Ahrenberg v Liotard-Vogt
2016 NY Slip Op 31651(U)
August 29, 2016
Supreme Court, New York County
Docket Number: 653687/2015
Judge: Anil C. Singh

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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STAFFAN AHRENBERG, *et al.*

Plaintiff,

-against-

PATRICK LIOTARD-VOGT, *et al.*

Defendants.

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DECISION AND ORDER

Index No. 653687/2015

Mot. Seq. 001/003

HON. ANIL C. SINGH, J.:

In this action for, *inter alia*, fraud, negligent misrepresentation, breach of fiduciary duty and breach of contract, Staffan Ahrenberg, *et al.* ("plaintiffs") move for a judgment of no less than $20 million in damages against Patrick Liotard-Vogt, Joseph Robinson, ASW Capital AG, ASM Media Consult Corporation ("ASM Media") and aSmallWorld Holdings Inc. ("aSW"). Defendants ASM Media and aSmallWorld Holdings Inc. oppose and move for an order dismissing all plaintiffs' counts pending against them pursuant to 3211(a)(7) and 3016(b) for failure to statue a claim and 3211(a)(1) on the basis of documentary evidence. (Mot. Seq. 001). Defendant Joseph Robinson opposes and moves for an order dismissing all of plaintiffs' counts against him pursuant to CPLR 3211(a)(1), (a)(3), (a)(5) and (a)(7). (Mot. Seq. 003).

Prior to December 2012 and since May 16, 2006, aSW was the holding company of ASMALLWORLD, an invitation only online social network with 850,000 members. By December 2012, ASW Capital had acquired a 95 percent ownership stake in aSW. On December 5, 2012, ASW Capital created ASM Media and transferred all of ASW Capital's shares of aSW to ASM Media in exchange for all shares of ASM Media. Subsequently on December 13, 2012 merged aSW with and into ASM Media under a Delaware DGCL § 253 short-form merger. Following the merger, the corporate structure was such that ASW Capital was ASM Media's parent and aSW no longer existed. Because the merger occurred pursuant to DGCL § 253, all minority shareholders' shares were converted into the right to cash reimbursement and all minority shareholders were entitled to an appraisal pursuant to DGCL § 262.

Plaintiffs were minority shareholders of aSW. The merger converted minority shareholders' shares into a right to receive $0.96 per share of common stock and $1.24 per share of Preferred Series B stock. Plaintiffs also did not exercise their right to an appraisal and instead brought this action in 2015. Their claims arise from the valuation of aSW's IP assets and business enterprise value for the purposes of the merger. Plaintiffs allege that the valuation of aSW was too low because Alvarez & Marsal Valuation Services LLC ("Alvarez"), the independent valuation firm that performed the valuation, was not given all relevant information. Alvarez estimated

aSW's business value to be between $3.2 million and $4.6 million. For the purposes of calculating a share price for the short-form merger, aSW was valued exactly in the middle of the estimate at $3.9 million. Yet, plaintiffs contend that in 2012 prior to the merger, ASW Capital placed a value on itself for the purposes of financing, but based on the same assets that yielded the $3.9 million valuation, of about $43 million. In their action, plaintiffs contend that they are entitled to be fully compensated for their minority shares on the basis of a consideration of all relevant financial information. At the core of plaintiffs' claims against ASM Media and aSW is the $43 million valuation of ASW Capital that plaintiffs allege was material information for the purposes of determining the value of aSW for the merger.

While ASW Capital was acquiring its majority of shares in aSW starting in 2010, defendant Robinson was a board member and the CEO of aSW. In a series of transactions to increase its holdings in aSW in July 2010, ASW Capital purchased two senior notes for $500,000, purchased Preferred Series B-1 shares in aSW from Robinson's company, JCR, to increase its holdings from 46 percent to 51 percent and bought more than 3 million new Preferred Series B-1 shares issued by the aSW board. By time of the December 2012 aSW and ASM Media merger, Robinson no longer served on the board of aSW. Plaintiffs allege that Robinson's role in the 2010 transactions for shares of aSW ownership by ASW Capital amount to, *inter alia*, breach of fiduciary duty as a board member and breach of the aSW Shareholders

Agreement.

Analysis

Standard for a motion to dismiss

On a motion to dismiss based on the ground that the defenses are founded upon documentary evidence pursuant to CPLR 3211(a)(1), the evidence must be unambiguous, authentic, and undeniable. See Fountanetta v. Doe, 73 A.D.3d 78 (2d Dept 2010). "To succeed on a [CPLR 3211(a)(1)] motion ... a defendant must show that the documentary evidence upon which the motion is predicated resolves all factual issues as a matter of law and definitively disposes of the plaintiff's claim." Ozdemir v. Caithness Corp., 285 A.D.2d 961, 963 (2d Dept 2001), leave to appeal denied 97 N.Y.2d 605. Alternatively, "documentary evidence [must] utterly refute plaintiff's factual allegations, conclusively establishing a defense as a matter of law." See, Goshen v. Mutual Life Ins. Co. of New York, 98 N.Y.2d 314, 326 (2002).

On a motion to dismiss a complaint for failure to state a cause of action pursuant to CPLR 3211(a)(7), all factual allegations must be accepted as true, the complaint must be construed in the light most favorable to plaintiffs, and plaintiffs must be given the benefit of all reasonable inferences. Allianz Underwriters Ins. Co. v. Landmark Ins. Co., 13 A.D.3d 172, 174 (1st Dept 2004). The court determines only whether the facts as alleged fit within any cognizable legal theory. Leon v.

Martinez, 84 N.Y.2d 83, 87-88 (1994). The court must deny a motion to dismiss, "if, from the pleading's four corners, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law." 511 West 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 152 (2002).

"[N]evertheless, allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or contradicted by documentary evidence, are not entitled to such consideration." Quatrochi v. Citibank, N.A., 210 A.D.2d 53, 53 (1st Dept 1994) (internal citation omitted).

In any claim for fraud, New York law requires that "the circumstances constituting the wrong shall be stated in detail." CPLR 3016(b). Under this heightened pleading standard, a claim of fraud must be supported by factual allegations that sufficiently detail the allegedly fraudulent conduct and give rise to a reasonable inference of the alleged fraud. Pludeman v. Northern Leasing Systems, Inc., 10 N.Y.3d 486, 492 (2008).

First Cause of Action as to Plaintiffs' Claim of Fraud Against ASM Media and aSW

DGCL § 253 provides that a minority shareholder, in the event of a short-form merger, only has a claim to a statutory right to appraisal, unless the minority shareholder can make a demonstration of "fraud or blatant overreaching." Green v. Santa Fe Indus., Inc., 70 N.Y.2d 244, 259 (1987). Thus, plaintiffs' first cause of action against ASM Media and aSW is necessarily a claim of fraud. To make a prima

facie case for fraud that will survive a motion to dismiss, a plaintiff must allege "a misrepresentation or concealment of a material fact, falsity, scienter by the wrongdoer, justifiable reliance on the deception, and resulting injury." Zanett Lombardier, Ltd. v. Maslow, 29 A.D.3d 495, 495 (1st Dept 2006).

Defendants argue that plaintiffs have not properly alleged the scienter element. Scienter requires that the defendants had knowledge of the falsity of the misrepresentation made to the plaintiffs. See Houbigant, Inc. v. Deloitte & Touche LLP, 303 A.D.2d 92, 98 (1st Dept 2003). It is defendants' contention that a cognizable fraud claim requires specificity and particularity with respect to each element. However, it is important to note that the case defendants rely on for that argument was not decided on a motion to dismiss, but rather after full trial and discovery. See Kimmell v. Schaefer, 224 A.D.2d 217, 219 (1st Dept 1996).

Additionally, defendants' reliance on Houbigant for the requirement that scienter be pleaded with specificity is misplaced, for that case actually stands for a more relaxed pleading standard at the motion to dismiss stage. Houbigant, Inc. 303 A.D.2d 92 at 99. Defendants argue that Plaintiffs have failed to meet the scienter pleading requirement and that the claim must be dismissed pursuant to CPLR 3211(a)(7) and 3016(b) and 3211(a)(1) because plaintiffs have not alleged with specificity that defendants knew of the falsity of any representation they had made,

but rather point to surrounding circumstances that may establish that defendants likely knew or knew because of overlapping entities and schemes.

But plaintiffs are correct to argue that the Court in Pludeman was clear that on a motion to dismiss, the standard for particularity of a fraud claim at the motion to dismiss stage is more permissive. On a motion to dismiss a fraud claim, the First Department has previously held that specificity is not required.

> "Accordingly, plaintiffs here need not, at this time, establish the truth of their allegations that [defendant] was aware of severe irregularities in ... financial statements resulting in misstatement of the corporation's net worth. They need only allege specific facts from which it is possible to infer defendant's knowledge of the falsity of its statements." Houbigant, Inc., 303 A.D.2d 92 at 99.

As the Court of Appeals has stated, for a fraud claim at the motion to dismiss stage, "Section 3016(b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct." Pludeman v. N. Leasing Sys., Inc., 10 N.Y.3d 486, 492 (2008).

Plaintiffs have alleged facts sufficient to establish a rational inference of ASM Media and aSW's scienter. In Pludeman, the reasonable inference of fraud was built upon a foundation of an alleged nationwide scheme among defendants that took place over the course of years. Pluedman, 10 N.Y.3d 486 at 493. Plaintiffs have alleged a similar scheme by defendants to acquire over 90% control of aSW and withhold ASW Capital asset valuation information in order to minimize the aSW-ASM Media merger cash disbursement to the minority shareholders. Additionally,

plaintiffs rely on DDJ Mgmt., LLC to argue that where there are overlapping directors of different corporate entities, a scheme can be reasonably inferred for the purposes of the scienter element. DDJ Mgmt., LLC v. Rhone Grp. L.L.C., 78 A.D.3d 442, 443, 911 N.Y.S.2d 7 (1st Dept 2010). "At this early stage of the litigation, plaintiffs are entitled to the most favorable inferences, including inferences arising from the positions and responsibilities of defendants." See id.

Defendants counter that plaintiffs' argument to impute knowledge from an agent to different principals is too broad and falls far short of a reasonable inference. Plaintiffs allege that Liotard-Vogt controlled ASW Capital and served on the boards of ASM Media and aSW. Thus his knowledge of the $43 million valuation of ASW Capital's assets can be reasonably imputed to aSW and ASM Media as well. Plaintiffs also allege that Sabine Heller was an agent of all three of ASW Capital, ASM Media and aSW, establishing a reasonable inference of a coordinated effort of board members of interrelated companies to raise capital through sales of stock and then withhold valuation information to push out minority shareholders at a reduced price.

Since reasonable inferences can be made regarding ASM Media and aSW's knowledge of the misrepresentation in value of aSW, it would be premature to dismiss plaintiffs' fraud claim as against ASM Media and aSW at this stage. Defendants ASM Media and aSW's motion to dismiss the claim of fraud is denied.

Third Cause of Action as to Plaintiffs' Claim of Breach of Fiduciary Duty Against Robinson

A breach of fiduciary duty claim falls under a three-year statute of limitations when monetary relief is sought and a six-year statute of limitations when equitable relief is sought. Robinson argues that the claim of breach of fiduciary duty should be dismissed because it is barred by the three-year statute of limitations. Plaintiffs argue that they have made a showing that their claim is primarily equitable in character and that the six-year statutory period applies.

The determination of which statutory period applies depends on "whether, when viewed in its entirety, the primary character of the case is legal or equitable." Cadwalader Wickersham & Taft v Spinale, 177 A.D.2d 315, 316 (1st Dept 1991). The damages that plaintiffs are seeking, with respect to the breach of fiduciary duty claim as against Robinson, are monetary at heart. Both of plaintiffs' claims for equitable relief, rescission and quasi-appraisal, are made with respect to remedies for the under-valuation of their shares of aSW. The relief that plaintiffs seek with respect to Robinson's breach of fiduciary duty is monetary, though. Further, rescission is not an available remedy for plaintiffs. Under DGCL § 253, Plaintiffs' only remedy is quasi-appraisal.

Plaintiffs brought this action against Robinson in November 2015, which falls outside of the three-year statute of limitations because the statutory period began in 2011. The statute of limitations begins to run when the cause of action when "all of

the facts necessary to the cause of action have occurred." Aetna Life & Ca. Co. v. Nelson, 67 NY2d 169, 175 (1986); CPLR 203(a). The financing that plaintiffs allege Robinson orchestrated, in breach of his fiduciary duty, to provide ASW Capital with a 90% majority stake in aSW was completed in 2011. Therefore, the statutory period had elapsed before plaintiffs brought their claim against Robinson.

As plaintiffs are primarily seeking monetary damages for the under-valuation of their shares in aSW, the three-year statute of limitations must apply. Accordingly, Robinson's motion to dismiss the claim of breach of fiduciary duty is granted.

Fourth Cause of Action as to Plaintiffs' Claim of Aiding and Abetting Breach of Fiduciary Duty Against ASM Media

Plaintiffs allege that ASW Capital owed them a fiduciary duty and ASM Media caused that duty to be breached. A fiduciary duty must exist in the first place for a party to have aided or abetted the breach of another party's fiduciary duty. Kaufman v. Choen, 307 A.D.2d 113, 125 (1st Dept 2003).

As defendants argue, under Delaware corporate law, a majority shareholder is the only entity that owes a duty to the minority shareholders— a duty of disclosure. In re Unocal Exploration Corp. Shareholders Litig., 793 A.2d 329, 351-52 (Del. Ch. 2000). The subsidiary and its board members owe no such duty, "because the subsidiary directors have no role in the short form merger, . . . they have no duties to minority stockholders." See id at 338. There are thus no fiduciary relationships that ASM Media could have aided or abetted in breaching. Plaintiff disputes ASM

Media's characterization as sole shareholder as a matter of law, yet plaintiffs themselves argue under their negligent misrepresentation claim above that ASM Media is the party that owes the minority shareholders a duty. As such, plaintiffs have not made a showing of any duty owed to them, other than that of ASM Media, that ASM Media could have aided and abetted in breaching.

Finally, Plaintiffs request leave to amend the complaint to add a breach of fiduciary duty claim against ASM Media. Plaintiffs allege in their complaint that ASM Media was, even if only momentarily before the merger, the majority shareholder of aSW. There are thus sufficient facts to sustain a claim as against ASM Media for breaching its fiduciary duty to minority shareholders. Plaintiff's request for leave to amend the complaint is granted.

Fifth Cause of Action as to Plaintiffs' Claim of Conversion Against ASM Media

Plaintiffs brought a claim of conversion against defendant ASM Media to be compensated for the shares of aSW they owned before the merger. For a cognizable cause of action of conversion to survive a motion to dismiss, plaintiff must have a "possessory right or interest in the property." Pappas v. Tzolis, 20 N.Y.3d 228, 234 (2012). When a defendant has legally purchased the plaintiff's possessory right, there cannot be conversion of a current possessory right of a plaintiff. Id. As defendants argue, there is no current possessory right for the plaintiffs in the aSW shares; that right disappeared after the merger went through.

Furthermore, as defendants add, "If a claim alleges an obligation to pay plaintiff money that he or she is owed, a conversion is not alleged, despite the fact that a specific fund is the subject of the claim." Stack Elec. v. DiNardi Constr. Corp., 161 A.D.2d 416, 417 (1st Dept 1990).

Plaintiffs have not made a showing of a present possessory right to the shares of aSW and only cite to Batsidis v. Batsidis 9 A.D.3d 342 (2d Dept 2004) for the contention that a conversion claim stands where plaintiffs were not properly compensated. However, that is a simplification of a conversion claim. Pappas is clear in that a present possessory right is a required element of a properly plead conversion claim. See Pappas v. Tzolis, 20 N.Y.3d at 234. The claim of conversion as against ASM Media is dismissed.

Seventh Cause of Action as to Plaintiffs' Claim of Negligent Misrepresentation Against ASM Media and aSW

A claim of negligent misrepresentation requires that "a plaintiff must allege a misrepresentation or a material omission of fact which was false and known to be false by 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." Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 179 (2011).

Plaintiffs have alleged that defendants ASM Media and aSW knew the information was false, contrary to what defendants have argued. The facts and allegations made by plaintiffs in the complaint all paint a picture of the defendants

knowingly making misrepresentations of aSW for valuation purposes as previously established in the above section on the merits of the fraud claim.

Defendants argue the information allegedly misrepresented was incomplete, not false, and that this distinction is dispositive in dismissing a negligent misrepresentation claim. See Gomez- Jimenez v. New York Law Sch., 103 A.D.3d 13, 18 (1st Dept 2012) (motion to dismiss a claim of negligent misrepresentation against a law school was granted where the law school gave out incomplete, rather than false, jobs data to students). Gomez-Jimenez can be distinguished from the matter at hand, though, in that the numbers the law school gave were not false, but correct as a whole and just not explained fully. Here, no valuation data, correct in sum, was allegedly given to the minority shareholders. Rather, plaintiffs assert that a false number was given.

Further, a claim of negligent misrepresentation requires a showing of the existence of a "special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff." Id at 180. Defendants argue that ASM Media, acting as a corporation, does not owe a duty to shareholders. See In re Dataproducts Shareholders Litig., 1991 Del. Ch. LEXIS 149, at *18 (Del. Ch. Aug. 22, 1991). However, majority shareholders owe a fiduciary duty to minority shareholders. See Tradewinds Fin. Corp. v. Repco Secs., Inc., 5 A.D.3d 229, 230 (1st Dept 2004). Plaintiffs have made a showing that ASM Media was the majority

shareholder of aSW prior to the merger and thus owed a fiduciary duty to the minority shareholders.

Defendants' motion to dismiss plaintiffs' claim of negligent misrepresentation is denied.

Eighth Cause of Action as to Plaintiffs' Claim of Unjust Enrichment Against ASM Media and aSW

"To state a cause of action for unjust enrichment, a plaintiff must allege that it conferred a benefit upon the defendant, and that the defendant will obtain such benefit without adequately compensating plaintiff therefor." Nakamura v. Fujii, 253 A.D.2d 387, 390 (1st Dept 1998). Plaintiffs have satisfied both requirements in their complaint by alleging that their purchase of stock increased the capital available to aSW, conferring a benefit to aSW, without adequate compensation at the time of the short form merger.

Contrary to defendants' contention, unjust enrichment claims can duplicate contract or tort claims. In Samiento, an unjust enrichment claim "[did] not lie as plaintiffs [had] an adequate remedy at law and therefore this claim was likewise properly dismissed." Samiento v. World Yacht Inc., 10 N.Y.3d 70, 81 (2008). Therefore, defendants are incorrect to argue that an unjust enrichment claim cannot be brought in the alternative to a fraud or breach of contract claim. Only if the other routes for remedies succeed does an unjust enrichment claim become duplicative.

The motion to dismiss plaintiffs' claim of unjust enrichment against ASM Media and aSW is denied.

Ninth Cause of Action as to Plaintiffs' Claim of Breach of Contract Against Robinson and aSW

Plaintiffs allege that aSW breached Section 4(b)(iii) of the Fourth Amended and Restated Certificate of Incorporation of aSW by entering into, approving, ratifying, or otherwise permitting the merger of aSW and aSW's sale of intellectual property without giving full effect to the rights of holders of Preferred Stock.

Defendants argue that the breach of contract claim must be dismissed because the terms of the contract could not have been breached after interpreting the objective language of the contract. Defendants contend that 4(b)(iii) could only reasonably apply to sales that trigger payments to preferred stock shareholders. However, defendants allege, only aSW received payments from the sold shares in question. Defendants argue that Section 4(b) only applies to sales of assets that impact the rights of holders of Preferred Stock and the sale in question did not alter any of the minority shareholders' rights.

Plaintiffs counter that defendants are too narrowly interpreting 4(b)(iii) to only govern sales of stock that trigger payments to preferred shareholders. Therefore, plaintiffs have sufficiently pleaded facts to make a showing that defendants breached the terms of the Fourth Amended and Restated Certificate of Incorporation.

The motion to dismiss plaintiffs' claim of breach of contract as against aSW is denied.

Plaintiffs have also brought a breach of contract claim against Robinson for allegedly breaching Section 3.1(g) of the Stockholders Agreement by not allowing other shareholders to exercise their tag along rights to sell Series B shares. Plaintiffs allege that Robinson sold his Series B shares to Liotard-Vogt without notice to other shareholders and after rejecting the tag-along rights of other shareholders that wanted to exercise.

Robinson was not a party to the Stockholders Agreement, but merely an agent of JCR. "[I]t is the general rule that a corporate officer is not liable for contracts entered into on the corporation's behalf unless there is clear and explicit evidence of the individual officer's intention to be personally bound." Mencher v Weiss, 306 NY 1, 4 (1953). Defendants have made a showing that Robinson only signed the Stockholders Agreement as a JCR corporate officer, meaning that Robinson cannot be held personally liable for breaching the contract.

The motion to dismiss the breach of contract claim as against Robinson is granted.

Tenth Cause of Action as to Plaintiffs' Claim of Promissory Estoppel Against Robinson and aSW

Plaintiffs have brought promissory estoppel claims against aSW and Robinson, the director of aSW, for a promise that they allege Robinson made to

plaintiff Ernest Jacquet. "Promissory doctrine may be invoked only where the aggrieved party can demonstrate the existence of a clear and unambiguous promise upon which he or she reasonably relied, thereby sustaining injury." Steele v. Delverde S.R.L., 242 A.D.2d 414, 415 (1st Dept 1997).

Plaintiffs allege that Ernest Jacquet increased his investment in aSW to $500,000 worth of aSW shares in reliance on a quid pro quo promise made by Robinson that Jacquet would get a seat on the board of aSW. Defendants argue that Jacquet's reliance on such a promise is, first, unreasonable. Robinson himself, under Delaware law, could not grant Jacquet a voting seat on the aSW board. DGCL §223. Defendants have thus made an adequate showing that it was unreasonable for Jacquet to rely on a promise that Robinson made which he, by law, could not guarantee. On the other hand, plaintiffs have not alleged sufficient facts to show that Jacquet's reliance was reasonable. Having plead only that Robinson was the director of aSW, plaintiffs have not brought forth any facts to show that Jacquet could have reasonably believed one board member's word was enough to guarantee him a board seat.

Next, defendants argue that the promise was not "clear and unambiguous" as defined by law. "Vague and conclusory allegations are insufficient." Marino v. Vunk, 39 A.D.3d 339, 340 (1st Dept 2007). Even though the Complaint does allege that Jacquet increased to $500,000 his investment in aSW in reliance on Robinson's

promise, defendants allege that the promise and purchase of additional shares took place over the span of several years. Defendants have thus made a showing that plaintiffs have not sufficiently plead facts of a clear and unambiguous promise made by Robinson as an agent of aSW to Jacquet.

The motion to dismiss plaintiffs' claim of promissory estoppel as against Robinson and aSW is granted.

Eleventh and Twelfth Causes of Action as to Plaintiffs' Requests for Quasi-Appraisal and Rescission Against all Defendants

Plaintiffs have pleaded relief in the form of quasi-appraisal and rescission. As defendants argue, plaintiffs' request for quasi-appraisal for monetary damages can only survive if a single claim survives the motion to dismiss. Therefore, quasi-appraisal is a valid remedy by which to value any damages plaintiffs have suffered at law.

Additionally, the remedy of rescission "is to be invoked only when there is lacking complete and adequate remedy at law and where the Status quo may be substantially restored." Rudman v. Cowles Commc'ns, Inc., 30 N.Y.2d 1, 13 (1972). The remedy of quasi-appraisal would restore plaintiffs to the position they would have been in had the short form merger been completed with the alleged valuation information that plaintiffs allege was withheld by defendants. Plaintiffs' claim for rescission as an equitable remedy is dismissed.

Accordingly it is hereby,

ORDERED that Robinson's motion to dismiss plaintiffs' claims of breach of fiduciary duty, breach of contract and promissory estoppel is granted; and it is further

ORDERED that ASM Media and aSW's motion to dismiss plaintiffs' claims of conversion, promissory estoppel, aiding and abetting breach of fiduciary duty and rescission is granted; and it is further

ORDERED that the motion to dismiss is denied with respect to plaintiffs' claims of fraud, breach of contract, negligent misrepresentation and unjust enrichment.

Date: August 29, 2016
New York, New York

Anil C. Singh