

ERI/SNL 2015 Holdings LLC v SNL Dev. Group LLC
2026 NY Slip Op 30083(U)
January 7, 2026
Supreme Court, New York County
Docket Number: Index No. 653695/2023
Judge: Andrea Masley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

ERI/SNL 2015 HOLDINGS LLC, ERI/SNL 2017
HOLDINGS LLC, ERI/SNL 2018 HOLDINGS LLC, F2017
EMPLOYEE PARTICIPATION FUND LLC, and F2018
EMPLOYEE PARTICIPATION FUND LLC

Plaintiffs,

- v -

SNL DEVELOPMENT GROUP LLC, SNL CAPITAL
PARTNERS, LLC, SNL CONSTRUCTION, LLC, SNL
FUND LLC, and MARC SHARINN,

Defendants.

-----X

INDEX NO. 653695/2023

MOTION DATE --

MOTION SEQ. NO. 014

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 168, 169, 170, 171,
172, 173, 174, 175, 176, 177, 181, 182, 183, 184, 185, 186, 187, 188, 194, 199

were read on this motion to/for LEAVE TO FILE.

This action arises from dispute between the investors and developers of 22 self-storage facilities built in New York.

In motion sequence 014, plaintiffs ERI/SNL 2015 Holdings LLC, ERI/SNL 2017 Holdings LLC, ERI/SNL 2018 Holdings LLC, F2017 Employee Participation Fund LLC, and F2018 Employee Participation Fund LLC move pursuant to CPLR 3025(b) to amend the complaint to add new parties and new claims. (NYSCEF Doc. No. [NYSCEF] 175, Order to Show Cause [OSC].)

Background

The following facts are taken from the proposed fourth amended complaint. (NYSCEF 172, Proposed Fourth Amended Complaint [PFAC].)

In 2013, Safe N Lock Self Storage, LLC (SNL) and Equity Resource Investments, LLC (ERI)¹ entered into a business relationship to develop self-storage facilities in New York. (*Id.* ¶ 21.)

Plaintiffs Equity Resource Fund 2015 Holdings LLC² (2015 Fund); Equity Resource Fund 2017 Holdings LLC³ (2017 Fund); and Equity Resource Fund 2018 LLC⁴ (2018 Fund, and collectively, ERI Funds) formed ERI/SNL 2015 Holdings LLC (2015 ERI Member); ERI/SNL 2017 Holdings LLC (2017 ERI Member); ERI/SNL 2018 Holdings LLC (2018 ERI Member); and ERI/SNL 2019 Holding LLC⁵ (2019 ERI Member, and collectively, the ERI Members) to serve as the ERI members. (*Id.* ¶¶ 2-4, 29.) Defendant SNL formed SNL Development Group⁶ and SNL Capital Partners⁷ (collectively the SNL Members) to serve as the SNL members. (*Id.* ¶¶ 9-10, 26.) The ERI Members and SNL Members formed SNL/ERI Holding, LLC (2015 Platform); SNL/ERI 2017 Platform Holdings LLC (2017 Platform)⁸; SNL/ERI 2018 Platform

¹ ERI is a “registered investment advisor” that “solicits capital commitments from third-party investors and deploys such capital into real estate investment opportunities. ERI then acts as an investment manager pursuant to a management agreement with each fund sponsored by it.” (NYSCEF 172, PFAC ¶ 24.)

² 2015 Fund formed 2015 ERI Member. (*Id.* ¶ 2.)

³ 2017 Fund formed 2017 ERI Member. (*Id.* ¶ 3.)

⁴ 2018 Fund formed 2018 ERI Member. (*Id.* ¶ 4.)

⁵ 2018 Fund through 2018 Platform, F2018 Fund, and SNL Capital Partners formed 2019 Platform (*Id.* ¶ 29.)

⁶ SNL Development Group is the SNL member in the 2015 Platform, 2017 Platform, and 2018 Platform. (*Id.* ¶ 9.)

⁷ SNL Capital Partners is the SNL member in the 2019 Platform. (*Id.* ¶ 10.)

⁸ “The 2017 Platform is an investor together with the 2015 Platform in each of the 2015 Platform’s assets and holds no assets other than investments in 2015 Platform Projects.” (*Id.* ¶ 27.)

Holdings LLC⁹ (2018 Platform); and SNL/ERI 2019 HOLDINGS LLC¹⁰ (2019 Platform, the Platforms). (*Id.* ¶¶ 26-29.) Under the Platforms, ERI caused ERI Funds through ERI Platform Members, F2018 ERI Member, and F2017 ERI Member to provide capital investments and backstop guaranty commitments in exchange for the SNL Members providing the construction and development of the self-storage facilities. (*See id.* ¶ 24.)

Operating Agreements

On July 15, 2015, 2015 ERI Platform and SNL Development Group entered into the 2015 operating agreement to acquire and develop self-storage facilities. (*Id.* ¶ 26.)

On August 15, 2017, 2017 ERI Platform and SNL Development Group entered into the 2017 operating agreement to acquire and develop additional self-storage facilities. (*Id.* ¶ 27.)

On June 15, 2018, SNL Development Group, the 2015 ERI platform, the 2017 ERI Platform, and F2017 Fund entered into the 2018 operating Agreement to acquire and develop additional self-storage facilities. (*Id.* ¶ 28)

On February 26, 2019, 2018 Platform and F2018 Fund, in conjunction with SNL Capital Partners entered into the 2019 operating Agreement to acquire and develop additional self-storage facilities. (*Id.* ¶ 29.)

Pursuant to the operating agreements, SNL Development Group and SNL Capital Partners were to “operate, improve, lease, manage, finance, refinance, sell and/or otherwise dispose of, and/or otherwise deal with the Properties.” (NYSCEF 3,

⁹ Specifically, the 2018 Platform is formed by SNL Development Group, 2015 Platform, 2017 ERI Member, and F2017 Employee Participation Fund LLC (F2017 ERI Member). (*Id.* ¶ 28.)

¹⁰ Specifically, the 2019 Platform is formed by 2018 ERI Member, F2018 Employee Participation Fund LLC (F2018 ERI Member), and SNL Capital Partners. (*Id.* ¶ 29.)

2015 Operating Agreement § 2.2 [b]; NYSCEF 4, 2017 Operating Agreement § 2.2 [b]; NYSCEF 5, 2018 Operating Agreement § 2.2 [b]; NYSCEF 6, 2019 Operating Agreement § 2.2 [b].)

Under § 4.2 of each of the operating agreements, SNL Development Group and SNL Capital Partners were prohibited from making certain major decision without the prior written approval of all agreement members. The major decisions include: (1) “tak[ing] any action that is not in furtherance of the stated purposes or intended business of the Company” (NYSCEF 3, 2015 Operating Agreement § 4.2 [g]; NYSCEF 4, 2017 Operating Agreement § 4.2 [g]; NYSCEF 5, 2018 Operating Agreement § 4.2 [g]; NYSCEF 6, 2019 Operating Agreement § 4.2 [g]); (2) “approv[ing], execut[ing], or undertak[ing] any financing obligation or borrowing binding upon the [Designated LLC] that results in a lien on assets” (*id.* § 4.2 [r][I]); (3) “expend[ing], or permit[ing] the expenditure, of any funds in excess of the amounts set forth in the Company Budget, the Property Budget, the Construction Company Budget, or the annual Pursuit Cost Budget” (*id.* § 4.2 [x]); and (4) “commingl[ing] the funds of [the Designated LLC] with those of any other Person with the intention to so commingle” (*id.* § 4.2 [z]).

Plaintiffs allege that SNL Development Group and SNL Capital Partners made major decisions without seeking or obtaining the required approval. (NYSCEF 172, PFAC ¶ 39.) Specifically, SNL Development Group, SNL Capital Partners, and Sharinn made misrepresentations, orally and in writing, to ERI, the Funds, and the Platforms, “informing them that the Projects were on budget and not experiencing cash shortfalls.” (*id.* ¶ 41.) ERI Platform and ERI learned about cash shortfalls in 2022 when money that was scheduled to be passed to the Platforms for distribution to their members in

December of 2022 did not pass. (*Id.* ¶ 43.) In 2023, SNL’s proposed annual budget for the Platforms included cash that SNL had not distributed to the platforms. (*Id.* ¶ 44.) Moreover, plaintiffs allege that Sharinn directed SNL Capital Partners to divert and misappropriate a recourse fee belonging to the 2019 Platform in violation of § 4.2(x), which required approval from ERI Platform. (*Id.* ¶¶ 45-46.) Further, on an emergency capital call held on February 14, 2023, “SNL represented that ‘[a]ll Capital Contributions previously made to the Company have been expended for the purposes for which they were requisitioned’ and further represented that ‘[n]o removal event has occurred or is continuing’.” (*Id.* ¶ 48.)

On April 27, 2023, Grady Humphrey¹¹ and Ari Goldman¹² admitted to ERI that: (1) SNL failed to disclose that it needed additional funding because of cost overruns; (2) there were two sets of books at SNL, ones with true project costs and ones provided to lenders and equity partners; (3) money was comingled across projects; (4) \$5.7 million were used to cover cost overruns instead of construction fees, which is what they were for; and (5) “the mechanical rebates paid to date were diverted from the projects and platform to a non-project and non-platform account.” (*Id.* ¶ 51.) After performing audit work, ERI discovered that SNL and Sharinn used SNL Construction’s accounts as a “slush fund” to help move funds from one project to another in violation of the operating agreements. (*Id.* ¶ 57.)

On July 27, 2023, ERI, 2015 ERI Platform, 2017 ERI Platform, F2017 Fund, 2018 Platform, and F2018 Fund issued notices of removal seeking to remove SNL

¹¹ Grady Humphrey is SNL’s Vice President of Construction and Development. (NYSCEF 172, PFAC ¶ 51.)

¹² Ari Goldman is SNL’s Vice President of Real Estate & Development. (*Id.*)

Development LLC and SNL Capital Partners as Managing Member. However, SNL Development LLC and SNL Capital Partners contested the removal and continued to take actions without consent in violation of § 4.3¹³ of the operating agreements. (*Id.* ¶ 80.) On September 21, 2023, SNL Development LLC and SNL Capital Partners withdrew their opposition and stepped down as Managing Member of each of the Platforms. (*Id.* ¶ 81.)

Fraudulent Statements and Omissions of Material Facts

Plaintiffs allege that at Sharinn's direction, SNL Construction received PPP loans in the amount of almost \$1.7 million to cover expenses but failed to disclose the existence of such loans to ERI, choosing instead "to double-dip by taking reimbursement for the salaries and at least a portion of those expenses from the Platforms." (*Id.* ¶ 56.)

Plaintiffs also allege that SNL, through SNL Construction at the direction of Sharinn, provided ERI with false construction development reports to induce the ERI Funds to fund 2015 ERI Platform Projects and enter into the 2017 Operating Agreement, 2018 Operating Agreement, and 2019 Operating Agreement. (*Id.* ¶ 59.) Specifically, on February 15, 2019, SNL, through SNL Construction and at Sharinn's

¹³ Section 4.3 of the 2015 operating agreement provides that "upon the delivery of a Notice pursuant to this Section 4.3 from ERI to the Managing Member alleging a Removal Event relating to clauses (i), (ii), (iii), (iv) or (vi) thereof, and without regard to any applicable cure period, all actions by the Managing Member hereunder shall require the prior written consent of ERI for so long as the Notice of the alleged breach is not resolved and/or cured, except that (1) the Managing Member may make distributions to the Members necessary to cover tax distributions under Section 5.5 of this Agreement; and (2) ERI shall remain obligated to fund Properties pursuant to previously agreed upon Property Budgets or the ERI Backstop Commitment for approved Properties acquired hereunder, in each case pursuant to the terms hereof." (NYSCEF 3, 2015 Operating Agreement § 4.3.)

direction, submitted its final Construction Development Report falsely stating that the self-storage facility at 4139 Boston Road, Bronx (Boston Road project) had a positive contingency balance. (*Id.* ¶ 61.) Yet on April 27, 2023, and June 2, 2023, SNL acknowledged in documents provided to ERI that the Boston Road project had sustained losses of \$320,384.61. (*Id.* ¶ 62.) As a result, the Platforms allege that they suffered “more than \$4.1 million in recourse fees, \$2.7 million in mechanical rebates, construction management fees, and distributions – the precise amount of which is not yet known – due but never paid to any ERI entity, and almost \$1.7 million in PPP Double Dipping.” (*Id.* ¶ 84.)

Discussion

“[L]eave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit ... and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court.” (*Davis v S. Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] [internal quotation marks and citations omitted]; see also CPLR 3025 [b].) “[L]eave to amend a complaint should be denied if the proposed complaint could not survive a motion to dismiss. A proposed amended complaint that would be subject to dismissal *as a matter of law* is, by definition, ‘palpably insufficient or clearly devoid of merit’ and thus should not be permitted under CPLR 3025.” (*Olam Corp. v Thayer*, 2021 NY Slip Op 30345[U], *3-4 [Sup Ct, NY County 2021].) The party opposing a motion to amend a pleading must show how it would be significantly prejudiced or unfairly surprised in the “preparation of its case or prevented from taking some measure

to support its position.” (*Spitzer v Schussel*, 48 AD3d 233, 233 [1st Dept 2008], citing *Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23 [1981].)

1. Addition of New Parties

Plaintiffs seek to amend the complaint to add (1) the ERI Funds; (2) the Platforms; and (3) ERI, as plaintiffs; and (4) SNL as a defendant. (NYSCEF 172, PFAC ¶¶ 1-4, 8.) CPLR 1001(a) provides 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. When a person who should join as a plaintiff refuses to do so he may be made a defendant.” (CPLR 1001 [a].) The court has discretion to add or not to add a party. (See *Oleh v Anlovi Corp.*, 106 AD3d 445, 445 [1st Dept 2013].)

Plaintiffs seek to amend the complaint to add the ERI Funds as plaintiffs. Defendants argue that the Funds should not be added because there are no allegations that they were parties to a contract or transaction with defendant. However, this argument is misplaced because plaintiffs are alleging that the 2015, 2017, and 2018 ERI Funds were defrauded, which is a claim that does not require the existence of a contract or privity between the parties. (*Buff v Nemeth*, 2021 NY Slip Op 32532[U], *5 [Sup Ct, NY County 2021] [“[a] specific relationship or privity between a plaintiff and defendant is not an element to fraud and the alleged misrepresentation does not need to have been made directly to the plaintiff”] [internal citation omitted].) However, because the court finds, as detailed below, that all the tort claims brought by the ERI Funds fail, plaintiffs’ motion to amend the complaint to add the 2015, 2017, and 2018 ERI Funds as plaintiffs is also denied.

Plaintiffs further seek to amend the complaint to add the Platforms as plaintiffs. Defendants do not oppose. While plaintiffs do not plead that the Platforms are parties and why jurisdiction and venue over them is proper, plaintiffs plead that “the Operating Agreements expressly include the ERI Platform Members and the SNL Platform Members, and by operation of law include the Platforms.” (NYSCEF 172, PFAC ¶ 20.) The Platforms are necessary parties because the breach of the operating agreements at issue here are the Platforms’ operating agreements. (See NYSCEF 3, 2015 Operating Agreement; NYSCEF 4, 2017 Operating Agreement; NYSCEF 5, 2018 Operating Agreement; NYSCEF 6, 2019 Operating Agreement.) Accordingly, plaintiffs’ motion to amend the complaint to add the Platforms as plaintiffs is granted.

Plaintiffs further seek to amend the complaint to add ERI as a plaintiff. Defendants argues that ERI is an unnecessary party but fail to explain why. Plaintiffs allege that “ERI is an investor in each of the ERI Funds and [F2017 Fund]” (NYSCEF 172, PFAC ¶ 7), which makes ERI an injured party of defendants alleged wrongdoing to the ERI Funds and F2017 Fund. “Under New York law, a shareholder lacks standing to pursue a direct cause of action to redress wrongs suffered by the corporation. Rather, such claims must be asserted as derivative claims, for the benefit of the corporation.” (*Sajust, LLC v Mendelow*, 198 AD3d 582, 582 [1st Dept 2021], citing *Abrams v Donati*, 66 NY2d 951, 953 [1985].) Here, all the causes of actions plaintiffs seek to add are the corporation’s direct claims, rather than derivative claims. ERI did not suffer any alleged wrongdoing. Instead, defendants alleged wrongdoing is suffered by the Funds and the Platforms. Accordingly, plaintiffs’ motion to amend the complaint to add ERI as a plaintiff is denied.

Plaintiffs also seek to add SNL as a defendant. Defendants argue that SNL should not be added as a defendant because SNL's partnership with ERI runs afoul of business formation laws. However, the standard on this motion to amend is to determine whether a party is necessary to an action, not the relationships between the parties. (See CPLR 1001 [a].) Here, plaintiffs allege that SNL "established SNL Development Group to serve as its [m]ember... in the 2015 Platform." (NYSCEF 172, PFAC ¶ 26.) Plaintiffs further allege that they were harmed by SNL when SNL "wrongfully diverted assets" to itself; "lost more than \$6 million in fees and rebates that SNL and Sharinn [] converted to their own use" and did not distribute any of that cash to the Platforms or the ERI Platform Member." (*Id.* ¶¶ 34-35, 44.) For the reasons set forth below, the court finds that the breach of contract, fraud, conversion, and unjust enrichment claims against SNL fail. Accordingly, plaintiffs' motion to amend the complaint to add SNL as a defendant is also denied.

2. Sharinn's Liability Based on An Alter Ego Theory

Plaintiffs seek to amend the complaint to allege that Sharinn is the alter ego of SNL, SNL Development Group, SNL Capital Partners, SNL Construction, and SNL Fund, and thus liable for their breaches of contract and fraud under an alter ego liability theory. "[F]or a plaintiff to state a viable claim against a parent or alter ego of the corporation, the plaintiff must allege facts that, if proved, indicate that the parent or alter ego exercised complete domination of the corporation in respect to the transaction attacked and that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff's injury." (*Americore Drilling & Cutting, Inc. v EMB Contr. Corp.*, 198 AD3d 941, 944 [2d Dept 2021] [citations omitted].) At the pleading

stage, a plaintiff must plead the elements of alter-ego liability in a non-conclusory manner. (*2406-12 Amsterdam Assocs. LLC v Alianza LLC*, 136 AD3d 512, 512 [1st Dept 2016]; see also *East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 16 NY3d 775, 776 [2011] [not required to plead the elements with the particularity required by CPLR 3016(b)].) However, “[e]vidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance.” (*TNS Holdings Inc. v MKI Sec. Corp.*, 92 NY2d 335, 339 [1998] [citation omitted].)

Here, plaintiffs have alleged that Sharinn exercised complete domination by providing that Sharinn “is the co-founder, majority owner, and CEO ... [of] SNL itself, SNL Development Group, SNL Capital Partners, and SNL Construction. He is the sole founder, manager and member of SNL Fund” and “Sharinn has at all relevant times been the CEO and 51% owner of SNL, which in turn is the 100% owner of SNL Development Group of which Sharinn is President. Sharinn is the President and Representative Member of SNL Capital Partners, of which he owns 70.4%. He is the 60% owner and an officer of SNL Construction. He is the sole Member and Manager, and solely and exclusively controls, SNL Fund.” (NYSCEF 172, FPAC ¶¶ 13, 31.)

Moreover, plaintiffs provide various non-conclusory allegations in support of their assertion that Sharinn used his dominion over SNL, SNL Development Group, SNL Capital Partners, SNL Construction, and SNL Fund to commit wrongdoing. For instance, plaintiffs assert that (1) “[a]ll of Defendant entities operated out of the same... office, with the same staff”; (2) “Sharinn conver[ted] and misappropriate[d]... funds rightfully belonging to the Platforms, including more than \$4.1 million in recourse fees, \$2.7 million in mechanical rebates, construction management fees, and distributions”;

(3) in April 2023 “about \$6 million was moved to a different SNL Fund account still under Sharinn’s exclusive control . . . approximately \$1.5 million was transferred to a personal account of Sharinn’s, and [] an additional \$1.3 million was initially transferred . . . to an SNL Fund account and then immediately transferred to one of Sharinn’s personal accounts,” and (4) SNL Construction, at Sharinn’s direction, received PPP loans to cover payroll but “failed to disclose that fact to ERI, and chose instead to double-dip by taking reimbursement for the salaries... from the Platforms”. (*Id.* ¶¶ 31, 56, 84, 170.) Accordingly, plaintiffs’ motion to amend the complaint to make Sharinn the alter ego of SNL, SNL Development Group, SNL Capital Partners, SNL Construction, and SNL is granted.

3. Addition of Causes of Actions

Plaintiffs also seek to add the following direct claims for breach of contract, fraud, conversion, aiding and abetting, and unjust enrichment.

Breach of Contract

Plaintiffs seek to add five causes of action for breach of various contracts. The elements required to establish a breach of contract claim are: (1) “the existence of a contract”; (2) “the plaintiff’s performance thereunder”; (3) “the defendant’s breach thereof”; and (4) “resulting damages.” (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010] [citation omitted].)

Breach of Programmatic Joint Venture (First Cause of Action)

Plaintiffs seek to amend the complaint to add a breach of the programmatic joint venture claim by ERI against SNL and Sharinn. (NYSCEF 172, PFAC ¶¶ 85-93.) Since

ERI is not a party to this action, ERI cannot bring an action against SNL and Sharinn.¹⁴

(See *supra* at 9.)

Breach of 2015 Operating Agreement (Second Cause of Action)

Plaintiffs further seek to amend the complaint to add a claim by 2015 ERI Member and 2015 Platform against SNL Development Group and Sharinn for breach of the 2015 Operating Agreement. (NYSCEF 172, PFAC ¶¶ 94-104.) SNL Development Group does not oppose the addition of this cause of action. However, Sharinn opposes on the ground that he was not a party to the 2015 Operating Agreement. 2015 ERI Member and 2015 Platform argue that Sharinn is liable for SNL Development Group's breach of contract as the alter ego. An alter ego theory can be used to hold individuals liable for corporate breaches of contract claims. (*Perez v Long Is. Concrete Inc.*, 203 AD3d 552, 553-54 [1st Dept 2022].) Since the court finds that plaintiffs have sufficiently alleged that Sharinn is the alter ego of SNL Development Group (*see supra* at 10-12), 2015 ERI Member and 2015 Platform may allege breach of the 2015 Operating Agreement against Sharinn. Accordingly, plaintiffs' motion to amend the complaint to add a breach of the 2015 Operating Agreement against SNL Development Group and Sharinn is granted.

¹⁴ Even if ERI was a party, this claim would still fail because ERI has not alleged the specific provisions of the joint venture agreement that SNL breached. (*See Unobagha v Hilton Garden inn Times Sq. N.*, 216 AD3d 524, 525 [1st Dept 2023] [affirmed dismissal of plaintiff's breach of contract claim where the complaint fails to allege "the specific provisions of the contract upon which liability is predicated."]; *see also Gianelli v RE/MAX of NY Inc.*, 144 AD3d 861, 862 [2d Dept 2016] [held that where "the plaintiff failed to identify a specific provision of the contract that was allegedly breached" the plaintiff "had no cause of action sounding in breach of contract."].) Since ERI fails to allege a breach of the Programmatic Joint Venture against SNL, there also cannot be a claim against Sharinn based on an alter ego theory.

Breach of 2017 Operating Agreement (Third Cause of Action)

Plaintiffs further seek to amend the complaint to add a claim by 2017 ERI Member and 2017 Platform against SNL Development Group and Sharinn for breach of the 2017 Operating Agreement. (NYSCEF 172, PFAC ¶¶ 105-112.) SNL Development Group does not oppose the addition of this cause of action. Again, since the court finds that plaintiffs have sufficiently alleged that Sharinn is the alter ego of SNL Development Group (*see supra* at 10-12), 2017 ERI Member and 2017 Platform may allege breach of the 2017 Operating Agreement against Sharinn. Accordingly, plaintiffs' motion to amend the complaint to add a breach of the 2017 Operating Agreement claim against SNL Development Group and Sharinn is granted.

Breach of the 2018 Operating Agreement (Fourth Cause of Action)

Plaintiffs further seek to amend the complaint to add a claim by 2018 Platform, 2017 ERI Member, F2017 Fund, and 2015 Platform against SNL Development Group and Sharinn for breach of the 2018 Operating Agreement. (NYSCEF 172, PFAC ¶¶ 113-119.) SNL Development Group does not oppose the addition of this cause of action. As to Sharinn, this cause of action can be added based on an alter ego theory. Accordingly, plaintiffs' motion to amend the complaint to add a breach of the 2018 Operating Agreement claim against SNL Development Group and Sharinn is granted.

Breach of the 2019 Operating Agreement (Fifth Cause of Action)

Finally, plaintiffs further seek to amend the complaint to add a claim by 2018 ERI Member, F2018 Fund, and 2019 Platform against SNL Capital Partners and Sharinn for breach of the 2019 Operating Agreement. (NYSCEF 172, ¶¶ 120-128.) SNL Capital Partners do not oppose the addition of this cause of action. As to Sharinn, this cause of

action may be added based on an alter ego theory. Accordingly, plaintiffs' motion to amend the complaint to add a breach of the 2019 Operating Agreement claim against SNL Capital Partners and Sharinn is granted.

Fraud

Plaintiffs also seek to add various causes of action for fraud. "The elements of a fraud cause of action consist of a misrepresentation or a material omission of fact which was false and known to be false by the 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." (*Pasternack v Lab. Corp. of Am. Holdings*, 27 NY3d 817, 827 [2016] [internal quotation marks and citations omitted].) Pursuant to CPLR 3016(b), such claim must be plead with particularity. (CPLR 3016 [b].)

Fraud (Sixth Cause of Action)

Plaintiffs further seek to amend the complaint to add a claim by ERI against SNL Development Group, SNL Capital Partners, SNL Construction, and Sharinn for fraud. (NYSCEF 172, PFAC ¶¶ 129-132.) As set forth above, ERI is not a plaintiff in this case and can, therefore, not bring claim.¹⁵ Accordingly, plaintiffs' motion to add a fraud claim against SNL Development Group, SNL Capital Partners, SNL Construction, and Sharinn is denied.

Fraud (Seventh, Eighth, Ninth and Tenth Causes of Action)

In the seventh, eighth, ninth, and tenth causes of action, plaintiffs seek to amend the complaint to add fraud claims (vii) by 2015 ERI Member against SNL Development

¹⁵ Even if ERI was a plaintiff in this case, its fraud claim would fail because it has alleged no injury. (See *Honua Fifth Ave. LLC v 400 Fifth Realty LLC*, 111 AD3d 579, 580 [1st Dept 2013].) ERI Funds' losses are not ERI's losses.

Group, SNL Construction, and Sharinn (NYSCEF 172, PFAC ¶¶ 133-137), (viii) by 2017 ERI Member against SNL Development Group, SNL Construction, SNL, and Sharinn (*id.* ¶¶ 138-142), (ix) by 2017 ERI Member and F2017 Fund against SNL Development Group, SNL Construction, SNL, and Sharinn (*id.* ¶¶ 143-147), and (x) by 2018 ERI Member and F2018 Fund against SNL Development, SNL Capital Partners, SNL Construction, SNL, and Sharinn (*id.* ¶¶ 148-152).

The defendants argue that the complaint lacks the particularity required by CPLR 3016(b) because plaintiffs fail to state which defendant made what misrepresentation. Here, the ERI Members, F2017 ERI Member, and F2018 ERI Member seek to establish that there was a misrepresentation by alleging that “[a]t Sharinn’s direction, SNL Development Group and SNL Capital Partners, directly and through false reports submitted by SNL Construction, knowingly and materially misrepresented the financial status of the 2015 Platform projects to ERI¹⁶.” (NYSCEF 172, PFAC ¶¶ 129, 133, 138, 143, 148.) Under New York law,

“[t]he failure to distinguish among the various defendants regarding which misrepresentations and omissions each defendant made to each plaintiff, when, and where is ‘improper group pleading.’ (*Principia Partners LLC v Swap Fin. Group, LLC*, 194 AD3d 584, 584 [1st Dept 2021].) By pleading the fraud claim against all defendants collectively, without any specification of the conduct charged to particular defendants, plaintiffs deprive defendants of the notice regarding “the material elements of each cause of action” to which defendants are entitled under CPLR 3013. By referring to all defendants together, plaintiffs also fail to plead their fraud claim with the particularity required by CPLR 3016 (b). (*Barlow v Skroupa*, 76 Misc 3d 587, 591 [Sup Ct, NY County 2022] [citations omitted]; *see also Total Asset Recovery Servs. LLC v Metlife, Inc.*, 189 AD3d 519, 523 [1st Dept 2020] [provides that a complaint is “insufficiently particular” where plaintiff alleges “in general terms that all defendants engaged in all of the allegedly conduct.”].)

¹⁶ Additionally, the misrepresentation was made to ERI, which is not a party to this action.

Accordingly, plaintiffs' motion to amend the complaint to add fraud claims (seventh, eighth, ninth, and tenth) is denied.

Fraudulent Statements and Omissions (Eleventh Cause of Action)

Further, plaintiffs seek to amend the complaint to add a claim by ERI against SNL, SNL Development Group, SNL Capital Partners, SNL Construction, and Sharinn for fraudulent statements and omissions. (NYSCEF 172, PFAC ¶¶ 153-156.) Since the court has found that ERI is not a necessary party (*see supra* at 9) and ERI thus cannot bring claims, plaintiffs' motion to amend the complaint to add the eleventh cause of action is denied.

Fraudulent Statements and Omissions (Twelfth, Thirteenth, and Fourteenth Causes of Action)

Plaintiffs also seek to amend the complaint to add three causes of action by ERI Funds, ERI Members, and the Platforms respectively, against SNL, SNL Development Group, SNL Capital Partners, SNL Construction, and Sharinn for fraudulent statements and omissions. (NYSCEF 172, PFAC ¶¶ 157-159, 160-162, 163-165.) Because the allegations are framed as fraud, the claim will be assessed as such.

The defendants argue that plaintiffs' claims must be dismissed because plaintiffs have not alleged a misrepresentation. A fraud claim cannot survive a motion to dismiss absent an allegation "of a knowing misrepresentation of a present material fact with the intent to deceive." (*Glatt v Mariner Partners, Inc.*, 63 AD3d 428, 429 [1st Dept 2009].) Here, ERI Funds, ERI Members, and the Platforms' allegation that they relied on "false statements and omissions relating not only to the financial status of the Projects, but

also to other issues, including those listed in ¶ 208¹⁷ and incorporated here” is insufficient. (NYSCEF 172, PFAC ¶¶ 158, 161, 164.) The PFAC lacks the particularity required by CPLR 3016(b) because the PFAC does not state what the false statements are, and moreover, the compliant contains neither a ¶ 202, nor a ¶ 208. Accordingly, plaintiffs’ motion to amend the complaint to add the three claims for fraudulent statements and omissions is denied.

Conversion

“A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession.” (*Colavito v NY Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 [2006] [citation omitted].) To plead a claim for conversion plaintiffs must allege that: (1) they have a “possessory interest or right in a property” and (2) “defendant’s dominion over the property or interference with it, [is] in derogation of plaintiff’s rights.” (*Id.* at 50 [citations omitted].)

Fraud/Misappropriation (Fifteenth Cause of Action)

Plaintiffs seek to amend the complaint to add a cause of action by the Platforms, the ERI Funds, and ERI against SNL Construction and Sharinn for fraud and/or misappropriation. (NYSCEF 172, PFAC ¶¶ 166-174.) As to ERI, there is no claim because ERI is not a party to this action. (*See supra* at 9.) As to the Platforms and ERI Funds, the fraud claim fails because there is no allegation that SNL Construction and Sharinn misrepresented any information. (*Katehis v Sovereign Assoc., Inc.*, 44 Misc 3d 1220[A], *14 [Sup Ct, NY County 2014] [dismissing a fraud claim because there was no

¹⁷ In ¶ 158, plaintiffs reference ¶ 208, while in ¶ 161 and ¶ 164, plaintiffs refer to ¶ 202.
653695/2023 ERI/SNL 2015 HOLDINGS LLC ET AL vs. SNL DEVELOPMENT GROUP LLC ET AL Page 18 of 24
Motion No. 014

misrepresentation].) Instead, the only allegation is that there was money missing. (See NYSCEF 172, PFAC ¶¶ 170-171.) Accordingly, the part of the motion to amend the complaint to add a fraud claim is denied.

As to the part of the motion to amend the complaint to add a misappropriation claim, such motion is also denied. Although labeled as a misappropriation claim, the allegation that “Sharinn has misappropriated funds that were passing through SNL Construction” is a conversion claim.¹⁸ (NYSCEF 172, PFAC ¶ 172.) “Where a conversion claim is asserted with respect to money, the funds must be specifically identifiable and be subject to an obligation to be returned or to be otherwise treated in a particular manner.” (*Sh575 Holdings LLC v Reliable Abstract Co.*, 195 AD3d 429, 430 [1st Dept 2021] [internal quotation marks and citations omitted].)

Defendants argue that plaintiffs fail to allege that the money is specifically identifiable. Plaintiffs’ complaint set forth that

“**several million dollars** had been transferred to SNL Fund between 2019 and August of 2023 at Sharinn’s direction, comprised of **approximately** \$2 million from SNL Construction and \$5.5 million from various Ventures. On April 1, 2023, a single SNL Fund account at one bank held **more than** \$7,500,000. But Sharinn liquidated that account to a zero balance by the end of April 2023 . . . Plaintiffs further learned that **about** \$6 million was moved to a different SNL Fund account still under Sharinn’s exclusive control but . . . **approximately** \$1.5 million was transferred to a personal account of Sharinn.” (NYSCEF PFAC ¶ 170 [emphasis added].)

Plaintiffs’ estimates do not meet the requirement that funds be “specifically identifiable.”

(*See Family Health Mgt., LLC v Rohan Devs., LLC*, 207 AD3d 136, 139 [1st Dept 2022])

¹⁸ Under New York law, misappropriation claims are primarily used for trade secrets, confidential and proprietary information, or unfair competition. (*See Cont. Indus. Group, Inc. v Ustuntas*, 211 AD3d 601 [1st Dept 2022]; *see also Caldera Holdings LTD v Apollo Global Mgt., LLC*, 2019 NY Slip Op 33734[U] [Sup Ct, NY County 2019].)

["an action for conversion of money must be for recovery of a particular and definite sum of money" (internal quotations marks and citation omitted)].) Accordingly, plaintiffs motion to amend the complaint to add a cause of action for fraud/misappropriation is denied.

Conversion (Sixteenth Cause of Action)

Plaintiffs also seek to amend the complaint to add a cause of action by ERI Funds and the Platforms against SNL, Sharinn, SNL Development Group and SNL Capital Partners for conversion. (NYSCEF 172, PFAC ¶¶ 175-180.) Defendants argue that this claim is duplicative of the breach of contract claims alleged in the second through fifth causes of action because plaintiffs seek to recover the exact same monies at issue here.

A conversion claim is duplicative of a breach of contract claim when it is "predicated on a mere breach of contract, and no independent facts are alleged giving rise to tort liability." (*Kopel v Bandwidth Tech. Corp.*, 56 AD3d 320, 320 [1st Dept 2008].) Here, plaintiffs allege that defendants converted "guaranty (or recourse) fees" paid to the 2019 Platform and "rebates from utilities" paid to The Platforms. (NYSCEF 172, PFAC ¶ 176.) In the breach of contract claims, ERI Funds and the Platforms seek the same damages. (See NYSCEF 172 PFAC ¶¶ 104, 112, 119, 128 [seeking "recourse fees" and "damages resulting from the wrongful dissemination, misappropriation or other improper removal of funds"].) The court granted plaintiff's motion to add the breach of contract claims. (*Supra* at 13-15.) Accordingly, the court

finds that this conversion claim is duplicative,¹⁹ and plaintiffs' motion to amend the complaint to add a conversion claim is denied.

Unjust Enrichment

Plaintiffs further seek to amend the complaint to add two causes of action for unjust enrichment. To state a claim for unjust enrichment, a plaintiff must allege that “(1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered.” (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012] [internal quotation marks and citations omitted].)

Unjust Enrichment (Seventeenth Cause of Action)

Plaintiffs seek to amend the complaint to add a seventeenth cause of action by ERI and ERI Funds against SNL, SNL Construction, and Sharinn for unjust enrichment. (NYSCEF 172, PFAC ¶¶ 181-183.) Again, ERI is not a party to this action and can, therefore, not bring any claims. (See *supra* at 9.) As to ERI Funds, the claim fails because the allegations in the complaint are almost exclusively based on ERI's conduct and thus fail to make out a cause of action for ERI Funds. (See NYSCEF 172, PFAC ¶ 182.) Regardless, the claim fails as it is duplicative of the plaintiffs' causes of action for breach of contract. (See *Island Stars 21 Inc. v Buccaria*, 221 AD3d 531, 532 [1st Dept 2023] [provides that an unjust enrichment claim is duplicative where a contract covers

¹⁹ Even if the conversion claim was not found to be duplicative, the claim would still fail because plaintiffs do not allege conversion of sums certain. (NYSCEF 172, PFAC ¶ 176 [provides that the resource fee was “more than \$4.1 million” and the rebates was “a total approximate amount of \$2.7 million.”]; *Family Health Mgt., LLC*, 207 AD3d at 139 [“an action for conversion of money must be for recovery of a particular and definite sum of money” (internal quotations marks and citation omitted)].)

the same subject matter].) Accordingly, plaintiffs' motion to amend the complaint to add an unjust enrichment claim is denied

Unjust Enrichment (Eighteenth Cause of Action)

Plaintiffs seek to amend the complaint to add a cause of action by 2015 ERI Platform and 2018 ERI Member against SNL, SNL Construction, and Sharinn for unjust enrichment. (NYSCEF 172, PFAC ¶¶ 184-189.) Plaintiffs allege that SNL, SNL Construction and Sharinn were unjustly enriched by the payment of the “backstop’ guaranty of five million dollars (\$5,000,000) to the 2015 Platform” and the payment of the “backstop’ guaranty of five million dollars (\$5,000,000) to the 2019 Platform.” (NYSCEF 172, PFAC ¶¶ 185-186.) Defendants argue that plaintiffs have failed to allege that SNL, SNL Construction and Sharinn have received a benefit or have a duty to relieve the plaintiffs of their backstop guarantees.

An unjust enrichment claim must be dismissed if the parties have an enforceable contract, and the monies sought in the unjust enrichment claim is covered by the contract. (See *2497 Realty Corp. v Fuertes*, 232 AD3d 451, 454 [1s Dept 2024], citing *Gorgia Malone & Co., Inc.*, 19 NY3d at 516 [2012]; see also *Clark-Fitzpatrick, Inc. v Long Island. R. Co.*, 70 NY2d 382, 388 [1987] “[t]he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter.” (citation omitted)].) Here, the guarantees were provided pursuant to the operating agreements and plaintiffs seek identical damages herein as pursuant to their breach of contract claims. (See NYSCEF 172, PFAC ¶¶ 103, 111, 118, 127 [“damages relating to the

potential triggering of backstop guarantees”].) Accordingly, plaintiffs’ motion to amend the complaint to add an unjust enrichment claim must be denied.

Aiding and Abetting Fraud/Misappropriation (Nineteenth Cause of Action)

Finally, plaintiffs seek to amend the complaint to add a cause of action by ERI Funds, the Platforms, and the ERI Platform Members against SNL Fund, SNL Construction and Sharinn for aiding and abetting fraud and misappropriation. (NYSCEF 172, PFAC ¶¶ 190-193.) Since the court denied plaintiff’s motion to amend the complaint to add fraud claims (*supra* at 15-18), there cannot be a claim for aiding and abetting fraud. (*NY City Waterfront Dev. Fund II, LLC v Pier A Battery Park Assocs., LLC*, 206 AD3d 565, 567 [1st Dept 2022] [“[a]bsent a fraud-based claim, there can be no claim for aiding and abetting fraud”] [citation omitted].) Similarly, since the court denied the plaintiff’s motion to amend the complaint to add conversion claims (*supra* at 18-21), there cannot be any claim for aiding and abetting conversion. (*William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501, 505 [1s Dept 2018] [“[a]iding and abetting requires the existence of a conversion by the primary tortfeasor.”].) Thus, plaintiffs’ motion to amend the complaint to add a claim for aiding and abetting fraud and misappropriation must be denied.

Accordingly, it is

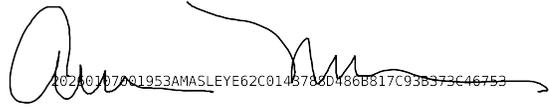
ORDERED that plaintiffs’ motion for leave to amend the complaint to add the Platforms as plaintiffs is granted; and it is further

ORDERED that plaintiff’s motion for leave to amend the complaint is granted to the extent that the second, third, fourth, and fifth causes of action may proceed but denied as to the remaining claims; and it is further

ORDERED that within 10 days from the date of this decision, plaintiff shall serve a copy of this order with notice of entry and the fourth amended complaint in conformity with this decision; and it is further

ORDERED that the defendants shall serve an answer to the fourth amended complaint within 20 days from the date of this decision; and it is further

ORDERED that the parties shall submit a proposed discovery schedule to the court within 30 days from the date of this decision. If the parties cannot agree, they shall submit competing schedules.



1/7/2026
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: