

**Mistry v Mistry**

2025 NY Slip Op 33717(U)

September 29, 2025

Supreme Court, New York County

Docket Number: Index No. 659545/2024

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LYLE E. FRANK PART 11M**

*Justice*

-----X

DAYANAND V. MISTRY,

Plaintiff,

- v -

HARSHAD V. MISTRY, PANKAJ H. MISTRY, AJAY D.  
MISTRY, HITESH D. MISTRY

Defendant.

-----X

INDEX NO. 659545/2024

MOTION DATE 03/27/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for DISMISSAL.

Plaintiff commenced the instant action alleging that defendants defrauded plaintiff in the creation of an irrevocable trust. Defendants now move to dismiss the action on the grounds that, *inter alia*, the action is barred by the statute of limitations. Plaintiff opposes the motion. For the reasons set forth below, the motion to dismiss is granted.

*Background*

The irrevocable trust that is the subject of this action was created in 2009. Plaintiff alleges that defendants assured plaintiff would remain in control of the trust assets. Plaintiff further alleges that he became aware of the alleged fraud in 2022 when he attempted to exercise said control and was unable to.

*Discussion*

The complaint asserts causes of action alleging fraudulent inducement, constructive fraud, breach of fiduciary duty, rescission, and unjust enrichment, the Court will address each in turn.

In assessing a motion under CPLR 3211 (a) (7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and “the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” *Leon v. Martinez*, 84 NY2d 83, 88 [1994]. Notwithstanding the broad pleading standard, a plaintiff’s bald legal conclusions, unsupported by factual specificity, will not withstand a motion to dismiss. *See Godfrey v Spano*, 13 NY3d 358, 373[2009]. “Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

#### Fraudulent Inducement

“For a fraudulent inducement cause of action to be viable, it must be demonstrated that there was a false representation, made for the purpose of inducing another to act on it, and that the party to whom the representation was made *justifiably* relied on it and was damaged. *Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 495 [1st Dept 2011].

Preliminarily, defendants contend that this cause of action is barred by the six-year statute of limitations period, as the trust was created in December 2009.

It is well established that a cause of action for fraudulent inducement accrues when the induced agreement was executed (*see Rogal v Wechsler*, 135 AD2d 384 [1st Dept 1987]; *Matter of Medallion Fin. Corp. v Rucker*, 223 AD3d 497, 498 [1st Dept 2024]). Moreover, the First Department has held that the statute of limitations is the greater of six years from the fraud or “two years from when the fraud was discovered or with reasonable diligence should have been discovered” (*Boesky v Levine*, 193 AD3d 403, 405 [1st Dept 2021]).

Here, plaintiff failed to plead a sufficient fraudulent inducement claim. Further, the complaint fails to allege what if any reasonable diligence was undertaken prior to the alleged discovery in early 2022. Even crediting plaintiff's assertion that discovery of the alleged fraud occurred in early 2022, as required the Court is required to do in the instant motion, the matter was commenced in December 2024, over two years of a date in early 2022. The Court does not agree that the continuing wrong doctrine applies in this instance, and the First Department has rejected that argument in similar instances, (*see Henry v Bank of Am.*, 147 AD3d 599, 601 [1st Dept 2017] internal citations and quotations omitted, holding "the doctrine may only be predicated on continuing unlawful acts and not on the continuing effects of earlier unlawful conduct."). Accordingly, the Court agrees that the fraudulent inducement cause of action is time barred.

#### Constructive Fraud

The statute of limitations for constructive fraud is six years and accrues at the time of the alleged fraud occurs (*see Jaliman v D.H. Blair & Co. Inc.*, 105 AD3d 646, 647 [1st Dept 2013]); CPLR § 213 (1). Accordingly, plaintiff's cause of action for a constructive fraud, is also time barred.

#### Breach of Fiduciary Duty

In order to adequately plead a cause of action, plaintiff must allege the existence of a fiduciary relationship, misconduct by the defendant and damages caused by the misconduct. *See Pokoik v Pokoik*, 115 AD3d 428, 429 [1st Dept 2014]. Pursuant to CPLR § 3016(b), where a cause of action alleges breach of trust, "the circumstances constituting the wrong shall be stated in detail".

Plaintiff alleges that defendants Harshad and Pankaj owed fiduciary duties to Plaintiff arising from their role as managers of plaintiff's U.S. investments since the 1970s and that duty was breached by structuring the trust to plaintiff's detriment and to their benefit.

The applicable statute of limitations where plaintiff seeks monetary damages based on an alleged breach of fiduciary duty is three years. As indicated above the trust was created in 2009 and is the basis of plaintiff's breach of fiduciary duty cause of action. Notwithstanding the untimeliness of this case of action, the complaint fails to provide adequate specific allegations as required, thus it also fails to state a claim upon which relief can be granted. Accordingly, the breach of fiduciary duty cause of action is dismissed.

#### Rescission

The applicable statute of limitations for rescission is six years and accrues from the time of the execution of the contract. The First Department has held that where plaintiff does not demonstrate that they could not be compensated by damages, rescission is not appropriate (*MBIA Ins. Corp. v Lynch*, 81 AD3d 419, 420 [1st Dept 2011]).

Here, the repeated allegations in the complaint are that plaintiff has been damaged in the amount of \$15.6 million, thus nothing in the complaint indicates that rescission is appropriate. Moreover, the Court notes and plaintiff did not dispute that it initiated a lawsuit against the trust in Queens County to collect on a promissory note, thus maintaining a position that the trust is valid in Queens County<sup>1</sup> however it is invalid here. The cause of action seeking rescission is dismissed.

#### Unjust Enrichment

Unjust enrichment is a quasi-contract cause of action, that creates an obligation absent an agreement, however when a contract controls the subject matter, a quasi-contract claim cannot be

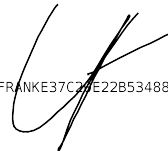
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<sup>1</sup> The matter is currently pending in Queens County Supreme Court, Index number 651383/2025.

maintained (see *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 572 [2005], quoting *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987] [the "existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter"])).

Again, here the allegations are based on plaintiff's assertion that the trust was created fraudulently, and the purpose of the trust was to benefit defendants Ajay and Hitesh, thus defendants have been unjustly enriched. The Court disagrees and finds that this cause of action is also time-barred. The Court has reviewed plaintiff's remaining contentions and finds them unavailing. Accordingly, it is hereby

ORDERED that the complaint is dismissed in its entirety.

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<u>9/29/2025</u> DATE			<u>LYLE E. FRANK, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE