

Farkas v 232 N12th Rest. LLC
2026 NY Slip Op 31528(U)
April 13, 2026
Supreme Court, Kings County
Docket Number: Index No. 509689/2025
Judge: Reginald A. Boddie
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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 13th day of April 2026.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

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DANIEL T. FARKAS,

Plaintiff,

Index No. 509689/2025

-against-

Cal. No. 5 MS 2

232 N12TH RESTAURANT LLC, SARA E. COONROD,
and PEDRO YAMASAKI,

Defendants.

Decision and Order

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The following e-filed papers read herein:
MS 2

NYSCEF Doc Nos.
20-22; 24-26

Defendants Sara E. Coonrod and Pedro Yamasaki’s motion to dismiss the Amended Complaint pursuant to CPLR 3211(a)(3), (5), and (7) and to stay all claims against defendant 232 N12th Restaurant LLC pursuant to CPLR 2201 is decided as follows:

Background

This action arises out of alleged breaches of fiduciary duty and contract in connection with the operation of a restaurant business, 232 N12th Restaurant LLC (the “LLC”). Plaintiff Daniel T. Farkas (“Farkas”) and defendant Sara E. Coonrod (“Coonrod”) formed the LLC pursuant to an operating agreement, which appointed Coonrod as the managing member and provided that plaintiff was the sole investor in the LLC. It is unclear whether defendant Pedro Yamasaki

("Yamasaki") was a member of the LLC, as he "was to be the Manager of the restaurant." Coonrod and Yamasaki are married to each other.

The operating agreement set forth plaintiff's investment in the LLC in the amount of \$150,869.27 as a repayable, interest-free loan secured by the assets of the LLC. The operating agreement further provided that the LLC would set aside a minimum of \$3,970.24 monthly as repayment of plaintiff's investment, payable on the last day of each month, with the first payment being due on September 1, 2022. Additionally, the operating agreement provided that Coonrod would devote a minimum of 20 hours per week to the LLC for the first 38 months starting May 1, 2022.

Based on plaintiff's complaint, although the exact dates are not specified, the parties appear to have operated the restaurant briefly before the LLC ceased operations in or about October 2022. Coonrod affirms that the LLC has no bank accounts, no assets, and no ongoing business operations.

During the time when the restaurant was being closed down, Coonrod and Yamasaki allegedly made and communicated a promise to repay plaintiff his capital investment, representing that funds to repay plaintiff were expected to be received from tax refunds and/or other government programs or incentives. Coonrod confirmed this promise on September 22, 2022. Plaintiff does not allege that any such promise was made in writing.

Plaintiff alleges that he first learned of the details of defendants' alleged diversion of funds and assets and failure to pay taxes on or about November 29, 2024, during a member meeting.

On May 1, 2025, almost three years after the restaurant purportedly ceased operations, as part of the parties' pre-litigation efforts to resolve plaintiff's claims, Coonrod and Yamasaki executed a written indemnity agreement acknowledging plaintiff as an investor without any active role in the LLC's operations and Coonrod and Yamasaki as the sole individuals with access to the LLC's bank accounts and responsibility of managing its day-to-day operations.

The Court notes that neither the operating agreement nor the indemnity agreement has been provided, and defendants represent that they do not have access to any fully executed operating agreement of the LLC.

Plaintiff alleges that Coonrod and Yamasaki engaged in misconduct by diverting funds and assets of the LLC to another restaurant and to themselves, failing to pay taxes for the LLC, grossly mismanaging the LLC, and failing to comply with contractual monthly repayment obligations, causing plaintiff substantial financial harm in addition to the unpaid loan. Plaintiff contends that defendants concealed their improper diversion of funds and other assets until submitting a 2022 tax return in April 2024 and providing the tax return to plaintiff in the fall of 2024. Plaintiff asserts (1) breach of fiduciary duty, (2) breach of the operating agreement, (3) unjust enrichment, (4) conversion, (5) accounting, (6) constructive fraud, and (7) breach of the oral promise to pay. Plaintiff seeks damages for lost investment, lost value of membership interest, and lost profits in an amount of not less than \$1,000,000, repayment of \$150,869.27, disgorgement, punitive damages, and costs, disbursements, and expenses incurred in this action.

Defendants Coonrod and Yamasaki move to dismiss this action under CPLR 3211 (a)(3), (5), and (7), arguing that (1) plaintiff lacks standing to assert the LLC's claims in his individual capacity; (2) the breach of fiduciary duty claim is barred by a three-year statute of limitations; (3) the breach of contract claim against Coonrod and Yamasaki is barred by the Statute of Frauds as the promise constitutes a suretyship; and (4) the claims lack particularity and are duplicative. Defendants also move to stay all claims against the LLC pursuant to CPLR 2201, arguing that the authority to control and retain counsel for the LLC is unclear and may risk prejudice and confusion.

In opposition, plaintiff argues that (1) plaintiff has standing to assert direct claims based on his interest in the assets of the LLC; (2) the breach of fiduciary duty claim is timely; (3) the

Statute of Frauds is inapplicable to the breach of contract claim against Coonrod and Yamasaki; and (4) the claims are adequately pled with sufficient particularity.

In reply, defendants argue that a debtor-creditor relationship between the LLC and a member does not create a fiduciary duty among its members, nor does it allow plaintiff to transform a derivative claim into a direct claim against defendants. Defendants further argue that plaintiff's opposition to the motion is legally insufficient.

Discussion

CPLR 3211 (a)(3) Standing

“On a defendant's motion pursuant to CPLR 3211(a)(3) to dismiss the complaint based upon the plaintiff's alleged lack of standing, the burden is on the moving defendant to establish, prima facie, plaintiff's lack of standing as a matter of law” (*U.S. Bank Nat. Ass'n v Guy*, 125 AD3d 845, 847 [2d Dept 2015] [citations omitted]). “To defeat the motion, a plaintiff must submit evidence which raises a question of fact as to its standing” (*id.*).

Here, defendants fail to establish that plaintiff lacks standing to sue. As the sole investor in the LLC and a party to the contract under which plaintiff seeks redress, plaintiff has sufficiently demonstrated an interest in the claims at issue in this lawsuit. Thus, the branch of defendants' motion seeking dismissal of plaintiff's first, second, third, and fourth causes of action for lack of standing is denied.

CPLR 3211(a)(7) Failure to State a Cause of Action

“On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must afford the complaint a liberal construction, accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*USCHAG Corp. v Flagstar Bank*, 220 AD3d 823, 823-24 [2d Dept 2023] [citation omitted]). “Although a court may consider materials submitted

by the defendant in support of its motion, the materials must establish conclusively that the plaintiff has no cause of action” (*id.*). Moreover, “a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Leon v Martinez*, 84 NY2d 83, 88 [1994] [citation and internal quotation marks omitted]). “The pleading will be deemed to allege whatever may be implied from its statements by reasonable intendment and the court must give the pleader the benefit of all favorable inferences that may be drawn from the complaint” (*Dunn v Gelardi*, 59 AD3d 385, 386 [2d Dept 2009] [citation omitted]).

Pursuant to CPLR 3013, “[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.”

“The elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant’s misconduct” (*Stortini v Pollis, supra*, at 979 [2d Dept 2016] [citations omitted]). “A cause of action sounding in breach of fiduciary duty must be pleaded with the particularity required by CPLR 3016(b)” (*id.*). “A fiduciary relationship arises when one is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation” (*Saul v Cahan*, 153 AD3d 947, 949 [2d Dept 2017] [citations and internal quotation marks omitted]). “[A] plaintiff must make a showing of special circumstances that could have transformed the parties’ business relationship to a fiduciary one, such as control by one party of the other for the good of the other” (*id.*). “A fiduciary relationship may exist when one party reposes confidence in another and reasonably relies on the other’s superior expertise or knowledge, but not in an arm’s-length business transaction involving sophisticated business people” (*id.*).

Here, viewing the allegations of the complaint as true and according plaintiff the benefit of every favorable inference, plaintiff has sufficiently alleged a breach of fiduciary duty. The complaint asserts that Coonrod and Yamasaki controlled plaintiff's investment and agreed to act as custodians of the LLC's funds and assets, establishing a relationship of trust and confidence. Plaintiff alleges specific misconduct, including the mismanagement of the funds and assets of the LLC and the failure to return the investment or provide agreed-upon returns, resulting in financial harm. Such allegations meet the pleading requirements under CPLR 3016(b) and support a viable claim. Accordingly, the branch of defendants' motion seeking dismissal of the first cause of action alleging breach of fiduciary duty is denied.

"An accounting is an equitable remedy which a party may seek only where he or she can establish the existence of a confidential or fiduciary relationship and a breach of the duty imposed by that relationship respecting property in which the party seeking the accounting has an interest" (*LMEG Wireless, LLC v Farro*, 190 AD3d 716 [2d Dept 2021] [citation and internal quotation marks omitted]). "To obtain an accounting, a plaintiff must show that there was some wrongdoing on the part of a defendant with respect to the fiduciary relationship concerning property in which the plaintiff has an interest."

Here, as plaintiff adequately pleads a breach of fiduciary duty and alleges that Coonrod failed to respond to plaintiff's demand for the LLC's relevant financial records and information, the complaint sufficiently states a claim for an accounting. Thus, the branch of defendants' motion seeking dismissal of the fifth cause of action for an accounting is denied.

The Court declines to dismiss the fourth cause of action alleging conversion at this time. However, plaintiff's third and sixth causes of action alleging unjust enrichment and constructive fraud are duplicative of the breach of fiduciary duty and breach of contract claims, as they are

based on the same allegations of defendants' diversion of funds and assets. Thus, the branch of defendants' motion seeking dismissal of the third and sixth causes of action is granted.

CPLR 3211(a)(5) Statute of Limitations

“A defendant who moves to dismiss a complaint pursuant to CPLR 3211(a)(5) on the ground that it is barred by the statute of limitations bears the initial burden of proving, prima facie, that the time in which to sue has expired” (*Berger v Stolzenberg*, 158 AD3d 738, 739 [2d Dept 2018] [citations omitted]). “The burden then shifts to the nonmoving party to raise a question of fact as to the applicability of an exception to the statute of limitations, as to whether the statute of limitations was tolled, or as to whether the action was actually commenced within the applicable limitations period” (*id.*).

“Generally, [a] cause of action [alleging] breach of fiduciary duty is governed by a six-year statute of limitations where the relief sought is equitable in nature, or by a three-year statute of limitations where the only relief sought is money damages” (*Berejka v Huntington Med. Group, P.C.*, 235 AD3d 821, 823 [2D Dept 2025] [citations and internal quotation marks omitted]). “Moreover, where an allegation of fraud is essential to a breach of fiduciary duty claim, courts have applied a six-year statute of limitations under CPLR 213(8)” (*id.*). “The statute of limitations for a cause of action alleging a breach of fiduciary duty does not begin to run until the fiduciary has openly repudiated his or her obligation or the relationship has been otherwise terminated” (*id.*).

Here, defendants correctly note that plaintiff seeks solely money damages, and therefore, the applicable statute of limitations is three years. However, as the LLC ceased business operations in or about October 2022, and any fiduciary relationship terminated in or about October 2022, this action was timely commenced in March 2025. Thus, the branch of defendants' motion seeking dismissal of plaintiff's first cause of action for breach of fiduciary duty is denied.

CPLR 3211(a)(5) Statute of Frauds

Pursuant to General Obligations Law § 5-701 (a)(2), a promise to answer for the debt of another is barred by the Statute of Frauds, unless it is in writing and subscribed by the party to be charged. “However, the oral promise may be taken out of the Statute of Frauds if two requirements are met. First, the promise must represent an independent duty of payment, irrespective of the liability of the principal debtor, and second, the promise must be based upon new consideration which moves the promisor and is beneficial to him” (*Karl Ehmer Forest Hills Corp. v Gonzalez*, 159 AD2d 613, 613 [2d Dept 1990] [citation omitted]). It is plaintiff’s burden to demonstrate that consideration moved to defendants and that the parties intended to create an independent contract obligating defendants to satisfy the corporate debt (*Martin Roofing, Inc. v Goldstein*, 60 NY2d 262, 265 [1983]).

Defendants argue that the alleged oral promise made by Coonrod and Yamasaki constitutes a promise to answer for the debt of another, as it seeks to impose personal liability on the individual defendants for repayment of plaintiff’s investment in the LLC, which arose separately under the operating agreement and was a loan to the LLC. Plaintiff, in opposition, argues that it was a direct promise by the individuals who had exclusive control over the assets to ensure that plaintiff would be repaid from specific anticipated funds. Plaintiff further argues that dismissal is inappropriate at this stage even if the promise is properly characterized as a guaranty because defendants have failed to establish the nonexistence of writing and the inapplicability of exceptions to the Statute of Frauds, such as the existence of valid consideration, partial performance, or detrimental reliance. In reply, defendants argue that plaintiff cannot maintain a cause of action that is facially barred by the Statute of Frauds based solely on the speculative possibility that a writing or valid consideration might surface during discovery.

Here, Coonrod and Yamasaki's obligations were secondary to that of the LLC, and the LLC was not relieved of its obligation by virtue of defendants' subsequent promise. Moreover, plaintiff is unable to demonstrate the existence of valid consideration sufficient to create an independent obligation. Plaintiff's argument that discovery may yield the existence of a writing is unavailing. Therefore, as Coonrod and Yamasaki's oral promise was to answer for the debt of another, it is unenforceable under the Statute of Frauds, and the branch of defendants' motion seeking dismissal of plaintiff's seventh cause of action for breach of contract is granted.

CPLR 2201 Stay

CPLR 2201 provides that "[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." A stay of an action "should be refused unless the proponent shows good cause for granting it. Nothing but good cause would make for a 'proper case'" (Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C2201:7 (2020)). Defendants have failed to demonstrate good cause warranting a stay. Thus, the branch of defendants' motion seeking to stay the claims against the LLC is denied.

Conclusion

Based on the foregoing, defendants' motion to dismiss is granted as to plaintiff's claims for the third, sixth, and seventh causes of action. The remainder of defendants' motion is denied. Any arguments not expressly addressed herein were considered and deemed to be without merit or unnecessary to address given the Court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

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HON. REGINALD A. BODDIE
J.S.C.