No. 25-

IN THE

Supreme Court of the United States

VINCENZO OPPEDISANO,

Petitioner,

v.

LYNDA ZUR,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

MICHAEL V. CARUSO
Counsel of Record
CUDDY & FEDER LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601
(914) 761-1300
mcaruso@cuddyfeder.com

Counsel for Petitioner

386395

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether a federal court sitting in diversity may treat a single factor as dispositive in assessing partnership formation, contrary to this Court's precedent and controlling state law.

PARTIES TO THE PROCEEDING

Petitioner Vincenzo Oppedisano was the plaintiff in the district court and appellant in the court of appeals below. Respondent Lynda Zur was the defendant in the district court and appellee below.

RELATED CASES

Oppedisano v. Zur, No. 20-cv-5395, U. S. District Court for the Southern District of New York. Judgment entered Oct. 24, 2024.

Oppedisano v. Zur, No. 24-cv-295, U. S. Court of Appeals for the Second Circuit. Judgment entered Sep. 19, 2025.

Oppedisano v. Myles, et al., No. 22-cv-62449, U. S. District Court for the Southern District of Florida.

Oppedisano v. Zur, File No. 2024-913, N.Y. Sur. Ct. Orange Cnty. 2024.

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PETITION FOR WRIT OF CERTIORARI

Vincenzo Oppedisano respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The decision of the court of appeals is available at 2025 WL 2682227 and reproduced in the Appendix at 1a-8a. The decision of the U.S. District Court for the Southern District of New York is available at 2024 WL 967260 and reproduced in the Appendix at 9a-13a.

JURISDICTION

The court of appeals issued its summary order on September 19, 2025. Pet. App. 1a-8a. The court of appeals issued its summary order on September 19, 2025. Pet. App. 1a–8a. The time to file a petition for certiorari has been extended to February 16, 2026, and under Supreme Court Rule 30.1, the deadline is further extended to February 17, 2026 because February 16, 2026 is a federal holiday. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Petition involves issues of common law. No constitutional or statutory provisions are at issue.

STATEMENT OF THE CASE

This case addresses whether a federal court may treat loss-sharing as indispensable to forming a partnership, in conflict with state law and this Court's totality-of-the-circumstances framework. Here, the Second Circuit held that, absent a written agreement, a partnership requires: (1) the parties' intent to form a partnership; (2) joint control over the business; (3) an agreement to share profits and losses, with an explicit agreement to share losses being "indispensable;" and (4) capital contributions. Pet. App. 3a. The issue is whether a federal court may treat loss-sharing as indispensable to forming a partnership despite prevalent state-law authority requiring courts to evaluate disputed evidence of intent and course of dealings under a totality-of-the-circumstances analysis established by the Court in *Commissioner v. Culbertson*, 337 U.S. 733 (1949).

Respondent Lynda Zur inherited a fixed-base-operator ("FBO") business from her late husband that provides aviation services at the Fort Lauderdale Executive Airport. Petitioner, a pilot who had previously formed Sano Aviation Corporation ("Sano Aviation"), developed a close personal and professional relationship with Respondent. In 2006, Respondent transferred the FBO business into Sano Aviation, and the parties began operating it together. Over the next thirteen years, they jointly managed the FBO and renamed it using Petitioner's name, with Petitioner publicly identified as its president, overseeing ramp operations and contributing substantial labor and resources to the business, and investing his personal reputation in the business. In 2019, Respondent ended their relationship, excluded Petitioner

from the business, and began operating the FBO with a new partner. Petitioner subsequently filed suit in June 2020 in the District Court, invoking diversity jurisdiction under 28 U.S.C. § 1332.

Respondent argued that Petitioner's partnership-based claims turned solely on whether the parties agreed to share losses, contending that, absent such proof, no partnership could exist as a matter of law regardless of disputed issues of fact concerning other partnership elements. Respondent maintained that she alone guaranteed multimillion-dollar FBO loans and bore responsibility for the company's operating and legal expenses. Petitioner founded and controlled Sano Aviation, the entity operating the FBO, serving as its president and sole shareholder. He publicly associated the business with his name, managed daily operations, and invested substantial, unreimbursed capital and resources at risk of total loss. By committing his own funds, labor, reputation, and corporate assets without any guarantee of repayment and at risk of total loss, Petitioner reasonably believed he was participating in the risks and potential losses of the parties' collective FBO enterprise.

The District Court disagreed and granted summary judgment for Respondent, finding that Petitioner had not raised a triable factual issue as to the existence of a partnership. Pet. App. 26a-31a. Notably, while the court concluded that Petitioner was not a partner, it nevertheless found the parties had "some other form of business relationship," acknowledged that he performed services for the FBO, and recognized that he was "associated" with its operations. Pet. App. 29a-30a. Oddly, the District Court concluded that this evidence, though probative of a

business relationship, did not create a triable factual issue as to partnership formation. Pet. App. 29a-31a.

The Second Circuit exercised jurisdiction under 28 U.S.C. § 1291 and affirmed. It held that the record showed the parties "did not anticipate that Oppedisano [Petitioner] would share in the company's losses." Pet. App. 4a. The Court cited New York Court of Appeals precedent stating that, while no single factor is sufficient to establish a partnership, an agreement to share both profits and losses is "indispensable." Pet. App. 3a-4a. The Second Circuit also relied on its own precedent holding that a partnership may be formed without an express loss-sharing agreement only where "there was no reasonable expectation of losses at all," and concluded that such an agreement was unnecessary here because the parties "did not reasonably anticipate any [losses]." Pet. App. 5a. By treating loss sharing as indispensable, the courts below misapplied the fact-intensive, totality-of-the-circumstances standard established by this Court and followed by state courts, substituting a rigid and incorrect federal rule in its place.

Petitioner now respectfully petitions for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

Occasionally, a federal court's view of state law on a basic and recurring issue is so plainly wrong that this Court's review is warranted. This is such an instance.

This case is remarkable not because its facts are unusual, but because they are ordinary. Forming a

partnership reflects the most fundamental principle of business: uniting individuals to share risk. These decisions involve heavily travelled intersections between law and finance that are often navigated without counsel. The lack of a consistently applied evidentiary standard being applied to those formative events has produced disparate outcomes in federal courts when applying state law partnership standards.

Certiorari is appropriate here because this case implicates not only the foundational question of how partnerships are formed, but more importantly applying the proper lens for evaluating whether parties intended to conduct business together and share risk in a common enterprise. Without definitive guidance from this Court, federal courts have increasingly moved away from a functional, context-driven analysis and instead rely on a rigid, dispositive focus on loss-sharing as the keystone element of partnership formation. This shift has produced incongruous outcomes in factually similar cases nationwide.

Here, the Second Circuit held that the absence of an explicit loss-sharing agreement "alone defeats" the existence of a partnership, thus abandoning the totality-of-the-circumstances inquiry required under state law by subordinating all other factors to loss-sharing. Pet. App. 5a. This approach conflicts with longstanding partnership formation principles that have guided this Court and others for more than a century. The court below was plainly wrong to hold that loss sharing is indispensable to forming a partnership without regard to triable factual issues in the record. Pet. App. 5a. Certiorari should be granted.

I. This Court Reviews Federal Courts' State-Law Rulings That Are Plainly Wrong

This Court does not normally grant petitions for certiorari to review an application of state law. *Leavitt v. Jane L.,* 518 U.S. 137, 144-45 (1996). But the "general presumption that circuit courts correctly decide questions of state law reflects a judgment as to the utility of reviewing them in most cases, not a belief that the courts of appeals have some natural advantage in this domain." *Id.* at 145 (citations omitted). "That general presumption is obviously inapplicable where the court of appeals' state-law ruling is plainly wrong . . . ." *Id.*; *see also Town of Castle Rock v. Gonzales*, 545 U.S. 748, 757 (2005) ("That presumption can be overcome, however."). Under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) and its progeny, federal courts sitting in diversity must apply substantive state law as interpreted by state courts. *Erie* precludes federal courts from replacing state-law standards with their own substantive interpretations, especially where, as here, state law precedents nationwide recognize a fact-intensive, totality-of-the-circumstances approach to assessing partnership formation. *See id.*

II. The Decision Below Treating Loss Sharing As Dispositive Rather Than Probative Evidence Of Partnership Formation Is Plainly Wrong

Courts have long recognized that partnerships are inherently fact-driven and shaped by the parties' conduct and intent in each case. As such, these legal relationships are not susceptible to immediate classifications. Nor can they be reduced to any single dispositive factor, including the existence of a written loss-sharing agreement.

The decision below interpreting this requirement as indispensable rather than probative evidence of the parties' intentions, is plainly wrong. Pet. App. 2a-6a.

As early as 1892, this Court recognized that profit-sharing was presumptive, though inconclusive evidence of a partnership. *See Meehan v. Valentine*, 145 U.S. 611 (1892). The Court in *Meehan* instead focused on the parties' greater "community of interests" that embraced the business' risks and responsibilities. *See id*. Since *Meehan*, this Court has not imposed loss sharing as a prerequisite to partnership formation. Instead, the Court has consistently treated loss sharing as one factor among many bearing on whether the parties intended to carry on a business together. *See Commissioner v. Tower*, 327 U.S. 280 (1946) (whether partners "really and truly intended to join together for the purpose of carrying on business and sharing in the profits or losses … is a question of fact to be determined from testimony disclosed by their agreement, considered as a whole, and by their conduct in execution of its provisions"); *see also Lusthaus v. Commissioner*, 327 U.S. 293 (1946) (holding that the intention to form a partnership should be inferred when the necessary elements of a valid partnership exist absent contrary evidence). This Court has yet to mint a purely mechanical test for partnership formation and, at times, has stopped short of making loss sharing an indispensable prerequisite. For example, in *Comm'r v. Culbertson*, 337 U.S. 733 (1949), this Court emphasized that no single factor, whether profit or loss sharing, capital contribution, or management authority, is determinative. Rather, it is whether the parties, in good faith and with a business purpose, intend to join in the conduct of a business. From *Culbertson* emerged a totality-of-the-circumstances lens

based on the parties' full pattern of conduct, intent, and economic reality rather than in a rote, checklist fashion.

This Court has not revisited this totality analysis in over seventy-five years since *Culbertson*. Since then, courts have gravitated toward a bright-line rule treating loss-sharing as an indispensable element, and producing conflicting outcomes as reflected in the decisions below:

- **Federal:** *Williams v. Obstfeld*, 314 F.3d 1270 (11th Cir. 2002) (an agreement to share losses may be implied only in specific circumstances whereas, for example, one party supplies labor or skill, and the other supplies capital); *see Southex Exhibitions, Inc. v. Rhode Island Builder Ass'n., Inc.*, 279 F.3d 94 (1st Cir. 2002) (loss sharing is "a very important partnership attribute" the parties can "override"); *VIDIVIXI, LLC v. Grattan*, 155 F. Supp. 3d 476, 481 (S.D.N.Y. 2016) (holding that contributions of "labor and expertise" are part of the losses shared by partners); *Scholastic, Inc. v. Harris*, 259 F.3d 73, 84 (2d Cir. 2001) (finding that the parties proffered conflicting testimony on summary judgment, creating a genuine issue of material fact, requiring a jury trial to determine whether a partnership, joint venture, or another business structure formed).

- **State:** *Florida Tomato Packers, Inc. v. Wilson*, 296 So.2d 536 (Fla. Dist. Ct. App. 1974) ("a duty to share in losses is legally implied to exist in the situation where one of the joint ventures supplied the labor, experience, and

skill and the other the necessary capital" and submitting the partnership issue to a jury); *Harun v. Rashid*, 2018 WL 329292 (Tex. App.—Dallas) ("an agreement to share losses is not necessary to create a partnership."); *Holmes v. Lerner*, 74 Cal.App.4th 442, 444 (Cal.App. 1 Dist. 1999) ("[T]he presence or absence of any of the various elements ... is not necessarily dispositive."); *Shain Inv. Co. v. Cohen*, 15 Mass.App.Ct. 4 (1982) (partnership intent and formation turns on many factors including "an express or implied duty to share in losses"); *Bianchi v. Midtown Reporting Service*, 103 A.D. 3d 1261, 1262 (4th Dept. 2013) ("No one factor is determinative [and] it is necessary to examine the relationship as a whole."); *Harrell Oil Co. of Mount Airy v. Case,* 543 S.E.2d 522, 525 (N.C. App. 2001) (a partnership can exist despite the "absence of an express agreement to share profits or losses, and despite the apparent absence of actual profits during the operation of the business.").

- **Bankruptcy:** *In re Fairfield Sentry Ltd.*, 627 B.R. 546, 563-64 (Bankr. S.D.N.Y. 2021) ("[t]he use of the term 'factors,' rather than 'elements,' by New York courts implies that a party can prove the existence of a *de facto* partnership without meeting each of the 'elements.").

- **Delaware Court of Chancery:** *Grunstein v. Silva*, 2011 WL 378872 at *7 (Del.Ch. Jan 31, 2011) (finding there is "no singularly dispositive

> consideration that determines whether or not a partnership" exists).

The Second Circuit has long acknowledged that determining whether a partnership exists is a fact-intensive inquiry requiring consideration of the totality of the circumstances, with no single factor being dispositive. *See Kidz Cloz, Inc. v. Officially for Kids, Inc.*, 320 F. Supp. 2d 164, 177 (S.D.N.Y. 2004). Yet here, the courts below treated the absence of a loss-sharing agreement as dispositive, disregarding other probative evidence that, under *Commissioner v. Culbertson*, *supra*, could support a partnership finding, thereby creating an *Erie* problem by substituting a rigid federal standard for the state law totality approach. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). Here, the summary judgment record contains numerous triable factual issues bearing directly on partnership formation, including control, intent, and risk allocation, which also require credibility determinations. Rather than letting a jury resolve these triable issues, the courts below ruled that a partnership could not exist solely due to the absence of a loss-sharing agreement and ignoring a record laden with contested facts.

The Second Circuit attempted to reinforce this reasoning by rejecting an exception to loss-sharing recognized in *Fat Brands Inc. v. Ramjeet*, 75 F.4th 118, 129-30 (2d Cir. 2023), which applies when parties reasonably foresee no possibility of losses. The court below cited the summary judgment record as "replete with indications that Oppedisano expected the FBO business to struggle financially at the outset of his involvement." Pet. App. 4a. But even the absence of evidence that losses

were anticipated carries no greater evidentiary weight than Respondent boasting of the FBO's financial strength from the outset. Here, the record shows consistently positive financial performance for the FBO year after year. Applying *Fat Brands* to presume losses under these circumstances short-circuited the summary judgment process. Rather than evaluating the entire record and drawing inferences in the nonmovant's favor, the lower courts applied a single factor focus that displaced the required totality analysis and undermined a full search of the record as Rule 56 requires. Neither *Kidz Cloz Inc.*, *Fat Brands*, nor any other Second Circuit authority endorses such an approach, particularly where it prevents courts from confronting triable factual issues on summary judgment.

New York has long applied a totality-of-the-circumstances test for partnership formation, considering multiple factors rather than treating loss sharing as indispensable. *See Brodsky v. Stadlen*, 138 A.D.2d 662, 663 (2d Dep't 1988) (nine factors); *see also Leonard v. Cummins*, 196 A.D.3d 886 (3d Dep't 2021) (four). Yet the courts below treated loss sharing as the sole controlling element and disregarded all other probative evidence once that factor was absent. In doing so, they not only departed from controlling precedent but also displaced the factfinder's role and abridged the totality inquiry at both the summary judgment stage and at trial.

This case therefore presents an ideal opportunity to curb the drift from this Court's totality framework under *Culbertson* toward a single, dispositive element framework for analyzing partnership claims. Certiorari is warranted to restore uniformity, sharpen the governing standard

articulated in *Culbertson*, and ensure that partnership formation disputes are resolved through a comprehensive evaluation of the parties' conduct and economic realities rather than an element-based shortcut.

III. Clarifying Partnership Formation Standards Reflects an Important and Recurring Partnership Formation Question

For more than seventy-five years, this Court has held that partnership formation depends on the parties' intent and the totality of the circumstances. *Comm'r v. Culbertson*, 337 U.S. 733 (1949). Lower courts across multiple circuits have increasingly elevated loss-sharing to a dispositive element, creating inconsistent and forum-dependent outcomes on the fundamental issue of partnership formation. This case presents the Court with an opportunity to reaffirm a century-old, universally applicable standard for partnership formation Yet, lower courts increasingly substitute categorical rules, most notably treating loss sharing as a dispositive prerequisite, yielding inconsistent and forum dependent outcomes. This case illustrates why partnership formation must continue to be assessed under *Culbertson*'s totality framework and why rigid, bright-line tests are improper.

Partnership formation disputes are pervasive, often arising whenever parties jointly pursue a business venture, invest capital, or operate a business without written agreements and corporate formalities. Because most begin informally, courts routinely face questions about whether parties intended to act as partners. The absence of a clear evidentiary standard that is being consistently applied in federal courts has generated

uncertainty for litigants and inconsistent results across jurisdictions. Federal courts have diverged sharply. Some elevate loss sharing to a dispositive element, which is at odds with *Comm'r v. Culbertson*. Others apply the more comprehensive, fact-intensive inquiry that *Culbertson* established. These inconsistencies also have *Erie* implications because federal courts sitting in diversity cannot invent a federal shortcut for the state-law totality framework. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). As a result, identical facts may yield opposite outcomes depending on the forum or circuit. The loss-sharing overemphasis has also encouraged a more liberal use of summary judgment to shortcut the role of judges and juries in weighing evidence of intent, conduct, and credibility.

This case is an ideal vehicle to resolve this divergence from *Culbertson*. The issue was dispositive below and benefits from a full summary judgment record. This Court's review would clarify that partnership formation disputes must be resolved based on the full record and totality analysis, and not by inflexible, element-based rules that are reflexively applied at the expense of the facts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael V. Caruso
Counsel of Record
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601
(914) 761-1300
mcaruso@cuddyfeder.com
Counsel for Petitioner

February 17, 2026

APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DECIDED SEPTEMBER 19, 2025

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

24-2955

VINCENZO OPPEDISANO,

Plaintiff-Appellant,

v.

LYNDA ZUR,

Defendants-Appellee.[*]

Decided September 19, 2025

Present:

DENNY CHIN,
WILLIAM J. NARDINI,
MARIA ARAÚJO KAHN,
Circuit Judges.

Appeal from a judgment of the United States District Court for the Southern District of New York (Vincent L. Briccetti, *District Judge*).

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* The Clerk of Court is respectfully directed to amend the caption as set forth above.

Appendix A

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiff-Appellant Vincenzo Oppedisano appeals from a judgment of the United States District Court for the Southern District of New York (Vincent L. Briccetti, *District Judge*), entered on March 5, 2024, granting in part Defendant-Appellee Lynda Zur's motion for summary judgment and denying Oppedisano's motion for partial summary judgment. Oppedisano's claims turn on his involvement in a fixed-base-operator ("FBO") business that Zur inherited, which provided aeronautical services at the Fort Lauderdale Executive Airport. Sometime before 2006, Zur transferred the operation and control of the FBO to the Sano Aviation Corporation ("SAC"), an entity Oppedisano previously incorporated. Oppedisano claimed that he and Zur operated the FBO for years as a partnership, but that at some point Zur cut him out and began operating the FBO with a new business partner. In June of 2020, Oppedisano filed a lawsuit against Zur alleging various violations of New York state partnership and contract law and seeking legal and equitable relief. Zur removed the case to federal court on July 14, 2020. The district court granted Zur's motion for summary judgment with respect to all but one claim, which Oppedisano subsequently voluntarily dismissed with prejudice. The district court also denied Oppedisano's motion for partial summary judgment with respect to his declaratory relief and unjust enrichment claims. Oppedisano now appeals the district court's grant of summary judgment as to his partnership-based claims, fraud claim, and unjust

enrichment claim, and his request for declaratory relief.[1] We assume the parties' familiarity with the case.

We review the grant of summary judgment *de novo*. *Bellamy v. City of New York*, 914 F.3d 727, 744 (2d Cir. 2019).[2] Summary judgment is appropriate only where the moving party "shows that there is no genuine dispute as to any material fact and . . . is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). We review a district court's refusal to issue a declaratory judgment for abuse of discretion. *Grand River Enters. Six Nations, Ltd. v. Boughton*, 988 F.3d 114, 127 (2d Cir. 2021).

I. Partnership-Based Claims & Fraud Claim

The bulk of Oppedisano's claims depend on his assertion that he and Zur formed a partnership to operate the FBO. The parties do not dispute that New York law applies to these claims. In determining whether a partnership exists in the absence of a written agreement, courts consider "the intent of the parties, whether the parties shared joint control in the management of the business, whether the parties shared profits and losses[,] and the existence of capital contribution." *Moses v. Savedoff*, 96 A.D.3d 466,

1. Oppedisano's partnership-based claims are limited to his first, second, third, and fourth causes of action for accounting, judicial dissolution, dissolution based on fraud or misrepresentation, and liquidation.

2. Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

947 N.Y.S.2d 419, 423 (1st Dep't 2012). No single element is sufficient to establish a partnership, but an agreement to share both profits and losses is "indispensable." *Steinbeck v. Gerosa*, 4 N.Y.2d 302, 317, 151 N.E.2d 170, 175 N.Y.S.2d 1 (1958). A partnership can be formed absent an agreement to share losses only if "there was no reasonable expectation of losses" at all. *Fat Brands Inc. v. Ramjeet*, 75 F.4th 118, 129-30 (2d Cir. 2023).

Even drawing every reasonable inference in favor of Oppedisano, the record evidence conclusively shows that Oppedisano and Zur did not anticipate that Oppedisano would share in the company's losses. The parties agree that Zur alone personally guaranteed several loans, securing millions of dollars to fund SAC. Zur did not share the loan applications or related paperwork with Oppedisano. Zur declared that Oppedisano was similarly unobligated with respect to the company's operating, legal, and tax expenses. Oppedisano contests this characterization but produced no documents to the contrary. Indeed, he testified at his deposition that he did not recall signing any documents on behalf of the FBO beyond "maybe . . . some payroll checks." App'x 418. Oppedisano's exclusion from these financial obligations, as well as Zur's failure to consult Oppedisano about the FBO's loans, indicate that the parties did not form an agreement to share in the company's losses. Nor can Oppedisano benefit from the exception for cases involving "no reasonable expectation of losses." *Id.* at 129-30. The record is replete with indications that Oppedisano expected the FBO business to struggle financially at the outset of his involvement. Oppedisano thus fails to establish that he and Zur agreed to share

losses, or that such an agreement was unnecessary because they did not reasonably anticipate any. This factor alone defeats Oppedisano's claim that he and Zur formed a partnership.

In any event, Oppedisano also failed to establish the remaining elements of a partnership agreement. Oppedisano concedes that he never received a salary or dividend from the FBO, and he provided no evidence to support his assertion that he reinvested alleged profits into the company. He likewise failed to show that he exercised joint control of the FBO business; to the contrary, he emphasized his own removal from the company's administration and core decision-making. And while Oppedisano may have contributed his time and knowledge of the aviation industry, he failed to show capital contributions beyond the expenses he incurred by performing repairs at the FBO and lending equipment for its use. Oppedisano thus has not established a genuine dispute of fact as to the existence of a partnership. The district court properly granted summary judgment in favor of Zur on his partnership-based claims.

Oppedisano's fraud claim also fails without an operative partnership agreement. To establish fraud under New York law, plaintiffs must show:

> (1) a misrepresentation or an omission of material fact which was false and known to be false by the defendant, (2) the misrepresentation was made for the purpose of inducing the plaintiff to rely upon it, (3) justifiable reliance of the plaintiff on the

misrepresentation or material omission, and (4) injury.

Guilbert v. Gardner, 480 F.3d 140, 147 n.5 (2d Cir. 2007). Oppedisano contends that in 2019 Zur misrepresented to Oppedisano that she wanted to sell the FBO to a third party and share the proceeds with Oppedisano equally in order to secure Oppedisano's agreement to a future sale. He argues that he was injured when Zur decided instead to take on a new partner and exclude him from the FBO's management because he was deprived of his share of the partnership's assets. In other words, his injuries flow solely from his alleged status as a partner. Because Oppedisano failed to establish the existence of a partnership, he enjoys no claim to half the FBO's assets and therefore cannot show that he suffered an injury. He is similarly unable to show that he detrimentally relied on Zur's alleged misrepresentation by consenting to a prospective sale because Zur would have been free to sell the company without his consent in the absence of a partnership agreement. Oppedisano's fraud claim thus falls with his partnership-based claims.

II. The Purchase Agreement

Oppedisano's only remaining claims are for unjust enrichment and declaratory judgment. These claims stem from a 2011 "Purchase Agreement" under which a trust, for which Oppedisano served as grantor, sold stock in SAC to an entity that Zur owned and controlled. Oppedisano asserts that Zur used the allegedly invalid Purchase Agreement to convert Oppedisano's ownership interest

in SAC and was therefore unjustly enriched. The statute of limitations in New York for an unjust enrichment claim is six years. N.Y. C.P.L.R. § 213(1). The limitations period begins to accrue "upon the occurrence of the wrongful act giving rise to a duty of restitution and not from the time the facts constituting the fraud are discovered." *Cohen v. S.A.C. Trading Corp.*, 711 F.3d 353, 364 (2d Cir. 2013). The "wrongful act giving rise" to Oppedisano's claim occurred when the Purchase Agreement was executed on January 20, 2011, more than nine years before Oppedisano commenced this action. The claim is therefore time-barred.

Oppedisano also fails to demonstrate that he is entitled to equitable tolling. Equitable tolling may defeat a statute of limitations defense when "the plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action." *Abbas v. Dixon*, 480 F.3d 636, 642 (2d Cir. 2007). To show the defendant engaged in such behavior, the plaintiff must point to specific actions by the defendant that prevented him from bringing suit. *Id.* "[M]ere silence or failure to disclose the wrongdoing," for example, is insufficient. *Ross v. Louise Wise Servs., Inc.*, 8 N.Y.3d 478, 491, 868 N.E.2d 189, 836 N.Y.S.2d 509 (2007). Oppedisano not only fails to identify affirmative steps Zur took to prevent him from uncovering the nature of the Purchase Agreement but also is personally responsible for any limited understanding of its effect. Oppedisano testified at his deposition that he signed the agreement without reading it, as he did with most of the company's paperwork. Oppedisano also repeatedly stressed that he generally left Zur to handle the business side of the

relationship. App'x at 428-29 ("I'm the field guy. I don't think about the office."). Oppedisano may not now argue that his ignorance of the Purchase Agreement was a result of Zur's "fraud, misrepresentations or deception." *Abbas*, 480 F.3d at 642. He therefore provides no reason why his failure to bring his unjust enrichment claim within the limitations period should be excused.

Oppedisano also seeks a declaration that the Purchase Agreement is a "legal nullity." Because the district court is time barred from reaching the merits of his unjust enrichment claim, which necessarily requires a conclusion regarding the Purchase Agreement's validity, declaratory relief is unavailable. *Stone v. Williams*, 970 F.2d 1043, 1048 (2d Cir. 1992) ("Because a declaratory judgment action is a procedural device used to vindicate substantive rights, it is time-barred only if relief on a direct claim based on such rights would also be barred.").

The district court, therefore, did not err in granting Zur's motion for summary judgment on Oppedisano's claims for unjust enrichment and declaratory judgment.

* * *

We have considered Oppedisano's remaining arguments and find them to be unpersuasive. Accordingly, we **AFFIRM** the judgment of the district court.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK, FILED OCTOBER 24, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 20 CV 5395 (LAP)

VINCENZO OPPEDISANO,

Plaintiff,

-against-

LYNDA ZUR,

Defendant.

Filed October 24, 2024

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

Before the Court is Plaintiff's second letter-motion for leave to dismiss this action pursuant to Federal Rule of Civil Procedure 41(a)(2).[1] (*See* dkt. no. 169.) Trial is scheduled to begin in less than four weeks. Defendant does

1. The Court denied Plaintiff's first letter-motion for leave to amend due to a lack of substance, including whether Plaintiff was requesting dismissal with or without prejudice. (*See* dkt. no. 168.)

not oppose dismissal to the extent Plaintiff voluntarily dismisses the entire action with prejudice. (Dkt. no. 170.)

I. Relevant Background

The Court presumes familiarity with the underlying facts of this case. Briefly, this action commenced over four years ago, on June 29, 2020, with Plaintiff's filing of the original complaint in state court. (Dkt. no. 1 ¶ 1.) On July 14, 2020, Defendant removed the case to federal court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, (*see generally id.*), and the case was assigned to Judge Vincent L. Briccetti.

Plaintiff filed an amended complaint ("AC") on August 25, 2020. (Dkt. no. 13.) Defendant moved to dismiss the AC for lack of personal jurisdiction, improper venue, and failure to state a claim on Counts 1-5 and 10, and, in the alternative, moved to transfer the action to the U.S. District Court for the Southern District of Florida. (Dkt. nos. 18-20.) Judge Briccetti denied all but one of Defendant's bases for the motion to dismiss[2] and ordered the parties to submit a proposed discovery plan and scheduling order no later than August 26, 2021. (Dkt. no. 24.) Judge Briccetti entered a case management and scheduling order establishing October 1, 2021 as the deadline to amend pleadings. (*See* dkt. nos. 28, 36, 56, 64.)

2. Judge Briccetti dismissed Count 10 for failure to state a claim.

Appendix B

On July 29, 2022, Plaintiff sought leave to amend the AC, and, on September 12, 2022, Judge Briccetti denied the request as untimely, among other reasons. (Dkt. nos. 65-67, 77.) The parties completed discovery and cross-moved for summary judgment in 2023.

On March 5, 2024, Judge Briccetti denied Plaintiff's motion for partial summary judgment and denied in part and granted in part Defendant's motion for summary judgment, ruling that Plaintiff's sixth cause of action for quantum meruit/unjust enrichment may proceed to the extent that Plaintiff seeks compensation for his contributions of time, services, and money to the business. (*See* dkt. no. 140.) Plaintiff moved for reconsideration of the summary judgment order, (dkt. nos. 141-42), which Judge Briccetti denied on April 2, 2024, (dkt. no. 145).

On May 31, 2024, the case was reassigned to this Court. Two weeks later, Plaintiff moved this Court for leave to amend the AC, notwithstanding Judge Briccetti's prior orders denying leave to amend as untimely and ruling on cross-motions for summary judgment and reconsideration. (*See* dkt. no. 154.) The Court denied leave to amend, (dkt. no. 157), and set trial for November 18, 2024, (dkt. no. 161)

On September 30, 2024, the parties appeared for a pretrial conference, at which Plaintiff argued that, notwithstanding the summary judgment ruling to the contrary, he should be permitted to recover an interest in the value of the business. The Court rejected this argument, reminding counsel that the summary judgment

ruling limited damages to "compensation for the value of [P]laintiff's contributions of time, services, and money to the business[,]" and disallowed "recovery of an alleged interest in the business itself." (*See* dkt. no. 140 at 16.)

One week later, Plaintiff moved to dismiss the only remaining claim in this action. (Dkt. no. 165.) The instant letter-motion, Plaintiff's second under Rule 41(a)(2), adds only that Plaintiff seeks a dismissal with prejudice. (*See* dkt. no. 169.)

II. Applicable Law

Under Rule 41(a)(2), "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). In this Circuit, "[a] party who loses on a dispositive issue that affects only a portion of his claims may elect to abandon the unaffected claim[], invite a final judgment, and thereby secure review of the adverse ruling." *Atlanta Shipping Corp. v. Chem. Bank*, 818 F.2d 240, 246 (2d Cir. 1987) (citation omitted). Put another way, "[h]e is not obliged to try to completion a claim he is willing to abandon as the price of securing review of the dismissal of the claims he deems important." *Id.* (citing *Empire Volkswagen Inc. v. World-Wide Volkswagen Corp.*, 814 F.2d 90 (2d Cir. 1987)).

As discussed above, the only remaining claim is Plaintiff's sixth cause of action for quantum meruit/unjust enrichment. By moving for dismissal with prejudice, Plaintiff abandons Count Six, foregoing trial presumably to pursue appellate review. Accordingly, as

Plaintiff invites a final judgment of this action, the motion is granted.[3]

III. Conclusion

For the foregoing reasons, Plaintiff's letter-motion for leave to dismiss with prejudice the only remaining claim, (dkt. no. 169), is GRANTED. Accordingly, because there are no remaining claims before the Court, the Clerk of the Court shall mark this action as closed and enter a judgment in favor of Defendant.

SO ORDERED.

Dated: October 24, 2024
New York, New York

/s/ Loretta A. Preska
LORETTA A. PRESKA
Senior United States District Judge

3. Still, the timing of this motion is curious. Judge Briccetti ruled on cross-motions for summary judgment and on Plaintiff's reconsideration motion in March and April of 2024, respectively. Plaintiff could have moved at any time in the last six months to dismiss Count Six and invite a final judgment, but he did not. Instead, upon reassignment of the action to this Court, Plaintiff attempted to relitigate issues resolved by Judge Briccetti in the hopes of achieving a different ruling from this Court. That Plaintiff was unsuccessful in bringing about different results and now moves, at the eleventh hour, to dismiss the only remaining cause of action suggests that Plaintiff may seek appellate review at this juncture in the hopes of starting fresh with yet another bench.

APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED MARCH 5, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20 CV 5395 (VB)

VINCENZO OPPEDISANO,

Plaintiff,

v.

LYNDA ZUR,

Defendant.

Filed March 5, 2024

OPINION AND ORDER

Briccetti, J:

Plaintiff Vincenzo Oppedisano brings this action against his former romantic and alleged business partner, defendant Lynda Zur. Plaintiff asserts claims for unjust enrichment, quantum meruit, breach of contract, breach of the duty of good faith and fair dealing, and breach of fiduciary duty. Plaintiff also seeks a declaratory judgment and certain relief pursuant to New York's partnership law.

Appendix C

Now pending are defendant's motion for summary judgment (Doc. #107), and plaintiff's motion for partial summary judgment (Doc. #115).

For the reasons set forth below, defendant's motion is GRANTED in part and DENIED in part, and plaintiff's motion is DENIED.

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

BACKGROUND

The parties have submitted memoranda of law, statements of material undisputed facts pursuant to Local Civil Rule 56.1, and supporting declarations and exhibits. Together, they reflect the following background.

This case arises from a dispute over the parties' respective ownership of and involvement in an aviation-services business operated in Fort Lauderdale, Florida.

I. Formation of Sano Aviation Corporation

In 2004, defendant's husband died and left her with control of the Aztec Jet Center ("Aztec"), a fixed-base operator ("FBO"),[1] located at the Fort Lauderdale Executive Airport. (Doc. #116 ("Pl. 56.1 Statement")

1. FBOs are businesses granted rights by an airport to provide various "aviation services such as fueling aircraft, hangar rental, parking, tie-downs, aircraft rental and maintenance, and flight instruction." (Pl. 56.1 Statement ¶ 2).

¶¶ 1-3). Subsequently, in approximately 2005, plaintiff and defendant began what would ultimately be a thirteen-year romantic relationship. (Doc. #112 ("Def. 56.1 Statement") ¶ 1).

On June 2, 2005, plaintiff filed a certificate of incorporation with the New York Department of State for a newly formed entity called Sano Aviation Corporation ("SAC"). (Doc. #117-1). Over the years, plaintiff has formed and operated several businesses using the trade name "Sano"—the last four letters of his surname. (Pl. 56.1 Statement ¶ 11).

On March 14, 2006, plaintiff registered SAC with Florida's Department of State as a foreign corporation doing business in Florida. (Docs. ##111-5, 111-6). Plaintiff is identified as chairman and president of SAC in the registration paperwork. (Doc. #111-6 at ECF 4).[2]

Although the record is murky as to the precise mechanics, the parties agree SAC eventually took over operation and control of Aztec's business, rebranding it as "Sano Jet Center." (Doc. #127 ¶ 12). According to defendant, this change was precipitated by "bad advice" she received from a New York lawyer whom plaintiff had selected. (Doc. #128 ¶¶ 11-12). At the time, defendant asserts, various parties were pursuing the assets of her late husband's estate. Therefore, the New York lawyer allegedly advised defendant to move "ownership of the

2. "ECF" refers to page numbers automatically assigned by the Court's Electronic Filing System.

Florida FBO business into Sano Aviation Corp.," and operate the FBO using "a company name that appeared wholly unaffiliated with my husband." (*Id.* ¶¶ 11-12).

From 2007 to 2010, annual reports filed with the Florida Department of State identify plaintiff as the chairman and president of SAC.[3] (Doc. #117-22 at ECF 2-5). For the years 2007 to 2012, federal tax returns also list plaintiff as the sole shareholder of SAC. (Docs. ##117-3-117-8). Nevertheless, defendant insists both she and plaintiff "agreed and were fully aware that the Florida FBO business—whether named Aztec Jet Center, Sano Jet Center, or otherwise—was always solely owned by me and would remain solely owned by me." (Doc. #128 ¶ 13).

II. Transfer of SAC Stock

Over the several years of their relationship, the parties signed and executed a series of documents which now loom large in this lawsuit.

First, on November 13, 2006, plaintiff and defendant executed a document that appears to create an irrevocable inter vivos trust (the "Trust"). (Pl. 56.1 Statement at 16; Doc. #110-4). The document identifies plaintiff as the grantor and beneficiary and defendant as the trustee; it does not identify any trust property. Although plaintiff disputes the legal effect of the document, he does not

3. Plaintiff states in his 56.1 Statement that he is listed as chairman and president of SAC through 2011. (Pl. 56.1 Statement ¶ 32). However, the 2011 annual filing reflects Sigrun Corporation in those roles. (Doc. #111-8).

dispute that he signed and executed it. The document was also notarized. (Doc. #110-4 at ECF 13-14; Doc. #111-1 at 72).[4]

Second, on August 8, 2007, plaintiff signed a document entitled "Stock Power." The document reads as follows:

> **VINCENZO OPPEDISANO**, individually, as shareholder, president, officer, and all other titles, hereby irrevocably assigns and transfers unto **LINDA ZUR,**[5] **as trustee of the Vincenzo Oppedisano trust dated November 13, 2006,** ALL of his Shares of Stock in SANO AVIATION INC., standing in his name on the books of said Corporation. This transfer is for no consideration.

(Doc. #110-5 at ECF 1). The parties also dispute the nature and legal effect of this document, but plaintiff does not dispute that he signed it. (Doc. #111-1 at 60). This document is also notarized. (Doc. #110-5 at ECF 1). Relatedly, an undated stock certificate states "Linda Zur, as trustee of the Vincenzo Oppedisano Trust" is the owner of all two hundred shares of stock in SAC. (Doc. #117-2 at ECF 1).

Third, on January 20, 2011, the parties signed a document entitled "Purchase and Transfer of Stock

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4. Citations to transcripts refer to the page number at the top-right hand corner of each transcript page.

5. Defendant's name seems to be misspelled in certain documents, but the parties do not dispute that "Linda Zur" refers to defendant.

Agreement" (the "Purchase Agreement"). (Doc. #110-6). The Purchase Agreement identifies the Trust as the seller of two hundred shares of capital stock in SAC, "issued to Seller on or about June 2, 2005." (*Id.* at ECF 1). An entity called Sigrun Corporation is identified as the buyer. Defendant is the sole owner and shareholder of Sigrun, a corporation she formed in Delaware on January 12, 2011. (Pl. 56.1 Statement ¶¶ 52-53).

The document has a signature page with several blocks. Both defendant and plaintiff signed their names under the "SELLER" blocks. Defendant is identified as the trustee of the Vincenzo Oppedisano Trust, while plaintiff's name is listed with no additional description. Defendant also signed her name under the signature block for "BUYER" but, there, she is identified as the president of Sigrun Corporation. (Doc. #110-6 at ECF 3). As with the other documents discussed, plaintiff contests the legal validity and effect of the Purchase Agreement, but does not dispute that he signed it. (Doc. #111-1 at 70-71).

On November 6, 2011, defendant filed a "Certificate of Domestication" for SAC with the Florida Department of State. (Doc. #111-9). Defendant is identified in the document as the director of SAC.[6] (*Id.* at ECF 5). Also,

6. Defendant contends that by domesticating SAC in Florida, she formed a new, Florida-based entity distinct from the Sano Aviation Corporation registered in New York. (*See, e.g.*, Def. 56.1 Statement ¶¶ 13-14). Plaintiff disputes this characterization and argues defendant had no legal right to domesticate SAC because plaintiff was still the sole owner of the business. (Pl. 56.1 Statement at 19). This issue is ultimately immaterial to the resolution of the

starting in 2011, defendant signed SAC's annual reports filed with Florida's Department of State, and she is identified as SAC's director starting with the 2012 report. (Docs. #111-8, 111-10).[7] Beginning in 2013, defendant is listed as SAC's sole shareholder on the company's federal tax returns. (Doc. #111-16).

III. Operation and Control of SAC

The parties vigorously dispute whether and the extent to which plaintiff participated in the management and operation of Sano Jet Center and SAC. Plaintiff contends he played an integral role in nearly every operational aspect of the business: managing the tarmac, supervising employees, monitoring fueling, performing repairs, and completing grading and site work, among other things. (Doc. #118 ¶¶ 19-26). According to plaintiff, at the time he

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instant motion, so the Court declines to weigh in on the matter. However, for the sake of simplicity only, the Court does not adopt defendant's distinction between the purported "New York entity" and "Florida entity."

7. In his 56.1 Statement, plaintiff asks the Court to exclude and strike Exhibit 10 to the DeSouza Declaration (Doc. #111-10) because defendant did not produce the documents contained therein in response to plaintiff's discovery requests (Pl. 56.1 Statement at 20 n.12). Because these documents are public and readily available on a Florida government website—a fact defense counsel pointed out in response to plaintiff's counsel (Doc. #117-20 at ECF 2)—this request is denied. Defendant was not obligated to produce documents equally available to both parties. Nevertheless, defense counsel offered to produce the documents anyway. (*Id.* ("If you want them produced by Ms. Zur, I can do so.")). In short, the Court will neither strike nor disregard this exhibit.

became involved in the business, it was in "financial ruin" (*id.* ¶ 10), in desperate need of repairs and organizational improvements (*id.* ¶¶ 24, 31), and suffering from a poor reputation in the aviation community (Pl. 56.1 Statement ¶ 6). Plaintiff insists it was only with his intensive assistance and commitment that the business turned a corner, becoming profitable and successful.

Nonetheless, plaintiff also contends he relied completely on defendant to manage the "books" aspect of the business, including running the "office and administrative portions of the FBO." (Doc. #118 ¶ 44; Doc. #111-1 at 98-99, 109, 149). In fact, plaintiff testified at his deposition that he signed all documents defendant presented to him and did not read any paperwork related to the FBO or alleged partnership. (*See, e.g.*, Doc. #111-1 at 109).

Defendant sharply disputes plaintiff's characterization of his role in Sano Jet Center. Defendant asserts the FBO was not "rundown" or "in distress" when she took control of it following her husband's death. (Doc. #128 ¶ 5). She also insists plaintiff "never had any role in the management, ownership, and/or operation of Aztec Jet Center, Sano Jet Center, or any other name for the Florida FBO business." (*Id.* ¶ 6). Defendant further emphasizes plaintiff made no capital contributions to the FBO and did not guarantee or sign any of the business loans SAC took out to expand and improve its facilities. (*Id.* ¶ 19; Def. 56.1 Statement ¶ 30). Neither party has been able to produce any documents plaintiff signed on behalf of SAC or Sano Jet Center, though plaintiff testified he recalls signing

payroll checks. (*See* Pl. 56.1 Statement at 30; Doc. #111-1 at 103-04).

IV. Breakdown of SAC

In approximately May 2019, the parties' romantic relationship ended. (Doc. #111-3 at 129-30; Doc. #133 ¶ 4). Plaintiff alleges that shortly prior to their separation, defendant approached him and proposed they sell the FBO business, splitting the profits equally so they could "travel the world together." (Doc. #13 ("Am. Compl.") ¶ 7). However, according to plaintiff, defendant had already secretly initiated a partnership with a third party to own and operate the FBO (*id.* ¶ 137), thereby "freezing Plaintiff out of both the Partnership and management of the FBO" (*id.* ¶ 235).

Although defendant disputes this narrative, the parties agree that in the spring of 2019, defendant began running the FBO under the banner "Fort Lauderdale Executive Jet Center." (Doc. #110 ¶ 22; Doc. #121 at 28). Defendant now operates the FBO formerly known as Sano Jet Center in partnership with an individual and investor named Marshall Myles. (Doc. #13-5); Doc. #111-3 at 19).

DISCUSSION

I. Standard of Review

The Court must grant a motion for summary judgment if the pleadings, discovery materials before the Court, and any affidavits show there is no genuine issue as to any

material fact and it is clear the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

A fact is material when it "might affect the outcome of the suit under the governing law. . . . Factual disputes that are irrelevant or unnecessary" are not material and thus cannot preclude summary judgment.[8] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

A dispute about a material fact is genuine if there is sufficient evidence upon which a reasonable jury could return a verdict for the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248. The Court "is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried." *Wilson v. Nw. Mut. Ins. Co.*, 625 F.3d 54, 60 (2d Cir. 2010). It is the moving party's burden to establish the absence of any genuine issue of material fact. *Zalaski v. Bridgeport Police Dep't*, 613 F.3d 336, 340 (2d Cir. 2010).

If the non-moving party has failed to make a sufficient showing on an essential element of his case on which he has the burden of proof, then summary judgment is appropriate. *Celotex Corp. v. Catrett*, 477 U.S. at 322-23. If the non-moving party submits "merely colorable" evidence, summary judgment may be granted. *Anderson*

8. Unless otherwise indicated, case quotations omit all internal citations, quotation marks, footnotes, and alterations.

v. Liberty Lobby, Inc., 477 U.S. at 249-50. The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts, and may not rely on conclusory allegations or unsubstantiated speculation." *Brown ex rel. Brown v. Eli Lilly & Co.*, 654 F.3d 347, 358 (2d Cir. 2011). "The mere existence of a scintilla of evidence in support" of the non-moving party's position is likewise insufficient; "there must be evidence on which the jury could reasonably find for" the non-moving party. *Dawson v. County of Westchester*, 373 F.3d 265, 272 (2d Cir. 2004).

On summary judgment, the Court construes the facts, resolves all ambiguities, and draws all permissible factual inferences in favor of the non-moving party. *Dallas Aerospace, Inc. v. CIS Air Corp.*, 352 F.3d 775, 780 (2d Cir. 2003). If there is any evidence from which a reasonable inference could be drawn in the non-movant's favor on the issue on which summary judgment is sought, summary judgment is improper. *See Sec. Ins. Co. of Hartford v. Old Dominion Freight Line, Inc.*, 391 F.3d 77, 82-83 (2d Cir. 2004).

In deciding a motion for summary judgment, the Court need consider only evidence that would be admissible at trial. *Nora Beverages, Inc. v. Perrier Grp. of Am. Inc.*, 164 F.3d 736, 746 (2d Cir. 1998). Bald assertions, unsupported by admissible evidence, are thus not sufficient to overcome summary judgment. *Carey v. Crescenzi*, 923 F.2d 18, 21 (2d Cir. 1991).

II. Existence of a Partnership

Defendant argues she is entitled to summary judgment on all of plaintiff's claims because, as a matter of law, the parties never formed a partnership.

The Court agrees there was no partnership but disagrees that all of plaintiff's claims must be dismissed on those grounds.

A. Legal Standard

In New York,[9] a party seeking to establish the existence of a partnership, absent a written agreement, must show: (i) the sharing of profits and losses; (ii) joint control and management; (iii) contribution by each party of property, financial resources, effort, skill, or knowledge; and (iv) the parties' intention to be partners. *Kidz Cloz, Inc. v. Officially for Kids, Inc.*, 320 F. Supp. 2d 164, 171 (S.D.N.Y. 2004).

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9. In a diversity case, the Court must use the choice-of-law rules of the forum state to determine the substantive law to be applied. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496, 61 S. Ct. 1020, 85 L. Ed. 1477 (1941). "However, where the parties have agreed to the application of the forum law, their consent concludes the choice of law inquiry." *Cargo Partner AG v. Albatrans Inc.*, 207 F. Supp. 2d 86, 93 (S.D.N.Y. 2022), *aff'd*, 352 F.3d 41 (2d Cir. 2003). Here, the parties both briefed New York law on the existence of a partnership, without engaging in a choice-of-law analysis. They have, therefore, "consented to the application of the law of the forum state" on this issue. *Id.*

"When there is no written partnership agreement between the parties, the court must determine whether a partnership in fact existed from the conduct, intention, and relationship between the parties." *Fasolo v. Scarafile*, 120 A.D.3d 929, 929-30, 991 N.Y.S.2d 820 (4th Dep't 2014); *accord Czernicki v. Lawniczak*, 74 A.D.3d 1121, 1123-24, 904 N.Y.S.2d 127 (2d Dep't 2010). Although no single factor is determinative, "some of them weigh more heavily than others." *Toretto v. Donnelley Fin. Sols., Inc.*, 583 F. Supp. 3d 570, 587 (S.D.N.Y. 2022). In particular, an agreement to share in both profits *and* losses is "indispensable" to partnership formation. *Fisher v. Tice*, 692 F. App'x 54, 56-57 (2d Cir. 2017) (summary order).[10] As such, unless both parties consent, "either expressly or impliedly, to share liability for the possible obligations, debts, and losses" of the business, no partnership exists. *Fisher v. Tice*, 2016 U.S. Dist. LEXIS 87792, 2016 WL 4626205, at *14 (S.D.N.Y. July 5, 2016), *aff'd*, 692 F. App'x 54.

B. Analysis

Plaintiff has not raised a triable issue of fact as to the existence of a partnership.

Plaintiff is correct that, as a general matter, several factors are relevant in an analysis of partnership formation. However, the overwhelming weight of authority demonstrates that the absence of "any agreement to share

10. Because "joint ventures are governed by the same legal rules as partnerships" in New York, cases concerning the formation of a joint venture apply with equal force to the instant motion. *See Scholastic, Inc. v. Harris*, 259 F.3d 73, 84 (2d Cir. 2001).

the burden of losses" is "fatal" to a partnership claim. *Davella v. Nielsen*, 208 A.D.2d 494, 494, 616 N.Y.S.2d 800 (2d Dep't 1994); *Dinaco, Inc. v. Time Warner, Inc.*, 346 F.3d 64, 68 (2d Cir. 2003); *Kidz Cloz, Inc. v. Officially for Kids, Inc.*, 320 F. Supp. 2d at 177.

The only exception to this rule is for cases in which "there was no reasonable expectation of losses." *Fat Brands v. Ramjeet*, 75 F.4th 118, 129-30 (2d Cir. 2023). But plaintiff himself insists, when he agreed to partner with defendant, the FBO was in dire straits: he asserts it was facing "financial ruin"; it was "beset by persistent disorganization and delay" (Doc. #118 ¶¶ 10, 24); it suffered from a poor reputation in the community; and its facilities were rundown and needed repair (Doc. #116 ¶¶ 5-7). Under these circumstances, there is no genuine dispute that "losses were plainly possible in connection with this endeavor." *Fisher v. Tice*, 692 F. App'x at 57. Accordingly, the exception recognized in *Fat Brands* does not apply here.

Plaintiff argues the business did not actually incur any losses, so there were no obligations in which he could share. As an initial matter, this is somewhat beside the point. Partnerships are creatures of contract, whether express or implied. *Growblox Sci., Inc. v. GCM Admin. Servs. LLC*, 2016 U.S. Dist. LEXIS 44679, 2016 WL 1275050, at *7 (S.D.N.Y. Mar. 13, 2016). Thus, the critical issue is whether the parties *agreed* they would both be liable for future business obligations, not necessarily whether they shared losses in fact. *See Cleland v. Thirion*, 268 A.D.2d 842, 844, 704 N.Y.S.2d 316 (3d Dep't 2000).

That said, if the parties had shared losses as a matter of course, this would be relevant to whether a prior existing agreement could be inferred. *See Vogel v. TakeOne Network Corp.*, 2023 U.S. Dist. LEXIS 144922, 2023 WL 5276857, at *5 (S.D.N.Y. Aug. 13, 2023) (finding the "absence of a course of conduct sharing losses" fatal to partnership claim). But, here, the evidence cuts cleanly against any suggestion of a loss-sharing agreement: although SAC "never reported losses on its tax returns" (Doc. #119 ¶ 30), the business *did* incur financial obligations in the form of business loans. Plaintiff does not dispute[11] that defendant was the only signatory or guarantor for these loans (Doc. #116 at 29-30), and the record does not suggest otherwise (*see, e.g.*, Doc. #110-1).

Plaintiff also argues defendant never told him about the loans, "thereby denying him the opportunity to contribute or obligate himself thereto." (Doc. #121 at 24 n.26). However, that defendant never discussed the loans with plaintiff is, in itself, "a strong indication they never had an agreement to share [losses]." *Slinin v. Shnaider*, 2019 U.S. Dist. LEXIS 245265, 2019 WL 13214733, at *7 (S.D.N.Y. Oct. 1, 2019); *see Kidz Cloz, Inc. v. Officially for Kids*, 320 F. Supp. 2d at 175 (observing "the parties never discussed what would occur in the event of a loss").[12]

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11. Although plaintiff claims he "[d]isagree[s]" with this statement, he does not actually dispute its substance. Rather, he points out he "was not consulted" about the referenced loans and complains defendant did not produce evidence of any *other* loans in discovery. (Doc. #116 at 29). These arguments are neither consistent with the spirit of Local Rule 56.1 nor relevant.

12. The Court notes plaintiff's representations on this point are somewhat inconsistent. Plaintiff's opposition to defendant's

Plaintiff does present evidence he was associated with and performed services for the business during his relationship with defendant (*see, e.g.*, Doc. #127 ¶¶ 19, 34; Doc. #117-10 at 30; Doc. #117-14 at ECF 3; Doc. #131-1), loaned defendant funds for the business, and incurred certain service-related expenses (for which he was not reimbursed). Although this evidence suggests the parties had some form of business relationship, it does not create a genuine dispute of fact as to the existence of a partnership.

For example, plaintiff's contribution of time and services, no matter how significant, is insufficient on its own to make him a partner, absent some other proprietary interest in the business. *Kidz Cloz, Inc. v. Officially for Kids, Inc.*, 320 F. Supp. 2d at 175; *Rivkin v. Coleman*, 978 F. Supp. 539, 543 (S.D.N.Y. 1997) ("[A]lleged sweat equity [is] insufficient to form a partnership.").

Moreover, even if the Court were to credit plaintiff's contention that he shared in the profits of the FBO (but simply "reinvested" them), "the sharing of profits is consistent with other types of business arrangements,"

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motion claims defendant "*never told plaintiff about the loans*" (Doc. #121 at 24 n.26), and cites to plaintiff's declaration as evidence. However, in that declaration, plaintiff admits he was aware the FBO needed and was in the process of securing loans from institutional lenders, but defendant never provided him with "any of the loan applications, guarantees, or paperwork." (Doc. #118 ¶¶ 46-47). Whatever the truth of the matter, defendant's failure to seek plaintiff's contribution or guarantee on the loans is flatly inconsistent with the suggestion they formed a mutual loss-sharing agreement.

and therefore not uniquely indicative of a partnership.[13] *See Slinin v. Shnaider*, 2019 U.S. Dist. LEXIS 245265, 2019 WL 13214733, at *7.

In addition, neither party disputes that the $1.3 million plaintiff provided was a loan, which defendant repaid. (Pl. 56.1 Statement ¶ 23). "Such loans of cash by one person to another for the purposes of business during the existence of the claimed relationship usually negates the notion of partnership." *Brodsky v. Stadlen*, 138 A.D.2d 662, 663, 526 N.Y.S.2d 478 (2d Dep't 1988).

Lastly, although plaintiff makes various references to "capital" and financial contributions, the Court cannot identify any capital plaintiff contributed to the alleged partnership other than expenses he incurred in performing certain services. "Where there is undisputed

13. Although the Court need not reach the question of whether plaintiff shared in the profits of the FBO, it is worth noting that plaintiff's argument in this respect is dubious. During the thirteen years of the alleged partnership, the FBO generated substantial profits. Yet plaintiff (unlike defendant) never received a salary, dividend, or distribution from the business. Plaintiff insists, however, that he *was* sharing in the profits, but that he simply reinvested his share. However, plaintiff has been unable to produce any accounting or other evidence demonstrating the amount of his share of the profits and/or this supposed "reinvestment." Rather, plaintiff asserts that the fact he never received a salary, distribution, or dividend is evidence he reinvested his profits in the business. However, this merely assumes the conclusion—plaintiff attempts to prove he shared in the profits by pointing to the absence of proof he ever drew on the profits. Of course, these facts are also consistent with plaintiff never having had a share of the profits in the first place.

evidence that a party never made a capital contribution to the business, such evidence strongly suggests that no partnership existed." *Hammond v. Smith*, 151 A.D.3d 1896, 1899, 57 N.Y.S.3d 832 (4th Dep't 2017).

In sum, there is no genuine dispute of material fact as to whether plaintiff and defendant formed a partnership. Thus, no partnership existed.

C. Partnership-Dependent Claims

As noted above, defendant argues all of plaintiff's claims are predicated on the existence of a partnership between the parties to own, operate, and manage the FBO.

The Court disagrees.

Neither party devotes meaningful attention to this issue in their briefing. Nonetheless, at bottom, the Court may not find for defendant on claims for which she is not entitled to judgment as a matter of law. *See Vt. Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 246 (2d Cir. 2004). Accordingly, the Court must determine, on a claim-by-claim basis, whether plaintiff can proceed on each of his causes of action as a matter of law, notwithstanding the absence of a partnership between the parties.

1. First, Second, Third, and Fourth Causes of Action: Partnership Remedies

Plaintiffs first through fourth causes of action all seek explicit partnership remedies that are based on

rights available only to partners. (*See* Am. Compl. ¶¶ 179-246). Accordingly, plaintiff's claims for an accounting, judicial dissolution, dissolution based on fraud or misrepresentation, and liquidation must all be dismissed.

2. Fifth Cause of Action: Fraud Claim

It is self-evident that, in the abstract, a plaintiff need not show the existence of a partnership to pursue a claim for fraud or fraudulent misrepresentation. Under New York law, a fraud claim requires "a misrepresentation . . . 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." *Lama Holding Co. v. Smith Barney Inc.*, 88 N.Y.2d 413, 421, 668 N.E.2d 1370, 646 N.Y.S.2d 76 (1996). In other words, to state a fraud claim, a plaintiff must show "a representation of material fact, falsity, scienter, reliance, and injury." *Small v. Lorillard Tobacco Co.*, 94 N.Y.2d 43, 57, 720 N.E.2d 892, 698 N.Y.S.2d 615 (1999).

Here, the fraud claim is based on plaintiff's allegation that defendant said she wished to sell the FBO to a third-party purchaser, with the parties to divide the profits of the sale equally between them. (Am. Compl. ¶¶ 233-34). However, plaintiff claims that when defendant made this statement, she was planning to or had already decided to take on a new partner and "freez[e] Plaintiff out of both the Partnership and management of the FBO." (*Id.* ¶ 235). Plaintiff alleges he was falsely induced to consent to the sale of the FBO and "was never paid for his 50% share of the Partnership's assets." (*Id.* ¶ 242).

Because the Court finds no reasonable juror could conclude the parties formed a partnership, as a matter of law, plaintiff is not entitled to half of the business's assets based on his status as a partner. Plaintiff pleads no other injury specific to his fraud claim. Accordingly, as a matter of law, plaintiff's fraud claim fails because he cannot make a sufficient showing on an essential element of his claim.[14] *See Celotex Corp. v. Catrett*, 477 U.S. at 322-23.

3. Sixth Cause of Action: Quantum Meruit/ Unjust Enrichment Claim

Plaintiff's sixth cause of action is for quantum meruit/ unjust enrichment. Under New York law, courts "may analyze quantum meruit and unjust enrichment together as a single quasi contract claim." *Mid-Hudson Catskill Rural Migrant Ministry, Inc. v. Fine Host Corp.*, 418 F.3d 168, 175 (2d Cir. 2005). To succeed on such a claim, a plaintiff must establish "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services." *Id.*

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14. It bears mentioning that plaintiff had notice and an opportunity to develop arguments as to the viability of his claims in the absence of a partnership. In her motion papers, defendant took the explicit position summary judgment was warranted on all of plaintiff's claims because the parties had not formed a partnership. (Doc. #108 at 3). Moreover, even at the pleading stage, plaintiff brought claims and made allegations "in the alternative" if the Court determined no partnership existed. (*See, e.g.*, Am. Compl. ¶¶ 256, 290, 309).

Here, plaintiff asserts both that defendant has been unjustly enriched by his services—*i.e.*, his "input of time, effort, experience, labor, and resources"—and that it would be inequitable to permit defendant to retain the value of his interest in the alleged partnership or the increase in the value of the business during their relationship. (Am. Compl. ¶¶ 254-56). As with his fraud claim, plaintiff cannot recover an ownership interest or share of the business's assets under quantum meruit based on his status as a partner. However, plaintiff is not perforce barred from seeking equitable relief for the value of his services generally. *See, e.g., GrowBlox Scis., Inc. v. GCM Admin. Servs., LLC*, 2015 U.S. Dist. LEXIS 71180, 2015 WL 3504208, at *9.

Accordingly, plaintiff's quantum meruit/unjust enrichment claim may proceed but only insofar as it seeks compensation for the value of plaintiff's contributions of time, services, and money to the business, but not recovery of an alleged interest in the business itself. *See Collins Tuttle & Co., Inc. v. Leucadia, Inc.*, 153 A.D.2d 526, 526, 544 N.Y.S.2d 604 (1st Dep't 1989) ("Recovery on a claim premised upon quasi-contract or unjust enrichment is limited to the reasonable value of the services rendered by the plaintiff.").

4. Seventh and Ninth Causes of Action: Contract Claims

Plaintiff's seventh and ninth causes of action are for breach of contract and breach of the duty of good faith and fair dealing. Both of these claims require an express

contract, whether oral or written. *See Cambridge Cap. LLC v. Ruby Has LLC*, 565 F. Supp. 3d 420, 456, 471-72 (S.D.N.Y. 2021). With respect to these claims, plaintiff has not alleged the existence of any applicable contract other than a partnership agreement. Accordingly, defendant is entitled to summary judgment on the seventh and ninth causes of action.

5. Eighth Cause of Action: Breach of Fiduciary Duty Claim

Plaintiff's eighth cause of action, for breach of fiduciary duty, is similarly based on the theory defendant owed plaintiff a fiduciary duty because he was "a partner in the Partnership." (Am. Compl. ¶ 267). Accordingly, this claim must also be dismissed.

Plaintiff's remaining claims are discussed below in the context of his motion for partial summary judgment.[15]

III. Eleventh Cause of Action: Declaratory Judgment Claim

Plaintiff argues he is entitled summary judgment on his eleventh cause of action in which he seeks a declaration that the Purchase Agreement[16] is a "legal nullity" because

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15. The Court dismissed plaintiff's tenth cause of action, seeking the imposition of a constructive trust, by bench ruling dated September 2, 2021. (*See* Docs. ##24, 30).

16. In the amended complaint, plaintiff requests a declaratory judgment as to both the Purchase Agreement and the Trust.

(i) the agreement and "the process of its creation" were "fatally deficient," (ii) it was "void and/or voidable" for lack of or inadequate consideration, and (iii) it is voidable because it was the result of defendant's impermissible self-dealing. (Doc. #121 at 6-7).

The Court disagrees but on other grounds.

Under New York law, "[a] cause of action for a declaratory judgment is unnecessary and inappropriate when the plaintiff has an adequate, alternative remedy in another form of action." *Apple Records, Inc. v. Cap. Recs., Inc.*, 137 A.D.2d 50, 54, 529 N.Y.S.2d 279 (1st Dep't 1988). Put differently, a declaratory judgment claim is unnecessary if it "seeks resolution of legal issues that will, of necessity, be resolved in the course of the litigation of the other causes of action." *Sofi Classic S.A. de C.V. v. Hurowitz*, 444 F. Supp. 2d 231, 249-50 (S.D.N.Y. 2006).

In the same vein, "[d]eclaratory relief is intended to operate prospectively. There is no basis for declaratory relief where only past acts are involved." *Frontier Airlines, Inc. v. AMCK Aviation Holdings Ir. Ltd.*, 676 F. Supp. 3d 233, 2023 U.S. Dist. LEXIS 99452, 2023 WL 3868585, at *14 (S.D.N.Y. June 7, 2023) (collecting cases).

Here, both principles apply.

(Am. Compl. ¶ 308). However, his summary judgment motion suggests he seeks only a declaratory judgment as to the Purchase Agreement. In any event, plaintiff's argument is premised, in part, on the Trust being invalid, so this distinction is ultimately immaterial.

Appendix C

Plaintiff seeks a declaratory judgment invalidating the Purchase Agreement and, by implication, the Trust. In his unjust enrichment claim (the twelfth cause of action), plaintiff likewise contends the Trust and the Purchase Agreement are null and void and, thus, defendant "gained the appearance of . . . ownership and control" over SAC "using the legally invalid [Purchase Agreement] as a false pretense." (Doc. #121 at 20). Thus, plaintiff's claim for unjust enrichment necessarily requires a conclusion that the Purchase Agreement and Trust were invalid. Plaintiff also seeks the value of his alleged ownership interest in SAC under his unjust enrichment theory. In sum, his declaratory judgment claim "seeks no relief that is not implicitly sought" through another cause of action. *Sofi Classic S.A. de CV v. Hurowitz*, 444 F. Supp. 2d at 249.

Moreover, the parties have no ongoing business or personal relationship that would benefit from the certainty of a declaratory judgment. Quite the opposite is true—the bulk of the relevant events took place more than a decade ago. *Cf. Amusement Indus. Inc. v. Stern*, 693 F. Supp. 2d 301, 311 (S.D.N.Y. 2010) (noting a court should consider "(1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved; and (2) whether a judgment would finalize the controversy and offer relief from uncertainty").

In light of these considerations, it is within the Court's discretion to dispose of the declaratory judgment claim as "parallel and duplicative" of plaintiff's cause of action for unjust enrichment. *See Smith v. Metro. Prop. & Liab. Ins. Co.*, 629 F.2d 757, 759-60 (2d Cir. 1980).

Accordingly, plaintiff's claim for a declaratory judgment is dismissed.

IV. Twelfth Cause of Action: Unjust Enrichment Claim Based on the Purchase Agreement

Plaintiff argues he is entitled to summary judgment on his twelfth cause of action, for unjust enrichment, because it is undisputed defendant "gained access to SAC through a fraudulent scheme" and she was thereby unjustly enriched by access to its assets and profits.[17]

The Court disagrees because it concludes this claim is time barred.

A. Statute of Limitations

In New York, the statute of limitations for claims of unjust enrichment is six years.[18] *Golden Pac. Bancorp v.*

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17. Plaintiff's twelfth cause of action for unjust enrichment is distinct from his sixth cause of action for "quantum meruit/ unjust enrichment." The sixth cause of action posits defendant was unjustly enriched by plaintiff's contributions to the alleged partnership, for which he was not compensated or reimbursed. The twelfth cause of action is based on the notion that defendant was unjustly enriched because she used the invalid Purchase Agreement to convert plaintiff's ownership interest in SAC.

18. The Purchase Agreement contains a choice-of-law provision dictating Florida law will govern the substance of the contract. (Doc. #110-6 at 2). However, "[a] federal court sitting in diversity applies the forum state's statute of limitations, as well as any provisions that govern the tolling of the statute of limitations."

F.D.I.C., 273 F.3d 509, 518 (2d Cir. 2001). When evaluating timeliness, the Court must determine when the limitations period began to run. The limitations period for an unjust enrichment claim begins "upon the occurrence of the wrongful act giving rise to a duty of restitution and not from the time the facts constituting the fraud are discovered." *Cohen v. S.A.C. Trading Corp.*, 711 F.3d 353, 364 (2d Cir. 2013).

Here, the wrongful act occurred in January 2011, when defendant allegedly used the purportedly invalid Purchase Agreement to convert plaintiff's ownership interest in SAC. It is undisputed the Purchase Agreement was executed more than nine years before plaintiff filed this lawsuit. Accordingly, the limitations period on plaintiff's claim of unjust enrichment has long expired.[19]

Vincent v. Money Store, 915 F. Supp. 2d 553, 562 (S.D.N.Y. 2013). Accordingly, the Court applies New York law to this analysis. And, in any event, the application of Florida law would not change the outcome here, as the limitations period under Florida law is four years. *See* Fla. Stat. § 95.11(3)(o).

19. To the extent plaintiff relies on fraud, contract defenses, or breach of fiduciary duty in support of his declaratory judgment claim, the statute of limitations for each underlying substantive claim would also be six years. Accordingly, even if plaintiff's declaratory judgment claim were not duplicative, the Court still would have been unable to reach the merits of plaintiff's argument that the Purchase Agreement is invalid, because the cause of action would be time-barred. *See Stone v. Williams*, 970 F.2d 1043, 1047-48 (2d Cir. 1992) (declaratory judgment action is time barred "if relief on a direct claim based on such rights would also be barred"). And, for substantially the same reasons plaintiff is not entitled to equitable tolling, he would have been unable to rely

B. Equitable Tolling

Insofar as plaintiff argues his unjust enrichment claim should be equitably tolled because plaintiff fraudulently concealed her wrongful conduct until 2019, this theory is unavailing.

"Under New York law, the doctrines of equitable tolling or equitable estoppel may be invoked to defeat a statute of limitations defense when the plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action." *Abbas v. Dixon*, 480 F.3d 636, 642 (2d Cir. 2007). Equitable tolling "is applied only in rare circumstances when the defendant's fraudulent conduct either conceals the existence of a cause of action or acts to delay Plaintiff from commencing a lawsuit." *DuBuisson v. Nat'l Union Fire Ins. of Pittsburgh, P.A.*, 2021 U.S. Dist. LEXIS 138918, 2021 WL 3141672, at *9 (S.D.N.Y. July 26, 2021). "Due diligence on the part of the plaintiff in bringing an action, however, is an essential element of equitable relief." *Abbas v. Dixon*, 480 F.3d at 642. Moreover, equitable tolling "is triggered by some conduct on the part of the defendant after the initial wrongdoing; mere silence or failure to disclose the wrongdoing is insufficient." *Ross v. Louise Wise Servs., Inc.*, 8 N.Y.3d 478, 868 N.E.2d 189, 836 N.Y.S.2d 509, 518 (2007).

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on the discovery accrual rule to extend the applicable limitations period to 2019. *Dodds v. Cigna Sec., Inc.*, 12 F.3d 346, 350 (2d Cir. 1993) (noting that the discovery accrual rule and equitable tolling are "similarly limited" and available only when the plaintiff "has exercised reasonable care and diligence in seeking to learn the facts which would disclose fraud").

Here, plaintiff does not deny he signed the Purchase Agreement without reading it. Had he read the document, he would have discovered (i) the Trust, not plaintiff, was the purported owner of all shares of SAC, and (ii) a different corporation (Sigrun), of which defendant was the president, was purchasing such shares for the allegedly "grossly inadequate" sum of $40,000. If, as plaintiff alleges, he was entirely unaware the Trust existed or that he had supposedly transferred his entire ownership interest in SAC to the Trust, then reading the Purchase Agreement would have alerted him that something was amiss.

Furthermore, other than defendant's neglecting to tell plaintiff about her allegedly improper conversion of SAC stock, plaintiff has not offered any facts suggesting defendant took affirmative steps to prevent him from consulting the Purchase Agreement or from later discovering other indicia that plaintiff no longer had an ownership interest in SAC. For example, as plaintiff concedes, he had access to SAC's annual reports filed with the Florida Department of State, which identified defendant as the sole director of the company starting in 2012.

In any event, on a more fundamental level, "[a] party who signs a document without any valid excuse for having failed to read it is conclusively bound by its terms." *Sofio v. Hughes*, 162 A.D.2d 518, 519, 556 N.Y.S.2d 717 (2d Dep't 1990). Plaintiff repeatedly testified throughout his deposition that he regularly signed any document defendant placed before him and never read them because

he simply trusted she was managing the "books" side of the business. Such circumstances do not warrant the application of equitable tolling.

In sum, there is no triable issue of fact as to "whether a reasonable plaintiff in the circumstances would have been aware of the existence of a cause of action" within the applicable limitations period. *Valdez ex rel. Donely v. United States*, 518 F.3d 173, 183 (2d Cir. 2008). Accordingly, equitable tolling does not apply to plaintiffs claim for unjust enrichment, and that claim must be dismissed as time-barred.

CONCLUSION

Defendant's motion for summary judgment is GRANTED in part and DENIED in part.

Plaintiffs motion for partial summary judgment is DENIED.

Plaintiffs sixth cause of action for quantum meruit/ unjust enrichment may proceed but only insofar as he seeks compensation for his contributions of time, services, and money to the FBO. All other claims are dismissed.

A case management conference is scheduled for April 4, 2024, at 11:00 a.m. The conference will proceed in person, at the White Plains courthouse, Courtroom 620. Counsel shall be prepared to discuss the setting of a trial date and a schedule for pretrial submissions, as well as what efforts they have made and will continue to make to settle this case.

The Clerk is instructed to terminate the motions. (Docs. ##107, 115).

Dated: March 5, 2024
White Plains, NY

SO ORDERED:

/s/ Vincent L. Briccetti
Vincent L. Briccetti
United States District Judge