

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CURT MELTZER and
MELTZER MANAGEMENT SERVICES, LLC,

Plaintiffs,

- against -

KENTUCKY HI-TECH GREENHOUSES, LLC
and KENTUCKY FRESH HARVEST, LLC,

Defendants.

KENTUCKY HI-TECH GREENHOUSES, LLC,

Counterclaim Plaintiff,

- against -

CURT MELTZER and
MELTZER MANAGEMENT SERVICES, LLC,

Counterclaim Defendants.

Index No. 652396/2022

Hon. Melissa A. Crane
Part 60

Motion Seq. 002

Oral Argument Requested

**DEFENDANTS' JOINT MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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Defendant/Counterclaim Plaintiff Kentucky Hi-Tech Greenhouses, LLC (“KHTG”) and Defendant Kentucky Fresh Harvest, LLC (“KFH”), respectfully submit this Joint Memorandum of Law in opposition to Plaintiffs’ motion for summary judgment pursuant to CPLR § 3212 on Plaintiffs’ remaining claims, namely, Count I (Breach of Contract) and Count IV (N.Y. Labor Law § § 193/198), in the Complaint filed by plaintiffs Curt Meltzer (“Meltzer”) and Meltzer Management Services, LLC (“MMS”) (“Plaintiffs”).

PRELIMINARY STATEMENT

Plaintiffs frame this case as a “simple” case of compensation owed for services rendered by Curt Meltzer. It is far, far from that. Rather, as attested to by numerous witnesses and documentary evidence offered herein, this is instead a complex case of fraud and deception, of waste and mismanagement, of “shady” spending, and as several witnesses succinctly called it “monorail”. “Monorail” refers to the iconic television series *The Simpsons* and the episode (now a cultural reference) where a fast-talking traveling salesman convinces a small town to build a monorail. It ends up being a scam, leaving the town in ruins.¹

Here, over \$40 million was spent to build an “Israeli” “high-tech” greenhouse in the small town of Stanford, Kentucky, after years of delays and broken promises. Meltzer has admitted in federal court pleadings that his partner, Israeli businessman Haim Oz, was a fraud.²

¹ “Marge vs. the Monorail”. *The Simpsons*, written by Conan O’Brien, season 4, episode 12, Fox Broadcasting Company, January 14, 1993. Wikipedia, https://en.wikipedia.org/wiki/Marge_vs._the_Monorail. True to life, in the episode the protagonist meets the engineer who designed the monorail who confirms that all of the salesman’s monorail projects are scams. See e.g., Sjöholm Aff. ¶¶ 10-12; D. Terry Aff. ¶¶ 6-7.

² See Curt Meltzer and Meltzer Management Services, LLC v. Kentucky High Tech Greenhouses, LLC, et al., United States District Court for the Eastern District of Kentucky (Civil Action No. 22-cv-0049-DCR) ([Doc 19](#)) (the “EDKY Action”).

Oz was ceremonially ousted from both companies in 2019, after his fraud was conclusively discovered by the other partners. Meltzer has tried to distance himself from Oz, even demoting himself as simply a “liaison” between Oz and Defendants (EDKY Action Complaint, ¶ 12). This is an outright lie. This is likely why Meltzer has chosen to now omit any reference to Oz in this New York action.

Plaintiff Meltzer – Oz’s “partner” in their Israeli based company, Oz Agribusiness Projects International (“OAPI”) – was at all times front and center in this fraud. Meltzer, also a personal friend of Oz, introduced and brought Oz and OAPI to the Kentucky High Tech Greenhouse Project. Numerous witnesses, documentary evidence, and Meltzer’s own written admissions attest to all of this. Meltzer (a founding member and owner in both Defendants KHTG and KFH), and also a founding Manager and Director along with Oz, is seeking almost one million dollars for services he claims he performed from the beginning of this project in 2015 as “COO” and “CEO”.

Plaintiffs’ seek summary judgment for their remaining claims, breach of contract (Count I) and violations of N.Y. Labor Law § § 193/198 (“NY LL claims”) (Count IV), despite numerous disputed issues of material fact requiring denial of Plaintiffs’ motion. Plaintiffs’ NY LL claim seeking almost a million dollars in liquidated damages, costs and attorneys’ fees, is predicated upon Meltzer’s representation that he is an employee of Defendants. He isn’t. In fact, he has admitted that he isn’t an employee in writing.

D. When I started as CEO, the question came up as to whether I should be an employee or an independent contractor. Since I could qualify as an independent contractor, it was decided that this would provide both myself **and** KFH with significant tax benefits. Julian, please confirm that if I had gone forward as an employee, KFH would have had to pay about \$35,000-40,000 in employer contributions on my salary, to date (assuming full salary for 2 years).

See Meltzer email, November 4, 2021 (Back Aff., ¶ 31; Exhibit 3). Meltzer acknowledges this in another email. Everyone knew he wasn't an employee, and four witnesses, including the company's Human Resources Director (see Edwards Aff., ¶ 15), the company's accounting firm, and KFH's former CFO, have also attested to this fact and how Meltzer meets all of the criteria for an independent contractor. (See, e.g., Back Aff., ¶ 31; Gardner Aff., ¶ 11; Hill Aff., ¶ 36). Meltzer should be sanctioned for bringing this wholly frivolous claim.

Plaintiffs claim that they are owed from both KHTG and KFH the sum of \$945,062.23, which includes an "agreed to" 8% interest per annum, for services allegedly agreed to and performed from October 2015 through his resignation in November 2021. Throughout this litigation, Plaintiffs have deliberately blurred the lines between Defendant KHTG and Defendant KFH, they have blurred the lines between Meltzer and MMS, and they have confused and blurred the lines between key documents relied upon, the 2018-2019 KHTG Resolutions, and various extraneous, unauthenticated, writings taken wholly out of context. Plaintiffs now move the court claiming as undisputed fact that for 6 years Meltzer fully and faithfully performed services for both KHTG and KFH, as promised and agreed to.

Yet, Plaintiffs provide little to no support or testimonial evidence of this performance (other than Meltzer's self-serving affidavit). Even if Plaintiffs could prove that some agreement exists between Plaintiffs and both KHTG and KFH, binding each to almost one million dollars in "wages", Plaintiffs cannot avoid the fact that Meltzer's abysmal performance, if any, was reckless, wasteful, and fraudulent, that it cost the Defendants millions of dollars, and that in just about every way, Meltzer materially breached any agreement. To succeed in this motion, Plaintiffs need to prove indisputably each and every element of their contract claim, and that a binding contract exists between Plaintiffs and both KHTG and KFH, on all essential terms, that

governs the entire \$945,062.23. Notably, Meltzer has been paid and received to date **\$397,757.00** (Back Aff., ¶ 32). Of course, that fact is mentioned nowhere in Plaintiffs' papers. Meltzer has certainly been compensated.

Defendants submit eleven (11) affidavits in opposition to Plaintiffs' motion, each refuting Plaintiffs' claims to compensation, and the only testimony submitted by Plaintiffs, the Meltzer Affidavit. Each affidavit is referenced in the accompanying Affirmation of Anthony A. LoPresti (**Doc. 65**). All of Meltzer's contract arguments fail, and are in fact contradicted by his own written admissions, and the documents relied upon. The affidavits, with exhibits, also shed light on Meltzer's malfeasance, waste, mismanagement and sheer ineptitude, which are alleged in Defendant/Counterclaim Plaintiff KHTG's Answer with Counterclaims, filed February 1, 2023 ([Doc. 38](#)). As attested to in the affidavits, representations and promises made by Meltzer and Oz, to effectively, efficiently and cost-effectively design, build and operate a successful greenhouse facility were "pure BS". Meltzer never performed as promised. Numerous witnesses have concluded, based on firsthand knowledge, that Meltzer was either a party to the Oz/OAPI fraud (or scam), that he enabled it, and/or that he willingly or recklessly turned a blind eye to it.

STATEMENT OF FACTS

Defendants set forth alternate facts to Plaintiffs' wholly inaccurate and misleading "Factual Background", via the following affidavits:

1. Affidavit of **Carol Hill** ("Hill Aff.") ([Doc. 66](#)): Since August 2016, a Director and primary investor in KFH. To date, Hill has personally loaned the company over \$40,000,000 through her sole member entity, 4M Greenhouses, LLC ("4M"). Hill refutes Plaintiffs' claims of contract formation and performance, as well as Meltzer's false promises and representations, that cost the company millions. Hill also refutes Plaintiffs' assertion that the 2018 and 2019 KHTG

Resolutions support the “Meltzer Compensation Arrangement” any “Arrearages”, and any “deferred compensation”. Hill also attests to Meltzer’s fraud, waste, mismanagement and malfeasance:

“Unfortunately, this project was plagued with problems from the start. Internal mismanagement and incompetence, deficient planning, and gross miscalculations by Meltzer and Oz caused massive delays, extreme waste, and highly questionable spending of which we are just now learning more and more about. None of the promises made in the OAPI Offering Materials came to fruition. By 2018 the project was out of money. However, this project was in my community and I did not want to see it fail. Since 2018, this project has been bankrupted and has only continued because individually or through a business entity I have funded it on a monthly basis.”

(Hill Aff., ¶ 12).

Hill attests to the fact that she was wholly unaware of the 2018 and 2019 KHTG Resolutions containing the “Meltzer Compensation Arrangement” and “Arrearages”. According to Hill she “first became aware of the KHTG Resolutions in 2021, in business discussions and in discussions regarding 2020 tax return documents. I was stunned that Mr. Meltzer thought he was entitled to a salary from KHTG for any time during 2015, 2016 and 2017 as this was supposed to be his sweat equity contribution” (Hill Aff., ¶ 19). Hill affirms “It is now clear that Mr. Meltzer and Mr. Oz fraudulently conspired to go back and give Mr. Meltzer a salary for time that is already on the books as sweat equity” (Hill Aff., ¶ 25).

Hill also confirms that regarding Plaintiffs’ Exhibit “D” (the “Deferred Comp chart”), “[t]his information is not reflected in the official accounting of either KFH or KHTG; there is no record on the books of either company showing any deferred compensation due to Mr. Meltzer.” (Hill Aff., ¶ 30). Hill also confirms that Meltzer admitted in writing that the alleged “deferred compensation” “debt” was contingent upon company distributions by KHTG, and that even if somehow there was a “debt” obligation, it was “incurred and accrued” **by KHTG**. (Hill Aff., ¶¶ 32-33, 35-36). Hill refused to agree to transfer and bind that KHTG obligation to KFH. (“I

certainly refused to agree to the proposed Meltzer Resolutions.”) (Hill Aff., ¶ 35). According to Hill, “[Meltzer] instead tried to extort additional funds from the company.” (Hill Aff., ¶ 36).

Hill also attests to and corroborates the fact that Meltzer and Oz effectively shut Bill Back out of company and project operations, marginalizing him: “In fact, when Bill Back discovered these representations and projections were untrue, and began to question and warn others, Meltzer and Oz conspired to push him out of the project.” (Hill Aff., ¶ 7, 28).

2. Affidavit of **William K. Back** (“Back Aff.”) ([Doc. 67](#)): Currently the CEO of KFH. Back is an initial member of KHTG, along with Meltzer and Haim Oz (via ORYM, LLC). Meltzer first introduced Back to Oz in 2015, representing him as Meltzer’s partner in the Israeli based company OAPI, and an international expert in high-tech greenhouse design, construction and operation. Back refutes Plaintiffs’ claims of contract formation and performance, as well as Meltzer’s false promises and representations, that cost the company millions. Back also refutes Plaintiffs’ assertion that the 2018 and 2019 KHTG Resolutions support the “Meltzer Compensation Arrangement” any “Arrearages”, and any “deferred compensation”. Notably, Back did not sign the 2018 KHTG Resolution. (Back Aff., ¶ 19):

“I also did not sign the 2018 Resolution that purportedly established the “Arrearages” and the “Meltzer Compensation Arrangement”. In fact, I was unaware of the actual agreement / Resolution until 2019. There are representations made by Meltzer that for the 2018 Resolution the vote was unanimous. This is just not true. I did not vote and I didn’t know that a vote was being held. This is why signature is absent from the document.”

Id. As for the 2019 KHTG Resolution:

“Upon being invited to a 2019 KHTG company meeting and the subsequent voting on the 2019 Resolution, I expressed concern about what was being termed “arrearages”. I always believed any and all work that was preformed prior to late 2018 would be considered sweat equity. Not “arrearages” ... “I would come to find out that I had been lied to by Meltzer and Oz regarding the purpose and intent behind the 2018 and 2019 Resolutions. For example, I was misled to believe that the “Arrearages” that both Haim and Curt had defined as the “Meltzer Compensation Arrangement” had been earned. They were not.”

(Back Aff., ¶ 20-21).

Back also attests to Meltzer's fraud, "chaos, waste, gross mismanagement and even 'shady' spending" (Back Aff., ¶ 15), which was evident to employees of KFH and contractors, as well as Meltzer's non-performance:

"I later discovered that Meltzer and Oz did not in fact perform any of the services claimed during 2015, 2016, 2017 and most of 2018 as is represented in KHTG 2018 Resolution. I knew for a fact that Oz and Meltzer were working on other identical greenhouse projects, wrongfully circumventing me and KFH, while taking corporate opportunities for themselves. This can be confirmed by the subject of the 2018 Settlement Agreement."

(Back Aff., ¶ 28)

Back also attests to and corroborates the fact that Meltzer and Oz effectively shut him out of operations, marginalized him, and even wrongfully circumvented their agreements to profit from other greenhouse projects resulting in a 2018 Settlement Agreement (Back Aff., ¶¶ 16, 17, 26). Back also attests that the 2018 and 2019 KHTG Resolutions were never intended to create an employment agreement moving forward with KFH, that they were a reflection of "sweat equity", and were contingent and conditional upon KHTG making distributions. (Back Aff., ¶¶ 17 - 27). Meltzer admitted to this in writing. In July 2020, Meltzer applied for a company insurance policy stating:

"I am also the CEO for the last 18 months, and am compensated at 60% of a low FMV calculation of several years ago (which rate will go up this fall)- I have earned lots of deferred income from the Holding company [KHTG], which will only come out of dividends, so we are 7-10 years away (we must pay off most of Carol's debt first)".

(Back Aff., ¶¶ 23) (**Exhibit 2** to Back Aff.). Meltzer also admitted that obligations, if any, were "incurred and accrued" by KHTG in his proposed "2020 Meltzer Resolutions". (Back Aff., ¶¶ 24). Back also attests that:

“Both of the company’s CFOs, John Gardner and Julian Gander have confirmed that there is no record on either company books of any such “debt” or obligations; there are no records of “Arrearages” or the “Meltzer Compensation Arrangement”. Nor has there ever been. The “Deferred Comp” chart Meltzer refers to as “Exhibit D” of his affidavit is simply a calculation made by Gander based on Meltzer’s fabricated numbers given to Gander, using as a base the “Arrearages” from the KHTG 2018 and 2019 Resolutions. Gander simply calculated and added 8% interest as directed by Meltzer.”

(Back Aff., ¶¶ 25). Back also attests to Meltzer’s admission that he is not an employee: “Meltzer has also claimed that at all times he was an “employee” of KHTG and KFH ... This is a complete and utter lie.” (Back Aff., ¶¶ 31). In a November 4, 2021 email Meltzer writes:

“When I started as CEO, the question came up as to whether I should be an employee or an independent contractor. Since I could qualify as an independent contractor, it was decided that this would provide both myself and KFH with significant tax benefits. Julian, please confirm that if I had gone forward as an employee, KFH would have had to pay about \$35,000-40,000 in employer contributions on my salary, to date (assuming full salary for 2 years).”

Id. **Exhibit 3** to Back Aff. (Emphasis in original). This has also been confirmed by various witnesses, including the HR Director (Edwards Aff., ¶ 15), the company’s accounting firm, and KFH’s former CFO, John Gardner. (Back Aff., ¶¶ 31).

3. Affidavit of **John Sjoholm** (“Sjoholm Aff.”) (**Doc. 68**): The head of Logistics and Investigation for the New York law firm, LOPRESTI, PLLC. An investigator and intelligence consultant who conducted an investigation into Meltzer, Haim Oz, their Israeli based company OAPI, and their involvement in KFH and KHTG. Sjoholm interviewed and/or spoke with witnesses that include Carol Hill, William Back, Trevor Terry, Victoria Edwards, Douglas Terry, Mitch Lanigan, Julian Gander, Jim Codell, and Jason Akers. Sjoholm states that various witnesses testified that Meltzer continuously ignored or supported Oz and OAPI’s highly wasteful (and “shady”) spending, obvious lack of experience, reckless and gross mismanagement, highly questionable methods, and lack of even basic standards such as construction designs and plans. “Based on my investigation, and the interviews of credible

witnesses, Oz and OAPI turned out to be essentially a scam” (Sjoholm Aff., ¶ 10) and that “it is apparent that Meltzer continued to cover for Oz’s highly suspicious activities throughout construction and operations, which leads me, and some witnesses, to conclude that Meltzer was either a party to the fraud (or scam), that he enabled it, and/or that he willingly or recklessly turned a blind eye to it.” (Sjoholm Aff., ¶ 14). In addition, Sjoholm states that “during the period of interest, while he was involved with the KHTG Greenhouse Project, Meltzer was also involved in a multitude of other companies as an executive and/or legal representative.” (Sjoholm Aff., ¶ 8).

4. Affidavit of **John Gardner** (“Gardner Aff.”) ([Doc. 69](#)): The former CFO of KFH from 2016 through 2019, when he resigned. Gardner was introduced to Meltzer, Bill Back, and Haim Oz in 2016. Gardner is the author of the “Gardner Report” relied upon by Plaintiffs (Pl. Exhibit A). According to Gardner:

“For their equity share in KHTG, Meltzer (35%) and Oz (40%) and Back (25%) were supposed to timely and efficiently design, build and operate the high technology greenhouse for KFH. Instead, from 2015 through Oz’s resignation in 2019, followed by Meltzer’s resignation in November 2021, the project was grossly over budget and way behind schedule, with non-stop waste and mismanagement.”

(Gardner Aff., ¶ 6). Gardner attests to the fact that “It was later discovered that Oz had been defrauding the company. Oz eventually fled back to Israel and my understanding is he has declared bankruptcy.” (Gardner Aff., ¶ 8). Regarding the “Gardner Report”, Gardner states:

“My understanding is that my results were to be used as a basis of moving forward for Meltzer assuming the role of CEO of KFH and running the daily operations of said company. At no time did I believe or intend to justify remuneration going back to 2015, 2016, 2017 or other. Compensation for this prior period I believe was and should have been handled in the equity structure between KHTG and KFH.”

(Gardner Aff., ¶ 10). Gardner also confirms that “Meltzer was compensated through his management company, Meltzer Management Services, LLC (“MMS”). Meltzer was provided

with a 1099, as requested, since he was at all times an independent contractor and not an employee of KHTG or KFH.” (Gardner Aff., ¶ 11).

5. Affidavit of **Douglas Terry** (“D. Terry Aff.”) ([Doc. 70](#)): Currently a Director at KFH, having been appointed by company vote on about January 12, 2023. Terry first became involved in the greenhouse project in 2014, as the Kentucky Project Coordinator, through KHTG. Terry is highly experienced developer and builder, having been in the construction business for over 50 years. Terry states:

“Curt Meltzer portrayed his partner Haim Oz as an international expert in building and operating high-tech greenhouses. We would later learn that this was untrue. As explained below, I would soon develop the feeling that Oz was a con man, and that Meltzer was either a willing accomplice to the con, or an unwitting fool and victim of the con. As more has come to the surface years later, I, along with others believe that Meltzer was indeed a willing accomplice to the con.”

(D. Terry Aff., ¶ 4). Terry witnessed firsthand the waste, mismanagement and ineptitude of Meltzer and Oz, and how Back was pushed out and marginalized by Meltzer and Oz for raising concerns and bringing to the project knowledgeable contractors and individuals that also questioned them. “Eventually Oz’s fraud and malfeasance were discovered in 2019, and Meltzer tried to blame Oz for all of it. Meltzer then claimed to take over operations, yet he continued to fail miserably before resigning in November 2021. We’ve been cleaning up the mess since then.” (D. Terry Aff., ¶ 17).

6. Affidavit of **Victoria Edwards** (“Edwards Aff.”) ([Doc. 71](#)): Currently the Human Resources (“HR”) Manager at KFH. First joined KFH in June 2020 as the Assistant of Safety and Human Resources. According to Edwards:

“When I was hired, KFH had upwards of 90 employees. The HR Department, if you can call it that, was a mess. For a multi-million dollar, high-tech agricultural project, I was shocked at how little organization or protocol was present. Safety protocols were sketchy, if at all, and inconsistent.”

(Edwards Aff., ¶ 5). Edwards adds:

“Despite his title as “CEO”, Mr. Meltzer never provided me with any instructions, guidance, or the tools required for me to perform my safety or HR duties. Nor did Meltzer provide any tools, oversight, or guidance on critical OSHA matters, which I pointed out was of particular importance as the work site was, and still is, an ongoing construction site. Instead, I was forced to rely on Google as my knowledgebase. I basically had to learn myself online how to do my job. This was shocking to me, as HR and safety are highly critical to a company’s operations. They are also critical to a company’s employee relations and liability – issues I had assumed Mr. Meltzer, a New York lawyer supposedly an expert in business law, would be aware of. It soon became clear that Mr. Meltzer lacked any experience in, or would provide any guidance towards, compliance with Kentucky or federal safety or employment laws and regulations.”

(Edwards Aff., ¶ 6). Edwards also attests to Meltzer’s failure to provide for a company employee handbook, and even a basic company file system. “[C]ritical to HR and safety functions in any company is a basic and secure file and record keeping system. It is even required under state and federal law. Under Mr. Meltzer, there was none. I had never seen this at a company.” (Edwards Aff., ¶ 8). Edwards also corroborates other testimony that Meltzer insisted on a daily “nap time” (1pm to 4pm): “We were expressly told by Meltzer not to interrupt him during that nap time. This meant that for a large portion of our work day, every day, he was MIA.” (Edwards Aff., ¶ 10). When working, “Meltzer seemingly actively sought to create a hostile work environment by acting in an abusive manner, or ignoring employee concerns. In my role as assistant HR and later HR Manager, I often had to comfort employees after their disturbing interactions with Meltzer.” (Edwards Aff., ¶ 12). Edward added, “In addition to his terrible track record in working with our staff, Meltzer would often seek to undermine individuals that actually had the necessary skills and experience to effectively build and operate high-tech greenhouses. At times he had asked me not to speak to Bill Back regarding any HR issues. He also did not want me speaking to Carol Hill about a student trade program

that Carol wanted to create known as the Co-Op Program.” (Edwards Aff., ¶ 13). Edwards further corroborates other accounts as to Meltzer and Oz’s complicity:

“We all had come to know that Haim Oz and his team from OAPI were horribly incompetent and even shady, having failed to achieve even basic goals, and leaving a trail of waste and mismanagement. Yet, despite this, which was obvious to all, Meltzer insisted on ignoring others while always favoring and deferring to Oz. Meltzer did this even during times when Oz was obviously in the wrong and had sought to circumvent basic legal requirements and regulations.”

(Edwards Aff., ¶ 14). Lastly, Edwards confirms that Meltzer was certainly not an employee:

“At all times I was at KFH, Meltzer was not an employee. He was not covered by Workers Compensation, he never had to, or did, sign for an employee handbook, employee manuals, safety class certifications, direct deposit instructions, an I-9, a W-4, or any other required employee documentation. He was not on employee payroll.”

(Edwards Aff., ¶ 15).

7. Affidavit of **Shubin K. Saha** (“Saha Aff.”) ([Doc. 72](#)): Currently serves as the Chief Operating Officer (“COO”) at KFH. Saha, Ph.D., D.P.M., is a highly experienced expert in agriculture and greenhouse vegetable crops. He first met Bill Back and Douglas Terry in June, 2015, before being introduced to Meltzer and Haim Oz as partners OAPI. According to Saha: “Meltzer and Oz represented that OAPI had designed and built successful high-tech greenhouses around the world, and that they were looking to enter the US market.” (Saha Aff., ¶ 4). Saha states:

“I soon discovered that many aspects of the engineering and sourcing of essential inputs to the construction process, as well as many aspects of the horticultural inputs, including supplemental lighting, were not properly considered. This was very troubling to me, as Meltzer and Oz had represented that they were experts in their fields. Meltzer claimed to be a highly experienced US attorney and “international business expert”. I quickly found out that this was not the case.”

(Saha Aff., ¶ 7). Saha corroborates other testimony that Meltzer was “often disregarding the advice of experienced individuals who pointed out waste, mismanagement or questionable spending, always siding with [Oz], even though the project was years behind schedule and

exceedingly over budget. For example, Bill Back and Douglas Terry were soon marginalized and cut from the project by Meltzer and Haim for questioning these inconsistencies, despite their experience in Kentucky business and construction.” (Saha Aff., ¶ 8). According to Saha, “[Meltzer] did not want others communicating about the disastrous lack of progress at the project, especially to Carol Hill, the sole investor, or Bill Back.” (Saha Aff., ¶ 9). Saha corroborates other accounts as well as to Meltzer’s absence and toxic and counterproductive management style:

“[Meltzer] relied on weekly summaries from the team just so he could try to get perspective at the site since most of his time “working” was from his home office in New York. He was also abusive, shouting and screaming in many instances and would often try to drive a wedge between employees to manipulate the situation. Many described his management style as ‘toxic’”.

(Saha Aff., ¶ 10). Per Saha:

“[Meltzer] had no horticultural or construction experience and most of his time was spent unavailable in New York. When he was reachable outside of his daily “nap time” from 1pm/2pm through 4pm, or his personal or vacation time, it was often counterproductive. I also believe that during this time he was working on other projects outside of KFH Phase One.”

(Saha Aff., ¶ 11). Saha concluded, “It is obvious that before Meltzer resigned, he certainly did not advance the project to success, but rather hindered it, costing the company millions.” (Saha Aff., ¶ 13).

8. Affidavit of **Trevor Terry** (“T. Terry Aff.”) ([Doc. 73](#)): Currently the Chief Marketing Communications Officer (“CMCO”) at KFH. Terry has been with the company since its inception in 2015. Terry states:

“Bill Back was another original member, but later became the victim of an attempted ousting from the company, a coup orchestrated by Oz and Meltzer, to form a new company and establish more projects like this one in Stanford (the “Pilot Project” or “Phase One”) around the country even as the Pilot Project was still unfinished. It is my opinion that this coup was motivated by greed and a desire to sell as many projects in the

US as possible as quickly as possible, despite Oz, Meltzer, and OAPI's lack of resources, manpower and experience needed to achieve these goals.”

(T. Terry Aff., ¶ 7). Terry also corroborates witness accounts that Meltzer refused to address numerous concerns brought to his attention:

“During this time, several members of the team on the ground, including myself, made Meltzer aware of the poor work, incomplete designs, shady spending, and unsafe conditions at the worksite. Instead of actively addressing these concerns, Meltzer either did nothing, or sided with and often shielded Oz and the Israelis from scrutiny, often by firing experienced and trusted contractors, and belittling those of us that questioned Oz’s expertise. I have provided emails and other documents that establish this behavior.”

(T. Terry Aff., ¶ 10). Terry also corroborates accounts that Meltzer did not “turn the company around”:

“When Oz's failures and lack of experience became too much to cover up, Meltzer (likely sensing the writing on the wall), then finally sided with investor Carol Hill and Bill Back to oust Oz from the company in mid 2019. Meltzer then named himself CEO and later claimed that he "turned the company around" when the team seeded the first crop in 2020, regularly taking credit for work he did not do. Instead of “turning the company around”, Meltzer created a toxic workplace culture that centered around his ego.”

(T. Terry Aff., ¶ 14). Terry states that Meltzer (“who worked from New York when he wasn’t napping between 1pm and 4pm or on vacation”) (¶ 15) “regularly took out his anger on employees through email and over the phone ... and made the employees feel that any attempt to discuss critical issues with his partners, Carol Hill or Bill Back, was off-limits and would result in retaliation.” (T. Terry Aff., ¶ 16). Terry concludes that “I find it hard to believe Meltzer would not have been aware of Oz’s intentions prior to bringing him to the US, suspicious of Oz’s credentials given his (Meltzer’s) visits to other countries, or complicit in Oz’s shady schemes given his close relationship with and loyalty to Oz over my time with the company.” (T. Terry Aff., ¶ 20).

9. Affidavit of **Mitch Lanigan** (“Lanigan Aff.”) ([Doc. 74](#)): Currently the Facility and Boiler Manager at KFH and has been in the construction business for over 25 years. In 2017,

he was first employed as a general laborer to work on the KFH greenhouses, and in May 2018, he was subsequently hired by KFH to supervise construction before becoming the Facility and Boiler Manager. Lanigan attests to the complete lack of experience by Oz and OAPI, and a lack of “basic construction and standard methods of construction” (Lanigan Aff., ¶¶ 6-7) (“OAPI, instead, focused on creating the impression of progress.”). According to Lanigan, “As I got to know Meltzer better, it became obvious to me that he just had no context or understanding of what was going on, what essential materials and labor cost, and that worse, he would make little to no effort to learn or understand any of it. (Lanigan Aff., ¶ 11). According to Lanigan:

“During my time working [with KFH], I saw numerous costly misadventures by Meltzer, and how he refused to adhere to advice from experienced and knowledgeable individuals that were not Haim Oz. Meltzer even worked with Oz to silence or get rid of anyone that did question them, such as Bill Back, and other experienced and knowledgeable contractors and individuals. Meltzer also belittled or ignored the advice of Shubin Saha, who Bill Back had brought to the team. Shubin is a Ph.D. and D.P.M. (Doctor of Plant Medicine) in greenhouse vegetable crops, and is one of the foremost experts in greenhouse vegetable production. Meltzer would continually side with Oz's decisions over other more qualified individuals like Shubin, even when it was clearly incorrect.”

(Lanigan Aff., ¶ 13). Per Lanigan, “[b]y autumn of 2019, Meltzer then began to blame Oz and OAPI for all problems that he was informed of. This was despite the fact that we had previously tried to inform him of many of these troubling issues to no avail. It was not until Oz resigned and left the country that Meltzer admitted what a “shit show” it all had become, yet still refusing to take any personal responsibility.” (Lanigan Aff., ¶ 14). Most glaringly, Lanigan corroborates that many felt this was a scam and that Meltzer benefitted from it:

“Over time it had become increasingly obvious to me that there was a scam going on. It was all snake oil, smoke and mirrors. It reminded me of that famous Simpsons episode, “Marge vs. the Monorail” where a con artist convinces the town to build a costly monorail that doesn’t even function, before he disappears with all of their money. It was obvious that Oz and OAPI were not capable of providing the services or results that had been promised. The Israelis and OAPI never intended to actually deliver the goods, only to drain the accounts of KFH. Most glaring, it appeared to me as if Curt Meltzer was covering up for Oz. I find it very difficult to believe that Meltzer was not aware of the

scam, as it became increasingly obviously apparent, and I believe he must have been personally profiting from the scam's continuation.”

(Lanigan Aff., ¶ 18).

10. Affidavit of **James C. Codell** (“Codell Aff.”) ([Doc. 75](#)): President and CEO of Codell Construction Company, based out of Winchester, Kentucky, a fifth-generation, family-owned company having operated for over 115 years. Codell has more than 35 years of construction experience in all types of commercial and industrial construction. In 2016, Codell Construction was hired by KFH as a General Contractor to manage the building of its greenhouse project in Stanford, Kentucky. Codell was introduced to the project by Doug Terry and Bill Back. According to Codell:

“From the beginning of this project, I could tell there was something very wrong about the planning and design; ie **“There was no plan and no design!”** Haim Oz, who Meltzer represented as the expert in such projects, knew very little about the actual construction process. Worse, Oz would never provide my project manager or me with any real guidance or provide our company with an actual set of plans. The idea that these “experts” were proceeding with a multi-million dollar construction project in Kentucky, without design plans, was astounding and extremely troubling.”

(Codell Aff., ¶ 5). Codell attests to the fact that the project was a disaster because of Meltzer and Oz, and that “[n]either Curt nor Haim would listen to or take any suggestions from our experienced and knowledgeable team, or any experts that Bill Back or Doug Terry (also extremely experienced) brought to the project.” (Codell Aff., ¶ 6). Codell concludes that:

“I’ve never seen such incompetence, inability, waste, and in some cases outright malfeasance, on behalf of Oz, Meltzer and OAPI. Every expert in the field that worked on this project knew that they were the biggest obstacles to KFH successfully building and operating this facility in an organized, timely and cost-effective fashion.”

(Codell Aff., ¶ 10).

11. Affidavit of **Jason Akers** (“Akers Aff.”) ([Doc. 76](#)): President and CEO of Rising Sun Developing, Inc. which was hired in about March, 2019 as a General Contractor. Akers has

more than 30 years of construction experience, and is a fourth-generation contractor. Akers attests to the fact that “Curt Meltzer was emphatic that he was the ‘Sole Managing Member’ and that all construction decisions were to be made by him about the project. (Akers Aff., ¶ 10). Akers states, “I learned very quickly that [Oz] had very limited knowledge of the construction process in the United States-i.e., laws, regulations, building codes, etc. Curt Meltzer, a lawyer in New York City, knew even less. (Akers Aff., ¶ 9). He concludes that “[w]e were uncomfortable with the decisions being made by Meltzer. We felt that funds were spent recklessly or wastefully.” (Akers Aff., ¶ 10).

ARGUMENT

I. PLAINTIFFS UTTERLY FAIL TO SATISFY THE APPLICABLE LEGAL STANDARD ON THEIR BREACH OF CONTRACT CLAIMS AND ISSUES OF FACT IN DISPUTE PRECLUDE SUMMARY JUDGMENT

To recover for breach of contract, a plaintiff must show the "formation of a contract between the parties, performance by the plaintiff, the defendant's failure to perform, and resulting damage." Flomenbaum v. New York Univ., 71 A.D.3d 80, 91 (1st Dept. 2009). With respect to breach of contract, the failure to perform constitutes a breach of contract. 22A NY Jur Contracts § 429. See Garofalo Elec. Co. Inc. v. New York Univ., 300 A.D.2d 186, 189 (1st Dept. 2002) ("The question of whether there has been substantial performance—or a breach—is to be determined, whenever there is any doubt, by the trier of fact"). To establish the existence of an enforceable agreement, a plaintiff must establish an offer, acceptance of the offer, consideration, mutual assent, and an intent to be bound (22 NY Jur 2d, Contracts § 9). That meeting of the minds must include agreement on all essential terms. *Id.* § 31; Kowalchuk v. Stroup, 61 A.D.3d 118 (1st Dept. 2009).

Plaintiffs need to first prove that they offered/promised to perform specific services for KHTG and KFH, under specific terms, for the sum of \$200,200 per year, and that KHTG and KFH accepted that offer/promise without reservation or modification. To establish a contract between Plaintiffs and Defendants KHTG and KFH, Plaintiffs rely primarily upon the KHTG 2018 and 2019 Resolutions that purportedly establish the “Meltzer Compensation Arrangement” and “Arrearages”. Thereafter, Plaintiffs rely upon four other informal writings in an attempt to carry that alleged “Meltzer Compensation Arrangement” and “Arrearages” forward from July 30, 2019, and to also then bind these “obligations” to KFH (collectively the “Ancillary Writings”): (i) “internal business records of the Defendants tracked his deferred compensation owed, plus interest” (Pl. Exhibit D); (ii) a February 2021 text exchange between KFH’s CFO, Julian Gander, where by Gander “texted Meltzer regularly to report to Meltzer when payments were being made by Defendants on Meltzer’s compensation and expenses.” (Pl. Exhibit E); (iii) a November 2021 email from Carol Hill (Pl. Exhibit F); (iv) a November 19, 2021 letter from Carol Hill (Pl. Exhibit G).

Each of the Ancillary Writings, as well as both the KHTG 2018 Resolution and the KHTG 2019 Resolution, are refuted in the affidavits Bill Back and Carol Hill. In fact, Back and Hill reference Meltzer’s own written admissions that wholly refute Plaintiffs’ claim that the “Meltzer Compensation Arrangement” or “Arrearages” are “wages” due and owing by both KHTG and KFH. This includes Meltzer’s proposed 2020 Meltzer Resolutions. (Hill Aff., ¶¶ 33-35; Back Aff., ¶¶ 24-26).

As also admitted by Meltzer in a brief and fleeting moment of truth, compensation, if any, “will only come out of dividends, so we are 7-10 years away (we must pay off most of Carol’s debt first)”.

I am also the CEO for the last 18 months, and am compensated at 60% of a low FMV calculation of several years ago (which rate will go up this fall)- I have earned lots of deferred income from the Holding company, which will only come out of dividends, so we are 7-10 years away (we must pay off most of Carol's debt first). Bill Back is similarly compensated, but at a lower rate.

(Back Aff., ¶¶ 23) (**Exhibit 2** to Back Aff.). This is corroborated by both the Meltzer September 12, 2018 email ("I also ask for some limited priority, once we start to get distributions, so that I can start paying off my credit line then (50,000 out of the first 100,000 we all get, and 30,000 out of every further 100,000 distribution we get, until I am paid in full)" (Back Aff., ¶ 18; **Exhibit 1**), and the 2018 KHTG Resolutions themselves. The last paragraph states:

"RESOLVED FURTHER, that it is unanimously agreed that the Arrearage shall have a priority over interim distributions by the Company such that (i) the Company may make no distribution until not less than \$50,000 of the Arrearage has been satisfied, after which there is no priority with respect to the first \$100,000 distributed and (ii) the Company may make no interim distribution until not less than \$30,000 of the Arrearage has been satisfied, after which there is no priority with respect to the first \$100,000 thereafter distributed."

(Pl. Exhibit "B"). According to the unambiguous language of this last resolution, the Arrearages are tied to KHTG distributions. This is exactly why Meltzer was so eager to "extort additional funds" from KFH in 2021 before he resigned. (Hill Aff., ¶ 36).

Plaintiffs also failed miserably to perform under any agreement. Numerous affidavits attest to this. (See Hill Aff.; Back Aff.; Gardner Aff.; D. Terry Aff.; S. Saha Aff.; T. Terry Aff.; M. Lanigan Aff.; Codell Aff.; Akers Aff.). Plaintiffs never ending material breach of any agreement for compensation precludes any relief.

II. MELTZER CANNOT SUCCEED UNDER HIS NY LABOR LAW CLAIMS BECAUSE HE HAS ADMITTED HE IS NOT AN EMPLOYEE AND SATISFIES ALL CRITERIA TO BE DEEMED AN INDEPENDT CONTRACTOR

Plaintiffs claim that Defendants have violated N.Y. Labor Law § 193 and §198 by failing pay "wages" to Meltzer as an "employee" for his role as COO or CEO. The problem is, Meltzer

has admitted he never was an employee. In a November 4, 2021 email from Meltzer to Hill,

Back and CFO Gander, Meltzer writes:

“When I started as CEO, the question came up as to whether I should be an employee or an independent contractor. Since I could qualify as an independent contractor, it was decided that this would provide both myself and KFH with significant tax benefits. Julian, please confirm that if I had gone forward as an employee, KFH would have had to pay about \$35,000-40,000 in employer contributions on my salary, to date (assuming full salary for 2 years).”

(Back Aff., ¶ 31; **Exhibit 3**) (emphasis in original). Meltzer admits this in other writings, because everyone knew this. See e.g., Edwards Aff., ¶ 15; Gardner Aff., ¶ 11).

Even if he hadn't admitted this, to make out any claim under Article 6 of the Labor Law, a plaintiff must first allege facts to support the existence of an employer-employee relationship and establish that she is an "employee" as the statute defines that term. See Bynog v. Cipriani Group, Inc., 1 N.Y.3d 193, 198 (2003). Under New York law, whether the requisite employment relationship even exists to sustain a NYLL claim is determined by the amount of control the alleged employer has over the worker's outcomes and practices used to achieve those outcomes. Bynog v. Cipriani Group, 1 N.Y.3d 193, 198 (2003). As explained in Bynog, the relevant factors to assess control are if the worker (1) worked at her own convenience, (2) was free to engage in other employment, (3) received fringe benefits, (4) was on the employer's payroll, and (5) was on a fixed schedule. Id.

Meltzer absolutely fails the Bynog test, as attested to by numerous witnesses. (See Edwards Aff., ¶ 15; Gardner Aff., ¶ 11; Back Aff., ¶ 31; Hill Aff., ¶41). Meltzer should be sanctioned for misrepresenting his status to this Court.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion should be denied in its entirety, and based upon the irrefutable evidence presented, Plaintiffs' Complaint should be dismissed in its entirety.

Defendants should be awarded their attorneys' fees and costs, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 27, 2023

Respectfully submitted,

LOPRESTI, PLLC

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CERTIFICATION OF WORD COUNT

In accordance with Rule 17 of the Rules of Practice for the Commercial Division, 22 N.Y.C.R.R. 202.70(g), I hereby certify that this document complies with the word limit because it contains 6,996 words, excluding the parts of this document exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this document.

Dated: New York, New York
March 27, 2023

/s/Anthony A. LoPresti
Anthony A. LoPresti