

To be Argued by:
MICHAEL J. ANTONGIOVANNI
(Time Requested: 15 Minutes)

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**New York Supreme Court
Appellate Division – First Department**



SHILPA SAKETH REALTY INC.,

Plaintiff-Appellant,

– against –

SUDHAKAR VIDYALA, MADHAVA REDDY UPPUGALLA
and SHRI BHRAMARAMBIKAS INDUSTRIES LIMITED,

Defendants-Respondents.

**Appellate
Case No.:
2020-02285**

BRIEF FOR PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT

Plaintiff-Appellant Shilpa Saketh Realty, Inc. (“Shilpa”) submits this brief in support of its appeal from the portion of the lower court’s order, dated April 16, 2020 (Ostrager, J.) (“Order”) (R. 3-14), which granted Defendant-Respondents Sudhaker Vidiyala (“Vidiyala”), Madhava Reddy Uppugalla (“Uppugalla”) and Shri Bhramarambikas Industrys Limited’s (“SBIL”) (at times, collectively referred to herein as “Respondents”) motion to dismiss Shilpa’s complaint (“Complaint”).

In dismissing the Complaint, the lower court failed to correctly apply the legal standard on a motion to dismiss of accepting all facts alleged as true and affording Shilpa the benefit of every possible inference of its allegations. As the Complaint alleges, Shilpa, a minority shareholder in the close corporation InvaGen Pharmaceuticals Inc. (“InvaGen”), was the victim of a fraudulent scheme perpetrated by its fellow shareholders in connection with the sale of InvaGen to another company, Cipla (EU) Limited (“Cipla”). R.22-29. The scheme involved the other three InvaGen shareholders – Vidiyala, SBIL and Uppugalla -- misappropriating and splitting amongst themselves a portion of Shilpa’s share of the sale proceeds, amounting to \$14.3 million dollars. *Id.*

As pled in the Complaint, all of the shareholders of InvaGen shared close, family and personal relationships, regularly associating on a personal level and attending each other’s family gatherings. R. 26, 245. To accomplish their scheme,

the other InvaGen shareholders exploited these close personal ties and the confidential relationship that Shilpa's two shareholders, Shilpa and Saketh Reddy, shared with Vidiyala. R.26-28. Through Shilpa, Shilpa and Saketh Reddy (both young students at the time) were only passive owners of a minority interest in InvaGen. R.26.

Vidiyala, who helped implement the scheme with Bandi Parthasaradhi Reddy ("Bandi"), the principal owner of InvaGen's majority shareholder SBIL, was a long-time, close family friend of Shilpa and Saketh Reddy. R.26, 245. So close that they considered him, and referred to him as, their "Uncle." *Id.* Vidiyala was also the Chief Executive Officer (CEO) and President of InvaGen, and the designated "Minority Stockholder Representative" and Shilpa's appointed agent and attorney-in-fact in connection with the sale of the InvaGen shares to Cipla. R.26. Vidiyala was overseeing the sale of InvaGen's shares to Cipla and possessed the details of the proposed transaction. *Id.* Shilpa and Saketh Reddy, as such, relied upon him to disclose the details of the transaction and to protect their interests. R.26-28, 246. They were not represented by independent counsel in connection with the transaction. *Id.*

As such, when, just days before the closing of the sale, Vidiyala forwarded only signature pages of "closing documents" and requested that Shilpa Reddy execute them on behalf of Shilpa (assuring that he would later send the complete

documents), Shilpa and Saketh Reddy did not question his loyalty, that he was being untruthful or that he was not acting in their best interests. R.246. They relied on his and Bandi's earlier representations concerning the payment terms of the sale of the InvaGen shares to Cipla and each shareholders' respective share of the proceeds thereof (which later turned out to be fraudulent misrepresentations, as discussed below) and executed the documents as requested, promptly emailing them back to Vidiyala. R.27-28, 246. *Despite his assurances*, Vidiyala, several days later, proceeded to close the transaction with Cipla *without first sending to Shilpa the complete closing documents* to which he apparently attached the signature pages that Shilpa Reddy had signed at his request. *Id.* Shilpa and Saketh Reddy only learned that they had been betrayed and defrauded by Vidiyala and Bandi years later when a tax refund alerted them to the fraud. R.28-29. They investigated the scheme and managed to obtain some (but evidently still, to this date, not all) of the "closing documents." *Id.* Based upon what they learned, they promptly commenced the underlying lawsuit to enforce their legal rights.

In response, Respondents moved to dismiss prior to answering based on a purported release that they produced on their motion, purporting to release them of the very fraud and fiduciary breaches that they committed against Shilpa ("Purported Release"). R.15 *et seq.* *Evidently Vidiyala, unbeknownst to Shilpa Reddy, attached one of the signature pages he had her sign to this Purported Release.* R.214-217,

246. Vidiyala concealed this fact from Shilpa Reddy and, as such, she did not know that the signature page would be attached to an instrument that had the effect of releasing the very fiduciaries she was relying upon in connection with the transaction. R.246.

The lower court incorrectly found that this Purported Release, alone, released the other InvaGen shareholders of the alleged wrongdoing and required the dismissal of Shilpa's complaint. R.3-12. In so doing, the lower court erroneously overlooked that the Complaint sufficiently asserts allegations supporting, and giving rise to the inference and presumption, that the Purported Release, itself, was the product of a fraud in the *factum* (*i.e.*, fraud in the execution) and not fairly and knowingly entered into by Shilpa. Indeed, as a fiduciary and the stronger party of the confidential relationship that he shared with Shilpa Reddy, Vidiyala was duty-bound to disclose to Shilpa Reddy that one of the signature pages he had her execute was part of an instrument releasing himself (a fiduciary) and the other shareholders of InvaGen of all claims Shilpa may have against them. By concealing this fact, as well as the true terms of the transactional documents, Vidiyala finalized the implementation of the fraud and benefitted at Shilpa's expense along with SBIL (Bandi's company) and Uppugalla

Contrary to the lower court's finding, because of the existence of Vidiyala's confidential, fiduciary relationship, and his efforts to conceal the true terms of the

documents, Shilpa Reddy was justified in relying upon Vidiyala to disclose, and not misrepresent and conceal, all essential terms of the transaction, including that he was annexing a signature page to a release that would release himself and the other InvaGen shareholders. Under the circumstances, Shilpa was under no obligation to inquire further. As the allegations of the Complaint and the inferences drawn therefrom sufficiently support these well-settled tenets of law, it was a reversible error for the lower court to dismiss the Complaint pre-answer before a full factual record could be developed through discovery.

For these reasons, the lower court's Order should be reversed in all respects.

QUESTIONS PRESENTED

(1) Did the lower court err in finding, on a pre-answer motion to dismiss, that the Purported Release was valid, notwithstanding that the allegations of the Complaint and inferences drawn therefrom reflect that (i) Vidiyala shared both a confidential and fiduciary relationship with Shilpa; (ii) as a result of his confidential, fiduciary relationship, Vidiyala was required to disclose, and not misrepresent and conceal, all essential terms of the share-sale transaction to Shilpa, including the Purported Release; (iii) by providing Shilpa Reddy with only signature pages to execute and proceeding to close without first sending her the complete documents (as he assured he would), Vidiyala intentionally impaired Shilpa's ability to discover the true contents of the documents to which he affixed the signature pages; (iv) under

the circumstances, and as a result of the confidential, fiduciary relationship, Shilpa was justified in relying on Vidiyala to disclose all essential facts of the transaction, including that he and the other InvaGen shareholders would benefit at its expense; and (v) that the Purported Release was the product of a fraud in the *factum* and invalid therefor.

Answer: The lower court answered the question in the negative.

(2) Did the lower court err in dismissing the fraudulent inducement and fraud claims against Vidiyala and SBIL pre-answer where (i) the Complaint's allegations reflect that the Purported Release is invalid and cannot be relied upon by Vidiyala and SBIL to release them of such claims; (ii) the Complaint sufficiently pleads the elements of such claims; and (iii) due to the confidential and fiduciary relationships that existed between the parties, Shilpa was justified in relying on Vidiyala and Bandi's fraudulent misrepresentations and omissions.

Answer: The lower court answered the question in the negative.

(3) Did the lower court err in dismissing the breach of fiduciary duty claims against Vidiyala and SBIL pre-answer where (i) the Complaint's allegations reflect the Purported Release is invalid and cannot be relied upon by Vidiyala and SBIL to release them of such claims; and (ii) the Complaint sufficiently pleads the elements of such claims.

Answer: The lower court answered the question in the negative.

(4) Did the lower court err in dismissing the unjust enrichment claim pre-answer where the Complaint adequately alleges that (i) the Purported Release is invalid and cannot be relied upon by Vidiyala, SBIL and Uppugalla to release them of such claim; (ii) while an agreement exists concerning the sale of shares to the purchaser, Cipla, Shilpa has sufficiently alleged that the other InvaGen shareholders defrauded it in connection with such sale and were, therefore, unjustly enriched as a result of the fraudulent scheme, and (iii) Shilpa should have the opportunity to develop the factual record through discovery.

Answer: The lower court answered the question in the negative.

STATEMENT OF FACTS

This matter involves a fraudulent scheme perpetrated by the other shareholders of the close corporation, InvaGen, against Shilpa, one of the minority shareholders, to defraud Shilpa out of a portion of the proceeds it was supposed to receive as part of the sale of the company to another entity, Cipla. As noted above, in order to implement the fraud, the other InvaGen shareholders exploited the close, personal relationships that they shared with the two shareholders of Shilpa – Shilpa and Saketh Reddy. R. 26-28, 245-246. Indeed, the other shareholders correctly calculated that, based on the very close, confidential relationship that Shilpa and Saketh Reddy shared with Vidiyala, Shilpa Reddy would faithfully rely upon Vidiyala, and his misrepresentations and concealment of essential facts, to Shilpa's

detriment. *Id.* Vidiyala, along with Bandi (the principal owner of SBIL, the majority shareholder of InvaGen), abused the existing confidential and fiduciary relationships for their own benefit. *Id.*

A. InvaGen’s Shareholders Shared Close and Personal Relationships Prior to Cipla’s Acquisition of Their InvaGen Shares

Shilpa is owned by Shilpa and Saketh Reddy, who were both young students at the time this scheme unfolded. R.26. Through Shilpa, Shilpa and Saketh Reddy were passive investors in InvaGen, a closely held pharmaceutical company, but otherwise had no involvement with the operations of the company. R.24, 26. InvaGen’s shareholders all shared close family and personal relationships, regularly associating on a personal level and attending each other’s family gatherings. R., 26, 245.

SBIL was the majority owner of InvaGen, holding 72 shares (a 72% interest). R. 24. SBIL’s principal owner, Bandi, was close family friends of Shilpa and Saketh Reddy’s father, Pailla Reddy. R.26, 245. Vidiyala, also a long-time, close family friend, who Shilpa and Saketh Ready considered, and grew up referring to as, their “Uncle,” was the CEO and President of InvaGen. R.26, 245. He held 11 shares of InvaGen (an 11% interest). R.24, 245. Another close family friend, Uppugalla, held 8 shares of InvaGen (an 8% interest). *Id.* Finally, Shilpa held 9 shares of InvaGen (a 9% interest). *Id.*

In or about 2015, Cipla, a publicly traded European company, became interested in acquiring InvaGen by way of a stock purchase. R.24. The purchase price for the sale of the shares was supposed to be \$500,000,000. R.24. The understanding amongst the InvaGen shareholders was that they would each share in the sale proceeds *pro rata* pursuant to their percentage ownership interests stated above. R.24. A stock purchase agreement was ultimately entered into between Cipla, InvaGen and InvaGen's shareholders. *Id.* Evidently the stock purchase agreement was restated and amended several times by way of an Amended and Restated Stock Purchase Agreement, "dated and effective as of" September 4, 2015 ("Restated SPA") and Amendment no. 1, dated December 18, 2015; Amendment no. 2, dated February 17, 2016; and Amendment no. 3, dated September 15, 2017. *Id.* As reflected by Section 8.07 of the Restated SPA, Vidiyala was designated the "Minority Stockholder Representative" and expressly appointed Shilpa's and the other minority shareholders' (i) attorney-in-fact and (ii) agent with full power and authority to represent them. R.25.

B. The Other InvaGen Shareholders Hatch a Scheme to Exploit the Existing Confidential and Fiduciary Relationships With Shilpa And Its Young Shareholders, and Misappropriate a Portion of Shilpa's Share of the InvaGen Sale Proceeds

At some point, the other shareholders of InvaGen hatched a scheme to defraud Shilpa out of a portion of its share of the proceeds, amounting to \$14,300,000. Besides apparent pure greed and that they viewed Shilpa as an easy target (Shilpa

and Saketh Reddy were young, not represented by counsel in the transaction and faithfully trusted their family friends and fellow InvaGen shareholders [R.26]), it appears that the other InvaGen shareholders were motivated by a grudge that they harbored against Shilpa and Saketh Reddy's father, Pailla Reddy. R.223, 315. In their effort to improperly malign Pailla Reddy through inadmissible assertions of their counsel on the motion below, Respondents reveal a glimpse of this additional motive. *Id.* According to their counsel's assertions, the other InvaGen shareholders were upset that Pailla Reddy, who founded InvaGen years before, had left the company to start another company, which went on to be successful (as was his right as there was no non-compete in place nor do Respondents claim there was one). *Id.* Their counsel asserts that the Respondents believe this depressed the value of InvaGen. *Id.* Fueled by this grudge, the other shareholders apparently decided to *settle the score* during this transaction and misappropriate a portion of Shilpa's proceeds.

The scheme was apparently executed in several phases. Specifically, while Pailla Reddy was visiting his native country of India, Bandi, the principal owner of InvaGen's majority shareholder SBIL, invited Pailla Reddy to his home for breakfast one day. R.26-27, 245. As noted above, they were close family friends and this was not unusual. *Id.* During the visit, however, Bandi advised Pailla Reddy of a change to the terms of the InvaGen-Cipla stock-sale transaction. Specifically, he advised

Pailla Reddy, who was acting as Shilpa's agent, that InvaGen's principal distributor, Camber Pharmaceuticals ("Camber"), needed to be compensated out of the sale proceeds for its past contributions to InvaGen. R.26-28. According to Bandi, Camber's marketing efforts had increased the value of InvaGen and that Camber's participation in the transaction was critical, indicating that the sale would not proceed without such compensation. *Id.* Bandi advised that, as such, the purchase price for the InvaGen's shareholders' shares was being reduced by \$100,000,000 and such sum was going to be paid to Camber. *Id.* Bandi further advised that all of the other InvaGen shareholders had agreed to share *pro rata* in the reduction of the purchase price and, as such, they were all going to receive a lower sum for their shares in accordance with their respective ownership interest percentages. *Id.* Bandi asked Shilpa to agree to reduce its share *pro rata* along with the other shareholders based on these representations, and it so agreed. *Id.*

Then, a few months or so after this meeting, Vidiyala followed up on Bandi's discussion with Pailla Reddy in order to reiterate the misrepresentations Bandi had already made. *Id.* As noted above, Vidiyala was a close family friend of the Reddy family -- so much so that Shilpa and Saketh Reddy considered him, and referred to him as, their "Uncle." R.26, 245. As additionally noted above, he was also (i) the CEO and President of InvaGen, (ii) overseeing the sale of the InvaGen shares to Cipla and (iii) according to the Revised SPA, the designated "Minority Stockholder

Representative,” and the appointed “agent” and “attorney-in-fact” of Shilpa and the other minority shareholders. R. 24-28, 245-246. Vidiyala shared a confidential relationship with Shilpa and Saketh Reddy, and owed Shilpa fiduciary duties. *Id.* Based on this, Shilpa and Saketh Reddy relied upon and unquestionably trusted Vidiyala to be candid and truthful concerning the Cipla transaction that he was overseeing, advise them honestly of the terms of the transaction, look out for their best interests and not to misrepresent and conceal material information. *Id.* Vidiyala and Bandi were well-aware of this when implementing their scheme.

At a meeting in February 2016, Vidiyala met with Pailla Reddy at Shilpa’s office on Long Island. R.27. At that meeting, Vidiyala communicated the same representations that Bandi had made to Pailla Reddy. *Id.* Indeed, when Pailla Reddy asked Vidiyala, specifically, to confirm the purchase price for the shares being paid by Cipla and how much Shilpa would receive, Vidiyala unequivocally represented that Shilpa was going to receive 9% of \$400,000,000 and that the other \$100,000,000 of the \$500,000,000 purchase price would be paid to Camber. R.26-27.

As yet another phase of the scheme, on February 9, 2016, Vidiyala emailed Pailla Reddy. R.27-28. According to Vidiyala’s email, he was attaching “signature pages for the closing documents.” *Id.* Vidiyala offered no further explanation in the email of the signatures pages and did not provide the agreements or instruments to which they purportedly belonged. *Id.* He simply requested in the email that Pailla

Reddy obtain Shilpa's signatures on the signature pages and to retain the original signatures until he furnished the original closing documents. *Id.*

Understanding the import of Vidiyala's email to be urgent and trusting fully in Vidiyala, (i) the person she trusted and considered her Uncle, (ii) who was InvaGen's CEO, President and overseeing the transaction and (iii) Shilpa's attorney-in-fact, agent and Minority Stockholder Representative (as reflected by the Restated APA), Shilpa Reddy signed and emailed her signature pages back to Vidiyala that same day. R.27-28, 246. Vidiyala, however, never did send the full closing documents to which the signature pages allegedly related as he promised he would in the covering email. R.28, 246. Rather, he proceeded to close the transaction just days later on February 17, 2016, using Shilpa's signature pages in connection therewith. R.25. Vidiyala did not afford Shilpa Reddy the opportunity to read the documents before she signed them and he closed on the transaction. R.28. In fact, by proceeding to close without providing the documents as he said he would, he entirely impaired her ability to do so. *Id.*

C. After Shilpa Discovers the Scheme and Commences Its Action, The Respondents Produce a Purported Release, to Which They Improperly Annexed One of Shilpa's Signature Pages, Claiming It Shields Them From Liability for Their Fraudulent Scheme and Fiduciary Breaches

As Shilpa subsequently learned the transaction successfully closed, Shilpa did not suspect anything was amiss until years later when Shilpa received a tax refund

in connection with the sale of the shares. R.29. However, instead of receiving 9% of the refund (corresponding to its 9% of the purchase price), it only received approximately 6.874% of the refund. *Id.* Upon questioning the discrepancy and requesting a full set of the transactional documents, Shilpa was provided with only some of the documents related to the acquisition, which were delivered in a disorganized and piecemeal fashion. R.28-29, 246.

Upon confirming it had been betrayed and defrauded, Shilpa promptly commenced this action against the Respondents, asserting the following causes of action: (i) against Vidiyala, fraudulent concealment (1st cause of action), fraudulent misrepresentation (2nd cause of action), fraudulent inducement (3rd cause of action) and breach of fiduciary duty (4th cause of action); (ii) against SBIL (Bandi's company), fraudulent misrepresentation (fifth cause of action), fraudulent inducement (6th cause of action) and breach of fiduciary duty (7th cause of action); and (iii) against Vidiyala, SBIL and Uppugalla, unjust enrichment (8th cause of action). R.22 *et seq.*

In their pre-answer motion to dismiss, the *Respondents produced the Purported Release for the first time*, to which they evidently attached one of Shilpa Reddy's signature pages (again, *Vidiyala had not disclosed to Shilpa that one of the signature pages it executed would be annexed to a general release releasing Vidiyala and the other InvaGen shareholders*). R.27-28, 214-217, 246. Respondents

claimed on the motion below that this Purported Release released them of the fraud and fiduciary breaches they had committed. R.17-20. With this previously undisclosed Purported Release in hand, Respondents moved for dismissal based on purported documentary evidence (and statute of limitations), pursuant to CPLR 3211(a)(1)(5); and alleged failure to state a claim, pursuant to CPLR 3211(a)(7). (SBIL also separately moved to dismiss based on lack of jurisdiction, which motion the lower court denied.) R.15 *et seq.*

The lower court, thereafter, issued the Order, granting the motion and dismissing the Complaint. R.3-12. As noted above, by way of the Order, the lower court erroneously found that the Purported Release had the effect of releasing Respondents from the fraud and fiduciary breaches they had committed. *Id.* In so doing, the lower court improperly misapplied the standard on a motion dismiss, requiring it to deem all facts alleged in the Complaint as true and affording Shilpa every favorable inference. Indeed, the lower court disregarded that the allegations of the Complaint necessarily allege fraud in the *factum* as it was not disclosed to Shilpa that one of the signature pages Vidiyala had Shilpa Reddy sign would be affixed to a release that released its fellow shareholders and fiduciaries, instead of to “closing documents” implementing the transaction between the seller (InvaGen’s shareholders), on the one hand, and the purchaser (Cipla), on the other hand. R.27-28, 246. As such, the inference and presumption arises that such Purported Release

is void *ab initio* and cannot serve as the predicate of a motion to dismiss based on documentary evidence. *The very validity of this instrument is in dispute.*

The lower court also incorrectly overlooked that the Complaint sufficiently alleges a *confidential relationship* between Vidiyala, on the one hand, and Shilpa and Saketh Reddy, on the other hand. As a result of this confidential relationship, as well as Vidiyala's efforts to conceal the complete closing documents from Shilpa, Shilpa Reddy was justified in relying upon Vidiyala and Bandi to disclose, and not misrepresent and conceal, the true and accurate terms of the transaction. R.26-28, 244-246. As such, Shilpa has properly pled fraud and breach of fiduciary duty claims. Moreover, Shilpa properly alleged an unjust enrichment claim against all Respondents. While a contract does exist concerning the sale of shares of InvaGen to Cipla, as purchaser, Shilpa properly alleges that it was defrauded by the independent scheme of the other InvaGen shareholders, who were each unjustly enriched thereby.

Based on the above, the lower court improperly dismissed the Complaint pre-answer.

ARGUMENT

I.

AS THE PURPORTED RELEASE WAS PROCURED BY A FRAUD IN THE FACTUM AND ABUSE OF A CONFIDENTIAL RELATIONSHIP, AND, THUS, WAS NOT KNOWINGLY ENTERED INTO, THE LOWER COURT INCORRECTLY FOUND THAT IT RELEASED RESPONDENTS OF THE FRAUD THEY PERPETRATED AND THEIR FIDUCIARY BREACHES

The lower court erred in dismissing the Complaint based on the Purported Release, which, as the Complaint's allegations support, was the product of a fraud in the *factum* (*i.e.*, fraud in the execution). As a fiduciary of Shilpa and the stronger party in the confidential relationship he shared with Shilpa and Saketh Reddy, Vidiyala had a duty to disclose that one of the signature pages he had Shilpa execute would be attached to a broad general release, *releasing Vidiyala and the other InvaGen shareholders. This was not Shilpa Reddy's understanding of the "closing documents" for which Vidiyala had her sign only signature pages.* R.27-28, 246. As such, under the circumstances, the Purported Release is void and, therefore, Vidiyala and the other InvaGen shareholders may not rely upon it to extinguish Shilpa's fraud and breach of fiduciary duty claims.

On a motion to dismiss, a court must "determine whether plaintiffs' pleadings state a cause of action." *Richbell Info. Servs., Inc. v. Jupiter Partners, L.P.*, 309 A.D.2d 288, 289, 765 N.Y.S.2d 575, 578 (1st Dep't 2003). A court must further "construe the complaint liberally, and accept as true the facts alleged in the

complaint and any submissions in opposition to the dismissal motion, and accord plaintiffs the benefit of every possible favorable inference.” *Id.*

Here, the lower court failed to correctly apply this standard. Indeed, viewing the Complaint in a light most favorable to Shilpa and affording it all favorable inferences, the Complaint’s allegations sufficiently allege that Vidiyala (i) shared a confidential relationship with Shilpa and Saketh Reddy, (ii) along with SBIL, was a fiduciary of Shilpa’s, (iii) concealed that Shilpa was releasing the other InvaGen shareholders as part of the sale of InvaGen stock to Cipla; and (iv) committed a fraud in the *factum* by annexing a signature page he had Shilpa Reddy sign to a general release that released himself and the other InvaGen shareholders of claims, including the fiduciary breaches and fraud they had committed against Shilpa. R.22 *et seq.*

A. The Complaint’s Allegations Give Rise to the Inference That the Purported Release is Void as a Product of a Fraud in the Factum

As the Complaint’s allegations support, and give rise to the inference that, the Purported Release is the product of a fraud in the *factum* and, thus void, the lower court improperly dismissed the action based upon the Purported Release.

It is well-settled that “where a signatory signed an instrument different from that which he understood it to be... the instrument [is] void.” *Mix v. Neff*, 99 A.D.2d 180, 182–183, 473 N.Y.S.2d 31, 33 (3d Dep’t 1984); *see also Martin v. Citibank, N.A.*, 64 A.D.3d 477, 478, 883 N.Y.S.2d 483, 485 (1st Dep’t 2009) (finding that an issue of fact existed as to whether agreement was void where plaintiff contended that

he did not receive the full agreement to review); *see also Koo v. Robert Koo Wine & Liquor, Inc.*, 203 A.D.2d 180, 181, 611 N.Y.S.2d 4, 5 (1st Dep't 1994) (noting that the burden is on the proponent of the instrument to rebut a plaintiff's claim concerning a fraud in the *factum*). The Complaint alleges that, after the fraudulent misrepresentations were made by Bandi and Vidiyala regarding a reduction in the shareholders' shares of the sale proceeds, Vidiyala sent Shilpa only signature pages of the "closing documents" for the sale of the InvaGen shares to Cipla. R. 27-28, 246. As the Complaint states, Vidiyala did not provide the agreements that corresponded to the signature pages or provide any description of the agreements. *Id.* Vidiyala also did not disclose to Shilpa that the "closing documents" included a release of himself and the other InvaGen shareholders. *Id.* This was not Shilpa Reddy's understanding of the "closing documents" for which Vidiyala had her sign only signature pages. *Id.* Though he promised to provide Shilpa with all closing documents after Shilpa Reddy signed the signature pages, he did not do so. Instead he proceeded to close the transaction days later. R.25-28, 246.

A few years later, after the fraudulent scheme was discovered and this action commenced, Vidiyala and the other Respondents surprisingly produced the Purported Release as a defense to the claims against them. R.214-217. By having Shilpa sign a signature page and then annexing it to an instrument that released himself, as a fiduciary and the stronger party in the confidential relationship, as well

as the other InvaGen shareholders without disclosing that fact to Shilpa, Vidiyala perpetrated a fraud in the *factum*. Shilpa Reddy did not know that the signature page would be annexed to a general release having the effect of releasing the other InvaGen shareholders. R.27-28, 246. She thought she was executing “closing documents” only effectuating the sale of the transfer of shares vis-à-vis the InvaGen shareholders, on the one hand, and purchaser, Cipla, on the other hand. *Id.* Vidiyala and the other InvaGen shareholders are now improperly attempting to use this Purported Release as a shield.

Thus, as the allegations of the Complaint supports, and gives rise to the inference that, this Purported Release was part of a fraud in the *factum* and is, therefore, void *ab initio*, the lower court incorrectly dismissed the Complaint pre-answer as if there was no dispute that the Purported Release was valid. *But the validity of the Purported Release is plainly in dispute* and, thus, cannot serve as a basis for a motion to dismiss based on documentary evidence. *See Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267, 271, 780 N.Y.S.2d 593, 596 (1st Dep’t 2004) (“[D]ismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law”); *see also Artis v. Random House, Inc.*, 34 Misc.3d 858, 862, 936 N.Y.S.2d 479, 482 (Sup. Ct., N.Y. Co, 2011) (“Dismissal of the complaint’s claims pursuant to C.P.L.R. § 3211(a)(1) requires documentary evidence in

admissible form that conclusively resolves all factual issues and establishes a defense as a matter of law”); *see also Feldshteyn v. Brighton Beach 2012, LLC*, 153 A.D.3d 670, 670, 61 N.Y.S.3d 60, 62 (2d Dep’t 2017) (“In order for evidence submitted in support of a CPLR 3211(a)(1) motion to qualify as ‘documentary evidence,’ it must be ‘unambiguous, authentic, and undeniable”); *see also Fontanetta v. Doe*, 73 A.D.3d 78, 83–84, 898 N.Y.S.2d 569, 573-574 (2d Dep’t 2010) (“If a court does not find submissions ... ‘documentary,’ it must deny the motion”).

Moreover, while the lower court in the Order espouses the view that a party has an obligation to read the documents that it signs and is bound thereby (R.9), the application of such general holding is inapplicable to this case based on the plain allegations of the Complaint of a confidential relationship. Indeed, while such proposition may be the general rule, an exception exists in situations, such as here, where there is a confidential relationship. *Sorenson v. Bridge Capital Corp.*, 52 A.D.3d 265, 266, 861 N.Y.S.2d 280 (1st Dep’t 2008) (“*The general rule is that in the absence of a confidential relationship, a party who signs a document without any valid excuse for having failed to read it is ‘conclusively bound’ by its terms*”) (emphasis added); *see also Sofio v. Hughes*, 162 A.D.2d 518, 519, 556 N.Y.S.2d 717 (2d Dep’t 1990) (“a party who signs a document *without any valid excuse* for having failed to read it is ‘conclusively bound’ by its terms”). The lower court overlooked that the Complaint alleged a confidential relationship between Vidiyala and Shilpa

Reddy and, therefore, incorrectly applied the general rule on the motion to dismiss. *See Williams v. Lynch*, 245 A.D.2d 715, 716, 666 N.Y.S.2d 749, 751–752 (3d Dep’t 1997) (noting that a finding of a confidential relationship is appropriate even where “there is no great disparity in the parties' education or experience; the question posed is whether the parties' relationship was one of ‘trust and confidence’”).

As alleged in the Complaint, Vidiyala was a close family friend, who the younger Shilpa Reddy grew up considering, and referring to as, her “Uncle.” R.26. At the time of this fraud, Shilpa Reddy and her brother, Saketh, were still young students (attending medical school and college, respectively), holding only a passive investment in InvaGen through their entity, Shilpa. *Id.* They were not represented by counsel in this transaction. *Id.* Vidiyala was the CEO and President of InvaGen, handling its operations along with Uppugalla. Bandi’s company, SBIL, was the majority shareholder. R.24 Vidiyala was the person overseeing the InvaGen shareholders’ collective sale of their interests in InvaGen to Cipla (even the Revised SPA reflects his role as “Minority Stockholder Representative” and “attorney-in-fact” and “agent” of Shilpa). R.24-28.

As such, due to this confidential relationship, it was natural and appropriate for Shilpa Reddy to place her trust in Vidiyala and rely upon him to be honest, forthcoming and not deceive her for purposes of gaining an unfair advantage and benefit for himself and his co-conspirators. Thus, it was not neglect on her part to

sign the signature pages at Vidiyala's request without first reading the documents to which they purportedly attached, and she should not be bound by the Purported Release to which Vidiyala later attached the signature page releasing himself and the other InvaGen shareholders. Shilpa Reddy had no reason to question Vidiyala's trust and loyalty when acting at his request. *See Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 278–279, 952 N.E.2d 995, 1002 (2011) (“In certain circumstances, a fiduciary's disclosure obligations might effectively operate like a written representation that no material facts are undisclosed, and this might satisfy a principal's obligation to investigate further”). Additionally, Vidiyala purposefully impaired Shilpa Reddy's ability to review the documents by assuring that he would send them to her, but, instead, proceeded to close the transaction without doing so. R.28, 246. Vidiyala should not be permitted to benefit from such concealment.

In sum, as the Complaint's allegations support, and raise the inference, that the Purported Release is the product of a fraud in the *factum* and, therefore, void *ab initio*, the lower court incorrectly dismissed the Complaint based on the Purported Release.

B. In Addition to the Inference That the Purported Release Is Void as a Product of the Fraud in the Factum, the Purported Release is Presumed Void as a Result of the Confidential Relationship

In addition to the Complaint supporting, and giving rise to the inference, that the Purported Release is void as it is the product of a fraud in the *factum*, Vidiyala's confidential and fiduciary relationships with Shilpa Reddy and Shilpa, respectively, alone gives rise to the presumption that the Purported Release that benefitted Vidiyala and the other InvaGen shareholders is void. Vidiyala, as the stronger party of the confidential relationship, has the burden of showing that "the transaction [is] fair and free from undue influence." *Matter of Connelly*, 193 A.D.2d 602, 603, 597 N.Y.S.2d 427, 428 (2d Dep't 1993); *see also Gordon v. Bialystoker Ctr. & Bikur Cholim, Inc.*, 45 N.Y.2d 692, 698–699, 385 N.E.2d 285, 288–289 (1978) ("Whenever, however, the relations between the contracting parties appear to be of such a character as to render it certain that they do not deal on terms of equality but that either on the one side from superior knowledge of the matter derived from a fiduciary relation, or from an overmastering influence, or on the other from weakness, dependence, or trust justifiably reposed, unfair advantage in a transaction is rendered probable, there the burden is shifted, the transaction is presumed void, and it is incumbent upon the stronger party to show affirmatively that no deception was practiced, no undue influence was used, and that all was fair, open, voluntary and well understood. This doctrine is well settled").

This is not a showing that can be made, or considered, on a pre-answer motion to dismiss based on documentary evidence or failure to state a claim. It certainly was not made on the record below for the reasons stated above. Accordingly, in light of the legal presumption arising from the Complaint's allegations that the Purported Release is void, the lower court improperly dismissed the Complaint based upon it.

C. In Addition, Since the Complaint's Allegations Sufficiently Allege That (i) the Purported Release Was Not Knowingly Entered Into and (ii) the Fiduciary Relationship Was One of Unquestioning Trust, the Purported Release, Therefore, Could Not Have Released the Other InvaGen Shareholders of Their Concealed Fiduciary Breaches and Fraud

In granting the motion to dismiss based on the Purported Release, the lower court emphasized that a principal may release a fiduciary, even of fraud, “*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*.” *Pappas v. Tzolis*, 20 N.Y.3d 228, 232–33, 982 N.E.2d 576, 579 (2012) (emphasis added) quoting *Centro Empresarial Cempresa S.A.*, 17 N.Y.3d at 278–279 (“The 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”).

In addition to the inference and presumption that the Purported Release is void, the allegations of the Complaint reveal that (i) the Purported Release was not knowingly entered into by Shilpa and (ii) even if it had been knowingly entered into, the fiduciary relationship was always one of unquestioning trust. R.22 *et seq.* As such, even if the Purported Release were not void, it could not serve to release the other InvaGen shareholders of the fraud and fiduciary breaches they were concealing.

In addition to the confidential relationship Vidiyala shared with Shilpa and Saketh Reddy, as the Complaint alleges, Vidiyala maintained a fiduciary relationship with Shilpa by virtue of his being a fellow shareholder of the closely held InvaGen (the Restated APA also reflects that he was the designated Minority Stockholder Representative, serving as Shilpa's *agent and attorney-in-fact* with respect to the implementation of the sale of its shares in InvaGen to Cipla). R.25-28, 33, 245-246. *Brunetti v. Musallam*, 11 A.D.3d 280, 281, 783 N.Y.S.2d 347, 349 (1st Dep't 2004) ("The 'relationship between shareholders in a close corporation, *vis-a-vis* each other, is akin to that between partners and imposes a high degree of fidelity and good faith"); *see also Zeidman v. Zeidman*, 49 Misc.3d 963, 967-68, 16 N.Y.S.3d 134, 139 (N.Y. Dist. Ct., Nassau Co., 2015) ("Fundamental to an agent-principal relationship is that an agent owes a duty of loyalty to his or her principal, and is 'prohibited from acting in any manner inconsistent with his agency or trust and is at

all times bound to exercise the utmost good faith and loyalty in the performance of his duties”’).

SBIL, as a majority shareholder of the closely held InvaGen, likewise, owed Shilpa a fiduciary duty. R.24, 34, 244-246. *Cortes v. 3A N. Park Ave. Rest Corp.*, 46 Misc.3d 670, 694, 998 N.Y.S.2d 797, 815 (Sup. Ct., Kings Co., 2014) (“A minority shareholder in a close corporation is owed a fiduciary duty by the majority shareholders”); *see also O’Neill v. Warburg, Pincus & Co.*, 39 A.D.3d 281, 282, 833 N.Y.S.2d 461, 462–463 (1st Dep’t 2007); *see also Richbell Info. Servs., Inc. v. Jupiter Partners, L.P.*, 309 A.D.2d 288, 300, 765 N.Y.S.2d 575, 585 (1st Dep’t 2003).

As noted above, Shilpa Reddy was unaware that the signature page would be attached to a release of her co-shareholders and fiduciaries. R.27-28, 246. Therefore, she did not knowingly enter into the Purported Release. Additionally, at the time the Purported Release became effective, Vidiyala and SBIL were *actively concealing* their breaches and fraud from Shilpa. This is yet another reason Shilpa could not have *knowingly* released such claims.

Moreover, as the Complaint alleges no reason why Shilpa should not have trusted Vidiyala and Bandi, Shilpa’s relationship with them at the time of the execution of the signature page that was ultimately attached by Vidiyala to the Purported Release remained one of *unquestioning trust*. Thus, even if the Purported

Release were not void, it could not have served to release Shilpa's fiduciaries, Vidiyala and SBIL, of their fiduciary breaches and fraud.

As such, this is an additional reason why it was incorrect for the lower court to dismiss the Complaint based on the Purported Release.

II.

SHILPA HAS SUFFICIENTLY PLED CLAIMS OF FRAUD, BREACH OF FIDUCIARY DUTY AND UNJUST ENRICHMENT

As the Purported Release does not operate to bar Shilpa's claims for the reasons stated above, an examination of Shilpa's substantive allegations reveals that it has sufficiently pled allegations supporting its claims of fraud, breach of fiduciary duty and unjust enrichment. R.22 *et seq.* The lower court erred by dismissing these well-pled claims pre-answer.

A. As the Purported Release Does Not Operate to Bar Shilpa's Claims, Shilpa Adequately Alleged Breach of Fiduciary Duty Claims Against Vidiyala and SBIL

As noted above, Vidiyala and SBIL each, respectively, owed Shilpa fiduciary duties. R.24-25, 28, 33-34, 244-246. It is well-settled that, "[a] fiduciary owes a duty of undivided and undiluted loyalty to those whose interests the fiduciary is to protect. This is a sensitive and 'inflexible' rule of fidelity, barring not only blatant self-dealing, but also requiring avoidance of situations in which a fiduciary's personal interest possibly conflicts with the interest of those owed a fiduciary duty." *Ajettix Inc. v. Raub*, 9 Misc.3d 908, 912, 804 N.Y.S.2d 580, 588 (Sup. Ct., Monroe

Co., 2005). Indeed, “there is an obligation of utmost candor, strictly obligating a fiduciary ‘to make a full disclosure of any and all material facts within his or her knowledge relating to a contemplated transaction with the other party to the relationship.’” *Id.* “[W]hen a fiduciary, in furtherance of its individual interests, deals with the beneficiary of the duty in a matter relating to the fiduciary relationship, the fiduciary is strictly obligated to make 'full disclosure' of all material facts.” *Id.*

As the Purported Release does not act to bar Shilpa’s claims, Shilpa’s Complaint sufficiently alleges the elements of a breach of fiduciary duty claim against both Vidiyala and SBIL, namely: (i) the existence of a fiduciary relationship, (ii) misconduct by the defendant and (iii) damages that were directly caused by the defendant's misconduct. R.22 *et seq.* *Kurtzman v. Bergstol*, 40 A.D.3d 588, 590, 835 N.Y.S.2d 644 (2d Dept. 2007). Indeed, as discussed above, both Vidiyala and SBIL owed Shilpa fiduciary duties of good faith and full disclosure with respect to the InvaGen-Cipla transaction. R.24-25, 28, 33-34, 244-246. Shilpa details in its Complaint how Vidiyala and Bandi (the latter on behalf of SBIL) breached their fiduciary duties and concocted a scheme to misappropriate a portion of Shilpa’s share of the proceeds of the sale of InvaGen’s shares to Cipla. R.22 *et seq.*

Specifically, Bandi invited Shilpa’s agent, Pailla Reddy, to his home where he made material misrepresentations regarding the sale of the InvaGen shares to Cipla. R.26-28. As noted above, Bandi advised that InvaGen’s principal distributor,

Camber, needed to be compensated out of the sale proceeds for its past contributions to InvaGen. R.26-28. According to Bandi, Camber's marketing efforts had increased the value of InvaGen and Camber's participation in the transaction was critical, indicating that the sale would not proceed without it. *Id.* Bandi advised that, therefore, the purchase price for the InvaGen's shareholders' shares would be reduced by \$100,000,000 and such sum would be paid to Camber. *Id.* Bandi further advised that all of the other InvaGen shareholders had agreed to share *pro rata* in the reduction of the purchase price and, as such, they would all receive a lower sum for their shares in accordance with their respective ownership interest percentages. *Id.* Bandi asked Shilpa to agree to reduce its share *pro rata* along with the other shareholders. *Id.* Based on these representations, which ultimately proved to be fraudulent misrepresentations, Shilpa agreed. *Id.*

A few months or so after this meeting, in February 2016, Vidiyala followed up on Bandi's discussion with Pailla Reddy. R.27. Vidiyala met with Pailla Reddy at Shilpa's office on Long Island and communicated the same representations that Bandi had conveyed to him. *Id.* Indeed, when Pailla Reddy asked Vidiyala, specifically, to confirm the purchase price being paid by Cipla for the shares and how much Shilpa would receive, Vidiyala unequivocally represented that Shilpa was going to receive 9% of \$400,000,000 and that the other \$100,000,000 of the \$500,000,000 purchase price would be paid to Camber. *Id.*

As a final implementation of the scheme, Vidiyala took advantage of his close relationship with Shilpa Reddy to have the latter execute signature pages for the “closing documents” without disclosing the true contents thereof and that the representations that he and Bandi had made were, in fact, false. R.27-28, 246. Vidiyala concealed the truth in violation of his fiduciary duty of full disclosure. He then closed the transaction only days later with Shilpa’s signature pages *without providing the complete documents as he assured Shilpa he would*. R.25, 27-28, 246. Vidiyala offered no further explanation of the signature pages in the email and did not provide any agreements to which they purportedly belonged. *Id.* He simply requested in the email that Paila Reddy obtain Shilpa’s signatures on the signature pages and to retain the original signatures until he furnished the original closing documents. *Id.*

It was not until several years later that Shilpa learned that Vidiyala and Bandi (the latter on behalf of SBIL) breached their fiduciary duties of loyalty and full disclosure, misrepresented and concealed the essential facts of the transaction and misappropriated a portion of Shilpa’s share of the sale proceeds for their and Uppugalla’s benefit. R. 28-29. Specifically, contrary to their representations, the sale price was not reduced by \$100,000,000 dollars nor was such amount transferred to Camber. *Id.* Instead, they deceitfully reduced only Shilpa’s share of the proceeds from 9% to approximately 6.874%, while keeping their percentages the same (they

did not reduce their shares *pro rata* as Vidiyala and Bandi said they had). *Id.* The other InvaGen shareholders then divided the \$14.3 million dollars that they misappropriated from Shilpa with Vidiyala taking the largest share thereof. *Id.*

Based on these allegations, the Complaint sufficiently alleges all elements of a breach of fiduciary duty on the part of Vidiyala and SBIL.¹ As such, it was an error for the lower court to dismiss the breach of fiduciary duty claims.

B. As the Purported Release Does Not Operate to Bar Shilpa's Claims, Shilpa Adequately Pled Its Fraud Claims Against Vidiyala and SBIL

In addition to sufficiently alleging breach of fiduciary duty claims against SBIL and Vidiyala, Shilpa also properly pled its fraud and fraudulent inducement claims against them, as well.

The elements of fraud and fraudulent inducement are misrepresentation or concealment of a material fact, falsity, scienter on the part of the wrongdoer, justifiable reliance and resulting injury. *Dembeck v. 220 Cent. Park S., LLC*, 33 A.D.3d 491, 492, 823 N.Y.S.2d 45, 47 (1st Dep't 2006). Fraud may be based not only on an affirmative misrepresentation but also a concealment of material fact where, as here, a person such as Vidiyala shared a confidential, fiduciary relationship

¹ Respondents also erroneously argued below that their fiduciary breaches should be shielded by the statute of limitations. The lower court correctly did not make such finding, including because the fiduciary breaches are predicated on fraud and, thus, the six-year fraud statute of limitations applies. *See Kaufman v. Cohen*, 307 A.D.2d 113, 119, 760 N.Y.S.2d 157, 164 (1st Dep't 2003).

with the victim (*i.e.*, Shilpa Reddy and Shilpa, respectively) and, thus, had a duty to disclose material information. *Id.*; *see also*, *Campaign v. Esterhay*, 61 Misc.3d 662, 664–665, 85 N.Y.S.3d 687, 691–692 (Sup. Ct., N.Y. Co., 2018). Additionally, with respect to fraudulent inducement, there is an intent to deceive another party and induce that party to act on it, resulting in injury. *Genger v. Genger*, 144 A.D.3d 581, 582, 43 N.Y.S.3d 264, 265 (1st Dep’t 2016).

By making the above misrepresentations regarding the change of the purchase price, the shareholders’ collective *pro rata* reduction of their respective shares thereof and Camber, Vidiyala and Bandi (on behalf of SBIL) intended to deceive Shilpa and induce it to accept the reduction of its share of the purchase price and sign the closing documents to effectuate the transaction so that they, along with Uppugalla, could benefit to Shilpa’s detriment. R.26-29. As alleged in the Complaint, because Vidiyala shared a confidential, fiduciary relationship with Shilpa Reddy, he, therefore, had a *duty to disclose, and not conceal*, material information regarding such transaction. R.24-28, 245-246. As a result of this relationship of trust and confidence, Shilpa Reddy was justified in relying on the misrepresentations and omissions that had been made in signing the signature pages without reading the documents to which Vidiyala would later attach them. *Tsai Chung Chao v. Chao*, 161 A.D.3d 564, 565, 78 N.Y.S.3d 297, 298–299 (1st Dep’t 2018) (finding that the principal that a party may not claim to have justifiably relied

on misrepresentations concerning documents he or she failed to read *cannot be determined as a matter of law where a relationship of trust and confidence is alleged*).

Indeed, Vidiyala foreclosed that opportunity when he, once in possession of the signature pages, *closed the transaction days later without first providing Shilpa with the complete closing documents* to which he attached the signature papers, as he assured Shilpa he would in his transmittal email. R.27-28, 246. Having exploited his relationship with Shilpa Reddy to have her sign and provide him with only signature pages, and then impaired Shilpa Reddy's ability to review the complete documents by not forwarding them to her before the closing, Vidiyala cannot credibly claim, as he did on the motion below, that Shilpa Reddy was not justified in relying upon his fraudulent misrepresentations and omissions in signing the documents because the documents would have revealed the truth behind his deceit. *Suttongate Holdings Ltd. v. Laconm Mgmt. N.V.*, 160 A.D.3d 464, 464–465, 75 N.Y.S.3d 145, 146–147 (1st Dep't 2018) (rejecting counter-claim defendant's argument that reliance was unjustified because of defendant's failure to read the agreements and noting that the "principle relied upon by [counter-claim defendant] that a party claiming fraudulent inducement cannot be said to have justifiably relied on a representation negated by the plain terms of the contract they signed does not apply here, since [counter-claim defendant's] alleged assurances and fraud were the

very cause of defendants' failure to review the documents carefully”).

Much of Respondents’ opposition on the pre-answer motion to dismiss below is based on inadmissible assertions of its counsel, who lacks personal knowledge of the facts, and is not based on the evidentiary record. *See Werdein v. Johnson*, 221 A.D.2d 899, 900, 633 N.Y.S.2d 908, 910 (4th Dep’t 1995) (noting remarks of counsel without personal knowledge of essential facts are insufficient evidence on a dispositive motion). However, these off-the-record remarks of counsel, inadvertently or not, do offer a glimpse of the apparent motive behind this fraudulent scheme. Evidently Vidiyala, Bandi and Uppagalla had a score to settle with Shilpa and Saketh Reddy’s father, Pailla Reddy, because he had, years ago, departed from InvaGen and started a different company that became successful. R.223, 315. As there was no non-compete agreement prohibiting Pailla Reddy from doing so (nor does Respondents’ counsel allege any), Pailla Reddy had every right to do so. Apparently, however, Respondents felt that Pailla Reddy’s actions somehow depressed the value of InvaGen’s shares. *Id.* They, therefore, evidently seized this as an opportunity to even the score and misappropriate a portion of Shilpa’s share of the sale proceeds, splitting the \$14.3 million dollars amongst themselves with Vidiyala taking the largest share thereof for himself – all to Shilpa’s detriment.

In sum, Shilpa has adequately pled the elements of its fraud claims with the requisite specificity and it was an error for the lower court to dismiss them on the pleadings.

C. As the Purported Release Does Not Operate to Bar Shilpa’s Claims, Shilpa Adequately Pled Its Unjust Enrichment Claim

In addition to the fraud and breach of fiduciary duty claims, Shilpa has also sufficiently pled an unjust enrichment claim against all Respondents.

To plead a claim of unjust enrichment, a plaintiff must allege that (i) the defendants were enriched, (ii) at the plaintiff's expense (iii) and that it is against equity and good conscience to permit the defendants to retain what is sought to be recovered. *Cty. of Nassau v. Expedia, Inc.*, 120 A.D.3d 1178, 1180, 992 N.Y.S.2d 293, 296 (2d Dep’t 2014). “The essence of unjust enrichment is that one party has received money or a benefit at the expense of another.” *Id.*

Here, Shilpa has sufficiently pled that Respondents have been unfairly enriched at Shilpa’s expense in the amount of \$14.3 million dollars. R.36-37. Respondents should not be permitted to retain such monies as a result of the fraud they perpetrated. While it is true that a contract exists regarding the underlying transaction with Cipla, that should not, at the pleading stage, preclude Shilpa from asserting an unjust enrichment claim against Respondents based on the latter’s independent fraud and fiduciary breaches in connection with such transaction.

As such, for this reason, the lower court incorrectly dismissed the unjust enrichment claim.

CONCLUSION

In sum, the lower court erroneously granted the Respondents' motion to dismiss the Complaint. In so doing, the lower court failed correctly to apply the legal standard on a motion to dismiss of accepting the allegations of Shilpa's Complaint as true and affording Shilpa the benefit of all favorable inferences arising therefrom. Based on the alleged facts that Vidiyala, along with Bandi, breached and abused his confidential, fiduciary relationship to cause Shilpa Reddy to execute a signature page that he later annexed to a release benefiting himself and his co-conspirators, an inference and presumption arise that the Purported Release is the product of a fraud in the *factum* and void *ab initio*. This is a fact-intensive issue that cannot be decided on a pre-answer motion to dismiss. Thus, it was an error for the lower court to find that the Purported Release precluded Shilpa's claims.

Moreover, the allegations of the Complaint clearly state a claim that Bandi and Vidiyala, through their respective misrepresentations and omissions, defrauded Shilpa out of \$14.3 million dollars of its share of the proceeds from the sale of the InvaGen shares. Based on the allegations of the fiduciary and confidential relationships, and how Vidiyala implemented the fraudulent scheme, Shilpa, in executing the signature pages, was justified in relying upon the representations and

omissions that were made even though Vidiyala surreptitiously did not provide her with the complete agreements. This misconduct by Bandi (on behalf of SBIL) and Vidiyala further served as a clear breach of the fiduciary duties owed to Shilpa. As the Complaint properly alleges, as a result of this fraudulent scheme, Vidiyala, SBIL and Uppugalla were all unjustly enriched at Shilpa's expense. As such, the lower court erred in granting Respondents' pre-answer motion to dismiss and dismissing these well-pled claims.

For all of the foregoing reasons, it is respectfully requested that this Court reverse the lower court's Order in all respects and award Shilpa costs on this appeal as against Respondents.

Dated: Garden City, New York
August 10, 2020

Respectfully submitted,

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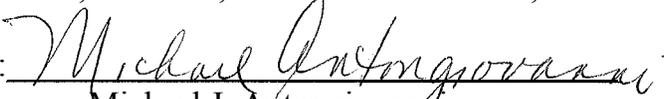
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New York Supreme Court
Appellate Division – First Department



SHILPA SAKETH REALTY INC.,

Plaintiff-Appellant,

– against –

SUDHAKAR VIDIYALA, MADHAVA REDDY UPPUGALLA
and SHRI BHRAMARAMBIKAS INDUSTRIES LIMITED,

Defendants-Respondents.

1. The index number of the case in the court below is 157087/19.
2. The full names of the original parties are as above. There have been no changes.
3. The action was commenced in Supreme Court, New York County.
4. The action was commenced on or about July 20, 2019, by the filing of a summons and verified complaint. The Answer was served thereafter.
5. The nature and object of the action is for fraud, breach of fiduciary duty and unjust enrichment.
6. The appeal is from a decision and Order of the Honorable Barry R. Ostrager, entered on April 17, 2020.
7. This appeal is being perfected on a full reproduced record.