

Weinstein v Levitin

2026 NY Slip Op 31696(U)

April 16, 2026

Supreme Court, Kings County

Docket Number: Index No. 525670/2018

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

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 16th day of April 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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HENRY WEINSTEIN and HPHW REALTY CORP., INC.,

Index No. 525670/2018

Plaintiffs,

Cal. No. 18-19 MS 9-10

-against-

JEFFREY LEVITIN, LEVITIN & ASSOCIATES, P.C.,
BORDEAUX CAPITAL, LLC, YECHIEL SHIMON SPREI
a/k/a SAM SPREI, OLDEN EQUITIES CORP., and
ROCHELLE FRIEDMAN,

Decision and Order

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 9

142-146

MS 10

147-151

The motion by defendants, Yechiel Shimon Sprei a/k/a Sam Sprei and Rochelle Friedman (collectively, “Defendants”), seeking an order pursuant to CPLR 3211(a)(1) and 3016(b) dismissing the complaint as against them, and dismissing all claims against defendant Olden Equities Corp. and any purported “Olden” entity, including nonparty Olden Group, LLC, for lack of personal jurisdiction and failure to state a claim, and plaintiffs’ cross-motion seeking leave to amend their complaint pursuant to CPLR 3025 are decided as follows:

The following factual background is gleaned from plaintiffs' "Statement of Facts" in their memorandum of law in opposition to Defendants' motion to dismiss unless stated otherwise. Plaintiff Henry Weinstein ("Weinstein") is a long-time real estate investor and the sole shareholder of HPHW Realty Corp., Inc. ("HPHW"). HPHW owned, among other assets, real property located at 604 Pacific Street in Brooklyn, New York. Defendant Yechiel Shimon Sprei a/k/a Sam Sprei ("Sprei") is a real estate promoter and purported investor who solicited plaintiffs' participation in multiple real estate transactions. Defendant Olden Equities Corp. ("Olden Corp") is a corporation controlled by Sprei and used by him as a vehicle to receive and disburse investor funds. Defendant Rochelle Friedman ("Friedman") is Sprei's wife and was used by Sprei as a "nominee" and participant in transactions to conceal his misconduct.

In August 2018, Sprei approached Weinstein and solicited his investment in a series of purported real estate transactions. Sprei represented that these transactions were legitimate, imminent, financially sound, and that plaintiffs' funds would be used solely for real estate acquisitions. Sprei further represented that plaintiffs' investments would be protected, properly documented, and used exclusively for the identified transactions. In reliance on these representations, plaintiffs agreed to advance substantial sums of money to Sprei and to entities under his control, including Olden Corp. However, the real estate transactions were never consummated. Instead, Sprei diverted and misappropriated plaintiffs' funds for his own use and benefit and for the benefit of entities and individuals aligned with him, including Olden Corp. and Friedman. Olden Corp was used by Sprei as a shell entity to receive, hold, and transfer plaintiffs' funds without a legitimate business purpose. Funds transferred to Olden Corp were not used for real estate acquisitions but were instead diverted in furtherance of Sprei's scheme. Plaintiffs allege that Friedman knowingly participated in and benefitted from Sprei's misconduct by allowing her

name to be used in transactions and accounts to shield Sprei from scrutiny and to conceal the true disposition of plaintiffs' funds. Friedman received and/or controlled funds derived from plaintiffs' investments despite having no legitimate entitlement to them.

According to plaintiffs' complaint, on or around September 16, 2018, Weinstein suffered a cardiac emergency and was admitted to Maimonides Medical Center. On or around September 17-23, 2018, Sprei and defendant Jeffrey Levitin ("Levitin") allegedly fraudulently induced plaintiffs to enter into a promissory note with defendant Bordeaux Capital LLC ("Promissory Note") which encumbered Weinstein's previously unencumbered property at 604 Pacific Street in Brooklyn. During his hospital stay, plaintiffs contend Weinstein was under heavy sedation, infirm and not possessed of the capacity to enter into an arm's length transaction. Due to defendants' aforementioned conduct, among others, plaintiffs purportedly suffered financial losses exceeding \$4,500,000, which Defendants failed to reimburse despite plaintiffs' repeated demands.

On August 22, 2019, plaintiffs commenced this action asserting the following claims against Defendants: (1) replevin against Sprei; (2) conversion against Sprei; (3) fraud against Defendants; and (4) unjust enrichment against Defendants. Although a default judgment against Defendants was initially obtained due to their failure to answer or appear, the default judgment was subsequently vacated by the court's decision dated January 8, 2026 pursuant to motion practice.

On February 11, 2026, Defendants filed the instant motion arguing the complaint should be dismissed against them because (1) the complaint suffers from group pleading and fails to specifically allege the underlying fraud against Sprei and Friedman; (2) the complaint fails to allege that Friedman received any of plaintiffs' monies or that her name was actually used in transactions related to the "Virgina Property, New Jersey Property, and/or New York Property,"

thereby failing to state an unjust enrichment claim; (3) the complaint fails to allege a fraud claim against Sprei because it is not alleged that Sprei ever personally stated or represented that he was a reputable real estate investor, and the allegations fail to set forth any dates or details of his misrepresentations; and (4) the complaint fails to allege an unjust enrichment claim against Sprei because, having asserted multiple torts against him, it is used as a “catchall” cause of action. Defendants also argue that Olden Corp is not an entity that exists and that plaintiff’s January 13, 2026 service of process on nonparty Olden Group, LLC (“Olden Group”) is improper because Olden Group is not named anywhere in the caption or in the body of the complaint and it was never added by amendment. Defendants further argue that plaintiffs should not be allowed to amend their pleadings to name Olden Group because it was only served after the expiration of the statute of limitations.

In addition to the jurisdictional defect regarding Olden Group, defendants contend the complaint’s allegations are insufficient against any “Olden entity” because it alleges no wrongdoing by it and the sole reference to Olden, in paragraph 24, merely alleges that Levitin acted as counsel for Sprei, Friedman, and “Olden Equities Corp.” in connection with certain real estate transactions. Thus, whether viewed as a fundamental jurisdictional failure or on the merits, Defendants argue that the complaint should be dismissed in its entirety as against “Olden Equities Corp.” and any other purported Olden entity.

By cross-motion, plaintiff seeks leave to amend the pleadings to name Olden Group as the corporate defendant instead of Olden Corp. Plaintiffs state that naming Olden Corp as a defendant was not arbitrary since, throughout the parties’ dealings, Sprei conducted business using the email address oldenequitiesgroup@gmail.com. Based upon the representations made and the documentation and communications received, plaintiffs assert that it named the Olden entity

consistent with the manner in which Sprei held it out to the world. Plaintiffs further argue that naming Olden Corp instead of Olden Group is simply a misnomer, and that such mistake may be remedied by amending the caption so long as the parties are fairly apprised of the misnomer and are not prejudiced. Plaintiffs assert there is no articulable prejudice to Defendants, and, as such, that the amendment should be permitted. Even if the court determines that a formal substitution is required, plaintiffs contend the amendment would relate back pursuant to CPLR 203 as the Olden Group is united in interest with Sprei, Olden Group had actual notice of the action given Sprei's control over it, and no prejudice can be shown.

Regarding the sufficiency of their pleadings, plaintiffs argue that they have adequately plead all essential elements of fraud and unjust enrichment against Defendants by alleging specific facts showing that Sprei knowingly misrepresented material information, induced plaintiffs to transfer millions of dollars, and orchestrated the fraudulent procurement of the Promissory Note while Weinstein was incapacitated. Additionally, that plaintiffs have also alleged that Defendants were unjustly enriched at their expense by retaining millions of dollars without providing any legitimate benefit in return. Regarding the Olden entity, plaintiffs argue that the pleadings detail Sprei's control over the Olden entity and the entity's integral role in effectuating the scheme.

In their reply memorandum of law, Defendants re-emphasize that plaintiffs' allegations are vague, speculative and conclusory. In addition, Defendants argue the proposed amendment is futile since plaintiffs do not offer any new factual allegations that would cure the complaint's deficiencies, the proposed amendment is highly prejudicial since the action was commenced nearly eight years ago, and most critically, plaintiffs' proposed amendment is an improper attempt to add or substitute a new party after the expiration of the statute of limitations. According to Defendants, plaintiffs' mistake is not a mere misnomer but, rather, plaintiffs seek to replace one corporate entity

with an entirely different entity. Moreover, it is Defendants' position that plaintiffs cannot satisfy the requirements of the relation-back doctrine since there are no allegations that the proposed new entity is united in interest with the originally named defendant, nor that it had notice of this action within the statutory period.

Discussion

"In the context of a motion to dismiss the complaint pursuant to CPLR 3211 (a), the court must 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'" (*Brooklyn Tabernacle v Thor 180 Livingston, LLC*, 242 AD3d 813, 814 [2d Dept 2025] [citing *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]]). "A motion pursuant to CPLR 3211 (a) (7) will be granted if the plaintiffs do not have a cause of action..." (*id.* [citation omitted]). The pleading requirements of CPLR 3016 (b) are met when the facts plead are sufficient to permit a reasonable inference of the alleged conduct (*Star Auto Sales of Queens, LLC v Filardo*, 203 AD3d 865, 868 [citations omitted]).

Upon review of the complaint and the parties' submissions, the court finds plaintiffs' claims are sufficiently plead against Defendants. Although some causes of action overlap, plaintiffs may plead in the alternative. As such, Defendants' motion to dismiss is denied.

Turning to plaintiffs' cross-motion to amend, "CPLR 305(c) authorizes the court, in its discretion, to allow any summons or proof of service of a summons to be amended, if a substantial right of a party against whom the summons issued is not prejudiced" (*Brewster v North Shore/LIJ Huntington Hosp.*, 221 AD3d 648, 649 [2d Dept 2023] [internal quotation marks and external citations omitted]). "Where the motion is to cure a misnomer in the description of a party defendant, it should be granted even after the statute of limitations has run where (1) there is

evidence that the correct defendant (misnamed in the original process) has in fact been properly served, and (2) the correct defendant would not be prejudiced by granting the amendment sought” (*id.* [citations omitted]). “While CPLR 305(c) may be used to cure a misnomer in the description of a party defendant, it cannot be used after the expiration of the statute of limitations as a device to add or substitute an entirely new defendant who was not properly served” (*id.* at 649-650 [citation omitted]).

Here, plaintiffs’ motion to amend seeks to cure a misnomer. Notably, although Defendants assert that Olden Corp and Olden Group are two entirely different entities, Defendants fail to dispute that Olden Group was properly served although it was misnamed as Olden Corp. Moreover, there is no indication that Olden Corp exists as a separate entity. In addition, although Defendants emphasize that this matter has been pending for nearly eight years as evidence of prejudice in the event of amendment, Defendants only recently appeared in this action and fail to show any actual prejudice. Thus, plaintiff’s cross-motion is granted and Olden Group is deemed served *nunc pro tunc*.

Conclusion

Based on the foregoing, Defendants’ motion to dismiss is denied. Plaintiffs’ cross-motion seeking to amend their pleadings to correctly identify the corporate defendant is granted. The caption is hereby amended to reflect:

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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HENRY WEINSTEIN and HPHW REALTY CORP.,

Plaintiff,


-against-

JEFFREY LEVITIN, LEVITIN & ASSOCIATES, P.C.,
BORDEAUX CAPITAL, LLC, OLDEN GROUP, LLC,
YECHIEL SHIMON SPREI a/k/a SAM SPREI and
ROCHELLE FRIEDMAN,

Defendants.
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Any argument not explicitly addressed herein was either deemed to be without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

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