

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS

PART

07

Justice

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INDEX NO.

651274/2025

JOANNE CHANG,

MOTION SEQ. NO.

002

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

SOLLEGA INC. and ELIE ROTHSCHILD,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 72

were read on this motion to/for

DISMISS

Eric N. Cohen & Associates, PLLC, New York, NY (Eric Neil Cohen of counsel), for plaintiff.
Polsinelli PC, New York, NY (Michelle Genet Bernstein and Leo David Bronshteyn of counsel),
for defendants.

Gerald Lebovits, J.:

Plaintiff, Joanne Chang (individually and on behalf of her minor child N.C.S.), brings this shareholder dispute against defendants, Sollega Inc. and Elie Rothschild. Sollega is a closely held corporation that designs and manufactures solar-racking systems. Plaintiff alleges that she owns approximately 15.38% of Sollega's shares; and Rothschild owns approximately 84.62% of the shares and serves as Sollega's majority shareholder, sole director, and chief executive officer. (NYSCEF No. 28 at ¶¶ 4-8.)

Plaintiff alleges that Rothschild abused his control over Sollega to benefit himself at plaintiff's expense. She alleges that Sollega made disproportionate shareholder distributions in 2020 and 2022, causing Rothschild to receive more than his proportionate share while plaintiff received less than hers. (*Id.* at ¶¶ 51-60.) Plaintiff further alleges that Rothschild caused Sollega to issue inaccurate tax documents, misstated plaintiff's ownership interest, and failed to provide adequate corporate records and shareholder communications. (*Id.* at ¶¶ 27-50.) Plaintiff also contends that defendants failed to authorize shareholder distributions in 2024 and that Rothschild registered or held in his own name intellectual-property assets used in Sollega's business. (*Id.* at ¶¶ 61-71.)

Based on those allegations, plaintiff asserts causes of action for breach of fiduciary duty, violations of the Business Corporation Law (BCL) and other related claims.

Defendants move under CPLR 3211 (a) (1), (5), (7), and (8) to dismiss the amended complaint in its entirety. The motion is granted in part and denied in part.

DISCUSSION

I. Defendants' Motion to Dismiss Plaintiff's Claims Against Rothschild for Lack of Personal Jurisdiction

Defendants first argue that the claims against Rothschild must be dismissed under CPLR 3211 (a) (8) for lack of personal jurisdiction. This branch of the motion is denied.

On a motion to dismiss under CPLR 3211 (a) (8), plaintiff bears the burden to establish a basis for personal jurisdiction. (*Copp v Ramirez*, 62 AD3d 23, 28 [1st Dept 2009].) Plaintiff argues that longarm personal jurisdiction exists under CPLR 302 (a) (1). Under this branch of the longarm statute, the question is whether the defendant, under the totality of the circumstances, purposefully availed himself of the privilege of conducting activities in New York, thereby invoking the benefits and protections of New York law. (*See Paterno v Laser Spine Inst.*, 24 NY3d 370, 376-378 [2014].) There must also be an articulable nexus or substantial relationship between the New York activity and the claims asserted. (*See SPCA of Upstate N.Y., Inc. v American Working Collie Assn.*, 18 NY3d 400, 404 [2012].) The quality of defendant's New York contacts, rather than their quantity, is the primary consideration. (*Fischbarg v Doucet*, 9 NY3d 375, 380 [2007].)

Defendants correctly argue that Rothschild's status as an officer, director, or shareholder of Sollega is not alone sufficient to give rise to personal jurisdiction over him in New York. But a nonresident corporate officer's acts in New York on behalf of the corporation may support personal jurisdiction over the officer. (*See Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 470-472 [1988].) Here, plaintiff has made a sufficient showing at this stage that Rothschild transacted business in New York on Sollega's behalf within the meaning of CPLR 302 (a) (1).

The amended complaint alleges that Sollega is a New York corporation and that Rothschild is Sollega's majority shareholder, sole director, and chief executive officer. (NYSCEF No. 28 at ¶¶ 5-8.) Plaintiff's claims do not arise from Rothschild's unrelated personal conduct in California. They arise from his alleged exercise of control over Sollega's internal corporate affairs: shareholder distributions, shareholder tax documents, corporate records and communications, corporate governance and ownership, or control of intellectual-property assets allegedly used in Sollega's business. (*Id.* at ¶¶ 38-84.) Those allegations concern Rothschild's alleged conduct as the controlling fiduciary of a New York corporation and invoke rights and duties arising from that New York corporate relationship, including rights under the BCL.

Rothschild emphasizes that he resides in California, that Sollega has allegedly operated from California since 2013, and that he has not conducted Sollega-related business in New York for more than a decade. (NYSCEF No. 51 at ¶¶ 5-11.) Those facts might ultimately bear on the jurisdictional analysis. But they do not conclusively defeat jurisdiction at the pleading stage. A nondomiciliary defendant may transact business in New York without being physically present if he purposefully avails himself of New York's laws or projects himself into New York business

activity through communications or other means. (*See Fischbarg*, 9 NY3d at 382; *Deutsche Bank Sec., Inc. v Montana Bd. of Invs.*, 7 NY3d 65, 71 [2006].)

Here, plaintiff alleges that Rothschild was not a passive officer or remote shareholder. She alleges that Rothschild was the person who controlled Sollega's corporate decisions, distributions, records, tax-related documents, and shareholder treatment. Given Sollega's New York incorporation and the nature of plaintiff's claims, plaintiff has adequately alleged, at minimum, an articulable nexus between Rothschild's control of Sollega as a New York corporation and the claims asserted in this action. On the facts as alleged, exercising jurisdiction over Rothschild in New York also comports with due process, because plaintiff's claims arise from Rothschild's alleged use and control of a New York corporation.¹

The branch of defendants' motion seeking dismissal of the amended complaint against Rothschild under CPLR 3211 (a) (8) is denied.

II. Defendants' Motion to Dismiss Plaintiff's Sixth and Seventh Causes of Action as Untimely

Defendants also move under CPLR 3211 (a) (5) to dismiss plaintiff's IP-related claims (the sixth and seventh causes of action) on limitations grounds. This branch of the motion is granted in part and denied in part with respect to plaintiff's usurpation-of-corporate-opportunity claim (sixth cause of action), and granted as to plaintiff's conversion claim (seventh cause of action)

The amended complaint alleges that Rothschild registered or held in his own name intellectual-property assets allegedly belonging to, developed for, or used by Sollega, including the Sollega trademark and several solar-racking patents. (NYSCEF No. 28 at ¶¶ 68-71, 103-114.) Defendants argue that the IP-related claims are untimely because the patents issued on November 28, 2017, January 22, 2019, and December 1, 2020, and the SOLLEGA trademark issued on December 7, 2021—more than three years before plaintiff brought this action. (NYSCEF No. 65 at 10-11.) Plaintiff responds that the claims are timely because they seek equitable relief, are based on alleged fiduciary concealment or fraud, and are tolled as to N.C.S. during infancy. (NYSCEF No. 67 at 10-13.)

New York does not apply a single limitations period to breach-of-fiduciary-duty claims. The applicable limitations period depends on the substantive remedy sought. When the relief sought is purely monetary, courts treat the claim as one for injury to property, governed by CPLR 214 (4)'s three-year limitations period. When the relief sought is equitable, CPLR 213 (1)'s six-year limitations period applies. (*See IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 139 [2009]; *Kaufman v Cohen*, 307 AD2d 113, 118 [1st Dept 2003].) When a complaint seeks both legal and equitable relief, court looks to the reality and essence of the claim, not merely the label attached to the requested remedy. (*See Kaufman*, 307 AD2d at 118-119.)

¹ Given the court's conclusion on this point, the court does not reach plaintiff's argument that personal jurisdiction exists over Rothschild on a veil-piercing theory.

Applying these principles, defendants have not shown that the IP-based fiduciary-duty and corporate-opportunity theories are time-barred with respect to the patents issued in December 2020 and December 2021. Plaintiff seeks damages, but she also seeks return of the IP assets to Sollega and a constructive trust over proceeds or benefits derived from those assets. (NYSCEF No. 28, at prayer for relief items F, G.) That requested relief is directed to specific property allegedly belonging to, developed for, or used by Sollega. At this pleading stage, the court cannot conclude that the IP-based fiduciary-duty and corporate-opportunity theories are purely monetary claims governed by CPLR 214 (4). As a result, the fiduciary-duty claims relating to the December 2021 trademark registration and the December 2020 and December 2021 patents were asserted within the applicable six-year limitations period under CPLR 213 (1).

Plaintiff's fiduciary-duty/corporate-opportunity claims based on the November 2017 and January 2019 patents, on the other hand, are untimely. It is undisputed that those claims were brought more than six years after issuance of the patents at issue. Plaintiff contends that the claims are nonetheless timely under CPLR 213 (8), on the ground that the claims were asserted within two years of plaintiff's discovery of the issuance of the patents. This contention is unpersuasive. CPLR 213 (8) applies to claims sounding in fraud. For a fiduciary-duty claim to be governed by CPLR 213 (8)'s limitations period—including its discovery rule—the claim has to be “based on allegations of actual fraud.” (*Kaufman v Cohen*, 307 AD2d 113, 119 [1st Dept 2003].) That is, the fiduciary-duty claim must rest on allegations that would also support a fraud cause of action. (*See id.* at 119-120.) Otherwise, the fraud allegations will be considered merely “incidental to the claim asserted,” and, as a result, insufficient to trigger applicability of CPLR 213 (8).

Here, plaintiff's IP-related allegations do not state a viable fraud claim because they do not allege that plaintiff justifiably relied on any affirmative misrepresentations, or material omissions, by defendants. That is, plaintiff has not alleged that defendants' failure to disclose Rothschild's alleged diversion of the IP assets “caused a change in [her] position,” as required to establish reliance for pleading purposes. (*Mariani v Dyer*, 193 AD2d 456, 457 [1st Dept 1993]; accord *Nabatkhorian v Nabatkhorian*, 127 AD3d 1043, 1044 [2d Dept 2015] [same].) To the contrary, plaintiff represents that, absent knowledge of Rothschild's alleged registrations of the IP assets in his name, she continued both before and after those registrations to “accept[] Rothschild's word on matters related to the Company and assume[] they were complete and factually correct.” (NYSCEF No. 68 at ¶ 10.) No fraud claim lies on these facts. As a result, the CPLR 213 (8) statute of limitations for fraud claims does not apply, either. Plaintiff's IP-asset-related claims for breach of fiduciary duty are time-barred to the extent those claims accrued before March 6, 2019.²

² Defendants' reference to derivative standing does not require dismissal of the IP-based fiduciary-duty or corporate-opportunity theories. In their limitations argument, defendants state that the IP-related claims are derivative, but they expressly ask the court to set that point aside and dismiss those claims as time-barred. (NYSCEF No. 65 at 10-11.) In reply, defendants again refer generally to claims that are “derivative in nature without pleading derivative standing,” but they do not separately develop that point as an independent basis to dismiss the IP-based fiduciary-duty or corporate-opportunity theories. (NYSCEF No. 72 at 3, 7-9.) The court therefore addresses the IP allegations here only for statute-of-limitations purposes.

Conversion claims are governed by CPLR 214 (3)'s three-year limitations period and generally accrue when the alleged conversion occurs. Here, plaintiff's conversion claim is based on Rothschild's alleged registration and holding of Sollega's IP assets in his own name. The complaint identifies the latest of those registrations as the SOLLEGA trademark, which issued on December 7, 2021. (NYSCEF No. 28 ¶¶ at 68-71, 108-114.) Plaintiff commenced this action in March 2025 and first asserted conversion in the amended complaint filed in June 2025. The seventh cause of action for conversion is therefore dismissed as untimely.

The infancy toll does not save the conversion claim. CPLR 208 protects claims belonging to the infant. (*See Henry v City of New York*, 94 NY2d 275, 278-283 [1999].) The conversion claim, as pleaded, alleges conversion of Sollega's IP assets and seeks return of those assets to Sollega. (NYSCEF No. 28 at ¶¶ 108-114, prayer for relief item G.) Because that claim is based on injury to *corporate* property, it is not made timely by N.C.S.'s infancy.

Accordingly, defendants' CPLR 3211 (a) (5) motion is granted in part and denied in part as to the sixth cause of action for usurpation of corporate opportunity, and granted as to the seventh cause of action for conversion.

III. Defendants' Motion to Dismiss Plaintiff's Claims as Refuted by Documentary Evidence

Defendants next argue that the amended complaint should be dismissed under CPLR 3211 (a) (1) because documentary evidence conclusively refutes plaintiff's allegations concerning disproportionate distributions. This branch of the motion is denied.

Dismissal under CPLR 3211 (a) (1) is warranted only when the documentary evidence utterly refutes the plaintiff's factual allegations and conclusively establishes a defense as a matter of law. (*See Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Leon v Martinez*, 84 NY2d 83, 88 [1994].) The documentary evidence must be unambiguous and of undisputed authenticity. (*Qureshi v Vital Transp., Inc.*, 173 AD3d 1076, 1077 [2d Dept 2019].)

Defendants rely on amended K-1s, emails, checks, bank records, and materials allegedly made available through a Google Drive link. According to defendants, those materials establish that the challenged transfers were returned to Sollega, that amended tax records were issued, and that plaintiff received corrective distributions. (NYSCEF No. 65 at 4-6, 12-13; NYSCEF No. 51 ¶¶ at 14-25; NYSCEF No. 72 at 9-10.) Those documents might support defendants' factual defense. They do not, however, conclusively dispose of plaintiff's claims at the pleading stage.

The amended K-1s and related tax materials show defendants' corrected tax and accounting treatment of the challenged transfers. The emails, checks, and bank records might

To the extent that the IP allegations concern injury to corporate property, that may raise pleading issues not fully presented on this motion. It does not, standing alone, establish that the IP-based fiduciary-duty and corporate-opportunity theories are untimely.

show that money was later returned to Sollega and that payments were later made to plaintiff. But those materials do not conclusively establish that the transfers were proper when made, that plaintiff received all distributions to which she was entitled, that the amended calculations are accurate, that later payments fully remedied the alleged harm, or that any alleged fiduciary breach or unequal treatment was cured as a matter of law.

Documentary evidence does not utterly refute a pleading when the records require interpretation or when their accuracy and legal effect remain disputed. (*See Rosario v Hallen Constr. Co., Inc.*, 214 AD3d 544, 545 [1st Dept 2023].) Here, defendants' accounting and payment records require interpretation. They do not, on their face, resolve the dispute over Sollega's distributions and defendants' alleged fiduciary conduct.

Defendants' reliance on *Langer v Dadabhoy* is misplaced. (*See* NYSCEF No. 72 at 10, citing 44 AD3d 425, 426 [1st Dept 2007].) Unlike in *Langer*, the documents here do not establish a complete defense on their face. They require defendants' explanation that the challenged transfers were made for Sollega's benefit, were mistakenly treated as distributions, were returned, and were fully corrected. That explanation might be relevant on a later factual record, but it does not warrant dismissal under CPLR 3211 (a) (1).

Nor does Chang's receipt of the September 2024 email and Google Drive link make the documents dispositive. Receipt of documents is not an admission that the documents are accurate, complete, or legally sufficient to cure the alleged misconduct. Plaintiff may still dispute the accuracy and effect of the amended K-1s, the sufficiency of the corrective payments, and whether later corrective measures extinguished claims based on prior conduct.

Accordingly, defendants have not met the demanding standard for dismissal under CPLR 3211 (a) (1).

IV. Defendants' Motion to Dismiss Plaintiff's Claims for Failure to State a Cause of Action

Defendants also move under CPLR 3211 (a) (7) to dismiss the six causes of action of the amended complaint that defendants do not also seek to dismiss as untimely—*i.e.*, the first, second, third, fourth, fifth, and eighth causes of action.

On a motion to dismiss under CPLR 3211 (a) (7), the pleading is afforded a liberal construction, and the plaintiff receives the benefit of every possible favorable inference. (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002].) The court's task is to determine whether the facts alleged fit within any cognizable legal theory. (*Sassi v Mobile Life Support Servs., Inc.*, 37 NY3d 236, 239 [2021].) But conclusory allegations and bare legal conclusions unsupported by factual specificity are insufficient to survive a motion to dismiss. (*Barnes v Hodge*, 118 AD3d 633, 633 [1st Dept 2014].)

A. Breach of Fiduciary Duty (First Cause of Action)

The first cause of action is for breach of the fiduciary duties of care, loyalty, and good faith. Defendants' motion to dismiss this cause of action is granted as against Sollega and denied as against Rothschild.

The elements of a breach-of-fiduciary-duty claim are the existence of a fiduciary relationship, misconduct by the defendant, and damages directly caused by the misconduct. (*Pokoik v Pokoik*, 115 AD3d 428, 429 [1st Dept 2014].) A fiduciary-duty claim must be pleaded with the particularity required by CPLR 3016 (b). (*Burry v Madison Park Owner LLC*, 84 AD3d 699, 699 [1st Dept 2011].)

The claim fails to state a cause of action as against Sollega. A corporation does not owe fiduciary duties to its shareholders. (*See C & J Bros., Inc. v Hunts Point Term. Produce Coop. Assn., Inc.*, 181 AD3d 419, 419 [1st Dept 2020].) Plaintiff alleges that Sollega owed fiduciary duties on the ground that Rothschild allegedly operated the corporation as his instrumentality or alter ego. But those allegations do not transform the corporation itself into a fiduciary of its shareholders. The first cause of action is dismissed as against Sollega.

The claim states a cause of action as against Rothschild. Plaintiff alleges that Rothschild was Sollega's majority shareholder, sole director, and chief executive officer. A majority shareholder in a closely held corporation owes fiduciary duties to minority shareholders. (*O'Neill v Warburg, Pincus & Co.*, 39 AD3d 281, 282 [1st Dept 2007].) Directors and majority shareholders are fiduciaries who must exercise their corporate responsibilities in good faith and may not act for their own aggrandizement or undue advantage to the exclusion or detriment of minority shareholders. (*See Gallagher v Lambert*, 74 NY2d 562, 571-572 [1989]; *Alpert v 28 Williams St. Corp.*, 63 NY2d 557, 568-569 [1984].)

Plaintiff alleges more than disagreement with business decisions. She alleges that Rothschild caused Sollega to make disproportionate distributions to himself in 2020 and 2022, failed to ensure plaintiff received her proportionate share, provided incorrect or misleading tax and financial information, withheld corporate information, failed to make distributions in 2024 despite sufficient profits, and held or registered Sollega-related IP assets in his own name. (NYSCEF No. 28 at ¶¶ 38-84.) Those allegations, accepted as true, are sufficient at this stage to plead misconduct, self-dealing, bad faith, and damages.

Defendants argue that the business-judgment rule bars the claim. That rule protects corporate decisions made in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes. (*See Gjuraj v Uplift El. Corp.*, 110 AD3d 540, 541 [1st Dept 2013].) But plaintiff's allegations of disproportionate distributions, self-dealing, misleading tax and ownership records, withheld corporate information, and IP assets held in Rothschild's own name sufficiently call into question, for pleading purposes, whether the challenged conduct was taken in good faith and for a legitimate corporate purpose. Dismissal of the fiduciary-duty claim against Rothschild is not warranted at this stage of the action.

B. Breach of Duty of Equal Treatment (Second Cause of Action)

The second cause of action is for breach of the duty of equal treatment. Defendants' motion to dismiss this cause of action is granted. The claim is dismissed as against Sollega for lack of a fiduciary duty to plaintiff, as discussed above. And the claim is dismissed as against Rothschild as duplicative of plaintiff's breach-of-fiduciary-duty claim.

C. Violation of BCL § 501 (c) (Third Cause of Action)

The third cause of action is based on alleged violations of BCL § 501 (c). Defendants' motion to dismiss this cause of action is denied.

BCL § 501 (c) provides that "each share shall be equal to every other share of the same class." The Court of Appeals has interpreted this provision to require equality among shares "in all respects." (*Fe Bland v Two Trees Mgt. Co.*, 66 NY2d 556, 569 [1985].) The statute therefore addresses corporate action that treats shares of the same class unequally. (*See Beaumont v American Can Co.*, 142 Misc 2d 767, 769-770 [Sup Ct, NY County 1988].)

Beaumont is instructive. The court explained that § 501 (c) does not prohibit unequal treatment by third parties, but it does prohibit corporate action that treats shares of the same class unequally. (*See id.* at 770.) The court further recognized that a corporate distribution analogous to dividends would present the type of share-based unequal treatment that might implicate § 501 (c). (*See id.*) Thus, the relevant question is whether plaintiff alleges unequal treatment of shares of the same class through corporate action.

Plaintiff does so here. She alleges that she and Rothschild held Sollega common shares; that Sollega made shareholder distributions in 2020 and 2022; and that those distributions were not made equally on a per-share basis. Plaintiff further alleges that Rothschild received more than his proportionate share while plaintiff received less than hers. Accepting those allegations as true, plaintiff alleges corporate action by Sollega that favored Rothschild's common shares over plaintiff's common shares, which suffices to state a cause of action under BCL § 501 (c).

Defendants misplace their reliance on on cases involving non-share-based disparate treatment. In *Moltisanti v East Riv. Hous. Corp.* (149 AD3d 530, 532 [1st Dept 2017]), the First Department dismissed a § 501 (c) claim because the plaintiffs did not allege that the terms of their lease or shares differed from those of other shareholders; they alleged only that they were treated differently in seeking permission to construct an enclosure. The Court held that this was not the type of differential treatment that § 501 (c) was designed to address. Similarly, in *Tahari v 860 Fifth Ave. Corp.* (214 AD3d 491, 492 [1st Dept 2023]), the alleged disparate treatment concerned negotiations over a penthouse construction project, not unequal treatment of the plaintiff's shares.

This case is materially different. Plaintiff does not allege merely that Rothschild treated her unfairly in corporate dealings, communications, or access to information. She alleges that Sollega made distributions on common shares and that those distributions were not proportionate to the shareholders' ownership of those same common shares. Unlike *Moltisanti* and *Tahari*, the alleged unequal treatment concerns the economic rights attached to the shares themselves.

Defendants' arguments about later corrections, amended tax documents, returned funds, and corrective payments do not defeat the claim on a CPLR 3211 (a) (7) motion. Those arguments may bear on damages, cure, or the ultimate merits. But they do not establish, on the face of the amended complaint, that Sollega never made unequal distributions or that plaintiff was timely and fully paid her proportionate share.

Nor does the § 501 (c) cause of action duplicate of plaintiff's fiduciary-duty claim. The fiduciary-duty claim against Rothschild concerns his alleged misconduct as majority shareholder, sole director, and chief executive officer. The § 501 (c) claim concerns a statutory rule requiring equal treatment of shares of the same class. Although the claims arise from overlapping facts, they rest on different duties and may be asserted at the same time.

D. Minority-Shareholder Oppression (Fourth Cause of Action)

The fourth cause of action is for minority-shareholder oppression. Plaintiff seeks damages of at least \$351,897, her proportional share of any other unpaid distributions, and involuntary dissolution of Sollega with liquidation of its assets. Defendants' motion to dismiss this cause of action is denied.

Defendants argue that this claim fails under *Orloff v Weinstein Enters., Inc.* (247 AD2d 63 [1st Dept 1998]). (See NYSCEF No. 65 at 16-17.) According to defendants, plaintiff alleges only ordinary complaints about management, dividends, and records; directors have no obligation to declare dividends; plaintiff received corrected distributions before suit; and plaintiff does not allege a reasonable expectation of participation in management. (NYSCEF No. 65 at 16-17; NYSCEF No. 72 at 11-12.) Defendants also contend that plaintiff's squeeze-out theory should be disregarded because it is not pleaded in the complaint and appears only in plaintiff's opposition affirmation.³ (NYSCEF No. 72 at 12.)

To the extent that plaintiff seeks statutory dissolution under BCL § 1104-a, that statute is unavailable. Section 1104-a permits a dissolution petition by shareholders holding at least 20% of the votes of all outstanding shares. Plaintiff alleges that she owns 15.38494% of Sollega's shares. She therefore does not meet the ownership threshold for dissolution under § 1104-a. But plaintiff does not cite § 1104-a as the basis for her fourth cause of action. And New York has long recognized a narrow common-law-dissolution remedy in cases involving serious abuse of minority shareholders by those in control.

In *Leibert v Clapp*, the Court of Appeals held that, even absent explicit statutory authority, dissolution may be available "as a matter of judicial sponsorship" when the complaint alleges that those in control looted corporate assets, enriched themselves at the expense of minority shareholders, continued the corporation solely for their own benefit, and sought to freeze out or coerce the minority into selling at a sacrifice. (13 NY2d 313, 315-318 [1963].) The Court

³ The court considers the affirmation only for the limited purpose of supplementing the factual allegations underlying plaintiff's pleaded minority-oppression theory, not to create a new cause of action.

emphasized that more is required for common-law dissolution than would be required to sustain an ordinary derivative claim for waste. (*Id.* at 316.) But it also held that whether the plaintiff could prove the allegations and whether dissolution or some lesser remedy should ultimately be granted were not questions to be resolved at the leading stage. (*Id.* at 318.)

The Court of Appeals later confirmed in *Matter of Kemp & Beatley, Inc.*, that, before enactment of § 1104-a, minority shareholders had standing to seek dissolution in equity when controlling shareholders engaged in egregious conduct and so palpably breached fiduciary duties owed to the minority that the controlling shareholders were disqualified from exercising the dissolution power themselves. (64 NY2d 63, 69-70 [1984].) *Kemp & Beatley* defined oppressive conduct as conduct that substantially defeats the reasonable expectations held by minority shareholders when they committed their capital to the enterprise. Those expectations might include an objectively reasonable expectation of a share of corporate earnings. (*Id.* at 72-73.) Whether dissolution is ultimately appropriate depends on the totality of the circumstances and whether a remedy short of dissolution can adequately protect the minority shareholder's interests. (*Id.* at 73-74.)

Fedele v Seybert confirms that common-law dissolution remains distinct from statutory dissolution under § 1104-a. The First Department explained that § 1104-a supplemented the common-law right; it did not displace it. (250 AD2d 519, 521-522 [1st Dept 1998].) The Court also held that a generically pleaded dissolution claim should not be converted into a § 1104-a petition where the plaintiff did not invoke that statute. (*Id.* at 522-523.) That principle applies here. Plaintiff's failure to satisfy § 1104-a's 20% threshold bars statutory dissolution under that section; but it does not, by itself, bar a properly pleaded common-law oppression/dissolution theory.

Defendants' reliance on *Orloff* does not require dismissal. *Orloff* held that the facts there did not amount to oppressive conduct where the plaintiffs failed to show that the alleged conduct defeated reasonable expectations central to their ownership interests. (*See Orloff*, 247 AD2d at 67.) But plaintiff here alleges more than exclusion from some meetings, denial of records, or a general demand for dividends. She alleges that Rothschild—Sollega's majority shareholder, sole director, and chief executive officer—dominated the corporation; caused Sollega to make disproportionate distributions to himself in 2020 and 2022 while depriving plaintiff of her proportionate share; provided incorrect or misleading tax and financial information; withheld corporate information; failed to make 2024 distributions despite alleged profitability; and misappropriated Sollega-related intellectual-property assets.

Nor is the claim deficient merely because plaintiff does not allege an expectation of managing Sollega. As *Kemp & Beatley* makes clear, reasonable expectations may be economic as well as managerial. (*See* 64 NY2d at 72-73.) Plaintiff alleges that her expectations were economic: proportionate distributions and tax distributions during profitable years.

Defendants also argue that the oppression claim fails because directors generally have discretion whether to declare dividends. (NYSCEF No. 65 at 16-17; NYSCEF No. 72 at 12-13.) That principle is correct. An undeclared dividend ordinarily does not give rise to an individual right to payment, and courts generally will not interfere with directors' dividend decisions absent

fraud, bad faith, or clear abuse of discretion. (*See Gordon v Elliman*, 306 NY 456, 459-460 [1954].) But plaintiff's oppression claim is not based only on the absence of a 2024 distribution. It is based also on an alleged broader pattern of minority prejudice, including disproportionate distributions in earlier years, misleading tax and ownership records, withholding of corporate information, and alleged diversion of corporate assets. Whether the 2024 distribution decision reflects ordinary business judgment or part of that alleged pattern cannot be determined at the pleading stage.

Defendants' reliance on alleged corrective distributions and amended K-1s also implicates factual issues that cannot yet be resolved. Defendants assert that Sollega corrected the challenged distributions and that plaintiff accepted checks before suit. Plaintiff disputes that those steps fully cured the alleged misconduct. At this stage, the court may not resolve whether later corrective measures extinguished claims based on prior alleged self-dealing, inaccurate records, or withholding of information.

Nor does defendants' challenge to plaintiff's squeeze-out theory warrant dismissal. The complaint alleges that Rothschild used his domination and control over Sollega to engage in a systemic pattern of oppressive and unfair conduct toward plaintiff. (NYSCEF No. 28 at ¶¶ 90-93.) Chang's affirmation adds factual detail about Rothschild's April 2023 emails discussing a possible buyback or sale of shares. (NYSCEF No. 68 at ¶¶ 5-7.) Those facts are consistent with the pleaded oppression theory and may be considered to amplify the pleading.

Accepting plaintiff's allegations as true, the fourth cause of action is sufficiently pleaded under New York's narrow common-law oppression/dissolution doctrine. The claim may proceed against both defendants, but for different reasons. As against Rothschild, it rests on his alleged conduct as Sollega's majority shareholder, sole director, and chief executive officer. As against Sollega, the claim does not rest on a theory that the corporation owed fiduciary duties to plaintiff. Sollega remains a proper party because plaintiff seeks equitable relief affecting Sollega itself, including dissolution and liquidation.

Accordingly, defendants' motion to dismiss the fourth cause of action is denied.

E. Failure to Make 2024 Corporate Distributions (Fifth Cause of Action)

The fifth cause of action is for failure to make distributions in 2024. Defendants' motion to dismiss this cause of action is granted.

Plaintiff alleges that Sollega is a closely held corporation, that Sollega was profitable in 2024, and that defendants intentionally failed to declare or pay distributions to shareholders despite that profitability. Plaintiff further alleges that Rothschild's refusal to authorize distributions suggests bad faith, particularly in light of the alleged prior disproportionate distributions, plaintiff's investigation into defendants' conduct, and the parties' dispute. (NYSCEF No. 28 ¶¶ 94-100.)

The law distinguishes between a declared distribution and an undeclared distribution. Once a dividend or distribution has been lawfully declared, the relationship of debtor and creditor

arises between the corporation and each shareholder for that shareholder's proportionate share, and the shareholder may sue directly to recover it. (*Gordon*, 306 NY at 459.) But when no dividend or distribution has been declared, no corporate assets have been set aside for shareholders, and no shareholder has an individual right to payment of corporate funds. (*See id.*) In that circumstance, "a stockholder has no individual cause of action to recover dividends that have not been declared." (*Id.* at 462.)

The decision whether to declare dividends or distributions rests ordinarily with the directors. Courts will not interfere with that decision merely because a corporation was profitable or because shareholders wanted a distribution. (*See Gordon*, 306 NY at 459-460.) A court may intervene only when the directors acted fraudulently, dishonestly, in bad faith, or with a clear abuse of discretion. (*See id.*) But a claim seeking to compel an undeclared distribution is not an ordinary direct claim for payment. It is an equitable claim asking the court to direct corporate action that the directors allegedly should have taken. (*See id.* at 460-462.)

Here, plaintiff does not allege that Sollega declared a 2024 distribution and then failed to pay plaintiff her share. Nor does she allege that Rothschild received a 2024 distribution while plaintiff did not. Instead, plaintiff alleges that no 2024 distribution was declared or paid to any shareholder. That allegation differs from cases in which a minority shareholder was excluded from distributions or profits that were paid to others. (*See Gjuraj*, 110 AD3d at 540-541 [minority shareholder had direct fiduciary-duty claim because defendants failed to pay him his share of profits]; *Noryb Ventures, Inc. v Mankovsky*, 2015 NY Slip Op 50760[U], *10 [Sup Ct, NY County 2015] [holding that the claim was direct because plaintiff was denied participation in distributions of corporate assets].) Those cases support direct claims for exclusion from distributions; they do not create an individual right to recover a distribution that was never declared and never paid to any shareholder.

Plaintiff's bad-faith allegations might support plaintiff's surviving fiduciary-duty claim against Rothschild and her surviving minority-oppression/dissolution theory. They might also bear on whether Rothschild's refusal to authorize a 2024 distribution was a good-faith business judgment or part of an (alleged) pattern of minority oppression. But the fifth cause of action is pleaded as a separate claim for failure to make 2024 distributions. As a freestanding direct claim for damages, it does not state a cause of action.

Accordingly, the fifth cause of action is dismissed. This dismissal does not preclude plaintiff from relying on the alleged 2024 non-distribution to support her surviving fiduciary-duty and minority-oppression claims.

F. Violation of BCL § 624 (Eighth Cause of Action)

The eighth cause of action is for alleged violations of BCL § 624. Plaintiff alleges that she made multiple written demands between April 2023 and October 2024 to inspect Sollega's books and records, including its stock ledger, shareholder lists, meeting minutes, financial statements, officer-compensation records, and related corporate materials. Plaintiff further alleges that defendants refused for more than a year to provide complete access, only partially complied, and that the records eventually produced revealed inaccurate and inadequately maintained corporate

records. Plaintiff seeks injunctive and declaratory relief compelling Sollega to issue share certificates, inspection of requested records, costs, attorney fees, and related relief.

Defendants' motion to dismiss this cause of action is granted and the claim is dismissed without prejudice. BCL § 624 gives shareholders certain inspection rights. Section 624 (a) requires a corporation to keep correct and complete books and records of account, minutes of shareholder and board proceedings, and a record of shareholders. Section 624 (b) gives qualified shareholders the right, upon written demand, to inspect specified corporate records. Section 624 (d) sets forth the procedure to enforce that inspection right when inspection is refused. It provides that the person making the demand may apply to Supreme Court for an order directing the corporation, its officer, or its agent to show cause why inspection should not be granted.

Plaintiff did not proceed by order to show cause under § 624 (d). Instead, she pleaded a violation of § 624 as an ordinary cause of action in the amended complaint. Courts have dismissed such claims without prejudice where the shareholder did not use the statutory procedure. (*See Hafeez v American Express Co.*, 2023 NY Slip Op 31273[U], *2-3 [Sup Ct, NY County 2023]; *Greenberg v Falco Constr. Corp.*, 2010 NY Slip Op 51669[U], *3 [Sup Ct, Kings County 2010].) In *Hafeez*, the court explained that moving by proposed order to show cause is the appropriate procedure for a shareholder inspection demand under § 624. It dismissed the statutory inspection claim where the plaintiff did not dispute that the claim had been brought in improper form.

The same result follows here. Defendants contend that plaintiff's § 624 claim is procedurally improper because it was not brought by order to show cause. Plaintiff's opposition does not meaningfully answer that procedural argument. Instead, plaintiff argues that defendants delayed production, failed to provide all requested records, and maintained inaccurate corporate records. Those arguments might bear on whether plaintiff is entitled to inspection relief. They do not cure plaintiff's failure to proceed under § 624 (d).

The dismissal is therefore procedural. The court does not address the merits of plaintiff's claim that defendants did not comply with their statutory production obligations, but instead leaves that claim to be addressed, if necessary, on a proper § 624 (d) application.

Accordingly, it is

ORDERED that the branch of defendants' motion seeking dismissal under CPLR 3211 (a) (8) of plaintiff's claims against defendant Rothschild is denied; and it is further

ORDERED that the branch of defendants' motion seeking dismissal under CPLR 3211 (a) (1) of plaintiff's claims is denied; and it is further

ORDERED that the branch of defendants' motion seeking dismissal under CPLR 3211 (a) (5) of plaintiff's sixth and seventh causes of action is granted with respect to plaintiff's sixth cause of action to the extent that the claim is based on alleged wrongs occurring before March 6, 2019, is granted with respect to plaintiff's seventh cause of action, and is otherwise denied; and it is further

ORDERED that the branch of defendants' motion seeking dismissal under CPLR 3211 (a) (7) is granted with respect to the first cause of action as asserted against defendant Sollega, is granted with respect to the second and fifth causes of action as asserted against both defendants, is granted without prejudice with respect to the eighth cause of action as asserted against both defendants, and is otherwise denied; and it is further

ORDERED that defendants shall serve and file an answer to the remaining claims within 30 days of entry of this order.

9/28/2026

DATE


HON. GERALD LEBOVITZ
 J.S.C.

CHECK ONE:

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CASE DISPOSED

☒

NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE