

Pfanner v Anderson

2025 NY Slip Op 34487(U)

November 19, 2025

Supreme Court, Kings County

Docket Number: Index No. 533494/2024

Judge: Cenceria P. Edwards

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At an IAS Term, Part COMM2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19th day of ~~October~~, 2025.
November

P R E S E N T:

HON. CENCERIA P. EDWARDS, CPA,

Justice.

-----X
ANDREAS PFANNER, individually and in the right of POK
MILL, LLC and POK 1-3 GRAND, LLC,

Plaintiff(s),

-against-

ERIC "GUSTAVE" ANDERSON, URBAN GREEN EQUITIES, LLC,
and WALLACE CAMPUS MANAGER, LLC,

Defendant(s).
-----X

ORDER

Motion Calendar: 4/9/2025

Motion Cal. #(s): 1, 3

Index #: 533494/2024

Mot. Seq. #(s): 1 and 2

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion, Affidavits/Affirmations, and Exhibits _____

31-33, 37-42 _____

Opposing Affidavits/Affirmations and Exhibits _____

34-36; 54-58 _____

Reply Affidavits/Affirmations and Exhibits _____

61 _____

Plaintiff ANDREAS PFANNER, individually and in the right of POK MILL, LLC and POK 1-3 GRAND, LLC, commenced this declaratory judgment action against defendants ERIC "GUSTAVE" ANDERSON, URBAN GREEN EQUITIES, LLC ("Urban Green"), and WALLACE CAMPUS MANAGER, LLC ("Wallace Campus"), alleging that Anderson, who is the sole member and owner of Urban Green and has a 45% equity ownership interest in Wallace Campus, formed a joint venture and partnership with Pfanner to acquire, operate, and develop real property. It is alleged that Anderson acquired and re-sold a parcel of real property but withheld the resulting proceeds and benefits from the partnership, in breach of his fiduciary obligations to it. (See NYSCEF Doc. #1, at ¶¶ 6-13).

In motion sequence ("mot. seq.") #1, defendant Urban Green moves, pursuant to CPLR 602, for an order consolidating this action with four pending actions that were previously joined for discovery and trial. In mot. seq. #2, defendant Wallace Campus moves, pursuant to CPLR

3211 (a)(1) and (a)(7), to dismiss the complaint as against it. Plaintiff opposes both motions and moves, in mot. seq. #3, for leave to enter a default judgment against Anderson and Urban Green.¹

Relevant Facts and Procedural History

The previously commenced actions involving individual litigants Andreas Pfanner and Eric Anderson, and their various companies, are listed below:

- Index No. 509781/2024, commenced April 5, 2024, captioned, *Andreas Pfanner, POK Mill, LLC and POK 1-3 Grand, LLC, v Eric Gustave Anderson, Urban Green Equities, LLC, POK Mill Housing Development Fund Corporation, POK 325 Main LLC, and Wallace Campus Manager, LLC* (hereinafter “Action #1”).
- Index No. 509789/2024, commenced April 5, 2024, captioned, *Andreas Pfanner, individually and in the right of POK 325 Main, LLC, v Eric Gustave Anderson, Urban Green Equities, LLC, POK Mill Housing Development Fund Corporation, POK 325 Main LLC, and Wallace Campus Manager, LLC* (hereinafter “Action #2”).
- Index No. 518712/2024, commenced July 10, 2024, captioned: *Eric Anderson, in his capacity as the Winding-Up Partner of the PFANNER/ANDERSON General Partnership, itself suing here derivatively on behalf of 435 SR AVE LLC, 505 SR AVE LLC, and 458 SEB LLC, v Andreas Pfanner [Defendant] and 435 SR AVE LLC, 505 SR AVE LLC, and 458 SEB LLC [Nominal Defendants]* (hereinafter, “Action #3”).
- Index No. 519488/2024, commenced July 18, 2024, captioned, *POK Mill, LLC, POK Mill Housing Development Finance Corp., and Eric Anderson v Andreas Pfanner* (hereinafter, “Action #4”).

The instant action was commenced on December 10, 2024, and proof of service of process was filed on December 11, 2024, and December 26, 2024 (*see* NYSCEF Doc. #s 1-6). On December 30, 2024, Plaintiff stipulated to extend defendant Wallace Campus’s time to respond to the Complaint until January 31, 2025 (*see* NYSCEF Doc. #7). On January 7, 2025, defendant Urban Green made mot. seq. #1, and on January 30, 2025, Wallace Campus made mot. seq. #2. On February 12, 2025, Plaintiff made mot. seq. #3.

The Complaint alleges that on March 5, 2019, while purporting to act on behalf of the partnership, defendant Anderson used funds “from a property owned by Pfanner and Anderson as part of their partnership/joint venture” to purchase the real property at 325 Main Street,

¹ Although the Court heard all three motions together, it will issue a separate Decision and Order on mot. seq. #3.

Poughkeepsie, NY, for \$166,000.00 (*see* NYSCEF Doc. #1, at ¶¶ 11-12). Unbeknownst to Plaintiff, on November 5, 2020, Anderson sold this property to defendant Wallace Campus for \$236,000.00 and granted Wallace Campus a “gratuitous easement” (*see id.* at ¶13). Anderson then applied for and received government funding of more than \$135 million to develop property in blighted areas of Poughkeepsie, including the 325 Main Street parcel (*see id.* at ¶27). “In addition, it was learned that Anderson siphoned and divided rents from jointly owned properties to Urban [Green], instead of for the benefit of the partnership/joint venture” (*see id.* at ¶13).²

Plaintiff broadly alleges that Anderson allegedly failed to include the 325 Main Street parcel among the partnership/joint venture assets and has since refused Plaintiff’s demands for, inter alia, accountings of the funds used to initially purchase the parcel and of the details of the sale of said parcel to Wallace Campus. Anderson also refused Plaintiff’s alternative demands to: transfer title and monies reflecting a 50% ownership of the 325 Main Street parcel; furnish funds enabling Pfanner to have an equal share of the profit on the sale of the parcel to Wallace Campus; and “return the partnership/joint venture funds originally converted by Anderson used to purchase said property, in addition to restoring the funds embezzled and diverted by Anderson as *aforedescribed.*” (*See id.*, at ¶¶ 13-17.)

Mot. Seq. #1: by Urban Green to Consolidate

Since Urban Green made this motion before answering the Complaint, Plaintiff argues, as a “preliminary matter,” that Urban Green “is in default and is not permitted to engage in motion practice” (NYSCEF Doc. #34, ¶2). However, this argument is presented in a wholly conclusory manner, as Plaintiff does not articulate when and how Urban Green was served, nor when its Answer was due and, thus, has failed to establish, *prima facie*, that Urban Green was in default when it moved for relief. Relatedly, it is noted that Urban Green made this motion within 30 days of this action’s commencement and the filing of all proofs of service of process.

Urban Green now moves to consolidate this action with the four related actions previously joined for discovery and trial. “Where common questions of fact or law exist, a motion pursuant

² The Complaint gives no details about the easement and does not even identify the other property on which it exists. Nor does the Complaint identify the partnership properties from which Anderson allegedly siphoned and divided rents or describe when and how this occurred.

to CPLR 602(a) for consolidation or joinder should be granted, absent a showing of prejudice to a substantial right by the party opposing the motion” (*HSBC Bank USA, N.A. v Francis*, 214 AD3d 58, 62 [2d Dept 2023]). “Although a motion pursuant to CPLR 602 (a) is addressed to the sound discretion of the trial court, consolidation or joinder for trial is favored to avoid unnecessary duplication of trials, save unnecessary costs and expense, and prevent an injustice which would result from divergent decisions based on the same facts” (*Calle v 2118 Flatbush Ave. Realty, LLC*, 209 AD3d 961, 962-963 [2d Dept 2022]). On the other hand,

“[d]enial of a motion to consolidate or for a joint trial may be warranted where common questions of law or fact are lacking, where the actions involve dissimilar issues or disparate legal theories, or where a joint trial would substantially prejudice an opposing party or pose a risk of confusing the jury or rendering the litigation unwieldy” (*Cromwell v CRP 482 Riverdale Ave., LLC*, 163 AD3d 626, 627-628 [2d Dept 2018]) [internal citations omitted].

“Moreover, a joint trial, rather than consolidation, is appropriate where a party is both a plaintiff and a defendant” (*Calle*, 209 AD3d at 963), or where “the actions involve certain different defendants” (*see Matter of Joseph J.*, 106 AD3d 1004, 1006-1007 [2d Dept 2013]).

By Decision and Order dated November 12, 2024, the Hon. Leon Ruchelsman, *J.S.C.*, granted the motion to consolidate made in Action #1, by some of those defendants, specifically, Mr. Anderson, Urban Green and POK 325 Main LLC, to the extent of ordering the case joined for discovery and trial with Actions #2, #3, and #4 (*see* NYSCEF Doc. #33). Justice Ruchelsman summarized plaintiff Andreas Pfanner’s allegations in Action #1 as follows:

“The amended complaint in this action alleges that the plaintiff Pfanner and defendant Anderson entered into joint ventures together to purchase real estate. The joint ventures purchased five properties, three in Poughkeepsie[,] New York and two in California. Each purchase was executed by a corporation established for that specific purpose[,] including a corporation called POK Mill LLC. These entities were equally owned by the plaintiff and the defendant. While the amended complaint does not really describe any specific tortious conduct committed by the defendant[,] it does allege in conclusory fashion that ‘extensive misappropriation, embezzlement and misdirection of the capital furnished by the Plaintiff, as well as the revenue income generated from the properties, as herein mentioned’” (*id.*, at p. 2, quoting ¶15 of the Amended Complaint in Action #1).

Justice Ruchelsman further noted that while the amended complaint in Action #1 “does not describe the actual way in which the defendant allegedly embezzled funds or how he facilitated such embezzlement” (*id.*), Pfanner alleged in his amended complaint in Action #2,

“that Anderson, through a corporation wholly owned by him, purchased the property located at 325 Mill Street [*sic*] in Poughkeepsie from a third party without informing the plaintiff and violating the joint venture agreement. ... The amended complaint alleges the defendant [Anderson] purchased this property from funds he embezzled from the other jointly owned entities without informing the plaintiff and then resold it for an undisclosed sum.” (*id.*, at pp. 2-3).³

The instant action asserts the same core allegations, albeit amplified with additional details, such as the amount for which defendant Anderson allegedly resold the 325 Main Street parcel. Similarly, this description of the subject transaction presented in the Amended Complaint in Action #2 appears to supply the details about the embezzlement and misdirected capital that Justice Ruchelsman found lacking in Action #1’s Amended Complaint.

Since plaintiff Pfanner’s claims in the instant action are essentially duplicative of what has been described as the gravamen of his claims in Action #2, the cases clearly share common questions of law and fact. Additionally, the parties in both cases are largely the same, although in Action #2, Pfanner named POK 325 Main, LLC and POK Mill Housing Development Fund Corporation as additional defendants, and he sues on behalf of POK 325 Main, LLC, instead of POK Mill, LLC and POK 1-3 Grand, LLC. While the presence of different parties makes a true consolidation inappropriate (*see Calle*, 209 AD3d at 963; *Matter of Joseph J.*, 106 AD3d at 1006-1007), the Court finds that Urban Green has made a *prima facie* showing that the instant action should, at the very least, be joined for discovery and trial with Actions #1 and #2 (*see Scotto v Kodosi*, 102 AD3d 947, 948 [2d Dept 2013] [breach of contract action and mortgage foreclosure action joined for trial because “both actions arise from the same transaction, concern the same parties, and involve common questions of law and fact”]; *Alizio v Feldman*, 97 AD3d 517 [2d Dept 2012] [holding that it was appropriate to join “several related actions involving, among other things, the sale of the partnership’s assets” because “common questions of law or fact exist”]).

³ This appears to be a typographical error in Justice Ruchelsman’s Decision and Order. The pleadings in Action #2 identify the real property as “325 Main Street” (*see* NYSCEF Doc. #s 2 and 41 [Index No. 509789/2024]).

In opposition, Plaintiff argues that the actions are based upon different facts and law, seek different relief, and involve different parties, but does not specify which of the four prior actions it is referring to. As discussed, since Plaintiff's prior actions against Anderson and his LLCs, *i.e.*, Actions #1 and #2, focus, at least in part, on Anderson's allegedly improper purchase and re-sale of the 325 Main Street parcel, Plaintiff's attempt to distinguish them from the instant action is unpersuasive. To the extent that Plaintiff refers to the cases commenced by defendant Anderson, *i.e.*, Actions #3 and #4, the argument is unavailing. First, even if the facts, law, and reliefs sought in these actions were very different, that would not negate the commonality amongst Action #1, Action #2, and the instant action. Second, Justice Ruchelsman found that Anderson's complaint in Action #3 incorporates his counterclaims against Pfanner in Action #1 (*see* NYSCEF Doc. #33, at p. 3). As discussed, Pfanner's generalized embezzlement and misappropriation claims from Action #1 appear to encompass his allegations about the 325 Main Street parcel set forth in Action #2 and the instant action. Therefore, Action #3 also shares at least some common questions of fact and law with Actions #1 and #2, and the instant action.

Importantly, Plaintiff does not argue that a substantial right would be prejudiced by joining this action with any of the four prior actions. Absent a showing of prejudice by Plaintiff, any additional issues which may differentiate Action #4 would not outweigh the presumption in favor of joining the instant action with Actions #1, #2, and #3, particularly since all five actions arise out of the same general nucleus of facts (*see e.g.*, *Matter of Rose R. (Ross)*, 231 AD3d 1038, 1041-1042 [2d Dept 2024] [consolidating guardianship proceeding and foreclosure action that shared common questions of law and fact]; *Matter of Powers v De Groodt*, 43 AD3d 509, 512 [3d Dept 2007] [proceedings which "involve(d) different issues of law" consolidated where "they ar(o)se from the same factual pattern" and there was "no actual prejudice"]; *Chiacchia v Natl. Westminster Bank*, 124 AD2d 626, 628-629 [2d Dept 1986] [wife's matrimonial action joined for trial with her separate action to recover funds from a bank, explaining that "a single common issue suffices"]).

In any event, Justice Ruchelsman has already determined that the four prior actions should be joined for trial, explaining:

"the four lawsuits clearly concern the same questions of law and fact, namely whether any improprieties were committed by the plaintiff [Pfanner] and/or the defendant [Anderson]. All four cases concern the same entities, the same

individuals[,] and are all really claims and counterclaims against each other. The mere fact some of the actions contain additional allegations of wrongdoing that [are] not included in the others does not render the actions so different that consolidation [*sic*] would be an inappropriate abuse of discretion” (NYSCEF Doc. #33, at p. 3).

There is no indication that Justice Ruchelsman’s order has been vacated, modified, or reversed on appeal, nor that any party has sought such relief. Affording due respect to that order issued by a Justice sitting on a Court of coordinate jurisdiction, since this Court concludes that the instant action should be joined for trial and discovery with Actions #1 and #2 because they share common questions of law and fact, this necessarily means that the instant action will be joined with Actions #3 and #4, as well. Moreover, since all five actions appear to still be in the early discovery phase of litigation, this additional joinder will not unduly delay resolution of the four older actions.

For the foregoing reasons, the Court grants mot. seq. #1 by Urban Green, to the extent that the instant action shall be joined for discovery and trial with the previously commenced actions which have already been so joined.

Mot. Seq. #2 by Wallace Campus to Dismiss

Defendant Wallace Campus now timely moves to dismiss the Complaint as against it pursuant to CPLR 3211 (a)(1) and (a)(7), on the grounds that Plaintiff’s claims to having an interest in the company are inadequately pleaded and belied by documentary evidence.

The Complaint is largely in narrative form and, as Justice Ruchelsman found with respect to the pleadings in Action #1, it contains many broad and conclusory allegations. This creates challenges in assessing Wallace Campus’s motion to dismiss. The Court’s task is all the more difficult because Plaintiff’s opposing papers do not focus on any specific cause of action, nor do they actually dispute Wallace Campus’s assertion that the only relief sought against Wallace Campus is a declaration that plaintiff Pfanner is entitled to an ownership interest in the company.⁴

⁴ Wallace Campus characterizes the relief sought against it as a declaration that Plaintiff owns a 50% interest in the company (*see* NYSCEF Doc. #42 [Memo of Law in Support], p. 4). However, as discussed *infra*, in the sections of the Complaint articulating the second and third causes of action, Plaintiff’s claimed entitlement to an interest in the LLC defendants is limited to Anderson’s ownership interest in them, alleged to be only 45% of Wallace Campus.

Legal Standards on a Motion to Dismiss

The Court now sets forth the analytical standards on a CPLR 3211 pre-Answer motion to dismiss and the specific, intertwined grounds upon which Wallace Campus seeks dismissal.

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. Courts must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Eccles v Shamrock Capital Advisors, LLC*, 42 NY3d 321, 342 [2024]).”

However, “[a]llegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration” (*Laine v Empire HealthChoice Assur., Inc.*, 234 AD3d 833, 835 [2d Dept 2025]).

As its first ground for dismissal under CPLR 3211 (a)(7), Wallace Campus argues that the Complaint proffers no non-conclusory factual allegations which would establish that Plaintiff has an ownership interest in the company. “In considering the sufficiency of a pleading subject to a motion to dismiss for failure to state a cause of action under CPLR 3211 (a) (7), [a Court’s] well-settled task is to determine whether, accepting as true the factual averments of the complaint, plaintiff can succeed upon any reasonable view of the facts stated” (*Ripa v Petrosyants*, 203 AD3d 768, 769 [2d Dept 2022] [internal quotation marks omitted]). In addition,

“Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211 (a) (7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate” (*Schwartz v Fallah*, 230 AD3d 1263, 1264 [2d Dept 2024], quoting *Agai v Liberty Mut. Agency Corp.*, 118 AD3d 830, 832 [2d Dept 1994]).

“Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 153 [2023], quoting *EBC I, Inc. v Goldman Sachs & Co.*, 5 NY3d 11, 19 [2005]). However, “[d]ismissal under CPLR 3211 (a) (7) “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” (*Himmelstein, McConnell, Gribben, Donoghue &*

Joseph, LLP v Matthew Bender & Co., 37 NY3d 169, 175 [2021], quoting *Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

As to its second ground for dismissal under CPLR 3211 (a)(1), Wallace Campus argues that documentary evidence demonstrates that Plaintiff has no ownership interest in the company.

“Under CPLR 3211 (a) (1), a party may move to dismiss a cause of action asserted against them on the ground that a defense is founded upon documentary evidence. Such a motion may be appropriately granted only where the documentary evidence utterly refutes the plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Farage v Associated Ins. Mgt. Corp.*, 43 NY3d 152, 158 [2024]).

Put differently, “the documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim” (*Constant v Pub. Adm’r of Queens County*, 204 AD3d 640 [2d Dept 2022]). “Unambiguous contracts that can be interpreted only in one manner may be the basis for a dismissal pursuant to CPLR 3211 (a) (1)” (*Farage v Associated Ins. Mgt. Corp.*, 43 NY3d at 158).

Submissions by the Movant and Non-movant

According to Wallace Campus, the only specific relief sought against it in the Complaint is a declaration that plaintiff Andreas Pfanner has an ownership interest in the company, but this is contradicted by documentary evidence and the allegations in the Complaint are too vague and conclusory to suggest otherwise. In support of its motion, Wallace Campus submits, inter alia, an affidavit from Hercules Argyriou, a member and authorized representative of another LLC that is the managing member of Wallace Campus, and a copy of Wallace Campus’s operating agreement (*see* NYSCEF Doc. #s 38 and 40).

According to Mr. Argyriou, Wallace Campus owns the 325 Main Street parcel, having purchased it from POK 325 Main LLC “for valuable consideration” on or around November 5, 2020 (*see* NYSCEF Doc. #38, at ¶¶ 5-6).⁵ He explains that the Wallace Campus operating agreement “clearly states the members who make up Wallace [Campus]. ... Specifically, neither

⁵ POK 325 Main LLC is a named defendant in Actions #1 and #2. It is also the corporate entity in whose right Mr. Pfanner purports to sue in Action #2 against, inter alia, Mr. Anderson, Urban Green, and Wallace Campus, all of whom are also named as defendants in the instant action.

Pfanner nor any entity owned or controlled by Pfanner is an enumerated member of Wallace [Campus] in any fashion” (*id.* at ¶7). Rather, “[a]t all relevant times, Pfanner was not in any way a member of Wallace [Campus], the underlying subject matter of this action was governed by the Contract that set forth all the terms and rights” (*id.* at ¶9). Schedule “A” to the operating agreement, titled “Wallace Campus Manager LLC Membership Interests,” shows that Argyriou’s LLC has a 55% interest in Wallace Campus, and the remaining 45% interest is owned by an entity named “POK Wallace Partner LLC,” managed by Anderson (*see* NYSCEF Doc. #40, at p. 36).

Plaintiff’s opposition to the motion consists of, *inter alia*: a memorandum of law and an affirmation by its attorney, Jack S. Dweck, Esq.; a copy of an email chain from April and May of 2019, purporting to show discussions between, *inter alia*, an Urban Green employee and Anderson, acknowledging that he and Pfanner shared equal ownership in POK 325 Main LLC, the entity used to initially acquire the 325 Main Street parcel; a document purportedly showing Anderson’s 45% ownership of Wallace Campus; and copies of the deed conveying the 325 Main Street parcel from POK 325 Main LLC to Wallace Campus, dated November 5, 2020, and the Dutchess County Clerk’s recording page, dated April 9, 2021 (*see* NYSCEF Doc. #s 54-57).

The Court cannot help but notice that Plaintiff’s opposing papers lack an affidavit from Mr. Pfanner. Although Plaintiff’s counsel, Mr. Dweck, states in his affirmation in opposition to the motion that he “affirms the truth of the following statements under the penalties of perjury,” he does not attest to having any personal knowledge of the underlying facts, but merely proclaims that “[t]he facts are basically not in dispute,” without citing any evidence supporting this assertion (*see* NYSCEF Doc. #54, at p. 1). It is also noted that the instant Complaint is verified only by attorney Dweck, and not by Mr. Pfanner (*see* NYSCEF Doc. #1, at p. 10). However, since neither side has invoked CPLR 3211 (c) to request that this motion be converted to one for summary judgment, and Wallace Campus does not, in its Reply papers, challenge their admissibility, the Court will consider the materials submitted with Plaintiff’s opposing papers.

Analysis

The Court’s analysis starts with the Complaint, incorporating Plaintiff’s arguments and submissions in opposition to the motion insofar as they may tend to supplement it. As described below, the Complaint asserts three causes of action.

First Cause of Action

Although the Complaint specifically denominates a second and third cause of action, it does not do so for a first cause of action. Rather, after describing Anderson's various alleged misconduct (*see generally* NYSCEF Doc. #1, at ¶¶ 9-19), as previously summarized herein, the Complaint articulates what is, in effect, the first cause of action as follows:

“By virtue of the foregoing conduct on the part of the Defendant Anderson, in his refusal to include the proceeds of the purchase and sale of the property at 325 Main Street, Poughkeepsie, New York, and restore diverted and embezzled funds in the partnership/joint venture of the Plaintiff and Defendant Anderson, a bona fide dispute has arisen between the Plaintiff and the Defendant Anderson with respect to the failure of inclusion of the assets above described, as an asset of the partnership/joint venture, **a declaration is required of the respective interests of the Plaintiff and the Defendant Anderson with respect to the above described property and the easement, as well**” (*id.* at ¶19 [emphasis added]).

Treating the bolded portion above as the operative language, the Court finds that the first cause of action does not specifically pertain to or seek any relief as against Wallace Campus. The Court, thus, finds that Wallace Campus's motion to dismiss the Complaint as against it is inapplicable to the first cause of action.

Second Cause of Action

With respect to what is denominates as its second cause of action, the Complaint alleges the following:

“By virtue of the relationship between the Plaintiff and the Defendant Anderson as partners and/or joint venturers, there arose a fiduciary relationship between them, which included the Defendant's Urban Green Equities LLC and Wallace Campus Manager LLC, which are owned in whole, or to a major extent, by the Defendant Anderson, who uses such entities in place of himself personally, as his investment vehicles, or his instruments of investment” (*id.* at 22).

Hence, the Complaint states that Plaintiff “seeks a judgment declaring that the interest, equities and assets of the Defendants Anderson, Urban and Wallace, insofar as they should include the assets of Anderson as aforescribed, which property, and in law, constitute assets of the joint venture/partnership of the Plaintiff and the Defendant Anderson” (*id.* at 24).

Third Cause of Action

The Complaint expressly denominates the third cause of action as being “against Wallace Campus Manager LLC” (*see id.*, at p. 6), but seems to present somewhat incongruous descriptions of the LLC defendants in relation to individual defendant Anderson. On the one hand, it refers to Urban Green and Wallace Campus as Anderson’s “alter ego companies” from which Plaintiff “has been excluded,” and claims that this “constitute[s] a breach of the fiduciary obligations of the Defendant Anderson to the Plaintiff Pfanner” (*see id.* at ¶30). In the next breath, however, the Complaint simply characterizes them as Anderson’s assets, stating, “[t]he Defendant Anderson has failed to include the Plaintiff Pfanner in his ownership interests in Urban Green Equities LLC and Wallace Campus Manager LLC as described herein” (*id.* at ¶31).

In this section, the Complaint reiterates that “[t]he Defendant Eric Anderson” holds a 45% equity ownership interest in the company (*see id.*, at ¶28), and goes on to assert that “[b]y virtue of the fiduciary relationship between the Plaintiff and the Defendant, the Plaintiff is entitled to a fifty percent interest of Anderson’s holdings within Wallace Campus Manager LLC” (*id.* at ¶29). The Complaint then expounds upon the relief sought under this cause of action, and the purported grounds therefor, stating:

“By virtue of the relationship between the Plaintiff and the Defendant Anderson as partners and/or joint venturers, and the fiduciary relationship between them, which included the Defendants Urban Green Equities LLC and Wallace Campus Manager LLC, which are owned in whole, or to a major extent, by the Defendant Anderson, the use of such entities in place of himself personally, as his investment vehicles, or his instruments of investment, a declaratory judgment should be issued declaring that all assets of/ or in the name of the Defendants be deemed in law as assets of the jointly owned property of the Plaintiff Pfanner and the Defendant Anderson” (*id.*, at ¶34).

Reading the second and third causes of action together, it appears that Plaintiff seeks a declaration that it owns 50% of whatever Anderson’s ownership interest in both Wallace Campus and the 325 Main Street parcel is determined to be, predicated upon Plaintiff’s belief that both should be deemed assets of the partnership/joint venture.

For most of its opposition, Plaintiff generally argues in defense of the Complaint as a whole, rather than whether it should be dismissed as against the sole movant, defendant Wallace

Campus. For example, Plaintiff states that the Complaint “sufficiently pleads each cause of action and there is no defense founded upon documentary evidence” (NYSCEF Doc. #58 [Memo of Law in Opposition], at p. 4). Plaintiff continues:

“the Defendant has failed to sufficiently overcome the indisputable fact that the Plaintiff has properly pleaded each and every element necessary to sustain its claims, regardless of the evidence that will be obtained during discovery, and regardless of the undisputed fact that Wallace Campus was aware of Plaintiff’s ownership interest at the time of the subject transfer” (*id.*, at p. 5).

Plaintiff contends that by virtue of Anderson’s 45% equity in Wallace Campus, when Anderson sold the 325 Main Street parcel to Wallace Campus, he “[b]asically” “sold it to his own company” (*see id.*, at pp. 3-4), as Anderson was essentially “on both sides of the transfer as the seller and purchaser at the time the conveyance was made” (*see id.*, at p. 6). Plaintiff argues that Anderson acted “without ever having disclosed his joint ownership of Wallace with [*sic*] the oral partnership/joint venture with Pfanner” and “[t]his was an outlandish breach by Anderson of his fiduciary relationship with Pfanner as his partner” (*id.*, at p. 3).

Since evidentiary material has been submitted on this motion to dismiss, the criterion is not whether the Complaint merely states a cause of action against Wallace Campus, but whether Plaintiff actually has one (*see Schwartz v Fallah*, 230 AD3d at 1264). As discussed, the first cause of action does not apply to Wallace Campus, because it seeks a declaration only as between Plaintiff and Anderson.

The main thrust of the second and third causes of action, as amplified by Plaintiff’s opposing papers, is that Anderson owed a fiduciary duty to Plaintiff arising from their partnership, Urban Green and Wallace Campus also owed the same fiduciary duty because Anderson owns a significant share of the companies, and they all breached said duty by completing the subject transaction. “The elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant’s misconduct” (*88-18 Tropical Restaurante Corp. v Utica First Ins. Co.*, 223 AD3d 772, 774 [2d Dept 2024]). “Further, ‘a special relationship does not arise out of an ordinary arm’s length business transaction between two parties’” (*id.*, quoting *Neurological Surgery, P.C. v MLMIC Ins. Co.*, 208 AD3d 1238, 1240 [2d Dept 2022]).

To the extent that Plaintiff's second and third causes of action against Wallace Campus are predicated on the existence of a fiduciary duty between these two parties, the Court finds them to be inadequately pleaded. A corporate entity, by definition, has a legal identity which is separate from that of its members or owners. Accordingly, Plaintiff's mere allegation that Wallace Campus owed it the same fiduciary duties as did Anderson solely because he may have an ownership interest in the company, is insufficient, standing alone, to establish the existence of a fiduciary relationship between Plaintiff and Wallace Campus. Although factual allegations in a Complaint are generally presumed true at this stage, that is not so for allegations like this, which are, in essence, legal conclusions (*see Laine v Empire HealthChoice Assur., Inc.*, 234 AD3d at 835). Similarly, although Plaintiff, at times, refers to both LLC defendants as Anderson's "alter egos," that is a conclusory statement, lacking any supporting factual allegations. It is also undermined by Plaintiff's own allegation that Anderson is only a minority owner of Wallace Campus, which, itself, is corroborated by the movant's documentary evidence showing that another LLC is its majority owner and managing member.

Even if the Complaint adequately made out a cause of action against Wallace Campus for breach of fiduciary duty, Plaintiff has still failed to set forth a sufficient basis for awarding it a share of Anderson's purported equity in the company. First, the evidence submitted by both parties shows that the actual owner of the 45% interest in Wallace Campus is not Anderson, but rather, is POK Wallace Partner LLC, of which he is the manager. More importantly, although the Complaint alleges that Anderson used unidentified partnership assets or funds when he initially purchased the 325 Main Street parcel in 2019, Plaintiff has never alleged that partnership assets were used to form Wallace Campus or purchase equity in it.

The Court, nonetheless, finds some merit in Plaintiff's additional argument that "the documents submitted by the Defendant fail to resolve any of the factual issues – namely that the transfers in question were made with Wallace Campus' [*sic*] full knowledge of Plaintiff's ownership interest and was made with fraudulent intent" (NYSCEF Doc. # 58 [Memo of Law in Opp.], at p. 6). Construing Plaintiff's allegations as broadly as possible at this juncture (*see Eccles v Shamrock Capital Advisors, LLC*, 42 NY3d at 342; *Ripa v Petrosyants*, 203 AD3d at 769), the Court finds that Plaintiff has articulated a cause of action against Wallace Campus for aiding and abetting Anderson's breach of fiduciary duty owed to Plaintiff.

“To assert a cause of action for aiding and abetting breach of fiduciary duty, the plaintiff must allege, with particularity, knowledge of the alleged tortious conduct by the aider and abettor, and substantial assistance by the aider and abettor in the achievement of the tortious conduct. Substantial assistance requires an affirmative act on the defendant’s part; mere inaction can constitute substantial assistance only if the defendant owes a fiduciary duty directly to the plaintiff” (*Plymouth Capital, LLC v Montage Fin. Group, Inc.*, 230 AD3d 1361, 1364 [2d Dept 2024] [internal quotation marks and citations omitted]).

It could be reasonably inferred that Wallace Campus knew of the existence and purpose of the Pfanner-Anderson partnership by virtue of Anderson’s significant 45% ownership of the company and hence, by completing the acquisition of the 325 Main Street parcel, Wallace Campus knowingly aided and abetted Anderson’s breach of the fiduciary duty owed to the partnership.

For the foregoing reasons, the Court finds that because Plaintiff’s claim to an ownership interest in Wallace Campus is predicated upon an insufficiently pleaded fiduciary duty between these two parties, dismissal is granted solely with respect to this specific relief. However, to the extent that Plaintiff has sufficiently pleaded a cause of action against Wallace Campus for aiding and abetting Anderson’s breach of fiduciary duty, for which Plaintiff could recover monetary damages, the motion to dismiss is denied.

Conclusion

Accordingly, the above-referenced motion by defendant URBAN GREEN EQUITIES, LLC (mot. seq. #1) is **GRANTED to the extent indicated below**, the above referenced motion by defendant WALLACE CAMPUS MANAGER, LLC (mot. seq. #2), is **GRANTED solely to the extent**, that Plaintiff’s claim to an ownership interest in said defendant is dismissed, and **the motion is otherwise DENIED**; and it is hereby:

ORDERED, that the instant action shall be joined for purposes of discovery and trial with the related cases commenced under Index No. 509781/2024 (*Pfanner, et al., v Anderson, et al.*), Index No. 509789/2024 (*Pfanner, et al., v Anderson, et al.*), Index No. 518712/2024 (*Anderson, et al., v Pfanner, et al.*), and Index No. 519488/2024 (*POK Mill, LLC, et al., v Pfanner*); and it is further

ORDERED, that all five (5) cases shall retain their separate index numbers and captions, and separate Notes of Issue shall be required for each; and it is further

ORDERED, that defendant WALLACE CAMPUS MANAGER, LLC, shall serve and file its Answer to the Complaint within ten (10) days after service of this Order with Notice of Entry, in accordance with CPLR 3211 (e).

The foregoing constitutes the Decision and Order of this Court.

ENTER,

November 19,

Dated: ~~October~~ November, 2025.



Hon. Cenceria P. Edwards, JSC, CPA