STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: September 7, 2012)

MARY LOU DAURAY	:	
	:	
vs.	:	**C.A. No. PB 10-1195**
	:	
ESTATE OF GABRIELLE D. MEE (a/k/a Gabrielle Malvina Mee), et al.	:	

MARY LOU DAURAY, an heir-at-law of GABRIELLE D. MEE, and on behalf of the ESTATE OF GABRIELLE D. MEE	:	
	:	
vs.	:	**C.A. No. PB 11-2640**
	:	
THE LEGION OF CHRIST OF NORTH AMERICA, INC., OCEAN PASTORAL CENTER, INC. d/b/a THE LEGION OF CHRIST (RI) INCORPORATED, THE LEGION OF CHRIST, INCORPORATED, LEGION OF CHRIST INCORPORATED, MATER ECCLESIAE, INC. (MOTHER OF THE CHURCH, INC.), HOMBRE NUEVO (RI), INC. (NEW MAN (RI) INC.), OVERBROOK, INCORPORATED, PASTORAL SUPPORT SERVICES INC., LEGIONS OF CHRIST, LEGION OF CHRIST AND CONSECRATED REGNUM CHRISTI MEMBERS ASSISTANCE FOUNDATION, LEGION OF CHRIST COLLEGE, INC., FR. ANTHONY BANNON, LC, Individually and as Responsible Officer for other Defendants, and XYZ CORPORATION, or other entities not known at this time	:	

MARY LOU DAURAY, an heir-at-law of GABRIELLE D. MEE, and on behalf of the ESTATE OF GABRIELLE D. MEE	:	
	:	
vs.	:	**C.A. No. PB 11-2757**

BANK OF AMERICA, N.A., as successor-in-interest by merger or otherwise to FLEET NATIONAL BANK, as Trustee of the Timothy J. Mee Foundation Trust and the Timothy J. Mee Charitable Trust, and as co-trustee of the Gabrielle D. Mee Trust, THE LEGION OF CHRIST OF NORTH AMERICA, INC., OCEAN PASTORAL CENTER, INC. d/b/a THE LEGION OF CHRIST (RI) INCORPORATED, THE LEGION OF CHRIST, INCORPORATED, LEGION OF CHRIST INCORPORATED MATER ECCLESIAE, INC. (MOTHER OF THE CHURCH, INC.), HOMBRE NUEVO (RI), INC. (NEW MAN (RI) INC.), OVERBROOK, INCORPORATED, PASTORAL SUPPORT SERVICES INC., LEGIONS OF CHRIST, LEGION OF CHRIST AND CONSECRATED REGNUM CHRISTI MEMBERS ASSISTANCE FOUNDATION, LEGION OF CHRIST COLLEGE, INC., FR. ANTHONY BANNON, LC, Individually and as Responsible Officer for other Defendants, and XYZ CORPORATION, or other entities not known at this time.	:

DECISION

SILVERSTEIN, J. Before the Court are Defendants'/Appellees' (Defendants) Motions for Summary Judgment, pursuant to Super. R. Civ. P. 56.[1] This Decision applies to the three separate, unconsolidated cases captioned above. The Court heard oral argument regarding all three matters together over the course of three days. In the will case (C.A. No. PB 10-1195), Plaintiff/Appellant Mary Lou Dauray is appealing a probate court Order admitting the will of Gabrielle D. Mee, claiming the will was executed under undue influence, fraud, and mistake in

[1] Originally, Defendants brought motions to dismiss rather than motions for summary judgment in the civil actions numbered PB 11-2640 and PB 11-2757. These motions have been converted to motions for summary judgment. See Tidewater Realty, LLC v. State, 942 A.2d 986, 992 (R.I. 2008) (providing court may convert motions to dismiss to motions for summary judgment).

the inducement. In the inter vivos gifts case (C.A. No. 11-2640), Ms. Dauray claims the Defendants unduly influenced and fraudulently induced Mrs. Mee into giving approximately $60 million to the Defendants—particularly, the Legion of Christ.[2] In the trust case (C.A. No. PB 11-2757), Ms. Dauray alleges that Defendant Bank of America, N.A. (the Bank), as successor-in-interest by merger or otherwise to Fleet National Bank, breached its fiduciary duties as trustee of multiple trusts. Defendants move for summary judgment in all three matters, arguing mainly that Ms. Dauray has not and cannot present any evidence creating a genuine dispute of fact that Defendants did not unduly influence or fraudulently induce Mrs. Mee's actions and that the Bank did not breach any fiduciary duties.

I

Facts and Travel

Mrs. Gabrielle D. Mee was born on June 10, 1911 and lived a devoutly Catholic life. See Gabrielle Mee Dep. Tr. 4:12-7:1, July 12, 2001.[3] From the age of twelve, Mrs. Mee attended daily Mass. Id. at 5:17-7:1. She earned her high school degree from a religious school operated by the Religious of Jesus and Mary, a Roman Catholic religious Order. Id. at 4:12-24. Mrs. Mee's education was bilingual, and she worked as a French translator before marrying Timothy J. Mee in 1950. See id. at 4:12-5:8. Mr. Mee similarly was a devout Catholic with a Catholic upbringing. See id. at 7:2-10:14. Together, they attended Mass and recited the Rosary nightly. Id. at 5:17-10:14.

[2] Defendants, as listed in the case captions, will be collectively referred to in this Decision as the Legion of Christ, with the exception of the Bank. Defendant Bank of America, N.A., as successor-in-interest by merger or otherwise to Fleet National Bank, will be referred to as the Bank.

[3] Mrs. Mee's deposition was taken in connection with what will be referred to as the "Fleet Litigation," more properly described as Legion of Christ N. Am., Inc. v. Fleet Nat'l Bank, No. 01-1039, a civil action filed in Rhode Island Superior Court.

Mr. Mee was a successful businessman who served as a director of Fleet National Bank and accumulated significant wealth. See id. at 10:15-11:20. He passed away on December 18, 1985. Id. at 13:10-12. During his lifetime, Mr. Mee handled the Mees' finances and investments, although Mrs. Mee was generally, but perhaps not always, included in the discussions. Id. at 12:14-13:9; Robert Sylvestre Dep. 16:1-14, Sept. 13, 2011.

In February of 1982, Mr. Mee created a trust indenture characterized as a charitable remainder unitrust. (Pl.'s Ex. G1.) The original charitable beneficiary was the Hope Charitable Foundation, created in 1967 by Mr. Mee. See id. In September of 1982, Mrs. Mee by trust indenture created a revocable trust to benefit the Hope Charitable Foundation on her death. See Pl.'s Ex. G3. That trust was amended twice, but income and residue remained directed to the Hope Charitable Foundation. See id.

In January of 1985, before Mr. Mee's death, he established the Timothy J. Mee Foundation Trust. At that time, the Mees created the Timothy J. Mee Foundation to replace the Hope Charitable Foundation as the trust beneficiary. See Pl.'s Ex. G2. Mrs. Mee explained that she and her husband shared the ideal that "[y]ou have to give back to God some of what God has given you," and that, in their eyes, supporting the Church came first. (Mee Dep. 10:6-14.) Mrs. Mee reiterated, "When God gives us something good, we have to give something back to Him. And we were Roman Catholics and we thought giving it to the church would be the best way and they would know where to put it." Id. at 15:5-11.

In October of 1987, after Mr. Mee's death, Mrs. Mee established the Gabrielle D. Mee Charitable Trust, originally to benefit the Contemplatives of Our Lady of Joy (the Contemplatives). See Pl.'s Ex. G4. The Contemplatives were a small, start-up, religious Order with preliminary recognition from the Roman Catholic Church. See id.; Silvestre Dep. 19:5-

24:2. They were founded by two Rhode Island brothers in the Catholic religion. (Silvestre Dep. 19:5-24:2.) Mrs. Mee's 1987 trust funded the Contemplatives, and Mrs. Mee allowed them to reside in the Mee's North Smithfield residence rent-free. See id.; Pl.'s Ex. TT (Mem. from Beth Kernan, Feb. 1, 1993).

The Legion of Christ[4] was established in 1941 in Mexico by Father Marcial Maciel Degollado. Father Maciel served as the General Director of the Legion of Christ until 2005. Regnum Christi is an organization associated with the Legion of Christ. Mrs. Mee testified that she first learned of the Legion of Christ around 1989 from a church friend at her parish in Narragansett. (Mee Dep. 15:23-16:6.) She learned that the Legion of Christ was "with the Catholic church without deviation," so she "knew that was the way to go" with her charitable donations. Id. at 17:3-12. A trust officer at the Bank claims, however, that he informed Mrs. Mee about the Legion of Christ. (Silvestre Dep. 42:1-43:9.)

Soon after, Mrs. Mee visited the Legion of Christ at their center in Cheshire, Connecticut. (Mee Dep. 18:2-7; Silvestre Dep. 43:20-45:18.) She went there because she wanted to meet them and thought they were "doing something good." Id. at 18:8-21. On her visit, she "liked what [she] saw." Id. Mrs. Mee made a $1,000,000 gift to the Legion of Christ at that time. Id. at 18:22-19:5; see Pl.'s Ex. K (Ltr. from Mrs. Mee, Aug. 8, 1989). Mrs. Mee met with Father Maciel at the time of the visit. (Silvestre Dep. 44:10-45:6.)

In October of 1991, Mrs. Mee executed a new will that revoked all prior wills and codicils. Her 1991 Will directed ninety percent of her assets to the Legion of Christ and ten percent to Americans United for Life. See Defs.' Ex. 53.

[4] The Legion of Christ, as the term is used in this Decision, includes the Legionnaires of Christ, the Legionarios de Christos, the Legion of Christ, Inc., the Legion of Christ North America, Inc., and other related entities and names.

In November of 1991, Mrs. Mee became a consecrated woman with the Legion of Christ. (Mee Dep. 22:14-17.) By that time, she resided at the Regnum Christi facility in Rhode Island. That same year, Mrs. Mee made a $3,000,000 gift to the Legion of Christ. Mr. and Mrs. Mee never had any children, although Mrs. Mee had seen a Catholic doctor about pregnancy and fertility issues. (Mee Dep. 22:24-23:13.) When Mrs. Mee moved into the Regnum Christi facility and became a consecrated woman, in her own words, "God's promise to the childless wife that she would be given a home and children to gladden her heart was fulfilled!" Mrs. Mee considered herself the grandmother and the young, consecrated women her grandchildren. (Mee Dep. 23:22-24:19.)

In 1993, Mrs. Mee learned that one of the two brothers in the Contemplatives was accused of soliciting sex from another male. (Silvestre Dep. 34:21-35:19, 86:24-88:11.) In response, Mrs. Mee withdrew her financial support of the Contemplatives and wanted to immediately evict them from her North Smithfield property that they were occupying. See id.

Later in 1993, Mrs. Mee deeded that North Smithfield property to the Legion of Christ. In January of 1994, Mrs. Mee amended the 1987 Gabrielle D. Mee Charitable Trust to change the beneficiary to the Legion of Christ. See Pl.'s Ex. G4.

In September of 1994, the Timothy J. Mee Foundation Trust was amended to benefit the Legion of Christ. See Pl.'s Ex. G2. The amendments changed the name to the Timothy J. Mee Charitable Trust, and changed the Trust purpose so as to "support exclusively the Legion of Christ . . . ." See id. The Trust provided that "should the said Legion ever . . . cease to be faithful to the Holy Father as determined by the Roman Pontiff or his designee, then the Trust shall be a supporting organization of Overbrook, Inc. . . . ." Id. If Overbrook ceased to be faithful to the Pope, then the Trust would become a supporting organization of Hombre Nuevo

Rhode Island, Inc. See id. Likewise, if Hombre Nuevo ceased to be faithful to the Pope, then the Trust would become a supporting organization of Mater Ecclesiae, Inc. of Rhode Island. See id. Finally, if Mater Ecclesiae ceased to be faithful to the Pope, then the Trust would become a supporting organization of The Papal Foundation. See id. All of these beneficiaries were related entities of the Legion of Christ, with the exception of the final beneficiary, The Papal Foundation.

The 1994 amendments to the Trust further established an Advisory Committee "composed of three persons appointed by the President of the Legion of Christ" to "in its sole discretion make recommendations to the Trustee regarding the amounts and distributes of Trust distributions." Id. The principal and income of the Trust was to be distributed to the Legion of Christ "in such amounts and in such manner as the Trustee (after taking into consideration any recommendations of the Committee) may from time to time determine." Id. The amendments obligated the Trustee to "make proper distributions after taking into consideration the recommendations of the Committee," which was comprised of Legion of Christ appointees. See id. Further, the amendments required the consent of Mrs. Mee or the Committee for any subsequent amendments to Mr. Mee's trust, despite the fact that neither Mrs. Mee nor the Committee was a settlor or trustee of the Trust. See id.

These 1994 amendments to Mr. Mee's trust were allegedly drafted by Father Bannon of the Legion of Christ at the request of Mrs. Mee, and adopted by the trustee bank. See Pl.'s Exs. N (Ltr. from Mrs. Mee to Father Maciel), O (Ltr. from Father Maciel to Mrs. Mee, Dec. 18, 1993). With regard to amending the two trusts to make the Legion of Christ the beneficiary, Mrs. Mee explained:

> "Well, there was one thing I wanted. [Mr. Mee] always said, it has to do some good. And the Catholics[,] the Church . . . . I knew

> that it was going to be in the Catholic Church, and . . . having heard what I knew about the [Legion of Christ], I preferred to put all my eggs in one basket than have it all fragmented. And I was sure of what they were doing. I got to know them well. I had extreme faith in what they were doing and they're proving today what they are doing. They're re-Christianizing the entire world." (Mee Dep. 20:24-21:11.)

Just a few months later, in January of 1995, Mrs. Mee executed a codicil to her 1991 Will. The 1995 Codicil modified her will such that one hundred percent of her assets were to be directed to the Legion of Christ. (Defs.' Ex. 54.)

In the autumn of 1996, the Legion of Christ purchased a parcel of improved real estate in New York formerly occupied by IBM and known as "Thornwood" for $35,000,000. The purchase was made possible by a $25,000,000 loan and a $5,000,000 revolving line of credit from the Bank. A loan officer of the Bank testified that the Bank relied on representations by the Legion of Christ and Mrs. Mee that the Mee trusts (held by the Bank) would pay the Legion of Christ's loan (from the Bank). See Jeffrey Klaus Dep. 15:3-18:25, 44:16-22, Jan. 18, 2012; Pl.'s Ex. S (Mem. from Klaus, Oct. 28, 1996).

Public exposure of scandals within the Legion of Christ began with a detailed, February 1997 Hartford Courant report describing sexual abuse allegations against Father Maciel. See Pl.'s Ex. U (Hartford Courant report, Feb. 23, 1997); see also Anthony Bannon Dep. 147:25-148:2, June 8, 2010. Previously, in the 1950s, Father Maciel had been investigated for misuse of prescription drugs, financial impropriety, and other allegations. (Bannon Dep. at 148:3-18.) According to the Hartford Courant article, nine men accused Father Maciel of sexually abusing them from the 1940s to 1960s, although many more young men may have been involved. See Pl.'s Ex. U. A spokesman for the Legion of Christ denied the allegations. See id. In 1998, the

Vatican became aware of the accusations and initiated its investigation. See Pl.'s Ex. Y (Zenit.org article, May 19, 2006).

In March of 1999, the 1987 Gabrielle D. Mee Charitable Trust was again amended, this time to restrict the trustee to "invest only in companies, the products, activities and business practices of which are consistent with Catholic moral teaching and in accordance with the investment guidelines of the Legion of Christ, Inc." (Pl.'s Ex. G4.) The amendment further provided that "no assets of the Trust be invested in companies in the liquor industry, health care or pharmaceutical companies that perform abortions or develop artificial contraceptives, or companies in the entertainment industry that produce pornographic material or otherwise attack or contradict the moral principles of the Catholic church." Id. The same month, Mrs. Mee also executed a codicil to her 1991 Will. The 1999 Codicil, like the 1999 trust amendments, restricted the executor of her estate to "invest only in companies, the products, activities and business practices of which are consistent with Catholic moral teaching and in accordance with the investment guidelines of the Legion of Christ, Inc." (Defs.' Ex. 55.)

In August of 2000, Mrs. Mee executed a durable power of attorney in favor of Father Bannon, authorizing him to represent her in any discussions with the Bank regarding the Mee trusts. In December of 2000, Mrs. Mee executed a new will, the 2000 Will, revoking the prior wills and codicils. The 2000 will left all property and residue to the Legion of Christ, contained the same Legion of Christ investment restrictions, but appointed Father Bannon as executor of the estate rather than the Bank. See Defs.' Ex. 56. The Bank remained only as an alternate executor. See id.

In March of 2001, the Legion of Christ requested that the Bank terminate the 1987 Gabrielle D. Mee Charitable Trust and distribute its res to the Timothy J. Mee Charitable Trust

so that the Legion of Christ could use it to discharge its mortgage debt. The Bank refused, and the Legion of Christ and Mrs. Mee brought an action in Providence County Superior Court (the Fleet Litigation). The parties settled that matter, and this Court and the Attorney General, Division of Charitable Trusts, approved the settlement in August of 2003. As part of the settlement, the Timothy J. Mee Charitable Trust was amended and restated. The Trust, as amended, terminates on December 31, 2042 and contains the provision requiring the beneficiary to remain faithful to the Pope. See Pl.'s Ex. G2.

While the Fleet Litigation was ongoing, in September of 2002, Mrs. Mee executed a codicil to her 2000 Will. The 2002 Codicil removed the Bank as alternate executor and named Father Christopher Brackett in its place. See Defs.' Ex. 57. It further directed the executor to substitute the estate as Plaintiff in the Fleet Litigation upon Mrs. Mee's death and to "continue to litigate said matter until its completion." Id.

Father Maciel retired from the Legion of Christ in 2005 and died in 2008. (Bannon Dep. 146:12-25, 148:19-21.) He was replaced by Father Corcuera as the director. Following Father Maciel's death, certain additional revelations came to light, including that he had fathered children and that he had lived with the woman with whom he had conceived a child. Id. at 148:22-149:9.

On May 19, 2006, the press office of the Pope released an official "Communiqué Concerning Founder of Legionnaires of Christ." (Defs.' Ex. 32.) The Communiqué revealed that the Congregation for the Doctrine of the Faith received allegations—some of which were public—against Father Maciel beginning in 1998. See id. In 2001, then-Cardinal Joseph Ratzinger authorized an investigation. See id. After review of the results and after Cardinal Ratzinger was elected Pope, Cardinal William Joseph Levada decided to forego a hearing but to

"invite the [Father Maciel] to a reserved life of penitence and prayer, relinquishing any form of public ministry." Id. The 2006 Communiqué concluded by acknowledging the "worthy apostolate" of the Legion of Christ and Regnum Christi, independent of its founder. Id.

In September of 2006, Mrs. Mee instructed the Bank to release any and all information regarding her bank accounts and trusts to Legion of Christ members, including Father Ortega. See Pl.'s EE (Ltr. from Mrs. Mee to Bank, Sept. 5, 2006), FF (Ltr. from Mrs. Mee to Bank, Sept. 21, 2006). She also instructed the Bank to distribute an additional $3,000 a month from her trust by check payable to the Legion of Christ. See Pl.'s GG (Ltr. from Mrs. Mee to Bank, Sept. 8, 2006). In December of 2006, Mrs. Mee made a $1,210,000 gift from her personal bank account to the Legion of Christ. See Pl.'s HH (Ltr. from Mrs. Mee to Bank, Dec. 26, 2006). In August of 2007, Mrs. Mee made a gift of $590,000 to the Legion of Christ from her personal bank account. See Pl.'s II (Ltr. from Mrs. Mee to Bank, Aug. 15, 2007). On May 12, 2008, just four days before Mrs. Mee's death, Father Bannon wrote to the Bank and requested a $400,000 gift be made to the Legion of Christ from Mrs. Mee's personal bank account. See Pl.'s JJ (Ltr. from Father Bannon to Bank, May 12, 2008). The Bank complied with Father Bannon's request and made the transfer on May 14, 2008. Mrs. Mee passed away two days later on May 16, 2008.

On May 1, 2010, the Pope issued a Communiqué regarding the "apostolic visitation" of the Legion of Christ. (Defs.' Ex. 48.) The extensive visitation "ascertain[ed] that the conduct of [Father Maciel] has given rise to serious consequences in the life and structure of the Legion, such as to require a process of profound re-evaluation." Id. The Communiqué acknowledged the "very grave and objectively immoral actions of Father Maciel, confirmed by incontrovertible testimonies, [that] in some cases constitute real crimes and manifest a life devoid of scruples and

authentic religious meaning." Id. After describing plans to review, redefine, and purify the Legion of Christ, the Pope reaffirmed the Vatican's support of the organization. See id.

Plaintiff Mary Lou Dauray was Mrs. Mee's niece. (Mary Lou Dauray Dep. Vol. I, 31:20-21, Dec. 16, 2010.) Although Ms. Dauray saw Mrs. Mee from time to time during Ms. Dauray's childhood and through her college years, Ms. Dauray did not see or speak with Mrs. Mee after moving to California in the late 1960s, with the exception of one occasion. (Mary Lou Dauray Dep. Vol. II, 163:22-165:3, 174:8-175:15, Dec. 16, 2010.) In 1991, Ms. Dauray took a three-day business trip to Providence. Id. at 175:9-18. She visited with Mrs. Mee for several hours and asked Mrs. Mee for money to help fix her mother's teeth. Id. at 176:2-9, 180:23-181:8. That was the last time and only time that Ms. Dauray saw Mrs. Mee in the forty-six years before her death. See id. at 174:21-175:11, 181:11-13, 188:8-10.

Ms. Dauray now appeals the probate of Mrs. Mee's will. She claims the Defendants unduly influenced and fraudulently induced Mrs. Mee to distribute her assets to them (by will, trust, and gifts), and she claims the Bank breached its fiduciary duties as trustee of the Mee trusts. It is clear to the Court—and agreed by all parties—that Ms. Dauray testified at her deposition that she does not seek to recover any of Mrs. Mee's assets for herself in this litigation.[5]

II

Standard of Review

Summary judgment is proper when "no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the motion justice finds that the moving party is entitled to prevail as a

[5] The legally binding nature of that testimony was not made an issue either in the memoranda furnished or during oral argument.

matter of law." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (quoting Rule 56(c)). On consideration of a motion for summary judgment, this Court must draw "all reasonable inferences in the light most favorable to the nonmoving party." Hill v. Nat'l Grid, 11 A.3d 110, 113 (R.I. 2011) (quoting Fiorenzano v. Lima, 982 A.2d 585, 589 (R.I. 2009)). However, the burden lies on the nonmoving party to "prove the existence of a disputed issue of material fact by competent evidence," rather than resting on the pleadings or mere legal opinions and conclusions. Hill, 11 A.3d at 113.

Where it is concluded "that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law," summary judgment shall properly enter. Malinou v. Miriam Hosp., 24 A.3d 497, 508 (R.I. 2011) (quoting Poulin v. Custom Craft, Inc., 996 A.2d 654, 658 (R.I. 2010)); see also Holliston Mills, Inc. v. Citizens Trust Co., 604 A.2d 331, 334 (R.I. 1992) (stating "summary judgment is proper when there is no ambiguity as a matter of law"). Conversely, "if the record evinces a genuine issue of material fact, summary judgment is improper." Shelter Harbor Conservation Soc'y, Inc. v. Rogers, 21 A.3d 337, 343 (R.I. 2011) (citations omitted). "Summary judgment is an extreme remedy that should be applied cautiously." Hill, 11 A.3d at 113 (quoting Plainfield Pike Gas & Convenience, LLC v. 1889 Plainfield Pike Realty Corp., 994 A.2d 54, 57 (R.I. 2010)).

III

Discussion

In their Motion for Summary Judgment, Defendants make several arguments why the Court should grant judgment in their favor. The Court will address the chief issues in the order it perceives to be most logical. First, the Court will consider Defendants' contention that Plaintiff Mary Lou Dauray does not have standing to bring her claims under G.L. 1956 § 33-18-17 or

under the common law. Next, the Court will address the burden of proof on an undue influence claim and whether Plaintiff's cause of action survives a summary judgment review on undue influence. Then, the Court will analyze Plaintiff's fraud claims. Finally, the Court will discuss the duties of a trustee and whether Plaintiff's claims for breach of fiduciary duties will survive the instant Motion for Summary Judgment.

A

Standing

In the instant Motion, Defendants argue Ms. Dauray does not have standing under § 33-18-17 or under common law to bring the lawsuit. Ms. Dauray counters that she has standing to enforce the trusts and recover the gifts on behalf of Mrs. Mee's estate under § 33-18-17 and that she further has "special interest" standing to enforce the charitable trusts. Ms. Dauray also contends that she has common law standing to appeal the probate court Order admitting the will.

Title 33 of Rhode Island General Law on Probate Practice and Procedure provides, inter alia, that "a person legally interested in the estate" of a decedent may, after proper notice to the administrator, executor, or guardian, "commence an action or proceeding to recover any property, personal or real, which the legally interested person may have reason to believe should be recovered for the benefit of the estate . . . ." Sec. 33-18-17. Ms. Dauray explicitly states in her Complaint that she "brings this action . . . pursuant to R.I. Gen. Laws § 33-18-17." (Compl. ¶ 20, May 12, 2011.) The issue, then, in the trust case and inter vivos gift case standing analysis is whether Ms. Dauray is "a person legally interested in the estate" of Mrs. Mee. See § 33-18-17.

In the reported cases finding standing of a person legally interested under § 33-18-17, the plaintiff is generally a legatee of the will and an intestate heir of the deceased. See Umsted v. Umsted, 446 F.3d 17, 21 (1st Cir. 2006). "Under Rhode Island law, legally interested parties

may commence an action *on behalf of an estate* to recover property that belongs to the estate if the executor fails to so act." Umsted v. Umsted, 446 F.3d 17, 21 (1st Cir. 2006) (citing § 33-18-17). Interpreting the Rhode Island statute, the First Circuit held that "[a]s legatees under [the] will, as well as intestate heirs . . . grandchildren qualify as persons 'legally interested' in [the] estate." Id. at 23.

Other courts have found parties to be legally interested only under similar circumstances. See, e.g., Henry v. Sheffield, No. CA 09-332 S, 2012 WL 1292497, at *3 (D.R.I. Apr. 16, 2012) ("As legatees under [the] will, as well as intestate heirs, there is no question that Plaintiffs . . . qualify as persons 'legally interested in the estate of a deceased person.'"); Haffenreffer v. Coleman, No. 06-299T, 2007 WL 2972575, at *3-4 (D.R.I. Oct. 10, 2007) (determining principal beneficiary of estate to have standing to bring action under § 33-18-17 as legally interested person in order to recover to the benefit of the estate); see also Stubbs v. Taft, 88 R.I. 462, 463, 149 A.2d 706, 706 (1959) (hearing action under § 33-18-17 brought by "heirs-at-law" of the deceased as "persons legally interested in [the] estate"). The Federal District Court for the District of Rhode Island determined in Henry that "in their capacity as beneficiaries of [the] estate, Plaintiffs 'had standing to bring the state court action for what [they] perceive[] to be the benefit of the estate *and [their] interest in it*.'" 2012 WL 1292497 at *3 (citations omitted) (emphasis in original). This Court is not aware of any cases conferring standing under the statute to a niece who is neither a legatee under the will nor a beneficiary under the trusts.

In the context of a will contest, an "interested party" who may contest the will is one who "may become a legatee or beneficiary under a will," a party with a "financial interest in property of [the] deceased," or a "part[y] who ha[s] a pecuniary interest in the subject of the contest, including heirs at law of the testator." See In re Estate of Notarianni, No. 02-5295, 2004 WL

603520 at *5 (R.I. Super. Mar. 17, 2004) (Clifton, J.) (citing "Interested party," West's Words and Phrases). Even an heir at law of a decedent—at least in some jurisdictions—does not necessarily have standing to contest proceedings for the probate of wills. See, e.g., In re Anthony's Estate, 15 P.2d 531, 533 (Cal. App. 1932). Generally, "the interest must be pecuniary and one detrimentally affected by the will, and not a mere sentimental interest." See Conner v. Brown, 3 A.2d 64, 74 (Del. Super. Ct. 1938); see also Apollonio v. Kenyon, 101 R.I. 578, 588, 225 A.2d 778, 784 (1967) (requiring to contest a will that the interested party have an interest in the estate and be aggrieved by the probate decree).

This Court holds as a matter of law that Ms. Dauray is not a "person legally interested in the estate" of Mrs. Mee and, therefore, does not have standing under § 33-18-17 to enforce the trusts and contest the inter vivos gifts. Ms. Dauray is neither a legatee under Mrs. Mee's will nor a beneficiary of any of the Mee trusts. Ms. Dauray herself has disavowed any interest in recovering from Mrs. Mee's assets. See Mary Lou Dauray Dep. Vol. III, 56:14-57:10, 58:24-59:21, 61:13-16, Aug. 23, 2011. Because the Plaintiff does not have any interest in recovering Mrs. Mee's monies and is not a beneficiary of the will or trusts, she cannot be a person legally interested in the estate. See Apollonio, 101 R.I. at 588, 225 A.2d at 784 (requiring interested party to have interest in estate and be aggrieved by probate decree); Henry, 2012 WL 1292497, at *3 (holding legatee under will and intestate heir to be legally interested party under statute). Besides Ms. Dauray's express disavowal of any recovery in these actions, the trusts clearly direct all assets to charity, depriving Ms. Dauray of any pecuniary interest. See Pl.'s Exs. G1, G2, G3, G4. Ms. Dauray has no standing to bring her claims under § 33-18-17. See § 33-18-17 (requiring "person legally interested in the estate" to bring claims).

Generally, under common law, "[t]he standing inquiry is satisfied when a plaintiff has suffered [some] injury in fact, economic or otherwise." Warwick Sewer Auth. v. Carlone, 45 A.3d 493, 499 (R.I. 2012) (citations omitted). "An injury in fact is an invasion of a legally protected interest which is (a) concrete and particularized * * * and (b) actual or imminent, not conjectural or hypothetical." Id. (citations omitted). Further, "a plaintiff must demonstrate a personalized injury distinct from that of the community as a whole." Id. (citations omitted). It is for the trial justice to determine whether the plaintiff "alleged a personal stake in the outcome of the litigation." See Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008).

Here, as with standing under the statute, Ms. Dauray does not have general standing to bring her claims contesting the admission of Mrs. Mee's will. Ms. Dauray has disavowed any recovery in this action and has not shown any personal injury. See Dauray Dep. Vol. III, 56:14-57:10, 58:24-59:21, 61:13-16, Aug. 23, 2011. She has reiterated that her intention in this lawsuit is only to honor her aunt's wishes. See id. Interestingly, Ms. Dauray had seen or spoken to her aunt only once in the forty-six years before her death. See Dauray Dep. Vol. II, at 174:21-175:11, 181:11-13, 188:8-10. She has failed to demonstrate by competent evidence any personalized injury distinct from that of the community. See Warwick Sewer Auth., 45 A.3d at 499 (requiring concrete and particularized personal injury distinct from that to community to establish standing); Hill, 11 A.3d at 113 (placing burden on nonmoving party to provide competent evidence of disputed facts).

Even if Ms. Dauray had successfully contested the trusts and wills executed after Mrs. Mee's involvement with the Legion of Christ began, the trusts and wills in force before the alleged fraud and undue influence all benefited only charity. See Pl.'s Exs. G1, G2, G3, G4. Thus, Ms. Dauray, even as niece to Mrs. Mee, would still have no pecuniary interest and no

concrete and particularized personal injury. See Warwick Sewer Auth., 45 A.3d at 499 (providing requirements for legal standing). Ms. Dauray lacks standing under both common law principles and the Rhode Island statute to bring her claims.

Ms. Dauray also argues a sort of "special interest" standing and cites to several secondary sources purporting to establish that persons with a special interest may have standing to enforce a trust when there is egregious misconduct or fraud. See Pl.'s Obj. and Mem. in Supp. of Her Obj. to Defs.' Mot. for Summ. J. (No. 11-2757) 48-50, June 12, 2005. A prominent treatise explains that this special interest standing to enforce a charitable trust applies when "one is entitled to a preference under the terms of the trust, is a member of a small class of identifiable beneficiaries, or is certain to receive trust benefits." Charles E. Rounds, Jr. & Charles E. Rounds, III, Loring and Rounds: A Trustee's Handbook § 9.4.2 (2012) (providing example of special interest standing for president or officers of organization that would benefit from trust). This Court is not aware and has not been made aware of any such "special interest" standing being applied in courts of this jurisdiction to supply standing not otherwise provided by statute. This Court is not inclined to begin that practice today. Further, it is clear that Ms. Dauray, who by her own testimony saw Mrs. Mee once in forty-six years and who does not seek any personal recovery in this litigation, cannot have a special interest in litigating the trust distributions to the Legion of Christ because she could not stand to benefit from any distributions of trust assets herself. See id.; Dauray Dep. Vol. II at 174:21-175:11, 181:11-13, 188:8-10, Vol. III at 58:24-59:21, 61:13-16.

With regard to the claims brought against the Bank, the Bank argues that they were released through the settlement and release signed by Mrs. Mee in the Fleet Litigation. However, whether that release applies to bar Ms. Dauray's claims against the Bank in this action

or not, Ms. Dauray still has no standing under § 33-18-17. Even if it is true, as Ms. Dauray argues, that the claims are distinct from those brought in the Fleet Litigation and could not have been brought in the Fleet Litigation, she still cannot bring the claims now because she lacks standing under § 33-18-17 and the common law, as discussed above. Accordingly, Ms. Dauray lacks standing to bring these claims in all three cases, and the Court grants summary judgment in favor of the Defendants on that ground.

B

Undue Influence

Although the Court holds that summary judgment is properly granted in favor of the Defendants (including the Bank) because Ms. Dauray lacks standing, the Court will consider, en arguendo, the instant Motion as applied to the undue influence, fraud, mistake in the inducement, and breach of fiduciary duties claims. First, the Court will address the issue of undue influence, beginning with the burden of proof and then considering the merits.

1

Burden of Proof

Generally, "[t]he party contesting the will must prove undue influence by a preponderance of the evidence." Caranci v. Howard, 708 A.2d 1321, 1324 (R.I. 1998); Murphy v. O'Neill, 454 A.2d 248, 249 (R.I. 1983) ("The burden of proving undue influence has traditionally rested with the contestants of the will."). However, "where a relationship of trust and confidence exists between a grantor and grantee, it is generally held that the burden is on the grantee to establish that the transfer was the deliberate and voluntary act of the grantor and that the transaction was fair, proper, and reasonable in all circumstances." Passarelli v. Passarelli, 94 R.I. 157, 159-60, 179 A.2d 330, 332 (1962); see Caranci, 708 A.2d at 1324 ("evidence that the

person accused of unduly influencing the testator enjoys a relationship of trust and confidence with the testator and was instrumental in the testator's execution of the contested will may at least give rise to the drawing of a permissible inference that undue influence was exerted upon the testator"). The confidential relationship presumption should be used to shift the burden when "circumstances are suspicious and . . . call[] for some explanation." Huebel v. Baldwin, 45 R.I. 40, 119 A. 631, 641 (1923).

It is, in fact, a long-held principle of Rhode Island law that "where property is conveyed to a person holding a confidential relation to the grantor . . . the *onus* is on the grantee to show affirmatively that the grantor acts with full knowledge and independently of the pressure of the relation." Earle v. Chace, 12 R.I. 374, 1879 WL 3547, at *3 (R.I. 1879). "The rule applies especially to persons in fiduciary situations, but it is not confined to them. It is applicable whenever the relation is such that the grantor is dependent on the grantee for advice and direction, or is, as it were, in tutelage or subjection to him as the guiding or controlling mind." Id.

The Rhode Island Supreme Court has recognized such confidential relationships between clergymen and parishioners, or between similar religious leaders and their followers. See Nelson v. Dodge, 76 R.I. 1, 12, 68 A.2d 51, 57 (1949). "[W]hen such trust is betrayed . . . in order to obtain another person's property even though not for one's self the processes of equity will come to the aid of the one who has parted with his property while under that influence." Nelson, 76 R.I. at 12, 68 A.2d at 57 (ruling in context of confidential relation comparable to that of clergyman and parishioner). "In the presence of such a spiritual ascendancy, all gifts or benefactions from the subject of such an influence to the possessor of it, have been frequently

avoided on grounds of public policy, and without any suspicion that fraud or imposition of any kind has been practiced." Id. (quoting Corrigan v. Pironi, 23 A. 355, 355 (N.J. 1891)).

Therefore, "[i]n the case of a spiritual adviser there is a presumption of undue influence, and the adviser has the burden to prove that the donor was entirely free from such influence." Id. at 13, 68 A.2d at 57. "It is a difficult burden to discharge," and "[t]he donee in such a case has the burden to show perfect fairness toward, complete freedom of, and absence of undue influence upon, the donor." Id. It is a "well-settled rule that the utmost good faith must be shown by one in any confidential relation, even though not technically a fiduciary, in order to support a gift of money or anything of value obtained from another who has reposed the trust and confidence." Id.

In this case, the Court is satisfied that the presumption of undue influence applies, shifting the burden to the Defendants to prove perfect fairness—namely, that the transactions were fair, proper, and reasonable in all circumstances. See Passarelli, 94 R.I. at 159-60, 179 A.2d at 332 (holding burden on grantee to establish transaction was fair, proper, and reasonable in all circumstances); Nelson, 76 R.I. at 13, 68 A.2d at 57 (holding burden on donee to show perfect fairness toward, complete freedom of, and absence of undue influence upon, the donor). While both sides have presented the Court with extensive factual claims, the following facts (albeit not an exhaustive list) establish an undisputed confidential relationship between Mrs. Mee and the Legion of Christ (and its members as her spiritual advisers) and indicate the Legion of Christ control over Mrs. Mee's finances within that confidential relationship:

- The Legion of Christ is a conservative, religious Order recognized and supported by the Catholic Church, and, specifically, the Pope. Regnum Christi is a related entity that was supported by the Legion of Christ. Father Maciel and others with whom Mrs. Mee had direct contact were Legion of Christ members. Mrs. Mee relied on them for spiritual guidance in her faith. See Pl.'s Ex. UU (consisting of hundreds of letters between Mrs. Mee and Legion of Christ members from 1989 through 2008); see generally Mee Dep.

- Mrs. Mee met on numerous occasions with Father Maciel and communicated by letter with him frequently. See Pl.'s Ex. UU. When she met him in 1989, he blessed her, which Mrs. Mee wrote that she would cherish as long as she lived. See id.
- Mrs. Mee's correspondence with Father Maciel refers to the gifts she was making to the Legion of Christ, and Father Maciel replied by telling her how pleased her late husband would be, by inviting her on trips abroad, and by including her specifically in prayers at Mass. See Pl.'s Ex. UU.
- Countless letters from Legion of Christ members to Mrs. Mee thank her for devoting substantially all of her assets to the Legion of Christ, and the letters consistently emphasize pleasing both the Lord and assisting His mission (and similar themes), as well as satisfying Mr. Mee's wishes. The Legion of Christ members unwaveringly promised to keep Mrs. Mee in their private prayers and prayers at Mass, they invited her on trips abroad to Rome and Mexico, and they encouraged her incorporation into the Regnum Christi movement. See Pl's Ex. UU.
- Upon this Court's review of the hundreds of letters submitted as an exhibit, Mrs. Mee's great spiritual respect and devotion for Father Maciel and other Legion of Christ members is clear, and it is undisputed by Defendants. See Pl.'s Ex. UU. She directly speaks of her faith in Father Maciel. See id.
- Mrs. Mee considered Regnum Christi and the Legion of Christ members to be her family, and she directly described them as such in her correspondence with Father Maciel. See Pl.'s Ex. UU. Mrs. Mee felt Father Maciel was a "saint," whom she held in great esteem and considered to be a Holy person. See Heather Sellors Dep. 102:8-23, Nov. 17, 2011; Joanne McOsker Dep. 16:2-18, Sept. 15, 2011.
- Father Alonso, by his own admission, acted as a spiritual adviser to Mrs. Mee, who even attended theology courses he taught and went to him for Confession. See Jose Alonso Dep. 58:18-59:17, 63:22-64:8, Oct. 13, 2011 (describing his interactions with Mrs. Mee as including "giving her spiritual advice").
- Mrs. Mee's estate planning instruments (beginning with 1991 Will directing ninety percent of her assets to the Legion of Christ) were executed while Mrs. Mee had a spiritual advisor/advisee relationship with the Legion of Christ priests, including Fathers Maciel, Bannon, and Alonso. The 1991 estate planning changes occurred two years after she first learned of the Legion of Christ and the same year she became a consecrated member of Regnum Christi.
- Mrs. Mee's 1994 trust amendments reduced Bank authority and increased control of Legion of Christ. Legion of Christ members were in fact on the committee established to participate in determining trust distributions in order to ensure the Mee trust funds most benefited the Legion of Christ. (Luis Garza Dep. 63:4-64:2, Nov. 18, 2011; Bannon Dep. 136:7-139:9.)
- Mrs. Mee required her trusts and wills be amended to comply with the Legion of Christ's teachings and guidelines that required investments only in entities that complied with the Legion of Christ's conservative, Catholic beliefs. See Pl.'s Ex. G4; Defs.' Ex. 55.
- Mrs. Mee's check records show that Father Alonso and others used her funds for Legion of Christ expenses. Specifically, Mrs. Mee wrote checks totaling in the hundreds of thousands of dollars for Legion of Christ members' expenses and as gifts for Legion of Christ members. See Pl.'s Ex. GGG (Mrs. Mee's check register).

- On November 23, 1991, Father Maciel wrote to Mrs. Mee and encouraged her to submit a monthly budget to Fathers Bannon and Alonso in order to fulfill her promise of poverty as a consecrated woman in Regnum Christi. See Pl.'s Ex. UU.
- The Legion of Christ relied on receiving assets from the Mee trusts in securing and paying its loan from the Bank to purchase the Thornwood property, and Legion of Christ members negotiated with Mrs. Mee to receive those trust fund assets. (Klaus Dep. 15:9-16:2, 17:24-18:12, 29:17-22, 79:22-81:8.)
- Leading up to the Fleet Litigation, the Legion of Christ's counsel corresponded with Fleet's counsel on behalf of the Legion of Christ and Mrs. Mee. (Pl.'s Ex. D (Ltr. from Dowling to Paul Silver, Dec. 1, 2000).)
- The August 2000 power of attorney executed by Mrs. Mee gave the Legion of Christ control over Mee assets and permitted Father Bannon to speak to the Bank on behalf of Mrs. Mee. The attorney who drafted the power of attorney testified that she may have met Father Bannon before meeting Mrs. Mee and that the Legion of Christ (not Mrs. Mee) was her client. (Sarah Dowling Dep. 8:12-10:3, July 18, 2011.)
- The Legion of Christ's counsel also drafted Mrs. Mee's 2000 Will, which left all of her assets to the Legion of Christ and appointed Father Bannon as executor, replacing the Bank. (Dowling Dep. 12:11-14:3.)
- Mrs. Mee resided at the Regnum Christi home and her visits with guests were at least sometimes, if not always, monitored by Regnum Christi members. When Mrs. Mee's grandniece visited for three days, Regnum Christi members were always with Mrs. Mee. (Jeanne Marie Dauray Dep. 48:2-6, Nov. 7, 2011; Jeanne Marie Dauray Aff., ¶¶ 6-7, June 30, 2011; McOsker Dep. 12:25-13:8.) Mrs. Mee was seldom alone at the facility and almost always had someone with her. (Sellors Dep. 87:19-88:8.)
- At least one friend of Mrs. Mee had difficulty visiting her and telephoning her at the Regnum Christi facility and was told on multiple occasions that Mrs. Mee was indisposed or not feeling well. (McOsker Dep. 14:1-16:1.)
- On at least one occasion, Mrs. Mee requested permission from a "tribunal" of sorts to visit family out of state, and the "tribunal" denied the request. (Jeanne Dauray Dep. 53:9-58:10.)
- Generally, consecrated members of Regnum Christi must release control of their assets to the organization and the Legion of Christ. Consecrated women must donate half of their assets to the organization within fifteen years and all of their assets within twenty-five years. (Bannon Dep. 28:20-30:10, 33:7-34:23.)
- The Legion of Christ monitored the mail, news program access, and communications of at least some Regnum Christi facility residents. (Heather Sellors Aff. ¶¶ 20-21, Jan. 31, 2012; Sellors Dep. 106:1-12, 114:2-13, 116:10-117:18.)
- Regnum Christi members were discouraged from discussing events and information from outside of their community and discouraged from seeing and interacting with their natural family. (Sellors Dep. 106:1-12; Sellors Aff. ¶¶ 20-22.) Regnum Christi controlled their daily routine and told the consecrated members that Regnum Christi was their real family. (Sellors Aff. ¶¶ 20-22.)
- The Legion of Christ and its members were not only spiritual advisers, but also beneficiaries of the Mees' trusts and Mrs. Mee's wills, as well as executor of her estate.

- Mrs. Mee's own deposition testimony demonstrates her extremely close bond with the Legion of Christ, her "extreme faith in what they were doing," and her "complete confidence and trust" in them as her religious leaders. See generally Mee Dep.

Any one of the above facts may be insufficient alone to prove a confidential relationship between a spiritual advisor and advisee, leading to the presumption of undue influence. However, without doubt in this case, the totality of the circumstances is at least suspicious and calls for some explanation. See Huebel, 119 A. at 641 (stating confidential relationship presumption of undue influence should apply when circumstances are suspicious). The transfer of millions of dollars worth of assets—through will, trust, and gifts—from a steadfastly spiritual, elderly woman to her trusted but clandestinely dubious religious leaders raises a red flag to this Court and demands application of the burden-shifting presumption. Therefore, in light of the established confidential relationship between Mrs. Mee and the Legion of Christ as her spiritual advisers, a presumption of undue influence arises and the burden is on the Defendants to prove the transactions were fair, proper, and reasonable in all circumstances. See Passarelli, 94 R.I. at 159-60, 179 A.2d at 332; Nelson, 76 R.I. at 13, 68 A.2d at 57.

2

Undue Influence Claims

In its most basic sense, undue influence is "the substitution of the will of a third party for the free will and choice of the testator in making a testamentary disposition." Caranci, 708 A.2d at 1324 (citations omitted); see Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008); Filippi v. Filippi, 818 A.2d 608, 630 (R.I. 2003); Tinney v. Tinney, 770 A.2d 420, 437-38 (R.I. 2001). Weakness of mind of the decedent, while a relevant factor, is not an essential element to a finding of undue influence. Caranci, 708 A.2d at 1324 n.3. An inference of undue influence arises when there is an unnatural disposition of a decedent's property by will, considered along

with other factors. Id. at 1324. Courts of this jurisdiction have frequently noted that one claiming undue influence "is often unable to produce direct evidence of the undue influence to the factfinder but rather must rely on circumstantial evidence." Id.; see Apollonio, 101 R.I. at 593-94, 225 A.2d at 787.

Of course, the direct or circumstantial evidence of undue influence "must be connected with and relevant to the time that the challenged will was executed." Caranci, 708 A.2d at 1324 (citing Brousseau v. Messier, 79 R.I. 106, 110, 84 A.2d 608, 610 (1951)). Nevertheless, evidence of events occurring subsequent to the execution of the challenged instrument may be considered in the undue influence analysis, although such evidence may be less probative than evidence of events contemporaneous with or prior to the execution. See Caranci, 708 A.2d at 1326. The best-reasoned analysis "requires an ad hoc, totality-of-the-circumstances approach to the facts of each particular case." Id. at 1326-27 (weighing "totality of the evidence considered cumulatively"); see Filippi v. Filippi, 818 A.2d 608, 630 (R.I. 2003) (explaining "whether undue influence exists is a fact-intensive inquiry"). "In determining what constitutes undue influence in a particular case, then, a trial justice ordinarily examines the totality of circumstances, including the relationship between the parties, the physical and mental condition of the grantor, the opportunity and disposition of a person wielding influence, and his or her acts and declarations." Tinney, 770 A.2d at 438.

Because of the presumption of undue influence applied in the case at bar, the burden is on the Defendants to prove—considering the totality of the circumstances and all evidence presented—that the Legion of Christ did not substitute its will for the free will and choice of Mrs. Mee and that the transactions were fair, proper, and reasonable. See Caranci, 708 A.2d at

1324; Nelson, 76 R.I. at 13, 68 A.2d at 57. In this case, the Plaintiff has set forth admissible evidence creating genuine disputes of fact regarding undue influence:

- The Legion of Christ waived its usual consecration requirements to allow Mrs. Mee to expeditiously become a consecrated woman within their religious community. Father Alonso petitioned to Rome to waive the education and time requirements, and Father Maciel granted permission. (Alonso Dep. 62:18-63:7.)
- Legion of Christ members met with Mrs. Mee alone (while her own family and friends at least sometimes could not) and may have solicited gifts. See Sellors Dep. 90:24-92:19. According to another woman present at the Regnum Christi facility, Fathers Bannon and Alonso solicited gifts directly from Mrs. Mee. (Sellors Aff. ¶ 17.) This, however, is a disputed fact.
- To receive the loan to purchase the Thornwood property, the Legion of Christ "had been negotiating with Mrs. Mee to steer some money from her considerable assets to support this loan." (Klaus Dep. 81:21-82:3.) The Legion of Christ relied on receiving assets from the Mee trusts to secure and to service the loan. See id. at 15:9-16:2, 17:24-18:12, 29:17-22, 79:22-81:8. Further, the Bank relied on the Legion of Christ's representations that it would receive assets from the Mee trusts in lending the money to the Legion of Christ. (Klaus Dep. 15:3-18:19, 44:16-22.)
- Mrs. Mee developed extensive, personal relationships with Legion of Christ leadership, including Fathers Maciel and Bannon. She referred to Regnum Christi as her family and other consecrated women as her "little saints." See Pl.'s Ex. UU.
- Mrs. Mee had great faith in Father Maciel and worshipped him nearly as a saint. See Pl.'s Ex. UU; Sellors Dep. 102:8-23.
- Father Maciel gave Mrs. Mee advice regarding how she should handle her finances. See Pl.'s Ex. UU. On November 23, 1991, Father Maciel wrote to Mrs. Mee and encouraged her to submit a monthly budget to Fathers Bannon and Alonso in order to fulfill her promise of poverty as a consecrated woman in Regnum Christi. See id.
- Father Maciel and others repeatedly promised to mention Mrs. Mee in their prayers at Mass in return for her gifts to the Legion of Christ. See Pl.'s Ex. UU. In response to Mrs. Mee's gifts to the Legion of Christ, Father Maciel and others also invited Mrs. Mee on trips to Rome and Mexico and reinforced how pleased Mr. Mee and the Lord would be with her donations. See id. They also encouraged her consecration with Regnum Christi. See id.
- Father Bannon helped Mrs. Mee with the wording of legal papers with respect to her estate planning documents. See Pl.'s Ex. UU.
- Mrs. Mee's estate planning instruments—beginning with the 1991 Will directing ninety percent of her assets to the Legion of Christ—were executed after Mrs. Mee became a consecrated woman with Regnum Christi and within just a couple years of Mrs. Mee first connecting with the Legion of Christ.
- The 1994 trust amendments increased the Legion of Christ's control over the Mees' assets and established a committee appointed by the Legion of Christ to participate in determining trust distributions to the Legion of Christ. See Pl.'s Ex. G2; Garza Dep. 63:4-64:2; Bannon Dep. 136:7-139:9.

- Mrs. Mee's August 2000 Power of Attorney—drafted by counsel for the Legion of Christ—provided Father Bannon and the Legion of Christ with control over Mrs. Mee's finances. See Dowling Dep. 9:2-14. The attorney drafting Mrs. Mee's power of attorney may have even met Father Bannon before she met Mrs. Mee. See Dowling Dep. 8:12-10:3.
- Counsel for the Legion of Christ also drafted Mrs. Mee's 2000 Will, leaving all assets to the Legion of Christ and appointing Father Bannon as executor of her estate instead of the Bank. See Dowling Dep. 12:11-14:3.
- The Legion of Christ's investment guidelines were imposed on Mrs. Mee's trusts and wills. The Legion of Christ required investments not be made in any companies that did not comport with the Legion of Christ's Catholic beliefs. See Pl.'s Ex. G4; Defs.' Ex. 55.
- Legion of Christ members took or accepted money from Mrs. Mee's personal checking account to fund their general expenses. Mrs. Mee's check records indicate that she wrote checks totaling in the hundreds of thousands of dollars for Legion of Christ expenses and as gifts to Legion of Christ members. See Pl.'s Ex. GGG.
- The Legion of Christ's counsel in the Fleet Litigation corresponded with the Bank on behalf of both the Legion of Christ and Mrs. Mee. See Pl.'s Ex. D.
- While residing in Regnum Christi facilities from 1991 until her death, Mrs. Mee's visits with any permitted guests were at least sometimes, if not always, monitored by Regnum Christi members, and she was seldom alone at the facility. See Dauray Aff. ¶¶ 6-7; McOsker Dep. 12:25-13:8; Sellors Dep. 87:19-88:8.
- An old church friend of Mrs. Mee had difficulty staying in touch with and visiting Mrs. Mee once she became a consecrated member of Regnum Christi. Mrs. Mee's friend was told on multiple occasions that Mrs. Mee was indisposed or not feeling well enough for a visit or telephone call. See McOsker Dep. 14:1-16:1.
- On at least one occasion, Mrs. Mee had to request permission from what Plaintiff characterizes as a "tribunal" to visit a relative out of state, and the "tribunal" denied that request. See Jeanne Dauray Dep. 53:9-58:10.
- The Legion of Christ monitored the mail, news access, and communications of at least some Regnum Christi facility residents. (Sellors Aff. ¶¶ 20-21, Sellors Dep. 106:1-12, 114:2-13, 116:10-117:18.) Even Legion of Christ staff members admit that mail of consecrated members was screened, but they claim Mrs. Mee's mail never was. See Maria Lourdes Fernandez Dep. 16:20-17:13, Jan. 5, 2012.
- Typically, consecrated members of Regnum Christi take a vow of poverty and release their assets to the Legion of Christ. Consecrated women must donate half of their assets to the organization within fifteen years and all of their assets within twenty-five years. (Bannon Dep. 28:20-30:10, 33:7-34:23.)
- The Legion of Christ relies on the testimony of Gian Brosco, a trust officer who, despite an animus against the Church, found Mrs. Mee was not unduly influenced by the Legion of Christ. However, Mr. Brosco met Mrs. Mee only once for no more than an hour. See Gian Brosco Dep. 66:25-67:7, Dec. 5, 2011.

Considering the facts above in the light most favorable to the plaintiff, the nonmoving party, genuine disputes of material fact exist regarding the undue influence issue, precluding

summary judgment. See Hill, 11 A.3d at 113 (providing Court must draw all reasonable inferences in favor of nonmoving party). This Court is satisfied that Plaintiff has met its burden of proving disputes of fact, particularly given the presumption of undue influence applied to this case. See id. (placing burden on nonmoving party to set forth disputes of material fact); Nelson, 76 R.I. at 12, 68 A.2d at 57 (providing presumption of undue influence in case of spiritual adviser/advisee relationship leading to gifts). Accordingly, the Court would deny Defendants' Motion for Summary Judgment as to the undue influence claims.

C

Fraud

In addition to its argument for undue influence, Plaintiff claims that Defendants fraudulently induced Mrs. Mee into directing substantially all of her assets—through gift, trust, and will—to the Legion of Christ by misrepresenting or concealing the truth regarding Father Maciel and the scandals within the Legion of Christ. In response, Defendants argue primarily that the Plaintiffs cannot prove concealment or reliance by Mrs. Mee.

To establish a claim for fraud, "the plaintiff must prove that the defendant made a false representation intending thereby to induce plaintiff to rely thereon and that the plaintiff justifiably relied thereon to his or her damage." Parker v. Byrne, 996 A.2d 627, 634 (R.I. 2010) (quoting Bitting v. Gray, 897 A.2d 25, 34 (R.I. 2006)); Travers v. Spidell, 682 A.2d 471, 472-73 (R.I. 1996). The representation must be false at the time it is made. Parker, 996 A.2d at 634. Further, a misrepresentation is defined in this jurisdiction as a "manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts." Stebbins v. Wells, 766 A.2d 369, 372 n.4 (R.I. 2001) (quoting Travers, 682 A.2d at 471 n.1). However, fraud may "be grounded in either affirmative acts or

concealment." W. Reserve Life Assurance Co. of Ohio v. Caramadre, Nos. 09-470 S, 09-471 S, 09-472 S, 09-473 S, 09-502 S, 09-549 S, 09-564 S, 2012 WL 399184, at *4 (D.R.I. Feb. 7, 2012) (quoting Guilbeault v. R.J. Reynolds Tobacco Co., 84 F. Supp. 2d 263, 268-69 (D.R.I. 2000)). In the context of concealment as the basis for a claim of fraud, mere silence is not fraudulent unless there is a duty to speak. McGinn v. McGinn, 50 R.I. 236, 146 A. 636, 638 (1929); see Guilbeault, 84 F. Supp. 2d at 269 ("a claim based on concealment will not lie absent a duty to speak") (citing Home Loan & Inv. Ass'n v. Paterra, 105 R.I. 763, 767, 255 A.2d 165, 168 (1969)). Whether there is a duty to disclose information turns on the facts of the case and is a flexible inquiry. W. Reserve Life Assurance, 2012 WL 399184 at *4-5. Lastly, although justifiable reliance is an essential element of a claim for fraud or deceit, "the law does not demand that direct evidence be admitted on this issue if the necessary reliance can be inferred from the circumstances attending the transaction in question." East Providence Loan Co. v. Ernest, 103 R.I. 259, 263, 236 A.2d 639, 642 (1968).

In this case, there are factual disputes preventing this Court from finding concealment or from inferring reliance at summary judgment. On their Motion, Defendants argue that the scandals involving Father Maciel were disclosed to Mrs. Mee; however, Plaintiffs have provided evidence disputing that fact:

- Father Garza personally confirmed the allegations regarding Father Maciel in June of 2006 when he spoke to the woman with whom Father Maciel had a daughter and did some of his own investigation regarding the daughter. See generally Garza Dep. 90-119, 126-128, 137-142, 152-156**.** Father Garza never confronted Father Maciel with his discovery, and Father Garza only spoke to several Legion of Christ members about it. See id. at 126:2-128:5.
- Father Garza held a meeting of approximately fifteen Regnum Christi and Legion of Christ members in Switzerland in July of 2008 and informed them that Father Maciel (who had died about six months prior) had a daughter. (Fernandez Dep. 45:12-47:2.) Father Garza asked those present at the meeting not to disseminate this information yet. Id. at 47:3-6. The information was finally released at the Regnum Christi facility in Rhode Island in January of 2009. Id. at 48:6-10. This was at least six months after

Father Garza held the meeting, and perhaps three years after Father Garza had knowledge of Father Maciel's misdeeds.

- Father Alonso, despite his knowledge of accusations against Father Maciel, did not discuss those with Mrs. Mee. (Alonso Dep. 106:14-107:7.)
- Defendants argue that a meeting was held in the Chapel at the Regnum Christi facility sometime after the 2006 Communiqué to discuss the allegations against Father Maciel. See Maria Lourdes Fernandez Aff. ¶¶ 2-3, May 18, 2012. Defendants also argue that copies of the 2006 Communiqué were left out in the back of the Chapel for members to take and that the communiqué was posted on a bulletin board outside Mrs. Mee's apartment for the residents to read. Id. at ¶¶ 4-5. There is no evidence, however, that Mrs. Mee attended the meeting in the Chapel or that Mrs. Mee actually read the communiqué on the bulletin board.
- Beyond having the communiqués from the Vatican posted, Father Garza did not discuss the allegations against Father Maciel with any other congregation members, despite uncovering conclusive evidence on his own that Father Maciel had a long and stable relationship with a woman and fathered at least one child. (Garza Dep. 137:12-142:18.)
- The Defendants rely on statements made by Father Bannon in his deposition testimony as evidence that Mrs. Mee was informed by the Legion of Christ of Father Maciel's misdeeds; however, Father Bannon only states that he informed Mrs. Mee of Father Maciel's retirement and that the reasons for his retirement were "a continuation of other accusations that were made public in the middle 90's." (Bannon Dep. 147:4-148:2.) There is no evidence Father Bannon disclosed the full extent of the significant allegations against Father Maciel to Mrs. Mee.
- The 2010 Communiqué from the Pope suggests that Father Maciel was able to commit and conceal such immoral actions because he was skillful in his ability "to obtain trust, confidence and silence from those around him, and to reinforce his personal role as a charismatic founder." (Defs.' Ex. 48.)
- According to some testimony, the Legion of Christ shielded Mrs. Mee and perhaps others from learning about the allegations against Father Maciel. See Sellors Dep. 108:18-109:18; see also Fernandez Dep. 45:12-47:2.
- Plaintiff presents that in 1996, Father Garza told the Regnum Christi community that the allegations against Father Maciel were false. (Sellors Dep. 118:17-124:8.) However, the witness providing that deposition testimony did not hear Father Garza speak that directly. See id.
- In 1997, Father Bannon apologized to the Bank for not notifying it of the accusations against Father Maciel before the Hartford Courant published its report, but Father Bannon also indicated the Legion of Christ was considering suing the paper over the article. See Pl.'s Ex. W (Klaus Mem., Mar. 3, 1997).

Defendants further argue that there is no evidence Mrs. Mee relied on representations or concealments of the Legion of Christ, but Plaintiff has also set forth evidence rebutting that argument sufficiently enough to permit a factfinder to infer reliance:

- Mrs. Mee immediately cut off her support of the Contemplatives as soon as she learned of the accusations that one of its founders engaged in sexual acts with another male. (Silvestre Dep. 34:21-35:19, 85:13-88:11.) In the words of the trust officer, Mrs. Mee's initial reaction was disappointment, "she wanted them out of there," and "[s]he wasn't happy." Id. at 88:3-11. Plaintiff argues, and the Court recognizes, this could reasonably indicate how Mrs. Mee would have acted if she had known of the allegations (or the extent of the allegations) against Father Maciel. Therefore, it appears she relied on the lack of information regarding the accusations in continuing her support of Father Maciel and the Legion of Christ.
- Mrs. Mee held Father Maciel in extremely high regard and considered him to be saint-like. See Sellors Dep. 102:8-23; McOsker Dep. 16:2-18. Her extensive communications with Father Maciel display her reverence for him and his organization, the Legion of Christ. See Pl.'s Ex. UU.
- Mrs. Mee's correspondence with Legion of Christ members indicate that gifts were made to the Legion of Christ because of her faith in their mission and her faith in Father Maciel. See Pl.'s Ex. UU.
- Mrs. Mee's own deposition testimony, taken in 2001, clearly expresses her faith and trust in the Legion of Christ, as well as her and her husband's intention to benefit the Catholic Church, with which she believed the Legion of Christ to be aligned without deviation. See, e.g., Mee Dep. 10:2-14, 15:8-11, 17:7-12, 18:12-21, 20:24-21:11, 23:23-24:19.
- Mrs. Mee considered Father Maciel and other Legion of Christ members to be her family. See Pl.'s Ex. UU.
- Father Maciel was the general director of the Legion of Christ until he stepped down in 2005. (Garza Dep. 80:9-81:17.)
- The Legion of Christ did not publicly acknowledge the accusations against Father Maciel until February of 2009, nine months after Mrs. Mee's death. See James Fair Dep. 51:8-56:6, Nov. 29, 2011; Pl.'s Ex. DD.

In light of the fact that reasonable reliance may be inferred from the circumstances and in consideration of the above evidence presented by the Plaintiff, the Court would deny Defendants' Motion for Summary Judgment on the fraud claims due to the genuine disputes of material fact. See East Providence Loan Co., 103 R.I. at 263, 236 A.2d at 642 (providing direct evidence of reliance unnecessary).

D

Mistake in the Inducement

Plaintiff claims that Mrs. Mee was induced into making the inter vivos gifts and estate planning changes in favor of the Legion of Christ under a mistaken belief as to Father Maciel and the Legion of Christ's moral and religious character. To the knowledge of this Court, no cause of action for mistake in the inducement has ever been recognized in any Rhode Island courts.[6]

This Court in the past has disposed of claims when they do not constitute independent causes of action. See, e.g., F. Saia Rests., LLC v. Pat's Italian Food to Go, Inc., No. 12-1294, 2012 WL 2133511, slip op. at 10-11 (R.I. Super. June 6, 2012) (Silverstein, J.) (dismissing count for injunctive relief where duplicative of relief requested in other counts and not recognized as independent cause of action); State v. Lead Indus. Ass'n, Inc., No. 99-5226, 2001 WL 345830, at *17 (R.I. Super. Apr. 2, 2001) (Silverstein, J.) (describing absence of controlling case law that injunctive relief constitutes an independent cause of action and dismissing count for injunctive relief). Here, likewise, Plaintiff's mistake in the inducement allegations are substantially similar to Plaintiff's fraud causes of action and do not constitute their own actionable and substantive claims. See F. Saia Rests., 2012 WL 2133511, slip op. at 10-11. Consequently, the Court would grant summary judgment in favor of the Defendants on Plaintiff's mistake in the inducement claims.

[6] Ms. Dauray in fact acknowledges that mistake in the inducement is not found in any reported Rhode Island decision, but argues that it is an established principle of law. See Pl.'s Obj. and Mem. in Supp. of Her Obj. to Defs.' Mot. to Dismiss (No. 11-2640) 36, June 25, 2012.

E

Breach of Fiduciary Duties

In her claims against the trustee bank for breach of fiduciary duties, Ms. Dauray advocates for the court to apply a higher, professional standard of care to the Bank rather than the typical prudent person standard. Defendants, on the other hand, argue that the general, prudent person standard applies in this case.

"[T]he 'prudent man' standard applie[s] to the behavior of trustees as a matter of common law in Rhode Island." Donato v. BankBoston, N.A., 110 F. Supp. 2d 42, 48 (D.R.I. 2000) (holding trustee bank to prudent man standard in considering breach of fiduciary duty by investing in a particular stock); see Manchester v. Pereira, 926 A.2d 1005, 1013 (R.I. 2007) (applying reasonable person standard to determine breach of fiduciary duties). The Restatement (Third) of Trusts outlines the duties of a trustee:

> "(1) The trustee has a duty to administer the trust as a prudent person would, in light of the purposes, terms, and other circumstances of the trust.
> (2) The duty of prudence requires the exercise of reasonable care, skill, and caution.
> (3) If the trustee possesses, or procured appointment by purporting to possess, special facilities or greater skill than that of a person of ordinary prudence, the trustee has a duty to use such facilities or skill." § 77 (2007).

Thus, the typical standard is to exercise the reasonable care, skill, and caution of a prudent person. See id.

In some jurisdictions, "it has been held that the standard of care owed by a bank trustee is higher than that owed by an ordinary individual nonprofessional trustee." 76 Am. Jur. 2d Trusts § 362 (2012); see Charles E. Rounds, Jr. & Charles E. Rounds, III, Loring and Rounds: A Trustee's Handbook §6.2.7 (2012) ("One who represents himself as possessing special skills or

expertise and is named as trustee in reliance upon those representations shall be held to the standard of one who in fact possesses those special skills and expertise."); 91 A.L.R.3d 904 § 2(a). Undoubtedly, in Rhode Island, a trustee is statutorily obligated to "invest and manage trust assets as a prudent investor would," and "shall exercise reasonable care, skill, and caution" in doing so. G.L. 1956 § 18-15-2(a). "A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise." Id. at (f). However, this prudent investor standard generally relates to the trustee's "overall investment strategy," as opposed to the trustee's more general duties. See id. at (b). The Restatement explains the prudent investor standard:

> "This standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation but in the context of the trust portfolio and as part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the trust." § 90 (2007).

This Court, then, is of the opinion that the prudent investor rule, codified in Rhode Island at § 18-15-2, applies to the trustee's financial investment duties.

The Court is not aware and has not been made aware of any Rhode Island cases further distinguishing the general duties of a non-professional and a professional trustee. Recently, the Federal District Court in Rhode Island declined to rule whether the standard of a reasonably prudent person or a higher, professional standard applied to a trustee bank under Rhode Island law. See Probate Court of Warwick v. Bank of Am., N.A., 813 F. Supp. 2d 277, 301-02 (D.R.I. 2011). The federal district court was asked to decide "whether the Bank should be held to a higher standard of care than the traditional prudent person standard because of its institutional sophistication." Id. at 302. Instead of deciding that issue, the court found the distinction

immaterial under the facts and did not rule whether the trustee bank's institutional sophistication imposes a higher standard of care on a wide variety of breach of fiduciary duty claims. Id.

Other jurisdictions, including both Massachusetts and Delaware, have adopted the distinction between the reasonably prudent person standard and the standard applied to professional trustees. See In re Will of Crabtree, 865 N.E.2d 1119, 1128 (Mass. 2007) ("Where the trustee is a professional trustee, as in this case, the fiduciary duty is higher than that imposed on a lay trustee."); Law v. Law, 753 A.2d 443, 447 (Del. 2000) (stating with regard to children named as trustees that a "non-professional trustee's duty to beneficiaries in administering a trust is to exercise the skill and care that a man of ordinary prudence would exercise in dealing with his own property"); contra McNeil v. McNeil, 798 A.2d 503, 509 (Del. 2002) (noting general standard for non-professional trustee to act as reasonable and prudent person in managing trust). The Massachusetts Supreme Judicial Court expounded:

> "[t]he law does not look with special favor upon attempts to impair the breadth and strength of the safeguards which experience has erected for the protection of those whose property has been confided to the good faith and sound judgment of trustees. And certainly this general attitude should not be softened first for the benefit of trust companies and professional trustees who hold themselves out as fully conversant with the duties of trustees and fully competent to perform them." Will of Crabtree, 865 N.E.2d at 1128 (quoting New England Trust Co. v. Paine, 59 N.E.2d 263, 269 (Mass. 1945)).

Thus, in accordance with the Restatement, other jurisdictions hold professional trustees to a higher standard, obligating them to use such skill and expertise as they represent they have as a professional trustee. See Restatement (Third) Trusts § 77 (2007) (enforcing higher duty on trustees with greater skill or special facilities); Will of Crabtree, 865 N.E.2d at 1128 (holding professional trustees to higher fiduciary duty); Law, 753 A.2d at 447.

Under any standard, breach of fiduciary duty does not require bad faith on the part of the trustee; a breach occurs when the trustee "intentionally or negligently do[es] what he ought not to do or fail[s] to do what he ought to do." Oscar A. Samos, M.D., Inc. v. Dean Witter Reynolds, Inc., 772 F. Supp. 715, 719 (D.R.I. 1991) (emphasis and citations omitted). The elements of a claim for breach of fiduciary duty are "(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach." See Chain Store Maint., Inc. v. Nat'l Glass & Gate Serv., Inc., No. PB 01-3522, 2004 WL 877599, at *13 (R.I. Super. Apr. 21, 2004) (Silverstein, J.) (citations omitted).

Here, the Bank was undoubtedly a professional trustee, and other jurisdictions have held bank trustees in particular to be professional trustees held to the higher standard. See, e.g., Kenerson v. Fleet Nat'l Bank, 840 N.E.2d 66 (table), 2005 WL 3536194, at *1 n.3 (Mass. App. Ct. Dec. 27, 2005) (noting Fleet Bank as a professional trustee); In re Trusteeship of Williams, 591 N.W.2d 743, 748 (Minn. Ct. App. 1999) (recognizing bank as professional trustee with greater skills than person of ordinary prudence); In re Estate of Maxedon, 946 P.2d 104, 110-11 (Kan. Ct. App. 1997) (determining bank trustees are judged by professional standard); Bank of Cal., N.A. v. Dep't of Revenue, 594 P.2d 1244, 1247 (Or. 1979) (noting bank to be professional trustee). The Court is satisfied that the Mees selected the Bank as trustee with knowledge that the Bank possessed greater skills and facilities than an average, prudent person. See Restatement (Third) of Trusts § 77 (applying higher standard to trustee hired for its special facilities or greater skill). Therefore, the Bank will be held to the higher, professional standard of a trustee bank. See 76 Am. Jur. 2d Trusts § 362 (2012).

In light of that higher standard the Bank must satisfy, it is clear that Plaintiff has provided sufficient disputes of material fact that the Bank may have breached its fiduciary duties as

trustee. In particular, Plaintiff has provided the following evidence of the Bank's potential breaches of fiduciary duties:

- A Bank credit offering memorandum prepared in connection with the Legion of Christ's application for the $25 million loan to purchase the Thornwood property in New York discusses the role of the Mee trust income in that transaction. The memorandum states: "one of the Legion's major benefactors has directed that the income portion of a $30MM trust fund be sent directly to The Legion beginning in January of 1997. The trust, which is administered by Fleet, is projected to generate $1.3MM of income per annum which represents approximately 50% of pro-forma debt service for the mortgage loan." (Pl.'s Ex. F (Klaus Mem., Dec. 3, 1996).)
- Jeffrey Klaus from the Bank testified that the Bank gave significant weight to the fact that money from the Mee trusts would service the loan in making their decision to lend the money to the Legion of Christ. (Klaus Dep. 18:8-19.)
- Mr. Klaus mentioned in a memorandum that Father Bannon "offered to pledge the cash flow stream from the Mee trust funds in order to provide additional security" on the loan. (Pl.'s Ex. W.) Mr. Klaus admitted at his deposition that his source of information about Mrs. Mee for the Bank loan was through conversations with representatives of the Legion of Christ. (Klaus Dep. 44:6-22.) Mr. Klaus in a separate memorandum detailing the source of repayment on the loan stated that "The Legion is also currently negotiating to receive approximately $1.5MM per year in additional trust fund income with which they will use to pay Fleet's loan." (Pl.'s Ex. S.)
- Mr. Klaus, the Bank loan officer, was aware of the public allegations against Father Maciel. See Pl.'s Ex. F.
- There is no evidence any trust officer ever raised to Mrs. Mee the public allegations against Father Maciel and the Legion of Christ.
- The 1994 trust amendments dramatically altered the trust, such that it may not have complied with the intentions of the settlor, Mr. Mee. Establishment of the committee appointed by the Legion of Christ may have limited the Trustee bank's ability to comply with the original settlor's intent. The original trust indenture did not name Mrs. Mee, yet the 1994 amendments provided her with authority to reject any further trust amendments. See Pl.'s Ex. G2.
- Mr. Silvestre, a Bank trust officer, never read the Legion of Christ or Regnum Christi constitutions, vows, or requirements and was not aware of the investigation of Father Maciel in the 1950s and 1960s or the more recent claims that Father Maciel had relationships with women and fathered children. (Silvestre Dep. 110:1-111:8, 112:21-115:8.)
- Other Bank officers—Ms. Kernan, Ms. Derick, and Ms. Franklin—were similarly ill-informed about the Legion of Christ and Mrs. Mee's role as a consecrated woman in Regnum Christi, and they did little to learn about the Legion of Christ as the trust beneficiary. See Beth Kernan Dep. 51:4-52:5, Feb. 12, 2012; Dorothy Derick Dep. Vol. I at 79:20-25, Jan. 12, 2012, Vol. II at 69:7-78:16, Jan. 16, 2012; Vautina Franklin Dep. 23:18-27:3, 33:6-36:16, Sept. 14, 2011.
- Ms. Derick saw no reason to further inquire about or follow-up on the allegations against Father Maciel or to verify independently the Pope's support of the Legion of Christ.

(Derick Dep. Vol. II, 69:7-78:16.) She never communicated with Father Maciel or discussed the allegations against him with Mrs. Mee. See id.

- Ms. Franklin, another Bank trust officer, did not know who Father Maciel was and was not aware of the investigations of him. (Franklin Dep. 23:18-27:3, 33:6-36:16.) She did not perform any of her own due diligence to look into the Legion of Christ in response to the investigations. See id.
- Mr. Brosco only met with Mrs. Mee once and conducted no investigation himself of the Legion of Christ. (Brosco Dep. 47:17-19, 72:8-23.) His impression was that the Legion of Christ was "like the Catholic Mafia." Id. at 71:2-6. He, like other Bank employees, never investigated the Legion of Christ or reviewed its governing documents. Id. at 72:8-23.
- The Bank did not inquire whether the 1994 amendments complied with Mr. Mee's intent and, rather, relied on Mrs. Mee's instructions. See Kernan Dep. 44:3-45:24, 52:22-53:7.
- There is some indication that the Bank accepted amendments that were drafted or worded by Father Bannon. See Pl.'s Exs. N, O.
- The Bank trust officers delegated to the Legion of Christ the responsibility to show they were approved by the Pope and satisfied the trust requirements of a written certification every three years rather than determining this for itself. See Franklin Dep. 18:11-20:6, Derick Dep. Vol. I 46:4-22. Another trust officer, Ms. Kernan, was unsure how the Bank obtained the certification, but she did not recall requesting it from the Vatican directly. (Kernan Dep. 71:18-72:17.)
- The Bank simultaneously acted as Trustee to and held the Mee trusts while lending a substantial sum to the Legion of Christ, relying in part on the Mee trust funds with the Bank to pay the loan from the Bank, creating what Plaintiff argues constitutes self-dealing and conflicts of interest.

Given the disputes of fact presented by the Plaintiff, a determination of whether a breach of fiduciary duties occurred must be reserved for the factfinder. Accordingly, the Court would deny Defendants' Motion for Summary Judgment on the breach of fiduciary duties claims.

IV

Conclusion

After due consideration, the Court grants Defendants' Motion for Summary Judgment on the grounds that the Plaintiff lacks standing. Assuming, en arguendo, that Ms. Dauray had standing to bring the claims, the Court would have denied the Motion on the undue influence, fraud, and breach of fiduciary duty claims, but granted the Defendants' Motion on the mistake in

the inducement claim. Prevailing counsel may present an Order consistent herewith which shall be settled after due notice to counsel of record.