

Pope Inv. II LLC v Belmont Partners, LLC
2014 NY Slip Op 30349(U)
February 4, 2014
Sup Ct, New York County
Docket Number: 651479/12
Judge: Jeffrey K. Oing
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JEFFREY K. OING J.S.C. Justice

PART 48

Index Number : 651479/2012
POPE INVESTMENTS II LLC
vs.
BELMONT PARTNERS, LLC
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

Mtn is decided in accordance w/ the accompanying memorandum decision/order of the Court.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 2/4/14

JEFFREY K. OING J.S.C. J.S.C.

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: IAS PART 48

-----x

POPE INVESTMENTS II LLC, JAYHAWK
 PRIVATE EQUITY FUND II, L.P., GUERRILLA
 PARTNERS, L.P., ALDER CAPITAL PARTNERS
 I, L.P., ALDER OFFSHORE MASTER FUND,
 L.P., PARAGON CAPITAL, L.P., DAYBREAK
 SPECIAL SITUATIONS MASTER FUND, LTD.,
 AAMAXEN TRANSPORT GROUP, INC., ASIA
 BUSINESS MANAGEMENT GROUP, LTD., AND
 SHANGHAI ANHANTE (BEIJING) MEDICAL
 TECHNOLOGY CO., LTD.,

Index No. : 651479/12

**Mtn Seq. Nos. 001 &
 002**

DECISION AND ORDER

Plaintiffs,

-against-

BELMONT PARTNERS, LLC, ROSEWOOD
 SECURITIES, LLC, SOUTHERN TRUST
 SECURITIES HOLDING CORP., JOSEPH
 MEUSE, WILLIAM H. LUCKMAN, GUZOV
 OFSINK, LLC, AND DARREN L. OFSINK,

Defendants.

-----x

JEFFREY K. OING, J.:

In motion sequence no. 001, defendants, Guzov Ofsink, LLC ("Guzov") and Darren L. Ofsink ("Ofsink") move, pursuant to CPLR 3211(a)(7), for an order dismissing the complaint.

In motion sequence no. 002, defendants Joseph Meuse, Belmont Partners, LLC, and Rosewood Securities, LLC (collectively referred to as the "Meuse defendants") join in Guzov and Ofsink's motion to dismiss. In addition, the Meuse defendants seek an order dismissing plaintiffs' claim of legal malpractice because that claim is specific to Guzov and Ofsink, and not to them.

Parties

Plaintiffs consist of investors in the parent corporation of the transactions at issue (the "Investor plaintiffs"), and the

parent corporation and its subsidiaries (the "Group plaintiffs") (Investor and Group plaintiffs collectively referred to as "plaintiffs").

The Investor plaintiffs are Pope Investments II LLC ("Pope"), Jayhawk Private Equity Fund II ("Jayhawk"), L.P. Guerrilla Partners, L.P. ("Guerrilla"), Alder Capital Partners I, L.P. ("Alder Capital"), Alder Offshore Master Fund, L.P. ("Alder Offshore", together with Alder Capital, referred to as "Alder"), Paragon Capital, L.P. ("Paragon"), and Daybreak Special Situations Master Fund, Ltd. ("Daybreak").

The Group plaintiffs are Aamaxan Transport Group, Inc. ("AAXT"), Asia Business Management Group, Ltd. ("ABM"), and Shanghai Anhante (Beijing) Medical Technology Co., Ltd. ("Anhante").

Defendants are Belmont Partners, LLC ("Belmont Partners"), Rosewood Securities, LLC ("Rosewood"), Southern Trust Securities Holding Corp. ("Southern Trust"), Joseph Meuse ("Meuse"), William H. Luckman ("Luckman"), Guzov Ofsink, LLC. ("Guzov"), and Darren L. Ofsink ("Ofsink") (collectively referred to as "defendants"). Guzov is a law firm and Ofsink is a member and employee of Guzov. Meuse is currently a member and officer of Belmont. Luckman was a member of Belmont during the relevant time period. Pursuant to a stipulation of discontinuance, dated October 9, 2012, plaintiffs discontinued this action against Southern Trust.

The SMT Transactions

For purposes of this motion, the allegations in the complaint are assumed as true. The complaint outlines a series of transactions (collectively the "SMT Transactions,") in which the Investor plaintiffs invested in AAXT (the "AAXT Investment") with the intention of owning a significant interest in Shanghai Atrip Medical Technology ("SMT"), (Compl., ¶ 19). Defendants Guzov and Ofsink were the Group plaintiffs' legal counsel for the SMT Transactions (Compl., ¶ 40). Defendant Belmont acted as the investment banker on the transactions (Compl., ¶¶ 44, 49).

Plaintiffs' rest their claims on defendants' actions or inactions, which allegedly enabled Shao Gan Hua ("Shao"), a non-party, to embezzle the AAXT Investment's proceeds, less fees paid to Guzov, Belmont, and the Deheng Law Firm ("Deheng"), a non-party to this action.¹

The series of transactions began in 2007 when Helen Lv ("Lv"), a partner of Deheng, contacted Ofsink about jointly seeking out U.S. based investors to organize an investment transaction in SMT (Compl., ¶ 43). Ofsink solicited Belmont to act as the investment banker on the transactions and Belmont solicited the investors for the AAXT Investment (Compl., ¶¶ 44, 49).

¹Although Deheng and Helen Lv are not named as defendants in this matter, plaintiffs brought suit against them in the United States District Court for the Southern District of New York. After filing a second amended complaint, the District Court granted Deheng's motion to dismiss because plaintiffs failed to allege sufficiently scienter (Pope Invs. II LLC v Deheng Law Firm, 2012 WL 3526621 No. 10 Civ. 6608 [SD NY 2012]).

Before, and allegedly in anticipation of, the AAXT Investment, Kamick Assets Limited ("Kamick"), a British Virgin Islands company solely owned by Shao, transferred 100% of the outstanding equity of its subsidiary ABM in exchange for 16,607,143 shares in AAXT (the "ABM Transaction") (Compl., ¶ 21). A Share Exchange Agreement, dated April 14, 2008, documented the ABM transaction (Id.). As a result of the ABM Transaction, ABM became a wholly owned direct subsidiary of AAXT, and Anhante, a wholly foreign owned enterprise of ABM, became a wholly owned subsidiary of ABM (Compl., ¶ 22).

A Securities Purchase Agreement, dated April 14, 2008, documented the AAXT Investment (Compl., ¶ 18). The Investor plaintiffs, along with other investors not named as plaintiffs, invested approximately \$12.5 million in AAXT in exchange for 4,008,188 shares of AAXT's Series A Senior Convertible Preferred Stock (Id.). Of the \$12.5 million, approximately \$10,132,522.35 was left in net proceeds after fees were paid to Deheng and named defendants Guzov and Belmont (Compl., ¶ 24).

In conjunction with the closing of the AAXT Investment, AAXT and SMT entered into the China Control Agreement (Compl., ¶ 23). SMT transferred all of the economic benefits and liabilities of its business to Anhante in exchange for the net proceeds of the AAXT Investment, namely, \$10,132,522.35 (Id.). Pursuant to the China Control Agreement, AAXT effectively became the indirect beneficial owner of SMT (Id.).

As part of the SMT Transactions, Chen Zhong ("Chen"), the principal owner of SMT, also became the Chairman and CEO of AAXT.

Chen and Shao, the sole owner of Kamick, entered into a Call Option Agreement, dated April 14, 2008 (Compl., ¶ 25). Pursuant to the terms of the Call Option Agreement, Chen had the option of purchasing all of Kamick's outstanding stock over approximately two years for a total purchase price of less than thirty dollars (Id.). Although Chen held himself out as the CEO and Chairman of Kamick, Shao was the controlling shareholder of Kamick, subject to the Call Option Agreement (Id.).

The SMT Transactions made Shao essentially the majority shareholder of AAXT (Compl., ¶ 26). Kamick was the majority shareholder of AAXT and Shao was the sole owner of Kamick subject to the Call Option Agreement. AAXT was the only shareholder of ABM and the only shareholder of Anhante, the entity that entered into the China Control Agreement with SMT (Id.). While Shao and Kamick were nominees of ABM, they were not supposed to have any control over ABM. Chen was supposed to have control of ABM as CEO of AAXT (Compl., ¶ 27).

After the AAXT Investment closed, Guzov placed the net proceeds, \$10,132,522.35, in a Hong Kong & Shanghai Banking Corporation Limited ("HSBC") account under ABM's name for holding before they were transferred to SMT (Compl., ¶¶ 40, 45). Plaintiffs allege, however, that Shao and/or Kamick retained control of AMB and the bank account at issue, and that they were not aware that Shao and/or Kamick could exercise control over the net proceeds (Compl., ¶ 28). The complaint alleges that Shao embezzled most or all of the money in the ABM account within several days (Compl., ¶ 29).

The complaint also alleges that Shao and Lv had been conspiring to embezzle the money invested in AAXT since 2007 (Compl., ¶ 31). On September 4, 2008, Lv, acting on Kamick's behalf, e-mailed Meuse and Luckman, asking that they act as a bridge between Kamick and the AAXT Investors to avoid legal action (Compl., ¶ 33). On September 18, 2008, Lv informed the AAXT Investors that their investment had been invested elsewhere, contrary to the Transaction Documents and SEC filings (Compl., ¶ 34). After Deheng had advised Kamick to transfer the net proceeds out of ABM's account, Lv informed the AAXT investors in an e-mail dated October 9, 2008 that Deheng would no longer be representing Kamick (Compl., ¶ 35). According to the complaint, after the net proceeds were removed from ABM's account, the funds were deposited into Shao's personal bank account, accounts of entities controlled by Shao, and an account controlled by Lv (Compl., ¶ 37).

Guzov, Ofsink, Belmont, Luckman, & Meuse

The complaint alleges that Guzov and Deheng advised and represented the Group plaintiffs on the form and substance of the contractual agreements necessary for the SMT Transactions (Compl., ¶ 46). Allegedly, Guzov drafted documents for the SMT Transactions (Compl., ¶ 45) and issued a written legal opinion dated April 15, 2008 to investors in AAXT (the "Guzov Legal Opinion") stating that the transaction documents for the AAXT Investment were effective, legal, and binding (Compl., ¶ 48). Plaintiffs also assert that Guzov received the wired funds from

the AAXT Investors and transferred these funds to ABM at the closing of the SMT Transactions (Compl., ¶ 46).

Ofsink, an attorney and member of Guzov, was the lead counsel representing the Group plaintiffs in the SMT Transactions. Plaintiffs claim that Ofsink personally did or supervised all of the work attributable to Guzov with respect to the SMT Transactions and he solicited Belmont to act as the investment banker on the transaction (Compl., ¶¶ 41-44).

Plaintiffs claim that Belmont provided the Group plaintiffs and SMT with investment, business, and structuring advice regarding the SMT Transactions. Allegedly, Belmont solicited investors for the AAXT Investment, including the named plaintiffs, helped negotiate the terms of the SMT Transactions, and secured the AAXT shell company used as the investment vehicle for the transaction (Compl., ¶ 49). Plaintiffs claim that Meuse and Luckman are or were employees or owners of Belmont and took the lead roles on behalf of Belmont in representing the Group plaintiffs and SMT with the SMT Transactions by personally performing or supervising all the work done on Belmont's behalf in regards to the SMT Transactions (Compl., ¶ 50).

Preliminary Issues

The Investor plaintiffs assert a single claim against defendants: fraudulent inducement to invest (Count I). They allege that defendants fraudulently induced them to purchase shares of AAXT. The Investor plaintiffs claim that Guzov and Ofsink are responsible because of the alleged material

misrepresentations made in the Guzov Legal Opinion that the transactions were legal and binding (Compl., ¶ 81). Specifically, the complaint alleges that defendants Guzov, Ofsink, Belmont, Meuse, and Luckman, fraudulently induced the Investor plaintiffs to invest in AAXT by misrepresenting that they had fully vetted Shao and Kamick, and by not disclosing that Shao and Helen Lv were close friends with the intent to defraud and deceive plaintiffs (Compl., ¶¶ 84, 87-88).

The Group plaintiffs' remaining claims are as follows: fraudulent inducement to invest (Count III); negligent misrepresentation (Count IV), breach of fiduciary duty (Count V), legal malpractice (Count VI), and professional malpractice (Count VII). Plaintiffs withdrew their claims for breach of contract (Count II), conversion (Count VIII), and rescission (Count IX).

The Group plaintiffs' fraudulent inducement to invest claim (Count III) mirrors the Investor plaintiffs' claim. However, rather than being fraudulently induced to invest in AAXT, the Group plaintiffs allege that they were fraudulently induced to complete the SMT Transactions (Compl., ¶ 100). The Group plaintiffs also assert that defendants made negligent misrepresentations (Count IV) and breached their fiduciary duty (Count V) to the plaintiffs by failing to disclose material information regarding the investments.

The Group plaintiffs also assert two malpractice claims: legal malpractice against defendants Guzov and Ofsink (Count VI) and professional malpractice against defendants Belmont, Meuse, and Luckman (Count VII). The legal malpractice claim alleges

that defendants Guzov and Ofsink violated New York Rules of Professional Conduct because they also represented Kamick in the SMT Transactions without plaintiffs' written consent (Compl., ¶¶ 126-28). The Group plaintiffs' professional malpractice claim (Count VII) maintains that defendants Belmont, Meuse, and Luckman breached their duty to use the ordinary skill and care expected of professionals in the same field while providing their services to plaintiffs (Compl., ¶ 134).

Discussion

I. Fraudulent Inducement to Invest² (Counts I & III)

The Investor plaintiffs claim that the defendants fraudulently induced them to invest in AAXT as a result of material misrepresentations regarding Shao and his relationship with Lv made by defendants Guzov, Ofsink, Belmont, Meuse, and Luckman (Compl., ¶¶ 80, 84, 87). The Investor plaintiffs seek to hold Guzov and Ofsink liable because of alleged misrepresentations in the Guzov Legal Opinion that the transactions were valid and enforceable (Compl., ¶ 81).

²Plaintiffs initially commenced an action against defendants herein in the United States District Court for the Southern District of New York. In that action, plaintiffs, in addition to state law claims, asserted a securities fraud claim under § 10(b) of the Securities Exchange Act and Rule 10b-5. The District Court dismissed the federal claims finding that the complaint failed to plead with specificity that defendants acted with scienter. The District Court declined to exercise supplemental jurisdiction over the remaining state law claims because there were no other federal questions at issue (Pope Invs. II LLC v Deheng Law Firm, 2011 WL 5837818 No. 10 Civ. 6608 (LLS) [SD NY 2011]).

The Group plaintiffs claim the defendants fraudulently induced them to complete the SMT Transactions for the same reasons the Investor plaintiffs assert: misrepresentations regarding Shao and misrepresentations in the Guzov Legal Opinion (Compl., ¶¶ 100, 101, 104, 106).

A fraudulent inducement claim must meet CPLR 3016 (b)'s heightened pleading standard: "[w]here 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." CPLR 3016 (b) serves to inform a defendant of the incidents that the plaintiff is complaining of (Pludeman v Northern Leasing Sys., Inc., 860 NYS2d 422, 425 [2008]). CPLR 3016[b] does not, however, require unassailable proof of fraud and a plaintiff is not expected to plead details exclusively known to the defendant (Id. at 427, 492). All that is required is that a plaintiff allege facts sufficient to permit a reasonable inference of the alleged misconduct (Id. at 427). Conclusory allegations, however, are insufficient (Id.).

A claim of fraudulent inducement must demonstrate "that there was a false representation, made for the purpose of inducing another to act on it, and that the party to whom the representation was made justifiably relied on it and was damaged" (Perrotti v Becker, Glyn, Melamed & Muffy LLP, 82 AD3d 495, 498 [1st Dept 2011]). The Investor plaintiffs' and the Group plaintiffs' fraudulent inducement claims are insufficiently pleaded. Although plaintiffs do not bear the burden of pleading

facts exclusively known to defendants, they must specifically plead the elements of fraud to the best of their knowledge. Here, plaintiffs, collectively, fail to plead adequately their reliance on defendants' alleged misrepresentations. In that regard, the Investor plaintiffs merely allege that:

[t]he AAXT Investors specifically relied on defendants' representations that AAXT would invest in SMT by agreeing to invest \$12.5 million in AAXT to fund SMT ... [and] [t]he AAXT Investors relied on the information provided by Belmont, Meuse, Luckman, Guzov and Ofsink in making the decision to invest in AAXT"

(Compl., ¶¶ 89, 93).

While the Group plaintiffs simply assert that:

[t]he Group specifically relied on defendants' representations that the Group would invest in SMT by agreeing to invest \$12.5 million to fund SMT ... [t]he Group relied on the information provided by Belmont, Meuse, Luckman, Guzov and Ofsink in making the decision to complete the SMT Transactions.

(Compl., ¶¶ 108, 112).

The record fails to show that defendants have exclusive knowledge of the facts concerning the plaintiffs' reliance on the alleged misrepresentations they made. Furthermore, plaintiffs could not have reasonably relied on the Guzov Legal Opinion when deciding to invest or, in the case of the Group defendants, complete the SMT Transactions. The Guzov Legal Opinion was dated April 15, 2008, a day after the AAXT Investment had closed and the SMT Transactions were completed (Compare Compl., ¶¶ 18, 21, 23 with Compl., ¶ 48).

Accordingly, defendants' motion to dismiss the Investor plaintiffs' fraudulent inducement to invest claim (Count I) and the Group defendants fraudulent inducement to invest claim (Count

III) is granted, and those claims are dismissed without prejudice.

II. Negligent Misrepresentation (Count IV)

In order to state a claim for negligent misrepresentation, plaintiffs must allege: 1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; 2) the information was incorrect; and 3) reasonable reliance on the information (MatlinPatterson ATA Holdings LLC v Federal Express Corp., 87 AD3d 836, 840 [1st Dept 2011]).

Here, the Group plaintiffs adequately allege that there was a special, privity-like relationship requiring defendants to impart correct information (Compl. ¶¶ 56, 59). The misleading information the Group plaintiffs allege defendants imparted to them entailed the misrepresentations that they had fully vetted Shao, that Shao, Chen, and Kamick were trustworthy and reliable investment partners, and that the Guzov Legal Opinion indicated that the transactions were valid and enforceable. These allegations are sufficient to state a claim for negligent misrepresentation.

Accordingly, defendants' motion to dismiss the Group plaintiffs' negligent misrepresentation claim is denied for the alleged misrepresentations regarding vetting Shao and the trustworthiness of Shao, Chen, and Kamick. As to that branch of the motion to dismiss this claim based on alleged misrepresentations in the Guzov Legal Opinion, it is granted. As

discussed, supra, the Group plaintiffs could not have reasonably relied on the representations in the Guzov Legal Opinion because it was issued after the SMT Transactions were completed (Compare Compl., ¶¶ 18, 21, 23 with Compl., ¶ 48).

III. Breach of Fiduciary Duty (Count V)

The elements for a breach of fiduciary duty claim are: 1) the existence of a fiduciary relationship; 2) misconduct by the defendant; and 3) damages directly caused by the defendant's misconduct (Rut v Young Adult Institute, Inc., 74 AD3d 776, 777 [2d Dept 2010]). For a fiduciary relationship to have existed between the Group plaintiffs and the defendants, the Group plaintiffs must allege that the defendants were under a duty to act for, or to give advice for, their benefit upon matters within the scope of the relationship (EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 [2005]). Fiduciary relationships are grounded in a higher level of trust than normally present in the marketplace between those involved in arm's length business transactions (Id.). If the parties have entered into a contract, "courts look to that agreement to discover the nexus of the parties' relationship and the particular contractual expression establishing the parties' interdependency" (Id. at 19-20). Absent a contract, or the explicit expression of a fiduciary relationship in a contract, courts look to the actual relationship between the parties (Id.).

Here, the Group plaintiffs premise the alleged fiduciary relationship upon the "defendants' access to books and records

and other sources of knowledge concerning the financial and operating condition of Kamick and SMT and their knowledge and experience in the securities industry" (Compl., ¶ 120) and claim that they placed their confidence and trust in defendants Belmont, Meuse, Luckman, Guzov, and Ofsink (Compl., ¶ 121). The Group plaintiffs adequately allege misconduct perpetrated by defendants due to their alleged failure to disclose and concealment of facts regarding Shao and Kamick, and the resulting damages (Compl., ¶¶ 122-23). These allegations are sufficient to show a fiduciary relationship at this juncture.

Further, although unclear as to whether the Group plaintiffs will ultimately prevail on their breach of fiduciary duty claim, defendants have failed to show by documentary proof that no fiduciary relationship existed for purposes of their motion to dismiss. Indeed, rather than denying the existence of a fiduciary relationship with the Group plaintiffs, defendants merely argue that the breach of fiduciary duty claim is duplicative of the Group plaintiffs' legal malpractice claim and, therefore, should be dismissed. This argument is unavailing given that the legal malpractice and professional malpractice claims are dismissed, infra.

Accordingly, defendants' motion to dismiss the breach of fiduciary duty claim is denied.

IV. Legal Malpractice (Count VI)

A legal malpractice claim must "establish that the attorney in question was negligent, that the attorney's negligence was the

proximate cause of the loss sustained, and that actual damages were sustained," (Wall Street Assocs. v Brodsky, 257 AD2d 526, 527 [1st Dept 1999]).

The Group plaintiffs allege that Guzov and Ofsink committed legal malpractice by violating New York Rules of Professional Conduct Rule 1.7(b)(4). That Rule requires a lawyer who has decided to represent two clients, regardless of an apparent conflict of interest, obtain written consent from each affected client. The Group plaintiffs claim that defendants Guzov and Ofsink represented AAXT and Kamick for the SMT Transactions without their written consent.

In support of dismissal of this claim, defendants Guzov and Ofsink rely on William Kaufman Org., Ltd. v Graham & James LLP, 269 AD2d 171, 173 (1st Dept 2000) to argue that "a violation of a disciplinary rule does not generate a cause of action." That reliance is misplaced. That case also stands for the proposition that "some of the conduct constituting a violation of a disciplinary rule may also constitute evidence of malpractice" (Id.). Nonetheless, a violation of a disciplinary rule, standing alone and without more, does not generate a cause of action (Schafrann v N.V. Famka, Inc., 14 AD3d 363, 364 [1st Dept 2003]). The issue, thus, is whether there is more than just a violation of the Rule.

A review of the complaint demonstrates that it does not sufficiently plead what negligent conduct defendants Guzov and Ofsink allegedly perpetrated to support the legal malpractice claim. Specifically, the allegations of failure to vet Shao and

disclose information surrounding Shao, his management of Kamick, and his personal relationship with Lv are insufficient to substantiate claims of attorney malpractice without allegations that such a duty existed and that these omissions were the proximate cause of the Group plaintiffs' damages.

As to such duty, the Group plaintiffs contend that defendants Guzov and Ofsink's actions and advice concerning the SMT Transactions resulted in their loss of \$12.5 million plus the \$1 million expended in seeking recovery of the initial \$12.5 million (Compl., ¶¶ 130-32). In that regard, the complaint alleges that defendants were negligent:

[t]hrough their acts and advice as described above, the defendants failed to meet their obligation and breached this duty, causing damages to the Group as described herein

(Compl., ¶ 131).

This broad and conclusory allegation, however, without more, is insufficient. Even if the Group plaintiffs were to contend that defendants were negligent by failing to conduct due diligence on Shao and disclose information regarding his management of Kamick and his personal relationship with Lv, nowhere does the complaint allege that defendants had a duty to conduct such due diligence or disclose such information, and that this failure was the proximate cause of plaintiffs' damages.

Accordingly, defendants' motion to dismiss the Group plaintiffs' legal malpractice claim (Count VI) is granted, and it is hereby dismissed without prejudice.

V. Professional Malpractice (Count VII)

The complaint alleges that defendants Belmont, Meuse, and Luckman departed from the accepted standards of practice of like professionals:

Through their acts and omissions described above, these defendants failed to use the ordinary skill and care used and expected of others in their profession under the same circumstances. This failure was a breach of their duty to all plaintiffs, thereby causing the damages described herein

(Compl., ¶ 135). The Group plaintiffs do not, however, specifically allege what actions other like-professionals would have taken in similar circumstances and how defendants Belmont, Meuse, and Luckman departed from that standard of conduct. As such, the Group plaintiffs' allegations are insufficient to state a claim for professional malpractice.

Accordingly, defendants' motion to dismiss the Group plaintiff's professional malpractice claim (Count VII) is granted, and it is hereby dismissed without prejudice.

Accordingly, it is

ORDERED that defendants Guzov and Ofsink's motion (mtn seq. no. 001) and defendants Belmont, Meuse, and Rosewood's motion (mtn seq. no. 002) are granted to the extent of dismissing the causes of action for fraudulent inducement to invest (Counts I and III), negligent misrepresentation based on the Guzov Legal Opinion (Count IV), legal malpractice (Count VI), and professional malpractice (Count VII), and is otherwise denied; and it is further

Index No. 651479/12
Mtn Seq. Nos. 001 & 002

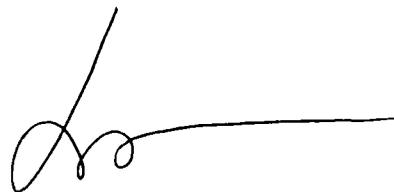
Page 18 of 18

ORDERED that defendants shall serve an answer to the complaint within ten (10) days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to contact the clerk of Part 48 at 646-386-3265 to schedule a preliminary conference.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 2/4/14



HON. JEFFREY K. OING, J.S.C.