

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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Index No.: 653460/2021

2008 FAMILY TRUST, SAM ABRAHAM TRUSTEE

Plaintiff,

- against -

391 BROADWAY LLC, EREZ ITZHAKI, GIL

BOOSIDAN and PRO NATIONAL

TITLE AGENCY.

Defendants.

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DEFENDANTS' MEMORANDUM OF LAW IN FURTHER SUPPORT OF

IT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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CPLR 3013 requires that "statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." Separately, CPLR 3016 provides that "where a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail." To plead a claim for fraud under New York law, the Petitioner must allege: a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the Petitioner and damages. The pleading requirements of CPLR 3016(b) are a matter of procedure, governed by the law of the forum. In this case, there is no factual nor legal basis for the Plaintiff's pleadings.

It is clear that the Plaintiff's strategy is to mislead the court to believe that there was an Agreement among all the members of Defendant 391 Broadway LLC. Defendants easily refuted each of the Plaintiff's erroneous causes of actions.

Defendant argument that Defendants have not provided a single which would come close to the Standard set forth in M&E, 73-75 LLC is incorrect. First, Plaintiff have provided an illegible copy of the Operating Agreement, which was executed only by its three members (NYSCEF Doc. No. 2), in contradiction to Section 14.1 of the same Operating Agreement, which requires the following: "This Agreement contains the entire agreement of the parties concerning the subject matter hereof and supersedes any and all prior agreements oral or written among the parties hereto concerning the subject matter hereof, which prior agreements are hereby canceled. This Agreement may not be changed, modified, amended, discharged, abandoned or terminated orally, but only by an agreement in writing, signed by all of the Members" (653460/2020 at NYSCEF Doc. No. 2 at 14:19-24). It is clear that the Operating Agreement and its amendments

must be executed by all the members of Defendant 391 Broadway LLC. The copy of the LLC Agreement that was provided by the Plaintiff was executed by only 3 members out of the 14 members of Defendant 391 Broadway LLC. Exhibit A includes all the emails between the parties with connection to the drafting of the Operating Agreement. Exhibit A proves that Sam Abraham planned and orchestrated this transaction and that he was the one who drafted the operating agreement, composed its schedules, its member list, composed the capital contribution schedule, reviewed with counsel and many more. All Plaintiff does is to provide an email from Defendants' counsel to Defendant Boosidan which included an operating agreement of another LLC, West 91 (NYSCEF Doc. No. 2) and which was provided to Plaintiff so he can have an example (Court should refer to the subject matter, "West 91", which is a different entity under the Defendants' group) and then he provides another email where Defendant Boosidan provides Plaintiff with the name and addresses of the other members).

Furthermore, Defendant argument regarding Section 417 (c) of the New York Limited Liability Law of the State of New York is incorrect. This section requires that an operating agreement may be entered into before, at the time of or within ninety days after the filing of the Article of Organization. There is no dispute that the Article of Organization of Defendant 391 Broadway LLC was filed with the New York Department of State on August 31, 2012. Plaintiff alleges that the Operating Agreement of Defendant 391 Broadway LLC became effective on March 6, 2013, more than six (6) months after the Article of Organization of Defendant 391 Broadway LLC was filed with the Division OF Corporation of the State of New York, in contradiction to the requirement of the section above.

As for Sam Abraham's affidavit and the remainder of Plaintiff's assertions, Defendants refer the court to Defendant Boosidian's affidavit (NYSCEF Doc. No. 44) and Point II of its application which details the chain of events from the moment that Plaintiff started to work

with the Defendants and provides a comprehensive and extensive documentary evidence which shows the Plaintiff's lack of good faith and poor credibility.

CONCLUSION

For the reasons set forth in Defendants' memorandum in support, and for the additional reasons above, Defendant respectfully requests that the Court grant its motion to dismiss in its entirety and dismiss all of the causes of action in the Complaint with prejudice, together with such other and further relief as this Court deems just and proper.

Dated: Queens, New York
August 9, 2021

Respectfully Submitted,

/s/ Ran Daniel

By: Ran Daniel, Esq.

Attorney for Defendants

VIA NYSCEF AND ELECTRONIC-MAIL ONLY