| **Yujuico v Yujuico** |
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| 2025 NY Slip Op 33621(U) |
| September 30, 2025 |
| Supreme Court, New York County |
| Docket Number: Index No. 154597/2022 |
| Judge: Emily Morales-Minerva |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** HON. EMILY MORALES-MINERVA **PART** 42M

*Justice*

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JOSELITO Z YUJUICO,

Plaintiff,

- v -

ELOINA Z. YUJUICO, ADERITO Z. YUJUICO

Defendants.

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**INDEX NO.** 154597/2022

**MOTION DATE** 02/05/2025

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion to/for DISMISS.

APPEARANCES:

Venturini & Associates, New York, New York (August C. Venturini, Esq., of counsel) for plaintiff.

Kelley Drye & Warren LLP, New York, New York (Aaron Joshua Gold, Esq., of counsel) for defendant ELOINA Z. YUJUICO.

HON. EMILY MORALES-MINERVA:

Plaintiff JOSELITO YUJUICO commenced this action against his siblings defendants ELOINA Z. YUJUICO[1] and ADERITO Z. YUJUICO,[2] which concerns a dispute over the parties' rights to rental income from three condominium units, among other things. In the subject pre-answer motion to dismiss (motion seq. no. 002), defendant ELOINA Z. YUJUICO (movant), seeks an order dismissing the amended complaint based on statute of limitations

[1] Defendant ADERITO Z. YUJUICO has not appeared in the instant action.
[2] Defendant ADERITO Z. YUJUICO is named solely as a necessary party under Article 9 of the New York Real Property Actions and Proceedings Law, and no claims are asserted against this defendant in this action (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 51, Amended Complaint).

(see CPLR § 3211 [a] [5] [governing the same]), and laches. In the alternative, movant moves for an order dismissing the amended complaint due to plaintiff's failure to state a cause of action (see CPLR § 3211 [a] [7] [governing the same]), and/or inconvenient forum, as she lives in Vancouver, British Columbia (see CPLR § 327 [governing the same]).

Plaintiff submitted written opposition, and the Court heard oral arguments prior to marking the motion submitted.

Now, for the reasons explained below, movant's motion (seq. no. 002), is granted, in part, to the extent that plaintiff's second and fourth causes of action are dismissed, and is otherwise denied in its entirety.

BACKGROUND

The following facts are set forth in the amended complaint, which the court must accept as true for the limited purpose of this motion to dismiss (see Leon v Martinez, 84 NY2d 83 [1994]).

Non-party Purificacion Z. Yujuico is the deceased mother of plaintiff JOSELITO Z. YUJUICO (plaintiff) and defendants ELOINA Z. YUJUICO (movant) and ADERITO Z. YUJUICO (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 51, Amended Complaint). Siblings plaintiff and defendant Aderito Z. Yujuico reside in the Philippines, and sibling movant "maintains a

residence in California" (id. at p 1), and in Vancouver, British Columbia (id.).

Prior to her death,[3] Purificacion Z. Yujuico purchased condominium units 9C, 14E, and 23B at 900 Park Avenue, New York, New York, 10075. Later, she transferred each of those units to the parties "together" in exchange for $10.00 (see NYSCEF Doc. No. 03, entitled "Condominium Unit Deed," dated November 01, 1979, Doc. No. 04, entitled "Condominium Unit Deed," dated November 19, 1993, and Doc. No. 28, entitled "Condominium Unit Deed," dated December 03, 1979).[4]

Thereafter, movant "assumed responsibility as the sole manager of [the units] . . . charged with the obligation to manage them for the benefit of all of the co-owners" (NYSCEF Doc. No. 51, Amended Complaint). As manager, but unbeknownst to plaintiff, movant leased units 14E and 9C to non-party tenants (see id.).[5] She collected rental income from the same and

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[3] The parties are currently involved in a contentious probate action in British Columbia concerning their deceased mother's estate and will (see NYSCEF Doc. No. 66, Memorandum of Law in Opposition; see also NYSCEF Doc. No. 72, Oral Argument Transcript, p 41, lines 1-5).

[4] Unit 14E was deeded to the siblings on November 01, 1979 (see NYSCEF Doc. No. 03, "Condominium Unit Deed", dated November 01, 1979 [providing that Unit 14E is deeded to "Adrito Z. Yujucio, Joselito Z. Yujuicio and Eloina Z. Yujuico" as grantors "(t)ogether with an undivided .900% interest in the Common Elements"]). Unit 9C was deeded to the siblings on November 19, 1993 (see NYSCEF Doc. No. 04, "Condominium Unit Deed", dated November 19, 1993 [providing that Unit 9C is deeded to "Adrito Z. Yujucio, Joselito Z. Yujuicio and Eloina Z. Yujuico" as grantors "(t)ogether with an undivided .776% interest in the Common Elements"]). Unit 23B was deeded to the siblings on December 03, 1979 (see NYSCEF Doc. No. 28, "Condominium Unit Deed", dated December 03, 1979 [providing that Unit 23B is deeded to "Adrito Z. Yujucio, Joselito Z. Yujuicio and Eloina Z. Yujuico" as grantors "(t)ogether with an undivided .545% interest in the Common Elements"]).

[5] The time frame is not specified in the complaint, as the complaint simply alleges "[a]t some point after each of the purchases of Unit 14E, 23B, and 9C, Eloina leased each of the units to non-party tenants and collected all of the rent" (NYSCEF Doc. No. 51, Amended Complaint).

retained all rental profits to the exclusion of plaintiff and Aderito Z. Yujuico, who had no knowledge that movant leased the units.

However, at some point, movant filed income tax returns in plaintiff's name; therein, she claimed income from the rental units. This is how plaintiff learned, for the first time, that movant obtained revenue from the condominiums that she did not share with him or with their brother Aderito Z. Yujuico (id.).[6]

On February 03, 2020, plaintiff's counsel sent a letter to movant (see NYSCEF Doc. No. 15, Demand Letter, dated February 03, 2020). In the letter, plaintiff demanded that movant refrain from taking any actions on his behalf and that she provide a full accounting of the rental income generated on each unit (see id.).

At or around two years later, plaintiff commenced this action against movant and defendant Aderito Z. Yujuico, who has not appeared (see NYSCEF Doc. No. 002, Complaint, dated May 31, 2022). Plaintiff asserts seven causes of action against movant: "conversion and action under RPAPL § 1201" (first); unjust enrichment (second); misrepresentation and fraudulent omission (third); constructive trust on Unit 14E and Unit 9C (fourth); breach of fiduciary duty (fifth); partition and sale of units (sixth); and accounting pursuant to RPAPL § 1201 (seventh) (see

[6] Plaintiff does not specify when he discovered that movant was filing tax returns on his behalf (see NYSCEF Doc. No. 51, Amended Complaint).

id.). However, plaintiff explicitly states that he asserts no claims against defendant Aderito Z. Yujuico whom he joined as a necessary party only (see NYSCEF Doc. No. 51, Amended Complaint).

In response, movant, by notice of motion (seq. no. 001), filed a request for an order dismissing plaintiff's complaint. Among other things, defendant Eloina argued inconvenient forum (see CPLR § 327 [governing dismissal based on inconvenient forum]); lack of personal jurisdiction due to ineffective service of process (see CPLR § 3211 [a][8] [governing dismissal based on lack of personal jurisdiction]); statute of limitations grounds (see CPLR § 3211 [a][5][governing dismissal based on statute of limitations]); and failure to state causes of action (see CPLR § 3211 [a][7][governing dismissal based on failure to state a cause of action]); see NYSCEF Doc. No. 10, Motion to Dismiss).

Plaintiff opposed the motion and cross-moved for orders to (1) extend the time for service of process upon movant, pursuant to CPLR § 306-b, governing the time frames for service of process; and to (2) amend his complaint, pursuant to CPLR § 3025 (b), governing the amendment of pleadings, to add allegations regarding condominium unit 23B (see NYSCEF Doc. No. 23, Cross-Motion with proposed amended complaint attached).

The court (N. Bannon, J.S.C.) granted plaintiff's cross-motion in its entirety, and denied movant's motion to dismiss

"without prejudice to renew after service of the amended complaint" (NYSCEF Doc. No. 48, Decision and Order, dated January 12, 2024).

Thereafter, plaintiff and movant entered a two-attorney stipulation, dated April 12, 2023, agreeing that movant's counsel would accept service of the amended complaint on her behalf; they also entered a second two-attorney stipulation, dated February 13, 2024, where movant acknowledged receipt of such service (see NYSCEF Doc. No. 43, Stipulation, dated April 12, 2023; see also NYSCEF Doc. No. 57, Stipulation, dated February 13, 2024).

In the amended complaint, plaintiff asserts the same seven causes of action against movant, including for the first time allegations regarding the parties' condominium "Unit 23B" (see NYSCEF Doc. No. 51, Amended Complaint).

Movant timely filed the instant pre-answer motion to dismiss (motion seq. no. 002). Movant asserts as grounds for dismissal, in the following order (1) that the statute of limitations bars the causes of actions, in part, and (2) that laches requires dismissal of otherwise valid claims (see CPLR § 3211 [a][5]). In the alternative, and, again, in order set forth in the opposition papers, movant seeks an order dismissing the complaint based on (3) failure to state a cause

of action (see CPLR § 3211 [a][7]), or (4) inconvenient forum[7] (see CPLR § 327).

Plaintiff submits written opposition, and the court held oral arguments on the motion.[8]

ANALYSIS

*STATUTE OF LIMITATIONS*

Movant first argues that the Statute of Limitations bars plaintiff's "claims for conversion pre-dating May 31, 2019," and bars "claims for unjust enrichment and constructive trust" pre-dating May 31, 2016 (NYSCEF Doc. No. 59, Memorandum of Law in Support of Movant's Motion to Dismiss First Amended Complaint, dated February 29, 2024, p 5, section I). Plaintiff conceded this point, on record, during oral arguments on this motion (see NYSCEF Doc. No. 72, Transcript of Oral Argument, p 43, lines 3-25).

Accordingly, the Court grants movant's motion to dismiss plaintiff's causes of action to the extent of finding that the time frame for plaintiff's conversion claim is limited to May 31, 2019, through May 31, 2022 (the filing date of the

[7] Jurisdiction is not contested.
[8] The parties submitted the transcript to NYSCEF on September 08, 2025 (see NYSCEF Doc. No. 72, Transcript of August 08, 2024, Oral Argument).

complaint), and the time frames for plaintiff's unjust enrichment, constructive trust, and fraudulent misrepresentation and omission claims are limited to May 31, 2016, through May 31, 2022.

*LACHES*

Movant next argues that laches bars plaintiff's claims accruing, at least, before February 03, 2020 (see NYSCEF Doc. No. 59, Memorandum of Law in Support of Movant's Motion to Dismiss First Amended Complaint, dated February 29, 2024, p 6, section II). The court disagrees.

"Laches and limitations are not the same. Limitations involve the fixed statutory period within which actions must be brought, while laches signifies a delay independent of statute" (Matter of Linker, 23 AD3d 186, 189 [1st Dept 2005], quoting Saratoga County Chamber of Commerce v Pataki, 100 NY2d 801, 816 [2003]). As an equitable bar, the doctrine of laches seeks to address a plaintiff's "lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party" (Reif v Nagy, 175 AD3d 107, 130 [1st Dept 2019], quoting Saratoga County Chamber of Commerce, 100 NY2d at 816; see also 214 Lafayette House LLC v Akasa Holdings LLC, 227 AD3d 75, 82 [1st Dept 2024]["the essential elements of laches are unreasonable and inexcusable delay by the plaintiff in undertaking to enforce his

rights, which result in prejudice to the opposing party"] [internal quotation marks omitted]).

"The mere lapse of time, without a showing of prejudice, is insufficient to sustain a claim of laches" (Reif, 175 AD3d at 130, citing Saratoga County Chamber of Commerce, 100 NY2d at 816, and Matter of Flamenbaum, 22 NY3d 962, 966 [2013] ["the essential element of laches [is] prejudice"]). Prejudice may be demonstrated "by a showing of injury, change of position, loss of evidence, or some other disadvantage resulting from the delay" (Matter of Linker, 23 AD3d at 189; see also White v Priester, 78 AD3d 1169, 1171 [2d Dept 2010]).

Here, movant argues that plaintiff delayed in filing a claim "for at least 40-plus years regarding Units 14E and 23B, and 27 years for Unit 9C-[despite knowing] that he was not receiving rental income from the Units" (NYSCEF Doc. No. 59, Memorandum of Law in Support of Movant's Motion to Dismiss First Amended Complaint, dated February 29, 2024, p 7). This argument is disingenuous and misleading.

No dispute exists that plaintiff did not know movant was renting the properties. Therefore, no reason existed for movant to ask for his share of rental income. Movant argument that her renting the units should have been obvious to plaintiff, because he was not contributing financially to the maintenance of the properties, is also unavailing (see NYSCEF Doc. No. 59, Memorandum of Law in Support of Movant's Motion to Dismiss First

Amended Complaint, dated February 29, 2024, p 7-8). While movant managed the units independently, this fact alone does not make it obvious that she was renting the units.

The amended complaint, which the Court must accept as true on the motion to dismiss, alleges that, on or around 2020, when plaintiff discovered that the co-owned Units were leased, he reached out to movant to demand an accounting (see NYSCEF Doc. No. 51, Amended Complaint). Once she declined to provide that accounting, plaintiff filed this action within three years.

In any event, "mere lapse of time, without a showing of prejudice, is insufficient to sustain a claim of laches" (Reif, 175 AD3d at 130). Here, movant appears to allege the prejudice of "los[t] evidence" (NYSCEF Doc. No. 59, Memorandum of Law in Support of Movant's Motion to Dismiss First Amended Complaint, dated February 29, 2024, p 8) this argument is unavailing (see generally Matter of Linker, supra, 23 AD3d at 189 [Prejudice may be demonstrated "by a showing of injury, change of position, loss of evidence, or some other disadvantage resulting from the delay"]).

The alleged lost witnesses are the parties' mother, who passed in 1996, and the parties' father, who passed in 2005 (see NYSCEF Doc. No. 59, Memorandum of Law in Support of Movant's Motion to Dismiss First Amended Complaint, dated February 29, 2024, p 8). Further, as to documentary evidence, movant states

broadly that banks do not retain financial records forever (see id.).

However, movant identifies no proposed testimony that the parties' parents could provide regarding the events, which occurred after their death. Similarly, movant's arguments that banks will not have financial records for any of the periods at hand is conclusory and unsupported by any alleged facts.

*FAILURE TO STATE A CAUSE OF ACTION*

"On a CPLR § 3211 (a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true" (Alden Glob. Value Recovery Master Fund, L.P. v KeyBank N.A., 159 AD3d 618, 621-622 [1st Dept 2018] citing 219 Broadway Corp. v Alexander's, Inc., 46 NY2d 506, 509 [1979]). Further, on such a motion, the complaint is to be construed liberally, and all reasonable inferences must be drawn in favor of the plaintiff (see Leon v Martinez, 84 NY2d 83, 87 [1994]). "Whatever an ultimate trial may disclose as to the truth of the allegations, on such a motion, a court is to take them as true and resolve all inferences which reasonably flow therefrom in favor of the pleader" (Sander v Winship, 57 NY2d 391, 394 [1982]).

*Conversion and RPAPL § 1201 (First Cause of Action)*

In this first cause of action, plaintiff appears to merge the theory of conversion and an action "by joint tenant or tenant in common" against a co-tenant, pursuant to Real Property Actions and Proceedings Law [RPAPL] § 1201. However, these actions are plainly distinct. Each rule -- one common law and the other statutory -- requires a separate analysis. Here, the court begins with plaintiff's conversion claim.

In the amended complaint, plaintiff alleges that, in retaining all the undisclosed rental "profits" from the subject condominium units, movant has improperly kept money for herself that belongs to him (see NYSCEF Doc. No. 51, Amended Complaint). Plaintiff does not identify the amount of such profits, if any, or the exact amount due to plaintiff. However, as owner in common of each unit with his two siblings, plaintiff asserts he is entitled to one-third of those monies and movant does not dispute that plaintiff is one-third owner of each subject condominium unit.

"Conversion occurs when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession"[9] (Family Health Mgt., LLC v Rohan Developments,

[9] Section 1201 of the RPAPL provides, "A joint tenant or a tenant in common of real property, or his executor or administrator, may maintain an action to

LLC, 207 AD3d 136, 139 [1st Dept 2022] [internal quotation marks omitted]; see also Colavito v New York Organ Donor Network, Inc., 8 NY3d 43, 49-50 [2006] [Rosenblatt, J.] [addressing the tort of conversion and setting forth its elements]). "'Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights'" (Papas v Tzolis, 20 NY3d 228, 234 [2012], quoting Colavito, supra, 8 NY3d 43 at 50).

"Where, as here, the property is money, it must be identifiable and be subject to an obligation to be returned or to otherwise be treated in a particular manner" (Salatino v Salatino, 64 AD3d 923, 925 [3d Dept 2009], lv denied 13 NY3d 710 [2009] [internal quotation marks and citation omitted]; see also SH575 Holdings, LLC v Reliable Abstract Co., 195 AD3d 429, 430 [1st Dept 2021] ["where a conversion claim is asserted with respect to money, the funds must be specifically identifiable and be subject to an obligation to be returned or to be otherwise treated in a particular manner"]; Matter of Clark, 146 AD3d 495, 496 [1st Dept 2017] [stating the same], lv denied 29 NY3d 907 [2017]). The First Department clarifies that the

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recover his just proportion against his co-tenant who has received more than his own just proportion, or against his executor or administrator" (see Dan M. Blumenthal, Practice Commentaries [McKinney's Cons Law of NY, RPAPL § 1201] [explaining that "this section codifies the common law principle that tenants in common 'have a quasi-trust or fiduciary relation with regard to the property they commonly hold'"]).

requirement that money be identifiable does not preclude an action for conversion where money is comingled or transferred to others (see Family Health Mgt., LLC, 207 AD3d at 140).

Key to this appears to be that plaintiff's ownership right over the funds is known and that the defendant has an obligation to return or "to treat [plaintiff's] fund[s] in a particular manner" (id. at 139). This reading employs the wisdom of our highest court's statement: "[n]o one, in the practical affairs of life, retains a specific description of each bill which comes to [their] hands . . . If the fact of the unlawful taking be established, and the amount converted is ascertained, the culprit cannot avail [themselves] of [their] own act, in secreting" bills (Gordon v Hostetter, 37 NY 99, 102 [1867]), even if among others.

"When the funds at issue in an action for the conversion of money constitute a specific sum, one that is determinate, and reflects an ascertained amount, the money is specifically identifiable" (Homapour v 3M Props., LLC, 2025 NY Misc LEXIS 6939, *24 [Sup Ct NY Cnty 2025], citing Family Health Mgt., supra, 207 AD3d at 240).

Here, movant does not dispute that she collected rental income from the condominiums that the parties own jointly (see generally NYSCEF Doc. No. 59, Memorandum of Law in Support of Movant's Motion to Dismiss First Amended Complaint, dated February 29, 2024). She also does not dispute that she refuses

to provide plaintiff with an accounting of such rental income (see id.). Such refusal complicates plaintiff's ability to identify the monetary sum in proceeds belonging to him.

However, clarity is found in plaintiff's undisputed one-third ownership of each condominium unit that movant rented for profit.[10] In this regard, the funds at issue are determinate, as the plaintiff's ownership amount is fixed and clear. One-third of rental income received is not open to interpretation and is specifically identifiable upon discovery of the rental profit which movant does not deny collecting and, thus far, refuses to disclose.

Therefore, the Court will not dismiss plaintiff's cause of action for conversion, recognizing that it is a close call and "the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff" (see Leon v Martinez, 84 NY2d 83, 87 [1994]).

Moving next to plaintiff's claim against movant, pursuant to RPAPL § 1201, it also withstands this motion to dismiss for failure to state a cause of action (see CPLR § 3211 [a] [7]). Section 1201 of the RPAPL provides:

> "A joint tenant or a tenant in common of real property . . . may maintain an action to recover his just proportion against his co-tenant who has received more than his own

[10] While movant hints that she used the money collected in rent to maintain the units without her brothers' help, this may be grounds for a crossclaim against plaintiff and is not challenge to his share of the unit.

> just proportion, or against his executor or administrator"

(RPAPL § 1201).

This statute codifies "the long-established principle that a tenant be required to account to cotenants for rents received from third parties'" (Matter of Steinberg, 183 AD3d 1067, 1073 [3d Dept 2020], citing Trotta v Ollivier, 91 AD3d 8, 14 [1st Dept 2011] ["The purpose of RPAPL 1201 . . . is to vest joint tenants and tenants in common . . . with the right to income generated by jointly held property, and for related accounting thereof"] [citations omitted]; see also Pichler v Jackson, 157 AD3d 450, 450 [1st Dept 2018] ["As tenants in common, the parties have a quasi-trust or fiduciary relation with regard to the property they commonly hold, supporting plaintiff's third cause of action for an accounting. . . . Even absent any such common-law obligation, a statutory duty to account would exist, pursuant to RPAPL 1201"], citing Degliuomini v. Degliuomini, 12 AD3d 634, 635 [2d Dept 2004] ["one cotenant is unquestionably required to account to . . . his [or her] cotenant, for an amount of rent he [or she] may have received in excess of his [or her] own just proportion"][internal quotation marks omitted]).

The facts alleged in the subject amended complaint are that the parties' mother conveyed to them the deeds to the subject condominium units to hold together, and that movant

rented the units unbeknownst to plaintiff and defendant Aderito Z. Yujuico; the amended complaint further alleges that movant collected rent and reported rental income from the condominium units on tax forms, but failed to remit to plaintiff his 1/3rd share of such proceeds (see NYSCEF Doc. No. 51, Amended Complaint). Therefore, the Court finds that the amended complaint sufficiently alleges a cause of action, pursuant to RPAPL § 1201.

*Unjust Enrichment (Second Cause of Action)*

Movant is correct that plaintiff's second cause of action in the amended complaint should be dismissed. "The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in 'equity and good conscience' should be paid to the plaintiff" (Corsello v Verizon New York, Inc., 18 NY3d 777, 790 [2012]). To state a claim for unjust enrichment, a plaintiff must allege that "(1) the other party was enriched, (2) at that party's expense, and (3) that it would be against equity and good conscience to [permit the other party] to retain what is sought to be recovered" (Columbia Memorial Hospital v Hinds, 38 NY3d 253, 275 [2022][internal quotation marks omitted]).

"Unjust enrichment is not a catchall cause of action to be used when others fail" (Corsello, 18 NY3d at 790). "It is

available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff" (id., see also Iberdrola Energy Projects v MUFG Union Bank, N.A., 218 AD3d 409, 412 [1st Dept 2023]).

"Typical cases are those in which the defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled (Corsello, 18 NY3d at 790, citing Markwica v Davis, 64 NY2d 38 [1984] [emphasis added]). Unjust enrichment claims are correctly dismissed when "it simply duplicates, or replaces, a conventional contract or tort claim" (Stevens v RX Med. Dynamics, LLC, 191 AD3d 487, 488 [1st Dept 2021]).

Here, plaintiff's unjust enrichment claim is duplicative of plaintiff's breach of fiduciary duty claim, which is not the subject of the instant motion to dismiss; they arise from the same facts and seek identical damages (see NYSCEF Doc. No. 51, Amended Complaint, ¶ 29-30, and 41-43; see also Hahn v Stone House Properties, LLC, 206 AD3d 408, 409 [1st Dept 2022] [holding that "the claim for . . . unjust enrichment . . . [is] duplicative of the breach of fiduciary duty claim as they arise from the same facts and seek identical damages"]).

*Fraudulent Misrepresentation and Omission*
*(Third Cause of Action)*

Movant's motion to dismiss plaintiff's cause of action for fraudulent misrepresentation and omission is denied.

"[I]n a claim for fraudulent misrepresentation, a plaintiff must allege a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (Mandarin Trading Ltd. v Wildenstein, 16 NY3d 173, 178 [2011], quoting Lama Holding Co. v Smith Barney, 88 NY2d 413, 421 [1996][internal quotation marks omitted]). "Where a cause of action is based in fraud, the circumstances constituting the wrong shall be stated in detail" (Mandarin Trading Ltd., 16 NY3d at 178, quoting CPLR § 3016 [b][internal quotation marks omitted]).

Plaintiff alleges that movant knowingly failed to inform him that (1) she leased the units to non-party tenants; that (2) she was collecting rent from the units, which generated annual profits; that (3) she was filing tax returns in plaintiff's name, which detailed the profits; and that (4) she kept all of the annual profits generated by the rent, despite plaintiff having an interest in the same (see NYSCEF Doc. No. 51, Amended Complaint, ¶ 32).

Accepting these allegations as true and construing the inferences that may be drawn from those allegations in plaintiff's favor, this Court finds that the amended complaint sufficiently alleges that movant failed to disclose material facts to plaintiff and that, in so doing, plaintiff, to his detriment, continued to rely on her to independently manage the condominium units in the interests of all of the siblings (see P.T. Bank Cent. Asia, NY Branch v ABN AMRO Bank N.V., 301 AD2d 373, 377 [1st Dept 2003] [finding that plaintiff sufficiently alleged that defendant intentionally failed to disclose material facts, and that CPLR § 3016 (b) "requires only that the misconduct complained of be set forth in sufficient detail to clearly inform a defendant with respect to the incidents complained of"]).

Movant's argument against a finding that a cause of action exists is that plaintiff's reliance on her omissions was not justifiable. However, "[d]etermination of whether a party's reliance is reasonable, or justifiable, is highly fact-intensive, and thus generally not amenable to resolution as a matter of law on a motion to dismiss" (Bennett v Bennett, 223 AD3d 1013, 1016 [3d Dept 2024]).

*Constructive Trust*
*(Fourth Cause of Action)*

Regarding plaintiff's claim "for a constructive trust on Unit 14E and Unit 9C and all Rent," the Court agrees with movant that plaintiff fails to state a cause of action.

A "constructive trust is an equitable remedy [and, therefore] courts do not rigidly apply the elements but use them as flexible guidelines" (Baker v Harrison, 180 AD3d 1210, 1211 [3d Dept 2020]; see Aubertine v Aubertine, 240 AD3d 1360, 1361 [4th Dept 2025]). The elements required to set forth a claim for constructive trust are: "(1) a confidential or fiduciary relation, (2) a promise, express or implied, (3) a transfer made in reliance on that promise, and (4) unjust enrichment'" (Consumers Union of U.S., Inc. v. State, 5 NY3d 327, 347, n 14 [2005]; citing Bankers Sec. Life. Ins. Soc. v Shakerdge, 49 NY2d 939, 940 [1980] [providing the same]; see also Wachovia Sec., LLC v Joseph, 56 AD3d 269, 271 [1st Dept 2008], quoting Bankers, 49 NY2d at 940).

Here, there appears to be no dispute that the parties -- as siblings who own the subject condominiums in common -- have a fiduciary relation (Pichler v Jackson, 157 AD3d 450, 450 [1st Dept 2018]). Further, the complaint provides that movant "assumed responsibility as the sole manager of [the subject condominium units'] charged with the obligation to manage them for the benefit of all the owners" (NYSCEF Doc. No. 51, Amended Complaint, p 3, ¶ 12). It states that movant's "promise to manage the Units on behalf of all of the co-owners" necessarily

meant that she would provide plaintiff with "the benefits of ownership, including the profits from the rent" (id., p 6, ¶ 38).

However, plaintiff alleges no transfer of any interest from himself to movant in exchange for her promise to manage the units (see generally M v F, 27 Misc3d 1205[A], *4 [Sup Ct NY Cnty 2010] [E. Gesmer, J.S.C.] ["cases require a transfer of funds or other valuable property either alone or in addition to time and effort, in reliance on a promise made by defendant"]).

Plaintiff's reliance on Palazzo v Palazzo (121 AD2d 261 [1st Dept 1986]) does not require a different result. That case involved a divorced couple who purchased real property during their marriage which the husband later claimed for himself alone; the court found a constructive trust existed entitling the wife to equal ownership interest in the real property because (1) the couple purchased said property through their joint account and (2) the wife helped renovate the property, including making administrative applications necessary to proceed with the building's renovations (see Palazzo, supra, 121 AD2d at 263). There, the First Department found that the husband made an implicit promise to own the property jointly with wife and, in exchange, the wife transferred her earnings to the purchase price of the real property and her work to complete renovations on the property (id.).

Here, the parties shared the condominium units equally prior to movant allegedly promising to take on the role of managing them. Plaintiff does not allege that, in exchange for such promise, he offered anything to movant or that, having given such to movant, she is unjustly enriched.

*FORUM NON CONVENIENS*

Curiously, movant asserts forum non conveniens as, an alternative, and final ground upon which plaintiff's motion should be dismissed. Therefore, the Court addresses this argument in closing.

The forum non conveniens doctrine is codified in CPLR § 327 (a), which provides, as relevant here:

> "When the court finds that in the interest of substantial justice the action should be heard in another forum, the court on the motion of any party, may stay or dismiss the action in whole or in part on conditions that may be just"

(CPLR § 327 [a]).

The decision to grant or deny such motion is "addressed to a court's discretion, and [is subject to review] only to decide whether discretion has been abused" (Haussmann v Baumann, 2025 NY LEXIS 686, *1 [2025], citing Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Bros. Co., 23 NY3d 129, 137 [2014]).

Further, if a lower court considers the "various relevant factors in making such a determination" there is "'no abuse of discretion reviewable' . . . even if [room exists to weigh] those factors differently" (Haussmann, supra, 2025 NY LEXIS 686, *1, citing Estate of Kainer v UBS AG, 37 NY3d 460, 467 [2021] [confirming that factors relevant to a forum non conveniens analysis are articulated in Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 479 [1984], quoting Pahlavi, 62 NY2d at 479).

As the Court of Appeals sets forth, these various factors include:

> "[1] the burden on the New York courts, [2] the potential hardship to the defendant, and the unavailability of an alternative forum in which plaintiff may bring suit. The court may also consider [3] that both parties to the action are nonresidents and [4] that the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction"

(Pahlavi, 62 NY2d at 479 [citations omitted]). A court may also consider the location of potential witnesses and documents (see Shin-Etsu Chem. Co., Ltd. v ICICI Bank Ltd., 9 AD3d 171 [1st Dept 2004]; see also Zhakiyanov v Ogai, 239 AD3d 432, 433 [1st Dept 2025]).

No one factor is controlling in a forum non conveneins analysis (Bangladesh Bank v Rizal Commercial Banking Corp., 226 AD3d 60, 70 [1st Dept 2024], citing Pahlavi, 62 NY2d at 479). The doctrine "rests upon justice, fairness and convenience" (Pahlavi, 62 NY2d at 479; see also Kainer, 37 NY3d at 472 ["The

unique circumstances of each case must be considered, and the interests of substantial justice are paramount"]). Flexibility based on the facts and circumstances of each case is "[t]he great advantage of the rule of forum non conveniens" (Kainer, 37 NY3d at 471 [quotation and citation omitted]).

Finally, the burden is on the defendant "challenging the forum to demonstrate relevant private or public interest factors which militate against [the court] accepting litigation" (Kainer, 37 NY3d at 471 [quotations and citation omitted]). Such is "a heavy burden of establishing that New York is an inconvenient forum and that a substantial nexus between New York and the action is lacking" (Elmaliach v Bank of China Ltd., 110 AD3d 192, 208 [1st Dept 2013], citing Kuwaiti Eng'g Group v Consortium of Intl. Consultants, LLC, 50 AD3d 599, 600 [1st Dept 2008]; Bacon v Nygard, 160 AD3d 565, 565 [1st Dept 2018] [indicating that defendants seeking dismissal based on foreign non conveniens must establish the balance of facts point "strongly in their favor" (quotations and citations omitted)]).

A "plaintiff's choice of forum should rarely be disturbed, even when plaintiff is not a New York resident" (Bangladesh Bank, 226 AD3d at 70, citing OrthoTec, LLC v Healthpoint Capital, LLC, 84 AD3d 702, 702 [1st Dept 2011]).

Here, considering all the relevant factors, the Court declines to dismiss this action based on non-convenient forum. First, there is no articulated burden on the court to preside

over this matter. No need exists to translate documents or interpret and apply laws of another governing state or country (see generally Bacon, 160 AD3d at 566). Movant effectively concedes that New York law applies here, relying on it in her prior motion to dismiss and making all previous arguments for dismissal based on New York law alone (id. at 566 [holding, in the context of a motion to dismiss based on forum non conveniens, that defendants "conceded that New York law applies by relying on it in their prior motion to dismiss"]). Movant also provides, in support of this motion, that Vancouver, British Columbia "can handle all aspects of this dispute - including applying New York law" (NYSCEF Doc. No. 59, Memorandum of Law in Support of Movant's Motion to Dismiss First Amended Complaint, dated February 29, 2024, p 5 [emphasis added]).

Second, movant fails to establish a potential undue hardship if the matter remains in New York state. While movant asserts she is 70-years-old, age alone does not constitute ill health or inability to travel (see generally Temple by Romano v Temple, 97 AD2d 757 [2d Dept 1983][finding that although the record demonstrates that defendants are over 70 years old, that fact, in and of itself, does not prevent them from traveling, and they have not claimed to be in ill health]; see also Gowen v Helly Nahmad Gallery, Inc., 60 Misc3d 963, 995 [Sup Ct NY Cnty 2018][discussing, in the context of CPLR § 327 (a), that "exceptional circumstances such as illness" preventing a witness

who is an older adult from traveling may constitute a hardship]).

Further, movant's proposed alternative forum -- Vancouver, British Columbia -- may be available as an alternative forum. However, movant is the only party with a residence there, and movant transacts business in this State as a landlord (see Aon Risk Servs., Northeast v Cusack, 34 Misc 3d 1234[A], *5-6 [Sup Ct, NY County 2012], aff'd 102 AD3d 461 [1st Dept 2013]). Indeed, movant recently commenced actions in New York City Civil Court, Housing Part, against non-party tenants; these actions resolved in 2024 and 2023, respectively, and movant points to no facts that made such litigation overly burdensome.

To the extent movant claims it would be a hardship to litigant in New York State -- because she lives in Vancouver, British Colombia -- this argument appears incredible. The 2018 lease agreement for the subject Unit 23B, between movant and a non-party tenant, list movant's residence as "1177 California Street, Suite 605, San Francisco, CA" (see Eloina Yujuico v David Townes, Index No. LT-316898-22/NY, NYSCEF Doc. No. 10, Lease, dated May 21, 2018 [both parties refer to this proceeding in the instant action; plaintiff attaches the petition as Exhibit B (NYSCEF Doc. No. 62) to its Affirmation in Opposition (NYSCEF Doc. No. 60), and movant submits the "information, [regarding Unit 23B], which I [counsel] am referencing, is judicially noticeable because it it [sic] the subject of a

landlord/tenant action in this City" [NYSCEF Doc. No. 72, Oral Argument Transcript, p 16, lines 4-10).

Further, movant conceded in her previous motion to dismiss this action that she maintains that residence, although contending that she has only sporadically resided "at the California property" since 2015 (NYSCEF Doc. No. 16, Affidavit of Movant, dated December 19, 2022, p 3, ¶ 8-9).

The Court recognizes that the parties are engaged in a contentious probate action in British Columbia (see NYSCEF Doc. No. 66, Memorandum of Law in Opposition; see also Oral Argument tr at 41, lines 1-5). However, the probate action is not related to, nor does it overlap with, this one.

Third, while the Court considers that none of the parties reside in New York State, all the parties have substantial connections to New York as they own the condominium units here. Finally, contrary to movant's contention, the transactions out of which these causes of action arise did not occur primarily in a foreign jurisdiction. At the heart of this matter are condominium units, lease agreements, tenants, potential witnesses and income generated in New York State.

Accordingly, it is hereby

ORDERED that defendant ELOINA YUJUICO's motion (seq. no. 002) to dismiss plaintiff's JOSELITO YUJUICO's complaint on the ground of forum non conveniens is denied; it is further

ORDERED that defendant ELOINA YUJUICO's motion (seq. no. 002) to dismiss the first, second, third, and fourth causes of action in plaintiff's complaint pursuant to CPLR § 3211 (a)(7) is granted, in part, to the extent that plaintiff's second (unjust enrichment) and fourth (constructive trust) causes of action are dismissed; it is further

ORDERED that the statute of limitations of plaintiff's JOSELITO YUJUICO's remaining causes of actions are limited as discussed herein; it is further

ORDERED that defendant ELOINA YUJUICO's motion (seq. no. 002) to dismiss is otherwise denied; it is further

ORDERED that defendant ELOINA YUJUICO shall serve an answer to plaintiff's amended complaint within twenty (20) days after service of a copy of this order with notice of entry; and it is further

ORDERD that the parties shall appear for a preliminary conference in Part 42M on December 10, 2025, at 11:00 A.M.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

9/30/2025
DATE

EMILY MORALES-MINERVA, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | | X | NON-FINAL DISPOSITION | |
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| APPLICATION: | | SETTLE ORDER | | | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | | FIDUCIARY APPOINTMENT | REFERENCE |