Supreme Court of the State of New York
Appellate Division, First Judicial Department

Renwick, P.J., Kapnick, Pitt-Burke, Rosado, Hagler, JJ.

7049
M-2829

MEHRNAZ NANCY HOMAPOUR et al.,
Plaintiffs-Appellants,

-against-

3M PROPERTIES, LLC, et al.,
Defendants-Respondents,

427 EAST 77TH STREET LLC et al.,
Defendants.

Index No. 653795/15
Case No. 2025-05691

Oved & Oved LLP, New York (Glen Lenihan of counsel), for appellants.

Jaspan Schlesinger Narendran LLP, Garden City (Sophia A. Perna-Plank of counsel), for Orange & Blue LLC, respondent.

Pryor Cashman LLP, New York (Simon Shahinian and William L. Charron of counsel), for Mark Harounian, The Family LLCs and The Harounian LLCs, respondents.

Order, Supreme Court, New York County (Joel M. Cohen, J.), entered on or about August 8, 2025, which, insofar as appealed from as limited by the briefs, (a) granted defendants Mark Harounian, 3M Properties LLC, Balance Property LLC, JAM Realty NYC LLC, United Chelsea LLC, United East LLC, United Fifth LLC, United Flatiron LLC, United Greenwich LLC, United Hay LLC, United Nationwide Realty LLC, United Prime Broadway LLC, United Prime LLC, United Seed LLC, United Square LLC, United Village LLC, United West LLC, Jacob NY Holdings LLC, Jacob NY Holdings Ltd., 172 Mulberry Realty LLC, 1007 Lex Ave LLC, and 163 Chrystie LLC's motion for summary judgment to the extent of dismissing plaintiffs' first, fifth, tenth, eleventh, and fourteenth causes of

action; (b) granted these defendants' motion to strike plaintiffs' jury demand; and (c) granted defendant Orange & Blue LLC's motion for summary judgment to the extent of dismissing plaintiffs' fifteenth cause of action, unanimously modified, on the law, to reinstate the cause of action for fraud (the fifth cause of action), and otherwise affirmed, without costs.

Plaintiff Mehrnaz Nancy Homapour brings this action, individually and derivatively on behalf of the Family LLCs[1] against her brother Mark Harounian and their father Jacob Harounian, the Family LLCs, the Family LLCs' attorneys and various corporations owned by Mark. It is alleged that Mark fraudulently induced Mehrnaz and Jacob to sign unilaterally amended Family LLC agreements.

The fifth cause of action for fraud against defendant Mark should not have been dismissed. Mehrnaz attested that Mark fraudulently induced her to sign the unilaterally amended Family LLC operating agreements by, among other things, presenting 'just a signature page' with no accompanying document. Mehrnaz averred that "[w]henever I inquired about what I was asked to sign, Mark's response was always that 'nothing is changed' and that he just needed my signature" and that "I was never given the full document to review." Jacob also attested that the operating agreements were "created or amended to incorporate significantly favorable terms for Mark," that Jacob never agreed to these changes and that he was never provided with the entire document.

"Ordinarily a person is bound by the terms of an instrument he or she signs, and

[1] The Family LLCs consist of nominal plaintiffs/defendants 3M Properties LLC, Balance Property LLC, JAM Realty NYC LLC, United Chelsea LLC, United East LLC, United Fifth LLC, United Flatiron LLC, United Greenwich LLC, United Hay LLC, United Nationwide Realty LLC, United Prime Broadway LLC, United Prime LLC, United Seed LLC, United Square LLC, United Village LLC, and United West LLC.

may not claim to have justifiably relied on false representations concerning the contents of a document that he or she failed to read without valid excuse" (*Tsai Chung Chao v Chao,* 161 AD3d 564, 565 [1st Dept 2018]). However, here whether this principle applies to bar plaintiff's fraud claim against Mark cannot be determined as a matter of law because Mark had fiduciary obligations to Mehrnaz and Jacob as the managing member of several limited liability companies of which they were nonmanaging members (the Family LLCs) (*see id.*). Given the fiduciary relationship between Mehrnaz and Mark, there is a question of fact as to whether Mehrnaz justifiably relied on Mark's misrepresentations as to the agreements she signed.

The tenth and fourteenth causes of action for constructive trust against Mark and certain LLCs controlled by him (the Harounian LLCs)[2] were properly dismissed as against the Harounian LLCs because these entities were not in a confidential or fiduciary relationship with Mehrnaz and the circumstances are not such as to warrant overlooking this factor (*see Simonds v Simonds*, 45 NY2d 233, 241 [1978]; *Toobian v Golzad*, 193 AD3d 778, 781 [2d Dept 2021]). The tenth cause of action was properly dismissed as against Mark because it sought relief that was equitable in nature, which was contractually barred by the operating agreement governing the Family LLC from which funds were claimed to have been taken (*see Harounian v Harounian*, 198 AD3d 734, 738-739 [2d Dept 2021]). The fourteenth cause of action was also properly dismissed as against Mark as time-barred, as the applicable six-year statute of limitations began to run in September 2003, when Mark openly purchased the property in the name of Jacob NY Holdings Ltd. rather than a Family LLC (*see Quadrozzi v*

[2] The Harounian LLCs consist of defendants Jacob NY Holdings LLC, Jacob NY Holdings Ltd., 172 Mulberry Realty LLC, 1007 Lex Ave LLC, and 163 Chrystie LLC.

Estate of Quadrozzi, 99 AD3d 688, 690 [2d Dept 2012]; *Knobel v Shaw*, 90 AD3d 493, 496 [1st Dept 2011]).

The first and fifteenth causes of action for breach of fiduciary duty against Mark and aiding and abetting breach of fiduciary duty against defendant Orange & Blue LLC (O&B) were properly dismissed insofar as they related to the alleged scheme to fraudulently remove the Family LLCs' apartments from rent regulation. Years have passed; yet, to date, no regulatory or tenant/lender liability has been incurred, rendering this dispute unripe insofar as it is based on exposure to such liability (*see Wong v New York City Employees' Retirement. Sys.*, 236 AD3d 480, 481 [1st Dept 2025], *lv denied*, 44 NY3d 906 [2025]; *Parametric Capital Mgt., LLC v Lacher*, 15 AD3d 301, 302 [1st Dept 2005]). In view of our disposition of this issue, we need not reach the parties' arguments with respect to O&B's knowing participation and substantial assistance.

The eleventh cause of action to remove Mark as manager of the Family LLCs was also properly dismissed. The 11 operating agreements drafted by nonparty Alan Winters (the Winters Operating Agreements) bar such equitable relief with respect to the Family LLCs they govern. All of the agreements are silent regarding whether and when a manager may be removed. Under such circumstances, the majority of courts have concluded that they do not have the power to remove an LLC manager (*see McCormack v Kuras*, 2022 WL 141560, *1 [Sup Ct, NY County Jan. 11, 2022]; *Fakiris v Gusmar Enters., LLC*, 53 Misc 3d 1215[A], 2016 NY Slip Op 51665[U], *7 [Sup Ct, Queens County 2016]; *Friedman v Ridge Capital Corp.*, 2010 WL 5799429, *5-6 [Sup Ct, NY County Jan. 28, 2010]; *but cf. Goldstein v Pikus*, 2015 NY Slip Op 31483[U], *13-14 [Sup Ct, NY County 2015]).

The jury demand was also properly struck. The Winters Operating Agreements waived the right to trial by jury "in any action or proceeding of any kind or nature . . . arising out of this Agreement or by reason of any other cause or dispute whatsoever between [the parties]." "The right to a jury trial may be waived in an instrument other than that representing the agreement upon which the action is founded" (*see Franklin Natl. Bank v Capobianco*, 25 AD2d 445, 445 [2d Dept 1966]) – even if the party seeking a jury trial never read that instrument (*see Barclays Bank of N.Y. v Heady Elec. Co.*, 174 AD2d 963, 964-965 [3d Dept 1991], *lv dismissed* 78 NY2d 1072 [1991]; *James Talcott, Inc. v Wilson Hosiery Co.*, 32 AD2d 524, 525 [1st Dept 1969]). A jury trial would at any rate not be available in view of the primarily equitable nature of this action, which includes numerous and substantial equitable claims, which are not merely incidental to the legal relief sought, and in which the sole claims for money damages are derivative and thus equitable in nature (*see James Thomas Realty, LLC v Cheliotes*, 249 AD3d 633 [1st Dept 2026]).

M 2026-02829 – *Homapour, et al. v 3M Properties, LLC, et al.*

Motion to stay trial, denied.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: July 9, 2026

Susanna Molina Rojas
Clerk of the Court