United States Life Ins. Co. in the City of N.Y. v Horowitz
2020 NY Slip Op 32445(U)
July 23, 2020
Supreme Court, New York County
Docket Number: 650221/2019
Judge: O. Peter Sherwood

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49

THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK,

Plaintiff,

-against-

STEVEN A. HOROWITZ; ELI ALAN RUBENSTEIN; HOROWITZ AND RUBENSTEIN, LLC; and SAMUEL ZEVY GOLBERG a/k/a SHMUEL GOLDBERG,

Defendants.

DECISION AND ORDER
Index No.: 650221/2019

Motion Sequence No.: 001

O. PETER SHERWOOD, J.:

Under motion sequence 001, defendants Horowitz, Rubinstein, and Horowitz & Rubinstein LLC move to dismiss the claims against them pursuant to CPLR 3211 (a)(1), CPLR 3211 (a)(7), and Judiciary Law § 487. For the following reasons, the motion shall be granted as to the first cause of action (N.Y. Judiciary Law § 487) only.

I. BACKGROUND

As this is a motion to dismiss, the following facts are taken from the complaint. In November 2008, someone using the name "Ricky Nicholas" ("Nicholas") submitted an application to United States Life Insurance Company ("US Life") for a $3,000,000 term life insurance policy ("Policy") designating his son, Nicholas Quick ("Quick"), as beneficiary. US Life issued the Policy on February 1, 2009, based on representations made in the application and the results of a paramedical examination. The applicant represented that he lived on Staten Island, earned $450,000 per year, had a net worth of $1,500,000 and was in "grt [sic] health". The application was signed "Ricky Nickolas". It was not known to US Life at the time, but someone other than Ricky Nicholas sat for the paramedical examination.

The policy contained a provision making the Policy incontestable after being in force during the life of the insured for two years from the date of issuance. On December 29, 2009, a request was made to change the mailing address for the owner of the policy to an address in Brooklyn, New York. On February 3, 2011, two days after the Policy became incontestable, a request was made for US Life to email change of ownership and change of beneficiary forms to

zevy@lcascinc.com. While not known to US Life at the time, upon information and belief, it was defendant Goldberg who made these requests. Goldberg's middle name is Zevy. On June 16, 2011, US Life received a forged change of ownership form designating Goldberg as owner. Unaware of the forgery, US Life effectuated the change. On July 1, 2011, US Life received a forged change of beneficiary form, designating Goldberg as the sole beneficiary, which US Life likewise effectuated.

Nicholas passed away on June 23, 2012, of a heart attack. On July 1, 2014, Goldberg submitted a claim for the Policy's death benefit, attaching the death certificate. Accordingly, US Life undertook a standard investigation, during which it discovered that it was not Nicholas who completed or executed the application, sat for the paramedical exam, requested changes in ownership and beneficiary, or authorized change of ownership. Quick told US Life in an interview that it was not his father's signature on the documents, that his father did not know Goldberg, and that the application failed to disclose that his father had open heart surgery the same year the application had been submitted. The financial disclosures were also false as Nicholas never made more than $30,000 per year.

US Life denied Goldberg's claim, and Goldberg brought suit[1] on November 24, 2014. Defendant Eli Rubenstein ("Rubenstein") filed the case on Goldberg's behalf, and later defendants Steven Horowitz and Horowitz & Rubinstein LLC ("Law Firm") filed appearances on behalf of Goldberg. US Life asserted a number of affirmative defenses and counterclaims, including that there was never a legally binding contract between the parties because the contract had been made with an imposter, and that it was not obligated to pay the death benefit to Goldberg.

After filing the counterclaims, the Horowitz & Rubinstein defendants sent plaintiff a video, showing Quick reading the following statement: "My name is Joshua Nicholas Quick. I am the son of Ricky Nicholas. My father was aware of the US Life Insurance Policy and signed the Application for insurance. My father knew Samuel Goldberg. They sold and transferred the policy to Samuel Goldberg. I understand that US Life does not want to pay the Policy, and I am helping Samuel Goldberg collecting [sic] the insurance proceeds." Quick's statements in the video contradict the statements made in his interview with US Life.

[1] *Goldberg v The United States Life Insurance Company in the City of New York*, Index No. 511216/2014 ("Underlying Action")

In May 5015, Goldberg moved in the Underlying Action to dismiss all of the affirmative defenses and counterclaims based on incontestability of the Policy. Recognizing the impediment created by the video, US Life entered into a settlement agreement with Goldberg, pursuant to which it paid a certain amount in exchange for dismissal of the claims. The same day that the settlement was finalized, the court in the Underlying Action issued a decision denying Goldberg's motion to dismiss the affirmative defenses and counterclaims. Nonetheless, the Underlying Action was resolved in September 2016.

A third party later came forward with information that the contents of the video were false and that defendants had bribed Quick for the statement made in the video. Horowitz and Rubenstein withdrew $145,000 from the Law Firm's account and transferred another $17,923.12 from the same account to Scott Jewelers d/b/a London Jewelers in Nassau County, New York for the purchase of a Rolex watch. A third party retrieved the watch from the jeweler, and gave it to Horowitz, who then handed it to the Nicholas family. Goldberg directed and participated in the perpetration of the fraud.

The complaint asserts the following causes of action: (i) NY Judiciary Law 487 against Horowitz, Rubenstein, and the Law Firm; (ii) fraudulent inducement against all defendants; (iii) civil conspiracy against all defendants; (iv) aiding and abetting fraudulent inducement against all defendants. The motion relates to all claims against the lawyers and their law firm ("Defendants"). In a "cross motion", Goldberg adopts Defendants' arguments and requests that the claims against him be dismissed (NYSCEF Doc. No. 16).

II. RELEASE AS BAR TO PLAINTIFF'S CLAIMS

Defendants first argue that the complaint should be dismissed because all claims are barred by the release (*see Swig Equities, LLC v Kruger*, 165 AD3d 404 [1st Dept 2018]; *Salerno v Coach, Inc.*, 144 AD3d 449, 450 [1st Dept 2016]; *Calavano v New York Health & Hospitals Corp.*, 246 AD2d 317, 318 [1st Dept 1998]). Pursuant to the Settlement Agreement in the Underlying Action, US Life released Goldberg and his attorneys "from any and all manner of actions, causes of action, claims (at law or in equity), demands, rights, suits, liabilities, debts, sums of money, agreements, damages, losses, litigation expenses, attorneys' fees and costs, of any nature whatsoever, which have or could have been asserted by US Life in connection with the Policy" (exhibit B ¶ 4[d]).

In opposition, plaintiff contends that for a number of reasons, the release does not bar its claims. First, the Judiciary Law claim does not relate to the Policy. Rather the claim relates to the conduct of the defendant attorneys in the Underlying Action, during which they bribed a non-party witness in order to secure a favorable settlement (opp at 7). Second, a release does not cover claims that are unknown, future, or contingent unless "the parties so intend and the agreement is fairly and knowingly made" (*Centro Empresarial Cempresa S.A. et al. v America Movil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011]). Unknown, future, and contingent claims must be expressly released (*see Meisel v Grunberg*, 521 FAppx3d [2d Cir 2013]; *E*Trade Financial Corp. v Deutche Bank AG*, 420 FSupp2d 273, 280-84 [SDNY 2006]; *Maddolini Jewelers, Inc. v Rolex Watch U.S.A., Inc.*, 354 FSupp2d 293 [SDNY 2004; *Bushkin, Gaims, Gaines, Jonas & Stream v Garber*, 677 FSupp 774, 776 [SDNY 1988]; *Kafa Investments, LLC v 270-2178 Broadway, LLC*, 958 NYS2d 577, 582 [Sup Ct NY County 2013]). Here, the release only states that it releases claims that "have or could have been asserted by US Life in connection with the Policy", or those claims that were ripe at the time of the release (NYSCEF Doc No 13 ¶ 4[d]). The Judiciary Law and fraud-based claims asserted here were not known at the time of the release (opp at 9; complaint ¶ 2).

In reply, defendants argue that plaintiff's own allegations show the relationship of the Judiciary Law claim to the Policy. For example, plaintiff alleges that it paid a "confidential amount in exchange for a dismissal of the claims seeking the Policy's $3,000,000 death benefit in the Underlying Action" and that defendants paid for a video containing false statements in order to induce that payment (complaint ¶¶ 44, 1, 51). The Policy was the sole subject of the Underlying Action. In any event, the release expressly includes such a claim in the language "claims…of any nature whatsoever" (exhibit B ¶ 4). Further, plaintiff cannot call the fraud claims "future claims" because it had the video since 2015, well before settling the Underlying Action, and knew it contained statements contradictory to those that Quick had made in 2012. Neither *Centro*, nor *Kafa*, hold that absent the words "future" and "contingent", fraud claims are excluded from a release. US Life fails to explain how the fraud claim did not exist at the time of the settlement. Plaintiff offers no support for its assertion that it "specifically bargained" for the omission from the release (reply at 5-6).

The Settlement Agreement and Release (NYSCEF Doc. No. 13) provide, in relevant part, as follows:

> 4(d). **US Life**. US Life specifically releases…Goldberg… [and] their respective… attorneys… from any and all manner of actions… of any nature whatsoever, which have or could have been asserted by US Life in connection with the Policy.

On its face, the Settlement Agreement and Release is unambiguous and clearly bars any claims that "have or could have been asserted by US Life in connection with the Policy." Plaintiff, however argues that the claims brought here could not "have been asserted by US Life in connection with the Policy" because they were at the time of the release "unknown, future, or contingent" (*Centro Empresarial Cempresa S.A.*, 17 NY3d at 277). The court in *Centro* found that the release at issue there released even future fraud claims because it contained broad language reaching "all manner of actions…whether past, present or future, actual or contingent" (*id.*). Such broad language is not present in the release at issue here. It is limited to those claims that "have or could have been asserted by US Life in connection with the Policy." While it is clear that the conduct alleged involves fraudulent tactics used to secure payment of a benefit "in connection with the Policy," the question remains as to whether the claims "could have been asserted" in the Underlying Action.

The Underlying Action was initiated on November 24, 2014. Horowitz & Rubinstein LLC provided plaintiff with the video on or about February 25, 2015. The parties executed the Settlement Agreement and Release on September 29, 2016. Since plaintiff alleges that the settlement was procured by fraud, the fraudulent inducement and related claims would have accrued when the parties executed the Settlement Agreement and Release (*see Spinale v. Tag's Pride Produce Corp.*, 44 AD3d 570, 571 [1st Dept 2007]). The claims therefore could not have been asserted by US Life prior to execution and are not barred by the release.

III. FRAUDULENT INDUCEMENT CLAIM

Defendants argue that plaintiff fails to state a cause of action for fraudulent inducement. The complaint merely alleges that the attorneys "sent to US Life's counsel a video clip depicting someone they represented to be Quick…" (complaint ¶ 37). They do not dispute that it was Quick in the video, and plaintiff does not allege that the attorney defendants made any other false statement or representation. To the extent the claim relies on bribery of an unidentified third party, plaintiff makes only vague and conclusory allegations without factual detail (mem at 11).

The fraudulent inducement claim also fails because in light of the Integration Clause in the Settlement Agreement, plaintiff cannot show reasonable reliance. US Life expressly represented

that "[a]ll representations and promises made by any party to another, whether in writing or orally, concerning the Policy, the Lawsuit, or this Agreement, are understood by the Parties to be merged into the Agreement" and that "[e]ach of the Parties acknowledges it is not executing this Agreement in reliance upon any promise, representation or warranty not contained or referred to in this Agreement" (exhibit B ¶¶ 4 & 9). Plaintiff may not now circumvent the settlement agreement and release (*see Danann Realty Corp. v Harris*, 5 NY2d 317, 320-21 [1959]).

The fraudulent inducement claim fails for the additional reason that reliance on the video was not reasonable. Quick did not provide any verification of the statements he made on video or swear an oath before making them. Nor did plaintiff depose him afterword regarding the inconsistencies with his prior statements. In fact, due to such "hints of falsity" a "heightened degree of diligence" would have been required here (*see Global Mins. & Metals Corp. v D. Holme*, 35 AD3d 93, 100 [1st Dept 2006]). Plaintiff should have at very least investigated (*Norcast S.ar.L. v Castle Harlan, Inc.*, 147 AD3d 666, 667-68 [1st Dept 2018]). Where a plaintiff knows it is missing information, yet proceeds with entering into a release, the plaintiff is not entitled to bring a related fraud claim later on (*see Centro Empresarial Cempresa S.A.*, 17 NY3d at 278-79).

In opposition, plaintiff argues that the misrepresentation made in the video may be attributed to all defendants because they were part of a fraudulent scheme to procure it (*see e.g. Downey v Finucane*, 205 NY 251, 259-60 [1912]; *Lukowsky v Shalit*, 110 AD2d 563 [1st Dept 1985]; *Noved Realty Corp. v A.A.P. Co. Inc.*, 250 AD1, 6 [1st Dept 1937]). Plaintiff contends that the claim is in fact pled with specificity, detailing the exact language of the misrepresentations (*see* complaint ¶ 38), the date they were conveyed to US Life (February 25, 2015), the medium in which they were made (video), the way in which they were conveyed (email), by whom they were conveyed (by the attorney defendants at Goldberg's direction), how they were procured (bribing Quick), including exactly how much was paid and by whom ($145,000 and a $17,923 Rolex watch, given by the attorney defendants) (opp at 15).

Plaintiff also contends that the claim is not barred by the Integration Clause because it is not specific enough. "[B]ecause fraudulent inducement is remedied with rescission of the entire contract including its merger clause, New York courts routinely permit fraudulent inducement claims to go forward although the written contract contains a merger clause" (*Alpha Capital Anstalt v Oxysure Sys. Inc.*, 252 FSupp3d 332, 341 [SD NY 2017]). While defendants cite *Danann*

because it held that the merger clause applied to exclude parol evidence to show fraud in that case, plaintiff distinguishes it on the facts since that case involved a merger clause with highly specific language. Here, the clause covers only general statements "concerning the Policy, the Lawsuit, or this Agreement" and does not explicitly prohibit reliance on other misrepresentations. This case is more like *Barash v Pa. Terminal Real Estate Corp.*, where a general integration clause did not cover claims based on extra-contractual misrepresentations (26 NY2d 77 [1970]).

To the extent defendants argue that the claim should be defeated by a lack of reasonable reliance, this is a question of fact that cannot be resolved on a motion to dismiss, unless the "case [is] premised on representations explicitly contradicted by a written agreement" (*Knight Securities L.P. v Fiduciary Trust Co.*, 5 AD3d 172, 174 [1st Dept 2004]). The exception does not apply here. *Global Mins.* is distinguishable as it concerns a summary judgment motion. *Norcast* is distinguishable because in that case reliance was not reasonable where plaintiff failed to seek a contractual warranty concerning misrepresentation, unlike here where US Life obtained a representation and warranty that Goldberg owned the Policy. To the extent that defendants argue that plaintiff had an obligation to investigate representations made by opposing counsel, this assumes that attorneys may not rely on their adversaries' ethical obligations to not "knowingly use… false evidence" or "participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false" (N.Y. Rule of Prof. Conduct 3.4[a][4]-[5]). Finally, whether the misrepresentations were verified or made under oath is of no legal significance (opp at 18).

In reply, defendants argue that the court in *Centro* found that where defendant establishes that there is a release, the burden shifts "to the [plaintiff] to show that there has been fraud, duress or some other fact which will be sufficient to void the release" (17 NY3d at 276). As discussed above, plaintiff has failed to establish the elements of fraudulent inducement. In addition to the fact that the bribery allegations are entirely conclusory, "[i]t is axiomatic that [to constitute bribery] the bribe must be offered or paid before the illegal conduct sought to be unlawfully procured is done" (*People v Hankin*, 175 Misc2d 83, 87-88 [Crim Ct Kings County 1997]). The bribery here is not alleged as bribery per se. Plaintiff also fails to provide any legal authority for the proposition that the attorney defendants are responsible for anything Quick said. They themselves did not make

any false statements (reply at 10). Neither *Noved* nor *Lukowsky* involved liability for the false statement of another.

While reasonable reliance is often a question of fact, here it is not reasonable as a matter of law because plaintiff had the means and opportunity to verify the alleged misstatement and did not do so (*see Rubin v Sabharwal*, 2019 WL 1768684 [1st Dept April 23, 2019]; *Cascardo v Dratel*, 2019 WL 1715149 [1st Dept April 18, 2019]; *Taurus Petroleum Ltd. v Global Emerging Mkts. N.A., Inc.*, 2018 WL 3023223, at *3 [Sup Ct NY County 2018]).

The elements of a claim for fraudulent inducement are: (1) a false representation of material fact, (2) known by the utterer to be untrue, (3) made with the intention of inducing reliance and forbearance from further inquiry, (4) that is justifiably relied upon, and (5) results in damages (*Schumaker v Mather*, 133 NY 590, 595 [1892]).

As a preliminary matter, the fraudulent inducement claim is not barred by the Integration Clause in the Settlement Agreement and Release (NYSCEF Doc. No. 13) which provides as follows:

> 9. **Integration Clause**. This Agreement is an integrated contract and constitutes the entire agreement between the Parties with regard to the subject matter hereof. This Agreement supersedes all prior agreements, arrangements, and understandings, if any, relating to the subject matter hereof (including, without limitation, the Policy) and may be amended only by an instrument in writing executed by all Parties. All representations and promises made by any party to another, whether in writing or orally, concerning the Policy, the Lawsuit, or this Agreement, are understood by the Parties to be merged into the Agreement. Each of the Parties acknowledges it is not executing this Agreement in reliance upon any promise, representation, or warranty not contained or referred to in this Agreement.

An integration clause may bar a claim that is specifically disclaimed (*see Alpha Capital Anstalt v Oxysure Sys. Inc.*, 252 FSupp3d 332, 341 [SDNY 2017]). Plaintiff properly distinguishes *Danann* on the grounds that the case involved a merger clause with highly specific language.

Plaintiff has otherwise sufficiently pled the claim for fraudulent inducement with the requisite specificity (*see* CPLR 3016). Plaintiff alleges that defendants represented to it that the contents of Quick's video statement were true, while knowing them to be untrue, with the intention of inducing plaintiff to enter into a favorable settlement agreement, that plaintiff did then rely on the misrepresentation when it entered into the Settlement Agreement, and that it is now damaged in the amount it paid out to an improper beneficiary of the Policy. As plaintiff explains, it includes

further detail as to the exact language of the misrepresentations (*see* complaint ¶ 38), the date they were conveyed to US Life (February 25, 2015), the medium in which they were made (video), the way in which they were conveyed (email), by whom they were conveyed (by the attorney defendants at Goldberg's direction), how they were procured (bribing Quick), including exactly how much was paid and by whom ($145,000 and a $17,923 Rolex watch, given by the attorney defendants). To the extent that defendants argue they themselves made no representations, "whatever functions they assumed… were in furtherance of a common enterprise" to induce a favorable settlement (*see Downey v Finucane*, 205 NY 251, 259-60 [1912]).

As to the claim of a lack of reasonable reliance, defendants have shown that the reliance alleged was not reasonable as a matter of law. A "[p]laintiff cannot assert reasonable reliance where she had the means to discover the true nature of the transaction by the exercise of ordinary intelligence, and failed to make use of those means", (*Rubin v. Sabharwal*, 171 AD3d 580, 580 [1st Dept 2019]). In *Rubin*, a museum co-founder and co-chair failed to conduct an appraisal of certain jewelry before purchasing it despite having the means to do so, and in fact had the jewelry appraised years later when she wanted to sell it. In *Cascardo v Dratel*, plaintiff paid a $10,000 legal fee despite knowing that the funds would not be used for work on her case. In *Taurus Petroleum*, a sophisticated investor failed to perform due diligence or negotiate a contract to bind defendants to their representations. Here plaintiff was aware of the inconsistencies in the statement made in the video for months prior to entering into the settlement and failed to conduct available discovery aimed at uncovering the true facts.

The fraudulent inducement claim shall be dismissed.

IV. CONSPIRACY and AIDING & ABETTING CLAIMS

Defendants argue that because the fraudulent inducement claim fails, so too must the claims for conspiracy and aiding and abetting. Both claims must allege an underlying tort (mem at 16-17). Plaintiff, of course, contends that it has adequately alleged an underlying fraud but the court has held that claim must be dismissed. Accordingly, the civil conspiracy shall be dismissed.

"New York does not recognize an independent cause of action for conspiracy to commit a civil tort" (*Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010]). "[A] cause of action sounding in civil conspiracy cannot stand alone, but stands or falls with the underlying tort"

(*Romano v Romano*, 2 AD3d 430, 432 [2d Dept 2003]). Accordingly, this claim must be dismissed.

The elements of a claim for aiding and abetting fraud are: (1) the existence of an underlying fraud; (2) knowledge of this fraud on the part of the aiding and abetting party; and (3) substantial assistance by the aiding and abetting party in achieving this fraud (*see Oster v Kirschner*, 77 AD3d 51 [1st Dept 2010]; *Stanfield Offshore Leveraged Assets, Ltd. v Metropolitan Life Insurance Co.*, 64 AD3d 472 [1st Dept 2009].

The claim must be dismissed for the same reasons discussed above.

V. JUDICIARY LAW SECTION 487 CLAIM

Defendants argue that plaintiff's claim under Judiciary Law 487 fails because plaintiff has not shown "egregious conduct or a chronic and extreme pattern of behavior on the part of the defendant attorneys that caused damages" (*Facebook, Inc. v DLA Piper LLP (US)*, 134 AD3d 610, 615 [1st Dept 2015]). Defendants add that plaintiff also improperly seeks to collaterally attack the settlement agreement in the Underlying Action by this claim (*see McMahon v Belowich*, 164 AD3d 1443, 1443-44 [2d Dept 2018]["[g]enerally, a party who has lost an action as a result of alleged fraud or false testimony cannot collaterally attack the judgment in a separate action against the party who adduced the false evidence..."]).

In opposition, plaintiff notes that defendants have not cited any authority supporting the proposition that the alleged conduct is anything other than egregious and actionable. Courts have sustained claims under the Judiciary Law for similar and less egregious allegations. In *Guardian Life Ins. Co. of Am. v Handel*, the court maintained a claim where an attorney allegedly initiated litigation to delay and ultimately render ineffectual an autopsy report that may have rendered a death benefit smaller (*see* 190 AD2d 57 [1st Dept 1993]; *see also Palmieri v Biggiani*, 108 AD3d 604 [2d Dept 2013]; and *Izko Sportswear Co. v Flaum*, 25 AD3d 534 [2d Dept 2006]). Plaintiff distinguishes *McMahon* on the grounds that the case involved a collateral attack on a judgement, in which case the judgment must be vacated. This is not the case here. This case is like *Melcher v Greenberg Traurig LLP*, in which the court permitted a Judiciary Law Section 487 claim in a new action where the claim did not arise until after the underlying action was commenced and no judgment was being attacked (*see* 135 AD3d 547, 553 [1st Dept 2016]).

In reply, plaintiff argues that courts have held that "New York law requires that claims under Section 487 be brought in the underlying action where the attorney misconduct occurred, unless the misconduct is part of a broader fraudulent scheme" (*Oorah, Inc. v Kane Kessler, P.C.*, 2018 WL 3996930, at *4 [SDNY August 21, 2018]). Here, there is no allegation of a broader scheme, so the claim should have been brought in the Underlying Action.

New York Judiciary Law § 487 provides that an attorney who "is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party ... is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action." The complaint adequately alleges violation of the statute.

In *Melcher*, the First Department rejected the argument that a Judiciary Law § 487 claim brought in a separate action must be dismissed where the plaintiff does not seek to collaterally attack a judgment (*see* 135 AD3d at 554). Plaintiff is asserting a claim against defendnats based on their alleged participation in a deceit. Defendants have not otherwise shown that the conduct at issue here is not actionable. This branch of the motion is DENIED.

As the second, third and fourth causes of action must be dismissed as against the attorney defendants, those causes of action as also due to be dismissed against Goldberg upon his cross motion.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is GRANTED to the extent that the Second (fraudulent inducement), Third (civil conspiracy to commit fraudulent inducement) and Fourth (aiding and abetting fraudulent inducement) causes of action are hereby DISMISSED and otherwise DENIED; and it is further

ORDERED that the claims against Goldberg are severed and the complaint is hereby dismissed as against Samuel Goldberg and the Clerk of the Court is directed to enter judgment dismissing the complaint as to him together with costs in an amount to be taxed by the Clerk upon presentation of a proper bill of costs.

ORDERED that counsel shall appear by Skype at a status conference on August 11, 2020 10:30 AM. at which time any remaining issues may be addressed. On or before July 29, 2020 counsel shall email the names and email addresses of the persons counsel wish to have invited to attend the conference to Mr. Rivera (mrivera@nycourts.gov).

This constitutes the decision and order of the court.

DATED: July 23, 2020

E N T E R,

O. PETER SHERWOOD J.S.C.