

Milman v Milman

2026 NY Slip Op 31609(U)

April 20, 2026

Supreme Court, Nassau County

Docket Number: Index No. 618865-23

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

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JILLIAN MILMAN,

Plaintiff,

-against-

RONALD MILMAN,

Defendant,

-and-

**B.D. REALTY CORP., 2872 CONEY ISLAND
AVENUE LLC, and RONALD MILMAN, as
Trustee of the Trust f/b/o Bruce Milman,**

Nominal Defendants.

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Presently pending before the Court are:

1) The partial motion for summary judgment filed by plaintiff Jillian Milman ("Plaintiff" or "Jillian"), seeking summary judgment on a) the first counterclaim for declaratory judgment, b) the sixth cause of action for accounting/breach of fiduciary duty, and c) an award of attorneys' fees, costs, and disbursements from the proceeds of the damages awarded to B.D. Realty Corp. (the "Corporation") and 2872 Coney Island LLC (the "LLC" and collectively, the Companies) on the sixth cause of action pursuant to Business Corporation Law § 626(e), *see* Docket Entries 137-219, 261-298, 311-320, 322-325, and

2) The motion for summary judgment filed by defendant Ronald Milman ("Defendant" or "Ronald") and the Companies, *see* Docket Entries 232-247, 253-260, 299, 316, 321.

For the following reasons, Plaintiff's motion is granted as to the first counterclaim and granted as to liability on the sixth cause of action, and Defendant's motion is granted in part and denied in part. The parties are reminded of the conference scheduled for May 20, 2026 at 10:00 a.m. in person.

BACKGROUND

A. Factual Background

The Amended Complaint alleges as follows:

Jillian is the daughter of Bruce Milman (“Bruce”), who is deceased. Ronald is Bruce’s brother and Jillian’s uncle. The Corporation was founded in or around 1967 by the ancestors of Ronald, Bruce, and Jillian. By 2012, Ronald owned 50% of the Corporation’s issued and outstanding shares and the Lawrence Milman Trust f/b/o Bruce Milman (the “Trust”) owned the other 50% of the Corporation’s issued and outstanding shares.

Unbeknownst to Jillian, in or around 2018, after Bruce died, Ronald, with the assistance of the Corporation’s accountant, Arthur Goldblatt (“Goldblatt”), changed the ownership structure of the Corporation from being partly owned by the Trust to partly owned by Jillian. The alleged purpose of this ownership change, which Ronald never mentioned to Jillian, nor documented in any ownership interest transfer document, was to avoid jeopardizing the Corporation’s Subchapter S Corp. election. Jillian only learned about Ronald’s decision in pretrial disclosure in this lawsuit. The Corporation lacks a board of directors, by-laws, and/or a shareholder agreement. In 2021, Ronald attempted to make Jillian execute a shareholder’s agreement, but Jillian declined.

The Corporation’s principal asset is a parcel of real estate and improvements at 2775-79 Coney Island Avenue, Brooklyn, New York. Pursuant to a long-term, triple net lease, the Corporation leases the property as a restaurant and lounge. According to East Coast Real Estate Appraisers, a New York State certified commercial and residential real estate appraisal firm, as of January 2022, the appraised value of the Corporation’s real estate was approximately \$4,330,000. The value of the Corporation’s principal asset has appreciated.

In or around 2000, the Milman family founded the LLC. At the time of its formation, the LLC was owned by Lawrence Milman, Ronald, and the Trust. By 2012, ownership of the Company was held in equal halves, with Ronald owning 50% of the Company’s membership interests, and the Trust owning the other 50% of the Company’s membership interests. Jillian is the sole remaining beneficiary of the Trust.

The Trust Agreement dated November 20, 2000, for the Benefit of Bruce Milman (the “Trust Agreement”) provides that when Jillian attains the age of 40, she will become the owner

in her own name of the 50% membership interest of the LLC currently held in the name of the Trust. Jillian turned 40 on October 25, 2024.

The LLC is governed by a written Operating Agreement, dated on or around November 20, 2000. The LLC's principal asset is a parcel of real estate and improvements at 2872 Coney Island Avenue, Brooklyn, New York. Pursuant to a long-term, triple net lease, the LLC leases the property for use as a family-friendly restaurant. According to East Coast Real Estate Appraisers, as of January 2022, the appraised value of the LLC's real estate was approximately \$1,670,000. The value of the LLC's principal asset has appreciated.

In January 2012, Bruce's femur suddenly broke due to bone deterioration from multiple myeloma. Throughout the summer and into the fall, Bruce was confined to his home and required a home health aide to perform his cooking, cleaning, and bathing. By fall 2012, Bruce was experiencing acute psychological distress impairing his ability to comprehend reality or function. Bruce lacked any mental capacity whatsoever to engage in business transactions. In or around October 2012, Jillian noticed that her father was acting very bizarrely, which she believed was related to his medical issues, including his ongoing battle with cancer.

On or about November 5, 2012, Bruce was admitted as an inpatient to Mercy Medical Center due to his deteriorating mental health condition. On November 8, 2012, while admitted to Mercy Medical Center, Bruce's attending neurologist, Dr. Poonam S. Dulai, diagnosed Bruce with "acute psychosis," noting that for a roughly "2-3 week" period before admission to the facility, Bruce was experiencing "confusion," "intermittent delusions/hallucinations," and that he "talks to himself." On November 10, 2012, while still admitted to Mercy Medical Center, Dr. Dulai wrote in a Progress Note that Bruce was suffering from "psychosis/delirium."

Unbeknownst to Jillian, on or about October 27, 2012, Ronald presented Bruce with a blank piece of paper and told Bruce to sign it on the bottom. Bruce, who was experiencing acute mental distress and who trusted Ronald, agreed to sign the paper. After Bruce signed the paper, and when Bruce was not present, Ronald then handwrote the body of the document, writing, falsely, in the first person as if it were Bruce, not Ronald, who authored the document. Ronald's intent at the time was to steal control of the family businesses for himself in the event Bruce died (which, at the time, Ronald believed to be imminent).

In the body of the document (the "Letter of Direction"), Ronald, writing falsely as if it were Bruce speaking, purported to transfer a 2% stock interest of the Corporation and a 2%

membership interest in the LLC from Bruce to Ronald. In the Letter of Direction, Ronald, writing falsely as if it were Bruce speaking, purported to explain the reasons for the alleged transfer. Ronald wrote, pretending falsely as if it were Bruce, stated:

I called for a special business meeting with my brother Ronald Milman to discuss my decision about how the businesses (BD Realty Corp - at 2775 Coney Island Ave and 2872 Coney Island Ave - at 2872 Coney Island Ave) should be run and divided in the future. I've come to this decision because my daughter Jillian is young and inexperienced in our businesses and there could be outside influences affecting her decision-making where the businesses are involved. My brother has always been there for me and I trust him and his judgment. I know that he will do the right thing for my daughter Jillian if anything should happen to me.

I have given him authority to run my share of the business for my daughter. I know that he will take care of her needs and teach her what she has to know about the businesses and about finance if I'm not around.

For these reasons, I am authorizing the transfer from me (Bruce Milman) to Ronald Milman of two (2) shares of my stock of BD Realty Corp - 2775 Coney Island Ave and two (2) shares of my stock in 2872 Coney Island Ave LLC - 2872 Coney Island Ave. Now Ronald will own 52% of BD Realty Corp and 52% of 2872 Coney Island Ave LLC and I will own 48% of BD Realty Corp - 2775 Coney Island Ave and 48% of 2872 Coney Island Ave LLC - 2872 Coney Island Ave. I want him to have the final say and the controlling vote on all business decisions. I know that he will make the best and most educated decisions for me and Jillian.

I hope that Jillian will understand why I made this decision.

Jillian first saw a copy of the handwritten Letter of Direction on August 7, 2023. The purported transfer document is a forgery. When he was alive, Bruce almost always referred to his daughter as "Jill," not "Jillian." The document, in contrast, exclusively referred to her as "Jillian." The handwriting of the body of the document is demonstrably different from the signature on the document. There were no witnesses to Bruce's alleged execution of the document. The document was not notarized and lacks any indicia of reliability that one would expect of a closely held business equity interest transfer document.

Because Ronald singularly controlled all of Bruce's business, personal, and financial affairs through a Power of Attorney, Bruce never discovered the theft that Ronald hoped to perpetrate with the forged transfer document. On or about December 25, 2012, Bruce executed a New York Statutory Short Form Power of Attorney naming Ronald as agent and attorney-in-fact for all his affairs. Thereafter, Ronald controlled every aspect of Bruce's life. In the years after

the forged transfer document, the only documents that corroborated Bruce's alleged 2% stock and 2% membership interest transfers to Ronald were certain Schedules K-1 for the Corporation and the LLC. Sadly, because of the exceedingly broad Power of Attorney he gave Ronald, Bruce never saw any of those Schedules K-1. Instead, pursuant to the Power of Attorney, Ronald handled, from 2012 until Bruce died, all of Bruce's "tax matters," including the preparation of Bruce's personal and business tax filings. Until the day he died, Bruce truly believed, and told others, that he owned 50% of the Corporation and 50% of the LLC and that, upon his death, his daughter, Jillian, would succeed to his 50% interests in the family businesses.

Not only was Ronald's misappropriation of Bruce's 2% equity interest in the Corporation and the LLC a flagrant breach of Ronald's fiduciary duties to his brother, the transaction violated the express terms of the Trust Agreement. Article XII of the Trust Agreement provides, "The Beneficiaries of the trusts under this Agreement [i.e., Bruce] shall have no right to assign, transfer, hypothecate, encumber, anticipate, or commute their interests in any benefits or payments under the trusts[.]" Ronald accordingly violated Article XII of the Trust Agreement when he purported to cause his Trust beneficiary, Bruce, to transfer to himself, while serving as Trustee, a 2% equity interest and the associated economic rights in the Corporation and the LLC, rendering the purported transaction null and void.

On November 13, 2018, Bruce passed away from cancer. After Bruce's death, Ronald concealed from Jillian, his niece and co-fiduciary, his attempted theft of 2% of the family businesses. Repeatedly, Jillian asked her uncle to provide her access to books, records, financial information, bank accounts, and tax returns of the Corporation and the LLC. To this day, Ronald has refused to permit Jillian to see even one bank account statement and has refused to allow Jillian to be an authorized user with access to the accounts. Ronald, however, in disregard of his fiduciary duties to Jillian, made his wife, Sherry, and children, Chad and Cara, signatories and authorized users on the accounts. Sherry, Chad, and Cara are not owners of the family businesses. The only corporate documents Ronald let Jillian see were the businesses' handwritten ledgers which, contrary to Ronald's position that he is a 52% owner, showed equal 50% distributions to Ronald and Jillian.

Ronald's decision to show Jillian the general ledgers showing equal distributions was part of his scheme to conceal from and misrepresent to Jillian the fact that, years earlier, Ronald had stolen 2% of the businesses through the fraudulent transfer document. Ronald also instructed the

accountant for the family businesses (and for Ronald and Jillian personally), Goldblatt, to deny Jillian access to information about the businesses. Because of Ronald's refusal to allow Jillian to access even basic information about the businesses, the first time Jillian received the slightest hint that her uncle might have done something dishonest was in July or August 2022. At that time, Jillian and Ronald had a conversation in which Ronald advised Jillian, *inter alia*, that she was not the majority shareholder and that Goldblatt had paperwork in his office documenting Ronald's majority ownership status. On August 7, 2023, Jillian met with Goldblatt, who showed her the forged, handwritten transfer document.

On October 30, 2023, Jillian's counsel sent Ronald a letter expressing a desire for Jillian to amicably part as a co-owner of the Corporation and the LLC through a negotiated buyout. On November 8, 2023, an attorney sent Jillian's counsel a terse letter addressing nothing of substance, writing instead, "I am on vacation and will be back in my office on November 20, 2023. I will contact you sometime during the week of November 20, 2023." That same day, Goldblatt sent Jillian a letter announcing that he no longer considered her a client but that he would continue to serve as accountant for Ronald, the Corporation, and the LLC based on a conflict of interest due to likely litigation with Ronald. In the ensuing week and a half, Jillian's counsel sent Ronald's counsel emails requesting a call to discuss a potential negotiated buyout before the Thanksgiving holiday break but received no response.

Late on the night of November 16, 2023, Jillian and her counsel learned for the first time that Ronald transmitted to Jillian a "Notice of Special Meeting of the Shareholders" of the Corporation, dated and apparently sent on November 15, 2023 (the "Notice"), announcing Ronald's intention to hold a special meeting of the shareholders of the Corporation at Ronald's condominium unit in Florida on November 27, 2023, at 9:30 a.m. for the purported purposes of appointing himself sole Director of the Corporation and adopting by-laws for the Corporation. That same day, Jillian had her counsel send Ronald's counsel a letter by email demanding that Ronald cease and desist from convening a meeting of the shareholders of the Corporation or otherwise attempting to usurp control over the Corporation based upon his fraudulent contention that he is the majority shareholder. In the ensuing several days, Ronald and his counsel refused to respond to Jillian's counsel's request to withdraw the shareholder meeting notice or cancel the meeting. As a result, Jillian was forced to commence this action, moving at the same time for injunctive relief, which she successfully obtained enjoining Ronald's shareholders' meeting.

After commencement of the lawsuit, Jillian duly served Subpoenas Duces Tecum (the “Subpoenas”) upon Bank of America and JP Morgan Chase Bank, two banking institutions for the Corporation and the LLC. The Subpoena response from Bank of America revealed that Ronald wrote himself four checks, wrote Morgan Stanley three checks, sent two wire transfers, and made one cash withdrawal totaling \$152,000 between June 15, 2018 and October 22, 2020. The Subpoena response from Chase revealed that Ronald wrote himself checks totaling \$153,050.96 from the Corporation account ending 2665 between June 4, 2018 and 2024, and Ronald wrote himself checks totaling \$143,331.50 from the LLC account ending 9665 between December 15, 2022 and February 2024. Additionally, Ronald and Sherry wrote checks from their joint account 1) to the LLC totaling \$52,000 between 2018 and 2020, and 2) to the Corporation totaling \$5,000 in 2019. Checks issued from the accounts of the Corporation and the LLC appear to show that Ronald used corporate funds to pay Goldblatt for non-corporate tax preparation services totaling \$27,113.30. These monies may have been used in part to pay for Goldblatt to prepare personal income taxes for Ronald and Sherry and their children. At no time did Jillian receive similar distributions or benefits.

Jillian asserts the following causes of action 1) declaratory judgment declaring that Notice of Special Meeting of the Shareholders of the Corporation, dated and sent by Ronald on or about November 15, 2023, or any subsequent notices, seeking to constitute a board of directors of the Corporation and/or elect Ronald sole director of the Corporation at a meeting noticed for November 27, 2023, or any subsequent meeting, failed to comply with BCL § 603(a)'s minimum, 60-day notice requirement, and also fails to comply with BCL § 602(a)'s requirements regarding the fixing of the location of shareholder meetings, rendering the purported notice, and any subsequent actions purportedly taken at the meeting, void and ineffective, 2) forgery, 3) fraud in the factum, 4) lack of mental capacity/undue influence, 5) permanent injunction, and 6) accounting/breach of fiduciary duty derivatively on behalf of the Corporation and the LLC.

Defendant's counterclaim alleges as follows:

In or around 2012, Bruce wanted to protect Jillian and the Companies from Jillian's fiancé, who had issues with drugs and alcohol. During one of their many visits to Brooklyn to check in on the Companies, Bruce told Ronald that he wanted to ensure that, in the event of his passing, Ronald would be able to continue to run the Companies and have a final say and

controlling vote on all business decisions. This was important to Bruce because he did not believe Plaintiff was ready to participate in running the Companies, and because there were certain outside influences affecting Plaintiff's decision-making.

On October 27, 2012, Bruce executed the Letter of Direction, which accurately reflected his wishes, and which authorized the transfer of two shares of Bruce's stock and membership interests in the Companies to Ronald, such that Ronald would have a 52% ownership interest in both Companies. Bruce and Ronald then met with their accountant and presented him with the signed Letter of Direction to seek advice on how to effectuate the desired change in ownership interest. The accountant advised Ronald and Bruce to return with the books and records for the Companies, which Ronald did, and the accountant would make the change official as of January 1, 2013. Ronald believes that after providing the books and records of the Companies to the accountant, the accountant then made whatever changes he deemed necessary to effectuate the ownership interest reflected in the Letter of Direction including, without limitation, issuing Ronald stock certificates for the Corporation and membership interest certificates for the LLC reflecting a 52% ownership interest and changing all of the tax records for the Companies to reflect the ownership interest in the Letter of Direction, as confirmed by Bruce and Ronald.

Bruce's intent in the Letter of Direction is further confirmed by his later execution of a power of attorney ("Power of Attorney"), naming Ronald as agent and attorney-in-fact of all of his affairs, and last will and testament (the "Will") naming Ronald as Executor, which provided Ronald with discretion as to when Bruce's ownership interest in the Companies would pass to Plaintiff. On December 25, 2012, Bruce executed the Power of Attorney naming Ronald as agent and attorney-in-fact for all of his affairs. That same day, Bruce executed the Will, in which he devised and bequeathed his estate to Plaintiff, subject, however, to the constraint that all monies and entitlements derived from Bruce's ownership interest in the Companies shall be deferred pending resolution of certain debts and other obligations, as confirmed by Ronald and the accountant for the Companies. The Will further specified that "[m]y dear brother [Ronald] has my complete confidence and trust and is intimately knowledgeable with our businesses." The Will was executed by three witnesses, all of whom attested to the fact that, at the time of signing the Will, Bruce was of sound mind and memory and not under any restraint. Plaintiff did not contest the validity of the Will.

Effective January 2020, Plaintiff became a 48% owner in the Corporation. For 2020, 2021, and 2022, the Corporation issued Schedules K-1 reflecting Plaintiff's 48% ownership interest in the Corporation. Ronald believes that for 2020, 2021, and 2022, Plaintiff signed and filed tax returns reflecting her 48% ownership interest in the Corporation. Plaintiff never contested the validity of the Letter of Direction or her 48% ownership interest position until Ronald refused her exorbitant demands to buy her out of the Companies.

Defendant asserts the following counterclaim: 1) declaratory judgment that a) Ronald holds a 52% ownership interest in the Corporation and the LLC, b) Jillian holds a 48% ownership interest in the Corporation and the Trust holds a 48% ownership interest in the LLC, and c) Jillian is precluded from asserting that she has a 50% ownership interest in the Corporation and that the Trust has a 50% ownership interest in the LLC, based upon the doctrine of tax estoppel and the affirmative defenses set forth in Defendant's Answer.

B. Procedural History

On January 17, 2025, Plaintiff filed her partial motion for summary judgment. Plaintiff contends that she should be awarded summary judgment on the first counterclaim and the Court should declare that the handwritten transfer document is void *ab initio* and unenforceable. Plaintiff argues, *inter alia*, that Bruce's purported transfer of his ownership interest in the Companies under the Letter of Direction violated the Trust Agreement and the document is void under EPTL § 7-2.4. Plaintiff also seeks summary judgment on the sixth cause of action for accounting/breach of fiduciary duty, asserting, *inter alia*, that Ronald's sworn deposition testimony demonstrates that he is unable to legitimately account for his self-interested transactions from November 2017 to the present. Plaintiff further seeks attorneys' fees because she conferred a substantial benefit upon the Companies.

In opposition, Defendant contends, *inter alia*, that the Letter of Direction did not violate the terms of the Trust. Defendant asserts that under Article II of the Trust, Ronald, as trustee, was well within his authority to grant Bruce's wishes and transfer 2% of the ownership interest in the Companies out of the Trust, and then Bruce was free to transfer such ownership interest as he deemed appropriate. Defendant argues that Plaintiff's motion for summary judgment on her claim for accounting/breach of fiduciary duty should be denied because every transaction complained of by Plaintiff is fully accounted for, justified, and explained. Plaintiff's request for

attorneys' fees should be denied, as the entire crux of her action is to invalidate the Letter of Direction.

On February 10, 2025, Defendant filed his motion for summary judgment. Defendant argues that Plaintiff's second claim for forgery, third claim for fraud in the factum, and fourth claim for undue influence are wholly refuted by the record evidence and should be dismissed as barred by the statute of limitations and/or doctrines of tax estoppel and ratification. Defendant avers that Plaintiff's sixth claim for accounting/breach of fiduciary duty should be dismissed because every transaction is fully accounted for. The first and fifth causes of action are premised entirely on whether Plaintiff will succeed in rescinding the Letter of Direction and there is no legal basis for such relief.

Plaintiff contends that the second, third, and fourth claims are timely, the doctrine of tax estoppel is inapplicable, and there is a triable issues of fact as to whether the Letter of Direction is a forgery and/or was procured by fraud. Plaintiff avers that the Court should deny summary judgment dismissing the sixth claim, as Ronald's deposition testimony, at a minimum, raises issues of fact. Plaintiff further asserts that the Court should deny dismissal of the first and fifth causes of action because the Letter of Direction is void, the declaratory judgment claim is timely, and Ronald waived any statute of limitations defense by voluntarily electing to plead his own claim for declaratory judgment to validate the handwritten transfer document.

The Court held oral argument on the motions on March 27, 2025. The parties attempted to resolve the matter during the months following oral argument. In a Court Notice dated November 7, 2025, the Court directed supplemental briefing on the following issues: 1) evidentiary support for Defendant's position that Bruce Milman's ownership interest in the Companies was transferred from the Trust to Bruce, and then from Bruce to Ronald Milman, and 2) application of the two-year discovery rule to Plaintiff's undue influence claim. On January 9, 2026, the parties filed supplemental papers.

The Court held a second oral argument on January 16, 2026. During that argument, Plaintiff referenced portions of Ronald's deposition taken in a Surrogate's Court matter that were submitted with Plaintiff's supplemental briefing. The Court directed further supplemental briefing on Ronald's deposition testimony, and the parties submitted supplemental papers in February 2026. The Court held a third oral argument on March 11, 2026.

RULING OF THE COURT

A. Relevant Legal Principles

On a motion for summary judgment, the moving party must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. *Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP*, 26 N.Y.3d 40, 49 (2015), quoting *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). If the moving party produces the requisite evidence, the burden then shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action. *Nomura Asset Capital Corp.*, 26 N.Y.3d at 49, quoting *Alvarez*, 68 N.Y.2d at 324. Viewing the evidence in the light most favorable to the non-moving party, if the non-moving party, nonetheless, fails to establish a material triable issue of fact, summary judgment for the movant is appropriate. *Nomura Asset Capital Corp.*, 26 N.Y.3d at 49, quoting *Ortiz v. Varsity Holdings, LLC*, 18 N.Y.3d 335, 339 (2011).

B. Plaintiff's Partial Motion for Summary Judgment

Plaintiff's motion for summary judgment on Ronald's first counterclaim is granted. The crux of this matter is the overarching question of whether Bruce validly transferred his 2% ownership interest in the Companies held in the Trust to Ronald. Subsumed within that inquiry is the discrete yet critical question of whether the alleged transfer violated the terms of the Trust.

To effectuate the alleged transfer, the Trust assets were required to be transferred from the Trust to Bruce in the first instance, and then from Bruce to Ronald. *See* Docket Entry 147 at Article II ("The Trustees shall be authorized and empowered at any time or from time to time, to pay or apply for the benefit of [Bruce], any amount or amounts out of the principal of said trust which the Trustees, in their sole and absolute discretion, shall deem advisable, for any reason whatsoever, even to the extent of terminating the trust by paying all of the principal to him") and Article XII ("The Beneficiaries of the trusts under this Agreement shall have no right to assign, transfer, hypothecate, encumber, anticipate, or commute their interests in any benefits or payments under the trusts"). Defendant does not dispute that this two-step transfer process was required and, in fact, expressly asserts that Bruce's ownership interests were transferred from the Trust to Bruce and then from Bruce to Ronald. Defendant, however, fails to raise a triable issue of fact that Ronald did, in fact, transfer the ownership interests from the Trust to Bruce in the first instance.

The Letter of Direction, *see* Docket Entry 153, makes no mention of a transfer from the Trust to Bruce and states, in relevant part: “I am authorizing the transfer from me (Bruce Milman) to (Ronald Milman) of two (2) shares of my stock in BD Realty Corp-2775 Coney Island Ave and two (2) shares of my stock in 2872 Coney Island Ave LLC-2872 Coney Island Ave.” The fact that the books and records of the Companies and Trust were changed to reflect the alleged transfer and the subsequent tax returns filed by Bruce, Ronald, and the Trust similarly reflected the change in ownership interest does not establish that the Trust assets were transferred to Bruce rather than directly to Ronald.

Indeed, Defendant’s unsupported position that the Trust assets were transferred from the Trust to Bruce prior to the alleged transfer to Ronald is rendered more specious by Ronald’s testimony that, *inter alia*, he “did not know that everything was held in trust.” When asked if he “ha[d] an understanding of whether what [Bruce] attempted to do in the handwritten transfer document was consistent with Article 12 of the trust agreement,” Ronald answered, “I never even thought about it.” *See* Docket Entry 210 at 254-259. Accordingly, the Court finds that the alleged transfer memorialized in the Letter of Intent violates the terms of the Trust, rendering the transfer void. *See* N.Y. EPTL § 7-2.4 (“If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void”).

The Court is unpersuaded that the doctrine of tax estoppel precludes Plaintiff from attempting to invalidate the Letter of Direction. “Tax estoppel applies where . . . the party seeking to contradict the factual statements as to ownership in the tax returns signed the tax returns, and has failed to assert any basis for not crediting the statements.” *Tradesman Program Mgrs., LLC v. Doyle*, 202 A.D.3d 456, 457 (1st Dept. 2022) (internal quotations omitted). Defendant has not proffered any tax documents signed by Bruce and/or Jillian that reflect the ownership interest percentages contained in the Letter of Direction. *See id.* at 457 (doctrine of tax estoppel was inapplicable where, *inter alia*, the plaintiff did not sign the K-1 in question). *See also United Hay, LLC v. Harounian*, 213 A.D.3d 443, 444 (1st Dept. 2023) (“Defendant’s reliance on the K-1 schedules is unavailing because those forms were not signed, and thus cannot serve as a basis for tax estoppel”).

Moreover, Defendant has not raised issues of fact that Bruce and/or Jillian received the relevant K-1s that reflect the ownership interest percentages contained in the Letter of Direction.

Mr. Goldblatt, the parties' personal tax preparer, could not say whether Bruce reviewed the actual contents of his tax file:

Q Do you know whether Bruce Milman ever saw any of the tax documents that you prepared for him for his tax filings? . . .

THE WITNESS: I presume he did, 'cause he signed e-file authorization and sent them back to me before I filed the returns. . .

Q Okay. Do you know if he saw the actual contents of the tax file? . . .

THE WITNESS: I can't know that.

See Docket Entry 238 at 125-126. Jillian denies receiving copies of the K-1s, and while Mr. Goldblatt testified that he mailed K-1s to Jillian, he could not say whether Jillian received a K-1. *See id.* at 172-75. Jillian's testimony that she did not have trouble receiving mail at the address listed on her K-1 and received her personal tax returns from Mr. Goldblatt at that address, *see* Docket Entry 237 at 75-76, 79-81, without more, fails to raise an issue of fact as to the applicability of tax estoppel.

Accordingly, the Court grants Jillian's motion for summary judgment on Ronald's counterclaim and declares that Jillian holds a 50% ownership interest in the Companies because the Letter of Direction is void.¹

Plaintiff's motion for summary judgment on the sixth claim for derivative breach of fiduciary duty/accounting is granted as to liability. Plaintiff does not dispute that the accounting portion of this claim was rendered moot by the discovery obtained in this matter. The Court construes the sixth cause of action as asserting a claim for breach of fiduciary duty based on Ronald's 1) management fees to paid to himself, 2) year-end distributions to himself reflecting a 52% interest in the Companies, and 3) payments to Mr. Goldblatt for the preparation of personal tax returns for himself, his wife, and his daughter.

A breach of fiduciary duty claim requires: "1) the existence of a fiduciary relationship, 2) misconduct by the defendant, and 3) damages directly caused by the defendant's

¹ Plaintiff's argument that the transfer violated the LLC Operating Agreement, *see generally* Docket Entry 219 at 9-10, and Defendant's counterargument that "[e]ven if the transfer can be construed as a breach of the LLC's operating agreement, Plaintiff's request for a declaratory judgment that the transfer is void because it breached the terms of the operating agreement is time-barred," *see* Docket Entry 272 at 8-11, are academic in light of the Court's determination that the Letter of Direction is void under EPTL § 7-2.4.

misconduct.” *Armentano v. Paraco Gas Corp.*, 90 A.D.3d 683, 684 (2d Dept. 2011) (internal quotations omitted). Ronald does not dispute that he owed fiduciary duties to the Companies.

Ronald concedes that he paid himself management fees and additional distributions, arguing that the subject transactions were fair and justifiable. Critically, however, Ronald does not dispute that he never disclosed these payments to Jillian. Even assuming, *arguendo*, that the transactions were fair, Ronald’s failure to disclose the transactions to Jillian amounts to a breach of fiduciary duty. Moreover, the additional distributions were based upon the Letter of Direction found by the Court to be void.

The Court similarly concludes that Ronald breached his fiduciary duties by using corporate funds to pay for personal tax return preparation for his family. Ronald does not dispute that the Corporation paid his family’s personal tax preparation fees. While Ronald asserts that there was a long history of corporate payment of personal tax preparation fees for Bruce, Ronald, the Trust, and even Jillian, *see* Docket Entry 270 at ¶ 61, Ronald testified that he did not disclose to Jillian that the Corporation paid his personal tax preparation fees, *see* Docket Entry 210 at 179:8-13. Parenthetically, Mr. Goldblatt testified that Jillian’s personal tax preparation fees were included with Bruce’s fees, which were paid by the Corporation until Bruce passed away, and after 2018, Jillian paid for her own personal tax return preparation. *See* Docket Entry 238 at 185-86. Ronald’s failure to disclose to Jillian that the Corporation paid his personal tax return preparation fees amounts to a breach of fiduciary duty.

Nevertheless, the question of damages implicates issues of fact—including but not limited to what constitutes a reasonable management fee for the Companies—and is more properly addressed at the trial of this matter. Plaintiff’s request for attorneys’ fees pursuant to Business Corporation Law § 626(e) is referred to the trial to be addressed in connection with Plaintiff’s damages. *See* BCL § 626(e) (“If the action on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or plaintiffs or a claimant or claimants as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff or plaintiffs, claimant or claimants, reasonable expenses, including reasonable attorney’s fees, and shall direct him or them to account to the corporation for the remainder of the proceeds so received by him or them”).

C. Defendant's Motion for Summary Judgment

Defendant's motion for summary judgment on the second claim for forgery, third claim for fraud in the factum, and fourth claim for lack of mental capacity/undue influence is granted. These claims are all based on the Letter of Direction and are no longer viable in light of the Court's determination that the Letter of Direction is void.

Defendant's motion for summary judgment on the sixth cause of action is denied as moot based on the Court's award of summary judgment in favor of Plaintiff on that claim.

Defendant's motion for summary judgment on the first cause of action for declaratory judgment and fifth cause of action for injunction is denied. Defendant argues that Plaintiff's first and fifth causes of action are premised entirely on whether Plaintiff will succeed in rescinding the Letter of Direction. *See* Docket Entry 247 at 24. As set forth above, the Court has determined that the Letter of Intent is void, rendering Defendant's sole argument academic.

CONCLUSION

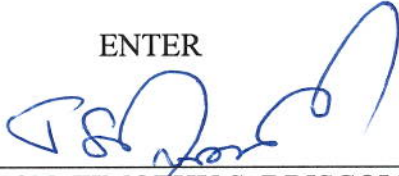
For the foregoing reasons, Plaintiff's motion for partial summary judgment is granted on the first counterclaim and granted as to liability on the sixth cause of action. Defendant's motion for summary judgment is granted in part and denied in part. Defendant's motion is granted as to the second, third, and fourth causes of action, and denied as to the first, fifth, and sixth causes of action.

The parties are reminded of the conference scheduled for May 20, 2026 at 10:00 a.m. in person.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

DATED: Mineola, NY
April 24, 2026

ENTER

HON. TIMOTHY S. DRISCOLL
J.S.C.