Vulpes Testudo Fund v Shinnick
2026 NY Slip Op 31503(U)
April 9, 2026
Supreme Court, New York County
Docket Number: Index No. 655825/2024
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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VULPES TESTUDO FUND, and VULPES INNOVATIVE TECHNOLOGIES INVESTMENT COMPANY PTE LTD,

Plaintiffs,

- v -

GREGORY DANIEL SHINNICK, MATTHEW GARRITY O'BRIEN, BLUE OCEAN TECHNOLOGIES, LLC, RALPH LAYMAN, SANFORD MORHOUSE, and BLUE OCEAN MANAGEMENT PARTNERS, LLC,

Defendants.

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INDEX NO. 655825/2024

MOTION DATE

MOTION SEQ. NO. 004 005

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 84, 85, 86, 87, 89, 91, 92, 93, 94, 95, 97, 105
were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 78, 79, 88, 96, 106
were read on this motion to/for DISMISS.

This case arises from the June 2017 allocation of shares in Blue Ocean Financial Technology Pte Ltd. (BOFT), pursuant to which plaintiffs Vulpes Testudo Fund (VFT) and Vulpes Innovative Technologies Investment Company Pte. Ltd. (VITIC) allegedly contributed a disproportionate amount in exchange for their shares compared to other shareholders. (NYSCEF Doc. No. [NYSCEF] 36, Amended Complaint [AC] ¶ 2.) Plaintiffs seek to recover for defendants' alleged fraudulent and tortious conduct.[1] (*See id.* ¶¶ 125-128.)

[1] In the AC, plaintiffs allege ten causes of action for (1) fraud against Shinnick and O'Brien; (2) conversion against Shinnick and O'Brien; (3) aiding and abetting conversion against Blue Ocean; (4) unjust enrichment against Shinnick and O'Brien; (5) breach of fiduciary duty against Shinnick, O'Brien, and BOM; (6) breach of fiduciary duty against Shinnick, Layman, and Morhouse; (8) declaratory judgment that VITIC owns the

In motion sequence 004, defendants Gregory Daniel Shinnick and Matthew Garrity O'Brien move pursuant to CPLR 3211(a)(1), (3), (5), (7), and (8), as well as CPLR 327(a), to dismiss the plaintiffs' causes of action against them. (NYSCEF 64, Notice of Motion.)

Similarly, in motion sequence 005, defendants Blue Ocean Technologies LLC (BOT), Ralph Layman, Sanford Morhouse, and Blue Ocean Management Partners, LLC (BOM, and collectively Blue Ocean) move pursuant to CPLR 3211(a)(7), to dismiss plaintiffs' complaint. (NYSCEF 78, Notice of Motion.)

Background

BOFT was incorporated in Singapore on November 10, 2015. (NYSCEF 36, AC ¶ 38.) Shinnick and O'Brien were the only two directors. (*Id.* ¶ 39.) At the time of incorporation, BOFT "had a paid-up share capital of SG $2" of which Shinnick and O'Brien held one share each. (*Id.*)

Between November 11, 2015, and November 17, 2015, Field Pickering[2] and O'Brien discussed a potential deal between BOFT and the Singapore Exchange, in which the Singapore Exchange would receive common equity shares in BOFT in exchange for a minimum investment of SG $1,000,000. (*Id.* ¶ 40.)

On January 11, 2016, plaintiff Vulpes Testudo Fund (VTF) and BOFT executed a Convertible Note Purchase Agreement (2016 Purchase Agreement) and Convertible

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Converted Membership Units, along with all associated rights, including the rights to pro rata distributions and any and all proceeds received by any sale of any or all of the Converted Membership Units against Shinnick, O'Brien, and BOT; (9) statutory violation of Limited Liability Company Law § 409(a) against Shinnick, Layman, and Morhouse; and (10) prima facie tort against all defendants. (*See* NYSCEF 36, AC.)

[2] Field Pickering is not identified in the complaint, but it appears from the circumstances that he is either employed by and/or represents plaintiffs.

Loan Note (BOFT Loan Note). (*Id.* ¶ 43; NYSCEF 69, 2016 Purchase Agreement.) The 2016 Purchase Agreement provided that VTF would "benefit from any adjustments to the share capital" of BOFT. (NYSCEF 36, AC ¶ 43; NYSCEF 69, 2016 Purchase Agreement § 4.2.) The BOFT Loan Note further provided that "if, upon expiration, BOFT's valuation exceeded $12,500,000, then VTF would be repaid the original loan amount or would get the upside of the increased value in shares. However, if BOFT's valuation fell below $12,500,000, VTF would have the option of being repaid the principal value of the note "**or the equivalent value in shares** of [BOFT]." (NYSCEF 36, AC ¶ 44.)

On May 3, 2016, O'Brien notified Scott Treloar, plaintiffs' Chief Risk Officer, that the deal between BOFT and the Singapore Exchange had collapsed, and requested that the BOFT Loan Note be extended through June 30, 2016. (*Id.* ¶¶ 37, 45.)

On June 29, 2016, O'Brien informed plaintiffs that BOFT had raised only $12,500,000, but that investors other than plaintiffs, were "investing at the same level." (*Id.* ¶ 46.) That same day, O'Brien accepted Pickering's offer to help structure a joint venture and sent Pickering and Treloar a brief with information regarding a joint venture with Overstock.com (Overstock). (*Id.* ¶ 47.)

On November 22, 2016, Shinnick notified Stephen Diggle[3], Bert Verdicchio[4], and Pickering that BOFT had completed negotiations with Overstock to create a new New York company, BOT. (*Id.* ¶ 49.) The purpose of the deal was to develop a platform "whereby Asian-based investors could trade U.S. securities during non-U.S. trading

[3] Stephen Diggle is the managing director and co-founder of Vulpes Investment Management. (NYSCEF 36, AC ¶ 23.)
[4] Bert Verdicchio is plaintiffs' treasurer. (NYSCEF 36, AC ¶ 37.)

hours." (*Id.*) Pursuant to the negotiations, Overstock's wholly owned subsidiary t0 Technologies LLC (t0 Tech) would hold 61% of BOT, whereas BOFT would hold 39% with an option to purchase an additional 10%. (*Id.* ¶ 51.)

On December 7, 2016, BOFT and t0 Tech executed the operating agreement for BOT. (*Id.* ¶ 53; NYSCEF 85, Operating Agreement.) Pursuant to the agreement, BOT would have three managers, of which Shinnick would be one. (NYSCEF 36, AC ¶ 56; NYSCEF 85, Operating Agreement §§ 4.2-4.3.)

On December 10, 2016, Shinnick emailed Diggle, Pickering, and Verdicchio to notify them, as shareholders, of the Operating Agreement's execution. (NYSCEF 36, AC ¶ 53.) In response, Pickering requested to see the capitalization table for BOFT. (*Id.* ¶ 54.) The capitalization table sent on December 13, 2016 (December 2016 Capitalization Table) did not reference each shareholder's contribution for their allotted shares. (*Id.* ¶¶ 54-55.)

On June 6, 2017[5], Shinnick and O'Brien held an annual general meeting where they allotted ordinary shares of BOFT to each intended shareholder. (*Id.* ¶ 59.) Unlike the 2016 Capitalization Table, the written resolution from the meeting "contained the specific dollar amounts each shareholder contributed in exchange for his or her shares." (*Id.*) The written resolution set forth that Shinnick was allotted 2,784,534 shares for $170.28, O'Brien received 1,400,000 shares for $85.61, and VITIC was allotted 1,115,466 shares for $200,055.98.[6] (*Id.*)

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[5] The AC states that the annual general meeting was held on December 13, 2016. However, because the written resolution is alleged to have been dated June 6, 2017, it appears the December 13, 2016 date is a typo. (*See* NYSCEF 36, AC ¶ 59.)

[6] Plaintiffs' total capital injections through Blue Ocean Company (Brunei) Pte. Ltd. (BRUCO) and BOFT Loan Notes totaled $1,050,000. (NYSCEF 36, AC ¶ 74.)

On June 22, 2022, Shinnick and O'Brien informed plaintiffs "that BOFT was offering for sale 120,000 new shares at $.50 cents each and that [plaintiffs] could elect to purchase new shares on a pro-rata basis (the '2022 Offer')." (*Id.* ¶ 61.) Verdicchio expressed that plaintiffs were inclined to support the offering but wanted more information about how the proceeds from the 2022 Offer would be used. (*Id.* ¶¶ 63, 65.) When plaintiffs failed to get the requested information from Shinnick and O'Brien, Bill Crispin, plaintiffs' Chief Legal Officer, contacted Morhouse, one of BOT's managers, on November 7, 2022, seeking clarification. (*See id.* ¶¶ 65-67.) When such request also proved unfruitful, plaintiffs retained counsel to investigate BOFT's historical holdings. (*See id.* ¶¶ 69-73.)

On December 5, 2022, plaintiffs discovered for the first time that Shinnick and O'Brien contributed a mere $170.28 and $85.61 each for their respective 2,788,534 and 1,400,000 shares in BOFT. (*Id.* ¶ 73.)

Between January and March 2023, attorneys for plaintiffs and Shinnick and O'Brien engaged in discussion to resolve the matter. (*See id.* ¶¶ 74-76.) When such negotiations failed, plaintiffs pursued action in the High Court of the Republic of Singapore. (*See id.* ¶¶ 77-79.)

In alleged retaliation to plaintiffs' legal actions, defendants sought to take plaintiffs' ownership interest in BOT by reorganizing the company. (*Id.* ¶ 80.) On May 26, 2024, plaintiffs received notice of BOFT's annual general meeting, scheduled for June 11, 2024. (*Id.* ¶ 81.) During the meeting, shareholders would be asked to ratify the proposed disposal of all, or substantially all of BOFT's assets, namely the 3,900 membership units in BOT (Resolution 5). (*Id.*) Pursuant to Resolution 5, BOFT would

re-assign its membership units in BOT to individual BOFT shareholders on a pro-rata basis. (*Id.*)

On June 4, 2024, plaintiffs sent a letter to BOFT and BOT, expressing concern about Resolution 5, as the shares in BOFT were at issue in the Singapore actions, and passage of Resolution 5 would impede plaintiffs' attempts to seek relief in the Singapore courts. (*Id.* ¶ 83.) After sending the letter, plaintiffs received an email from Morhouse with a Reorganization Agreement for BOT. (*Id.* ¶ 86; NYSCEF 84, Reorganization Agreement.) Pursuant to the agreement, BOFT would be replaced as a BOT member by the constituent BOFT shareholders directly. (NYSCEF 36, AC ¶ 87.) This would have the effect of converting some of plaintiff's ownership interest in BOT to Shinnick and O'Brien. (*Id.* ¶¶ 88-89.)

On June 11, 2024, BOFT's annual general meeting proceeded as scheduled. (*Id.* ¶ 100.) Verdicchio attended on behalf of plaintiffs. (*Id.*) Resolution 5 passed with the affirmative vote of a simple majority of BOFT shareholders. (*Id.* ¶ 105.) Only plaintiffs and one other shareholder voted against the resolution. (*Id.*)

In August 2024, BOT officially reorganized in New York. (*Id.* ¶ 112.) To preserve their voting interest in BOT, plaintiffs had to execute a subscription agreement. (*Id.*)

After the High Court of the Republic of Singapore dismissed plaintiff's actions on September 19, 2024, plaintiffs commenced this action on November 19, 2024. (*Id.* ¶¶ 114-115.) As a result, plaintiffs were designated 'excluded members' of BOT pursuant to a December 24, 2024 Liquidity Memorandum (Liquidity Memo) and lost the right to sell or buy BOT membership units. (*See id.* ¶¶ 118-124.)

Defendants seek herein to dismiss the amended complaint.

Discussion

Motion 004

Shinnick and O'Brien move to dismiss the causes of action alleged against them on the grounds that (i) the court lacks personal jurisdiction, (ii) the doctrine of f*orum non conveniens* counsels that Singapore, not New York, is the appropriate forum for the dispute, and (iii) plaintiffs fail to state any viable claim.

Personal Jurisdiction

Shinnick and O'Brien move to dismiss the causes of action alleged against them on the ground that this court does not have personal jurisdiction over them. Plaintiffs contend that Shinnick and O'Brien consented to the court's jurisdiction by way of the forum selection clause in BOT's September 5, 2023 Fourth Operating Agreement (the FOA). (NYSCEF 71, FOA § 16.2 [provides that New York courts shall have "exclusive jurisdiction"].) As stated on the record on July 23, 2025, this court "find[s] that the forum selection clause applies and that the Court has jurisdiction." (NYSCEF 105, Tr at 28: 7-8.) Accordingly, the court declines to dismiss the causes of action against Shinnick and O'Brien for lack of jurisdiction.

Forum Non Conveniens

Shinnick and O'Brien further move for dismissal pursuant to CLPR 327(a), arguing that the claims, parties, and evidence in this case are all connected to Singapore, not to New York. (*See Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478-79 [1984] [New York courts have broad discretion to dismiss an action that, "although jurisdictionally sound, would be better adjudicated elsewhere."].)

"A defendant has a heavy burden in attempting to establish that New York is an inappropriate forum before plaintiff's choice of forum is disturbed." (*Highgate Pictures, Inc. v De Paul*, 153 AD2d 126, 129 [1st Dept 1990] [citations omitted]; *see also Bank Hapoalim (Switzerland) Ltd. v Banca Intesa S.P.A.*, 26 AD3d 286, 287 [1st Dept 2006].) When reviewing whether New York is the appropriate forum for litigation, courts will look at a number of factors.

> "Among the factors to be considered are the burden on the New York courts, the potential hardship to the defendant, and the unavailability of an alternative forum in which plaintiff may bring suit. The court may also consider that both parties to the action are nonresidents and that the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction. No one factor is controlling." (*Islamic Republic of Iran*, 62 NY2d at 479 [2000] [internal citations omitted].)

Here, Shinnick and O'Brien fail to meet their burden of establishing that New York is an inappropriate forum. First, defendants consented to jurisdiction in New York, which alone is conclusive. (*Express Trade Capital, Inc. v Horowitz*, 198 AD3d 529, 530 [1st Dept 2021] ["[h]aving agreed by contract to submit to the jurisdiction of the court, defendants are precluded from attacking the court's jurisdiction on forum non conveniens grounds" (citation omitted)]; *Natl. Union Fire Ins. Co.*, 223 AD2d at 398 [1st Dept 1996] ["[i]t is settled that a selection of forum clause . . . renders the designated forum convenient as a matter of law."].)

Second, the court rejects Shinnick and O'Brien's forum non conveniens argument because they neither offer facts in support nor acknowledge plaintiff's allegations. For instance, defendants fail to acknowledge the alleged ties that defendants in this action have to New York, including Shinnick being a manager of a New York LLC (NYSCEF 36, ¶ 11), BOT being a New York LLC (*id.* ¶ 13), Leyman

being the chairman of a New York company (*id.* ¶ 14), and Morhouse being a resident of New York and the manager of a New York company (*id.* ¶ 15).

Furthermore, Shinnick and O'Brien fail to offer evidence that documents and witnesses are located outside of New York. (*Yoshida Printing Co. v Aiba*, 213 AD2d 275, 275 [1st Dept 1995] [affirming denial of motion to dismiss on forum non conveniens grounds where defendant "failed to make any showing with respect to materiality of certain potential witnesses" and did not "demonstrate that their testimony would be unavailable" in New York].) In any case, the availability of witnesses is a factor that is given less weight because witnesses may appear virtually.

Finally, plaintiffs' allegations that the FOA and subscription agreements used to execute the alleged fraudulent scheme are governed by New York law (NYSCEF 36, ¶¶ 88, 90, 113; NYSCEF 84, Subscription Agreement § 6 [a]; NYSCEF 48, FOA § 16.1), and the disputed membership units concerns BOT, a New York LLC (*id.* ¶¶ 115-124), further supports the finding that New York is an appropriate forum for this matter.

Accordingly, the court declines to dismiss the causes of action against Shinnick and O'Brien on forum non conveniens grounds.

Failure to State a Claim

Shinnick and O'Brien further move to dismiss the causes of action alleged against them for failure to state a claim.

Fraud

Shinnick and O'Brien move to dismiss the fraud claim on the grounds that (i) the claim is barred by the statute of limitations, (ii) the claim is barred by contract, and (iii) plaintiffs fail to plead fraud with the requisite specificity.

(i) Statute of Limitations

Shinnick and O'Brien argue that the fraud claim against them is time-barred because the disputed share allocation occurred on June 6, 2017, and plaintiffs initiated this action on November 1, 2024, after the six-year statute of limitations had expired. (*See* CPLR 213 [8].) However, plaintiffs allege that they did not discover the alleged fraud until December 5, 2022. (NYSCEF 36, AC ¶ 60.) CPLR 213(8) provides that

> "the time within which the action must be commenced shall be the greater of six years from the date the cause of action accrued or two years from the time the plaintiff or the person under whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it." (CPLR 213 [8].)

Shinnick and O'Brien argue that because the 2017 share allocation was a matter of public record, "readily accessible to plaintiffs through ACRA[7]," documentary evidence establishes that plaintiffs could reasonably have discovered the alleged fraud prior to 2022, and therefore, the fraud claim is time-barred. (*See* NYSCEF 77, Defendants' MOL at 18; *see also* NYSCEF 75, ACRA Register of Members.)

Pursuant to CPLR 3211(a)(1), a party "may move for judgment dismissing one or more causes of action against him on the ground that . . . a defense is founded upon documentary evidence." (CPLR 3211 [a] [1].) Defendants have the burden to show that "documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." (*Goldman v Metro. Life Ins. Co.*, 5 NY3d 561, 571 [2005] [internal quotation marks and citation omitted].) Here, Shinnick and O'Brien have submitted BOFT member information from ACRA, showing in relevant part, the number of shares held, and amount paid for those shares, by each member. (NYSCEF 75,

[7] ACRA is Singapore's public registry of corporate information, including shareholder registers. (NYSCEF 77, Defendants' MOL at 18.)

ACRA Register of Members.) Nevertheless, this document does not "conclusively establish" a defense to plaintiffs' assertions.

Plaintiffs allege in the AC that they did not, until November 7, 2022, "ha[ve] suspicions concerning the shareholding . . . [or] any reason to seek information concerning BOFT's historical data and information concerning its capitalization table." (NYSCEF 36, AC ¶ 68.) Their suspicion was triggered by defendants' effort to fundraise, and plaintiffs failed attempts to obtain information from Shinnick and O'Brien related to such fundraising efforts. (*See id.* ¶¶ 61-68.) Further investigations revealed to plaintiffs, "[f]or the first time, on December 5, 2022," the truth about BOFT's historical holdings. (*Id.* ¶ 73.) The public availability of the capitalization table does not defeat these allegations or conclusively establish that plaintiffs failed to act with reasonable diligence to discover the alleged fraud prior to 2022. (*See McGuinness v Standard Drywall Corp.*, 193 AD2d 518, 518 [1st Dept 1993] ["the failure of plaintiffs to ascertain the truth by inspecting public records is not determinative" (citation omitted)].)

Accordingly, the court finds that the fraud claim is not barred by the statute of limitations.

(ii) Claim Barred by Contract

Shinnick and O'Brien further argue that the fraud claim against them is barred by the 2013 and 2016 Purchase Agreements because the contracts contain merger clauses that disclaim reliance on extra-contractual representations. A disclaimer of reliance can defeat allegations of fraud on a motion to dismiss. (*See e.g. PMC Fin. Sers. Grp., LLC v Nations Equip. Fin. LLC*, 2022 NY Slip Op 32097[U], *15-16 [Sup Ct, NY County 2022].)

The merger clause in the 2013 Purchase Agreement is not a specific disclaimer of reliance; instead, it is simply a general merger clause. (NYSCEF 68, 2013 Purchase Agreement § 13.6 ["[t]his Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement."].) "[A] general merger clause is ineffective to preclude parol evidence to show fraud in inducing the contract." (*Danann Realty Corp. v Harris*, 5 NY2d 317, 320 [1959].) Thus, plaintiff's fraud allegations are not barred by the 2013 Purchase Agreement.

In contrast to the 2013 Purchase Agreement, the 2016 Purchase Agreement contains a disclaimer of reliance. Specifically, § 11.7 provides that

> "[t]his Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement. No Party shall have any claim or remedy in respect of any pre-contractual statement, statement, representation, warranty or undertaking made by or on behalf of the other Party in relation to the proposed transaction which is not expressly set out in this Agreement. Each Party acknowledges and agrees that it has not entered into this Agreement in reliance on any statement or representation of any Person (whether a Party to this Agreement or not) other than as expressly incorporated in this Agreement and the documents referred to or incorporated in this Agreement." (NYSCEF 69, 2016 Purchase Agreement § 11.7.)

Where plaintiffs "in the plainest language" agree that they did not "rely[] on any representations as to the very matter as to which they now claim[] [they were] defrauded[,]" the claim of fraud must be dismissed. (*Pappas v Tzolis*, 20 NY3d 228, 233 [2012] [internal quotation marks and citation omitted].) This is especially the case where "plaintiffs do not allege that the release was itself induced by any action separate from the alleged fraud." (*Id.* at 234.)

To the extent plaintiffs allege that Shinnick and O'Brien fraudulently induced them to invest in BOFT (NYSCEF 36, AC ¶¶ 131, 132, 133 [a]), 139 [a], [c], [d], 140 [a]), these claims are dismissed as barred by the 2016 Purchase Agreement. However,

plaintiffs' allegation of fraudulent misrepresentations *in* the 2016 Purchase Agreement (*id.* ¶¶ 133 [b], 139 [b]), and fraudulent misrepresentations made *after* execution of the 2016 Purchase Agreement (*id.* ¶¶ 133 [c], 135-136, 140 [b]-[c]) survive, as these are not barred by the 2016 Purchase Agreement's merger clause.

(iii) Pled With Requisite Specificity

Finally, Shinnick and O'Brien argue that the fraud claim against them should be dismissed because plaintiffs fail to plead fraud with the requisite specificity. Specifically, defendants contend that plaintiffs fail to (i) identify specific misrepresentations, (ii) allege scienter, and (iii) plead justifiable reliance. The court disagrees.

"To establish a prima facie claim of fraud, a complaint must allege misrepresentation or concealment of a material fact, falsity, scienter on the part of the wrongdoer, justifiable reliance, and resulting injury." (*IKB Intl. S.A. v Morgan Stanley*, 142 AD3d 447, 448 [1st Dept 2016] [citation omitted].) A fraud claim must be pleaded with the requisite particularity. (CPLR 3016 [b].)

Plaintiffs allege misrepresentations made by Shinnick and O'Brien in the 2016 Purchase Agreement, and in the June 29, 2016, and March 1, 2017, emails. (NYSCEF 36, AC ¶¶ 133 [b]-[c], 135-136, 139 [b], 140 [b]-[c].) The allegations meet the requirement that plaintiffs "set forth specific and detailed factual allegations" of the alleged fraud (*Friedman v Anderson*, 23 AD3d 163, 166 [1st Dept 2005]) because plaintiffs provide the dates, context, and parties involved, as well as the information or quoted language that plaintiffs believe to be false. (*See id.* ¶¶ 43-44, 46, 57-58; *see also* NYSCEF 69, 2016 Purchase Agreement § 4.2.)

Further, plaintiffs sufficiently plead scienter. Plaintiffs allege in their AC that "[a]s the only two individuals with the corporate ability to issue equity and because they personally made the misrepresentations, Shinnick and O'Brien knew that the following representations were false." (NYSCEF 36, AC ¶¶ 139-140.) "All that is required to defeat a motion to dismiss a fraud claim for lack of scienter is a rational inference of actual knowledge." (*IKB Intl. S.A.*, 142 AD3d at 450 [internal quotation marks and citation omitted].) Plaintiffs' allegations are sufficient to support to a rational inference that Shinnick and O'Brien had actual knowledge that the alleged misrepresentations were false.

Finally, plaintiffs sufficiently plead justifiable reliance. Plaintiffs assert that they justifiably relied on Shinnick and O'Brien because they were directors of BOFT (NYSCEF 36, AC ¶ 141) and because of the business relationship, "based on mutual trust and confidence," that existed between plaintiffs and Shinnick and O'Brien (*see id.* ¶¶ 142-46). Shinnick and O'Brien argue that plaintiffs are sophisticated investors, and therefore, their allegations of reliance fail to rise to the level of reasonable. It is true that "a sophisticated investor claiming that it has been defrauded has to allege that it took reasonable steps to protect itself against deception." (*IKB Intl. S.A.*, 142 AD3d at 449 [citation omitted].) Plaintiffs have met that burden here by explaining how Shinnick and O'Brien "had been consistent" in their various communications to plaintiffs, and thus, plaintiffs "had no reason to believe that the statements were false." (NYSCEF 36, AC ¶ 141.) Moreover, "resolution of a reasonable reliance claim is generally left to a finder of fact." (*Talansky v Schulman*, 2 AD3d 355, 361 [1st Dept 2003].)

Accordingly, the court grants, in part, Shinnick and O'Brien's motion to dismiss the first cause of action for fraud to the extent that any allegations of fraudulent inducement prior to the execution of the January 11, 2016 Purchase Agreement are barred by contract. Similarly, the court denies defendants' motion to the extent that plaintiffs' allegation of fraudulent misrepresentations *in* the 2016 Purchase Agreement and email correspondence *postdating* the 2016 Purchase Agreement survives.

Conversion

Shinnick and O'Brien move to dismiss the second cause of action for conversion on the grounds that (i) the claim is barred by the statute of limitations and (ii) an intangible interest, such as plaintiffs' ownership interest in BOFT, cannot be converted under New York law.

(i) Statute of Limitations

Shinnick and O'Brien argue that the cause of action for conversion is time-barred because the claim arose from the June 6, 2017 BOFT share allocation, and plaintiffs initiated this action on November 1, 2024, after the three-year statute of limitations had expired. (*See* CPLR 214 [3].) The court rejects this argument as plaintiffs' allegation of conversion is rooted in the reorganization of BOT, which occurred in August 2024. (*See* NYSCEF 36, AC ¶¶ 86-87, 150.) Therefore, the conversion claim is timely.

(ii) Intangible Interest

Shinnick and O'Brien further argue that the conversion claim should be dismissed because plaintiffs' ownership interest in BOFT cannot be converted under New York law. Plaintiffs contend that this is not an accurate recitation of the law and that New York, in fact, no longer limits conversion to tangible property. Plaintiffs also

argue that their ownership shares are, regardless, tangible because plaintiffs received their membership units pursuant to their subscription agreements.

In *Thyroff v Nationwide Mut. Ins. Co.* (8 NY3d 283, 292 [2007]), the Court of Appeals expanded conversion to include information memorialized in electronic format. The parties dispute whether *Thyroff* controls in this case; plaintiffs argue that *Thyroff* stands for the proposition that stock ownership is subject to conversion, meanwhile, defendants contend *Thyroff* is irrelevant as it does not apply to the facts in this case.

"A conversion of a certificate of stock . . . is [] a conversion of the stock itself." (*Pierpoint v Hoyt*, 260 NY 26, 29 [1932].) This so-called merger rule, reflects the concept that "intangible property interests [can] be converted only by exercising dominion over the paper document that represent[] that interest." (*Thyroff*, 8 NY3d at 292.) *Thyroff* did not disturb this rule. Instead, *Thyroff* proposed that "electronics records that [are] stored on a computer" are "indistinguishable from printed documents." (*Id.* at 292-93.) Thus, the merger doctrine should not be limited to exercising dominion over paper documents but may similarly include exercising dominion over an electronic reproduction of information otherwise contained in paper format. (*Id.* at 292; *see also Nelly De Vuyst, USA, Inc. v Europe Cosmetiques, Inc.*, 2012 WL 246673, *8, 2012 US Dist LEXIS 12981, *22 [SD NY 2012] ["*Thyroff* stands for the proposition that intangible property interests may be subject to conversion when they are represented by something that is subject to conversion — e.g., physical or electronic document." (citation omitted)].)

To the extent plaintiffs allege that Shinnick and O'Brien "exercised dominion over, or otherwise interfered with" plaintiffs' ownership interest in the Converted

Membership Units (NYSCEF 36, AC ¶ 152), this is alone insufficient to make out a claim for conversion. (*See Peters v Gould*, 2012 NY Slip Op 33913[U], *19-20 [Sup Ct, NY County 2012] [held that "[a]n 'interest' cannot be the subject of a cause of action in conversion"]; *Saleeby v Remco Maintenance, LLC*, 48 AD3d 570, 570-71 [1st Dept 2017] [held that an "ownership share in a limited liability company . . . could not be the subject of a conversion claim"]; *C & B Enters. USA v Koegel*, 136 AD3d 957, 958 [2d Dept 2016] [held that an "interest in a business" does not give rise to a conversion claim].)

To the extent plaintiffs allege that their ownership shares are tangible because plaintiffs received their membership units pursuant to the BOT subscription agreements, this argument also fails to make out a viable conversion claim. While "[i]ntangible property [] may be considered tangible for purposes of a conversion claim where the plaintiff has a physical representation of it, i.e., stock certificates or the electronic record or registration of such stock certificates," plaintiff must still "allege[] the taking of that physical representation" in order to make out a conversion claim. (*Alrai Naked Opportunity, LLC v Naked Brand Group Ltd.*, 2019 NY Slip Op 33421[U], *6 [Sup Ct, NY County 2019] [citing to *Thyroff*].) Here, plaintiffs do not allege that Shinnick and O'Brien converted the BOT subscription agreements. (*Jin Yung Chun v Sano*, 2011 WL 1303292, 2011 US Dist LEXIS 34870, *51 [ED NY 2011] [denied default judgment as to conversion claim where plaintiffs failed to allege that "the defendants actually took possession of physical documents reflecting her ownership of the companies."].) Instead, plaintiffs allege that Shinnick and O'Brien's "execut[ed] subscription agreements with BOT" to dilute and divert plaintiffs' BOT membership units. (NYSCEF

36, AC ¶¶ 152-53; *see also Pierpoint*, 260 NY at 29 [“the law of conversion is concerned with possession, not with title.”].)

Accordingly, Shinnick and O’Brien’s motion to dismiss the second cause of action for conversion is granted.

Unjust Enrichment

Shinnick and O’Brien move to dismiss the fourth cause of action for unjust enrichment on the grounds that (i) the claim is barred by the statute of limitations, (ii) the claim is governed by the 2013 and 2016 Purchase Agreements, (iii) plaintiffs’ alleged harm is generalized, and (iv) plaintiffs fail to allege facts to show that it would be against equity and good conscience for Shinnick and O’Brien to retain the BOFT shares.

(i) Statute of Limitations

Shinnick and O’Brien argue that the cause of action for unjust enrichment is time-barred because the claim arose from the June 6, 2017 BOFT share allocation, and plaintiffs initiated this action on November 1, 2024, after the six-year statute of limitations had expired. (*See* CPLR 213 [1]; *Gerschel v Christensen*, 143 AD3d 555, 556 [1st Dept 2016].) Because “a claim for unjust enrichment accrues upon the occurrence of the alleged wrongful act giving rise to restitution” (*Kaufman*, 307 AD2d at 127), the claim is time-barred. Though plaintiffs’ unjust enrichment claim seeks to recover the Converted Membership Units that were reassigned pursuant to the BOFT reorganization in August 2024, the claim is premised upon the “improperly diluted” capitalization table “based on the BOFT Share Allotments” that occurred on June 6, 2017. (NYSCEF 36, AC ¶ 165, *see also* ¶ 59.) The alleged wrongful act giving rise to restitution is, thus, Shinnick and O’Brien “allott[ing] themselves their respective shares

for next to no value" in June 2017. (*Id.* ¶¶ 59-60.) The court thus finds that the unjust enrichment claim is barred by the statute of limitations and must be dismissed. For this reason, the court does not consider Shinnick and O'Brien's remaining arguments.

Accordingly, Shinnick and O'Brien's motion to dismiss the fourth cause of action for unjust enrichment is granted.

Breach of Fiduciary Duty

Shinnick and O'Brien move to dismiss the fifth and sixth causes of action for breach of fiduciary duty on the grounds that (i) Shinnick and O'Brien were minority shareholders in BOT and thus, did not owe plaintiffs fiduciary duties, and (ii) plaintiffs fail to allege with the requisite specificity that they were harmed by the Liquidity Memo.

"To state a claim for breach of fiduciary duty, plaintiffs must allege that (1) defendant[s] owed them a fiduciary duty, (2) defendant[s] committed misconduct, and (3) they suffered damages caused by that misconduct." (*Besen v Farhadian*, 195 AD3d 548, 549-550 [1st Dept 2021]] [citation omitted].)

In their fifth cause of action, plaintiffs allege that "[a]s Supermajority Members,[8] Shinnick, O'Brien, and BOM, owed a fiduciary duty of loyalty to [p]laintiffs." (NYSCEF 36, AC ¶ 172.) Shinnick and O'Brien dispute that they were supermajority members of BOT. Plaintiffs' allegation fails for two reasons. First, Shinnick and O'Brien held a 7.63% and 3.90% ownership interest in BOT, respectively. (*Id.* ¶ 122.) This alone raises the question of whether they may be considered 'supermajority' members. Second, even in concert with BOM, Shinnick and O'Brien did not hold a majority, and even less a supermajority, ownership interest in BOT. Combined with BOM's 14%

[8] Pursuant to the FOA. (*See* NYSCEF 36, AC ¶ 169.)

ownership interest, the three BOT members held a 25.53% interest. (*Id.* ¶ 122.) The FOA defines 'Super Majority Vote' as "the written approval of, or the affirmative vote by, Members holding sixty-six and two-thirds (**66.667%**) percent or more of the outstanding Units." (NYSCEF 48, FOA at 8 [emphasis added].) The 25.53% ownership interest in BOT held collectively by Shinnick, O'Brien, and BOM, falls far below the 66.667% supermajority requirement set forth in the FOA.[9]

Only managing and majority members of an LLC owe fiduciary duties to other members. (*Matter of Goodwin Law Group P.C. v Zilong Wang*, 226 AD3d 537, 538 [1st Dept 2024] ["the managing member of an LLC owes fiduciary duties to the LLC members" (citations omitted)]; *Johnson v Asberry*, 190 AD3d 491, 492 [1st Dept 2021] [as "LLC manager and majority member" defendant owed plaintiff fiduciary duties].) Plaintiffs fail to allege that Shinnick and O'Brien were supermajority, or even majority, members. "Without an allegation giving rise to a fiduciary duty, no cause of action for breach of fiduciary duty can stand." (*Norex Petroleum Ltd. v Blavatnik*, 48 Misc 3d 1226[A], *14 [Sup Ct, NY County 2015].)

Accordingly, Shinnick and O'Brien's motion to dismiss the fifth cause of action is granted.

In their sixth cause of action, plaintiffs allege that Shinnick, as a member of the BOT board of managers, owed plaintiffs fiduciary duties. (NYSCEF 36, AC ¶ 181.) Managing members owe nonmanaging members a fiduciary duty. (*Pokoik v Pokoik*,

[9] Even accounting for the ownership interest of additional BOT members Urbana International, Inc. (Urbana) and Chone Sophonpanich, which together owned a 39.37% interest in BOT (NYSCEF 36, AC ¶ 122), the collective ownership interest of 64.90% still falls below the FOA supermajority threshold.

115 AD3d 428, 429 [1st Dept 2014].) Shinnick moves to dismiss the claim on the grounds that plaintiffs fail to allege with the requisite specificity that they were harmed by the Liquidity Memo.

While "[b]reaches of a fiduciary relationship . . . comprise a special breed of cases that often loosen normally stringent requirements of causation and damages. . . [plaintiffs] must, at a minimum, establish that the offending parties' actions were 'a substantial factor' in causing an identifiable loss." (*Gibbs v Breed, Abbott & Morgan*, 271 AD2d 180, 189 [1s Dept 2000] [internal quotation marks and citations omitted].)

Plaintiffs allege that they were harmed by Shinnick's breach of fiduciary duties because they were (i) "deprived of the ability to exercise their rights in their BOT membership units" and (ii) Shinnick "orchestrated a transaction" in which he transferred the Converted Membership Units "that rightfully belong to [p]laintiffs." (NYSCEF 36, AC ¶ 187.) These allegations are sufficient to survive a motion to dismiss as they sufficiently connect Shinnick's actions to plaintiffs' alleged loss of their ownership and ownership rights in the BOT membership units. (*Global Care Pharm. Inc. v Cheung*, 2023 NY Slip Op 30493[U], *6 [Sup Ct, Kings County 2023] ["where reasonable inferences can be drawn to establish self-dealing and the record is not sufficiently developed to determine if the transactions were proper then the allegations must proceed" (citation omitted)].)

Accordingly, Shinnick's motion to dismiss the sixth cause of action is denied.

Declaratory Judgment

Shinnick and O'Brien move to dismiss the eighth cause of action for declaratory judgment "that VITIC owns the Converted Membership Units, along with all associated

rights, including the rights to pro rata distributions and any and all proceeds received by any sale of any or all of the Converted Membership Units" (NYSCEF 36, AC ¶ 203) on the grounds that the relief sought (i) is duplicative of the AC's other causes of action, and (ii) retrospective.

"A cause of action for a declaratory judgment is unnecessary and inappropriate when the plaintiff has an adequate, alternative remedy in another form of action." (*Apple Records, Inc. v Capitol Records, Inc.*, 137 AD2d 50, 54 [1st Dept 1988].) This is not such a case. Here, plaintiffs assert a claim for declaratory judgment to establish ownership and ownership rights in the Converted Membership Units. Plaintiffs' claim presents a "justifiable controversy" sufficient to invoke this court's power to render a declaratory judgment. (CPLR 3001.)

Further, plaintiffs seek different relief in their declaration than they do pursuant to their other viable claims. (*See* NYSCEF 36, AC ¶¶ 148 [damages equal to the diluted value of their BOFT shares], 188 [damages caused by plaintiffs' status as an 'Excluded Member'].) Moreover, the relief sought is not retroactive as it seeks to establish plaintiffs' existing and continuing rights in the Converted Membership Units. (*See Giaquinto v Commr of Health*, 11 NY3d 179, 188 [2008] ["prospective relief seeks to end an ongoing or future violation of law."].)

Accordingly, Shinnick and O'Brien's motion to dismiss the eighth cause of action for declaratory judgment is denied.

Breach of NY LLC Law § 409(a)

Shinnick moves to dismiss the ninth cause of action for breach of Limited Liability Company Law § 409(a) on the grounds that (i) the statute does not create a private right of action and (ii) the claim is duplicative of plaintiffs' breach of fiduciary duty claims.

The court rejects Shinnick's first argument that claims pursuant to Limited Liability Company Law § 409(a) can only be brought derivatively. On the contrary, courts have been asked to decide "[t]he issue [of] whether derivative suits on behalf of LLCs are **allowed**" because the statute "omit[s] all reference to such suits." (*Tzolis v Wolff*, 10 NY3d 100, 103 [2008] [emphasis added].) Nevertheless, the cause of action is duplicative of plaintiffs' sixth cause of action against Shinnick for breach of fiduciary duty. (*Chowaiki & Co. Fine Art Ltd. v Lacher*, 115 AD3d 600, 600 [1st Dept 2014] [a cause of action is duplicative if "the claims are premised upon the same facts and seek identical damages"].)

Accordingly, Shinnick's motion to dismiss the ninth cause of action for breach of Limited Liability Company Law § 409(a) is granted.

Prima Facie Tort

Finally, Shinnick and O'Brien move to dismiss the tenth cause of action for prima facie tort on the grounds that (i) the claim is barred by the statute of limitations, and (ii) plaintiffs fail to plead the requisite elements, specifically, harmful intent and special damages.

(i) Statute of Limitations

Shinnick and O'Brien argue that the prima facie tort claim is time-barred because the claim arose from the June 6, 2017 BOFT share allocation, and plaintiffs initiated this action on November 1, 2024, after the one-year statute of limitations had expired. (*See*

CPLR 215; *Russek v Dag Media, Inc.*, 47 AD3d 457, 458 [1st Dept 2008]].) To the extent plaintiffs allege that Shinnick and O'Brien "intentionally inflicted harm" on plaintiffs by denying them access to BOFT's annual general meeting in June 2023, this claim is time-barred. (NYSCEF 36, AC ¶ 217 [a].) However, plaintiffs' remaining allegations pertaining to events that occurred in 2024, are not barred by the statute of limitations. (*Id.* ¶¶ 217 [b] – [g].)

(ii) Insufficient Pleadings

To allege a cause of action for prima facie tort, a plaintiff must assert "(1) intentional infliction of harm, (2) causing special damages, (3) without excuse or justification, (4) by an act or series of acts that would otherwise be lawful." (*Curiano v Suozzi*, 63 NY2d 113, 117 [1984] [citation omitted].) Shinnick and O'Brien argue that the prima facie tort claim must be dismissed because plaintiffs fail to plead the requisite elements, specifically, harmful intent and special damages.[10]

"A critical element of the cause of action [for prima facie tort] is that plaintiff suffered specific and measurable loss, which requires an allegation of special damages." (*Freihofer v Hearst Corp.*, 65 NY2d 135, 143 [1985] [citations omitted].) In the AC, plaintiffs allege that as a result of defendants' intentional infliction of harm, plaintiffs "suffered special damages in the form of the lost value of their rightful BOFT shares, and subsequently, the lost value of their true pro rata interest in BOT

[10] To the extent Shinnick and O'Brien notes that prima facie tort is not a catch-all remedy for failed claims, the court declines to dismiss the claim on this basis having dismissed plaintiffs' other tort claims. (*See Curiano v Suozzi*, 63 NY2d 113, 117 [1984] ["[w]hile prima facie tort may be pleaded in the alternative with a traditional tort, once a traditional tort is established the cause of action for prima facie tort disappears" (citation omitted)].)

membership units, including the Converted Membership Units." (NYSCEF 36, AC ¶¶ 219-220.) At this stage of the litigation, plaintiffs' allegations sufficiently specify and detail plaintiffs' loss. (*See Phillips v New York Daily News*, 111 AD3d 420, 421 [1st Dept 2013].)

Nevertheless, plaintiffs' allegations of harmful intent are insufficient. The law is clear that "there is no recovery in prima facie tort unless malevolence is the sole motive for defendant's otherwise lawful act." (*Burns Jackson Miller Summit & Spitzer v Lindner*, 59 NY2d 314, 333 [1983]; *see also Bitt v City of New York*, 151 AD36 606, 607 [1st Dept 2017].) Plaintiffs allege that "[r]etaliating against [p]laintiffs for protecting their rights in court and devising a plan to impede [p]laintiffs from obtaining relief in court is no justification for their intentional infliction of harm on [p]laintiffs." (NYSCEF 36, AC ¶ 218.) Plaintiffs' allegations do not sufficiently allege that defendants' intent was "a malicious one unmixed with any other and exclusively directed to injure and damage of [plainitffs]." (*Burns Jackson Miller Summit & Spitzer*, 59 NY2d at 333 [internal quotation marks and citation omitted] [dismissed prima facie tort claim where plaintiff "allege[d] intentional and malicious action" but did not "allege that defendants' sole motivation was 'disinterested malevolence.'"].)

Accordingly, Shinnick and O'Brien's motion to dismiss plaintiffs' tenth cause of action for prima facie tort is granted.

Motion 005

BOT, Layman, Morhouse, and BOM move to dismiss the causes of actions against them on the grounds that (i) the court lacks personal jurisdiction over BOM, (ii) the claims are barred by the statute of limitations, and (iii) plaintiffs fail to state any viable claim.

Personal Jurisdiction

As stated on the record on July 23, 2025, this court "find[s] that the forum selection clause [in the FOA] applies and that the Court has jurisdiction." (NYSCEF 105, Tr at 28: 7-8.) Accordingly, the court declines to dismiss the causes of action against BOM for lack of jurisdiction.

Statute of Limitations

For the reasons previously set forth, the court finds that plaintiffs' claims against defendants for aiding and abetting conversion (*see supra* at 15) and prima facie tort (*see supra* at 24) are not barred by the statute of limitations. As to defendants' allegation that the declaratory judgment claim is time-barred, the court similarly declines to dismiss this cause of action on this basis.

First, defendants argue that the declaratory judgment claim is subject to a three-year statute of limitation because the claim is duplicative of the conversion and unjust enrichment claims, which have three-year statutes of limitation. Second, defendants argue that even under the applicable six-year statute of limitations, the declaratory judgment claim fails because it arises from the 2017 capitalization table. The court rejects both arguments as plaintiffs' claim for declaratory judgment is based on the reorganization of BOT and BOT's approval of the subscription agreements, all which

occurred in August 2024. (*See* NYSCEF 36, AC ¶¶ 112, 201-02.) Accordingly, the court finds that the declaratory judgment claim is not barred by the statute of limitations.

Failure to State a Claim

Aiding and Abetting Conversion

Plaintiffs premise their claim of aiding and abetting conversion on its second cause of action for conversion against Shinnick and O'Brien. (*See* NYSCEF 36, AC ¶ 157.) Because the court dismisses plaintiffs' second cause of action for conversion (*see supra* at 15-18), the court must also dismiss the claim for aiding and abetting. (*William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501, 505 [1st Dept 2018] ["[a]iding and abetting conversion requires the existence of a conversion by the primary tortfeasor"].) Accordingly, Layman, Morhouse, and BOT's motion to dismiss the third cause of action for aiding and abetting conversion is granted.

Breach of Fiduciary Duty Against BOM

For the reasons previously set forth, the court finds that plaintiffs fail to allege that BOM was a supermajority, or even a majority, member of BOT. (*See supra* at 19-20.) Absent an allegation of majority member status, plaintiffs fail to plead that BOM owed plaintiffs fiduciary duties. Accordingly, BOM's motion to dismiss the fifth cause of action is granted.

Breach of Fiduciary Duty Against Layman and Morhouse

Layman and Morhouse move to dismiss the sixth cause of action for breach of fiduciary duty on the grounds that the board members' approval of the Liquidity Memo is protected by the business judgment rule.

> "On a motion to dismiss the complaint pursuant to CPLR 3211 (a) (7), the court is necessarily assuming the truth of the allegations asserted in the pleadings in

> order to 'determine simply whether the facts alleged fit within any cognizable legal theory.' (*Morone v Morone*, 50 NY2d 481, 484 [1980].) Even in the context of the business judgment rule, this distinction does not fundamentally change, and the complaint will be sustained if it contains allegations sufficient to demonstrate that directors did not act in good faith or were otherwise interested, as [p]rediscovery dismissal of pleadings in the name of the business judgment rule is inappropriate. (*Ackerman v 305 E. 40th Owners Corp.*, 189 AD2d 665, 667 [1st Dept 1993].)." (*Higgins v New York Stock Exch., Inc.*, 2005 NY Slip Op 25365, *15 [Sup Ct, NY County 2005].)

Because the court finds that plaintiffs have sufficiently alleged that Layman and Morhouse "did not act in good faith or were otherwise interested" when approving and implementing the Liquidity Memo (*see* NYSCEF 36, AC ¶¶ 183-186), the court will inquire no further into the viability of plaintiffs' allegations in the context of the business judgment rule on this motion to dismiss.

Accordingly, Layman and Morhouse's motion to dismiss the sixth cause of action is denied.

Aiding and Abetting Breach of Fiduciary Duty

Layman, Morhouse, and BOT move to dismiss the seventh cause of action for aiding and abetting breach of fiduciary duty on the grounds that plaintiffs have failed to establish (i) an underlying breach of fiduciary duty, (ii) knowing inducement or participation, and (iii) damages.

"A claim for aiding and abetting a breach of fiduciary duty requires: (1) a breach by a fiduciary of obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damage as a result of the breach." (*Kaufman v Cohen*, 307 AD2d 113, 125 [1st Dept 2003] [citations omitted].)

Plaintiffs premise their claim of aiding and abetting breach of fiduciary duty on its fifth cause of action for breach of fiduciary duty against Shinnick, O'Brien, and BOM.

(*See* NYSCEF 36, AC ¶ 190.) Because the court dismisses plaintiffs' fifth cause of action for failure to allege that Shinnick, O'Brien, and BOM owed plaintiffs' fiduciary duties as 'supermajority' members of BOT (*see supra* at 19-20), the court must also dismiss the claim for aiding and abetting. (*Shatz v Chertok*, 2022 NY Slip Op 33171[U], *5 [Sup Ct, NY County 2022] [where a defendant "cannot be held liable on plaintiffs breach of fiduciary duty claim . . . [the]" claim[] for aiding and abetting breach of fiduciary duty . . . necessarily fail[s]."].)

Accordingly, Layman, Morhouse, and BOT's motion to dismiss the seventh cause of action for aiding and abetting breach of fiduciary duty is granted.

Declaratory Judgment

For the reasons previously stated the court finds that the declaratory judgment claim is not duplicative of plaintiffs' other causes of actions. (*See supra* at 22.) Accordingly, BOT's motion to dismiss the eighth cause of action for declaratory judgment is denied.

Breach of NY LLC Law § 409(a)

For the reasons previously stated, the court finds that the breach of NY LLC Law § 409(a) claim is duplicative of plaintiffs' breach of fiduciary duty claim. (*See supra* at 23.) Accordingly, Layman and Morhouse's motion to dismiss the ninth cause of action for breach of NY LLC Law § 409(a) is granted.

Prima Facie Tort

For the reasons previously stated, the court finds that plaintiffs fail to sufficiently allege a prima facie tort claim. (*See supra* at 23-25.) Accordingly, defendants' motion to dismiss the tenth cause of action for prima facie tort is granted.

Accordingly, it is

ORDERED that motion sequence 004 is denied, in part, to the extent that the first cause of action for fraud survives to the extent that plaintiffs' allegation of fraudulent misrepresentations *in* the 2016 Purchase Agreement and email correspondence *postdating* the 2016 Purchase Agreement survives. Similarly, the sixth and eighth causes of action survive; and it is further

ORDERED that motion sequence 004 is granted, in part, to the extent that the first cause of action for fraud is dismissed to the extent it alleges fraudulent misrepresentations prior to the execution of the January 11, 2016 Purchase Agreement. Similarly, the second, third, fifth, ninth, and tenth causes of action are dismissed; and it is further

ORDERED that motion sequence 005 is granted, in part, to the extent that the third, fifth, seventh, ninth, and tenth causes of action are dismissed, and denied, in part, to the extent that the sixth and eighth causes of action survive; and it is further

ORDERED that the motion of defendant Blue Ocean Management Partners, LLC to dismiss the amended complaint is granted and the amended complaint is dismissed in its entirety as against this defendant, with costs and disbursements to this defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of this defendant; and it is further

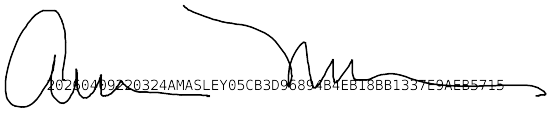
ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the remaining defendants are directed to serve an answer to the amended complaint within 20 days of the date of this decision and order.



4/9/2026
DATE

ANDREA MASLEY, J.S.C.

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