

**D&S, Ltd. v GE Healthcare Tech., Inc.**

2025 NY Slip Op 34311(U)

November 8, 2025

Supreme Court, New York County

Docket Number: Index No. 653909/2023

Judge: Anar R. Patel

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various breaches of contract. *Id.* The last four counterclaims sound in tort (*i.e.*, negligent misrepresentation, breach of fiduciary duty, and negligence). *Id.*

Effective October 1, 2010, DS entered into the MCSA with GECC pursuant to which DS was engaged to provide certain debt collection services to GECC and its affiliates. FAC ¶¶ 1–2. DS asserts, upon information and belief, that GE HealthCare “was an operating division of GECC in 2010, when DS entered into the MCSA.” *Id.* ¶ 3.

DS alleges that, under the MCSA, it agreed to provide debt collection services upon the request of GECC or one of its affiliates, such as GE HealthCare. *Id.* ¶ 4. It further asserts that if its debt collection efforts were unsuccessful and GECC, or the affiliate involved, was forced to pursue litigation against their debtor, DS “was not responsible for managing any such litigation or responding to any counterclaims asserted in such a litigation” and that neither “GECC [nor any of its affiliates] retain[ed it] for litigation management of counterclaims that may arise out of debt collection services... .” *Id.*

In its Answer, GE HealthCare alleges that, “[i]n January 2018, pursuant to the statement of work contract then in effect, [it] placed a debt collection account with DS concerning a South Carolina company named MRI at Belfair, LLC (“Belfair”).” Answer and Am. Countercls. ¶ 3. DS’s collection efforts were unsuccessful, which led it to recommend that one of its “Network Attorneys” be hired to take legal action against Belfair. *Id.* GE HealthCare agreed, and DS thereupon hired the law firm Parnell & Parnell, P.A. (“Parnell”), which filed suit on behalf of GE HealthCare against Belfair in October 2018 (“Belfair Litigation”). *Id.* GE HealthCare alleges that, as its agent, DS agreed to “manage and monitor” the Belfair Litigation on its behalf and, among other undertakings, DS promised to “accurately communicate the status of the Belfair Litigation to GE HealthCare” and advise on developments that could prejudice its rights. *Id.* ¶ 4.

GE HealthCare further alleges that Belfair filed counterclaims against it in January 2019 and that, “[upon] information and belief, Parnell promptly informed DS of the counterclaims” upon their receipt, but “DS failed to timely inform GE HealthCare [about the existence of the counterclaims],” and failed to direct Parnell to file a reply to the counterclaims. *Id.* ¶ 5. “In the year after the counterclaims were filed,” Belfair entered the default and “filed motions for default judgment, to dismiss GE HealthCare’s claims, and for sanctions.” *Id.* “Parnell failed to respond to these motions” in any way, and “DS kept GE HealthCare in the dark and failed to competently advance [GE HealthCare’s] rights.” *Id.* ¶¶ 5–6.

### **Motion Sequence No. 007**

In Motion 007, GE Capital Defendants seek dismissal of the FAC pursuant to CPLR §§ 3211(a)(1), (a)(2), (a)(7), and/or (c), and summary judgment dismissing the FAC pursuant to CPLR § 3212. NYSCEF Doc. No. 90 (Notice of Motion). DS opposes the motion.

GE Capital Defendants argue that no justiciable controversy exists between themselves and DS. They point out that several material allegations in the original complaint, on which DS relied on to persuade the Court to deny dismissal in Motions 001 and 002, have been removed from the FAC. For example, GE Capital Defendants observe that DS revised paragraphs 3 and 4 of the original complaint (NYSCEF Doc. No. 1) to clarify that “DS provided the relevant debt collection

services to GE HealthCare, and not to GECC” and that it deleted the allegation in paragraph 4 of the original complaint “that GECC demanded indemnification” from DS. NYSCEF Doc. No. 91 (“GE Capital Defs. Mem. in Supp. of Mot. to Dismiss”) at 7 (citing FAC ¶¶ 4–5); *see also* NYSCEF Doc. No. 101 (FAC Redline). GE Capital Defendants also state that DS made changes to paragraphs 49 and 51 of the original complaint to clarify that DS made its recommendation that its dispute with Belfair be “escalated to an attorney for legal action” to GE HealthCare, not GECC, and that it was “GE HealthCare [that] approved escalating” the dispute, not GECC. GE Capital Defs. Mem. in Supp. of Mot. to Dismiss at 8 (citing FAC ¶¶ 55, 57).

GE Capital Defendants assert that this dispute turns on whether GE HealthCare is entitled to indemnity from DS under the MCSA for losses and attorneys’ fees associated with the Belfair Litigation, and that DS has failed to identify any dispute it has with either of the GE Capital Defendants. FAC ¶¶ 21, 103–04. Accordingly, GE Capital Defendants argue that they are not necessary parties to this action, and—as to GECC—DS cannot maintain any claim against GECC because GECC “has not existed nor held itself out as operating since 2015.” NYSCEF Doc. No. 92 (GE Capital Defendants’ Statement of Material Facts) ¶ 6.

In opposition, DS argues that GE Capital Defendants’ summary judgment motion must be dismissed as procedurally improper because DS did not answer the FAC. This is correct. A motion “for summary judgment [is] properly denied as premature because it was filed prior to issue being joined [], and this requirement is strictly adhered to.” *Compass Concierge, LLC v. 142 Duane Realty Corp.*, 222 A.D.3d 428, 430 (1st Dept 2023) (citing CPLR § 3212(a) and *City of Rochester v. Chiarella*, 65 N.Y.2d 92, 101 (1985)). GE Capital Defendants tacitly concede this point by failing to offer any argument to preserve this motion on reply, and accordingly this portion of the motion is dismissed as abandoned. *See Keane v. Chelsea Piers, L.P.*, 16 Misc. 3d 1116(A), 2007 N.Y. Slip Op. 51443(U), \*7 (Sup. Ct., N.Y. County 2007) (citing *Genovese v. Gambino*, 309 A.D.2d 832, 833 (2d Dept 2003)).

As to what remains of GE Capital Defendants’ motion, DS argues that it has adequately pleaded its claim for a declaratory judgment, and that GE Capital Defendants’ assertions that they “have never demanded indemnification from DS concerning the Belfair account” and that “DS does not allege or have evidence otherwise” fail because, among other reasons, that “producing ‘evidence’” at the pleadings stage is not the standard for dismissal of the complaint, that the Court must take DS’s allegations as true, and that the affirmations submitted by GE Defendants are not considered irrefutable documentary evidence under § 3211(a)(1). NYSCEF Doc. No. 117 (DS Opp’n) at 14. DS further argues that GE Capital Defendants are necessary parties to this action, despite issues with its amenability to suit.

As a threshold matter, the Court first considers GE Capital Defendants’ argument that GECC cannot be sued because it was merged out of existence in 2015. GE Capital Defendants argue that “GECC’s ability to sue and be sued is governed by the laws of the state of incorporation.” *Loccisano v. A. O. Smith Water Prod. Co.*, 211 N.Y. Slip Op. 33724(U), \*3 (Sup. Ct., N.Y. County 2011). As demonstrated by the Delaware Secretary of State’s “Certificate of Ownership and Merger,” submitted by GE Capital Defendants, GECC was merged “With and Into General Electric Company” on December 2, 2015. NYSCEF Doc. No. 96 (Certificate of Merger).

Section 259(a) of Delaware's General Corporate Law provides that, when a merger becomes effective:

the separate existence of all constituent corporations, or of such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation or be merged into 1 of such corporations, as the case may be, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated; *and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well ... as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation;* and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations... .

8 Del. C. § 259(a) (emphasis added).

Likewise, in New York, as a constituent corporation being merged “With and Into General Electric Company,” GECC “cease[d] to exist when [the] merger became effective.” *RAL Cap. Ltd. v. CheckM8, Inc.*, 2017 N.Y. Slip Op. 32000(U), \*7 (Sup. Ct., N.Y. County 2017); *see also Damon Alarm Corp. v. Am. Dist. Tel. Co.*, 304 F. Supp. 83, 84 (S.D.N.Y. 1969) (under 8 Del. C. § 259(a), “when a merger becomes effective the separate existence of all corporations except the survivor shall cease to exist”) (citations omitted). “Once such a merger has been effected, the absorbed corporation immediately ceases to exist as a separate entity, and may no longer be a named party in litigation.” *Sheldon v. Kimberly-Clark Corp.*, 105 A.D.2d 273, 276 (2d Dept. 1984), citing, *inter alia*, *Billy v. Consol. Mach. Tool Corp.*, 51 N.Y.2d 152, 164 (1980) (holding dismissal of complaint against “corporations [which] have been completely absorbed by” another in merger to be “entirely proper,” as they had “long since ceased to exist at the time the instant action was commenced”). Accordingly, GECC must be dismissed as a defendant party in this action.

As to their motion to dismiss DS’s claim against GECUSH, GE Capital Defendants state that, upon their receipt of the original complaint, they believed that DS had made a mistake in naming GECC, “a defunct entity,” as a defendant, and so they voluntarily added GECUSH as a defendant herein. *See* NYSCEF Doc. No. 71 (7/19/24 Letter of Casey J. Olbrantz, *Esq.*). Mr. Wright, Senior Corporate Counsel of General Electric Company, explained that “[f]or most of the period relevant to the [FAC], General Electric Company owned several distinct operating segments [including two] ... known as GE Healthcare and GE Capital.” NYSCEF Doc. No. 93 (“Wright Aff.”) ¶ 3. “Before December 3, 2015, the GE Capital segment ... was [previously] consolidated under GECC, which was wholly owned by General Electric Company,” *id.* ¶ 4, but after GECC was “merged out of existence into General Electric Company ... General Electric Company then

created GE Capital Global Holdings, LLC, which became the parent of both GECUSH and GE Capital International Global Holdings Limited, each of which assumed some of GECC's prior operations from General Electric Company." *Id.* ¶ 5.

As held in the April 2024 Decision, DS did not need to have plausibly alleged that GECC was involved in the operative events set forth in the FAC to be deemed a necessary party. GE Capital Defendants admit that the November 2017 Statement of Work, which incorporated the terms of the MCSA by reference, identified "GECUSH as the 'successor-in-interest' to GECC." *Id.* ¶ 12. As a subsidiary of GE Capital Holdings, LLC and successor to the rights and privileges of GECC under the MCSA, GECUSH could be joined as a necessary party, if it "might be inequitably affected by a judgment in the action." CPLR § 1001(a); *see also Galbraith v. Guida*, 161 A.D.2d 206, 206 (1st Dept. 1990) (holding that successor syndicate manager "must be joined as necessary party to any cause of action seeking to rescind or reform the agreements from which its rights arise").

Mr. Wright further states that GECUSH has no rights or interests at issue in this dispute. Wright Aff. ¶ 18. Mr. Wright asserts that "neither GECC nor GECUSH have demanded indemnification from DS, and DS does not allege otherwise," and that neither GECC nor GECUSH have "any potential right to demand such indemnification." *Id.* Counsel further asserts that "there is no genuine controversy between DS and either of the Capital Defendants, nor does the dismissal of the GE Capital Defendants from this lawsuit affect DS's ability to obtain the relief it seeks concerning GE HealthCare's indemnification demand." *Id.* ¶ 20. Mr. Wright concludes by averring that "the GE Capital Defendants simply have no interests in this dispute." *Id.* ¶ 21.

Considering Mr. Wright's averments, GECUSH must also be dismissed from this action on the grounds that it has, through counsel, intentionally and explicitly abandoned any and all contractual rights it may have as successor-in-interest to GECC under the MCSA. *See Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Mgt., L.P.*, 7 N.Y.3d 96, 104 (2006) ("Contractual rights may be waived if they are knowingly, voluntarily and intentionally abandoned. Such abandonment may be established by affirmative conduct...") (internal quotation marks and citations omitted).

Accordingly, the Court grants GE Capital Defendants' motion to dismiss the FAC as against GECC and GECUSH, and the GE Capital Defendants' motion for summary judgment is denied as moot.

### **Motion Sequence No. 008**

In Motion 008, DS seeks dismissal of GE HealthCare's sixth, seventh, eighth, and ninth tort-based counterclaims pursuant to CPLR §§ 3211(a)(1) and (a)(7), principally on the ground that GE HealthCare's tort counterclaims are impermissibly duplicative of their contract-based counterclaims. NYSCEF Doc. No. 108 (Notice of Motion). DS also argues that GE HealthCare's counterclaims for breach of fiduciary duty, negligent misrepresentation, negligent misrepresentation by omission, and negligence must be dismissed because GE HealthCare and DS had an arm's-length business relationship, not a special or fiduciary relationship. GE HealthCare opposes the motion and cross-moves under CPLR § 3025(b) to reinstate its sixth, seventh, eighth,

and ninth counterclaims. NYSCEF Doc. No. 125 (“Cross-Motion”). DS opposes the cross-motion.

On a “CPLR 3211(a)(1) motion to dismiss on the ground that the action is barred by documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” *Goshen v. Mut. Life Ins. Co. of New York*, 98 N.Y.2d 314, 326 (2002) (citing *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994)). “Letters, e-mails, and affidavits do not qualify as documentary evidence for purposes of CPLR 3211(a)(1).” Hon. Mark C. Dillon, 2024 Supp. Prac. Commentaries, McKinney’s Cons. Laws of N.Y., CPLR C3211:10 (citing *Old Republic Nat’l Title Ins. Co. v. 1152 53 Mgt., LLC*, 227 A.D.3d 824 (2d Dept. 2024)). “Affidavits prepared for the motion never qualify.” *Id.*, 2023 Supp. Prac. Commentaries, CPLR C3211:10 (citing *J.D. v. Archdiocese of New York*, 214 A.D.3d 561 (1st Dept. 2023)).

“When reviewing a motion to dismiss for failure to state a claim [under CPLR § 3211(a)(7)], a court must give the complaint a liberal construction, accept the allegations as true, and, providing plaintiffs the benefit of every favorable inference, examine the adequacy of the pleadings.” *Moore Charitable Found. V. PJT Partners, Inc.*, 40 N.Y.3d 150, 153 (2023) (citations omitted). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss.” *Id.* (quoting *EBC I, Inc. v. Goldman Sachs & Co.*, 5 N.Y.3d 11, 19 (2005)).

GE HealthCare opposes DS’s motion and cross moves to have its tort-based counterclaims “reinstated” under CPLR § 3025(b), which provides:

Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

The four tort-based counterclaims that GE HealthCare asserted in its answer to the original complaint, dated and e-filed on October 18, 2024, were: (i) negligent misrepresentation as its sixth counterclaim; (ii) negligent misrepresentation by omission as its seventh counterclaim; (iii) breach of fiduciary duty as its eighth counterclaim; and (iv) negligence as its ninth counterclaim. Answer and Am. Countercls. It seeks their “reinstatement” because they were dismissed, without prejudice, in the April 2024 Decision on the grounds that they were duplicative of GE HealthCare’s contract-based counterclaims.

In its moving papers, DS argues that GE HealthCare cannot maintain its tort-based counterclaims because they are duplicative of its contract-based counterclaims, and because there is no fiduciary or special relationship between DS and GE Healthcare. In doing so, DS relies solely on New York case law for its arguments. GE HealthCare opposes and, citing *Leviton Manufacturing Co. v. Blumberg*, 242 A.D.2d 205, 207 (1st Dept. 1997), asserts that its fiduciary

duty counterclaim is governed by Texas law because, in the absence of a contractual governing provision, New York courts apply the state of incorporation of the defendant to a claim for breach of fiduciary duty and DS admits in its pleading that it is “a Texas limited liability partnership.” FAC ¶ 22.

Section 15.3 of the MCSA, the Agreement’s choice of law provision, states, in pertinent part:

This Agreement shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of New York, United States of America, without regard to the conflict of laws principles thereof, and all actions arising out of or relating to this Agreement must be brought in the State of New York.

GE HealthCare asserts that the choice of law provision only requires application of New York substantive law in the construction and enforcement of the MCSA, but is “conspicuously silent [as] to the law governing ‘actions arising out of or relating’ to the MCSA which merely must be brought in New York.” Cross-Motion at 7 (citing, *inter alia*, *Twinlab Corp. v. Paulson*, 283 A.D.2d 570, 571 (2d Dept. 2001) (provision governing “validity, interpretation, construction and performance” of contract did not govern tort claim)). This accords with other decisions in this Department. *See Knieriemen v. Bache Halsey Stuart Shields Inc.*, 74 A.D.2d 290, 293 (1st Dept. 1980), *appeal dismissed* 50 N.Y.2d 1021 (1980), and 51 N.Y.2d 970 (1980), *overruled on other grounds Rescildo v. R.H. Macy’s*, 187 A.D.2d 112, 117 (1st Dept. 1993) (contractual choice-of-law clause that states agreement governed by laws of New York State not construed to bind parties “as to causes of action sounding in tort”).

“When parties, particularly sophisticated business entities, enter into an arm’s-length business transaction, the terms of their contract govern their relationship.” *JPMorgan Chase Bank, N.A. v. Controladora Com. Mexicana S.A.B. De C.V.*, 29 Misc. 3d 1227(A), 2010 N.Y. Slip Op. 52066, \*11 (Sup. Ct., N.Y. County 2010); *see also id.* (quoting and citing *Northeast Gen. Corp. v. Wellington Adv., Inc.*, 82 N.Y.2d 158, 160 (1993) (“Courts look to the parties’ agreements to discover, not generate, the nexus of [their] relationship”); *Taylor Bldg. Mgt., Inc. v. Glob. Payments Direct, Inc.*, 19 Misc. 3d 1133(A), 2008 N.Y. Slip Op. 50988(U), \*7 (Sup. Ct., N.Y. County, 2008) (“relationship of parties in an arm’s-length business transaction ‘is contractual in nature’”).

“Accordingly, where the parties’ agreement specifically disclaims a fiduciary relationship, no defense of, or claim for, breach of fiduciary duty will lie.” *JPMorgan Chase Bank*, 2010 N.Y. Slip Op. 52066, \*11 (citing *CIBC Bank & Trust Co. (Cayman) Ltd. v. Credit Lyonnais*, 270 A.D.2d 138, 139 (1st Dept. 2000) (“affirming dismissal of breach of fiduciary duty claim where parties represented that they had not acted as ‘financial advisor or fiduciary’”); *AJW Partners, LLC v. Cyberlux Corp.*, 21 Misc. 3d 1109(A), 2008 N.Y. Slip Op. 52020(U), \*3 (Sup. Ct., N.Y. County, 2008) (“dismissing breach of fiduciary duty counterclaim ‘in light of the plain contractual language disavowing a fiduciary relationship’”).

Once parties enter a contract, however, they may assume additional roles and duties outside their contractual relationship. “Undertaking to act as a party’s agent can assume a fiduciary duty

independent of the specific contractual obligations of the agreement creating the relationship.” *Impax Media, Inc. v. Northeast Adv. Corp.*, No. 17 Civ. 8272, 2018 WL 3962841, at \*8 (S.D.N.Y., Aug. 17, 2018) (quoting *Limited, Inc. v. McGrory Corp.*, 169 A.D.2d 605, 607 (1st Dept. 1991) (“allegations are adequate to state that defendants undertook to act as the Lerner Group’s agent in preparing and filing franchise tax returns and paying the requisite taxes and thereby assumed a fiduciary duty independent of the contractual obligations alleged”)); *see also Weiner v. Lazard Freres & Co.*, 241 A.D.2d 114, 122 (1st Dept. 1998) (“[T]he ongoing conduct between parties may give rise to a fiduciary relationship that will be recognized by the courts”) (internal citation omitted).

GE HealthCare asserts that it had both a formal and informal fiduciary relationship with DS. It argues that the formal relationship is borne out by DS’s admission in the FAC at paragraph 58 that the attorneys that DS hired to act as counsel for GE HealthCare as “creditor” would communicate with DS acting as “GE HealthCare’s agent.” *See Hudson Ins. Co. v. Oppenheim*, 72 A.D.3d 489, 489–90 (1st Dept. 2010) (“The [attorney-client] privilege extends to communications of one serving as agent of either attorney or client”) (internal quotation marks omitted); *see also R.P. Small Corp. v. Land Dept., Inc.*, 505 F. Supp. 3d 681, 695 (S.D. Tex. 2020) (allegations of oral agency agreement held sufficient to “plausibly [plead] a fiduciary relationship”).<sup>2</sup>

GE HealthCare also asserts that it has adequately pleaded an informal fiduciary duty based on their “longstanding relationship” and DS’s prior handling of disputes similar to the Belfair Litigation.<sup>3</sup> GE HealthCare states that it was “common practice” for it to retain DS for collection work, having a “strong 20-year partnership” before DS accepted the Belfair account from GE HealthCare for collection in 2018. Answer and Am. Countercls. ¶ 23.

DS is alleged to have “manag[ed] a collections portfolio for GE HealthCare” in which it undertook “to collect on assigned accounts,” “exercised its discretion to,” among other things, “choose and enlist an attorney to assist” in collecting funds due to GE HealthCare, convey material and privileged information in updates about the accounts DS was managing for GE HealthCare, as it deemed necessary, including amounts DS had collected, DS’s notes on each, and any notes or inquiries from the attorneys DS had enlisted that DS wished to relay to GE HealthCare, while conducting “all ordinary course communication” with the collection attorneys it hired on GE

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<sup>2</sup> “Agency is a legal relationship between a principal and an agent. It is a fiduciary relationship which results from the manifestation of consent of one person to allow another to act on his or her behalf and subject to his or her control, and consent by the other so to act.” *Sneider v. Great S. Bay Surgical Assoc.*, 235 A.D.3d 685, 687 (2d Dept. 2025) (quoting *Faith Assembly v. Titledge of NY Abstract, LLC*, 106 A.D.3d 47, 58 (2d Dept. 2013) (internal quotation marks omitted)).

<sup>3</sup> Both New York and Texas recognize informal fiduciary relationships. *See P. Chimento Co. v. Banco Popular de Puerto Rico*, 208 A.D.2d 385, 386 (1st Dept. 1994) (“an informal fiduciary relationship may arise when one party places special trust and confidence in another such that the first party becomes dependent upon the second party”) (citation omitted); *see also Daughtry v. Silver Fern Chem., Inc.*, No. 1:23-CV-343, 2024 WL 2211005, at \*13 (E.D. Tex., May 16, 2024) (informal fiduciary relationship may arise “from a moral, social, domestic, or merely personal relationship where ... plaintiff is in fact accustomed to be guided by the judgment or advice of the other”) (internal quotation marks and citations omitted).

HealthCare's behalf, "and frequently instructed such attorneys without consulting GE HealthCare." *Id.* ¶ 24.

In conclusion, GE HealthCare asserts that it "reposed a great deal of trust and confidence in DS to exercise its discretion in pursuing the assigned collection accounts, including by entrusting DS to select and enlist suitable attorneys, to competently instruct the attorneys and manage disputes, to report material updates to GE HealthCare as needed, and to advise GE Healthcare personnel as to how best advance its rights." *Id.* ¶ 25.

"A fiduciary relationship arises when one is 'under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.'" *Saul v. Cahan*, 153 A.D.3d 947, 949 (2d Dept. 2017) (quoting *Oddo Asset Mgt. v. Barclays Bank PLC*, 19 N.Y.3d 584, 592–93 (2012)). "It is 'grounded in a higher level of trust than normally present in the marketplace between those involved in arm's length business transactions.'" *Id.* (quoting *EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19 (2005)). "[A] conventional business relationship, without more, is insufficient to create a fiduciary relationship." *Id.* (quoting *AHA Sales, Inc. v. Creative Bath Prods., Inc.*, 58 A.D.3d 6, 21 (2d Dept. 2008)). "A fiduciary relationship may exist when one party reposes confidence in another and reasonably relies on the other's superior expertise or knowledge, but not in an arm's-length business transaction involving sophisticated business people." *Id.* (internal citations and quotations omitted).

Affording GE HealthCare's counterclaims a liberal construction, accepting the facts alleged therein as true, and granting it the benefit of every possible favorable inference, GE HealthCare's amended counterclaim adequately pleads the existence of a fiduciary relationship between itself and DS.

Furthermore, questions arising from the non-contractual causes of action which GE HealthCare seeks to reinstate do not appear to be amenable to resolution at the dismissal stage of this action. For example, the First Department has stated that whether a party's conduct was sufficiently directed and controlled "to constitute an agency relationship is a question of fact for resolution at trial." *Bermudez v. Ruiz*, 185 A.D.2d 212, 214 (1st Dept. 1992) (citation omitted); *see also La Barte v. Seneca Res. Corp.*, 285 A.D.2d 974, 976 (4th Dept. 2001) ("Whether a fiduciary relationship exists between parties is necessarily fact-specific. . .") (internal quotation marks omitted).

With respect to DS's duties under the remaining three negligence-based counterclaims, "[a] contracting party may be charged with a separate tort liability arising from a breach of a duty distinct from, or in addition to, the breach of contract." *37 E. 50th St. Corp. v. Rest. Grp. Mgt. Servs., L.L.C.*, 156 A.D.3d 569, 571 (1st Dept. 2017) (internal quotation marks and citation omitted). "Since we have concluded [] that a claim for breach of fiduciary duty has been sufficiently pleaded, a duty on the part of [DS] beyond the scope of the [MCSA] has been alleged and the negligence claim[s] should be reinstated." *Sergeants Benevolent Assn. Annuity Fund v. Renck*, 19 A.D.3d 107, 111 (1st Dept. 2005).

In light of the foregoing, and the amendments GE HealthCare has made to its breach of fiduciary duty counterclaim, GE HealthCare's motion to reinstate its counterclaim for breach of

fiduciary duty is granted, and DS’s motion to dismiss GE HealthCare’s amended counterclaim for breach of fiduciary duty is denied.

The Court has considered the parties’ remaining contentions and finds them to be unavailing.

Accordingly, it is hereby

**ORDERED** that the motion of Defendants General Electric Capital Corporation and GE Capital U.S. Holdings Inc. (Motion 007) to dismiss the First Amended Complaint as asserted against them is **GRANTED**; and it is further

**ORDERED** that the motion of Defendants General Electric Capital Corporation and GE Capital U.S. Holdings Inc. (Motion 007) for summary judgment is **DENIED** as moot; and it is further

**ORDERED** that the action is severed and continued against the remaining Defendant GE HealthCare Technologies; and it is further

**ORDERED** that the caption be amended to reflect the dismissal and that all future papers filed with the Court bear the amended caption; and it is further

**ORDERED** that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the Court’s records to reflect the change in the caption herein; and it is further

**ORDERED** that the motion of Plaintiff D&S Ltd. to dismiss the tort-based counterclaims (Motion 008) for breach of fiduciary duty, negligent misrepresentation, negligent misrepresentation by omission, and negligence asserted by Defendant and Counterclaim-Plaintiff GE HealthCare Technologies, Inc. is **DENIED**; and it is further

**ORDERED** that the cross-motion of Defendant and Counterclaim Plaintiff GE HealthCare Technologies, Inc., for reinstatement of the tort-based counterclaims (Motion 008) for breach of fiduciary duty, negligent misrepresentation, negligent misrepresentation by omission, and negligence is **GRANTED**.

The foregoing constitutes the Decision and Order of the Court.

11/8/2025

DATE



ANAR R. PATEL, A.J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE