

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 60
2 - - - - - X

3 MARKO GNANN

4 Plaintiff,

5 - against -

INDEX NO.
650104/23

6 MORGAN STANLEY SMITH BARNEY LLC, WELLS
FARGO CLEARING SERVICES, LLC and DONOVAN
7 GREGORY MANNATO,

8 Defendants.

9 - - - - - X

10 60 Centre Street
New York, New York
January 8, 2025
11 **VIA MICROSOFT TEAMS**

12 BEFORE:

13 HONORABLE MELISSA A. CRANE,
14 Justice

15 APPEARANCES:

16 LAW OFFICES STUART L. MELNICK, LLC
17 Attorneys for the Plaintiff
60 East 42nd Street, Suite 4600
18 New York, New York 10165
BY: STUART L. MELNICK, ESQ.

19 THE GALBRAITH LAW FIRM
20 Attorney for the Defendant
Donovan Gregory Mannato
21 Two Waterline Square
400 West 61st Street, Suite 1125
22 New York, New York 10023
BY: KEVIN D. GALBRAITH, ESQ.

24 Bonnie Piccirillo
25 Official Court Reporter

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1

2 THE COURT: Let's take appearances, starting with
3 plaintiff.

4 MR. MELNICK: Yes, your Honor. It's Stuart Melnick
5 for the plaintiff, Marko Gnann. Good morning.

6 THE COURT: Good morning.

7 MR. GALBRAITH: Kevin Galbraith for defendant,
8 Donovan Mannato. Good morning, your Honor.

9 THE COURT: Good morning.

09:30:52 10 So, this is defendant's motion for summary
11 judgment, so why don't you start, Mr. Galbraith.

12 MR. GALBRAITH: Great, thank you very much.

13 This case has been going on in one form or another
14 for four and a half years and it is time for it to end.

15 First came an e-mail threat demanding immediate
16 repayment for lost 2012 investment in the Broadway
17 production of Ghost the musical.

18 Then came a FINRA claim. The FINRA arbitrators
19 ruled that more than six years had passed since the claim
09:31:33 20 accrued and, therefore, the --

21 THE COURT: You didn't argue that plaintiffs were
22 collaterally estopped because of the FINRA ruling. Why is
23 that?

24 MR. GALBRAITH: Because under FINRA rules, if you
25 were dismissed on a six-year eligibility motion, you were

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1 contractually entitled to proceed in court.

2 THE COURT: Thanks.

3 MR. GALBRAITH: Yes. So, the FINRA arbitrators
4 ruled that more than six years had elapsed since the claim
5 accrued, and therefore was untimely. Mr. Gnann then changed
6 lawyers and brought this case changing his story in
7 fundamental ways that are delineated in our moving and reply
8 papers.

9 Most significantly -- and this is just one of well
09:32:25 10 over a half-dozen material changes. But, most
11 significantly, he changed his story to allege an additional
12 seven-figure investment that he claimed to have made in
13 2014, which would have allowed him to come -- arguably come
14 within the statute of limitations on fraud and fraud based
15 breach of fiduciary duty.

16 But there's one big problem with that flip of the
17 script. Mr. Mannato had no association whatsoever with any
18 production of Ghost on any stage, in any country in 2014;
19 and there's neither a shred of paper nor a pixel in an
09:33:07 20 e-mail saying otherwise. In fact, plaintiff has admitted
21 under oath that he cannot point to a single piece of
22 documentary evidence that supports any of his claims. Not
23 an e-mail, not a --

24 THE COURT: Okay, so I do have a lot of questions
25 mostly for plaintiff. But what about E-doc 354, which is

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1 purportedly the 2014 -- I may have pulled up the wrong one.
2 I printed stuff. But there was a 2014 investment somewhere,
3 right? And it was to North Land Group and wasn't Northland
4 Group the same group that plaintiff paid for his 2012
5 investment?

6 MR. GALBRAITH: So, that's a great question. I'm
7 glad you asked.

8 In plaintiff's reply papers, he admitted for the
9 first time that he actually controlled and owned Northland
09:34:07 10 Group and the Swiss bank account that funded and from which
11 its funds originated. To me that seems like a strange thing
12 to forget, but he has now --

13 THE COURT: Let me ask Mr. Melnick, is that a
14 correct --

15 MR. MELNICK: I would say that he has indicated
16 that he -- the company was formed on his behalf and, again,
17 his position --

18 THE COURT: Mr. Melnick, can you hear me?

19 MR. MELNICK: Yes.

09:34:41 20 THE COURT: Because I really do have a lot of
21 questions for you because this doesn't add up.

22 MR. MELNICK: Can you hear me?

23 THE COURT: I can hear you. It is very important
24 you can hear me because right now your story doesn't add up
25 to, me and I'm actually prepared to dismiss this case. So,

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1 I'd like to understand your position.

2 Is it your position that NLG was formed -- that
3 your client formed NLG at Mannato's direction?

4 MR. MELNICK: That is the position, yes, your
5 Honor, and that would have been back in 2009.

6 THE COURT: Okay. And was it formed to funnel the
7 investment for the first --

8 MR. MELNICK: That's my understanding. That's
9 plaintiff's understanding.

09:35:31 10 THE COURT: So, that because of that and because
11 the 2014 investment was to Northland Group, does it raise
12 an issue of fact whether the 2014 investment was for the
13 play?

14 MR. MELNICK: We believe that it does, your Honor,
15 and that was, again, my client indicated that at that point
16 in time he was instructed by Mr. Mannato to make these two
17 tranches of the this three-point-something investment to
18 obtain worldwide rights to -- to the musical.

19 And there definitely is an absence of written
09:36:18 20 communication, I will agree with Mr. Galbraith on that.
21 That's largely because my gather, the individuals, the
22 plaintiff and Mr. Mannato, were communicating orally. So,
23 there was, there was no -- there's no -- certainly no
24 smoking gun here. That's for sure.

25 THE COURT: Okay. So, that's really my main area

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1 of questioning is over that 2014 piece.

2 So, let's go back and talk about stuff I have less
3 other question in my mind about which is the 2012
4 investment.

5 Okay, so why isn't that time barred? I mean, I
6 have 2020 e-mails from your client where he admits that
7 Mannato told him in 2012 that the play would close, right,
8 and that his investment was gone, right?

9 So, isn't that time barred, the initial investment?

09:37:15 10 MR. MELNICK: Your Honor, given the wealth of the
11 e-mail exchanges, I would indicate to you that it probably
12 is. I can't be disingenuous about that because I've seen
13 the e-mails. Whether or not my client has specific
14 recollection having sent them or what it meant; you know, at
15 this point they speak for themselves.

16 THE COURT: Okay. So, then in that case, I'm
17 looking at E-doc 364 and in that, I really think that does
18 end the 2012 claims because your client admits, quote,
19 "Donovan, after you told me that Ghost will close on
09:38:11 20 Broadway and my investment was completely lost, for many
21 years I carry the bitter thoughts of heavy losses."

22 This was sent on 10/19/2020. So, looking back,
23 he's admitting that he knew his 2012 investment was lost.
24 We know he was told that the investment was lost in 2012.
25 So, he had at most till 2018 to sue for breach of contract.

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1 So, I am dismissing all claims related to the 2012
2 investment.

3 Now, let's talk about breach of fiduciary duty
4 because I think even if that isn't time barred, I don't see
5 how you have a fiduciary relationship.

6 So, why don't you tell me what evidence you have in
7 this record to support a fiduciary.

8 MR. MELNICK: Unfortunately, the record is more
9 perspective, my perspective and I was not involved in
09:39:08 10 building the record, I came very later in the game is very
11 scant. I mean, Mr. Gnann claims he relied upon Mr. Mannato
12 exclusively. They had a relationship of trust. Mr. Mannato
13 was sophisticated in these matters, and he wasn't.

14 So, he was really relying upon Mr. Mannato to guide
15 him through the process with the understanding -- at least
16 in his mind -- that the rights were going to be acquired
17 either to the musical; and that at the end of the day, that
18 the success was quote/unquote guaranteed.

19 Admittedly, that seems a little bit farfetched; but
09:39:56 20 this is what he's attested to and what he's informed me, and
21 that's been his -- you know, the common refrain is that he
22 relied upon and trusted Mr. Mannato given his level of
23 professionalism, their friendship, et cetera.

24 THE COURT: Okay. Mr. Galbraith, do you want to
25 respond to that?

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1 MR. GALBRAITH: I do. Thank you very much. And,
2 first of all, frankly, I appreciate Mr. Melnick's candor on
3 some of these points very much.

4 THE COURT: Mr. Melnick, I can't tell you enough
5 how important that is. Thank you. Because, first of all,
6 not only will I remember that for this case, I'll remember
7 it every time I see you how forthright you were.

8 MR. MELNICK: That's been very tough coming in very
9 late in the game here.

09:40:47 10 THE COURT: I know.

11 MR. MELNICK: I wish I had an opportunity to go
12 back in time and figure this out. It is what it is.

13 THE COURT: Well, I'm not sure it would be worth it
14 on the 2012 investment because I think that's time barred
15 from anyone's sense. So, what we need to focus on is
16 fiduciary duty, and then we'll come back to the 2014
17 investment which is where I have the real questions.

18 I'm not seeing a fiduciary relationship here
19 because a friendship isn't enough, and he was an investment
09:41:27 20 advisor with a different hat on; but he had no discretionary
21 authority over the account and, ordinarily, that's not a
22 fiduciary duty relationship.

23 So, do you have anything in this record that would
24 point to a fiduciary relationship aside from them being
25 friends and this sort of promise that --

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1 MR. MELNICK: Well, other than what I just
2 articulated, there's really nothing in writing per se. This
3 investment was not in the ordinary course of a securities
4 transaction, what have you. It was outside the scope of
5 that.

6 And in that sense, the plaintiff reasonably relied
7 upon what Mr. Mannato was telling him about the prospects
8 for the future, et cetera, of the musical, what he expected
9 to realize, reap at the end of the day. That's the best I
10 can tell you at this point because there is no real
11 documentary evidence there. I mean, there's a big gap.

12 THE COURT: So, I found documentary evidence to the
13 contrary, actually, because in E-doc 379, which is your
14 client's FINRA statement, he admits that his interactions
15 with the defendant were cagy; right? He says under oath in
16 paragraph 17 of this FINRA statement -- again, that's E-doc
17 379. Quote, "that indeed I would often ask Mannato about
18 the status of the other production runs, but would receive
19 cagy responses."

20 So, if somebody is receiving "cagy responses" that,
21 quote, were qualified with an assurance that there was no
22 reason to worry; if you think someone is being cagy, then
23 you should be suspicious that they --

24 MR. MELNICK: Absolutely.

25 THE COURT: So, I'm holding that even if not time

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1 barred, I'm dismissing the claim for breach of fiduciary
2 duty. The parties simply did not have a fiduciary
3 relationship and, indeed, plaintiff was suspicious of that
4 relationship. The record shows so, I'm dismissing breach of
5 fiduciary duty altogether.

6 Let's talk about fraud and the 2014 investment
7 because that's the main event.

8 So, Mr. Galbraith, for the record, will you repeat
9 your position and it's just that there's nothing in this
09:43:58 10 record to indicate that there was an investment to begin
11 with.

12 MR. GALBRAITH: In 2014, there is nothing to
13 indicate there was an investment at all. And just to
14 amplify on that for a moment, there is an investment
15 contract for the earlier one. There is a non-solicitation
16 letter for the earlier one. There is e-mail traffic
17 indicating the closure of the show and the complete loss for
18 the earlier one. There is absolutely nothing for 2014.

19 Now, your Honor, you mentioned a wire transfer in
09:44:31 20 2014. There is nothing -- first of all, the client only
21 admitted to ownership and control of the company to which
22 that wire went in his reply brief. He has consistently
23 denied any knowledge of Northland Group or the Swiss bank
24 account providing its funds until the reply brief.

25 Now, it is quite convenience that we're talking

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1 about the formation in 2009, which is years before the
2 original Broadway investment; and the reason we're talking
3 about it, I would posit to the Court is that we found wire
4 transfers from Mr. Gnann to the Swiss bank account back in
5 2009 for which there was no explanation, no explanation
6 other than that he controlled it.

7 There was no discussion of Ghost, the musical on
8 Broadway in 2009. There was no long con. There was no long
9 game by Mr. Mannato to his one-time friend saying, Why don't
09:45:37 10 you go set up an offshore company with a Swiss bank account
11 in 2009 and pay undisclosed -- you know, administrative fees
12 and so on. There is nothing in the record to support that.

13 So, getting to your direct question on 2014, there
14 is literally nothing to support the claim that the wire that
15 you see had anything to do with Ghost, the musical, with
16 Donovan Mannato, with Mr. Mannato's production group.

17 Mr. Mannato had nothing to do with Ghost, the
18 musical. He had already lost all of his investment in
19 Ghost, the musical's Broadway production in 2012. He never
09:46:18 20 invested in Berlin, in Seoul, in any of these worldwide
21 rights.

22 And if Mr. Gnann claims that he somehow invested in
23 such rights, such worldwide rights -- which, again, there's
24 no evidence of that. But even if he did, there's no
25 indication that had anything to do with Mr. Mannato.

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1 Mr. Mannato was out. He was back to working as a financial
2 advisor and looking for his next opportunity for a
3 theatrical production.

4 And that gets me to what this has done to him, and
5 I'll be be very brief. This has been a meritless stain on
6 his personal and professional reputation. He has managed to
7 trudge through and successfully coproduce other things on
8 Broadway since. But when he sent his son off to college, he
9 knew a Google search would reveal a multimillion-dollar
10 fraud allegation against him that has no basis.

09:47:15

11 So, the 2014 so-called investment has no
12 documentary support, none. It was invented and added to
13 this claim to save some semblance of a legal claim in this
14 court. It has cost my client very substantial legal fees
15 and countless sleepless nights and, frankly -- not to use an
16 overused term -- trauma within his family.

17 So, there's nothing to support it. It, too, should
18 be dismissed with prejudice today.

19 THE COURT: I have a question, a legal question.
20 I've dismissed breach of fiduciary duty. We're only left
21 with fraud. Fraud has to be proven by clear and convincing
22 evidence.

09:48:01

23 Can I dismiss on summary judgment on the basis that
24 there is no clear and convincing evidence? There may be a
25 preponderance, but not clear and convincing. Can I do that

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1 on summary judgment or I do have to wait till trial? I
2 don't know.

3 MR. GALBRAITH: Yes, your Honor, you can.

4 First of all, not only isn't there a preponderance
5 of evidence or a clear and convincing, there is literally no
6 evidence. All we have is a single wire transfer with no, no
7 connection to Mr. Mannato, no connection to a theater
8 generally, let alone Ghost, the musical. So, there is no
9 evidence. So your Honor doesn't even need to reach that
09:48:57 10 question because there is no record evidence other than a
11 late invented claim by plaintiff.

12 THE COURT: Where -- where's the 2009 NLG transfers
13 in this record, what E-doc you referred to earlier?

14 MR. GALBRAITH: I referred to them from memory. I
15 know for a fact they existed. They were relatively small
16 denominations. I'm going to check with my team and get a
17 citation for you.

18 THE COURT: Great, thanks. And I'd like
19 Mr. Melnick to respond.

09:49:33 20 MR. MELNICK: I will say that there is a lack of
21 documentary evidence previous to discovery; but my client
22 is convinced that these wire transfers, these two in 2014
23 were made at the request of Mr. Mannato to NLG and those
24 transfers happened. There's no documentation reflecting
25 what purpose they were for that we've got presently.

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1 And, apparently, because my client is so intent on
2 pursuing this, he had engaged I guess at some point right
3 around the time discovery had ended and for them to support
4 former counsel, an investigator and a lawyer in Zurich --
5 and he also traveled to Zurich to meet with Amacore that was
6 one of the -- the entity that was controlling NLG. And he's
7 now of the view based upon the information imparted to him
8 from Swiss counsel that there is now a documentary record of
9 everything that happened and where these funds went in
09:50:50 10 Switzerland.

11 However, in order to get that information, there's
12 got to be something done under the Hague Convention and
13 which, apparently, prior counsel was going to do.

14 THE COURT: It's too late.

15 MR. MELNICK: I know.

16 THE COURT: This record is closed.

17 MR. MELNICK: I've told him this, but that's --
18 that's what he's telling me and that's what he's
19 encountered. From his perspective, he would never have
09:51:15 20 pursued this unless there was legitimacy.

21 THE COURT: Well, plaintiff filed a note of issue
22 back in April. So, if he didn't mean that there was no
23 discovery remaining outstanding, he shouldn't have filed a
24 note of issue. I know you didn't do it, but that's the way
25 this case is postured and we're done.

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1 MR. MELNICK: I understand. Trust me, your Honor,
2 I've tried to let my client know repeatedly that this is
3 something that's about the scope of this motion, but I had
4 to raise this issue because it is something of significance
5 to him. And if there is documentary proof that these funds
6 were allocated or misused the way he thinks they were, that
7 ought to be something that, hopefully, can come into the
8 record even --

9 THE COURT: Yeah, I don't have any motion to renew.
09:52:15 10 I have nothing, so this is not going to be happening. This
11 is summary judgment. This is the meal, and I'm ruling
12 today.

13 So, is there anything else anyone wants to tell me?
14 I may need a little while to think about this last bit.

15 MR. GALBRAITH: Your Honor, I would just on the
16 point of the 2014 investment, I would simply direct your
17 attention to the uncontroverted fact that there is no piece
18 of paper even purporting to relate to a 2014 investment.
19 So, there cannot be any evidence that this investment
09:52:59 20 occurred. Therefore, there is absolutely no reason to
21 require my client to go through yet another round of very
22 substantial, in fact amped-up legal fees to prepare for a
23 trial of a claim that is invented out of thin air.

24 THE COURT: I need proof from 2009 from you, and I
25 have a question for Mr. Melnick. Is it correct that your

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1 client controlled the NLG account or that it was his account
2 even --

3 MR. MELNICK: My sense is it it was created on his
4 behalf, which meant that and again --

5 THE COURT: By whom?

6 MR. MELNICK: By this Amacore Group under the aegis
7 of NLG. And, again, his position has been, even the
8 arbitration, he was instructed to establish that by
9 Mr. Mannato. I mean, it's out there, there's no question.

09:54:10 10 MR. GALBRAITH: Can I have clarity? Is Mr. Melnick
11 acknowledging that Mr. Gnann is the beneficial owner of NLG?

12 MR. MELNICK: He may be. He doesn't really realize
13 what's happened here. I mean, the sense was this was
14 somehow created -- he had some form of ownership interest,
15 but he doesn't know -- he doesn't get receipts. He doesn't
16 get statements and the two transfers in 2014 were certainly
17 made by him to NLG. The question is what happened to those
18 sums? And that's where, you know, everything falls apart.

19 MR. GALBRAITH: Understood. And could I take issue
09:54:53 20 with one point there? We didn't get these statements. We
21 received these statements in discovery. These are not --
22 so, Mr. Gnann at some point got statements because he
23 searched for them, produced them to us so we would have no
24 idea.

25 But the central point here is that he was the

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1 beneficial owner. The account goes back to 2009, way before
2 any Ghost investment.

3 THE COURT: I need proof that the account goes back
4 to 2009.

5 MR. GALBRAITH: Yes, your Honor. I will provide
6 that. Your Honor, would you want that just with a simple
7 cover letter?

8 THE COURT: No, I just want the cite to the record.
9 I can wait for it and I can look for it myself. But unless
09:55:43 10 plaintiff is willing to concede that the account has been
11 opened since 2009?

12 MR. MELNICK: It's my understanding, and, again,
13 it's been opened at by my -- on behalf of Mr. Gnann at the
14 instruction of Mr. Mannato for these purposes. That's how
15 it came to be, that's what he's alleging and he's been
16 consistent about that.

17 THE COURT: What I need to do is I need to look at
18 this 2014 issue a little more. I need about
19 forty-five minutes to do that. Can everyone come back at
09:56:22 20 let's say eleven o'clock for a ruling on it one way or the
21 other?

22 MR. GALBRAITH: I'm free for eleven o'clock, your
23 Honor. And I just want to add one thing. My team has
24 informed me that it is E-doc 273, but she is pulling up that
25 document as we speak.

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1 THE COURT: I see it. Thank you. That's very
2 helpful.

3 Okay. All right, so come back at eleven, and I
4 will have a decision by then. Thank you.

5 MR. MELNICK: So, will we get another thing link,
6 your Honor?

7 THE COURT: No, back on the same one.

8 MR. MELNICK: Thank you so much.

9 MR. GALBRAITH: Thank you, your Honor.

09:57:03 10 (Whereupon, at this time a short recess was then
11 taken.)

12 * * * *

13 (Continued on next page)

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DECISION

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2 THE COURT: So, I am going to rule from the bench
3 today, so here it is:

4 Earlier today, I dismissed all claims based on
5 plaintiff's 2012 investment as time barred. I also
6 dismissed the breach of fiduciary duty claim because the
7 parties did not have, nor did plaintiff expect, a fiduciary
8 relationship. Indeed, the evidence actually reflected that
9 plaintiff was somewhat suspicious of defendant.

11:01:56

10 This left us with plaintiff's fraud claim for his
11 alleged 2014 investment in which he claims that he invested
12 additional monies in the international run of the musical
13 Ghost.

14 Defendant argues that there is no evidence to
15 support that plaintiff ever made an additional investment in
16 Ghost the musical in 2014; and, as plaintiff concedes, there
17 is no real evidence aside from plaintiff's self-serving
18 statements that plaintiff ever made an investment in Ghost
19 the musical in 2014. Thus, defendant has established, prima
20 facie, a right to summary judgment.

11:02:33

21 For a fraud claim to survive the summary judgment
22 stage, a party must proffer enough proof to allow a
23 reasonable jury to find by clear and convincing evidence the
24 existence of each of the elements necessary to make out a
25 claim for fraud in the inducement.

DECISION

1 For this proposition, I would point to several
2 cases: The first is *Waran v. Christie's Inc.*, 315 F.Supp.3d
3 713, the jump cite 718 (Southern District of New York 2018).
4 There's also *Loreley Financial versus Wells Fargo*, 412
5 F.Supp.3d 392, jump cite 407. That's Southern District of
6 New York 2019. That was affirmed 13 F.4th 247 (2nd Circuit
7 2021). And I would also cite to *Consigli & Associates LLC*
8 *v. Maplewood Senior Living LLC*, which is at 2023 Westlaw
9 1818401, at *14, (Southern District of New York February 8,
10 2023), and there the court granted summary judgment because
11 no reasonable factfinder could find by clear and convincing
12 evidence that the defendant had made a misrepresentation.

13 Plaintiff's statements in opposition that, although
14 the account was his own, he created it at Mannato's urging
15 in 2009 and that this untethered money transfer in 2014 was
16 for the musical are insufficient to create a material issue
17 of fact.

18 The NLG account may have been the conduit for the
19 time-barred 2012 investment, but for that 2012 investment
20 there is additional documentation. Here, we have nothing
21 else aside from plaintiff's say-so. Thus, because no
22 reasonable finder of fact could find, by clear and
23 convincing evidence, that there ever was a 2014 investment,
24 the Court grants summary judgment in favor of defendant and
25 dismisses the remaining claims based on the 2014 investment.

DECISION

1 Moreover, in addition to there being no clear and
2 convincing evidence of the transfer in 2014 had anything to
3 do with the play, there is no evidence at all, zero, aside
4 from plaintiff's self-serving statement that Mannato had
5 anything to do with the 2014 transfer. Thus, there is no
6 evidence at all, much less clear and convincing, to continue
7 this claim against Mannato.

8 Accordingly, the Court grants summary judgment and
9 dismisses this case.

11:05:21 10 So, thank you. That's the decision. Appreciate
11 your time.

12 MR. GALBRAITH: Thank you, your Honor.

13 MR. MELNICK: Your Honor, will the decision be
14 reduced to writing at some point?

15 THE COURT: So, the gray sheet will say the motion
16 is decided in accordance with the reasoning on the record;
17 and if you need the record, Bonnie can put her contact
18 information in the chat.

19 MR. MELNICK: Great, thank you.

20 THE COURT: Thank you so much.

21 * * *

22 (Certification on next page)

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C E R T I F I C A T I O N

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THIS IS HEREBY CERTIFIED TO BE A
TRUE AND CORRECT TRANSCRIPT.

Bonnie Piccirillo

BONNIE PICCIRILLO
OFFICIAL COURT REPORTER

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