

269 W. 87th St. Apt. Corp. v QSB 267 Prop. Co, LLC
2026 NY Slip Op 50450(U)
April 1, 2026
Supreme Court, New York County
Robert R. Reed, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.



Digest-Index Classification: Condominiums and Cooperatives—Offering Plan—Action Alleging Misrepresentation of Annual Rent Increases--Dismissal Motion

269 West 87th Street Apartment Corp., Chamberlain Concerned Shareholders Association, 269 Winston, LLC, Robert D. Perlmutter Revocable Trust, Soozan Baxter, Akash Surendra Patel, Andrea Haley Patel, Sophia Srulowitz, Max Srulowitz, Laura Fino, Scott Sullivan, Chaitanya Joglekar, Nina Patel, Avi H LLC, Ryan Sanzari Revocable Trust, Bal Bay LLC, Ariella Huberfeld, Roger and Jennifer Park Revocable Trust, Ashleigh C. Verrier, Richard K. Lin, KCFiriakis Holdings LLC, Jonas Rudofsky, Helen Rudofsky, Tanisha Bellur, Ravi Bellur, Shalom Buyit, LLC, Larisa Pivnik, Karen I. Kennedy, Robert F. Kennedy, Faya Hoffman, Brad Hoffman, Robert Perlmutter, Ryan Sanzari, Roger Chul Park and Jennifer Kim Park, Plaintiff,

V

QSB 267 Property Co, LLC, QSB 267 Holdings, LLC, JSMB 267 LLC, Simon Baron Development LLC, West 87 LP, W 87th Lender LLC, Matthew M. Baron, Jonathan H. Simon, Andrew Till, Seth Schumer, Defendant.

Supreme Court, New York County

Decided on April 1, 2026

Index No. 655615/2024

[\[*1\]](#)

The following e-filed documents, listed by NYSCEF document number (Motion 001) 64, 65, 66, 67, 93, 96, 99, 117 were read on this motion for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 68, 69, 70, 71, 94, 97, 101, 102, 103, 118 were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 95, 98, 100, 119 were read on this motion to DISMISS.

In motion sequence no. 001, defendants JSMB 267 LLC, Simon Baron Development LLC, Matthew M. Baron, Jonathan H. Simon and Andrew Till move, pursuant to CPLR 3211 (a) (7), to dismiss the fourth, fifth, sixth, seventh, eighth and ninth causes of action. In motion sequence no. 002, defendants QSB 267 Property Co. LLC, QSB 267 Holdings, LLC and W 87th Lender LLC move, pursuant to CPLR 3211 (a) (1), (3) and (7), to dismiss the first, third, fourth, fifth, sixth, seventh, and ninth causes of action. In motion sequence no. 003, defendants West 87 LP and Seth Schumer move, pursuant to CPLR 3211 (a) (1) and (7), to dismiss the second, fourth, fifth, sixth, seventh and ninth causes of action. Plaintiffs submit a consolidated opposition [\[*2\]](#) to all motions. The pending motions are consolidated herein for disposition. Upon the foregoing documents and oral argument on February 5, 2026, defendants' motions are granted.

I. Background

The Parties

The Verified Complaint identifies the parties as follows. Plaintiffs consist of a cooperative housing corporation called 269 West 87th Street Apartment Corp. ("cooperative"), an unincorporated association of shareholders of the cooperative called Chamberlain Concerned Shareholders Association ("association"), 269 Winston LLC, the owner of shares in the cooperative, and certain individual who are owners of shares and leases in the cooperative, and members of the association (NY St Cts Elec Filing [NYSCEF] Doc No. 24, Verified Complaint ("Complaint") ¶¶ 13-31).

Defendant QSB 267 Property Co, LLC ("Sponsor") is Sponsor of the Offering Plan ("offering plan") for the cooperative (*id.* ¶ 32). Defendant QSB 267 Holdings, LLC ("Holdings") is the sole member of Sponsor (*id.* ¶ 33). Defendant JSMB 267 LLC ("JSMB") is a special purpose entity that was originally affiliated with defendant Simon Baron Development, LLC ("SBD"), and is directly or indirectly owned by defendants Matthew Baron ("Baron") and Jonathan Simon ("Simon"), and has a membership interest in Holdings (*id.* ¶ 34). SBD is an affiliate of JSMB (*id.* ¶ 35). Defendant West 87 LP ("West 87/Quadrup") is affiliated with Quadrup Global, a real estate investment firm, and owned a membership interest in Holdings (*id.* ¶ 36). Defendant W 87th Lender LLC ("Scale Lending") is alleged to have made a loan to Sponsor in the amount of \$37,856,551.32, collateralized by Sponsor's shares of unsold stock and leases in the building (*id.* ¶ 37). Baron is a principal of Sponsor and served as a member of the cooperative's board of directors and president during the initial period of Sponsor control (*id.* ¶ 38). Simon is principal of Sponsor and served as a member of the cooperative's board of directors and vice president during the

period of Sponsor control (*id.* ¶ 39). Defendant Andrew Till ("Till") served as a member of the cooperative's board of directors and secretary/treasurer (*id.* ¶ 40). Defendant Schumer previously served as the head of US investments for Quadrum Global and was originally a principal of Sponsor (*id.* ¶ 41).

The Facts

According to the verified complaint, Sponsor was the original ground lessee of the Ground Lease ("ground lease") dated February 27, 2015 (*id.* ¶ 43). The annual base rent was \$2,900,000 per annum, and the lease was set to expire on January 31, 2114 (*id.* ¶ 44). Pursuant to the offering plan and the contract of exchange dated October 30, 2018, Sponsor assigned and conveyed its title and interest in the ground lease to the cooperative, as the successor ground lessee, and the cooperative issued to Sponsor the shares of the cooperative allocated to respective apartments (*id.* ¶ 45). Plaintiffs allege that the ground lease contains an entirely different rent escalation formula than what Sponsor represented would be in the offering plan (*id.* ¶ 74). Plaintiffs allege that the offering plan issued by Sponsor, on which plaintiffs relied in purchasing their shares represented that the annual ground rent increase would be "based on CPI growth, with a 2% floor and a 5% cap on any annual rent increase" (*id.* ¶ 3). Plaintiffs allege that Sponsor again represented in the 15th amendment to the offering plan that the rent would increase based on the CPI, with a 2% cap and a 5% ceiling (*id.*). Plaintiffs allege that these representations were false, and the ground lease contained a flawed formula that improperly mixed two different methods for calculating annual rent increases by CPI growth (*id.* ¶ 4). Plaintiffs allege that the misrepresentation is financially devastating because Quadrum, Holdings, [*3]SBD and Sponsor, filed a legal malpractice action against Paul Hastings LLP, captioned *West 87 LP, et. al. v Paul Hastings LLP*, index no. 65126/2021 ("malpractice action"), for negotiating the ground lease's rent-escalation clause for Sponsor, which will force an overpayment of ground rent of approximately \$2.3 billion over the term of the 99-year ground lease (*id.* ¶ 5). Plaintiffs allege that the cooperative is the successor of the ground lease, and that, therefore, the cooperative and the other plaintiffs are now required to pay annually toward the \$2.3 billion additional rent (*id.* ¶). Plaintiffs further allege that Sponsor took out a loan for nearly \$38 million from Scale Lending, pledged all of the cooperative shares and proprietary leases appurtenant to the unsold apartments as security, and then contributed the majority of the loan proceeds, as well as its claim for legal malpractice against Paul Hastings, to Sponsor's joint venture partner and primary capital investor, Quadrum (*id.* ¶ 10).

The Documents

The special risk provision in the offering plan states,

"Pursuant to the [g]round [l]ease, the cooperative shall be required to pay rent to [g]round [l]essor in the scheduled amounts set forth in more detail in the [s]ection of the [p]lan entitled 'Summary of the Ground Lease' . . . At this time, it is anticipated that the [g]round [r]ent will escalate annually between 2% and 5%, based on CPI growth" (NYSCEF Doc No. 27 at 1, 1 [f]).

In relevant part, the summary of the ground lease states,

"For more details with respect to the terms summarized here or to review other terms of the [g]round [l]ease that are not included in the below summary, [p]urchasers should refer to the [g]round [l]ease

itself, which is available at the office of Selling Agent for inspection without charge and for copying at a reasonable fee" (NYSCEF Doc No. 27 at 126).

The Ground Rent provision states, "[t]he rent due under the [g]round [l]ease ("Ground Rent") consists of Initial Base Rent, Annual Base Rent, and Additional Rent" (*id.* at 128). The annual base rent for the first year of the term is \$2,900,000 per annum and thereafter is subject to escalation clauses with respect to years 2, 21, 41, 61 and 81 of the term (*id.* at 128-129).

The 15th amendment consolidated and expanded the annual base rent under "Ground Rent" in the offering plan entitled "Summary of Ground Lease" as follows: "The Annual Base Rent increases annually at the greater of 2% or CPI, capped at 5%, and resets in each of years 21, 41, 61 and 81 of the Term" (NYSCEF Doc No. 52 ¶ 7).

Relevant Pleadings

Plaintiffs commenced this action on October 23, 2024. In their Verified Complaint, filed on March 10, 2025, plaintiffs assert nine causes of action: (1) breach of contract against Sponsor; (2) unjust enrichment against Quadrum; (3) breach of implied duty of good faith and fair dealing against Sponsor; (4)–(7) fraud, fraudulent misrepresentation, fraudulent concealment, fraudulent inducement against Sponsor, Baron, Simon and Schumer; (8) breach of fiduciary duty against Baron, Simon and Till, and (9) voidable transactions pursuant to New York's Debtor and Creditor Law ("DCL") § 273 against Sponsor, Holdings, SBD, JSMB, Quadrum and Scale Lending.

II. The Parties' Contentions

As noted above, defendants have filed separate motions to dismiss. Because the same [*4]causes of action are alleged against multiple defendants, many of the arguments made by defendants are the same. The court will address the arguments made in motion sequence # 001 and will not address similar arguments made by the other defendants in this decision and order. In reaching its decision, the court has considered all affidavits, affirmations and legal memoranda submitted by the parties.

Motion Sequence 001

Defendants contend that the four causes of action sounding in fraud should be dismissed because the offering plan and the ground lease disclosed the 5% annual rent increase (NYSCEF Doc No. 67, Memorandum of Law in Support of Michael B. Smith, Esq. [memo], at 5). Specifically, they argue that the 15th amendment, on which plaintiffs allege they relied, provided a calculation of the ground lease payments showing that each year's rent would be 5% greater than the prior year's rent (*id.* at 6). Further, they argue that the offering plan referred plaintiffs to the ground lease, which disclosed the 5% annual increase **FN1** (*id.*). Defendants further rely on the holding in *Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269 [2011], that when "[t]he other party has the means available of him knowing by the exercise ordinary intelligence . . . he must make use of those means . . .," and assert that plaintiffs here had an affirmative duty to review the ground lease, which was identified in the offering plan (*id.* at 7). Defendants additionally argue that the constructive fraud claim should be dismissed because plaintiffs have not alleged facts suggesting that Baron and Simon exercised undue influence over plaintiffs, and Baron and Simon were principals of Sponsor and had no fiduciary or confidential relationship with the prospective purchasers (*id.* at 8-9). Defendants further contend that

the fraudulent concealment claim is preempted by the Martin Act (*id.* at 10). Moreover, defendants argue that the breach of fiduciary duty claim should be dismissed because it is duplicative as it alleges identical facts and damages to the fraudulent concealment claim, and that the claim based on the approval of the Scale Lending loan is time-barred as Sponsor borrowed the funds in October or November 2020, barring any claims by November 2023 (*id.* at 12-14). Finally, defendants argue that the claim pursuant to DCL § 273 is time barred as the assignment of their shares took place on October 19, 2020, and plaintiffs commenced the action on October 23, 2024 — four days too late (*id.* at 15).

Motion Sequence 002

Defendants first contend that plaintiffs' claim pursuant to DCL should be dismissed because plaintiffs lack creditor's standing against Lender and Holdings, and they failed to plead with particularity the voidable transactions, the nature of the fraud and their reliance on it (NYSCEF Doc No. 69, Memorandum of Law in Support of Lee Bergstein, Esq. [memo], at 3-7). Regarding the breach of contract claim, defendants contend plaintiffs' complaint is vague and they have failed to identify any specific, contractual term breached by Sponsor, and that the offering plan's summary of the ground rent is not an enforceable contractual obligation, but a "material term of all leases" pursuant to 13 NYCRR 21.3 (*id.* at 18). In the alternative, they argue that, even if the escalation language constitutes an obligation, Sponsor fully performed its contractual obligations according to the plain text of the offering plan, *i.e.*, the ground rent will [*5]escalate annually between 2% and 5%, based on CPI growth (*id.* at 19-20).

Finally, defendants argue that the breach of implied duty of good faith and fair dealing claim should be dismissed because the claims are duplicative of the breach of contract claim (NYSCEF Doc No. 117, tr at 8, 53).

Motion Sequence 003

Defendants contend that plaintiffs' reliance on "information and belief" allegations is reason enough to dismiss the DCL § 273 claim (NYSCEF Doc No. 73, Memorandum of Law in Support of Ronald C. Minkoff, Esq., [memo] at 9-10). They further state the pleadings are deficient as plaintiffs have failed to allege that they are creditors of West 87, but allege only that they are creditors of Sponsor (*id.* at 11). Defendants argue that the claim for unjust enrichment should be dismissed because plaintiffs failed to plead that they had a sufficiently close relationship with West 87 to maintain an unjust enrichment claim, and because documentary evidence, *i.e.*, the Bracco report, establishes that West 87 did not make any profit (*id.* at 14-15).

Plaintiffs' Consolidated Opposition

In their consolidated opposition, plaintiffs argue that the complaint sufficiently states a claim for breach of contract against Sponsor as the complaint identifies the contractual documents, specifies the obligations at issue, and includes copies of the offering plan and Sponsor's form of purchase agreement (NYSCEF Doc No. 96, Memorandum of Law in Opposition of Scott J. Pashman, Esq. [opp memo] at 6-7). They argue that the complaint specifically refers to the 15th amendment of the offering plan as having been breached (*id.* at 7). Secondly, plaintiffs argue that the complaint states an unjust enrichment claim that is demonstrated by documentary evidence: *i.e.*, Sponsor obtained a loan for \$37,856,551, secured it by the then-remaining unsold shares, and contributed \$24,923,523 of that money to Quadrum as a loan, but never to be paid back (*id.* at 8). They further contend that Quadrum has a sufficiently close

relationship with plaintiffs as it was the 99.77% interest holder of the membership interest in Holdings (*id.* at 9). Third, plaintiffs argue that the complaint states a cause of action for breach of implied duty of good faith and fair dealing against Sponsor, and that, contrary to Sponsor's arguments, the ground lease was assigned to the cooperative on March 27, 2019, which was the same date as the first closing, by which time Sponsor was in the course of performance pursuant to numerous purchase agreements, and there is evidence that Sponsor affirmatively misrepresented the ground rent escalation to the purchasers well after it knew and concealed the Scale Lending loan and other transactions with Quadrum in the 15th amendment to the Offering Plan (*id.* at 10-11). Fourth, relying on *Board of Managers of 570 Broome Condominium v Soho Broome Condos LLC*, [231 AD3d 424](#) [1st Dept 2024], plaintiffs argue that a sponsor and its individual principals may be held liable for fraud based on affirmative misrepresentations in the offering plan, and that such claims are not barred by the Martin Act, nor should such claims be counted as duplicative of the breach of contract claim (*id.* at 11-13). Fifth, relying on *Kaufman v Cohen*, 307 AD3d 113 [1st Dept 2003], plaintiffs contend their claim is equitable in nature and is governed by a six-year statute of limitations, and that the complaint sufficiently alleges a fiduciary duty breach claim against Baron, Simon and Till, who, while serving as sponsor-appointed directors, concealed their knowledge of the rapidly escalating ground rent from the other shareholders, and then authorized Sponsor to pledge all of its shares and proprietary leases in the unsold apartments as collateral for the loan (*id.* at 15). Lastly, plaintiffs argue that it has capacity as creditors of Sponsor to attempt to undo the entire Scale Lending/Quadrum transaction as a fraudulent transfer, and the voidable transaction claim is not time-barred as the [*6] assignment documents state that the assignment did not become effective until approved by Holdings on October 23, 2020 (*id.* at 16-17).

III. Legal Standard

While in the context of a pre-answer motion to dismiss the court must accept all of the allegations in the complaint as true, dismissal may be nonetheless be warranted where "[t]he documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*US Express Leading, Inc. v Elite Tech. (NY), Inc.*, [87 AD3d 494](#), 46 [1st Dept 2011]). A motion to dismiss a plaintiff's claim pursuant to CPLR 3211 (a) (1) "may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*McCully v Jersey Partners, Inc.*, [60 AD3d 562](#), 562 [1st Dept 2009]).

On a motion to dismiss a plaintiff's claim pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the court is not called upon to determine the truth of the allegations (*see Campaign for Fiscal Equity v State of New York*, 86 NY2d 307, 317 [1995]). Rather, the court is required to afford the pleading a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference (*see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]).

In assessing the sufficiency of the complaint, this court must also consider the allegations made in both the complaint and the accompanying affidavit, "submitted in opposition to the motion, as true and resolve all inferences which reasonably flow therefrom in favor of the [plaintiffs]" (*Joel v Weber*, 166 AD2d 130, 135-136 [1st Dept 1991] [internal quotation marks and citations omitted]). However, vague, and conclusory allegations cannot survive a motion to dismiss (*see Kaplan v Conway & Conway*, [173 AD3d 452](#), 452-453 [1st Dept 2019] [internal quotation marks and citations omitted]). "Whether a

plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*Cortland St. Recovery Corp. v Bonderman*, [31 NY3d 30](#), 38 [2018] [citation omitted]). "[U]nlike on a motion for summary judgment where the court searches the record and assesses the sufficiency of the parties' evidence, on a motion to dismiss the court merely examines the adequacy of the pleadings" (*id.*). "[W]hether the pleading will later survive a motion for summary judgment, or whether the party will ultimately prevail on the claims, is not relevant on a pre-discovery motion to dismiss" (*Oluwo v Sutton*, [206 AD3d 750](#), 752 [2d Dept 2022] [internal quotation marks and citations omitted]).

First Cause of Action for Breach of Contract Against Sponsor

In the first cause of action, for breach of contract against Sponsor, plaintiffs allege that the offering plan is a contract between Sponsor and plaintiffs, in which the special risks section states the ground rent will escalate annually between 2% and 5% based on CPI growth, that the 15th amendment of the offering plan states the increase will be at the greater of 2% or CPI, capped at 5%, and that plaintiffs purchased their shares pursuant to the terms of the offering plan (Complaint ¶¶ 165-168). Plaintiffs further allege that Sponsor misrepresented the ground rent in the offering plan, as the ground lease states the rent compounds at an annual rate of 5%, regardless of the CPI, and that, as a consequence of that misrepresentation, the tenant shareholder plaintiffs — through maintenance — will be forced to overpay the ground lessor approximately \$2.3 billion over the 99-year ground lease term (*see* Complaint ¶¶ 170-171).

"Generally, a party's breach of contract allegations must demonstrate the essential terms of the parties' purported contract, including the specific provisions of the contract upon which [*7]liability is predicated" (*Hempel v Wise*, [224 AD3d 574](#), 575 [1st Dept 2024] [internal quotations marks and citations omitted]). "[T]he burden of proving the existence, terms and validity of a contract rests on the party seeking to enforce it" (*Paz v Singer Co.*, 151 AD2d 234, 235 [1st Dept 1989]). Boilerplate allegations of damages are insufficient to state a complaint for breach of contract (*see Gordon v Dino De Laurentiis Corp.*, 141 AD2d 435, 436 [1st Dept 1988]).

It must be noted that this is not a contract involving "[o]nerous contractual terms which one party is able to impose upon the other because of a significant disparity in bargaining power" (*159 MP Corp. v Redbridge Bedford, LLC*, [33 NY3d 353](#), 360 [2019]). It was entered into by "sophisticated parties negotiating at arm's length" (*id.* at 363). Courts have held that "[f]reedom of contract prevails in an arm's length transaction between sophisticated parties . . . and in the absence of countervailing public policy concerns there is no reason to relieve them of the consequences of their bargain" (*Oppenheimer & Co. v Oppenheim, Appel, Dixon & Co.*, 86 NY2d 685, 695 [1995]).

The crux of defendants' argument is that plaintiffs fail to plead a contractual obligation that was breached, and that the operative language involved is the summary of the ground lease in the offering plan, which explicitly refers the purchasers to the ground lease throughout the course of the offering plan (*see* NYSCEF Doc No. 117, tr at 4). "In order to state a cause of action to recover damages for a breach of contract, the plaintiff's allegations must identify the provisions of the contract that were breached" (*Barker v Time Warner Cable, Inc.*, [83 AD3d 750](#), 751 [2011] [citations omitted]). In reviewing the complaint and giving the plaintiffs' benefit of every possible inference, this court finds that plaintiffs fail to identify any provision of the offering plan that was breached.

Plaintiffs vaguely state that the complaint identifies Sponsor's duty to comply with the offering plan (NYSCEF Doc No. 97 at 7). The Court of Appeals has long made plain that, "[i]f both the recitals and the operative part are clear, but they are inconsistent with each other, the operative part is to be preferred" (*Williams v Barkley*, 165 NY 48, 57 [1900]). Here, the offering plan document speaks for itself. The special risks provision in the offering plan clearly states the rent is set forth in more detail in the summary of the ground lease, and the summary specifically directs the purchasers to refer to the ground lease, which was publicly available for viewing (NYSCEF Doc No. 27 at 1, 126). Neither in their opposition papers nor in oral argument have plaintiffs denied their failure to conduct basic due diligence with respect to the issue of the escalation of annual rent due under the ground lease. The court is not persuaded that discovery on the issue of due diligence is warranted, as this was a transaction with sophisticated parties represented by counsel, and the document sufficiently directs the purchasers to review the ground lease.

Furthermore, plaintiffs' argument that the language in the 15th amendment replaces all prior Sponsor disclosure is meritless (NYSCEF Doc No. 97 at 8). The 15th amendment states its purpose is to consolidate and expand the annual base rent under the ground rent section of the plan under summary of ground lease; it lacks any language that the prior provisions were replaced (NYSCEF Doc No. 52 ¶ 7). "A written agreement that is clear, complete and subject to only one reasonable interpretation must be enforced according to the plain meaning of the language chosen by the contracting parties" (*Brad H. v City of New York*, [17 NY3d 180](#), 185 [2011] [citations omitted]). Plaintiffs' further reliance on the 15th amendment for the breach of contract claim also fails as the amendment is dated November 18, 2020, and some of the tenant shareholder plaintiffs purchased their respective units prior to the amendment (see [NYSCEF \[*8\]](#) Docs No. 76-82). Here, the documentary evidence utterly refutes plaintiffs' factual allegations, conclusively establishing a defense as a matter of law (see *Goshen*, 98 NY2d at 326). Based on the foregoing, the breach of contract cause of action is dismissed.

Second Cause of Action for Unjust Enrichment Against Quadrum

In the second cause of action, for unjust enrichment against Quadrum, plaintiffs allege that Sponsor obtained the Scale Lending loan in the amount of \$37,856,551, secured by the unsold apartments in the cooperative, that the proceeds were transferred to Quadrum, and that Quadrum provided no additional value consideration to the cooperative or the shareholders (Complaint ¶¶ 175-178).

"Although privity is not required for an unjust enrichment claim, a claim will not be supported if the connection between the parties is too attenuated" (*Mandarin Trading Ltd. v Wildenstein*, [16 NY3d 173](#), 182 [2011] [citations omitted]). In the complaint, plaintiffs fail to indicate a relationship between them and West 87/Quadrum. Plaintiffs merely allege in their opposition that West 87/Quadrum is a 99.77% interest holder of the membership interest in Holdings (NYSCEF Doc No. 96. at 9). The pleadings fail to indicate a relationship between the parties that could have caused reliance or inducement (*Mandarin Trading Ltd.*, 16 NY3d at 182). Even if the complaint had sufficiently alleged a relationship, the court notes the record is devoid of any benefit that plaintiffs have conferred on West 87/Quadrum (*id.*). The documentary evidence here, *i.e.*, the Brocco Report, clearly indicates that West 87 did not obtain any benefit, and, on the contrary, the amount due to it under the earnouts was at most an offset (NYSCEF Doc No. 1 Ex 25 ¶ 51). As such, dismissal is warranted (see *Mandarin Trading Ltd.*,

16NY3d at 183 ["Without sufficient facts, conclusory allegations that fail to establish that a defendant was unjustly enriched at the expense of a plaintiff warrant dismissal"] [citations omitted]).

Third Cause of Action for Breach of Implied Duty of Good Faith and Fair Dealing Against Sponsor

In the third cause of action, for breach of implied duty of good faith and fair dealing against Sponsor, plaintiffs allege that Sponsor breached its duty by entering into the ground lease, signing both sides of agreements by which all of the unsold shares of the cooperative were assigned to Sponsor in consideration for the assignment of the ground lease, and by which the cooperative consented to allow Sponsor to pledge all of the shares and proprietary leases to the unsold apartments as security for the Scale Lending loan, all of which resulted in damages to plaintiffs in excess of \$100,000,000.00 (Complaint ¶¶ 183-186).

A cause of action for breach of the implied covenant of good faith and fair dealing duplicates a breach-of-contract claim when both claims arise from the same facts and seek the identical damages from each alleged breach (*see Berkely Research Group, LLC v FTI Consulting Inc.* [157 AD3d 486](#), 489 [1st Dept 2018]; *see also Art Capital Group, LLC v Carlyle Inv. Mgt. LLC*, [151 AD3d 604](#), 605 [1st Dept 2017]). Plaintiffs allege the same facts and seek the same damages in the breach of contract claim against sponsor as in their claim for breach of the implied duty of good faith and fair dealing. As such, the third cause of action duplicates the breach of contract claim, and therefore, is dismissed.

Fourth through Seventh Causes of Action for Fraud Against Sponsor, Baron, Simon and Schumer

In the fourth cause of action, for fraud against Sponsor, Baron, Simon and Schumer, plaintiff alleges that Sponsor and its principals discovered that the rent escalation clause of the ground lease does not provide for annual rent escalation between 2% and 5%, based on CPI [*9]growth, but rather compounds at a rate of 5% annually starting in the fifth year, yet falsely represented in the offering plan, as amended by the 15th amendment, that the annual base rent increases annually at the greater 2% or CPI, capped at 5%, and resets in each of years 21, 41, 61 and 81 of the term (Complaint ¶¶ 191-192).

In the fifth, sixth, and seventh causes of action, for fraudulent misrepresentation, fraudulent concealment, and fraudulent inducement against Sponsor, Baron, Simon and Schumer, plaintiffs allege that they falsely represented material facts to plaintiffs in the offering plan, as amended, regarding the rate of escalation of the cooperative's ground rent and the financial consequences thereof (*id.* ¶¶ 199, 206, 216).

"The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages" (*Eurycleia Partners, LP v Seward & Kissel, LLP*, [12 NY3d 553](#), 559 [2009] [citations omitted]). "[T]he circumstances constituting the wrong shall be stated in detail" (*Pludeman v Northern Leasing Sys. Inc.*, [10 NY3d 486](#), 491 [2008] [citations omitted]).

Here, the complaint does not contain sufficiently detailed allegations of the allegedly fraudulent misrepresentations made by Baron, Simon, Schumer and/or Sponsor in the offering plan that were allegedly known to be false when made, made with the intention of inducing plaintiffs to purchase shares of the cooperative, and which plaintiffs allegedly justifiably relied upon, causing them to be injured. Paragraphs 190-211 of the complaint, which purport to set forth the defendants' alleged fraudulent conduct, contain general statements that defendants "knowingly" "made false representations to deceive" and "concealed" "with the intent to defraud" plaintiffs — without any details or specifics of the misrepresentations, the dates on which they were made, to whom they were made — as required by CPLR 3016 (b) (*see Eurycleia Partners*, 12 NY3d at 559-60). Furthermore, plaintiffs had, in the offering plan, the means for discovering the requirements under the ground lease — as the offering plan specifically instructs purchasers to review the ground lease (NYSCEF Doc No. 27 at 126). This was an arms-length transaction by sophisticated parties who, with the exercise of ordinary intelligence and due diligence, could make no plausible claim of justifiable reliance on any representation by the other (*see Rapaport v Strategic Fin. Solutions, LLC*, [190 AD3d 657](#), 657-58 [1st Dept 2021]). It is undisputed from the documentary evidence that plaintiffs, as sophisticated parties represented by counsel, would have discovered the nature of the transaction, precluding an assertion of justifiable reliance (*see Centro Empresarial Cempresa S.A.*, 17 NY3d at 278-79).

Eighth Cause of Action for Breach of Fiduciary Duty Against Baron, Simon and Till

In the eighth cause of action, for breach of fiduciary duty against Baron, Simon and Till, plaintiffs allege that, as the initial members of the board, these individually named defendants had a fiduciary obligation to act in the best interests of the cooperative and its shareholders, and that they failed to take diligent action when confronted with the knowledge that the ground rent escalation under the ground lease was rising far more steeply than originally intended, with consequences for the financial viability of the cooperative, and that, due to such breach of duty, plaintiffs are entitled to monetary judgment against them (Complaint ¶ 222-228).

To the extent the movants assert that the claims of breach of fiduciary duty are barred by the statute of limitations, the statute of limitations for a breach of fiduciary duty cause of action depends on the substantive remedy sought by the plaintiffs. Where the relief sought is monetary in nature, the statute of limitations is three years. However, where an allegation of fraud is essential to a breach of fiduciary duty claim, courts will apply the six-year statute of limitations [\[*10\]](#)applicable to fraud under CPLR 213 (8) (*see IDT Corp. v Morgan Stanley Dean Witter & Co.*, [12 NY3d 132](#), 139 [2009]; *see also Kaufman v Cohen*, 307 AD2d 113, 119 [1st Dept 2003]). A claim for breach of fiduciary duty accrues, and the statute of limitation begins to run, upon the date of the alleged breach. In this instance, plaintiffs seek monetary damages (NYSCEF Doc No. ¶¶ 228-229). The claim is based on the affirmative acts taken by Baron, Simon and Till, as members of the cooperative board, authorizing Sponsor to pledge the shares and proprietary leases as collateral for the Scale Lending loan, which occurred in October or November 2020. Consequently, any such claims would have been time-barred by November 2023.

Additionally, a fiduciary relationship may exist where one party reposes confidence in another and reasonably relies on the other's superior expertise or knowledge (*see Roni LLC v Arfa*, [18 NY3d 846](#), 848 [2011]). As previously stated, all the parties involved in this transaction were sophisticated and

represented by counsel; it cannot be said that any one party relied upon the superior expertise of the other or that any fiduciary relationship was created by the arm's length transaction. Therefore, the eighth cause of action, for breach of fiduciary duty against Baron, Simon, and Till, is dismissed.

Ninth Cause of Action for Voidable Transactions Against Sponsor, Holdings, SBD, JSMB, Quadrum and Scale Lending

Finally, dismissal of the ninth cause of action is also warranted. In the ninth cause of action, for voidable transactions pursuant to DCL § 273, plaintiffs allege that they were creditors of Sponsor, and that Sponsor obtained the Scale Lending loan in the amount of \$37,856,551 in exchange for pledging all of the Cooperative shares and propriety leases for the unsold apartments, and that \$24,923,523 of the loan proceeds were transferred to Quadrum as a purported non-recourse loan secured by Quadrum's converted preferred equity interest in Holdings (Complaint ¶¶ 232-234). Plaintiffs allege that Sponsor, Holdings, SBD and JSMB transferred their valuable legal malpractice claims against Paul Hastings LLP to Quadrum (*id.* ¶ 235). Plaintiffs further allege that, upon information and belief, the transfers were made with actual intent to hinder, delay or defraud plaintiffs, were made without the Sponsor receiving a reasonably equivalent value in exchange for said transfers, and were made at a time when Sponsor's assets were unreasonably small in relation to the transfers (*id.* ¶¶ 236-235).

First, turning to the question of timeliness, a four-year limitations period applies to claims brought pursuant to DCL § 273, and that period runs from the date the transfer was made, or the date the obligation was incurred (*see* DCL § 278). Here, the assignment in question became effective as of October 19, 2020, barring any claims pursuant to DCL § 273 by October 19, 2024, and rendering plaintiffs' claim as untimely (*see* NYSCEF Doc No. 48 at 7).

Even if considered timely, however, the fraudulent conveyance claim fails as a matter of law. Only a creditor of the transferor of the alleged fraudulent conveyance has standing to bring a claim under DCL (*see* DCL §§ 270, 273; *see also Drenis v Haligiannis*, 452 F Supp 2d 418, 428 [SD NY 2006]). On a motion to dismiss pursuant to CPLR 3211 (a) (3), the moving party has the burden to establish a prima facie case that the plaintiff lacks standing (*see Brunner v Estate of Lax*, [137 AD3d 553](#), 553 [1st Dept 2016]). The DCL only confers standing on plaintiffs if they were creditors at the time of the alleged fraudulent conveyances or are defendant's present or future creditors (*see* DCL § 273). As movants well establish, plaintiffs only conclusorily allege that they are creditors of Sponsor: they provide no specificity as to their allegations that they are creditors of Lender or Holdings, and did not address these deficiencies in their opposition to the instant motions.

In addition, plaintiffs base several of the fraudulent conveyance allegations on "information and belief." Such conclusory allegations regarding fraudulent intent and those made on information and belief fail to meet the heightened particularity requirement of CPLR 3016 (b) (*see SSC NY Corp. v Computershare Inc.*, [224 AD3d 620](#), 622 [1st Dept 2024]). The constructive fraudulent conveyance claims pursuant to DCL § 273 likewise should be dismissed because the relevant allegations are all made "[u]pon information and belief" (*Carlyle LLC v Quik Park 1633 Garage LLC*, [160 AD3d 476](#), 477 [1st Dept 2018]).

Accordingly, it is hereby

ORDERED that defendants JSMB 267 LLC, Simon Baron Development LLC, Matthew M. Baron, Jonathan H. Simon and Andrew Till's motion pursuant to CPLR 3211 (a) (7), to dismiss the fourth, fifth, sixth, seventh, eighth and ninth causes of action (motion seq. no. 001), is granted and the complaint is dismissed as against them; and it is further

ORDERED that defendants QSB 267 Property Co. LLC, QSB 267 Holdings, LLC and W 87th Lender LLC's motion pursuant to CPLR 3211 (a) (1), (3) and (7), to dismiss the first, third, fourth, fifth, sixth, seventh, and ninth causes of action (motion seq. no. 002), is granted, and the complaint is dismissed against them; and it is further

ORDERED that defendants West 87 LP and Seth Schumer, motion pursuant to CPLR 3211 (a) (1) and (7), to dismiss the second, fourth, fifth, sixth, seventh and ninth causes of action (motion seq. no. 003), is granted, and the complaint is dismissed as against them, and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon plaintiffs' counsel, and the Clerk of the Court and the Clerk of the General Clerk's Office, and that such service shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

DATE April 1, 2026

ROBERT R. REED, J.S.C.

FOOTNOTES

1. [Footnote 1](#): The offering plan specifically states that "[p]urchasers should refer to the Ground Lease itself, which is available at the office of the Selling Agent for inspection without charge and for copying at a reasonable fee."

Links to or from other sites do not signify endorsement or relationship with them.
