SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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MICHAEL COHEN

Plaintiff,

- v -

TRUMP ORGANIZATION LLC,

Defendant.

INDEX NO. 651377/2019

MOTION DATE N/A

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 191, 194

were read on this motion for SUMMARY JUDGMENT.

The question in this case is whether Plaintiff Michael D. Cohen ("Plaintiff"), once a purported "fixer" for Donald J. Trump, is entitled to indemnification from his former employer, Defendant Trump Organization LLC (the "Trump Organization" or "Defendant"), for legal expenses he incurred in a snowballing series of lawsuits and investigations targeting the former President's campaign and business dealings.[1] Mr. Cohen asserts that Defendant initially promised to cover these legal expenses, but then reneged after it became clear that he would cooperate in the ongoing investigations, leaving him with "millions of dollars" in unpaid legal bills.

[1] The Court detailed the background facts of this litigation in its August 28, 2019 Decision and Order granting in part, and denying in part, Defendant's motion to dismiss the original Complaint (*see* NYSCEF 29). The Court presumes the parties' familiarity with those facts here.

Plaintiff's claim for indemnification, as amended, hinges on both oral and written agreements.[2] Plaintiff's Amended Complaint asserts a claim for breach of contract based on alleged oral commitments from the Trump Organization, as well as the Trump Organization's written Operating Agreement. In addition, Plaintiff asserts causes of action for breach of the implied covenant of good faith and fair dealing, declaratory judgment, and promissory estoppel (NYSCEF 111 ["Am. Compl."]).

On this motion, Defendant moves for summary judgment dismissing the Amended Complaint. Among other things, Defendant challenges the enforceability of the alleged oral agreements and the applicability of the Operating Agreement. In addition, large swaths of Mr. Cohen's claims have already been mooted by Defendant's payment of a number of his outstanding legal bills during the course of this litigation (*see* NYSCEF 110 at 39 [Aug. 20, 2020 oral arg. tr.] ["[S]ummary judgment is granted with respect to legal fees that have actually been paid that's [reflected] in receipts submitted by defendant."]; NYSCEF 108 [Aug. 20, 2020 Decision and Order] [granting in part Defendant's cross-motion for summary judgment]). For the reasons set forth below, Defendant's motion is granted, and the Amended Complaint is dismissed in its entirety.

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[2] Originally, Plaintiff's claim was based solely on alleged oral promises by the Trump Organization (*see* NYSCEF 29). And in moving to dismiss that claim, Defendant's counsel expressed doubt that any written agreement even existed (*see* Aug. 6, 2019 oral arg. tr. at 24 ["[A] writing saying 'we agree to pay your bill' doesn't suggest the existence of a contract"]; *id.* at 36 ["Do I think it's laughable that there can be supporting documents? I don't think it's laughable. I think that it's a Hail Mary pass . . . ."]). Nevertheless, the existence of a written agreement, in Defendant's own possession, now spurs Defendant's motion seeking summary judgment.

In a nutshell, Mr. Cohen's legal fees arise out of his (sometimes unlawful) service to Mr. Trump personally, to Mr. Trump's campaign, and to the Trump Foundation, but not out of his service to the business of the Trump Organization, which is the only defendant in this case.

DISCUSSION

"[W]hen there is no genuine issue to be resolved at trial, the case should be summarily decided" (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). A party moving for summary judgment must demonstrate that "the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment" in the moving party's favor (CPLR 3212 [b]). Thus, "the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "This burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013] [internal quotation marks omitted]; *Jacobsen v N.Y.C. Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]).

If the moving party meets this burden, "it is incumbent upon the [party opposing summary judgment] . . . to produce 'evidentiary proof, in admissible form, sufficient to require a trial . . . mere conclusions, expressions of hope, unsubstantiated allegations or assertions are insufficient'" (*State Bank of Albany v Fioravonti*, 51 NY2d 638, 647 [1980], quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). The "presentation of a shadowy semblance of an issue is insufficient to defeat summary judgment" (*American Savings Bank FSB v Imperato*, 159 AD2d 444, 444 [1st Dept 1990]). Likewise, a summary judgment motion may not be defeated by "arguments, and contentions 'based upon surmise, conjecture and suspicion'" (*Gray Mfg. Co.*

v Pathe Indus., Inc., 33 AD2d 739, 739 [1st Dept 1969], *quoting Shapiro v Health Ins. Plan of Greater NY*, 7 NY2d 56, 93 [1959], *affd*, 26 NY2d 1045 [1970]).

A. Breach of Contract

Plaintiff's contract claim is based on two types of alleged agreements – (1) oral agreements with the Trump Organization, and (2) the Trump Organization's written Operating Agreement (Am. Compl. ¶¶2, 10, 80). The Court will analyze each in turn.

1. Alleged oral agreements

The alleged oral agreements are unenforceable as a matter of law. Under well-settled New York law, "where a contract contains a 'no oral modification' clause, that clause will be enforceable" (*Israel v Chabra*, 12 NY3d 158, 163 [2009], *citing* NY Gen. Obligations Law §15-301 [1]). And "[i]f the only proof of an alleged agreement to deviate from a written contract is the oral exchanges between the parties, the writing controls" (*Rose v Spa Realty Assocs.*, 42 NY2d 338, 343 [1977]; *Eujoy Realty Corp. v Van Wagner Communications, LLC*, 22 NY3d 413, 425 [2013]).

Here, it is undisputed that the Operating Agreement, upon which Mr. Cohen heavily relies, contains a "no oral modification" clause. It is also undisputed that the Operating Agreement "was in effect . . . at all times relevant to [Plaintiff's] claims for indemnification" (Am. Compl. ¶29). And the only evidence of the oral agreements proffered by Plaintiff is his own testimony about the alleged promises between the parties (*see* Pl.'s resp. to SUMF at 14, *citing* Wolf Aff., Ex. F [NYSCEF 169] [redacted]; Pl.'s opp. to mot. for S.J. at 22). As a result, the terms of indemnification written down in the Operating Agreement must control, and Plaintiff may not rely on the alleged oral agreements to deviate from them.

Plaintiff insists that section 11.1 is inapplicable because the alleged oral commitments "were not agreements to modify the indemnification clause in the Operating Agreement[,]" but were, rather, "stand-alone commitments" to "'take care of'" Cohen's "expenses[.]" (NYSCEF 161 at 22). But the distinction Plaintiff draws here is insubstantial. Whether or not the alleged oral agreements were "framed as modifications" (*id.*), the legal question is whether they address the same subject matter as the written indemnification provisions, such that their *effect* would modify the terms set down in the Operating Agreement. And they do. Where article 7.2 of the Operating Agreement provides for indemnification in specified circumstances, the alleged oral agreements purport to expand that duty into a general promise to "take care of" Plaintiff's legal expenses (*see Weslowski v Zugibe*, 167 AD3d 972, 974 [2d Dept 2018] [where written agreement already "governed" issue of "plaintiff's entitlement to [employment] leave . . . oral promise that the plaintiff would not lose accumulated leave upon the termination of his employment was not binding"]).

Indeed, Plaintiff concedes that the oral commitments "supplement[ed]" the written instrument (Am. Compl. ¶¶37-38; *see also id.* ¶39 ["The separate agreement was unnecessary, given Mr. Cohen's right under the indemnification provision of the Operating Agreement"]), and his own deposition testimony confirms his view that the alleged oral agreements "changed" the terms of the written agreement.[3] "[V]iewing the matter realistically, it is quite obvious that

[3] *See* Wolf Aff., Ex. F at 164:2-166:25 [Q: "So the terms of the oral agreement . . . were not as restrictive as the terms of the written agreement, is that accurate? A: To the extent that there were restrictions in the right to indemnification, yes, I agree with that."]; *id.* at 173:8-25 [Q: "You are not aware of any differences between the written agreement or . . . the second oral agreement with respect to the obligation of the terms and conditions of indemnification. Am I stating it correctly? A: I am aware that there were differences between the oral obligation, as well as the written obligation, yes. Q: . . . Can you tell us what those differences were? A: I cannot. Q: . . .

plaintiff is merely attempting to change 'orally' the written agreement by altering" key terms – here, the scope of Defendant's duty to indemnify him – in violation of section 11.1 (*Bakhshandeh v Am. Cyanamid Co.*, 8 AD2d 35, 37 [1st Dept 1959], *affd*, 8 NY2d 981 [1960]).

Therefore, because the alleged oral agreements are unenforceable, the Court must look to the Operating Agreement to determine the scope of Defendant's duty to indemnify Plaintiff.

2. Operating Agreement

Section 7.2 of the Operating Agreement provides indemnification to employees of the Trump Organization under specified conditions. The provision reads, in full, as follows:

> Subject to the limitations and provisions provided in this Article VII and in the LLCL, ***each person (an "Indemnified Person") who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed claim, action, suit or proceeding***, whether civil, criminal, administrative, arbitrative or investigative ("Proceeding"), or any appeal in a Proceeding, or any inquiry or investigation that could lead to a Proceeding, ***by reason of the fact that he is the Member, or he, she or it was or is the legal representative of or a manager, director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of the Company*** or of the Member, ***shall be indemnified by the Company*** against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements, and reasonable costs and expenses (including, without limitation, attorneys' fees) actually incurred by such Indemnified Person in connection with a Proceeding ***if (i) such Indemnified Person acted in good faith and in a manner he, she, or it reasonably believed to be in, or not opposed to, the best interest of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his, her or its conduct was unlawful*** and (ii) the Indemnitee's conduct did not constitute gross negligence or willful or wanton misconduct. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he, she, or it reasonably believed to be in or not opposed to the best interests of the Company, or, with respect to any criminal action or proceeding, that the

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But they do exist? A: Yes. Q: . . . [I]s it . . . therefore, accurate to say that the oral agreement changed the written agreement, at least in some respects? A: Yes."]; *id.* at 174:22-175:5 [Q: "[A]m I also correct that the third oral agreement changed at least some of the terms and conditions to indemnification that are set forth in the written Operating Agreement? A: Yes."]).

> Indemnified Person had reasonable cause to believe that his, her or its conduct was unlawful.

(Operating Agreement §7.2 [emphases added]). In addition, section 7.3 ensures that the right to indemnification under section 7.2 "shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity" (*id.* §7.3).

a. Search Warrants

As to legal expenses related to the search warrants, section 7.2 is unavailing. Plaintiff cannot, as a matter of law, seek indemnification for his legal expenses stemming from the search warrants executed as part of the criminal investigation against him. As the Court previously held, "[t]he law does not permit a company to hold its employees harmless for criminal activity," nor does the Operating Agreement purport to do so (NYSCEF 110 at 38 [Aug. 20, 2020 oral arg. tr.], *citing* NY LLC Law §420). The fees related to the search warrants are bound up in the criminal investigation against Plaintiff. In fact, Plaintiff's own statements in this case acknowledge the link, explicitly and repeatedly. The Amended Complaint, for example, alleges that "[o]n April 9, 2018, ***in connection with a federal investigation of Mr. Cohen's business dealings*** (the 'FBI Investigation'), the FBI raided" his office, residence and hotel room (Am. Compl. ¶49 [emphasis added]; *see also* NYSCEF 71 ¶3 [describing law firm's representation "in connection with . . . the United States Attorney for the Southern District of New York's criminal investigation of me that arose from . . . the April 9, 2018 FBI raids"]; NYSCEF 145 at 178:24-182:5 [admitting that criminal "would include records obtained during the search warrant[s]"] [Cohen dep. tr.]; NYSCEF 85 at 5 [admitting search warrants were executed as part of "SDNY Investigation"] [Pl.'s resp. to SUMF]).

b. Mueller Investigation

Nor is Plaintiff entitled to indemnification under section 7.2 for his legal expenses in connection with the Mueller Investigation. Plaintiff did not become "involved in" the investigation "by reason of the fact that he . . . was . . . [an] employee" of the Trump Organization (referred to hereinafter simply as the "by reason of" clause). Indemnification provisions like this one must be read narrowly. Where, as here, "a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed" (*546-552 W. 146th St. LLC v Arfa*, 99 AD3d 117, 122 [1st Dept 2012]; *see* NY LLC Law §420). Absent "unmistakably clear" language, a promise to indemnify another party for legal expenses "should not be found" (*Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491-92 [1989]; *see Gotham Partners, L.P. v High Riv. Ltd. Partnership*, 76 AD3d 203, 209 [1st Dept 2010] ["The *Hooper* standard requires more than merely an arguable inference of what the parties must have meant; the intention to authorize an award of fees to the prevailing party in such circumstances must be virtually inescapable."]).[4]

The "by reason of" clause requires, as a precondition for indemnification, a nexus between the underlying proceedings and the employee acting in his or her capacity as employee.

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[4] In *Hooper*, a plaintiff who had successfully sued for breach of contract sought to recover attorneys' fees under an indemnity provision in the contract (74 NY2d at 489). The contract provided that defendant must indemnify plaintiff for "reasonable counsel fees," but "failed to define the scope of defendant's promise" (*id.* at 491). The Court of Appeals was asked to determine whether the indemnity provision was "limited to attorney's fees incurred by plaintiff in actions involving third parties or also includes those incurred in prosecuting a suit against defendant for claims under the contract" (*id.*). The Court read the provision as cabined to third-party claims, reasoning that it "d[id] not contain language clearly permitting plaintiff to recover from defendant the attorney's fees incurred in a suit against defendant" (*id.* at 492).

Delaware law, which "can be instructive" on issues of corporate indemnification (*Ficus Investments, Inc. v Private Capital Mgt., LLC*, 61 AD3d 1, 9 [1st Dept 2009]), holds that "if there is a nexus or causal connection between any of the underlying proceedings contemplated . . . and one's official corporate capacity, those proceedings are 'by reason of the fact' that one was a corporate officer, without regard to one's motivation for engaging in that conduct" (*Homestore, Inc. v Tafeen*, 888 A2d 204, 214 [Del 2005]). And under New York law, indemnification agreements should not be interpreted to apply "to fees and expenses having the most attenuated link to the underlying action" (*Baker v Health Mgt. Sys., Inc.*, 98 NY2d 80, 85 [2002] [rejecting claim for "fees on fees" in securing indemnification from company]).

Here, the tether from the Mueller Investigation to the Trump *Organization* – as opposed to former President Trump, the Trump campaign, or other Trump ventures – is too tenuous to support indemnification under section 7.2. Based on the record before the Court, the subject matter of the various investigations appears to relate mainly, if not entirely, to former President Trump personally, or the Trump campaign, or to the Trump Foundation. For example, the Amended Complaint defines the "Mueller Investigation" as "an investigation, led by Special Counsel Robert S. Mueller III (the 'Special Counsel'), into potential coordination between the ***Trump Campaign*** and the Russian government, potential obstruction of justice by ***Mr. Trump***, and related matters" (Am. Compl. ¶32 [emphasis added]; *see also id.* ¶43).

Plaintiff's amorphous role as former President Trump's personal "fixer" compounds the issue. As alleged in the Amended Complaint, Plaintiff not only worked for the Trump Organization, he "often help[ed] Mr. Trump . . . and other affiliated businesses" (Am. Compl. ¶18; *see id.* ¶21 ["In addition to his work for the Trump Organization, Mr. Cohen also advised Mr. Trump's 2016 presidential campaign"]; *id.* ¶¶22-23 [recounting actions Plaintiff took "at the

direction of Mr. Trump," not the Trump Organization]). Plaintiff fails to tender evidence showing that his involvement in the Mueller Investigation relates directly to his capacity as a Trump Organization employee, rather than his role more generally in the Trump orbit. It is not enough to argue that but for his employment at the Trump Organization, Plaintiff would not have known some of the information that made him a target – and, later, a cooperator – in the investigation. That reasoning sweeps too broadly, permitting corporate indemnification even where it is not tied to actions on behalf of the corporation. The Operating Agreement only compels Defendant to indemnify Plaintiff with regard to the business of the Trump Organization. And Plaintiff has not tendered evidence to show this connection.[5]

c. Congressional Investigations

The reasoning above also forecloses Plaintiff's claim for indemnification in connection with the five Congressional Investigations. Clearly, Plaintiff is not entitled to legal fees for testimony before the Congressional committees that he later confessed was perjurious (NY LLC Law §420 [prohibiting indemnification to any person "if a judgment . . . adverse to such . . . person establishes (a) that his . . . acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated[.]"]; *see* Operating Agreement §7.2 [requiring "such Indemnified Person [have] acted in good faith"]). As to the other aspects of these investigations, Plaintiff fails to show, as a matter of law, that his

[5] On the other hand, Defendant's argument that indemnification is not available when the employee's "involvement" is voluntary or for personal gain is too broad, and Defendant cites to no authority supporting that proposition. The cases dealing with personal guarantees are inapposite, as those relate to obligations borne personally and solely in the indemnitee's individual capacity (*see, e.g.*, *Bensen v Am. Ultramar Ltd.*, 92CIV.4420(KMW)(NRB), 1996 WL 435039, at *1 [SD NY Aug. 2, 1996] [involving dispute over whether former employee was owed compensation by company]).

involvement in these investigations was entwined with his service *to the Trump Organization* specifically (*see* Am. Compl. ¶43 [describing "congressional hearings relating to the involvement of the Russian government in the 2016 Election"]).

B. Implied Covenant of Good Faith and Fair Dealing

"Implicit in all contracts is a covenant of good faith and fair dealing in the course of contract performance," which imputes "any promises which a reasonable person in the position of the promisee would be justified in understanding were included" (*Dalton v Educational Testing Serv.*, 87 NY2d 384, 389-90 [1995]). This includes covenants not to "do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract" (*id.*, quoting *Kirke La Shelle Co. v Paul Armstrong Co.*, 263 NY 79, 87 [1933]).

At the same time, however, "[t]he duty of good faith and fair dealing does not imply obligations inconsistent with contractual provisions (*Gottwald v Sebert*, 193 AD3d 573, 582 [1st Dept 2021]) or "that were not bargained for" (*King Penguin Opportunity Fund III, LLC v Spectrum Group Mgt. LLC*, 187 AD3d 688, 690 [1st Dept 2020]). In other words, it cannot "impose obligations . . . beyond the express terms of the parties' agreement" (*Darabont v AMC Network Entertainment LLC*, 193 AD3d 500 [1st Dept 2021]).

Moreover, a claim for breach of the implied covenant will be dismissed if it "relies on the same facts that form the basis for the breach of contract claim and seek[s] the exact same damages" (*320 W. 115 Realty LLC v All Bldg. Constr. Corp.*, 194 AD3d 511, 512 [1st Dept 2021] [citation omitted]; *Bostany v Trump Org. LLC*, 73 AD3d 479, 481 [1st Dept 2010] [affirming dismissal of implied covenant claim "on the ground of redundancy" because the claim was "intrinsically tied to the damages allegedly resulting from a breach of the contract"]). To warrant dismissal, "[t]he conduct alleged in the two causes of action need not be identical in

every respect. It is enough that they arise from the same operative facts" (*Mill Fin., LLC v Gillett*, 122 AD3d 98, 104-05 [1st Dept 2014]).

Plaintiff's claim for breach of the implied covenant springs from the Operating Agreement (and also the alleged oral agreements, but those are not enforceable) (Am. Compl. ¶¶87-88). As this Court previously held, the implied covenant claim is duplicative of Plaintiff's contract claim insofar as both seek the same damages arising from the same conduct – that is, Defendant's refusal to indemnify Plaintiff (*see* NYSCEF 29 at 23 ["The claim that Defendant's 'failure to pay attorneys' fees and costs . . . destroyed [Plaintiff's] right to receive the fruits of the contract' is another way of saying that Defendant breached its contractual obligation to pay attorneys' fees and costs."]; *320 W. 115 Realty*, 194 AD3d at 512).

The other piece of Plaintiff's claim, as amended, alleges that Defendant "slandered and defamed Mr. Cohen . . concurrently with breaching the Operating Agreement" (Am. Compl. ¶89). The problem with this theory, in the context of an implied covenant claim, is that it looks at conduct outside the scope of the contract. And an implied covenant claim cannot "impose obligations . . . beyond the express terms of the parties' agreement" (*Darabont*, 193 AD3d at 500). Therefore, the claim for breach of the implied covenant is dismissed.

C. Declaratory Judgment

The declaratory judgment claim is also dismissed. Previously, the Court dismissed part of this claim as duplicative of Plaintiff's breach of contract claim, but sustained the portion seeking "prospective relief[.]" (NYSCEF 29 at 25; *see, e.g.*, *Home Equity Mortg. Trust Series 2006-1 v DLJ Mortg. Capital, Inc.*, No. 156016/2012, 2013 WL 5691995, at *7 [Sup Ct, New York County Oct. 9, 2013] [denying motion to dismiss declaratory judgment claim which "[b]y contrast [to contract claim] . . . contemplate[d] prospective action"] [emphasis in original]).

Now, because Plaintiff no longer alleges viable claims for prospective relief, the declaratory judgment claim is dismissed in its entirety. Plaintiff's speculation about "the possibility . . . that [he] could be recalled for additional testimony by various congressional committees" is insufficient, as a matter of law, because it does not connect Plaintiff's involvement in future proceedings to the narrow indemnification obligation in the Operating Agreement (*see* part A [2] [b], *supra*).

In addition, "[w]hen a court resolves the merits of a declaratory judgment action against the plaintiff, the proper course is not to dismiss the complaint, but rather to issue a declaration in favor of the defendant[ ]" (*Maurizzio v Lumbermens Mut. Cas. Co.*, 73 NY2d 951, 954 [1989]). As such, the Court declares that Plaintiff has not shown, *ex ante*, that Defendant is "liable for all attorneys' fees and costs that [Plaintiff] may incur in the future in connection with the Matters under the indemnification agreements" (Am. Compl. ¶95). That is not to say that indemnification necessarily is foreclosed for every legal proceeding that might come within the scope of "Matters" going forward, only that Plaintiff has not yet shown his entitlement to such indemnification.

D. Promissory Estoppel

Finally, Plaintiff's claim for promissory estoppel is also dismissed. The Court previously dismissed all but "a narrow sliver of Cohen's promissory estoppel claim" (NYSCEF 29 at 27), keeping alive the portion of Plaintiff's claim relating to "Pending Matters [as of July 2017], and even then only if [he] is not able to establish that there was a binding contract" (*id.* at 27-28). Because the parties now agree that a binding written agreement "was in effect . . . at all times relevant to [Plaintiff's] claims for indemnification" (Am. Compl. ¶29), the promissory estoppel claims fails as a matter of law (*see Zuccarini v Ziff-Davis Media, Inc.*, 306 AD2d 404, 405 [2d

Dept 2003] [allowing "a theory of quasi contract as well as contract" to proceed "[w]here, as here, there is a bona fide dispute as to the existence of a contract, or where the contract does not cover the dispute in issue"]).

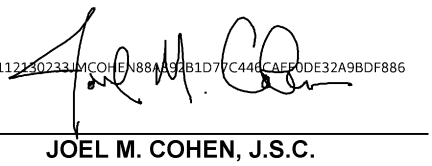
* * * *

Accordingly, it is

ORDERED that Defendant's motion for summary judgment is GRANTED and the amended complaint (NYSCEF 111) is dismissed with prejudice, with costs and disbursements to Defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; it is further

ADJUDGED and DECLARED that Plaintiff has not established that Defendant is liable under the indemnification agreements for all attorneys' fees and costs that Plaintiff may incur in the future in connection with the Matters; it is further

ORDERED that the Clerk is directed to enter judgment accordingly.



11/12/2021
DATE

JOEL M. COHEN, J.S.C.

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