UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Robert Gehring, et al. v. Osaic Incorporated, et al.

Gehring v. Osaic · No. CV-25-00367-PHX-KML · Decided January 30, 2026

SUMMARY

The United States District Court for the District of Arizona addresses motions to dismiss claims arising from financial firms' cash sweep programs. The court dismisses all claims against parent company Osaic, Inc. for lack of privity, agency, fiduciary relationship, aiding-and-abetting allegations, or a basis for veil piercing. The court allows breach-of-contract claims against APA, Osaic Institutions, and Osaic Wealth to proceed based on alleged failures to review or adjust sweep rates, while the excerpt does not include the complete ruling on the fiduciary-duty claims against those entities.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Krissa M. Lanham
JURISDICTION	United States District Court for the District of Arizona
DECIDED	January 30, 2026
DOCKET	CV-25-00367-PHX-KML
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs brought putative class claims for breach of contract, breach of fiduciary duty, unjust enrichment, and violations of the Investment Advisers Act of 1940 arising from defendants' cash sweep programs. The defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6).
STANDARD OF REVIEW	On a motion to dismiss, the court accepted well-pleaded factual allegations as true and determined whether the complaint stated a facially plausible claim for relief. A statute-of-limitations defense warranted dismissal at the pleading stage only when untimeliness was apparent on the face of the complaint and no set of facts could establish timeliness.
PRECEDENTIAL VALUE	unpublished
PARTIES	Robert Gehring, Harold Hunt, Jeana Norris v. Osaic Incorporated, American Portfolios Advisors, Inc., Osaic Wealth, Inc., Osaic Institutions, Inc.

TOPICS

motions to dismiss · breach of contract · breach of fiduciary duty · unjust enrichment · corporate veil piercing

PRACTICE AREAS

contracts · corporate law · commercial litigation · civil procedure · securities and financial regulation

QUESTIONS PRESENTED

1. Whether the complaint plausibly stated contract, fiduciary-duty, unjust-enrichment, or Investment Advisers Act claims against parent company Osaic, Inc.
2. Whether plaintiffs' breach-of-contract claims against the Osaic broker-advisors were timely and plausibly alleged ongoing contractual obligations to review or adjust sweep rates.
3. Whether the broker-advisors owed fiduciary duties to plaintiffs whose accounts were advisory or non-advisory.
4. Whether plaintiffs could plead unjust enrichment in the alternative when the parties disputed the scope of written account agreements.
5. Whether the Investment Advisers Act claims were timely and supported a private cause of action.
6. Whether leave to amend should be granted.

HOLDINGS

1. The complaint did not plausibly establish that Osaic, Inc. was a party to plaintiffs' contracts, was vicariously liable for its subsidiaries' contractual breaches, had a principal-agent relationship with the subsidiaries, or satisfied the requirements for piercing the corporate veil. The contract claims against Osaic, Inc. were therefore dismissed.
2. The complaint did not plausibly allege that Osaic, Inc. owed plaintiffs a fiduciary duty or knowingly participated in its subsidiaries' alleged fiduciary breaches. Those claims were dismissed.
3. Plaintiffs failed to plausibly allege that equity and good conscience required restitution from Osaic, Inc. or that Osaic, Inc. itself received a benefit from plaintiffs for which it unjustly failed to pay. The unjust-enrichment claims against Osaic, Inc. were dismissed.
4. The breach-of-contract claims were timely at the pleading stage and plausibly alleged that the governing agreements required ongoing rate-setting and periodic review of sweep rates. The claims could proceed to the extent based on alleged failures to adjust or reconsider rates as required by the agreements.
5. Only Gehring's advisory account through APA plausibly supported a fiduciary-duty claim. The fiduciary-duty claims based on Gehring's non-advisory Osaic Wealth brokerage IRA and Hunt and Norris's non-advisory Osaic Institutions IRAs were dismissed.
6. Plaintiffs could plead unjust enrichment in the alternative because the parties disputed the scope of the written contracts, but the claims were inadequately pleaded and were dismissed.
7. The Investment Advisers Act claims were dismissed because the section 80b-15 rescission claims were untimely and the Act provides no private cause of action other than contract-voiding relief under section

80b-15.

8. Leave to amend was granted because additional facts could potentially cure the claims against Osaic, Inc., the fiduciary-duty claims against Osaic Wealth and Osaic Institutions, and the unjust-enrichment claims. The IAA claims were also dismissed with leave to amend in case plaintiffs could identify newly added contractual terms within the limitations period.

KEY QUOTATIONS

> *"Some of plaintiffs' claims fail, but the central claims involving breach of contract and breach of fiduciary duty may proceed."* (at 1)

> *"At this stage, the agreements do not clearly foreclose plaintiffs' interpretation that the Broker-Advisors had a contractual duty to periodically reconsider or adjust sweep rates in accordance with the criteria described in the governing documents."* (at 27)

> *"Accordingly, only Gehring's advisory account through APA gives rise to a fiduciary duty."* (at 35)

> *"Because the alleged violations under § 80b-15 are untimely and no other private causes of action exist under the IAA, all IAA claims are dismissed."* (at 42)

FACTUAL BACKGROUND

Plaintiffs participated in cash sweep programs operated by defendants, under which uninvested cash was automatically placed in interest-bearing accounts at participating banks. The banks paid interest to defendants, which allegedly paid customers substantially lower rates while retaining the spread; plaintiffs alleged that sweep rates remained near zero even as benchmark rates rose above five percent. Plaintiffs contended that account agreements and related disclosures required defendants to set and periodically review reasonable sweep rates and to act in customers' best interests. The defendants included a parent corporation, Osaic, Inc., and subsidiary broker-advisors that operated the relevant accounts and programs.

PROCEDURAL HISTORY

The action was filed in the District of Arizona under diversity jurisdiction and involved claims concerning allegedly inadequate interest rates paid on swept cash. The court granted Osaic, Inc.'s motion to dismiss all claims against it, granted in part and denied in part the motions filed by APA, Osaic Wealth, and Osaic Institutions, and dismissed several claims with leave to amend. The court allowed the adequately pleaded contract claims and the fiduciary-duty claim relating to Gehring's advisory account to proceed and directed the parties to prepare a Rule 26(f) case-management report.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)

- Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 969 (9th Cir. 2010)
- In re Hyundai & Kia Fuel Econ. Litig., 926 F.3d 539, 561 (9th Cir. 2019) (en banc)
- Labertew v. Chartis Prop. Cas. Co., 363 F. Supp. 3d 1031, 1036 (D. Ariz. 2019)
- Bates v. Superior Court, 749 P.2d 1367, 1369-70 (Ariz. 1988)
- In re Korean Air Lines Disaster of Sept. 1, 1983, 932 F.2d 1475, 1495 (D.C. Cir. 1991)
- Mont. Power Co. v. Pub. Util. Dist. No. 2 of Grant Cnty., Wash., 587 F.2d 1019, 1022 (9th Cir. 1978)
- MBIA Ins. Corp. v. Royal Bank of Can., 958 N.Y.S.2d 62, 2010 WL 3294302, at *25 (N.Y. Sup. Ct. 2010)
- Carte Blanche (Singapore) Pte., Ltd. v. Diners Club Int'l, Inc., 2 F.3d 24, 26 (2d Cir. 1993)
- Arroyo v. Cent. Islip UFSD, 103 N.Y.S.3d 512, 514 (N.Y. App. Div. 2019)
- Coburn v. Lenox Homes, Inc., 378 A.2d 599, 601 (Conn. 1977)
- Maki v. Travelers Cos., Inc., 44 N.Y.S.3d 220, 223 (N.Y. App. Div. 2016)
- Hess v. L.G. Balfour Co., 822 F. Supp. 84, 85-87 (D. Conn. 1993)
- Wesley v. Schaller Subaru, Inc., 893 A.2d 389, 400 (Conn. 2006)
- N. Shipping Funds I, LLC v. Icon Cap. Corp., 921 F. Supp. 2d 94, 103 (S.D.N.Y. 2013)
- Abdelhamid v. Altria Grp., Inc., 515 F. Supp. 2d 384, 394 (S.D.N.Y. 2007)
- Ruesga v. Kindred Nursing Ctrs., L.L.C., 161 P.3d 1253, 1261-62 (Ariz. Ct. App. 2007)
- TFH Props., LLC v. MCM Dev., LLC, 2010 WL 2720843, at *5 (D. Ariz. July 9, 2010)
- Hildreth v. Tidewater Equip. Co., 838 A.2d 1204, 1210 (Md. 2003)
- Litvinoff v. Wright, 54 N.Y.S.3d 22, 24 (N.Y. App. Div. 2017)
- Chioffi v. Martin, 186 A.3d 15, 33 (Conn. App. Ct. 2018)
- Marmelstein v. Kehillat New Hempstead, 892 N.E.2d 375, 378 (N.Y. 2008)
- Saint Bernard Sch. of Montville, Inc. v. Bank of Am., 95 A.3d 1063, 1077-78 (Conn. 2014)
- Kolbeck v. LIT Am., Inc., 939 F. Supp. 240, 245 (S.D.N.Y. 1996), aff'd, 152 F.3d 918 (2d Cir. 1998)
- Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund, 38 P.3d 12, 23 (Ariz. 2002)
- Beth Israel Med. Ctr. v. Horizon Blue Cross & Blue Shield of N.J., Inc., 448 F.3d 573, 586 (2d Cir. 2006)
- Vertex, Inc. v. City of Waterbury, 898 A.2d 178, 190 (Conn. 2006)
- Freeman v. Sorchych, 245 P.3d 927, 936 (Ariz. Ct. App. 2011)
- ACE Sec. Corp. v. DB Structured Prods., Inc., 36 N.E.3d 623, 628 (N.Y. 2015)
- Berman v. Sugo LLC, 580 F. Supp. 2d 191, 202 (S.D.N.Y. 2008)
- Prysmian Cables & Sys. USA LLC v. ADT Com. LLC, 665 F. Supp. 3d 236, 244 (D. Conn. 2023)
- Mehlman v. Ameriprise Fin., Inc., 2025 WL 2403252, at *2 (D. Minn. Aug. 19, 2025)
- Liberty Cap. Grp. v. Oppenheimer Holdings Inc., 802 F. Supp. 3d 701, 711 n.6, 712-17 (S.D.N.Y. 2025)
- In re Wells Fargo Cash Sweep Litig., 2025 WL 1785315, at *2-3 (N.D. Cal. June 27, 2025)
- Westchester Religious Inst. v. Kamerman, 691 N.Y.S.2d 502, 503 (N.Y. App. Div. 1999)
- Flannery v. Singer Asset Fin. Co., LLC, 17 A.3d 509, 513 (Conn. App. Ct. 2011), aff'd, 94 A.3d 553 (Conn. 2014)

- Miller v. Metro. Life Ins. Co., 979 F.3d 118, 122 (2d Cir. 2020)
- Tunick v. Tunick, 242 A.3d 1011, 1027-28 (Conn. App. Ct. 2020)
- Press v. Chem. Inv. Servs. Corp., 988 F. Supp. 375, 386 (S.D.N.Y. 1997), aff'd, 166 F.3d 529 (2d Cir. 1999)
- DeBlasio v. Merrill Lynch & Co., 2009 WL 2242605, at *29, *40 (S.D.N.Y. July 27, 2009)
- Trustpilot Damages LLC v. Trustpilot, Inc., 2021 WL 2667029, at *9-10 (S.D.N.Y. June 29, 2021)
- Meaney v. Connecticut Hosp. Ass'n, Inc., 735 A.2d 813, 823 (Conn. 1999)
- Caires v. JP Morgan Chase Bank, N.A., 880 F. Supp. 2d 288, 310-11 (D. Conn. 2012)
- Kahn v. Kohlberg, Kravis, Roberts & Co., 970 F.2d 1030, 1042 (2d Cir. 1992)
- Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis, 444 U.S. 11, 11-12 (1979)
- NexPoint Diversified Real Est. Tr. v. Acis Cap. Mgmt., L.P., 80 F.4th 413, 418 (2d Cir. 2023)
- Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000)

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