CENTRA CAPITAL INVESTMENTS LLC, Plaintiff-Respondent, v. BAPU CORPORATION & HARSHAD PATEL, Defendants-Appellants.	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **CIVIL ACTION** **On appeal from a final judgment of the Law Division dated June 13, 2025** **DOCKET NO. A-3296-24** **TRIAL DOCKET NO. UNN-L-3016-22** **SAT BELOW:** **HON. DANIEL R. LINDEMANN, J.S.C.**

BRIEF OF PLAINTIFF-APPELLANT CENTRA CAPITAL INVESTMENTS LLC

COHN LIFLAND PEARLMAN HERRMANN & KNOPF LLP
Park 80 West - Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, New Jersey 07663
(201) 845-9600
jwh@njlawfirm.com
cs@njlawfirm.com
Attorneys for Plaintiff-Appellant Centra Capital Investments LLC

On the Brief:
Jeffrey W. Herrmann, Esq.
No. 019311976
Christina N. Stripp, Esq.
No. 239692017

Submitted: September 10, 2025
Revised: September 11, 2025

TABLE OF CONTENTS

Table of Authorities

Cases

TABLE OF JUDGMENTS, ORDERS, & RULINGS

PRELIMINARY STATEMENT

This is an appeal from a bench trial decision which held that Plaintiff Centra Capital Investments LLC ("Plaintiff") could not prevail on its breach of contract claim based on a Loan Commitment against Defendants Harshad Patel ("Mr. Patel") and the Bapu Corporation ("Bapu") because Plaintiff had assigned its contractual rights, and that such an assignment breached the Loan Commitment.

As shall be demonstrated below, this finding was incorrect inasmuch as the record is clear that there was no formal written assignment, there was no testimony as to any assignment, and because the finding disregarded documentary evidence that no assignment was ever made or intended.

The Trial Court's decision is even more puzzling in light of its later holding that the contract in question could not be assigned, a holding in itself based on a misreading of the language of the Loan Commitment.

Accordingly, as more fully set forth below, the order of the Trial Court must be reversed, and this matter remanded to the Trial Court with directions to enter new order and decision in favor of Plaintiff based on the existing trial record.

STATEMENT OF FACTS[1]

A. The Parties Involved

David Hecht ("Mr. Hecht") is the president of Plaintiff. (2T10:3-6). Mr. Hecht has been in the business of commercial real estate lending for approximately 35 years, and Plaintiff was formed in or about 2012. (2T13:7-9; 2T11:6-8).

Plaintiff is in the business of making commercial real estate loans secured by commercial real estate, and provides funds to the requesting entities swiftly, often within weeks. (2T11:9-12; 2T11:13-12:8). Many of the entities who seek funding from Plaintiff cannot obtain funding from banks because the entities have low cash flow or are higher risk for other reasons. (2T11:13-12:8). Plaintiff is an asset-based lender, and always takes collateral for its loans, in the form of a first position lien on commercial real estate. (2T12:13-13:6).

Defendant Harshad Patel ("Mr. Patel") is the manager and owner of Defendant Bapu Corporation ("Bapu"). (Pa15-19, ¶ 1; 3T7:7-10). Mr. Patel is a businessman who has been involved in various real estate transactions and business transactions and holds himself out as someone whose "expertise is not limited to management

---

[1] The transcripts for the proceedings in this matter will be referenced as follows:

1T = October 21, 2022
2T = February 24, 2025
3T = February 25, 2025
4T = June 13, 2025

but includes negotiating promising deals, development, construction, [and] renovation." (3T15:10-17:25).

Despite being the sole shareholder of Bapu, Mr. Patel defers the day-to-day handling of the matters of Bapu to his son, Himansu, including the decisions for the intended loan transaction with Plaintiff. (Pa15-19, ¶ 2).

At the time of the intended loan transaction in 2022, Bapu was the owner of the land located at 2735 Route 22, Union, New Jersey ("the Property"), on which sits the Clinton Manor Hotel. (3T18:3-9). The Property was made up of a hotel and a banquet hall. (3T18:10-12). The banquet hall was owned and operated by Clinton Manor Banquet, LLC, and the hotel was owned and operated by Clinton Manor Hotel, LLC. (3T18:13-21). Mr. Patel's sons, Himansu Patel and Akash Patel, were the managers and owners of both Clinton Manor Banquet, LLC and Clinton Manor Hotel, LLC. (3T18:22-19:3).

The income received by either the banquet hall or the hotel was paid to those respective LLCs, not to Bapu. (3T19:4-12). Clinton Manor Banquet, LLC and Clinton Manor Hotel, LLC then paid monthly rent to Bapu, which then used that rent to pay its obligations, such as its mortgage. (3T19:13-20). Aside from the income received from Clinton Manor Banquet, LLC and Clinton Manor Hotel, LLC, Bapu had very little, if any income. (3T19:21-24).

B. Plaintiff's Loan Process

Plaintiff's traditional lending process usually begins when they are approached by a broker, who would talk to one of its loan officers. (2T13:13-14:4). If Plaintiff's loan officer thinks that the loan presented by the broker has merit, it would be brought to Mr. Hecht, who would then do a conference call with the borrower(s). (2T13:13-14:4). If Mr. Hecht agrees, after this conference call, that the loan opportunity has merit, Plaintiff will issue a term sheet named a "Letter of Intent." (2T13:13-14:4).

The Letter of Intent generally contains information pertinent to the intended loan such as the borrowers, the name of the guarantor, interest rate, the points--termed by Plaintiff their Commitment Fee--any funding fee, the term of the loan, and the option to extend the term of the loan. (2T14:11-15:15; See Pa24-29).

The Letter of Intent also discloses the individuals who would be personal guarantors on the borrower's obligations under the loan documents. (2T25:13-21; See Pa24-29). Plaintiff always requires a personal guarantee for its loan transactions, because, as Mr. Hecht testified, if the borrower's principal is not "willing to sign personal guarantee, I will not give him a loan because I'm saying to myself there's something there that he's not telling me because he got nothing to worry about from the personal guarantee as long as he pays on time, as long as the asset is worth what he's saying it's worth." (2T25:22-26:23).

Once the borrower signs and returns the Letter of Intent with a due diligence fee, Plaintiff issues a draft Loan Commitment. (2T15:18-16:7). The Loan Commitment document is longer than the Letter of Intent and generally contains more detailed terms and conditions for the intended loan transaction with Plaintiff. (2T15:18-16:7; See Pa30-45).

Once the Loan Commitment is finalized, signed by the intended borrower, and returned to Plaintiff, Plaintiff begins its due diligence, which aids Plaintiff in looking at the whole picture and rating the risk of the loan transaction. (2T17:6-16; 2T22:8-10). Plaintiff's due diligence includes retaining an appraiser for the real property intended to be collateral. (2T17:6-16). The standard loan to value ratio that Plaintiff is willing to accept is between fifty and sixty percent of the appraised value. (2T17:1-6). Plaintiff's due diligence also includes gathering financial information from the intended borrowers and guarantors, such as a credit check, resumes, and personal financial statements. (2T20:14-22:10). Plaintiff also performs a background check on the borrowers and guarantors, ascertains any environmental issues with the real property intended to be collateral, and completes a site visit with the borrower. (2T17:6-16).

Plaintiff also begins to gather funding from investors for the intended loan; Mr. Hecht is always an investor in Plaintiff's loans. (2T17:16-18:4).

If all of the information gathered by Plaintiff is satisfactory, it will issue a document called a Loan Offer, which indicates the final amount of the loan offered by Plaintiff. (2T18:5-14).[2]

If the borrowers return the Loan Offer to Plaintiff signed, the matter proceeds to a closing. (2T18:6-14).

C. The Loan Process with Defendants

In or around March of 2022, Bapu approached Plaintiff through a loan broker named Guy Parsons. (2T22:12-22; 3T9:16-23).

When Mr. Hecht had his usual conference call to assess the merit of the intended loan transaction, it was not with Mr. Patel, but with his two sons, Himansu and Akash Patel,[3] who informed Mr. Hecht that their father's "English was not that good, so they'd prefer to be on the line answering all the questions." (2T22:15-23:11).

Defendants informed Mr. Hecht that they needed to refinance the current mortgage on the Property. (Pa15-19, ¶ 3; 2T22:20-23:17; Pa57; 3T9:16-23). The

---

[2] If the loan does not close because Plaintiff chooses not to move forward with the transaction based on its due diligence, it traditionally waives the three percent Commitment Fee. (2T36:7-16).

[3] As Himansu and Akash Patel were acting on behalf of their father, Harshad Patel, in his capacity as the manager and owner of Defendant Bapu Corporation, all four (Bapu, Harshad, Himansu, and Akash) will hereinafter collectively be referred to as "Defendants."

Property is the site of the Clinton Manor Hotel and the Clinton Manor Banquet. (Pa15-19, ¶ 4; 3T18:10-12).

Defendants informed Mr. Hecht that the Property is "not an active hotel . . . but is being used as a service to the County and the town for hosting homeless, hosting people that don't have a means of living at that stage, and they were actually making good money from the County." (2T28:6-18).

At this time, Mr. Hecht asked Defendants about the status of the title to the Property, and he was told that they could convey clear title at closing. (2T28:19-23). In keeping with his habit and practice, Mr. Hecht also suggested to Defendants that they work with an attorney to obtain a title report as soon as possible, and not to wait until closing. (2T28:23-30:12).

On March 2, 2022, Plaintiff issued a Letter of Intent indicating that it was willing to consider Defendants' request for $5,200,000, and also set such terms as the loan term, the interest rate, and the intended collateral. (Pa24-29; Pa15-19, ¶ 5; 2T24:4-13). The Letter of Intent also stated that Mr. Patel would be the personal guarantor. (Pa24-29; 2T25:18-21). The Letter of Intent also stated that there would be a Commitment Fee equal to three percent (three percent) of the eventual loan. (Pa24-29; Pa15-19, ¶ 6).

The Letter of Intent requested the return of the signed LOI with payment of a due diligence fee of $12,000. (Pa24-29; Pa15-19, ¶ 7). On March 4, 2022, Mr. Patel

signed the Letter of Intent individually as guarantor and on behalf of Bapu and then returned the signed Letter of Intent to Plaintiff by email on March 7, 2022; the requested due diligence fee was later paid by wire. (Pa24-29; Pa15-19, ¶ 8; 2T27:23-28:5; 2T30:19-31:2; 3T29:19-30:5).

Though Mr. Patel did not read the Letter of Intent prior to signing it, he had the opportunity to do so "if [he] wanted to." (3T30:6-14). And though Defendants did not have an attorney review the Letter of Intent prior to signing it, they had the opportunity to do so if they wanted to. (3T30:15-20).

On March 14, 2022, Plaintiff issued a written Loan Commitment4 ("Loan Commitment") to Bapu, by which Plaintiff agreed to extend financing in the amount of $5,000,000.[5] (Pa30-45; Pa15-19, ¶ 9; 2T31:7-16). Mr. Hecht confirmed that the date of the Loan Commitment was March 14, 2022 and the Lender's name[6] was Centra Capital Investments, LLC, or "CCI" for short. (2T31:14-32:5). The Loan

---

[4] Plaintiff views a Loan Commitment as a firm commitment to lend money to the borrower, with the amount of the resulting loan dependent on the value of the property offered as security. (2T42:5-7). If Plaintiff decided not to lend on the loan, then it would waive payment of the Commitment Fee. (2T42:8-12).

[5] During the period of time in between the letter of intent and the Loan Commitment, Defendants had requested that the amount of the loan be lowered from $5,200,000 to $5,000,000. (2T32:12-22).

[6] Mr. Hecht testified that the date on the top of the Loan Commitment (March 14, 2021) and the name of the lender in the first paragraph of the Loan Commitment (Centra Capital Partners LLC) were typographical errors. (2T31:14-32:5). This testimony was accepted by the Trial Court. (Pa140, ¶ 51).

Commitment also set such terms as the loan term, the interest rate, and the intended collateral. (Pa30-45; Pa15-19, ¶ 9; 2T31:7-16; 2T32:6-46:15). The Loan Commitment required that Plaintiff be given a "first and paramount lien" on the Property. (Pa15-19, ¶ 11; 2T36:17-37:5; 3T51:7-15).

The Loan Commitment also stated that Mr. Patel would be the personal guarantor. (Pa30-45; 2T33:4-10). Specifically, the Loan Commitment states on the first page that "[t]he terms of this Loan Commitment are as follows," and then it lists the Borrower as Bapu, and the guarantor as Mr. Patel. (Pa30-45). Mr. Hecht testified that the purpose was for Mr. Patel to guarantee the "commitment, the loan, not defaulting." (2T88:2-5).

On March 14, 2022, Mr. Patel signed the Loan Commitment, individually as a guarantor and on behalf of Bapu, in two places, including under a paragraph which stated clearly that

> The undersigned does hereby accept this Commitment and does hereby agree to keep and perform **each and every item and condition herein before set forth and do acknowledge that the performance of such terms and conditions are obligations of the undersigned**. The attorney for the Borrower(s) has reviewed this Commitment and has explained all of its terms and ramifications to the Borrower (s) **and the Guarantor**.
>
> [(Pa44 (emphasis added); 2T103:18-104:4; 3T30:24-31:20; 3T51:6-22).]

Though Mr. Patel did not read the Loan Commitment prior to signing it, he had the opportunity to do so if he wanted to. (3T31:21-32:18). Mr. Patel signed the Loan Commitment because his son, Himansu, requested that he sign it, and because his son advised him to sign it because it was a good deal for them. (3T31:24-33:12).

The Loan Commitment advised Defendants to retain an attorney to represent their interests in the loan transaction. (Pa30-45; 2T33:25-34:6). And though Defendants did not have an attorney review the Loan Commitment prior to signing it, they had the opportunity to do so if they wanted to. (3T31:21-32:18).

The Loan Commitment provided for Defendants to pay a Commitment Fee of $150,000, stated that the Commitment Fee was deemed earned as of the Effective Date (March 14, 2022) and allowed for the Commitment Fee to be paid at closing "as consideration for the parties' unconditional and irrevocable waiver of all rights to a trial by jury and the parties agreeing to the Choice of Forum and Limitations of Damages clauses set forth below." (Pa30-45; Pa15-19, ¶¶ 1, 10; 2T16:8-12; 2T35:11-36:6; 2T36:4-6).

Mr. Patel not only was aware that there was a three percent, or $150,000, fee owed to Plaintiff, but he also specifically discussed this fee with his son, Himansu. (3T34:4-15). Mr. Patel also understood the nature of a personal guarantee, which was that if he signed "a guarantee for an obligation of Bapu and Bapu doesn't pay," that he, as the guarantor, was obligated to pay. (3T37:20-23).

Furthermore, Schedule A to the Loan Commitment summarized the payment terms, including the loan amount ($5,000,000) and the Commitment Fee of $150,000. (Pa30-45; Pa15-19, ¶ 13; 2T45:22-46:15).

The Loan Commitment expressly provides that "CCI shall not bear any out-of-pocket costs or expenses whatsoever in connection with the Commitment, Loan or any litigation arising out of either. Such costs and expenses shall be paid at or prior to the Loan closing, or upon demand if the Loan does not close or if this Commitment is terminated." (Pa30-45; Pa15-19, ¶ 14). The Loan Commitment also provides that "The Borrower shall be required to pay the lender's attorney reasonable legal fees and expenses for lender's attorney for services provided to lender in connection with this transaction." (Pa30-45; Pa15-19, ¶ 15).

On April 1, 2022, the Property appraised at $10,000,000. (Pa65-102; Pa15-19, ¶ 16). The loan to value ratio applicable to the loan requested by Defendants was "[sixty] percent of the assessed value, not to exceed the financing request." (Pa30-45; 2T38:5-24). Under this provision, the $5,000,000 requested by Defendants formed the ceiling for how much Plaintiff would lend, regardless of the appraised value, as long as the appraised value was sufficient to meet the loan to value ratio. (2T39:5-11).

After the Loan Commitment was signed, Mr. Hecht conducted a site visit on Plaintiff's behalf, personally going to the Property, where he met with Mr. Patel, the

broker, Guy Parsons, and one of Mr. Patel's sons. (2T46:21-47:8). On April 14, 2022, after finishing the site visit and "liking what they saw," Plaintiff issued a Loan Offer which stated that it was "prepared to proceed to a closing in the amount of $5,000,000." (Pa15-19, ¶ 17; Pa45; 2T50:3-17). On April 15, 2022, Mr. Patel signed the Loan Offer, though he did so without reading it. (Pa15-19, ¶ 18; Pa56; 2T50:18-51:1; 3T38:4-14).

At the time that the Loan Offer was signed, Plaintiff had gathered the funds to be lent to Defendants and placed them into escrow with its attorneys, and its attorneys had started to prepare the loan documents for closing. (2T51:20-52:9).

On May 11, 2022, First American Title wrote an email to Defendants' counsel regarding several outstanding judgment liens against Defendants to be satisfied at closing and conveying their policy of holding an escrow in the amount of 150% of each judgment. (Pa15-19, ¶ 19).

On May 12, 2022, Plaintiff's counsel issued the relevant loan documents to Defendants' counsel. (Pa15-19, ¶ 20; Pa58-60; 2T52:25-53:7). The loan documents included written guarantees for Mr. Patel, and for his two sons, Himansu and Akash Patel, and from entities named Clinton Manor Banquet LLC and Clinton Manor Hotel, LLC. (Pa51; Pa109-110; 2T53:8-54:3). These guarantees requested because Plaintiff had been informed that the extra guarantors were "part of the company and they're in some way part owners." (2T54:6-10). These guarantees were discussed

with Defendants in advance, and Defendants did not object to the additional guarantees. (2T26:24-27:3; 2T54:11-17).

In fact, on April 12, 2022, Defendants cooperated with Plaintiff's desire to have additional guarantors by providing the personal financial statements of Himansu Patel and Akash Patel. (Pa111-120; 3T22:22-26:18). Furthermore, on April 20, 2022, Clinton Manor Banquet LLC and Clinton Manor Hotel, LLC adopted Unanimous Consent Resolutions, each of which "approve[d] and adopt[ed] the resolution for the Company to act as guarantor for the $5,000,000 loan by Centra CMH 22 Partners LLC to Bapu Corp." (Pa109-110; 2T58:6-60:19; 3T21:22-22:14).

The loan documents also included a Closing Statement dated May 12, 2022, (provided by First American Title in draft format) which showed that, in addition to the $4,600,000 to be paid to the primary mortgage holder, $411,842.79 would have to be paid in order to satisfy outstanding judgment liens against Defendants. (Pa57-58; Pa15-19, ¶¶ 20-21; Pa59-61). These outstanding judgment liens against Defendants totaled $411,842.79. (Pa57-58; Pa59; Pa15-19).

Defendants informed Plaintiff that the judgments would be resolved before or at closing, and that the "[five] million [would] be more than sufficient to close." (2T62:16-63:8; 2T100:13-101:3). Though Mr. Patel was unaware of any judgments aside from the one owed to Travelodge, he agreed that all unpaid judgments

appearing on a title search would have to be satisfied at the time of closing. (3T39:6-25; 3T41:7-11). Plaintiff was not responsible for paying those liens. (2T68:15-21).

The settlement statement, though still in draft format at that time, made clear that, as of May 13, 2022, First American Title required Defendants to bring $381,981.91 to the closing. (2T67:21-68:4; Pa57-58; Pa15-19, ¶ 22; 3T9:24-10:14). On May 11, 2022, First American Title sent an email to Defendants and their counsel which stated that:

> I am following up in connection with our conversation earlier today concerning this file. As you know, several of the judgments included on the attached report remain outstanding and **your client requested that First American hold an escrow corresponding to each outstanding lien in the face amount of the judgment**.
>
> Please be advised that in order to resolve these items by escrow, **we must hold at least 150% of the judgment amount**. As you know, we have not received any additional information to support the current balance of these liens. Since they are active liens we have no way of calculating an actual payoff amount in the context of the creditors executing on these liens. As a result, we **must calculate the escrow for each lien at 150%**.
>
> Please let me know if you need to discuss this matter further. Otherwise, our escrow officer Beth Sheets has started a **preliminary settlement statement for review by the parties**.
>
> [(Pa56 (emphasis added); 2T72:8-72:9).]

On May 12, 2022, Defendants informed Plaintiff that they could not proceed with the present plan to close on the loan the following day because "there is no way

they can bring $400,000 additional cash to the closing." (Pa53-56; Pa15-19, ¶ 23; 2T65:16-66:19). They requested an adjournment of the closing to May 18 or 19, 2022 and stated that otherwise they would "explore other options, if [Plaintiff] refused." (Pa58-60; Pa15-19, ¶ 24). In response, on May 12, 2022, Plaintiff's counsel inquired as to the plan proposed by Defendant which would enable them to close on May 18, 2022, but indicated its continued willingness to close on the loan. (Pa58-60; Pa15-19, ¶ 25). Defendants never responded to Plaintiff's inquiry with any promise that factual circumstances had changed between May 12 and May 18, 2022. (Pa15-19, ¶ 26).

At no time did Defendants request that Plaintiff increase the amount of money to be lent, in an attempt to cover these outstanding judgment liens. (2T72:17-20). Had Defendants requested an increase in the amount of money to be lent by Plaintiff, Plaintiff would not have been required to agree to the increase, because it would violate the provision in the Loan Commitment that the amount lent would "not . . . exceed the financing request." (Pa30-45; 2T72:21-73:6; 2T99:9-20). Furthermore, increasing the amount of a loan right before closing would cause hardship to Plaintiff because at that point, Plaintiff has already committed to funds, which means that investors have provided funds, and those funds have been placed into escrow. (2T100:1-12; 2T52:4-10; 2T17:16-18:4).

On May 17, 2022, Plaintiff acknowledged that the Defendants were not going forward with the loan and demanded payment of the $150,000 Loan Commitment fee. (Pa63; Pa15-19, ¶ 27; 2T73:13-74:9). Defendants never paid the Commitment Fee. (Pa15-19, ¶ 28; 2T74:7-12).

Plaintiff wanted to close the loan and lend money to Defendants and was always willing to move forward with the closing as long as Defendants could meet the terms of the Loan Commitment and provide clean title to the Property. (2T83:23-84:16).

STATEMENT OF PROCEDURAL HISTORY

On June 16, 2022, Plaintiff filed a Complaint against Bapu and Mr. Patel. (Pa1-5). Plaintiff sought payment of the Commitment Fee, and alleged breach of contract against Bapu for failing to pay the Commitment Fee upon demand after the loan failed to close, and breach of contract against Mr. Patel for his breach of the personal guaranty, again for Bapu for failing to pay the Commitment Fee upon demand after the loan failed to close. (Ibid). On October 29, 2022,[7] Defendants filed an amended answer to the complaint. (Pa6-11).

The intervening two and a half years between the pleadings and the trial were full of discovery and varied motion practice. None is relevant to the inquiry

[7] Defendants' original answer was filed on October 27, 2022. No substantive changes were contained in the amendment.

before the Court here. However, notable is the fact that the Trial Court enforced the jury waiver contained in the Loan Commitment.

On January 14, 2025, Plaintiff provided its pre-trial submissions, including witnesses and proposed deposition readings. (Pa12-14). In an effort to streamline the issues before the Trial Court, and in recognition of the fact that the matter would be conducted as a bench trial, the parties were able to agree on stipulated facts (Pa15-19), a stipulation as to authenticity of such documents as email correspondence (Pa16-21), and thirteen stipulated exhibits (Pa22-102).

On February 24, 2025, trial commenced. After openings were waived, Plaintiff, through Mr. Hecht, testified, and rested its case that same day. (2T). On February 25, 2025, Defendants, through Mr. Patel, testified. (3T).

On April 21, 2025, Defendants filed their written summation in the form of proposed findings of fact and conclusions of law. On May 21, 2025, Plaintiff followed suit. (Pa130).

On June 13, 2025, despite the fact that the parties had filed written summations and had waived oral summations, the Trial Court heard oral summations. (4T).

On June 13, 2025, the Trial Court entered an order, accompanied by a written findings of fact and conclusions of law, which dismissed Plaintiff's complaint with prejudice and without costs. (Pa131-160).

Specifically, the Trial Court found that

> for purposes of the within Decision, here, even assuming all that were correct, and that somehow Plaintiff having subsequently breached the Commitment by the assignment but somehow despite the breach had retained its rights under the Commitment in order to actually assign its rights to Centra CMH 22 Partners LLC, the Plaintiffs Complaint is dismissed with prejudice as to both of its counts for relief, fundamentally because Plaintiff assigned its rights to the New LLC, and in so assigning its rights as aforesaid above, Plaintiff breached the contract, and as a breaching party to an agreement, it has no rights to seek enforcement of the agreement..

(Pa154). In short, and stated in more succinct terms, the Trial Court found that "Plaintiff assigned its rights under the Commitment (J-2) to the New LLC." (Pa156). And further, the Trial Court found that "Section 18 of Schedule B required mutual agreement to modify the Commitment; Plaintiff unilaterally modified the Commitment by assigning its rights to the New LLC" and as such, "Plaintiff breached the Commitment by assigning its rights to the New LLC." (Pa158).

This appeal followed. (Pa170).

LEGAL ARGUMENT

POINT I

STANDARD OF REVIEW

In determining whether a ruling, action or inaction by the lower court or agency constituted error, the appellate court applies a standard of review that gives the appropriate deference, if any, to the lower court's decision. Interpretations of law are reviewed de novo. See Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.").

Appellate courts apply a deferential standard in reviewing factual findings by a judge. Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. McNeil-Thomas, 238 N.J. 256, 271 (2019). "A reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the

interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

POINT II

THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF-APPELLANT ASSIGNED ITS RIGHTS UNDER THE CONTRACT TO A NON-PARTY TO THE LITIGATION

(Not Raised Below)[8]

The Trial Court found that Plaintiff had assigned its rights to the entity which would ultimately be the lender if the loan transaction had closed: Centra CMH 22 Partners, LLC. For the reasons that follow, Plaintiff urges this Court to conclude differently, and requests that the Court find that this determination was an abuse of the Trial Court's discretion warranting a remand for revised findings.

At the very outset, it must be emphasized that no one contemplated the possibility of an assignment at trial. It was not included by either party in pre-trial briefs, in trial testimony, in the post-trial written summations, or in the oral

[8] Neither point raised on appeal here were raised below, because no party ever raised the concept of an assignment. It was not argued in any pre-trial motion or trial brief, nor was it elicited in any trial testimony. The first time an assignment was mentioned in this case, which spanned three years (filed on June 16, 2022 and dismissed on June 13, 2025), was in the Trial Court's final written findings of fact and conclusions of law.

summations. (See, generally, 2T, 3T, 4T). The Trial Court raised the theory, *sua sponte*, out of the blue and after the close of evidence.

Under New Jersey law, the determination of whether there has been an assignment of rights under a contract, whether explicit or implied, depends on the language of the contract, the intent of the parties, and the circumstances surrounding the transaction.

The Trial Court acknowledged multiple times through its decision that there was no "actual formal written assignment document." (See, e.g., Pa135, ¶ 1; Pa143, ¶ 82; Pa144, fn. 3; Pa151, ¶¶ 1, 2). And there was no testimony from any witness at trial about any assignment, whether explicit or implied. (See, generally, 2T, 3T). However, the Trial Court reasoned it could infer Plaintiff's intent to assign from the documents introduced at trial. (See, e.g., Pa135, ¶ 1; Pa144, fn. 3; Pa151, ¶ 5; Pa152 ¶ 11; Pa154).

Defendants' counsel did not elicit any testimony on cross-examination of Plaintiff, or on direct examination of Defendants, regarding an assignment of Plaintiff's rights. (See, generally, 2T; 3T). And, if this was a question that the Trial Court had wanted to have answered, and as it had elsewhere, interjected to ask its own questions of the witnesses (see, e.g., 2T22:23-23:12; 2T29:8-30:13; 3T34:13-16; 3T40:2-41:1), it did not do so at any point to inquire of either witness or the attorneys the parties' positions on whether Plaintiff had assigned

its rights under the Loan Commitment. (See, generally, 2T; 3T).

A. The Trial Court Misinterpreted Trial Exhibits

Specifically, it appears that the Trial Court relied on three documents submitted by the parties as joint trial exhibits, and three exhibits submitted by Plaintiff, to support this finding. The first is "J-8"--a Closing Statement dated May 12, 2022, provided by First American Title in draft format which listed the "Lender" as Centra CMH 22 Partners LLC, with a "lender fee" of three percent, or $150,000. (Pa57). The second is "J-7"--a series of emails which were primarily sent between Defendants, their broker, and the title company, First American Title. (Pa53). And the third is "J-5"--a letter drafted by Plaintiff's counsel sending the drafted closing documents to Defendants' counsel. (Pa51-52). The fourth, fifth, and sixth were P1, the opinion letter on the letterhead of Defendnats' counsel, and P2 and P3, which were the Consent Resolutions executed by two of the intended guarantees, Clinton Manor Hotel LLC and Clinton Manor Banquet LLC.

None of these documents, taken individually or even considered together, should be interpreted to effectuate an assignment of Plaintiff's rights under the Loan Commitment. And none of these documents were used at trial for the purpose of demonstrating an assignment.

i. The Draft Closing Statement, J-8

The Closing Statement marked as J-8 was a draft that was circulated by

the title company, First American Title, not Plaintiff, and there is no evidence in the record that it was adopted by Plaintiff for the purpose of demonstrating an assignment. This is clear by the email exchange marked as J-7, which was also relied upon by the Trial Court. And on May 11, 2024, as part of J-7, the title agency acknowledged that the J-8 was not final, because it was a draft which was being circulated "for review by the parties." (Pa56).

And Plaintiff's principal testified regarding J-8 as it related to his understanding of the judgment liens that had been outstanding against Defendants around the time of the intended closing. (2T66:20-69:5).

ii. The Emails Between Defendants and First American Title, J-7

In the email exchange marked as J-7, on May 12, 2022, First American Title sent an email to Defendants' broker, Guy Parsons, Defendants' attorney, Michael Curran, and Defendants with a "revised settlement statement." (Pa55). Neither Plaintiff nor its attorney was copied on this email, or the earlier email where Defendants' broker stated that "Lender is Centra CMH Partners LLC they have 1.5 % lender Fee=150,000"; Plaintiff and its attorney were not "looped in" to the conversation until later in the morning of May 12, 2024. (Pa53-55). No part of J-7 could be interpreted as an adoption of the specific contents of that settlement statement. And though the Trial Court found that this statement was evidence of Plaintiff's intent to assign its rights, this was an abuse of discretion

because there was no evidence before the Trial Court to show that Defendant's broker, Guy Parsons was Plaintiff's agent with authority to bind Plaintiff. See Mann v. Interstate Fire & Cas. Co., 307 N.J. Super. 587, 595 (App. Div. 1998) (authority can be inferred from "manifestations of that authority by the principal, or implied authority inferred from the nature or extent of the function to be performed, the general course of conducting the business, or from the particular circumstances in the case.").

And finally, Plaintiff's principal testified regarding J-7 as it related to an email exchange between First American Title and Defendants' counsel about the necessity of holding an escrow of 150% to satisfy all outstanding judgment liens. (2T71:8-72:13).

iii. The Letter from Plaintiff's Attorney to Defendants' Attorney, J-5

On February 24, 2025, Plaintiff's principal testified regarding J-5 as it related to the guarantees that had been requested for Clinton Manor Hotel, LLC, Clinton Manor Banquet, LLC, Akash Patel, and Himansu Patel. (2T52:11-54:17). This line of questioning was relevant to an issue that had been raised throughout the pre-trial proceedings, and in the pre-trial briefing, which was whether Plaintiff's request for guarantors not named in the Loan Commitment was a breach of contract to excuse Defendants' performance. On cross-examination, Defendants' counsel also questioned Plaintiff about these

guarantees (2T96:22-98:16).

i. Plaintiffs' Exhibits Relied Upon Do Not Show Intent to Assign

The document marked as P-1 was an opinion letter written on the letterhead of Defendants' counsel. This document does not contain any mention of the three percent, or $150,000, Commitment Fee. It only opines on the enforceability of the loan documents and the validity of the intended loan transaction. There is nothing about P-1 which supports a finding that Plaintiff intended to assign its right to collect on the Commitment Fee to a third-party.

Similarly, the Consent Resolutions, marked as P-2 and P-3, also make no mention of the Commitment Fee. They only serve as evidence of the fact that Clinton Manor Hotel LLC and Clinton Manor Banquet LLC, through their principals, Mr. Patel's two sons, Himansu and Akash Patel, were fully cooperating with Plaintiff's request that they provide personal guarantees for the ultimate loan transaction. There is nothing about P-2 and P-3 which support a finding that Plaintiff intended to assign its right to collect on the Commitment Fee to a third-party.

B. The Trial Court Disregarded Competent Evidence Which Disproved Intent to Assign by Plaintiff

In addition to creating the idea of an assignment out of the blue based on the above documents, the Trial Court's finding also contradicted other "competent, relevant and reasonably credible evidence" in the trial record.

Specifically regarding testimonial evidence, the Trial Court stated that it "accepted the accepted the testimony of Mr. Hecht that there had been a clerical error and the name of the lender was Centra Capital Investment LLC." (Pa148). And it accepted for the purpose of its decision Plaintiff's Proposed Finding of Fact asserting that "Mr. Hecht confirmed that the date of the Loan Commitment was March 14, 2022 and the **Lender's name was Centra Capital Investments, LLC, or "CCI" for short**." (Pa140, ¶ 51) (emphasis added by Trial Court).

Related to documentary evidence in the record, the agreement between the parties, the Loan Commitment, marked into evidence as J-2, was a document negotiated between Plaintiff (Centra Capital Investments, LLC) and Defendants, and stated that "In the event the Loan does not close, payment of the Commitment Fee shall be made in accordance with the terms of the Acceptance of Loan Offer paragraph below." The Acceptance of Loan Offer paragraph permitted the borrower to make payment by "wire transfer or certified or cashier's check . . . to CCI's counsel." The Acceptance of Loan Offer paragraph also provided that "If Borrower(s) fails to close, after signing the Loan Offer, this amount will be immediately paid **to CCI** and the remaining, [two and a half] percent of the Commitment Fee shall be immediately due and payable **upon Lender's demand** therefor," where Lender is elsewhere defined as Plaintiff, Centra Capital Investments, LLC. (Pa33) (emphasis added). The Trial Court

recognized that J-2 did not mention Centra CMH 22 Partners, LLC. (Pa148, ¶ 10).

And the demand letter, marked into evidence as J-12, which had been sent to Defendants by Plaintiff on May 17, 2022, mere days after the failed closing, clearly demonstrated that Plaintiff did not have intent to assign its right to collect the Commitment Fee from Defendants to Centra CMH 22 Partners, LLC. (Pa63). The demand letter is on Centra Capital Investments LLC, letterhead, and was signed by Mr. Hecht as manager of Centra Capital Investments LLC. (Ibid.)

And finally, the fact that it was Plaintiff who filed the lawsuit against Defendants, not Centra CMH 22 Partners, LLC, is further evidence that Plaintiff did not have intent to assign its right to collect the Commitment Fee from Defendants to Centra CMH 22 Partners, LLC. (Pa1-5).

Based on the foregoing, it is clear that the findings and conclusions of the Trial Court that Plaintiff assigned its rights under the Loan Commitment were "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Griepenburg, 220 N.J. at 254 (quotations omitted).

It is clear from the trial record that Plaintiff fulfilled its duties under the Loan Commitment. There is no competent evidence in the records to support anything other than a finding that Plaintiff is the holder of the rights under the

Loan Commitment and is entitled to payment of the Commitment Fee. This matter should be reversed and remanded to the Trial Court for the entry of a judgment in favor of Plaintiff, based on the existing trial record.

POINT III

ALTERNATIVELY, IF THERE WAS AN ASSIGNMENT, THE TRIAL COURT ERRED IN FINDING THAT IT WAS A BREACH OF THE CONTRACT

(Not Raised Below)

The Trial Court found that Plaintiff had breached the Loan Commitment with Defendants by assigning its rights under that document to Centra CMH 22 Partners, LLC.

The Trial Court's decision is both puzzling and self-contradictory. If the Trial Court's secondary holding (that Plaintiff's rights under the Loan Commitment could not be assigned) is true, then the Trial Court's primary holding (that Plaintiff assigned its rights under the Loan Commitment) cannot stand. Though Plaintiff urges this Court to reject the finding of the Trial Court that an assignment had occurred (see Point II),[9] Plaintiff also urges this Court to conclude that any assignment was not a breach of the Loan Commitment.

Under New Jersey law, the interpretation of a contract is a question of law

[9] Any reference to an assignment should not be deemed an acceptance of the Trial Court's findings that Plaintiff assigned its rights under the Loan Commitment.

subject to de novo review by appellate courts. Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014) ("When a trial court's decision turns on its construction of a contract, appellate review of that determination is de novo.") This standard of review ensures that appellate courts do not defer to the trial court's interpretation of a contract and instead examine the contract with "fresh eyes" to determine its proper meaning. Our Supreme Court has consistently held that appellate courts owe no special deference to a trial court's interpretation of a contract, particularly when the contract is unambiguous. Kieffer v. Best Buy, 205 N.J. 213, 222-23 (2011).

New Jersey courts enforce contracts "based on the intent of the parties, the express terms of the contract, the surrounding circumstances, and the underlying purpose of the contract." Manahawkin Convalescent, 217 N.J. at 118. When the language of a contract is clear and unambiguous, courts must enforce the agreement as written, without resorting to extrinsic evidence or rewriting the contract to achieve a different result, unless doing so would lead to an absurd result. See Matter of County of Atlantic, 230 N.J. 237, 254-55 (2017); Quinn v. Quinn, 225 N.J. 34, 45 (2016). Courts are not permitted to rewrite contracts for the parties or impose terms that were not agreed upon. Quinn, 225 N.J. at 45 (". . . the parties cannot expect a court to present to them a contract better than or different from the agreement they struck between themselves.") (quoting Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960)).

Here, the Trial Court made a finding that Plaintiff, by assigning its rights under the Loan Commitment, had breached the agreement's anti-assignment clause, which stated that

> This Commitment is for the benefit of the Borrower(s) only and may not be assigned except upon the prior written consent of CCI, which consent may be withheld for any reason or no reason in CCI's sole discretion. No party other than Borrower(s) or a permitted assignee may rely upon the terms and conditions of this Commitment.

(Pa35). This provision is unambiguously one-sided in that it prevents the Borrower (Defendants) from assigning its rights and obligations under the Loan Commitment but does not prevent CCI (Plaintiff) from any assignment. It states clearly that it can be assigned only on the "prior written consent of CCI." Defendants could have bargained for a bilateral provision, but they did not, and to reform the existing anti-assignment clause to prevent an assignment by Plaintiff would be to "present to [Defendants] a contract better than or different from the agreement they struck between themselves." Quinn, 225 N.J. at 45. As such, the express terms of the Loan Commitment did not bar Plaintiff from assigning its rights under the Loan Commitment, and any assignment was not a breach.

The conduct of the parties would also indicate that Plaintiff was not prevented from assigning its rights under the Loan Commitment. Namely, the drafted closing documents, including the Consent Resolutions executed by two of the intended guarantees, Clinton Manor Hotel LLC and Clinton Manor Banquet LLC, identify

Centra CMH 22 Partners LLC as the post-closing lender. (Pa51; Pa109-110; Pa123-129). Defendants' agent, Guy Parsons, indicated his belief that the post-closing lender would be Centra CMH 22 Partners LLC when discussing the closing with the title company, Defendants, and Defendants' attorney, and no objection was noted. (Pa55; Pa57). And the opinion letter written on the letterhead of Defendants' attorney noted that the post-closing lender would be Centra CMH 22 Partners LLC. (Pa103-108). Clearly Defendants, including their then-attorney, did not think that any assignment was a breach of the parties' agreement.

And finally, the underlying purpose of the Loan Commitment also supports a finding that Plaintiff was not prevented from assigning its rights under the Loan Commitment. It is commonplace for lending contracts to have one-sided anti-assignment clauses which permit the lender to assign while preventing the borrower from doing the same. In the context of lending, one-sided anti-assignment clauses serve legitimate business purposes, such as protecting the lender's ability to manage risk and maintain control over the borrower relationship. These clauses do not inherently harm the public interest or violate legislative policy. See Somerset Orthopedic Assoc., P.A. v. Horizon Blue Cross and Blue Shield of N.J., 345 N.J. Super. 410, 418 (App. Div. 2001) (recognizing the long-standing position of our courts that anti-assignment clauses are enforceable when they are clearly stated and do not conflict with public policy).

CONCLUSION

For the foregoing reasons, the Trial Court's judgments against Plaintiff must be reversed and this matter remanded to the Trial Court for entry of an order in favor of Plaintiff based on the existing trial record.

Respectfully submitted,

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
Attorneys for Plaintiff-
Appellant, Centra Capital Investments
LLC

/s/ Christina N. Stripp
Christina N. Stripp

Dated: September 11, 2025

CENTRA CAPITAL INVESTMENTS, LLC PLAINTIFF-APPELLANT vs. BAPU CORPORATION & HARSHAD PATEL DEFENDANTS-RESPONDENTS	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-3296-24 CIVIL ACTION ON APPEAL FROM A FINAL JUDGMENT OF THE LAW DIVISION ENTERED ON JUNE 13, 2025 TRIAL DOCKET NUMBER UNN-L-3016-22 SAT BELOW HON. DANIEL R. LINDEMANN, JSC

BRIEF OF DEFENDANTS-RESPONDENTS IN OPPOSITION TO APPEAL OF PLAINTIFF-APPELLANT

MACKEVICH, BURKE & STANICKI
Attorneys for Defendants-Respondents
Bapu Corporation and Harshad Patel
1435 Raritan Road
Clark, NJ 07066
(732) 388-2121
jmackevich@mbslawyers.com

James E. Mackevich, Esq.
NJ Attorney ID 012621976
On the Brief

Submitted: November 14, 2025
Revised: November 19, 2025

TABLE OF CONTENTS

TRANSCRIPT REFERENCES

T1	Transcript of Trial on February 24, 2025
T2	Transcript of Trial on February 25, 2025

TABLE OF AUTHORITIES

Page

State Cases

Federal Cases

Statutes Cited

Other Authorities

TABLE OF JUDGMENTS, ORDERS, & RULINGS

STATEMENT OF FACTS

Defendant Bapu Corporation, ("Bapu"), was the owner of property upon which a hotel and banquet business known as the Clinton Manor were located, 1T41-3; 2T7 – 6 to 14; 2T7- 11 to 12; Pa133.

The subject property is located at 2735 Route 22 West, Union, NJ, (the "Property"). Bapu is owned by Defendant Harshad Patel, ("Harshad"), 2T7- 6 to 14; 2T18 – 3 to 6; Pa133.

Bapu was looking to refinance the Property, 2T9- 16 to 19. $4,600,050 was needed to pay off the first mortgage, J4.

Plaintiff, Centra Capital Investments, LLC, ("Centra Investments"), is in the business of making commercial real estate loans,1T11- 11 to 12.

On March 2, 2022, a non-binding letter of intent, (LOI), for a commercial loan in the sum of $5,200,000 was issued to Bapu by Centra Investments, J1; 1T23-16; 1T24-7 to 16; 1T25-17; J1; Pa133.

Bapu accepted the terms set forth in the LOI and paid a $12,000 "due diligence fee", 1T30-19 to 25; 1T31 – 1 to 2.

The due diligence fee covered the appraisal, background check, credit check, environmental and financial statement analysis, 1T80- 21 to 25; 1T81- 1 to 2.

On March 14th, 2021 [sic][1], Centra Investments issued a written Conditional Loan Commitment, (the "CLC"), in favor of Bapu setting forth the terms of a proposed loan for $5,000,000, J2; 1T31-7 to 16.

The CLC was issued on the letterhead of Centra Investments, but the initial sentence in the letter indicated that the lender would be Centra Capital Partners, LLC, J2. At trial Centra Investments claimed that this was yet another typo, 1T31-21 to 25; 1T77- 15 TO 20.

The ultimate Lender as set forth in the Lender's attorney letter of May 12, 2022 and proposed closing statement was Centra CMH 22 Partners, LLC. J5; J8; 1T56- 4 to 5; 1T56- 10 to 21.

David Hecht ("Hecht") is the president of Centra Investments. 1T10-6. Hecht testified that he creates a new entity for every loan and that the new LLC is the owner of the mortgage so that the loans are not commingled. 1T56:10 to 21.

The CLC stated in part that:

> The Commitment Fee in the amount of 3% of the amount of Loan (more particularly described above), shall on the Effective date become earned, payable and non-refundable for among other things CCI's commitment to provide funds to Borrower in an amount set forth in CCI's loan offer to Borrowers J2 (CCI001353
>
> Borrower(s) agrees to deposit one half percent (.5%) of the Loan Amount into escrow with Borrower's attorney. This amount is a

[1] Testimony was that this was a typo and should have been 2022. The Trial Court accepted the testimony that this date was a clerical error and that the year was actually 2022

> portion of the Three Percent (3%) Commitment Fee due at Closing. If Borrower fails to close, after signing the loan offer, this Amount will be immediately paid to CCI and the remaining 2-1/2% of the Commitment shall be immediately due and payable upon Lender's demand therefore J2 (CCI001353)
>
> The deposit was not made as required by the CLC, 1T90- 8 to 11
>
> The CLC further indicates in part that:
>
> …[N]o amendment, modification, recission, waiver, or release of any provision of this Commitment shall be effective unless the same shall be in writing and signed by the Borrower(s) and Lender. J2 (CCI001363)
>
> …[T]he parties specifically acknowledge and agree that the terms and conditions of this loan agreement may be modified by mutual agreement... . J2 (CCI001363) (emphasis added)

Both the LOI and the CLC identified Bapu as BORROWER and Harshad as GUARANTOR, 1T33-4 to 7. J1; J2.

Hecht testified that the purpose of the guarantee was to guarantee the loan, 1T80 – 2.

Harshad testified that he agreed to guarantee the loan but never agreed to guarantee the commitment fee nor was he requested to do so, 2T11- 10 to 20; 2T45-16 to 20; 2T49-1 to 4.

No one else was required by the CLC to guarantee the loan, 1T22-18 to 25; 1T23-1 to 11.

The CLC contemplated a closing no later than April 15, 2022 with that date being deemed "time of the essence." J2 (CI 0011350).

The closing did not occur on or before April 15, 2022. Instead, the closing was tentatively scheduled for May 18, 2022, J6 (CCI002485).

As the parties approached the new closing date, the title commitment indicated that open judgments on the Court docket were recorded against Bapu, J9, J10, J11.

The face amount of the judgments totaled $381,981, 1T67-25. On May 11, 2022, the title company demanded that Bapu deposit into escrow $411,842.79 representing 150% of the face amount of the judgments, 1T72- 1 to 9; J7 (CCI 0000548); J8 (CCI000051).

On May 12, 2022, counsel for the lender transmitted proposed closing documents, J5. This transmittal as well as the settlement statement, (J8), describe the lender as Centra CMH Partners LLC.

The Trial Court found as fact that:

> 1. *the record does not include any formal, written assignment of Plaintiff CCI's rights under the commitment (J2) to any other party, person or entity, including, but not limited to Central CMH 22 Partners, LLC. Pa151*
>
> 2. *the record does not include any formal, written or other consent from the defendants to Plaintiff CCI regarding any assignment or rights under the commitment from Plaintiff CCI to any other party, person or entity, including, but not limited to Central CMH 22 Partners, LLC.* Pa151

The loan documents outlined in counsel's May 12 letter included a requirement that the contemplated loan be guaranteed by Clinton Manor Hotel, LLC, Clinton Manor Banquet LLC, Akash H. Patel and Himansu H, Patel, J5.

The inclusion of these additional guarantors was not mentioned in the LOI, J1, or the CLC, J2. Harshad never consented to have his sons guarantee the loan. 2T12- 7 to 19.

Neither Bapu nor Harshad ever contemplated or understood that they would have to bring funds to the closing. 2T10- 15 to 25; 2T11- 1 to 4.

Bapu could not meet the escrow demand, pay its existing mortgage, pay the loan fees and pay the title charges and objected to the escrow demand. J6 CI 002486; 1T72- 10 to 13.

The loan did not close. Centra investments thereafter demanded that Bapu and Harshad pay the $150,000 Commitment Fee set forth in the CLC. J12; 1T73- 7 to 17. Bapu and Harshad rejected the demand and this litigation followed.

PRELIMINARY STATEMENT

The law cited by the Trial Court as applied to the facts found cannot be disputed. Simply speaking, a material breach excuses the non-breaching party of further performance.

In this appeal, Centra Investments attempts to draw inferences which are not supported by the record and contests facts found which cannot be disputed.

Centra Investments as lender issued the CLC. On the eve of the closing, without the consent of the borrower, Centra Investments transferred its rights under the CLC to another entity and demanded additional guarantors.

The CLC is clear and unambiguous. There can be no changes to the terms of the commitment without the mutual consent of the parties

The Trial Court properly found that Centra Investment's arbitrary modification of material terms in the CLC was a breach of the contract and dismissed the complaint with prejudice.

STATEMENT OF PROCEDURAL HISTORY

On June 16, 2022, Plaintiff Centra Capital Investments, LLC filed a Complaint against Bapu Corporation and Harshad Patel in the Superior Court of New Jersey, Law Division, Bergen County. (Pa1-5).

On September 9, 2022 venue was transferred to Union County.

On October 29, 2022, Defendants filed an amended answer to the complaint in the Superior Court of New Jersey, Law Division, Union County. (Pa6-11).

On February 24, 2025, trial commenced and concluded on February 25th. (1T, 2T)

On April 21, 2025, Defendants filed their written summation and proposed findings of fact and conclusions of law.

On May 21, 2025, Plaintiff filed its written summation and proposed findings of facts and conclusion of law.

On June 13, 2025 the Trial Court heard oral summations.

On June 13, 2025, the Trial Court entered an order dismissing Plaintiff's complaint with prejudice and without costs. (Pa131-160).

This appeal followed. (Pa170).

LEGAL ARGUMENT

POINT 1

STANDARD OF REVIEW

In a non-jury case, it is well established that a Court's findings of fact will not be disturbed unless the Court is convinced that they are so manifestly unsupported by, or inconsistent with, the competent, relevant and reasonably credible evidence as to offend the interests of justice. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am 65 N.J. 474, 484 (1974); State v Johnson 42 N.J. 146, 162 (1962).

By contrast, a review of trial court's construction and interpretation of a contract is de novo. Kaur v Assured Lending Corp. 405 N.J. Super 468, 474 (App. Div. 2009). Under this standard of review, "[a] trial court's interpretation of the law

and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v Twp Comm of Twp of Manalapan 140 N.J. 366, 378 (1995).

POINT 2

THE CLC WAS CLEAR AND UNAMBIGOUS. NO MATERIAL TERM COULD BE ALTERED OR AMENDED WITHOUT THE CONSENT OF BOTH PARTIES. THE COURT PROPERLY FOUND THAT CENTRA INVESTMENTS BREACHED THE COMMITMENT CONTRACT BY ASSIGNING ITS RIGHTS TO CENTRA CHMH 22 PARTNERS LLC WITHOUT THE CONSENT OF THE BORROWER. THE LAST MINUTE DEMAND FOR ADDITIONAL GUARANTORS FURTHER SUPPORTS THE CONCLUSION THAT PLAINTIFF WAS THE BREACHING PARTY

(See June 13, 2025 Court Order of Final Judgment at Pa151 and Pa153)

The CLC was issued on the letterhead of Centra Investments who was identified as the lender, J2; P148; P151 ¶3.

However, as the parties approached the proposed closing date, the lender changed to Centra CMH 22 Partners, LLC.

The CLC states that there can be no modification to any provision without a writing signed by both the borrower and lender. No writing assigning Centra Investment's rights in the CLC exists, nor was there any evidence that the borrower agreed to the assignment of rights, P151 ¶¶ 1-2.

The identification of the Lender was a material term of the CLC Contract. P154

The change of lenders from Centra Investors to CMH 22 Partners, LLC was a material change to the commitment letter which by its terms required the consent of the borrower to any amendment or modification. That consent was never obtained.

Centra Investments asserts in its brief that the Court improperly concluded that an assignment had occurred. Pb20.

That contention is wrong both factually and legally.

Hecht acknowledged that he creates a new company for each loan. 1T56:10 to 21. The proposed settlement statement identifies CMH 22 Partners, LLC as the lender, J8. The proposed opinion letter identifies CMH 22 Partners, LLC as the lender, P1. The attorney letter to the Borrower and Title Company identifies CMH 22 Partners, LLC at the lender. J5.

Factually there is nothing in the record or in Hecht's testimony to suggest that Centra Investments intended to retain any interest in the final note and mortgage or the CLC that set forth the terms of the loan. Mr. Hecht was clear. His loans should not be commingled.

An assignment of right is a manifestation of the assignor's intention to transfer it by virtue of which the assignor's rights to performance by the obligator is extinguished in whole or in part and the assignee acquires right to such performance.

In re Jason Realty L.P. 59 F. 3d 423, 427 (3d Cir. 1995); Aronsohn v Mandara 98 N.J. 92, 98-100 (1984)

Our law does not dictate any precise formula for such assignments. New Century Financial Services, Inc. v Oughla 437 N.J. Super 299, 315-316 (App. Div. 2014)citing to Sullivan v Visconti 68 N.J.L. 543, 550 (Sup. Ct. 1902).

All that is required is evidence of the intent to transfer one's rights and a description of the intangible right being assigned sufficient to make it readily identifiable. New Century Financial Services, Inc. v Oughla 437 N.J. 215; K Woodmere Assocs., L.P. v Menk Corp. 316 N.J. Super 306, 314 (App. Div. 1998)

Further, at the last minute, the lender demanded four additional guarantors. Although there was some evidence that the Borrower agreed to provide guarantees from Clinton Manor Hotel, LLC and Clinton Manor Banquet LLC, P151¶4, nothing in the record indicates that Akash Patel and Himansu Patel ever consented to guarantee a $5,000,000 loan.

Hecht testified that the CLC states that "*everybody that has a stake in this loan will personally guarantee the loan.* 1T36-25; 1T37-1. That statement is not true. J2 does not say anywhere that anyone with a stake in the loan will be required to personally guarantee the loan. This testimony illustrates Hecht's fallacious belief that the lender had the right to change the transaction terms unilaterally without obtaining the consent of the borrower. The CLC says otherwise.

The Trial Court properly found that Centra Investments was the breaching party and had no right to enforce the agreement, Pa154.

A contract arises from an offer and acceptance and must be sufficiently definite "that the performance to be rendered by each party can be ascertained with reasonable certainty." Weichert Co. Realtors v Ryan 128 N.J. 427, 435 (1975); Johnson & Johnson v Charmley Drug Company 11 N.J. 526, 538 (1953)("…[I]t is elementary that there can be no operative acceptance…unless the offeree's assent to the offer according to its terms is thereby unequivocally shown."); West Caldwell v Caldwell, 26 N.J. 9, 24-25 (1958) ("…'doubt or difference' is incompatible with agreement.."); Friedman v Tappan Dev. Corp 22 N.J. 523, 531 (1956)(same); Thus, if parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract.

However, when the parties do not agree to one or more essential terms, courts generally hold that the agreement is unenforceable. Weichert Co. Realtors v Ryan 128 N.J. at 435; Heim v Shore 56 N.J. Super 62, 72-73 (App. Div. 1959) (holding agreement unenforceable because parties did not agree on terms of payment, principal amount of mortgage, due date, and interest rate); Elliot & Frantz v Ingersoll-Rand Co. 457 F. 3d 312, 322 (3rd Cir. 2006) ("A proposed modification by one party to a contract must be accepted by the other to constitute mutual assent to modify," …, "[u]nilateral statements or actions made after an agreement has been

reached or added to a completed agreement clearly do not serve to modify the original terms of a contract"); County of Morris v Fauver 153 N.J. 80, 99-100 (1998)(("A proposed modification by one party to a contract must be accepted by the other to constitute mutual assent to modify").

The last-minute substitution of a new lender, the demand for an escrow coupled with a requirement for additional personal guarantors represents an attempted material modification of the CLC which was never accepted by the Borrower. As such, it rendered the CLC unenforceable.

It is fundamental contract law that when there is a breach of a material term of an agreement, the non-breaching party is relieved of its obligations under the agreement. Nolan v Lee Ho 120 N.J. 465, 472 (1990); Stamato & Co. Borough of Lodi 4 N.J. 14, 71 (1950); Roach BM Motoring LLC 228 N.J. 163, 174 (2017).

After a material breach occurs, "the non-breaching party may treat the contract as terminated and refuse to render continued performance." Goldman S. Brunswick Partners v Stern 265 N.J. Super 489, 494 (App. Div. 1993), quoting Ross Sys. Linden Dari-Delite, Inc. 35 N.J. 329, 341 (App. Div. 1961).

Centra seems to believe it had the right to unilaterally change the deal. 1T49-15 to 24, but the CLC language is clear, any amendment shall only be effective if in a writing signed by the borrower.

Centra Investments transferred its rights under the CLC to another party without consent by the Borrower. Centra Investments demanded additional guarantors and the title company demanded a massive escrow which again represented new material terms unilaterally imposed. The borrower did not agree in a writing to any of those demands and by making these unilateral demands, the lender became the defaulting party not the borrower.

There was no meeting of the minds and no enforceable contract.

POINT 3

NO COMPETENT EVIDENCE SUPPORTS THE CLAIM OF THE PLAINTIFF THAT HARSHAD PATEL PERSONALLY GUARANTEED THE COMMITMENT FEE

(This issue was not addressed in Trial Court's ruling)

The first page of the Conditional Loan Commitment "*to provide financing*" identifies the Borrower as Bapu and describes Harshad as Guarantor.

The Conditional Loan commitment states in pertinent part that that:

- *Borrower(s) agrees to deposit one half percent (.5%) of the Loan Amount into escrow with Borrower's attorney*
- *If Borrower fails to close, after signing the loan offer, this Amount will be immediately paid to CCI and the remaining 2-1/2% of the Commitment shall be immediately due and payable upon Lender's demand therefore*
- *The Commitment Fee …shall …become earned… for … CCI's commitment to provide funds to Borrower*

With respect to the Commitment Fee, Mr. Hecht testified that:

> *Once any borrower signs this commitment a 3% commitment fee is due…Any borrower knows that if the value will come back positive, he will get a loan…We are willing …to take [the] 3 percent… at closing because the borrower agrees to a waiver of trial by jury. 1T35-17 to 25; 1T36-1*

In his testimony regarding the lender's right to a commitment fee, Hecht only identified the borrower as the obligated party. He further explained that *"[t]he personal guarantee comes into play only if we are not able --- to collect the money from the collateral*." 1T26 - 9 to 11.

Harshad was not the borrower. Harshad agreed to guarantee the loan, not anything else. Hecht made it clear that the guarantee only comes into play after the loan is made, after there is a default, and only if the loan cannot be repaid from the collateral. The loan did not close. Therefore, no default as to loan occurred and no collateral was liquidated which in turn might have led to a deficiency claim against the guarantor.

Hecht knows better than anyone what was intended by his loan documents and his testimony negates the assertion that Harshad guaranteed payment of the commitment fee if the loan did not close.

Centra Investments would have the Court infer that Harshad agreed to guarantee payment of the commitment if there was no closing, but (a) Centra Investments was not the Lender (b) that is not what Commitment Letter says (c) that is not what Hecht testified to and (d) that is not what Harshad agreed to.

For Harshad to be liable for a commitment fee when there was no closing, there must have been a "meeting of the minds." Johnson & Johnson v Charmley Drug Co. 11 N.J. 526, 538 (1953) ("[A] contract does not come into being unless there be a manifestation of mutual assent by the parties to the same terms .... [I]t is elementary that there can be no operative acceptance by acts or conduct unless the offeree's assent to the offer according to its terms is thereby unequivocally shown."). NAACP of Camden County East v. Foulke Management Corp., 421 N.J. Super 404, 424 (2011)(an agreement to arbitrate must be the product of mutual assent, as determined under customary principles of contract law… There must be… a "meeting of the minds").

Mutual assent requires that the parties have an understanding of the terms that they have agreed to. Altatese v. U.S. Legal Services Group, L.P., 219 N.J. 430, 443 (2014).

A personal guarantee is a " 'promise to pay an antecedent debt of another[,]' " Walder, Sondak, Berkeley & Brogan v Lipari 300 N.J. 67, 79 (App. Div. 1997) (quoting Great Falls Bank v Pardo 263 N.J. Super 388, 400-401 (Chan. Div. 1993)), accompanied by "a slight benefit to the promisor or a trifling inconvenience to the promise[,] Great Falls Bank v Pardo 263 N.J. Super at 401.

Under the Statute of Frauds, N.J.S.A. 25:1-1 to 16, personal guarantees must be in writing:

> A promise to be liable for the obligation of another person, in order to be enforceable, shall be in a writing signed by the person assuming the liability or by that person's agent. The consideration for the promise need not be stated in the writing. N.J.S.A. 25:1-15.

"Generally, a guarantor is a different person from the maker or, if the same person, signs in different capacities when signing as maker and guarantor (e.g., an individual may sign as an officer of a corporate maker and also sign individually as a guarantor of the corporate obligation)." Ligran, Inc. v Medlawtel 86 N.J. 583, 589 (1981). Essentially, "[u]nder a guaranty contract, the guarantor, in a separate contract with the obligee, promises to answer for the primary obligor's debt on the default of the primary obligor." Feigenbaum v Guaracini 402 N.J. Super 7, 18 (App. Div. 2008); Great Falls Bank v Pardo 263 N.J. Super at 398, note 5 ("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.") And, where a guarantee exists, and a demand upon the debt covered by the guarantee 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. 1962).

In this matter, there is no separate contract of guarantee for the commitment fee. There is no clear or unambiguous promise by Harshad to guarantee a

commitment fee if the closing failed to occur. Indeed, there is no promise at all. The individual claim against Harshad must be dismissed.

POINT 4

THE COMMITMENT FEE CLAIM IS A LIQUIDATED DAMAGES CLAUSE WHICH IS UNENFORCEABLE BECAUSE THERE HAS BEEN NO SHOWING THAT THE FEE HAS A REASONABLE RELATIONSHIP TO PLAINTIFF'S ACTUAL DAMAGES

(This issue was not addressed in Trial Court's ruling)

As a general proposition, compensatory damages are designed to put the injured party in as good a position as he would have had if performance had been rendered as promised. Donovan v Bachstadt 91 N.J. 434, 444 (1982) *citing*, 5 Corbin, *Contracts* ¶ 992 p.5 (1951); 525 Main Street v Eagle Roofing Co. 34 N.J. 251, 254 (1961); Sandvik Inc. v Statewide Sec. Systems 192 N.J. Super 272, 277 (App. Div. 1983) *citing,* Weiss v Revenue B&L Assn, 116 N.J.L. 208, 210 (E&A, 1936)("The prima facia measure of damages for breach of contract is the quantum of loss consequent thereon. The injured party is entitled to the value of the contract to him").

Of equal importance, it has further long been recognized that penalties and forfeitures are not favored and calling an outrageous penalty by the more kindly name of liquidated damages does not absolve it from its sin. Kutzin v Pirnie 124 N.J. 500, 517-518 (1991).

Thus, an agreement made in advance of breach, fixing the damages is not enforceable as a contract and does not affect the damages recoverable for the breach, unless (a) the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and (b) the harm that is caused by the breach is one that is incapable or very difficult of accurate estimate. Westmont Country Club v Kameny 82 N.J. Super 200, 206 (App. Div. 1964) citing, 1 Restatement, Contracts, s 339, p. 552 (1932); 218-220 Market St. Corp. v. Krich-Radisco, Inc., 124 N.J.L. 302, 305 (E. & A.1939).

Stated another way, if it appears that the parties have provided for an excessive sum in a case where the real damages are certain or readily reducible to certainty by proof, then the sum fixed is deemed a penalty and is not enforceable. Westmont Country Club v Kameny, 82 N.J. Super at 206, citing Borden Co. Pioneer Ice Cream Division v. Manley, 127 N.J.L. 461, 463, (Sup.Ct.1942).

The standard used to determine the validity of a contractual damages provision is a question of law that is well established. To be valid (1) the provision must be a "reasonable forecast of just compensation" for the harm caused by the prospective breach and (2) the harm must be impossible or difficult to calculate. If either of these elements is not satisfied, the provision is an unenforceable penalty. "If it is doubtful whether the provision is intended as a penalty or liquidated damages, it will be construed as a penalty because the law favors indemnity.

Wasserman's Inc. v Township of Middletown 137 N.J. 238, 250-51; Westmont Country Club v Kameny 82 N.J. Super 200, 206 (App. Div. 1964)

In Country Club v Kameny 82 N.J. Super 200, 209 (App. Div. 1964), the Defendant agreed to join a country club and to pay a membership fee. After six months defendant terminated his membership agreement. The Club demand the full membership fee provided for under the contract. In affirming dismissal of the suit, the Court noted that "[i]t was not reasonable to assume Plaintiff would have incurred no costs whatever in connection with Defendant's membership and that the membership represented pure profit."

The testimony in this matter is that the Lender accumulates funds from other investors for the purpose of satisfying its loan commitment, 1T17 – 19 to 25; 1T18 – 1 to 4. There was no testimony that Centra Investments or its affiliates incurred any charges, costs or expenses to the other investors or anyone else because the loan did not close. To the contrary, the only testimony as to the actual damages incurred was Mr. Hecht's pure reliance of the penalty provision set forth in the commitment letter, 1T91-11 to 25; 1T92-1 to 8. That testimony does not meet the standards required of a litigant to show damages.

We know that the due diligence expenses were covered by the $12,000 paid by the borrower, 1T – 13 to 25; 1T14 - 1 to 4. We also know that there was no prepayment penalty included in the loan. 1T12 - 10 to 11.

There was no testimony from Hecht as to what other damages or costs were incurred in connection with the proposed loan nor any explanation as to why the actual damages, if any, could not be calculated.

Lacking any testimony as to (a) Plaintiff's actual damages or (b) the reasonable relationship the non-refundable commitment fee has to the actual damages or (c) testimony as to why the actual damages could not be calculated, only one conclusion is possible: the claimed commitment fee is an unenforceable penalty.

CONCLUSION

For the foregoing reasons, the Trial Court's decision dismissing the matter with prejudice against Plaintiff should be upheld.

MACKEVICH BURKE STANICKI
Attorneys for Defendants-Respondents
Bapu Corporation and Harshad Patel

/s/ James E Mackevich

By: James E. Mackevich

Dated: November 14, 2025

CENTRA CAPITAL INVESTMENTS LLC, Plaintiff-Respondent, v. BAPU CORPORATION & HARSHAD PATEL, Defendants-Appellants.	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **CIVIL ACTION** **On appeal from a final judgment of the Law Division dated June 13, 2025** **DOCKET NO. A-3296-24** **TRIAL DOCKET NO. UNN-L-3016-22** **SAT BELOW:** **HON. DANIEL R. LINDEMANN, J.S.C.**

REPLY BRIEF OF PLAINTIFF-APPELLANT CENTRA CAPITAL INVESTMENTS LLC

COHN LIFLAND PEARLMAN HERRMANN & KNOPF LLP
Park 80 West - Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, New Jersey 07663
(201) 845-9600
jwh@njlawfirm.com
cs@njlawfirm.com
Attorneys for Plaintiff-Appellant Centra Capital Investments LLC

On the Brief:
Jeffrey W. Herrmann, Esq.
No. 019311976
Christina N. Stripp, Esq.
No. 239692017

Submitted: December 17, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

LEGAL ARGUMENT

POINT I

PLAINTIFF DID NOT BREACH THE LOAN COMMITMENT, AND DEFENDANTS WERE NOT REQUIRED TO CONSENT TO ANY ASSIGNMENT, HAD SUCH AN ASSIGNMENT OCCURRED

(Raised Below at Pra14-45)

Plaintiff never assigned its rights in the Loan Commitment to any entity, including Centra CMH 22 Partners, LLC. Had Plaintiff done so, they were free to do so without Defendants' consent. The contention that any assignment of the Loan Commitment required Defendants' consent is factually wrong. The Loan Commitment's anti-assignment clause stated clearly that

> This Commitment is for the benefit of the Borrower(s) only and may not be assigned except upon the **prior written consent of CCI**, which consent may be withheld for any reason or no reason in CCI's sole discretion. No party other than Borrower(s) or a permitted assignee may rely upon the terms and conditions of this Commitment.

(Pa35) (emphasis added). This unambiguous provision limits the Defendants' rights to assign the Loan Commitment but contains no corresponding limitation on Plaintiff's right to do so.

Defendants' reliance on the modification clause (Pa43) fails because the Loan Commitment was never modified in writing.

A. Neither the Required Escrow nor the Additional Guarantors Constituted a Breach of the Loan Commitment

Defendants have claimed throughout this litigation that it was Plaintiff who

imposed an additional condition in that it 'unreasonably demanded' that Defendants bring $400,000 to the closing table; they have asserted that this alleged request excused their performance or that it was somehow Plaintiff's fault that Defendants had unpaid judgment liens which prevented the loan from closing. Furthermore, Defendant attempt to claim that Plaintiff imposed the requirement of additional guarantors, in the form of Clinton Manor Banquet, LLC, Clinton Manor Hotel, LLC, Himansu Patel, and Akash Patel, at the last minute. These claims are a blatant misrepresentation of the indisputable facts as unearthed in discovery.

i. Plaintiff Did Not Breach the Loan Commitment by Requiring a First Priority Lien in Exchange for Lending Defendants $5,000,000

Loans cannot close without clear title. Defendants had a number of outstanding judgments against them which had to be satisfied at closing. Understanding this, Defendants requested the title company to escrow funds to cover the judgment balances. The title company informed Defendants that it required 150% of the judgment balances be placed into escrow. Specifically, the title company stated in an email to Defendants' counsel:

> As you know, several of the judgments included on the attached report remain outstanding and **your client requested that First American hold an escrow corresponding to each outstanding lien in the face amount of the judgment**. Please be advised that in order to resolve these items by escrow, we must hold at least 150% of the judgment amount.

(Pa56; Pa15-19, ¶ 19; 2T36:17-37:5) (emphasis added). This was a stipulated fact at trial. Because Defendants promised that Plaintiff a "first and paramount lien" on the Property, payment of all prior liens was a condition precedent to closing the Loan. (Pa15-19, ¶ 11; Pa30; Pa39; 2T71:8-72:13; 3T51:7-15).

Defendants promised that Plaintiff's lien would be in the first position. This Court should not create for Defendants a better Loan Commitment than what they negotiated for themselves. See Quinn v. Quinn, 225 N.J. 34, 45 (2016) ("It is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear. Stated differently, the parties cannot expect a court to present to them a contract better than or different from the agreement they struck between themselves.") (internal quotations and citation omitted).

As such, the $400,000 escrow requirement as security against Defendants unsatisfied judgment liens was not a breach of the Loan Commitment.

ii. Plaintiff Did Not Breach the Loan Commitment by Requiring Additional Guarantors on the Failed Loan

Plaintiff's proposed amendment to the terms of the ultimate loan to require additional guarantors, in the form of in the form of Clinton Manor Banquet, LLC, Clinton Manor Hotel, LLC, Himansu Patel, and Akash Patel was not a breach of the Loan Commitment. (Pa109-120).

The additional guarantors[1] were related to the eventual loan, not the Loan Commitment. And it is crucial that the complaint here did not name Clinton Manor Banquet, LLC, Clinton Manor Hotel, LLC, Himansu Patel, and Akash Patel as Defendants, as they did not sign the Loan Commitment. (Pa1-5). As such, the additional guarantors were not an attempted modification to the Loan Commitment.

Furthermore, even if the additional guarantors were an attempted modification, to the extent that Defendants had not agreed to the new terms, this was not a breach of the Loan Commitment.[2] "A proposed modification by one party to a contract must be accepted by the other to constitute mutual assent to modify." Saini v. Rock Assocs., 2023 N.J. Super. Unpub. LEXIS 306, at *25 (App. Div. Mar. 3, 2023) (Pra75-89) (quoting Cty. of Morris v. Fauver, 153 N.J. 80, 99 (1998)). "As a result, "unilateral statements or actions made after an agreement has been reached or added to a completed agreement clearly do not serve to modify the original terms of a contract[.]" Cty. of Morris, 153 N.J. at 100 (citations omitted).

"[A] proposed modification of the original contract . . . if accepted by

---

[1] The additional guarantors were necessary because Bapu Corporation had little to no income which was not dependent on Clinton Manor Banquet, LLC, and Clinton Manor Hotel, LLC, of which Himansu Patel and Akash Patel were the sole owners and in which Mr. Patel had no explicit ownership interest. (3T18:22-19:24).

[2] Additionally, the Loan Commitment expressly contemplated that the parties to the document might make written modifications to its terms. (Pa43). As such, even a failed modification attempt cannot be considered a breach of the Loan Commitment.

defendant, would have modified the contract, but, not being accepted or acted on by either party, leaves both complainant and defendant to, their equitable rights under the original contract." Wheaton v. Collins, 84 A. 271, 273 (N.J. Ch. 1912); see also Cty. of Morris, 153 N.J. at 100 (citing Wheaton, 84 A. at 273). As such, to the extent that the additional guarantors were an attempted modification that was not accepted by Defendants, then the modification failed and the original and agreed-upon terms of the Loan Commitment remained.

However, Defendants, through their agents, Himansu Patel and Akash Patel, agreed to this modification. The statements made by Defendants in their brief that this requirement was a surprise to Defendants and was only disclosed to them "at the last minute" and that there is "no evidence that Akash Patel and Himansu Patel consented to guarantee a $5,000,000 loan" is expressly contrary to the documentary evidence and the clear testimony at trial.

On April 12, 2022, Himansu Patel and Akash Patel agreed to additional guarantors by providing their personal financial statements in response to an email from Plaintiff which indicated that it had been told they would guarantee the loan at the beginning of the loan relationship. (Pa111-120; 3T26:4-18; 3T22:22-26:18). Furthermore, on April 20, 2022, Clinton Manor Banquet LLC and Clinton Manor Hotel, LLC adopted Unanimous Consent Resolutions, each of which "approve[d] and adopt[ed] the resolution for the Company to act as guarantor for the $5,000,000

loan by Centra CMH 22 Partners LLC to Bapu Corp." (Pa109-110; 3T20:8-22:14). These resolutions were signed by Himansu Patel and Akash Patel. Ibid.

Defendants accuse Plaintiff of requesting the additional guarantors "at the last minute." But Himansu Patel and Akash Patel's agreement to the guarantees (individually and on behalf of their companies), which occurred at the very least several weeks before closing, and at most at the inception of the relationship, is far from last minute, as Mr. Patel agreed during his trial testimony:

Q:	So your son's (sic) had agreed, had provided financials to Centra Capital. Isn't that correct?
MR. PATEL:	Yes.
Q:	And they had provided those to Centra Capital in April of 2022, isn't that correct? April 12th, 2022 is when the e-mail is dated. Isn't that correct?
MR. PATEL:	[April, 12, 2022], yeah.
Q:	Okay. So -- and the closing was scheduled for May of 2022, right? It's not in the document. The May -- the closing of this matter was supposed to be in May of 2022. Isn't that correct?
MR. PATEL:	Yeah, I remember. About that -- about right. Yeah.
Q:	It's not very last minute, is it?
MR. PATEL:	No.

[(3T26:4-18).]

There was no testimony or documentary evidence introduced at trial (and

there could be none because none was produced in discovery) to dispute the testimony that these financials were produced willingly, or to dispute the testimony that Himansu Patel and Akash Patel had agreed to the requirement that they provide personal guarantees.

As such, Plaintiff did not breach the Loan Commitment by either requiring Defendants to bring funds to the closing table, or by requesting additional guarantors on the ultimate loan.

POINT II

AMPLE EVIDENCE EXISTS IN THE TRIAL RECORD OF DEFENDANT HARSHAD PATEL'S KNOWING GUARANTEE OF THE LOAN COMMITMENT

(Raised Below at Pra14-45)

Defendants request that this Court find that the trial record does not support a finding that Defendant Harshad Patel guaranteed the Loan Commitment. Furthermore, they request at the end of their Point II that "[t]he individual claim against Harshad must be dismissed." First, to the extent that Defendants are requesting affirmative relief from this Court related to this issue, their failure to file a cross-appeal is fatal.

Second, the issue of Mr. Patel's personal guarantee was not reached by the Trial Court and is not addressed at all in the decision issued by the Trial Court. (Pa131-160). As such, there is no justiciable issue before this Court related to the

guarantee and its enforceability. It is well settled that our courts do "not render advisory opinions or function in the abstract[.]" N.J. Coal. of Auto. Retailers, Inc. v. Ford Motor Co., 261 N.J. 348, 358 (2025) (citing Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 58 N.J. 98, 107 (1971)); see also Indep. Realty Co. v. Twp. of N. Bergen, 376 N.J. Super. 295, 301 (App. Div. 2005). In other words, our appellate courts "do not render 'recommendations' but rather 'decide only concrete contested issues conclusively affecting adversary parties in interest.'" Cumberland Farms, Inc. v. N.J. Dep't of Envtl. Prot., 447 N.J. Super. 423, 441 (App. Div. 2016) (quoting Indep. Realty Co., 376 N.J. Super. at 301)

However, to the extent that Defendants are raising this issue in an attempt to argue that the errors committed by the Trial Court were harmless, and that this could be an alternative reasoning for dismissal of Plaintiff's complaint, this argument must also fail. First, even if this Court were to agree with Defendants' position on the personal guarantee, that would not resolve the question of Plaintiff's claims against Bapu.

Second, the evidence of Mr. Patel's understanding and agreement with the personal guarantee is decisive. On March 14, 2022, Mr. Patel signed the Loan Commitment, individually as a guarantor and on behalf of Bapu, in two places, including under a paragraph which stated clearly that

> The undersigned does hereby accept this Commitment and does hereby agree to keep and perform **each and every**

> **item and condition herein before set forth and do acknowledge that the performance of such terms and conditions are obligations of the undersigned**. The attorney for the Borrower(s) has reviewed this Commitment and has explained all of its terms and ramifications to the Borrower (s) **and the Guarantor**.

(Pa44 (emphasis added); 2T103:18-104:4; 3T30:24-31:20; 3T51:6-22). This document defined the "borrower" as Bapu, and the "guarantor" as Mr. Patel. (Pa30).

Mr. Patel understood the nature of a personal guarantee, which was that if he signed "a guarantee for an obligation of Bapu and Bapu doesn't pay," that he, as the guarantor, was obligated to pay. (3T37:20-23). The $150,000 Commitment Fee, which Mr. Patel also understood and discussed with his son, was an obligation of Defendant Bapu. (3T34:4-15).

Furthermore, Mr. Hecht, the principal of Plaintiff Centra Capital Investments LLC, testified in response to Defendants' counsel's cross examination that the purpose of the personal guarantee was for Mr. Patel to guarantee the "commitment, the loan, not defaulting." 2T88:2-5.

Mr. Patel now argues that he believed that he had only agreed to guarantee the loan, not the Loan Commitment. And on cross-examination, Mr. Patel admitted that he had agreed to guarantee the terms of the Loan Commitment:

> Q The undersigned does hereby accept this commitment and does hereby agree to keep and perform each and every item and condition herein before set forth and do acknowledge that the performance of such

terms and conditions are obligations of the undersigned. Did I read that sentence correctly?

MR. PATEL: I remember when I signed this.

Q: It's a yes or no. Mr. Patel, it's a yes or no question. Did I read the sentence correctly?

MR. PATEL: You did, yeah.

Q: Thank you. Okay. In that sentence, anywhere in that sentence, does the word loan appear anywhere? Yes or no?

MR. PATEL: I don't see any loan.

Q: Okay. And you signed it underneath as individually and as guarantor, isn't that correct?

MR. PATEL: Yes.

[(2T51:6-22).]

Mr. Patel testified that he did not read the Loan Commitment prior to signing it, and now claims that he did not understand the terms of what he was signing. (3T31:21-23). But he also testified that he had the opportunity to read the document if he wanted to. (3T31:21-32:18). Nor did Defendants have an attorney review the Loan Commitment prior to signing, but they had the opportunity to do so if they wanted to. (3T30:15-20).

It is axiomatic in New Jersey that, "in the absence of fraud, one who does not choose to read a contract before signing it, cannot later relieve himself of its burdens." Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 386 (1960); Gras v.

Assocs. First Capital Corp., 346 N.J. Super. 42, 56 (App. Div. 2001), certif. denied, 171 N.J. 445 (2002); see also Peter W. Kero, Inc. v. Terminal Const. Corp., 6 N.J. 361, 368 (1951) ("It is the general rule that where a party affixes his signature to a written instrument, such as a release, a conclusive presumption arises that he read, understood and assented to its terms and he will not be heard to complain that he did not comprehend the effect of his act in signing."); see also Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 212 (2019) ("[T]he argument that [a] plaintiff did not understand the import of the . . . agreement and did not have it explained to [him] by the dealership is simply inadequate to avoid enforcement of [the] clear and conspicuous . . . agreement[] [he] signed."). Mr. Patel decided to trust his son's advice to sign the document because it was a good deal for them, and not to read the Loan Commitment before signing it; he also made a voluntary choice chose not to hire an attorney to review it before signing it. There is no support in the trial record that Mr. Patel was coerced or defrauded into signing the document. As such, he should not now be allowed to claim ignorance of its provisions and claim that there was no "meeting of the minds" in order to escape his obligations.

Defendants also argue that the guarantee was required to be in a separate document to be enforceable. However, we have identified no cases that **require** a guarantee to be in a separate writing, and Defendants cite none that support their proposition.

This Court recently reversed a trial court and held that to be enforceable, a guarantee only needs to be in writing. In Extech Building Materials, Inc. v. E&N Construction Inc., the individual defendants had signed a credit application for over $1,000,000 on behalf of their company and personally as guarantors; there was no separate guarantee document. 2024 N.J. Super. Unpub. LEXIS 1471, at *3-4 (App. Div. July 5, 2024) (Pra67-74). After the trial court held on granted summary judgment that the personal guarantees needed to be in a separate and distinct writing in to be enforceable, the plaintiff appealed. Id. at *7. The Appellate Division reversed, finding that it was "undisputed that [the individual defendants] signed the credit application and that they were associated in some manner with [the corporate defendant] at the time." Id. at *10. All that was required to satisfy the Statute of Frauds was that a personal guarantee was in writing. Ibid. (quoting N.J.S.A. 25:1-15). Although this Court reversed the matter on other grounds, this Court expressed disagreement with the trial court's finding that a personal guaranty needed to be in a separate writing from the credit agreement.

Here, the facts in Extech are instructive. The Loan Commitment is not ambiguous with respect to the roles of the signatories. It says very clearly on the first page that the "terms of this Loan Commitment are" that Bapu is the borrower, and that Harshad Patel is the guarantor. (Pa30). Then, in two separate places, Mr. Patel

signed the Loan Commitment "Individually & as Guarantor." (Pa37; Pa44).[3] And it is undisputed that, as the sole member of Bapu, Mr. Patel has the authority to bind the corporation.

In Ligran, Inc. v. Medlawtel, Inc., 86 N.J. 583, 585 (1981), one of the cased relied upon by Defendants, the maker of a note "signed on the face of the note as sole maker and on the back as sole guarantor of payment." The Supreme Court, apparently seeing no problem with the note and guaranty existing on the same document, stated unambiguously that "a guarantor of payment, like a maker, is primarily liable on the note. Id. at 588.

As such, any contention that the claims against Mr. Patel should have been dismissed by the Trial Court, or that they should be dismissed in the future, should be rejected by this Court.

POINT III

THE COMMITMENT FEE WAS EARNED BY PLAINTIFF AND IS A PERMISSIBLE MEASURE OF DAMAGES

(Raised Below at Pra14-45)

Defendants request that this Court find that the Commitment Fee is a "penalty" and is an unenforceable liquidated damages clause. First, as with Point II,

[3] The signatures on the documents as included in the appendix appear to be faded. It should be noted that Mr. Patel did not dispute that he signed this document in both locations. (3T30:21-31:20; 3T51:20-22).

to the extent that Defendants are requesting affirmative relief from this Court related to this issue, their failure to file a cross-appeal is fatal.

Second, whether the Commitment Fee is a proper measure of damages, was not addressed at all by the Trial Court. (Pa131-160). As such, the same issues as discussed in Point III regarding advisory opinions exist here. See N.J. Coal. of Auto. Retailers, Inc., 261 N.J. at 358; see also Indep. Realty Co., 376 N.J. Super. at 301; Cumberland Farms, Inc., 447 N.J. Super. at 441.

However, to the extent that Defendants are raising this issue in an attempt to argue that the errors committed by the Trial Court were harmless, and that this could be an alternative reasoning for dismissal of Plaintiff's complaint, this argument must also fail, because under New Jersey law, the Commitment Fee is not a penalty but is a permissible measure of damages. Plaintiff fully performed its obligations under the Loan Commitment, because it provided the commitment to lend funds and was prepared to close the loan.

In Brauser Real Estate, LLC v. Meecorp Capital Markets, LLC, the District of New Jersey considered a strikingly similar situation to the case at bar, on cross-motions for partial summary judgment. 2008 U.S. Dist. LEXIS 8000, (D.N.J. Feb. 4, 2008) (Pra48-60). The defendant-lender presented the plaintiff-borrower with a term sheet for a loan in the amount of $28,000,000. Id. at *3. The loan commitment issued by the defendant-lender promised a loan of $20,000,000, with a commitment

fee of three percent of the total loan, or $600,000. Ibid. The plaintiff-borrower signed the loan commitment and paid $200,000 against the commitment fee. Ibid. When the loan did not close, the plaintiff-borrower demanded return of the fees it had paid, including the $200,000 commitment fee and a $25,000 application fee. Id. at *5. When the plaintiff-borrower sued for the refund, the defendant-lender counterclaimed for the unpaid balance of the commitment fee. Id. at *6.

The District Court rejected the idea that the plaintiff-borrower was entitled to the return of the $200,000 under a theory of unjust enrichment, because "the $225,000 in collected fees were earned by and specifically contracted for by the Defendants at the time the Letter of Interest and the Loan Commitment were executed, respectively." Id. at *25. Furthermore, the District Court found that the plaintiff-borrower was liable for the remainder of the $400,000 on the commitment fee, because the provision entitled "Acceptance of Commitment" made clear that

> [t]he payment of the Commitment Fee for a total of $600,000 was not conditioned on the loan closing, rather the remaining $400,000 was deferred to the time of closing. Although the closing did not take place, the $400,000 in Commitment Fee was already earned upon the signing of the Loan Commitment. Therefore, the Court finds that Plaintiff is obligated to pay the remaining $ 400,000 balance of the Commitment Fee."
>
> [Id. at *33.]

In the same case, on later cross-motions for full summary judgment, the District Court reaffirmed this position and further addressed the question of the

plaintiff's personal guarantee. Brauser Real Estate, LLC v. Meecorp Capital Mkts., LLC, 2008 U.S. Dist. LEXIS 71234, *4 (D.N.J. Sep. 12, 2008) (Pra61-66). In this motion, the court made clear that one of the reasons that the loan could not close is that the borrowers could not "obtain clear title" to the collateral promised in the loan commitment. Id. at *5. Then, the court reaffirmed its position on the commitment fee, stating that "Plaintiff cannot avoid paying the remaining balance of the Commitment Fee even though the loan never closed as the Commitment Fee was earned by Defendants as of the signing of the Loan Commitment." Id. at *7. Turning to the question of the personal guarantee, the court noted without concern that the guarantee sought to be enforced was contained in the same loan commitment document being enforced against the corporate borrower but only noted that its enforceability was a triable issue of fact because of other ambiguities contained in the document, ambiguities which do not exist in our case.

In another case recently decided by the Appellate Division, Spectrum Capital North Bergen, LLC v. Crown Bank, the court rejected the idea that a loan commitment letter, very similar to the one at issue here, was "illusory because . . . each party provided consideration and [the defendant-lender] earned the fee by working on the loan commitment." 2025 N.J. Super. Unpub. LEXIS 291, at *7 (App. Div. Feb. 27, 2025) (Pra90-95) (internal quotation marks omitted). In that case, the defendant-lender was not required to return the commitment fee paid by the plaintiff-

borrower.

As such, it is clear that the Commitment Fee is not an illegal liquidated damages clause and a penalty against the Defendants but is a measure of damages which has been largely enforced by our courts in situations very similar to these.

As such, any contention that the Commitment Fee should have been considered an unenforceable liquidated damages clause by the Trial Court, or it should be considered as such in the future, should be rejected by this Court.

CONCLUSION

For the foregoing reasons, and for those set forth in Plaintiff's opening merits brief, the Trial Court's judgments against Plaintiff must be reversed and this matter remanded to the Trial Court for entry of an order in favor of Plaintiff based on the existing trial record.

Respectfully submitted,

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
Attorneys for Plaintiff-
Appellant, Centra Capital Investments
LLC

/s/ Christina N. Stripp
Christina N. Stripp

Dated: December 17, 2025