Gateway Intl. 360, LLC v Richmond Capital Group, LLC
2021 NY Slip Op 30066(U)
January 7, 2021
Supreme Court, New York County
Docket Number: 654636/2018
Judge: Shawn T. Kelly
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SHAWN TIMOTHY KELLY **PART** IAS MOTION 57

Justice

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GATEWAY INTERNATIONAL, 360, LLC, HARPER ZARKER,

Plaintiff,

- v -

RICHMOND CAPITAL GROUP, LLC, GTR SOURCE, LLC, MZEED, INC. D/B/A MEGA CAP FUNDING, ORANGE ACH, LLC, MICHELLE GREGG, TSVI DAVIS, JONATHAN BRAUN,

Defendant.

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INDEX NO. 654636/2018

MOTION DATE 11/17/2020

MOTION SEQ. NO. 018

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 018) 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 523, 539, 556, 557, 558, 559, 560, 561, 593

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

Defendant Jonathan Braun ("defendant" or "Braun") moves for an order: (a) pursuant to CPLR §3211(a)(7), dismissing the plaintiffs' Gateway International, 360, LLC ("Gateway") and Harper Franklin Zarker, Jr. ("Zarker") (collectively "plaintiffs") amended complaint as against defendant Jonathan Braun ("Braun") for failure to state a claim upon which relief can be granted; (b) directing plaintiffs to disclose to Braun the contents of their settlement with World Global Capital, LLC and to provide him with a copy of any and all settlement papers in connection therewith; (c) awarding Braun all of his costs and expenses, including his reasonable attorneys' fees; and (d) granting such other and further relief as may be just and proper. In opposition, plaintiffs contend that the amended complaint has been properly pled and that defendants are not entitled to any disclosure regarding the settlement with World Global Capital, LLC.

Background

Plaintiffs allege various forms of purported wrongdoing by Braun and the other defendants in connection with certain Merchant Cash Advance ("MCA") agreements, pursuant to which plaintiffs borrowed money from the defendant entities and, in turn, plaintiff Gateway provided the defendant entities with access to its accounts receivable in order to repay the borrowed funds. Specifically, plaintiffs allege the existence of a fraudulent scheme among closely related "merchant cash advance" companies which share the same address and personnel. The scheme involves luring plaintiffs into paying off advances from one defendant at a purported "discount" from the amount that would have been due over time with the expectation of a larger cash advance on better terms from another defendant. This larger cash advance would satisfy the initial advance as well as plaintiffs' other debts. Plaintiffs contend that the larger advance would then not be made and plaintiffs would be left with mounting unpaid debts as defendants reaped a quick and substantial return from plaintiffs' first cash advance. Plaintiffs would then be worse off than before taking the original advance. Plaintiffs seek to recover damages incurred as a result of this alleged fraudulent scheme.

Disclosure of Settlement with World Global Capital, LLC

Defendant Braun contends that the plaintiffs must disclose the nature of its settlement with prior defendant World Global Capital, LLC. Though Braun does not rely upon any case law, he argues that he is entitled to know the sum and substance of that settlement to determine whether that settlement was sufficient to cover the unidentified damages purportedly suffered by plaintiffs.

A non-settling defendant may be entitled to discovery of a confidential settlement between plaintiff and settling defendant(s) if the terms of the settlement are material and

necessary to the defense of an action (*see* CPLR §3101(a); *Allen v Crowell-Collier*, 21 NY2d 403, 288 NYS2d 449 [1968]; *In re NY County*, 222 AD2d 381, 635 NYS2d 641 [1st Dept 1995]). However, the use of settlement information to assess a defendant's maximum exposure, or to determine whether to settle or continue the litigation, are not considered material and necessary to the defense of the action to warrant usurping the confidentiality of the agreement (*see In re NY County, supra*). Braun has not established that the terms of the confidential settlement agreement are material and necessary to defend against the claims. Accordingly, defendant Braun's motion for disclosure of the settlement with World Global Capital, LLC is denied.

Motion to Dismiss as to Braun

The Amended Complaint alleges nine causes of action. The fourth and fifth causes of action are not asserted as against defendant Braun and as such, will not be discussed in this decision.

On a CPLR §3211(a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true" (*Alden Global Value Recovery Master Fund, L.P. v KeyBank National Association*, 159 AD3d 618, 621-22 [2018]). In addition, "on such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff" (*Id.* at 622). However, vague and conclusory allegations cannot survive a motion to dismiss (*see, Kaplan v Conway and Conway*, 173 AD3d 452, 452-53 [2019]; *D. Penguin Brothers Ltd. v City National Bank*, 270 NYS3d 192, 192 [2018] [noting that "conclusory allegations fail"]; *R & R Capital LLC, et al., v Linda Merritt*, 68 AD3d 436, 437 [2010]).

The criterion for establishing whether a Complaint should be dismissed pursuant to §3211(a)(7) is "whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; s*ee also Foley v D'Agostino,* 21 AD2d 60, 64-65 [1964]). Whether the pleader will ultimately be able to establish the allegations in the pleading is irrelevant to the determination of a motion to dismiss pursuant to CPLR §3211(a)(7) (*see EBC I, Inc., v Goldman Sachs & Co.*, 5 NY3d 11, 19 [2005]; *Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001][motion must be denied if "from [the] four corners [of the pleadings] factual allegations are discerned which taken together manifest any cause of action cognizable at law"]).

First Cause of Action- Breach of General Business Law §349

The first cause of action is breach of General Business Law §349 (herein "GBL") against all defendants. New York GBL §349 prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service" in New York State (*see Small v Lorillard Tobacco Co.*, 94 NY2d 43, 55–56, 720 NE2d 892 [1999]). Defendant contends that the vague allegations advanced by plaintiffs are insufficient to state a GBL §349 claim and that none are sufficiently alleged against Braun. Defendant further argues that plaintiffs have not alleged that Braun personally engaged in business with plaintiffs and that the alleged consumer-oriented conduct was limited to just the parties and did not involve the purchase of goods or services for personal use. In opposition, plaintiffs argue that they have pled sufficient allegations to support a claim for breach of GBL §349.

To state a claim under the statute, a plaintiff must allege that the defendant has engaged "in an act or practice that is deceptive or misleading in a material way and that plaintiff has been

injured by reason thereof" (*Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, N.A.*, 85 NY2d 20, 25, 647 NE2d 741 [1995]). As a threshold matter, plaintiffs claiming the benefit of section 349, whether individuals or entities, must allege conduct on the part of defendant that is consumer oriented. Consumer oriented conduct does not require a repetition or pattern of deceptive behavior, nor does it require recurring conduct. Plaintiff must demonstrate that the acts or practices have a broader impact on consumers at large (*Benetech, Inc. v Omni Fin. Group, Inc.*, 116 AD3d 1190, 1190 [2014]. Private contract disputes, unique to the parties, for example, would not fall within the ambit of the statute (*see, e.g., Genesco Entertainment v Koch*, 593 F Supp 743, 752 [1984]).

Plaintiffs argues that the present matter affects the public interest in New York because the defendants are based in New York, their contracts are governed by the State of New York, and their confessions on judgments are filed in New York State Courts before being domesticated around the country. These allegations are not adequate to demonstrate that defendants' actions are consumer-oriented and therefore, defendant's motion as to the first cause of action is granted.

Second Cause of Action- Fraudulent Inducement and Sixth Cause of Action- Fraud

The second cause of action is Fraudulent Inducement and the sixth cause of action is Fraud as against defendants Braun, Michelle Gregg (herein "Gregg"), Richmond Capital Group, LLC (herein "RCG"), GTR Source (herein "GTR"), MZeed Inc. d/b/a Mega Cap Funding (herein "MZeed"), and Orange ACH, LLC (herein "Orange"), as Alter Egos. Specifically, as to Braun, plaintiffs allege that Braun is an owner, principal, manager, and/or control person or otherwise affiliated, directly or indirectly, of or with RCG, GTR, MZeed and Orange (Amended Complaint ¶ 20). Further, plaintiffs aver that Braun solicited Mr. Zarker, made the offers,

negotiated the terms, changed the terms, and satisfied the agreements on behalf of RCG, GTR, MZeed, and Orange (Amended Complaint ¶ ¶ 20, 50-53). Plaintiffs also allege that Braun used 'Jack Snyder' as an alias to knowingly and intentionally misrepresent the existence of 'Jack Snyder' to Mr. Zarker, to hide that he is a convicted money launderer, and to induce Mr. Zarker into doing business with him and his corporate entities on the basis that he had no criminal background (Amended Complaint ¶22, 54-113). Plaintiffs contend that Mr. Zarker justifiably relied on Braun's misrepresentations as he had no reason to suspect 'Jack Snyder' was an alias or did not exist, 'Jack Snyder' contacted him using JackSnyder@companycapitalfunding.com, and he continued to refer to himself as 'Snyder' throughout their relationship. He also used a cell phone number not traceable to Braun. Further, Plaintiffs allege that Mr. Zarker was injured by this fraudulent misrepresentation because if Braun had not used an alias to conceal his criminal past, Mr. Zarker would not have responded or accepted the offer for financing (Amended Complaint ¶180).

Plaintiffs sixth cause of action for fraudulent inducement against Braun is based on the alleged intentional misrepresentations that (i) if Gateway paid the balances owed to RCG, GTR, and MZeed early, Gateway would receive $725,000 from Orange., (ii) all other MCA debts, totaling $421,000, would be paid in full directly from the proceeds of the larger MCA financing, and (iii) that Gateway would receive $304,000 in liquid capital after all of the MCA debt was paid in full (Amended Complaint ¶85-116).

When a plaintiff brings a cause of action based upon fraud, "the circumstances constituting the wrong shall be stated in detail" (CPLR §3016 [b]). "The purpose of section 3016 (b)'s pleading requirement is to inform a defendant with respect to the incidents complained of." Thus "[w]e have cautioned that section 3016 (b) should not be so strictly interpreted as to

prevent an otherwise valid cause of action in situations where it may be impossible to state in detail the circumstances constituting a fraud" (*Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491 [2008]). What is "[c]ritical to a fraud claim is that a complaint allege the basic facts to establish the elements of the cause of action." and although under CPLR §3016 (b) "the complaint must sufficiently detail the allegedly fraudulent conduct, that requirement should not be confused with unassailable proof of fraud" (*id.* at 492). "Necessarily, then, section 3016 (b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct" (*id.*). The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff, and damages (*Eurycleia Partners, LP v Seward & Kissel. LLP*, 12 NY3d 553 [2009]).

Further, the elements of a fraudulent inducement or misrepresentation claim are: (1) the defendant made a false representation of fact, (2) the defendant had knowledge of the falsity, (3) the misrepresentation was made in order to induce the plaintiff's reliance, and (4) there was justifiable reliance on the part of the plaintiff resulting in an injury for which compensable damages are sought (*see Connaughton v Chipolte Mexican Grill*, 29 NY3d 137, 142 [2017]; *McSpedon v Levine*, 158 AD3d 618, 620 [2d Dept 2018]; *Mariano v Fiorvante*, 118 AD3d 961, 962 [2d Dept 2014]; *Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 421 [1996]). The fraudulent inducement claim is not duplicative of the fraud claim or the breach of contract claim.

Giving plaintiffs the benefit of every inference, the complaint states a cause of action for fraudulent inducement and fraud, by alleging that defendant knowingly misrepresented a present fact in order to induce plaintiffs to enter into the agreement (*see GoSmile, Inc. v Levine*, 81 AD3d 77, 81, 915 NYS2d 521 [1st Dept 2010], *lv. dismissed* 17 NY3d 782, 929 NYS2d 83

[2011]; *Rossetti v Ambulatory Surgery Ctr. of Brooklyn, LLC*, 125 AD3d 548, 549, 5 NYS3d 373, 375 [2015]). Courts have consistently held that allegations, such as the type plaintiffs have outlined, are sufficient to state a cause of action for fraud in the inducement (*522 Realty, LLC v. Heurtelou*, No. 523175/2018, 2020 WL 3124239, at *2–3 [2020]; *Caboara v Babylon Cove Development*, 82 AD3d 1141,1142 [2d Dept 2011]; *Bhandari v Ismael Leyva Architects*, 84 AD3d 607,608 [1st Dept 2011]; *Bd. of Managers of Marke Gardens Condominium v 240/242 Franklin Ave LLC*, 71 AD3d 935, 936 [2d Dept 2010]).

Finally, damages for fraud are calculated according to the "out-of-pocket" rule and must reflect "the actual pecuniary loss sustained as the direct result of the wrong" (*Lama Holding Co. v Smith Barney*, 88 NY2d 413, 421, 646 NYS2d 76, [1996]). Plaintiffs have properly alleged their damages, but even if they had not, the issue of damages in connection with a fraudulent inducement claim is a question of fact that cannot be resolved on a motion to dismiss (see *Ambac Assurance Corp. v Countrywide Home Loans, Inc.*, 179 AD3d 518 [2020]). Accordingly, defendant's motion to dismiss the second and sixth cause of action is denied.

Alter Ego/Piercing the Corporate Veil

Plaintiffs allege that Braun dominated RCG, GTR, Mzeed and Orange in the course of the transaction and that such domination was used to commit fraud or wrongdoing against Plaintiffs, which resulted in injury to plaintiffs. Further, plaintiffs contend that RCG, GTR, and MZeed each offered plaintiffs MCA financing codified in three (3) separate MCA contracts dated July 26, 2018 that were offered and emailed to plaintiffs by Braun as "Snyder". Pursuant to each of the July 26, 2018 agreements, RCG, GTR, and MZeed were each required to deliver $30,000, $90,000 total, in exchange for the receivables purchased, $44,970 per each contract, or $134,910 total. Plaintiffs performed their obligations pursuant to the agreement by selling

$44,970 worth of Gateway's receivables at a discounted price, executing the MCA Agreements, the ACH authorizations, and the COJs that secured each. Plaintiffs allege that RCG, GTR, and MZeed materially breached the agreements by delivering only $21,002 each, or $63,006 total, almost 30% less than the purchase price. Plaintiffs suffered damages because they did not receive the benefit of the bargains (Amended Complaint ¶76-107).

The doctrine of piercing the corporate veil is typically employed by a party seeking to go behind the corporate existence in order to circumvent the limited liability of the owners and to hold them liable for some underlying corporate obligation (*see Matter of Morris v New York State Dept. of Taxation & Fin.*, 183 AD2d 5, 588 NYS2d 927 [Court of Appeals 1993]; *Billy v Consolidated Mach. Tool Corp.*, 51 NY2d 152, 432 NYS2d 879 [1980]; *Port Chester Elec. Constr. Corp. v Atlas*, 40 NY2d 652, 389 NYS2d 327 [1976]). The doctrine is equitable in nature and the piercing of the corporate veil does not constitute an independent cause of action, but is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners (*see Matter of Morris*, 183 AD2d 5).

Piercing of the corporate veil is dependent on the specific facts and equities, but generally requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff, which resulted in plaintiff's injury (*see Baby Phat Holding Co., LLC v Kellwood Co.*, 123 AD3d 405, 997 NYS2d 67 [2014]; *Matter of Morris*, 183 AD2d 5). The theory of piercing the corporate veil involves a fact intensive inquiry that is not well suited for determination prior to discovery (*see Gardner v Yanko*, No. 600606/09, 2011 WL 3565829 [2011]; *Ledy v Wilson*, 38 AD3d 214, 214 [1st Dept 2007]; *Kralic v Helmsley*, 294

AD2d 234, 235-36 [1st Dept 2002]; *International Credit Brokerage Co. Inc. v Agapov*, 249 AD2d 77, 78 [1st Dept 1998]).

In the present case, particularly as there has been no discovery, the amended complaint sets forth sufficient allegations to establish the *prima facie* piercing of the corporate veil. Specifically, the amended complaint alleges that Braun and Gregg did not maintain corporate formalities as to RCG, GTR, MZeed, and Orange, dominated these corporate defendants, and acted as their alter egos to perpetuate fraud on plaintiffs.

Further, the Amended Complaint alleges that with the transactions at issue, Braun dominated and controlled the negotiations and provided erroneous information, which persuaded plaintiffs to enter into the agreement. The allegations sufficiently support plaintiffs' assertion that the corporate veil should be pierced.

Third Cause of Action- Breach of Contract

The third cause of action is Breach of Contract against Davis, as "MCA Subsidiary's" alter ego, and Braun and Gregg as alter egos of RCG, GTR, MZeed and Orange. Defendant contends that as he did not personally execute the MCA agreements on behalf of the corporations, that he is not liable for any wrongdoing. In opposition, plaintiffs allege that Braun as alter ego for RCG, GTR, Mzeed and Orange, and as "Snyder," was responsible for inducing plaintiffs into signing three contracts that were breached. Plaintiffs further allege that the contracts were materially breached when RCG, GTR, and MZeed failed to deliver almost 30% of the purchase price, which negatively impacted plaintiffs.

The elements of a breach of contract claim are "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages" (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). Taken in the light most favorable

to plaintiffs, the allegations contained in the Amended Complaint are sufficient to support a breach of contract cause of action.

Defendant also argues that the fraud claims are duplicative of the breach of contract claim. However, "[a] fraud based cause of action is duplicative of a breach of contract claim 'when the only fraud alleged is that the defendant was not sincere when it promised to perform under the contract' " (*Manas v VMS Associates, LLC*, 53 AD3d 451, 454 [1st Dept 2008], *quoting First Bank of the Americas v Motor Car Funding*, 257 AD2d 287, 291 [1st Dept 1999]). The allegations set forth in the Amended Complaint are sufficient to support both a breach of contract cause of action and allegations of fraud, independent of the breach of contract. Accordingly, defendant's motion to dismiss the third cause of action is denied.

Seventh Cause of Action- Civil Conspiracy

The seventh cause of action is Civil Conspiracy against all defendants. Braun's motion to dismiss as to the seventh cause of action, civil conspiracy, is granted. New York does not recognize an independent cause of action for conspiracy to commit fraud (*Hoeffner v Orrick, Herrington & Sutcliffe LLP*, 85 AD3d 457 [1st Dept 2011]) "While a plaintiff may allege, in a claim of fraud or other tort, that parties conspired, the conspiracy to commit a fraud or tort is not, of itself, a cause of action" (*see MBF Clearing Corp. v Shine*, 212 AD2d 478, 479 [1995], *citing Brackett v Griswold*, 112 NY 454 [1889]). Given that civil conspiracy is not an independent tort, it cannot have its own independent measure of damages; any damages attributable to plaintiff's conspiracy claim exists only within those damages that may be assessed for fraud" (*id.*). Accordingly, defendant's motion to dismiss the seventh cause of action is granted.

Eighth Cause of Action- Conversion

The eighth cause of action is Conversion as against Braun, Gregg, RCG, GTR, MZeed, and Orange as alter egos. A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43 [2006]). Two key elements of conversion are (1) plaintiff's possessory right or interest in the property (*Pierpoint v Hoyt*, 260 NY 26 [1932]; *State v Seventh Regiment Fund*, 98 NY2d 249, 259 [2002]) and (2) defendant's dominion over the property or interference with it, in derogation of plaintiffs rights (*Employers' Fire Ins. Co. v Cotten*, 245 NY 102 [1927]).

Plaintiffs contend that although the MCA agreement granted RCG, GTR, and Mzeed access to their bank accounts, the unauthorized debits on July 31, 2018, amount to conversion. Though these facts without more would not be sufficient to survive a motion to dismiss, the plaintiffs have sufficiently plead a theory of alter ego liability and discovery has not been completed yet. Therefore, defendant's motion to dismiss the eighth cause of action is denied (*see Gowen v Helly Nahmad Gallery, Inc.*, 60 Misc 3d 963, 984–85, 77 NYS3d 605, 622–23 [2018], *aff'd*, 169 AD3d 580 [2019]).

Ninth Cause of Action- Unjust Enrichment

The ninth cause of action is Unjust Enrichment against all defendants. Braun contends that this cause of action must be dismissed as plaintiffs fail to allege that he received any personal benefit. Further, Braun argues that the unjust enrichment claim is duplicative of the breach of contract claim and accordingly, must be dismissed. In opposition, plaintiffs aver that benefits were personally conferred on Braun either through commissions paid, profits shared, and/or other cash disbursements (Amended Complaint ¶282- 283).

"Unjust enrichment is a quasi-contract theory of recovery, and is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned' " (*Georgia Malone & Co., Inc. v Rieder*, 86 AD3d 406, 408 [1st Dept 2011], *affd.* 19 NY3d 511 [2012], *quoting IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 142 [2009]). In order to plead a claim for unjust enrichment, the plaintiff must allege "that the other party was enriched, at plaintiff's expense, and that "it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered' " (*Georgia Malone & Co.*, 86 AD3d at 408, *quoting Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]). However, "[t]he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter" (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]).

Further, although privity is not required for an unjust enrichment claim (*Sperry v Crompton Corp.*, 8 NY3d 204, 215, 831 NYS2d 760 [2007]), a claim will not be supported unless there is a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff's part (*Mandarin Trading*, 16 NY3d at 182). An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim (*Clark–Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388–389, 521 NYS2d 653 [1987]; *Samiento v World Yacht Inc.*, 10 NY3d 70, 81 [2008]).

While a claim for unjust enrichment may stand alongside a breach of contract cause of action at the pleading stage (*see Wilmoth v Sandor*, 259 AD2d 252, 254 [1st Dept 1999]), when, as here, plaintiffs allegations merely duplicate the tort and contract claims stated, a claim for unjust enrichment is not stated (*see Khurdayan v Kassir*, No. 159480/17, 2020 WL 3511498, at *4 [2020]; *Shilkoff Inc. v 885 Third Avenue Corp.*, 299 AD2d 253 [1st Dept 2002]; *Brintec*

Corp. v Akzo, N.V., 171 AD2d 440 [1st Dept 1991][recovery for unjust enrichment applies only in the absence of an express agreement]. Accordingly, the ninth cause of action is dismissed.

Conclusion

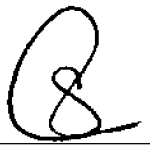
In accordance with the foregoing, defendant Braun's motion to dismiss is partially granted to the extent that the first, seventh and ninth causes of action are dismissed as against Braun. Defendant's motion for the disclosure of the settlement with World Global Capital, LLC is denied.

Accordingly, it is hereby

ORDERED that the motion to dismiss is granted and the first, seventh, and ninth, causes of action of the complaint are dismissed; and it is further

ORDERED that defendant Braun is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference to be conducted remotely on March 17, 2021 , at 12:30 PM.



1/7/2021
DATE

SHAWN TIMOTHY KELLY, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE