SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROBERT ROSANIA, Plaintiff, - against - LAURENCE GLUCK, Defendant, - and - STELLAR SUTTON LLC, STELLAR BRUCKNER LLC, STELLAR 117 GARTH, LLC, STELLAR 750 TUCKAHOE, LLC, STELLAR 330 EAST 54, LLC, STELLAR WEST 110 LLC, STELLAR MORRISON LLC, STELLAR KVI LLC, STELLAR STRONG ISLAND MEMBER LLC, STELLAR WEST 28 LLC, STELLAR PWV LLC, STELLAR JANEL MEMBER LLC, STELLAR ARIES INVESTOR LLC, BOULEVARD STORY LLC, STELLAR COURT PLAZA LLC, STELLAR UNDERCLIFF LLC, STELLAR 2020 LLC, and "JOHN DOES" 1-3, Nominal Defendants.	:	Hon. Saliann Scarpulla, J.S.C. Index No. 655331/2017 Motion Seq. No. 002

MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Other Authorities

Plaintiff Robert Rosania ("Rosania") respectfully submits this memorandum of law in opposition to the motion to dismiss filed by defendant Laurence Gluck ("Gluck") and the nominal defendants ("Nominal Defendants," and together with Gluck, the "Defendants").[1]

PRELIMINARY STATEMENT

This case arises out of the pervasively fraudulent and patently improper conduct of Gluck, which conduct has continued unabated despite the fact that the parties are already before this Court in connection with a variety of disagreements. Given Gluck's pattern and practice of breaching his contractual and fiduciary obligations to Rosania, this action seeks equitable remedies, which remedies this Court has already acknowledged are the only means to fully and finally end the disputes between the parties.

Defendants' Brief in support of their motion dismiss does not address, much less dispute, any of the facts or allegations in Rosania's Amended Complaint, or contend that Rosania has failed to state a cause of action against Gluck. Rather, Defendants argue, based on a demonstrably false premise, that this Court does not have the power or authority to consider Rosania's claims. Defendants are wrong and, for the reasons set forth below, Defendants' motion to dismiss should be denied in its entirety.

First, Defendants contend that this Court does not have subject matter jurisdiction to adjudicate the causes of action in the Amended Complaint based on a line of inapposite cases that concern claims for dissolution of foreign entities. As is clear from the Amended Complaint, Rosania is not seeking dissolution of the Nominal Defendants, but equitable relief that would

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Verified Amended Complaint, dated December 22, 2017 ("Amended Complaint" or "Am. Compl."), a copy which is attached as Exhibit A to the Affirmation of Stephen B. Meister ("Meister Aff.") filed in support of Defendants' motion to dismiss. Citations to the Memorandum of Law in Support of Defendants' Motion to Dismiss are denoted herein as "Defendants' Brief" or "Def. Br."

finally put an end to Gluck's pervasive misconduct and his ability to abuse his partners. Established case law provides that this Court has both the jurisdiction and authority to grant such equitable relief and, as this Court has recognized, such equitable relief is the only way to discontinue the multiplicity of actions between the parties.

Second, Defendants argue that this Court does not have the authority to grant the specific equitable relief that Rosania seeks in the Amended Complaint, and should thus dismiss the action in its entirety. However, the relief sought by Rosania is well within the Court's extensive equitable powers. Moreover, on a motion to dismiss, the availability of a particular remedy is irrelevant. The inquiry is whether the plaintiff has stated a cause of action -- which Rosania plainly has, as Defendants concede.

Third, Defendants contend that the Court should dismiss the action because there are necessary parties -- all of which are in some way related to Gluck -- that have not been joined. Even assuming that any of these parties are necessary, this is plainly not a basis for dismissal as the Court can simply order the joinder of any necessary parties, or the parties can seek to implead them.

Fourth, Defendants assert that this case should be dismissed because it is duplicative of other actions already pending before the Court. It is not. Indeed, the substance of the claims, and the relief sought in the Amended Complaint are distinct from the other pending actions. Further, and in any event, duplicativeness is not a basis for dismissal.

Accordingly, and for the reasons set forth below, Defendants' motion to dismiss should be denied in its entirety.

STATEMENT OF FACTS

The facts upon which this motion is based are set forth in the Amended Complaint. Rosania incorporates by reference all of the facts set forth in the Amended Complaint, and summarizes the relevant facts herein for the Court's convenience.

Rosania's relationship with Gluck spans almost fifteen years. Am. Compl. ¶ 29. In 1999, Rosania began working for Gluck at Stellar Management[2] -- a company that owns and operates residential and commercial real estate in the New York area and elsewhere. *Id.* ¶ 30. Eventually, Rosania rose to the position of Chief Executive Officer at Stellar Management. *Id.* ¶ 31. As Rosania was given greater responsibility and proved himself to Gluck, as a reward, Gluck began giving Rosania an ownership interest in the various real estate deals in which Stellar Management and its affiliates were involved. *Id.* ¶ 32. In all, together Rosania and Gluck invested in well over 20 properties in New York and elsewhere. *Id.* ¶ 34. These real estate interests are held through a complex structure of special purpose entities created exclusively for the operation, ownership, and management of such interests. *Id.* ¶ 33. Gluck dominates and controls all of the special purpose entities at each and every level of the ownership structure, and uses this domination and control to perpetrate fraudulent acts and steal from his partners. *Id.*

In or about 2013, the relationship between Gluck and Rosania broke down as a result of Gluck's jealousy over Rosania's success. *Id.* ¶ 53. Gluck lashed out, excluding Rosania from the management of the properties in which Rosania and Gluck held interests and terminating Rosania's employment with Stellar Management. *Id.* ¶ 54. Further, since 2013, when Gluck terminated Rosania's employment and ousted Rosania from Stellar Management's offices, every time there has been a capital event at a property in which Gluck and Rosania jointly own

[2] Over the years, numerous legal entities have done business as Stellar Management. The current entity doing business as Stellar Management is Mason Management Services Corporation.

interests, Gluck has improperly seized funds belonging to Rosania without any advance notice, and in many instances, without any notice at all. *Id.* ¶ 75. Specifically, as properties have been sold or refinanced, Gluck has seized funds due to Rosania and has not paid required distributions to Rosania. *Id.* Further, Rosania has been forced to pay substantial taxes on these distributions even though they were withheld by Gluck and Rosania never actually received them. *Id.* In total, Gluck has withheld nearly $25 million in distributions owed to Rosania. *Id.* ¶ 77.

The falling out between Rosania and Gluck has spurned a series of lawsuits between the parties, each of which have proved unresolvable. *Id.* ¶ 55. Three other actions between the parties are pending before this Court. In *Rosania v. Gluck, et. al*, Index No. 160289/2013, Rosania seeks damages arising out of egregious actions that Gluck has taken as the manager of two apartment buildings in which Rosania and Gluck own interests (the "Aries Action").[3] In *Rosania v. Gluck, et. al*, Index No. 150476/2015, Rosania seeks relief for specific breaches of fiduciary duty and breaches of contract by Gluck in connection with certain real estate ventures in which Rosania and Gluck invested (the "Bruckner Action"). In the Bruckner Action, Gluck has interposed counterclaims in which he asserted that Rosania breached certain agreements between Rosania and Gluck (the "Bruckner Counterclaims"). In *Gluck v. Rosania et al.*, Index No. 655183/2016 (the "Parkmerced Action"), Gluck seeks rescission of a contract entered into by Rosania and Gluck in 2010 related to a property in California, Parkmerced, despite the fact that Gluck is simultaneously suing for breach of the same agreement through the Bruckner Counterclaims. Rosania has filed a motion to dismiss the Parkmerced Action. Additionally, Gluck's employee Matthew Lembo ("Lembo") commenced a separate action against Rosania

[3] Rosania commenced the Aries Action via summons with notice on November 16, 2013 but, per stipulations with Gluck's counsel, did not file the complaint until January 15, 2015.

captioned *Lembo v. Rosania*, Index No. 655076/2016 (the "Lembo Action"). The Lembo Action asserts causes of action for breach of contract and a declaratory judgment based upon a purported unwritten agreement between Lembo and Rosania concerning Rosania's interest in Parkmerced. Rosania has also filed a motion to dismiss the Lembo Action.

Given the myriad disputes between the parties, the Court has repeatedly admonished the parties that if they cannot resolve their overall disputes, the Court will find a means to do so. As such, and in light of Gluck's continuing fraudulent conduct during the pendency of the Bruckner Action and Aries Action, on August 11, 2017, in an effort to give the Court a vehicle to finally and completely resolve the disputes between Rosania and Gluck, Rosania filed his complaint in this action. On December 15, 2017, Defendants moved to dismiss the original complaint on the grounds that the court lacked subject matter jurisdiction to dissolve the Nominal Defendants, entities incorporated in Delaware. On December 22, 2017, Rosania filed an Amended Complaint -- which does not seek dissolution of the Nominal Defendants -- to clarify the equitable relief he is seeking. Thereafter, Defendants moved to dismiss the Amended Complaint, making a series of technical and procedural arguments that do not addresses any of the substantive allegations in the Amended Complaint.

ARGUMENT

Defendants do not contend that the factual allegations made by Rosania are insufficient, or that Rosania has failed to state a cause of action. *See* Def. Br. at 4. Rather, Defendants argue that this Court has no subject matter jurisdiction to grant a dissolution of the Nominal Defendants -- relief Rosania explicitly does not seek -- or even to grant equitable relief short of dissolution, because the Nominal Defendants are organized under Delaware law. *See* Def. Br. at 5-14. Further, Defendants argue that even if the Court had subject matter jurisdiction, the relief Rosania seeks is barred by the operative language of the governing limited liability company

agreements. *See id*. at 14-16. Finally, Defendants argue that the Amended Complaint should be dismissed because necessary parties are not before this Court, and Rosania's claims are duplicative of those asserted in prior actions. *See id*. at 16-22.

As more specifically set forth below, none of these arguments provides a basis for dismissal, particularly in light of the inferences in favor of Rosania on this motion. *See Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1997) ("[T]he sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law, a motion for dismissal will fail."); *Condon v. Associated Hosp. Serv.*, 287 N.Y. 411, 415 (1942) (a court of general jurisdiction, "is presumed to have jurisdiction of a cause unless the contrary plainly appears"); *Due Pesci Inc. v Threads for Thought, LLC*, 35 Misc.3d 1202(A), at *3 (Sup. Ct. N.Y. Cty. Feb. 6, 2012) (on a motion to dismiss pursuant to CPLR 3211, "the court takes the facts alleged in the complaint as true and accords the non-movant the benefit of every possible favorable inference") (citing *AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co.*, 5 N.Y.3d 582, 591 (2005)); *Vidal Corp. v. Langley Aviation Corp.*, 48 N.Y.S.2d 824, 827 (Sup. Ct. N.Y. Cty. 1944) ("The complaint must be liberally construed to give it, if possible, such a construction as will bring its demands within the scope of the jurisdiction of this Court which is presumed to have jurisdiction of a cause unless the contrary plainly appears."). Accordingly, the Court should deny Defendants' motion to dismiss in its entirety.

I. THIS COURT HAS SUBJECT MATTER JURISDICTION OVER THIS ACTION

Defendants' argument that this Court lacks subject matter jurisdiction over this action is a strawman that rests on the false premise that Rosania is seeking dissolution of the Nominal Defendants. He is not. Rather, Rosania seeks equitable remedies such as a forced sale, forced buy-out or other appropriate relief -- which this Court has already recognized as the only viable

means to put an end to the parties' serial disputes -- and there is ample precedent that this Court has the authority, power, and jurisdiction to grant such remedies. Accordingly, Defendants' contention that this Court lacks subject matter jurisdiction should be rejected.

A. Rosania Is Not Seeking Dissolution Of The Nominal Defendants

It is clear from the Amended Complaint that Rosania is not seeking dissolution of the Nominal Defendants, but equitable remedies that are "short of dissolution." *See* Am. Compl. ¶¶ 128-44; *infra* Section I.B; *In re Dohring*, 142 Misc. 2d 429, 433 (Sup. Ct. Monroe Cty. 1989) ("there is ample authority for this Court to fashion a remedy, short of dissolution, which will attain substantial justice between the parties"). Nevertheless, Defendants spend pages of their brief arguing that the Amended Complaint should be treated as one for dissolution and, as a result, dismissed because this Court lacks subject matter jurisdiction. *See* Def. Br. at 4-8.

However, there is no basis for the Court to treat the Amended Complaint as a request for dissolution. Indeed, as set forth below, numerous New York courts have treated requests for equitable relief short of dissolution (such as forced sales or forced buy-outs) as just that, and have not considered such cases to be "effectively" seeking dissolution. *See infra* Section I.B. Moreover, Defendants' argument that Rosania is "effectively" seeking a dissolution because the Nominal Defendants would be left without any assets, *see* Def. Br. at 5, relates to only one possible remedy -- a forced sale.[4] However, the Court has the power to fashion the remedies here as it sees fit. *See infra* Sections I.B, II. Further, even if the remedy of a forced sale was granted, pursuant to Delaware law, dissolution does not occur upon the sale of all or substantially all of the assets held by a limited liability company. *See* 6 Del. C. § 18-203.[5]

[4] If the Court orders a forced buy-out, a buy/sell, or other relief, the Nominal Defendants will continue to own the assets in question.

[5] Only one of the 17 limited liability company agreements governing the Nominal Defendants provides that the Nominal Defendant in question is dissolved if and when its assets are sold. *Compare* Meister

Accordingly, given the broad availability of remedies and the fact that no dissolution of the Nominal Defendants would necessarily occur if Rosania is granted relief, this action is plainly not one for dissolution and is not subject to any jurisdictional bar.

B. This Court Has Jurisdiction To Grant Equitable Relief

This action was instituted to provide the Court with a mechanism to grant the relief that the Court has already suggested in order to resolve the multiplicity of litigations between Gluck and Rosania. To that end, in his Amended Complaint, Rosania requests a forced sale, a buy-sell, or other relief that the Court deems just and proper as a result of Gluck's ongoing and pervasive breaches of fiduciary duty. *See* Am. Compl. ¶¶ 134, 139, 144; *id.* at 36 (Prayer For Relief).

It is well-settled that that New York State Courts have the power to grant such equitable relief in the course of hearing controversies concerning business entities created outside New York. Indeed, numerous courts have held that New York State Courts maintain jurisdiction and authority to entertain suits concerning foreign limited liability companies where such suits seek relief "short of dissolution." *See Tosi v. Pastene & Co.*, 34 A.D.2d 520, 520 (1st Dep't 1970) ("where the court has acquired jurisdiction of the parties and there is appropriate basis for the granting of some relief to the plaintiffs in New York, the court should not reject jurisdiction of the action"); *Sokol v. Ventures Educ. Sys. Corp.*, 10 Misc. 3d 1055(A), at *3-4 (Sup. Ct. N.Y. Cty. 2005) ("[s]ubject matter jurisdiction over the internal affairs, short of dissolution, of a foreign corporation may be found, in the court's discretion, to exist in equity"); *In re Dohring*, 142 Misc. 2d 429, 433 (Sup. Ct. Monroe Cty. 1989) ("there is ample authority for this Court to fashion a remedy, short of dissolution, which will attain substantial justice between the parties");

Aff. Ex. U § 11.2 *with id*. Ex. D § 9.1, Ex. F § 9.1, Ex. G § 9.1, Ex. H § 9.1, Ex. I § 7, Ex. J § 9.1, Ex. K § 9.1, Ex. L § 9.1, Ex. M § 9.1, Ex. N. § 10.1, Ex. O § 9.1, Ex. P § 9.1, Ex. Q § 9.1, Ex. R § 9.1, Ex. T § 9.1.

Gimpel v. Bolstein, 125 Misc. 2d 45, 55-56 (Sup. Ct. N.Y. Cty. 1984) (where improper conduct in a partnership is found, the court has "jurisdiction to fashion a remedy . . . short of dissolution").

Moreover, as unequivocally stated in *Raharney Capital, LLC v. Capital Stack LLC* -- a case relied upon by Gluck -- the exception to jurisdiction for dissolution actions applies to "an extremely narrow subset of cases." 138 A.D.3d 83, 88 (1st Dep't 2016) ("[O]ur limited holding here is only that New York courts lack subject matter jurisdiction to dissolve a business entity created under another state's laws, an extremely narrow subset of cases."). Indeed, in *Raharney*, the Court made clear that it was not constraining "the authority of our courts to adjudicate the myriad disputes involving foreign entities doing business in this state . . . ." *Id*.

While Defendants attempt to distinguish the case law cited in Rosania's Amended Complaint, their efforts are in vain. In *Sokol v. Ventures Educ. Sys. Corp.*, the Court reaffirmed the well-settled law that New York State Courts maintain jurisdiction and authority to entertain suits concerning foreign LLCs where such suits seek relief short of dissolution. 10 Misc. 3d 1055(A), at *4 (Sup. Ct. N.Y. Cty. 2005) (holding that "[s]ubject matter jurisdiction over the internal affairs, short of dissolution, of a foreign corporation may be found"). Moreover, *Sokol* does not hold that a party may not seek a buy-out in the absence of an express contractual provision. Rather, *Sokol* held that the plaintiff could not prove a claim of minority shareholder oppression in the absence of either a binding agreement or a Delaware statute granting plaintiff the rights he claimed were oppressed. *Id.* at *7. Further, while Defendants contend that *Tosi v. Pastene & Co.*, 34 A.D.2d 520, 520 (1st Dep't 1970) restricts Rosania's available remedies to a damages claim, *Tosi* merely provides that dissolution is not available for foreign limited liability companies. Finally, *In re Superior Vending, LLC*, 71 A.D.3d 1153, 1154 (2d Dep't 2010) stands

for the proposition that this Court has that authority to mandate a buy-out -- even in the absence of explicit statutory authority --where it is determined to be "the most equitable" method of terminating a business relationship. This holding is directly applicable here, where Rosania is requesting that the Court determine the most equitable remedy should it find that Gluck has committed breaches of fiduciary duty.

Additionally, *Kassab v. Kasab*, No. 0144282013, 2015 WL 11090346 (Sup. Ct. N.Y. Cty. 2015), *aff'd Kassab v. Kasab*, 137 A.D.3d 1138 (2d Dep't 2016), upon which Defendants rely, *see* Def. Br. at 10, 11, 15, does not support their argument but, rather, implicitly confirms the availability of the relief sought by Rosania upon a proper showing. *See Kassab*, 137 A.D.3d at 1141 (breach of fiduciary duty claim dismissed where petitioner failed to allege any basis to "remove the respondent from the management of the LLC . . . or to compel the sale of property owned by those entities in the absence of the dissolution of those entities"). Specifically, in *Kassab*, the lower court held that, where it had already dismissed a cause of action for dissolution under the New York limited liability company act as insufficiently pled, the petitioner could not attempt an end around that decision by asserting a claim for "equitable dissolution." *Id.* at *2-3. Moreover, the Second Department affirmed dismissal of petitioner's breach of fiduciary duty claim because it was insufficiently alleged. *See Kassab*, 137 A.D.3d at 1140. Here, by contrast, Defendants do not even contend that the causes of action are insufficiently alleged, and there is indisputably no prior Court decision holding that Rosania's causes of action are insufficiently alleged.

Given the foregoing, Defendants' argument that this Court lacks jurisdiction to adjudicate the claims set forth in the Amended Complaint is without merit. *See Condon v. Associated*

Hosp. Serv., 287 N.Y. 411, 415 (1942) (a court of general jurisdiction "is presumed to have jurisdiction of a cause unless the contrary plainly appears").

II. DEFENDANTS' ARGUMENT CONCERNING THE AVAILABILITY OF THE REQUESTED REMEDIES IS IRRELEVANT

In addition to arguing that the Court cannot exercise jurisdiction based on a remedy that Rosania does not seek, Gluck argues that the Amended Complaint should be dismissed because the Court cannot grant the remedies that Rosania does seek. *See* Def. Br. at 14-16. Gluck is wrong. The Court undoubtedly has the authority to grant the remedies sought by Rosania, or other relief as it deems just and proper. Indeed, there can be no dispute that this Court retains broad equitable powers. *See Kaminsky v. Kahn*, 23 A.D.2d 231, 237 (1965) ("The power of equity is as broad as equity and justice require."); *Dickerson v. Thompson*, 88 A.D.3d 121, 123 (3d Dep't 2011) (courts have the "inherent authority to fashion whatever remedies are required for the resolution of justiciable disputes and the protection of the rights of citizens"). As such, this Court has broad discretion to fashion relief to fit the particular circumstances of this case. *See* CPLR 3017 ("the court may grant any type of relief within its jurisdiction appropriate to the proof whether or not demanded, imposing such terms as may be just"); *Friedman v. Dalmazio*, 228 A.D.2d 549, 550 (2d Dep't 1996) (after "the trial court concluded that the defendants breached their fiduciary duty to the plaintiffs" it "properly exercised its discretion in fashioning the relief it did").

Moreover, and in any event, this argument is a red herring because the availability of a particular remedy is irrelevant on a motion to dismiss. *See Mintz v. Am. Tax Relief, LLC*, 16 Misc. 3d 517, 524 (Sup. Ct. N.Y. Cty. 2007) ("Where the pleader has stated a good cause of action, the complaint will not be subject to dismissal if the demand asks for relief to which the plaintiff is not entitled or relief that is inconsistent with the cause of action stated.") (citation

omitted); *Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 415 (2001) (where plaintiffs alleged cognizable cause of action whether the remedy is ultimately available "is a matter to be resolved at a later stage, not on a motion to dismiss the complaint"). Indeed, the inquiry on a motion to dismiss is whether a cause of action is stated, not whether a remedy is available. Because Defendants do not dispute that Rosania has, in fact, stated cause of actions, this Court should not dismiss any claim based on the purported unavailability of a particular remedy.

Finally, though the Court need not consider the availability of specific remedies, contrary to Defendants' assertion, none of the LLC Agreements governing the Nominal Defendants preclude a forced sale or a forced buy-out. Rather, in the event Gluck is found to have breached his fiduciary duties and these specific remedies are granted, Gluck (the named defendant in this action and the Manager of every Nominal Defendant), *see* Def. Br. at 15, n.16, would have to enter into actual transaction documents effectuating any such transfer. These transaction documents would thus constitute the "written consent of the Manager" required by 14 of the 17 LLC Agreements. *See Ripley v. Int'l Rys. of Cent. Am.*, 8 A.D.2d 310, 328 (1st Dep't 1959) ("The flexibility of equitable jurisdiction permits innovation in remedies to meet all varieties of circumstances which may arise in any case."); *Newman v. Sherbar Dev. Co.*, 47 A.D.2d 648, 364 (2d Dep't 1975) ("In the granting of equitable relief, the court may mold its relief to accord with the exigencies of the case."); *Garber v. Stevens*, No. 601017/2005, 2012 WL 2091186, at *14-17 (Sup. Ct. N.Y. Cty. June 6, 2012) (holding that where breach of fiduciary duty was proven, Court would exercise its "broad powers in equity" by removing a general partner even when there was no removal provision in the governing limited partnership agreement).

Accordingly, the remedies that Rosania seeks -- which this Court undoubtedly has the authority and jurisdiction to order -- do not provide a basis to dismiss Rosania's well-pleaded Amended Complaint.

III. ANY PURPORTED FAILURE TO JOIN NECESSARY PARTIES IS NOT A BASIS FOR DISMISSAL

Defendants also argue that Rosania's second cause of action, seeking a sale of the properties owned by the Nominal Defendants and a distribution to members in accordance with their percentage interest, should be dismissed because the rights of non-party members of the Nominal Defendants may be "inequitably effected by their non-participation in this action . . . ." Def. Br. at 18. This argument also misses the mark as any purported failure to join these purportedly necessary parties -- all of which are related to Gluck in some way -- is not a basis for dismissal of the Second Cause of Action.

Dismissal of a complaint "for failure to join a necessary party should eventuate only as a 'last resort.'" *L-3 Commc'ns Corp. v. SafeNet Inc.*, 45 A.D.3d 1, 14 (1st Dep't 2007) (citation omitted); *see also Eclair Advisor Ltd. v. Jindo Am., Inc.*, 39 A.D.3d 240, 245 (1st Dep't 2007) (same). Indeed, CPLR 1001(b) specifies that the court should simply order the joinder of all necessary parties over which it has jurisdiction. *See also Farrell v. City of Kingston*, 156 A.D.3d 1269, 1271 (3d Dep't 2017) (holding that lower court erred by determining that failure to name necessary parties required dismissal of complaint, and instead ordering joinder of those parties). Accordingly, should the need arise to join the other members of the Nominal Defendants (who consist largely of Gluck's family members and employees), the Court can simply order the joinder of those parties, or the parties can seek to implead them. *See Blank v. Blank*, 222 A.D.2d 851, 853 (3d Dep't 1995); *see also Eclair Advisor*, 39 A.D.3d at 245. As such, dismissal is not warranted. *See Farrell v. City of Kingston*, 156 A.D.3d 1269 (3d Dep't 2017) (holding that

lower court erred by determining that failure to name necessary parties required dismissal of complaint, and instead ordering joinder of those parties).

IV. ANY PURPORTED DUPLICATIVENESS IS NOT A BASIS FOR DISMISSAL

Defendants additionally move to dismiss the Amended Complaint pursuant to CPLR 3211(a)(4), claiming that this action is duplicative of the Bruckner Action and the Aries Action. *See* Def. Br. at 20-22. It is not. While the Bruckner Action and Aries Action also assert claims for breach of fiduciary duty, the substance of the claims and the relief sought are different. Among other things, the Amended Complaint contains allegations of breaches of fiduciary duty that have occurred in 2015 and 2016 since the filing of the Bruckner Action and the Aries Action. *See* Am. Compl. ¶¶ 100-19. It further sets forth lawsuits filed by rent-controlled tenants in 2017 as a result of Gluck's actions, which have exposed the Nominal Defendants to ongoing future and potential liability, including civil and criminal penalties. *See id*. ¶¶ 70-74. Finally, the Amended Complaint details how the falling out between Rosania and Gluck has spurned a series of lawsuits, each of which has proved unresolvable, thus necessitating the Court's imposition of equitable relief. *See id.* ¶¶ 53-69.

Moreover, even assuming *arguendo* that the Amended Complaint is duplicative -- which it is not -- this would not be a basis for dismissal. Indeed, "[t]he purpose of CPLR 3211(a)(4) is to prevent possible inconsistent or duplicative verdicts." *City of New York v. Wall Street Racquet Club, Inc.*, 136 Misc.2d 405, 409 (1987). Certainly, where, as here, each of the purportedly duplicative actions has been assigned to this Court, this rationale has no application. Moreover, CPLR 3211(a)(4) provides that where there is a prior action pending, "the court need not dismiss upon this ground but may make such order as justice requires." In fact, CPLR 602(a) states that when actions involving a common question of law or fact are pending before a court,

it "may order a joint trial of any or all matters in issue, may order actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Accordingly, even if the Amended Complaint was duplicative -- which it is not -- it would not be a basis to dismiss Rosania's well-pleaded causes of action and Defendants motion to dismiss the Amended Complaint pursuant to CPLR 3211(a)(4) should be denied.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss should be denied in its entirety.

Dated: New York, New York
March 2, 2018

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