

Kaufman Dolowich LLP

Patrick M. Kennell

pkennell@kaufmandolowich.com

Kathleen A. Mullins

kathleen.mullins@kaufmandolowich.com

40 Exchange Place

New York, New York 10005

(212) 485-9600

Counsel for Defendant Michael Blatter

Hearing Date and Time:

**To Be Scheduled by the Court Per
Stipulation and Order (Dkt 66)**

Responsive Papers Due:

January 28, 2025 (Per Dkt 66)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

TRANSFIX PRODUCTIONS LLC,

Debtor.

DEBORAH J. PIAZZA, AS CHAPTER 7
TRUSTEE OF TRANSFIX PRODUCTIONS LLC,

Plaintiff,

-v-

MICHAEL BLATTER,

Defendant.

Chapter 7

Case No.: 23-11283 (JLG)

Adv. Pro. No.: 24-04040 (JLG)

**NOTICE OF MOTION BY
DEFENDANT MICHAEL
BLATTER TO DISMISS THE
COMPLAINT**

PLEASE TAKE NOTICE that, pursuant to the Stipulation and Order Regarding Contemplated Adversary Proceeding and Further Mediation (ECF Doc 66), and upon the accompanying Memorandum of Law in Support of Defendant's Motion to Dismiss, dated January 10, 2025, and upon all the pleadings and proceedings herein, Defendant MICHAEL BLATTER will move this Court, before the Honorable James L. Garrity, Jr., U.S.B.J., at the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York, 10004, on a date and time to be determined by the Court, for an Order pursuant to the

Federal Rules of Bankruptcy Procedure and Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint and this Adversary Proceeding, in its entirety with prejudice, on the grounds that the Complaint fails to state a claim upon which relief can be granted, and for such other relief as the Court deems just and proper.

Dated: January 10, 2025
New York, New York

Respectfully submitted,

KAUFMAN DOLOWICH LLP

/s/ Patrick M. Kennell

Patrick M. Kennell

pkennell@kaufmandolowich.com

Kathleen A. Mullins

kathleen.mullins@kaufmandolowich.com

40 Exchange Place – 20th Floor

New York, New York 10005

Tel: (212) 485-9600

Counsel for Defendant Michael Blatter

To:
(Via ECF)

TARTER KRINSKY & DROGIN LLP

Robert Wolf, Esq.

rwolf@tarterkrinsky.com

Jacob B. Gabor, Esq.

jgabor@tarterkrinsky.com

1350 Broadway, 11th Floor

New York, New York 10018

Tel (212) 216-8000

Counsel to Deborah J. Piazza as Chapter 7 Trustee

STATEMENT PURSUANT TO FED. R. BANKR. P. 7012(b)

Pursuant to Fed.R.Bankr.P. 7025(b), Defendant Michael Blatter states that, to the extent applicable, Defendant does not consent to the entry of final orders or judgment by the Bankruptcy Court.

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Plaintiff,

Adv. Pro. No.: 24-04040 (JLG)

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Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

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PRELIMINARY STATEMENT

Not all startups succeed, particularly in the entertainment industry, and such is the case here, where Transfix Productions LLC, a New York limited liability company, simply did not sell enough tickets to its Las Vegas immersive art experience to succeed. In this Adversary Proceeding, the Trustee seeks to blame Transfix's Managing Member and CEO, Michael Blatter—who himself invested a significant amount of money in Transfix—for the venture's downfall, making wild and baseless allegations of financial and operational mismanagement and asserting a single count for breach of fiduciary duty. The main issue for the Court to decide on this motion to dismiss the Complaint and Adversary Proceeding is whether the Trustee has any basis to bring a claim for purported breach of *any* duty, however, where the Transfix LLC Operating Agreement expressly provides that Transfix's members and managers owe no fiduciary or other duties to the company and enjoy exculpation from any liability.

The Operating Agreement, which is appended to the Complaint as Exhibit 2, provides that no Member of the LLC “shall have any duties or liabilities, including fiduciary duties, to the Company,” that the Members shall have no personal liability to the company or its creditors, and that the Managing Member and officers of Transfix (called Indemnitees under the Operating Agreement) shall have no “personal liability to the Company or the Members for monetary damages for breach of such Indemnitee's fiduciary duties (if any) or for any act or omission performed or omitted by such Indemnitee in good faith on behalf of the Company.” New York law upholds such standard exculpation provisions favoring members, managers and officers of limited liability companies, and as such, the Trustee's claim against Mr. Blatter fails and the Complaint and Adversary Proceeding should be dismissed entirely and with prejudice.

STATEMENT OF FACTS AND ALLEGATIONS¹

When Defendant Michael Blatter and non-party Tom Stinchfield founded Transfix Productions, LLC in 2021, they sought to create “an entertainment company that would produce and present a unique art exposition on a touring basis at various city sites.” (*See*, ECF Doc. 1, “Compl.,” at ¶ 2). And so, Transfix Productions LLC was formed as a New York limited liability company in 2021. (*Id.*, at ¶¶ 2, 13).

A. The Transfix LLC Operating Agreement

As part of the company’s formation, Transfix’s Members entered into an Operating Agreement on August 26, 2021, as amended on February 1, 2023. (*See*, ECF Doc. 1-2, “Op. Agmt.,” at “Recitals,” p. 1). Per the Definitions section of the LLC Operating Agreement, Mr. Blatter served as the defined “Managing Member” of Transfix. (Op. Agmt., at Art. I, p. 5). In the day-to-day operations, Mr. Blatter also outwardly used the title of “CEO.” (Compl., at ¶ 15).

The Operating Agreement contains a number of liability shields for the LLCs Members, Managing Member, and officers. Section 4.7 of the Operating Agreement, entitled “No Fiduciary Duties,” provides in relevant part:

To the maximum extent permitted by the NY LLC Law and applicable law, **no Person, in such Person’s capacity as a Member, shall have any duties or liabilities, including fiduciary duties, to the Company, any Member or any**

¹ As is necessary on a Rule 12(b)(6) motion to dismiss, Mr. Blatter refers only to the “facts” as alleged by the Trustee’s Complaint, any exhibits attached or incorporated by reference, matters of public record or of which the Court may take judicial notice, and any documents that are “integral to” the Complaint. *In re Tops Holding II Corp.*, 646 B.R. 617, 647-648 (Bankr. S.D.N.Y. 2022). “When documents contain statements that contradict allegations in the complaint, the documents control and the court need not accept as true the allegations in the complaint to the extent that they are contradicted.” *In Re Richartz, Fliss, Clark & Pope, Inc.*, Adv. Pro. No. 10-03317-MG, 2010 WL 4502038, at *3 (Bankr. S.D.N.Y. Nov. 1, 2010), citing *Roth v. Jennings*, 489 F.3d 499, 510-11 (2d Cir. 2007).

other Persons bound by this Agreement, and all such duties or liabilities are hereby irrevocably disclaimed and eliminated. The provisions of this Agreement, to the extent that they restrict or otherwise modify or eliminate the duties and liabilities, including fiduciary duties, of a Member otherwise existing at law or in equity, are agreed by the Members to replace any such other duties or liabilities of the Member. (Op. Agmt., at § 4.7) (emphasis added).

At Section 5.11 (“Certain Limitations on Member Liability”), the Operating Agreement states:

To the maximum extent permitted by applicable law, **no Member shall have any personal liability whatsoever in such Member’s capacity as a Member, whether to the Company, to any of the other Members, to the creditors of the Company or to any other third party, for the debts, liabilities, commitments or any other obligations (whether arising in contract, tort or otherwise) of the Company or for any losses of the Company.** Notwithstanding anything contained herein to the contrary, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the NY LLC Law will not be grounds for imposing personal liability on the Members (in their capacities as such) for obligations of the Company, except to the extent constituting fraud, willful misconduct, or a violation of applicable law or the express terms of this Agreement by such Members. (Op. Agmt., at § 5.11) (emphasis added).

Using the defined group “Indemnitees” as identified at Section 8.1 (as “the Managing Member and each officer of the Company”), Section 8.8 (Exculpation) of the Operating Agreement makes clear that:

To the maximum extent permitted by applicable law, **no Indemnatee shall have personal liability to the Company or the Members for monetary damages for breach of such Indemnatee’s fiduciary duties (if any) or for any act or omission performed or omitted by such Indemnatee in good faith on behalf of the Company.** To the maximum extent permitted by applicable law, no Indemnatee shall have personal liability to the Company or the Members for relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters that such Indemnatee reasonably believes are within such Person’s professional or expert competence. (Op. Agmt., at §§ 8.1 and 8.8) (emphasis added).

B. The Transfix Show at Resorts World Las Vegas

Transfix secured an exclusive opportunity to partner with Resorts World Casino and Hotel Las Vegas, a prominent hotel on the Las Vegas Strip. (Compl. at ¶ 22). Under its contract with Resorts World, Transfix was to produce its immersive art festival on the 200,000 square foot outdoor grounds of Resorts World for an approximate six-month period between April 21, 2023 and October 2023. (*Id.*). Mr. Blatter and the Transfix team estimated that approximately 3,000 tickets would be sold each night for the Resorts World iteration of the Transfix Festival. (Compl., at ¶ 33).

The Transfix Festival opened at Resorts World as scheduled on April 21, 2023. (Compl., at ¶ 23). But ticket sales lagged, and when the project did not meet its revenue projections, Transfix ultimately made the decision to close its doors during the last week of May, after only a six-week run. (*Id.*). Once Transfix closed, the several art installations remained at the Resorts World site in shipping containers. (Compl., at ¶ 47). Resorts World on its own initiative retained a third-party storage company to secure and move the containers offsite to Resorts World's own storage facility. (*Id.*).

C. The Trustee's Adversary Proceeding Complaint

Following the closure of Transfix Festival, the company filed for Chapter 7 bankruptcy on August 11, 2023. (Compl., at ¶ 47). On December 6, 2024, the Trustee filed an Adversary Proceeding Complaint against Mr. Blatter alleging that, as CEO of Transfix, Mr. Blatter breached his purported fiduciary duties owed to Transfix and its creditors. (Compl., at ¶ 1). The Complaint accuses Mr. Blatter of financial and operational mismanagement and seeks to place sole blame for the failure of the Transfix Festival on Mr. Blatter. (*Id.*, at ¶ 56). The Complaint asserts a single count for breach of fiduciary duty. (*Id.*, at ¶¶ 53-59).

LEGAL ARGUMENTS

Mr. Blatter now moves to dismiss the Complaint and this Adversary Proceeding in its entirety under Fed.R.Civ.P. 12(b)(6).

I. THE TRUSTEE’S COMPLAINT FAILS TO STATE A CLAIM WHERE THE TRANSFIX LLC OPERATING AGREEMENT EXPRESSLY EXCULPATES MR. BLATTER FROM ANY FIDUCIARY OR OTHER DUTIES

Federal Rule of Bankruptcy Procedure 7012(b) provides that the Federal Rules of Civil Procedure 12(b)-(i) apply in adversary proceedings.

A. Standard for a Rule 12(b)(6) Motion to Dismiss

To withstand a Rule 12(b)(6) motion to dismiss for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Allegations which demonstrate only the “mere possibility of misconduct” are insufficient. *Iqbal*, 556 U.S. at 678.

While the Court must accept as true the facts alleged in the complaint, it need not accept as true legal conclusions asserted in the complaint. *Id.* A claim will only have “facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 663. A “formulaic recitation of the elements of a cause of action” is insufficient to overcome a motion to dismiss, *Twombly*, 550 U.S. at 544, and “[f]actual allegations must be enough to raise a right to relief above the speculative level,” *Id.* at 455. However, a pleading that offers only “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Id.*

(noting that a court is “not bound to accept as true a legal conclusion couched as a factual allegation”).

B. The Transfix LLC Operating Agreement Precludes Any Claims Against Mr. Blatter for Breach of a Fiduciary or Other Duty

To properly plead a claim for breach of fiduciary duty under New York law,² the Trustee must plead facts sufficient to demonstrate “(1) the existence of a fiduciary duty; (2) a knowing breach of that duty; and (3) damages resulting therefrom.” *Schwartzco Enters. LLC v. TMH Mgmt., LLC*, 60 F.Supp.3d 331, 352 (E.D.N.Y. 2014). Here, the Trustee cannot successfully demonstrate the existence of a fiduciary (or any other) duty by Mr. Blatter, either as the Member Manager or as an officer (the CEO) of Transfix, in light of the Transfix LLC Operating Agreement’s exculpation and indemnity provisions.

1. Mr. Blatter, as the Managing Member of Transfix, Owed No Fiduciary or Other Duties, Dooming the Trustee’s Complaint

Generally, a managing member of an LLC owes the traditional fiduciary duties of care and loyalty to the company. *Wen v. New York City Regional Center, LLC*, 695 F.Supp.3d 517, 545 (S.D.N.Y. 2023). *See also, DirecTV Latin America, LLC v. Park 610, LLC*, 691 F.Supp.2d 405, 438 (S.D.N.Y. 2010) (“[I]n the absence of a contrary provision in the LLC agreement, the manager of an LLC owes the traditional fiduciary duties of loyalty and care to the members of the LLC.”). But New York law also allows LLCs to disclaim or exculpate members, managers, and officers of the LLC from fundamental fiduciary duties by expressly doing so in the LLC’s

² New York law applies in this case. “A claim for breach of fiduciary duty brought against a corporate officer or director raises issues relating to the internal affairs of a corporation and therefore should be governed by the law of the state of incorporation of the relevant corporation.” *In re Hydrogen, L.L.C.*, 431 B.R. 337, 346 (Bankr. S.D.N.Y. 2010). The Transfix LLC Operating Agreement states that the company was formed under the laws of New York and provides that New York law governs any disputes. (*See, Op. Agmt.*, at §§ 2.1 and 11.12).

operating agreement. *Kagan v. HMC–New York, Inc.*, 94 A.D.3d 67, 72–73 (1st Dep’t 2012); *Barry v. Clermont York Associates LLC*, No. 650838/2012, 2015 WL 9307944, at *13 (Sup. Ct. N.Y. Cnty. Dec. 21, 2015) (New York LLC laws are “merely default rules that can easily be overridden by the LLC’s operating agreement.”). Such exculpatory provisions in an operating agreement can provide the basis for the dismissal of a breach of duty of care claim, such as the Trustee’s claim against Mr. Blatter here. *In re LMI Holdings, Inc.*, Adv. Proc. No. 15–51069, 2017 WL 1508606, at *6 (Bankr. D. Del. Apr. 27, 2017) (applying NY law).

Indeed, New York Limited Liability Company Law § 417(a) expressly permits the waiver of fiduciary and other duties by an LLC’s manager, providing in relevant part:

The operating agreement may set forth a provision eliminating or limiting the personal liability of managers to the limited liability company or its members for damages for any breach of duty in such capacity, provided that no such provision shall eliminate or limit:

(1) the liability of any manager if a judgment or other final adjudication adverse to him or her establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or that with respect to a distribution the subject of subdivision (a) of this section five hundred eight of this chapter his or her acts were not performed in accordance with section four hundred nine of this article.

The Transfix LLC Operating Agreement’s Definitions provide: “‘**Managing Member**’ shall mean Michael Blatter.” (Op. Agmt., at Art. I, p. 5) (bold in original). And as to all Members, including Mr. Blatter as the Managing Member, Section 4.7 (titled “No Fiduciary Duties”) of the Operating Agreement states that “no Person, in such Person’s capacity as a Member, shall have any duties or liabilities, including fiduciary duties, to the Company, any Member or any other Persons bound by this Agreement, and all such duties or liabilities are hereby irrevocably disclaimed and eliminated.” Moreover, as one would expect given the

primary purpose of an LLC, the Operating Agreement expressly provides that Members, which here would include Mr. Blatter as the Managing Member, are insulated from personal liability: “no Member shall have any personal liability whatsoever in such Member’s capacity as a Member, whether to the Company, to any of the other Members, to the creditors of the Company or to any other third party, for the debts, liabilities, commitments or any other obligations (whether arising in contract, tort or otherwise) of the Company or for any losses of the Company.” (Op. Agmt., at § 5.11). Taken altogether, these provisions plainly prohibit the Trustee, or anyone, from pursuing claims against Mr. Blatter, whether for breach of fiduciary duty or otherwise.

The Trustee attempts to plead around the clear import of the “No Fiduciary Duties” waiver and Member liability limitation clauses by characterizing Mr. Blatter as having acted solely as an “officer” of Transfix, because he also outwardly used a CEO title. (Compl., at ¶¶ 6, 53-54). In doing so, the Trustee alleges and relies on Section 4.5(c) of the Operating Agreement, which provides that “officers, in the performance of their duties as such, shall owe to the Company duties of loyalty and due care of the type owed by the officers of a business corporation ...” (Op. Agmt., § 4.5(c)). But as the *entirety* of the Operating Agreement plainly shows, Mr. Blatter was not merely the company’s CEO, he was in fact the LLC’s Managing Member. Indeed, the Operating Agreement—which, again, specifically defines and identifies Mr. Blatter, by name, as the defined “Managing Member”—gives the Managing Member (*i.e.*, Mr. Blatter) the sole authority to designate and appoint officers of Transfix. (*See*, Op. Agmt., at § 4.5(a) (“The Managing Member may, from time to time, designate and appoint individuals as officers of the Company.”)). It would be nonsensical to read the Operating Agreement such that Mr. Blatter appointed himself the CEO, and in doing so, stripped himself of all the benefits and

protections of the Managing Member role as afforded under the Operating Agreement. Artful pleading is one thing, but the Trustee cannot simply ignore Mr. Blatter's true capacity in order to end-run around the Operating Agreement and New York law.

Mr. Blatter is entitled to the protection of the Operating Agreement's waiver of fiduciary and other duties and the protections from personal liability to the company and creditors. Accordingly, the Trustee cannot allege Mr. Blatter owed a fiduciary duty in order to maintain her Complaint and its single count for breach of fiduciary duty, and as such, the Complaint and this Adversary Action must be dismissed in their entirety.

2. *The Operating Agreement's Exculpation Provision Also Protects Mr. Blatter From Personal Liability for the Trustee's Claims*

Even if the Trustee is correct—which she is not—that Mr. Blatter was solely the CEO of Transfix, the Operating Agreement would exculpate him from personal liability in any event. More specifically, Section 8.8 of the Operating Agreement (titled “Exculpation”) provides that “... no Indemnitee shall have personal liability to the Company or the Members for monetary damages for breach of such Indemnitee's fiduciary duties (if any) or for any act or omission performed or omitted by such Indemnitee in good faith on behalf of the Company.” (Op. Agmt., at § 8.8). Defined “Indemnites” include “the Managing Member and each officer of the Company.” (*Id.*, at § 8.1). So even if Mr. Blatter was deprived of the Operating Agreement's various other protections bestowed on the Managing Member, simply because he used a CEO title, Mr. Blatter as the mere CEO would qualify as an “Indemnitee” and thus have no personal liability to the company or to the Trustee standing in the company's shoes in bankruptcy. Accordingly, for this additional reason, the Trustee's Complaint fails and this action should be dismissed.

CONCLUSION

The Trustee cannot simply ignore the shields and protections afforded under the Transfix LLC Operating Agreement and New York law to Transfix's founding and Managing Member, Defendant Michael Blatter. While Mr. Blatter used a CEO title, that title does not deprive him of the expectation of being free from personal liability and from claims based on fiduciary and other duties. And therefore, the Trustee cannot establish that a fiduciary duty exists, such that the Complaint here fails. Defendant Michael Blatter therefore respectfully requests that this Court grant his motion and dismiss this Adversary Proceeding in its entirety and with prejudice.

Dated: January 10, 2025
New York, New York

Respectfully submitted,

KAUFMAN DOLOWICH LLP

/s/ Patrick M. Kennell

Patrick M. Kennell

pkennell@kaufmandolowich.com

Kathleen A. Mullins

kathleen.mullins@kaufmandolowich.com

40 Exchange Place – 20th Floor

New York, New York 10005

Tel: (212) 485-9600

Counsel for Defendant Michael Blatter

To:
(Via ECF)

TARTER KRINSKY & DROGIN LLP

Robert Wolf, Esq.

rwolf@tarterkrinsky.com

Jacob B. Gabor, Esq.

jgabor@tarterkrinsky.com

1350 Broadway, 11th Floor

New York, New York 10018

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