UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTINE SVENNINGSEN, 33 PROSPECT HILL ROAD, LLC, 34 PROSPECT HILL ROAD, LLC, AUTO I, LLC, BELDENS ISLAND, LLC, CUT-IN-TWO EAST, LLC, CUT-IN-TWO WEST, LLC, EAST CRIB ISLAND, LLC, GUILFORD DOCKOMINTUM I, LLC, HOME PALACE, LLC, JEPSON ISLAND, LLC, LINDEN POINT, LLC, REEL ISLAND, LLC, ROGERS ISLAND, LLC, SNOW PALACE, LLC, THE OLD ADAMS HOUSE, LLC, WEST CRIB ISLAND, LLC, WHALER I, LLC, and WHEELER ISLAND, LLC,

Plaintiffs,

-against-

ULTIMATE PROFESSIONAL GROUNDS MANAGEMENT, INC., doing business as ULTIMATE SERVICES PROFESSIONAL GROUNDS MANAGEMENT, JOHN G. CHIARELLA, JR., DOMENIC A. CHIARELLA, and ULTIMATE SERVICES PROFESSIONAL GROUNDS MANAGEMENT, INC.,

Defendants.

OPINION & ORDER

No. 14 Civ. 5161 (NSR)

NELSON S. ROMÁN, United States District Judge

Defendant Ultimate Professional Grounds Management, Inc. ("Ultimate") seeks reconsideration of this Court's March 31, 2017 Opinion and Order (the "Opinion") (ECF No. 167) resolving the parties' cross-summary judgment motions. Ultimate argues the Court should have dismissed the Property LLC Plaintiffs' remaining claims on the bases of judicial estoppel and lack of standing. (*See* Def. Reply at 1, 6, ECF No. 174.) But, as the Property LLCs correctly observe (*see* Pls. Opp'n at 6-11, ECF No. 172), neither of Ultimate's positions are correct. Familiarity with the Opinion and the factual background of this action is assumed.

LEGAL STANDARD

Reconsideration of a Court's previous order is "an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." *In re Initial Pub. Offering Sec. Litig.*, 399 F. Supp. 2d 298, 300 (S.D.N.Y. 2005) (internal citation and quotation omitted), *aff'd sub nom. Tenney v. Credit Suisse First Boston Corp.*, Nos. 05 Civ. 3430, 05 Civ. 4759 & 05 Civ. 4760, 2006 WL 1423785, at *1 (2d Cir. 2006). Motions for reconsideration are governed by Local Civil Rule 6.3 and Federal Rule of Civil Procedure 60(b), and "[t]he standard for granting a motion for reconsideration . . . is strict." *Targum v. Citrin Cooperman & Company, LLP*, No. 12 Civ. 6909 (SAS), 2013 WL 6188339, at *1 (S.D.N.Y. Nov. 25, 2013). Motions for reconsideration are "addressed to the sound discretion of the district court and are generally granted only upon a showing of exceptional circumstances." *Mendell ex rel. Viacom, Inc. v. Gollust*, 909 F.2d 724, 731 (2d Cir. 1990).

Importantly, a motion to reconsider "is not a vehicle for . . . presenting the case under new theories . . . or otherwise taking a second bite at the apple." *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (quotation and citation omitted); *see also Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Stroh Cos.*, 265 F.3d 97, 115 (2d Cir. 2001) (quoting *Polsby v. St. Martin's Press*, No. 97 Civ. 0690 (MBM), 2000 WL 98057, at *1 (S.D.N.Y. Jan. 18, 2000)) (in moving for reconsideration, "'a party may not advance new facts, issues, or arguments not previously presented to the Court.'"). Generally, these motions "'will [] be denied unless the moving party can point to controlling decisions or data that the court overlooked.'" *Analytical Surveys*, 684 F.3d at 52 (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)).

DISCUSSION

The admonition to avoid making motions for reconsideration absent "extraordinary" circumstances—such as "point[ing] to controlling decisions or data that the court overlooked," *Shrader*, 70 F.3d at 257—has not deterred Ultimate from asking for reconsideration in this case. Primarily, Ultimate argues that the Court "overlooked" its seven page argument regarding the application of judicial estoppel to Plaintiff Svenningsen's claims and its lengthy footnote argument that the Property LLC Plaintiffs were similarly estopped or lacked standing to assert claims against Ultimate. (*See* Def. Mem. at 2, ECF No. 169.) What Ultimate does not do, however, is point to controlling precedent or information that the Court neglected to consider.

In the Opinion, this Court decided that Svenningsen and Chiarella had mutually waived claims against each other by virtue of their divorce agreement. (Opinion at 24; *Svenningsen v. Ultimate Prof'l Grounds Mgmt., Inc.*, No. 14 Civ. 5161 (NSR), 2017 WL 1234040, at *12 (S.D.N.Y. Mar. 31, 2017).) The Court concluded that the LLCs, not parties to that personal divorce, could not be held to the same waiver. (*Id.*; *Svenningsen*, 2017 WL 1234040, at *12.) The Court then held that Ultimate's remaining arguments were either "unnecessary" or "unpersuasive." (*Id.* at 25; *Svenningsen*, 2017 WL 1234040, at *13.) Though Ultimate appears to think the word "unpersuasive" was the only instance in which the Court dismissed its other arguments against the LLCs, the Court also indicated that: (1) Ultimate's arguments regarding "statute of limitations and waiver [] address[ed] a significant portion of Plaintiffs' claims in th[e] action;" (2) "Defendants' remaining arguments d[id] not impact the remaining viable claims;" and, specifically, (3) Ultimate did not "articulate *any* viable defenses to claims brought by the LLCs." (*Id.* at 11, 24; *Svenningsen*, 2017 WL 1234040, at *6, 12-13 (emphasis added).)

Despite failing to demonstrate its entitlement to reconsideration, the Court will explain in greater detail why Ultimate's arguments were unpersuasive, *i.e.*, why judicial estoppel does not apply to the Property LLCs' claims and why the LLCs have standing to pursue this action.

I. Judicial Estoppel Does Not Apply to the LLCs Claims

Under Connecticut law, the law applicable to this action, judicial estoppel requires that "(1) 'a party's later position is *clearly inconsistent* with its earlier position,' (2) 'the party's former position has been adopted in some way by the court in the earlier proceeding,' and (3) 'the party asserting the two positions would derive an *unfair* advantage against the party seeking estoppel.'" *Barton v. City of Norwalk*, 326 Conn. 139, --- A.3d ----, at *9 (2017) (quoting *Dep't of Transportation v. White Oak Corp.*, 319 Conn. 582, 612 (2015) and citing *Dougan v. Dougan*, 301 Conn. 361, 372-73 (2011); *DeRosa v. National Envelope Corp.*, 595 F.3d 99, 103 (2d Cir. 2010)) (emphasis added). "[G]enerally speaking, the doctrine will not apply 'if the first statement or omission was the result of a good faith mistake . . . or an unintentional error.'" *Id.* (citation omitted). And, "[l]ike all equitable remedies, judicial estoppel requires the party invoking the doctrine to do so with clean hands." *David M. Somers & Assocs., P.C. v. Kendall*, 1 A.3d 217, 220 (Conn. App. Ct. 2010). Furthermore, where the parties in the two proceedings differ, the Court must determine whether they are in sufficient privity for the doctrine to apply. *See Central Hudson Gas & Elec. Corp. v. Empresa Naviera Santa S.A.*, 56 F.3d 359, 368 (2d Cir. 1995) (for *res judicata* purposes, determination of whether party is in privity with former litigant requires court to inquire whether "party controlled or substantially participated in the control of the presentation on behalf of a party to the prior action" and that its interests were "identical to the interests" of former litigant) (internal quotation marks and alterations omitted).

"In the bankruptcy context, the federal courts have developed a basic default rule: If a plaintiff-debtor omits a pending (or soon-to-be-filed) lawsuit from the bankruptcy schedules and obtains a discharge (or plan confirmation), judicial estoppel bars the [pending] action." *Ah Quin v. Cty. of Kauai Dep't of Transp.*, 733 F.3d 267, 271 (9th Cir. 2013); *see BPP Illinois, LLC v. Royal Bank of Scotland Grp. PLC*, 859 F.3d 188, 192 (2d Cir. 2017) ("Judicial estoppel will 'prevent a party who failed to disclose a claim in bankruptcy proceedings from asserting that claim after emerging from bankruptcy.'") (citations omitted); *see, e.g.*, *In re Crossover Fin. I, LLC*, 477 B.R. 196, 204 (Bankr. D. Colo. 2012) (noteholders took "positions to suit their litigation tactics regardless of whether they conflict[ed] with each other"). The doctrine has similarly been applied to an LLC as a result of a position previously taken by its sole owner-member during a personal bankruptcy. *See, e.g.*, *Patriot Mfg. LLC v. Hartwig, Inc.*, No. 10 Civ. 1206 (EFM) (KGG), 2014 WL 4538059, at *1 (D. Kan. Sept. 11, 2014) (plaintiff's "sole member" omitted "his ownership interest in [the plaintiff LLC] or th[e] lawsuit in his personal bankruptcy filing," requiring application of judicial estoppel to LLC's breach of contract claims).

Application of the doctrine is more nuanced in a case, such as this, where the parties have intertwined their personal and professional matters. The thrust of Ultimate's argument at summary judgment was that judicial estoppel should apply to the LLCs', as well as Svenningsen's, claims "as a matter of equity and public policy," because "[i]f parties could circumvent the court and avoid the consequences of judicial estoppel simply by bringing the same claims on behalf of their solely owned LLCs, they would be free to advance inconsistent positions in different courts with impunity, rendering the doctrine powerless." (Def. S.J. Mem., at 8 n.3; *see also id.* at 2 ("Christine, either personally or through her solely owned [] LLCs,

should not be permitted to now take a completely inconsistent position before this court").)[1] Ultimate tellingly omitted any case citations for this proposition and omitted the fact that Chiarella *also* had an intimate relationship with the LLCs. In fact, it is the complexity of the relationship between Ultimate and the LLCs, Chiarella and Svenningsen, that undermines the application of judicial estoppel in this case.

A. Is Svenningsen's Prior Position, Taken During the Divorce, *Clearly Inconsistent* with the LLCs' Current Position?

When an individual files for bankruptcy and omits a claim, of which that person was aware, and in a later action asserts that claim—it works an injustice against the individual's creditors by "abusing the judicial process through cynical gamesmanship[.]" *Teledyne Indus., Inc. v. N.L.R.B.*, 911 F.2d 1214, 1218 (6th Cir. 1990); *BPP Illinois*, 859 F.3d at 194. Unlike a bankruptcy proceeding focusing on professional dissolutions between members of companies and their creditors, a matrimonial court is tasked with adjudicating personal divorces. Here, particularly given the fact that Chiarella had taken on a role within the LLCs, it does not work an injustice—or force an inconsistent position—to keep the LLCs separate from the personal divorce in the absence of an explicit acknowledgement by either party to the divorce that the waiver should also apply to the LLCs in which they shared some responsibility. *Compare, e.g., In re Myers*, No. 09-33813 (JES), 2012 WL 2501124, at *2 (Bankr. E.D. Wis. June 28, 2012) (in a case of "mixing friendship with business," judicial estoppel did not apply where statement made by creditor did not clearly delineate whether it sought to hold LLC or individuals liable for debt), *with Samson v. NAMA Holdings, LLC*, 637 F.3d 915, 936 (9th Cir. 2011) (position was

[1] Ultimate also contends that by defining "Plaintiffs" to include the LLCs it provided sufficiently robust argument on the extension of the doctrine to both Svenningsen and the LLCs. (*See* Def. Reply at 2.) This contention is particularly unconvincing in the absence of controlling case law related to this specific context—which Ultimate did not provide.

clearly inconsistent where plaintiffs "consistently argued that their capacity as manager [of LLC] was distinct from their capacity as individuals" but later attempted to apply LLC agreement to claims against them as individuals).

At the outset, the Court notes that the parties did not submit sufficient information in their motions for summary judgment to create a "fully developed" record with regard to the structure of the LLCs and the internal obligations owed between the manager and potential members: Svenningsen is the sole member and owner of the Property LLCs, but her ex-husband, Chiarella, was the manager of the LLCs at the time the alleged wrongdoing occurred and he may have owed the LLCs a fiduciary duty.[2] Specifically, neither side submitted the operating agreements for the companies for the Court's consideration. Therefore, the Court could not decide any issues related to the management of the LLCs. (Opinion at 20 n.14 (declining to decide whether the LLCs were owed a fiduciary duty by Chiarella)); *cf. Scarfo v. Snow*, 146 A.3d 1006, 1019 n.10 (Conn. App. Ct. 2016) (noting the court was able to conduct a "thorough review of the operating agreement" at issue).

As a result, there is a genuine question here as to whether the Property LLC Plaintiffs and Svenningsen are in sufficient privity such that Svenningsen's assertions made in the divorce court should bind the LLCs. *See Empresa Naviera*, 56 F.3d at 368. Privity is generally found when the party to the previous litigation was the sole or managing member of a closely held corporation. *See, e.g.*, *Lia v. Saporito*, 909 F. Supp. 2d 149, 178-79 (E.D.N.Y. 2012), *aff'd*, 541 F. App'x 71, 73 (2d Cir. 2013) (party claimed to be "undisclosed 75% owner, sole manager, and sole financier of [an entity]" and that entity "was a party to the [previous] administrative

[2] The Court detailed this information in the Opinion. (Opinion at 3, 20 n.14; *Svenningsen*, 2017 WL 1234040, at *2, 10 n.14; *see also* Pls. Resp. 56.1 ¶¶ 1, 4, 86, ECF No. 161; Am. Compl. ¶ 31 & Ex. A (Chiarella listed as "manager" for each LLC and as president of Ultimate).)

proceeding"). But Svenningsen's interests in the divorce were arguably different and distinct from the interests of the LLCs. And, there is insufficient evidence in the record to determine what degree of control over the LLCs Chiarella was able to assert.

More importantly, Ultimate has not established, particularly given the identity issues between the parties, that the waiver of claims made during Svenningsen and Chiarella's divorce proceedings is clearly inconsistent with the LLCs asserting their own claims now. When Svenningsen divorced from Chiarella—and the two listed their respective assets—both were undoubtedly aware that the Property LLCs were not listed. Svenningsen listed her wholly-owned investment company and disclaimed any pending claims against Chiarella and, thus, his grounds keeping company. Chiarella listed Ultimate and did the same. Though Ultimate argues the LLCs' claims are "identical" to Svenningsen's claims (*see* Def. Reply at 4, 7), they are not: all of Svenningsen's personal claims have been dismissed. (*See* Opinion at 24.)

Therefore, her position during the divorce is not clearly inconsistent, as required under the doctrine of judicial estoppel, with the Property LLCs' current claims against Ultimate, since those entities were in a unique management and service relationship with Ultimate that differed from the relationship between Svenningsen and Chiarella, both parties knew the LLCs were not listed on the financial affidavits, and the disclaimer did not imply it would extend to jointly managed companies. *See Barton*, 326 Conn. 139, at *9-10 (prior assertion as to a property's "highest and best use" for valuation purposes did not conflict with decision to use property in a different fashion); *Mangiafico v. Town of Farmington*, 173 Conn. App. 178, 192, --- A.3d ----, (Conn. App. Ct. 2017) (given the specific facts at issue, town's claim that an appeal procedure was not available "was correct and was not inconsistent with its prior position" that an appeal was available in different circumstances); *Rogers Inv. Co. v. F. W. Woolworth Co.*, 161 Conn. 6,

11 (1971) (plaintiff admitted that defendant claimed entitlement to an escrow fund, but that admission did not extend to whether such a claim was valid); *cf. Dougan*, 301 Conn. at 374 ("one year after representing to the trial court that he . . . agreed to the [divorce] agreement in its entirety, and that [it] was fair and equitable, the plaintiff . . . asked that court to invalidate the provision because it constituted a penalty and was unenforceable as against public policy").

Because the divorce proceeding was a divorce between individuals, not businesses, both of whom had some role in the LLCs, Ultimate has failed to establish at this stage of the litigation that Svenningsen's position is "*clearly inconsistent*" with the position of the LLCs, or that it should be binding upon them.

B. Does Svenningsen Reap an *Unfair Advantage* Against Ultimate Based on the Two Positions?

As for the third requirement, it is difficult to imagine how Svenningsen would derive an "*unfair* advantage" against Ultimate. *Barton*, 326 Conn. 139, at *8; *cf. Lia*, 909 F. Supp. 2d at 178-79 ("the Lia parties would derive an unfair advantage if allowed to disavow any interest in the [] [d]ealership . . . in order to avoid a statutory protest which, if successful, could have prevented the [] [d]ealership from opening, only to later be allowed to change their position . . . to claim a majority interest in the seemingly successful [] [d]ealership entitled to a share of its profits"). The Court, in deciding that the separation agreement only applied to claims between Svenningsen and Chiarella, and in rejecting the application of judicial estoppel to the LLCs, recognized that whatever Svenningsen knew in 2013, or had inquiry notice of in 2011, Chiarella would also have been aware of in his dual, potentially conflicting, roles as owner of Ultimate and manager of the LLCs. Similarly, as noted, Chiarella was undoubtedly aware that the companies for which he acted as manager were not listed on Svenningsen's asset schedule, whether

intentionally or by mistake.[3] *See Summer v. Summer*, 649 N.Y.S.2d 615, 616 (4th Dep't 1996) (husband who complained of assets that were concealed during a bankruptcy filing "acknowledge[d] that he knew of [wife's] concealment of the family trust before the commencement of the trial in the underlying matrimonial action" precluding a finding of fraud required to vacate the final judgment of divorce); *Billington v. Billington*, 220 Conn. 212, 217, 224-25 (1991) (requiring that "the statement [be] untrue and known to be so by its maker" and that the parties not be acting in concert to re-open a divorce judgment). Therefore, although he may have been surprised by Svenningsen's claims in this action given the settlement agreement between the two individuals, his surprise at claims lodged by the LLCs is dubious. His involvement with Ultimate and the LLCs also frustrates the requirement that "the party invoking the doctrine [] do so with clean hands." *Kendall*, 1 A.3d at 220.

* * *

As was the case for Svenningsen, Chiarella's decision to mix his marital and managerial duties impacts this litigation and exemplifies why the LLCs cannot be judicially estopped by Svenningsen's actions. Even concluding, as this Court did at summary judgment, that

[3] In this case, the failure of Ultimate's judicial estoppel argument does not turn on Svenningsen's knowledge—or whether she made a mistake during the divorce proceedings. *Barton*, 326 Conn. 139, at *8 (doctrine does not apply in the case of "a good faith mistake . . . or an unintentional error"); *see, e.g.*, *Cagle v. C & S Wholesale Grocers Inc.*, 505 B.R. 534, 540 (E.D. Cal. 2014) (where there was "no question that Plaintiff had knowledge of the facts giving rise to the lawsuit" but failed to amend bankruptcy schedules, court found "Plaintiff's claim of inadvertence or mistake [was] simply not plausible"). Rather, the doctrine is inapplicable because of the interplay between Chiarella and the LLCs.

Moreover, Ultimate has also failed to present sufficient evidence to warrant summary judgment on the issue of Svenningsen's intent when the LLCs were omitted from the affidavits at issue. *Ass'n Res., Inc. v. Wall*, 298 Conn. 145, 172 (2010) (defendant failed to "point[] to any evidence contradicting the plaintiff's assertion that he did not realize that he was supposed to list this counterclaim as an asset in the bankruptcy proceeding" and failed to demonstrate prejudice based on the nondisclosure); *Sutton v. Licenziato*, No. UWYCV126019112S, 2015 WL 6231967, at *5 (Conn. Super. Ct. Sept. 18, 2015) (party presented "absolutely no evidence of any bad faith actions or intentional deception . . . as [] required for judicial estoppel"); *see also* Conn. Gen. Stat. Ann. § 34-132 (West), *repealed by* 2016, P.A. 16-97, § 110 (eff. July 1, 2017) (although notice to a member is generally imputed to an LLC, that is not true "in the case of a fraud on the limited liability company committed by or with the consent of that manager[.]"). Plaintiffs' repeated point that Chiarella has not sought to reopen the divorce judgment despite the claims now lodged against Ultimate supports this conclusion. (*See* Pls. Opp'n at 8.)

Svenningsen "came to the conclusion sometime in 2013" that she was owed money as a result of Ultimate's alleged deceptive business practices prior to the finalization of Svenningsen and Chiarella's divorce in 2014, the Court cannot make the leap that the LLCs, distinct entities in which both individuals had some role, should be estopped from asserting their distinct claims. In sum, when Svenningsen waived any claims against Ultimate, she did not do so with respect to the LLCs,[4] and it would not work an injustice to allow such claims to go forward at this juncture. *See In re First Connecticut Consulting Grp., Inc.*, 254 F. App'x 64, 67 (2d Cir. 2007) ("the record fails to demonstrate the requisite clear inconsistency in their positions or risk of inconsistent results necessary to warrant the application of judicial estoppel to this case").

II. The LLCs have Standing to Pursue the Claims

Ultimate's argument at summary judgment, also asserted in the same footnote arguing for the extension of judicial estoppel to the Property LLCs, was that the LLCs "do not having standing to sue because they did not sustain any injury, since all invoices relevant to the overcharge claims were paid by [Svenningsen]." (Def. S.J. Mem., at 8 n.3 (citing *Chiulli v. Zola*, 905 A.2d 1236, 1241 (Conn. App. Ct. 2006); *Jenkins v. U.S.*, 386 F.3d 415, 417 (2d Cir. 2004)).) Ultimate additionally argued:

> Plaintiffs [] d[id] not allege that the [] LLCs were parties to any contract with Ultimate, or that they had any direct relationship with Ultimate sufficient to give rise to any causes of action based on alleged overcharges. Even assuming *arguendo* that the [] LLCs, were third-party beneficiaries to the Contract that was effective beginning in 2010, if Christine is barred from enforcing the Contract, then the [] LLCs are also barred.

[4] The LLCs are distinct legal entities and Ultimate has not established—or even tried to demonstrate—that the LLCs are simply alter egos of Svenningsen. *Padawer v. Yur*, 66 A.3d 931, 935-36 (Conn. App. Ct. 2013) ("position as sole member, also, d[id] not provide [plaintiff] with standing to recover individually for harm to the limited liability company"); *cf. In re Weeks Landing, LLC*, 439 B.R. 897, 915 (M.D. Fla. 2010) (in reverse situation, there was "no record evidence" that release entered into between LLCs waived individual claims of member to one of the LLCs).

(*Id.*) Ultimate, thus, anchors its lack of standing argument to the proposition that the waiver of Svenningsen's claims extended to the LLCs even if they were third-party beneficiaries. But, as discussed above, the waiver, based on the evidence presented, does not extend to the LLCs.[5]

The Property LLC Plaintiffs are free to enforce the contracts—entered into between Svenningsen and Ultimate for their benefit—as intended third-party beneficiaries. *See Byram Lumber & Supply Co. v. Page*, 109 Conn. 256, 146 A. 293, 294 (1929) ("a third party for whose benefit a provision has been inserted in a contract may sue thereon"); *Heyman Assocs. No. 5, L.P. v. FelCor TRS Guarantor, L.P.*, 102 A.3d 87, 96 (Conn. App. Ct. 2014) (property owners had standing to enforce restrictive covenant designed to benefit property, where "[i]t [was] apparent that the defendant clearly understood who owned the [property]"); *see also* (Opinion at 24 (citing *Gateway Co. v. DiNoia*, 232 Conn. 223, 231 (1995) (a third-party beneficiary to a contract can enforce its obligations if the contract was intended to create a direct obligation from one party to that third-party)); *id.* at 25 ("This leaves the Property LLCs' claims related to Ultimate's provision of grounds-keeping services to the property held by the LLCs.")).

Plaintiffs correctly argue that "[t]he fact that Svenningsen paid amounts due on the Ultimate contracts from her personal funds does not deprive [the] LLCs of standing." (Pls. Opp'n at 11 ("Svenningsen's payments were manifestly for the benefit of [the] LLCs pursuant to contracts to which they were parties.").) Therefore, the LLCs have standing to pursue their claims, separate and apart from whatever claims Svenningsen may have had. *See Ambrogio v. Beaver Rd. Assocs.*, 267 Conn. 148, 155 (2003) (for example, "consequential damages include any loss that may fairly and reasonably be considered [as] arising naturally, *i.e.*, according to the

[5] As the Court explained in the Opinion, "all of [Svenningsen's] *personal* claims against Ultimate were waived when she signed the Separation Agreement[.]" (Opinion at 24 (emphasis added).)

usual course of things, from [the] breach of contract itself.") (citations omitted); *see also Little Mountains Enterprises, Inc. v. Groom*, 64 A.3d 781, 786 (Conn. App. Ct. 2013) (discussing damages measures and evidence required); *cf. Scarfo*, 146 A.3d at 1016 (if "harms asserted to have been suffered directly by a plaintiff are in reality derivative of injuries to a third party, [] injuries are not direct but are indirect, [] the plaintiff has no standing to assert them").

* * *

Having failed to point to controlling law or data on the issues of judicial estoppel and standing which this Court overlooked with regard to the Property LLC Plaintiffs' claims, the Court denies Defendant's motion for reconsideration. Ultimate's attempted "second bite at the apple," *Analytical Surveys*, 684 F.3d at 52, does not change the Court's conclusions.

CONCLUSION

For the foregoing reasons, Defendant Ultimate's motion for reconsideration is DENIED. The Clerk of the Court is respectfully directed to terminate the motion at ECF No. 168.

The parties are directed to appear for the previously scheduled pre-trial conference on July 20, 2017 at 12:00 pm.

Dated: July 20, 2017
White Plains, New York

SO ORDERED:

NELSON S. ROMÁN
United States District Judge