

<b>Blesson v Something Good Supper Club, LLC</b>
2026 NY Slip Op 30338(U)
January 28, 2026
Supreme Court, New York County
Docket Number: Index No. 655429/2024
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 655429/2024

GEORGE BLESSON,

MOTION DATE 01/17/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

SOMETHING GOOD SUPPER CLUB, LLC, SOMETHING SHORT, LLC, ILAN KHUTORSKY, RAPHAEL KHUTORSKY

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 18, 20, 21

were read on this motion to/for DISMISSAL

Plaintiff George Blesson ("Plaintiff") commenced this action against Something Good Supper Club, LLC ("Something Good"), Something Short, LLC ("Something Short"), Ilan Khutorsky, and Raphael Khutorsky (collectively "Defendants"). Plaintiff alleges that Defendants collectively own and operate a bar and restaurant located at 335 Bowery, New York, New York, doing business as "Something Short," and that Defendants induced Plaintiff to invest \$34,000 into Something Short. Plaintiff asserts that he entered into a side letter agreement (the "Side Agreement") with Something Short, which stated the terms of his investment, including that the money would be invested as soon as Something Good acquired a liquor license, and that Defendants breached the Side Agreement by using Plaintiff's investment to make buyout payments to a prior investor to settle a lawsuit. Plaintiff further alleges that Defendants purposefully withheld information about the prior lawsuit, as well as information about the financial health of the company.

The complaint seeks to recover Plaintiff's investment, seeks additional damages, including punitive damages, and asserts five causes of action (1) breach of the Side Agreement against all Defendants; (2) breach of the Something Short's Operating Agreement (the "Operating Agreement") against Ilan Khutorsky, (3) negligent misrepresentation against Ilan Khutorsky, (4) fraudulent misrepresentation against Ilan Khutorsky, and (5) civil conspiracy against all Defendants.

Defendants now serve a pre-answer motion, pursuant to CPLR 3211(a)(7), to dismiss the complaint in its entirety against Something Good, Ilan Khutorsky, and Raphael Khutorsky. Defendants also move to dismiss all claims, except for the first claim for breach of contract of the Side Agreement, against Something Short.

### LEGAL STANDARD

On a motion to dismiss pursuant to CPLR 3211 (a)(7), the facts alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court's function is to determine simply whether plaintiff's facts fit within any cognizable legal theory (*see Leon*, 84 NY2d at 87-88; *Siegmund Straus, Inc. v. East 149<sup>th</sup> Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*Zurich Am. Ins. Co. v City of New York*, 176 AD3d 1145, 1147 [2d Dept 2019], quoting *EBC I, Inc. v Goldman Sacks & Co.*, 5 NY3d 11, 19 [2005]).

### DISCUSSION

#### *I. Breach of Contract*

Defendants assert that the first cause of action, breach of the Side Agreement, must be dismissed against Something Good, Ilan Khutorsky, and Raphael Khutorsky because Something

Short was the only signatory, along with Plaintiff, to the Side Agreement. Defendants further argue that Ilan Khutorsky cannot be liable individually for breach of contract because he signed the contract as manager of Something Short, not in his individual capacity. In opposition, Plaintiff asserts that all Defendants are liable in their capacity as agents and managers of Something Short.

To plead a breach of contract cause of action, a plaintiff must allege that (1) a contract exists, (2) plaintiff performed in accordance with the contract's terms, (3) defendant breached its contractual obligations, and (4) defendant's breach cause damages (*see 34-0673, LLC v Seneca Ins. Co.*, 39 NY3d 44, 49 [2022]). Here, Plaintiff alleges an agreement, its own proper performance and Defendants' breach of contractual obligations. Therefore, the only issue is which Defendants are liable.

Something Short is the only alleged signatory to the Side Agreement with Plaintiff. As the other Defendants did not execute the agreement as individuals, they cannot be sued in their individual capacities. Additionally, they cannot be held liable as managers or agents of Something Short unless they purported to bind themselves individually, which is not alleged. Therefore, the first cause of action for breach of contract of the Side Agreement is dismissed as to Ilan Khutorsky, Raphael Khutorsky, and Something Good.

The second cause of action alleges that Ilan Khutorsky, in his capacity as manager, breached the Operating Agreement. Plaintiff appears to bring this claim as a minority shareholder in Something Short. Defendants argue that this claim should be dismissed because it is not pled with the required particularity. In opposition, Plaintiff asserts that the second cause of action includes specific provisions that have allegedly been violated by Ilan Khutorsky.

The complaint alleges that Plaintiff is a party to the Operating Agreement, and the Operating Agreement provides that Ilan Khutorsky, in his capacity as manager, has specific

responsibilities to Something Short. Section 5.5 of the Operating Agreement provides that Ilan Khutorsky can be held liable for willful misconduct and bad faith. The complaint alleges that Ilan Khutorsky breached this provision by withholding pertinent information from investors and misappropriating company funds for his own benefit. Section 5.6 of the Operating Agreement provides that Ilan Khutorsky has an obligation to present documentary material related to the company's business. The complaint alleges that Ilan Khutorsky failed to present an annual budget. Section 6.3 and 6.4 provide that Ilan Khutorsky has to maintain a duty of loyalty and good faith to Something Short. As noted above, the complaint alleges that Ilan Khutorsky, among other things, misappropriated company funds for his own interest and to the detriment of the company and investors. Therefore, Plaintiff has established a cognizable cause of action for breach of contract of the Operating Agreement against Ilan Khutorsky and Defendants' motion to dismiss is denied with respect to the second cause of action.

## *II. Negligent & Fraudulent Misrepresentation*

The third and fourth causes of action assert that Ilan Khutorsky made negligent and fraudulent representations to induce Plaintiff to execute the Side Agreement, to his detriment. Defendants argue that these causes of action must be dismissed because they are duplicative of the breach of contract cause of action. In opposition, Plaintiff asserts that these claims are separate from breach of contract because they relate to misrepresentations of present fact, as opposed to representations of future facts, as a means to induce Plaintiff to execute the agreement.

The elements of negligent misrepresentation are (1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information (*see MatlinPatterson ATA Holdings LLC v Federal Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]).

To recover damages for fraudulent misrepresentation, the plaintiff must prove (1) a misrepresentation or omission of material fact, which was false and known to be false by defendant, (2) made for the purpose of inducing the other party to rely on it, (3) justifiable reliance of the other party on the misrepresentation or material omission, and (4) injury (*Lama Holding Co. v Smith Barney*, 88 NY2d 413 [1996]). “As a general rule, to recover damages for a tort in a contract matter, it is necessary that the plaintiff plead and prove a breach of duty distinct from, or in addition to, the breach of contract” (*Non-Linear Trading Co. v Braddis Assoc.*, 243 AD2d 107, 118 [1st Dept 1998]). Fraudulent inducement to execute a contract is not duplicative of a breach of contract as long as the pleadings allege misrepresentations of present fact, not those of future intent to perform under the contract (*see Wyle Inc. v ITT Corp.*, 130 AD3d 438, 440 [1st Dept 2015]).

Here, the alleged misrepresentations are similar to the terms of the Side Agreement, not separate misrepresentations. However, as discussed above, Ilan Khutorsky is not personally liable for any breach of the Side Agreement because he did not sign it in his individual capacity. Therefore, Ilan Khutorsky can be liable for fraudulent misrepresentation and the motion to dismiss with respect to the fourth cause of action is denied.

As to the negligent misrepresentation cause of action, the alleged misrepresentations are similar to those in the fraudulent cause of action. However, Plaintiff failed to allege a special relationship with Ilan Khutorsky, other than a contractual relationship pursuant to the shareholders Operating Agreement. A special relationship, which would include a fiduciary duty, goes beyond a contractual relationship (*see Saunders v AOL Time Warner, Inc.*, 18 AD3d 216, 217 [1st Dept 2005]). Therefore, that part of Defendant’s motion to dismiss the third cause of action for negligent misrepresentation against Ilan Khutorsky is granted, and the third cause of action is dismissed.

### III. *Civil Conspiracy*

Defendants argue that the fifth cause of action for civil conspiracy against all Defendants must be dismissed because it is not recognized as an independent cause of action in New York (*see Alexander and Alexander of New York v Fritzen*, 68 NY2d 968, 969 [1986]). However, plaintiff may plead the existence of a conspiracy in order to connect the actions of individual defendants with an actionable underlying tort and establish that those actions were part of a common scheme (*Id.* at 969).

Here, Plaintiff alleges that Defendants conspired to fraudulently induce him to execute the Side Agreement. However, Plaintiff has not alleged a fraudulent inducement claim. He has alleged a conspiracy to commit fraud, which is not a valid cause of action in this jurisdiction. Therefore, the part of Defendant's motion to dismiss the fifth cause of action for conspiracy is granted, and the fifth cause of action is dismissed.

Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss is granted in part and denied in part; and it is further

ORDERED that the first cause of action for breach of contract is dismissed against all Defendants except Something Short, LLC; and it is further

ORDERED that the part of Defendants' motion to dismiss the third and fifth causes of action is granted, and they are dismissed; and it is further

ORDERED that the part of Defendants' motion to dismiss the second and fourth causes of action is denied; and it is further

ORDERED that Defendants Something Short, LLC and Ilan Khutorsky are directed to serve an answer within 30 days of receipt of this order with notice of entry; and it is further

ORDERED that the caption is amended to reflect the dismissal of the other defendants in this action and that all future papers filed with the court bear the amended caption, which is:

X-----X  
GEORGE BLESSON,

Plaintiff,

-against-

SOMETHING SHORT, LLC and ILAN KHUTORSKY

Defendants.

X-----X


This constitutes the decision and order of the Court.

1/28/2026  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  SETTLE ORDER  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  SUBMIT ORDER  FIDUCIARY APPOINTMENT  REFERENCE

  
HON. LESLIE A. STROTH  
J.S.C.