SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

JUMA TECHNOLOGY CORP., MARGERY C. RUBIN as Trustee of RUBIN FAMILY IRREVOCABLE STOCK TRUST, and ROBERT M. RUBIN.

Plaintiffs,

Index No.: 151483/2016

-against-

ANTHONY M. SERVIDIO, JOSEPH FUCCILLO, ROBERT THOMSON, VISION OPPORTUNITY MASTER FUND, LTD., VISION CAPITAL ADVANTAGE FUND, LP, VISION CAPITAL ADVISORS, LLC and NECTAR HOLDINGS INC.,

Defendants.

----------x

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS THE COMPLAINT

Submitted by:

MASSOUD & PASHKOFF, LLP
Attorneys for Plaintiffs
1700 Broadway, 41st Floor
New York, New York 10019
(212) 207-6771

Plaintiffs, Juma Technology Corp. ("Juma"), Margery C. Rubin as Trustee of Rubin Family Irrevocable Stock Trust (the "Trust"), and Robert M. Rubin ("Rubin"), by Massoud & Pashkoff, LLP, their undersigned attorneys, submit this Memorandum of Law in opposition to the motion by defendants Vision Opportunity Master Fund, Ltd. ("VOMF"), Vision Capital Fund, LP ("VCF"), Vision Capital Advisors, LLC ("VCA" and, together with VOMF and VCF referred to as "Vision Defendants") and Robert Thomson ("Thomson") for an order, pursuant to CPLR § 3211(a)(1), (2), (3), (5), (7) and (8), dismissing the Amended Complaint in this action as against them.

NATURE OF THE ACTION

By way of this action, plaintiff Juma seeks to recover damages against certain of its former officers and directors (defendants Anthony Servidio, Joseph Fuccillo and Robert Thomson) and the Vision Defendants which it sustained as a result of breach of fiduciary duties/inducement to breach of fiduciary duties owed to it by engaging in acts of self-dealing and other wrongful conduct. *See* Amended Complaint.[1]

Juma also seeks an accounting from, and money damages against, the Vision defendants and Nectar Holdings Inc. – an entity they created and controlled -- which it sustained as a result of said defendants having exercised complete control and domination of its affairs and diversion of its assets to themselves and their newly-formed entity.

Plaintiffs Rubin and the Trust, minority shareholders of Juma, seek damages from the Vision Defendants which they sustained as a result of their acts of self-dealing and other wrongful conduct.

---

[1] A copy of the Amended Complaint, the contents of which are adopted and incorporated in their entirety as if fully set forth herein at length, is annexed as Exhibit "V-MTD-B" to the affidavit of Cynthia M. Monaco, Esq., sworn to August 19, 2016, submitted in support of defendants' instant motion (the "Monaco Aff.").

COUNTER-STATEMENT OF RELEVANT FACTS

At all relevant times mentioned in the Complaint, Juma was a Delaware corporation and publicly traded company, its securities registered with the United States Securities and Exchange Commission, and its sole place of business located at 154 Toledo Street, Farmingdale, New York. *See* Rubin Aff. ¶ 4.[2]

Juma was a highly specialized systems integrator with a complete suite of services for the implementation and management of an entities data, voice and video requirements, and its business focused on providing converged communications solutions for voice, data and video network implementation for various markets, being a designer and seller of converged solutions across a range of vertical markets including retail, healthcare, educational and financial. Juma's business consisted of providing long term professional services engagements, maintenance, monitoring and management contracts, and it was the owner of important and valuable intellectual property rights in certain technology related to and utilized in the conduct of its business affairs.

Juma was recognized for its fast growth and innovation by leading technology magazines including CRN, which ranked Juma number 50 on its Fast Growth 100 List in 2009.

Commencing in or about August 2007, Juma, together with Nectar Services Corp. ("NSC"), an affiliate and wholly-owned subsidiary, entered into a series of financing arrangements with the Vision Defendants, pursuant to which Juma and NSC executed and delivered to said defendants a series of convertible promissory notes.

---

[2] References are to the affidavit of Robert Rubin, sworn to October 1, 2016, submitted in opposition to defendants' motion. Except where otherwise specifically indicated, all allegations of fact are those set forth in the Amended Complaint.

Commencing in November 2007 and continuing thereafter, the Vision Defendants exercised complete control and domination over Juma's affairs including: dictating the composition of its Board of Directors; hiring and firing of its personnel and employees; approval and implementation of its budgets; approval of its vendors and customers; the refusal to allow Juma to obtain outside funding from other sources; the refusal to allow for payment of dividends without their express approval; meddling and interference with Juma's day-to-day business affairs and decision-making; and, insistence that Juma cease reporting as a public company on or about May 10, 2011 – which decision made it extremely difficult, if not almost impossible, for Juma to raise outside financing. *See* Rubin Aff., ¶ 8.

On July 27, 2012 Juma and NSC commenced an action against Carousel Industries of North America, Inc. ("Carousel"), Perspective Solutions, LLC and certain former employees in the United States District Court, Southern District of New York, titled Nectar Services Corp., et al v. Carousel Industries of North America, Inc., et al, Civil Case No.: 12-cv-5773, asserting claims for copyright and trademark infringement stemming from the theft of intellectual property – i.e., its prized software product pertaining to converged communications solutions for voice, data and video network implementation, and seeking damages and injunctive relief. (the "Federal Court Action").

On October 15, 2012, U.S. District Judge Paul Crotty granted Juma and NSC a preliminary injunction barring the defendants from promoting, advertising, licensing or undertaking any further development of their competing software. The injunction granted all but guaranteed Juma's success in the market as a leading developer of converged communications solutions for voice, data and video network implementation. *See* Rubin Aff., ¶ 10.

Exactly five days later – on October 20, 2012, at the insistence and direction of the Vision Defendants, a special meeting of Juma's Board of Directors was held via teleconference for the purpose of discussing status of the Federal Court Action and approval of a strict foreclosure by the Vision Defendants against Juma's and NSC's assets. *See* Rubin Aff., ¶ 11; *also* Exhibit "V-MTD-N" to Monaco Aff.

Defendants Anthony Servidio and Joseph Fuccillo participated in the said meeting. Also participating were Robert Rubin, David Giangano (the then-CEO of Juma and NSC) and Frances Vinci, who served as Secretary. *See* Rubin Aff., ¶ 11; *also* Exhibit "V-MTD-N" to Monaco Aff.

Prior to the afore-described meeting, the Vision Defendants made it clear that they would not provide any additional financing to Juma and/or NSC, nor would they allow either entity to seek financing elsewhere. *See* Rubin Aff., ¶ 12.

During said meeting, Robert Rubin informed all other members that he had held discussions with a major investor – Iroquois Capital – which was ready, willing and able to provide the capital required to pay-off the debt due to the Vision Defendants, as well as provide additional capital for Juma's and NSC's operations. *See* Rubin Aff., ¶ 12. All other board members refused to consider Robert Rubin's proposal, and would not allow Iroquois Capital to provide any such financing. *See* Rubin Aff., ¶ 12.

At that point, Robert Rubin suggested that Juma and/or NSC file for Chapter 11 bankruptcy protection so that the financing could be obtained from Iroquois Capital under the bankruptcy Court's supervision, and thus save Juma – particularly in light of the Federal Court decision which rendered its intellectual property extremely valuable as it now had virtually no major competitors. *See* Rubin Aff., ¶ 12.

Although all of Juma's board members recognized that its CMP product was ahead of the market, but that it would be falling behind without further investment in product development, they rejected Robert Rubin's proposal and approved the Vision Defendants' strict foreclosure, specifically stating the reason for doing so as follows:

> "By voting to accept the strict foreclosure option and not file for bankruptcy or object thereto (and thus cause a public judicial foreclosure to take place, further damaging the credibility of the company in the marketplace) ."

See Exhibit "V-MTD-N" to Monaco Aff.

Defendants' reasoning was a farce since, by authorizing the transfer of all of Juma's assets to the Vision Defendants, Juma ceased to exist, and there was no "credibility of the company in the marketplace" to protect.

At the direction and insistence of the Vision Defendants, defendants Anthony Servidio and Joseph Fuccillo, together with David Giangano waived Juma's rights of redemption of its assets and property, and all other rights specifically granted and reserved to it under the Uniform Commercial Code, including, but not limited to, the right to demand disposition of such assets in a commercially reasonable manner and the right to an accounting and payment of any surplus realized from a sale of such assets. *See* Rubin Aff., ¶ 14.

On October 26, 2012, the Vision Defendants completed a strict foreclosure of all of the assets, tangible and intangible, including patents, copyrights and trademarks of Juma and NSC, all of which were transferred to defendant Nectar Holdings, Inc. ("Nectar"), a Delaware corporation organized by the Vision Defendants three weeks earlier. *See* Exhibit "A*" to Massoud Aff.[3]

---

[3] References are to the affirmation of Ahmed Massoud, Esq., dated October 1, 2016, submitted in opposition to defendants' motion.

Immediately following the strict foreclosure by the Vision Defendants, Anthony Servidio, Joseph Fuccillo, David Giangano, Anthony Fernandez (Juma's Chief Financial Officer) and Frances Vinci (Juma's Executive Vice-President and Secretary) all resigned as officers and/or directors of Juma. *See* Rubin Aff., ¶ 15.

Following their resignations as officers and/or directors of Juma, Anthony Servidio, Joseph Fuccillo, David Giangano, Anthony Fernandez and Frances Vinci were immediately "hired" as the key officers/directors of the Vision Defendants' newly-formed entity – Nectar Holdings Inc. *See* Rubin Aff., ¶ 16; *see also* Exhibit "A" to Rubin Aff.

Notably, defendant Nectar Holdings, Inc.'s website – as prepared and advertised by the Vision Defendants – is outright deceptive, claiming the company was founded in 2006, implying it was the same entity as Nectar Services Corp – Juma's wholly-owned subsidiary. *See* Exhibit "A" to Rubin Aff.

Upon information and belief, each of Anthony Servidio, Joseph Fuccillo, David Giangano, Anthony Fernandez and Frances Vinci had negotiated an employment agreement with the Vision Defendants prior to approving the strict foreclosure of Juma's and NSC's assets as established by the October 20, 2016 Minutes of Special Board Meeting. *See* Rubin Aff., ¶ 18; *see also* Exhibit "V-MTD-N" to Monaco Aff.

Notwithstanding their resignations as officers/directors of Juma, on December 20, 2012, defendants Anthony Servidio and Joseph Fuccillo, acting for the benefit and at the direction of the Vision Defendants, caused Juma and NSC to enter into a settlement agreement of the Federal Court Action. *See* Rubin Aff., ¶ 20; *see also* Exhibit "C" to Rubin Aff.

Pursuant to the settlement agreement entered in the Federal Court Action, Carousel and the other named defendants were enjoined, for a period of five years, from promoting, advertising, licensing, or attempting to license, their competing software, regardless of how it was branded, and from possessing, operating sublicensing, distributing, or undertaking any further development efforts with respect to such product, or otherwise creating any derivative work thereof. *See* Exhibit "C" to Rubin Aff. In essence, as a result of the settlement agreement in the Federal Court Action, Juma's prized software product – having been transferred only two months earlier to the Vision Defendants as a result of the strict foreclosure – had no viable competition.

Following the favorable settlement of the Federal Court Action as afore-described, the Vision Defendants, capitalizing on the confusion caused by their misleading advertising of Nectar Holdings, Inc., did, upon information and belief, "dump" their Juma stock (which was rendered worthless as a result of the strict foreclosure) on June 19, 2013 at $0.02 per share – a 700% jump over the $0.0025 at which it had been traditionally trading prior to the foreclosure. *See* Rubin Aff., ¶ 21.

ARGUMENT

POINT I.

JUMA HAS STANDING TO MAINTAIN THIS ACTION

Contrary to defendants' erroneous contention, while it is true that plaintiff Juma Technology Corp. is listed by the Secretary of State of Delaware as not being in good standing as of March 1, 2014, it *does have legal standing* to maintain this action.

Specifically, 8 Del. C. § 278 provides, in relevant part, as follows:

> "All corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be continued, for the term of 3 years from such expiration or dissolution or for such longer period as the Court of Chancery shall in

> its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities and to distribute to their stockholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit or proceeding begun by or against the corporation either prior to or within 3 years after the date of its expiration or dissolution, the action shall not abate by reason of the dissolution of the corporation; the corporation shall, solely for the purpose of such action, suit or proceeding, be continued as a body corporate beyond the 3-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Court of Chancery."

See 8 Del. C. § 278; *see also* Anderson v. Krafft-Murphy Co., 82 A.D.3d 696 (Sup. Ct. Del. 2013) (Sections 278 and 279 of the Delaware General Corporation Law both operate to enable a dissolved corporation to wind up its affairs and prolong the existence of the body corporate for three years after dissolution to enable it to wind up its business, which includes participating in litigation).

In the present case, plaintiff Juma Technology Corp. was dissolved on March 1, 2014, but this action was commenced on February 23, 2016 – well within the 3-year period provided for under 8 Del. C. § 278. Therefore, contrary to the defendants' contention, plaintiff Juma Technology Corp. *does* have standing to maintain the instant action.

POINT II.

THE COMPLAINT HEREIN ADEQUATELY SETS FORTH VIABLE CLAIMS AND CAUSES OF ACTION FOR RELIEF

A. The Documentary Evidence Defense Fails

CPLR § 3211(a)(1) permits a defendant to seek and obtain a dismissal of one or more causes of action on the ground that he has a defense founded upon documentary evidence. When a motion to dismiss based upon documentary evidence is made, dismissal is warranted *only if* the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law. *See*

Leon v. Martinez, 84 N.Y.2d 83 (1994); *see also* Guggenheimer v. Ginzburg, 43 N.Y.2d 268 (1977). In other words, a motion to dismiss upon a CPLR 3211(a)(1) ground may be granted only where the documentary evidence utterly refutes a plaintiff's factual allegations, and conclusively disposes of plaintiff's claims in their entirety. *See* Held v. Kaufman, 91 N.Y.2d 425 (1998).

In support of their instant motion, Thomson and the Vision Defendants rely on documents to show that Juma – and Robert Rubin, as a director of the company – approved various financing from the Vision Defendants, as well as a forbearance agreement. *See* Exhibit "V-MTD-H", Exhibit "V-MTD-I", Exhibit "V-MTD-K" and Exhibit "V-MTD-M" to Monaco Aff. Defendants also rely on Thomson's resignation from Juma's Board of Directors immediately prior to the board's adoption of a resolution authorizing a strict foreclosure of all of the company's assets and their transfer to the Vision Defendants. *See* Exhibit "V-MTD-L" to Monaco Aff. Defendants' "documentary evidence", however, is insufficient to " utterly refute plaintiffs' factual allegations, and conclusively dispose of their claims in their entirety."

The fact that the Vision Defendants extended financing to Juma is not now, nor has it ever been, an issue, and is not dispositive of plaintiffs' claims. Likewise, Thomson's "resignation" from Juma's board of directors immediately prior to the board's adoption of a resolution authorizing a strict foreclosure of all of the company's assets and their transfer to the Vision Defendants is not at issue, nor is it dispositive of plaintiffs' claims. The basis for plaintiffs' claims is that Thomson and the Vision Defendants exercised complete control over Juma, and used such control to the detriment of the company and its shareholders for their own sole benefit in a series of self-dealing transactions.

As alleged in the Amended Complaint, and set forth in plaintiffs' opposition submissions, the Vision Defendants (the lender), through Thomson, exercised such control over Juma's (the

borrower) day-to-day operations that, in effect, the lender became the borrower. In that respect, the Vision Defendants dictated the composition of Juma's Board of Directors, appointing Thomson and Kenneth Archer thereto; they made all decisions concerning the hiring and firing of Juma's personnel and employees; made all decisions concerning approval and implementation of Juma's budgets, as well as its vendors and customers; they refused to allow Juma to obtain outside funding from other sources; they refused to allow for payment of dividends without their express approval; and, they insisted that Juma cease reporting as a public company, thereby making it extremely difficult, if not almost impossible, for Juma to raise outside financing. *See* Rubin Aff., ¶ 8. Indeed, as part of their total and complete domination of Juma, the Vision Defendants insisted that its President and Chief Executive Officer – defendant Anthony Servidio – report to and follow all directives of Thomson – their representative. *See* Amended Complaint, ¶¶ 32-35.

As for the forbearance agreement, it was meaningless since neither the Vision Defendants, nor their "puppet" management, would allow Juma to seek financing elsewhere, or allow any other investor to pay-off the debt due to them. *See* Rubin Aff., ¶ 12.

Juma's management and its board of directors were so beholden to Thomson as the Vision Defendants' representative and were eager to please him any way they could and – in their own words, "obtain employment contracts" with the Vision Defendants – that they were not willing to consider or take any action to actually benefit Juma and its shareholders, *even after* the issuance of an injunction in the Federal Court Action that guaranteed the success of Juma's software product in the marketplace. *See* Exhibit "V-MTD-N" to Monaco Aff. Instead, under the complete control and domination of the Vision Defendants, they chose to transfer all of Juma's assets in exchange for the forgiveness of its debt. *See* Exhibit "V-MTD-N" to Monaco Aff.

Notably, 8 Del. C. § 271 provides, in relevant part, as follows:

> "(a) Every corporation may at any meeting of its board of directors or governing body sell, lease or exchange all or substantially all of its property and assets, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors or governing body deems expedient and for the best interests of the corporation, when and as authorized by a resolution adopted by the holders of a majority of the outstanding stock of the corporation entitled to vote thereon . . ., at a meeting duly called upon at least 20 days' notice. The notice of the meeting shall state that such a resolution will be considered.
>
> .....
>
> (c) For purposes of this section only, the property and assets of the corporation include the property and assets of any subsidiary of the corporation. As used in this subsection, "subsidiary" means any entity wholly-owned and controlled, directly or indirectly, by the corporation and includes, without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, and/or statutory trusts. . ."

See 8 Del. C. § 271.

The foregoing section was specifically designed as a protection for rational owners of capital, and its proper interpretation requires the court to focus on the economic importance of the businesses involved, and not their aesthetic worth. *See* Hollinger Inc. v. Hollinger Int'l, Inc., 858 A.2d 342 (Del. Ch. 2004). In addition, the section requires the court to focus not on the interpretation of the words "substantially all," but upon whether a transaction involved the sale of assets quantitatively vital to the operation of the corporation. *See* In re Nantucket Island Assocs. Ltd. P'ship Unitholders Litig., 810 A.2d 351 (Del. Ch. 2002).

There is no dispute that the transaction be means of which Juma's board of directors – under the control of the Vision Defendants – disposed of all the company's assets which were vital for its operations in exchange for extinguishment of the debt owing to the Vision Defendants.

In the instant case, defendants have not submitted any documentary evidence to refute the allegations that they exercised complete control and domination of Juma, its management and its board of directors to benefit themselves at the expense of the company and its shareholders by having it turnover its assets to them, and waiving all rights and protections provided under the UCC. Likewise, the defendants have not produced a single document evidencing compliance with 8 Del. C. § 271 – be it a 20-dy notice to shareholders of the intention to dispose of all of Juma's assets, or authorization by a resolution adopted by the holders of a majority of its outstanding stock entitled to vote thereon. Thus, defendants' "documentary evidence" defense fails.

B. The Failure to State a Claim Defense Fails

It is axiomatic that, on a motion to dismiss for a failure to state a cause of action, the court must accept every allegation of the complaint as true and resolve all inferences in favor of plaintiff regardless of whether or not plaintiff will ultimately prevail on the merits. *See* Guggenheimer v. Ginzburg, 43 N.Y.2d at 275; *see* also Leon v. Martinez, 84 N.Y.2d at 87; Samiento v. World Yacht, Inc., 10 N.Y.3d 70 (2008). In examining the sufficiency of a pleading, only affidavits submitted by plaintiff in support of his or her causes of action may be considered. Rovello v. Orofino Realty Co., 40 N.Y.2d 633, 635-636 (1976). On such a motion, the court's sole inquiry is whether the facts, as alleged in the complaint or any supporting affidavits, fit within any cognizable legal theory, and not whether there is evidentiary support for the complaint. Leon v. Martinez, 84 N.Y.2d at 87-88.

It is an equally well-settled rule that where – as in the present case – a motion to dismiss is addressed to the complaint as a whole rather than to individual causes of action, it must be denied in its entirety if at least once cause of action is found to be sufficient. *See* Matriano Construction Corp. v. Briar Contracting Corp., 104 A.D.2d 1028, 1029-1030 (2nd Dept. 1984).

Plaintiffs whole-heartedly agree that, as lenders, the Vision Defendants are afforded broad discretion to protect their collateral. Indeed, it would be fool-hardy not to do so. The defendants' interest in protecting their collateral, however, does not give them the right to interfere with and dictate the manner in which Juma conducted its day-to-day operations to the point that any and all such decisions were detrimental to Juma and its shareholders, and undertaken solely for the Vision Defendants' benefit. In that respect, as secured lenders, the Vision Defendants were under a duty to act in good faith in *both* the performance of their obligations, and enforcement of their rights, as lenders. *See* U.C.C. § 1-304. Defendants, by their actions, breached that duty.

As lenders, the Vision Defendants' had a valid interest in the repayment of loans extended to Juma and NSC in full. Once those loans are repaid, however, the Vision Defendants – as lenders – have no rights in Juma's and/or NSC's assets. But, the Vision Defendants, exercising their total and complete domination and control of Juma, refused to allow the company to repay such loans by seeking other financing. Instead, the Vision Defendants insisted on acquiring Juma's now widely-recognized valuable asset (its unchallenged position as the premier UCMP software company in the market) for themselves at any cost, and it is that conduct which is actionable.

Specifically, although Robert Rubin informed Juma's management/board of directors that a major investor – Iroquois Capital – was ready, willing and able to provide the capital required to pay-off the debt due to the Vision Defendants, and provide additional capital for Juma's and NSC's operations, said board members – under the Vision Defendants' control – refused to consider any such proposal and, having been offered employment with the Vision Defendants' newly-formed entity (Nectar Holdings Inc.), abdicated their fiduciary obligations to Juma and refused to allow Iroquois Capital to provide any such financing and save Juma. *See* Rubin Aff., ¶ 12.

Moreover, on the Vision Defendants' instructions – and with the promise of employment with Nectar Holdings Inc. – Juma's board of directors refused to file for Chapter 11 bankruptcy protection, and thereby allow financing to be obtained from Iroquois Capital under the bankruptcy Court's supervision. *See* Rubin Aff., ¶ 12. Instead, Juma's board of directors approved the transfer of the company's assets to Nectar Holdings Inc., thereby rendering Juma a worthless entity. *See* Exhibit "V-MTD- N".

Indeed, on the Vision Defendants' instructions and command, Juma's board of directors even waived such basic and fundamental rights and protections afforded the company (and, by extension, its shareholders) under the Uniform Commercial Code, such as the right to demand disposition of its assets in a commercially reasonable manner and the right to an accounting and payment of any surplus realized from the sale of its assets. *See* Amended Complaint, ¶ 48.

The Vision Defendants and Thomson, having procured a breach of the fiduciary duty owed to Juma by each of Anthony Servidio, Joseph Fuccillo, David Giangano and Frances Vinci by promising – and actually providing – employment with Nectar Holdings Inc., are liable for damages sustained by Juma even if they themselves had no independent fiduciary obligation to the company. *See* Velazquez v. Decaudin, 49 A.D.3d 712, 716 (2nd Dept. 2008); *see also* Monaghan v. Ford Motor Co., 71 A.D.3d 848, 850 (2nd Dept. 2010). Therefore, the plaintiffs have stated valid and actionable claims against defendants.

POINT III.

PLAINTIFF'S CLAIMS ARE NOT TIME-BARRED

CPLR § 213(7) specifically provides that, an action by or on behalf of a corporation against a present or former director, officer or stockholder for an accounting, or to procure a judgment on

the ground of fraud, or to enforce a liability, penalty or forfeiture, or to recover damages for waste or for an injury to property or for an accounting in conjunction therewith, is governed by a six-year statute of limitations. *See* Roslyn Union Free School Dist. v. Barkan, 16 N.Y.3d 643 (2011) (causes of action that seek monetary damages for injury to property are generally subject to a three-year statute of limitations, but CPLR 213 (7) extends the limitations period to six years for an action by or on behalf of a corporation against a present or former officer, director or shareholder to recover damages for waste or for an injury to property or for an accounting in conjunction therewith; if the specific language of CPLR 213 (7) encompasses a particular claim, it supplants the general three-year rule of CPLR 214 (4)).

In the present case, the claims asserted by Juma – a corporation – against Thomson and the Vision Defendants fit squarely within those encompassed by CPLR § 213(7) and are governed by a six-year statute of limitations, and therefore not time-barred.

Notably, defendants' reliance on the statute of limitations applicable under Delaware law is misplaced. Specifically, New York courts have held that, for statute of limitations purposes, when an alleged injury is purely economic, the place of injury usually is where the plaintiff resides and sustains the economic impact of the loss, and a cause of action accrues where the injury is sustained. *See* Global Fin. Corp. v. Triarc Corp., 93 N.Y.2d 525 (1999). In the present case, Juma's sole place of business is, and always has been, the State of New York, and the injury it sustained occurred in New York as a result of wrongful conduct perpetrated in New York. *See* Rubin Aff., ¶ 4.

Therefore, plaintiff's claims are not time-barred.

POINT IV.

SERVICE OF PROCESS WAS PROPERLY EFFECTED

Robert Thomson was served at the offices of Nectar Holdings Inc., located at 154 Toledo Street, Farmingdale, New York, through substituted service on an individual who identified herself as his "co-worker." *See* Exhibit "C" to Massoud Aff. This particular method of substituted service is specifically authorized by CPLR § 308(2). Nevertheless, given that defendants are extremely difficult to locate, should the Court find that such service was not proper, it should, pursuant to CPLR § 306-b, extend the time for plaintiffs to effect service.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that defendants' motion should be denied in its entirety.

Dated: New York, New York
October 1, 2016

MASSOUD & PASHKOFF, LLP
Attorneys for Plaintiffs

By: _____

Ahmed A. Massoud, Esq.
1700 Broadway, 41st Floor
New York, New York 10019
(212) 207-6771