

Huskanovic v Armenti

2025 NY Slip Op 35027(U)

December 23, 2025

Supreme Court, New York County

Docket Number: Index No. 650244/2024

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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SANEL HUSKANOVIC, INDIVIDUALLY AND AS
SHAREHOLDER OF SP & BIG APPLE INC.,

Plaintiff,

- v -

PIERO ARMENTI, VALERIA ARMENTI, IMV TRAVEL INC.

Defendants.

INDEX NO. 650244/2024

MOTION DATE 10/21/2024,
10/21/2024

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 73, 74, 75, 76, 77, 78, 87, 89, 92, 93, 94, 95, 96, 97, 98, 99, 100, 110, 112, 129

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113, 114, 115, 130

were read on this motion to DISMISS.

Plaintiff Sanel Huskanovic (“Plaintiff”) commenced this action individually and as an alleged shareholder of SP & Big Apple Inc. (“SPBA”) against Defendants Piero Armenti (“Piero”), Valeria Armenti (“Valeria”), and IMV Travel Inc. (“IMV”) (collectively, “Defendants”), asserting causes of action sounding in breach of contract, fraud, negligence, breach of fiduciary duty, and requests for an accounting and declaratory relief. Defendants move to dismiss the Amended Complaint pursuant to CPLR 3211(a).

For the reasons set forth below, Valeria and IMV’s motion (MS 003) is granted and Piero’s motion (MS 004) is granted as to all claims other than the Fourth Cause of Action for breach of contract.

BACKGROUND

In his Amended Complaint, Plaintiff seeks to cure deficiencies identified in the Court's dismissal of his original pleading by adding new factual allegations and submitting additional documentary evidence in support of his claim that he co-founded SPBA with Piero and held a 50% ownership interest (NYSCEF 64 ["Amended Complaint ("AC")] ¶¶ 14, 48).

Among the new allegations, Plaintiff asserts that Piero sent him a text message with a purported photo of a tax document, promising that Plaintiff's name would be added to SPBA's tax form once Plaintiff obtained a social security number the following year (*id.* ¶ 18-19; NYSCEF 65). Plaintiff also alleges that several SPBA employees observed the relationship between Plaintiff and Piero and understood Plaintiff to be a co-owner of the company (*id.* ¶ 28).

In addition, in his opposition to Defendants' motions to dismiss, Plaintiff asserts that he and Piero executed a written agreement memorializing their purported 50/50 ownership of SPBA (NYSCEF 92 [Opp] at 1-2). Plaintiff claims he was recently reminded of the existence of the purported written agreement by a mutual friend who allegedly witnessed the signing of the agreement (*id.*).

The Amended Complaint also re-pleads facts from the original complaint. Plaintiff claims he served as the company's chief operating officer starting in 2013, the year the company was founded, until it was dissolved in May 2022 (*id.* ¶ 51). He seeks to recover profits that Piero purportedly held for him since 2014 (*id.* ¶ 52). Plaintiff alleges that Piero held those funds for him because Plaintiff did not have a Social Security number due to his immigration status and was unable to have a bank account and receive a salary¹ (*id.* ¶ 21-22). In lieu of direct payments,

¹ Plaintiff claims that he received his Green Card in early 2023 (AC ¶ 45).

Plaintiff claims that Piero gave him access to the company credit card, which Plaintiff used for his personal expenses (*id.* ¶ 23). Plaintiff alleges that he was eventually excluded from the business and deprived of his ownership interest and share of the profit (*id.* ¶¶ 67, 72). He asserts that Piero diverted funds from SPBA into IMV, an entity controlled by Valeria (Piero's sister), to conceal SPBA profits and deprive Plaintiff of compensation (*id.* ¶ 34, 69-72, 79). Based on these allegations, Plaintiff asserts causes of action sounding in fraud, breach of contract, negligence, and breach of fiduciary duty (*id.* ¶ 77-188).

Defendants now move to dismiss the Amended Complaint on multiple grounds, arguing that (i) Plaintiff's claims are time-barred under CPLR 213(2) and (8); (ii) the statute of frauds bars enforcement of any alleged oral agreement; (iii) documentary evidence conclusively establishes that Plaintiff was never a shareholder of SPBA or IMV; and (iv) Plaintiff fails to state any viable cause of action against Valeria or IMV.²

DISCUSSION

On a motion to dismiss under CPLR 3211, the Court must accept all factual allegations as true, afford the pleadings a liberal construction, and accord plaintiff the benefit of every possible favorable inference (*Leon v. Martinez*, 84 N.Y.2d 83, 87-88 [1994]). “[H]owever, ‘allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration’” (*Myers v. Schneiderman*, 30 NY3d 1, 11 [2017] [citations omitted]). As is often stated, “the court must ‘determine only whether the facts as alleged fit within any cognizable legal theory’” (*Richards v. Sec. Resources*, 187 A.D.3d 452 [1st Dept. 2020], quoting *Leon*, 84 N.Y.2d at 87-88). Additionally, “[i]n assessing a motion

² Plaintiff's opposition papers only addressed Piero's motion and contained no arguments in response to Valeria and IMV's motion.

under CPLR 3211(a)(7), ... 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] [internal citations omitted]). “[A] defective complaint will not be dismissed where affidavits and other evidence amplify inartfully pleaded but potentially meritorious claims” (*Ninth Space LLC v Goldman*, 192 AD3d 594 [1st Dept 2021]).

Dismissal under CPLR 3211(a)(1) is appropriate when the documentary evidence produced by Defendants “utterly refutes plaintiffs’ factual allegations” and “conclusively establishes a defense to the asserted claims as a matter of law” (*Amsterdam Hospitality Grp., LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431, 433 [1st Dept 2013]).

I. Breach of Contract

The elements of a breach of contract claim “include the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages” (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]).

The Amended Complaint, together with supplemental information provided in response to the motion to dismiss, contains sufficient allegations to support a potentially viable claim for breach of contract. Specifically, Plaintiff pleads a 2013 “equity partnership” agreement with Piero under which Plaintiff would receive a 50% ownership interest in SPBA and 50% of profits beginning in 2014. That is sufficiently descriptive of the alleged terms of the agreement at this stage.

Piero’s argument that the claim is time-barred is unavailing. Under CPLR § 213(2), a breach of contract claim must be brought within six years from the date of the breach. Here, Plaintiff alleges that Piero breached the agreement by revoking Plaintiff’s access to the company

credit card in 2019 and by dissolving the business in 2020 without providing an accounting. Since the initial complaint was filed in 2024, the breach of contract claim is within the six-year statute of limitations period.

Finally, the breach of contract claims asserted against Valeria and IMV are dismissed. Plaintiff does not allege sufficient facts to sustain claims against those defendants and did not submit arguments opposing their motion to dismiss.

II. Fraud

"The elements of a fraud cause of action consist of a misrepresentation or a material omission of fact which was false and known to be false by the defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (*Pasternack v Lab. Corp. of Am. Holdings*, 27 NY3d 817, 827 [2016][cleaned up and internal citations omitted]). "General allegations that defendant entered into a contract while lacking the intent to perform it are insufficient to support the claim" (*New York Univ. v Cont. Ins. Co.*, 87 NY2d 308, 318 [1995]). Additionally, "CPLR 3016 (b) provides that where a cause of action or defense is based upon fraud, 'the circumstances constituting the wrong shall be stated in detail.'" (*Pludeman v N. Leasing Sys., Inc.*, 10 NY3d 486, 491 [2008]).

Here, Plaintiff merely offers generalized accusations that Piero diverted revenues, misappropriated funds from a Covid-related government grant, failed to provide Plaintiff's share of the profits, and falsely claimed that the business was bankrupt, which are insufficient to satisfy the heightened CPLR 3016(b) requirement to plead fraud with particularity. Plaintiff fails to identify specific misrepresentations that Piero made or how exactly Plaintiff relied on such

misrepresentations. Accordingly, the fraud claim against Piero is dismissed for lack of particularity.

As to Valeria and IMV, the Amended Complaint alleges that IMV was formed in Valeria's name and used to shield SPBA income from Plaintiff, and that Plaintiff later learned of pandemic-related government loans and other diversions. The Amended Complaint, however, fails to identify any specific misrepresentations attributable to Valeria or IMV, and Plaintiff's opposition is devoid of any arguments directly addressing Valeria and IMV's motion to dismiss. Accordingly, the fraud claims against IMV and Valeria are also dismissed.

III. Breach of Fiduciary Duty Claims

"To state a claim for breach of fiduciary duty, plaintiffs must allege that (1) defendant owed them a fiduciary duty, (2) defendant committed misconduct, and (3) they suffered damages caused by that misconduct" (*Burry v. Madison Park Owner LLC*, 84 AD3d 699, 699–700 [1st Dept 2011]). Such claims are generally governed by a three-year period when (as here) they seek damages only, accruing at the time of injury (*IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 139 [2009]).

These counts assert that Piero, as an SPBA officer, owed duties to Plaintiff as shareholder/co-officer and breached them by engaging in self-dealing and mismanagement. On the face of the Amended Complaint, the operative conduct is alleged to have occurred from approximately 2013 through 2020. The original Complaint in this action was filed on January 17, 2024 (NYSCEF 2). Thus, these claims are dismissed as time-barred.

The fiduciary duty claims against IMV and Valeria are also dismissed because the Amended Complaint does not allege facts giving rise to a fiduciary relationship with those defendants, and Plaintiff's opposition does not address Valeria and IMV's motion to dismiss.

IV. Accounting

Plaintiff argues that he and Piero operated as a de facto partnership, entitling him to an accounting upon dissolution under New York Partnership Law § 71. That contention is unavailing. The Amended Complaint does not adequately allege the existence of a partnership (it is undisputed that SPBA is a corporation), and Plaintiff therefore has no right to an accounting under the Partnership Law. This determination does not foreclose the possibility that, if Plaintiff is ultimately found to be a shareholder, he may pursue an accounting on a different legal theory. Accordingly, the cause of action for an accounting is dismissed without prejudice.

The account claim against Valeria and IMV are also dismissed. Plaintiff's opposition does not respond to Valeria and IMV's motion to dismiss, and, in any event, the Amended Complaint fails to allege facts demonstrating a fiduciary relationship with Valeria or any ownership interest in IMV that would support a claim for an accounting.

V. Negligence

The negligence cause of action is premised on defendants' alleged mismanagement of SPBA's finances and records. The claim merely repackages alleged obligations arising, if at all, from a contractual relationship and duplicates the breach of contract claim. A party may not reframe a contract claim as negligence absent allegations of a duty independent of the contractual relationship (*Ho v Star Contractors, Inc.*, 226 AD3d 511 [1st Dept 2024] [affirming dismissal of a negligence claim as duplicative of breach of contract claim where plaintiff alleged "no duty distinct from defendants' contractual obligations"]). Here, Plaintiff identifies no such

independent duty with respect to Piero, Valeria, or IMV. The negligence claims are therefore dismissed as against all Defendants.

VI. Punitive Damages as a Standalone Count

The claim for punitive damages is dismissed. Punitive damages are a potential remedy, not a separate cause of action.

The Court has considered the parties' other arguments and finds them unavailing.

Accordingly, it is

ORDERED that Motion Sequence 003 is **GRANTED** in its entirety, and all claims against Defendants IMV Travel Inc. and Valeria Armenti are dismissed; it is further

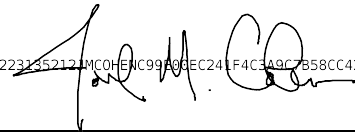
ORDERED that Motion Sequence 004 is **GRANTED IN PART** such that all causes of action against Defendant Piero Armenti are dismissed other than the Fourth Cause of Action (Breach of Contract); and it is further

ORDERED that the remaining parties appear for a preliminary conference on January 13, 2026 at 11:00 a.m., with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference.³

³ If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Part3-Preliminary-Conference-Order.pdf>), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.

This constitutes the Decision and Order of the Court.

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12/23/2025

DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: