

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

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SHILPA SAKETH REALTY INC.,	:	Appellate Case No.
	:	2020-02285
<i>Plaintiff-Appellant,</i>	:	
	:	Originating Court
-against-	:	Index No. 157087/2019
	:	
SUDHAKAR VIDYALA, MADHAVA	:	
REDDY UPPUGALLA, and SHRI	:	
BHRAMARAMBIKAS INDUSTRIES	:	NOTICE OF MOTION TO
LIMITED,	:	REARGUE, OR, IN THE
	:	ALTERNATIVE, FOR
<i>Defendants-Respondents,</i>	:	LEAVE TO APPEAL TO
	:	THE COURT OF APPEALS
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PLEASE TAKE NOTICE that upon the attached Affirmation of Ronald D. Lefton dated March 19, 2021, and upon all the proceedings in this appeal to date, the Defendants-Respondents, SUDHAKAR VIDYALA, MADHAVA REDDY UPPUGALLA, and SHRI BHRAMARAMBIKAS INDUSTRIES LIMITED, will move in this Court at 10:00 a.m. on April 5, 2021 at the Appellate Division, First Department, 27 Madison Avenue, New York, NY 10010, pursuant to CPLR 5602(a) and 22 NYCRR §§ 1250.4 and 1250.16, to reargue this Court's Decision and Order dated February 11, 2021, with Notice of Entry filed on February 17, 2021, based on points of law that the Court overlooked or misapprehended or, in the alternative, for leave to appeal to the New York Court of Appeals.

PLEASE TAKE FURTHER NOTICE, that pursuant to Civil Practice Law and Rules § 2214(b), you are hereby required to serve copies of your answering papers on the undersigned no later than the seventh day prior to the date set forth above for the submission of this motion.

Dated: Nassau County, New York
March 19, 2021

RONALD D. LEFTON

Ronald D. Lefton

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	: 2020-02285
<i>Plaintiff-Appellant,</i>	:
	: Originating Court
-against-	: Index No. 157087/2019
	:
SUDHAKAR VIDİYALA, MADHAVA	: AFFIRMATION IN
REDDY UPPUGALLA, and SHRI	: SUPPORT OF MOTION TO
BHRAMARAMBIKAS INDUSTRIES	: REARGUE, OR, IN THE
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RONALD D. LEFTON, an attorney admitted to practice law in the State of New York, hereby affirms under penalties of perjury pursuant to CPLR 2106 as follows:

1. I am a member of the firm Izower Feldman, LLP, attorneys for Respondents Sudhakar Vidiyala, Madhava Reddy Uppugalla, and Shri Bhramarambikas Industries Limited. I am fully familiar with the facts and circumstances of this action and appeal.

2. I make this affirmation in support of Respondents' Motion to Reargue or, In the Alternative, for Permission to Appeal to the New York Court of Appeals. Attached as Exhibit A is a true and correct copy of the February 11, 2021 Decision and Order of this Court with Notice of Entry, dated February 17, 2021 (the "Court's Decision"). The Court's Decision reversed Justice Barry Ostrager's Decision and

Order dismissing the Complaint on the grounds, *inter alia*, that SSR's execution of a General Release (the "Justice Ostrager Decision") precluded it from pursuing its claims against the Respondents, in light of the fact that SSR did not plead a separate fraudulent inducement to enter into the Release. (R. 3-12). Attached as Exhibit B is a true and correct copy of the Justice Ostrager Decision, dated April 17, 2020.

3. As required by 22 NYCRR 1250.16, this Affirmation briefly sets forth the points that the Court misapprehended or overlooked in reversing the IAS Court Decision and, in event this Court denies the Motion to Reargue, the questions of law Respondents seek to be reviewed by the Court of Appeals and the reasons that the questions should be reviewed by the Court of Appeals.

PRELIMINARY STATEMENT

4. This action arises from non-party CIPLA's acquisition of 100% of the stock of generic pharmaceutical company Invagen from its Stockholders, the Appellant and three Respondents here. As the stock purchase agreement specified, Cipla would purchase all of shares held by each Stockholder and would remit payment to each Stockholder directly, based upon their "Allocated Share" as to be agreed among the selling Stockholders. This Allocated Share was at variance from, and in lieu of each Stockholder's pro rata percentage. The Stockholders were responsible for determining their respective Allocated Share and providing that information to Cipla, which made payment on that basis.

5. The transaction took several months to negotiate and document. As the Complaint alleges, the parties executed several amendments to the Stock Purchase Agreement, and entered into related transaction documents, including a General Release of all potential claims, whether then known or unknown, that any party to the deal might have against another party. (R. 214).

6. The parties executed the Stock Purchase Agreement on September 4, 2015 and then an Amended and Restated Stock Purchase Agreement, which the Complaint defines as the “Amended Agreement.” The parties executed three subsequent amendments to the Amended Agreement and the transaction closed on February 17, 2016. (R. 25 at ¶ 18). The Amended Agreement incorporates a one-page schedule of the Allocated Shares, which lists the allocated share amount for all four Stockholders of Invagen. (R. 170).

7. SSR concedes that after the Amended Agreement, it never read any of the subsequent amendments or any other transaction documents, including its own Officer’s Certificate, its one-page Allocated Share, or the General Release among all the parties.

8. Plaintiff does not challenge, nor could it, that had it looked at the transaction documents, it would have seen that the only recipients of the purchase proceeds were the four Invagen Stockholders and that there was no provision for any payment to the affiliated nonparty, Camber. Plaintiff also does not challenge, nor

could it, that the transaction documents unequivocally identify exactly what percentage of the purchase price each Stockholder would receive. Plaintiff also does not allege that it received less than that amount.

9. Nevertheless, SSR claims it was defrauded, and that the alleged fraud was also a breach of fiduciary duty, based upon alleged misrepresentations made to SSR's agent, Dr. Reddy, during in person negotiation of the Allocated Share amount to be received by SSR. The Complaint does not allege that the purportedly *unsophisticated* holders of SSR's stock—Dr. Reddy's children Shilpa and Saketh—were involved in the negotiations or received any communications from Respondents. All communications from Respondents were directed to and relayed through Dr. Reddy who acted on behalf of SSR.¹ There is no allegation that Dr. Reddy, a well known and successful businessman, is unsophisticated.

10. On Respondents' motion to dismiss pursuant to CPLR 3211(a)(1) and (a)(5), the IAS Court dismissed SSR's Complaint in its entirety. Among other reasons, the IAS Court held that the terms of the General Release that SSR executed was a complete bar to the action. (R. 3-12).

¹ Although Plaintiff, a New York corporation, is owned by two individuals, a medical student, Shilpa, and her brother, a college student, Saketh, it is undisputed that throughout Plaintiff acted through their father and agent, Dr. Pailla Reddy. Dr. Reddy, one of Invagen's founders and formerly its CEO, then formed a separate company which sold competing generic pharmaceuticals. Pailla Reddy also owns and controls substantial real estate interests in New York. As Justice Singh noted at oral argument, Pailla Reddy is well known and extremely sophisticated. The alleged fraud is based on things allegedly told to Dr. Reddy in the Stockholders' negotiation of how to allocate the purchase price among themselves.

11. The IAS Court also held that SSR could not establish the essential element of reasonable reliance as a matter of law, because, as SSR readily admits, it willfully decided not to read or even to look at the transaction documents before signing them. The IAS Court further noted that, even if a fiduciary duty existed, it would not excuse the Plaintiff from its failure to read.

12. The Appellate Division reversed. Without expressing its rationale, the Appellate Division concluded that “two of the three defendants were fiduciaries” to SSR and therefore that SSR “was excused from reading the agreements” and it “cannot be said as a matter of law that the release or the agreements ...bind [SSR].” That Court further concluded that the release—notwithstanding its unequivocal terms—was not a bar to claims and SSR’s purported reliance on the alleged misrepresentations “was not unreasonable as a matter of law.”

13. Respondents respectfully submit that this Court misapprehended or overlooked key documentary evidence and relevant Court of Appeals decisions

14. *First*, the Court’s Decision misapprehends the Court of Appeals decision in *Pappas v. Tzolis*, 20 N.Y.3d 228 (2012), particularly as applied to the General Release. In *Pappas*, the Court of Appeals reaffirmed the rule that a plaintiff cannot avoid the effect of its release of any potential fraud claims unless the plaintiff can allege a separate fraudulent inducement to enter into that release different from that alleged with regard to the underlying fraud. Because the *Pappas* Plaintiffs had

failed to make such allegations, the Court of Appeals held they were bound by the release, despite plaintiffs' allegations that the defendant owed them a fiduciary duty to disclose all material information. *Pappas* requires affirming the IAS Court's Dismissal of SSR's Complaint.

15. *Second*, this Court misapprehended or overlooked Section 11.10 of the Amended Agreement, which SSR admits was executed before any alleged misrepresentations. Section 11.10 states, among other things, that "all parties to this Agreement specifically acknowledge that *no party has any special relationship with another party that would justify any expectation beyond that of an ordinary buyer and an ordinary seller in an arm's-length transaction.*" (R. 144). In contrast with subsequent amendments and closing documents, SSR alleges neither that it was fraudulently induced to enter into the Amended Agreement nor that it did not read the Amended Agreement before signing it. Section 11.10 conclusively establishes that—at least with regard to the arm's length negotiation of the Allocated Share amounts—Vidiyala and Shri did not owe any fiduciary duties to SSR and that SSR could not reasonably believe that they did.

16. *Third*, the Court failed to address whether the Complaint contained sufficient allegations of fiduciary duties flowing to SSR from fellow Stockholders Vidiyala and Shri. The Decision simply assumes without analysis not only that SSR adequately alleged fiduciary relationships with Vidiyala and Shri, but also that those

relationships were applicable to the negotiations surrounding the termination of their relationship as Stockholders in the same company. Respondents submit that SSR's allegations of a fiduciary relationship were insufficient as a matter of law.

17. If this Court denies Respondents' Motion to Reargue, Respondents, in the alternative, Move for Leave to Appeal to the New York Court of Appeals pursuant to CPLR 5602(a). The matters raised on this appeal are important to the statewide business community, as they concern, among other things, the application of the Court of Appeals' holding in *Pappas v. Tzolis*, the scope and effect of releases and contractual clauses disavowing fiduciary relationships, and the minimum thresholds for pleading the existence of a fiduciary relationship as well as the extent to which a corporate entity acting through a sophisticated agent can avoid any responsibility for reading the documents it signs, or for retaining counsel to do so on its behalf, and thereby disrupt a thoroughly documented, multi-hundred million dollar transaction involving multiple parties and nonparties and considerable time, effort and resources.

MOTION TO REARGUE

I. The Court's Decision Misapprehends The Effect Of Pappas.

18. The Court's decision does not address the black-letter rule of law that a plaintiff can only avoid the effect of its release of fraud claims by alleging and proving a separate fraudulent inducement to enter into the release itself. As the Court

of Appeals held in *Pappas v. Tzolis*, this rule applies even where the plaintiff has alleged that the defendant owed plaintiff a fiduciary duty to disclose material information.

19. As the Court of Appeals has long held:

[A] party that releases a fraud claim may later challenge that release as fraudulently induced only if it can identify a separate fraud from the subject of the release. Were this not the case, no party could ever settle a fraud claim with any finality.

17 N.Y.3d at 276.

20. Allegations that the plaintiff was fraudulently induced to enter into the contract as a whole are not sufficient. For example, in *Pappas*, the Court of Appeals rejected the plaintiffs' claim that the defendant—an alleged fiduciary for the plaintiffs—fraudulently induced the plaintiffs to execute the release, because plaintiffs “did not allege that the release was itself induced by any action separate from the alleged fraud consisting of [defendant’s] failure to disclose his negotiations to sell the lease.” 20 N.Y.3d at 234

21. Here, the Complaint similarly lacks any allegation that Vidiyala or Shri fraudulently induced SSR to execute the General Release. Indeed, the word “release” appears nowhere in the Complaint. (R. 22-38). Similarly, despite Respondents having argued in their motion to dismiss that the General Release required dismissal of SSR’s claims (R. 231-232), the word “release” does not appear

in the Affidavit of Shilpa Reddy, which SSR submitted to supplement the allegations of its Complaint in response to the motion to dismiss (R. 244-246).

22. The *Pappas* Court also held that a plaintiff can be held to terms of its release of fraud claims against a defendant, even where, as here, the plaintiff alleges that the defendant violated its fiduciary duty to disclose material information to the plaintiff. 20 N.Y.3d at 234. Claiming a fiduciary duty does not excuse a plaintiff from its pleading requirements, or immunize a plaintiff from its most fundamental obligations of reasonable reliance and diligence. This is especially true when dealing with a corporate entity represented by a sophisticated agent. *Pappas* is controlling precedent required this Court to affirm the dismissal of the Complaint.

A. SSR Is A Multimillion Dollar Corporate Plaintiff Represented By An Extremely Sophisticated Agent

23. To the extent that this Court may have determined that *Pappas* was not controlling here because the Court credited SSR's efforts to cast itself as an unsophisticated party (in contrast to the sophisticated *Pappas* plaintiffs), Respondents respectfully submit that the Court has elevated form over substance.

24. In the Amended Agreement—which it executed well before the allegations of fraud purportedly occurred—SSR represented that it was a sophisticated party and there were no special relationships among the parties. (R. 144).

25. SSR has argued that it is an unsophisticated party, given the ages of Dr. Reddy's two adult children, who are the holders of record of SSR stock. But, SSR is a corporate entity whose assets at the time of the transaction included, among other things, nine percent of a generic pharmaceutical company that was worth hundreds of millions of dollars. (R. 24 at ¶¶ 13-14). SSR knew it had the right to counsel and signed documents saying it had consulted with counsel. Yet SSR asks the Court to excuse it from reading the documents it signed—and its fellow Invagen Stockholders relied upon—as part of the five hundred-million-dollar sale of Invagen to Cipla.

26. Moreover, SSR admits that at all times it acted through its agent, Dr. Reddy, including his negotiation of its Allocated Share percentage. As this Court noted at oral argument, Dr. Reddy is a very well-known and highly sophisticated businessman.

27. The Complaint alleges that Dr. Reddy handled the transaction. SSR alleges three different interactions only between Dr. Reddy and either Vidiyala or Shri. (R. 26-27 at ¶¶ 24-26 (Shri's principal invites Dr. Reddy to breakfast meeting to negotiate allocations); R. 27 at ¶¶ 30-33 (meeting at SSR's offices between Dr. Reddy and Vidiyala); R. 27-28 at ¶¶ 34-36 (Vidiyala sends Dr. Reddy the closing documents signature packet and instructions)). SSR does not allege that any Respondent ever attempted to communicate with Shilpa or Saketh regarding any

element of the transaction, much less that a Respondent made any misrepresentation to Shilpa or Saketh.

28. Without exception, the Complaint alleges that when any Respondent interacted with SSR, the Respondent did so via the sophisticated Dr. Reddy and not with his adult, well-educated children.

B. The Complaint And Documentary Evidence Establish That SSR Had Ample Reason To Know That The Parties Were Not In A Relationship Of Trust With Regard To This Transaction.

29. Respectfully, the Court has misapprehended the allegations of the Complaint and the documentary evidence that rebuts any alleged fiduciary relationship.

30. According to *Pappas*, where the relationship between principal and fiduciary “is not one of trust, the principal cannot reasonably rely on the fiduciary without making additional inquiry.” 20 N.Y.3d at 232. As an example, the Court of Appeals explained that the plaintiffs in *Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V.*, “knew that the defendants had not supplied them with the financial information to which they were entitled” and that this alone should have triggered a “heightened degree of diligence” such that the “the principal cannot blindly trust the fiduciary's assertions.” 20 N.Y.3d at 232–33 (emphasis added)(citing *Centro*, 17 N.Y.3d 269 (2011)). This is exactly the situation here. Plaintiff knew from the Amended Agreement and its own arm’s length negotiations

that there was an Allocation Schedule. It cannot rely on an alleged fiduciary duty to excuse its failure ever to look at it.

31. Similarly, here, SSR alleges that Vidiyala did not send SSR copies of the closing documents and “[a]s such, Shilpa did not have an opportunity to read or review the documents before she signed them.” (R. 28 at ¶ 39). SSR also complains that “Vidiyala provided no explanation of the closing documents and simply requested that Dr. Reddy obtain Plaintiff’s signatures and retain the original signatures until he furnished the original closing documents.” (R. 28 at ¶ 39). As in *Centro*, SSR’s decision to sign the signature pages without reading the documents and to rely on Vidiyala to supply “all material information relating to the transaction and to protect Plaintiffs interests in connection therewith” (R. 28 at ¶40) was similarly unreasonable. Simply, even if there were a fiduciary duty with regard to negotiating the Allocated Share, it did not excuse SSR from reading the release it executed. Nor was SSR excused from reading the one-page Allocated Share schedule attached to the Second Amendment. In addition to the very allegations of the Complaint, the documentary evidence demonstrates that SSR’s purported reliance on Vidiyala and Shri as its fiduciaries was unreasonable as a matter of law.

32. The Amended Agreement put SSR on notice that the Stockholders would negotiate among themselves (and not with Cipla) the amount that each would

receive from the proceeds of the sale. Article II, Section 2.01 sets forth the “Terms of the Transaction” for the “Purchase and Sale of Company Stock.” (R. 62).

33. *First*, Section 2.01(a) explains what the “Buyer” (Cipla) will receive from each Stockholder (the respondents and appellant here).

Each Stockholder shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase and acquire from each Stockholder, the number of shares of Company Stock owned by each Stockholder[.]

(R. 62).

34. *Second*, Section 2.01(b) then explains what the Stockholders will receive as consideration.

The *aggregate purchase price consideration* to be paid for *all of the Company Stock* is equal to the Purchase Price as finally determined pursuant to Section 2.02. At the Closing, Buyer shall pay to each Stockholder such Stockholder’s *Allocated Share* of Closing Date Payment in accordance with Section 3.03(h). Buyer shall not have any obligation with respect to the actual allocation among the Stockholders of the Closing Date Payment...

(R. 62) (italics added) (underlining in original).

35. Then, Section 3.03(h) provides that: “Buyer shall pay to each Stockholder such Stockholder’s Allocated Share of Closing Date Payment ...” (R. 74).

36. Thus, the structure of the transaction described in the Amended Agreement separates what Cipla is buying for a combined total purchase price – *i.e.*,

all Invagen shares owned by each Stockholder—from the consideration each Stockholder would receive for those shares. The allocation of the purchase price was a matter to be negotiated among the Stockholders. SSR concedes that Dr. Reddy had this negotiation on its behalf with Shri on the other side of the table.

37. Therefore, SSR's claims that the Stockholders were in a position of trust and not competing with each other, because each would simply be paid its pro rata share of the purchase proceeds, are demonstrably false.

II. The Court Has Overlooked The Amended Agreement In Which SSR Knowingly Agreed That No Party To The Transaction Owed A Fiduciary Duty To Any Other.

38. Before any of the Complaint's alleged misrepresentations or omissions, SSR and the other Invagen Stockholders acknowledged in writing that no party to the Amended Agreement owed fiduciary duties to any other party with regard to the transaction. The Amended Agreement therefore foreclosed the existence of any fiduciary duty flowing from Vidiyala or Shri to SSR at all, much less one that would excuse SSR from being bound by the transaction documents it signed without reading, including the General Release on which Justice Ostrager correctly based the dismissal of the Complaint.

39. Since the Amended Agreement with its merger clause was entered before the alleged fraud, this case falls directly within this Court's precedent. *Lynn v. Maida*, 170 A.D.3d 573, 574-575 (1st Dep't 2019) (affirming dismissal of breach

of fiduciary duty claim where contracts “clearly state that [defendant] is not their agent, co-venturer or representative” and because “neither the fact that [defendant] represented plaintiffs vis-à-vis clients nor the fact that plaintiffs were friends with defendants creates a fiduciary relationship”).

40. Specifically, SSR itself alleges that it and the other Invagen Stockholders entered the Amended Agreement on September 4, 2015 (R. 24; ¶ 10), a date that precedes all of the Complaint’s alleged misrepresentations and omissions.

41. Section 11.10 of the Amended Agreement, titled “Complete Agreement,” includes SSR’s acknowledgement that, among other things, none of its fellow Stockholders owed SSR any fiduciary duties:

This Agreement and the other Transaction Documents contain the entire agreement of the parties respecting the sale and purchase of the Company and supersedes all prior agreements among the parties respecting the sale and purchase of the Company. *[T]he parties each hereby acknowledge that this Agreement and the other Transaction Documents embodies the justifiable expectations of sophisticated parties derived from arm’s-length negotiations; all parties to this Agreement specifically acknowledge that no party has any special relationship with another party that would justify any expectation beyond that of an ordinary buyer and an ordinary seller in an arm’s-length transaction.*

(R. 144) (emphasis added).

42. The phrases “[T]he parties each hereby acknowledge” and “all parties to this Agreement specifically acknowledge that no party” are clear and

unambiguous, and purposely specific to include all parties with regard to the entirety of the transaction including the negotiation of the Allocated Share. Indeed, SSR is judicially estopped from arguing otherwise because it made precisely this argument in opposing the motion by Shri to dismiss for lack of personal jurisdiction and the IAS Court relied on that argument in denying that motion.

43. When the parties wished to use the phrases buyer and seller to refer to Cipla and the Invagen Stockholders, they did so by using the defined terms with an uppercase “B” or “S” as appropriate. The defined term “Buyer” (initial capitalization) is used approximately 570 times throughout the Amended Agreement and “Stockholder” (initial capitalization) approximately 680 times.²

44. SSR does not allege that it was fraudulently induced to sign the Amended Agreement. Indeed, the first alleged misrepresentation to Dr. Reddy, whom the Complaint admits was SSR’s agent, did not occur until “between October and December” of 2015 (R. 26 at ¶ 24), after SSR signed the Amended Agreement.

45. SSR effectively admits that it read the Amended Agreement. It claims to have relied on the Amended Agreement’s appointment of Vidiyala as Minority Stockholder Representative (“MSR”) to excuse its failure to participate in subsequent negotiations, retain counsel, or even review any transaction documents

² The word “seller” is not defined, appears only twice in the Amended Agreement regardless of capitalization, and is used generically both times. (R. 52, 144).

before signing them. (R. 25 at ¶ 15—partial text of the MSR clause; R. 26 at ¶ 22 — “Plaintiff relied exclusively on Vidiyala as the Minority Stockholder Representative, and thereby Plaintiff’s designated agent and attorney-in-fact, to represent its interests in connection with the transaction.”)

46. Having alleged that it relied on the MSR Clause of the Amended Agreement, SSR can hardly be heard to argue that it is not bound by the Amended Agreement or that it was unaware of the Amended Agreement’s contents. Moreover, the Amended Agreement makes clear that the role of Minority Representative was limited to implementing only certain enumerated provisions of the Amended Agreement. (R. 44, 154). The MSR had no responsibility for negotiating or determining the selling Stockholders’ Allocated Shares, but rather had the administrative responsibility to inform Cipla of the final allocation among the Stockholders and to provide Cipla with the wire instructions for where to send payments. (R. 62).

47. Section 11.10 of the Amended Agreement (R. 144) conclusively disposes of any claim SSR reasonably believed that Vidiyala or Shri owed SSR any fiduciary duties at all with regard to the transaction. It therefore also disposes of SSR’s claim that those fiduciary duties excused SSR from reading any transaction documents before signing them, including the Allocated Share Schedule (R. 218) and the General Release (R. 214).

III. The Court’s Decision Overlooked the Complaint’s Lack of Factual Allegations That Any Respondent Owed SSR Any Fiduciary Duty

48. In addition to overlooking or misapprehending the irrefutable documentary evidence that SSR knowingly agreed that no party owed it a fiduciary duty, the Court’s Decision dispensed with any review of the Complaint’s factual allegations that a fiduciary relationship existed at all.

49. The Court’s Decision instead takes it as a “given that two of the three defendants were fiduciaries to plaintiff...” (Ex. A; p. 1). In so doing, the Court skipped the question of whether the Complaint adequately pleaded a fiduciary relationship with respect to the negotiation of the Allocated Share and instead assumed that SSR was immunized by some ambiguous fiduciary relationship.

50. Bare legal conclusions that a defendant owed a fiduciary duty are insufficient to state a claim. *See, e.g., Faith Assembly v. Titledge of New York Abstract, LLC*, 106 A.D.3d 47, 62 (2013)(reversing denial of dismissal of breach of fiduciary duty claim where “the complaint allege[d] in the most conclusory fashion” that the plaintiff was owed a fiduciary duty). If the alleged fiduciary relationship is not based on allegations of objective fact, the plaintiff fails to state a cause of action for breach of fiduciary duty. *L. Magarian & Co. v. Timberland Co.*, 245 A.D.2d 69, 69–70 (1997)(“[T]he record shows that plaintiff failed to support its assertion of such a relationship with any objective fact.”); *Madison Sullivan Partners LLC v. PMG*

Sullivan St., LLC, 173 A.D.3d 437, 438 (2019)(“The failure to allege particularized facts is fatal to the cause of action for breach of fiduciary duty...”).

51. The Complaint’s factual allegations that Vidiyala owed SSR a fiduciary duty are exceedingly thin. Specifically, SSR alleges only that a) it relied on Vidiyala as the “Minority Shareholder [sic] Representative” (R. 26 at ¶ 22) identified in the Amended Agreement; and b) Vidiyala was “a close family friend of Shilpa and Saketh, whom they addressed as “Uncle.” (R. 26 at ¶ 23). Neither claim is sufficient.

52. *First*, the MSR clause on its face is incapable of imposing fiduciary duties on Vidiyala for any activities outside of effectuating the parties’ written agreement and certainly not for representing SSR’s interests during negotiations of the allocation of the total purchase price among the Stockholders.

53. The MSR clause grants only very limited, enumerated powers to perform certain acts, “[i]n order to administer efficiently” the Amended Agreement. (R. 122). According to the Complaint, Vidiyala defrauded SSR and breached his alleged fiduciary duties during the negotiation and execution of the transaction documents prior to the closing date. The MSR clause is simply irrelevant to SSR’s claims.

54. *Second*, an allegation that a defendant is a friend of a plaintiff—or here, a friend of the family of the holders of the plaintiff’s stock—is insufficient to

establish a fiduciary relationship. *See Prado v. De Latorre*, 194 A.D.2d 656, 657 (1993); *see also Casanas v. Carlei Grp., LLC*, 176 A.D.3d 499, 499 (1st Dep’t 2019) (“[T]he individual parties’ *sibling* relationship, standing alone, is insufficient to establish a fiduciary duty that would entitle plaintiff to an accounting in this case.”).

55. Moreover, SSR’s subjective trust in or reliance upon Vidiyala, even if more fully alleged, would not unilaterally impose fiduciary duties upon him. *Solomatina v. Mikelic*, 370 F. Supp. 3d 420, 434 (S.D.N.Y. 2019) (“Plaintiff’s subjective trust in Defendant does not provide the basis for the Court to find a fiduciary relationship existed prior to the alleged breach.”).

56. SSR alleges that Shilpa and Saketh Reddy relied on Vidiyala to protect SSR’s interests because he was a friend of their family, but the Complaint contains no allegations that Vidiyala assumed this duty or had reason to believe that Shilpa and Saketh were relying on him to protect their interests in a transaction in which he was a counterparty. *See, e.g., L. Magarian*, 245 A.D.2d at 69-70 (“There was no showing that defendant had undertaken to act primarily for the benefit of another in matters connected with [its] undertaking) (citing Restatement [Second] of Agency § 13, comment *a*)).

57. The very allegations of the Complaint, that Vidiyala was negotiating only with Dr. Reddy as the agent for SSR, there was no reasonable basis for Vidiyala

to believe that he—and not Dr. Reddy—was responsible for protecting SSR’s interests.

58. For all of the above reasons, it is respectfully requested that this motion to reargue be granted and upon reargument that this Court’s order of February 11, 2021 be vacated and the IAS order dismissing the complaint be affirmed. As set forth below, Respondents alternatively seek leave to appeal to the Court of Appeals.

MOTION FOR LEAVE TO APPEAL

I. Questions of Law Sought to be Reviewed by the Court of Appeals

59. Where a plaintiff has “specifically acknowledge[d]” in a written agreement with a buyer and the plaintiff’s fellow Stockholders that their transaction is the result of “arms-length” negotiations between “sophisticated parties” and that “no party has any special relationship with another party that would justify any expectation beyond that of an ordinary buyer and an ordinary seller in an arm’s-length transaction,” may the plaintiff nonetheless pursue a claim that its fellow Stockholders had fiduciary duties in connection with an alleged subsequent fraud?

60. In light of the Court of Appeals’ decisions in *Pappas v. Tzolis* and *Centro*, may a plaintiff, represented by a sophisticated party in the negotiation of the a transaction, be excused from the terms of a general release it alleges it signed without reading?

61. Does a plaintiff allege a breach of fiduciary duty claim with the particularity required by CPLR 3106(b) where the plaintiff, prior to the date of any allegations of a breach, had expressly denied in a written agreement that any fiduciary relationship existed and where the plaintiff alleges only that the alleged fiduciary was a friend of the plaintiff's family?

II. Reasons that These Questions Should be Reviewed by Court of Appeals

62. If this Court denies the Motion to Reargue, Respondents respectfully submit that the Court of Appeals should review the above questions of law and reverse the Court's Decision because the Decision is unsupported by the record and the applicable law.

63. The Court of Appeals decided *Pappas v. Tzolis* nine years ago. The Court did not expressly limit the ruling to cases in which the parties had precisely the same circumstances as the *Pappas* parties, i.e., only when the parties had had numerous prior business disputes and are indisputably sophisticated, represented by sophisticated counsel, and negotiating against each other. The Court of Appeals has not yet addressed the situations in which those factors are arguably less extreme.

64. The rationale for the decision certainly is not so narrow.³ Fairly read, the negotiations on behalf of the corporate entity SSR were conducted by a

sophisticated agent, Dr. Reddy, as to how to split up a finite pie of proceeds to be reflected as the Allocated Share, and SSR had strong indications that the relationship between the parties was not one of trust.

65. To Respondents' knowledge, the Court of Appeals has not addressed the preclusive effect of a clause that disavows fiduciary relationships between parties to a contract. The issue has been addressed by New York federal courts, which have held that such clauses preclude plaintiffs from pursuing fiduciary duty claims against other parties to the contract. *See, e.g., Spinelli v. Nat'l Football League*, 903 F.3d 185, 207 (2d Cir. 2018) (“[A] breach of fiduciary duty claim fails where the governing agreement makes clear that [the defendants] were not to be held to the ordinary standard of care applicable to fiduciaries.”); *LBBW Luxemburg S.A. v. Wells Fargo Sec. LLC*, 10 F.Supp.3d 504, 523 (S.D.N.Y. 2014) (“[N]o fiduciary duty is owed where explicit contractual disclaimers of fiduciary duty apply.”).

66. A Court of Appeals decision establishing New York law on such clauses would be of interest to the statewide business community. Like merger clauses and arbitration clauses, clauses that disavow fiduciary relationships encourage parties to enter into contracts by adding certainty to business dealings and potentially avoiding or lessening the costs of subsequent litigation.

67. Finally, the Court of Appeals should rule on the minimum allegations required to allege a fiduciary relationship in light of the particularized pleading

requirements of CPLR 3016(b). Respondents respectfully submit that the Court's Decision illustrates the danger of the lack of guidance on this issue. SSR's invocation of the term "fiduciary duty" against Vidiyala, for example, is based on a vague and thin allegation of family friendship and an irrelevant contractual clause.

68. Nonetheless, this Court's acceptance of those scant allegations without any analysis will compel Respondents, as SSR's former co-Stockholders, to now engage in expensive discovery, motion practice, and a potential trial to defend against SSR's claims. It is manifestly unfair that Respondents must do so, merely because SSR invoked the term "fiduciary duty" to excuse its admittedly conscious decision not to read the transaction documents it signed.

69. WHEREFORE, Respondents respectfully request that this Court grant this Motion to Reargue the Court's Decision; that the Court vacate that Decision; and that the Court affirm the IAS Court's dismissal of the Complaint. In the alternative, Respondents respectfully request that this Court grant its Motion for Leave to Appeal the Court's Decision to the New York Court of Appeals.

Dated: Nassau County, New York
March 19, 2021

RONALD D. LEFTON

Ronald D. Lefton

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

-----X

Docket No.: 2020-02285

SHILPA SAKETH REALTY INC.,

Plaintiff-Appellant,
-against-

NOTICE OF ENTRY

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

Defendants-Respondents.

-----X

PLEASE TAKE NOTICE, that the within is a true and complete copy of the Decision and Order of the Supreme Court of the State of New York, Appellate Division, First Department, dated February 11, 2021, which was duly entered on the Court's Docket and in the Office of the Clerk of the Court on February 11, 2021.

Dated: Garden City, New York
February 17, 2021

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

By: Michael J. Antongiovanni

Michael J. Antongiovanni

Attorneys for Plaintiff-Appellant

Shilpa Saketh Realty Inc.

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11 Broadway, Suite 615
New York, NY 10004
646-688-3232
Counsel for Defendants-Respondents

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Acosta, P.J., Kapnick, Singh, Mendez, JJ.

13102 SHILPA SAKETH REALTY, INC.,
 Plaintiff-Appellant,

Index No. 157087/19
Case No. 2020-02285

-against-

SUDHAKAR VIDYALA et al.,
Defendants-Respondents.

Meyer, Suozzi, English & Klein, P.C., Garden City (Michael J. Antongiovanni of counsel),
for appellant.

Izower Feldman, LLP, Garden City (Ronald D. Lefton of counsel), for respondents.

Order, Supreme Court, New York County (Barry R. Ostrager, J.), entered on or
about April 17, 2020, which, inter alia, granted defendants' motion to dismiss the
complaint, unanimously reversed, on the law, with costs, and the motion denied.

Plaintiff's fraud in the factum argument involves issues of fact and thus may not
be raised here for the first time (*see Chateau D'If Corp. v City of New York*, 219 AD2d
205, 209 [1st Dept 1996], *lv denied* 88 NY2d 811 [1996]).

Given that two of the three defendants were fiduciaries to plaintiff, and the
allegations of the complaint describe united efforts rather than an adversarial or arm's
length negotiations with another party for the sale of the parties' jointly owned
company, it cannot be said as a matter of law that the release or the agreements (which
plaintiff signed without reading) bar or bind plaintiff here (*Pappas v Tzolis*, 20 NY3d
228, 232–233 [2012]). Moreover, given that the release was not a bar to the claims, and
plaintiff's reliance on misrepresentations was not unreasonable as a matter of law,

because it was excused from reading the agreements, we reject defendants' argument that either the release, or the agreements are a defense as a matter of law.

Furthermore, plaintiff sufficiently alleges out-of-pocket loss, given that it was induced to relinquish a larger pro rata share of the purchase price of the sale of the parties' company.

The unjust enrichment claim was not barred by the existence of an express contract, where, as here, the validity of that contract was in dispute (*compare Dabrowski v ABAX Inc.*, 64 AD3d 426, 427 [1st Dept 2009]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: February 11, 2021



Susanna Molina Rojas
Clerk of the Court

EXHIBIT B

**DECISION AND ORDER OF THE HONORABLE BARRY R. OSTRAGER,
DATED APRIL 16, 2020, APPEALED FROM, WITH NOTICE
OF ENTRY [3 - 14]**

FILED: NEW YORK COUNTY CLERK 05/04/2020 03:59 PM

NYSCEF DOC. NO. 52

INDEX NO. 157087/2019

RECEIVED NYSCEF: 05/17/2020

**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 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

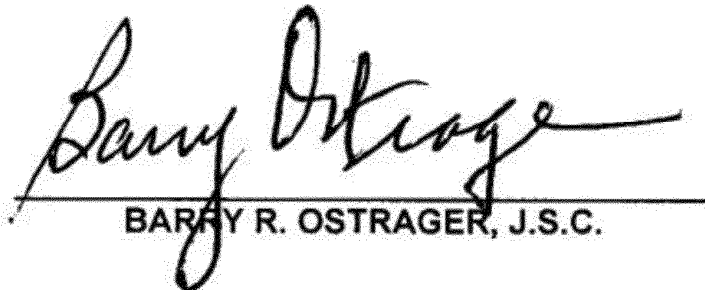
also allege a fraud that is separate and distinct from that contemplated by the release. *Centro* at 275. First, the Court finds that plaintiff has not adequately alleged fraud for the reasons discussed, specifically plaintiff's reliance was unreasonable because the alleged misrepresentations are flatly 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 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:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE