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To be Argued by:
MICHAEL J. ANTONGIOVANNI
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New York Supreme Court
Appellate Division – First Department

Appellate Case No.: 2020-02285

SHILPA SAKETH REALTY INC.,

Plaintiff-Appellant,

– against –

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

Defendants-Respondents.

REPLY BRIEF FOR PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT[1]

In their opposition to this appeal, Respondents ask this Court to disregard the plain allegations of the Complaint supporting why it was improper for the lower court to grant Respondents' pre-answer motion to dismiss. As this Court knows, dismissing a case at the pleading stage is a drastic remedy. That is why the burden is so high on a moving defendant. To have a complaint dismissed on purported "documentary evidence," before it is answered, the defendant must produce documents that *conclusively* refute the allegations of the Complaint and establish a defense as a matter of law. That is not what occurred before the court below.

Here, the Complaint's allegations squarely place the (i) validity and (ii) effectiveness of the Purported Release at issue, warranting the denial of Respondents' pre-answer motion to dismiss. As alleged in the Complaint, Vidiyala and Shilpa Reddy shared a confidential relationship akin to that of close family members. R.26, ¶23. Thus, when Vidiyala provided Shilpa with only "signature pages" of "closing documents" with no further explanation thereof, Shilpa Reddy trusted Vidiyala, signed the pages and promptly returned them to him. R.27-28, ¶¶35-40. Vidiyala proceeded to close the transaction without providing Shilpa Reddy with the complete closing documents, as he had promised. R.28, ¶¶38-39.

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[1] Unless otherwise stated herein, the capitalized terms bear the meanings ascribed to them in Shilpa's appellate brief.

One of the signature pages was affixed to the Purported Release. R.217. While it is true that the bottom of one of the signature pages references a "general release," it does not disclose that the referenced release actually purports to release Vidiyala and SBIL, fiduciaries of Shilpa, of their wrongs (and also Uppugalla, who profited along with them at Shilpa's expense). *Id.* Even if, for argument's sake, Shilpa Reddy, a young student at the time, knew what a general release legally meant, it would not be proper on a pre-answer motion to dismiss to assume she knew it released *Vidiyala and the other InvaGen shareholders*, as opposed to, for instance, only Cipla, the buyer of the InvaGen shareholders' shares. Indeed, the lone phrase "general release" on one of several signature pages she signed did not magically impart to Shilpa Reddy all of the contents of that release, the legal effect thereof and that it was a release of Shilpa's fiduciaries, Vidiyala and SBIL (as the Complaint alleges, Shilpa was not represented by independent counsel in the transaction [R.26, ¶21]).

Vidiyala, as a fiduciary of Shilpa, was obligated to disclose fully to Shilpa Reddy that the Purported Release (which he never provided to her) released himself and the other InvaGen shareholders. Realizing that this failure to disclose is fatal to their motion (and undisputed on the motion below), Respondents implore the Court to deem this argument as being raised only on appeal and to disregard it. Respondents' Brief [("Resp. Br.") pp. 29-30. But, that is not accurate. Shilpa clearly

alleged in the Complaint and argued below that Shilpa Reddy only signed signature pages of "closing documents" with no further explanation thereof by Vidiyala. R.27-28, ¶¶35-40; R.246, ¶¶12-14. Shilpa asserted before the lower court that Shilpa Reddy did not know the contents of the closing documents nor were they explained to her. *Id.* Thus, a proper inference drawn from the Complaint's allegations (which must be viewed in Shilpa's favor on the motion) is that the Purported Release was not knowingly entered into. Rather, because Vidiyala affixed the signature page to the Purported Release from which he and the other Respondents benefitted (mentioning only "closing documents") [R.27-28, ¶¶34-40; R.217], this act, as alleged in the Complaint, is legally considered the product of a fraud in the *factum* and void R.29-35.

This is not a *surprise* to Respondents. Respondents had ample opportunity to submit documentary evidence on the motion below that refuted these allegations. Respondents did not, because they could not, do so. Clearly if Respondents had documents proving that Vidiyala had provided Shilpa Reddy with a copy of the Purported Release (along with the other "closing documents") or that he explained the terms thereof to her, he would have produced them along with all of the other documentation Respondents produced on the motion below. Respondents did not do so for the simple fact that none exists. Thus, the validity of the Purported Release is at issue in this litigation based on the allegations of the Complaint, which were

not conclusively refuted by Respondents' purported "documentary evidence," despite their opportunity to do so.

In addition to the question of validity, the effectiveness of the Release (if it were not invalid) is also at issue. While it is true that a principal may release an agent of wrongdoing, the fiduciary must, at the very minimum, disclose to the principal the fact that the principal is entering into such a release. Concealing the contents of the Purported Release, as Respondents did here, simply does not meet this standard. Again, as the allegations of the Complaint support, Shilpa Reddy did not know that the signature page she signed referring to a "general release," actually purported to release the very fiduciaries she was trusting to protect Shilpa's interests in the transaction. R.27-28, ¶¶35-40; R.246, ¶¶12-14.

While it has been held generally that a person has an obligation to read a document before signing it, that is not the rule under these set of facts alleged in the Complaint. Here, because of the confidential relationship existing between Shilpa Reddy and Vidiyala, Shilpa Reddy was entitled to rely upon Vidiyala to disclose the essential terms of the documents, including the fact that he was procuring a release for himself and his co-conspirators. It is undisputed that Vidiyala did not make such disclosure. As such, even if valid, the issue of whether the Purported Release is effective to release Vidiyala and the other InvaGen shareholders in light of this non-disclosure cannot be decided on the record before the lower court.

Because the Purported Release does not conclusively refute Shilpa's allegations, the lower court erred in finding that it served as a basis to dismiss Shilpa's Complaint. R.7-12. As shown in Shilpa's appellate brief and discussed further herein, the Complaint sufficiently pleads claims of breach of fiduciary duty, fraud and unjust enrichment against Respondents for their collective misappropriation of $14.3 million dollars from Shilpa through wrongful means. As such, the lower court's order should be reversed and the matter remanded so that Respondents may answer the Complaint, discovery may proceed and this factually-intensive matter may be adjudicated on its merits upon a fully developed record.

ARGUMENT

I.

THE DOCUMENTATION THAT RESPONDENTS MISREPRESENTED AND CONCEALED DOES NOT SERVE AS A BASIS FOR DISMISSAL

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,

¶¶35-40; R.246, ¶¶12-14. 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 him and 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 purported to release 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 Purported Release Cannot Serve as a Basis of a Pre-Answer Dismissal as Its Validity and Effectiveness are Factually Disputed

In order to justify a dismissal of a Complaint pre-answer, documentary evidence must "conclusively resolve[] all factual issues and establish a defense as a matter of law." *Artis v. Random House, Inc.*, 34 Misc.3d 858, 862, 936 N.Y.S.2d 479, 482 (Sup. Ct., N.Y. Co., 2011); *see also 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"). Here, the lower court erred by finding that the Purported Release justified the dismissal of Shilpa's claims when the validity and the effectiveness of the Purported Release are factually disputed issues in the litigation.

1. The Purported Release's Validity Is Factually Disputed

The Complaint's allegations, which must be accepted as true, allege that after the fraudulent misrepresentations were made by Bandi and Vidiyala regarding a reduction in the shareholders' shares of the Cipla sale proceeds, Vidiyala sent Shilpa only signature pages of the "closing documents" for the sale of the InvaGen shares to Cipla. R.27-28, ¶¶35-40; R.246, ¶¶12-14. 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.*

As Vidiyala only needed electronic copies of the signatures to close the transaction (as is common practice in modern transactions), he instructed Shilpa to maintain the "*original* signatures" only until he provided Shilpa with the "*original* closing documents" to which they corresponded. R.28, ¶36. But, the import of the message and surrounding circumstances was for Shilpa to return electronic signature pages to him promptly so that Vidiyala could close the transaction with Cipla at the closing he had apparently scheduled to occur just days later. R.25, ¶18; R.27-28, ¶¶35-40; R.246, ¶¶12-14. This short notice created a sense of urgency and Vidiyala evidently exploited this as the pretext for why he was only sending signature pages and not complete documents. Shilpa had to promptly act so Vidiyala could close the deal. As such, in response to Vidiyala's email, Shilpa Reddy emailed Vidiyala the signature pages. R.28, ¶37.

While Respondents claim, without any supporting evidence, that Shilpa Reddy had "ample time and opportunity to review the documents" (Resp. Br. p.2), that is simply untrue according to the allegations of the Complaint. Rather, upon his receipt of the electronic copies of the signature pages, Vidiyala quickly proceeded to close the transaction days later without first providing the complete closing documents as he had promised. R.25, ¶18; R.27-28, ¶¶35-37. This absolutely

ensured that Shilpa could not review the closing documents, including the Purported Release, before Vidiyala closed the transaction.

While Respondents claim that no confidential relationship existed between Shilpa Reddy and Vidiyala (and even attempt to downplay her affectionate use of the term "Uncle" [Resp. Br. p.38]), they provided no documentary evidence before the court below to refute the Complaint's allegations that such relationship existed. As the Complaint sufficiently alleges the close, confidential relationship, the law holds that Shilpa Reddy was entitled to rely upon Vidiyala and sign the signature pages at his request without first reviewing documents, including the Purported Release. *See 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 a confidential relationship is an *exception* to the general rule that a person is bound by the terms of an agreement she signed even if she did not read the agreement). Respondents' argument that the relationship was not "close enough" to permit such reliance, only raises an issue of fact that was not conclusively resolved by the "documentary evidence" they submitted in the record (the fact that such a confidential relationship existed is necessarily deemed true for purposes of the motion to dismiss).

Because a confidential relationship existed between Shilpa Reddy and Vidiyala, it is well-settled that the burden is on Vidiyala, the stronger party who benefited from the Purported Release (as well as the usurpation of Shilpa's reduced

share of the Cipla proceeds), to "show affirmatively that no deception was practiced, no undue influence was used, and that all was fair, open, voluntary and well understood." *Matter of Gordon v. Bialystoker Ctr. & Bikur Cholim, Inc.*, 45 N.Y.2d 692, 698–699, 385 N.E.2d 285, 288–289 (1978); *see also, Matter of Connelly,* 193 A.D.2d 602, 603, 597 N.Y.S.2d 427, 428 (2d Dep't 1993), *lv. den'd* 82 N.Y.2d 656 (1993).

Respondents clearly did not make such a showing by way of the documentation submitted on the motion below. It makes no difference whether this is termed a fraud in the *factum* (its formal, legal nomenclature) or simply that Vidiyala attached the signature page to the Purported Release without disclosing the contents and meaning of the document to Shilpa Reddy. This allegation and argument were raised before the Court below, and Respondents are incorrect to argue it was not. This premise is, indeed, at the very heart of the allegations of the Complaint. *See Rojas-Wassil v. Villalona*, 114 A.D.3d 517, 517, 981 N.Y.S.2d 388, 389 (1st Dep't 2014) ("Although defendants raised the arguments … for the first time on appeal, legal issues appearing on the face of the record which could not have been avoided may be reviewed by this Court for the first time on appeal").

Respondents had more than ample opportunity to submit proof that the Purported Release was disclosed to Shilpa Reddy before Vidiyala took her signature page and attached it thereto. Respondents have, in fact, submitted hundreds of pages

of alleged "documentary evidence" in their effort to prematurely dismiss this case at the pleading stage (including even in their reply on the motion to dismiss below). If Respondents had documentation proving, conclusively or otherwise, that Vidiyala disclosed the Purported Release (as well as the other "closing documents") to Shilpa Reddy beforehand, clearly they would have included that on their motion. Instead, Respondents effectively concede the Purported Release was never disclosed to Shilpa Reddy.

For these reasons, the validity of the Purported Release is squarely at issue.

2. The Effectiveness of the Purported Release Is Factually Disputed

As Shilpa Reddy did not knowingly enter into the Purported Release on Shilpa's behalf, and her confidential relationship with Vidiyala and Shilpa's fiduciary relationships with Vidiyala and SBIL remained ones of unquestioning trust, the Purported Release is not effective to release claims *vis-à-vis* Shilpa, as principal, and Vidiyala and SBIL, as its agents. *Pappas v. Tzolis*, 20 N.Y.3d 228, 232–233, 982 N.E.2d 576, 579 (2012) (emphasis added) quoting *Centro Empresarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.,* 17 N.Y.3d 269, 278–279, 952 N.E.2d 995 (2011). The lower court erred in finding to the contrary.

As noted above, Shilpa Reddy did not know she was entering into a release that would release Shilpa's fiduciaries and fellow shareholders. R.27-28, ¶¶35-40; R.246, ¶¶12-13. Again, while one of the signature pages references a "general

release," it otherwise makes no reference to the contents thereof. R.217. Even if, for argument's sake, Shilpa Reddy, a young medical student at the time unrepresented by counsel, knew the legal meaning of a general release, that does not magically impart upon Shilpa all of the contents of the release and the scope thereof, including, *e.g.*, who is releasing whom and what is being released (*e.g.*, collateral, claims, escrow, misrepresentations, etc.).

Respondents' claim that the InvaGen shareholders were negotiating adversely to one another, and that Shilpa, therefore, could not rely upon Respondents as fiduciaries (Resp. Br. pp.11-13, 52-55) is plainly incorrect and not factually supported by the allegations of the Complaint. Indeed, the Complaint plainly alleges that the InvaGen shareholders were all supposed to share in the sale proceeds *pro rata* according to their respective ownership interests in InvaGen. R.24, ¶¶12-14. There was never a "negotiation" regarding their respective shares -- nor does the Complaint allege one and nor do Respondents submit any documentary evidence reflecting one. The *pro rata* method of distribution is a standard corporate method of making distributions. There was no reason to vary from this method, nor is one alleged in the Complaint. Respondents caused this change in the method through their fraud upon Shilpa. Respondents' fraud, however, does not constitute a "negotiation."

Rather, Bandi and Vidiyala advised Shilpa that all of the InvaGen shareholders had to reduce their shares – again *pro rata* – so that Camber could receive a portion of the sale proceeds or else the transaction would not close. R.26-27, ¶¶24-33. When Shilpa agreed, the Respondents, instead of paying Camber, took Shilpa's reduced share of the proceeds and distributed it amongst themselves with Vidiyala misappropriating the greatest share (perhaps because he was so instrumental in carrying out the scheme). R.25-27, ¶¶17, 24-33; R.29, ¶45. Yet, Respondents did not reduce their own shares of the proceeds *pro rata*. *Id.* This was an outright fraud, which Respondents are now perversely attempting to use as a shield to claim that their fiduciary relationships ceased to exist and, therefore, they did not breach their fiduciary duties to Shilpa.

The truth is that, at the time Shilpa Reddy signed the signature pages of the "closing documents," Shilpa had no reason not to fully trust the Respondents. Indeed, Shilpa Reddy did not even know that Respondents *secretly* harbored a grudge against her father, Pailla Reddy, until Respondents disclosed it, intentionally or not, during the briefing of the motion below. R.223, 315. Respondents incredulously use their apparent motive for their fraud as a reason the parties were adverse at the time Vidiyala procured the signature pages and that, therefore, no fiduciary relationship existed. *Id.*; *see also*, Resp. Br. p.54, n.14. This does not

make any logical sense. *Secretly* conspiring against Shilpa to *settle a score* with Pailla Reddy does not create an adverse relationship with Shilpa, the victim.

In sum, as the effectiveness of the Purported Release remains a disputed factual issue that is integral to the adjudication of this matter, the lower court erred in dismissing the Complaint.

B. The Other Transactional Documents Are Similarly Insufficient to Serve as a Basis for Dismissal

Respondents additionally claim that certain portions of the Restated SPA and other documents should serve as a basis for dismissing Shilpa's Complaint, claiming "there is no argument that [Shilpa] did not know it was signing the [Restated] SPA." Resp. Br. p.2. This argument fails, however, for the same reason Respondents' argument concerning the Purported Release fails: Respondents misrepresented the terms of the transactional documents to Shilpa, which was rightfully entitled to rely upon their representations. R.25-27, ¶¶17, 24-33; R.29, ¶45.

Again, it is undisputed on the record below, and the Respondents effectively concede on this appeal, that Vidiyala did not provide Shilpa with the closing documents to which he affixed the signature pages, despite his assurance that he would. R.27-28, ¶¶35-40; R.246, ¶¶12-14. Instead, after receiving Shilpa's signature papers, he quickly proceeded to close the transaction days later. R.25, ¶18; R.27-28, ¶¶35-37. By not providing Shilpa with the closing documents for review prior to the closing, Vidiyala effectively concealed them and impaired Shilpa's

ability to review the documents and discover Respondents' fraud and fiduciary breaches. R.29, ¶¶38-39; R.246, ¶13.

Respondents, incredulously, now claim that these very documents that they withheld from Shilpa serve as a basis to dismiss Shilpa's claims against them because the documents -- had they provided them to Shilpa -- would have disclosed that Respondents had only reduced Shilpa's share of the proceeds and kept it for their own benefit. In other words, the documents that Respondents intentionally concealed from Shilpa would have revealed their fraud. This is not a credible argument.

Respondents cannot, on the one hand, impair Shilpa's ability to ascertain the true details of the transaction by not providing the closing documents prior to the closing and then, on the other hand, use the fact that Shilpa was not able to review the documents before signing the signature pages as a shield for their fraud and fiduciary breaches. *See, e.g., 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). Shilpa Reddy's reliance on her confidential relationship with Vidiyala in signing only signature pages at his request was totally proper and justified under the circumstances. *See Tsai Chung Chao v. Chao*, 161 A.D.3d 564, 565, 78 N.Y.S.3d 297, 298–299 (1st Dep't 2018) ("Ordinarily a person is bound by the terms of an instrument he or she signs, and may not claim to have justifiably relied on false representations

concerning the contents of a document that he or she failed to read without valid excuse…In this case, however, whether this principle applies to bar plaintiff's fraudulent inducement claim regarding 37M cannot be determined as a matter of law because plaintiff alleges that he and defendant, his son, had a relationship of trust and confidence"). In that regard, Respondents' reliance on *Dasz, Inc. v. Meritocracy Ventures, Ltd.*, 108 A.D.3d 1084, 1085, 969 N.Y.S.2d 653 (4th Dep't 2013) is misplaced. There, unlike here, the Court found that the plaintiff-attorney did not have a valid excuse for signing signature pages without first reading the mortgage documents.

Indeed, here, Vidiyala was duty bound by virtue of his confidential relationship with Shilpa Reddy and his fiduciary relationship with Shilpa to disclose, and not conceal, all material terms of the transaction, which included that he and the other InvaGen shareholders were misappropriating Shilpa's reduced share of the proceeds. *Ajettix Inc. v. Raub*, 9 Misc.3d 908, 912, 804 N.Y.S.2d 580, 588 (Sup. Ct., Monroe Co., 2005). Vidiyala was legally obligated to make such disclosure irrespective of whether or not he produced the actual closing documents for Shilpa Reddy's review. It is undisputed that he did not make such disclosure.

In support of their position, Respondents point to a provision of the Restated SPA, which states that the parties reviewed the document before signing, even though Respondents plainly have conceded that they know that was not the case

here. Resp. Br. at 37. Respondents also claim that an "Allocated Share Schedule" (a defined term in the Restated SPA) is referenced throughout the Restated SPA and reflects that only Shilpa's share was reduced. Resp. Br. pp.11-13, 21-22. Again, however, this Allocated Share Schedule was not provided to Shilpa prior to Shilpa Reddy's signing of the signature pages and is different from Vidiyala and Bandi's misrepresentations to Shilpa, upon which Shilpa was entitled to rely. R.27-28, ¶¶34-40; R.246, ¶13. Moreover, the signed page Respondents produced concerning Shilpa's reduced share does not disclose the rest of the InvaGen's shareholders' respective shares and, thus, alone, is not conclusive or determinative of anything (in fact, Respondents do not even authenticate this page, which appears not to be part of the Restated SPA because it does not bear the same reference to the Restated SPA on the bottom of the page as all of the other signature pages do). R.218.

Respondents also point to a merger clause in the Restated SPA, claiming that it also bars Shilpa's claim. It does not. Even if Shilpa had reviewed this merger clause before it signed the signature pages (again, it did not), the merger clause is a vague, general merger clause. On its face, the merger clause does not include any anti-reliance clause (*i.e.*, "no other representations" clause) disclaiming responsibility for extra-contractual representations. R.144. It is well-settled that where a merger clause is "general" and "vague", it does not preclude parole evidence establishing a fraudulent inducement to enter into a contract, such as is alleged here.

Laduzinski v. Alvarez & Marsal Taxand, LLC, 132 A.D.3d 164, 169, 16 N.Y.S.3d 229, 233 (1st Dep't 2015). As such, for this reason, Respondents' reliance on *Xi Mei Jia v. Intelli-Tec Sec. Servs., Inc.*, 114 A.D.3d 607, 608, 981 N.Y.S.2d 79 (1st Dep't 2014) is misplaced. The merger clause in *Xi Mei* specifically provided that its superseded prior representations.

In sum, Respondents' efforts to rely upon certain provisions of the Restated SPA and other documents referring thereto is misguided because Respondents concede that they did not provide Shilpa with such documents before Shilpa Reddy signed and they closed the transaction. For the reasons stated herein, Shilpa was entitled to rely upon Vidiyala to truthfully disclose, and not conceal, the true terms of the transaction, which he did not do.

II.

AS THE PURPORTED RELEASE DOES NOT SUPPORT A DISMISSAL OF SHILPA'S CLAIMS, THE LOWER COURT'S ORDER MUST BE REVERSED AS SHILPA HAS SUFFICIENTLY PLED CLAIMS OF FRAUD, BREACH OF FIDUCIARY DUTY AND UNJUST ENRICHMENT

As the Purported Release does not bar Shilpa's claims, the lower court's order must be reversed because Shilpa's Complaint sufficiently pleads claims against Respondents for fraud, breach of fiduciary duty and unjust enrichment.

A. The Complaint Sufficiently Alleges Breach of Fiduciary Duty Claims Against Vidiyala and SBIL

Respondents do not contest, and, as such, concede, that they were fiduciaries of Shilpa, owing it unbending fiduciary duties of loyalty and full disclosure. R.24-25, 28, 33-34, 244-246. *Ajettix*, 9 Misc.3d at 912, 804 N.Y.S.2d at 588. Instead, Respondents incorrectly claim that the fiduciary relationship ceased to exist because the InvaGen shareholders "negotiated" amongst themselves their respective shares of the Cipla sale proceeds. Resp. Br. pp.11-13, 52-55.

As noted above, this assertion is without any documentary support and directly conflicts with the Complaint's allegations, which must be accepted as true. Specifically, the Complaint alleges that the InvaGen shareholders were all supposed to receive their *pro rata* share of the Cipla sale proceeds based on their proportionate share of InvaGen stock. R.24, ¶14; R.27, ¶26. By employing this standard corporate method of making distributions, there was no need to "negotiate" this issue, nor does the Complaint allege one. Even Bandi's misrepresentation concerning all InvaGen shareholders having to proportionally reduce their respective shares of the sale proceeds recognized InvaGen's use of this standard method of distribution so that it involved no negotiation. R.27, ¶26. Thus, Respondents' claim that the InvaGen shareholders entered into an "arm's length" negotiation over the sale proceeds is incorrect and, in fact, contrary to the Complaint's allegations. Respondents offer no documentary evidence to support this falsehood.

In a desperate attempt to claim that their fiduciary relationships ceased, Respondents point to an inapplicable provision of the Restated SPA providing that the parties acknowledge that no "special relationship" exists except that of an ordinary "buyer and seller." Resp. Br. pp. 7, 13-14, 26-27, 52. Putting aside the fact that Respondents concede that they did not even provide the Restated SPA to Shilpa before it signed so that it was even aware of such provision, this provision clearly is meant to apply between the InvaGen shareholders, the sellers, on the one hand, and Cipla, the buyer, on the other hand. Those were the two sets of parties engaging in a "sale," and thus constituted the arms-length "buyers" and "seller." This provision does not affect the relationship *between* the InvaGen shareholders whose fiduciary relationships remained intact. Indeed, this provision is even inconsistent with the other provision of the Restated SPA that bestowed upon Vidiyala an additional fiduciary role by appointing him the Minority Stockholder Representative and agent-in-fact for Shilpa. R.25, ¶15; R.122, Section 8.07(a).

As there is no question that Vidiyala and SBIL (the majority InvaGen shareholder) owed Shilpa fiduciary duties, the Complaint sufficiently states a claim that Vidiyala and SBIL breached those duties. *Kurtzman v. Bergstol*, 40 A.D.3d 588, 590, 835 N.Y.S.2d 644 (2d Dept. 2007). Indeed, 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.* While Respondents claim they did not "conspire" together, the allegations of the Complaint paint a starkly different picture of how the three Respondents came to misappropriate Shilpa's reduced share and benefit at its expense.

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.26-27, ¶¶24-29. 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. *Id.* 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 million dollars and such sum would be paid to Camber. *Id.*

Bandi further advised that all of the other InvaGen shareholders agreed with this and to reduce their respective shares of the proceeds *pro rata* -- continuing the same standard method that InvaGen was using to make distributions. *Id.* Bandi asked Shilpa to agree to this and 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 after this meeting, in February 2016, Vidiyala followed up on Bandi's discussion with Pailla Reddy.

R.27, ¶¶30-33. 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 million dollars and that the other $100 million dollars of the $500 million dollar purchase price would be paid to Camber. *Id.*

Vidiyala proceeded to implement the scheme by taking advantage of his close, confidential relationship with Shilpa Reddy to have her execute just signature pages of "closing documents" without providing the complete documents. R.27-28, ¶¶35-40; R.246, ¶¶12-13. Several years later, Shilpa learned that Vidiyala and Bandi (the latter on behalf of SBIL) breached their fiduciary duties by misrepresenting the Camber situation, reducing only Shilpa's share of the sale proceeds and selfishly misappropriating Shilpa's reduced share ($14.3 million dollars) for their and Uppugalla's benefit. R.28-29, ¶¶41-49.

Based on these allegations, the Complaint sufficiently alleges all elements of a breach of fiduciary duty on the part of Vidiyala and SBIL.

B. Shilpa Adequately Pled Its Fraud Claims Against Vidiyala and SBIL

Shilpa's Complaint also properly pleads fraud and fraudulent inducement claims against Vidiyala and SBIL.

In opposition, Respondents claim that Vidiyala and SBIL did not intend to deceive Shilpa. Resp. Br. 46-48. This is untrue and contradicted by the allegations of the Complaint. It is well-settled that 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, shares a confidential, fiduciary relationship with the victim (*i.e.*, Shilpa Reddy and Shilpa, respectively) and, thus, has a duty to disclose material information. *Dembeck v. 220 Cent. Park S., LLC*, 33 A.D.3d 491, 492, 823 N.Y.S.2d 45, 47 (1st Dep't 2006); *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).

The Complaint here clearly alleges that Bandi, on behalf of SBIL, advised Shilpa that 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 Camber's cooperation and it being compensated $100 million dollars of the sale proceed. R.26-27, ¶¶24-33. Bandi further misrepresented that all of the other InvaGen shareholders were agreeing to reduce their shares *pro rata* to compensate Camber so that the transaction could be consummated, which, as the Complaint alleges, was untrue and they had no intention of doing. *Id.* These were

express misstatements of material fact that Bandi and Vidiyala made with the intention that Shilpa would rely upon them, change its financial position and reduce its share of the sale proceeds accordingly. This is precisely what happened. Several months after Bandi made these representations to Pailla's Reddy, Vidiyala met with him and reiterated the same misrepresentations. R.27, ¶¶30-33.

Both SBIL and Vidiyala were bound by their fiduciary obligations as fellow shareholders of Shilpa is this close corporation (Vidiyala was also Shilpa's designated Minority Stockholder Representative and agent-in-fact under the Restated SPA) to be candid and not make such misrepresentations. Additionally, because Vidiyala shared a confidential relationship with Shilpa Reddy, he had the additional duty to be honest and not conceal the true terms of the transaction. Contrary to Respondents' assertion, 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*, 161 A.D.3d at 565, 78 N.Y.S.3d at 298–299 (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, ¶¶35-40; R.246, ¶13. Contrary to Respondents' argument, simply because Vidiyala's email advised Shilpa to maintain the "original signatures" does not mean that he did not have an intent to deceive. Vidiyala did not need the originals. As is common practice in modern day transactions, only electronic signatures are needed. That was the import of Vidiyala's email and Shilpa Reddy's understanding. Thus, understanding the urgency of Vidiyala needing the signatures so that he could close quickly, she promptly signed and emailed back the signature pages. R.28, ¶37.

Vidiyala, despite his promise, never provided the complete closing documents before he closed the transaction with Shilpa's signature pages days later. R.28, ¶¶38-39. Under the circumstances, Shilpa Reddy's reliance on Vidiyala was completely justified even if the closing documents, unbeknownst to her, contradicted the terms that Bandi and Vidiyala had misrepresented to Shilpa. *Suttongate Holdings Ltd.*, 160 A.D.3d at 464–465, 75 N.Y.S.3d at 146–147 (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").

As the Complaint alleges, this was a well thought-out scheme by Bandi and Vidiyala. They knew Shilpa, a passive, minority shareholder, was not directly involved in the transaction, which Vidiyala was overseeing. They took advantage of this fact to settle some secret grudge they were apparently harboring against Pailla Reddy from years before. Vidiyala, who had access to the complete closing documents, could have just as easily emailed Shilpa all of the closing documents at the same time he forwarded the signature pages. He purposefully did not do so in order to conceal the true terms from Shilpa.

Respondents' argument that Shilpa was not damaged as a result of this fraud is nonsensical. Of course Shilpa suffered pecuniary loss. The Respondents misappropriated a portion of Shilpa's share of the proceeds and kept it for themselves. They did not pay it over to Camber as Bandi and Vidiyala said they would. Nor, for that matter, did they reduce their own shares either. The $14.3 million dollars that they misappropriated represents Shilpa's out-of-pocket loss resulting from the fraud. Shilpa was entitled to the $14.3 million dollars before Respondents perpetrated their fraud. These are not monies Shilpa expected to *gain* because of the fraudulent misrepresentation. Thus, the Respondents' fraudulent

statements and acts of concealment were the direct and proximate cause of Shilpa's pecuniary loss.

In sum, Shilpa's Complaint adequately alleges fraud and fraudulent inducement claims against SBIL and Vidiyala.

C. 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.

Respondents defrauded Shilpa and wrongfully induced it to execute signature pages to an agreement which terms vary materially from that which was represented to Shilpa by Bandi and Vidiyala. Again, while Respondents claim this was not a "conspiracy," clearly they were acting together to misappropriate Shilpa's reduced share of the sale proceeds. Uppugalla benefited directly from the fraudulent scheme. Having received additional funds to which he was not entitled, the inference is clear that Uppugalla was a part of the scheme. By misappropriating and splitting a portion of Shilpa's proceeds, each Respondent was unjustly enriched.

As noted in Shilpa's appellate brief, while it is true that a contract exits 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. Appellant's Brief, pp.36-37. Shilpa's claim is

predicated on this independent tortious conduct. Thus, an alternative claim of unjust enrichment was properly pled. *See County 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'" [internal citation omitted]).

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. It was an error for the lower court to find that the Purported Release precluded Shilpa's claims when the validity and effectiveness of such release are plainly in dispute. 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. All of the Respondents unfairly benefitted from this fraud and the fiduciary breaches. This case plainly involves fact-intensive issues that cannot be decided on a pre-answer motion to dismiss.

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
November 13, 2020

Respectfully submitted,

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