SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42

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DANIELLE SHALOV,

Plaintiff,

- v -

BRISBANE ASSOCIATES LIMITED PARTNERSHIP, BRISBANE ASSOCIATES LLC, SEWARD BRISBANE LLC, ALICE BRISBANE LLC, ELINOR BRISBANE LLC, SARAH BRISBANE LLC, CHASE MELLEN III, CHARLES A. BRISBANE, ABIGAIL MELLEN, DARCY KELLEY, ALLAIRE STALLSMITH,

Defendants.

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INDEX NO. 651188/2021

MOTION DATE 09/03/2021

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

HON. NANCY BANNON:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 148

were read on this motion to/for DISMISS.

I. INTRODUCTION

In this action arising from the restructuring of a family real estate holding company, the plaintiff seeks a declaratory judgment voiding the restructuring *ab initio*, an appraisal of her interest in the company, and damages on theories of breach of fiduciary duty, fraud, negligent misrepresentation, minority oppression, unjust enrichment, and conversion. The defendants move to dismiss the amended complaint in its entirety pursuant to CPLR 3211(a)(1) and (a)(7). For the following reasons, the motion is granted.

II. BACKGROUND

The following allegations are drawn from the plaintiff's amended complaint, unless otherwise noted, and are assumed to be true solely for purposes of this motion. See Grassi & Co. v Honka, 180 AD3d 564 (1st Dept. 2020).

Defendant Brisbane Associates Limited Partnership (the "Partnership") was a family real estate holding company owned by the descendants of its original founder, Arthur Brisbane. The Partnership's term was set to expire on December 21, 2020. The plaintiff was a limited partner in the Partnership. Defendants Chase Mellen III ("Chase"), Charles A. Brisbane ("Charles"), Abigail Mellen ("Abigail"), Darcy B. Kelley ("Darcy"), and Allaire B. Stallsmith ("Allaire") (collectively, the "General Partners"), each a relative of the plaintiff, were general partners in the Partnership.

On July 30, 2020, the General Partners approved a plan (the "Plan") to convert the Partnership into a Delaware limited liability company, defendant Brisbane Associates, LLC (the "Company"), which would then own the real estate interests formerly owned by the Partnership. Darcy, the plaintiff's mother, emailed the plaintiff and five other family members who were also limited partners in the Partnership at the end of August 2020, stating that she was "pushing for having the annual BA [Partnership] meeting in October" to discuss the new structure. On October 4, 2020, Kenneth Frank (Frank), Darcy's husband and the plaintiff's stepfather, presented the General Partners with a Power Point presentation on the Plan. The plaintiff received a copy of the presentation on October 5, 2020. The presentation explained that the restructured Partnership would consist of a single master LLC, the Company, owned by four member LLCs, defendants Seward Brisbane, LLC, Alice Brisbane, LLC, Elinor Brisbane, LLC, and Sarah Brisbane, LLC, (the "Family LLCs"), each representing a branch of the family, with

equal 25% interests in the master LLC. There would be four managers of the Company, each appointed by one of the Family LLCs. The managers would have the "same authority as GPs [General Partners] currently have" and would vote on all "Major Decisions." Within each Family LLC would be various classes of Members, including voting members, non-voting members, and economic interest only members. In comparing the new proposed structure to the Partnership, the presentation stated that the new Company's operating agreement would serve "[e]ssentially the same function as the Partnership Agreement" and that there was "[n]o desire to depart substantially from what is currently in place." It also observed that, in contrast to the various classes of membership that would be permitted within the Family LLCs, the limited partners in the Partnership all currently had "no role other then [sic] to receive their distributions."

On October 11, 2020, Darcy scheduled a virtual meeting that the plaintiff and others attended to ask questions about the Plan. On October 16, 2020, Darcy forwarded an email chain to the plaintiff and other limited partners including Frank's answers to a list of questions that had been posed by a limited partner in response to the October 4, 2020, Power Point. Among other things, Frank represented in his email response that the new Company would include "no GPs [General Partners]. All current GPs [General Partners] and LPs [limited partners] in each family group have become 'voting members' in their [F]amily LLC." Frank also stated that the language of the new operating agreement would be "for the most part" the same as that of the Partnership Agreement.

The General Partners agreed that Frank, an attorney, would draft the conversion documents. The plaintiff raised concerns that Frank, as Darcy's husband, had a conflict of interest in light of Darcy's "personal interest in the conversion." Specifically, the plaintiff

believed Darcy benefited from the conversion inasmuch as it limited her liability to third parties and would eliminate her from fiduciary obligations she owed to limited partners in the Partnership when she acted as a manager of the Company. Darcy responded to the plaintiff, stating that Frank made it clear he was "not representing anyone" in drafting the documents, which would be subject to "review and approval by counsel and the GPs [General Partners]." Frank did not act pursuant to any retainer agreement with the Partnership or the Company.

On December 4, 2020, the General Partners met to review the terms of the Plan. On December 5, 2020, Darcy invited the plaintiff, her brother, Alexander Bockman ("Bockman"), and several other limited partners to a virtual meeting to review those terms. Darcy described the terms as requiring, among other things, a meeting of all partners to discuss the plan, called on not less than twenty days' prior written notice, pursuant to the Partnership Agreement. Darcy asked the limited partners to waive the twenty days' notice.

The virtual meeting was held on December 6, 2020. At the meeting, Frank presented the terms of the Plan. Frank represented that the governing documents for the newly formed LLCs "will mirror current documents" and that a statutory "consolidation" would not be utilized to effectuate the reorganization as it would involve "potential government interaction." During the meeting, the plaintiff requested drafts of the conversion documents from the General Partners but was denied. The plaintiff avers she had also done so on prior occasions and was denied. After the meeting, Darcy again asked the limited partners to waive the twenty-day meeting notice. In response, Bockman notified Darcy that he was requesting an annual meeting on behalf of the limited partners and was refusing to waive notice because, among other things, the limited partners had not yet received and would need time to review the conversion documents. The

plaintiff did not consent to waive notice, which she states she was owed under the New York Limited Liability Company Law (the "LLC Law").

Thereafter, the plaintiff learned that the General Partners had determined that they were not, in fact, required to provide additional notice prior to consummating the Plan. On December 13, 2020, the General Partners adopted a resolution (the "Resolution") setting forth the terms of the Plan and attaching initial forms of the reorganization documents (the "Document Package"), including, among others, an Initial Operating Agreement of the Company, Family LLC Operating Agreements, and a Contribution Agreement (the "Contribution Agreement") whereby partners transferred their partnership interests to their Family LLC. Pursuant to the Resolution, partners were authorized to transfer their Partnership interests to a Family LLC and were informed that "to the extent any consent or approval of any matter described herein may be required by a Limited Partner whose partnership interest was not transferred to their respective Family LLC, the General Partners have full power and authority to act on their behalf and consent to, approve or ratify all acts contemplated by this Resolution…".

On December 15, 2020, Darcy emailed the Resolution and related documents, including the Contribution Agreement and the Elinor Brisbane LLC Operating Agreement (the "Elinor Operating Agreement") to the plaintiff and other limited partners. Darcy advised that the deadline for returning executed Contribution Agreements was the end of Friday, December 18, 2020. The plaintiff avers that she was then removed from correspondence among the General Partners and limited partners concerning corrections and clarifications of the Contribution Agreement, Elinor Operating Agreement, and Document Package. All limited partners executed and returned the Contribution Agreements by the deadline except for the plaintiff and Bockman. On December 18, 2020, Darcy emailed the plaintiff and Bockman to ask for their executed

Contribution Agreements. Darcy attached a revised copy of the Contribution Agreement correcting two spelling errors. The plaintiff states she was not aware that that the Contribution Agreement was an updated draft and believed all documents were still awaiting revisions. The plaintiff responded to Darcy that she hadn't been able to complete her review but did not state to Darcy her understanding that final versions of the documents were still forthcoming.

The following week, on December 20, 2020, Darcy forwarded to the plaintiff a notice of meeting of the General Partners of the Partnership to be held at 5 p.m. that evening. At 1:32 p.m., the plaintiff's husband texted Darcy to tell her that the plaintiff understood she still did not have final versions of the documents sent for her execution on December 15, 2020. At 3:28 p.m., Darcy emailed what she represented to be a final version of the Contribution Agreement to the plaintiff with instructions that it had to be executed before 5 p.m. that evening. A few minutes thereafter, Darcy emailed the plaintiff again and confirmed that changes had been made to the Contribution Agreement, Elinor Operating Agreement, and documents in the Document Package. Darcy texted the plaintiff's husband and noted that all documents other than the Contribution Agreement were not in final form. She reiterated that the deadline for execution of the Contribution Agreement was 5 p.m. At 4:48 p.m., the plaintiff's husband notified Darcy that because the Contribution Agreement bound the plaintiff to the Elinor Operating Agreement, which was *not* in final form, the plaintiff had not received final documents and could not execute the Contribution Agreement. At 5:29 p.m., Darcy responded that because the plaintiff and Bockman missed the execution deadline they would be excluded from Elinor Brisbane, LLC, and their "rights and obligations will remain essentially as they are now."

At 6 p.m., Darcy sent a Plan Explanation to Bockman, but not the plaintiff. The Plan Explanation stated that non-contributing limited partners of the Partnership would be converted,

without consent, into holders of Class B units in the Company. At 8:03 p.m., Chase emailed the plaintiff and Bockman, providing them with a final copy of the Elinor Operating Agreement. Chase gave the plaintiff and Bockman until 9 p.m. to execute the Contribution Agreement and stated that failure to execute would result in the plaintiff and Bockman's remaining as "limited partners of the Partnership." Bockman executed and returned the Contribution Agreement prior to the deadline. The plaintiff did not.

On December 22, 2020, the plaintiff, having finally reviewed all documents and finding them satisfactory, attempted to reverse her earlier refusal to contribute her limited partnership interest by signing the Contribution Agreement and sending it to Darcy, the managing member of Elinor Brisbane, LLC. Darcy refused to accept the plaintiff's belated offer of contribution. The plaintiff was advised that she was not a member of Elinor Brisbane, LLC, but remained a Class B member of the Company with her rights limited to a 1% economic interest in the Company.

On January 12, 2021, Chase emailed the plaintiff and again advised that her "limited partner interest was converted to a Class B Membership in the new LLC, and although the type of legal entity changes, your rights are essentially the same." Chase attached a set of executed documents converting the Partnership to the Company. The plaintiff avers that this is when she learned that certain new terms had been inserted in the Company Operating Agreement on December 21, 2020, explaining the distribution and assignment to Class B members, whereas the original Operating Agreement had reserved Class B Units for "future issuance." The revised document now identified the plaintiff as a Class B member and provided that "Class B Units shall be non-voting Units and the holders thereof shall be Members with the rights and obligations of an Assignee." The revised document further added a section entitled, "Power of

Attorney," which provided, in relevant part, that each Class B member "appoints the Manager representing the Brisbane Family Group corresponding to the 'Initial Partner's Group' with whom such Class B Member was associated" in the Partnership Agreement as his or her lawful attorney, and that the percentage of membership interest held by such Class B member "shall be included in the voting percentage of such Brisbane Family Group."

On February 19, 2021, the plaintiff commenced this action. The original complaint sought declaratory judgments deeming the conversion of the Partnership to the Company void *ab initio* for failure to adhere to the procedures outlined in Section 1006 of the LLC Law and declaring the Contribution Agreement signed by the plaintiff and returned to the General Partners valid and binding, demanded a fair value appraisal and buyout of the plaintiff's partnership interest as a dissenting partner pursuant to Article 8-A of the New York Partnership Law (the "Partnership Law"), and sought damages for breach of the Contribution Agreement, breach of fiduciary duty, fraud, negligent misrepresentation, minority oppression, unjust enrichment, and conversion. On April 19, 2021, the plaintiff filed an amended complaint as of right restating all causes of action except for those arising out of the Contribution Agreement, i.e., seeking declaration that the Contribution Agreement is valid and binding and damages for breach of the Contribution Agreement. The instant motion ensued.

III. LEGAL STANDARD

A. CPLR 3211(a)(1)

Dismissal under CPLR 3211(a)(1) is warranted only when the documentary evidence submitted "resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." Fortis Financial Services, LLC v Fimat Futures USA, 290 AD2d 383, 383 (1st

Dept. 2002); see Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc., 120 AD3d 431, 433 (1st Dept. 2014); Fontanetta v John Doe 1, 73 AD3d 78 (2nd Dept. 2010). A particular paper will qualify as "documentary evidence" only if it satisfies the following criteria: (1) it is "unambiguous"; (2) it is of "undisputed authenticity"; and (3) its contents are "essentially undeniable." See VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC, 171 AD3d 189 (1st Dept. 2019) quoting Fontanetta v John Doe 1, supra.

B. CPLR 3211(a)(7)

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 151-152 (2002). To determine whether a claim adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (id. at 152; see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881 [2013]; Simkin v Blank, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory. See Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994). "The motion must be denied if from the pleading's four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." 511 W. 232nd Owners Corp. v Jennifer Realty Co., supra, at 152 (internal quotation marks omitted); see Leon v Martinez, supra; Guggenheimer v Ginzburg, 43 NY2d 268 (1977).

IV. DISCUSSION

A. Jurisdiction

Initially, while they do not cite to the relevant sections of CPLR 3211 in their notice of motion, the defendants aver that the plaintiff is precluded from bringing her claims in this court by forum selection and exculpation clauses in the Document Package, including the Contribution Agreement the plaintiff admittedly signed and attempted to return to the General Partners. The defendants state that the court is thus deprived of jurisdiction over the plaintiff's claims. The clauses in question provide, in relevant part, (1) that any action relating in any way to documents within the Document Package are subject to the exclusive jurisdiction of the courts of the State of Delaware and the U.S. District Court for the District of Delaware, and (2) that the executor of the subject Contribution Agreement releases all claims or causes of action arising out of or in connection with such Contribution Agreement.

When parties to an agreement consent to submit to the jurisdiction of a court by means of a forum selection clause, such clause is "prima facie valid and enforceable" with respect to the parties to that agreement. Brooke Group Ltd. v JCH Syndicate 488, 87 NY2d 530, 534 (1996); see Sterling Nat. Bank as Assignee of NorVergerence, Inc. v Eastern Shipping Worldwide, Inc., 35 AD3d 222, 223 (1st Dept. 2006); Sherrod v Mount Sinai St. Luke's, 204 AD3d 1053, 1055-56 (2nd Dept. 2022). Similarly, "contractual limitations on liability are generally enforceable" as against signatories to a contract in the absence allegations of grossly negligent conduct. S.A. De Obras y Servicios, COPASA v Bank of Nova Scotia, 170 AD3d 468, 472 (1st Dept. 2019); see Uribe v Merchants Bank of N.Y., 91 NY2d 336, 341 (1998).

Here, notwithstanding that the plaintiff initially brought claims seeking to enforce the Contribution Agreement, she has since withdrawn such claims. More significantly, the

defendants' position in this matter has consistently been that, because the plaintiff signed the Contribution Agreement and any related documents after the deadline imposed on her, she could not contribute her Partnership interest in accordance with such agreements and they were not bound to confer on her any of the benefits or obligations of contribution. The defendants cannot invoke as binding only provisions of the subject agreements that tend to benefit them while rejecting those that would benefit the plaintiff. To the extent that the defendants contend that the plaintiff is bound by documents implementing the Partnership's reorganization because such documents provided that Darcy was her attorney-in-fact, even without the plaintiff's consent, such argument is improperly raised for the first time on reply and may not be considered.

Accordingly, the court rejects the defendants' challenges to its jurisdiction.

B. Declaratory Judgment and Appraisal

The plaintiff's first cause of action seeks a declaration that the Plan and its execution are null and void, *ab initio*, inasmuch as both were done in contravention of the LLC Law's notice and meeting provisions and without regard to the appraisal and buyout rights of a dissenting partner. The plaintiff's second cause of action seeks, in the alternative, an appraisal of the fair value of her partnership interest as a dissenting partner under Article 8A of the Partnership Law.

Section 1006 of the LLC Law, entitled "Conversion of partnership or limited partnership to limited liability company," provides, in relevant part, that "[a] partnership or limited partnership may be converted to a limited liability company pursuant to this section." A conversion in accordance with Section 1006 requires, *inter alia*, that the terms and conditions of conversion be approved "by such vote of general partners as shall be required by the partnership

agreement" and "by limited partners representing at least a majority in interest of each class of limited partners." Further,

> The agreement of conversion shall be submitted to the general partners and limited partners of a limited partnership at a regular or special meeting called on twenty days notice or such other notice as the partnership agreement may provide. A dissenting limited partner shall have the rights provided in article eight-A of the partnership law and shall not be a member of the converted limited liability company.

Article 8A of the Partnership Law describes procedures for the merger or consolidation of a limited partnership. As relevant here, it permits any limited partner of a limited partnership that is party to a proposed merger or consolidation, prior to the time of the meeting at which such merger or consolidation is to be voted on, to file with the limited partnership written notice of dissent from the proposed merger or consolidation. Partnership Law §§ 121-1102, 121-1106.

The defendants do not dispute that they did not follow the foregoing procedures in effectuating the Plan. Rather, they aver that they were not required to adhere to those procedures because the reorganization of the Partnership was not a conversion, merger, or consolidation. The court agrees that there is no indication that the Plan was a merger or consolidation within the meaning of Article 8 of the Partnership Law, or a *de facto* merger under the common law, as the plaintiff suggests. It is more difficult to argue that the Plan did not result in a conversion, at least as the term is generally understood. Indeed, the record is replete with instances where the defendants described the Plan as a conversion of the Partnership to a limited liability company. The more important question, however, is whether the Plan was a statutory conversion within the meaning of the LLC Law, as opposed to the utilization of a mechanism of conversion not governed by statute.

As described above, Section 1006 of the LLC Law states that a limited partnership "may" convert to a limited liability corporation, without any intermediate steps, if the partners approve an agreement of conversion, the limited partnership files Articles of Organization with the Secretary of State including a statement that the partnership was converted to a limited liability company, and the limited partnership cancels its certificate of limited partnership. Here, the Partnership reorganized in a different manner. The Partnership first transferred its assets to the Company and initially owned the Company. The partners voluntarily contributed their partnership interests to one of the Family LLCs, each of which was then admitted as a substitute general partner owning the aggregate partnership interests of the participating family members. The last step in the conversion was the *pro rata*, in-kind distribution of the Partnership's only remaining asset - its ownership interest in the Company - to each partner, whether a Family LLC or an individual. Upon completion of that step, pursuant to the Partnership Agreement, the Partnership no longer had any limited partners and therefore was dissolved as a matter of law.

Thus, the Plan proceeded to effectuate the conversion of the Partnership to the Company not by means of a conversion agreement and the expedited statutory process authorized by the LLC Law but pursuant to a series of agreements and exercises of the power of the General Partners, as bestowed by the Partnership Agreement. Moreover, while the Plan ultimately resulted in former partners holding various membership interests in the Company, the Company was never considered to be the same entity as the Partnership and did not assume the Partnership's obligations, (see LLC Law § 1007). In light of the foregoing, the plaintiff's invocation of the procedures permitted by the LLC Law and Article 8A of the Partnership Law is misplaced. The first and second causes of action fail as a matter of law. The court need not reach the defendants' remaining objections to those claims.

C. Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation

The third cause of action seeks to recover damages for the General Partners' breach of fiduciary duty to the plaintiff. To state a cause of action for breach of fiduciary duty, the plaintiff must allege (1) the existence of a fiduciary relationship, (2) misconduct by the defendants, and (3) damages directly caused by the defendants' misconduct. Pokoik v Pokoik, 115 AD3d 428, 429 (1st Dept. 2014). It is well-settled that, under New York law, partners owe each other a fiduciary duty. Le Bel v Donovan, 96 AD3d 415, 417 (1st Dept. 2012). In a limited partnership, general partners always owe fiduciary duties to limited partners. Appleton Acquisition, LLC v National Hous. Partnership, 10 NY3d 250, 258 (2008). Nonetheless, the business judgment rule protects a fiduciary from liability when he or she makes business decision "in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of [the principal's] purposes." Levine v Levine, 184 AD2d 53, 59 (1st Dept. 1992) (quoting Auerbach v Bennett, 47 NY2d 619, 629 [1979]); see Avramides v Moussa, 158 AD3d 499, 500 (1st Dept. 2018). "If the decision is made in good faith and without personal bias or conflict of interest, the fiduciary is not liable even if the decisions turn out to be unwise or unsound." Id.

The plaintiff alleges that the General Partners breached their fiduciary duty to her and the other limited partners in the Partnership by adopting the Plan and "then attempting to deprive Plaintiff of her Partnership interest or a comparable interest in in [sic] the Company to which she was entitled." The plaintiff further states that "by taking membership interests in the Company and the designated Family LLCs with no attaching personal liability in exchange for their general partner interests in the Partnership, exposing them to unlimited personal liability," the General Partners "were in fact usurping substantial value for themselves at the expense of the Limited Partners, including Plaintiff."

These allegations are insufficient to support a cause of action for breach of fiduciary duty. The plaintiff's own submissions, including emails and Power Point presentations explaining the Plan, make apparent that ample valid business reasons existed to support the General Partners' decision to transition the family real estate business from a limited partnership to a limited liability company. The protection that a limited liability company would provide from personal liability is not a basis for inferring personal bias or a conflict of interest on the part of the General Partners. Thus, the business judgment rule protects the subject transaction from judicial scrutiny. Additionally, while the plaintiff strains to construct a narrative of biased and unfair treatment towards her alone, her submissions establish that she had access to the very same documents as all other family members who were limited partners prior to the deadline for execution of the Contribution Agreement. She also had the same opportunity to ask questions of the General Partners at various meetings and via email. Even crediting her allegation that she misunderstood that the Contribution Agreement she received was non-final, and that she was left out of an email chain with questions and feedback from other limited partners over the course of one to two days, the plaintiff was given the benefit of additional time to review and sign the agreement, which was four pages long, did not differ from the drafts she received days prior in a material way, and accurately reflected the representations the General Partners and Frank had made at virtual meetings and in emails over the previous months.

Moreover, though the plaintiff repeatedly avers, in conclusory terms, that the reorganization was detrimental to limited partners, she fails to demonstrate any nonspeculative harm resulting from the reorganization. Even the plaintiff, the only limited partner who declined to sign the Contribution Agreement, continues to retain her 1% interest in the Company's profits,

which have apparently increased since the Plan was consummated. Accordingly, the third cause of action is dismissed.

The fourth cause of action seeks to recover damages for the General Partners' alleged fraudulent misrepresentations to plaintiff. In order to state a claim sounding in fraud, the plaintiff must plead a material misrepresentation of fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff, and damages." Art Capital Group, LLC v Neuhaus, 70AD3d 605, 607 (1st Dept. 2010); see Eurycleia Partners, LP v Seward & Kissel, LLP, 12 NY3d 553, 559 (2009); Greater New York Mut. Ins. Co. v United States Underwriters Ins. Co., 36 AD3d 441, 443 (1st Dept. 2007).

The plaintiff avers that the General Partners, including her mother, Darcy, misrepresented to her the nature of the restructuring when they told her that the new Company structure would not depart substantially from what was already in place and that all partners in each family group would become "voting members" within their Family LLC. The plaintiff also points to various other purported misrepresentations related to Frank's representation of the Partnership and his explanation of the reasons for the restructuring, as well as the General Partners' representations that they were acting in the best interests of the limited partners.

Nearly all of the alleged misrepresentations identified by the plaintiff are not obviously false. The plaintiff was told repeatedly of the benefits of the restructuring for limited partners who agreed to become part of one of the Family LLCs. The plaintiff nonetheless declined to do so. To that end, while the plaintiff avers that she was fed false information in order to induce her to sign the Contribution Agreement by the General Partners' arbitrary deadline, she did not, in fact, do any such thing. Rather, the plaintiff explains that she signed only after ignoring multiple deadlines, on the advice of her own, independent counsel. Thus, the plaintiff cannot claim to

have acted in reliance on any of the statements she identifies. In light of the foregoing, the plaintiff fails to state any claim sounding in fraud.

For similar reasons, the fifth cause of action, seeking to recover damages for the General Partners' alleged negligent misrepresentations, also fails. A negligent misrepresentation claim requires "(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." JAO Acquisition Corp. v Stavitsky, 8 NY3d 144, 148 (2007). Again, the plaintiff did not receive false information from the General Partners, who explained that membership in the Family LLCs, which the plaintiff declined, would carry certain benefits. The plaintiff also fails to plead that she took any action in reliance on the purported misinformation. The fifth cause of action is dismissed.

D. Minority Oppression

The sixth cause of action, asserted as against the General Partners, sounds in minority oppression. Such cause of action will arise only when the majority in a business entity engage in conduct that substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and central to the plaintiff's decision to join the venture. Matter of Kemp & Beatley, 64 NY2d 63, 73 (1984); see Orloff v Weinstein Enters., 247 AD2d 63 (1st Dept. 1998).

Here, the plaintiff fails to plead minority oppression because the General Partners did not engage in conduct that could have objectively defeated any expectation the plaintiff had as a limited partner. As a result of the restructuring, the plaintiff's interest in the family business has not changed. She continues to receive distributions pursuant to that interest, as she had before.

Though she had the opportunity to gain additional rights and privileges as a member of her Family LLC, she declined to do so of her own volition. The sixth cause of action is dismissed.

E. Unjust Enrichment and Conversion

The seventh cause of action sounds in unjust enrichment. To state a cause of action for unjust enrichment, a plaintiff must allege that the defendant was enriched at the plaintiff's expense and that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. Schroeder v Pinterest Inc., 133 AD3d 12, 26 (1st Dept. 2015). The eighth cause of action, mislabeled in the amended complaint as the tenth cause of action, seeks to recover for conversion. The elements of conversion are (i) the plaintiff's possessory right or interest in property and (ii) the defendant's dominion over the property or interference with in in derogation of the plaintiff's rights. Colavito v NY Organ Donor Network, 8 NY3d 43, 48 (2006).

To support her claims under each of the foregoing theories, the plaintiff avers that the reorganization and dissolution of the Partnership left her with "an interest in a non-existent entity." However, the plaintiff acknowledges that her 1% limited partnership interest was exchanged for a 1% Class B membership interest in the Company, which is far from valueless and has yielded greater monetary benefits to her than her limited partnership interest did in the year before the reorganization. The plaintiff makes no cogent argument that the defendants have benefited from taking anything away from her. Accordingly, the plaintiff's unjust enrichment and conversion claims are dismissed.

V. CONCLUSION

Accordingly, it is

ORDERED that the defendants' motion to dismiss the amended complaint is granted, and the amended complaint is dismissed in its entirety; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

DATED: July 18, 2022

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON