

**Vigeland v Flaster**

2026 NY Slip Op 31413(U)

April 7, 2026

Supreme Court, New York County

Docket Number: Index No. 652450/2023

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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LAUREN VIGELAND,

Plaintiff,

- v -

RICHARD FLASTER, DAVID J. MEYROWITZ, MARK L.  
ROSENFELD, SAND ASSOCIATES, L.P.

Defendants.

INDEX NO. 652450/2023

MOTION DATE 05/16/2025,  
05/16/2025

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 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, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 291, 292, 293, 294, 295

were read on this motion for SUMMARY JUDGMENT.

This case concerns the management of Sand Associates, L.P. (“Sand” or the “Partnership”), a limited partnership formed in 1994 by brothers Stanley Flaster (“Stanley”) and Alvin Flaster (“Alvin”) to own and operate a commercial property at 400 Lafayette Street in Manhattan. After Stanley’s death in 2012, Alvin assumed effective control of the Partnership’s affairs, assisted by his son Richard Flaster (“Richard”). Richard assumed control of the Partnership after Alvin died in 2022. In April 2023, the property sold for \$97,500,000, enabling each side of the family to

receive more than \$47 million (NYSCEF 51 Amended Complaint ¶ 81; NYSCEF 93, Flaster Aff. ¶¶ 33-34).

On May 19, 2023, Plaintiff Lauren Vigeland (“Vigeland” or “Plaintiff”), as trustee of the GST Trust (successor to the Stanley side of the family), commenced this action, asserting derivative claims for breach of fiduciary duty and direct claims for breach of the Partnership Agreement against Richard and Alvin’s estate (NYSCEF 1 [Complaint]; Amended Complaint). Vigeland alleges that Alvin and Richard engaged in a pattern of self-dealing, including by executing management and lease agreements with entities they controlled, diverting Partnership funds for personal use, failing to collect rent from their affiliated tenant, and concealing information about the Partnership finances.

Defendants move for summary judgment (Mot. Seq. 002), arguing that (i) Vigeland’s claims are barred by the statute of limitations and equitable estoppel, (ii) the business-judgment rule protects their decisions from second-guessing, and (iii) that Richard—until 2022 only a limited partner—owed no fiduciary duty before he became a general partner. Vigeland cross-moves for partial summary judgment on liability (Mot. Seq. 003) on both causes of action, seeking a money judgment of \$3,306,430.94 and reserving the balance of damages for a limited trial.

For the reasons set forth below, Defendants’ motion is granted to the extent of dismissing the claim for breach of fiduciary duty insofar as it is based on conduct prior to May 19, 2020, dismissing the breach of contract claim insofar as it is based on conduct prior to May 19, 2017, and dismissing the books-and-records and misappropriation claims, and is otherwise denied. Vigeland’s motion is denied.

## BACKGROUND

### **A. The Partnership and the Parties in this Action**

On September 19, 1994, Alvin and his wife Norma on one side, and Stanley and his wife Dorothy on the other, entered into a limited partnership agreement (the “Partnership Agreement”) creating Sand “for the purpose of acquiring, developing, renovating, marketing and selling” the commercial property located at 400 Lafayette Street, New York, New York (NYSCEF 98 [Partnership Agreement] § 3, § 5[u], Ex B).

At formation, Stanley and Dorothy, through the Flaster Living Trust, held a combined 2% general partner interest and 48% limited partner interest. Alvin and Norma held the remaining 2% general partner interest and 48% limited partner interest (*id.* § 5 [k]-[l], Ex A).

The Partnership Agreement identified Stanley and Alvin as the Administrative General Partners (“AGPs”), with each being “responsible for managing the day to day operations of the Partnership,” subject to certain limitations (*id.* §§ 5[b], 9[b]). One of those limitations was set forth in Section 9(c)(9), which provides that the AGP lacks authority, absent unanimous approval of all general partners, to “enter into any contract or agreement with an affiliate of a General Partner which relates to the Property or any other Partnership business other than contracts or agreements in existence on the date hereof.”

Stanley and his family resided in California, while Alvin lived in New York and worked at the property (NYSCEF 93, Flaster Aff. ¶ 11). According to Richard, the brothers spoke regularly by telephone, and Stanley visited New York approximately twice a year, meeting with Alvin at the property for hours at a time (*id.* ¶ 23).

Stanley died on July 15, 2012 (NYSCEF Doc No. 269 [Plaintiff’s Response to Defendant’s Undisputed Statement of Material Facts, “Plaintiff’s Response to DSOF”] ¶ 7).

Following Stanley's death, the 2% general partner interest owned by his side of the family passed to the GST Trust, of which Dorothy was the sole trustee, and the 48% limited partner interest passed to various other Stanley-side trusts, of which Dorothy and Vigeland were trustees (NYSCEF 109, First Amendment to Partnership Agreement, dated February 5, 2020; NYSCEF 110, Second Amendment to Partnership Agreement, dated March 28, 2023; NYSCEF 111, Sixth Amended and Restated Flaster Living Trust).

Alvin became the sole AGP after Stanley's death (*id.* ¶ 10). The record shows that, until he died on June 14, 2022, Alvin exercised exclusive control over Sand's financial decisions and use of funds. Sand's accountant testified that, "from day one," he was instructed not to disseminate any financial information without Alvin's approval (NYSCEF 288, tr 77:9-17), and that entries for categories such as supplies and shipping were based on amounts provided by Alvin (*id.* 138:2-15). The record also shows that Alvin gave final approval before bills were paid, oversaw payroll, determined employee compensation, and signed payroll checks (NYSCEF 289, tr 12:10-13:2, 25:9-15, 26:3-22, 47:21-22; NYSCEF 290, tr 19:20-20:6; Flaster Aff ¶¶ 15-17). Richard Flaster became a general partner and AGP after his father died (Plaintiff's Response to DSOF ¶ 11).

On March 16, 2022, Dorothy resigned as trustee of the GST Trust in favor of her granddaughter, Vigeland, who then became the sole trustee of the GST Trust and the sole general partner on the Stanley side (Plaintiff's Response to DSOF ¶ 14).

### **B. Lease Arrangements**

In 1994, Sand leased approximately 6,400 square feet of ground floor space to Summers & Oppenheim ("Summers"), Alvin's yarn and cording business, for a 15-year term that ran from September 1, 1994 through April 30, 2009 (NYSCEF 104 [1994 Summers Lease Agreement

(“1994 Lease”)). Stanley signed on behalf of the Partnership and Alvin signed on behalf of Summers (*id.*). Summers was required to pay annual rent of \$42,000 as well as its proportionate share of the increases in operating expenses over a 1994 base year (NYSCEF 105 ¶¶ 41-43). The lease further provided for a ten-year renewal option exercisable if Summers was not in default and gave notice of such exercise within 60 days prior to the expiration of the lease (*id.* ¶ 80). The record shows that Defendants operated several other businesses in the leased space, including S&O Industries, Inc. (“S&O”) and Royal American Mills (“RAM”) (NYSCEF 107, tr at 8:20-22, 10:4-7, 12:9-13:16, 33:6-12; NYSCEF 119, tr 29:22-30:9, 56:25-57:12; NYSCEF 141-142; NYSCEF 143, tr 41:12-14; NYSCEF; NYSCEF 130-133; NYSCEF 124 ¶ 51).

In March 2007, Summers purportedly exercised its renewal option—which was later memorialized in a July 2007 Assignment and Modification to Lease (“2007 Modification”)—for an additional ten-year term commencing May 1, 2009 (NYSCEF 125 at 1). The 2007 Modification, which was executed while Stanley was alive, added the Partnership as a co-tenant under the lease (*id.* at 1-2). Alvin signed for the Partnership and Richard, in his capacity as Summers’ vice president, signed for Summers (*id.* at 2).

Vigeland asserts that the 2007 Modification was invalid because it was a premature renewal attempt (exercised two years early) and occurred while Summers was in default of the lease for failure to pay rent (NYSCEF 205, Plaintiff’s Memorandum of Law at 5-6; NYSCEF 204, Vigeland Aff ¶¶ 12, 14, 17). Vigeland’s expert, who examined the Partnership records, calculated that from at least April 2007<sup>1</sup> through the lease’s April 2009 expiration, Summers

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<sup>1</sup> The record shows that the Partnership did not maintain detailed rent rolls prior to April 2007 (*see* NYSCEF 120, 121, 122, 123). The general ledger includes rent income entries beginning in April 2007 and continuing through June 2010 (NYSCEF 120).

failed to pay base rent and required operating expense escalations, resulting in a deficiency of at least \$65,000 (NYSCEF 120 at 1-13; NYSCEF 124 at Ex 4, 5; NYSCEF 105 ¶¶ 42-43).

Defendants argue that the rent for that period reflects the change in the use of the space over the years and that Sand itself had become the primary user of the space while Summers' use had become minimal (NYSCEF 93, Flaster Aff ¶¶ 9, 18-19; NYSCEF 125). Vigeland disputes this characterization, citing testimony and emails from Summers employees showing that Summers and Defendants' other yarn businesses continued occupying and operating from the premises through the 2023 sale (NYSCEF 119, tr 64:7-19; NYSCEF 130, 131, 132, 133).

### C. Management Agreements

Richard claims that he worked for the partnership from 1990 to 2023, with his role at the property evolving overtime (Flaster Aff ¶¶ 9, 14-15). On August 17, 2005, Alvin and Richard executed a property management agreement between the Partnership and Summers (the "2005 Management Agreement"), pursuant to which Summers would receive 6% of the Partnership's rental income (NYSCEF 134, Article V[1][a]). Alvin signed for the Partnership and Richard signed for Summers (*id.*; NYSCEF 204, Vigeland Aff ¶¶ 18-19, 23). The Stanley side did not sign (*id.*). In January 2012, Alvin sent a handwritten letter to Stanley stating that Richard was serving as the Partnership's "manager of real estate" and would receive weekly compensation of \$3,843 (NYSCEF 135; Vigeland Aff ¶ 18). Vigeland avers that she was not aware of Alvin's letter and suggests Stanley was not aware of the letter or the 2005 management agreement (though the evidentiary basis for the latter assertions, which appear at best to be hearsay, is dubious) (Vigeland Aff ¶¶ 19, 23).

On January 1, 2016, the Partnership entered into a written management agreement ("2016 Agreement") with Richard J. Flaster Holdings, Inc. ("Richard Holdings"), an entity wholly

owned by Richard (NYSCEF 136). Pursuant to that agreement, Richard Holdings would receive the greater of \$25,000 per month or 6% of rental income, together with reimbursement of certain expenses (*id.*). Vigeland, who asserts that by “at least 2016” she “had assumed Dorothy’s day-to-day responsibilities as general partner of the Partnership” avers that the Stanley side never signed or otherwise approved this agreement (Vigeland Aff ¶¶ 18, 20-23).

On December 16, 2019, Alvin and Richard signed an amendment to the 2016 agreement (“2019 Amendment”), increasing the flat monthly compensation for Richard Holdings to \$29,200 effective January 1, 2020 (NYSCEF 140). Vigeland avers that the Stanley side did not sign or otherwise approve the 2019 Amendment (NYSCEF 140; Vigeland Aff ¶¶ 18, 20-23).

#### **D. The Partnership Finances**

The record reflects disputes concerning the Partnership’s finances, including payments to Alvin-affiliated entities, management compensation, reimbursement practices, and whether those transactions were adequately disclosed and substantiated. For example, between September 2019 and February 2020, the Partnership made three payments totaling \$200,000 to RAM, an Alvin-affiliated entity, for which the contemporaneous financial documents did not clearly identify the nature of the services provided or otherwise substantiate the basis for the payment (NYSCEF 169; NYSCEF 124 ¶ 104).

Moreover, according to Plaintiff’s expert, between 2011 and 2022 the Partnership paid \$4,333,068 in management fees, an amount that purportedly exceeded the sums authorized under the governing management agreements by \$355,594 (*id.* ¶ 67, [Ex 10]).

The record shows that management fee amounts were generally disclosed in the financial statements provided to the Stanley side (*see* NYSCEF 212). However, for the years 2011

through 2013, those fees were purportedly aggregated with other expenses into a single line item in the Partnership's tax returns (NYSCEF 212).

By 2014, the Stanley side had identified concerns and questioned the amount and structure of management-related payments. At her deposition, Vigeland testified that she was aware of high management fees as early as 2014 (NYSCEF 244, tr 92:15-21, 114:11-16, 148:4-14). In May 2014, counsel representing the Stanley side of the family wrote to Vigeland and Dorothy that “the major issue was the amount of the management fees” and noted that “Alvin's family received more in distributions than your side” (NYSCEF 209). In June 2014, counsel followed up with additional correspondence, comparing the 2011 and 2012 management figures to gross rental income and questioning the management fees (NYSCEF 210).

In September 2014, Alvin's counsel responded that the challenged 2012 figure included both “General Management Fees” and “Management Expenses” (NYSCEF 212). He stated that payments to “S&O”—one of Defendants' businesses that operated out of the leased space—“covered approximately 85% of salary and administration/bookkeeping support and expenses, including usage of computers and computer supplies that Sand Associates otherwise would have been required to pay directly” while payments to “Summers” covered reimbursements for “office rent, supplies, postage-shipping, and other out-of-pocket expenses” incurred on behalf of the Partnership (NYSCEF 212). Additional 2015 correspondence within the Stanley side of the family expressed lingering questions regarding management fees, payments to affiliates, and travel and automobile-related expenses (NYSCEF 211). The parties dispute whether the financial reporting and explanations that were provided sufficiently disclosed the true nature of the transactions.

It is clear, however, that by 2016 the Stanley side and its advisors had enough information to consider taking action against the Alvin side's purported financial machinations. In a September 30, 2016 email to a family member about the Partnership finances, Vigeland proposed a tactical course of action to defer challenging questionable financial activities by the Alvin side until "leverage" swung in their direction:

We have been down this rabbit hole countless times. The building is actually generating more income than it ever has. However, we are not "losing" money, it is just accruing in Sand bank accounts rather than being distributed. Could that money sitting in these accounts be offering a higher return than it currently is? Sure, but the conclusion that we, Dorothy's lawyers, and Dorothy's accountants, have come to is that we currently do not have the necessary leverage with Alvin to change the situation. Furthermore, Dorothy does not have the necessary reserves to risk antagonizing Alvin, who could easily cut her off entirely knowing full well that it would be a long, protracted, and expensive process to override him, unseat him, and/or simply recover her income.

If Dorothy outlives Alvin, as is likely given the age spread, we will have the leverage we need to affect major changes. Dorothy is next in line as Administrative General Partner and Alvin has set the precedent that it is the Administrative General Partner who determines the distributions. (Alvin has also said as much in writing.) Dorothy will have a powerful bargaining chip with Richard, should Richard wish to continue running the day-to-day (and I can't imagine he won't want that) instead of being replaced by a management company (which would take a much smaller fee and not occupy the entire ground floor). At that time, we will be in a position to audit the books, demand remuneration, and instate new policies.

Please rest assured that I have taken this very seriously and am well-versed in all our options now and in the future and I plan to take immediate and incisive action when the time comes [ . . . ] As a matter of note, Dorothy and I spoke last night and she mentioned your discussion, was hazy on the details, and said that she wasn't going to take action with Alvin so we should just leave it be for now.

(NYSCEF 214).

### DISCUSSION

Under CPLR 3212, summary judgment is appropriate when a party establishes with evidence "that there is no material issue of fact to be tried, and that judgment may be directed as a matter of law" (*Brill v City of New York*, 2 NY3d 648, 651 [2004]). "Failure to make such

prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

If the moving party crosses that threshold, the party opposing the motion “must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Glassman v Weinberg*, 154 AD3d 407, 408 [1st Dept 2017]).

#### **I. Breach of Fiduciary Duty Claims**

“The members of a partnership owe each other a duty of loyalty and good faith, and as a fiduciary, a partner must consider his or her partners' welfare, and refrain from acting for purely private gain” (*Gibbs v Breed, Abbott & Morgan*, 271 AD2d 180, 184 [1st Dept 2000] [cleaned up]). “[T]he proponent of a claim for a breach of fiduciary duty must, at a minimum, establish that the offending parties’ actions were a substantial factor in causing an identifiable loss” (*id.* at 189 [internal quotation marks and citations omitted]).

Plaintiff’s fiduciary duty claim rests on allegations of (i) excessive management fees; (ii) improper payments to Summers and S&O; (iii) the ground floor lease and related occupancy arrangements; and (iv) personal or discretionary expenses charged to the Partnership. Claims for breach of fiduciary duty for conduct occurring prior to June 2022 are directed primarily at Alvin, who served as the sole AGP and controlled the Partnership’s affairs after Stanley’s death in July 2012. With respect to Richard, the claims for that period do not rest on formal fiduciary status, but on his alleged participation in, or benefit from, the challenged transactions.

### A. Alleged Unauthorized and Excessive Management Fees

Defendants contend that the claim fails as a matter of law because Richard was not the AGP prior to June 2022 and because Alvin's compensation decisions are protected by the business judgment rule. Neither argument warrants summary judgment.

While fiduciary duties in a limited partnership run primarily from the general partner (*Millard v Newmark & Co.*, 24 AD2d 333, 335 [1st Dept 1966]), liability may extend to a limited partner who knowingly participates in a fiduciary breach (*Goldwasser v Geller*, 257 AD2d 489, 489 [1st Dept 1999] [limited partners assumed fiduciary duties upon taking over managerial control of the partnership and were liable for breaching those duties by settling with the general partners without including the aggrieved limited partner]; *May v Flowers*, 106 AD2d 873, 874 [4th Dept 1984] [recognizing a breach by a limited partner who, along with the general partner, acted in a manner detrimental to the partnership while favoring defendants individually at plaintiffs' expense]; *Andersen v Weinroth*, 13 Misc 3d 1204(A), 2006 NY Slip Op 51681(U), \*4, \*21-22 [Sup Ct, NY County 2006] [finding that a limited partner who managed and controlled the partnership's finances and books breached fiduciary duties through self-dealing]).

As to Richard, the record supports competing inferences. On the one hand, Defendants cite testimony that Alvin alone approved bills, controlled payroll, directed the accountant, and retained final authority over Sand's finances during his lifetime. On the other hand, the record indicates that Richard had a substantive role as property manager (according to Alvin's 2012 hand-written letter) and owned an affiliated entity that received management fees. The record is

therefore not conclusive as to whether Richard was simply the passive beneficiary of Alvin's decisions or instead exercised sufficient control to be subject to fiduciary liability.

As to Alvin, Defendants' argument that his actions were protected by the business judgment rule fails. The business judgment rule protects decisions made "in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes" (*Auerbach v Bennett*, 47 NY2d 619, 629 [1979]; *Levine v Levine*, 184 AD2d 53, 59 [1st Dept 1992] ["those in control of a business must deal fairly with the interests of the other investors and this is so regardless of whether the business is in corporate or partnership form"]) [internal quotation marks and citation omitted]. However, the rule does not shield purported self-dealing transactions from judicial scrutiny (*Marx v Akers*, 88 NY2d 189, 199-200 [1996]; *Van Der Lande v Stout*, 13 AD3d 261, 262-263 [1st Dept 2004]). "Under such circumstances, the burden shifts to the defendant to prove the fairness of the challenged acts" (*Kantor v Mesibov*, 8 Misc 3d 722, 725 [Sup Ct Nassau Cnty 2005]; see *Marx*, 88 NY2d at 204 n6).

Here, the conduct at issue is not that compensation was paid under a management arrangement. Rather, it is that Alvin, while serving as sole AGP, caused the Partnership to enter into and continue compensation arrangements that benefitted his son and his son's wholly owned entity (*Birnbaum v Birnbaum*, 73 NY2d 461, 466 [1989] [fiduciary breaches duty of loyalty by engaging in transactions with closely related persons that may influence the fiduciary's judgment]). Although Defendants contend that those payments reflected compensation for legitimate property-management services, that contention does not eliminate the related-party nature of the arrangements or resolve whether the amounts paid were fair to the Partnership. On this record, the Court cannot conclude as a matter of law that those arrangements were either a

disinterested exercise of business judgment or fair to the Partnership. The claim therefore survives to the extent it is not time-barred.

### **B. Alleged Excessive Payments to Summers**

A fiduciary may not divert partnership assets for personal benefit (*Garber v Stevens*, 94 AD3d 426, 426 [1st Dept 2012]). Vigeland challenges certain recurring payments to Summers as improper diversions of Partnership funds to Alvin-side affiliates. Defendants contend that those payments reflected reimbursements for payroll, administrative support, office rent, supplies, and other operating expenses tied to the property. The fact that payments were made to an affiliated entity does not, standing alone, establish impropriety; rather, the question is whether those payments corresponded to legitimate services rendered or reimbursable expenses incurred on the Partnership's behalf.

Vigeland, however, has adduced evidence suggesting that after receiving monthly "supplies" payments from the Partnership totaling \$760,000 between 2014 and 2022, Summers made payments in nearly equivalent amounts to Alvin and Richard personally, and that Defendants produced only minimal documentary support for actual purchases of supplies (NYSCEF 124 ¶¶ 80-87, Ex 11; NYSCEF 162; NYSCEF 117 at 250:18-252:25). Such evidence raises a genuine triable issue as to the character of those payments.

On this record, the Court cannot determine as a matter of law whether the payments were legitimate reimbursements or disguised diversions. This claim therefore survives to the extent it is not barred by the statute of limitations.

### **C. Claims Based on the Ground Floor Lease**

Plaintiff alleges that Defendants allowed Summers, an Alvin-side affiliate, to continue occupying the ground floor space on unauthorized and below-market terms, failed to collect

required rent, and thereby conferred an improper benefit on the Alvin side at the Partnership's expense. In response, Defendants argue that summary judgment should be granted in their favor as to those claims because (i) Richard was not the decisionmaker at Sand, (ii) Plaintiff cannot establish below-market rent, (iii) Stanley agreed to the original lease, and (iv) the record does not show self-dealing.

First, with respect to Richard not being a decisionmaker, the record is not conclusive. As noted earlier, Richard was not the AGP during most of the relevant period, so the lease decisions cannot simply be attributed to him. At the same time, he was not a stranger to the arrangements. The record shows that, as Summers' vice president, he was affiliated with the tenant and was involved in the management of the property, even while Alvin retained ultimate control of Partnership decisions. Accordingly, the scope of Richard's involvement and potential fiduciary liability presents a factual issue that cannot be resolved as a matter of law.

Second, Vigeland has not established below-market rent as a matter of law. Although Vigeland contends that Summers paid less than fair market value, the record does not conclusively establish what the market rate would have been for the permitted use of the space. That gap is underscored by her expert's inability to assess market value for the permitted use. Vigeland therefore is not entitled to summary judgment on her below-market-rent theory.

Third, Defendants' reliance on Stanley's approval of the original lease is not dispositive. The record demonstrates that the 1994 Lease permitted a 10-year renewal "on the same terms and conditions" without reference to market rent. As such, Vigeland cannot recast the 1994 rent structure to which both AGPs assented as fiduciary misconduct. That said, this does not resolve the issues raised with respect to subsequent conduct, including the renewals, the alleged defaults, the claimed failure to collect rent, and the post-2019 occupancy arrangement.

Defendants' estoppel-based arguments do not warrant a different result. To the extent Defendants contend that Vigeland is barred from challenging certain transactions because the Stanley side was aware of, acquiesced in, or approved them, that contention is, at most, partially dispositive. Prior approval or acquiescence may limit claims as to particular arrangements, but it does not, as a matter of law, foreclose challenges to later conduct. Nor does general awareness of categories of expenses, without more, establish that Vigeland is equitably estopped from pursuing all of her claims.

Finally, the record does not permit dismissal on the ground that there was no self-dealing. Vigeland has cited evidence of continued occupancy by an affiliated entity and an alleged failure to collect rent. Defendants contend that the failure to collect rent reflected the Partnership's own use of the space (as Summers' co-tenant per the 2007 Modification), particularly as Summers' business declined. These competing explanations raise factual disputes as to the nature of the arrangement and whether it conferred an improper benefit on the Alvin side.

On this record, the Court cannot determine as a matter of law whether the lease arrangements constituted breaches of fiduciary duty. This claim therefore survives to the extent it is not barred by the statute of limitations.

#### **D. Alleged Inappropriate and Personal Discretionary Expenditures**

Plaintiff's final fiduciary duty claim concerns travel, automobile, healthcare, and related expenditures that Vigeland contends were personal in nature. In response, Defendants argue that Alvin's travel and automobile-related expenses were business-related, and that Richard's health insurance was a legitimate business expense in light of his work for the Property. Defendants further contend that Vigeland is equitably estopped from asserting this claim because these

categories of expenses had long been disclosed in the Partnership's financial statements and were known to the Stanley side years before this action was commenced.

However, Vigeland has adduced evidence showing that from 2011 through 2020 the Partnership paid Alvin's car lease costs and other travel expenses totaling \$356,433, despite the fact that Alvin was not a Partnership employee (NYSCEF 124 ¶¶ 89-93, Ex 12-13; NYSCEF 126 at SAND 0000861-63, -867-72) and from 2011 through 2023 the Partnership paid Richard's health insurance premiums totaling \$148,431, even though Richard was not a Partnership employee and was separately compensated under the management fee agreements (NYSCEF 124 ¶¶ 98-100, Ex 15; NYSCEF 126 at SAND 0000778-787).

While Defendants emphasize that these expense categories were business-related, the record does not clearly distinguish between business and personal components of the challenged expenses. Accordingly, the propriety of these expenditures presents factual issues that preclude summary judgment for either side.

**E. The Statute of Limitations Bars the Fiduciary Duty Claim for Periods Prior to May 19, 2020**

Claims for breach of fiduciary duty are subject to different limitations periods based on the type of relief sought (*Kaufman v Cohen*, 307 AD2d 113, 118 [1st Dept 2003]). "Where the relief sought is equitable in nature, the six-year limitations period of CPLR 213(1) applies. On the other hand, where suits alleging a breach of fiduciary duty seek only money damages, courts have viewed such actions as alleging 'injury to property,' to which a three-year statute of limitations applies" (*id.* [internal citations omitted]). However, concealment by a fiduciary can toll the running of the statute of limitations until discovery of the wrongdoing (*Simcuski v Saeli*, 44 NY2d 442, 450-451 [1978] ["Such nondisclosure or concealment may affect the damages

recoverable, or, conceivably in a proper case in conjunction with other factors, provide a foundation for seeking to invoke the doctrine of equitable estoppel to extend the applicable period of limitations."]).

Here, Vigeland seeks monetary damages arising from alleged misappropriation of Partnership funds and related misconduct. Accordingly, the fiduciary duty cause of action is subject to a three-year limitations period (*IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 139 [2009]). Because this action was commenced on May 19, 2023, any claims for breach of fiduciary duty on conduct occurring before May 19, 2020 are untimely unless tolling applies.

Vigeland argues that conduct prior to May 2020 remains actionable under the continuous wrong doctrine and equitable estoppel principles. Both arguments are unavailing on these facts.

“The continuous wrong doctrine is an exception to the general rule that the statute of limitations runs from the time of the breach though no damage occurs until later” (*Henry v Bank of Am.*, 147 AD3d 599, 601 [1st Dept 2017] [internal quotation marks and citation omitted]). However, the doctrine “may only be predicated on continuing unlawful acts and not on the continuing effects of earlier unlawful conduct. The distinction is between a single wrong that has continuing effects and a series of independent, distinct wrongs” (*id.*).

Here, Vigeland’s attempt to characterize the challenged conduct as one continuous course of wrongdoing is unavailing. The agreements and transactions at issue occurred at different times and were separated by substantial periods of time. The continuous wrong doctrine does not transform a single allegedly improper agreement into a continuing wrong merely because payments were later made pursuant to that agreement (*id.* at 601-02 [“where a plaintiff asserts a

single breach—with damages increasing as the breach continued—the continuing wrong theory does not apply”).

Equally unavailing is Vigeland’s reliance on equitable estoppel. That doctrine may apply where “an affirmative act of concealment” prevents timely suit (*Langston v MFM Contr. Corp.*, 172 AD3d 583, 584 [1st Dept 2019]). But equitable estoppel requires a showing that the plaintiff “discovered information sufficient to prompt further inquiry only after the statute of limitations had expired” (*id.*). That is not the case here. The record shows that between 2014 and 2016, Vigeland and Dorothy had expressed concerns and actively questioned what they viewed as excessive management fees, payments to Summers, and travel and automobile expenses—some of the same “red flags” Vigeland raised in her Complaint. While Vigeland may not have possessed every piece of evidence she now relies upon, she plainly had sufficient information at that time to prompt further inquiry and, if warranted, to commence suit.

Moreover, the record suggests that the decision not to sue during the limitations period was strategic. In her September 2016 email, Vigeland wrote that “the conclusion that we, Dorothy’s lawyers, and Dorothy’s accountants, have come to is that we currently do not have the necessary leverage with Alvin to change the situation” (NYSCEF 214). She continued that “[i]f Dorothy outlives Alvin, as is likely given the age spread, we will have the leverage we need to affect major changes,” and further stated that she “plan[ned] to take immediate and incisive action when the time comes” (*id.*).

In those circumstances, Vigeland cannot rely on equitable estoppel to avoid preclusion under the statute of limitations, particularly given the likely prejudice to Defendants who would be deprived of Alvin’s testimony concerning the challenged conduct (*Liberty Group Holdings, Inc. v City of New York*, 5 AD3d 148, 149 [1st Dept 2004] [fear of retaliation by defendant does

not excuse delay in bringing an action]; *In re Linker*, 23 AD3d 186, 189 [1st Dept 2005] [delay in commencing suit was not excused where plaintiff “argued that she did not want to create family tensions by commencing an action”]; *see also Fleming v Giuliani*, 307 AD2d 866 [1st Dept 2003], *affd* 3 NY3d 544 [2004]).

Accordingly, the fiduciary-duty cause of action is dismissed insofar as it is based on conduct that occurred prior to May 19, 2020.

## II. Breach of Contract Claims

“The elements of a breach of contract claim are (1) the existence of a contract, (2) the plaintiff’s performance, (3) the defendant’s breach, and (4) resulting damages” (*Alloy Advisory, LLC v 503 W. 33rd St. Assoc., Inc.*, 195 AD3d 436, 436 [1st Dept 2021]).

Plaintiff’s breach of contract claims are based on allegations that (i) Defendants failed to maintain or provide access to the Partnership’s books and records; (ii) Partnership funds were misapplied or diverted in violation of the Agreement’s financial provisions; (iii) the Stanley-side general partner was not paid the contractual general partner fee; and (iv) the Administrative General Partner entered into agreements with affiliated entities—including management arrangements and lease-related transactions—without the unanimous consent required by Section 9(c)(9) of the Partnership Agreement. The Court addresses each claim in turn.

### A. Alleged Refusal to Provide Access to Books and Records

Plaintiff’s books-and-records claim is based on the provision of the Partnership Agreement requiring the AGP to maintain “adequate books of account” (NYSCEF 98 § 12). Defendants argue that any right to access is statutory, not contractual, and further note that Vigeland separately pursued books-and-records relief in a related action in this Court, where she obtained a favorable settlement through which she received access to the records (*Lauren*

*Vigeland v. Richard Flaster, et al.*, Index No. 652444/2023 [Sup. Ct. N.Y. Cnty. May 19, 2023]).

Vigeland does not address Defendants' arguments on this issue. Vigeland also does not identify any damages attributable specifically to this aspect of the claim.

Summary judgment is therefore granted in favor of Defendants on this claim.

### **B. Alleged Misappropriation of Partnership Funds**

Vigeland next alleges that Defendants diverted Partnership funds to Alvin-side affiliates, including through payments to Summers and other related entities, and by charging expenses that did not reflect legitimate Partnership obligations. According to Vigeland, those transfers reduced Partnership income and, in turn, the distributions owed to the Stanley side.

Where a claim “do[es] not implicate any injury to plaintiffs distinct from the harm to the partnership[.]” the claim is derivative (*Broome v ML Media Opportunity Partners L.P.*, 273 AD2d 63, 64 [1st Dept 2000]). In order to distinguish a derivative claim from a direct one, courts ask two questions: (1) who suffered the alleged harm and (2) who would receive the benefit of any recovery (*Serino v Lipper*, 123 AD3d 34, 40 [1st Dept 2014]).

Applying that standard here, the alleged harm is to the Partnership itself. Vigeland's theory is that Partnership funds were misapplied or diverted, thereby reducing the Partnership's overall income. Any resulting reduction in distributions is a downstream effect of that alleged injury, not a separate harm to Vigeland. As such, any recovery on this theory would flow to the Partnership (to be distributed according to the ownership of the entity), not directly to Vigeland (*Mohinani v. Charney*, 208 A.D.3d 404, 405 (1st Dept 2022) (holding that a claim alleging

misappropriation of entity funds must be brought derivatively because the injury runs to the entity).

Plaintiff attempts to recharacterize diversions of Partnership assets as a direct contract claim by reference to the Agreement's distribution provisions. That argument fails because the nature of the injury still controls.<sup>2</sup> The claim asserts diversion of partnership assets and is therefore derivative in nature and cannot be maintained as an individual action by Plaintiff for breach of contract. Accordingly, summary judgment is granted in favor of Defendants as to this claim.

**C. Alleged Failure to Pay a General Partner Fee**

Section 9(a) of the Partnership Agreement provides that “each of (i) the Flaster Trust and (ii) Alvin and Norma Flaster, or the survivor of them, shall be entitled to receive an annual fee” in exchange for services performed in a general partner capacity, and further provides that such fees are payable to a trust “as long as any grantor of such trust serves as trustee of such trust” (NYSCEF 98 § 9[a]).

The parties dispute whether, following Stanley's death and the succession of the Stanley side's interest, Vigeland or her predecessors fell within that provision and satisfied its conditions. Vigeland contends that the Stanley side retained the right to receive a general partner fee. In opposition, Defendants contend that the GST Trust is not the “Flaster Trust” identified in Section

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<sup>2</sup> The Court notes that the analogous fiduciary duty claims survive because they are properly pleaded as derivative claims on behalf of the Partnership; the misappropriation-based contract claim fails here because Vigeland has framed it as a direct individual claim, which it is not.

9(a), that neither Dorothy nor Vigeland is a grantor of that trust, and that the provision requires services to be performed in a general partner capacity.

The Partnership Agreement does not expressly address how Section 9(a) applies following the death of a named general partner and the transfer of that interest to successor trusts and trustees. Because the term “Flaster Trust” is undefined in the Agreement as applied to successor entities, and because the record does not resolve whether the grantor-as-trustee condition was satisfied during the relevant period, this presents a question of contract interpretation to be resolved on a fuller record.

Nor does the record conclusively establish whether the conditions for payment, including the service requirement and the grantor-as-trustee condition, were satisfied during the relevant period. Vigeland does not identify a precise calculation of any unpaid fee or a defined period for which such a fee was owed, and Defendants do not establish, as a matter of law, that no fee could be due under any permissible reading of Section 9(a).

Because this claim turns on disputed interpretation and application of Section 9(a) in the context of the post-2012 succession of the Stanley side’s interest, summary judgment is not warranted for either side on this claim.

**D. Alleged Entry into Agreements Without Consent from the Stanley Side**

The Partnership Agreement unambiguously required unanimous approval of all general partners before the AGP could enter into a contract or agreement with an affiliate of a general partner, except for agreements already in existence (Partnership Agreement, Section 9[c][9]).

As a threshold matter, the dates of the challenged agreements limit the scope of this claim. As discussed in greater detail below, claims based on the 2007 Modification and the 2016

management agreement are time-barred. What potentially remains are the 2019 management amendment and the dispute concerning Summers' post-2019 occupancy.

The 2019 management amendment, executed during Alvin's tenure as AGP, increased the compensation for Richard Holdings from \$25,000 to \$29,200 per month effective January 1, 2020 (NYSCEF 140). Vigeland contends that Richard Holdings falls within Section 9(c)(9) because it is wholly owned by Richard and is therefore an affiliate of a general partner. Defendants, for their part, do not point to evidence that the Stanley side approved that increase. However, the Partnership Agreement does not define the term "affiliate," and the parties dispute whether that provision applies to an entity wholly owned by a family member, as opposed to a business entity owned by the general partner directly. That threshold contract interpretation issue cannot be resolved as a matter of law on this record.

With respect to Summers' post-2019 occupancy, Defendants argue that it reflected a continuation of an existing lease—the 2007 Modification—rather than a new affiliate agreement requiring unanimous approval under Section 9(c)(9). Vigeland disputes that premise, contending that the earlier renewal under the 2007 Modification was invalid because Summers was in default and therefore not entitled to renew the 1994 Lease in the first place. On this record, the legal effect of the prior renewal and whether Summers' post-2019 occupancy constituted a new agreement or a continuation of an existing one cannot be determined as a matter of law on this record.

Accordingly, because the surviving Section 9(c)(9) claims turn on disputed facts and on the meaning of the undefined term "affiliate," summary judgment is not warranted for either side on those claims.

### **E. The Statute of Limitations Bars Contract Claims for Periods Prior to May 19, 2017**

Breach of contract claims are governed by a six-year statute of limitations (CPLR 213[2]). “In New York, a breach of contract cause of action accrues at the time of the breach” (*Ely-Cruikshank Co., Inc. v Bank of Montreal*, 81 NY2d 399, 402 [1993]). Where separate contractual breaches occur at different times, later acts may be timely even if earlier ones are not (*Bulova Watch Co. v Celotex Corp.*, 46 NY2d 606, 611 [1979]).

Here, Plaintiff’s tolling arguments fail for the same reasons already discussed in the fiduciary duty context above. As explained earlier, the record demonstrates that Plaintiff was aware of the conduct underlying her claims years before commencing this action and therefore cannot rely on equitable estoppel to extend the limitations period.

Accordingly, the contract claim is dismissed insofar as it is based on conduct before May 19, 2017.

### **III. Plaintiff’s Cross-Motion for Damages**

In her motion, Plaintiff seeks summary judgment on liability and a partial damages award, leaving the remainder of damages to be assessed at a limited trial. Damages cannot be determined as a matter of law on this record.

As discussed above, the majority of Plaintiff’s surviving claims present disputed issues of fact, including issues concerning management payments, the propriety of the Summers lease and occupancy arrangements, and the propriety of certain expenses. Those factual disputes bear directly on both liability and the measure of damages and therefore preclude summary judgment on damages.

In addition, although Plaintiff seeks summary judgment on liability as to certain contract-based claims, those claims likewise present factual and interpretive issues that preclude a determination of damages at this stage. Accordingly, Plaintiff’s motion seeking summary judgment on damages is denied.

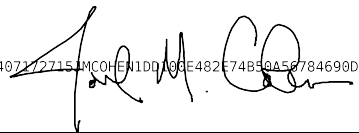
The Court has considered the parties’ remaining arguments and finds them unavailing. Accordingly, it is

**ORDERED** that Defendants’ motion (Mot. Seq. 002) for summary judgment is **GRANTED IN PART** to the extent that (i) the claim for breach of fiduciary duty is dismissed insofar as it is based on conduct occurring before May 19, 2020, (ii) the claim for breach of contract is dismissed insofar as it is based on conduct occurring before May 19, 2017, and (iii) the claims for failure to provide access to books and records and for alleged misappropriation of Partnership funds are dismissed, and the motion is otherwise denied; and it is further

**ORDERED** that Plaintiff’s cross-motion (Mot. Seq. 003) is **DENIED**; and it is further

**ORDERED** that the parties appear for a virtual initial pre-trial conference on May 5, 2026 at 11:00 a.m. to discuss trial scheduling and logistics; the parties are directed to meet and confer in advance of the conference to discuss the proposed length of trial and any other logistical issues that they have identified and be prepared to discuss those at the conference.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

4/7/2026  
DATE

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| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED                           | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION                          |
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| APPLICATION:          | <input type="checkbox"/> SETTLE ORDER                            | <input type="checkbox"/> SUBMIT ORDER  |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN              | <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE  |