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DiPENTIMA, C. J., dissenting in part. In large part, I agree with the well reasoned opinion of the majority. The majority concludes, however, that there is a genuine issue of material fact as to the reliance by the plaintiffs, William A. Stuart and Jonathan Stuart, on the defendant, Richard Freiberg, because “contrary to the [trial] court’s conclusion, the plaintiffs did not seek to have [their brother, Kenneth J. Stuart, Jr. (Stuart, Jr.)] removed as executor or as trustee of [the] estate [of their late father, Kenneth J. Stuart, Sr. (Stuart, Sr.)] in the 1993 litigation [between the Stuart brothers and others]. Rather, they sought an injunction against Stuart, Jr., as general partner of [the] Stuart & Sons [Limited Partnership (Stuart & Sons)] and as trustee, the imposition of a constructive trust on the assets of Stuart & Sons and an order setting aside conveyances made by Stuart, Jr., into Stuart & Sons on the basis of their overarching claims that Stuart, Jr., improperly had transferred assets from the estate to Stuart & Sons.” I disagree with this conclusion because, on the basis of the record before us, there are uncontroverted facts that show the plaintiffs had sufficient information regarding Kenneth Stuart, Jr.’s misbehavior so as not to support a claim of reasonable reliance on the defendant’s actions resulting in a delay in removing Kenneth Stuart, Jr. Through the papers accompanying his motion for summary judgment, the defendant has convinced me that there is no genuine issue of material fact as to the plaintiffs’ lack of reasonable reliance or induced action to their detriment in support of their counts of fraud and negligent misrepresentation. I further conclude that the plaintiffs have not substantiated their claim to the contrary. I would, therefore, affirm the court’s decision as to those counts of the plaintiffs’ amended complaint.

I agree with the facts as set out by the majority; my disagreement lies in the application of those facts as they relate to the defendant’s motion for summary judgment.

I

“Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . [T]he moving party for summary judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment. . . . [R]eview of [a] trial court’s decision to grant [a] motion for summary judgment is plenary.” (Citations omitted; internal quotation marks omitted.) *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 534–35, 51 A.3d 367 (2012). “[O]nce the moving party has met its burden . . . the opposing party [to survive sum-

mary judgment] must present evidence that demonstrates the existence of some disputed factual issue.” (Internal quotation marks omitted.) *Maltas v. Maltas*, 298 Conn. 354, 366, 2 A.3d 902 (2010). “[I]n determining whether any genuine issues of material fact exist, we must view the evidence in the light most favorable to the nonmoving party” *Dorreman v. Johnson*, 141 Conn. App. 91, 98, 60 A.3d 993 (2013).

In order to establish a case of fraud, as the majority points out, the plaintiffs must prove by clear and convincing evidence that “(1) . . . a false representation of fact was made; (2) . . . the party making the representation knew it to be false; (3) . . . the representation was made to induce action by the other party; and (4) . . . *the other party did so act to her detriment.*” (Emphasis added; internal quotation marks omitted.) *Warner v. Brochendorff*, 136 Conn. App. 24, 33 n.9, 43 A.3d 785, cert. denied, 306 Conn. 902, 52 A.3d 728 (2012). In order to establish a case of negligent misrepresentation, the plaintiffs must prove that “(1) . . . the defendant made a misrepresentation of fact (2) . . . the defendant knew or should have known was false, and (3) . . . the plaintiff[s] *reasonably relied* on the misrepresentation, and [the plaintiffs] suffered pecuniary harm as a result.” (Emphasis added; internal quotation marks omitted.) *Coppola Construction Co. v. Hoffman Enterprises Ltd. Partnership*, 134 Conn. App. 203, 211 n.4, 38 A.3d 215, cert. granted on other grounds, 304 Conn. 923, 41 A.3d 663 (2012). Like the majority, I focus solely on the elements of the plaintiffs’ acting on the defendant’s false representations to their detriment and with reasonable reliance.

The defendant has met his burden by providing uncontroverted evidence that there was no genuine issue of material fact as to the plaintiffs’ reliance on his actions. Both the 1993 complaint and the memorandum of decision from the 1993 action, attached to the defendant’s motion for summary judgment, demonstrate that the plaintiffs did not reasonably rely on the defendant and were not induced to act to their detriment because they possessed information sufficient to remove Kenneth Stuart, Jr., in 1993 as fiduciary.

In its decision granting summary judgment, the court noted the plaintiffs’ 1993 complaint requesting an injunction and a constructive trust, but the court went on to state that the 1993 action was specifically to “remove” Kenneth Stuart, Jr. This was incorrect. I agree with the majority that a request for an injunction and constructive trust in Superior Court is a proceeding different from a motion for removal in Probate Court. When viewing the two pleadings with respect to the plaintiffs’ reliance claims, however, plenary review of the evidence and testimony shows that although they did not file a specific removal motion until 2002, the plaintiffs had information available and the intent to

remove Kenneth Stuart, Jr., in 1993, before the defendant was hired. A genuine issue of material fact should not be determined solely on a matter of semantics, and although the plaintiffs did not file for removal formally with the Norwalk Probate Court until 2002, their testimony in this action and the prayer for relief in their 1993 complaint render their claims of reliance during the period of 1994 through 2002 untenable.

I turn first to the allegations and prayer for relief in the complaint of the 1993 action. The plaintiffs detailed Kenneth Stuart, Jr.'s breach of fiduciary duties, fraudulent concealment of estate information and fraudulent reporting of inaccurate estate accountings. On the basis of these allegations, the complaint sought: "A temporary and permanent injunction preventing [Kenneth Stuart, Jr.] from spending, selling, conveying, giving, transferring, hypothecating, converting, encumbering or wasting assets . . . and preventing [Kenneth Stuart, Jr.] from spending, selling, conveying, giving, transferring, hypothecating, converting, encumbering or wasting assets of the Trust created by [the decedent] without the consent of the [plaintiffs]." The majority concludes that the prayer does not explicitly ask for Kenneth Stuart, Jr.'s removal, but that should not end the analysis. In order to properly analyze the plaintiffs' request, it is necessary to understand the effect the motion for removal would have had on Kenneth Stuart, Jr., had the plaintiffs succeeded with it. In August, 1991, the decedent executed the "Kenneth J. Stuart Living Trust," a revocable trust that permitted Kenneth Stuart, Jr., to serve as the sole trustee. The plaintiffs and Kenneth Stuart, Jr., are the sole beneficiaries of the trust. Also in August, 1991, the decedent executed a will that bequeathed his entire estate to the trust. The will named Kenneth Stuart, Jr., as the sole executor. In November, 1992, Kenneth Stuart, Jr., and the plaintiffs discussed placing the decedent's assets into a limited partnership in order to avoid tax liability, but the plaintiffs never agreed to the proposed partnership agreement. Later that same month, Kenneth Stuart, Jr., the decedent and the Norman Rockwell Museum of Stockbridge, Massachusetts, created Stuart & Sons Limited Partnership. The decedent and Kenneth Stuart, Jr., were appointed as general partners. When the decedent died, his partnership interest passed into his estate, which, pursuant to his will, passed into the trust. Thus, all of the decedent's assets were contained in the trust, with Kenneth Stuart, Jr., as the sole trustee. Kenneth Stuart, Jr., had complete control over the decedent's assets and, therefore, the plaintiffs' action seeking an injunction preventing Kenneth Stuart, Jr., from "spending, selling, conveying, giving, transferring, hypothecating, converting, encumbering or wasting assets" from the trust, if successful, would have stripped Kenneth Stuart, Jr., of all power over the decedent's assets. A successful removal action would have similarly eliminated Ken-

neth Stuart, Jr.'s control of the decedent's assets. Thus it seems clear to me that, because the plaintiffs had sufficient information to file the 1993 action, which requested an effective removal of Kenneth Stuart, Jr., their knowledge of their brother's wrongdoing could not have been affected by the defendant's actions in the subsequent years.

Because the defendant has shown that the plaintiffs had sufficient information to remove Kenneth Stuart, Jr., in 1993, and therefore that the plaintiffs did not reasonably rely on the defendant as they claim, the burden then falls to the plaintiffs to show that there is a genuine issue as to reliance despite the defendant's evidence. See *Maltas v. Maltas*, supra, 298 Conn. 366. They fail to meet this burden. In his affidavit attached to the plaintiffs' objection to the defendant's motion for summary judgment, William Stuart stated that "as a result of my reliance of Freiberg's reports, I suffered pecuniary damages, as we delayed pursuing removal of Stuart Jr. . . ." Neither he nor Jonathan Stuart supported their claim of reliance with further documentation or testimony. Rather, the plaintiffs contradicted their claim of reliance in their own depositions. The plaintiffs testified that their intent in requesting an injunction and a constructive trust in 1993 was to remove Kenneth Stuart, Jr., from power over the decedent's assets; they stated further that they did not know or read documents from the defendant at any time. The majority concludes that this lack of contact is "of no legal significance"; see part I A of the majority opinion; but without such contact or documentation, the plaintiffs must rely on only their recollection of events during that time period to support their claim of reliance, and they both testified that, as they remembered, they intended to use information gathered by their own forensic accountant to remove Kenneth Stuart, Jr., in 1993. In his November, 2010 deposition, William Stuart stated that the facts from the forensic accountant's summary were "used in an attempt to remove [Kenneth Stuart, Jr.]—they were used in an unsuccessful attempt to remove him as executor." William Stuart stated further that he and his brother had hoped that facts from the forensic accountant's summary "would be capable of initiating the [1993] lawsuit and removing [Kenneth Stuart, Jr.] as executor. That was our hope." William Stuart stated that he had never met the defendant, did not believe that Jonathan Stuart had ever met the defendant and had only spoken with the defendant one time on the telephone. William Stuart consistently denied recognizing any of the defendant's financial documents shown to him at his deposition.

In his November, 2010 deposition, Jonathan Stuart stated: "I didn't rely on any documents. . . . I didn't look at documents. I don't look at documents." When asked whether he used facts from the forensic accountant hired before the 1993 action to remove Kenneth

Stuart, Jr., as fiduciary, Jonathan Stuart answered, “[m]aybe,” and when asked whether the facts contained in the forensic accountant’s report were sufficient to remove Kenneth Stuart, Jr., as fiduciary, he stated, “[s]ure.” Jonathan Stuart stated that there were “many reasons” why he and William Stuart tried to remove Kenneth Stuart, Jr., in the 1993 action and stated, “I would assume so,” when asked whether Kenneth Stuart’s spending prior to the 1993 action was sufficient, in his mind, to remove him as fiduciary. Jonathan Stuart stated that he had never met the defendant and that he had never hired the defendant to act as his accountant. Jonathan Stuart did not even claim to know whether the defendant acted fraudulently, as, when asked whether the defendant concealed information from him, he responded: “How would I know if he concealed things?”

Whether the defendant acted properly during his time as an accountant for the estate and the extent of his involvement in Kenneth Stuart, Jr.’s fraudulent actions would be for a jury to decide, but the uncontroverted facts demonstrate that the plaintiffs could not reasonably have relied on the defendant or acted to their detriment during the period between 1994 and 2002. It is clear from their allegations in the 1993 complaint that the plaintiffs were aware of Kenneth Stuart, Jr.’s fraudulent behavior and that they intended to remove Kenneth Stuart, Jr., from power over the decedent’s assets as a result of that awareness. The 1993 complaint demonstrates that the plaintiffs had sufficient information to remove Kenneth Stuart, Jr., before the defendant was hired in 1994 and at the time they initiated the 1993 action.

The plaintiffs have not satisfied their burden by providing any evidence to refute or clarify their testimony so as to contradict this conclusion. It was the defendant who provided the court with both the 1993 complaint and the court’s decision in that case. The evidence provided by the plaintiffs in support of their claim of a genuine issue consists of a few lines in William Stuart’s affidavit and a single account summary addressed to the “estate beneficiaries.” “Although the party seeking summary judgment has the burden of showing the nonexistence of any material fact . . . a party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court [in support of a motion for summary judgment].” (Internal quotation marks omitted.) *Great Country Bank v. Pastore*, 241 Conn. 423, 435–36, 696 A.2d 1254 (1997). The plaintiffs, like the majority,

focus solely on the fact that they did not file for removal formally with the Norwalk Probate Court until 2002, and although the majority states that the record shows where the plaintiffs “appeared to tolerate [Kenneth] Stuart, Jr., continuing in that role [as executor] for some period of time during the *Stuart v. Stuart* litigation,” there are no facts raised by the plaintiffs to support such an inference. Rather, the record and the plaintiffs’ own words indicate that the plaintiffs intended to remove Kenneth Stuart, Jr., from all positions of power and to initiate a lawsuit to recoup financial losses incurred as a result of Kenneth Stuart, Jr.’s fraudulent behavior.

Although the court was in error by stating that the plaintiffs sought to “remove” Kenneth Stuart, Jr., in their 1993 complaint, I nevertheless conclude that the court did not err in determining that there was no genuine issue as to either the plaintiffs’ lack of reasonable reliance on the defendant or any actions to their detriment induced by the defendant during the period before they filed the petition for removal in the Probate Court.¹

II

Because I would affirm the granting of summary judgment as to the fraud and negligent misrepresentation counts, I address the plaintiffs’ claim on appeal that their motion for reargument as to these counts should have been granted.

In their July 27, 2011 motion, the plaintiffs challenged the court’s determination that there was no genuine issue of material fact as to the plaintiffs’ reliance on the defendant’s actions and attached as exhibits both the 1993 Superior Court complaint from *Stuart v. Stuart*, Superior Court, judicial district of Stamford-Norwalk, Complex Litigation Docket, Docket No. X08-CV-02-0193031 (June 28, 2004) (37 Conn. L. Rptr. 367), *aff’d*, 112 Conn. App. 160, 962 A.2d 842 (2009), *rev’d in part*, 297 Conn. 26, 996 A.2d 259 (2010), and the 2002 Probate Court motion to remove the fiduciary and dissolve the trust. The plaintiffs argued that the court misread the original complaint in *Stuart v. Stuart*, *supra*, 37 Conn. L. Rptr. 367, to be seeking the removal of Kenneth Stuart, Jr., as fiduciary for the decedent’s estate. On August 3, 2011, the court denied the motion to reargue, finding that the motion was without merit and that further oral argument was unnecessary.

“[I]n reviewing a court’s ruling on a motion to . . . reargue . . . we ask only whether the court acted unreasonably or in clear abuse of its discretion.” *Valentine v. LaBow*, 95 Conn. App. 436, 451, 897 A.2d 624, cert. denied, 280 Conn. 933, 909 A.2d 963 (2006). “When reviewing a decision for an abuse of discretion, every reasonable presumption should be given in favor of its correctness.” (Internal quotation marks omitted.) *Id.* The purpose of reargument is to demonstrate to the

court that a controlling decision or principle of law has been overlooked or that there has been a misapprehension of facts; it also may be used to address alleged inconsistencies in the trial court's memorandum of decision. *Opoku v. Grant*, 63 Conn. App. 686, 692, 778 A.2d 981 (2001).

In its ruling denying the motion, the court noted that the plaintiffs "paraphrase the arguments they previously advanced in their unsuccessful attempt to defeat the defendant's motion for summary judgment." The motion seeking reargument did not alert the court to an overlooked decision or principle of law, nor did it address any alleged inconsistencies in the decision. The plaintiffs argue that in its decision, the court misapprehended the facts by reading the 1993 complaint to ask for Kenneth Stuart, Jr.'s removal as a fiduciary. As discussed in this dissent, although the court incorrectly stated that the 1993 complaint explicitly sought removal, the court correctly interpreted the 1993 complaint to be seeking remedies tantamount to removal. There was no material misapprehension of facts. Accordingly, there was no abuse of discretion in denying the motion for reargument.

I respectfully dissent in part.

¹ The majority also finds that there is a genuine issue of reliance as to the plaintiffs' claim of accounting malpractice. See part I B of the majority opinion. To the extent that the majority reverses the court's judgment as to accounting malpractice on the basis of reliance, I disagree for the reasons stated herein.
