APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Olshan Frome Wolosky, LLP v. Kestenbaum

2025 NY Slip Op 06816 (Appellate Division of the Supreme Court of the State of New York First Department 2025) · No. Index No. 656174/23; Appeal No. 5321; Case No. 2024-05853 · Decided December 9, 2025

SUMMARY

The Appellate Division, First Department modified an order dismissing claims arising from unpaid legal fees. It held that the complaint sufficiently alleged that a revised fee agreement bound Fortis Property Group to the engagement letter and allowed the breach-of-contract claim to proceed, but affirmed dismissal of fraudulent misrepresentation and veil-piercing claims against Louis Kestenbaum.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Webber, J.P.; Scarpulla, J.; Rodriguez, J.; Higgitt, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	December 9, 2025
DOCKET	Index No. 656174/23; Appeal No. 5321; Case No. 2024-05853
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting defendants' motion to dismiss the breach-of-contract cause of action as against Fortis Property Group, LLC and the fraudulent-misrepresentation cause of action as against Louis Kestenbaum.
STANDARD OF REVIEW	On a motion to dismiss under CPLR 3211(a)(1), the documentary evidence must utterly refute the plaintiff's factual allegations and conclusively establish a defense as a matter of law.
PRECEDENTIAL VALUE	published
PARTIES	Olshan Frome Wolosky, LLP v. Louis Kestenbaum, Fortis Property Group, LLC, FPG Maiden Lane, LLC, FPG Maiden Holdings, LLC, Joel Kestenbaum

TOPICS

breach of contract | contract interpretation | motions to dismiss | corporate veil piercing | appellate procedure

PRACTICE AREAS

contracts | civil procedure | appellate procedure | corporate law | commercial litigation

QUESTIONS PRESENTED

1. Whether the complaint sufficiently alleged that a later revised fee agreement modified the engagement letter and bound nonsignatory Fortis Property Group to pay the plaintiff's legal fees.
2. Whether the fraudulent-misrepresentation claim against Louis Kestenbaum was duplicative of the breach-of-contract claim because the alleged promise of payment was not collateral or extraneous to the agreements and the alleged damages were recoverable as contract damages.
3. Whether the complaint alleged sufficient facts to pierce the corporate veil and hold Louis Kestenbaum personally liable for the Fortis entities' legal-fee obligations.

HOLDINGS

1. The breach-of-contract claim against Fortis Property Group should not have been dismissed because the complaint sufficiently alleged that the later revised fee agreement modified the engagement letter and bound Fortis Property Group to its terms.
2. The fraudulent-misrepresentation claim against Louis Kestenbaum was properly dismissed because the alleged promise of payment was not collateral or extraneous to the agreements and the plaintiff alleged no damages distinct from those recoverable for breach of contract.
3. The complaint did not allege sufficient facts to pierce the corporate veil and impose personal liability on Louis Kestenbaum.

KEY QUOTATIONS

> *"Supreme Court should have allowed the cause of action for breach of contract to proceed as against Fortis Property Group."* (*1)

> *"Although a breach of contract cause of action generally cannot be asserted against a nonsignatory to the agreement and Fortis Property Group did not execute the engagement letter, the complaint sufficiently alleges that the engagement letter was modified by the later revised fee agreement, which bound Fortis Property Group to the terms of the engagement letter"* (*1)

FACTUAL BACKGROUND

In 2022, Olshan Frome Wolosky, LLP was retained to provide legal services to the Fortis entities and Joel Kestenbaum under an engagement letter executed by the plaintiff and FPG Maiden Lane, LLC. After the Fortis entities failed to pay legal fees, the plaintiff and the Fortis entities entered into a revised fee agreement under which Fortis Property Group agreed to pay past-due and future fees in exchange for an 18% fee discount and a 60-day payment window. The plaintiff also alleged that Louis Kestenbaum promised payment without intending to perform and sought to hold him personally liable for the entities' obligations.

PROCEDURAL HISTORY

The Supreme Court, New York County, granted defendants' motion to dismiss the first cause of action for breach of contract as against Fortis Property Group and the fourth cause of action for fraudulent misrepresentation as against Louis Kestenbaum. The Appellate Division modified the order to deny dismissal of the breach-of-contract claim against Fortis Property Group and otherwise affirmed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The breach-of-contract cause of action against Fortis Property Group is to proceed; the dismissal of the fraudulent-misrepresentation claim against Louis Kestenbaum remains in effect.

CASES CITED

- Lawrence M. Kamhi, M.D., P.C. v. East Coast Paint Mgt., P.C., 177 A.D.3d 726, 727 (2d Dep't 2019)
- Kataman Metals LLC v. Macquarie Futures USA, LLC, 227 A.D.3d 569, 569 (1st Dep't 2024)
- Amsterdam Hospitality Group, LLC v. Marshall-Alan Assoc., Inc., 120 A.D.3d 431, 433 (1st Dep't 2014)
- Cronos Group Ltd. v. XComIP, LLC, 156 A.D.3d 54, 65 (1st Dep't 2017)
- MBIA Ins. Corp. v. Countrywide Home Loans, Inc., 87 A.D.3d 287, 294 (1st Dep't 2011)
- MaÑas v. VMS Assoc., LLC, 53 A.D.3d 451, 454 (1st Dep't 2008)
- Dragons 516 Ltd. v. Knights Genesis Inv. Ltd., 226 A.D.3d 563, 563-564 (1st Dep't 2024), leave to appeal denied, 42 N.Y.3d 912 (2025)
- Sutton 58 Assoc. LLC v. Pilevsky, 189 A.D.3d 726, 729 (2d Dep't 2020)
- Max Markus Katz, P.C. v. Sterling Nat'l Bank, 206 A.D.3d 533, 534 (1st Dep't 2022)