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Chambers v Weinstein

Supreme Court of New York, Appellate Division, First Department

January 7, 2016

157781/13, 16579

Reporter

135 A.D.3d 450 *; 21 N.Y.S.3d 892 **; 2016 N.Y. App. Div. LEXIS 45 ***; 2016 NY Slip Op 00051 ****

[**1]** Gerald Chambers et al., Respondents, v Eliyahu Weinstein et al., Defendants, and 121 Park Realty LLC et al., Appellants.

Prior History: *Chambers v Weinstein*, 44 Misc 3d 1224[A], 997 NYS2d 668, 2014 N.Y. Misc. LEXIS 3883, 2014 NY Slip Op 51331[U] (2014)

Core Terms

aiding and abetting, alleges, substantial assistance, actual knowledge, pleaded

Headnotes/Summary

Headnotes

Pleading—Sufficiency of Pleading—Fraud—Aiding and Abetting Ponzi Scheme

Counsel: **[***1]** Lipsius-BenHaim Law LLP, Kew Gardens (Ira S. Lipsius of counsel), for appellants.

Law Office of Daniel H. Richland, PLLC, Lindenhurst (Daniel H. Richland of counsel), for respondents.

Judges: Tom, J.P., Mazzairelli, Richter, Gische, JJ.

Opinion

[*450] [892]** Order, Supreme Court, New York County (O. Peter Sherwood, J.), entered August 22, 2014, which, to the extent appealed from as limited by the briefs, denied defendants-appellants' (defendants) motion to dismiss the aiding and abetting fraud **[**893]** claims against them, unanimously affirmed, without costs.

To state a claim for aiding and abetting fraud, a plaintiff must allege "the existence of the underlying fraud, actual knowledge, and substantial assistance" ([Oster v Kirschner](#), 77 AD3d 51, 55, 905 NYS2d 69 [1st Dept 2010]). Here, the existence of an underlying fraud is sufficiently stated in the complaint, which alleges, among other things, that defendants aided and abetted a **[*451]** fraudulent Ponzi scheme involving the purchase of Facebook shares (*id.*). Plaintiffs have sufficiently stated "substantial assistance," because the complaint alleges that defendants assisted in the fraud by assigning property to codefendants and by placing the proceeds of the fraud beyond the reach of plaintiffs, thereby causing plaintiffs harm (see e.g. *Rostuca Holdings v Polo*, 231 AD2d 402, 403, 646 NYS2d 812 [1st Dept 1996]; see generally **[***2]** *Stanfield Offshore Leveraged Assets, Ltd. v Metropolitan Life Ins. Co.*, 64 AD3d 472, 476, 883 NYS2d 486 [2009], *lv denied* 13 NY3d 709, 918 NE2d 962, 890 NYS2d 447 [2009]). Plaintiffs have sufficiently pleaded "actual knowledge" of the underlying fraud, which "need only be pleaded generally" ([Oster](#), 77 AD3d at 55).

The documentary evidence submitted to the motion court does not "flatly contradict[]" the allegations of the complaint ([Scott v Bell Atl. Corp.](#), 282 AD2d 180, 183, 726 NYS2d 60 [1st Dept 2001], *mod on other grounds* 98 NY2d 314, 774 NE2d 1190, 746 NYS2d 858 [2002]).

We have considered defendants' remaining contentions and find them unavailing. Concur—Tom, J.P., Mazzairelli, Richter and Gische, JJ. **[Prior Case History: 44 Misc 3d 1224[A], 997 NYS2d 668, 2014 NY Slip Op 51331[U].]**

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