Zohar CDO 2003-1 Ltd. v Xinhua Sports & Entertainment Ltd.
2013 NY Slip Op 07860
Decided on November 26, 2013
Appellate Division, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on November 26, 2013
Friedman, J.P., Renwick, Freedman, Feinman, JJ.

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[*1]Zohar CDO 2003-1 Limited, et al., Plaintiffs-Appellants,

v

Xinhua Sports & Entertainment Limited, et al., Defendants, Loretta Fredy Bush, Defendant-Respondent.

Shapiro, Arato & Isserles LLP, New York (Marc E. Isserles of counsel), for appellants.
Drinker Biddle & Reath LLP, New York (Clay J. Pierce of counsel), for respondent.

Order, Supreme Court, New York County (Charles E. Ramos, J.), entered August 24, 2012, which granted the motion of defendant Loretta Fredy Bush to dismiss the second cause of action alleging negligent misrepresentation as against her, unanimously affirmed, with costs.

Where, as here, sophisticated parties expressly state in their heavily negotiated agreement that they are dealing at arm's-length, such a disclaimer bars a claim for negligent misrepresentation, because it precludes a finding of a special relationship *(see HSH*

Nordbank AG v UBS AG, 95 AD3d 185, 208-209 [1st Dept 2012])*; AJW Partners LLC v Itronics Inc.,* 68 AD3d 567, 568 [1st Dept 2009]). In addition, the complaint failed to allege facts giving rise to a special relationship. That defendant had superior knowledge of her company's business and finances is not the type of special knowledge or expertise that will support this claim *(see MBIA Ins. Corp. v Countrywide Home Loans, Inc.,* 87 AD3d 287, 296-297 [1st Dept 2011]). Nor do the past dealings of plaintiffs' collateral manager with defendant, all in arm's-length transactions, create a special relationship.

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

ENTERED: NOVEMBER 26, 2013

CLERK

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