

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK : CIVIL TERM : PART 43

3 -----X

4 MARY L. TRUMP,

5 Plaintiff,

INDEX NO:

654698/2020

7 -against-

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

12 Defendants.

13 -----X

14 Via Online Teams Meeting
15 January 11, 2022

16 B E F O R E:

17 THE HONORABLE ROBERT R. REED, Supreme Court Justice

18 A P P E A R A N C E S:

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Senior Court Reporter

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1 THE COURT: Good morning, everyone. If I can have
2 appearances.

3 MR. QUINN: John Quinn from Kaplan Hecker & Fink on
4 behalf of Mary Trump.

5 MR. FRIEDMAN: Good morning, your Honor.
6 Gary R. Friedman and Jeffrey Sheetz from Greenfield Stein &
7 Senior for the defendant Maryanne Barry.

8 MR. KYLIE: Good morning, your Honor. It's James
9 Kylie, Kylie, Kylie & Kylie, PLLC, for the defendants
10 Donald J. Trump and Shawn Hughes as Executor of the Estate
11 of Robert Trump.

12 MR. SHEETZ: I am Jeffrey Sheetz with Mr. Friedman.

13 THE COURT: We have the two motions. Does it make
14 sense to have both the initial movant argue followed by the
15 other one?

16 MR. KYLIE: That's fine, your Honor, I adhere to
17 that. I refer to my esteemed colleagues Mr. Friedman and
18 Mr. Sheetz.

19 THE COURT: We'll have the Barry attorney make the
20 argument. I'll ask you, Mr. Kylie, if there's anything you
21 want to add before bringing in Mr. Quinn because I don't
22 want to have to go back and forth since you have essentially
23 the same argument, but it is possible that there's something
24 that they leave out that you'd like to put in.

25 MR. KYLIE: That's fine, your Honor. Thank you.

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1 THE COURT: Is that fine, Mr. Quinn?

2 MR. QUINN: Of course, your Honor. Thank you.

3 MR. FRIEDMAN: Good morning, your Honor. We have
4 two principal points: One is that the claims are time
5 barred by the six-year statute of limitations and the
6 two-year extension and, in any event, that the claims were
7 released by the broad release language of the 2001 releases.

8 In April of 2001, the plaintiff possessed the same
9 information that forms the basis of her claims. This
10 information includes All County's role in marking up the
11 sales of supplies to the Midland entities to which she then
12 held ownership interest and for the Trump interest which she
13 held leases in. She had information about Apartment
14 Management charging those entities management fees. She
15 also possessed boxes and boxes of financial records produced
16 in the Surrogates Court litigation concerning those
17 entities. Inquiry notice, not actual notice, is the
18 governing standard for a statute of limitations defense.

19 Plaintiff's fraud claims are time barred if she had
20 knowledge of facts from which the alleged fraud might
21 reasonably be inferred more than two years before the action
22 was commenced. Plaintiff does not identify any information
23 that she was lacking in 2001, 20 years ago. I guess 21
24 years ago. Positive knowledge is not required. Plaintiff
25 need only be aware of enough operative facts. With

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1 reasonable diligence, she could have discovered the fraud.

2 THE COURT: What would be the operative facts?

3 It's your motion and you have to establish prima facie --

4 that she's on inquiry notice. What are the operative facts?

5 You've identified, broadly, documents that were handed over,

6 but what in those documents would suggest to a reasonable

7 person in the plaintiff's position, that being a family

8 member, a niece, that her aunt and uncles were swindling

9 her? That's her claim.

10 MR. FRIEDMAN: Right.

11 THE COURT: So the documents have to have facts

12 that jump out if you look at them. The background here is

13 that you say there are 19 documents, but the Near Times won

14 a Pulitzer Prize by digging through those 19 boxes of

15 documents but also by conducting interview after interview

16 after interview, having experts come in and analyze those

17 documents. That's the plaintiff's argument and I frame it

18 that way because this is a motion to dismiss, not a motion

19 for summary judgment. It's not a trial. Who knows what

20 happens then, but right now all that's being -- all I'm

21 being asked to do is decide whether or not plaintiff gets to

22 actually have discovery, that's the issue.

23 MR. FRIEDMAN: The heart of plaintiff's case and

24 certainly the heart of the Times article is found in Robert

25 Trump's deposition testimony. He was questioned extensively

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1 about All County and Apartment Management and he said
2 exactly what they were doing. All County was created to
3 transfer, basically, wealth from Fred Trump to All County --

4 THE COURT: Mr. Kylie, can you mute yourself,
5 please. We lost a little bit because of some paper
6 shuffling.

7 MR. FRIEDMAN: Robert Trump testified to exactly
8 what the so-called gift was, which is that an entity known
9 as All County was created. The four Trump children were the
10 shareholders of All County, together with their cousin,
11 Mr. Walter, and that All County became a purchasing vehicle
12 and it marked up the purchases and, therefore, wealth was
13 being transferred to them from Fred. Same thing Apartment
14 Management Associates was testified about by Mr. Trump, and
15 it basically succeeded Fred Trump's management company and
16 it charged management fees to the Trump entities. That is
17 the heart of the disguised gift portion of the New York
18 Times article. It was laid out in chapter and verse by
19 Robert Trump, and Mr. Barnosky even commented on how it was
20 a very clever way of transferring wealth from one generation
21 to the next.

22 THE COURT: Well, if that's the case, then is there
23 fraud at all? What you're saying is they have identified a
24 method of activity. The complaint is suggesting that that
25 method also was used in a fraudulent manner. The method

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1 could have transacted business lawfully. The plaintiff's
2 argument seems to be the manner in which those entities
3 operated ultimately had the impact of acting in an unlawful
4 manner. Knowing that there is a separate entity managing
5 isn't enough to assume that is being operated in an unlawful
6 manner.

7 Certainly in real estate people use different
8 corporations, small companies, to engage in management
9 functions so they can manage this building. They own a
10 bunch of buildings, but one will manage this building and
11 one will manage that building and one will perform
12 maintenance services with respect to that building. Those
13 are all done for corporate strategic reasons, but the
14 complaint is that this was being operated not in a normal
15 business fashion but in an unlawful fashion. The question
16 is, what documents are telling that there's anything there?

17 MR. FRIEDMAN: With all due respect, what she was
18 saying was it had the effect of reducing money going to Fred
19 Trump and reducing the value of the other entities, that's
20 what she is claiming is the so-called unlawful part. The
21 underlying facts of exactly what they were doing was freely
22 testified to by Robert Trump, and the fact that All County
23 and the other entity were making these payments was shown on
24 the financial statements that were furnished during the
25 course of the probate litigation and those very documents

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1 were acknowledged by the plaintiff as being received by her
2 in the settlement agreement.

3 To the extent there's a claim that, well, the
4 appraisals might have -- the other item that The Times
5 focused on was, well, the appraisals were low. Aside from
6 the fact that an appraisal is simply an opinion of value by
7 the appraiser, the appraiser that was retained was Robert
8 Von Ancken, which is one of the leading New York City real
9 estate appraisers.

10 What The Times found was comparable sales, which is
11 information that was readily available to the plaintiff and
12 her counsel at the time. If they had any concerns about
13 Mr. Von Ancken's appraisal, they were free to obtain their
14 own appraisal, they were free to look at comparable sales.
15 That information is publicly available.

16 Basically what we're saying is, all of this
17 information that forms the factual allegations, not the
18 legal conclusions that she's spinning in the complaint but
19 the factual allegations that she's making, she had all this
20 information in 2001. John Walter and Robert Trump testified
21 to it. The financial statements in the entities showed the
22 transactions.

23 THE COURT: Go ahead.

24 MR. FRIEDMAN: In any event, even if there was
25 fraud, which clearly there was not because she had all this

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1 information, the general releases are broad enough to cover
2 releasing any fraud claims.

3 As the Court of Appeals held in the Centro case
4 that we cite in both our main brief and our reply brief,
5 when you have sophisticated parties, when you have parties
6 who are involved in a dispute in a litigation, they have
7 sophisticated counsel representing them, they can release a
8 fraud claim, even an unknown fraud claim. And here, the
9 language that was used was as broad as it can be. It was
10 basically taken from a Blumberg general release, which has,
11 as your Honor knows, the broadest release language known to
12 the legal community. The only thing that was carved out was
13 the obligation that the settling parties had to make
14 payments under the settlement agreement, which is typical
15 when you settle a litigation.

16 THE COURT: Wasn't there a section with respect to
17 providing information? And it seems that the plaintiff's
18 argument that the information that was provided in
19 connection with that language was itself doctored and
20 fraudulent, that seems to be what the plaintiff is saying.

21 The second thing is, why were there multiple
22 releases if one release was good enough? Why were there
23 multiple releases? I understand there was a release with
24 respect to the 1976 Trust.

25 MR. FRIEDMAN: Because the general releases release

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1 all the business claims and the like and the purchase. The
2 release in connection with the '76 Trust, it's very typical.
3 If you speak to any trust and estates lawyer, when you're
4 settling a trust dispute, you have the beneficiary sign
5 what's called a Receipt Release and Refunding Agreement. It
6 acknowledged receipt of the trust principal, it releases the
7 trustee from any claims, and there's an agreement typically
8 to refund any money that would be required in the event that
9 the trustee was to have claims asserted against it in the
10 future. Perfectly typical to do. In addition, we have the
11 general releases that were given which are the -- as the
12 Court of Appeals said, when you give such a broad release,
13 it encompasses both known and unknown fraud claims.

14 Our position is, your Honor, that the fraud claims,
15 if there are any, are time barred because the plaintiff was
16 possessed of the knowledge of the alleged fraud back in 2001
17 or, in any event, those claims have been released by very
18 broad general releases.

19 THE COURT: Back to that issue. I guess I didn't
20 get the answer to my question. I understand it's typical
21 with respect to trust matters to have a specific trust
22 released, but their argument is the very fact there are the
23 multiple releases undercuts the idea of the generality of
24 the releases they are provided. Their argument seems to be
25 the releases aren't, in fact, general, but they are specific

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1 to those particular litigations that they were concerned
2 with and that the parties were concerned with at the time,
3 that it did not encompass fraud, and that they could not
4 encompass a fraud that is being perpetrated by virtue of the
5 finding of the release itself and, in particular, by virtue
6 of the lack of complaints. Their argument seems to be there
7 is a lack of compliance with that release by virtue of the
8 disclosure of what they say are falsified -- disclosure only
9 are falsified documents rather than documents that are true
10 and correct. That's what they're addressing.

11 From their standpoint, again, the question is, do
12 they not have the ability to do whatever discovery they
13 think is appropriate to try to figure all that out.

14 MR. FRIEDMAN: Aside from the untimeliness claim,
15 your Honor, the fact is the releases were given to different
16 people. The general releases were given to the executors to
17 the various Trump Organizations and the receipt release ran
18 to the '76 trust. That's one reason why there were
19 different documents.

20 If your Honor looks at the language of the general
21 releases that are given, it is as broad as one can make it.
22 Under the Centro case, that means it clearly releases all
23 claims known and unknown. As the Court of Appeals said, the
24 broad language reaches all manner of action from the past,
25 present, and future. It indicates an intent to release

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1 defendant from fraud claims, like this one, unknown at the
2 time of the contract. Certainly that's the release that was
3 given to Maryanne Barry was such a broad general release.
4 So even if your Honor were to find the fraud claim is
5 timely, it's been released.

6 I think when your Honor looks at our papers and
7 looks at the testimony of Robert Trump and the other
8 documents that we show that plaintiff had in her possession,
9 she wrote in her book -- she writes in her book, she says,
10 We knew at the time we were being lied to. So certainly
11 that indicates that she had some duty at that time. If she
12 felt she was being lied to, perhaps look a little further
13 and a little deeper, not wait 20 years.

14 THE COURT: I guess the question is -- again, the
15 difficulty I have with your motion is that it's under 3211
16 and it is not one under 3212. So I'm just a little hesitant
17 about the idea of not even allowing that, to pursue that.
18 Knowing someone is lying to you doesn't actually -- that by
19 itself, lying doesn't equate to fraud. It is one element of
20 fraud, but it's only one element, there are other elements
21 involved. Simply knowing you're lying to her, having a
22 sense she was lied to, she said she had a sense she was lied
23 to, maybe she was.

24 MR. FRIEDMAN: Your Honor, with all due respect,
25 the lying-to part, that's the essence of the fraud. That's

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1 a misrepresentation part.

2 THE COURT: It's a misrepresentation, but there are
3 other issues.

4 MR. FRIEDMAN: If you knew that you were being lied
5 to and nonetheless you waited 20 years, the cases are
6 crystal clear that your claim is time barred, that you had
7 knowledge because you had knowledge of the facts that would
8 have disclosed the fraud had you exercised even reasonable
9 diligence. That's all the statute requires is reasonable
10 diligence. She had a sophisticated lawyer, Jack Barnosky,
11 one of the leading probate litigators.

12 THE COURT: The complaint says she believes he was
13 compromised. I understand that you don't buy that.

14 MR. FRIEDMAN: It's a factual allegation. All she
15 says is she believes he was compromised. There was no
16 factual allegation that Jack was anything other than a
17 diligent lawyer. She says she believes he was compromised.
18 That's not the same thing, your Honor.

19 THE COURT: Again, the problem I'm having is this
20 is a motion to dismiss, not a motion for summary judgment.
21 They make the assertion and I'm supposed to believe it's
22 true. They say that a particular attorney was working on
23 behalf of your clients, not on her behalf. That he was
24 doing their bidding and not the bidding of the plaintiff.
25 That's their issue. If that is the case, then all this "she

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1 was represented by a competent attorney" doesn't amount to
2 anything in terms of interest contrary to the client.

3 MR. KYLIE: Your Honor, I know you said I should
4 wait.

5 THE COURT: Wait until Mr. Friedman is finished and
6 you'll have plenty of time.

7 MR. FRIEDMAN: To make a statement that she
8 believes she was compromised without any factual basis, your
9 Honor, is certainly not a basis for denying a motion to
10 dismiss at least when it comes to whether or not she was
11 represented by independent counsel. She has to set forth --

12 THE COURT: Well, that's a factual -- no. Her fact
13 is that the lawyer that she was represented by -- and she
14 identifies the particular lawyer, says that he was working
15 on behalf of the defendants and not her. That is a factual
16 allegation. If you dispute that, then we've got an issue of
17 fact. The only way we figure that out is by doing a
18 deposition. Maybe this attorney will say, Absolutely not
19 and I'm indignant at this charge, but who knows. People say
20 different things over the years.

21 Again, you talk about the clear case law. Case law
22 seems to be pretty clear that the question is one for a
23 trier of fact.

24 Looking here at the quotation from *Epiphany*
25 *Community and Nursery School v. Levy*, "the issue of when a

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1 plaintiff, acting with reasonable diligence, could have
2 discovered an alleged fraud involves a mixed question of law
3 and fact, and where it does not conclusively appear that a
4 plaintiff had knowledge of facts from which the alleged
5 fraud might be reasonably inferred. The cause of action
6 should not be disposed of summarily on statute of
7 limitations grounds. Instead, the question is one for the
8 trier of fact." That's the prevailing case law that I have
9 to contend with, not whether I believe you are right or
10 believe they're right.

11 It's just, does this move forward? That's really
12 the question that we have to address. I don't know that --
13 it's not something that after you develop or the plaintiff
14 is allowed to develop its full record that it could not be
15 disposed of on a motion for summary judgment, but surely on
16 a motion to dismiss, that seems unlikely. The bigger
17 question, it seems to be the issue of this release, I think
18 that's the bigger question.

19 MR. FRIEDMAN: Just to address your Honor's last
20 point, if I may.

21 The fraud claim is wrapped up in what All County
22 did and what Apartment Management did. It's indisputable
23 that Mary Trump knew about this in 2000 when Robert Trump
24 and John Walter were deposed. They testified to just what
25 they were doing.

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1 THE COURT: Is there anything about that testimony
2 to tell Mary Trump that those management entities were
3 acting against her interest? Her argument is that now in
4 the light of day after the investigation by the New York
5 Times, that it appears those management entities weren't
6 just operating to create efficiencies but were operating in
7 a manner that was diminishing Mary Trump's rights and was
8 doing so purposefully.

9 MR. FRIEDMAN: She had the knowledge of what they
10 were doing. The fact that she didn't then decide, Well,
11 because I knew this is what they were doing, how it impacted
12 her, that's not what the issue is because that's not what
13 the fraud is. The fraud is what they did, that's what she
14 is saying. The fact that she didn't figure out, Well, oh,
15 that might have adversely affected me, that's not the issue
16 here, your Honor. She had the underlying facts.

17 THE COURT: Having the underlying facts -- is that
18 what the case law says, that if you have the underlying
19 facts?

20 MR. FRIEDMAN: Absolutely.

21 THE COURT: There's a section of the *Epiphany* case
22 that quotes *Braddock v. Braddock*, 60 AD3d 84 at 88. There
23 we have, "Where the defendant and plaintiff were cousins,
24 the plaintiff's reliance on the defendant's good faith may
25 be found to be reasonable, even where it might not be

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1 reasonable in the context of an arm's-length transaction
2 with a stranger. We noted that family members stand in a
3 fiduciary relationship toward one another in a co-owned
4 business venture." This seems to line up with the
5 plaintiff's argument that they assumed -- you declare Mary
6 Trump as sophisticated, I have no doubt she's sophisticated
7 in the area of psychology, but I don't know whether or not
8 that means she's sophisticated in the area of real estate
9 management. Why wasn't it reasonable for Mary Trump to
10 assume that her uncles and certainly, maybe -- I don't know
11 whether this really applies with respect to the judge --
12 whether her uncles were operating these businesses in a
13 manner that she may not have understood but was ultimately
14 to her own good?

15 MR. FRIEDMAN: She had sophisticated counsel
16 representing her, your Honor.

17 THE COURT: That gets back to the issue. You say
18 that, you say she had sophisticated counsel, there's no
19 question she had counsel. You say the counsel is
20 sophisticated. They say the counsel is working for you, for
21 your client. We are clear about which particular counsel
22 we're talking about, but the two sides have a dispute right
23 now, factual dispute, about whether or not the counsel is
24 sophisticated and acting on behalf of the interest of his
25 client or whether the counsel is devious and acting against

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1 the interest of his client. That's a factual dispute that
2 we have right now. I don't have an affidavit from that
3 counsel, do I? I didn't see one.

4 MR. FRIEDMAN: We can certainly provide one.

5 THE COURT: That's the issue.

6 MR. FRIEDMAN: The only allegation in the entire
7 complaint was that Barnosky was colluding with defendants in
8 their campaign to squeeze her out. There's nothing else.
9 Compared to the *Epiphany* case, the facts are markedly
10 different because here the plaintiff -- the means by which
11 the plaintiff claimed she was defrauded, All County and
12 Apartment Management, they were known to her. She was told
13 about them.

14 THE COURT: The point I'm asking about, the section
15 I read from *Epiphany* was from the *Braddock v. Braddock* case
16 and that was about if the reasonableness -- and as the court
17 said once in *Braddock* and affirmed in *Epiphany*, is that it
18 was reasonable for a family member, a cousin, to rely on a
19 cousin with respect to their fiduciary interest in a
20 co-owned business venture. That being the predicate for
21 finding fraud in that case.

22 MR. FRIEDMAN: The cases hold when you have a
23 dispute and the parties are in an adversary relationship,
24 there is no fiduciary duty. The case the plaintiff relies
25 on, the Estate of Maunter v. The Glick Revocable Trust

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1 clearly holds that. They were longtime family members, they
2 were business partners. There was a claim of fraud in a
3 buyout because one side was negotiating the buyout with
4 another when unbeknownst to the selling partner there were
5 secret discussions with the hospital to take over the
6 property, and the court held that the fraud claim is barred
7 because allegedly the defrauded party was represented by
8 independent counsel, that there was no fiduciary
9 relationship because the parties were in an adversary
10 relationship.

11 THE COURT: Is that at a motion to dismiss stage?
12 It sounds like it's much more developed than that. Just
13 based upon the language you quoted, it sounds like it's
14 something that would have to have gone to either summary
15 judgment or out.

16 MR. FRIEDMAN: It was a motion to dismiss for
17 failure to state a claim.

18 THE COURT: All right. Anything further?

19 MR. FRIEDMAN: No. I turn it over to Mr. Kylie,
20 your Honor, if that's okay with you.

21 THE COURT: Mr. Kylie, go ahead.

22 MR. KYLIE: Not to be repetitive, I'm not going to
23 repeat what Mr. Friedman said. A couple things, your Honor.

24 You're saying it's a motion to dismiss, but when
25 you're talking about invoking the discovery rule, it becomes

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1 a motion for summary judgment with regard to the discovery.
2 With regard to the issue of whether what she's saying is
3 credible, it's a mini summary judgment. And just like on
4 summary judgment, their conclusory statements are
5 insufficient to invoke the fraud discovery rule and that's
6 right from *Davidson v. Pearls*, 42 Misc3d 1205A. It's also
7 in *Erbe*, 3 NY2d 321.

8 This notion that, My attorney was conflicted, it's
9 just a statement without any evidence to support it. No, I
10 overheard them talking, I saw them meeting in a phone booth,
11 I found a letter. It's just out there. The reason it's out
12 there, it's a desperate Hail Mary pass to satisfy a pleading
13 burden. I would like to read the law on this. The only way
14 the plaintiff can go forward is to say, My lawyer didn't
15 tell me. It's well-settled law that knowledge required by
16 an agent acting within the scope of its agency is imputed to
17 its principal and the latter is bound by such knowledge even
18 if she claims the info was never communicated to her.
19 That's *Farr v. Newman*, 14 NY2d 183.

20 THE COURT: What's the knowledge?

21 MR. KYLIE: All County. By the way, these are your
22 uncles, they're buying everything through All County and
23 they're marking it up. By the way, I looked at the
24 statistics for cleaning supplies and managerial and
25 maintenance for and they're up 100 percent after All County

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1 was formed from before All County was formed. The knowledge
2 of, oh, by the way, your uncles formed a management company.
3 Fred Trump is no longer paying a management fee to himself,
4 he's now paying it to your uncles. We disclosed the
5 management fee agreement with the number and percentage. By
6 the way, this is devaluing your grandfather's estate. So
7 all this stuff -- and if I may go back, your Honor.

8 Even if Mary claims conflicting loyalties and she
9 has some evidence, which she doesn't, the exception to the
10 rule of knowledge being imputed to the principal cannot be
11 revoked merely because an agent has a conflict of interest
12 because he's not acting primarily for his principal. It's
13 got to be only when an agent is engaged in a scheme to fraud
14 a principal. The agent has totally abandoned his
15 principal's interest. There's no evidence to support this.

16 Your Honor, with regard to -- I looked at this from
17 the point of view she's saying, I didn't know what I needed
18 to know until the New York Times article came out. So the
19 way my brain works, I said, all right, let's look at what
20 the New York Times article says. The New York Times article
21 is 37 pages long. I have no doubt there was great
22 investigative work done with respect to how Fred Trump made
23 his money and what he did in the '50s and the '60s, all the
24 things that went into it. There's only a few pages of it
25 that address anything germane to the plaintiff's claims of

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1 fraud and that information was not work done by
2 award-winning journalist. It was work done by journalists
3 who read the documents Mary gave them. For instance, The
4 Times says All County started in 1992 as a middleman and
5 marked up invoices between Fred's companies and vendors
6 effectively channeling away money from Fred's surviving
7 children. That came right from Robert Trump's transcript.

8 THE COURT: Make sure you're speaking slowly.

9 MR. KYLIE: I apologize. I forgot we had a court
10 reporter.

11 This was not award-winning journalism. This is,
12 Oh, let me look at these documents and see what they say.
13 Here is Robert Trump's deposition, here is what they say.
14 The Times came to the conclusion about the money being
15 siphoned out. All they did was look at the records of Beach
16 Haven apartments in 1991 and 1992 and compared them with
17 those from 1993, so it's effectively pre-All County and
18 post-All County. These are the same documents that not only
19 that plaintiff's attorney had, but he had them at the
20 deposition and questioned Robert Trump at the deposition
21 about them.

22 This notion that, well, they were restrained from
23 getting further discovery because it was a Surrogates Court
24 action, they could have moved to get further information and
25 they also then filed a Supreme Court action with regard to

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1 her health benefits, which they canceled because she sued
2 them. At that point they could have gone in -- they had
3 notice of all this, they could have gone in and named
4 Midland Associate, they could have brought a derivative
5 action, they could have asked for all the discovery,
6 subpoenas, they chose not to do so.

7 With regard to the management company that Trump
8 siblings formed to replace their father's company. This
9 comes from Robert -- reading from the New York Times,
10 reading from Robert Trump's deposition testimony. Company
11 had a management agreement, charged a management fee. In
12 fact, plaintiff's attorney Mr. Barnosky says at the time --
13 and it's in the transcript -- Wow, that's pretty good estate
14 planning.

15 Now, the other thing The Times went into was, the
16 estate planning that Fred and Mary Trump had done in the mid
17 '90s. They said, Well, Mr. Van Ackon was one of the
18 appraisers, he was known in the industry as a friendly
19 appraiser. Well, certainly that would have been known to
20 Mr. Barnosky. He is also only one of certain appraisers who
21 signed off and those are also conclusory statements. She
22 says he conspired with the defendant. Again, no evidence.
23 If she said, I didn't know because I was on Mars for the
24 last 20 years, you'd say, Well, that's ridiculous. To make
25 these allegations that people are conspiring and not have

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1 any evidence. There's no letter. There's no recorded
2 conversation. There's not even hearsay. These are just
3 conclusory statements that she makes.

4 That's all The Times went into. If you read The
5 Times article, it talks about All County, it talks about
6 Apartment Management, and it talks about the GRATs. You
7 know what The Times did, the award-winning journalists at
8 the Times to see if the GRATs held muster, they looked at
9 the building and they compared them with the comps in the
10 neighborhood. They said, Oh, boy, at the time of the GRATs,
11 this is the building down the block that sold for three
12 times that. All stuff that plaintiff had an opportunity and
13 a responsibility to do her due diligence. She did none of
14 it.

15 Your Honor, with regard to the release, if you're
16 saying that you can't on a 3211(a)(5) ever dismiss a fraud
17 case, if all the plaintiff has to do is say, Well, the
18 information they gave me was fraudulent, that's all you have
19 to say and you could never grant a motion under 3211(a)(5)
20 for fraud. That's pyridoxal, your Honor.

21 THE COURT: That's not what I'm concerned about.
22 What I'm concerned about is the smoke of the broad general
23 release that's done. That's a bit different than a release
24 that talks about ongoing obligations to provide information
25 so that the -- in your typical slip-and-fall case, you don't

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1 mind saying, If we're going to give you a million dollars,
2 you need to be sure you've given this some thought because
3 you're going to lose all claims that you could have brought
4 against this particular company up till now and think about
5 it.

6 What part that was involved in this settlement
7 agreement is some ongoing obligation to give or a current
8 obligation -- current and ongoing obligation to provide Mary
9 Trump with financial disclosure information which they are
10 claiming was then provided in a false matter. It is not
11 your typical --

12 MR. KYLIE: For release to say, Well, the stuff
13 they gave me was fraudulent.

14 Your Honor, the other thing I went to mention with
15 getting back to the statute of limitations issue, the
16 plaintiff talks about loans. These were all -- they were
17 not covered up. She says, Well, the loans, they were for
18 terms not certain or there was no interest. This was all
19 the information you gather if you just simply read the
20 documents. That's very similar to the *Siegle* case,
21 173 AD3d 515. The plaintiff sues the co-op board and the
22 court finds, Well, all you had to do was look at the minutes
23 from ten years ago and you would have found the information.
24 All she had to do was look at the note and read it, and the
25 note was available to her. All of her assets came out of

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25

1 trust in 1995. She was then 30-something years old. She
2 was getting all this information, all she had to do was look
3 at it.

4 I find the *Epiphany* case is like an epiphany in my
5 mind, your Honor, because it's so similar. With regard to
6 the two claims that were made, you had the one saying that,
7 Well, you know, we sold you a curriculum and you underpaid
8 for it, and the court basically said, Well, you should have
9 -- I think the argument was the rent was disproportionately
10 high and it devalued the interest, and the court said, Too
11 bad, you should have done your own due diligence, you could
12 have looked at the books and done your own appraisals.

13 The other claim I find very illustrative because
14 it's strikingly different. The claim was that the -- I
15 think it was the husband of the director of the school, he
16 falsely recorded transfers of monies as loans. Then he
17 changed the designation of loans to other receivables and
18 not only do they further offset them by other fake changes
19 to conceal them on the books, no such allegation is made
20 here. Nothing was concealed. All County was all over.
21 They did not take entries from maintenance and say, Well,
22 this was paid to ABC Corp. Everything was paid to
23 All County. Everything was on the books. There was no
24 fixing the books.

25 They believe what they were doing, and I know it's

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1 not germane to this motion, because there was no fraud and
2 they didn't believe there was a fraud. They had no reason
3 to do that. It was all out in the open. All County's
4 business motto was all out in the open back in 2000. The
5 plaintiff heard it all.

6 Just to recite the cases, your Honor, with regard
7 to the standard on inquiry notice, it's knowledge of the
8 act, a plaintiff need only be aware of the operative facts
9 that with reasonable diligence could have discovered the
10 fraud. That's *Erbe v. Lincoln Rochester*, 3 NY2d 321.

11 Another case that is illustrative, your Honor, the
12 legal rights that stem from certain circumstances need not
13 be known, that's *Kelly v. Legacy Benefits Court*, 34 Misc.3d
14 1242(a), quoting from *Stone v. Williams*, 970 F.2d 1043.

15 The courts have also ruled that where financial and
16 other records that might have been necessary for a claimant
17 to discover an alleged fraud are in her possession, the
18 discovery rule does not apply. Well, these were in her
19 possession for 20 years.

20 Your Honor, again, to give you my perspective on
21 this, the New York Times is like the Rosetta Stone, this was
22 the thing that enlightened her. If you look at the New York
23 Times and look at that, only those sections of it that are
24 germane to Mary's claims, which might be two or three pages
25 out of a 40-page article, nothing there was a revelation.

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1 All the information they had, including the information
2 about All County, the information about the testimony from
3 Robert Trump as to what the business motto was, that they
4 marked up stuff, the effect it had on the bottom line of the
5 companies. Then the analysis of the GRATS and how the
6 building would be valued, that was all from information they
7 got from the plaintiff. It was reasonable diligence, it
8 wasn't award-winning journalism to do basically what
9 Mr. Barnosky should have done, conduct your own appraisals.

10 I think, your Honor, to sum up, yes, it's a motion
11 to dismiss and I understand the plaintiff, with all
12 possibility, should be given her day in court, but there's
13 also a reason we have a statute of limitations. Robert
14 Trump is dead. John Walter is dead. Irwin Durben is dead.
15 All silenced from the grave and the Court has to weigh that
16 as well.

17 I would argue that this is a summary judgment
18 motion with respect to the fraud discovery rule. The
19 plaintiff has to come forward not with just allegations,
20 conclusory allegations, she has to come forward with
21 allegations based in evidence as she alleges none.

22 MR. QUINN: I'd like to start just where Mr. Kylie
23 left off. He remarked there is a reason we have a statute
24 of limitations. Your Honor, there is also a reason that we
25 have a fraud discovery rule and that reason as Justice Story

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1 put it 200 years ago is that fraud is a secret thing, fraud
2 is different. Fraud is covered up and orchestrated in the
3 shadows. That's why the fraud discovery rule exists and
4 holds that the statute of limitations does not begin to run
5 until -- if the plaintiff does not discover the fraud. The
6 fraud here was perpetrated in secret, it was perpetrated by
7 fiduciaries and family members. And in order to overcome
8 the allegations of the complaint, the defendants here must
9 make a conclusive showing that Mary was on inquiry notice of
10 these claims.

11 As the Court rightly recognized, the *Epiphany* case
12 provides the governing standard. The standard here is not,
13 as Mr. Kylie suggests, a summary judgment motion. This is a
14 motion to dismiss as the *Epiphany* case makes clear the
15 allegation of the complaint as the Court knows must be taken
16 as true, must be given the benefit of every inference. So
17 any inferences arising from documents go in favor of the
18 plaintiff.

19 The defendants here present their own
20 take-my-word-for-it version of what the facts are. They
21 argue about particular individuals. They argue about what
22 19 boxes of documents not in the record that haven't been
23 tested by discovery, what is and is not in those documents,
24 are clear from those documents.

25 As the Court recognized and as the *Epiphany* case

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1 from the First Department makes clear, this is not a motion
2 for arguing facts. The briefs are the same. The Donald
3 Trump brief, in particular, talks about evidence, complains
4 about hearsay. At one point it just starts asserting facts,
5 and I'm quoting here, On information and belief. That's
6 simply not what this motion to dismiss is about.

7 As the *Epiphany* case makes clear, they must make a
8 conclusive showing that Mary had notice of facts from which
9 fraud can be inferred. The *Norddeutsche* case in particular
10 makes this point clear, your Honor. The conclusive showing
11 is not that the plaintiff was aware of the corporate
12 structure or was aware even of harm. The plaintiff must be
13 aware of facts suggesting fraud and the defendants must show
14 that awareness conclusively. These defendants fall well
15 short of that.

16 I'd like to jump right into the Robert Trump
17 testimony because today's arguments have made clear the
18 defendants' timeliness contentions really arise principally
19 from what Robert Trump said in the probate litigation. It's
20 worth looking at exactly what he said. It is Maryanne Trump
21 Barry Exhibit 13. The reality of what he said furthered the
22 cover-up, it didn't give notice of facts from which the
23 fraud could be inferred.

24 What the complaint alleges and what The Times first
25 reported is that All County was a sham company, that the

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1 defendants set up and inserted as a middleman and purchases
2 by the Trump buildings. The vendors who sold dishwashers,
3 washing machines, and other pieces of equipment, they sold
4 those items at the same pre-negotiated prices that they have
5 been selling them at to the Trump properties for years. All
6 that changed was the name on the invoice.

7 Now the vendors charged those pre-negotiated prices
8 to All County and the defendants marked those prices way up,
9 25, 50 percent or more in what All County invoiced to the
10 building management companies like Midland. All County was
11 a pure pass-through, it just squeezed money out. It had no
12 offices, it provided no legitimate function or value, it was
13 a scam. This is what the New York Times reported in
14 Maryanne Trump Exhibit 4 and that is what the complaint
15 alleges.

16 Robert did not admit any of that. He said the
17 exact opposite in his testimony. I'll refer the Court in
18 particular to pages 135, 139, and 143 of his testimony.
19 What he said was that All County was providing real value.
20 It was using centralized purchasing power to provide
21 logistical services and to drive the vendor prices down to
22 help the Trump businesses get a better deal. This was just
23 false. This was the cover-up. By definition, the cover-up
24 doesn't give notice of the fraud that it's covering up. The
25 defendants try to brush past that, they say, Well, he

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1 acknowledged that All County existed, he acknowledged there
2 was a markup, that's enough. That was not enough, your
3 Honor. He was lying and saying they were providing real
4 value and the markup was legitimate compensation for that.
5 John Walter's testimony was the same.

6 The defendants tried to squint at some testimony
7 where he was asked about whether All County had an impact on
8 the value of Fred Sr.'s estate, but there are a number of
9 key points there. One, it's significant that this is all
10 coming up in the context of exploratory questioning about
11 Fred's estate. Robert is the one who first brings up All
12 County, that's page 134. So nothing in the questioning
13 suggests that Mary or her lawyer had any knowledge of fraud
14 or fraud directed at these separate interests that Mary had
15 inherited from her father many years earlier.

16 Two, even as to Fred Sr.'s estate, which, again, is
17 distinct from the interests at issue in this case, Robert
18 didn't actually admit there was any reduction in value. He
19 kept suggesting All County was providing real value in
20 driving vendor services down and benefiting Fred Sr.'s
21 estate when it wasn't.

22 Three, even if he admitted that there was some
23 reduction of value in Fred Sr.'s estate, which is not what
24 he said, Midland, which is at issue here, and Fred Sr.'s
25 estate are distinct things. Even knowledge of harm, as the

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1 *Norddeutsche* case makes clear, isn't sufficient to
2 conclusively establish inquiry notice. The plaintiffs in
3 the *Norddeutsche* case knew they were investing in the CEOs.
4 They knew the CEOs were making private equity investments.
5 They knew the equity investments were losing a lot of money.
6 They even knew a lot of the investors were starting to bring
7 claims. The First Department said categorically all of that
8 is insufficient. At most it was inconclusive evidence that
9 could be interpreted a myriad of ways and that's
10 insufficient on a motion to dismiss.

11 The same is true here. In fact, Mary knew a lot
12 less than the plaintiffs in *Norddeutsche*. She was being
13 told that All County was delivering a benefit, not causing
14 losses. Again, the defendants' own exhibit undercut them
15 here. Mary was, quote, "amazed," and, quote, "surprised" by
16 The Times revelations in 2018. What's more, your Honor, the
17 All County scam was just one part of the fraudulent schemes
18 the defendants were running in this case. Defendants don't
19 really make much of an argument that Mary was on notice of
20 manipulation of valuations or of all the complex tricks that
21 the defendants were using to disguise cash distributions to
22 themselves, that is loans or consulting fees.

23 Again, Mr. Kylie says, Well, she was aware there
24 were consulting fees, she was aware there were loans. He
25 makes unfounded suggestions about what the record will show

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1 or what was and wasn't available to her. These are all fact
2 questions. The defendants have fallen very far short of a
3 conclusive showing that Mary had notice of facts from which
4 these frauds could be determined.

5 Again, in the *Epiphany* case, the First Department
6 looked at merely identical facts here as to the loans and
7 the manipulated values, in particular. Even on the part of
8 the founder and CEO of that business with unfettered access
9 to records, the court held inquiry notice was not
10 established on a motion to dismiss. The court said the
11 records were falsely designated as loans. The books and
12 records were falsely manipulated, even for the founder and
13 CEO that meant no inquiry notice.

14 Mary, of course, here, was an outsider, was kept at
15 arm's length, and her only access to information was what
16 the defendants gave her, all of which, as the complaint
17 alleges, was tailor made to conceal this fraud and not admit
18 it. Ultimately on all these questions, any ambiguity, any
19 uncertainty, any need for findings needs discovery, not
20 dismissal.

21 In the *Norddeutsche* case, evidence that could be
22 interpreted a myriad of ways was insufficient. Last year in
23 the *Sabourin* case, the First Department looked at evidence
24 and said at best this is fodder for cross-examination, not
25 sufficient grounds for dismissal at that stage.

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1 THE COURT: One of the things, Mr. Quinn, one of
2 the difficulties, is that 19 boxes of information that is in
3 your client's possession and has been in your client's
4 possession. It's very often the case that when we're
5 dealing with these kind of cases and particularly when we're
6 talking about the need for discovery to go forward, the
7 problem is that we don't have... The problem is that we
8 don't have -- that the party, the plaintiff, typically
9 needing the information is not in possession of the
10 documentation. The information is out there and they simply
11 don't -- the information is out there within the other
12 side's possession, they don't have access to it. That's the
13 need for discovery to go forward to try to put some flesh on
14 what may be a limited set of allegations.

15 The difficulty with your position -- one of the
16 difficulties with your position is that it appears that the
17 19 boxes were something that could ultimately produce
18 award-winning journalism if one were but to look. And maybe
19 you couldn't have done it within the time frame that The New
20 York Times did it, but maybe if you acted diligently within
21 six years from the time you got these boxes and Mary Trump
22 could have made some semblance of the allegation that she's
23 making now. What are we to make of that and how does the
24 Court excuse that? You're not in a position of saying the
25 other side has documentation that you don't know anything

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1 about.

2 MR. QUINN: Your Honor, that is one of our
3 contentions that that is sufficient information of what the
4 truth was that was never made available to Mary, even in the
5 19 boxes. Maryanne Trump Barry recognizes this in her
6 brief, it's at page 3. She acknowledges that the 19 boxes
7 of documents are claimed to be fraudulent and indeed that is
8 the claim.

9 The defendants suggest that these 19 boxes, that
10 that's somehow all The Times had, and so the inferences,
11 that's where the truth must have lied, but that's simply
12 belied by The Times article itself. This is Exhibit 4, by
13 The Times' own account this investigation was, and I'm
14 quoting, "unprecedented in scope." The Times had, and it
15 recounts this in the article, extensive information, access
16 and documents that were never made available to Mary. Those
17 included interviews with Trump insiders who flipped and
18 spoke to The Times, hundreds of thousands of pages of
19 confidential documents, 200 of Fred Sr.'s own tax returns,
20 they conducted longitudinal reviews of washing machine
21 prices, they got building superintendents from the Beach
22 Haven apartments from the 1990s to talk to them.

23 To take one example, they interviewed a guy named
24 Leon Eastman, who was the owner of an industrial boiler
25 company that worked with the Trumps, his interview was key

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1 to unraveling the All County scam. There is no suggestion,
2 no evidence, that Mary had access to this person or any
3 reason to go back to this person. She was being fed
4 financial statements, valuations, and given other documents,
5 again, that were tailor made to reveal this fraud, not
6 conceal it.

7 These 19 boxes of documents aren't in the record
8 and everything about The Times article says The Times had a
9 lot more information, that's how the truth came to light.
10 Much of what the Times had may not have even been in
11 existence at the time that Mary was given these 19 boxes.
12 These are pure fact questions, totally untested by
13 discovery, and nothing about The Times article suggests that
14 those 19 boxes of documents contained all the facts
15 necessary from which fraud can be inferred.

16 What's more, your Honor, the standard here is the
17 standard of an ordinary person. The Times is one of the
18 four most investigative parties in the world and spent 18
19 months with an army of reporters, prosecutors, experts to
20 begin to unravel this and even then describe the scheme as,
21 I'm quoting, "numbingly complex." Mary didn't have the
22 documents and information and access The Times had. She
23 didn't have the expertise and resources that The Times had.
24 And perhaps most important, she didn't have any reason, she
25 didn't have any notice that there were facts suggesting

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1 fraud such that some inquiry and investigation was called
2 for.

3 The *Epiphany* case is very clear that that's a
4 two-stage inquiry, the first of which is has there been a
5 conclusive showing that there was notice of facts suggesting
6 fraud and the defendants have fallen far short of that here.

7 THE COURT: Talk to me about the release. I think
8 that's the biggest area of concern the Court has in looking
9 at this. How is it the two sides come to different views
10 about the broadness of the releases and explain to me, from
11 your perspective, how you address the release because I
12 think that is one of the important areas that you have to
13 overcome.

14 MR. QUINN: I'd be happy to, your Honor.

15 I think there are three key points on the release
16 and one sort of initial note. The initial note is there is
17 no dispute here between the parties that, as to the release
18 argument we're talking about, whether the release can reach
19 an unknown fraud claim, a claim that was not known to the
20 parties and knowingly released. We are in the world of
21 talking about whether a sort of boilerplate release can
22 later be applied to a fraud claim unknown at the time. I
23 think the parties agree that the *Centro* case from the Court
24 of Appeals provides the governing framework and doctrine for
25 answering that question.

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1 The three key points all built from the *Centro*
2 framework are the following: The first question that *Centro*
3 says the Court must address is whether the language clearly
4 and unambiguously reaches the claim at issue. In looking at
5 that question, the release must be strictly construed and it
6 should be borne in mind, and here I am quoting from the
7 *Mangini* case, that the parties often used realistic language
8 and are often looking no further than what they're actually
9 sitting down at the table to resolve.

10 With those principles in mind, does the text
11 clearly and unambiguously reach the unknown fraud claim at
12 issue? To be clear, there is some broad language in the
13 release. The defendants point to the use of the term "all
14 manner of actions." It is important to note with respect to
15 the text, for one, the language does not refer to unknown
16 claims, which is a fairly common thing to include if that's
17 what the parties actually intend. The word "unknown" does
18 not appear, nor do the words "future" or "contingent"
19 appear, and those were words that the *Centro* court found
20 important in concluding that that release did reach unknown
21 fraud claims, those words were absent here. Of course
22 there's no mention of fraud. Defendants have to show
23 conclusively on this motion that the text clearly and
24 unambiguously reaches unknown fraud claims and the text
25 doesn't refer to fraud claims, unknown claims, future

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1 claims, or contingent claims.

2 Now, the defendants point to the use of the word
3 "global resolution" in the settlement agreement that sort of
4 accompanied the releases, but even there the parties said
5 they wanted a global resolution of their differences and
6 they didn't have any differences about the frauds at issue
7 here. At that point, they were still unknown, they will
8 still being carried on in secret.

9 The defendants kind of fall back on the use of the
10 term "all manner of actions." As to the text, that's where
11 they hang their hat, and that was the language also used in
12 *Centro*, although the words "future" and "contingent" are
13 missing here, but the structure is important and the context
14 in *Centro* is important.

15 In that case there were two simultaneous releases.
16 The first one explicitly carved out fraud claims and the
17 second one just said all manner of action and didn't refer
18 one way or another to fraud claims. In concluding that all
19 manner of action, including a fraud claim in *Centro*, the
20 court there was drawing an inference from the structure,
21 from the inclusion of an expressed carveout in the first
22 release and the absence of such a carveout in the second.

23 The structure here is very different and the
24 structure here works against the defendant. As the Court
25 noted, there was a separate release that addressed the

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1 trust; and the defendants say, Well, there were different
2 parties or that was a different subject matter; but that's
3 precisely the point, your Honor. The first release was not
4 global, it was aimed at what it was aimed at.

5 The second point, as the Court also noted, this
6 release included an explicit obligation that the defendants
7 provide documents about the interest that they were
8 insisting she throw in as part of the deal. Those
9 documents, as we allege, are riddled with fraud. So to the
10 extent anything about these claims or the frauds that were
11 still unknown at the time can be found anywhere in the text
12 or structure of this release, they're a whole lot closer to
13 the carveout than to the heart of the release itself. I
14 think that's the first point on the releases, your Honor.
15 The text does not clearly and unambiguously reach this
16 unknown fraud claim, particularly on this motion.

17 The second point is that *Centro* makes clear, even
18 if the text can be read to reach an unknown fraud claim,
19 releasing claims people didn't know about is not something a
20 court will likely do. Even if the text is clear,
21 unambiguous, still two questions left to answer according to
22 *Centro*. The first is, is that what the parties intended,
23 have the defendants shown that conclusively? And the second
24 question is, was the release knowingly and fairly made?

25 So as to the first question, the intent question,

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1 again, the fact that this release and these settlements were
2 aimed at totally distinct disputes about Fred Sr.'s probate
3 issues, about health insurance issues, that is pretty strong
4 evidence the parties did not intend to release this claim,
5 these unknown claims. That's the *Linn* case from the First
6 Department, 139 AD3d 574.

7 With respect to Mary's intent, for her part, the
8 complaint specifically alleges her intent was to settle the
9 probate issues and the health insurance litigation, that's
10 what she understood she was releasing. And then she agreed
11 to sell the Midland and land interests at a price she
12 thought was fair because she was completely unaware of this
13 fraud. That's complaint paragraph 149. Of course that
14 allegation has to be taken as true and given the benefit of
15 every inference here.

16 Even if the texts were clear and unambiguous, even
17 if defendants could conclusively show intent, it still
18 leaves a critically important question that *Centro* lays out
19 and that the defendants mostly in their briefs and all
20 together today just tried to sidestep, and that is the
21 question of whether the release was knowingly and fairly
22 made.

23 Here the complaint alleges in detail that the
24 circumstances were profoundly unfair because, as Mr. Kylie
25 briefly acknowledged, once Mary sued them over the probate

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1 issues, the defendants terminated the health insurance that
2 covered Mary and her brother Fred III. That health
3 insurance critically also covered Fred's infant child who
4 was suffering from cerebral palsy and seizures and spent
5 time in neonatal and intensive care. The complaint explains
6 in detail that the fact that this young man's life had been
7 placed in jeopardy, that an infant child's life was
8 literally hanging in the balance, was a critically important
9 motivator that brought Mary to the table. It is difficult
10 to think what could be a more unfair circumstance than that.

11 The defendants, again, don't really have an answer
12 to that question. They come at it with a few different
13 strawman. They say, first, well, technically maybe this
14 doesn't amount to duress. That's not the standard, that's a
15 completely distinct legal question. Duress would have
16 allowed Mary to avoid the release, even as to the
17 litigations it was aimed at.

18 Here *Centro* is saying something different. *Centro*
19 is saying when the release was aimed at one thing and later
20 a defendant is trying to stretch and apply it to a claim
21 unknown at the time, a fraud claim at that, then we look and
22 see was that release fairly made before we stretch it that
23 far. It's a different inquiry and the complaint's
24 allegations are quite detailed and must be taken as true.

25 The defendants also try a misdirection. They say,

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1 Well, a separate fraud is required if you're going to
2 invalidate a release on the basis of fraud. It just
3 misunderstands the argument. The unfairness here which
4 *Centro* says means the release can't be applied arises
5 primarily from the termination of the health insurance along
6 with threats to bankrupt Mary and leave her and her daughter
7 destitute and everything else.

8 The defendants also tried to say, Well, she was
9 sophisticated; that just doesn't have any relevance to this
10 question. As the Court noted, Mary is sophisticated on
11 certain issues, as a psychologist, as an author; not
12 terribly sophisticated with respect to complex real estate
13 partnerships and fraudulent schemes. She was held as an
14 outsider in this family.

15 The sophistication question is not really relevant
16 to that fairness under *Centro*. Putting an infant child's
17 life at risk is unfair no matter how sophisticated a person
18 is.

19 THE COURT: On that point, I have to ask a
20 question. Mary is not the guardian of that child. It
21 catches the attention -- the idea suggests a level of
22 callousness or inhumanity. But from a legal standpoint,
23 does Mary even have standing to make that connection here?
24 It's not her child; right? This is a family dispute, so all
25 these people are related to that infant child. From a legal

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1 standpoint, I just wonder whether that's even appropriate
2 for this litigation. She's not a guardian of the child.

3 MR. QUINN: I think it is appropriate because the
4 *Centro* inquiry frames this as a question of overall
5 fairness. Mary alleges in detail that she had a close
6 relationship with her brother, that she had an attachment to
7 the child, that this threat to that child's life is why she
8 came to the settlement table and what drove her to sign
9 these papers. That is a part of the overall picture on
10 fairness. The defendants also put in documents from the
11 action that Mary and her brother started together to try to
12 get that health insurance reinstated. Those documents do
13 show this was of serious importance to her. They
14 corroborate the detailed allegations already in the
15 complaint.

16 Again, I'll emphasize, we are here on a motion to
17 dismiss. The defendants have to conclusively show that even
18 giving every benefit of every inference of the complaints
19 and the documents, including the complaint and health
20 insurance litigation, that even despite all of that, they've
21 conclusively shown that this release was fairly made with a
22 child hanging in the balance. They simply cannot make that
23 showing.

24 The last point I'd make on the fairness point that
25 the defendants' kind of ultimate fallback argument is a

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1 ratification argument. They say, Well, she took the money,
2 she did the deal, she took the payment. But, your Honor,
3 that too is beside the point. She did the deal, she did
4 what was necessary to save her nephew's life. She took what
5 she thought was a fair price because she was being defrauded
6 even at the settlement table. She did the deal. No court
7 has ever suggested that merely accepting the payment
8 constitutes implied ratification of a release unfairly made
9 such that that release can later be applied to unknown fraud
10 claims. There's no support for that proposition in the law.

11 THE COURT: Talk to me about the new allegations
12 with respect to the attorney who was advising Mary in this
13 matter. Your adversaries say that the allegations here are
14 simply conclusory and as such they're not really entitled to
15 the inference that you are seeking, that you need to have
16 some level of factual support in your paragraph. Here they
17 say simply a single conclusory assertion, rather than any
18 allegation of fact.

19 MR. QUINN: So there are facts, your Honor,
20 significantly more detailed allegations than the one
21 Mr. Kylie pointed to. Paragraph 114, for example, of the
22 complaint. There are allegations that Mr. Durben, who was
23 sort of a compromised trustee and an old hand in the Trump
24 world, and the documents corroborate that, that he was
25 actually participating and designing All County and he was

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1 working with the defendants to perpetrate these schemes,
2 that's her trustee, and the complaint alleges that's where
3 the attorney came from. The trustee recommends the
4 attorney, Mary engages the attorney.

5 I think, your Honor, the most important point here
6 on this attorney issue is really a red herring and a
7 question for another day. The record here does not contain
8 anything that suggests that even the lawyer actually had
9 notice of circumstances suggesting fraud. He was asking in
10 the deposition exploratory questions about the value of
11 Fred Sr.'s estate, not the interest of estate here. Nothing
12 in that questioning suggests he knew about the schemes at
13 issue here. And what he got back, what he was told and the
14 answers from Robert Trump, as I detailed a short while ago,
15 was false, was categorically false. It said the vendor
16 prices were going down when they were actually staying the
17 same. It was centralizing purchasing power and real work
18 being done when there were no offices, there was no
19 legitimate services being provided at all. There were some
20 exploratory questions about the estate values and some false
21 statements about All County came out, but there's nothing
22 here that conclusively suggests the lawyer had any
23 knowledge. So whether knowledge would be imputed to Mary or
24 not at most is a question for down the road, not one that
25 the Court need to resolve here.

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1 I'd note one other sort of related point, your
2 Honor. They say they point to this line in Mary's brief
3 where she refers to a brief exchange she had with her lawyer
4 in which she said, We knew they were lying to us, but it was
5 he said/she said. I refer the Court to that statement.
6 It's Mary Trump Barry's Exhibit 6 and I think it's on page
7 187. It's very clear that what they were talking about is
8 they were being lied to about the overall value of
9 Fred Sr.'s estate such that settling the probate case, that
10 the number she did in retrospect didn't look like a great
11 deal because actually the estate was worth a lot more. It
12 doesn't in any way suggest that they knew there was a secret
13 fraud going on about interests Mary had inherited from her
14 father many years earlier and this glancing reference to All
15 County for 10 pages was just more perpetuating of the
16 cover-up. Did they have a general sense as to the estate
17 issues? Maybe the defendants weren't being straight with
18 them, maybe there was a lack of good faith. The documents
19 don't support that, but that's a completely distinct issue.

20 The First Department made clear here in the CSAM
21 case and in the *Berman v. Hollander & Knight* case, notice of
22 one unlawful act is not notice of a distinct fraud and even
23 a general sense that the defendants may be crooks and liars
24 and may not be acting in good faith, that's not sufficient
25 either. They have to make a conclusive showing of knowledge

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1 of facts from which this fraud at issue could be inferred
2 and they haven't come anywhere close to making that showing.

3 Unless the Court has any further questions on
4 either the timeliness or the releases, I'd like to spend a
5 couple of minutes on the more partial arguments that the
6 defendants make. I think there are three arguments that
7 they direct at particular pieces of particular claims and
8 I'll just spend a minute or two on each of them.

9 First is standing. They argue that Mary lacks
10 standing to bring fiduciary duty claims as to the Midland
11 issues and the valuation and fraudulent loan issues, not the
12 ultimate sale. They concede she has standing to bring that.
13 But as to those earlier frauds, they say those are
14 derivative and not direct claims. This too kind of
15 misunderstands the nature of the allegations.

16 For the most part, Mary was the only other
17 shareholder in these entities besides the defendants
18 themselves. In a lot of these schemes, what's happening is
19 there is an entity like Midland where the defendants have
20 partial ownership and then Mary has a piece, and then
21 there's some other business they set up like All County
22 where they own it all to themselves, and they're using
23 various schemes to fraudulently siphon money from the entity
24 where Mary has some interest to the entity where only the
25 defendants do. That is squarely aimed at Mary and in

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1 getting her out and moving money away from her. The First
2 Department has seen claims like this before where a majority
3 shareholder is kind of freezing out a minority shareholder
4 or moving money out of entities where the minority
5 shareholder has a piece in a way that's targeted directly at
6 the minority shareholder, that's the PL2 security case,
7 those are direct claims. Mary is alleging a set of
8 interlocking schemes aimed at her, at defrauding her,
9 siphoning value from her interest, and ultimately pushing
10 her out of the business altogether.

11 The second one of these sort of partial arguments
12 that defendants makes have to do with reliance. They argue
13 as to her fraud and fraudulent concealment and negligent
14 misrepresentation claims that she hasn't sufficiently pled
15 justifiable reliance in enough detail. The complaint does
16 include quite a number of allegations on this and I am left
17 scratching my head a little bit. I can list the number of
18 complaint paragraphs, but I would suggest paragraph 177 is
19 the simplest and clearest.

20 Year after year she was being given financial
21 documents that were designed to dupe her into believing that
22 these interests were being protected and that everything was
23 okay. The complaint makes clear she is lulled into this
24 false sense of confidence, not only that the interest are
25 worth a lot less than they really are but everything is in

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1 hand and the value is about the same, everything is fine,
2 the interest is being looked after. And that's why she was
3 unaware, that's why there were no disputes about this,
4 that's why she held onto this interest.

5 The reliance is clear and we cite a case for this
6 in our brief, your Honor, it's *American General*
7 *Equity v. Gjura*. The courts have recognized reliance is one
8 of those elements that often can be inferred from looking at
9 the circumstances in the theory. And here the reliance is
10 very clear and, as I said, made explicit in Complaint 177
11 and elsewhere.

12 Last, your Honor, really the table of contents
13 issue. The defendants take issue with the theory of
14 conspiracy claims, that the defendants conspired together to
15 commit this fraud and breach of fiduciary duty. They say
16 conspiracy isn't a standalone action in New York; we agree
17 with that, it isn't, and that's not what we pled.

18 What the First Department has recognized in the
19 Cohen Brothers and elsewhere is that it is perfectly
20 appropriate if there is a conspiracy at issue to use account
21 to plead that conspiracy so long as it's attached to what
22 the actionable tort that the conspiracy was designed to
23 achieve it and that's what the complaint does here. It
24 alleges a series of primary torts and then it alleges civil
25 conspiracy to commit those torts between the defendants.

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1 With that, your Honor, I would be happy to address
2 any further questions the Court may have. Otherwise, I
3 thank the Court for the opportunity to speak this morning.

4 THE COURT: Mr. Friedman.

5 MR. FRIEDMAN: Turning back to the releases. If we
6 look at paragraph 24 of the settlement agreement, it says
7 that the execution of this agreement is being completed on a
8 voluntary basis and each party represents they were under no
9 compulsion to execute this agreement and they've been fully
10 advised throughout the negotiations to resolve their
11 differences between the parties as all negotiations and
12 representations made to each other as well as to the Court.

13 I disagree with Mr. Quinn. The general releases
14 given here do release future conduct. It says that there's
15 a release of any claims and it's a litany of things that are
16 being released that she ever had, now have, or hereafter
17 can, shall, or may have. Those are future claims, your
18 Honor. It doesn't use the word "future claims," but that's
19 what that is.

20 To call this boilerplate, yes, it's accepted
21 language and it's on a preprinted Blumberg form, but this is
22 not the boilerplate "whereas the party in the first part."
23 This is accepted language that the courts have interpreted
24 over the years to be a broad, broad general release. If the
25 parties wanted to limit the release simply to the interest

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1 in the estate of Fred Trump or simply to interest in
2 Midland, the release could have clearly so provided, it
3 didn't. They chose to use a broad, broad general release.

4 One final point, your Honor. In *Epiphany*, there
5 were two fraud claims in *Epiphany* and it was a motion to
6 dismiss and the first one was dismissed. The court found
7 that the person was not entitled to rely -- that allegedly
8 Epiphany could have obtained its own appraisals. It says,
9 We find that Epiphany could have discovered the alleged
10 fraud when Wendy, as Epiphany's executive director, signed
11 the asset agreement in 2003. She signed it without
12 obtaining her own appraisal. Further, Epiphany did not
13 question the disproportionately high rent which was the
14 basis of the undervaluation of the asset, nor did Epiphany
15 verify whether Magic paid the rent due or made payments on
16 the promissory note. This was all on a motion to dismiss,
17 your Honor, that determination was made. So here, there was
18 no attempt by Mary to verify anything about All County once
19 she knew exactly why it was created and what it was doing.

20 With that, your Honor, we think that the action
21 should be dismissed as time barred. And if not dismissed as
22 time barred, dismissed on the basis of release.

23 Thank you.

24 THE COURT: Mr. Kylie.

25 MR. KYLIE: I would note with regard to the

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1 release, this notion that the plaintiff only signed it
2 because they threatened to cut off their nephew's health
3 benefits, you would have thought then she would have carved
4 out in the release a value for that in the settlement
5 agreement. If you look at the settlement agreement, while
6 it gives a value for all her other interests or all her
7 other claims, it's silent on that issue, they don't put any
8 value on it. You would have thought if this was the single
9 most crucial factor for her giving up 18 months of
10 litigation, she would have put a value on it and would have
11 fought for it.

12 Judge, I know we've gone back through it a few
13 times, but I would be remiss if I didn't further advocate
14 for the fact that the plaintiff was on notice every single
15 allegation the New York Times makes with regard to her
16 claims. There's a 40-page article, 37 pages are about other
17 extraneous family stuff. Mary's claims relate to All County
18 and Apartment Management, devaluing her Midland interest,
19 devaluing Fred Trump's estate, okay, and then also devaluing
20 her reversionary interests on her land leases. Those are
21 theories. Anything in the New York Times that relates to
22 that, you can conclusively say her very able attorney was on
23 notice of it in 2000.

24 This notion that -- there's no requirement that I
25 have to disclose I'm committing a fraud on you. They're

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1 claiming the mere formation of All County was a sham. Well,
2 they were told that. We formed the company. It acted as a
3 middleman. We marked things up. It made a profit. It got
4 money out of Fred's estate. Her attorney even follows up on
5 it and looks at financials and says, Hm, it looks like it
6 went up a 100 percent when All County came in, prior to All
7 County. Unlike the *Epiphany* case and the other cases, they
8 didn't hide anything. All County is on the books. They
9 didn't launder it, so to speak. They didn't conceal it.
10 Everything was out in the open because what they were
11 advised was lawful. They had a legitimate reason to do
12 this.

13 I know this is not particularly germane, your
14 Honor, to the issue on the motion, but I would be remiss if
15 I didn't advocate for this. Fred Trump -- the plaintiff has
16 it both ways. On the one hand Fred was an old man in his
17 80s and they came in and they took power of attorney and
18 they took over everything; but on the other hand, they want
19 to say, Well, listen, All County was a sham because we've
20 got this interview with this boiler guy who says I always
21 negotiated with Fred Trump and all of a sudden out of
22 nowhere comes All County. You can't have it both ways.
23 Either Fred Trump was in dementia and he couldn't run the
24 company by himself or he wasn't, and they argued both sides
25 of it.

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1 The point is, All County was formed because their
2 father was in the late 80s. The supers were ripping them
3 off. They weren't purchasing through a central agent. The
4 mere fact they were able to do that under the rent
5 regulations at the time and make a profit and have an added
6 benefit of getting money out of the estate, paying income
7 tax obviously but getting money out of the estate, all
8 disclosed to Mary Trump in the litigation.

9 All of this sensational language about award
10 winning, they might have done some great research to
11 determine what Fred Trump did in the '40s and '50s and '60s,
12 but with regard to Mary's specific claims of All County,
13 claims are solely that All County and Apartment and
14 Management devalued her Midland interest, they devalued Fred
15 Trump's estate, and they devalued her land lease interest.
16 That's her entire claim in a nutshell.

17 THE COURT: You make a statement where you put a
18 conclusory spin on what their argument is and that's
19 contrary to what Mr. Quinn has said. You said that the mere
20 creation of these entities is what they are claiming was a
21 fraud. From what I understand from Mr. Quinn, from what I
22 read in the papers, they don't say the mere creation of them
23 constituted a fraud. They say those vehicles were created
24 and they could have operated in a fully lawful manner but
25 that, in fact, they were operated for sham purposes if

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1 Mr. Quinn says and that they did not provide value. I don't
2 know what's true and what's not. Again, the problem I have
3 on a motion to dismiss is I am supposed to believe
4 Mr. Quinn.

5 MR. KYLIE: Your Honor, it's knowledge of the
6 facts, not the inferences or the legal conclusions that's at
7 issue.

8 THE COURT: The fact that there's a middleman
9 company is not a reason to inquire that there's fraud. The
10 fact that there is a middleman company that is being
11 operated by your aunt and your uncles is not a reason to
12 believe where that middleman company is committing fraud.

13 MR. KYLIE: The middleman company which is marking
14 up the invoices. It's no longer Fred paying the boiler guy,
15 we are now going out and we're paying the boiler guy and
16 we're marking up. It's plainly testified to. We are
17 marking up -- now should Mr. Barnosky said, Well, how much
18 is the markup? Is it 10 percent? Is it 80 percent? Is it
19 100 percent? When he's staring at the records and
20 questioning Robert Trump, it looks like the cost for
21 materials and mops and repairs went up 100 percent after All
22 County was formed. It was on inquiry notice and she was by
23 implication -- he was her counsel, her agent. She was on
24 inquiry notice and she had an opportunity. They bring this
25 Supreme Court action, they could have brought a derivative

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1 action on top of it naming Midland. Let's get discovery.
2 It went up 100 percent, holy crap, and you're saying you're
3 marking it up. Before All County there was no need to do
4 that? You're just taking money. You didn't need an
5 award-winning journalist to make the deduction. You know
6 that because in the article itself all they do -- when they
7 come to the conclusion in the article itself, all they do is
8 refer to Robert's transcript and the questions that Barnosky
9 asked Robert. All they do is exact for page, Beach Haven
10 Apartments, looks like it went up 100 percent, janitorial
11 supplies, repairs, that's all they did. With regard to the
12 GRATs, all they did was go out and do what Barnosky had
13 done, go out and get another appraisal. The rest of it is
14 all window dressing and the sensationalized language, it's
15 there for a reason. This was not award-winning journalism
16 to go and actually look at the record, the file, from the
17 estate. You want to say one other thing. So one other
18 thing they did, which was not in the discovery materials,
19 they followed up with this boiler guy who, from my
20 recollection, all he did was say, Yeah, it used to be Fred
21 Trump; now I'm getting a bill from All County; who is All
22 County? That was not enlightening in any way.

23 Again, with regard to the release, plaintiff says,
24 I was only releasing the claim in the Surrogates Court case
25 and the Supreme Court case. This was a family divorce. She

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1 filed hurtful documents alleging fraud. They fraudulently
2 had my father, they induced him to do things and they
3 committed fraud. That's what was in their objections to
4 probate and their bill of particulars. They spent 18 months
5 litigating this thing. They are no longer fiduciaries, she
6 is in an adversarial position with them. The case law says
7 you have to do your due diligence, there's no more fiduciary
8 duty. She's got the best lawyer in town fighting for her.

9 After 18 months they come together with a global
10 settlement because would you want to do business with
11 somebody who filed something and said, I committed a fraud,
12 my grandfather had dementia. It was a global settlement, it
13 was a family divorce. She wants round two at the divorce
14 and she only wants round two because of the notoriety of the
15 case.

16 I know I don't need to tell this to the Court as
17 your Honor I'm sure -- unless justice is blind, but are we
18 kidding ourselves that if the name on this case wasn't
19 Trump, this case would never have been brought? The
20 plaintiff is seizing on sensationalism and politics to bring
21 a claim that shouldn't get past the courtroom front door, in
22 my respectful opinion, your Honor.

23 Thank you.

24 THE COURT: I will take this on submission.
25 Mr. Friedman and Mr. Kylie, if you could obtain a copy of

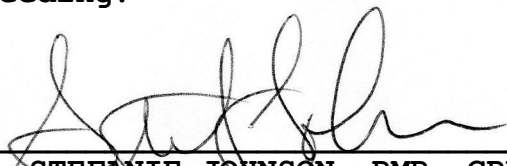
1 the transcript from the reporter and file it with the court
2 in Part 43 so the Court can use it in preparing its
3 decision, I appreciate it.

4 Good day, everyone.

5 * * * *

6
7 C E R T I F I C A T I O N

8 It is hereby certified that the foregoing is a true
9 and accurate transcript of the original stenographic minutes
taken of this proceeding.

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12 _____
13 STEFANIE JOHNSON, RMR, CRR
14 Senior Court Reporter
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