SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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KHAYYAM AHMADOV, PERGOLA ROOF, LLC,SCHILDR, INC.,

Plaintiff,

- v -

KHALIG ISGANDAROV, WOODCOCK CAPITAL, LLC,PERGOLA ROOF USA LLC,NAFTALI BRACHFEL, ISAAC WEINBERGER, FISHEL BEIGEL, JOHN DOES 1-10, ABC COMPANIES 1-10

Defendant.

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INDEX NO. 650495/2024

MOTION DATE 02/05/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 38, 44, 45, 46

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion is granted.

Background

In early 2018, plaintiff Khayyam Ahmadov and defendant Khalig Isgandarov (who was acting on behalf of defendant Woodcock Capital LLC) formed a company to distribute awnings, the plaintiff Pergola Roof, LLC ("Pergola"). Membership interest in Pergola Roof is split equally between Woodcock and Ahmadov, the last of whom served as the company's manager alongside Isgandarov. Then in 2020, Ahmadov and Isgandarov formed Schildr Inc. (collectively with Ahmadov and Pergola the "Plaintiffs"), a company with the purpose of providing materials to Pergola. The shareholder interest in Schildr is split 60-40 between Ahmadov and Woodcock, respectively.

In June of 2023, Ahmadov and Isgandarov entered into a written buyout agreement (the "Buyout Agreement") of $2.4 million for Ahmadov's interest in Pergola. The terms included a

payment of $1.5 million to Ahmadov within three business days' notice from Woodcock, and monthly installments of $150,000 over six months after the closing date. A guaranty in connection with the Buyout Agreement (the "Guaranty") was executed by defendants Naftali Brachfeld, Isaac Weinberger, and Fishel Beigel (collectively, the "Investor Defendants"). The Buyout Agreement also contained a promise by Isgandarov to transfer Woodcock's 40% interest in Schildr to Ahmadov. Unfortunately, the buyout never closed.

Although there was only an initial deposit of $200,000 received by Ahmadov, and the buyout was not closed, Plaintiffs allege that Isgandarov began to unilaterally act as if Ahmadov was no longer a member of Pergola. Plaintiffs also allege that during the buyout negotiations, Isgandarov formed defendant Pergola Roof USA, Inc. ("Pergola USA", collectively with Isgandarov and Woodcock the "Isgandarov Defendants") and transferred the majority of Pergola's assets, employees, and business opportunities to Pergola USA. Plaintiffs filed this underlying proceeding in January of 2024, and shortly thereafter the Isgandarov Defendants filed a related action against Plaintiffs. Plaintiffs filed an amended complaint in October of 2024, in which they added several causes of action against the Investor Defendants. These include breach of contract, aiding and abetting breach of fiduciary duty, civil conspiracy, and unjust enrichment. Plaintiffs' general theory against the Investor Defendants is that the Guaranty extends to ensuring that the buyout closed, and that they were aware of or should have been aware of the alleged asset transfer to Pergola USA.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*,

303 A.D.2d 340, 341 [2d Dept. 2003]. 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 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a "defense founded upon documentary evidence." Dismissal is only warranted under this provision if "the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *Leon v. Martinez,* 84 N.Y.2d 83, 88 [1994]. A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

The Investor Defendants bring this present motion to dismiss the claims asserted against them on the grounds that said causes of action fail to state a claim and are conclusively disputed by the Buyout Agreement. Plaintiffs oppose. For the reasons that follow, the claims asserted against the Investor Defendants fail and the amended complaint is properly dismissed as against them.

The Breach of Contract Cause of Action Is Conclusively Disputed by Unambiguous Documentary Evidence

The eleventh cause of action is for breach of the purchase agreement, pled against the Investor Defendants. Plaintiffs point to Section 1.2(b) of the Buyout Agreement, whereby the

Investor Defendants guarantee the payment of $900,000 intended for after the closing. They argue that through this provision the Investor Defendants also guaranteed that the Isgandarov Defendants would close, and failure to ensure that is a breach of contract by the Investor Defendants. The Investor Defendants have moved to dismiss this cause of action, arguing that Section 1.2(b) clearly indicates that any duty they bore towards Plaintiffs did not materialize until closing, an event that never occurred in part because the Isgardarov Defendants failed to pay the initial $1.5 million. The relevant portion of the Buyout Agreement reads "the amount of Nine Hundred Thousand Dollars ($900,000) shall be paid to Seller, by wire transfer of immediately available funds, within 12 months following the Closing, except that […] [The Investor Defendants] shall have each executed a personal guaranty [] to guarantee the payment of $900,000.00."

Plaintiffs' amended complaint does not point to any other provision in the personal guaranty or the Buyout Agreement that the Investor Defendants are alleged to have breached. The moving defendants argue that Section 1.2(b) is itself conclusive documentary evidence that the Investor Defendants did not breach any obligations contained in Section 1.2(b). In essence, the parties do not disagree with the relevant factual allegations (that the closing never occurred and that the $900k payments never occurred) but instead dispute the interpretation of Section 1.2(b). If a contract term is ambiguous, § 3211 dismissal is inappropriate. *Telerep, LLC v. U.S. Intl. Media, LLC*, 74 A.D.3d 401, 402 [1st Dept. 2010]. A contract provision is unambiguous "if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion." *Greenfield v. Philles Records*, 98 N.Y.2d 562, 569 [2002]. Therefore, the issue here is whether or not Section 1.2(b) is ambiguous.

As an initial matter, the Buyout Agreement cannot be read to mean that the Investor Defendants' guaranty included the guarantee that closing itself would occur. Closing is defined and addressed in Article II of the Buyout Agreement, and nowhere in that Article are there any obligations or guarantees explicitly listed on the part of the Investor Defendants. As part of the closing conditions, the Buyer was to deliver to Ahmadov a copy of the guaranty agreement signed by the Investor Defendants, but the Investor Defendants have no explicit duties to perform in connection with the completion of closing.

Nor can it be said under any interpretation that the Investor Defendants guaranteed the entire purchase price. By the clear terms of the Buyout Agreement, the buyer was to make payment to Ahmadov in two separate payments. Section 1.2(a) states that the buyer was to pay $1.5 million on the closing date, with no mention of any guarantee. Section 1.2(b) separates out $900,000 which was to be paid after closing, with the Investor Defendants guaranteeing this payment only. By the plain and unambiguous language of the Buyout Agreement, the Investor Defendants guaranteed a series of payments that are only to occur post-closing, an event which never occurred. The triggering condition of the guaranty has therefore not, by Plaintiffs' own admission, been met. In fact, Section 1.2(b) clearly states that the $900,000 payment "shall not be made prior to the start of the seventh month following the Closing", a date that clearly has not yet been reached. Nor have Plaintiffs made any allegation that the Investors are the reason why closing failed to occur, instead alleging that closing did not go through because the buyer Isgandarov failed to make the initial payment. Because Section 1.2(b) is unambiguous, and there have been no factual allegations showing a breach of that provision by the Investor Defendants, the motion to dismiss the eleventh cause of action should be granted. The Buyout Agreement

could have been so drafted as to have the Investor Defendants guarantee the initial payment and the Isgandarov Defendants' duty to close, but it was not so drafted.

The Aiding and Abetting Cause of Action Fails to Allege Substantial Assistance

The twelfth cause of action in the amended complaint alleges that Woodcock breached its fiduciary duties to the Plaintiffs in relation to the asset transfer and that the remaining Isgandarov Defendants aided and abetted that breach. The claim also alleges that the Investor Defendants "were aware or should have been aware" of the asset transfer and improper competition by Pergola USA to Plaintiffs. The Investor Defendants have moved to dismiss this cause of action for failure to state a claim. One essential element of a claim of aiding and abetting is "substantial assistance" in the achievement of the underlying tort. *Stanfield Offshore Leveraged Assets, Ltd. v. Metro. Life Ins. Co.*, 64 A.D.3d 472, 476 [1st Dept. 2009]. A failure to act, absent an independent duty, is insufficient to sustain a claim for aiding and abetting. *Id.*, *see also Gaughan v. Russo*, 214 A.D.3d 592, 592 – 93 [1st Dept. 2023].

Even assuming that Plaintiffs' allegations upon information and belief are correct and the Investor Defendants were aware of the transfer of assets from Pergola to Pergola USA, there has been no allegations that support an independent duty that the Investor Defendants bore towards Plaintiffs. Plaintiffs make some conclusory allegations that the Investor Defendants "acted in concert and conspired with Mr. Isgandarov to defraud Mr. Ahmadov", but essentially, Plaintiffs argue that by signing a guaranty for a purchase price payment that Isgandarov did not intend to make, the Investor Defendants aided and abetted a breach of fiduciary duty. Even if true, such an action however falls short of substantial assistance. Any link between signing a guaranty for a partial payment that would only be triggered after closing on a buyout, and an improper asset

transfer from Pergola and competition by Pergola USA, is too attenuated to constitute substantial assistance.

The Unjust Enrichment Cause of Action Fails to Allege How the Investor Defendants Were Enriched

The amended complaint's fourteenth cause of action is for unjust enrichment. It is pled against the Investor Defendants but makes no factual allegations as to them. The elements of an unjust enrichment claim are that "(1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered." *Georgia Malone & Co., Inc. v. Rieder*, 19 N.Y.3d 511, 516 [2012]. The Investor Defendants move to dismiss this cause of action on the grounds that it fails to allege the essential elements.

Plaintiffs allege that the Investor Defendants were aware that Isgandarov was misappropriating Pergola's assets and confidential information in order to enrich Pergola USA. They fail, however, to allege how such a misappropriation enriched the Investor Defendants. In fact, the amended complaint explicitly alleges that Woodcock is the sole shareholder of Pergola USA, and that Isgandarov is the sole member of Woodcock. The Court cannot discern from the amended complaint how any illicit benefit gained by Pergola USA benefits the Investor Defendants, regardless of the extent of their knowledge of the improper asset transfer and competition. Because the amended complaint fails to make any allegations as to how the Investor Defendants were enriched at Plaintiffs' expense (as addressed above, the Investor Defendants did not breach any duty to guarantee payment because the necessary condition has not occurred), the claim for unjust enrichment fails.

The Civil Conspiracy Cause of Action Fails to Allege an Underlying Tort By Investor Defendants

The final claim pled against the Investor Defendants is for civil conspiracy to commit common law fraud. Plaintiffs allege that the Investor Defendants made false representations about their "purpose to fund the $2.4 million purchase price set forth in the" Buyout Agreement. Conclusory allegations are made that Isgandarov committed the alleged actions to enrich his company together with or at the direction of the Investor Defendants. The Investor Defendants move to dismiss this claim on the grounds that there cannot be a standalone cause of action for civil conspiracy and that there is no underlying tort alleged.

In New York, "mere conspiracy to commit a [tort] is never of itself a cause of action [and] allegations of conspiracy are permitted only to connect the actions of separate defendants with an otherwise actionable tort." *Alexander & Alexander, Inc. v. Fritzen*, 68 N.Y.2d 968, 969 [1986]. As the First Department noted, "to establish a claim of civil conspiracy, the plaintiff must demonstrate the primary tort, plus the following four elements: (1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury." *Abacus Fed. Sav. Bank v. Lim*, 75 A.D.3d 472, 474 [1st Dept. 2010]. Plaintiffs allege that the Investor Defendants engaged in fraud by agreeing to fund the purchase price set forth in the Buyout Agreement without intending to carry through with that obligation.

The Investor Defendants are correct in arguing that there is no underlying tort alleged that can anchor a civil conspiracy claim against them. Even taking Plaintiffs' conclusory allegations as true, "[a]n allegation that one did not intend to perform a contract does not amount to a cause of action for fraud." *Kamyr, Inc. v. Combustion Eng'g*, 198 A.D.2d 44, 44 [1st Dept. 1993]. The Court has already addressed how the Investor Defendants have not breached their duty under the Buyout Agreement, but even if they had, the intent not to perform cannot serve to establish a

claim for civil conspiracy. Because there is no underlying tort, there can be no civil conspiracy claim. Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ADJUDGED that the amended complaint is dismissed as against defendants Naftali Brachfeld, Isaac Weinberger and Fishel Beigel.

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12/2/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE