THE SPRUCE HOUSE PARTNERSHIP (AI) LP, *et al.*,	*	**IN THE**
	*	**CIRCUIT COURT**
***Plaintiffs*,**	*	**FOR**
v.	*	**BALTIMORE CITY, PART 23**
COHNREZNICK LLP,	*	**Case No.: 24-C-22-004264**
Defendant.	*	

* * * * * * * * * * * * *

MEMORANDUM OPINION

This matter comes before the Court on Defendant's Motion for Summary Judgment and Memorandum of Law in Support thereof, filed February 14, 2025; Plaintiffs' Opposition thereto, filed March 7, 2025; Defendant's Reply in Support of its Motion for Summary Judgment, filed March 21, 2025; the arguments made before the Court on April 21, 2025; and the contents of the record herein. For the reasons elaborated upon here, Defendant's Motion for Summary Judgment is hereby **GRANTED**.

I. FACTUAL BACKGROUND

Plaintiffs The Spruce House Partnership (AI) LP and The Spruce House Partnership LLC's ("Plaintiffs" or "Spruce House") are an investment management firm. Defendant's Memorandum of Law in Support of its Motion for Summary Judgment ("MSJ") at p. 4. Beginning in September 2017, Plaintiffs entered into several purchase agreements with GTT Communications Inc. ("GTT"), a publicly traded telecommunications company, which led to substantial investment. Plaintiffs' Third Amended Complaint (the "Complaint" or "TAC") at ¶¶ 47, 57. Plaintiffs were once the largest shareholders of GTT. *Id*. at ¶ 5; Defendant's Answer to Third Amended Complaint ("Answer to TAC") at ¶ 5.

As a publicly traded company, GTT was required to file annual financial statements with the Securities and Exchange Commission (SEC) audited by an independent certified public accountant. MSJ at p. 4. Beginning in 2005, Defendant CohnReznick LLP ("Defendant" or "CohnReznick"), an accounting firm, became GTT's auditor. *Id*; TAC at ¶ 39.

A chronology of the undisputed facts relevant to this matter follows.

April 28, 2017	Christopher Mahon, a Partner at CohnReznick, sent a letter ("Engagement Letter") to GTT management outlining the scope of audit services CohnReznick was to provide for GTT regarding GTT's 2017 financials. Ex. 15 to Affidavit of Attorney Emily Harris in Support of Defendant's Motion for Summary Judgment ("Harris Affidavit"). In the Engagement Letter, Mr. Mahon wrote that the audit was designed to provide "reasonable, but not absolute, assurance" and that "there is some risk" that material misstatements and weaknesses may go undetected by the audit. *Id*. at p. 2.[1]
September 11, 2017 through November 3, 2017	**Spruce House purchased 4 million shares of GTT stock**. Spruce House conducted "extensive due diligence" before purchasing the stock but did not speak to CohnReznick. Deposition of Zachary Sternberg ("Sternberg Depo.") at p. 89.[2] Spruce House's purchase of GTT stock was "premised on careful study of GTT's audited financial statements." MSJ at p. 9; TAC at ¶ 52. The stock Spruce House purchased during this period was worth $143 million and gave Spruce House 9.2% ownership of GTT. This made Spruce House GTT's largest outside shareholder. TAC at ¶ 5; Answer to TAC at ¶ 5 (admitting allegation that Plaintiffs were GTT's largest shareholder).

[1] This statement regarding the limitations of CohnReznick's audit is similarly included in each of the other annual Engagement Letters sent to GTT by CohnReznick regarding CohnReznick's services as to GTT's 2016, 2018, and 2019 financials. Ex. 14 to Harris Affidavit (Engagement Letter dated April 29, 2016, regarding 2016 financials); Ex. 16 to Harris Affidavit (Engagement Letter dated April 5, 2018, regarding 2018 financials); and Ex. 17 to Harris Affidavit (Engagement Letter dated April 25, 2019, regarding 2019 financials).

[2] The versions of Benjamin Stein's and Zachary Sternberg's depositions to which this Court refers throughout this Opinion were submitted as Exhibit 5 and Exhibit 6 to the Harris Affidavit. Exhibits 5 and 6 appear to be excerpts of longer deposition transcripts, the full versions of which were not submitted as exhibits to the Motion for Summary Judgment or to Plaintiffs' Opposition.

January 2018	GTT and Spruce House began discussions about an arrangement in which Spruce House would make additional investment in GTT related to GTT's planned acquisition of Interoute Communications Holdings S.A. ("Interoute"). TAC at ¶ 53. The Interoute acquisition was the largest acquisition GTT had undertaken at the time. Deposition of Benjamin Stein ("Stein Depo.") at pp. 131-32. Interoute was different in several ways than GTT's other acquired companies, including its size and the type of assets involved. *Id*. at pp. 134-35. One of Spruce House's principals, Benjamin Stein, was concerned at the size of the Interoute deal because, in Mr. Stein's words, with "[b]igger deals, there's more to screw up and it's more consequential than smaller deals." Stein Depo. at pp. 135-36. Mr. Stein recalled that the Interoute deal was "a large transaction that would require more attention," which meant that GTT would have "less of an ability to do additional acquisitions" while its management worked on the Interoute deal. Stein Depo. at p. 134. Spruce House was aware that in pursuing the acquisition of Interoute, GTT was de-prioritizing organic growth. Sternberg Depo. at p. 111. Mr. Stein was concerned that GTT was going to be "more leveraged" after the Interoute acquisition because Interoute would "sit senior to [Spruce House] in the capital stack." *Id.* at pp. 134-36.
January 11, 2018	GTT and Spruce House entered into a non-disclosure agreement for Spruce House to consider participating in the prospective acquisition by GTT of lnteroute. TAC at ¶ 54.
February 23, 2018	GTT acquired Interoute. MSJ at p. 10. GTT and Spruce House entered into a securities purchase agreement in which Spruce House committed to invest $170 million more in GTT to help GTT acquire

	Interoute. MSJ at p. 10; TAC at ¶ 57; Ex. 26 to Harris Affidavit.
February 26, 2018	GTT publicly announced their purchase of Interoute. GTT filed the Interoute purchase agreement and February 2018 securities purchase agreement with the SEC. TAC at ¶ 60. CohnReznick identified shareholders of GTT, including Spruce House, in its audit work papers. TAC at ¶ 62; Answer to TAC at ¶ 62.
March 1, 2018	CohnReznick issued its audit report on GTT's 2017 financials. Ex. 10 to Harris Affidavit at F-2. The audit report contained an unqualified opinion on the Company's internal control over financial reporting ("ICFR"). *Id*.
May 30, 2018	The securities purchase agreement was amended. MSJ at pp. 10-11; Ex. 27 to Harris Affidavit. **Spruce House purchased 3.8 million more shares of GTT stock** in the Interoute deal, pursuant to the February/May securities purchase agreements. Plaintiffs conducted "extensive due diligence" before purchasing the stock but did not speak to CohnReznick. MSJ at p. 11.
2018	CohnReznick identified a "material weakness in GTT's internal control over financial reporting." MSJ at p. 11.
May 4, 2018	This "material weakness" is first reported publicly by GTT in its Q1 Form 10-Q. GTT reported that it was trying to remediate the weakness but that it might not be successful in doing so. GTT stated that if efforts to remediate were unsuccessful, "our consolidated financial statements may contain material misstatements." MSJ at p. 11.
August 7, 2018	GTT publicly disclosed that the material weakness persisted. MSJ at p. 12.
August 13, 2018 through January 30, 2019	**Spruce House purchased 4.5 million more shares of GTT stock.** MSJ at p. 12; TAC at ¶ 128.

Q3 2018 through Q3 2019	GTT underperformed analysts' estimates and its prospects took a turn for the worse. MSJ at p. 13.
November 8, 2018	GTT publicly disclosed that the material weakness persisted. MSJ at p. 12.
March 1, 2019	GTT's publicly disclosed that the material weakness had been remediated as of December 31, 2018. MSJ at p. 12.
July 2019	Plaintiffs allege that Spruce House Principals Benjamin Stein and Zachary Sternberg attended both a GTT board meeting and a GTT audit committee meeting at which Michael Monahan, the CohnReznick engagement partner who oversaw GTT's audits, was present. TAC at ¶ 133. Plaintiffs further allege that, at this meeting, "Mr. Monahan directly assured" Mr. Sternberg, one of Spruce House's principals, "that there were no material issues regarding GTT's financial statements or its internal controls. *Id;* Affidavit of Zachary Sternberg ("Sternberg Affidavit") at p. 1. Aside from acknowledging that Mr. Sternberg attended one or more audit committee meetings, CohnReznick denies these allegations. Answer to TAC at ¶ 133.
August 13, 2019 through December 13, 2019	**Spruce House purchased 3.5 million more shares of GTT stock.** MSJ at p. 13; TAC at ¶ 137.
September 2019 through April 2020	Several longtime executives at GTT left the company or were replaced. MSJ at pp. 13-14.
Q2 2020	GTT's new CFO refused to sign off on GTT's Q2 2020 Form 10-Q. The new CFO then launched an internal investigation into the accounting issues. MSJ at p. 15.
August 20, 2020	GTT filed notice of late filing of Q2 2020 Form 10-Q. The filing mentioned issues with cost reporting and internal controls. MSJ at p. 16.
November 9, 2020	GTT filed another notice of late filing of Form 10-Q. MSJ at p. 16.
June 2021	Spruce House recorded its GTT shares in its books as being worth $0. MSJ at p. 17.

	Spruce House gave up its GTT shares entirely. MSJ at p. 17.
October 31, 2021	GTT filed for bankruptcy. Spruce House could not recover any value as it had abandoned its shares already. MSJ at p. 17.
September 25, 2023	The United States Securities and Exchange Commission (SEC) issued an order instituting cease and desist proceedings against GTT ("SEC Order").[3] The SEC Order concerned discrepancies in GTT's financial reporting. The SEC's Order noted that it had reached a settlement with GTT. Ex. 3 to Opp. at p. 1.

II. PROCEDURAL BACKGROUND

On September 30, 2022, Plaintiffs brought this action against several Defendants, including CohnReznick. The subsequent procedural history of this matter has been extensively briefed by the parties and summarized in previous Orders.

On January 27, 2025, Plaintiffs' Third Amended Complaint was accepted for filing by the Clerk. In their Complaint, Plaintiffs asserted three counts against the Defendant: intentional misrepresentation, concealment, and negligent misrepresentation. TAC at ¶ 2. Defendant CohnReznick LLP filed a Motion for Summary Judgment on February 14, 2025, arguing that they are entitled to summary judgment as a matter of law on each of the three counts in the Complaint. MSJ at p. 1. Plaintiffs filed their Opposition to Defendant's Motion for Summary Judgment on March 7, 2025. The Court heard arguments on April 21, 2025.

III. STANDARD OF REVIEW

Summary judgment is appropriate under Maryland Rule 2-501 when (1) there is no genuine dispute of material fact and (2) the party moving for summary judgment is entitled to

[3] The findings of fact made in the 2023 SEC Order are not binding on the Court. Due to Plaintiffs' reliance on the Order, the Court has considered it, because the Court views the facts in the light most favorable to the Plaintiffs.

judgment as a matter of law. *Piscatelli v. Smith*, 197 Md. App. 23, 36 (2011) (citing *Pines Point Marina v. Rehak*, 406 Md. 613, 618 (2008)).

The trial court has broad discretion to grant or deny summary judgment, even when all "technical requirements" are met and there are no disputes as to material fact. *Mathis v. Hargrove*, 166 Md. App. 286 (2005). It is generally inappropriate for a court to enter summary judgment when matters such as knowledge, intent, and motive remain at issue. *Hines v. French*, 157 Md. App. 536, 556–57 (2004). Likewise, the credibility, intent, and motive of witnesses "are issues to be decided by a fact finder" rather than by the court at the summary judgment stage. *Id*. In ruling on a motion for summary judgment, the court must view the facts, and all reasonable inferences drawn from those facts, in the light most favorable to the non-moving party. *Remsburg v. Montgomery*, 376 Md. 568, 579-80 (2003). The party opposing summary judgment bears the burden of demonstrating that there is a genuine dispute of material fact. This may be evidenced by "factual assertions, under oath, based on the personal knowledge" of the affiant or deponent. *Bradley v. Fisher*, 113 Md. App. 603, 610 (1997). However, bald allegations, mere speculation, or conclusory assertions are insufficient to create a genuine dispute of material fact. *Id*.

In determining whether the parties are entitled to judgment as a matter of law on each of the counts, this Court applies New York law. The choice-of-law matter has been previously briefed and decided by this Court. See Motion to Dismiss Opinion (Jan. 3, 2025) at pp. 18-20.

APPLICABLE LAW

In Count 1 of the Complaint, Plaintiffs allege that the Defendant's conduct amounted to **intentional misrepresentation**, also known as fraud. The elements of intentional misrepresentation under New York law are:

> (1) a misrepresentation or a material omission of fact which was false and known to be false by defendant, (2) that the misrepresentation was made for the purpose of inducing plaintiff to rely upon it, (3) justifiable reliance by plaintiff on the misrepresentation or material omission, and (4) injury.

Horn v. Toback, 989 N.Y.S.2d 779, 782 (App. Term 2014) (citing *Shao v. 39 Coll. Point Corp.*, 309 A.D.2d 850, 851 (2003)). To successfully claim intentional misrepresentation, a plaintiff must allege the defendant "intended the misrepresentation to be conveyed to" the plaintiff. *Securities Investor Protection Corp.*, 222 F.3d at 71 (Sotomayor, J.). To establish intention under New York law, plaintiffs must prove the representations by the defendant were made to "influence" the plaintiff to act. See *Rosen v. Spanierman*, 894 F.2d 28, 33 (2d Cir. 1990).

In Count 2 of the Complaint, the Plaintiffs seek to hold the Defendant liable for **concealment**. The elements of concealment are the same four elements of fraud outlined above, plus a fifth element: (5) "that the defendant had a duty to disclose the material information." *Bannister v. Agard*, 125 A.D.3d 797, 798 (2015) (internal citations omitted).

Count 3 of the Complaint alleges that the Defendant has committed **negligent misrepresentation**. To succeed on a claim for negligent misrepresentation in New York, a plaintiff must show "(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information." *Ginsburg Dev. Companies, LLC v. Carbone*, 134 A.D.3d 890, 894 (2015) (quoting *J.A.O. Acquisition Corp. v. Stavitsky*, 8 N.Y.3d 144, 148). In other words, either actual privity or "near privity" between the parties is required to establish the existence of a duty. To demonstrate a "near privity" relationship between an auditor and a nonclient, as is required under the first element of negligent misrepresentation, the plaintiff must show three prerequisites: (1) the accountants must have been aware that the financial reports were to be used for a particular purpose or purposes; (2) in the furtherance of which a

known party or parties was intended to rely; and (3) there must have been some conduct on the part of the accountants linking them to that party or parties, which evinces the accountants' understanding of that party or parties' reliance." *Credit Alliance Corp. v. Arthur Andersen & Co.*, 65 N.Y. 2d 536, 551 (N.Y. 1985). These prerequisites are intended to ensure that the "end aim of [the] audit" was to benefit the third party who is alleging to be owed a duty. *Id.* at 554. The mere fact that potential investors may later use audited financial statements is insufficient to establish near-privity. *Saltz v. First Frontier, LP*, 782 F. Supp. 2d 61, 83-84 (S.D.N.Y. 2010).

Additionally, the plaintiff in a negligent representation case must establish causation. See *Meyercord v. Curry*, 38 A.D.3d 315, 316 (2007). To prove causation in a negligent misrepresentation claim, a plaintiff must show two types of causation. First, "that defendant's misrepresentation induced plaintiff to engage in the transaction in question (transaction causation)," and second, "that the misrepresentations directly caused the loss about which plaintiff complains (loss causation)." *Meyercord*, 38 A.D.3d at 316 (internal quotations omitted).

ANALYSIS

I. There was no communication between Spruce House and CohnReznick.

First, there were no communications between Spruce House and CohnReznick which could have amounted to a misrepresentation or omission.

All three causes of action in Plaintiffs' Complaint require a showing that the Defendant made some material misrepresentation or omission. See *Horn*, 989 N.Y.S.2d at 782 (requiring as an element of intentional misrepresentation and concealment claims "a misrepresentation or a material omission of fact which was false and known to be false by defendant"); *Ginsburg*, 134 A.D.3d at 894 (requiring as an element of negligent misrepresentation that the information conveyed to the plaintiff was "incorrect").

CohnReznick claims that there is no "admissible evidence" of any material misrepresentation or omission. MSJ at pp. 19-23. In support of this, CohnReznick refers to "compelling evidence that GTT's financial statements were accurate," including evidence that the statements were prepared in compliance with Generally Accepted Accounting Principles (GAAP). *Id*. at pp. 19-21. CohnReznick offers an extensive list of additional evidence to support this argument. See *id*. The Plaintiffs, in their response, counter that it is disputed whether GTT's financial statements for 2016 through 2019 were materially misstated. Opp. at p. 8. The Plaintiffs argue that CohnReznick's audit reports for those four years include "plainly false" representations, including "that ICFR was functioning and that financial statements were fairly presented." *Id*. In support of this allegation, the Plaintiffs offer opinions from their forensic accounting expert, Andrew Mintzer, that GTT's ICFR "was not effective" at the dates relevant to several of the financial statements. *Id*. at p. 9. The accounting expert further opines that the deficient ICFR "could lead to material misstatements." *Id.* He then states that

> It is my understanding that evidence consistent with the above information will be presented at trial. It is my further opinion that based on the provisions of GAAP and SEC Financial Reporting Rules, this evidence indicates that GTT's financial statements were materially misstated[.]

Ex. 10 to Opp. (Affidavit of Andrew Mintzer ("Mintzer Affidavit")). In their argument before this Court, Plaintiffs attempt to construe Mr. Mintzer's foregoing statement as confirmation that there was a material misstatement in GTT's audited financial statements. On its face, this statement reads as a mere allusion to evidence that "will be presented at trial" – not a conclusion based on the extensive factual record available to the parties at this stage of litigation. It was Plaintiffs' own investment decisions, independent due diligence, and GTT's actions that resulted in Plaintiffs' losses. These are undisputed facts.

It is dispositive that there was no communication whatsoever between CohnReznick and Spruce House. In order for there to be a material misrepresentation or omission, there must inherently be some communication (or some affirmative duty to communicate) to the person who claims to have relied on the statement or omission. Here, CohnReznick did not directly communicate with investors, including Spruce House, even prior to Spruce House's investing in GTT. Deposition of Michael Monahan ("Monahan Depo.") at pp. 469-70. Mr. Monahan stated that the auditors "don't directly communicate with investors" and that "we had no direct communication with Spruce House." Monahan Depo. at pp. 469-70. Likewise, Spruce House did not meet with or communicate with CohnReznick as part of its pre-investment investigation of GTT. Spruce House conducted "thorough" and "rigorous" due diligence on GTT before purchasing its stock, including speaking to senior members of GTT management and to unnamed third parties with knowledge of GTT. Sternberg Depo. at pp. 73, 87-88. However, this due diligence did not involve speaking to CohnReznick. Sternberg Depo. at p. 89; MSJ at p. 11 (stating that, in preparation for its investment in the Interoute deal, "Spruce House had no meetings, conversations, or contact of any kind with anyone from CohnReznick"). While the Plaintiffs point to the contents of audit reports and financial statements as purported communications by CohnReznick about the state of GTT's finances, these documents were publications directed towards GTT's shareholders and board in general, not to Spruce House specifically. Monahan Depo. at 226.

The only allegations put forth by the Plaintiffs as to a communication made by CohnReznick to Spruce House is their claim that Mr. Monahan made certain statements or omissions at the July 2019 audit committee meeting, a claim for which Plaintiffs have failed to offer any evidence in the form of meeting minutes, corroborative testimony, or otherwise. The

depositions of Mr. Sternberg and Mr. Stein include no reference to any statements made at the July 2019 meeting of GTT's audit committee. Sternberg Depo.; Stein Depo. The only evidence offered to support this assertion is the affidavit of Spruce House's principal, Zachary Sternberg, dated March 7, 2025. Sternberg Affidavit at p. 1 (stating that "Mr. Monahan assured me that there were no issues regarding GTT's financial statement or internal controls"). The March 2025 statement by Mr. Sternberg, standing alone, does not create a dispute of material fact sufficient to deny the Motion for Summary Judgment.

Therefore, given that there was no communication between the Defendant and Spruce House, there cannot have been any misrepresentation or material omission of fact by CohnReznick to Plaintiffs.

II. Reliance was impossible because Spruce House did not "have the option of selling."

Second, the Plaintiffs cannot show reliance because they could not have divested from GTT even if they had been aware of the faults in GTT's financial reporting and internal controls.

Each of Plaintiffs' claims requires a showing of reliance. The core allegations of Plaintiffs' Complaint rest on the premise that, had Spruce House been made aware of the accounting and financial deficiencies at GTT, Spruce House would not have further pursued or invested in GTT. Yet, the two decision makers at Spruce House, Mr. Stein and Mr. Sternberg, acknowledge that their options for distancing themselves from GTT were limited to none.

Even if Spruce House had been made aware of these deficiencies, Mr. Stein stated that "[i]t's hard to speculate" as to what actions Spruce House might have taken in response to an adverse opinion from CohnReznick on GTT's financials. Stein Depo. at p. 65. Mr. Stein could not say that "if CohnReznick had issue[d] a qualified opinion on the financial statements that [Spruce House] would have not continued to hold GTT securities." Stein Depo. at p. 64.

Moreover, Mr. Sternberg acknowledged that if Spruce House had learned at some point that GTT did not maintain effective control over financial reporting, Spruce House "would not be able to act on it" from a practical standpoint because trading based on such material nonpublic information would be prohibited by insider trading laws. Sternberg Depo. at pp. 36-37. Mr. Sternberg stated that one "would not be able to act on" such information "as a matter of practicality." *Id*. "Once one is in an investment and then learns something like, you know, what happened here," Mr. Sternberg stated, "your choices are very limited at that point in time." Sternberg Depo. at pp. 36-40. "You don't have the option of selling."

Plaintiffs have failed to pinpoint any particular moment in time at which information was misrepresented or withheld and at which they retained the ability to sell their shares of GTT stock. The Plaintiffs could not have divested from GTT even if they had been aware of the faults in GTT's financial reporting and internal controls.

On the subject of reliance, Plaintiffs claim that the audit work papers contain statements showing that CohnReznick was anticipating Spruce House would rely on the outcome of their audit of GTT. However, the audit work papers merely state that shareholders were "expected user[s]" of GTT's audited financial statements. TAC at ¶ 62. This alone does not serve to demonstrate that CohnReznick was preparing the audited financial statements with the express intention or expectation that Spruce House would *rely* on them in its investment determinations. Thus, the Plaintiffs cannot show reliance here.

III. **CohnReznick owes no duty to Spruce House, as the parties were not in privity or near-privity**.

Third, the parties were not in privity or near-privity and thus no duty was owed. Plaintiffs never engaged CohnReznick directly, and Plaintiffs did not have communications with CohnReznick prior to investing.

New York law imposes a high bar on plaintiffs to demonstrate the existence of a duty between an auditor and a non-client. To establish a near-privity relationship between a non-client and auditor under New York law, a plaintiff must show, among other things, that "a known party or parties was intended to rely" on the audited financial reports in question. *Credit Alliance*, 65 N.Y. 2d at 551. This requirement is intended to ensure that the "end aim of [the] audit" was to benefit the third party who is claiming to be owed a duty. *Id*.

Plaintiffs could not have taken any investment action even if they had known that GTT's financial statements were not accurate. The high bar to demonstrate near-privity has not been met by Plaintiffs. The lack of reliance is dispositive of the near-privity argument, and CohnReznick owed no duty to Spruce House. There is no special relationship between Plaintiffs and CohnReznick, and no evidence that CohnReznick made a false representation directly to Plaintiffs. The counts for concealment and negligent misrepresentation each fail on this basis.

The Plaintiffs argue that because Spruce House was noted to be an "affiliate" of GTT, they should be treated as if it were GTT, the audit client. Opp. at pp. 26-28. The Plaintiffs suggest that this treatment would create actual privity between Spruce House and CohnReznick. *Id*. However, even if the Court were to accept this argument and treat Spruce House as the audit client, it would follow that Spruce House is unable to sue CohnReznick. As the Defendant points out, the doctrine of *in pari delicto* bars audit clients who have engaged in fraud from suing their auditors. MSJ at n. 24. Under New York Law, the doctrine of *in pari delicto* requires that "the courts will not intercede to resolve a dispute between two wrongdoers." *Kirschner v. KPMG LLP*, 15 N.Y.3d 446, 464 (2010) (shareholder derivative suit brought against auditor related to fraud perpetrated by the corporation's officers was barred by *in pari delicto*).

It is undisputed that GTT is a wrongdoer. See Opp. at pp. 1-2 (claiming that GTT "lacked internal controls over financial reporting" and that GTT's executives "perpetrate[d] an accounting fraud" that "eventually drove GTT into bankruptcy"). Therefore, the two "wrongdoers" for purposes of the *in pari delicto* analysis are GTT and, according to Plaintiffs, CohnReznick. Taking as true Plaintiffs' allegation that CohnReznick was a wrongdoer, it follows that an action by GTT against CohnReznick cannot stand. Thus, treating Spruce House as if they were themselves GTT would similarly bar Plaintiffs from bringing these claims against CohnReznick.

IV. The alleged wrongdoing falls on GTT, not CohnReznick.

Plaintiffs repeatedly reference fraud perpetrated by GTT and its agents. In the 2023 Cease and Desist Order issued against GTT by the SEC – an order which is repeatedly referenced by the Plaintiffs as evidence of wrongdoing – not one reference is made to the Defendant, CohnReznick, by name. Ex. 3 to Opp. (SEC Order) (finding that "GTT made materially misleading statements," that "GTT failed to disclose material facts concerning certain unsupported adjustments to COR," and that "GTT violated" various federal statutes) (emphasis added); TAC at ¶ 30 (referencing SEC Order). Plaintiffs' Complaint is also rife with references to GTT's misconduct, which it paints as central to the downfall of GTT and, in turn, the loss in value of Plaintiffs' investments. TAC at ¶ 15 ("GTT was materially overstating GTT's profits"); *Id*. at ¶ 16 ("GTT was improperly classifying post-acquisition expenses as pre-acquisition expenses"); *Id*. at ¶ 27 (stating that GTT "breach[ed] debt covenants" and failed to meet "repayment obligations," making it "impossible for GTT to raise capital and hire new executive officers" and leading GTT to file for bankruptcy). Plaintiffs further cite to the affidavit of Steven Berns, a GTT executive, as evidence of wrongdoing. Yet, the quote that Plaintiffs chose to

highlight from Mr. Berns's affidavit states that Mr. Berns learned of fraud "in the books and records of GTT" and that GTT's controller "told [Mr. Berns] that he knew what they did was wrong and not in compliance with US GAAP." Plaintiffs' Ex. 1 at MSJ Hearing at p. 10 (emphasis added).

Yet, despite GTT being the central alleged wrongdoer, this action was brought against CohnReznick and not GTT itself. While it may be regrettable that Plaintiffs suffered losses from a failed investment in a company, it does not follow that Plaintiffs necessarily have an avenue for relief, particularly against the company's auditor.

CONCLUSION

Upon consideration of the undisputed material facts in this case, Defendant is entitled to judgment as a matter of law, and summary judgment is therefore granted for the Defendant on all three counts. Plaintiffs' arguments depend on numerous speculative assertions that would require a trier of fact to engage in guess work.

/s/
The Honorable Audrey J.S. Carrión
Circuit Court for Baltimore City
Case No. 24-C-22-004264

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