Fleiss v Keatinge
2025 NY Slip Op 35079(U)
December 30, 2025
Supreme Court, New York County
Docket Number: Index No. 156883/2020
Judge: Paul A. Goetz

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

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HEIDI FLEISS

Plaintiff,

- v -

ELIZABETH KEATINGE,

Defendant.

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INDEX NO. 156883/2020

MOTION DATE 07/14/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

In this action, plaintiff, Heidi Fleiss, alleges that defendant, Elizabeth Keatinge, unlawfully retained funds she alleges were transferred to Keatinge, with direction to invest in cryptocurrency assets. Fleiss asserts six causes of action, for: 1) Breach of Contract; 2) Conversion; 3) Prima Facie Tort; 4) Accounting; 5) Unjust Enrichment; and 6) an Injunction directing Defendant to cease and desist using the alleged funds. Keatinge asserts three counterclaims against Fleiss for: 1) a Declaration that the parties are co-owners of the alleged funds; 2) Breach of Contract; and 3) Defamation. Plaintiff now moves pursuant to CPLR § 3212 for summary judgment on her second and fifth[1] causes of action. Defendant cross-moves for summary judgment on her first counterclaim and further moves to dismiss the complaint.

[1] While in her Notice of Motion plaintiff claims she is moving for summary judgment on her Third cause of action, in her complaint the third cause of action is for "Prima Facie Tort." However, in her Notice of Motion plaintiff states that she is moving for summary judgment on a "Unjust Enrichment" cause of action, which is her Fifth cause of action.

BACKGROUND

Plaintiff alleges that in 2015, after inheriting a substantial sum of money from her late father, she decided to invest that money in cryptocurrencies (NYSCEF Doc No 2 ¶ 9). At that time, plaintiff also planned to purchase a property with defendant, her former personal assistant, and a third party, Jessica Steindorff, a friend of defendant and another former personal assistant of plaintiff's (*id*. at ¶ 10). Plaintiff alleges that with respect to that property, plaintiff agreed to make the down payment, Steindorff would make mortgage payments, and defendant would file for and obtain a bank loan (*id*. at ¶ 12). Plaintiff alleges that she then wired $175,000.00 to defendant's bank account (*id*. at ¶ 13).

Plaintiff alleges that she then instructed defendant to purchase the cryptocurrency Bitcoin with the $175,000.00 she transferred to defendant (*id*. at ¶ 14). Plaintiff alleges that on March 16, 2017, she agreed to pay defendant $3,000.00 in exchange for her assistance with the cryptocurrency investments (*id*. at ¶ 17). On November 1, 2017, plaintiff then wired defendant an additional $120,000.00 and instructed defendant to invest $40,000.00 in more Bitcoin, and use $16,000.00 to pay off some of plaintiff's personal debts (NYSCEF Doc No 2 ¶¶ 18 – 22). Plaintiff alleges she wired an additional $407,877.48 to defendant (*id*. at ¶ 23).

On November 8, 2017 plaintiff alleges that she requested the return of her funds but defendant refused (*id*. at ¶¶ 39 – 40). Plaintiff alleges that defendant has used the funds which she directed her to invest, for her own personal use and refuses to return plaintiff's investment.

Defendant alleges that in October 2016, plaintiff asked her if she could transfer her funds in order to avoid execution upon plaintiff's assets by creditors (NYSCEF Doc No 22 at ¶ 23). Defendant alleges that she agreed to hold this money in accounts she owned and to contribute and invest the money as part of a joint venture for their mutual benefit (*id*. at ¶ 25). Defendant

alleges that she and plaintiff agreed that they would be co-owners of the assets and each would own 50% of the assets and 50% of the profits derived from the investments (*id* at ¶ 27).

Defendant alleges that following a meeting with plaintiff on November 8, 2017 she decided to terminate the joint venture between the parties, as during the meeting plaintiff was disheveled, erratic, and incoherent, leaving defendant uncomfortable with the prospects of continuing the venture (*id*. at ¶ 33). Defendant alleges that plaintiff then went on a campaign of harassment which interfered with her business and personal relationships (*id*. at ¶¶ 35 – 42). Defendant alleges that she has attempted to placate plaintiff and transferred her 3.2 Bitcoin (*id*. at ¶ 41).

DISCUSSION

Summary Judgment Standard

It is well settled that 'the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact'" (*Pullman v Silverman,* 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). "Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Cabrera v Rodriguez*, 72 AD3d 553, 553-54 [1st Dept 2010]).

"The court's function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility" (*Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-11 [1st Dept 2010]

[internal citations omitted]). The evidence presented in a summary judgment motion must be examined "in the light most favorable to the non-moving party" (*Schmidt v One New York Plaza Co. LLC*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

Timeliness of Cross-motion

Plaintiff argues that defendant's cross-motion must be denied as a matter of law because it is untimely. Pursuant to the decision and order dated January 22, 2025 (NYSCEF Doc No 71) and the status conference order dated November 7, 2024 (NYSCEF Doc No 50) the deadline for dispositive motions was set for 60 days after the filing of the Note of Issue. The Note of Issue was filed on April 1, 2025 (NYSCEF Doc No 75), and defendant's cross-motion was not filed until June 23, 2025, 83 days after the Note of Issue was filed. Defendant argues that the cross-motion should be deemed timely as it seeks relief that is nearly identical to that of plaintiff's motion.

Indeed, "[a] cross motion for summary judgment made after the expiration of the [deadline for making dispositive motions] may be considered by the court, even in the absence of good cause, where a timely motion for summary judgment was made seeking relief nearly identical to that sought by the cross motion" (*Alonzo v Safe Harbors of the Hudson Hous. Dev. Fund Co., Inc.*, 104 AD3d 446, 448-49 [1st Dept 2013]).

Here however, defendant's cross-motion seeks relief beyond the scope of plaintiff's summary judgment motion. Plaintiff only moves for summary judgment on her conversion, and

unjust enrichment claims while defendant moves for summary judgment dismissing the entire complaint, and for summary judgment on her first counterclaim for a declaratory judgment. Therefore, the portions of the cross-motion seeking dismissal of the conversion and unjust enrichment claims will be considered, however the portions of the cross-motion seeking dismissal of plaintiff's other causes of action will not be considered because the unrelated requests are made more than 60 days after the Note of Issue was filed. Further, while defendant's first counterclaim for a declaration that the parties entered into a joint venture is relevant to the plaintiff's claims and will be analyzed below, plaintiff has not moved to dismiss defendant's first counterclaim and thus the cross-motion seeking summary judgment on this counterclaim is untimely, however, the arguments made in support of that portion of the cross-motion will be considered when determining the merits of plaintiff's motion.

Conversion

"In order to succeed on a cause of action to recover damages for conversion, a [party] must show (1) legal ownership or an immediate right of possession to a specific identifiable thing and (2) that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of plaintiff's right" (*Giardini v Settanni*, 159 AD3d 874, 875 [2d Dept 2018]). Plaintiff argues that it is undisputed that she is entitled to at least 50 percent of the assets held by defendant in the cryptocurrency accounts. While plaintiff rejects defendant's contentions that the investments represented a joint venture between the parties, she argues that even assuming *arguendo* that the parties did agree to a joint venture, defendant would still be liable for conversion as defendant did not send her 50 percent of the assets following the partnership's alleged dissolution.

"The elements of a joint venture are acts manifesting the intent of the parties to be associated as joint venturers, mutual contribution to the joint undertaking through a combination of property, financial resources, effort, skill or knowledge, a measure of joint proprietorship and control over the enterprise, and a provision for the sharing of profits and losses" (*Lebedev v Blavatnik*, 193 AD3d 175, 185 [1st Dept 2021]). A joint venture is a "special combination of two or more persons where in some specific venture a profit is jointly sought [and] is in a sense a partnership for a limited purpose, and it has long been recognized that the legal consequences of a joint venture are equivalent to those of a partnership" (*Gramercy Equities Corp. v Dumont*, 72 NY2d 560, 565 [1988]). Thus, joint ventures are governed by the same principles as partnerships (*id*.). Upon dissolution of a joint venture "[t]he amount of each party's contribution to each joint venture is ascertained and each party is entitled to receive the value of his or her contribution to each joint venture before the assets of the joint venture are distributed" (*Schneider v Green*, 88 CIV. 2931 (MJL), 1990 WL 151142, at *11 [SDNY Oct. 1, 1990]).

As previously mentioned, plaintiff contends that a joint venture did not exist and that she is entitled to all of the assets. Plaintiff nevertheless moves for summary judgment on her conversion claim arguing that, assuming a joint venture was entered into, she is entitled to at least 50 percent of the joint venture's assets. While plaintiff is indeed correct that if a joint venture was established, she would be entitled to a distribution of assets, these facts if true cannot sustain a conversion claim. Because, if a joint venture did exist, defendant could not have "exercised an *unauthorized dominion* over the thing in question to the exclusion of plaintiff's right" (*Giardini*, 159 AD3d at 875 [emphasis provided]), that is because the assets would be legally held until they are distributed pursuant to the rules of New York Partnership Law (*see* Partnership Law §§ 60 – 75[rules for dissolution of a partnership]).

Therefore, because plaintiff must establish that defendant had unauthorized dominion over the funds in question in order to be entitled to summary judgment on her conversion cause of action, if there is a question of fact regarding the existence of a joint venture then the motion must be denied.

In support of her motion plaintiff submits her own affidavit wherein she avers that she transferred money to defendant to purchase cryptocurrency for plaintiff and for no other purpose (NYSCEF Doc No 77 at ¶ 8). Plaintiff also submits evidence of wire transfers she made to defendant totaling of $407,877.48 (NYSCEF Doc Nos 81 – 83). It is undisputed that no written agreement was ever made. In opposition, defendant submits her own affidavit along with her deposition testimony wherein she avers that plaintiff transferred the money to her in furtherance of a joint venture between the parties for the trading of cryptocurrency assets (NYSCEF Doc No 90 ¶¶ 10 – 17). "It is not the function of a court deciding a summary judgment motion to make credibility determinations" (*Vega v Restani Const. Corp.*, 18 NY3d 499, 505 [2012]). Accordingly, since factual resolution of these issues will ultimately require credibility determinations, summary judgment must be denied.

Unjust Enrichment

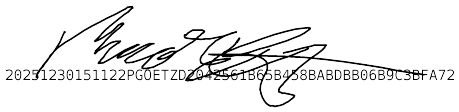
"To recover for unjust enrichment, a plaintiff must show that (1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*Hong Qin Jiang v Li Wan Wu*, 179 AD3d 1035, 1040 [2d Dept 2020]). As stated above, while plaintiff is entitled to recover some of the assets retained by defendant in defendant's cryptocurrency accounts, since at this juncture there is a triable issue of fact as to whether there was a joint venture, summary judgment must be denied on plaintiff's unjust enrichment claim because, if a joint venture did exist, an

unjust enrichment cause of action is not the appropriate vehicle for the winding down and distributing the assets of the joint venture (*see Boyle v Kelley*, 42 NY2d 88, 91 [1977] ["equity will not entertain jurisdiction where there is an adequate remedy at law"]; *First Class Concrete Corp. v Rosenblum*, 167 AD3d 989, 990 [2d Dept 2018] ["unjust enrichment theories are equitable in nature, and are appropriate only if there is no valid and enforceable contract between the parties covering the dispute at issue"]).

Since there are still triable issues of fact as to whether the parties entered into an enforceable joint venture agreement, and since plaintiff still maintains a viable conversion claim, a determination on the unjust enrichment claim is premature at this juncture. Moreover, there are triable issues of fact as to damages considering the parties vast differences in their calculations of the value of the cryptocurrency assets.

Accordingly, it is

ORDERED that the motion and the cross-motion are denied.



12/30/2025
DATE

PAUL A. GOETZ, J.S.C.

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