SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. BARRY R. OSTRAGER.** **PART** **IAS MOTION 61EFM**

Justice

---X **INDEX NO.** 157087/2019

Shilpa Saketh Realty Inc.,

Plaintiff,

- v -

ORDER & DECISION on Motion 001 & 002

Sudhakar Vidiyala, Madhava Reddy Uppugalla and Shri Bhramarambikas Industrys Limited

Defendants.

---X

OSTRAGER, J.

This dispute arises out of the sale of a pharmaceutical company. Plaintiff, Shilpa Saketh Realty Inc. ("plaintiff"), is a former minority stockholder in non-party pharmaceutical company InvaGen Pharmaceuticals Inc. (the "Company"). Plaintiff is co-owned by siblings Shilpa Reddy and Saketh Reddy. During the relevant time frame, Shilpa Reddy was a medical student, Saketh Reddy was a college freshman, and their father, Dr. Reddy, also served as an agent of plaintiff. Defendants Sudhakar Vidiyala, ("Vidiyala"), Madhava Uppugalla ("Uppugalla"), and Shiri Bhramarambikas Industrys Limited ("Shiri") were the other stockholders in the Company. In February 2016, the Company was sold to non-party Cipla (EU) Limited ("Cipla"), a company incorporated in the United Kingdom. Plaintiff is seeking approximately $14 million in damages in connection with the share allocation upon the sale of the Company.

To effectuate the sale of the Company to Cipla, the Company and all of the Company's stockholders – plaintiff and defendants - entered into a Stock Purchase Agreement, dated September 4, 2015 (the "SPA"), as amended by an Amended and Restated Stock Purchase Agreement, also dated September 4, 2015 (the "Amended Agreement"), Amendment No. 1 to the Amended Agreement dated December 18, 2015 (the "First Amendment"), Amendment No. 2 to the Amended Agreement dated February 17, 2016 (the "Second Amendment"), and Amendment No. 3 to the Amended Agreement dated September 15, 2017 (the "Third Amendment") (collectively, the "Transaction Documents"). *See* NYSCEF Doc. No. 1 Complaint ¶ 10. Pursuant to the Transaction Documents, the base purchase price for the stockholder's shares was $500,000,000.00.

The Complaint alleges eight causes of action sounding in fraud, breach of fiduciary duty and unjust enrichment. The Complaint states that defendant Shiri was the majority stockholder in InvaGen holding 72 shares, while plaintiff, defendant Vidiyala and defendant Uppugalla were each minority stockholders, with plaintiff holding 9 shares, Vidiyala holding 11 shares, and Uppugalla holding 8 shares in InvaGen. The Complaint further states that as part of Cipla's acquisition of the Company, it was agreed that each Stockholder was entitled to the following *pro rata* share of the purchase price: (i) Shri was entitled to 72%; (ii) Plaintiff was entitled to 9%; (iii) Vidiyala was entitled to 11%; and (iv) Uppugalla was entitled to 8%. However, at some time prior to the closing of the sale to Cipla, a schedule to the SPA was issued modifying the allocation of shares. Indeed, the schedule to the SPA reflects that the share allocation would be (i) Shri Bhramarambikas Industrys Limited 72.346% (ii) Shilpa Saketh Realty Inc. 6.874%, (iii) Sudhakar Vidiyala 12.62% and (iv) Madhava Reddy Uppugalla 8.16%. *See* NYSCEF Doc. No. 23. The schedule is referenced in the original SPA in the table of contents. Additionally, the same schedule is included as Exhibit I to Amendment No. 2 to the SPA. *See* NYSCEF Doc. No. 24.

The crux of the Complaint is that the modification in share allocation was misrepresented to plaintiff by a representative of defendant Shiri – Bandi ("Bandi") and by defendant Vidiyala.

In short, plaintiff was informed that $100,000,000 of the $500,000,000 Cilpa was to pay to the InvaGen stockholders was being redirected. Specifically, plaintiff alleges that some time in "late 2015" Bandi told plaintiff (via a representative of plaintiff - Dr. Reddy) that all stockholders would be taking a reduction in their share allocation to compensate another non-party company called Camber for work it had previously done and that all other stockholders had already agreed to the modification. *See* Complaint ¶ 24 - 27. Plaintiff alleges that another conversation took place with Vidiyala some time in February 2016, in which Vidiyala purportedly made the same claims as Bandi and further stated that plaintiff would receive 9% of $400,000,000.00 from the sale of the company and that the extra $100,000,000.00 from the original purchase price was going to non-party Camber. *See* Complaint ¶ 31 – 33.

In reality, plaintiff was the only stockholder whose share allocation was modified downward (from 9% to 6.874%), and the money from the adjustment did not go directly to non-party Camber and it was instead redistributed among the other three stockholders – defendants. Plaintiff claims that this conduct constitutes fraud and breach of fiduciary duty as well as unjust enrichment, as defendants were seemingly enriched at plaintiff's expense. In addition, plaintiff alleges that it was not given full copies of the Transaction Documents, was asked to sign signature pages only, and was not afforded an opportunity to read the Transaction Documents prior to executing them.

Before the Court are two motions to dismiss the Complaint. Motion 002 is by defendant Shiri, a company organized under the laws of India, and seeks to dismiss the claims against it based on lack of jurisdiction. Defendant Shiri otherwise joins Motion 001 by defendants Vidiyala and Uppugalla to dismiss the Complaint pursuant to CPLR (a) (1) (5) and (7).

Turning first to Motion 002 and the threshold issue of jurisdiction, the Court finds that this case is properly before it in New York State Supreme Court, New York County. The SPA, which all parties here are parties to, contains a broad and unambiguous jurisdiction selection clause, which states:

> Section 11.13 Submission to Jurisdiction: WAIVER OF JURY TRIAL. (a) Each party to this Agreement hereby *irrevocably and unconditionally*: (i) (A) agrees that any Legal Proceeding instituted *against such party by any other party with respect to this Agreement* (except for any dispute arising out of or in connection with a Buyer Disagreement Notice which shall be resolved in accordance with Section 2.02(a) or an Objections Statement which shall be resolved in accordance with Section 2.02(d)), or any Transaction Document, may be instituted in, and that any Legal Proceeding by it against the other parties with respect to this Agreement, or any Transaction Document, shall be instituted *only in, the Supreme Court of the State of New York, New York County*, or the United States District Court for the Southern District of New York (and appellate courts from any of the foregoing) as the party instituting such Legal Proceeding may elect, (B) consents and submits, for such party and such party's property, to the jurisdiction of such courts for the purpose of any such Legal Proceeding instituted against such party or such party's property by another party and (C) agrees that a final judgment in any such Legal Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law….(emphasis added).

Defendant Shiri disputes the applicability of this clause by arguing that the intent behind it was to hear disputes between the Company and Cipla in New York. However, the plain language of the contract directs any party to the agreement to bring a dispute with any other party to the agreement in New York. Since plaintiff and each defendant are parties to the SPA, and this dispute undoubtedly relates to the terms of the SPA, defendant Shiri's motion to dismiss based on lack of jurisdiction is denied.

Motion 001, which is now joined by all defendants, seeks to dismiss the Complaint on several grounds – most importantly, the existence of an executed release of all claims connected to the SPA. Defendants argue that plaintiff's claims must be dismissed because they were released. Indeed, defendants submit a "General Release" signed by plaintiff, a separate document from the SPA (NYSCEF Doc. No. 26).“ Releasor" is the defined as the undersigned – here, plaintiff, and "Released Parties are defined as "the Company and its affiliates, and their respective current and former equityholders, directors, officers, employees, agents, representatives, successors and assigns." *See* General Release (1) (a). "Equityholders" includes all defendants in this action. The Release provides in relevant part (with emphasis added) that:

> In signing this General Release, the Releasor acknowledges and intends that it shall be effective as a bar to each and every one of the Claims herein above mentioned or implied. The Releasor expressly consents that this General Release shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected Claims (notwithstanding any state statute that expressly limits the effectiveness of a general release of unknown, unsuspected or unanticipated Claims, which state statute(s) shall be considered waived by this General Release), if any, as well as those relating to any other Claims herein above mentioned or implied. The Releasor acknowledges and agrees that this waiver is an essential and material term of this General Release and that without such waiver the Buyer would not have agreed to consummate the transactions contemplated by the SPA. ***The Releasor further agrees that in the event it should assert any Claim seeking damages against any of the Released Parties, this General Release shall serve as a complete defense to any such Claim.*** General Release (1) (c).

The Court finds that the broad and unambiguous terms of the Release bar plaintiff's claims. It is well established that a release is a complete bar to any claim subject to the release, and the signing of an unambiguous release is a 'jural act' that binds its parties. *Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011). "Notably, a release may encompass unknown claims, including unknown fraud claims, if the parties so intend[,]" as well as claims based on fiduciary duties. *Id*. Here, plaintiff broadly released all claims that it might have against the other stockholders - defendants. The Release language is expansive and releases "any and all claims…or liabilities of any nature whatsoever in law and in equity, both past and present (through the date of this General Release) and whether known or unknown, suspected, or claimed against any of the Released Parties that the Releasor…may have, relating in any way to or in connection with events occurring or circumstances existing relating to the Company…" *See* NYSCEF Doc. No. 26 §(a).

Plaintiff also explicitly agreed the Release "shall be a bar" not only to those claims "mentioned," but also those that were "implied" and that the Release extends not only to known claims but to "unknown and unsuspected Claims" even if the "Releasor may hereafter discover facts different from or in addition to those now known, or believed to be true" and that the Release remains in effect "notwithstanding the existence of any different or additional facts." *Id.* at §§(a), (c), & (e). Inclusion of this type of language in a general release has repeatedly been held to effectively release fraud and breach of fiduciary duty claims. *See, e.g. Centro Empresarial Cempresa*, 17 N.Y.3d at 276–80 (2011); *Pappas v. Tzolis,* 20 N.Y.3d 228, 232-233 (2012); *Long v. O'Neill*, 126 A.D.3d 404, 408 (1st Dep't 2015).

Plaintiff argues against the applicability of the Release first by noting that the Release states that it is "[e]ffective as of, and contingent upon, the Closing" which took place on February 9, 2016. Plaintiff argues that because it alleges that defendant Vidiyala made misrepresentations in "February 2016," there is an issue of fact as to when these representations were made that cannot be determined on a motion to dismiss. However, common sense precludes this argument.

Plaintiff's complaint is that Vidiyala made misrepresentations and otherwise concealed relevant information in February 2016 to *induce* plaintiff to sign the Transaction Documents (*see* Complaint ¶¶ 55, 66). Plaintiff did sign the Transaction Documents, and the sale to Cipla was effectuated on February 9, 2016. Accordingly, if the alleged misrepresentations and omissions were made to *induce* plaintiff to sign the Transaction Documents, the statements must have been made prior to plaintiff's signing, and thus, prior to February 9, 2016.

Plaintiff's second argument against the applicability of the Release is that the Release is invalid because defendants were fiduciaries of plaintiff and plaintiff had no reason to believe that any one of them was acting in their own interest, nor was it otherwise aware of any information that would make reliance on them unreasonable. Plaintiff relies on *Pappas v. Tzolis*, 20 N.Y.3d 228, 232, (2012), in which the Court of Appeals noted that "[a] sophisticated principal is able to release its fiduciary from claims – at least where . . . the fiduciary relationship is no longer one of unquestioning trust – so long as the principal understands that the fiduciary is acting in its own interest and the release is knowingly entered into;" "[t]he test, in essence, is whether, given the nature of the parties' relationship at the time of the release, the principal is aware of information about the fiduciary that would make reliance on the fiduciary unreasonable." *Id* at 656. Plaintiff argues that *Tzois* does not support a release where there was a relationship of trust. Plaintiff also attempts to distinguish the results in *Tzois* and *Centro* on the basis that the parties in those cases were more sophisticated than plaintiff is here.

However, even if defendants were fiduciaries of plaintiff and even if plaintiff was unsophisticated, plaintiff's exclusive reliance on defendants is unreasonable, because defendants' alleged representations are contradicted by the express terms of the Transaction Documents, which plaintiff admittedly did not read. Even assuming plaintiff was not as sophisticated as the parties in *Tzois* and *Centro*, plaintiff's alleged reliance on defendants does not excuse plaintiff's failure to read the Transaction Documents. *See Sandcham Realty Corp. v. Taub*, 299 A.D.2d 220, 221 (1st Dep't 2002) (finding that the court had properly dismissed fraud claims because plaintiff's reliance on an alleged misrepresentation that was directly contradicted by the terms of the agreement was "unjustifiable as a matter of law").

For example, plaintiff alleges that defendant Vidiyala "failed to disclose to plaintiff that plaintiff was the only Stockholder to suffer a reduction in its pro rata share of the purchase price and that the reduction would be reallocated to the remaining Stockholders" (*see* Complaint ¶ 72). However, the "Allocated Share Schedule" to the SPA (NYSCEF Doc. No. 23, p. 14) clearly lays out the share allocation of each stockholder.

Plaintiff acknowledges that it was told its share allocation was being reduced by millions of dollars. *See* NYSCEF Doc. No. 37 Affidavit of Shilpa Reddy ¶ 4. Plaintiff knew that the sum allocated to InvaGen shareholders was being reduced by $100,000,000. As with all contracts, plaintiff had a duty to read the agreements. The alleged misrepresentations are contradicted by the plain terms of the Transaction Documents. Indeed, the Court notes that although the overall Transaction Documents may have been voluminous, the General Release is a separately executed document – which plaintiff separately signed – and is only five pages long. Plaintiff had duty to read what claims it was releasing. *See Vulcan Power Co. v. Munson*, 89 A.D.3d 494, 495 (1st Dept. 2011) (citing cases) (holding that a signer's duty to read and understand that which it signed is not diminished merely because the signer was provided with only a signature page and never requested copy of the agreement).

A plaintiff may challenge a release on the grounds that the release was fraudulently induced. Here, plaintiff alleges fraudulent inducement with respect to all of the Transaction Documents, including but not limited to the General Release. *See* Complaint ¶ 63 – 68. However, because of the broad Release discussed above, the relevant question is whether plaintiff is bound by the Release.

The Court finds that plaintiff's fraudulent inducement claim fails as a matter of law. To state a claim for fraudulent inducement, plaintiff must establish the basic elements of fraud and also allege a fraud that is separate and distinct from that contemplated by the release. *Centro* at 275. First, the Court finds that plaintiff has not adequately alleged fraud for the reasons discussed, specifically plaintiff's reliance was unreasonable because the alleged misrepresentations are flatly contradicted by the terms of the Transaction Documents. But even assuming plaintiff could adequately allege the elements of fraud, plaintiff's fraudulent inducement claim fails because plaintiff does not allege a fraud *separate and distinct* from the Release, as required by *Centro*.

As discussed above, the Release is extremely broad and includes unknown fraud claims. The subject of the Release is "any and all claims… both past and present… relating in any way to or in connection with events occurring or circumstances existing relating to the Company prior to the consummation of the Closing." General Release § (1) (a). The misrepresentations and omissions alleged by plaintiff about the share allocation upon closing are clearly related to "circumstances related to the Company." Because the alleged misrepresentations and omissions are directly related to the terms of the broad Release, plaintiff has not alleged a fraud "separate and distinct" from the that contemplated by the Release as required under *Centro*.

Still, under *Centro,* a release may be invalidated if it was not "fairly and knowingly" made. Typically, a court may find unfairness where a plaintiff enters into a release without time to investigate or deliberate, does not have access to counsel, or is *disproportionally* unsophisticated. In this case, while plaintiff alleges relative lack of sophistication due to age, plaintiff's owners and agent were either in pursuit of or had advanced degrees and were well aware that they were in engaged in a multi-hundred-million-dollar transaction. Most importantly, plaintiff does not allege any time pressure, coercion, or lack of access to counsel. Indeed, plaintiff does not allege that it even requested access to the full documents to read.

For the reasons stated above, plaintiff's fraudulent inducement claim cannot invalidate the General Release. And, because of the extremely broad language of the General Release, the Court finds that the General Release bars each of plaintiff's claims. As such, defendants' motion to dismiss the Complaint is granted, and the Clerk is directed to enter judgment accordingly.

Dated: April 16, 2020

BARRY R. OSTRAGER, J.S.C.

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