Innovative Sec. Ltd v Prime Capital Ltd
2026 NY Slip Op 30462(U)
February 6, 2026
Supreme Court, New York County
Docket Number: Index No. 650685/2023
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREW BORROK** **PART 53**

Justice

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INNOVATIVE SECURITIES LTD,

Plaintiff,

- v -

PRIME CAPITAL LTD,

Defendant.

----------X

INDEX NO. 650685/2023

MOTION DATE

MOTION SEQ. NO. 010

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 244, 245, 246, 247, 248

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 2.6.26), Prime Capital Ltd. (**Prime**)'s motion for partial summary judgment on its counterclaims sounding in breach of contract and seeking attorneys' fees is GRANTED. Prime is not however entitled to summary judgment on its counterclaim sounding in unjust enrichment (*see Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]).

Reference is made to (i) a Decision and Order of the Appellate Division *Innovative Sec. Ltd. v OBEX Sec. LLC*, 231 AD3d 646 [1st Dept 2024] [NYSCEF Doc. No. 123]), dated October 29, 2024, and (ii) a Decision and Order of the Appellate Division (*Innovative Sec. Ltd. v OBEX Sec. LLC*, 242 AD3d 662 [1st Dept 2025] [NYSCEF Doc. No. 248 at 3-4]), dated October 30, 2025 (collectively the **Appellate Decisions**), pursuant to which the Appellate Division held that:

Order, Supreme Court, New York County (Andrew Borrok, J.), entered on or about April 2, 2024, which, to the extent appealed from as limited by the briefs, granted the motions of defendants OBEX Securities, LLC, Randy Katzenstein, Cowen Inc., and Cowen International Ltd. to dismiss the complaint as against them and granted the motion of Cowen Inc. and Cowen International Ltd. (together, the Cowen defendants) to dismiss the cross-claims of defendant/cross-claimant Prime Capital (Bermuda) Ltd. with prejudice, unanimously modified, on the law, to the extent of striking the direction that the dismissal of Prime's cross-claims be "with prejudice," and substituting therefor a direction that dismissal of the cross-claims be "without prejudice," and otherwise affirmed, without costs.

The forum selection clauses in plaintiffs 2017 agreements with Cowen International bar so much of the first cause of action as seeks a declaration that those agreements were no longer in force and effect as of March 17, 2020 (*see Breakaway Courier Corp, v Berkshire Hathaway, Inc.*, 215 AD3d 565, 565 [1st Dept 2023], Iv denied 40 NY3d 903 [2023]). Although plaintiff asserts that the 2017 agreements were superseded by plaintiffs 2019 agreement with Prime, plaintiff concedes that the parties' course of dealing was unchanged by the 2019 agreement.

Plaintiff does not allege that it terminated the 2017 agreements in writing, as required by their express terms. Plaintiff does not argue that the forum selection clause does not apply to Cowen Inc. Therefore, the forum selection clauses bar plaintiffs causes of action against the Cowen defendants, which "aris[e] out of or in connection with" the 2017 agreements. The cause of action for breach of fiduciary duty was also properly dismissed as against the Cowen defendants because plaintiff, in its agreement with Cowen International, represented and warranted that neither Cowen International nor any of its affiliates were acting as plaintiffs fiduciaries (*see La Scoula D'Italia Guglielmo Marconi v Gates Capital Corp.,* 187ADsd 581[1st Dept 2020]). Plaintiff does not dispute the dismissal of its first cause of action against Prime, OBEX, and Katzenstein. Plaintiffs second and third causes of action against these defendants, respectively for fraud and breach of fiduciary duty, were properly dismissed. Plaintiff failed to plead any specific misrepresentations, concealment, or breach of specific duties (*see* CPLR 3016 [b]; *Berardi v Berardi*,108 AD3d 406, 406-407 [1st Dept 2013], Iv denied 22 NY3d 861[2014]; *ESBE Holdings, Inc. v Vanquish Acquisition Partners,* LLC,50 AD3d 397, 398 [1st Dept 2008]). Moreover, brokers for nondiscretionary accounts do not owe clients a fiduciary duty (*see Celle v Barclays Bank P.L.C.,* 48 AD3d 301, 302 [1st Dept 2008]). ***Insofar as we understand plaintiff to allege that it was not informed that its securities would not be segregated from Prime's or that Prime may use those securities as collateral for its own trading, these allegations are contradicted by Prime's brokerage terms, which plaintiff admits that it received and signed*** (*see Woods v 126 Riverside Dr. Corp.,* 64 AD3d 422, 423 [1st Dept 2009], Iv denied 14 NY3d 704 [2010]; *Sandcham Realty Corp. v Taub,* 299 AD2d 220, 221[1st Dept 2002]).

The fifth cause of action, for unjust enrichment, alleges that defendants improperly received money as a result of the wrongful margin calls placed by the Cowen defendants. This cause of action was properly dismissed as against the

remaining defendants, because plaintiff has not alleged that they received any benefit as a result of these margin calls (*see Woods*, 64 AD3d at 424; *see generally Corsello v Verizon N.Y., Inc.*,18 NY3d 777, 790 [2012]).

Since plaintiff's action is being dismissed, there is no longer a basis under the circumstances presented here for Prime to assert cross-claims against the Cowen defendants. However, because Prime requests that the dismissal of its cross-claims be without prejudice, we determine whether the cross-claims state causes of action.

The cross-claim for breach of the express and implied provisions of the contract between Prime and Cowen International (first cross-claim) was properly dismissed as against Cowen Inc., which is not a party to that agreement, and Prime's alter ego allegations are insufficient (*see Array BioPharma, Inc. v AstraZeneca AB*,184 AD3d 463, 464 [1st Dept 2020]; *see also Sheridan Broadcasting Corp, v Small*, 19 AD3d 331, 332 [1st Dept 2005]). However, this dismissal should have been without prejudice, as Prime may be able to make sufficient veil-piercing allegations if there is further litigation.

The Cowen defendants offer no substantive arguments as to why Prime's remaining cross-claims lack legal merit, and dismissal therefore should have been ordered without prejudice.

We have considered the parties' remaining allegations and find them unavailing.

(NYSCEF Doc. No. 123 [emphasis added]).

Order, Supreme Court, New York County (Andrew Borrok, J.), entered on or about December 2, 2024, which granted defendant Prime Capital LTD.'s (Prime) motion for summary judgment dismissing the complaint as against it, unanimously affirmed, with costs.

Prime established its prima facie burden on its summary judgment motion, and plaintiff failed to raise a triable issue of fact in opposition. This Court previously affirmed the dismissal of the complaint as against codefendants OBEX Securities LLC and Randy Katzenstein, relying on the fact that, as Prime established on its own motion, plaintiff admitted that it received and signed the account agreement at issue here (*Innovative Sec. Ltd. v OBEX Sec. LLC*, 231 AD3d646, 646 [1st Dept 2024]). Plaintiff has failed to raise a triable issue of fact concerning the agreement's enforceability. Thus, the first cause of action was properly dismissed on the merits. Accordingly, we need not consider whether the law of the case doctrine applies.

The court properly granted summary judgment dismissing the fraudulent inducement cause of action, as the record establishes that plaintiff had the means of discovering, by the exercise of ordinary intelligence, the potential consequences of those terms of the agreement that it alleges caused it to suffer damages (*see Woodsv 126 Riverside Dr. Corp.*, 64 AD3d422, 423 [1st Dept 2009], lv denied 14 NY3d704 [2010]). It is significant that plaintiff is a

> sophisticated party (*see U.S. Legal Support, Inc. v Eldad Prime, LLC*, 125 AD3d486, 487 [1st Dept 2015]). Moreover, it has not pleaded any specific misrepresentations or concealment (*see Innovative Sec. Ltd.* at 647).
>
> The breach of fiduciary duty and unjust enrichment causes of action were properly dismissed, because the account agreement controls the relevant subject matter (*see Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]; *Celle v Barclays Bank P.L.C.*, 48 AD3d301, 302 [1st Dept 2008]).

(NYSCEF Doc. No. 248 at 3-4).

Prime now moves for partial summary judgment indicating that there are no issues of fact as to whether the contract was breached and as to whether it is entitled to reimbursement for its reasonable legal fees.

On a motion for summary judgment, the movant 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 issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*id.*). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish the existence of material issues of fact requiring trial (*id.*).

To prevail upon a cause of action for breach of contract, a movant must prove that: (i) a contract exists; (ii) the movant performed in accordance with the contract; (iii) the respondent breached its contractual obligations; and (iv) the respondent's breach resulted in damages (*see 34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]).

In support of their motion, Prime adduces (i) the Prime Agreement, (ii) the Affirmation of Randy Katzenstein which indicates that Prime "complied fully with all of our obligations under the Prime Agreement" (NYSCEF Doc. No. 194 ¶ 35) and that"[a]t no time prior to the Margin Call were we ever asked to perform some act on behalf of Innovative under the Prime Agreement that [Prime] failed to do, and Innovative at no time ever suggested to the contrary" (*id.* ¶ 36), (iii) Innovative withdrew collateral from the Prime Account in violation of the Prime Agreement causing Prime to suffer having to address 100% of the margin call deficit and by failing to indemnify Prime, and (iv) that Innovative's breach resulted in damages. In fact, as to damages, Prime provides detailed analysis of the amount of the loss which was occasioned by virtue of the breach (NYSCEF Doc. No. 194 ¶¶ 31-32). Thus, Prime meets its *prima facie* burden of demonstrating its entitlement to judgment as a matter of law (*see 34-06 73, LLC*, 39 NY3d at 52; *Alvarez*, 68 NY2d at 324).

In their opposition papers, at bottom Innovative argues that the cross-collateralization provision did not permit Prime to offset losses that it may have caused by its trading activity against the amounts in the Innovative sub account. As discussed above, this is however directly contradicted by the express language of the Prime Agreement. In fact, Innovative understood that they would be responsible for their proportionate share of the losses (NYSCEF Doc. No. 234 [Darin Simeonov asked Randy Katzenstein "what is the exact scale of the unexpected losses that may affect us?"]). Thus, Innovative has failed to raise an issue of fact warranting further proceeding (*see Alvarez,* 68 NY2d at 324).

The Court notes that the cause of action for attorneys' fees (the seventh counterclaim) is not a separate cause of action in New York (*Pier 59 Studios v Chelsea Piers L.P.*, 27 AD3d 217, 217 [1st Dept 2006]. However, Prime is entitled to its reasonable attorneys' fees pursuant to its breach of contract claim because the definition of Liabilities for which Innovative is responsible includes "legal fees" (NYSCEF Doc. No. 9 at 21) and the indemnity provision is broad (*id.* at 13 § 9.1). Innovative does not indicate that it believes that the legal fees are unreasonable warranting referral for a determination.

Accordingly, it is hereby ORDERED that the branch of Prime's motion seeking partial summary judgment on its counterclaims sounding in breach of contract and seeking attorneys' fees is GRANTED; and it is further

ORDERED the Prime shall submit judgment counterclaims sounding in breach of contract and seeking attorneys' fees by emailing Part 53 (sfc-part53@nycourts.gov); and it is further

ORDERED that the branch of Prime's motion seeking partial summary judgment on its counterclaim sounding in unjust enrichment is DENIED; and it is further

ORDERED that Prime's counterclaim sounding in unjust enrichment is dismissed.

2/6/2026
DATE

CHECK ONE: ☐ **CASE DISPOSED** ☒ **NON-FINAL DISPOSITION**
☐ **GRANTED** ☐ **DENIED** ☒ **GRANTED IN PART** ☐ **OTHER**

650685/2023 vs.
Motion No. 010