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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5944-10T2
A-6008-10T2

HERKIMER INVESTMENT, LLC, a
New Jersey Limited Liability
Company,

Plaintiff-Respondent,

v.

MARINA GOLDSTEIN;
ALEXANDER GOLDSTEIN; and
RONALD H. SHALJIAN, ESQ.,
as Escrowee,

Defendants,

and

ELENA RIADTCHIKOVA;
ZHANNA ALERGANT; and
NEW LIFE ADULT DAY CARE
CENTER, INC., a/k/a
NEW LIFE ADULT MEDICAL
DAY CARE CORP.,

Defendants-Appellants.

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HERKIMER INVESTMENT, LLC, a
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MARINA GOLDSTEIN; and
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ADULT DAY CARE CENTER, INC.,
a/k/a NEW LIFE ADULT MEDICAL
DAY CARE CORP.; and
RONALD H. SHALJIAN, ESQ.,
as Escrowee,

Defendants.

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Argued May 22, 2012 - Decided July 19, 2012

Before Judges Nugent and Carchman.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-8540-09.

Vincent J. Failla argued the cause for appellants Elena Riadtchikova, Zhanna Alergant, and New Life Adult Day Care Center, Inc., a/k/a New Life Adult Medical Day Care Corp., in A-5944-10 (Failla & Banks, LLC, attorneys; Mr. Failla, on the brief).

Gerald D. Miller argued the cause for appellants Marina Goldstein and Alexander Goldstein in A-6008-10 (Miller, Meyerson & Corbo, attorneys; Mr. Miller, of counsel and on the brief).

Carmine R. Alampi argued the cause for respondent Herkimer Investment, LLC, in A-5944-10 and A-6008-10 (Alampi & De Marrais, attorneys; Santo T. Alampi, on the brief).

PER CURIAM

In this consolidated appeal[1] from a judgment entered as a result of a default in a commercial loan transaction, we consider the propriety of a contract provision that by its terms limits the interest rate to the "legal" rate and eliminates collection of additional interest that would render the transaction usurious. We conclude that, under the narrow facts here, the clause is enforceable and the transaction was not usurious. As to the liability of the guarantors, we affirm.

I.

These are the relevant facts adduced at both a proof hearing and plenary hearing. In early 2006, defendant Alexander Goldstein met with Robert DeMane, the managing member of plaintiff Herkimer Investment, LLC (Herkimer), a commercial lending company, to secure commercial financing to perfect oil leases in the Ukraine. From March 2006 until March 2007, defendants Marina and Alexander Goldstein (the Goldstein defendants or the Goldsteins)[2] executed a series of seven notes,

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[1] Although these are two separate actions, we consolidate the appeals as there are facts common to both appeals.

[2] Both defendant Alexander Goldstein and his wife Marina Goldstein executed the various notes in issue here and were named as defendants. Any reference to defendant or Goldstein shall refer to Alexander unless otherwise indicated.

drafted by Herkimer's corporate attorney, Gene Boffa, to fund a Ukrainian oil venture known as "Energyia."

The first commercial mortgage loan was for the amount of $640,000; the note was dated March 31, 2006, and had a maturity date of April 1, 2007 (the First Note). The First Note had an interest rate of twenty percent; a default interest rate of twenty-six percent; and a late charge of five percent of the amount of principal and interest past due. As collateral for the First Note, the Goldsteins executed a mortgage on their property at 9 Fieldstone Court, Upper Saddle River, New Jersey (the Mortgage).

The second commercial mortgage loan was for the principal amount of $177,000; the note was dated August 2, 2006, and matured on April 1, 2007 (the Second Note). The Second Note reflected the same interest rates as the First Note, and was also secured by the Mortgage.

The third commercial mortgage loan was for the amount of $150,000; the note was dated September 26, 2006, and matured on April 1, 2007 (the Third Note). The Third Note reflected the same interest rates as the First Note, and was also secured by the Mortgage.

As of December 2006, the Goldsteins had borrowed $967,000, but the overseas oil projects had been delayed. As a result,

Goldstein required additional capital to pursue the investment. DeMane was hesitant to make further loans, stating that as to the first three loans, "[t]he only hard collateral I received was a third mortgage on Mr. Goldstein's house, which is not a great position."

In order to acquire the additional financing from Herkimer, Goldstein reached out to his sister, defendant Zhanna Alergant, and his cousin, defendant Elena Riadtchikova (collectively "the guarantors"), to guarantee the loans received from Herkimer. Zhanna and Elena co-owned defendant New Life Adult Day Care Center, Inc. (New Life), an adult day care center. Elena was a "silent" partner in New Life, while Zhanna served as the president and administrator of the facility.

On December 26, 2006, Goldstein and defendant Ronald H. Shaljian, Esq., visited Zhanna at her office at the New Life facility to request Zhanna guarantee the loans from Herkimer. Although Zhanna was aware that Goldstein was involved in oil and gas "projects," she testified that she was not aware of Energyia prior to trial on June 7, 2011. Zhanna was not shown or made aware of the Goldstein defendants' prior loans with Herkimer. Rather, she explained that while in a meeting with her staff at New Life on December 26, 2006, Goldstein and Shaljian, who had previously served as her attorney and who she believed

represented her, asked her to speak with them in the hallway of the facility. Goldstein told Zhanna that he needed her to sign papers, and Shaljian handed her a conflict letter stating that he was not representing her, as well as a guaranty and a stock pledge agreement.

Zhanna did not review the documents in full at New Life, but nonetheless signed them in the hallway because she trusted her brother and Shaljian. Later that day, Zhanna asked Goldstein what papers were for, and "[h]e said, Zhan[n]a don't worry you signing that you are guarantee on $600 after my mortgage, my home and you know that my home costs much more than (sic) so you should not be worried. [Zhanna] said, okay." Zhanna then gave Alex the shares of New Life stock; no copies of the paperwork were left with Zhanna. Zhanna was never provided any documents or notice of the subsequent or prior loans made from Herkimer to the Goldsteins.

The guaranty signed by Zhanna and Elena provided in relevant part:

> To induce Bank to make loans, advances or other financial accommodations to Alexander Goldstein and Marina Goldstein . . . now or in the future, and with full knowledge that said loans, advances or other financial accommodations would not be made without this Agreement of Guaranty, the undersigned Guarantors agree as follows:

> The undersigned . . . guarantee full, prompt and unconditional payment when due <u>of each and every Liability of the Borrower to Bank, now existing or hereafter incurred</u>, whether direct or indirect, contingent or absolute, joint or several, matured or unmatured and the full, prompt, and unconditional performance of every term and condition of any transaction to be kept and performed by the [b]orrower. . . .
>
> The term "Liability of the Borrower" shall include all liabilities . . . now or hereafter existing, due or to become due . . . .
>
> [(Emphasis added).]

In addition to the guaranty, Elena and Zhanna also signed a "Stock Pledge Agreement" (the Stock Pledge), by which they pledged the entirety of their stock of New Life "as collateral to secure the [notes] and guaranty of [the Goldstein defendants.]" Pursuant to the Stock Pledge, Elena and Zhanna transferred their shares to Shaljian to be held in escrow in the event of default on repayment of the loans. The details of how Elena's signature was acquired are unclear from the record.

The subject line of the conflict letter, dated December 26, 2006, provided: "Re: Herkimer Investment, LLC to Goldstein $600,000 loan secured by a mortgage on 9 Fieldstone Court and guaranteed by Zhanna Alergant and Elena Riadtchikova." The letter confirmed that Shaljian's firm, although it had represented Zhanna and Elena in the past, "are <u>not</u> and <u>cannot</u>

represent [them] in this transaction." It further advised Zhanna and Elena to seek their own counsel and to "take as much time as you need to seek out and obtain legal counsel in order to represent your interest." Zhanna, Elena, and Shaljian signed the letter.

On the same day that Zhanna signed the guaranty, Stock Pledge, and conflict letter, December 26, 2006, Herkimer made a fourth loan to the Goldstein's for $600,000 (the Fourth Note). The Fourth Note had a maturity date of April 1, 2007, an interest rate of twenty percent, a default interest rate of thirty percent, and a late charge of five percent. The Goldstein defendants secured this loan with the Mortgage as well.

The Goldsteins received a fifth loan on February 10, 2007, in the amount of $110,000 (the Fifth Note), which had a maturity date of April 1, 2007. The interest rate, default interest rate, and late charges were the same as the First Note.

On March 22, 2007, Herkimer extended a sixth commercial loan in the amount of $67,000 to the Goldsteins (the Sixth Note). The sixth note, which matured on April 1, 2007, had the same interest rate, default interest rate and late charge as the First Note. Finally, on July 24, 2007, Herkimer made a seventh loan to the Goldstein defendants in the amount of $33,000 (the

Seventh Note). The Seventh Note matured on August 1, 2007, had an interest rate of twenty-four percent, a default interest rate of thirty percent, and a late charge of five percent of the amount past due.

All of the notes included the following provision relating to usurious interest rates:

> 15. Interest in Excess of Permitted Rate. If any provision of this Note relating to the rate of interest is in violation of any law in effect at the time payment is due, the interest rate then in effect, shall be automatically reduced to the maximum rate then permitted by law. If Lender should ever receive as interest an amount that would exceed the highest lawful rate of interest, the amount that would exceed that highest lawful rate shall be credited against principal and not the payment of interest.

Additionally, the amounts indicated on the face of the notes were not disbursed in their entirety to the Goldsteins. Rather, the amounts borrowed included a disbursement for prepaid interest; an origination fee due to the lender, Herkimer; legal fees; and recording fees.

The Goldsteins defaulted.[3]

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[3] Certain payments were made on the notes, which were credited to the Goldsteins and are not relevant to the issues raised on appeal.

Herkimer filed a complaint against the Goldsteins; Elena and Zhanna, as guarantors; New Life; and Shaljian, as escrowee.

The Guarantors filed a counterclaim against Herkimer and a cross-claim against the Goldsteins and Shaljian,[4] alleging fraud, misrepresentation, breach of the covenant of good faith and fair dealing, common law fraudulent inducement, and civil conspiracy.

Herkimer moved for summary judgment against all defendants. The trial court granted summary judgment in favor of Herkimer with respect to the Goldsteins, and denied the motion without prejudice as to the Guarantors.

A proof hearing was held to establish the amount of damages owed by the Goldsteins. Herkimer's witnesses Pat Lombardi and Anthony Rinaldi, and defendants' witness Eugene Boffa, dealt with the amounts owed by defendants, the value of the Goldstein's home, which was pledged as collateral on the first four notes, and the creation of the notes.

In an oral opinion, the court found that the Goldsteins defaulted on the notes and calculated the principal and interest amounts due under the notes as $3,798,437.[5] Regarding the

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[4] Shaljian moved for summary judgment on the cross-claim on April 30, 2010. An order granting summary judgment and dismissing the cross-claim was entered on June 21, 2010.

[5] In calculating this figure, the court relied upon a spreadsheet created by Boffa, and in accepting the figures

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Goldsteins' claim that the interest rates under the notes were usurious, the court found that Boffa's testimony "gave no weight to the defense arguments as to usury" and determined that the terms of the note rendered "the issue with regards to usury . . . essentially a non[-]issue." The court nonetheless disallowed $88,850 in late charges.[6]

The final judgment provided: (1) the total principal amount owed by the Goldsteins on the seven commercial notes was $1,770,000; (2) the Goldsteins made a $50,000 payment on September 24, 2008, which was to be credited against the default interest owed on the notes;[7] (3) the total default interest owed by the Goldsteins was $1,882,581; (4) the five percent late charge was a penalty, not an interest charge, but was nonetheless disallowed; (5) the value as of May 30, 2008 of the

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(continued)
represented on the spreadsheet, the court noted: "[W]e know the information is correct, the question is, is the calculation correct and it is that, a calculation it's empirical in nature. It isn't subject to dispute. So I'm going to accept it."

[6] The judge stated: "[t]he Court is going to delete the late charges. . . . I don't find it usury, but . . . I'm going to be cautious . . . [and] that's why I'm not going to allow the 88,850 in late charges, just for the record."

[7] Herkimer stipulated that the Goldstein defendants had made a total of $130,000 in payments during 2008, "two payments of $50,000 each and three payments of $10,000 each." It appears that only $50,000 of payments were deducted from the accrued default interest.

Goldsteins' home, which served as collateral, was $1,275,000, and the Goldsteins were entitled to a credit against equity in the amount of $524,063; and (6) Herkimer was entitled to $82,602 in attorney's fees. The total judgment against the Goldsteins was $3,211,120.

Thereafter, Herkimer pursued the Guarantors, and a bench trial was conducted. Herkimer principal Robert DeMane and Zhanna were the only witnesses at trial. Elena failed to appear. Following Herkimer's motion for default judgment against Elena, the court found that Elena "voluntarily absent[ed]" herself from trial, and ultimately granted judgment on the merits against her and in favor of Herkimer:

> It appears that [Elena] hasn't defended herself against the matter. The plaintiff has submitted documentary evidence along with the testimony of his witness, that is unchecked that [Elena] was involved in the loans and was in fact a silent partner to Mr. Goldstein that the plaintiff has proved by a preponderance of the evidence, those facts. That as such, there's no contradictory evidence that the Court has received that [Elena] was not involved with Mr. Goldstein in the underlying transactions with Energyia and as such, it appears that she is responsible; although not a signatory of the note to the money that was obtained from the plaintiff to Mr. Goldstein as such she was an accomplice and facilitator of the money that was obtained, which apparently was obtained by false premises and representations by Mr. Goldstein with the active participation and silent participation of Elena Riadtchikova, and as

> such the Court will enter judgement [sic] based on, not just default but, just on the merits of the . . . proofs that have been submitted at trial here against her at the trial. She has very clearly absented herself from the trial.

Additionally, the court granted default judgment in favor of the Guarantors on their cross-claim against the Goldsteins.

With respect to Zhanna's guaranty, the court found that

> to consummate the December 26th, 2006 $600,000 loan[,] a bundle of documents were submitted by hand to [Zhanna] by both [Shaljian] and her brother, Mr. Goldstein. She does acknowledge receiving and knowing of the $600,000 note that she was guaranteeing. She did acknowledge that she in fact executed a separate and distinct document . . [,] a guarantee for that $600,000.

However, the court also found that among the papers given to Zhanna at New Life, the conflict letter from Shaljian and the Stock Pledge referenced only the fourth loan for $600,000.

> Here, the only clear terms that the guarantor [Zhanna] would have known were that there was one note for a princip[al] amount of $600,000 which accompanied the grantee [sic]. There is no expectation that she would have known anything more. The plaintiff didn't even know the guarantor, had never met her and his information was upon information I believe from the borrower Goldstein who is in default of this matter.
>
> The Court does find that the [guaranty] obviously was understood by [Zhanna] that would obligate her to pay the $600,000 if that note was not paid by the borrower,

> Goldstein. And as such she is obligated to that amount but, only to that amount.

Because the Fourth Note had not been discharged, the court granted Herkimer's request to enforce the Stock Pledge.[8]

On June 27, 2011, the court entered a judgment against the remaining defendants, ordering among other things: (1) judgment against Elena in the amount of $3,211,120; (2) judgment against Zhanna in the amount of $1,365,000, consisting of $600,000 in principal and $765,000 in accrued default interest; (3) the foreclosure of Elena and Zhanna's interest in the pledged stock of New Life; (4) dismissal with prejudice of the Guarantors' counterclaim; and (5) entry of default judgment in favor of the Guarantors against the Goldsteins.

All defendants appealed. In their appeal, defendants limit their argument to a claim that the loans were usurious. In their more expansive arguments, Elena, Zhanna and New Life assert that the trial judge erred by failing to invalidate the guaranty because it was procured by fraud, Elena is not liable

[8] Although New Life is named as a defendant, the court found that "with regard to New Life itself, there has been no showing that New Life as a defendant was a guarantor[;] the security is pledged but, that has nothing to do with a culpable act or a liability incurred by New Life, there was no testimony of that." Although the Stock Pledge was enforceable, New Life incurred no liability.

for loans made prior or subsequent to December 26, 2006, and the loans were usurious.

II.

We first address the issue of usury, an issue common to both appeals.

Defendants argue that the interest rates charged on the commercial loans were usurious, and therefore the court erred in failing to deduct all interest amounts due in calculating the final judgment. Specifically, they contend that the court erroneously calculated the interest owed by using the face amount of the notes as principal, rather than calculating interest based upon the amount the Goldsteins actually received.

Following the trial, the judge struck the five percent late charge. While he made no finding that it was usurious to include that charge, he claims to have decided to eliminate that cost in an abundance of "caution." By so doing, the collective interest rates remained at or below thirty percent. Herkimer did not appeal from that decision.

Usury is the "exaction of more than lawful interest in exchange for a loan." Ferdon v. Zarriello Bros. Inc., 87 N.J. Super. 124, 129 (Law. Div. 1965). N.J.S.A. 31:1-3 provides:

> In all actions to enforce any note, bill, bond, mortgage, contract, covenant, conveyance, or assurance, for the payment or delivery of any money, wares, merchandise,

> goods, or chattels lent, and on which a higher rate of interest shall be reserved or taken than was or is allowed by the law of the place where the contract was made or is to be performed, the amount or value actually lent, without interest or costs of the action, may be recovered, and no more. If any premium or illegal interest shall have been paid to the lender, the sum or sums so paid shall be deducted from the amount that may be due as aforesaid, and recovery had for the balance only.

In New Jersey, the maximum interest rate that may be charged for a non-corporate loan is thirty percent. See N.J.S.A. 2C:21-19.

"Usury laws exist to protect oppressed borrowers, as distinguished from others, such as their guarantors." Ferdon, supra, 87 N.J. Super. at 134. Ferdon cautions that a guarantor, unlike a borrower, "is not likely to be overcome by financial need when assuming an obligation for the accommodation of another without participating in any of the borrowed money"; as a result, the defense of usury does not apply to guarantors. Ibid.

Not all exactions from a borrower, in addition to the principal amount received by the borrower, are illegal. "Exceptions are recognized for expenses of making the loan, attorney's fees, broker's commissions and the like, when taken in good faith and not as a device for evading the usury laws." Id. at 130.

Here, defendants' contention that the loans were usurious is based on the premise that the interest rates charged by Herkimer, when calculated on the amounts actually received by the Goldsteins, are above the statutory maximum. For instance, the face amount of the First Note was $640,000. Default interest began to accrue on $640,000 at twenty-six percent following the Goldstein defendants' failure to pay after the maturity date of April 1, 2007. However, defendants insist that because $140,000 of the loan was not disbursed directly to the defendants, but rather went towards prepaid interest, origination fees, legal fees, and the like, interest and default interest should only have been calculated upon the $500,000 physically received by the borrowers.

Defendants' contentions lack merit; the proceeds of the note disbursed for attorney's fees, origination fees and prepaid interest were taken in good faith and were not illegal on their face. The Goldsteins were obligated to pay these fees to secure the financing for this transaction, and the amounts necessary to meet these obligations were deducted from the principal amount of the loan. We find no error here. As noted in Ferdon, supra, 87 N.J. Super. at 190, these exceptions "do not increase the return to the lender for the use of his money. The exception for reimbursement to the lender of reasonable expenses incurred

by him assures the lender the full return allowed by law on the loan."

We note that this was apparently a speculative commercial transaction entered into by presumably sophisticated parties dealing in an expensive, high-risk, high-reward opportunity. We distinguish this from Goldstein's reliance on Swindell v. Federal National Mortgage Association, 409 S.E.2d 892 (N.C. 1991), involving allegations of usurious interest in the purchase of a single-family home.

We note also that while Swindell was critical of the use of a "usury savings clause," id. at 896, it was, again, in the context of a personal transaction involving the purchase of a single-family dwelling. Although, because of the unique circumstances presented here, we need not determine the validity of this clause, we are satisfied that the sophistication of the parties and the nature of the transaction lend itself to the presence of such a provision. We also note that Goldsteins' reliance on Regulation Z of the Truth in Lending Act, 12 C.F.R. § 226, is misplaced as that statute exempts commercial transactions from its scope. See 12 C.F.R. § 226.3(a).

In sum, we conclude that the judgment of $3,211,120 was supported by the evidence presented to the trial judge.

III.

We likewise find no merit in Zhanna's claim of fraud. What Goldstein may have represented to her is of little moment in Herkimer's claim on the guaranty.

"A guaranty is a separate and independent contract. The guarantor is not a party to the contract between the principal obligor and the guarantee, and the principal obligor is not a necessary party to the contract of guaranty." Great Falls Bank v. Pardo, 263 N.J. Super. 388, 398 n.5 (Ch. Div. 1993) (citing 38 C.J.S. Guaranty §§ 1, 2 (1992)), aff'd, 273 N.J. Super. 542 (App. Div. 1994). Where a guaranty exists, and a demand upon the debt covered by the guaranty is not paid, the party to whom the guaranty was made may sue to collect on it. U.S. Rubber Co. v. Champs Tires, Inc., 73 N.J. Super. 364, 373 (App. Div.), certif. denied, 37 N.J. 521 (1962).

When interpreting contracts of guaranty, the rules governing the construction of contracts apply. Center 48 Ltd. P'ship v. May Dep't Stores Co., 355 N.J. Super. 390, 405 (App. Div. 2002)(citations omitted). As a contract, a guaranty must be interpreted "according to its clear terms so as to effect the objective expectations of the parties," and any ambiguity in the terms should be construed in the guarantor's favor. Id. at 406. "Courts are generally obligated to enforce contracts based on

the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract." Caruso v. Ravenswood Developers, Inc., 337 N.J. Super. 499, 506 (App. Div. 2001). "An agreement guaranteeing a particular debt or debts does not extend to other indebtedness not within the manifest intention of the parties." Garfield Trust Co. v. Teichmann, 24 N.J. Super. 519, 527 (App. Div. 1953).

"[F]raud operates to discharge [a] guarantor from his liability on the guaranty, and may be set up by him as a defense to an action on the guaranty." Ramapo Bank v. Bechtel, 224 N.J. Super. 191, 197-98 (App. Div. 1988) (internal quotation marks and citation omitted). A "material misrepresentation," even if not fraudulent, may still be sufficient to void a secondary obligation. Restatement (Third) of Suretyship & Guaranty § 12(1) (1996). "A misrepresentation amounting to a 'legal fraud' is a 'material representation of a presently existing or past fact, made with knowledge of its falsity and with the intention that the other party rely thereon, resulting in reliance by that party to his detriment.'" Ramapo, supra, 224 N.J. Super. at 197 (quoting Jewish Ctr. of Sussex Cnty. v. Whale, 86 N.J. 619, 624 (1981)). "The facts concealed, however, must be facts which if known by the guarantor would have prevented him from obligating

himself, or which materially increase his responsibility[.]" Id. at 198 (citation and internal quotation marks omitted).

However, "[u]nless [a guarantor] is able to show that plaintiff, as [a lender], either participated in or had knowledge of any fraud perpetrated by the mortgagors, [the guarantor's] fraud claim is of no moment[.]" Pardo, supra, 263 N.J. Super. at 395. Nonetheless, in rendering a judgment on a guaranty in which a guarantor alleges fraud, the trial court initially should determine (1) whether the guaranty had been procured as the result of fraud by the borrower, and (2) whether the lender had committed fraud or "had such unclean hands that the guaranty agreement should be vitiated." Ramapo Bank, supra, 224 N.J. Super. at 199.

During summation on June 8, 2010, Zhanna's counsel raised the issue of fraud and misrepresentation:

> At the time [Zhanna] signed these documents in that hallway, a material misrepresentation of what she was actually signing was made. It was made by Mr. Goldstein, it was made by Mr. [Shaljian]. Whether it was by omission, whether they just failed to tell her about this million dollars that they just so happened to be involved in or, they purposely didn't tell her; either way [Zhanna] was never told about these prior debts that had already been executed between [Herkimer] and Mr. Goldstein.

In rebuttal, Herkimer contended that a fraud claim was not a valid defense because "there [was] no active claim of misrepresentation [or] fraud against the lender [Herkimer], not even in the testimony." To the contrary, "both parties openly admitted that they didn't discourse directly with each other until after the default and after collection efforts."

The court found that Zhanna was liable only on the Fourth Note because she "acknowledged receiving and knowing of the $600,000 note that she was guaranteeing," but "[t]here was no reference in [Shaljian's] cover letter nor in the note that accompanied the guarantee that there were specifically other loans and what those loans might have been, when they had been made, . . . nor[] was it ever specifically noted what future indebtedness would incur." Citing Teichmann, supra, 24 N.J. Super. 519, and Valley Hospital v. Juliano, 280 N.J. Super. 517 (App. Div. 1995), the court found that Zhanna could not be liable for debts which were not within the manifest intentions of the parties when she signed the guaranty.

Zhanna adduced at trial that she signed the loan in reliance on the representations made by her brother and that the his house would cover the amount due on the Fourth Note in case

of default.[9] However, Herkimer rightly states that Zhanna did not offer any evidence demonstrating that DeMane was involved in the fraud or misrepresentation, and we are satisfied that Zhanna presented insufficient evidence to raise an issue as to whether Shaljian, Herkimer's attorney, "had knowledge of any fraud." Pardo, supra, 263 N.J. Super. at 395.

In sum, although the court did not address Zhanna's claim directly, we find no basis for further action as to the claim of fraud. We conclude that the judge did not err in enforcing the guaranty.

Affirmed in both appeals.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION

[9] Elena presented no evidence that she relied upon any representations of the Goldstein defendants or Herkimer in signing the guaranty and Stock Pledge. Rather, she "would sign anything [Alexander] would want [her] to sign with [her] eyes closed, just because he is [her] brother." Moreover, the court found that Elena had an interest in the underlying transaction, while Zhanna knew little about Energyia or what the loans were being used for.