UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of November, two thousand twenty-six.

Present:

SUSAN L. CARNEY,
MICHAEL H. PARK,
SARAH A. L. MERRIAM,
Circuit Judges.

JOHN A. MANSOUR,

Plaintiff-Appellant,

26-600

v.

MORGAN STANLEY, MORGAN STANLEY & CO. LLC,
MORGAN STANLEY SMITH BARNEY LLC,

Defendants-Appellees.[*]

FOR PLAINTIFF-APPELLANT: YAVAR BATHAEE (Andrew C. Wolinsky, *on the brief*), Bathaee Dunne LLP, New York, NY.

FOR DEFENDANTS-APPELLEES: MARK EMERY (Stephen Dollar, Norton Rose Fulbright US LLP, New York, NY; David Kearns, Norton Rose Fulbright US LLP, Washington, D.C., *on the brief*), Norton Rose Fulbright US LLP, Washington, D.C.

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* The Clerk of Court is respectfully directed to amend the caption accordingly.

Appeal from a judgment of the United States District Court for the Southern District of New York (McMahon, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiff-Appellant John A. Mansour appeals from a judgment of the United States District Court for the Southern District of New York dismissing with prejudice his civil RICO and New York state-law claims against Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley Smith Barney LLC (together, "Morgan Stanley"). Mansour alleges that several investment banks, his brother Jimmy and other family members, and a lawyer formed a racketeering enterprise to launder, convert, and steal money from his brokerage accounts. Morgan Stanley allegedly participated in the enterprise from 1998 to 2004 through two schemes. In the "DELIVER" scheme, Morgan Stanley allegedly used manual journal entries labeled DELIVER to move about $20.5 million worth of Mansour's Intermedia stock out of his account to an undisclosed destination. In the "Netpliance" scheme, Morgan Stanley allegedly laundered money through Mansour's discretionary account by trading the stock of Netpliance, Inc.,[1] a company in which Jimmy was an insider, with co-conspirators it signaled through coded order book numbers. The district court dismissed his claims, concluding that the RICO claims were barred by the Private Securities Litigation Reform Act's amendment to RICO (the "RICO Amendment"), and that the state-law claims were untimely. It also denied Mansour's one-sentence request for leave to amend, concluding that the request was deficient and that amendment would be futile. We

[1] Netpliance was renamed TippingPoint Technologies in August 2001, but we refer to the company as Netpliance for simplicity.

assume the parties' familiarity with the underlying facts, the procedural history, and the issues on appeal, which we recount only as necessary to explain our decision to affirm.

"We review *de novo* the dismissal of a complaint under Rule 12(b)(6), accepting all factual allegations as true and drawing all reasonable inferences in favor of the plaintiff." *MLSMK Inv. Co. v. JP Morgan Chase & Co.*, 651 F.3d 268, 273 (2d Cir. 2011). "We review a district court's denial of leave to amend the complaint for abuse of discretion, unless the denial was based on an interpretation of law, such as futility, in which case we review the legal conclusion *de novo*." *Huey v. Anavex Life Scis. Corp.*, 180 F.4th 56, 65 (2d Cir. 2026).

I. Civil RICO Claims

Section 107 of the Private Securities Litigation Reform Act amended the RICO statute to provide that "no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of [RICO]." 18 U.S.C. § 1964(c). The RICO Amendment thus "bar[s] civil RICO claims based on allegations of securities fraud." *MLSMK*, 651 F.3d at 274. But it "must not be construed so broadly as to bar RICO claims based on common law frauds that happen to involve securities." *D'Addario v. D'Addario*, 75 F.4th 86, 93 (2d Cir. 2023). Instead, "for a claim to be barred, the fraud must be '*in* the purchase or sale of securities,' which means that the actual purchase or sale of securities was fraudulent." *Id.* (quoting 18 U.S.C. § 1964(c)).

The conduct alleged here "would have been actionable as fraud in the purchase or sale of securities." 18 U.S.C. § 1964(c). Securities fraud under Section 10(b) reaches a "fraudulent scheme in which the securities transactions and breaches of fiduciary duty coincide." *SEC v. Zandford,* 535 U.S. 813, 825 (2002). In the RICO context, "[f]or the fraud to 'coincide' with a securities transaction, a claim must 'necessarily allege,' 'necessarily involve,' or necessarily 'rest

on' the purchase or sale of securities." *D'Addario*, 75 F.4th at 96 (quoting *Romano v. Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010)). The fraud alleged here does that. Morgan Stanley was Mansour's broker, engaged to sell his Intermedia shares and to manage his discretionary account. Mansour alleges that, rather than executing those transactions in his interest, Morgan Stanley disposed of his Intermedia shares and made unauthorized Netpliance trades through his account, all while misreporting those transactions on his statements. Morgan Stanley's "fiduciary duty to [Mansour] was to execute securities transactions in [his] best interest," so the alleged "securities transactions were a necessary feature of the fraud." *Id.* at 96.

Mansour's attempt to avoid the bar by recharacterizing the schemes as "conversion" and "money laundering" fails. The RICO Amendment turns on the conduct alleged, not the label attached to it. *See* 18 U.S.C. § 1964(c) (barring reliance on "*any conduct* that would have been actionable as fraud in the purchase or sale of securities" (emphasis added)); *MLSMK*, 651 F.3d at 279 (explaining that the RICO Amendment bars a plaintiff from "plead[ing] other specified offenses, such as mail or wire fraud, as predicate acts under civil RICO if such offenses are based on conduct that would have been actionable as securities fraud" (alteration in original)). Moreover, Mansour alleges that the DELIVER and Netpliance schemes were "highly interrelated and in service of a common unlawful purpose—money laundering." Joint App'x at 181. Having alleged that Morgan Stanley's acts were part of a single fraudulent scheme, Mansour cannot now divide them to avoid the bar. *See MLSMK*, 651 F.3d at 274 (explaining that the RICO Amendment was designed to prevent plaintiffs from "using artful pleading to boot-strap securities fraud cases into RICO cases").

II. State-Law Claims

A. Timeliness

Mansour's state-law claims—based on fraud, breach of fiduciary duty, conversion, and unjust enrichment—are all untimely. A claim for fraud under New York law must be brought within "the greater of six years from the date the cause of action accrued or two years from the time the plaintiff . . . discovered the fraud, or could with reasonable diligence have discovered it." N.Y. C.P.L.R. 213(8). "[W]here the circumstances are such as to suggest to a person of ordinary intelligence the probability that he has been defrauded, a duty of inquiry arises." *Gutkin v. Siegal*, 85 A.D.3d 687, 688 (1st Dep't 2011) (alteration in original). "If the plaintiff makes no inquiry once the duty to inquire arises, knowledge will be imputed as of the date the duty arose." *Cohen v. S.A.C. Trading Corp.*, 711 F.3d 353, 361–62 (2d Cir. 2013) (internal quotation marks omitted).

The complaint alleges two fraud counts—one premised on the DELIVER scheme and one on the Netpliance scheme. Mansour does not dispute that the six-year period has run on both claims, so the claims are timely only if he can avail himself of CPLR 213(8)'s two-year discovery rule. *See* N.Y. C.P.L.R. 213(8) (permitting a claim to be brought "two years from the time the plaintiff . . . discovered the fraud, or could with reasonable diligence have discovered it"). Mansour filed this suit on May 17, 2024, so that rule saves his claims only if he could not, with reasonable diligence, have discovered the fraud before May 17, 2022. His own allegations foreclose that showing. They establish that he was on inquiry notice of the DELIVER scheme by 1999 and of the Netpliance scheme by 2004, so knowledge of each fraud is imputed to him as of those dates. *See Cohen*, 711 F.3d at 361–62.

As to the DELIVER scheme, Mansour's 1998–99 account statements included the twelve DELIVER entries that removed about $20.5 million worth of stock from his account. The

complaint alleges that those entries were facially deficient: each "omitted necessary information about the transaction—most critically, the destination account where the Intermedia shares were delivered," Joint App'x at 85, unlike other entries that "contain significantly more detail," *id.* at 189. Those entries put him on inquiry notice of the DELIVER scheme. As to the Netpliance scheme, his statements reflected more than $1 million in 1999 transfers to Netpliance, which he alleges were unauthorized, and an extraordinary volume of trading from 2001 to 2004. That was enough to put him on inquiry notice of the Netpliance scheme.

Mansour's allegation that he could not have detected the order-book signaling does not change this conclusion: "An investor does not have to have notice of the entire fraud being perpetrated to be on inquiry notice." *Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 427 (2d Cir. 2008). Nor did his broker's June 1999 explanation that the market had moved against him dispel the duty to inquire; it addressed the overall decline in his portfolio, not the unexplained removal of his shares, and it predated the Netpliance conduct. *See LC Cap. Partners, LP v. Frontier Ins. Grp., Inc.*, 318 F.3d 148, 155 (2d Cir. 2003).

His breach of fiduciary duty claim, which rests on the same transfers and statements as his fraud claims, accrued no later than 2004 and is untimely under either the three- or six-year limitations period. *See Carlingford Ctr. Point Assocs. v. MR Realty Assocs., L.P.*, 4 A.D.3d 179, 179–80 (1st Dep't 2004) (explaining that the statute of limitations period for breach of fiduciary duty turns on the relief sought). And although the discovery rule "applies to fraud-based breach of fiduciary duty claims," *Kaufman v. Cohen*, 307 A.D.2d 113, 122 (1st Dep't 2003), it cannot save this claim because, as explained above, Mansour was on inquiry notice by 1999 and 2004.

A conversion claim must be brought within three years, N.Y. C.P.L.R. 214(3), and "accrual runs from the date the conversion takes place," *Vigilant Ins. Co. of Am. v. Hous. Auth. of El Paso*,

87 N.Y.2d 36, 44 (1995). An unjust enrichment claim must be brought within six years and accrues "upon the occurrence of the wrongful act giving rise to a duty of restitution." *Golden Pac. Bancorp v. FDIC*, 273 F.3d 509, 518, 520 (2d Cir. 2001). By Mansour's own account, "Morgan Stanley had completed its fraud in 2004." Joint App'x at 202. His conversion and unjust enrichment claims thus expired by 2007 and 2010, respectively.

B. Equitable Estoppel

"Equitable estoppel may be invoked to defeat a statute of limitations defense when the plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action." *Doe v. Holy See (State of Vatican City)*, 17 A.D.3d 793, 794 (3d Dep't 2005) (internal quotation marks omitted). To invoke equitable estoppel, a plaintiff must "establish that subsequent and specific actions by defendants somehow kept them from timely bringing suit." *Zumpano v. Quinn*, 6 N.Y.3d 666, 674 (2006). And "it is not enough to have been misled or defrauded"—the plaintiff also "must demonstrate her diligence in seeking the facts." *Koral v. Saunders*, 36 F.4th 400, 410 (2d Cir. 2022).

Morgan Stanley is not equitably estopped from raising a limitations defense. Estoppel does not apply where the alleged concealment is the "same act which forms the basis of plaintiff's underlying substantive cause of action." *Kaufman*, 307 A.D.2d at 122. The only concealment Mansour identifies—the 1999 explanation of losses across his accounts—is pleaded as a predicate act of the scheme itself. Moreover, estoppel requires diligence, which Mansour, having waited more than twenty years to investigate, cannot show.

III. Leave To Amend

Leave to amend should be "freely give[n] . . . when justice so requires," Fed. R. Civ. P. 15(a)(2), but "should generally be denied in instances of futility, undue delay, bad faith or dilatory

motive, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the non-moving party," *United States ex rel. Ladas v. Exelis, Inc.*, 824 F.3d 16, 28 (2d Cir. 2016). The district court properly denied leave to amend because Mansour's single-sentence request did not explain how amendment would cure the complaint's defects and because amendment would be futile.

First, Mansour's request stated only that "discovery may reveal additional facts that would cure any defect." Joint App'x at 362. A district court does not abuse its discretion by denying such a request. *See Solomon v. Flipps Media, Inc.*, 136 F.4th 41, 55 (2d Cir. 2025) (finding no abuse of discretion where the plaintiff requested leave "only in a single footnote" and "ha[d] not identified any proposed amendments"). Second, the district court concluded that amendment would be futile because its dismissal rested on "fundamental legal barriers" that no additional facts could cure. Joint App'x at 363. We agree: the RICO Amendment bars the RICO claims, and the state-law claims are untimely.

* * *

We have considered Mansour's remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court