SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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DIMITRY ARONSHTEIN, on behalf of himself, and DIMITRY ARONSHTEIN, derivatively on behalf of AT HOME SOLUTIONS LLC, and SIMON ARONSHTEIN,

Index No.: 652674/2025

Plaintiffs,

-against-

OLGA ARONSHTEIN and AARON ARONSHTEIN,

Defendants.
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DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PURSUANT TO CPLR 3211

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PRELIMINARY STATEMENT

This action is a transparent and retaliatory attempt by Plaintiffs Dimitry and Simon Aronshtein to wrest control over a company in which they hold no ownership interest and to interfere with legitimate business operations. Plaintiffs bring this action premised on vague, conclusory, and unsupported allegations of fraud, conversion, and fiduciary breaches — none of which are pled with the requisite legal sufficiency, and all of which are designed to distract from Simon's own misconduct, which is the subject of a separate action currently pending in Queens County Supreme Court.

The operative Complaint fails on multiple, independent grounds. Dimitry lacks standing to bring this suit derivatively on behalf of At Home Solutions LLC ("AHS"), a company in which he has no membership interest, and whose ownership remains the subject of unresolved divorce proceedings. Simon likewise asserts no cognizable individual claims, instead seeking to improperly repackage derivative claims as personal causes of action. Furthermore, Plaintiffs' fraud allegations are wholly conclusory, fail to meet the heightened pleading standard required by CPLR 3016(b), and merely duplicate their deficient fiduciary duty claims.

Plaintiffs' misuse of this Court and the litigation process as a vehicle for personal and strategic gain — in the shadow of matrimonial and commercial disputes pending elsewhere — cannot be countenanced. For the reasons set forth herein, Defendants respectfully request that the Court dismiss the Complaint in its entirety, with prejudice.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiffs Dimitry Aronshtein ("Dimitry") (individually, and on behalf of AHS) and Simon Aronshtein ("Simon," and collectively with Dimitry, "Plaintiffs"), initiated this action by Summons, Complaint ("Complaint" or "Compl.") and Order to Show Cause. (*See* Affirmation of Leonard S. Spinelli (Spinelli Aff.), ¶ 2, Ex. A [Complaint]). The Action asserts four causes of action: (1) Breach of Fiduciary Duty; (2) Unjust Enrichment; (3) Conversion and (4) Fraud. (Compl., ¶¶ 23-43). These baseless allegations are unsupported by any actual facts, knowledge, information or belief and are purely retaliatory for a prior action filed by AHS and Elder Care against Simon for his own improper diversion of corporate funds to his private company, Personal Care Management, Inc.

AHS was formed on or about August 26, 2004, by Olga. (*See* Affirmation of Olga Aronshtein dated June 20, 2025 ("Olga Aff."), ¶ 3, Ex. A. Since its inception, Olga has been the sole managing member of AHS, as reflected in AHS's operating agreement and the IRS Form K-1 filed by AHS in each year since its inception. (*Id.* at Exs. D-E). Neither Dimitry nor Simon hold any ownership interest in AHS. (*Id.*) The only evidence that Simon holds any interest in AHS is an e-mail from November 30, 2020, memorializing a potentially planned gift from Olga to Simon, which was never memorialized in any documents, gift-tax receipts, nor reflected in the IRS Form K-1 of the Company. (*Id.* at ¶ 11; *see also* Compl., Ex. 1). Olga is the original sole member of Elder Care, which was formed on May 1, 2015, with Olga as the sole managing member. (*See* Olga Aff., Ex. F.) Olga gifted 50% membership interest to Simon and Simon is a 50% owner of Elder Care, as reflected in the IRS Form K-1 of Elder Care. (*See* Olga Aff., Ex. F). There are no amendments or modifications to the Elder Care operating agreement. (*Id.*) As such, Olga remains the managing member of Elder Care.

In sum and substance, the Complaint alleges "[u]pon information and belief, Olga and her son Aaron have robbed AHS of the funds in its bank account at M&T Bank for their own personal use and purposes unrelated to the business of AHS." (Compl., ¶ 12; *see also* Compl., ¶ 21 ["Upon

information and belief, Defendants improperly took AHS company funds and used them to finance […] private investments.")

Olga and Dimitry are married but are presently engaged in divorce proceedings (*Aronshtein v. Aronshtein,* Index No. 800149/2025 [Sup. Ct. Nassau County, 2025]) (the "Divorce"). Dimitry claims that by virtue of equitable distribution, he has an interest in AHS and presumptively, standing to bring this derivative suit on behalf of AHS. (*See* Compl., ¶¶ 2-3).

There is a third action, filed on April 8, 2025, in the Supreme Court of New York, Queens County, *At Home Solutions LLC and AHS Elder Care LLC v. Simon Aronshtein, Professional Care Management of New York LLC*, Index No. 710082/2025 [Sup. Ct. Queens County, 2025] (the "Queens Action"). (*See* Spinelli Aff., ¶ 4, Ex. A.) In the Queens Action, Olga – acting in her capacity as managing member of AHS and Elder Care – brought suit against Simon for diverting over a million of dollars of Elder Care funds to his personal company, Professional Care Management, LLC. An Order to Show Cause with Temporary Restraints was entered in the action, which froze PCM accounts until such time as those funds were returned.

This Action amounts to nothing more than a retaliatory scheme designed to frustrate AHS and Elder Care operations, founded on baseless and unsubstantiated allegations of fraud, waste and abuse.

LEGAL ARGUMENT

Defendants move to dismiss the Complaint in its entirety, with prejudice, on multiple grounds: (i) Dimitry, as a non-member of AHS and the party asserting the cause of action derivatively on behalf of AHS, lacks legal capacity to sue (CPLR 3211[a][3]); (ii) the pleading fails to state a cause of action (CPLR 3211[a][7]) in multiple respects: (a) failure to allege direct claims on behalf of Dimitry and Simon; and (b) failure to plead fraud with the requisite particularity and duplicity of the claim; and (iii) there are other actions pending between the same parties for the same cause of action (CPLR 3211[a][4]), which includes the Divorce, with respect to Dimitry's causes of action, and the Queens Action, with respect to Simon's causes of action.

I. DIMITRY LACKS STANDING TO ASSERT CLAIMS AGAINST DEFENDANTS DERIVATIVELY ON BEHALF OF AT HOME SOLUTIONS BECAUSE HE OWNS NO EQUITY IN THE COMPANY.

A derivative action is a lawsuit brought by a shareholder or member on behalf of a corporation or LLC to enforce a right that the entity itself has failed to assert. Under New York law, a plaintiff must own stock or a beneficial interest in the corporation at the time the action commenced and at the time the alleged harm occurred. (*Borrelli v. Thomas*, 216 A.D.3d 1433, [4th Dept. 2023]). A plaintiff does not have standing to bring a derivative action on behalf of a corporation unless they own stock in that corporation at that time. (N.Y. Bus. Corp. Law § 626[a][b]). This requirement extends to derivative actions involving Limited Liability Companies. (*Tzolis v. Wolff*, 10 N.Y.3d 100, 103 [2008]). A member of an LLC can bring a derivative suit on behalf of the LLC "when recovery is sought for damages to the entity." (*Maldonado v. DiBre*, 140 A.D.3d 1501, 1503, [3d Dept. 2016], *citing Tzolis v Wolff*, 10 NY3d 100, 103 [2008])

It is beyond dispute that neither Dimitry nor Simon are members of AHS, as reflected in the Articles of Organization, the operating agreement and the financial records of AHS. (*See* Olga Aff., Ex. A-E). Dimitry claims that he has a legal interest in AHS based on the New York Domestic

Relations Law § 236B, but that is the subject of the Divorce and has not been adjudicated yet – therefore, Dimitry's claims to AHS are inchoate at best and do not presently establish standing – i.e. that Dimitry has a beneficial interest in AHS at the time the alleged injury occurred or when this action was commenced. (Compl., ¶ 3). Dimitry alleges in the Divorce Action that he is entitled to equitable distribution of all martial property. (*Id.*). The fact that AHS might be considered marital property in an as to be determined divorce proceeding does not show "an injury-in-fact." (*Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 772 [1991]). Furthermore, it does not establish that Dimitry *presently* has a beneficial interest in AHS – his interest is contingent only.

Therefore, Plaintiff Dimitry lacks standing to bring this action on behalf of AHS, a company in which he owns no interest.

II. THE COMPLAINT FAILS TO STATE ANY DIRECT CLAIMS AGAINST OLGA AND AARON; THEREFORE, PLAINTIFFS' DIRECT CLAIMS SHOULD BE DISMISSED IN THEIR ENTIRETY.

On a motion to dismiss for failure to state a cause of action pursuant to C.P.L.R. 3211[a][7], this Court is tasked with determining whether the facts alleged by the plaintiff "fit within any cognizable legal theory." (*P.T. Bank Cent. Asia v. ABN AMRO Bank, N.V.*, 301 A.D.2d 373, 375 [1st Dept. 2003], *quoting Morone v. Morone*, 50 N.Y.2d 481, 483 [1980]; *see also AG Capital Funding Partners v. State St. Bank & Trust Co.*, 5 N.Y.3d 582, 591 [2005]). Although the court must accept as true all factual allegations by the claimant, "[c]onclusory allegations are generally insufficient to sustain a claim." (*Goode v. Charter Oak Fire Ins. Co.*, 8 Misc. 3d 1023(A), 1023(A) [Sup. Ct., Nassau County 2005]; *see also Fowler v. Am. Lawyer Media, Inc.*, 306 A.D.2d 113, 113 [1st Dept. 2003]). Indeed, "[t]he Court need not, and should not, accept legal conclusions, unwarranted inferences, unwarranted deductions, baseless conclusions of law, or sweeping legal conclusions cast in the form of factual allegations." (*Goode*, 803 N.Y.S. at 18, *citations omitted*).

When considering the sufficiency of a complaint, "[t]he pertinent inquiry is whether the thrust of the plaintiff's action is to vindicate his [or her] personal rights as an individual and not as a stockholder on behalf of the corporation." (*Maldonado,*, 140 A.D.3d at 1504). Where a party alleges injury to a corporate entity which results in a reduction of a party's proportionate share, the claim is derivative, not direct. (*Yudell v. Gilbert*, 99 A.D.3d 108, 115 [1st Dept. 2012] ["Only if and when the joint venture receives this compensation would plaintiffs then be entitled to receive their proportionate share. Thus, plaintiffs' claims are derivative."]) If party sets forth allegations in a complaint "which confuse a shareholder's derivative and individual rights," the action "will . . . be dismissed." (*Yudell*, 99 A.D.3d at 115, *citing Abrams v Donati*, 66 NY2d 951, 953 [1985]; *see also Quatrochi v. Citibank, N.A.*, 210 A.D.2d 53, 54 [1st Dept. 1994], [An individual plaintiff lacks standing to sue in his own name for injuries to the corporation.]).

Here, the Plaintiffs have confused their individual and derivative claims because they have pled derivative claims on behalf of AHS as individual plaintiffs. (*See* Spinelli Aff., Ex A). Our First Department has explained:

> It is black letter law that a stockholder has no individual cause of action against a person or entity that has injured the corporation. […] In order to distinguish a derivative claim from a direct one, the court considers (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders individually). If there is any harm caused to the individual, as opposed to the corporation, then the individual may proceed with a direct action.
>
> On the other hand, even where an individual harm is claimed, if it is confused with or embedded in the harm to the corporation, it cannot separately stand.

(*Serino v Lipper*, 123 A.D.3d 34, 39-40 [1st Dept 2014], *internal citations and quotations omitted; see also Abrams,* at 953-954 [conspiracy to terminate employment of corporation's president mixed

with claim for diversion of corporate assets was properly dismissed as a derivative action]; *Yudell,* 99 A.D.3d at 115[the plaintiff's direct claims, embedded in claims for partnership waste and mismanagement, were properly dismissed as derivative claims]; *Hahn v Stewart,* 5 A.D.3d 285 [1st Dept. 2004] [claims that the corporation's damaged reputation diminished the value of former corporate shareholder's shares dismissed on the grounds that such allegations plead a wrong to the corporation only, for which a shareholder can only sue derivatively]);

Here, Plaintiffs assert *individual* claims of Breach of Fiduciary Duty, Unjust Enrichment, Conversion, and Fraud. (Compl. at ¶¶ 23-43). Each claim specifically describes damage to AHS or Elder Care. (*See Id.*). Plaintiffs' claim of Breach of Fiduciary Duty details "removing…company operating funds from the AHS bank accounts." (*Id.* at ¶¶ 27-28). Plaintiffs claim for Unjust Enrichment alleges stolen "money from AHS and Elder Care, where Plaintiffs have interests." (*Id.* at ¶ 30). Plaintiffs' Conversion claim relates to alleged "usurped…corporate funds from AHS and Elder Care accounts." (*Id.* at ¶ 34). The Fraud claim against Defendants is based on alleged "intent to deplete" AHS resources. (*Id.* at ¶ 43). The Plaintiffs have not accused the Defendants of any individual harm, and yet Plaintiffs bring these claims in their capacity as individuals.

In each pled claim, Plaintiffs' harm arises from reduction in their alleged "proportionate share[s]" of AHS and Elder care which makes this action inherently derivative. (*Yudell,*, 99 A.D.3d at 115 ["Only if and when the joint venture receives this compensation would plaintiffs then be entitled to receive their proportionate share. Thus, plaintiffs' claims are derivative."]). Clearly, Plaintiffs have conflated their derivative and individual rights which warrants dismissal of their individual claims in the Complaint. (*Id.*, [*citing Abrams v Donati*, 66 NY2d 951, 953 [1985]). For these reasons, Plaintiffs' individual claims should be dismissed. *See Glenn v. Hoteltron Systems,* 74 N.Y.2d 386, 392 [1989]; *3P-733, LLC v. Tawan Davis*, 187 A.D.3d 626, 628–29 [1st Dept.

2020] [Dismissing as derivative conversion claims pled on behalf of individual plaintiffs where corporate officer was alleged to have misappropriated corporate funds.]; *Evangelista v. Slatt*, 20 A.D.3d 349, 350 [1st Dept. 2005] [Dismissing as derivative individual claims of breach of fiduciary duty based on corporate misappropriation of funds, noting that the individual plaintiff "had no right to such a recovery."]; *Wolf v. Rand*, 258 A.D.2d 401, 403 [1st Dept. 1999] [Shareholder's standing to sue for corporate misappropriation of funds is that of a shareholder entitling her to sue only derivatively.]).

III. PLAINTIFF FAILS TO PLEAD FRAUD WITH THE REQUISITE SPECIFICITY REQUIRED BY CPLR 3016[b] AND THE CLAIM SHOULD BE DISMISSED AS DUPLICATIVE OF PLAINTIFFS' BREACH OF FIDUCIARY DUTY CLAIMS.

In order to plead a cause of action for fraud, a plaintiff must allege: "a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages. A claim rooted in fraud must be pleaded with the requisite particularity under CPLR 3016(b)." *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553, 559 [2009], *citations omitted*. Here, Plaintiffs' allegations fail to establish the critical elements of fraud as they do not allege a material misrepresentation of fact *to Plaintiffs*, nor justifiable reliance *by the Plaintiffs.*

Indeed, Plaintiffs' allegations of fraud are merely duplicative of the breach of fiduciary duty and conversion claims alleged in the Complaint, and do not establish an independently cognizable claim for fraud. Where a fraud claim is duplicative of a breach of fiduciary duty claim, dismissal at the pre-answer motion phase is appropriate. (*Interventure 77 Hudson LLC v. Falcon Real Est. Inv. Co., LP*, 172 A.D.3d 481, 481–82 [1st Dept. 2019] ["The court correctly dismissed plaintiffs' fraud claim as duplicative of the breach of fiduciary duty claim]; *see also Pai v. Blue Man Group Publ., LLC,* 151 A.D.3d 456, [1st Dept. 2017], [dismissed as plaintiffs' fraud allegations are subsumed in

the allegations of wrongdoing that constitute the alleged breach of fiduciary duty.]; *Frydman & Co. v. Credit Suisse First Bos. Corp.*, 272 A.D.2d 236, 238 [1st Dept. 2000]).

Based on the foregoing, Plaintiffs' claim for fraud should be dismissed.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court grant Defendants' Motion to Dismiss, and that the Court dismiss Plaintiffs' Complaint, it its entirety with prejudice.

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