SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

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MARY L. TRUMP,

Plaintiff,

- v -

DONALD J. TRUMP, in his personal capacity, MARYANNE TRUMP BARRY, and SHAWN HUGHES, the executor of the ESTATE OF ROBERT S. TRUMP, in his capacity as executor,

Defendants.

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INDEX NO. 654698/2020

MOTION DATE 01/11/2022, 05/12/2021

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

ROBERT R. REED, J.S.C.:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 69, 70, 71, 72, 82, 97

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 78, 79, 80, 81, 88, 96

were read on this motion to DISMISS.

Plaintiff Mary L. Trump (plaintiff) alleges that defendants Donald J. Trump, Maryanne Trump Barry, and Robert S. Trump, her uncles and aunt, carried out a fraudulent scheme to siphon funds from minority interests that she inherited in the family business, concealed their grift, and deceived her about the true value of what she had inherited. Plaintiff alleges that she reasonably relied upon their misrepresentations, and that, as a result, in April 2001, she relinquished her interests at a significantly underestimated value.

Maryanne Trump Barry moves, pursuant to CPLR 3211 (a) (3), (5), and (7), to dismiss the complaint as time-barred, barred by a release, and for failure to state a cause of action (motion sequence number 001).

Donald J. Trump and Shawn Hughes, as executor of the estate of Robert S. Trump, also move, pursuant to CPLR 3211 (a) (3), (5), and (7), to dismiss the complaint on the same grounds (motion sequence number 002).

Because plaintiff's claims are barred by releases, both motions are granted and the complaint is dismissed.

BACKGROUND

The following facts are taken from the complaint. Plaintiff, a clinical psychologist and author, is the granddaughter of Fred C. Trump (Fred Sr.), a property developer and landlord in New York City (NYSCEF doc. no. 20, complaint ¶ 31). Fred Sr. had five children: Maryanne Trump Barry; Mary's late father, Fred Trump Jr. (Fred Jr.); Elizabeth Trump Grau; Donald J. Trump; and Robert S. Trump (*id.*, ¶ 41). Plaintiff's father, Fred Jr., died in 1981 when she was sixteen years old (*id.*, ¶ 2).

Donald J. Trump is the former President of the United States (*id.*, ¶ 32). From 1999 to 2019, Maryanne Trump Barry served as a judge on the United States Court of Appeals for the Third Circuit (*id.*, ¶ 33). Robert S. Trump was a New York businessperson and real estate developer who passed away in August 2020 (*id.*, ¶ 34).

When plaintiff's father died, she inherited various minority interests in the Trump family real estate business (*id.*, ¶ 5). She became the beneficial owner of rights in over 70 acres of land in New York City, improved by more than 50 buildings and a shopping center (the Land Interests), in addition to interests in a collection of entities known as the Midland Associates

Group (Midland), which held hundreds of New York City apartments, various other assets, and a portion of a 153-acre development (the Midland Interests) (*id.*, ¶¶ 48-58). Plaintiff was also a beneficiary of an irrevocable trust that her grandfather had established in 1976 (the 1976 trust) (*id.*, ¶ 60).

Plaintiff's Land Interests

Plaintiff's Land Interests included: (1) a 10% interest in the land underlying Beach Haven, a complex in Coney Island, Brooklyn, spanning over 40 acres improved with at least 26 buildings; and (2) a 5% interest in the land underlying Shore Haven, a complex in Bensonhurst, Brooklyn, spanning more than 30 acres improved by 32 six-story buildings and a shopping center (*id.*, ¶¶ 46, 48-49). According to plaintiff, Beach Haven and Shore Haven were the "crown jewels in the Trump family's empire" (*id.*, ¶ 47). As a minority owner, plaintiff had an interest in the cash streams under the terms of leases and reversion interests in the land and buildings and improvements (*id.*, ¶ 52).

Plaintiff's Midland Interests

Plaintiff inherited a combined 10% interest in Midland, which the Trump family referred to as "the mini-empire" (*id.*, ¶ 54). Midland was made up of the following four entities: Midland Associates, LLC; Park Briar Associates, LLC; Highlander Hall, Inc.; and Coronet Hall, Inc. (*id.*, ¶ 55). Plaintiff held a 10% interest in each of these entities (*id.*). Midland owned certain sponsor corporations that held, among other things, unsold cooperative shares in various apartment buildings (*id.*, ¶¶ 54, 55). Midland generated revenue by selling sponsor apartments, by renting unsold units, and by issuing loans (*id.*, ¶ 57). According to plaintiff, her interest in Midland entitled her to portions of each of these revenue streams (*id.*).

The 1976 Trust and Plaintiff's Interest in Fred Sr.'s Estate

Plaintiff alleges that, in 1976, Fred Sr. established irrevocable trusts then worth $400,000 for each of his grandchildren, including plaintiff (*id.*, ¶ 60). Plaintiff was also a beneficiary of Fred Sr.'s estate (*id.*, ¶ 62).

Plaintiff's Allegations that Defendants Owed Her Fiduciary Duties

According to plaintiff, in the 1980s and 1990s, as Fred Sr. descended into dementia, defendants maneuvered to take control over his business, including every entity in which plaintiff had an interest. Defendants became majority co-owners of the Land Interests (*id.*, ¶ 64). They were also majority partners, members, and owners of Midland (*id.*). Plaintiff alleges that they dominated and controlled various management companies and purchasing agents that transacted with Midland (*id.*, ¶ 66). Defendants were also co-trustees of Fred Sr.'s 1976 trust (*id.*, ¶ 61).

As described below, plaintiff alleges that defendants engaged in three fraudulent schemes against her (*id.*, ¶ 11).

The First Alleged Fraudulent Scheme -- Plaintiff's Allegations as to Grift:

Plaintiff alleges that, between 1981 and 2001, defendants siphoned millions of dollars from plaintiff's interests in entities that defendants controlled, while concealing those transfers as legitimate business transactions (*id.*, ¶ 68).

For example, as first reported by *The New York Times* in 2018, defendants set up a sham corporation in 1992 called All County Building Supply & Maintenance Co., Inc. (All County), which was a shell without any corporate offices (*id.*, ¶¶ 69-70). Plaintiff alleges that defendants falsely portrayed All County as a legitimate middleman between vendors that provided maintenance and supplies for Trump properties and the operating companies that paid those

vendors (*id.*). According to plaintiff, All County then issued "padded" invoices to the Trump entities marking up the purchases, and defendants pocketed the difference (*id.*). Plaintiff alleges that defendants concealed this grift through descriptions in financial statements such as "repairs," "maintenance," and "supplies" (*id.*, ¶ 94).

In addition, defendants allegedly used management companies that they owned and controlled, including Trump Management, Inc. (Trump Management) and Apartment Management Associates Inc., to make secret cash distributions to themselves under the guise of "management," "consulting," and "maintenance" fees and related salaries (*id.*, ¶¶ 74-75).

As alleged by plaintiff, defendants also issued loans to other entities that they controlled (*id.*, ¶ 76). These loans either did not have any repayment terms, did not impose any obligation to pay interest, or charged preferential rates far more favorable to the borrower than those in an arms-length transaction (*id.*).

The Second Alleged Fraudulent Scheme -- Plaintiff's Allegations as to Devaluing:

Plaintiff further alleges that defendants used "phony" appraisals and other valuation tricks to dramatically understate the value of plaintiff's interests in financial statements year after year (*id.*, ¶¶ 83, 127-128, 160-163). Plaintiff claims that defendants procured fraudulent appraisals from their co-conspirator Robert Van Ancken (Von Ancken), an appraiser who performed favorable appraisals for defendants after Fred Jr.'s death (*id.*, ¶¶ 79, 80).

According to the complaint, Von Ancken inflated or deflated valuations based on the purposes for which defendants requested those valuations (*id.*, ¶ 81). For instance, in 1992, when Fred Sr. decided to donate Patio Gardens, one of his least profitable complexes, and take a charitable deduction, Von Ancken provided an inflated assessment: $34 million, or $61.90 per square foot (*id.*, ¶ 82). By providing such an inflated appraisal, Von Ancken boosted the tax

deduction Fred Sr. claimed on his tax return (*id.*). By contrast, in 1995, Von Ancken priced Beach Haven and Shore Haven, in which plaintiff had reversion interests, at a mere $23 million, or $11.01 per square foot, even though they were much more lucrative than Patio Gardens (*id.*, ¶ 83). Plaintiff further alleges that Von Ancken's false valuations were based on false and misleading data and other management information that defendants provided to Von Ancken (*id.*, ¶ 84).

The Third Alleged Fraudulent Scheme -- Plaintiff's Allegations as to the "Squeeze-Out":

Additionally, plaintiff claims that, upon Fred Sr.'s death in 1999, defendants saw an opportunity to push her out of the family business altogether (*id.*, ¶ 3). Defendants filed a probate petition seeking to probate Fred Sr.'s will in Surrogate's Court, Queens County (*id.*, ¶¶ 109, 112).

A few days after Fred Sr. died, plaintiff received a call from Robert Trump, who told her that it was time for her to relinquish her interests (*id.*, ¶ 110). Over the next month, Robert reiterated the same message to plaintiff: "Cash in your chips, Honeybunch" (*id.*). She claims that, in October 1999, Robert threatened that "[i]f [plaintiff] did not comply with their demands, including consenting to probate, Defendants would bankrupt Midland and 'leave you paying taxes on money you don't have for the rest of your lives'" (*id.*, ¶ 112).

On March 23, 2000, plaintiff and her brother, Fred III, filed objections to the probate petition on the ground that Fred Sr. had not been of sound mind when his will was finalized (*id.*, ¶ 113). At the recommendation of her trustee, Irwin Durben, plaintiff retained an attorney named John Barnosky (Barnosky) to represent her (*id.*, ¶¶ 6, 20). Plaintiff alleges, "[w]hether because of conflicted loyalties or because he was duped by [defendants] as well," that Barnosky did not

keep her fully informed of material information and pursued a settlement without ensuring that he and plaintiff had complete and accurate information (*id.*, ¶ 114).

In retaliation for filing objections to probate, defendants allegedly terminated the health insurance for her, Fred III, and her infant nephew, William, which had been provided through Trump Management (*id.*, ¶ 117). Plaintiff alleges that William was later diagnosed with cerebral palsy (*id.*, ¶ 21). When defendants terminated her nephew's health insurance, plaintiff allegedly became desperate (*id.*, ¶ 118). She told the press, "William is my father's grandson. He is as much a part of that family as anybody else. He desperately needs extra care" (*id.*). Plaintiff and Fred III, represented by Barnosky, sued defendants for breach of contract in Supreme Court, Nassau County, seeking an injunction restoring their health insurance (*id.*, ¶ 119).

In response to that action, plaintiff alleges, defendants told plaintiff that they would only settle with her if she agreed to a buyout of her interests altogether (*id.*, ¶ 120). In a series of discussions, defendants allegedly fraudulently understated the fair market value of her Midland Interests and Land Interests, as well as the value of her interests in grantor-retained annuity trusts and the value of Fred Sr.'s gross estate (*id.*, ¶¶ 128, 137, 142).

More specifically, with respect to her Midland Interests, plaintiff alleges that defendants fraudulently understated the value of Starrett City, a Brooklyn housing development that later sold for $905 million dollars in 2018 (*id.*, ¶¶ 123, 125). On December 8, 2000, defendants' attorney informed plaintiff's attorney that "Starrett City was valued at a nominal amount based on information obtained from management" (*id.*, ¶ 124). On December 21, 1999, defendants provided plaintiff with financial statements, tax returns, and schedules of cash disbursements for the period 1989 through 1993 for Midland, which allegedly compounded defendants' prior fraudulent misrepresentations and omissions (*id.*, ¶ 126).

With respect to her Land Interests, plaintiff alleges that defendants fraudulently misrepresented the nature of her interests by merely portraying those interests as rights to cash streams from "ground leases," even though she had reversion interests in the buildings themselves, not just interests in the land underlying the developments (*id.*, ¶ 130). On December 21, 1999, plaintiff alleges, defendants provided plaintiff with valuations of Beach Haven and Shore Haven at a mere $23 million, or $11.01 per square foot, which was allegedly far lower than their true market value (*id.*, ¶ 132). Plaintiff also alleges that defendants provided her with fraudulent valuations performed by Von Ancken, which vastly understated the value of the reversion interest in Shore Haven Shopping Center at $1,330,000 and the reversion interest in Beach Haven Shopping Center at $2,530,000 (*id.*, ¶ 133). According to plaintiff's allegations, defendants also provided her with gift and estate tax returns for Fred Sr.'s estate that fraudulently undervalued her interests "based on present value of stream of payments" (*id.*, ¶ 135). Additionally, plaintiff alleges that the ground leases "were excessively preferential to Defendants' entities as lessees and far below market," and "[t]hese extremely low lease payments increased the flow of value to Defendants as lessees to the detriment of [plaintiff] and other stakeholders as lessor" (*id.*, ¶ 136).

With respect to her interests in Fred Sr.'s estate, defendants allegedly provided her with a May 18, 2000 letter that fraudulently understated the value of 11 properties associated with his estate, including the Fountainebleau Apartments, Lawrence Towers, Tysens Park Apartments, Shore Haven Shopping Center, and Beach Haven Shopping Center (*id.*, ¶ 139). Defendants allegedly misrepresented the value of the properties in grantor-retained annuity trusts as just $93.9 million in December 2000 statements (*id.*, ¶ 140). However, nine years later, banks valued these assets at nearly $900 million (*id.*). Based on the allegedly fraudulent data that defendants

provided, plaintiff's attorneys calculated that "the amount we would receive if were totally victorious in this regard is approximately $13,400,000" (*id.*, ¶ 141).

Although plaintiff eventually entered into a settlement agreement in which she relinquished her interests, she alleges that she reasonably relied on defendants' fraudulent undervaluations, and that had she been provided with accurate information, she would not have accepted the terms of the settlement (*id.*, ¶¶ 128, 137, 142). Plaintiff alleges that defendants "fleeced her of tens of millions of dollars or more" (*id.*, ¶ 3).

Plaintiff asserts that defendants' fraud only came to light with the publication of an investigative report by *The New York Times* on October 2, 2018 (*id.*, ¶ 145). She alleges that the report was based on "interviews with Fred Trump's former employees and advisers," in addition to invoices and purchase orders obtained from vendors and other documents (*id.*).

The Instant Complaint

The complaint, filed on September 24, 2020, asserts the following eight causes of action: (1) fraudulent misrepresentation; (2) fraudulent concealment; (3) fraudulent inducement; (4) negligent misrepresentation; (5) civil conspiracy to commit fraudulent misrepresentation and fraudulent concealment; (6) civil conspiracy to commit fraudulent inducement; (7) breach of fiduciary duty; and (8) aiding and abetting a breach of fiduciary duty (*id.*, ¶¶ 147-169, 170-184, 185-194, 195-204, 205-213, 214-220, 221-230, 231-236).

The Parties' Contentions with Respect to the Releases

Defendants move to dismiss the complaint, arguing that plaintiff's claims are barred by general releases, that she signed in connection with a settlement agreement dated April 10, 2001, under which she withdrew her objections to Fred Sr.'s will, sold all of her Land and Midland Interests, and took a distribution on the principal of the 1976 trust (NYSCEF Doc No. 29 at 10,

11, 17-18). Specifically, defendants assert that she signed four general releases in their favor, releasing each defendant from "all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, demands whatsoever, in law, admiralty or equity" plaintiff "ever had, now ha[s] or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the date of the world to the date of [the] RELEASE" (NYSCEF Doc No. 21 at 1-4).[1]

In response, plaintiff contends that the releases do not clearly and unambiguously release her claims in this action. Plaintiff argues that the releases were intended to resolve the probate proceeding and the breach of contract case relating to the health insurance that defendants revoked, not to release unknown fraud claims relating to plaintiff's interests. According to plaintiff, the releases referred to the settlement agreement, and explicitly carved out claims relating to the sale of her interests. Plaintiff contends that the settlement agreement required defendants to furnish tax returns and financial information for the Midland entities to plaintiff. However, the information that defendants provided only compounded and effectuated their fraud. Plaintiff also maintains that the limited scope of the releases is underscored by the fact that the parties contemporaneously signed a separate release relating to the 1976 trust as part of the settlement agreement (NYSCEF Doc No. 30 at 2).

Furthermore, plaintiff argues that the releases are unenforceable because she signed them only after defendants withdrew health insurance from her infant nephew. Plaintiff points out that defendants threatened to bankrupt Midland, as well as her. She also asserts that she was an

[1] Plaintiff signed four substantially identical releases, one in favor of each defendant and one in favor of all the defendants together.

unsophisticated party who depended on her aunt and uncles, who were highly sophisticated with superior access to information.

DISCUSSION

"A party may move for judgment dismissing one or more causes of action asserted against him [or her] on the ground that . . . the cause of action may not be maintained because of . . . [a] release" (CPLR 3211 [a] [5]). "In resolving a motion for dismissal pursuant to CPLR 3211 (a) (5), the plaintiff's allegations are to be treated as true, [and] all inferences that reasonably flow therefrom are to be resolved in his or her favor" (*Sacchetti-Virga v Bonilla*, 158 AD3d 783, 784 [2d Dept 2018], quoting *Ford v Phillips*, 121 AD3d 1232, 1234 [3d Dept 2014]; *see also Enock v National Westminster Bankcorp*, 226 AD2d 235, 236 [1st Dept 1996]).

"It is well established that a valid release constitutes a complete bar to an action on a claim which is the subject of the release" (*Global Mins. & Metals Corp. v Holme*, 35 AD3d 93, 98 [1st Dept 2006], *lv denied* 8 NY3d 804 [2007]). "A release is a contract, and its construction is governed by contract law" (*Davis v Rochdale Vil., Inc.*, 109 AD3d 867, 867 [2d Dept 2013] [internal quotation marks and citation omitted]). Where "the language of a release is clear and unambiguous, the signing of a release is a 'jural act' binding on the parties" (*Booth v 3669 Delaware*, 92 NY2d 934, 935 [1998], quoting *Mangini v McClurg*, 24 NY2d 556, 563 [1969]).

> "Although a defendant has the initial burden of establishing that it has been released from any claims, a signed release 'shifts the burden of going forward . . . to the [plaintiff] to show that there has been fraud, duress or some other fact which will be sufficient to void the release'"

(*Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011], quoting *Fleming v Ponziani*, 24 NY2d 105, 111 [1969]).

"[A] release may encompass unknown claims, including fraud claims, if the parties so intend and the agreement is 'fairly and knowingly made'" (*Centro Empresarial Cempresa S.A.*,

17 NY3d at 276, quoting *Mangini*, 24 NY2d at 566-567). Where a party releases a fraud claim, it "may later challenge that release as fraudulently induced only if it can identify a separate fraud from the subject of the release" (*id.*). "Were this not the case, no party could ever settle a fraud claim with any finality" (*id.*). While a release may be set aside on traditional grounds, including duress, illegality, fraud, or mutual mistake, "[a] release should never be converted into a starting point for litigation except under circumstances and under rules which would render any other result a grave injustice" (*Phillips v Savage*, 159 AD3d 1581, 1581 [4th Dept 2018], quoting *Centro Empresarial Cempresa S.A.*, 17 NY3d at 276 [internal quotation marks and citation omitted]).

Moreover, the Court of Appeals has held that "'[a] sophisticated principal is able to release its fiduciary from claims – at least where . . . the fiduciary relationship is no longer one of unquestioning trust – so long as the principal understands that the fiduciary is acting in its own interest and the release is knowingly entered into'" (*Pappas v Tzolis*, 20 NY3d 228, 232 [2012], *rearg denied* 20 NY3d 1075 [2013], quoting *Centro Empresarial Cempresa S.A.*, 17 NY3d at 278). "Where a principal and fiduciary are sophisticated parties engaged in negotiations to terminate their relationship, . . . the principal cannot blindly trust the fiduciary's assertions" (*Centro Empresarial Cempresa S.A.*, 17 NY3d at 279). "The test, in essence, is whether, given the nature of the parties' relationship at the time of release, the principal is aware of information about the fiduciary that would make reliance on the fiduciary unreasonable" (*Pappas*, 20 NY3d at 233).

Here, defendants have established that the releases bar plaintiff's claims. Plaintiff executed releases releasing defendants from "all actions" and "causes of action" which plaintiff "ever had, now [has] or hereafter can, shall or may, have for, upon, or by reason of any matter,

cause or thing whatsoever from the beginning of the world to the day of the date of this RELEASE, except for any obligations under a certain [settlement agreement] signed simultaneously herewith" (NYSCEF Doc No. 21 at 1-4). The settlement agreement referenced therein states that:

> "the parties hereto wish to avoid the uncertainty, further expense and delay incident to protracted litigation and believe it is in the best interest of all concerned that the controversies raised by those proceedings be compromised and settled, on a 'global basis' in order to resolve all of their differences pertaining to the two (2) probate proceedings; the insurance case; partnership and corporate interests; as well as their interests in two (2) inter vivos trusts established by FRED C. TRUMP as the Settlor"

(NYSCEF Doc No. 29 at 6).

The settlement agreement also provides:

> "Separate and apart from the exchange of General Releases in the two (2) aforementioned Probate Proceedings covered by paragraphs 1 to 7, inclusive, the Plaintiffs and Defendants will exchange General Releases as individuals [as] well as in their representative capacities, such as but not limited to, 'Parent and natural guardians,' 'preliminary Co-Executors', 'Co-Executors' and officers and directors of APARTMENT MANAGEMENT ASSOCIATES, INC. and TRUMP MANAGEMENT, INC. and as partners, officers and directors in the Midland Associates Group"

(*id.* at 11-12).

Reading the releases and settlement agreement together (*see NAB Constr. Corp. v City of New York*, 276 AD2d 388, 389 [1st Dept 2000] [releases that were executed at the same time and concerned the same subject matter "should have been read together to discern the intention of the parties"]), these documents clearly and unambiguously released defendants from unknown claims, including fraud claims. There is no indication that the parties intended to limit the releases to known claims at the time they executed the releases and settlement agreement. By using the language "all actions" and "causes of action" plaintiff "can," "shall" or "may" have against defendants "by reason of any matter, cause or thing whatsoever," plaintiff released

defendants from unknown fraud claims when she signed the releases (*see Centro Empresarial Cempresa S.A.*, 17 NY3d at 277 [general release barring "all manner of actions" in conjunction with the reference to "future" and "contingent" actions indicated an intent to release defendants from fraud claims unknown at the time of the contract]; *Consorcio Prodipe, S.A. de C.V. v Vinci, S.A.*, 544 F Supp 2d 178, 192 [SD NY 2008] [broad release language encompassed fraudulent inducement claim]; *see also Miller v Brunner*, 164 AD3d 1228, 1231 [2d Dept 2018] [identical release language barred plaintiff's claim for breach of contract]; *cf. Desiderio v Geico Gen. Ins. Co.*, 107 AD3d 662, 663 [2d Dept 2013] [release and trust agreement did not contain broad, all-encompassing language]).

Contrary to plaintiff's contention, the releases did not carve out claims relating to the sale of her interests. The releases only excepted *obligations* to be performed under the settlement agreement (NYSCEF Doc No. 21 at 1-4). Plaintiff's claims for fraudulent misrepresentation, fraudulent concealment, fraudulent inducement, negligent misrepresentation, civil conspiracy, breach of fiduciary duty, and aiding and abetting a breach of fiduciary duty all fall within the broad scope of the releases (NYSCEF Doc No. 20 ¶¶ 147-169, 170-184, 185-194, 195-204, 205-213, 214-220, 221-230, 231-236). Further, that plaintiff signed a separate release in connection with the 1976 trust does not limit the scope of the general releases; that release applied to "claims, demands, or liabilities whatsoever . . . which [plaintiff], has, or might have, . . by reason of the acts and proceedings of the Trustees and as to all matters set forth in the documents made available to them and agreed upon in this instrument of Receipt and Release" (NYSCEF Doc No. 30 at 3). Given that the releases are unambiguous, the "court is not free to alter the [language] to reflect its personal notions of fairness and equity" (*Greenfield v Philles Records*, 98 NY2d 562, 570 [2002]).

In addition, plaintiff fails to allege a *separate* fraud from the subject of the releases. The crux of the complaint is that defendants provided plaintiff with fraudulent tax returns, financial statements, and other documents that materially underestimated the value of her Midland Interests and Land Interests and interests in Fred Sr.'s estate, and that, based on this false and misleading information, she sold her interests (NYSCEF Doc No. 20 ¶¶ 122-146, 157, 176, 187, 198).

In *Centro Empresarial Cempresa S.A.*, the Court of Appeals held that "[t]he fraud described in the complaint . . . falls squarely within the scope of the release: plaintiffs allege that defendants supplied them with false financial information regarding the value of Conecel and TWE, and that, based on this false information, plaintiffs sold their interests in TWE and released defendants from claims in connection with that sale" (*Centro Empresarial Cempresa S.A.*, 17 NY3d at 277).

As in *Centro Empresarial Cempresa S.A.*, plaintiff's allegations clearly fall within the scope of the releases and she fails to allege that defendants perpetrated a separate fraud to induce her into signing the releases (*see Arfa v Zamir*, 17 NY3d 737, 739 [2011] [general release executed by majority and minority owners of real estate business barred majority owners' fraud claim against minority owner where majority owner failed to allege that the release was induced by a separate fraud]; *Sodhi v IAC/InterActive Corp.*, 201 AD3d 451, 451 [1st Dept 2022] [alleged misrepresentation made to senior participant did not constitute a "separate fraud" from the subject of the release]; *Kafa Invs., LLC v 2170-2178 Broadway, LLC*, 39 Misc 3d 385, 393 [Sup Ct, NY County 2013], *affd* 114 AD3d 433 [1st Dept 2014], *lv denied* 24 NY3d 902 [2014] ["the fraud described in the Complaint falls squarely within the scope of the release and there are no allegations that a separate fraud was perpetrated to induce the signing of the release"]). Without

a separate fraud, plaintiff cannot challenge the releases on the basis that she was fraudulently induced into entering them.

That the parties had a fiduciary relationship does not change this conclusion. "'There is no prerequisite to the settlement of a fraud case that the (fiduciary) defendant must come forward and confess to all of his wrongful acts in connection with the subject matter'" (*Centro Empresarial Cempresa S.A.*, 17 NY3d at 278, quoting *Alleghany Corp. v Kirby*, 333 F2d 327, 333 [2d Cir 1964]). At the time that plaintiff relinquished her interests, the parties were already in an adversarial relationship (*see Pappas*, 20 NY3d at 233 ["the relationship between the parties" was not "one of trust" where "(t)he relationship between plaintiffs and Tzolis had become antagonistic"]). Plaintiff had filed objections to probate and plaintiff had brought an action against defendants seeking reinstatement of insurance coverage. According to plaintiff's own allegations, at the time she entered into the settlement agreement in April 2001, the relationship was not one of unquestioning trust (NYSCEF Doc No. 20 ¶¶ 113, 119). Thus, plaintiff's reliance on defendants' representations as fiduciaries would not have been reasonable.

Notably, the settlement agreement did not require defendants to make true and correct representations to plaintiff[2] (*compare Dillon v Peak Envtl. LLC,* 187 AD3d 1517, 1519 [4th Dept 2020] [liquidation agreement's release had an exception for any obligations established by the liquidation agreement, and liquidation agreement established an obligation that remaining members make certain true and correct representations and warranties]). If plaintiff did not wish to forego suing on fraud she might discover in the future, she could have insisted that the releases

[2] The settlement agreement required defendants to provide income tax returns, financial statements, and Form 1065s for Midland entities for the years 1997, 1998, and 1999 (NYSCEF Doc No. 29 at 13-14). Under the settlement agreement, defendants were also obligated to provide a list of unsold units for 1998 and 1999, a detailed list of cooperative apartment ownership interests, a mortgage receivable dated September 29, 2000 and a note receivable dated September 29, 2000, among other things (*id.*).

be conditioned on the truth and accuracy of the financial information provided by defendants (*see Centro Empresarial Cempresa S.A.*, 76 AD3d 310, 320 [1st Dept 2010], *affd* 17 NY3d 269 [2011]; *see also Rodas v Manitaras*, 159 AD2d 341, 343 [1st Dept 1990] ["where, as here, a party has been put on notice of the existence of material facts which have not been documented and he nevertheless proceeds with a transaction without . . . *inserting appropriate language in the agreement for his (or her) protection*, he (or she) may truly be said to have willingly assumed the business risk that the facts may be not as represented"] [emphasis supplied]).

Moreover, plaintiff fails to sufficiently allege the "existence of overreaching or unfair circumstances," which render enforcement of the releases inequitable (*see Mangini*, 24 NY2d at 567; *Gibli v Kadosh*, 279 AD2d 35, 41 [1st Dept 2000]). Plaintiff, who was represented by counsel, agreed that "[t]he execution of this [settlement agreement] is being completed on a voluntary basis and each party represents that they were under no compulsion to execute this agreement and they have been fully advised throughout the negotiations to resolve their differences between the parties as to all negotiations and representations made to each other as well as to the Court" (NYSCEF Doc No. 29 at 19). She further agreed that she "had sufficient opportunity to review this [settlement agreement] with [her] attorney and . . . executes this instrument after due consideration and of . . . her own volition" (*id.*). Plaintiff received $1,700,000 as consideration for her Midland Interests, $100,000 for her Land Interests, and $962,500 to withdraw her objections in the probate proceeding (*id.* at 17-18).

Therefore, this is not a case where plaintiff allegedly had little time for deliberation and consideration and the release was a product of overreaching and unfair circumstances (*cf. Bloss v Va'ad Harabonim of Riverdale*, 203 AD2d 36, 40 [1st Dept 1994]), or a case where defendants'

alleged threats precluded the exercise of plaintiff's free will (*cf. Art Stone Theat. Corp. v Technical Programming & Sys. Support of Long Is.*, 157 AD2d 689, 691 [2d Dept 1990]).

In this regard, the cases relied upon by plaintiff in support of her contention that she signed the releases under circumstances which indicate unfairness are distinguishable (*see e.g. Paulino v Brown*, 170 AD3d 506, 506 [1st Dept 2019] [trial court properly denied motion to dismiss the complaint in personal injury action where the plaintiff submitted an affidavit indicating that he accepted $6,000 to settle and release all claims while he was still recovering from surgery and unable to work, and that claims specialist continued to pressure him to sign the release until he relented]; *Pacheco v 32-42 55th St. Realty, LLC*, 139 AD3d 833, 834 [2d Dept 2016] [employer allegedly coerced a plaintiff into signing a release days after his release from a hospital and allegedly threatened the plaintiff about how his undocumented status left him no choice but to sign the agreement]).

In light of the above, defendants' motions to dismiss the complaint must be granted. In view of the foregoing, the court need not reach defendants' remaining arguments in support of dismissal of the complaint.

CONCLUSION

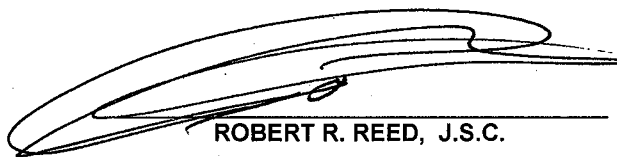
Accordingly, it is hereby

ORDERED that defendant Maryanne Trump Barry's motion to dismiss (motion seq. no. 001) is granted and the complaint is dismissed in its entirety, with costs and disbursements to defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that defendants Donald J. Trump and Shawn Hughes, as executor of the Estate of Robert S. Trump's motion to dismiss (motion seq. no. 002) is granted and the

complaint is dismissed in its entirety, with costs and disbursements to defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants.

This constitutes the decision and order of the court.



November 14, 2022
DATE

ROBERT R. REED, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION		
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE