

Mosaic Caribe, Ltd. v Allsettled Group, Inc.
2013 NY Slip Op 31723(U)
July 25, 2013
Sup Ct, New York County
Docket Number: 651798/2012
Judge: Eileen Bransten
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. EILEEN BRANSTEN

PRESENT: _____ **J.S.C.** _____

PART 3

Justice

Index Number : 651798/2012
MOSAIC CARIBE, LTD.,
vs.
ALLSETTLED GROUP, INC.,
SEQUENCE NUMBER : 001
AMEND SUPPLEMENT PLEADINGS

INDEX NO. 651798/12
MOTION DATE 8/14/13
MOTION SEQ. NO. 001

The following papers, numbered 1 to 3, were read on this motion to/for amend

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2</u>
Replying Affidavits _____	No(s). <u>3</u>

Upon the foregoing papers, it is ordered that this motion is

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 7-25-13

Eileen Bransten J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 3

----- X

MOSAIC CARIBE, LTD.,

Index No. 651798/2012
Motion Seq. No. 001
Motion Date: 5/14/2013

Plaintiff,

- against -

ALLSETTLED GROUP, INC., a New York limited liability
partnership,

Defendant.

----- X

Bransten, J.:

This matter comes before the Court on Plaintiff Mosaic Caribe Ltd's. ("Mosaic Caribe) motion for leave to file an amended complaint. Defendant opposes. For the reasons that follow, Plaintiff's motion is denied.

I. Background

Plaintiff Mosaic Caribe is a life settlement corporation that purchases life insurance policies and sells fractionalized interests in these policies to its investors. *See* Verified Amended Complaint ¶ 7. Defendant AllSettled Group ("ASG") is a corporation which arranged for third-party investors to acquire life insurance policies and served as a purchasing agent for investors including Mosaic. *See* Affidavit of Michael Krasnerman ("Krasnerman Aff." ¶ 3).

This litigation stems from a December 15, 2008 Policy Funding Agreement for procuring a life insurance policy. The Policy Funding Agreement provided for Mosaic

Caribe, a life settlement corporation, to purchase a \$10M life insurance policy (the “Heller” policy) for \$3,000,000 through ASG, a life settlement broker. *See* Affirmation of Jill L. Mandell (“Mandell Aff.”), Ex. 1. Mosaic made an initial partial payment of \$350,000 (the “Deposit”) to ASG on December 18, 2008 for the Heller policy, but after ASG refused to return this deposit when the agreement fell through, Plaintiff brought this action for breach of contract and unjust enrichment.

A. The Proposed Amended Complaint

Plaintiff alleges in its proposed Amended Complaint that in 2006, Krasnerman informed Mosaic that one of his companies owned a \$2.5M Policy, and offered to sell this policy to Mosaic. (Verified Amended Complaint ¶ 9.) Plaintiff also contends that Defendants¹ were aware that Mosaic proceeded to solicit offshore investors who were interested in purchasing interests in the \$2.5M Policy. *Id.* at ¶ 10. However, after Mosaic and ASG executed an agreement for Mosaic to purchase the \$2.5M Policy, Krasnerman allegedly told Mosaic that this policy was unavailable. *Id.* at ¶¶ 11-12. Plaintiff also claims that ASG informed Mosaic that it owned the \$10M Heller Policy, and offered to sell this policy instead. Mosaic contends that it was compelled to accept ASG’s changes in order for Mosaic to abide by its commitments to its offshore investors. *Id.* at ¶ 14.

¹ For the sake of clarity, ASG, Michael Krasnerman and AFG are herein referred to as “Defendants.”

The Amended Complaint seeks to add Michael Krasnerman and AllFinancial as defendants. Krasnerman is the principal of AllFinancial (“AFG”), an affiliate of ASG. See Krasnerman Aff. ¶¶ 11-12 and Mosaic Memorandum of Law (“Mosaic Br.”) at 1. Krasnerman was also the president, Chief Executive Officer, and a 94 percent shareholder of AllSettled Group. (Krasnerman Aff. ¶ 4 and Westerlind Aff. Ex. G.)

The Verified Amended Complaint also seeks to add causes of action against ASG, Krasnerman, and AFG for fraud; concerted action liability; civil conspiracy; breach of fiduciary duty against ASG and, money had and received. As the basis of its fraud claim, Mosaic alleges that Defendants fraudulently induced Mosaic to purchase the Heller policy by misrepresenting the policy holder’s identity. (Verified Amended Complaint ¶ 16.) Likewise, Plaintiff contends that Defendants’ alleged fraudulent inducement gives rise to its concerted action and civil conspiracy claims. *Id.* at ¶¶ 33, 39. Plaintiff also alleges that ASG breached its fiduciary duty to Mosaic to facilitate Mosaic’s purchase of the Heller Policy, *Id.* at ¶¶ 44-45, and seeks return of the Deposit from ASG through its quasi contract claim for money had and received. *Id.* at ¶¶ 49-51. Finally, Mosaic adds a request for punitive damages.

II. Analysis

A. Personal Jurisdiction

Defendants first attack the proposed amended complaint, arguing that this Court lacks personal jurisdiction over the non-domiciliaries Krasnerman and AFG.

Accordingly, as a threshold inquiry, this Court first must establish that it has personal jurisdiction over both the individual and corporate defendants. *See Copp v. Ramirez*, 62 A.D.3d 23, 26 (1st Dep't 2009) (stating that, as a threshold issue, defendants who are not New York residents "cannot be subject to personal jurisdiction in New York unless plaintiffs prove that New York's long-arm statute confers jurisdiction over them by reason of their contacts within the state").

Pursuant to New York's long-arm statute, a court may exercise personal jurisdiction over a non-domiciliary in New York if the defendant "committed a tortious act" in the state. *See* CPLR 302(a)(2). Plaintiff alleges that the court has personal jurisdiction over Krasnerman, pursuant to CPLR 302(a)(2), since Krasnerman made one of the alleged misrepresentations at issue during a meeting with Janice Winters ("Winters"), CEO of Mosaic, in New York. While Plaintiff's fraud claim if established would enable the court to exercise personal jurisdiction over Krasnerman, as discussed in detail below, Mosaic failed to allege a prima facie case for its fraud claim. Accordingly, the insufficient fraud claim cannot provide a basis for personal jurisdiction. Therefore, Krasnerman cannot be added as a defendant based on this cause of action. Likewise, Plaintiff's proposed tort and quasi contract claims fail to provide a basis for personal jurisdiction over Krasnerman, as they are palpably insufficient for the reasons detailed below.

Mosaic also argues that the court has personal jurisdiction over Defendants on the basis that each defendant engaged in a civil conspiracy to injure Mosaic. For a civil

conspiracy claim, the conduct of each co-conspirator can be imputed against the other co-conspirators, pursuant to CPLR 302(a)(2). As discussed below, however, Plaintiff's conspiracy claim is inadequate because its fraud claim is insufficient. Also, Plaintiff does not explain why Krasnerman's alleged tortious conduct should be imputed to AFG. Thus, the court does not have jurisdiction over the corporate Defendants based on a conspiracy claim.

B. Proposed Claims

Based on CPLR 3025(b), "leave shall be freely given" to allow amended and supplemental pleadings. Although motions for leave to amend pleadings are "liberally granted in the absence of prejudice or surprise," the court should consider "the sufficiency of the merits of the proposed amendment when considering such motions ..." *Heller v. Provenzano, Inc.*, 303 A.D.2d 20, 25 (1st Dep't 2003) (denying a motion to amend, noting that the motion was "totally devoid of merit" and "legally insufficient").

In this action, the Court concludes that Defendants will suffer no prejudice since no depositions have occurred, and discovery is still ongoing. *See Loomis v. Civetta Corinno Construction Corp.*, 54 N.Y.2d 18, 23 (1981) (stating that to establish prejudice, "there must be some indication that the opposing party will have been hindered in the preparation of its case or prevented from taking some measure to support its position"). The proposed new defendants also should not be unfairly surprised: Krasnerman represented ASG at this action's mediation, and AFG and Plaintiff exchanged emails

regarding Mosaic's potential purchase of a replacement policy from AFG in place of the Heller Policy. See *Kladstrup v. Westfall Health Care Ctr., Inc.*, 701 N.Y.2d 808, 811 (N.Y. Sup. Ct. 1999) (granting motion to amend, noting that "the original Complaint provided notice of the occurrence giving rise to the proposed cause of action"). However, even in the absence of prejudice and surprise, Mosaic's proposed amendment is legally insufficient under CPLR 3025(b), and therefore, Mosaic's motion must be denied.

1. *Fraud*

In its Proposed Amended Complaint, Plaintiff alleges that Defendants fraudulently induced Mosaic to execute the Policy Funding Agreement and pay the Deposit by misrepresenting the policy holder's identity. To establish fraud, a plaintiff must allege a representation of material fact, falsity, scienter, justifiable reliance and injury. *Kaufman v. Cohen*, 307 A.D.2d 113, 199 (1st Dep't 2003) (holding that plaintiff met a prima facie case for its fraud claim). The sufficiency of Plaintiff's proposed fraud claim is examined below.

i. **Proximate Cause**

Mosaic alleges that Kransnerman's misrepresentations about the policy holder's identity compelled Mosaic to execute the Policy Funding Agreement, which caused Mosaic's subsequent loss of the Deposit. "To establish causation, [a plaintiff alleging fraud] must show that defendant's misrepresentation induced plaintiff to engage in the

transaction in question.” *Laub v. Faessel*, 297 A.D.2d 28, 29 (1st Dep’t 2002). In particular, for a fraud claim, a plaintiff must show that a defendant’s misrepresentations “were the direct and proximate cause of the losses claimed.” *See id.* Plaintiff does not establish that Krasnerman’s alleged misrepresentation of the policy holder’s identity is linked to Mosaic’s loss of the Deposit. Accordingly, Mosaic does not provide an adequate evidentiary basis to show that Krasnerman’s alleged misrepresentation directly caused Plaintiff’s loss of the Deposit. *See Laub v. Faessel*, 297 A.D.2d 28, 29, (noting that Plaintiff’s injury must be a direct cause of Defendant’s alleged fraud). Plaintiff’s claim also fails to demonstrate that Mosaic’s loss was a reasonably foreseeable result of Plaintiff’s reliance on Krasnerman’s alleged misrepresentations. *See id.* (quoting Prosser and Keaton, Torts, § 41 at 263 [5th ed.]) (there must be a “reasonable connection” between defendant’s alleged misconduct and plaintiff’s injury). Thus, Plaintiff does not show that Defendant’s purported misrepresentations were a direct and proximate cause of Mosaic’s injury.

This case is distinguishable from *Stutman v. Chemical Bank*, 95 N.Y.2d 24, 27 (2000) in which the Court of Appeals found that plaintiff sufficiently alleged loss causation. The *Stutman* Court’s finding was based on defendant’s alleged misrepresentation that plaintiff must pay a fee in order for plaintiff to secure collateral to refinance a loan, which induced plaintiff to pay this fee. *Id.* at 24. Whereas in *Stutman*, it could be reasonably foreseeable that defendant’s alleged misrepresentation could have compelled plaintiff to pay this fee out of plaintiff’s perceived financial necessity, Mosaic

does not show a sufficient nexus between the alleged fraud, and its subsequent loss of the Deposit. Thus, the causation element for Mosaic's fraud claim is insufficient.

ii. Plaintiff's Fraud Claim is Duplicative of its Breach of Contract Claim

To establish a fraud claim based on a contractual relationship, "the plaintiff must allege a breach of duty which is collateral or extraneous to the contract between the parties." *Krantz v. Chateau Stores of Canada*, 256 A.D.2d 186, 187 (1st Dep't 1998). Plaintiff did not allege that Defendants had a legal duty to Plaintiff, aside from Defendants' contractual obligation to facilitate purchase of the Heller Policy. *See id.* In its fraud claim, Mosaic alleges that Defendants misrepresented that they owned and intended to convey the Heller Policy to Mosaic, which also forms the basis of Mosaic's breach of contract claim. *See J.E. Morgan Knitting Mills, Inc. v. Reeves Brothers, Inc.*, 243 A.D.2d 422, 422 (1st Dep't 1997) (plaintiff's fraud claim was dismissed as duplicative of its breach of contract claim, noting that "the fraud alleged is based on the same facts as underlie the contract claim and is not collateral to the contract"). As a result, Plaintiff fails to allege a fraud claim distinct from its breach of contract claim.

Moreover, *Deerfield Communications Corporation v. Chesebrough-Ponds, Inc.*, 68 N.Y.2d 954 (1986), in which the Court of Appeals denied a plaintiff's motion to dismiss a counterclaim for fraud, is distinguishable from the case at bar. In *Deerfield Communications Corporation*, defendant's counterclaims involved separate legal duties-

its breach of contract was premised on failure to pay a purchase price, while its fraudulent inducement claim stemmed from plaintiff's alleged failure to adhere to an oral agreement to resell within geographic limits. In contrast, Mosaic's fraud and breach of contract claims hinge solely upon Defendants' legal obligation under the Policy Funding Agreement to facilitate procurement of the Heller Policy. Although Plaintiff alleges that, apart from ASG's contractual obligation, Krasnerman orally agreed to procure the Heller Policy, the basis for both claims is the alleged breach of Defendant's legal duty under the Policy Funding Agreement, and involves no additional obligation. Thus, Plaintiff does not sufficiently allege that Defendants owed a legal duty to Mosaic, aside from its obligations under the Policy Funding Agreement.

iii. **Justifiable Reliance**

Plaintiff also argues that it justifiably relied on Defendants' alleged misrepresentations. To support its fraud claim, Mosaic contends that the Policy Funding Agreement contains a general merger clause, which would enable Mosaic to present evidence of fraud, including its grounds for justifiable reliance. *See Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 318 (1959) (stating that a general merger clause cannot exclude evidence of fraud). The Policy Funding Agreement states that: "This Agreement constitutes and contains the complete and final agreement between the parties...Each party acknowledges that, except as expressly set forth herein, no representations of any kind or character have been made to it by any other party...to induce the execution to this

Agreement.” Mandell Aff. Ex. A. Based on this wording, the Policy Funding Agreement contains a general merger clause. *See Hobart v. Schuler*, 55 N.Y.2d 1023, 1023 (1982) (holding that a merger clause’s generalized language constitutes a general merger clause.) Thus, Mosaic is not barred from presenting evidence of fraud.

This case is distinguishable from *Dannan Realty*. Plaintiff alleged that defendant fraudulently induced plaintiff to purchase a contract of sale of a lease of a building by misrepresenting operating expenses and profits; however, the contract’s merger clause contained a specific disclaimer, which included that the seller (defendant) did not make any representations about expenses and operation. *Dannan Realty*, 5 N.Y.2d at 517. In contrast, the Policy Funding Agreement does not contain a provision that specifically pertains to the alleged misrepresentations here. Mandell Aff. Ex. A. Thus, the Policy Funding Agreement includes no specific disclaimer, and Mosaic can present evidence of its alleged justifiable reliance.

However, Plaintiff did not allege that Krasnerman’s alleged misrepresentation would induce Mosaic’s justifiable reliance in executing the Policy Funding Agreement. In particular, Mosaic does not allege that it sought or acquired information about the Heller Policy before executing the Policy Funding Agreement, instead allegedly relying upon Krasnerman’s oral promise without further verification. *See UST Private Equity Inv. Fund, Inc. v. Barney*, 288 A.D.2d 87, 88 (1st Dep’t 2001) (holding that plaintiff did not sufficiently plead justifiable reliance because plaintiff failed to review relevant

documents and confirm defendant's alleged misrepresentations). For these reasons, Mosaic's fraud claim is palpably insufficient.

2. *Concerted Action*

Plaintiff alleges that Defendants are liable for concerted action because they engaged in a common plan or design to fraudulently induce Mosaic to purchase the Heller policy and convert such funds solely for Defendants' benefit. The elements of a concerted action claim are: (1) an agreement express or tacit to participate in a common plan or design to commit a tortious act, (2) tortious activity, and (3) commission of a tort pursuant to the agreement by at least one defendant. *Appavoo v. Phillip Morris Inc.*, No. 122469/97, 1998 WL 440036, at *5 (1st Dep't 1998) (citing *Rastelli v. Goodyear Tire & Rubber Co.*, 79 N.Y.2d 289, 290-291 (1992)). Mosaic does not sufficiently allege that Krasnerman and ASG made fraudulent representations to Mosaic or allegations of fact to imply that they conspired to defraud Mosaic. *See Abrahami v. UPC Constr. Co.*, 176 A.D.2d 180, 180 (1st Dep't 1991) (plaintiff insufficiently alleged an agreement among defendants to defraud plaintiff because it failed to plead fraud against all but one of defendants with enough detail, and did not provide an evidentiary basis to give rise to an inference of a conspiracy). Moreover, Mosaic does not allege that AFG made any fraudulent misrepresentation, nor does it provide facts to imply that AFG conspired with the other defendants. *See Nat'l Westminster Bank USA v. Weksel*, 124 A.D.2d 144, 145 (1987) (plaintiff's claim that defendant committed fraud solely on the basis that defendant

conspired to engage in a fraudulent scheme is inadequate because the complaint includes no factual basis to infer these allegations). Therefore, Plaintiff fails to establish adequate grounds for a concerted action claim against Defendants.

This case is distinguishable from *Appavoo*, 1998 WL 440036, at *5, whereby the court denied a defendant's motion to dismiss a concerted action claim because plaintiff established a conspiracy claim, in which plaintiff alleged specific and cooperating roles played by each defendant. In contrast, Plaintiff fails to sufficiently allege a tort claim against any defendant, nor does it make the requisite showing to infer an agreement among Defendants to defraud Mosaic. *Id.* Aside from its legal conclusions, Plaintiff's concerted action claim is unsupported by the facts as pleaded.

3. *Civil Conspiracy*

Plaintiff further argues that its allegations of fraudulent inducement constitute grounds for a civil conspiracy cause of action. The elements of a civil conspiracy claim require that the plaintiff establish the underlying tort, as well as: "(1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting injury." *Abacus Fed. Sav. Bank v. Lim*, 75 A.D.3d 472, 473 (1st Dep't 2010). The conspiracy claim lacks merit because the alleged primary tort, fraudulent inducement, is invalid, and a conspiracy claim based solely on breach of contract is insufficient to state a claim. *See Zachariou v. Manios*, 50 A.D.3d 257, 257 (1st Dep't 2008) (granting motion

to dismiss plaintiff's conspiracy claim because plaintiff only established a claim for breach of contract). As discussed, Plaintiff also did not sufficiently allege that Defendants had an agreement. In addition, Mosaic contends that Defendants' overt acts include the alleged misrepresentations and withholding of the Deposit. (Verified Amended Complaint ¶ 41.) However, as discussed above, Mosaic did not establish its alleged misrepresentation, and the Policy Funding Agreement did not provide for return of the Deposit. *See Mandell Aff. Ex. 1.* Thus, Plaintiff did not establish an overt act. For these reasons, Plaintiff does not sufficiently allege a claim that its loss arose from a conspiracy among Defendants.

4. *Breach of Fiduciary Duty*

Plaintiff also alleges that ASG breached a fiduciary duty to Mosaic by failing to facilitate purchase of the Heller Policy and return the Deposit. As the basis for its claim, Plaintiff contends that the Policy Funding Agreement created a fiduciary relationship between ASG and Mosaic by designating ASG as "Agent of Purchaser." (Verified Amended Complaint ¶ 44.) "A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." *Mandelblatt v. Devon Stores, Inc.*, 132 A.D.2d 162, 166 (1st Dep't 1987) (quoting Restatement Second, Torts, § 874, Cmt. a.) Moreover, a breach of contract claim cannot mimic a breach of fiduciary duty claim. *See Perl v. Smith Barney Inc.*, 230 A.D.2d 664, 665 (1st Dep't 1996) (plaintiff's breach of fiduciary duty

claim's duplication of its breach of contract claim constituted grounds for dismissing its breach of fiduciary duty claim). Pursuant to the Policy Funding Agreement, ASG's duties are limited to facilitating purchase of the Heller policy. *See* Mandell Aff. Ex. A. In addition, the relationship between Mosaic and ASG denotes a standard contractual relationship. Plaintiff's allegation that ASG did not abide by its duty to procure the Policy and refused to return the Deposit echoes the basis for Plaintiff's breach of contract claim. Therefore, Plaintiff does not sufficiently allege that ASG owed and breached a fiduciary duty to Mosaic to facilitate purchase of the Heller policy.

This case is distinguishable from *New York v. Coventry First LLC*, 13 N.Y.3d 108, 112 (2009), in which the court held that plaintiff plead a cognizable claim for breach of fiduciary duty. The court stated that there can be a fiduciary relationship between a life settlement broker and its client [policy holder] when the broker promises to procure the "highest possible" offer for its client, rather than merely "obtaining requested coverage... [with] no continuing duty to advise, guide or direct a client to obtain additional coverage." *Id.* In contrast, ASG was obligated to facilitate Mosaic's procurement of the Policy, as called for in the Policy Funding Agreement, but ASG had no duty to provide ongoing guidance to Mosaic. *See* Mandell Aff. Ex. 1. Policy Funding Agreement. (ASG's duties under the Policy Funding Agreement do not include an obligation to advise Mosaic.) Thus, Mosaic does not present sufficient grounds for a breach of fiduciary duty claim.

5. *Money Had and Received*

Plaintiff's proposed amended complaint also includes a quasi contract claim against Defendants for money had and received. A quasi contract claim is only applicable when there is no express agreement. *Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382, 392 (1987) (upholding a defendant's motion to dismiss a quasi contract claim, when there was a valid contract between the parties). As discussed above, Mosaic's fraud claim is insufficiently pleaded, and the Policy Funding Agreement constitutes a valid agreement between Mosaic and ASG. Therefore, Plaintiff does not have proper grounds to add a quasi contract claim for money had and received.

6. Damages

Plaintiff seeks punitive damages for its fraud, concerted action, civil conspiracy and breach of fiduciary duty causes of action. To establish a claim for punitive damages when the claim stems from a breach of contract, (1) "defendant's conduct must be actionable as an independent tort," as a threshold issue; (2) the tortious conduct must be egregious; (3) "the egregious conduct must be directed to plaintiff;" and (4) "it must be part of a pattern directed at the public generally." As discussed, Plaintiff's fraud claim, which would provide the basis for an independent tort, is insufficient. *See NYU*, 87 N.Y.2d at 312-313 (plaintiff's insufficiently alleged its fraud claim and thus, its fraud claim did not constitute grounds for an independent tort as a basis for punitive damages). Also, the alleged tortious activity does not amount to a level of egregiousness required for

punitive damages. *See AXA Mediterranean Holding v. ING Ins. Int'l.*, 106, 107 A.D.3d 457, 458 (1st Dep't 2013) (plaintiff's legal conclusions that its alleged breach of contract was "maliciously intended" or constituted "willful misconduct" is insufficient grounds for a separate tort claim). In addition, as discussed below, Mosaic's allegation is limited to a standard breach of contract claim, and thereby does not relate to an infringement upon a public right. *See Rocanova v. Equitable Life Assurance Soc'y of US*, 83 N.Y.2d 603, 606 ("punitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights"). As a result, Plaintiff did not sufficiently plead that its breach of contract claim gives rise to a punitive damages claim.

Given that Plaintiff did not sufficiently allege its punitive damages claim, its remedy is limited to contract damages. Mosaic's fraud and breach of contract claims hinge on loss of the Deposit, and Mosaic did not show that the alleged conduct warrants punitive damages. As in *Krantz*, in which the court granted a motion to dismiss a fraud claim, aside from "an unelaborated request for punitive damages on the fraud claim, plaintiff has not claimed any special damages proximately caused by the false representation that are not recoverable under the contract measure of damages." *Krantz*, 256 A.D.2d at 187. Therefore, Mosaic's request for punitive damages fails.

Order

Accordingly, for the foregoing reasons, it is

ORDERED that Plaintiff's motion for leave to file an amended complaint is denied.

Dated: New York, New York
July 25, 2013

ENTER:

A handwritten signature in black ink, appearing to read "Eileen Bransten", written over a horizontal line.

Hon. Eileen Bransten