

Enterprise v Shvo

2026 NY Slip Op 32033(U)

May 11, 2026

Supreme Court, New York County

Docket Number: Index No. 653221/2024

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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JENNIE ENTERPRISE, DANGENE ENTERPRISE, CORE
GLOBAL HOLDINGS LLC, CORE GLOBAL VENTURES
LLC, CORE 5TH AVENUE LLC, and CORE SF LLC,

Plaintiffs,

- v -

MICHAEL SHVO, SHVO CONCEPTS, LLC, SHVO
HOLDINGS INC., SHVO CAPITAL LLC, SHVO
DEVELOPMENT LLC, SHVO REALTY INVESTORS
LLC, SHVO, INC., SHVO ENTERPRISES LLC, SHVO
PROPERTY MANAGEMENT LLC, SHVO CARRY 711
LLC, SEREN MANAGING MEMBER 711 LLC, BH EJ
CORE LLC, 711 FIFTH AVE PRINCIPAL OWNER LLC,
BHSD TPC PROPCO LLC, DEUTSCHE FINANCE
AMERICA LLC, DEUTSCHE FINANCE GROUP,
UNIVERSAL INVESTMENT GESELLSCHAFT MBH,
UNIVERSAL INVESTMENT GROUP, and BAYERISCHE
VERSORGUNGSKAMMER,

Defendants.

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INDEX NO. 653221/2024
MOTION DATE _____
MOTION SEQ. NO. 011

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 226, 227, 228, 229, 230, 231, 232, 233, 235, 237, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 258, 261, 262, 263, 264, 265, 266, 269, 270

were read on this motion to/for LEAVE TO FILE.

In motion sequence 011, plaintiffs Jennie Enterprise, Dangene Enterprise, CORE Global Holdings LLC, CORE Global Ventures LLC, CORE: 5th Avenue LLC, and CORE: SF LLC move pursuant to CPLR 3025 for leave to file the verified second amended complaint (SAC). (NYSCEF Doc. No. [NYSCEF] 226, Notice of Motion.) Defendants oppose the motion on the grounds that (i) the causes of action alleged in the SAC are palpably insufficient, and (ii) permitting plaintiffs to amend the complaint at this stage of the litigation would prejudice defendants.

This action is between landlord and tenant wherein plaintiff, the tenant, initiated this action on June 26, 2024 with eighteen causes of action. In a related action, the court issued a Yellowstone injunction.¹ (Index No. 654976/2025, NYSCEF 71, September 22, 2025 Decision on motion 001.) Following a motion to dismiss in this action, the remaining claims are: (i) the third cause of action, in part, against defendant Shvo to the extent it alleges unjust enrichment for unpaid goods and services received at the NYC CORE: club and (ii) the seventh cause of action for declaratory judgment against all defendants, except as to the claim that the Note is usurious, and (iii) the seventeenth cause of action for breach of the TSA as to defendant 711 Fifth Avenue Principal Owner LLC. (NYSCEF 268, March 21, 2026 Decision on landlord's motion 001 to dismiss.) The action was dismissed against defendant Deutsche Finance America LLC. (NYSCEF 173, March 27, 2025 Decision on motion 005.) The action was also dismissed against defendants 711 Fifth Ave Principal Owner LLC and BHSD TPC Propco LLC. (NYSCEF 161, March 2, 2026 Decision on motion 007

¹ "ORDERED that Tenant's motion for a Yellowstone injunction is granted and Landlord and any and all of their officers, directors, managers, employees, members, representatives, affiliates, parents, subsidiaries, successors, assigns, agents, executors, administrators, those acting in concert with and on their behalf and all other persons acting under the jurisdiction, supervision and/or direction of defendant, are enjoined and restrained, during the pendency of this action, from (1) taking any action to cancel, terminate, modify, or otherwise alter the Lease, dated July 28, 2021, between CORE Tenant and Landlord, for the premises at 711 Fifth Avenue, New York, New York; (2) commencing any action or proceeding in furtherance of evicting CORE Tenant from the Premises, or otherwise disturbing in any manner the possession and rights of CORE Tenant in and to the Premises based upon the Notice of Termination of Lease served by Landlord, dated August 12, 2025; and (3) tolling the five (5) day termination period set forth in the Lease and the Notice." (Index No. 654976/2025, NYSCEF 71, September 22, 2025 Decision on motion 001.)

Legal Standard

CPLR 3025(b) allows a party to amend their pleading “at any time by leave of court . . . [and] [l]eave shall be freely given upon such terms as may be just.” (CPLR 3025 [b].) However,

“leave to amend a complaint should be denied if the proposed complaint could not survive a motion to dismiss. A proposed amended complaint that would be subject to dismissal *as a matter of law* is, by definition, ‘palpably insufficient or clearly devoid of merit’ and thus should not be permitted under CPLR 3025. Any other conclusion would lead to the waste of public and private resources - namely, amending the complaint only to have it be dismissed after a separate round of briefing, argument, and decision.” (*Olam Corp. v Thayer*, 2021 NY Slip Op 30345[U], *3-4 [Sup Ct, NY County 2021].)

Discussion

In the SAC, plaintiffs allege five causes of action for (i) RICO violations against all defendants, (ii) conspiracy to violate RICO against all defendants, (iii) fraudulent inducement against the Shvo Defendants², (iv) aiding and abetting fraudulent inducement against the DF Entities³, DF Principals⁴, and BVK⁵, and (v) breach of contract against the Shvo Defendants, DF Entities, and BVK. (See NYSCEF 230, SAC.)

RICO Violations § 1962(c) (First Cause of Action)

“The Racketeer Influenced and Corrupt Organizations Act (RICO or Act), 18 U.S.C. §§ 1961-1968, provides a private right of action for treble damages to ‘[a]ny

² Shvo Defendants is defined as Michael Shvo, Shvo Concepts, LLC, and BH EJ CORE LLC. (NYSCEF 230, SAC at 1-2.)

³ DF Entities is defined as Deutsche Finance America LLC and DF Deutsche Finance Holding AG d/b/a Deutsche Finance Group. (*Id.* at 2.)

⁴ DF Principals is defined as Rainer Komenda, Sven Neubauer, and Jason Lucas. (*Id.*)

⁵ BVK is defined as Bayerische Versorgungskammer. (*Id.*)

person injured in his business or property by reason of a violation' of the Act's criminal prohibitions." (*Bridge v Phoenix Bond & Indem. Co.*, 553 US 639, 641 [2008] [citation omitted].) "Section 1962 contains RICO's criminal prohibitions." (*Id.* at 647.) One such prohibition is that

"[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." (18 USC § 1962 [c].)

Thus, "[t]o establish a civil RICO claim for violation of Section 1962(c), a plaintiff must show that he was injured by defendants' (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." (*Azzielli v Cohen Law Offs.*, 21 F3d 512, 520 [2d Cir 1994] [internal quotation marks and citation omitted].) "RICO claims must be pleaded with particularity." (*Robbins MBW Corp. v Ashkenazy*, 228 AD2d 357, 359 [1st Dept 1996].) Moreover, courts must "ensure that RICO's severe penalties are limited to enterprises consisting of more than simple conspiracies to perpetrate the acts of racketeering. Thus, courts must always be on the lookout for the putative RICO case that is really nothing more than an ordinary fraud case clothed in the Emperor's trendy garb." (*Schmidt v Fleet Bank*, 16 F Supp 2d 340, 346 [SD NY 1998] [internal quotation marks and citations omitted].) This appears to be such a case.

The SAC is replete with allegations of how defendants misrepresented investment opportunities, the status of real estate purchases, and financials to partners and prospective investors. (See NYSCEF 230, SAC ¶¶ 93, 101, 114, 117, 148-150, 180, 184.) However, these allegations of fraudulent conduct do not give rise to a viable RICO claim. First, plaintiffs fail to plead a RICO enterprise.

“[T]o state a claim under RICO, a [p]laintiff must allege and prove the existence of an enterprise which is separate and distinct from the alleged pattern of racketeering activity.” (*Goldfine v Sichenzia*, 118 F Supp 2d 392, 400 [SD NY 2000] [internal questions marks and citation omitted].)

“When, as here, the alleged enterprise is a "group of individuals associated in fact although not a legal entity" . . . , the RICO claim requires proof that the conspirators formed and organized a separate entity (whether formal or informal) on whose behalf they acted; it is not enough if they merely acted together to commit the wrong.” (*Wild Edibles, Inc. v Indus. Workers of the World Local 460/640*, 2008 US Dist LEXIS 79619, *3-4 [SD NY, Oct. 8, 2008, No. 07 Civ 9225 (LLS)].)

Plaintiffs allege that defendants formed “a legitimate joint venture known as BSD Partnership” in 2018 to “acquire, develop, and manage high-value commercial and residential real-estate projects in the U.S.” (NYSCEF 230, SAC ¶¶ 47, 55.) By 2019, the venture’s operations took on an illegal purpose, as the defendants, “led by Shvo, hijacked the BSD Partnership enterprise to enrich themselves rather than pursue its legitimate real estate business.” (*Id.* ¶¶ 48, 64.) Precisely because plaintiffs allege in the SAC that defendants acted to enrich *themselves*, rather than benefit the BSD Partnership⁶ the SAC fails to allege an association-in-fact enterprise. (*See Foster v 2001 Real Estate*, 2015 US Dist LEXIS 159489, *11-12 [SD NY, Nov. 24, 2015, No. 14 Civ 9434 (RWS)] [dismissed RICO claim where the complaint failed to allege “that the conspirators formed and organized a separate entity . . . on whose behalf they acted”];

⁶ See e.g. NYSCEF 230, SAC ¶¶ 65 [“Shvo the DF Entities, and BVK were concerned that any independent review would uncover the diversion of funds earmarked for BSD Partnership projects to personal or non-project uses”], 110 [“Shvo and his affiliates also stood to gain personally, via the \$27 million promote paid by BVK, upon CORE’s execution of the New York Lease”], 228 [“Shvo . . . routinely permitted friends, family, business associates, and other invitees . . . to access 685 Fifth Avenue’s residential common elements and apartments”].

D. Penguin Bros. v Cirt Natl. Bank, 587 Fed Appx 663, 668 [2d Cir 2014] [“RICO is not violated every time two or more individuals commit one of the predicate crimes listed in the statute”].) Absent allegations of a RICO enterprise, the RICO claim fails as a matter of law.

Moreover, plaintiffs fail to plead loss causation. “RICO provides a civil remedy only to those persons injured ‘by reason of’ the defendant’s predicate acts.” (*First Nationwide Bank v Gelt Funding Corp.*, 27 F3d 763, 769 [2d Cir 1994].)

“In the context of predicate acts grounded in fraud, the proximate cause requirement means that the plaintiff must prove both transaction and loss causation. Thus, in addition to showing that but for the defendant’s misrepresentations the transaction would not have come about, the defendant must also show that the misstatements were the reason the transaction turned out to be a losing one. . . . [W]hen factors other than the defendant’s fraud are an intervening direct cause of a plaintiff’s injury, that same injury cannot be said to have occurred by reason of the defendant’s actions.” (*Id.* [citations omitted].)

Plaintiff fails to plead loss causation in the SAC. Though plaintiffs allege that they were fraudulently induced to execute four long-term agreements (see NYSCEF 230, SAC ¶¶ 93-94, 105), plaintiffs do not allege that those misstatements “were the reason the transaction turned out to be a losing one.” Instead, plaintiffs allege that they were injured by defendants’ defective and incomplete work at 711 Fifth Avenue (*id.* ¶¶ 121-22, 131-32), abandonment of the San Francisco and Milan projects (*id.* ¶¶ 139, 141, 147), and diversion of corporate funds and use of the CORE: club for their personal benefit (*id.* ¶¶ 152, 154, 160). Moreover, plaintiff allege that defendants’ conduct “fell far below the standards contractually agreed upon” and similarly, “did not meet [] contractual obligation[s]”. (*Id.* ¶¶ 121, 154.) Accordingly, plaintiffs’ RICO claim is more appropriately categorized as a claim for fraudulent inducement and/or breach of

contract.⁷ (See *Coldfine v Sichenzia*, 118 F Supp 2d 392, 399-400 [SD NY, 2000] [“RICO was not enacted for the purpose of providing a Federal forum and treble damages for nearly every conceivable contract action under State law”]; *Natl. Union Fire Ins. Co. v Archway Ins. Servs. LLC*, 2012 US Dist LEXIS 48735, *9 [SD NY, Mar. 23, 2012, No. 11 Civ 1134 (WHP)] [“[m]ere common-law fraud does not constitute racketeering activity for RICO purposes.” (citation omitted)].)

Accordingly, plaintiffs’ motion to amend to add RICO claim is denied.

Conspiracy to Violate RICO - § 1962(d) (Second Cause of Action)

“The core of a RICO civil conspiracy is an agreement to commit predicate acts. The complaint, therefore, must specifically allege such an agreement. The [p]laintiffs must show that the [d]efendants “understood the scope of the enterprise and knowingly agreed to further its affairs through the commission of various offenses.” (*Morin v Trupin*, 835 F Supp 126, 136 [SD NY 1993] [internal citations omitted].) Here, plaintiffs allege that the defendants “agreed to conduct or participate, directly or indirectly, in the conduct, management, or operation of the enterprises’ affairs through a pattern of racketeering activity.” (NYSCEF 230, SAC ¶ 277.) This allegation is conclusory and insufficient to establish that the defendants consciously entered into an agreement to violate RICO. (See *Abbott v Herzfeld & Rubin, P.C.*, 202 AD2d 351, 351 [1st Dept 1994] [found that plaintiff’s RICO conspiracy claim failed where the

⁷ The same is true of plaintiffs’ allegations arising out of John Flam Goodman and Diane Johnson Goodman’s (the Goodmans’) purchase of a residence at 685 Fifth Avenue. (See NYSCEF 230, SAC ¶¶ 178-247.) This is demonstrated by the Goodmans’ allegations in related actions against defendants wherein the Goodmans allege breach of contract and fraud for the same conduct complained of herein. (See related actions captioned at *Goodman v BSD 685 NY Propco LLC*, Index No. 151991/2024; *Goodman v Shvo*, Index No. 156843/2024.)

complaint “lacks specific allegations of a conscious agreement among the professional defendants . . . to commit mail fraud” (citation omitted); *see also House of Spices (India), Inc. v SMJ Servs., Inc.*, 103 AD3d 848, 851 [2d Dept 2013] [“[b]ecause the core of a RICO civil conspiracy is an agreement to commit predicate acts, a RICO civil conspiracy complaint, at the very least, must allege specifically such an agreement” (citation omitted)].)

Regardless, where the complaint fails to make out a substantive RICO claim, the conspiracy claim must also be dismissed. (*Natl. Union Fire Ins. Co.*, 2012 US Dist LEXIS 48735 at *16 [SD NY, Mar. 23, 2012, No. 11 Civ 1134 (WHP)].) Accordingly, plaintiffs’ motion to amend to add a cause of action for conspiracy to violate RICO is denied.

Fraudulent Inducement (Third Cause of Action)

In the SAC, plaintiffs allege that the Shvo Defendants fraudulently induced plaintiffs to enter into long-term contracts by

“(a) representing that they would contribute approximately \$100 million in capital from their partners, the DF Entities and BVK, to deliver ‘turnkey’ clubs in New York, San Francisco, and Milan; (b) promising that the Milan project would be personally delivered by Shvo as a turnkey, fully-funded expansion; (c) assuring CORE that the \$22-million budget for the New York Club would be sufficient to produce a six-star luxury product; and (d) representing through due diligence materials that the Shvo Defendants had the expertise, resources, and foresight to transform CORE into a global luxury brand.” (NYSCEF 230, SAC ¶ 282.)

“[I]n order to state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury.” (*Wyle Inc. v ITT Corp.*, 130 AD3d 438, 438-39 [1st Dept 2015] [internal quotation marks and citation committed].)

Plaintiffs’ fraud claim fails as a matter of law because the alleged misrepresentations

are not actionable statements of fraud. Alleged misrepresentations (a) and (b) are “nonactionable future promise[s].” (*Laduzinski v Alvarez & Marsal Taxand LLC*, 132 AD3d 164, 166 [1st Dept 2015]; see also *Wyle Inc.*, 130 Add at 439 [1st Dept 2015] [“the pleadings must allege misrepresentations of present fact, not merely misrepresentations of future intent to perform under the contract”].)

Similarly, alleged misrepresentations (c) and (d) are “nonactionable opinion[s] that provide no basis for a fraud claim.” (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 179 [2011]; see also *CC Pay Operations Ltd. v Alokush*, 2019 NY Slip Op 30048[U], *3 [Sup Ct, NY County 2019] [“statements of opinion as to a party’s qualifications cannot form the basis for a fraudulent inducement claim” (citations omitted); *Yablon v Stern*, 161 AD3d 594, 595 [1st Dept 2018] [affirmed dismissal of fraudulent inducement claim finding that “opinion of defendant as to his entity’s resources and capability of undertaking the luxury renovation work” was “non-actionable”]; *Violet Realty, Inc. v Gerster Sales & Serv., Inc.*, 128 AD3d 1348, 1349 [4th Dept 2015] [“opinion or predications of something which is hoped or expected will occur” cannot sustain a fraud claim].) Accordingly, plaintiffs motion to amend to add a cause of action for fraudulent inducement is denied.

Aiding and Abetting Fraudulent Inducement (Fourth Cause of Action)

“A plaintiff alleging an aiding-and-abetting fraud claim must allege the existence of the underlying fraud, actual knowledge, and substantial assistance.” (*Oster v Kirschner*, 77 AD3d 51, 55 [1st Dept 2010].) Because the court finds that plaintiffs’ claim for fraudulent inducement fails as a matter of law, their claim for aiding and abetting also fails. (*Board of Mgrs. of 325 Fifth Ave. Condominium v Continental*

Residential Holdings LLC, 149 AD3d 472, 474 [1st Dept 2017].) Accordingly, plaintiffs' motion to add a cause of action for aiding and abetting fraudulent inducement is denied.

Breach of Contract (Fifth Cause of Action)

"To state a claim for breach of contract, a plaintiff must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages." (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013] [citation omitted].) Plaintiffs' contract claim fails to allege that the December 16, 2024 Memorandum of Understanding (MOU) is a binding contract.

"In determining whether a contract exists, the inquiry centers upon the parties' intent to be bound, i.e., whether there was a 'meeting of the minds' regarding the material terms of the transaction. Generally, where the parties anticipate that a signed writing is required, there is no contract until one is delivered." (*Amcan Holdings, Inc. v Canadian Imperial Bank of Commerce*, 70 AD3d 423, 426 [1st Dept 2010] [internal quotation marks and citations omitted].)

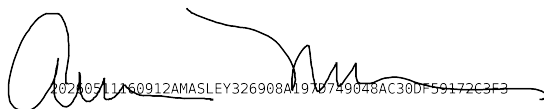
The MOU explicitly states that "this MOU is intended solely for discussion purposes and does not create any obligation to enter into a definitive agreement or otherwise." (NYSCEF 249, MOU at 1.) Thus, the parties' intent *not* to be bound by the MOU's terms is evident on its face. Absent a binding agreement, plaintiffs' breach of contract claim fails as a matter of law. (*Stonehill Capital Mgt., LLC v Bank of the West*, 28 NY3d 439, 448 [2016] ["[t]o establish a prima facie breach of contract, [plaintiffs] must show that [defendants] breached a binding agreement between the parties"].) Accordingly, plaintiffs' motion to amend to add a cause of action for breach of contract is denied.

The operative complaint is the Amended Complaint (NYSCEF 2) and the remaining claims therein are: (i) the third cause of action against defendant Michael

Shvo to the extent it alleges unjust enrichment for unpaid goods and services received at the NYC CORE: club and (ii) the seventh cause of action for declaratory judgment against the remaining defendants,⁸ except as to the claim that the promissory note is usurious. (NYSCEF 268, Decision and Order [mot. seq. no. 001].)

Accordingly, it is

ORDERED that motion sequence 011 to amend is denied.



5/11/2026

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

⁸ The remaining defendants in this action are Michael Shvo, Shvo Concepts, LLC, Shvo Holdings Inc., Shvo Capital LLC, Shvo Development LLC, Shvo Realty Investors LLC, Shvo, Inc., Shvo Enterprises LLC, Shvo Property Management LLC, Shvo Carry 711 LLC, Seren Managing Member 711 LLC, BH EJ CORE LLC, Universal Investment Gesellschaft mbH, Universal Investment Group d/b/a Universal Investment, and Bayerische Versorgungskammer. The amended complaint was previously dismissed in its entirety as against defendants 711 Fifth Avenue Principal Owner LLC, BHSD TPC Propco LLC, and Deutsche Finance America LLC. (NYSCEF 161, Decision and Order [mot. seq. no. 007]; NYSCEF 173, Decision and Order [mot. seq. no. 005].) Similarly, the action was discontinued without prejudice against defendants Deutsche Finance Group and DF Deutsche Finance Holding Group. (NYSCEF 192, Stipulation of Discontinuance.)