Sacks v Knolls at Pinewood, LLC
2016 NY Slip Op 32849(U)
July 22, 2016
Supreme Court, Westchester County
Docket Number: 58955/2014
Judge: Charles D. Wood
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To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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LOIS SACKS,

Plaintiff,

- against -

THE KNOLLS AT PINEWOOD, LLC,, PINEWOOD DEVELOPMENT CORP., URI HASON, EDMOND GEMMOLA, and GEMMOLA & ASSOCIATES,

Defendants,

CRONIN ENGINEERING PROFESSIONAL ENGINEERING, P.C., JOHN DOE 1, JOHN DOE 2 and JOHN DOE 3,

Supplemental Defendants

JASON FARINA in his capacity as President of the unincorporated association known as THE BOARD OF MANAGERS OF THE HOME OWNERS ASSOCIATION OF THE PRESERVE AT GREENBURGH CONDOMINIUM,

Additional Supplemental Defendants,

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DECISION AND ORDER

Index No. 58955/2014
Sequence No. 5

THE KNOLLS AT PINEWEED, LLC, PINEWOOD DEVELOPMENT CORP., and URI HASON,

Third Party Plaintiffs

-against-

EURO STYLE ENTERPRISES, INC., EURO STYLE CONCRETE CORPORATION, TESTWELL, INC., TESTWELL LABORATORIES, INC., TESTWELL CRAIG LABORATORIES, INC., TESTWELL EQUITY HOLDINGS, INC., TESTWELL CRAIG, INC., TESTWELL-CRAIG, INC., ROCKAWAY INDUSTRIES, INC., NELSTAD MATERIAL CORPORATION and NELSTAD READY MIX CONCRETE CORPORATION,

Third-Party Defendants.

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THE KNOLLS AT PINEWOOD, LLC, PINEWOOD DEVELOPMENT CORP., and URI HASON,

Second Third-Party Plaintiffs

-against-

CRONIN ENGINEERING PROFESSIONAL ENGINEER, P.C.,

Second Third-Party Defendant

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WOOD, J.

The following papers were read in connection with the moving defendants The Knolls at Pinewood, LLC, ("the Knolls") Pinewood Development Corp.("Pinewood") Uri Hason ("Hason") (collectively, "Hason defendants") to dismiss certain cross-claims relating to the Answer and Cross-

Claims served by Additional Supplemental Defendants Jason Farina ("Farina") in his capacity as President of the unincorporated association known as The Board of Managers of the Home Owners Association of the Preserve at Greenburgh Condominium ("the Board"):

> Hason Defendants' Notice of Motion, , Counsel's Affirmation, Exhibits, Memorandum of Law.
> The Board's Counsel's Affirmation in Opposition, Exhibits, Memorandum Of Law, Farina Affidavit.
> Hason Defendants' Counsel's Reply Affirmation.

By way of background, plaintiff purchased Unit 17 in a condominium development in Greenburgh known as "The Preserve at Greenburgh Condominium" ("the Condominium") from Knolls, which is the developer and sponsor for the Condominium, for $725,000 pursuant to a Purchase Agreement dated October 30, 2009 ("the Purchase Agreement"). Shortly after plaintiff purchased Unit 17, she started noticing cracks, sloping floors, problems with windows, and other issues. According to plaintiff, each of the Knolls, Pinewood (the general contractor) and Hason (the person overseeing the construction operations at the Preserve) were responsible for making sure that such defects did not occur. Some of the conditions have been repaired, some of the repaired areas have re-cracked and other conditions have been getting worse. Starting in the spring of 2012, Hason's brother, Eli Hason, attempted to fix the cracks in the Condo from a cosmetic prospective, but they reappeared a year later. Eli Hason again repaired the cracks in the Spring of 2013, but by the fall of 2013, the cracks reappeared. Plaintiff asserts that material defects in the foundation has made Unit 17 unsafe. In August 2013, she hired a local engineer, John Annuziata to investigate the problem. He reported that he suspected the exterior walls settled unevenly causing the off level window sills, sloped floors, etc., but assured plaintiff that the building is stable. Plaintiff has a six year warranty for the Condo which states "six years from and after the warranty date the home will be free from

material defects. Plaintiff alleges that the Knolls has not honored said warranty, and to date, the Knolls have not fixed Unit 17. Plaintiff believes that the Knolls likely knew the foundation did not have suitable soil.

Plaintiff commenced this action against Hason defendants and others on June 4, 2014. Then plaintiff filed a supplemental summons and amended complaint on July 29, 2014 ("Amended Complaint"). Defendants have interposed answers. Hason Defendants claim that as a result of an impasse wherein the Board allegedly failed to approve proposed repair plans, plaintiff joined the Board as a defendant in this action claiming they had failed in their duties under the Offering Plan to repair the common elements. In pertinent part to the instant motion, the Board filed an Answer with cross-claims as against the Hason Defendants. Hason Defendants now make a motion to dismiss the Board's cross-claims and affirmative defenses. As pleaded by the Board's answer and cross-claims, the Hason Defendants owned, developed, constructed and sponsored the Condominium and sold units to Condominium homeowners. Hason Defendants caused poor and improper fill to be moved to the areas on which the Building 5 foundation was to be constructed notwithstanding the close proximity to a steep slope. The foundation under Unit 17 and consequently Building 5 is sinking and this constitutes a defective common element, with Unit 17 already sustaining significant damage. In addition, Hason Defendants allegedly caused a boulder wall to be constructed on the Condominium property, which in part is located along the property slope adjacent to Building 5 ("the Boulder Wall"). The Board claims that the Boulder Wall is deteriorating and fails to adequately support the soil at the steep slope, and it violates the Building Code of the Town of Greenburgh, which incorporates by reference the NYS Building Code.

NOW, based upon the foregoing, the motions are decided as follows:

As an initial threshold matter, despite Hason Defendants contention that the Board lacks standing, the evidence shows that as the board of managers of the condominium has standing to commence this action on behalf of the individual condominium unit owners pursuant to the explicit statutory authority of Real Property Law § 339-dd, which empowers the board of managers of a condominium to maintain an action on behalf of the condominium owners with respect to any cause of action relating to the common elements of more than one unit. Moreover, the Board, via Jason Farina, as the Condominium's president has capacity to bring claims on behalf of and in the name of the Board (Pascual v Rustic Woods Homeowners Ass'n, Inc., 134 AD3d 1006, 1007 [2d Dept 2015]). There is no evidence that the Board lacks authority to bring cross-claims. Accordingly, these branches of the Hason Defendants' motion are denied.

Under CPLR 3211 (a)(1), dismissal is warranted only if the documentary evidence "conclusively establishes a defense to the asserted claims as a matter of law" (Leon v. Martinez, 84 NY2d 83, 88 [1994]; 730 J&J LLC v. Fillmore Agency, Inc., 303 AD2d 486 [2d Dept 2003]; Cives Corp. v. George A. Fuller Co., Inc., 97 AD3d 713 [2d Dept 2012]). The documentary evidence offered must be unambiguous, of undisputed authenticity, and essentially unassailable (Rabos v. R&R Bagels & Bakery, Inc., 100 AD3d 849 [2d Dept 2012]). "Judicial records, as well as documents reflecting out-of-court transactions such as mortgage, deeds, contracts, and any other papers, the contents of which are essentially undeniable, would qualify as documentary evidence in the proper case" Cives Corp. V. George A. Fuller Co., Inc., 97 AD3d 713).

Based upon the record and submissions, the Hason Defendants' motion to dismiss the Board's cross-claims relating to the construction of a boulder wall as against the Hason Defendants is denied. The Offering Plan can be considered documentary evidence, but it does not necessarily constitute

conclusive evidence (Bd. of Managers of 14 Hope St. Condo. v Hope St. Partners, LLC, 40 Misc. 3d 1215(A), 975 N.Y.S.2d 708 [Sup. Ct. Kings 2013]), and the documentary evidence does not utterly refute the plaintiff's factual allegations, nor conclusively establish a defense as a matter of law (Bd. of Managers of Marke Gardens Condo. v 240/242 Franklin Ave., LLC, 71 AD3d 935, 936 [2d Dept 2010]).

Turning to Hason Defendants' motion to dismiss pursuant to CPLR 3211 (a)(7), "the sole criterion is whether the subject pleading states a cause of action, and if, from the four corners of the complaint, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, then the motion will fail. The court must afford the pleading a liberal construction, accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory"[1] (Esposito v Noto, 90 AD3d 825 [2d Dept 2011]; (Sokol v Leader, 74 A.D.3d 1180 [2d Dept 2010]); (Bua v Purcell & Ingrao, P.C., 99 AD3d 843, 845 [2d Dept 2012] lv to appeal denied, 20 NY3d 857 [2013]). This does not apply to legal conclusions or factual claims that are inherently incredible or flatly contradicted by documentary evidence (West Branch Conservation Assn. v County of Rockland, 227 AD2d 547 [2d Dept 1996]). If the court considers evidence submitted by a defendant in support of a motion to dismiss under CPLR 3211 (a)(7), it may "freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint," and if the court does, "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]; Uzzle v. Nunzie Ct. Homeowners Ass'n, Inc., 70 AD3d 928, 930 [2d Dept 2010]); Greene v. Doral Conference Ctr. Assoc., 18 AD3d 429, 430 [2d Dept 2005]). Affidavits and

[1]Internal citations omitted.

other evidentiary material may be considered to "establish conclusively that plaintiff has no cause of action" (Simmons v. Edelstein, 32 AD3d 464, 465 [2d Dept 2006]), or where a meritorious claim lies within inartful pleadings (Lucia v. Goldman, 68 AD3d 1064, 1065 [2d Dept 2009]).

More succinctly, under CPLR 3211(a) (7), the standard is whether the pleading states a cause of action, but if the court considers evidentiary material, it becomes "whether the proponent of the pleading has a cause of action" (Sokol v. Leader, 74 AD3d 1180; Marist College v. Chazen Envtl. Serv. 84 AD3d 11181 [2d Dept 2011]). Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus (Dee v. Rakower, 112 AD3d 204 [2d Dept 2013]).

Defendant Hason

Generally, a plaintiff may seek damages for a breach of contract against the individual principals of the sponsor, based upon certification of the offering plan and the incorporation of the terms of the offering plan in a specific provision of the purchase agreement. The Martin Act is a disclosure statute designed to protect the public from fraud in the sale of real estate securities and the Attorney General enforces its provisions and implementing regulations" (Berenger v. 261 W. LLC, 93 AD3d 175, 184 [2d Dept 2012]). "[A] private litigant may not pursue a common-law cause of action where the claim is predicated solely on a violation of the Martin Act or its implementing regulations and would not exist but for the statute" (Assured Guar. [UK] Ltd. v. J.P. Morgan Inv. Mgt. Inc., 18 NY3d 341, 353 [2011]).

According to the Board, the Knolls and Hason issued the Offering Plan, and part thereof is the purchase agreement, bylaws, declaration of condominium and certifications. The certification of the offering plan demonstrates that Hason executed the certification in his individual capacity. By doing so, Hason, may be held responsible for knowingly and intentionally advancing the alleged

misrepresentations of the offering plan, and thus, can be held personally liable (Zanani v. Savad, 228 AD2d 584, 585 [2d Dept 1996]).

The Board maintains that Hason actively controlled the conduct which created all of the illegal and dangerous condition which are the subject of this action. It continues that Hason had intimate knowledge of the details of the construction process; he had a financial stake in the construction company (Pinewood); and he took the leading role as a member and principal of the sponsor The Knolls.

Based upon the record, at this juncture, it cannot be said that the alleged misrepresentations by Hason were confined to the Offering Plan, thus are not precluded by the Martin Act, as they do not rely entirely on alleged omissions from filings required by the Martin Act and the Attorney General's implementing regulations (Bd. of Managers of Marke Gardens Condo. v 240/242 Franklin Ave., LLC, 71 AD3d 935, 936 [2d Dept 2010]).

Further, contrary to Hason Defendants' contention, it appears that Eastleigh is not a necessary party, and had no role in the construction of the portions of the common elements which are the subject of the cross-claim.

Now, addressing the Board's cross-claims:

First Cause of Action-Breach of Offering Plan Against Hason and the Knolls

The elements of a cause of action for breach of contract are the existence of a contract between the plaintiff and defendant, consideration, performance by the plaintiff, breach by the defendant and damages resulting from the breach (Canzoa v. Atanasio, 118 AD3d 837 [2d Dept 2014]; Furia v. Furia, 116 AD2d 694 [2d Dept 1986]). Plaintiff must establish the provisions of the contract the defendant is alleged to have breached (Sud v. Sud, 211 AD2d 423 [2d Dept 1995]); Atkinson v.

Mobil Oil Corp., 205 AD2d 719 (2d Dept. 1994). The court is to give practical interpretation to the language employed and the parties' reasonable expectations (Slamow v Del Col, 174 AD2d 725, 726 (2d Dept 1991), aff'd. 79 NY2d 1016 (1992). Parol evidence will not be considered in interpreting a contract unless the contract is ambiguous (South Road Assocs., LLC. v. IBM Corp., 4 NY2d 272 (2005); The question or whether an agreement is ambiguous is a question of law to be determined by the Court (Innophos, Inc. v. Rhodai, S.A., 10 NY3d 25 [2008]; JJFN Holdings, Inc. v. Monarch Investment Properties, Inc., 289 AD2d 528 [2d Dept 2001]). Ambiguity exists where the terms of the agreement are susceptible to two reasonable interpretations (Uribe v. Merchants Bank of New York, 92 NY2d 336 [1998]; Around the Clock Delicatessen, Inc. v. Larkin, 232 AD2d 514 [2d Dept 1996]). Ambiguity does not exist simply because the parties urge different interpretations of its terms (Bethlehem Steel Co. v. Turner Construction Co., 2 NY2d 456 [1957]). When the parties' intent to be bound by a contractual obligation "is determinable by written agreements, the question is one of law" (Mallad Constr. Corp. v County Fed. Sav. & Loan Assn., 32 NY2d 285, 291 [1973]; Berghold v Kirschenbaum, 287 AD2d 673 [2d Dept 2001]).

Among other things, the Board points out that the Offering Plan (Section XXIX) represents that the sponsor has no knowledge of material defects or need for major repairs. According to the Board, the Hason defendants and Hason individually failed to perform numerous obligations to the Condominium in violation of the Offering Plan which Hason certified by signing as a member of the Knolls and again in his individual capacity. However, in light of the record, affording the pleading a liberal construction, accepting the facts alleged in the pleading as true, and according the Board the benefit of every possible inference, the cross claims against Hason and Knolls adequately allege all of the essential elements of a cause of action to recover damages for breach of the Offering Plan, and

is not barred by documentary evidence.

Second, Third and Twelfth Causes of Action for indemnity and failure to provide a defense

Hason defendants assert that the Board's causes of action for indemnity and failure to provide a defense must be dismissed because the Board cannot be indemnified/defended for their own negligence and/or breach of contract.

Section XV of the Offering Plan provides in relevant part at page with respect to Hason and the Knolls obligations:

> The Sponsor has an obligation to defend suits and to indemnify the Board of Managers or Home Owners arising out of any act or occurrence Occurring prior to or subsequent to the recording of the Declaration of Condominium solely for claims arising out of the acts or omissions of the Sponsor"

The Board asserts that despite due notice of the action, Hason and the Knolls have failed to provide for the defense of the Board in the instant action. And that based upon the provisions of the Offering Plan, should the Board become liable to plaintiff based upon the allegations set forth in plaintiff's complaint, the Board shall be entitled to indemnity and judgment over against defendants Hason and the Knolls. The Board points out that the complaint alleges that all conditions for which plaintiff seeks to hold the board liable were caused by the Knolls and its principal Uri Hason. Thus, The Board concludes that plaintiff's claim against the Board arose from the acts of the sponsor. The Board asserts that the Hason Defendants argue without any supporting law or facts that because the board's negligence and negligence misrepresentations cross-claims should be dismissed, this indemnification/contribution cross-claim must also be dismissed. However, the cross-claim seeks recovery for culpable conduct and/or wrongful acts and therefore non-negligence causes of action are

pleaded in the cross-claim.

CPLR 1401 provides that "two or more persons who are subject to liability for damages for the same personal injury, injury to property or wrongful death, may claim contribution among them whether or not an action has been brought or a judgment has been rendered against the person from whom contribution is sought". Purely economic loss from a breach of contract does not constitute injury to property within the meaning of CLR 1401 (Board of Educ. of Hudson City School Dist. v. Sargent, Webster, Crenshaw & Folley, 71 NY2d 21, 26 [1987]). Use of tort language in the complaint, absent tort liability, is not sufficient (Capstone Enterprises of Port Chester, Inc. v Bd. of Ed. Irvington UFSD, 106 AD3d 856, 860 [2d Dept 2013]).

However, at this juncture, since it cannot be said that plaintiff's claims against the Board are purely breach of contract, the Board may cross-claim for contribution. Thus, giving the Board every favorable inference, the second, third and twelfth causes of action of the Boards' Cross-claim state a cause of action.

Fourth Cause of Action for Negligent Misrepresentation

A claim sounding in negligent misrepresentation has a statute of limitations period of six years (Fandy Corp. v. Lung Fong Chen, 262 AD2d 352, 353 [2d Dept 1999]), and this cross claim is not barred by the statute of limitations.

A claim for negligent misrepresentation requires plaintiff to plead "the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff" that the information was incorrect; and reasonable reliance on the information" (J.A.O. Acquisition Corp. v. Stavitsky, 8 NY3d 144, 148 [2007]. Similarly, "[a] claim for negligent misrepresentation is not separate from a breach of contract claim where the plaintiff fails to allege a

breach of any duty independent from contractual obligations" (Bd. of Managers of Beacon Tower Condo. v. 85 Adams St., LLC, 136 A.D.3d 680, 684 [2d Dept 2016]).

The negligent misrepresentation claim is duplicative of the breach of contract claim. Based upon the record, and light of the foregoing this cause of action is dismissed as against Uri Hason and the Knolls, as the Board did not adequately demonstrate a privity relationship and this cause of action. This branch of Hason Defendants' motion is granted, and this cross claim is dismissed.

Fifth Cause of Action Fraud Against Hason and Knolls

The essential elements of a cause of action sounding in fraud are a misrepresentation or a material omission of fact which was false and known to be false by the defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury (Greenberg v. Blake, 117AD3d 683 [2d Dept 2014]; (Deutsche Bank Natl. Trust Co. v. Sinclair, 68 AD3d 914, 916 [2d Dept 2009]). A fraud claim must be based upon a misrepresentation of an existing fact rather than upon an "expression of future expectations" (68 AD3d 914, 916). However, even if made with sufficient particularity to comply with the requirements of CPLR 3016, "a cause of action premised upon fraud cannot lie where it is based on the same allegations as the breach of contract claim" (Heffez v. L & G Gen. Constr., Inc., 56 AD3d 526 [2d Dept 2008]). As here, a cause of action alleging fraud does not lie where the only fraud claim relates to a breach of contract (Bd. of Managers of Beacon Tower Condo. v. 85 Adams St., LLC, 136 AD 3d 680, 684 [2d Dept 2016]). The alleged misrepresentations/omissions did not result in any loss independent of the damages alleged from breach of contract. Accordingly, the causes of action sounding in fraud against the Hason and the Knolls are dismissed.

Sixth Cause of Action Negligence Against the Hason Defendants

The elements of negligence are: "(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, and (3) a showing that the breach of that duty constituted a proximate cause of the injury" (Ingrassia v. Lividikos, 54 AD3d 721, 724 [2d Dept 2008]). Hason defendants argue that there is no privity between the Board and Hason defendants as the Board was not a signatory to the Offering Plan, purchase agreements or contracts of sale, and was not a part of the discussions leading up to the sale of the units. Also, any allegation of representations made orally must be disregarded entirely as the Contract of Sale specifically prohibits oral modifications to the contract. A plaintiff cannot recover solely for economic loss arising out of negligent construction in the absence of a contractual relationship. It is well-established that a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated. This cross claim recites that the carelessness of Hason Defendants caused the conditions, and constitutes negligence. This is duplicative of the breach of contract claim, and does not establish an independent tortious act from which the Board can seek to recover.

The court finds that the cause of action sounding in negligence was merely a restatement of the implied contractual obligations asserted in the cause of action for breach of contract, and there is no showing that this action should transform into a tort (Countrywide Home Loans, Inc. v United Gen. Tit. Ins. Co., 109 AD3d 953, 954 [2d Dept 2013], and therefore must be dismissed since the Board fails to allege that the Hason Defendants breached any duty other than to erect the condominium building in the manner that they had promised.

Seventh Cause of Action Breach of Fiduciary Duty against Hason and the Knolls

The Board claims that Hason and The Knolls controlled the Board during the initial period of operation (residency) from 2010 through 2013. Thus, The Knolls and Hason, who controlled the Board of Managers owed a fiduciary duty to the Condominium and the homeowners for its conduct during this period. The record is belied of any showing that there is a fiduciary relationship between the sponsor (the Hason Defendants) and the Board (Caprer v. Nussbaum, 36 AD3d 176 [2d Dept 2006]). Thus, this cross claim is dismissed.

Eighth Cause of Action Claim for Third Party Beneficiary Against Pinewood

The Board alleges that Pinewood and The Knolls entered into a construction contract that Pinewood breached by creating the conditions. Courts have held that a condominium board was not third party beneficiary of construction management contract between sponsor and contractor which built condominium, precluding suit by board alleging violations of contract, when contract expressly negated existence of third party beneficiaries (Bd. of Managers of Alexandria Condo. v. Broadway/72nd Associates, 285 AD2d 422 [1st Dept 2001]). Since the Board did not provide any evidence that would support a finding that it was more than a mere incidental beneficiary of the contract, this cross-claim is dismissed.

The Eleventh Cause of Action-Unjust Enrichment Against the Hason Defendants

In order to prevail on a claim of unjust enrichment, it must be shown that the other party was enriched at that party's expense, and that it is against equity and good conscience to permit the other party to retain what is sought to be recovered (Old Republic Natl. Tit. Ins. Co. v. Luft, 52 AD3d 491 [2d Dept 2008]). The existence of a valid and enforceable written contract covering a particular

subject matter ordinarily precludes recovery in quasi-contract for events arising out of the same subject matter (Hamlet at Willow Creek Dev. Co., LLC v. Northeast Land Dev. Corp., 64 AD3d 85, 102 [2d Dept 2009]). However, an unjust enrichment claim is not available where it simply duplicates or replaces a conventional contract or tort claim (Corsello v. Verizon N.Y., Inc., 18 NY3d 777, 790 [2012]). Unjust enrichment is not a catchall cause of action when others fail. It is available only in unusual situations when the defendant has not breached a contract or committed a tort, but circumstances create an equitable obligation from the defendant to the plaintiff (18 NY3d at 790).

The court agrees that the unjust enrichment cause of action is duplicative of the breach of contract cause of action against Hason defendants. Thus, dismissal of the Board's unjust enrichment claim against the Hason Defendants is mandated due to its failure to state a viable cause of action.

Lastly, pursuant to CPLR 3211(b), the Hason Defendants' motion to strike various affirmative defenses asserted by the Board in its Answer dated January 19, 2016 based that these defenses have no merit is denied.

Accordingly, it is hereby

ORDERED, that the Hason Defendants' motion to dismiss cross claims found in the Board's Additional Supplemental Defendant Condominium's Answer to Plaintiff's Second Amended Complaint, is granted to the extent that cross claims for Fourth-Negligent Misrepresentation, Fifth-Fraud, Sixth Negligence, Seventh Fiduciary duty, Eighth Third Party Beneficiary, Eleventh Unjust Enrichment are dismissed as directed in this decision and order, and the motion is denied in all other respects: and it is further

ORDERED, that the clerk shall mark his records accordingly; and it is further

ORDERED, that Hason Defendants shall serve a copy of this order to all parties within ten

(10) days of notice of entry, and file proof of service within five (5) days of service, in compliance with the NYSCEF protocols; and it is further

ORDERED, that the parties are directed to appear in the Compliance Part on August 16, 2016 at 9:30 A.M. in Room 800 of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601.

All matters not specifically addressed are herewith denied.

This constitutes the decision and order of the court.

Dated: White Plains, New York
July 22, 2016

CHARLES D. WOOD, J.S.C.

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