

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Epstein v. Cantor

2025 NY Slip Op 06989 · No. 2020-09376 · Decided December 17, 2025

SUMMARY

The Appellate Division, Second Department, reviewed an appeal from an order granting motions to dismiss claims arising from the dissolution of a law firm. The court dismissed as academic the appeal concerning claims against the Cantor defendants because that portion of the order had been vacated on reargument, affirmed the dismissal of claims against the Boyd defendants, and awarded costs to those defendants.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; Linda Christopher, J.; Lillian Wan, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 17, 2025
DOCKET	2020-09376
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting motions under CPLR 3211(a) to dismiss certain causes of action and the amended complaint as asserted against specified defendants.
STANDARD OF REVIEW	On a CPLR 3211(a)(1) motion, documentary evidence must utterly refute the plaintiff's factual allegations and conclusively establish a defense as a matter of law. On a CPLR 3211(a)(7) motion, the court liberally construes the pleading, accepts alleged facts as true, affords the plaintiff every favorable inference, and determines whether the alleged facts fit within a cognizable legal theory. Where evidentiary material is considered without converting the motion to summary judgment, the question is whether the plaintiff has a cause of action, rather than merely whether the plaintiff has stated one.

PRECEDENTIAL VALUE	published
PARTIES	Scott Epstein v. Robert I. Cantor, Robert I. Cantor, PLLC, Bryan J. Mazzola, W. Todd Boyd, Boyd Richards Parker Colonelli, P.L., Boyd Richards NY, LLC

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QUESTIONS PRESENTED

1. Whether documentary evidence conclusively established that Mazzola was not a partner of Cantor, Epstein & Mazzola, LLP, warranting dismissal of claims for breach of fiduciary duty and violation of Partnership Law § 20(3) against him.
2. Whether the remaining claims asserted against the Boyd defendants adequately pleaded the required elements or instead consisted of conclusory allegations insufficient under CPLR 3211(a)(7).
3. Whether the appeal from the portion of the order dismissing claims against the Cantor defendants was academic after that portion of the order was effectively vacated upon reargument.

HOLDINGS

1. The appeal from the portion of the order dismissing the second, third, and fourth causes of action against the Cantor defendants was dismissed as academic because that portion of the order was effectively vacated upon reargument.
2. The January 1, 2013 agreement conclusively established that Mazzola was solely a salaried W-2 employee of CEM and had no equity interest; therefore, dismissal of the breach-of-fiduciary-duty and Partnership Law § 20(3) claims against Mazzola was proper under CPLR 3211(a)(1).
3. The remaining claims against the Boyd defendants—including faithless servant, unjust enrichment, corporate raiding, aiding and abetting breach of fiduciary duty, tortious interference with contract, and unfair competition—were properly dismissed because they either failed to plead requisite elements or rested on conclusory allegations lacking factual specificity.
4. Where a partnership agreement clearly sets forth the parties' terms, the agreement governs their relationship rather than default provisions of the Partnership Law; absent a written agreement, partnership status may be determined from the parties' conduct, intent, and relationship.

KEY QUOTATIONS

“In the agreement establishing a partnership, the partners can chart their own course” (at 2)

“Thus, the January 1, 2013 agreement utterly refuted Epstein's allegations that Mazzola was a partner of CEM.” (at 3)

FACTUAL BACKGROUND

The action arose from the dissolution of Cantor, Epstein & Mazzola, LLP. Although Mazzola had previously been associated with the firm, a January 1, 2013 agreement rendered a prior partnership agreement null and void and made Mazzola solely a W-2 salaried employee with no equity interest in the firm. After Cantor announced in 2015 that he intended to leave, negotiations concerning a buyout and the firm's future failed, and attorneys associated with the firm later left and solicited clients for a new firm. Epstein alleged that Cantor, with assistance from Mazzola and the Boyd defendants, transferred most of the firm's clients to other firms.

PROCEDURAL HISTORY

Epstein commenced an action arising from the dissolution of a law firm, asserting claims including breach of contract, breach of fiduciary duty, Partnership Law violations, conversion, unjust enrichment, corporate raiding, aiding and abetting, unfair competition, and tortious interference. The Supreme Court, Kings County, granted the Cantor defendants' motion to dismiss the second, third, and fourth causes of action and the Boyd defendants' motion to dismiss the amended complaint insofar as asserted against them. While the appeal was pending, the portion of the order concerning the Cantor defendants was effectively vacated upon reargument, so that portion of the appeal was dismissed as academic; the order was affirmed insofar as reviewed.

DISPOSITION

dismissed

CASES CITED

- Piccoli v. Cerra, Inc., 174 AD3d 754, 756
- Bono v. Stim & Warmuth, P.C., 215 AD3d 911, 911
- Leon v. Martinez, 84 NY2d 83, 87-88
- Gorbатов v. Tsirelman, 155 AD3d 836, 837
- Klein v. Catholic Health Sys. of Long Is., Inc., 231 AD3d 797, 797
- Connaughton v. Chipotle Mexican Grill, Inc., 29 NY3d 137, 142
- Jennings v. Metropolitan Transp. Auth., 226 AD3d 662, 663-664
- Young v. 101 Old Mamaroneck Rd. Owners Corp., 211 AD3d 771, 774
- Congel v. Malfitano, 31 NY3d 272, 278-279, 287-288
- Zohar v. LaRock, 185 AD3d 987, 991
- Lanier v. Bowdoin, 282 NY 32, 38
- Saibou v. Alidu, 187 AD3d 810, 811
- Delidimitropoulos v. Karantinidis, 186 AD3d 1489, 1490
- Cassese v. SVJ Joralemon, LLC, 168 AD3d 667, 669

