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

Danielle Shalov,

Plaintiff,

-against-

Brisbane Associates Limited Partnership, Brisbane Associates, LLC, Seward Brisbane LLC, Alice Brisbane LLC, Elinor Brisbane LLC, Sarah Brisbane LLC, Chase Mellen III, Charles A. Brisbane, Abigail Mellen, Darcy B.Kelley, and Allaire B. Stallsmith,

Defendants.

Index No. 651188/2021

Motion Sequence No. 004

**REPLY MEMORANDUM OF LAW IN SUPPORT OF**
**MOTION TO DISMISS AMENDED COMPLAINT BY DEFENDANTS**

VEDDER PRICE P.C.
Nicole J. Wing (*pro hac vice*)
222 N. La Salle Street
Chicago, Illinois 60601
(312) 609-7500 (tel.)
(312) 609-5005 (fax)

Victoria L. Jaus
1633 Broadway 31st Floor
New York, New York 10019
(212) 407-7700 (tel.)
(212) 407-7799 (fax)

*Attorneys for Defendants Brisbane Associates, LLC, Seward Brisbane LLC, Alice Brisbane LLC, Elinor Brisbane LLC, Sarah Brisbane LLC, Chase Mellen III, Charles A. Brisbane, Abigail Mellen, Darcy B. Kelley, and Allaire B. Stallsmith*

**TABLE OF CONTENTS**

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**TABLE OF AUTHORITIES**
**(continued)**

**Page(s)**

**Cases**



**Other Authorities**

## INTRODUCTION

Plaintiff fabricates a tale in which 20 family members owing 99% of a longtime family business singled her out—a 1% non-voting limited partner—to maliciously and spitefully mislead, mistreat and defraud her in connection with what was intended simply as a transition from a less desirable limited partnership formed in 1979 and scheduled to expire of 2020, to an LLC, the entity type almost universally used in the real estate business. Plaintiff repeatedly states under oath[1] that she was arbitrarily removed from communications without her knowledge, kept in the dark, and punished for refusing to sign documents she never saw or had time to review. As a result, she claims she was unlawfully deprived of her valuable limited partnership interest and instead forced to accept a "valueless" membership interest in the LLC which succeeded the partnership. The relentless portrayal of Defendants as dishonest and evil people, intent on inflicting harm on Plaintiff, reaches a crescendo in causes of action seeking damages against her family predicated largely on the bizarre theory that as former general partners they "usurped" value from Plaintiff for their own benefit, because as members of an LLC they no longer had personal liability for obligations of the business.

Undisputed documentary evidence presented to Plaintiff and her counsel prior to and contemporaneously with the Motion to Dismiss establishes that the bulk of Plaintiff's allegations in the Amended Complaint and repeated in the Opposition are either bald faced lies, or intentional distortions of the truth. It is disappointing indeed that Plaintiff and her counsel would proceed in this manner.

The reorganization, consisting of a series of independent steps in a particular order was to take place in late December 2020. One intermediate step afforded each partner the opportunity to

[1] Both the original and Amended Complaint are verified by Plaintiff, a member of the New York bar.

exchange their partnership interest for a membership interest in one of four Family LLCs, ultimately to become the members of Brisbane Associates, LLC ("Company")[2], the new entity to be formed to carry on the family business. Joining a Family LLC was optional but the December 31 expiration of the Partnership required action.

This case is really about the fact that Plaintiff changed her mind after everything was finalized, demanding a reversal of everything and threatening dire consequences if that were refused. When that did not occur, she filed this lawsuit, weaving a total fantasy as the only way to obscure her own knowing and intentional decision. The undeniable reality is Plaintiff's rights as a non-voting 1% member of the Company are substantially the same.

Plaintiff's own words are admissions of the opposite of everything she wishes this Court to believe. In text messages with her brother Plaintiff confirmed she had plenty of time to review the documents but was initially too busy at work and later didn't want to spend any time while she was skiing in Vermont. Those messages also undercut any suggestion she was duped or misled by anything Defendants said. She admitted talking to her lawyer before the deadline passed and based on a subsequent conversation, any concerns could be addressed afterwards "if it actualizes" and she wanted to "move forward".

Furthermore, Plaintiff knew exactly what she was doing. She wrote her brother that not signing the Contribution Agreement was "the only leverage an LP has." She refused to communicate with her mother, stepfather and other family members, requiring the family to jump through hoops to provide her with information and avoid the train wreck she is apparently determined to cause. Plaintiff tried to disrupt the business but could not because the reorganization was consummated in total compliance with the Partnership Agreement and New York law which

[2] Capitalized terms not defined herein shall have the meaning ascribed to them in Defendants' opening memorandum.

gave the former General Partners full authority to restructure the business as they did and distribute her limited partnership interest to her in kind as a pro-rata share of the membership of the Company.

Plaintiff hopes her Opposition will create such an illusion of factual confusion that the Court will deny dismissal. The sole focus of the discussion of the "facts" Plaintiff concocted is to demonstrate through documentary evidence the extreme disingenuousness of this case. The real issues before this Court justifying dismissal are matters of law. Plaintiff alleges harm to all former limited partners—an action that must be derivative. Causes of Action One and Two must be dismissed because this was not a transaction governed by statute (which documentary evidence proves Plaintiff knew). The remaining non-statutory claims not only lack a sufficient factual basis, they attack her Class B interest in the Company granted pursuant to the Distribution Agreement. (Ex.A hereto.) Plaintiff is a party to that agreement, which mandates exclusive jurisdiction in Delaware courts for any proceeding involving that agreement in any way. As discussed below, this baseless lawsuit suffers from many other fatal defects and Defendants respectfully request this Court to dismiss the Amended Complaint.

## ARGUMENT

### POINT ONE
### PLAINTIFF CANNOT SUSTAIN A CLAIM FOR DECLARATORY JUDGMENT

Plaintiff seeks restoration of the Partnership and all former partnership interests. (Opp.at19.) She argues, without authority, that the impossibility of such relief is a fact question. (*Id*.) It is not. Plaintiff admits the "Partnership was dissolved immediately" after the transaction (*Id*.at23) and its term was scheduled to expire 10 days after the Reorganization. (Am.Compl.¶56; Ex.B hereto.) New York law, unlike many other states, provides no mechanism to reinstate an

expired limited partnership. The Secretary of State will not even accept a filing on behalf of an inactive entity.

In the Opposition, Plaintiff argues the Court should "restore *all parties'* interests to the status quo ante if Plaintiff is successful," demonstrates that she lacks standing to bring this case because such relief could only be sought by derivative action. *See Mariani v. FiftyFifty*, IndexNo.656792/16, Doc.No.28 (SupCt,NYCounty2017) (this Court's dismissal of an action that could only have been brought derivatively); *O'Neill v. Warburg*, 39AD3d281,281 (1stDept2007) ("An individual shareholder has no right to bring an action in his own name and in his own behalf for a wrong committed against the corporation.")

Defendants acknowledge raising this argument for the first time in reply because it is responsive to Plaintiff's argument. (Opp.at19.) Standing is a rare exception to the general rule precluding new arguments in a reply. *Wells Fargo v. Marchione*, 69AD3d204,206-07 (2dDept2009). Since this is a question of standing, Defendants need not even raise the issue—the Court can dismiss *sua sponte*. *Pappas v. 38-40 LLC*, 2018NYSlipOp.30329(U) (SupCt,NYCounty2018); *Serino v. Lipper*, 123AD3d34 (1stDept2014).

Whether a claim is individual or derivative, "a court should consider (1) who suffered the alleged harm… and (2) who would receive the benefit of any recovery." *Yudell v. Gilbert*, 99 AD3d 108,114 (1stDept2012). In the Opposition, Plaintiff repeatedly refers to the harm to *all* former limited partners. (Opp.at1,2,6,7,11,12,14,21,28,29,31,32,35,46.) Plaintiff also seeks a restoration of "all parties' interests to the status quo ante" if she is successful which would apply to everyone. (Opp.at19.) If she were to obtain the relief she seeks, the relief would apply to everyone.

Plaintiff's lawsuit should be dismissed on this ground alone because "[a] complaint the allegations of which confuse a shareholder's derivative and individual rights will….be dismissed." *Yudell*, at 115.

**POINT TWO**
**PLAINTIFF FAILS TO STATE A CAUSE OF ACTION UNDER NEW YORK PARTNERSHIP OR LIMITED LIABILITY COMPANY LAWS**

Plaintiff calls the Reorganization a "conversion" and Defendants acknowledge use of that word in certain contexts. Regardless of someone's mere use of a word, however, the language of the relevant statute controls. The Reorganization was accomplished pursuant to the discretionary authority expressly granted the General Partners by the Partnership Agreement. Because the Partnership Agreement requires arbitration of all disputes other than those "which, pursuant to this Agreement, are within the discretion of the General Partners" (ComplaintEx.1§15.2.), the very filing of this case in court constitutes an acknowledgment that the Reorganization was a matter left to the discretion of the General Partners—not a matter subject to any merger, consolidation or conversion statute. Plaintiff further admits this was not a statutory transaction in Opp.Ex.20 when after confirming her lawyer is reviewing the documents, she texted her brother on December 18, saying the Contribution Agreement "is the only leverage an LP has." In addition to suggesting Plaintiff was purposefully trying to disrupt the process, she is admitting she does *not* have the statutory leverage of a dissenting limited partner.

In any event, the steps of the Reorganization demonstrate there was no "conversion." Whether the Secretary of State would even accept a certificate of conversion to a foreign LLC is debatable, —the statutory section cited by Plaintiff is unclear.[3] But it does not matter. A

[3] *Miller v. Ross*, 2007NYSlipOp52683(U)(SupCt,NYCounty2007) cited by Plaintiff, is an unpublished decision from 14 years ago. It is accepted practice now that the way to "convert" a New York entity to a foreign entity is through merger. The partnership agreement in *Miller* required the affirmative vote of a majority of each class interest to

conversion is a direct transformation of a limited partnership into another entity with *no* intervening steps. *Klein v. 599 Eleventh*, 2006NYSlipOp 52486(U) (1stDept 2006). A conversion is complete when the certificate of conversion is filed with the department of state. *Id*; *Gee v. Zee*, 2015 NYSlipOp 51685(U) (SupCt, KingsCounty2015). The statute provides they are considered to be the same entity which remains responsible for all obligations. That did not occur here. In fact, the Company was owned by the Partnership until that ownership interest was distributed to the partners, the partnership continued to exist thereafter, and the Company never assumed the Partnership's obligations.

Nor is the transaction a *de facto* merger. Documentary evidence squarely establishes a new entity was formed in which the former General Partners are not members; Plaintiff is the only individual member. (ComplaintEx.28.) Even the most cursory review of the Reorganization Documents reveals that this transaction was not a merger or consolidation of any sort. (ComplaintEx.28.)

Had Plaintiff believed the Reorganization was a statutory procedure, which she admits she was expressly told it was not (FrankAffEx1), she was required to submit a notice of dissent. The exhibits in the Opposition (Opp.at24.) she claims were "dissents" (Opp.Exs.23,24,26,33) are email chains in which Plaintiff's husband and brother ask for more time to review the documents, not a written notice from a dissenting limited partner.

Finally, while the parties agree on the timing calculation under RULPA§121-1105 and BCL§623—they disagree on the starting date. Plaintiff's claim is not time-barred *only* if we accept December 21, 2020 as the start date. Consummation of the transaction is not the starting point of

approve a merger, and the defendant could not avoid that requirement by calling it a conversion. The Partnership Agreement here has no such requirement.

the statutory process—submitting dissents after the transaction was complete would create chaos. Per §121-1102, the starting date is when the transaction is approved, here on December 13, 2020. (ComplaintEx1.) Plaintiff's husband and brother's emails were sent on December 19 or 20, so Plaintiff's December 21 date cannot possibly be correct. The facts do not support any timely filing of a statutory notice and no "good cause" has been shown to hear the time-barred proceeding.

**POINT THREE**
**PLAINTIFF'S REMAINING CLAIMS BELONG IN DELAWARE**

This would not be the first time this Court dismissed non-contractual claims based on contractual forum clauses—it did so in *Mariani* (IndexNo.656792/16,Doc.No.28), an action for tortious interference and breach of fiduciary duty from defendants' alleged scheme to steal plaintiff's ownership interest in a company. *Id.*at 6. This Court held "[e]ven where, as here, a plaintiff alleges tortious conduct, a forum selection clause in the agreement from which that conduct purportedly arises will not be disregarded." *Id.*at 7. The tort claims were dismissed because "Mariani challenges the defendants' attempts to diminish her ownership interest…which arose from the consultancy agreement" prescribing England as the forum. *Id.*at 7-8.

The Distribution Agreement is the precise source of Plaintiff's interest in the Company (Opp.at27; Ex.A.)[4] and provides "[a]ny action or proceeding against the parties relating in any way to this Agreement may be brought and enforced exclusively in the courts of the State of Delaware." Plaintiff is a party to that agreement by virtue of its execution on her behalf by her attorneys-in-fact. Regardless of the nature of Plaintiff's attack on the consequences of that agreement—whether it is binding on her or violated the Partnership Agreement—it is by definition

[4] Plaintiff alleges some mystery changes to the Operating Agreement at the 11th hour. There is no mystery—the Individual Defendants needed to decide what to do about Plaintiff's refusal to sign her Contribution Agreement. So, they made changes to the final Operating Agreement that provided an equal interest in the Company that she'd had in the Partnership so that she could receive her in-kind distribution upon the closing of the transaction.

an action against the parties related "in any way" to that agreement. Without the Distribution Agreement Plaintiff would have no interest in the Company. Thus, like *Mariani*, the forum selection provisions of those documents cannot be disregarded.

## POINT FOUR
## PLAINTIFF'S CAUSES OF ACTION 3 - 10 CANNOT SURVIVE DISMISSAL

### A. Plaintiff Fails to Meet the High Pleading Bar for a Fiduciary Duty Claim

Plaintiff alleges "sleight of hand and outright lies" for which she provides no detail or documentary proof. (Opp.at26.) Plaintiff does not refute the documentary evidence that Plaintiff was provided *six* copies of the Reorganization Documents and her family members practically begged her to sign the Contribution Agreement—only 1½ pages of text—to become a member in her Family LLC. (KelleyAffEx.3-8.) The fact that Plaintiff's refusal to join a Family LLC required Defendants to create an alternative mechanism to distribute Plaintiff's fair share of the assets in kind via membership in the Company does not even come close malicious misconduct required for a breach of fiduciary duty claim.

Plaintiff's most ridiculous theory of misconduct is "by taking membership interests in the Company and the designated Family LLCs with no attaching personal liability in exchange for their general partner interests in the Partnership, exposing them to unlimited personal liability…Defendants were in fact usurping substantial value for themselves at the expense of the Limited Partners, including Plaintiff." (Opp.at26.) If relief from personal liability by transitioning from a partnership to an LLC is a breach of fiduciary duty or a conversion of property, courts would be overwhelmed with litigation. No case supporting such a theory was cited by Plaintiff and after a diligent search Defendants are confident none exists. In any event, allegations that Defendants no longer have obligations to the members (ComplaintEx.28) are belied by the Operating Agreements and case law confirming managers of an LLCs still have fiduciary duties

to non-managing members. *Kelly v. Blum*, 2010WL629850 (Del.Ch.2010). The members remain protected.

Plaintiff claims Defendants "failed to offer any evidence to conclusively disprove the allegations that Defendants single out Plaintiff, a Limited Partner in the Partnership, for disparate, unfair, and malicious treatment, as plaintiff received an economic interest in the Company with no rights other than the right to receive distributions." (Opp.at27-28.) This is simply preposterous. As confirmed by the dozens of documents attached to the affidavits,[5] Plaintiff was sent the Reorganization Documents on December 15, just like everyone. (KelleyAffEx.3.) She was asked to submit any questions, just like everyone. (KelleyAffEx.4; StaffaAff¶6.) She was provided with the answers to her family members' questions (she did not submit any of her own). (KelleyAffEx.4; StaffaAff¶6.) She was given the same deadline for signature as everyone else. (KelleyAffEx.5.) She did not meet the deadline, and when she did not, she was given an extension (i.e., more *favorable* treatment than others). (KelleyAffEx.8.) Plaintiff's mother repeatedly asked Plaintiff to sign the Agreements on time over email and text message. (KelleyAffExs.3,5-7.) She was not singled out for exclusion—she was given the same opportunity as every former limited partner.

Finally, Plaintiff is wrong that the business judgment rule cannot apply at the dismissal stage. *See Avramides v. Moussa*, 158AD3d499,500 (1stDept 2018) (granting a motion to dismiss because the allegations in the case fall squarely within the protections of the business judgment rule); *Giuliano v. Gawrylewski*, 122AD3d477,478 (1stDept 2014) (finding the court properly granted a motion to dismiss breach of fiduciary duty claims against defendants, due to plaintiffs'

[5] Plaintiff frequently challenges the affidavits. The affidavits by and large authenticate the relevant documents that prove Plaintiff has no claims. Looking only at the documents themselves, Defendants have submitted a plethora of evidence warranting dismissal.

failure to rebut the presumptions of loyalty, prudence and good faith under the business judgment rule). The series of events here, established by clear documentary evidence, show all good faith efforts to include Plaintiff as a member of her Family LLC.

**B. Plaintiff's Fraud Claim Fails**

Plaintiff's tortured attempt to cobble together a list of supposed misrepresentations does not clear the high hurdle the law requires for pleading fraud. Everything she alleges as untrue *was* actually true for anyone who signed his or her Contribution Agreement. Plaintiff alleges the GPs represented that the operating agreement was not final, but the representation was it would be substantially in the form as the draft and the new structure would not "depart substantially from what is currently in place." (Opp.at29.) The Operating Agreement does serve essentially the same function as the Partnership Agreement. (*Compare* ComplaintEx.28 *with* MellenAffEx.1.) Moreover, these supposed misrepresentations came from Kenneth Frank ("Frank"), but he is not a former partner, current member, or defendant in this matter.[6]

Alleging the Individual Defendants "knowingly" made false statements to induce reliance (Opp.at31-32), ignores the documentary evidence. Affidavits from all fifteen (15) limited partners overwhelming disagree with Plaintiff's claims. (Ex.E.)[7] Moreover, all limited partners had the opportunity to submit questions about the LLC, and answers were given to all who did—including Plaintiff—and all answers were shared with her. (KelleyAffEx.4.) Plaintiff cites no conduct

[6] Plaintiff attempts to impute Frank's statements to the Company, arguing that he acted as counsel during the Reorganization. He did not, and she admits that she was informed as such. Her only argument to the contrary was Frank's statement in FrankAff that he provides legal services from time to time. Everyone was clear that the transaction was not one of those times.

[7] Due to notary error, Sarah Brumfield's affidavit was mis-dated and appended to an earlier version of the affidavit. The corrected affidavit is attached as Ex.C hereto.

establishing Defendants had knowledge of any falsity or any intent to induce reliance thereon. Instead, they strongly encouraged her to be a member of her Family LLC. (KelleyAffExs.3,5-7.)

Finally, Plaintiff is wrong that justifiable reliance is "rarely amenable to determination on a motion to dismiss." (Opp.at32.) *See Rapaport v. Strategic Financial*, 190AD3d657 (1stDept2021) (motion to dismiss fraud claim was proper where there was no reliance); *Churchill v. BNP Paribas*, 95AD3d614,615 (1stDept2012).

As shown by Plaintiff's text messages, she did *not* rely on any statements by Defendants—otherwise she would have accepted their pleas to join the Family LLC and this lawsuit would not exist. Plaintiff is an attorney, a law professor, and was represented by counsel. (*See* Opp.Ex20; KelleyAff. hereto as Ex. D.) In these texts appended the affidavit (Ex.1), Plaintiff told her brother, Alex Bockman, she was speaking to her lawyer. Later she says, "After reading Chase's email I'm just handing it off to Ben [her lawyer]." Then on the 21st, she states: "Hi—I was able to speak to my attorney. The concern that we had raised can be addressed after if it actualizes. He pointed out a few things but in light of my conversation with Tim- I am ready to move forward." She clearly did not rely on the expertise of any of the Defendants—she relied on her own independent counsel.

### C. Plaintiff Likewise Fails to Plead Negligent Misrepresentations

Plaintiff's negligent misrepresentation claim is similarly insufficient. Plaintiff alleges, "Kelley stated in her December 15, 2020 email to Limited Partners, including plaintiff, that [i]n the new structure you have a vote on certain major decisions which… was not true because Plaintiff does not have the right to vote on anything." (Opp.at35.) As a second example, Plaintiff alleges that Kelley said, "'[y]ou may be assured I have not and will not take any action which might be to [Plaintiff's] detriment, which of course, was not true because Kelley and the rest of the General

Partners decided to relegate Plaintiff to receive a non-voting membership interest with significantly lower value." (Opp.at35.)

Plaintiff had no right to vote as a limited partner and has not right to vote now. Kelley did not make any misrepresentations or take anything away from Plaintiff. It was true in the new structure, former limited partners would have certain voting rights in their Family LLCs but Plaintiff consciously elected not to do so. Defendants' documentary evidence demonstrates Plaintiff was well informed about the Plan, was asked multiple times to sign the Contribution Agreement and knew she would remain as a limited partner if she did not. Darcy's affidavit shows Plaintiff received ***three*** complete copies of the final four-page Contribution Agreement before the initial December 18 deadline expired, and a total of ***six*** copies before the extended deadline. (KelleyAffEx3-8.) Additionally, as discussed above, Plaintiff cannot establish justifiable reliance.

**D. Plaintiff's Minority Oppression Claim Fails**

Because her 1% interest in the family business has not changed Plaintiff fails to state a claim of minority oppression. Plaintiff disputes this point because "Defendants deprived Plaintiff of her valuable interest in the Partnership and secretly, and without Plaintiff's consent, converted her interest to a non-voting Class B Unit in a Delaware LLC with no rights other than a right to distribution." (Opp.at37.) Plaintiff knew from the resolution sent to her on December 15, 2020, action could be taken on her behalf if she chose not to join a Family LLC, which provides: (ComplaintEx.1)

> [T]o the extent any consent or approval of any matter described herein may be required by a Limited Partner whose partnership interest was not transferred to their respective Family LLC, the General Partners have full power and authority to act on their behalf and consent to, approve or ratify all acts contemplated by this Resolution, and to execute, on behalf of such Limited Partner any documents signifying such consent, approval or ratification.

Plaintiff claims Defendants intentionally kept her in the dark and gave her no time to review the final drafts of the agreements. (Opp.at38.) She claims she was taken off of communications with Frank without her knowledge, knowing quite well he stopped emailing her because she demanded it! (*See* Ex.E hereto, "I am going to ask you not to email me anymore;" KelleyAffEx.1, "I have no interest in speaking with mom or kenny or chase".) She claims she never received the answers to questions from her cousin Timothy, but his affidavit confirms she *asked* if he received answers and he forwarded them to her on December 18. (StaffaAff¶6.) Plaintiff confirms in her texts Timothy about the transaction. (KelleyAffEx.1.)

Plaintiff incorrectly relies on *Kassab v. Kasab*, 56Misc.3d1213(A), 65NYS492 (SupCt,QueensCounty2017) for her claim that minority oppression is a fact-specific inquiry generally inappropriate for a motion to dismiss. The *Kassab* court *did* dismiss an oppression claim pursuant to CPLR § 3211. *See also CIP GP v. Koplewicz*, 194AD3d639 (1stDept2021) (granting motion to dismiss a claim for minority oppression).

**E. Plaintiff's Conversion and Unjust Enrichment Claims Fail**

Plaintiff cannot state a claim for conversion or unjust enrichment because she has not been deprived of property. Plaintiff argues "Defendants' enrichment was to the detriment of and at the expense of Plaintiff, who was the only one to receive a non-voting membership interest and therefore suffered loss of economic value, voting rights, and the right to access books and records of the family business." (Opp.at40.) Plaintiff suffered no such losses nor alleges how Defendants were enriched. Even if she lost something Defendants have not benefitted.

Furthermore, Plaintiff's conversion and unjust enrichment claims must be dismissed because they relate to the interest she received by virtue of the contractual Reorganization Documents, including the Distribution Agreement, and other documents Plaintiff admitted in her

first verified Complaint were valid and binding, all of which confer exclusive jurisdiction on Delaware courts.

**POINT FIVE**
**A NON-EXISTENT PARTNERSHIP CANNOT BE SUED**

The Partnership no longer exists. Plaintiff incorrectly cites *Emerson Radio v. Eskind*, 228 NYS2d 841, 843 (SupCt,NYCounty,Sp.Term1957), where the court held "on dissolution the partnership is not terminated but continues until the winding up of partnership affairs is completed." Brisbane Limited Partnership was dissolved on December 21, 2020, when the assets were distributed, and its terms expired well before Plaintiff filed her Complaint. *See Zartone v. Tedone*, 221AD2d525 (2dDept1995) (holding that where the partnership was dissolved prior to the commencement of the action, it was not capable of being named as a defendant).

Moreover, RULPA § 121-801 provides a partnership is dissolved at the time provided in the partnership agreement. Pursuant to ¶13.8 of the Partnership Agreement the partnership was dissolved when its assets were distributed.

**CONCLUSION**

For the foregoing reasons, Plaintiff's Amended Complaint must be dismissed with prejudice.

Dated: New York, New York
July 6, 2021

Respectfully submitted,

VEDDER PRICE P.C.

By: *s/ Nicole J. Wing*

Nicole J. Wing (*pro hac vice*)
222 N. La Salle Street
Chicago, Illinois 60601
(312) 609-7500 (tel.)
(312) 609-5005 (fax)

Victoria L. Jaus
1633 Broadway
31st Floor
New York, New York 10019
(212) 407-7700 (tel.)
(212) 407-7799 (fax)

*Attorneys for Defendants Brisbane Associates, LLC, Seward Brisbane LLC, Alice Brisbane LLC, Elinor Brisbane LLC, Sarah Brisbane LLC, Chase Mellen III, Charles A. Brisbane, Abigail Mellen, Darcy B. Kelley, and Allaire B. Stallsmith*

**WORD COUNT CERTIFICATION**

I, Nicole J. Wing, in accordance with 22 NYCRR 202.8-b, certify that the foregoing Reply Memorandum of Law in Support of Motion to Dismiss the Amended Complaint by Defendants contains 4,190 words, as counted by Microsoft Word's word-processing system excluding the caption, date, and signature block.

Dated: New York, New York
July 6, 2021

Respectfully submitted,

VEDDER PRICE P.C.

By: *s/ Nicole J. Wing*
Nicole J. Wing (*pro hac vice*)
222 N. La Salle Street
Chicago, Illinois 60601
(312) 609-7500 (tel.)
(312) 609-5005 (fax)