

HON. JOSEPH FARNETI
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

RICHARD RUBENSTEIN, MD, DANIEL
MESSIAH, MD and DHIREN C. MEHTA, MD,

Index #608077/2018

Plaintiff,

Mot. Seq. #001 - MG

-against-

RONALD BERNADINI, DC, AUGUSTUS
MANTIA, MD, KENNETH GAUL, MD,
SUFFOLK MEDICAL HEALTH P.C.
and SUFFOLK PRIMARY HEALTH P.C.,

Defendants.

-----X

Upon consideration of the (1) motion to dismiss the Verified Complaint by Defendants Ronald Bernardini, DC and Augustus Mantia, MD, (2) opposition by Plaintiff Richard Rubenstein, MD, and (3) Defendants Bernardini and Mantia's Reply in further support of their motion to dismiss the Verified Complaint; it is hereby

ORDERED that Defendants Bernardini and Mantia's motion to dismiss is **GRANTED**.

This action was commenced on April 26, 2018 by Richard Rubenstein, MD, Daniel Messiah, MD, and Dhiren C. Mehta, MD, against Ronald Bernardini, DC, Augustus Mantia MD, Kenneth Gaul, MD, Suffolk Medical Health P.C., and Suffolk Primary Health P.C. The Plaintiffs' Verified Complaint sets forth three causes of action as to all of the defendants: (1) conversion, (2) fraud, and (3) unjust retention and misapplication of money in violation of fundamental principles of justice, equity and good conscience. Before the Court is Defendants Bernardini and Mantia's ("the Defendants") motion to dismiss this action.

The Defendants move to dismiss each and every cause of action on *res judicata* and collateral estoppel grounds based on the prior action *Richard Rubenstein v. United Comprehensive Care LTD.*, 26030-2012 (Supreme Court, Suffolk County). "Pursuant to the doctrine of *res judicata*, or claim preclusion, 'a valid final judgment bars future actions between the same parties on the same cause of action'" (*Highlands Ctr., LLC v. Home Depot U.S.A., Inc.*, 149 A.D.3d 919, 921, 53 N.Y.S.3d 321, 324 [2d Dept 2017]). "The doctrine of collateral estoppel, a narrower species of *res judicata*, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against

Rubenstein, MD v Bernadini, DC, et al.
Index No. 608077/2018
Page 2

that party or those in privity, whether or not the tribunals or causes of action are the same" (*Ryan v. New York Tel. Co.*, 62 N.Y.2d 494, 500, 467 N.E.2d 487, 490 [NY 1984]). The issue "must be the point actually to be determined in the second action or proceeding such that 'a different judgment in the second would destroy or impair rights or interests established by the first' " (*id.*).

After reviewing court documents from *Richard Rubenstein v. United Comprehensive Care LTD.* ("the 2012 Action"), in conjunction with the Verified Complaint filed in the instant action, the Court finds that dismissal of this case on *res judicata* and collateral estoppel grounds is not warranted. Plaintiff Rubenstein commenced the 2012 Action to recover under a February 18, 2011 Demand Promissory Note. Pursuant to the terms of the note, Plaintiff Rubenstein loaned United Comprehensive Care, LTD. ("UCC") \$25,000. The note was executed by Mantia and Bernardini, President and Vice President of UCC, respectively. Plaintiff Rubenstein alleged that UCC breached its obligations under the note by failing to pay any amount due thereunder. The Plaintiff sought judgment against the UCC in the total sum of \$25,000. By Order dated January 8, 2013, Judge Rebolini granted the Plaintiff's motion and entered judgment against UCC in the amount of \$25,000 with interest and costs and disbursements.

The instant action also involves Plaintiff Rubenstein's investment in UCC. However, it pertains to a purported agreement, entered into in or around February 2013, to transfer Plaintiff Rubenstein's investment to a separate entity, Suffolk Medical Health ("SMH"). According to the Verified Complaint, Mantia, Bernardini and Gauld represented that (1) SMH would recognize the liability of UCC to the Plaintiffs, (2) the liability would be paid by SMH, and (3) there would be no equity distributions until the liabilities were paid. It is the alleged breach of the February 2013 agreement that gave rise to this case, which sets forth causes of action for conversion and fraud, and an alleged claim in equity. These causes of action are distinct from the breach of promissory note claim asserted in the 2012 action. As such, *res judicata* does not bar the instant action. Moreover, with regard to collateral estoppel, a holding in the instant action would not destroy or impair the rights of the parties established in the 2012 action.

The Court is unpersuaded by the Defendant's argument that since the Plaintiff does not specifically plead that Mantia and Bernardini had the authority to enter into the 2013 agreement, or explain the source of Mantia and Bernardini's authority, the instant action is really just an attempt to recover the \$25,000 that Plaintiff Rubenstein loaned to UCC under the 2011 promissory note. The inquiry into Mantia and Bernardini's authority to enter into the alleged 2013 agreement relates to the merits of this action. A finding as to authority will have no bearing on the final determination of the court in the 2012 action. Since the Court declines to dismiss this action on *res judicata* and issue preclusion grounds, it shall consider the Defendants' alternative grounds for dismissal.

The Defendants argue that the Plaintiffs' conversion cause of action is time-barred. "To dismiss a cause of action pursuant to CPLR 3211(a)(5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, *prima facie*, that the time in which to sue has expired (*Franqui v. Korol*, 154 A.D.3d 742, 743, 62 N.Y.S.3d 452, 452 [2d Dept 2017]). The burden then shifts to the plaintiff to raise a question of fact as to whether

Rubenstein, MD v Bernadini, DC, et al.
Index No. 608077/2018
Page 3

the action was actually commenced within the applicable limitations period (*id.*). The statute of limitations for conversion is three years, (CPLR 214[3]; *Gold Sun Shipping Ltd. v. Ionian Transp. Inc.*, 245 A.D.2d 420, 421, 666 N.Y.S.2d 677, 678 [1997]), and it begins to run when the conversion occurred (*Sporn v. MCA Records, Inc.*, 58 N.Y.2d 482, 488, 448 N.E.2d 1324, 1327 [N.Y. 1983]). According to paragraph 9 of the Verified Complaint, “SMH was formed on or about February 2013, of which the Plaintiffs owned twenty-five (25%) of the equity of SMH.” Paragraph 12 of the Verified Complaint provides that “the sole purpose of SMH was to divert the assets of UCC to Suffolk Primary Health P.C., an entity controlled by Bernardini, Mantia and Gaul.” Based on the foregoing, it is apparent that the alleged conversion took place at the formation of SMH, which occurred in February 2013. In opposition to the Defendants’ motion, the Plaintiffs argue that the purported conversion took place “presumably in 2016,” when Suffolk Primary Health PC received approval to operate. The Plaintiffs’ representation does not raise an issue of fact with regard to when the Plaintiff’s conversion claim against Bernardini and Mantia began to run. The Court concludes that the conversion claim began to run in February 2013. As such, the statute of limitations expired in February of 2016. Since the instant action was not commenced until 2018, the Plaintiffs’ conversion claim is untimely and therefore is dismissed.

The Defendants argue that the Plaintiffs’ second cause of action, sounding in fraud, should be dismissed pursuant to CPLR 3211(a)(1), based on documentary evidence, and under CPLR 3211(a)(7), for failing to state a claim. On a motion to dismiss under CPLR 3211(a)(7), “[t]he sole criterion is whether ‘from [the complaint’s] four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law’” (*Operative Cake Corp. v. Nassour*, 21 A.D.3d 1020, 1021, 801 N.Y.S.2d 358, 358 [2d Dept 2005]). “The elements of a cause of action to recover damages for fraud are (1) a misrepresentation or a material omission of fact which was false, (2) knowledge of its falsity, (3) an intent to induce reliance, (4) justifiable reliance by the plaintiff, and (5) damages” *Minico Ins. Agency, LLC v. B & M Cleanup Servs.*, 165 A.D.3d 776, 777, 86 N.Y.S.3d 515, 517 [2d Dept 2018]). Pursuant to CPLR 3016, where a cause of action or defense is based upon, in relevant part, misrepresentation or fraud, “the circumstances constituting the wrong shall be stated in detail.” The Plaintiffs here have failed to adequately plead “justifiable reliance.” They allege that Bernardini, Mantia and Gaul made certain representations to the Plaintiffs regarding the transfer of their equity to SMH and how SMH would treat their investment. The Plaintiffs, however, fail to provide any explanation of the relationship between the individual Defendants and SMH in the Verified Complaint. The Plaintiffs have therefore failed to plead any indication that the Plaintiffs’ reliance on the individual Defendants’ representations was reasonable. Moreover, Plaintiffs’ fraud cause of action fails to allege specific facts with respect to the time, place, or manner in which defendants made the purported misrepresentations (see *Riverbay Corp. v. Thyssenkrupp N. Elevator Corp.*, 116 A.D.3d 487, 488, 984 N.Y.S.2d 14, 16 [2014]). The Court declines to also rely on CPLR 3211(a)(1) as grounds to dismiss since the document cited by the Defendants does not conclusively establish a defense as a matter of law (see *Goshen v. Mut. Life Ins. Co. of New York*, 98 N.Y.2d 314, 326, 774 N.E.2d 1190, 1197 [N.Y. 2002]). The Court turns to the final cause of action asserted in the Plaintiffs’ complaint.

Rubenstein, MD v Bernadini, DC, et al.
Index No. 608077/2018
Page 4

In their third cause of action, the Plaintiffs allege that the Defendants' "unjust retention and misapplication of money for their own benefit and to the detriment of the Plaintiffs violate fundamental principles of justice, equity and good conscience." This cause of action constitutes a claim for unjust enrichment. "The elements of a cause of action sounding in unjust enrichment are (1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*Gargano v. Morey*, 165 A.D.3d 889, 891, 86 N.Y.S.3d 595, 599 [2d Dept 2018]). A claim for unjust enrichment will not survive a motion to dismiss where "the pleadings failed to indicate a relationship between the parties that could have caused reliance or inducement" (*Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182, 944 N.E.2d 1104, 1111 [N.Y. 2011]). As the Court held in connection with the Plaintiffs' fraud claim, the Plaintiffs fail to plead allegations that would explain the Plaintiffs' reliance on representations made by Bernadini, Mantia, and Gaul with regard to SMH. The Court declines to also dismiss the Plaintiffs' fraud claim under CPLR 3211(a)(1) since the document cited by the Defendants does not conclusively establish a defense as a matter of law (*Goshen v. Mut. Life Ins. Co. of New York*, 98 N.Y.2d 314, 326, 774 N.E.2d 1190, 1197 [N.Y. 2002]).

In view of the foregoing analysis, Defendants Bernardini and Mantia's motion to dismiss is GRANTED, and the complaint is dismissed as asserted against Defendants Bernardini and Mantia.

DATED: May 20, 2020



HON. JOSEPH FARNETI
Acting Justice Supreme Court

FINAL DISPOSITION _____

NON-FINAL DISPOSITION X