

<b>Halperin v Van Dam</b>
2020 NY Slip Op 31301(U)
April 28, 2020
Supreme Court, New Yorkk County
Docket Number: Index No. 652124/2019
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

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INDEX NO. 652124/2019

STEPHEN HALPERIN, JAMIE BERMAN HALPERIN,

MOTION DATE

Plaintiffs,

MOTION SEQ. NO. 001 002 003

- v -

STEPHAN VAN DAM, GAIL PELLETT, HELD & HINES,
LLP, MARK HELD, DOUGLAS ELLIMAN REALTY, LLC,
JOHN-LUC BRIGUET, THIRTY-TWO WEST 20TH STREET
INC., CORNERSTONE MANAGEMENT SYSTEMS, INC.,
MAGGIE MARSHALL,

DECISION + ORDER ON
MOTION

Defendants.

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MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16,
17, 18, 19, 27, 41, 42, 43, 44

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26,
45, 47, 50, 51, 52

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 003) 28, 29, 30, 31, 32,
33, 34, 35, 36, 37, 38, 39, 40, 46, 48, 49, 57, 58

were read on this motion to/for DISMISS

In motion sequence number 001, defendants Stephan Van Dam and Gail Pellett
(Sellers) move, pursuant to CPLR 3211 (a) (1) and (a) (7), to dismiss the first cause of
action of the complaint. In motion sequence number 002, defendants Douglas Elliman,
LLC (Douglas Elliman) and Maggie Leigh Marshall (together, Elliman Defendants) move
pursuant to CPLR 3211 (a) (1), (a) (7) and CPLR 3016 (b) to dismiss the third and fourth
causes of action. In motion sequence number 003, defendants Held & Hines, LLP (HH)

and Mark Held, Esq. (together, HH Defendants) move pursuant to CPLR 3211 (a) (1) and (a) (10) to dismiss the second cause of action.

### Background

The following facts are alleged in the complaint and, for the purposes of these motions to dismiss, are accepted as true. Prior to March 2017, plaintiffs Steven Halperin<sup>1</sup> and Jamie Berman Halperin sought to purchase a multi-bedroom cooperative apartment in New York City to accommodate their young child and planned additional children. (NYSCEF Doc. No. [NYSCEF] 12, Complaint at ¶¶ 11, 14.) Plaintiffs engaged defendant Marshall, “a licensed Real Estate Broker and principal officer or agent of [defendant] Douglas Elliman.” (*Id.* at ¶ 12.) Steven Halperin had previously worked with Marshall in leasing and selling another NYC apartment. (*Id.*) Pursuant to a Dual Agency Disclosure prepared and furnished by Marshall, on behalf of Douglas Elliman, Marshall expressly acted as a “Buyers Broker” for plaintiffs. (*Id.* at ¶ 13.)

As their broker, Marshall provided plaintiffs with one of Douglas Elliman’s brokerage listings (Brokerage Listing) for an apartment located in the Flatiron District of Manhattan at 32 West 20<sup>th</sup> Street, Apartment 8S (Apartment). (*Id.* at ¶¶ 1, 12.) The Brokerage Listing represented the Apartment as “[c]urrently configured with one bedroom...additional bedrooms and baths may be added to fit your own lifestyle.” (*Id.* at ¶ 12 [emphasis omitted].) The Elliman Defendants knew that plaintiffs required a multi-

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<sup>1</sup> There is an inconsistency in the way Steven Halperin’s name is spelled in the complaint and NYSCEF. For purposes of these motions, the court will use the spelling in the complaint.

<sup>2</sup> Each movant submits a copy of the complaint in support of their respective motions to dismiss (see NYSCEF 14, 24, and 30). The court, however, will reference the complaint by the plaintiffs’ filing at NYSCEF 1.

bedroom apartment and actively marketed the Apartment as suitable for alteration and renovation into a multi-bedroom apartment. (*Id.* at ¶ 14.) The Elliman Defendants also assured plaintiffs that such renovations were lawful and consistent with the governing rules and would be authorized by defendant Thirty-Two West 20<sup>th</sup> Street Inc. (Apartment Corporation) (*Id.* at ¶¶ 4, 14.)

Plaintiffs engaged in negotiations with the Sellers. (*Id.* at ¶¶ 1, 15.) Although Sellers allegedly authorized Douglas Elliman to market the Apartment as a one bedroom with ability to expand, they failed to mention during negotiations that in 2010 the NYC Landmarks and Preservation Commission approved the premises adjacent to the Apartment for the construction of two additional levels and a penthouse, which would completely block certain windows in the Apartment. (*Id.* at ¶¶ 15, 27.)

Plaintiffs decided to purchase the Apartment and retained the HH Defendants as attorneys to handle the closing of the transaction. (*Id.* at ¶¶ 18, 4.) The HH Defendants utilized a form of questionnaire entitled "Coop/Condo Review Sheet" and requested specific information from the Apartment Corporation concerning the Apartment. (*Id.* at ¶ 19.) Questions 21 and 22 of this questionnaire were "Is this a lot-line Unit?" and if so, "Which of the windows are affected?" (*Id.*) Although the questionnaire was returned to the HH Defendants, questions 21 and 22 were not answered. (*Id.* at ¶ 20.) Nevertheless, the HH Defendants made no further inquiry and failed to communicate this omission or its significance to plaintiffs. (*Id.*)

On March 9, 2017, plaintiffs entered into a written contract of sale (Contract of Sale) with Sellers for the purchase of the Apartment in the amount of \$2,530,000. (*Id.* at ¶ 17.) The Contract of Sale provides,

[e]xcept as may be expressly set forth in this Contract, neither

Seller nor any agent or representative of Seller has made any representation, promise or statement upon which Purchaser has relied in the execution of this Contract and in deciding to purchase the Unit regarding: the Unit; the amenities, benefits, obligations or costs pertaining to the Unit, the Premises and/or the Corporation; and any other thing or matter. Purchaser has not relied upon any representation, statement, broker's set up, floor plan, statement of square footage, offering or any other thing, whether made by Seller, the Broker or any other person that is not expressly in this Contract. Seller shall have no liability to Purchaser and none of Purchaser's obligations under this Contract shall be voided, changed or reduced in any way in the event based upon any representation, statement, broker's set up, offering or any other thing, whether made by Seller, the Broker or any other person that is not set forth expressly in this Contract. Purchaser has made an independent investigation as to the (sic) all of the facts, costs, benefits, obligations and circumstances of the Unit, the Premises and the Corporation.

(NYSCEF 15, Rider to Contract of Sale at ¶ 40). The Closing occurred on May 24, 2017. (*Id.* at ¶ 17.)

Prior to executing the Contract of Sale, plaintiffs consulted with defendant John-Luc Briguet, an architect, for advice concerning proposed layouts and additions to the Apartment; after the completion of the purchase, plaintiffs engaged Briguet to prepare renovation plans and building plans in compliance with all legal requirements and the requirements of the Apartment Corporation. (*Id.* at ¶¶ 4, 21.) The planned renovations would result in the Apartment containing three bedrooms instead of one with one of these bedrooms located against the easterly wall of the Apartment as plaintiffs desired. (*Id.* at ¶ 21.) Before undertaking the renovations, plaintiffs provided a copy of the proposed renovations plan to the Apartment Corporation's board and managing agent, defendant Cornerstone Management Systems, Inc. (Managing Agent). (*Id.* at ¶¶ 22, 4.)

The renovations were approved and completed at the cost of \$750,000. (*Id.* at ¶¶ 22-23.)

On March 11, 2019, the Managing Agent advised plaintiffs and the other shareholders of the Apartment Corporation that the adjacent premise located at 33 West 19<sup>th</sup> Street/28 West 20<sup>th</sup> Street received approval “several years ago” to add two stories and a penthouse to the roof of its current six-story building. (*Id.* at ¶ 24.) Although the owner of the adjacent premises declined at that time to construct the additions, the owner now intended to proceed. (*Id.*) These additions necessitated the “elimination of the lot line windows on the east side of the 7<sup>th</sup> and 8<sup>th</sup> floors.” (*Id.*) These windows needed to be “closed from the interiors ... to comply with the fire code.” (*Id.*)

Subsequently, plaintiffs were made aware that the entire easterly wall of the Apartment contains “lot-line: windows which allegedly means that the space cannot be used for bedrooms, sleeping, or residential areas. (*Id.* at ¶ 2.) In the event that the construction on the adjacent premises blocked the lot-line windows, the new bedrooms along the Apartment’s easterly wall would be rendered uninhabitable and illegal for occupancy. (*Id.*) Plaintiffs also became aware that the original bedroom located on the southerly side of the Apartment also has a lot-line window which renders that bedroom potentially uninhabitable. (*Id.* at ¶ 2.) Accordingly, plaintiffs commenced this action against the defendants alleging fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, malpractice, fraud, gross negligence, negligence, breach of fiduciary duty, false representation, and negligent representation. (*Id.* at ¶¶ 25-52.)

### Discussion

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible

favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994].) However, factual allegations “that consist of bare legal conclusions, as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence” cannot survive a motion to dismiss. (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995] [citation omitted]; *see also* CPLR 3211 [a] [1].)

#### Motion Sequence Number 001 - Sellers’ Motion to Dismiss

In motion sequence number 001, the Sellers move pursuant to CPLR 3211 (a) (1) and (a) (7) to dismiss the first cause of action which actually contains three claims for fraudulent inducement, fraudulent concealment, and fraudulent misrepresentation.<sup>3</sup> Fraud claims must be plead with particularity (CPLR 3016[b].)

#### *Fraudulent Inducement*

The elements of a fraudulent inducement claim are “a false representation, made for the purpose of inducing another to act on it, and that the party whom the representation was made justifiably relied on it and was damaged.” (*Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 [1st Dept 2011] [citation omitted].) “[A] party claiming fraudulent inducement cannot be said to have justifiably relied on a representation when that very representation is negated by the terms of a contract executed by the allegedly defrauded party.” (*Id.* [citations omitted].)

However, “[t]he law is abundantly clear in this state that a buyer’s disclaimer of reliance cannot preclude a claim of justifiable reliance on the seller’s misrepresentations

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<sup>3</sup> The complaint designates six causes of action; however, under the first, third, and fourth causes of action, plaintiffs allege several different claims under various theories of liability.

or omissions unless (1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the seller's knowledge." (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 137 [1st Dept 2014] [citations omitted]; see also *114 W. 14 Realty LLC v Brandman*, 147 AD3d 703, 704 [1st Dept 2017].) Thus, contractual disclaimers only preclude claiming reliance when the disclaimer is specific and the misrepresentations or omissions are not peculiarly within the seller's knowledge.

Here, the disclaimer contained in the Contract of Sale is not specific to Sellers' representations that additional bedrooms may be added to the Apartment. Further, plaintiffs have sufficiently alleged that misrepresentations made by the Sellers were in peculiarly within their knowledge (NYSCEF 1, Complaint at ¶ 16 ["The Seller Defendants were directly, personally and intimately aware of the forthcoming alteration and increase of the size of the Adjacent Premises by reason of having been personally engaged and active in opposing the then-pending expansion/enlargement application before the New York City Landmarks Preservation Commission in or about 2009 and 2010, whereas the Halperins had no such knowledge nor could they have reasonably ascertained it."].)

At this stage, plaintiffs have stated the elements to support their claim. They allege a false misrepresentation (NYSCEF 1, Complaint at ¶¶ 12, 16, 26, 28, 29); made for the purpose of inducing the other party to act (*id.* at ¶¶ 16, 27, 28); justifiable reliance (*id.* at ¶¶ 26, 28); and injury (*id.* at ¶¶ 31, 52).

It cannot be determined on this pre-answer motion whether the alleged misrepresentations were peculiarly within the Sellers' knowledge, and thus, accepting the allegations as true, this claim survives the motion to dismiss.

*Fraudulent Misrepresentation*

"To state a cause of action for fraudulent misrepresentation, 'a plaintiff must allege a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury.'" (*Gomez-Jimenez v New York Law Sch.*, 103 AD3d 13, 17-18 [1st Dept 2012], quoting *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 178 [2011].)

Plaintiffs have stated a claim for fraudulent misrepresentation. They allege a misrepresentation (NYSCEF 1, Complaint at ¶ 12), which was false and known to be false by the Sellers (*id.* at ¶¶ 16, 26, 28, 29); made for the purpose of inducing plaintiffs to rely upon it (*id.* at ¶¶ 16, 27, 28); justifiable reliance (*id.* at ¶¶ 26, 28); and injury (*id.* at ¶¶ 31, 52).

*Fraudulent Concealment*

In addition to the four foregoing elements, a claim for fraudulent concealment requires an allegation "that the defendant had a duty to disclose material information and that it failed to do so." (*id.* at 18 [citation omitted].) "Although a cause of action for fraud may be predicated on acts of concealment, there must first be proven a duty to disclose material information. When one party is under a duty to act for, or give advice for the benefit of, another on matters within the scope of their relationship, a fiduciary relationship is created." (*Dembeck v 220 Cent. Park. S., LLC*, 33 AD3d 491, 492 [1st

Dept 2006] [citations omitted].) “A fiduciary relationship does not exist between parties engaged in an arm’s length business transaction.” (*Id.*)

The fraudulent concealment claim fails because plaintiffs do not allege that the Sellers had a duty to disclose material information and they failed to do so. (*Gomez-Jimenez*, 103 AD3d at 18.) Indeed, the complaint is bereft of any allegation that the Sellers had a fiduciary relationship with plaintiffs or that this sale of the Apartment was anything other than an arm’s length business transaction. (*Dembeck*, 33 AD3d at 492.)

Accordingly, the first cause of action is dismissed in part in so far as the claim for fraudulent concealment is dismissed against the Sellers.

#### Motion Sequence Number 002

In motion sequence number 002, the Elliman Defendants move pursuant to CPLR 3211 (a) (1), (a) (7) and CPLR 3016 (b) to dismiss the third and fourth causes of action.

#### *Third Cause of Action*

##### 1. Fraud, Fraudulent Concealment and False Representation

Plaintiffs fail to state a claim for fraud, fraudulent concealment, and false representation against the Elliman Defendants. Here, plaintiffs fail to allege that the Elliman Defendants had knowledge of the falsity of their representation that “additional bedrooms and baths may be added to fit your own lifestyle.” (NYSCEF 1, Complaint at ¶ 5.) Indeed, the complaint is bereft of any allegation that the Elliman Defendants knew that additional bedrooms and baths could not be added. (*Id.* at ¶¶ 37-40.) Thus, the claims for fraud and fraudulent concealment are dismissed.

Further, because knowledge of the falsehood uttered is also an element of fraudulent representation, the claim for false representation is also dismissed. (*Channel*

*Master Corp. v Aluminium Ltd. Sales*, 4 NY2d 403, 406 [1958] [“To maintain an action based on fraudulent representations ... it is sufficient to show that the defendant knowingly uttered a falsehood intending to deprive the plaintiff of a benefit and the plaintiff was thereby deceived and damaged.”]; *see also Amalfitano v Rosenberg*, 12 NY3d 8, 11 [2009].)

## 2. Gross Negligence

“Gross negligence is conduct that evinces a reckless disregard for the rights of others or smacks of intentional wrongdoing.” (*Hartford Ins. Co. v Holmes Protection Group*, 259 AD2d 526, 527 [1st Dept 1998] [internal quotation marks and citation omitted].) Gross negligence may be stated where there are “outrageous acts of folly” such as “giving out the security code for the store’s alarm system over the phone at 4:00 AM to burglars who gave a false name.” (*Id.* at 528.) Here, however, plaintiffs merely allege that the Elliman Defendants marketed the apartment as “additional bedrooms and baths may be added to fit your own lifestyle.” (NYSCEF 1, Complaint ¶ 5.) Additionally, the Elliman Defendants allegedly failed to counsel plaintiffs of the “imminent enlargement and increase in building height of the Adjacent Premises.” (*Id.* at ¶ 38.) These allegations fall short of conduct evincing a reckless disregard for the rights of others, smacking of intentional wrongdoing, or constituting outrageous acts of folly. “Notably missing from this complaint are any factual averments alleging conduct of such aggravated character.” (*Sutton Park Dev. Corp. Trading Co. v Guerin & Guerin Agency*, 297 AD2d 430, 431 [3d Dept 2002].)

## 3. Malpractice and Negligence

The Elliman Defendants raise a host of arguments to dismiss these portions of the third cause of action. Specifically, they argue that “there are no allegations

specific to these causes of action in the Verified Complaint” and that “it appears from the Verified Complaint that these causes of action are surplusage.” (NYSCEF 26, Memorandum in Support at 9.) Plaintiffs fail to address these arguments concerning the negligence and malpractice portions of the third cause of action in their opposition, indicating their intention to abandon their claims of negligence and malpractice as a basis for liability. (*Perez v Folio House, Inc.*, 123 AD3d 519, [1st Dept 2014]; *Cook v North Country Academy Exec. LLC*, 2019 NY Slip Op 51768[U], \*9 [“By not offering any argument on this issue in its opposition, plaintiffs have abandoned this claim as a basis for liability.”].)

#### 4. Breach of Fiduciary Duty

“To state a claim for breach of fiduciary duty, a plaintiff must allege that the defendant owed him a fiduciary duty, that the defendant committed misconduct, and that the plaintiff suffered damages caused by that misconduct.” (*NRT N.Y., LLC v Morin*, 147 AD3d 589, 589 [1st Dept 2017] [citation omitted].) “In New York, it is well settled that a real estate broker is a fiduciary with a duty of loyalty and an obligation to act in the best interests of the principal.” (*Dubbs v Stribling & Assoc.*, 96 NY2d 337, 340 [2001] [citation omitted].) “A real estate broker’s fiduciary duties include an obligation to keep her principal informed of all material facts within the broker’s knowledge regarding the relevant transaction.” (*Walker v Insignia Douglas Elliman LLC*, 79 AD3d 511, 512 [1st Dept 2010] [citation omitted].) “The imposition of fiduciary duties, such as the duty of disclosure ... , seeks to assure that the principal may rely on the undivided fidelity of a broker throughout the transaction for which the broker was employed.” (*Dubbs v Stribling & Assoc.*, 274 AD2d 32, 37 [1st Dept 2000], *affd Dubbs v Stribling & Assoc.*, 96 NY2d 337 [2001].)

The crux of this claim is the Elliman Defendants' failure "to properly counsel and inform [plaintiffs] of the imminent enlargement and increase in building height of the Adjacent Premises" (NYSCEF 1, Complaint at ¶ 38.) However, there is no allegation that the imminent addition to the adjacent premises was within the Elliman Defendants' knowledge. As the fiduciary duty that the Elliman Defendants allegedly breached was their failure to disclose, it has to first be alleged that they knew of this information in order to disclose it. Thus, plaintiffs have failed to allege misconduct by the Elliman Defendants.

The third cause of action is dismissed in its entirety against the Elliman Defendants.

#### *Fourth Cause of Action*

"A claim for negligent misrepresentation requires the plaintiff to demonstrate (1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information." (*J.P. Morgan Sec. Inc. v Ader*, 127 AD3d 506, 506 [1st Dept 2015].) Plaintiffs have stated a claim for negligent misrepresentation. As stated above, a real estate broker is a fiduciary (*Dubbs v Stribling & Assoc.*, 96 NY2d at 340), satisfying the first element. Further, as discussed above, plaintiffs have sufficiently alleged the information they were provided about the bedrooms was incorrect and they reasonably relied on that information.

The balance of claims asserted in the fourth cause of action fail for the reasons already stated and are dismissed against the Elliman Defendants.

Motion Sequence Number 003

In motion sequence number 003, the HH Defendants move pursuant to CPLR 3211 (a) (1) and (a) (10) to dismiss the second cause of action.

*Malpractice*

“To sustain a cause of action for legal malpractice, [plaintiff] must show that [the attorney] failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession and that [the attorney's] breach of this duty proximately caused the client to sustain actual and ascertainable damages.” (*Brookwood Cos., Inc. v Alston & Bird LLP*, 146 AD3d 662, 666 [1st Dept 2017] [internal quotation marks and citation omitted].) Failing to advise a client on the risks associated with a transaction and failing to confirm relevant information may form the basis of a legal malpractice claim. (*See Benitez v United Homes of N.Y., LLC*, 142 AD3d 867, 867 [1st Dept 2016].)

Here, plaintiffs allege that the HH Defendants failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession by failing to advise plaintiffs that rooms containing lot-line windows could not be utilized as bedrooms for residential occupancy. (NYSCEF 1, Complaint at ¶ 33[a]-[b].) Additionally, they allege that the HH Defendants failed to exercise ordinary reasonable skill and knowledge by failing to observe or report that the Managing Agent on behalf of the Apartment Corporation left blank the portion of the “Coop/Condo Review Sheet” that inquired “Is this a lot-line unit?” and “Which of the windows are affected.” (*Id.* at 33[d].) Plaintiffs also allege that these breaches proximately caused them to sustain actual and ascertainable damages in the amount of \$5,000,000. (*Id.* at ¶ 36.)

Although the HH Defendants submit a a diagram of the premises that plaintiffs received prior to signing the Contract of Sale, indicating the presence of lot-line windows, this submission does not utterly refute the legal malpractice claim. (NYSCEF 29, Heermance affirmation ¶ 7; NYSCEF 34, Diagram.) Here, “on a pre-answer motion to dismiss,” “the information contained in the [diagram] cannot, at this stage, be described as explicitly putting plaintiff on notice and not requiring counsel’s interpretation of the information.” (*Macquarie Capital [USA] Inc. v Morrison & Foerster LLP*, 157 AD3d 456, 457 [1st Dept 2018].) The HH Defendants “may not shift to the client the legal responsibility [they were] specifically hired to undertake.” (*Id.* [internal quotation marks and citation omitted].) Additionally, the HH Defendants’ submission of an email from Steven Halperin allegedly about the “Coop/Condo Review Sheet” also does not utterly refute the malpractice claim. (NYSCEF 38, 4/12/2019 email, 2.) To the contrary, Steven Halperin states, “If ... Marc confirms that he is comfortable with the answers in the questionnaire (I have read them and they seem fine to me), we should be clear to execute the agreement ...” (*Id.*) Accordingly, the HH Defendants’ motion to dismiss the second cause of action on these grounds is denied.

Lastly, the HH Defendants’ assertion that this claim should be dismissed because plaintiffs failed to join necessary parties is unpersuasive. The HH Defendants argue that the plaintiffs’ fathers and one of the father’s businesses are essential to this action because they were involved in all aspects of the transactions and occurrences from which this action arises. Allegedly, one of the fathers, Jack Halperin, is a contracts and securities attorney, and the other, Barrie Berman, is a general contractor and owner of the interior construction business SJB Interiors.

CPLR 1001 (a) states that “[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants.” These “[j]oiner rules serve an important policy interest in guaranteeing that absent parties at risk of prejudice will not be ‘embarrassed by judgments purporting to bind their rights or interests where they have had no opportunity to be heard.’” (*Matter of Red Hook/Gowanus Chamber of Commerce v New York City Bd. of Stds. & Appeals*, 5 NY3d 452, 458 [2005] [citation omitted].)

Here, the HH Defendants fail to assert or articulate why Jack Halperin, Barrie Berman and SJB Interiors ought to be parties if complete relief is to be accorded between the current plaintiffs and defendants or how these nonparties might be inequitably affected by a judgment. Accordingly, the HH Defendants’ motion to dismiss the second cause of action on these grounds is denied. Accordingly, it is,

ORDERED that the motion of defendants Stephan Van Dam and Gail Pellett to dismiss the complaint herein is granted, in part, in so far as the claim for fraudulent concealment is dismissed; and it is further

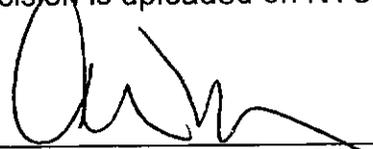
ORDERED that the motion of defendants Maggie Leigh Marshall and Douglas Elliman Realty, LLC to dismiss is granted, in part, in so far as the claims in the third cause of action (fraud, fraudulent concealment, false representation, gross negligence, malpractice and negligence, and breach of fiduciary duty) are dismissed; and it is further

ORDERED that the motion of Held & Hines LLP and Marc J. Held to dismiss the complaint is denied; and it is further

ORDERED that defendants are directed to serve a copy of this order with notice of entry on plaintiffs' counsel within 2 days after this decision is uploaded on NYSCEF.

Motion Seq. No. 001:

4/28/2020  
DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE

Motion Seq. No. 002:

4/28/2020  
DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE

Motion Seq. No. 003:

4/28/2020  
DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
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APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE