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Leser v Multi Capital Group LLC
2015 NY Slip Op 50272(U)
Decided on March 2, 2015
Supreme Court, Kings County
Demarest, J.
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Decided on March 2, 2015

Supreme Court, Kings County

Abraham Leser, Plaintiff,

against

Multi Capital Group LLC, Buchanan Ingersoll & Rooney P.C. and John Doe No.1 through John Doe #10, the last ten names being fictitious and unknown to plaintiff, Defendants.

507083/13

Attorneys for Plaintiff:
Steven A. Weg, Esq.
Goldberg & Rimberg, PLLC
115 Broadway, 3rd Floor
New York, NY 10006

Attorney for Defendant Buchanan Ingersoll:
Jonathan K. Cooperman, Esq.
Kelley Drye & Warren
101 Park Avenue
New York, NY 10178

Carolyn E. Demarest, J.

Upon the foregoing papers, defendant Buchanan Ingersoll & Rooney, P.C. (Buchanan Ingersoll), moves for an order, pursuant to CPLR 3211 (a) (1), (a) (5) and (a) (7), dismissing the causes of action against it.

Background And Arguments

Underlying Facts

Abraham Leser (plaintiff), an experienced real-estate investor, alleges that non-party Eli Verscheliser (Verscheliser), the principal of defendant mortgage broker, Multi Capital Group LLC (Multi), approached plaintiff in late 2006 concerning two projects: one residential tower in Philadelphia and another in Seattle. Verscheliser

allegedly proposed that plaintiff serve as each project's "sponsor," which, plaintiff explains, required making no investment whatsoever, but acting as "the public persona of the project for underwriting purposes and for reassurance to other joint venture partners." In return for this role, plaintiff alleges that he was promised 20% of the eventual profits. Verscheliser apparently assured plaintiff that he would not bear responsibility for any losses and would not have to sign any personal guaranties for the projects.

Plaintiff alleges that, before his involvement, Verscheliser used Buchanan Ingersoll to form an entity called VTE Philadelphia LP (VTE) to purchase and own the Philadelphia property, as well as various other entities to own VTE. Plaintiff contends that some of these entities received names that "were a play on the name Leser' such as RESEL,' PL Leser Corp.' and Leser Group LP,'" and he recounts that he was listed as owner or managing member of many of these entities, though the ownership structure was not explained to him at the time. The ownership for the Seattle project was, apparently, similarly structured.

Verscheliser purportedly told plaintiff that he would act as an authorized signatory for VTE, but that VTE, Multi and its attorneys would carefully review any documents prior to plaintiff's signing "to ensure that all parties involved were adequately protected and to make sure that this deal would not be a liability to [plaintiff]." Multi negotiated two loans from US Bank to finance the projects: $17.5

million for the Philadelphia project and $21 million for the Seattle project. Plaintiff explains that, in July and November 2007, respectively, Multi delivered to him, for signature, loan documents for [*2]the Philadelphia and Seattle projects. In both instances, plaintiff alleges that he received a large stack of documents with flags indicating locations where he should sign. He recounts that Multi represented to him that it and its attorneys had reviewed the documents and that he would not be signing anything in his personal capacity. Plaintiff explains that he signed both sets of documents alone, in his office, without any further review by himself or others, and returned the documents to Multi. Among the documents that plaintiff signed were agreements of guaranty and suretyship for the loans, which rendered plaintiff guarantor of each in his personal capacity. Plaintiff asserts that he later learned that Buchanan Ingersoll had acted as counsel for Multi and VTE throughout the course of these deals.

In February 2009, plaintiff learned, in a meeting with representatives from US Bank, that the loans were in default and that US Bank considered him as the loans' personal guarantor. Plaintiff thereafter commenced an action in the United States District Court for the Eastern District of New York and sought a declaration that the guaranties were forged and not enforceable against him [FN1] . US Bank commenced a counterclaim seeking to enforce the guaranties against plaintiff. On January 14, 2013, the jury in that action returned

a verdict finding the guaranties enforceable against plaintiff, and the court thereafter issued a judgment in favor of US Bank against plaintiff for $52,946,419.15.

The Complaint

Plaintiff commenced this action on November 12, 2013, alleging causes of action against Multi for fraud, negligent misrepresentation, breach of fiduciary duty, prima facie tort, contribution and indemnity and causes of action against Buchanan Ingersoll for legal malpractice, aiding and abetting breach of fiduciary duty and aiding and abetting fraud. He alleged that Multi and Buchanan Ingersoll (collectively, defendants) had engaged in a fraudulent scheme to use plaintiff's reputation and experience in real estate for their own pecuniary advantage. Plaintiff contends that he had previously represented to Multi and US Bank, in seeking to obtain financing for an unrelated project, that he would not sign personal guaranties and that Multi had assured him that he would not be asked to sign such a guaranty for the Philadelphia or Seattle project. Nonetheless, plaintiff claims Multi presented loan documents for him to sign, including personal guaranties, representing that both it and its attorney had reviewed and approved them and told plaintiff that he was not signing any documents in his personal capacity.

Plaintiff alleged that Multi had retained Buchanan Ingersoll to act as attorney for VTE, itself and for plaintiff and that Verscheliser

told plaintiff that he need not hire his own attorney. He argued that Buchanan Ingersoll thus had a duty to represent his interests and breached this duty by approving the loan documents for signature, failing to explain to plaintiff what he was signing and failing to provide him any legal advice. [*3]Plaintiff acknowledges he had no direct contact with Buchanan Ingersoll and there is no allegation that plaintiff ever sought out their advice. Plaintiff further complains that Buchanan Ingersoll did not notify him of the fact that it also represented US Bank in connection with the Philadelphia and Seattle projects or of its prior work for Multi and friendships between its attorneys and Multi's employees. Plaintiff contends that Multi had an affirmative obligation to advise him to obtain independent counsel, but failed to do this and failed to present plaintiff with a waiver for its conflicts of interest.

Plaintiff further alleged that Buchanan Ingersoll knew of the fiduciary duties Multi owed to plaintiff, yet helped Multi to breach them by assisting it in tricking plaintiff into signing the guaranties. There are no specific allegations as to how Buchanan Ingersoll did this. Plaintiff contends that Buchanan Ingersoll also helped Multi defraud plaintiff and had actual knowledge of the fraud, but gives no particulars as to how this was accomplished.

Buchanan Ingersoll's Dismissal Motion

Buchanan Ingersoll now moves for an order, pursuant to CPLR

3211 (a) (1), (a) (5) and (a) (7), dismissing plaintiff's claims against it upon the documentary evidence, under the applicable statutes of limitation and for failure to state a claim. It argues that plaintiff has alleged no facts indicating that Buchanan Ingersoll represented him, that any privity existed between them or even that they engaged in any communication or contact whatsoever. Buchanan Ingersoll argues that plaintiff's claim that Verscheliser merely told him that he did not need his own attorney because Buchanan Ingersoll was representing all parties is insufficient to establish an attorney-client relationship. It stresses that, in the course of the declaratory-judgment action, plaintiff testified that he did not know the identity of the attorney who was supposed to be representing him.

Buchanan Ingersoll further contends that the applicable, three-year statute of limitations bars plaintiff's legal-malpractice claim. It contends that the underlying facts on which plaintiff premises his claim had all occurred by November 2007, when plaintiff signed the Seattle loan documents, yet he did not commence this action until November 2013. At the latest, plaintiff's cause of action accrued in February 2009 when, upon plaintiff's own pleading, he was advised by US Bank personnel that the loans were in default and they were looking to hold plaintiff liable on his guaranty. It urges that a cause of action for malpractice accrues, and the limitations period commences, when all acts have been committed, not when a plaintiff discovers them.

Plaintiff's claim for aiding and abetting breach of fiduciary duty must be dismissed, Buchanan Ingersoll argues, because it relies on the same facts and claims the same damages as his malpractice claim, thus rendering it duplicative. In any case, Buchanan Ingersoll characterizes plaintiff's allegation that it substantially assisted Multi in breaching its fiduciary duty to plaintiff as conclusory, as plaintiff has merely alleged that Buchanan Ingersoll rendered legal services to Multi and must have known of and assisted [*4]Multi's purported breach. Buchanan Ingersoll additionally contends that such a claim, that essentially sounds in legal malpractice or that seeks monetary relief, is subject to a three-year statute of limitations, and is thus time barred.

Buchanan Ingersoll also characterizes plaintiff's aiding-and-abetting-fraud claim as duplicative and as pleaded with insufficient particularity under CPLR 3016 (b). It stresses that the acts constituting the aiding and abetting must be pleaded with the same specificity as the underlying fraud, and urges that plaintiff's allegations herein are conclusory. Furthermore, Buchanan Ingersoll argues that plaintiff cannot establish justifiable reliance on any representation concerning the loan documents, as the guaranties he signed clearly indicated, on the signature page, that they were "AGREEMENT[s] OF GUARANTY AND SURETYSHIP" and that plaintiff was signing as "GUARANTOR." It contends that, as this claim alleges the same facts and damages as the malpractice claim, it

is also subject to a three-year limitations period.

Plaintiff's Opposition

Plaintiff, in opposition to Buchanan Ingersoll's motion, urges that he received stacks of loan documents to sign, including, unknown to him, personal guaranties, and that he was told that Multi and its attorney had carefully reviewed them "in accordance with their discussions that there would be no personal guaranty." He urges that no one explained to him what he was signing or notified him that the documents contained guaranties and that he did not learn that he had executed such guaranties until the January 2013 verdict in the declaratory-judgment action.

Plaintiff argues that an attorney-client relationship does not require a formal retainer or payment of a fee and that the complaint adequately alleges that Buchanan Ingersoll performed legal work for plaintiff's benefit by forming entities and listing plaintiff as the owner or managing member. He thus asserts that Buchanan Ingersoll "performed actual legal work on behalf of [plaintiff] (even if formally retained by [Buchanan Ingersoll]'s good friend Eli Verscheliser of [Multi])." Plaintiff contends that Buchanan Ingersoll subsequently "represented US Bank in lending money to the Leser Entities and their affiliated entities, hid a personal guaranty from [plaintiff] within loan documents, did not alert [plaintiff] of the same, represented VTE . . . , and failed to communicate *at all* with [plaintiff][FN2] ." He

characterizes his inability, during the declaratory-judgment action, to identify Buchanan Ingersoll by name as irrelevant, and he urges that only discovery of material exclusively within Buchanan Ingersoll's possession can prove the extent to which it represented him. Plaintiff argues, in any case, that malpractice liability may accrue even without privity in a case involving fraud, which he [*5]has explicitly alleged.

Plaintiff argues that the statute of limitations does not bar his malpractice claim, because such a cause of action does not accrue until damages occur and legal relief becomes available. He contends that his damages were not "fully liquidated" until the judgment entered against him in the Eastern District of New York in May 2013. Plaintiff urges that he could not have sued before that date, as future damages are unrecoverable in legal-malpractice actions. In the alternative, plaintiff argues that the limitations period was tolled by Buchanan Ingersoll's continuous representation, and he urges that the full length of its engagement is unknown.

Plaintiff contends that, despite each guaranty's label as a guaranty, many types of guaranties exist in real-estate transactions and he had no reason to know that he was signing a guaranty and suretyship in his personal capacity. He also speculates that someone may have placed a flag, indicating the place for signature, over the signature line label "GUARANTOR." Charging him with knowledge of what he signed, plaintiff contends, would be improper, as the action is premised on Buchanan Ingersoll's failure to properly advise

plaintiff as to what he was signing. He also argues that, with a valid excuse, a party may be excused for not having read a contract before signing.

Plaintiff contends that his claim for aiding and abetting breach of fiduciary duties relies on facts different from his malpractice claim and, thus, should not be dismissed as duplicative. Whereas his malpractice claim is based on Buchanan Ingersoll's failure to warn plaintiff of the personal guaranties, he contends that his aiding-and-abetting-breach-of-fiduciary-duty claim rests on allegations that Buchanan Ingersoll substantially assisted Multi in hiding the guaranties. Plaintiff argues that the complaint cannot be considered conclusory as it "is comprised of 245 paragraphs of detailed facts that specifically allege [Buchanan Ingersoll]'s wrongful conduct" and as it alleged that Buchanan Ingersoll had actual knowledge of Multi's breach of fiduciary duty as it approved the loan documents for plaintiff's signing. He asserts that the applicable statute of limitations for aiding and abetting a breach of fiduciary duty is six years when fraud is integral to the breach, as alleged here. Plaintiff contends that, as he signed the Seattle loan documents on November 21, 2007 and commenced the action on November 12, 2013, the statute of limitations poses no obstacle.

Plaintiff also claims that the factual allegations underlying his cause of action for aiding and abetting fraud differ from those supporting his malpractice claim. He alleges that Buchanan Ingersoll

aided Multi in defrauding him by preparing the loan documents and assisting Multi in concealing them. Plaintiff contends that his fraud and aiding-and-abetting-fraud causes of action alleged claims with sufficient particularity "when read together and when read together with the 159 paragraphs preceding the first cause of action." The applicable statute of limitations for a fraud claim, plaintiff urges, is six years from commission of the fraud or two years from discovery of the fraud, and he contends that he properly commenced this action within either period. Plaintiff argues that [*6]Buchanan Ingersoll is "blaming the victim" by asserting that plaintiff should not have relied on Multi's representations concerning the loan documents, and he concludes by urging that, despite Multi's assurances that plaintiff would not have to sign personal guaranties, it and Buchanan Ingersoll hid such guaranties in the documents plaintiff signed.

Buchanan Ingersoll's Reply

Buchanan Ingersoll, in reply to plaintiff's opposition, first reiterates that the documents that plaintiff signed clearly indicate on their faces that they are guaranties and suretyships, not some other type of guaranty. It contends that plaintiff's allegation that stickers may have covered key terms is merely speculative and not included in his complaint, and it urges that, unlike a case plaintiff cited in which an attorney affirmatively misinformed a client regarding the effect of a signed document, plaintiff herein admits that Buchanan Ingersoll made no representations to him whatsoever concerning the loan

documents.

It argues that each of plaintiff's claims is barred by the statute of limitations, as each claim accrued more than three years before the action's commencement, with the filing of a summons with notice on November 12, 2013, with plaintiff's 2007 signing of the guaranties or, at the latest, in February 2009, when US Bank notified plaintiff that it was invoking the guaranties because of defaults on the loans. Buchanan Ingersoll argues that the continuous-representation doctrine cannot toll the applicable limitations period as Buchanan Ingersoll never, in fact, represented plaintiff, and it stresses, in any case, plaintiff has alleged no communication or contact with Buchanan Ingersoll after signing the loan documents. Buchanan Ingersoll contends that the claims for aiding and abetting breach of fiduciary duty and fraud, if not dismissed as duplicative, are subject to a three-year limitations period, as they also essentially allege a breach of professional duties.

Buchanan Ingersoll reiterates that plaintiff introduces no evidence of privity, and it contends that plaintiff's theory that Buchanan Ingersoll formed entities for his benefit contradicts his allegations that it conspired with Multi to his detriment. Buchanan Ingersoll asserts that it represented only US Bank in the underlying deals, as evidenced by e-mails in which Buchanan Ingersoll, on behalf of US Bank, informed project attorneys from Wachtel & Masyr LLP that personal guaranties were needed for the loans. It argues that fraud

may substitute for privity only in rare malpractice cases and where the defendant attorney made affirmative misrepresentations to the plaintiff. It stresses that plaintiff has admitted that he had no contact with Buchanan Ingersoll.

Buchanan Ingersoll again argues that plaintiff's other claims are duplicative of his malpractice cause of action and that his allegations are merely conclusory, and thus may not be presumed true. The complaint does not, Buchanan Ingersoll urges, contain any allegation that it assisted in hiding the guaranties from plaintiff or any explanation of how Buchanan Ingersoll purportedly assisted in getting plaintiff to sign them. It reiterates that CPLR 3016 (b) requires pleading with particularity the facts that purportedly constitute [*7]aiding and abetting of fraud and that plaintiff's allegations herein are insufficient.

Discussion

The Applicable Dismissal Standards

A movant seeking dismissal under CPLR 3211 (a) (1) must show that "the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (*Cives Corp. v George A. Fuller Co., Inc.*, 97 AD3d 713, 714 [2012]; *see also Galvan v 9519 Third Ave. Rest. Corp.*, 74 AD3d 743, 743-744 [2010]). To be "documentary," evidence " must be unambiguous and

of undisputed authenticity'" (*Rabos v R & R Bagels & Bakery, Inc.*, 100 AD3d 849, 851 [2012], quoting *Fontanetta v John Doe 1*, 73 AD3d 78, 86 [2010]).

A defendant seeking dismissal of a cause of action as time barred, pursuant to CPLR 3211 (a) (5), bears the burden of demonstrating that the plaintiff did not commence the action until after the applicable limitations period had expired, and the plaintiff, to overcome such a showing, must raise a factual issue as to whether the statute of limitations was tolled or whether the action was, in fact, timely commenced (*see New York City Sch. Constr. Auth. v Admiral Constr., LLC*, 114 AD3d 914, 914 [2014], *lv dismissed* 24 NY3d 998 [2014]; *Landow v Snow Becker Krauss, P.C.*, 111 AD3d 795, 796-797 [2013]; *Matteawan On Main, Inc. v City of Beacon*, 109 AD3d 590, 590 [2013]). Determining a CPLR 3211 (a) (5) motion requires construing the facts alleged in the pleading in the light most favorable to the plaintiff (*House of Spices [India], Inc. v SMJ Servs., Inc.*, 103 AD3d 848, 849 [2013]; *Cottone v Selective Surfaces, Inc.*, 68 AD3d 1038, 1041 [2009]).

A defendant's dismissal motion under CPLR 3211 (a) (7) requires determining whether the plaintiff has *stated* a cause of action, but "[i]f the court considers evidentiary material, the criterion then becomes whether the proponent of the pleading *has* a cause of action'" (*Sokol v Leader*, 74 AD3d 1180, 1181-1182 [2010] [emphasis added], quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

Dismissal results only if the movant demonstrates conclusively that the plaintiff has no cause of action, or that " a material fact as claimed by the pleader to be one is not a fact at all'" (*Sokol*, 74 AD3d at 1182, quoting *Guggenheimer*, 43 NY2d at 275; *see also Lawrence v Graubard Miller*, 11 NY3d 588, 595 [2008]). A court considering a dismissal motion on the basis of failure to state a claim generally must accept the facts alleged in the complaint as true and make any possible favorable inferences for the plaintiff (*Sokol*, 74 AD3d at 1181).

Legal Malpractice

A legal-malpractice plaintiff must show that the defendant 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 plaintiff to sustain actual and ascertainable damages'" (*Dombrowski v Bulson*, 19 NY3d 347, 350 [2012], quoting *Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 442 [2007]; *see also Markel Ins. Co. v American Guar. & Liab. Ins. Co.*, 111 AD3d [*8]678, 680 [2013]; *Barnave v Davis*, 108 AD3d 582, 582 [2013]). In examining a legal-malpractice claim, however, "a court must first look to the relationship of the parties" (*AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 5 NY3d 582, 595 [2005]). A plaintiff not in privity with the defendant attorney cannot maintain a legal-malpractice cause of action except in the event of fraud, collusion,

malicious acts or other special circumstances (*Estate of Schneider v Finmann*, 15 NY3d 306, 308-309 [2010]; *Zinnanti v 513 Woodward Ave. Realty, LLC*, 105 AD3d 736, 737 [2013]; *Ginsburg Dev. Cos., LLC v Carbone*, 85 AD3d 1110, 1111 [2011]).

A party asserting fraud must show "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" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 178 [2011] [internal quotation marks omitted]; *see also Levin v Kitsis*, 82 AD3d 1051, 1054 [2011]). Collusion has been defined as "[a]n agreement between two or more persons to defraud a person of his rights by the forms of law or to obtain an object forbidden by law" (*Warren v Union Bank of Rochester*, 157 NY 259, 270 [1898]; *Wallace v Jones*, 122 App Div 497, 499 [1907], *affd* 195 NY 511 [1909]; *Matter of Carpenter's Will*, 40 NYS2d 13, 17 [Sur Ct, Madison County 1943]; *see also* Black's Law Dictionary [9th ed 2009], [defining collusion as "(a)n agreement to defraud another or to do or obtain something forbidden by law"]).

Here, plaintiff essentially asserts that Buchanan Ingersoll's failure to warn him about the presence of personal guaranties in the loan documents he signed constituted a breach of its duty to exercise reasonable knowledge and skill in representing him. He fails, however, to plead facts from which it could be inferred that an

attorney-client relationship existed. Indeed, plaintiff states that he never had any communication or contact with Buchanan Ingersoll, and he admits that he was not aware of its identity until after he had signed the loan documents. Even if Verscheliser or Multi told plaintiff that its unidentified attorneys would review the loan documents for his benefit and that he need not hire his own attorney, such representations could not give rise to an attorney-client relationship between plaintiff and Buchanan Ingersoll. Similarly, plaintiff's allegation that Multi retained Buchanan Ingersoll to form entities naming plaintiff as owner or managing member does not establish any direct relationship between plaintiff and Buchanan Ingersoll (*see Federal Ins. Co. v North Am. Specialty Ins. Co.*, 47 AD3d 52, 60 [2007] ["(w)hile . . . third parties may be interested in the actions by another's attorney and even benefit therefrom, that circumstance does not give rise to a duty on the part of the attorney to that third party"]; *see also Fortress Credit Corp. v Dechert LLP*, 89 AD3d 615, 616 [2011], *lv denied* 19 NY3d 805 [2012]).

In any event, even if plaintiff could establish that Buchanan Ingersoll owed him any sort of duty, all elements of the alleged cause of action had accrued, at latest, by February 2009, when US Bank informed plaintiff that it was planning to enforce the [*9]personal guaranties against plaintiff due to default on the loans (*see McCoy v Feinman*, 99 NY2d 295, 301 [2002]; *Ackerman v Price Waterhouse*, 84 NY2d 535, 541 [1994], *amend denied* 85 NY2d 836 [1995]).

Hence, the three-year statute of limitations applicable to legal-malpractice claims requires dismissal of this claim (*see* CPLR 214 [6]; *Zorn v Gilbert*, 8 NY3d 933, 933-934 [2007]; *Farage v Ehrenberg*, 124 AD3d 159, 163-164 [2014]). Plaintiff's argument that continuous representation should permit tolling of the limitations period lacks merit, as there is no evidence of any representation, particularly after 2007.

Aiding And Abetting Breach Of Fiduciary Duty

A plaintiff establishes a breach of fiduciary duty by showing (1) the existence of a fiduciary relationship, (2) misconduct by the defendant fiduciary and (3) damages caused by the defendant fiduciary's misconduct (*Faith Assembly v Titledge of NY Abstract, LLC*, 106 AD3d 47, 61 [2013]; *Parekh v Cain*, 96 AD3d 812, 816 [2012]). Fiduciary duties include "undivided and undiluted loyalty to those whose interests the fiduciary is to protect" (*Matter of Wallens*, 9 NY3d 117, 122 [2007]; *see also Matter of Cooperman*, 83 NY2d 465, 472 [1994]). Liability also accrues if a defendant aided and abetted a fiduciary's breach of duty by knowingly providing substantial assistance to accomplish the breach (*see Caprer v Nussbaum*, 36 AD3d 176, 193 [2006]; *Kaufman v Cohen*, 307 AD2d 113, 125 [2003]). CPLR 3016 (b) requires that a breach-of-fiduciary-duty claim, like a fraud claim, be pleaded with particularity (*Faith Assembly*, 106 AD3d at 62; *Parekh*, 96 AD3d at 816).

Here, the only fact that plaintiff alleges in support of his claim that Buchanan Ingersoll aided and abetted Multi in breaching its fiduciary duty is Buchanan Ingersoll's purported approval of the loan documents that plaintiff signed. The remaining portions of this cause of action comprise conclusory allegations that Buchanan knew of Multi's fiduciary duty and plaintiff's refusal to sign personal guaranties, yet "substantially assisted [Multi] in having [plaintiff] sign personal guaranties in breach of [Multi]'s fiduciary duty." Regardless of the number of paragraphs in plaintiff's complaint, these bare legal conclusions cannot suffice to plead a claim for aiding and abetting breach of fiduciary duty, particularly with the specificity required of such an allegation under CPLR 3016 (b). Furthermore, as plaintiff seeks only monetary damages, this claim would also be time barred under the applicable, three-year statute of limitations (*see IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 139-140 [2009], *rearg denied* 12 NY3d 889 [2009]; *Elmakies v Sunshine*, 113 AD3d 814, 815 [2014]). Accordingly, dismissal must be granted as to this claim.

Aiding And Abetting Fraud

As stated above, a fraud claim requires "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" (*Mandarin Trading Ltd.*, 16 NY3d

at [*10]178 [internal quotation marks omitted]). A plaintiff pleading aiding and abetting fraud must show that the defendant knew of, and provided substantial assistance in perpetrating, the underlying fraud (*see Goel v Ramachandran*, 111 AD3d 783, 792 [2013]; *Oster v Kirschner*, 77 AD3d 51, 55 [2010]). The aiding and abetting must be pleaded with sufficient particularity under CPLR 3016 (b), and "[a]iding and abetting fraud is not made out simply by allegations which would be sufficient to state a claim against the principal participants in the fraud combined with conclusory allegations that the aider and abettor had actual knowledge of such fraud" (*Goel*, 111 AD3d at 792; *see also CDR Créances S.A.S. v First Hotels & Resorts Invs., Inc.*, 101 AD3d 485, 486-487 [2012]; *High Tides, LLC v DeMichele*, 88 AD3d 954, 960 [2011]).

Like his claims as to aiding and abetting a breach of fiduciary duty, plaintiff's allegations that Buchanan Ingersoll aided and abetted Multi in committing fraud are entirely conclusory. Beyond alleging simply that Buchanan Ingersoll knew of fraud and substantially assisted Multi in its commission, plaintiff's only factual claim is that Buchanan Ingersoll acted as Multi's attorneys and were involved in the transactions. Consequently, the cause of action for aiding and abetting fraud must be dismissed for failure to state a cause of action in accordance with the particularity required by CPLR 3016 (b). Accordingly, it is

ORDERED that Buchanan Ingersoll's motion, seeking dismissal

of all claims asserted against it, is granted in its entirety; and it is further

ORDERED that the action's caption is amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS

X

Abraham Leser,

Plaintiff,

against -Index No. 507083/13

Multi Capital Group LLC and John Doe #1 through John Doe #10, the last ten names being fictitious and unknown to plaintiff,

Defendants.

X

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

Footnotes

Footnote 1: That action, captioned *Abraham Leser v US Bank National Association* (Civ. No. 09-CV-2362 [KAM] EDNY), did not join defendants herein.

Footnote 2: Plaintiff's Verified Complaint, dated December 16, 2013, is verified only by counsel. Plaintiff's sole opposition to the motion is the Affirmation of his attorney, Steven A. Weg, Esq., and a Memorandum of Law.

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