

Brownsville GP LLC v Levitt
2026 NY Slip Op 31590(U)
April 6, 2026
Supreme Court, Kings County
Docket Number: Index No. 524841/2025
Judge: Cenceria P. Edwards
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At an IAS Term, Comm 2 off the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 6th day of April 2026.

PRESENT:

HON. CENCERIA P. EDWARDS, CPA,

Justice.

-----X
BROWNSVILLE GP LLC et al,

Plaintiff(s),

-against-

MICHAEL J. LEVITT et al,

Defendant(s).
-----X

ORDER

Calendar Date: 11/19/2025

Calendar #(s): 5

Index #: 524841/2025

Mot. Seq. #(s): 2

The following e-filed papers read herein:

Notice of Motion/Order to Show Cause/Petition/Cross-Motion and Affidavits (Affirmations) and Exhibits _____

Opposing Affidavits (Affirmations) and Exhibits _____

Reply Affidavits (Affirmations) and Exhibits _____

NYSCEF Doc. Nos.:

9, 15, 20, 22

26

Plaintiffs Brownsville GP LLC and Margar Associates Limited Partnership commenced this Commercial Division action in their own individual capacity and derivatively on behalf of Brownsville Associates, L.P. (“the Partnership”) (collectively, “Plaintiffs”) against Defendants Michael J. Levitt, Michaels Management – Affordable LLC, and Brownsville Associates, L.P. (“the Partnership”) (collectively, “Defendants”) (NYSCEF Doc. # 1, at 1). Brownsville GP and Margar allegedly serve as the sole general partner and limited partner of the Partnership, respectively (*id.*).

Plaintiffs assert three causes of action. First, for a declaratory judgment stating that Levitt is not the general partner of the Partnership (*id.* at 9). Second, for a declaratory judgment stating that Brownsville GP is the general partner of the Partnership (*id.* at 10). Third, for injunctive relief requiring Defendants give Plaintiffs access to inspect, copy and obtain all books, record, communications and other business documents of the Partnership that are in their possession (*id.* at 11–12).

Defendants move pursuant to CPLR 3211(a)(1) and (a)(7) to dismiss the Verified Complaint on the grounds that the action is barred by documentary evidence and fails to state a cause of action (NYSCEF Doc. # 15).

BACKGROUND

Plaintiffs allege that the Partnership was organized under New York law on or about March 24, 1982 (NYSCEF Doc. # 1 ¶ 16). At that time, Levitt served as both a general and limited partner of the Partnership along with Harvey Roer, who was also a general and limited partner, and Edwin Roer, who was only a general partner (*id.* ¶ 17). On or about October 28, 1982, Levitt and Harvey Roer allegedly withdrew as limited partners and Resources Housing Corporation (“RHC”) took their place to become a limited partner (*id.* ¶ 18). Allegedly, RHC soon after assigned its 99% limited partnership interest to Plaintiff Margar and both Roers assigned their interests to Levitt, leaving him the sole general partner (*id.* ¶ 21–23). On May 29, 2025, Levitt was allegedly removed as general partner by Margar pursuant to Section 3.6(A) of the Partnership Agreement, which gives limited partners power to remove a general partner by majority vote if the general partner is in default under the Partnership Agreement (*id.* ¶¶ 25, 63).

Plaintiffs allege that Levitt deceived the Partnership by falsely asserting that Levitt’s company, Michaels Management, was entitled to collect “Incentive Performance Fees” (“IPF”) as a Management Agent (*id.* ¶¶ 26, 35, 60). Plaintiff claims that the Partnership Agreement never authorized the payment of IPFs and that Levitt communicated the opposite in financial statements from 2005–2024 and in a separate writing to Margar in 2005 (*id.* ¶¶ 31–33). Defendants allegedly received an IPF of \$43,571 in 2021 and have received over \$500,000 in unauthorized IPFs since 2005 (*id.* ¶¶ 39, 41). Plaintiffs additionally claim that Levitt caused the Partnership to default on a loan provided by the Department of Housing and Urban Development (“HUD”) and failed to cure the default (*id.* ¶ 46). Plaintiffs allege that Levitt acted only in self-interest and that his actions constitute a breach of the Partnership Agreement and the laws and regulations that apply to the Partnership (*id.* ¶ 57). Defendants claim that Levitt was improperly removed as the general partner because Plaintiffs were not procedurally permitted to do so under the Partnership Agreement (NYSCEF Doc. # 20).

DISCUSSION

DEFENDANT’S MOTION TO DISMISS UNDER CPLR 3211(a)(7)

Defendants move to dismiss the complaint pursuant to CPLR 3211(a)(7). “On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory” (*IPA Asset Mgmt., LLC v Schuman*, 239 AD3d 619, 620–21 [2d Dept 2025], quoting *Martinez v NYC Health & Hosps. Corp.*, 223 AD3d 731, 731 [2d Dept 2024]). Moreover, the complaint may incorporate and reference separate documents that are attached to the pleading for the purpose of stating a cause of action (*see* CPLR 3014).

Plaintiffs' first cause of action is for a declaratory judgment establishing that Levitt is not the general partner of the Partnership pursuant to the Partnership Agreement (NYSCEF Doc. # 1, at 9). "[A]n action for a declaratory judgment must be supported by the existence of a justiciable controversy. There must be a genuine, concrete dispute between adverse parties, not merely the possibility of hypothetical, contingent, or remote prejudice to the plaintiff" *Singh v T-Mobile*, 232 AD3d 662, 666 [2d Dept 2024], quoting *Matter of Hargraves v City of Rye Zoning Bd. of Appeals*, 162 AD3d 1022, 1025 [2d Dept 2018]). A pre-answer motion to dismiss a cause of action for declaratory judgment "presents for consideration only the issue of whether a cause of action for declaratory relief is set forth, not the question of whether the plaintiff is entitled to a favorable declaration" (*Krawczyk v Inc. Vil. of Lindenhurst*, 216 AD3d 929, 931 [2d Dept 2023]). Moreover, A motion to dismiss a declaratory judgment cause of action should be denied where that cause of action "is sufficient to invoke the court's power to 'render a declaratory judgment . . . as to the rights and other legal relations of the parties to a justiciable controversy'" (*88-18 Tropical Restaurante Corp. v Utica First Ins. Co.*, 223 AD3d 772, 773 [2d Dept 2024], quoting *Matter of 22-50 Jackson Ave. Assoc., L.P. v County of Suffolk*, 216 AD3d 943, 946 [2d Dept 2023]; see also CPLR 3001). But where an adequate, alternative remedy exists, such as breach of contract, declaratory judgment is "unnecessary and inappropriate" (*189 Schermerhorn Owners Co. v Bd. of Managers of Be@Schermerhorn Condominium*, 186 AD3d 1467, 1468 [2d Dept 2020]).

Plaintiff has sufficiently pleaded a justiciable controversy that declaratory judgment would be appropriate for resolving. The complaint, along with the incorporated and referenced Partnership Agreement, alleges that Levitt committed several defaulting acts under the Partnership Agreement, such as taking excess fees and defaulting on a loan provided by HUD (NYSCEF Doc. # 1 ¶¶ 61–72). Plaintiff alleges that these defaulting acts enabled Margar, as limited partner, to remove Levitt as general partner (*id.* ¶ 63). Although a cause of action for breach of contract may also exist, it would not provide the same relief that this declaratory judgment cause of action would because Plaintiff does not seek monetary damages or specific performance, but to declare that Levitt is no longer a general partner of the Partnership pursuant to the Partnership Agreement. Accordingly, Plaintiff has sufficiently pleaded this cause of action.

Plaintiff's second cause of action is for a declaratory judgment stating that Brownsville GP is the general partner of the Partnership. (NYSCEF Doc. # 1, at 10–11). As stated above, Plaintiff has sufficiently pleaded a justiciable controversy that declaratory judgment would be appropriate for resolving because Plaintiff seeks a remedy declaring that, pursuant to the Partnership Agreement, Brownsville GP was properly selected as the sole general partner of the Partnership following Levitt's removal. Accordingly, Plaintiff has sufficiently pleaded this cause of action.

Plaintiff's third cause of action is for a declaratory judgment establishing that "[a]ll books, records and other documents, in electronic or paper format, of [the Partnership] that are in possession of Defendants are the property of [the Partnership]" and that Brownsville GP and Margar have property interests in them (NYSCEF Doc. # 1 ¶¶ 78–81). Like the previous causes of action, Plaintiff has sufficiently pleaded a justiciable controversy that declaratory judgment

would be appropriate for resolving because Plaintiff seeks to establish ownership of the Partnership's important documents. Accordingly, Plaintiff has sufficiently pleaded this cause of action.

Therefore, Defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(7) is denied.

DEFENDANT'S MOTION TO DISMISS UNDER CPLR 3211(a)(1)

Defendants move to dismiss the complaint under CPLR 3211(a)(1). "A motion pursuant to CPLR 3211(a)(1) to dismiss a complaint on the ground that a defense is founded on documentary evidence 'may be appropriately granted only where the documentary evidence utterly refutes [the] plaintiff's factual allegations, conclusively establishing a defense as a matter of law'" (*FPG CH 94 Amity, LLC v Pizzarotti, LLC*, 218 AD3d 651, 653 [2d Dept 2023]).

Defendants argue that Section 3.6(A) of the Partnership Agreement does not permit Margar to remove Levitt as general partner for the alleged actions and thus the complaint must be dismissed (NYSCEF Doc. # 22, at 7). Defendants' argument is based on a clause in Section 3.6(A) of the Partnership Agreement, which provides that

"the rights of the Limited Partners to remove any General Partner in accordance with this Paragraph A shall be (i) suspended so long as (x) neither the Partnership nor any Partner would be subjected to any criminal liability as a result of such default, (y) no action to foreclose any mortgage tax or other lien on the Project is commenced and is not dismissed within sixty (60) days of such commencement, and (z) such General Partner is diligently prosecuting the cure of such default and (ii) terminated upon the cure of such default if such General Partner has not theretofore been removed" (NYSCEF Doc. # 9, at 12).

Defendant has not shown that the documentary evidence "utterly refutes" Plaintiff's factual allegations (*see Pizzarotti*, 218 AD3d at 653). One of the requirements to suspend the limited partner's right to remove a general partner is that the defaulting general partner is diligently prosecuting the cure of such default (NYSCEF Doc. # 9, at 12). Defendants have not alleged and have submitted no evidence establishing that they ever diligently sought to cure those defaults. Additionally, Defendants do not address Plaintiffs' claims that they received unauthorized IPFs and fail to show that Levitt would not be "subjected to any criminal liability" for receiving those. Thus, Defendant cannot establish that documentary evidence utterly refutes any of Plaintiff's causes of action for declaratory judgment.

Therefore, Defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(1) is denied.

Accordingly, it is hereby:

ORDERED that Defendants' motion to dismiss is **DENIED**.

The Foregoing Constitutes the Decision and Order of this Court.

ENTER,

Dated: April 6, 2026



Hon. Cenceria P. Edwards, JSC, CPA