

SUPERIOR COURT OF NEW JERSEY

HUDSON VICINAGE

CHAMBERS OF
BARRY P. SARKISIAN
PRESIDING JUDGE
CHANCERY-GENERAL EQUITY



Brennan Courthouse
583 Newark Avenue
Jersey City, New Jersey 07306

NOT FOR PUBLICATION WITHOUT THE
WRITTEN APPROVAL OF THE COMMITTEE ON OPINIONS

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**Re: Nicholas J. Russo, Michael J. Russo, 1 Madison Avenue LLC, Brothers
from Another Mother LLC, and Boro 6 Bar and Grill LLC v. Trevor Vaughn
and Shirley Brown
Docket No. HUD-C-66-16
Date of Trial: April 18-April 21, 2017
Date of Revised Decision: July 14, 2017**

Dear Counsel:

INTRODUCTION

This matter comes before the Court after a four (4) day trial beginning on April 18, 2017 in which the Plaintiff seeks equitable relief, injunctive relief and damages against the Defendant Vaughn and his limited liability company, HDS Home & Designs, LLC, arising out of various property and business acquisitions located in Jersey City, New Jersey, primarily during the period from 2012 through 2014. Defendant Vaughn also has filed counterclaims against Plaintiff Michael J. Russo for damages alleging that Mr. Russo failed to provide development funding for certain unidentified projects.

The flight of this case speaks volumes to the inevitable landing in the courtroom when the parties, who decided to enter into significant real estate and business investments, failed to seek counsel and have them finalize their relationship with appropriate documents. The Court also faced significant challenges in damage assessment when neither party obtained the services of

a forensic accountant, although one of the Plaintiffs, Michael J. Russo, who has an accounting background, presented a more detailed presentation on damage assessment by project, when compared to the presentation by Defendant, Trevor Vaughn.

The Court has reviewed counsel's post-trial submissions.

The Court, to sort this out, will start from the beginning, but will, by introduction, identify the parties and the properties/businesses in question.

THE PARTIES

Plaintiffs

Nicholas J. Russo. An investor, now eighty-seven (87) years of age, who, in late 2011, was introduced to Defendant Vaughn, a real estate developer and owner of HDS Home & Designs, LLC, a home improvement and contracting business by his long-time partner and friend, John Hanti, not a named party. The trio agreed to form a business relating to real estate investment in Jersey City, New Jersey and the surrounding area.

Michael J. Russo. The son of Nicholas J. Russo who invested in one (1) property with Defendant Vaughn located at 1 Madison Ave, Jersey City, New Jersey and during this operative period, with his elderly father's health failing, provided him advice and assistance with respect to these investments with Vaughn, which are the subject of this litigation.

1 Madison Avenue, LLC. The limited liability company formed by Defendant Vaughn and Plaintiff Michael Russo on November 14, 2014 to purchase and sell for profit property located at 1 Madison Ave, Jersey City, New Jersey, in which Russo and Vaughn are equal members.

Brothers From Another Mother, LLC (hereinafter "Brothers" LLC or BFAM LLC). The limited liability company formed by Defendant Vaughn, Plaintiff Nicholas Russo, and John Hanti. Vaughn holds 55% interest and Plaintiff Russo and John Hanti each own a 22.5% interest. This entity holds title to the real property located at 542 Martin Luther King Drive. There is a dispute between the parties concerning the ownership of 543-547 Martin Luther King Drive, with Plaintiff contending that the "Brothers" LLC should be found to be the owner of this property and Defendant Vaughn contending he owns the property outright in his own name.

Boro 6 Bar & Grill, LLC (hereinafter "Boro" LLC). The limited liability company formed by Defendant Vaughn, Plaintiff Russo, and John Hanti. Vaughn holds a 55% interest and Plaintiff Nicholas Russo and John Hanti each owns a 22.5% interest. Plaintiff contends that this LLC should be found to be the owner of the liquor license and restaurant bar and grill to be operated at 543-547 Martin Luther King Drive. Defendant disputes this contention and contends he owns the liquor license and restaurant bar and grill in his own name.

Defendants

Trevor Vaughn. An individual who entered into oral agreements regarding development of certain properties in Jersey City with the Russo Plaintiffs and John Hanti. The terms of those agreements for ultimate sale and distribution of proceeds for reimbursement and profit sharing is in dispute, but it is generally understood that Plaintiffs' contribution would be cash and Vaughn's contribution would be his "sweat" equity in the form of construction and renovation of the properties through his HDS Home & Designs, LLC at cost.

HDS Home & Designs, LLC (hereinafter "HDS"). Defendant Vaughn's construction company in which Vaughn is the sole member.

Properties in question. As identified above 1 Madison Avenue; 542 Martin Luther King Drive; 543-547 Martin Luther King Drive (hereinafter "MLK Drive"); and, in addition, 66 Summit Avenue, and 10 Madison Avenue—all located in Jersey City, New Jersey.

IDENTIFICATION OF ISSUES PRESENTED

The Court intends to outline the operative facts and discussion based upon (2) core issues:

1(a). Who owned the subject properties that have been sold---66 Summit Avenue, 10 Madison Avenue, and 1 Madison Avenue; (b) what is the understanding of the parties with respect to the distribution of the proceeds of sale of those properties; (c) what are the damages, if any, suffered by the Plaintiffs as a result of Defendant's actionable conduct; and

2 (a) Who is the owner of the unsold properties—542 Martin Luther King Drive and 543-547 Martin Luther King Drive—and (b) what are the capital contribution/reimbursement accounts of the principals of the entities that own these properties based upon the evidence received.

OPERATIVE FACTS AND DISCUSSION

In late 2011, John Hanti introduced Nick Russo to Defendant Vaughn, a real estate developer and owner of HDS, a home improvement and contracting business. The trio agreed to form a business relating to real estate investment in Jersey City, New Jersey and the surrounding area.

I. The \$45,000 Promissory Note

The initial business relationship between the Plaintiff Nicholas J. Russo with his long-time partner John Hanti and the Defendant Trevor Vaughn began in January 2012.

More specifically, on January 6, 2012, Trevor Vaughn, through an entity he controlled, SMG Partners, LLC, executed a Promissory Note in the amount of \$45,000.00 ("the Promissory

Note") in favor of Plaintiff Nicholas Russo and John Hanti, relating to a real estate project entitled "NACA Project 1 & 2," developed by Defendant Vaughn.

By letter dated March 26, 2012, Nicholas Cherami, Esq., Vaughn's attorney, stated that the Promissory Note had been deemed satisfied by the payment of interest in the amount of \$1,000.00 because Nick Russo, John Hanti and Defendant Vaughn had agreed "to roll the principle [sic] amount of the loan into a new project." This letter was never refuted by Plaintiff Nicholas Russo or John Hanti, but Plaintiff contends that Vaughn never informed Nick Russo of the identity of the "new project." It is undisputed that this Note has not been paid.

A Promissory Note providing that the aforesaid \$45,000.00 loan now applied to real property located at 66 Summit Avenue, Jersey City, New Jersey was prepared but not executed (P-4), and there is insufficient evidence that Defendant Vaughn agreed that the proceeds of the loan would be paid from any sale of 66 Summit Avenue.

II. 543-547 MLK DRIVE; 542 MLK DRIVE; 66 SUMMIT AVE AND 10 MADISON AVE

Around this time, Defendant Vaughn represented to Nick Russo and Hanti that he was in difficult financial straits because one Morris Winograd, a real estate investor, had breached a lucrative management agreement with Defendant Vaughn, and he needed money to purchase two (2) properties in the bankruptcy proceedings of Mr. Winograd located at 543-547 MLK Drive and 542 MLK Drive, as well as a liquor license attached to the former property. Defendant Vaughn had filed a claim in the Winograd bankruptcy proceedings related to the agreement he had with Mr. Winograd providing operational managing services for Mr. Winograd's real estate business. Vaughn had previously owned the bar and restaurant at 543-547 MLK Drive, when the property was owned by Winograd.

Vaughn also needed money to save the two (2) properties that he owned located at 66 Summit Avenue and 10 Madison Avenue which were the subject of foreclosure actions. It is the conversations surrounding this scenario, and the actions taken thereafter, that establish the basis for Plaintiff's claims involving these properties.

More specifically, Plaintiff contends that in 2013 Nicholas Russo, John Hanti and Trevor Vaughn agreed that: (1) Nicholas Russo and John Hanti would provide the funds to purchase or save the properties from foreclosure and renovate the aforesaid real properties; (2) Defendant Trevor Vaughn's company, Defendant HDS Home & Designs LLC, would renovate the real properties and be paid for the renovations at his cost; and (3) the parties would establish two (2) New Jersey limited liability companies, which would hold title to these properties, in which Defendant Vaughn would hold 55% interest and Nick Russo and John Hanti would each own 22.5% interest in the LLCs, but have equal voting rights regarding the operation of the business. One of the limited liability companies formed, "Brothers From Another Mother, LLC," would hold title to 542 MLK Drive and 543-547 MLK Drive and would, with the investment of Hanti and Russo in the properties at 66 Summit Avenue and 10 Madison Avenue, described *infra*, at p.8, be also under the BFAM umbrella. The other limited liability company, "Boro 6 Bar & Grill, LLC",

would hold title to the liquor license and restaurant business to be located at 543-547 MLK Drive. Upon the sale of any of the properties, the parties would first be reimbursed for any capital contribution to the purchase and renovation of the property and then any profit would be distributed based on the percentage allocation referenced above.

Certificates of formation were filed for BFAM in October 2012 and on Boro 6 Bar & Grill in January 2013.

IIA. 543-547 Martin Luther King Drive

Pursuant to their understanding, in June 2013, Defendant Trevor Vaughn purchased the subject property, located at 543-547 Martin Luther King Drive, Jersey City, New Jersey, for a contract sales price of \$313,750.00 from Eric Perkins, the Trustee in the Winograd bankruptcy, and a liquor license owned by Winograd's corporate satellite for \$60,000.00. On May 14, 2012, Plaintiff Nicholas Russo had already transmitted to "Gerald Miller Trust Account", a check for \$13,100.00, which represented one-half of the deposit for the purchase of 543-547 Martin Luther King Drive. John Hanti paid the other half.

On June 27 or June 28, 2013, John Hanti, on behalf of himself and Plaintiff Nicholas Russo, transferred to Miller Meyerson & Corbo the sum of \$216,000.12 and the sum of \$37,434.00, which funds were used for the purchase of 543-547 MLK. Drive.

It is undisputed that Defendant Trevor Vaughn contributed \$138,000.00 (\$70,000 and \$68,000) for the purchase of 543-547 MLK Drive from his affirmative claim award in the Winograd bankruptcy.

Defendant Vaughn set projections for the aforesaid bar/club/restaurant that Plaintiff Nicholas Russo, John Hanti and Defendant Vaughn were going to operate.

To memorialize their agreement, albeit after the Plaintiff's transfer of funds to Vaughn pursuant to their oral agreement, on or about September 2013, the partners engaged John Caruso, Jr., Esq., to prepare operating agreements for BFAM and Boro 6. While Trevor Vaughn signed the first draft of the BFAM agreement, when Nick Russo and John Hanti realized that there was a mistake in the Operating Agreements regarding the respective voting interests of the parties, they advised Mr. Caruso to prepare corrected Operating Agreements, which he did, but they were never signed by Vaughn. Mr. Caruso testified that Vaughn was contacted to appear in his office to sign the deed conveying 543-547 MLK Drive property into the BFAM LLC, but when he appeared he just took the deed without signing it and never returned a signed copy of the deed nor the corrected BFAM operating agreement.

Despite these transfers of monies, Plaintiff contends Defendant Vaughn willfully failed to (1) execute the corrected Operating Agreement, and (2) place title to 543-547 Martin Luther King Drive in the "Brothers, LLC" in violation of their oral agreement.

Nicholas Russo and John Hanti provided the funds to purchase the liquor license to be connected to the property at 543-547 MLK Drive, but despite these transfers of monies, Plaintiff contends Defendant Vaughn willfully failed to place title to the liquor license in the "Boro LLC" in violation of the agreement.

IIB. 542 Martin Luther King Drive

On February 25, 2014, Winograd's Trustee in bankruptcy, Eric Perkins, agreed to sell the real property located at 542 MLK Drive to Defendant Trevor Vaughn for the sum of \$46,000.00, which ultimately was increased to \$49,000.00.

On June 3, 2014, by wire transfer to Nicholas Cherami, Esq., Plaintiff Nicholas J. Russo paid the entire purchase price, \$49,000.00, for 542 MLK Drive, Jersey City, New Jersey. By check No. 5264, dated September 7, 2014, Plaintiff Nicholas Russo transmitted to Defendant Vaughn another \$40,000.00 in connection for renovations on the property. Unlike the property at 543-547 MLK Drive, Vaughn did transfer title to this property into the Brother's LLC. Vaughn testified the renovation to this property is near completion.

IIC. 66 Summit Avenue and 10 Madison Avenue

The transactions between the parties surrounding the Plaintiff's acquisition of their interest in the properties located at 66 Summit Avenue and 10 Madison Avenue and the unilateral sale by Vaughn evolved from the following background.

Originally, Defendant Vaughn's LLC, HDS Home & Designs acquired title to 66 Summit Avenue and 10 Madison Avenue in 2008. Defendant Vaughn personally guaranteed building loan notes in the amount of \$466,997.00 for 66 Summit Avenue and \$394,079.00 for 10 Madison Avenue. When Defendants, Vaughn and HDS, defaulted on these notes, the mortgagee, Community Preservation Corporation, instituted foreclosure actions in 2012.

With financial assistance from Nick Russo and John Hanti, Defendant Vaughn settled the foreclosure actions for 66 Summit Avenue and 10 Madison Avenue pursuant to a mutual release and settlement agreement dated December 31, 2013 providing for the release of Defendants from their obligations under the two (2) building loan notes for the payment of \$442,500.00. Nick Russo wired the sum of \$260,500.00 to the trust account of Gerald D. Miller, Esq., and John Hanti sent Mr. Miller the sum of \$182,515.00 to enable Defendant Vaughn to secure his ownership of the two (2) properties, 66 Summit Avenue and 10 Madison Avenue. Plaintiff contends this transaction was supposed to be governed by the "Brothers" partnership agreement. Defendant denies this and asserts that this was only a loan that he would return with a "vig" of additive interest; however, no loan records or mortgage documents were produced by the Defendant in support of this conclusion. In addition to these funds, Nick Russo subsequently, in September 2014, transferred to Defendant Vaughn \$10,000.00 to remove an oil tank from 10 Madison Avenue.

John Hanti, whom the Court finds credible, testified that with respect to the 66 Summit Avenue/10 Madison Avenue transaction, he, Mr. Vaughn, and Mr. Russo agreed to "extricate" Vaughn from the foreclosure problems he was facing and, after reimbursement of the monies they expended to resolve those problems, they would together, under the Brothers LLC umbrella, sell the properties and "discuss what we were going to do with the proceeds, including any profits, with the idea of reinvesting, buying more properties"

Plaintiffs contend those discussions never took place, when, without notice to the Plaintiffs, in June 2014, Defendant sold 66 Summit Avenue for the sum of \$659,900.00 and in November 2014 sold 10 Madison Avenue for \$370,000.00.

Although Defendant Vaughn paid Nick Russo the bulk of the money, Mr. Russo and Mr. Hanti had advanced for the purchases of 66 Summit Avenue and 10 Madison Avenue,¹ Defendant Vaughn failed to share with Nick Russo the profit that Defendant HDS reaped from the sales.

Defendant Vaughn, on the other hand, contends that Nick Russo was reimbursed for all monies he invested in the 66 Summit Avenue/10 Madison Avenue transaction plus a profit.

TREVOR VAUGHN'S TESTIMONY

The only witness presented by the Defendant was the Defendant, Trevor Vaughn himself.

Despite refuting the contention of Plaintiffs' interest in the properties located at 66 Summit Avenue, 10 Madison Avenue, and 543-547 MLK Drive, Mr. Vaughn, in a tape obtained during discovery, that had been taken by Vaughn of a conversation between himself and Nicholas Russo, referred to Russo as his partner in the MLK properties and the restaurant bar business to be operated on one of the properties.

Defendant acknowledged that Russo's longtime partner, John Hanti, kept the books and records for the bar and grill to be operated at 543-547 MLK Drive. Vaughn sent pro formas on the business to both Nicholas Russo and Hanti. Vaughn, in his testimony, did not refute a confirmation of the percentage interests of Nick Russo, Hanti and himself in the two (2) LLCs. Vaughn cannot recall seeing operating agreements presented by Mr. Hanti by e-mail, but did acknowledge his signature on one of them.

The Court finds that the defendant Trevor Vaughn was less than candid when not acknowledging the terms and conditions of the BFAM agreement and testifying as to whether he ever saw a copy of one or ever being requested to sign a deed conveying the property located

¹ In connection with that sale, by check from The Cherami Law Firm LLC, Attorney Escrow Account dated June 19, 2014, Defendant Vaughn paid Plaintiff Nicholas Russo the sum of \$394,254.80 (P-17). From the aforesaid check for \$394,254.80, Nicholas Russo paid John Hanti the sum of \$200,000.00 (P-103; 3T82 -5 to 13; 3T109-6 to 12). In connection with the sale of 10 Madison Avenue, Defendant HDS paid Plaintiff Nicholas Russo the sum of \$80,545.20. (D-5) A recapitulation of these checks is further accounted for in the Court's findings and schedules attached to this Opinion.

at 543-547 MLK Drive into the BFAM LLC. While he acknowledged owing the Plaintiffs money in the vicinity of \$200,000, he did not testify specifically to what checks he issued to the Plaintiffs and for which property transaction. While the Plaintiffs acknowledge the receipt of the check of \$394,254.80 on June 1, 2014 and \$80,545.20 on December 12, 2014, which are accounted for in the Court's findings (See Schedule "B"), there was no testimony from Mr. Vaughn regarding his HDS Home and Design LLC check to Nicholas Russo in the amount of \$25,000 dated July 15, 2015 and a check in a similar amount dated September 2, 2015. While both checks were admitted into evidence by consent, as Defendant's Exhibits D6 and D7, there were also checks in similar amounts from Nicholas Russo to Vaughn's HDS LLC admitted into evidence by the Court marked P81 and P82. Therefore, while Defendant's attorney points to these checks as evidence of Plaintiff Nick Russo's full reimbursement, in his brief, the Court, without any testimony, cannot recognize them as cognizable proofs which would alter this opinion.

THE SEPTEMBER 7, 2014 MEETING

On or about September 7, 2014, Plaintiff Nicholas Russo, Plaintiff Michael Russo and Defendant Trevor Vaughn met at the home of Plaintiff Nicholas Russo (Testimony of Michael Russo). Based on the elderly Nicholas Russo's failing health, one of the main agenda items for that meeting was that Russo's son, Michael, was to be advised and included on all the history and future plans for the properties acquired.

Plaintiff contends at this meeting, Defendant Trevor Vaughn stated that he would transfer title for 543-547 MLK Drive to the Brothers LLC. He never did. (Testimony of Michael Russo). At this meeting, Defendant Trevor Vaughn also stated that he would transfer title to the liquor license from himself to the "Boro" LLC. (Testimony of Michael Russo). He never did.

Nicholas Russo was at this meeting and agreed that Defendant Trevor Vaughn should deal with Plaintiff Michael Russo on issues relating to Nicholas Russo's business arrangements with Defendant Trevor Vaughn.

III. 1 Madison Avenue

With respect to the background and actions surrounding the acquisition of the final property at 1 Madison Avenue, this transaction involved only Plaintiff Michael Russo and Trevor Vaughn.

On or about November 14, 2014, Plaintiff Michael Russo and Defendant Vaughn established 1 Madison Avenue, LLC, a New Jersey limited liability company whose purpose was to hold title to the real property located at 1 Madison Avenue, Jersey City, New Jersey. Plaintiff Michael Russo and Defendant Vaughn are equal owners of Plaintiff 1 Madison Avenue, LLC.

By Contract of Sale dated November 14, 2014, 1 Madison Avenue LLC agreed to purchase from Loretta Boyd-Brooks real property located at 1 Madison Avenue, Jersey City, New Jersey for \$240,000.00.

Without notice to Plaintiff Michael Russo, in December 2014, Defendant Trevor Vaughn executed an Operating Agreement for 1 Madison LLC under which he was the sole member of the LLC.

By cashier's check dated December 22, 2014, Plaintiff Michael Russo and Nicholas Russo transmitted to Miller, Meyerson & Corbo, Trust Account, the attorneys for Defendant Vaughn, the sum of \$221,065.58 in connection with the purchase of 1 Madison Avenue. Defendant acknowledges, in his Findings of Fact, under paragraph 13, that Plaintiff Michael Russo transmitted to Defendant Vaughn the sum of \$30,000 for expenses related to renovation of the property.

Seven months later, on or about July 9, 2015, without the knowledge or consent of Plaintiff Michael Russo, Defendant Vaughn sold 1 Madison Avenue to The Madison Brownstone LLC for \$385,000.00 and deposited the entire proceeds from that sale in his HDS' checking account.

Approximately two (2) months later, when Michael Russo learned that Defendant Vaughn had sold 1 Madison Avenue and kept the entire proceeds of that sale, Michael Russo asked Defendant Vaughn what happened to the money. Defendant Vaughn falsely represented to Michael Russo that he bought an unrelated property located at 544 MLK Drive with those funds. Plaintiff Nick Russo seeks damages from Defendant Vaughn and HDS for reimbursement of his investment in the subject property and one-half of the profit.

Plaintiff Nicholas Russo contends part of Vaughn's motive in not communicating with him regarding his actions arises from a dispute that arose between the two of them over Mr. Russo's disappointment with renovation work that Vaughn's company had performed on his personal residence in Union City.

FINDINGS OF THE COURT

The Court has considered the testimony of the witnesses and the Exhibits marked into evidence and makes the following findings, primarily in favor of the Plaintiffs and against the Defendants, which are summarized as follows:

1. The \$45,000 Promissory Note.

Plaintiffs have met their burden of proof that this note has not been repaid, contrary to the Defendant's position, and finds that Defendant Trevor Vaughn is indebted to Plaintiff Nicholas Russo in the sum of \$45,000, which is to be addressed as a rollover of an additional capital contribution for the benefit of the principals in the BFAM LLC, Russo and Hanti, on the property located at 542 Martin Luther King Drive, Jersey City, New Jersey.

It is undisputed that the Note, dated January 6, 2012, was never repaid by the Defendant Vaughn. Moreover, it is clear, as confirmed by the March 26, 2012 letter from Defendant's

attorney at the time, Mr. Cherami, to the Plaintiff, that the note had been deemed satisfied by the payment of \$1,000 and that the parties had agreed to "roll" the principal amount of the loan into an unidentified new project. While Mr. Cherami subsequently, approximately five months later in August 2012, provided the parties with a promissory note stating that the funds from the loan would be applied to the 66 Summit Avenue property, this note was never signed by Vaughn.

Defendant has failed to provide any evidence that this note was repaid. Accordingly, the Court will apply the Plaintiff's interest in these funds to a property unsold and held by BFAM, LLC: 542 Martin Luther King Drive.

This result is justified under general breach of contract principles. Here, Plaintiff never received the benefit of the promissory note, which was apparently "satisfied" with a promise to repay the loan from proceeds of the parties from subsequent investments. Accordingly, the Court's remedy will allow the Plaintiff to get the substantial benefit of the parties' bargain as compensation to put him "into the position he . . . would have achieved had the contract been completed." Totaro, Duffy, Canova and Co., LLC v. Lane, Middleton & Co., LLC, 191 N.J. 1, 12-13 (2007) (noting that while "[j]udicial remedies upon breach of contract fall into three general categories: restitution, compensatory damages, and performance," courts "[m]ost often" award compensatory damages to make the aggrieved party whole).

Furthermore, while the obligor of the note was "Vaughn for SMG Partners, LLC," the Court will still hold the Defendant Vaughn liable for several reasons. First, Mr. Cherami's letter, dated March 26, 2012, indicates that Defendant Vaughn individually had agreed to deem the January 6, 2012 promissory note satisfied, by virtue of the \$1,000 interest payment made on March 24, 2012, and that Mr. Cherami had "also been advised that [his] client was instructed to roll the principle amount of the loan into a new project." The letter does not indicate that Mr. Cherami or Defendant Vaughn was acting on behalf of the SMG Partners, LLC entity. Accordingly, it is clear that Defendant Vaughn individually agreed to roll over the funds to a separate project, in which SMG Partners LLC had no apparent interest.

In addition, SMG Partners, LLC may be considered an "alter ego" of the Defendant Vaughn for this purpose, which justifies holding Defendant Vaughn individually responsible for the "rolled-over" funds. See generally, Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 199-200 (App. Div. 2006); Interfaith Cmty. Org. v. Honeywell Int'l, Inc., 215 F. Supp. 2d 482, 497 (D.N.J. 2002) ("In essence, veil-piercing is proper when a subsidiary is an alter ego or instrumentality of the parent corporation.").

2. 543-547 MLK Drive; 542 MLK Drive; 66 Summit Ave and 10 Madison Ave

As to the properties located at 543-547 Martin Luther King Drive, 542 Martin Luther King Drive, 66 Summit Avenue, and 10 Madison Avenue, the Court finds that Defendant Trevor Vaughn breached his oral contract with the Plaintiffs Nicholas J. Russo and Michael J. Russo, which contract was supported by documents entered into evidence as well as the testimony of the Plaintiff Michael Russo and witness John Hanti. More specifically, Plaintiff Nicholas Russo along with his longtime partner, John Hanti, acquired an interest in the above properties based

upon their financial contributions to those projects, which interest was to be exercised under the umbrella of the BFAM LLC with Trevor Vaughn.

2(A) 66 Summit Avenue and 10 Madison Avenue

As to the sold properties at 66 Summit Avenue and 10 Madison Avenue, Defendant Vaughn breached the parties' contract by selling the properties without the consent of his partners. Based primarily upon the testimony of Mr. Hanti, the Court will award relief to the Plaintiff Nicholas Russo, individually and on behalf of the Plaintiff BFAM, reflected as an additional capital contribution to his account and the account of his longtime partner John Hanti for the property located at 543-547 MLK Drive. The Court has computed this allocation in its Schedule "B" to this decision.

Before the Court identifies its findings in reaching the monetary conclusions that it does, the Court is satisfied and accepts Plaintiff's position, as testified to by Mr. Hanti, that Nicholas Russo and his longtime partner and friend John Hanti would pool their funds involving their prior investments over the years. While the checks presented by Plaintiff in support of their financial contributions to their ventures with Mr. Vaughn do not show a precise 50-50 contribution from their respective accounts, the Court is satisfied based upon the testimony of Mr. Hanti that they would ultimately "true up" and their investments in the subject projects as between themselves was on a 50-50 basis.

Here, the two (2) properties, 66 Summit Avenue and 10 Madison Avenue, were purchased by Defendant's limited liability company, HDS Home & Designs LLC, in 2008; the purchase was funded by loans personally guaranteed by the Defendant. However, after the Defendant defaulted under the loan documents, Plaintiff Nick Russo and Mr. Hanti wired a total of \$443,010 to Defendant Vaughn, which were used to settle the foreclosure actions stemming from Defendants' default. In exchange, Hanti and Russo acquired an interest in the properties under the terms of the BFAM agreement. Under this transaction, as testified by Mr. Hanti, who the Court finds to be credible, the properties were to be transferred into the name of BFAM by Defendant Vaughn to be sold with the proceeds and profits to be used to reinvest in future real estate ventures.

The Court is satisfied that the contributions by Russo and Hanti to these properties to save Vaughn from losing them in foreclosure were not made pursuant to a "loan with vig" agreement, as Vaughn suggests, but rather pursuant to their discussion of a rolling investment plan where the Russo/Hanti contributions would result in the properties being held under the BFAM umbrella to be distributed upon sale in accordance with their mutual understanding reimbursement to the parties for costs incurred and a split of the "profits" based on a fifty-five percent (55%) split to Mr. Vaughn and a twenty-two and a half percent (22.5%) split to both Mr. Nicholas Russo and Mr. Hanti. The Court does not accept the Defendants' position that these expenditures by the Russo/Hanti partnership were only to be considered loans, albeit loans that were not secured through mortgage documents. The Court finds that the Plaintiffs have met their

burden of proof that the Russo/Hanti contributions towards this property were to be funneled under the BFAM umbrella and the checks paid by Vaughn will be credited against their capital accounts for this transaction, as described above.

With this finding, the Court makes the following findings as to the money trail of these two (2) properties, which were sold by Vaughn without notice to Russo or Vaughn (see Court's Schedule "B" for the particulars on the Court's computation). 66 Summit Avenue sold on June 18, 2014 with net proceeds of \$613,049.65, and 10 Madison Avenue sold on November 11, 2014 with net proceeds of \$299,748.87. Accordingly, Defendant Vaughn received a net total of \$912,798.52 from the proceeds for both properties. After taking into account the \$443,010.00 contributed by Plaintiff Nick Russo and Mr. Hanti individually and on behalf of Brothers from Another Mother, LLC to settle the foreclosure action, and an additional \$22,000.00 which the Court finds as a proven representing (1) a \$10,000.00 contribution for oil tank removal, and (2) acknowledgment of Vaughn's obligation under the "Madison Disbursement from closing document" in the amount of \$12,000.00 prepared by Vaughn (P-94)², a profit of \$447,788.52 was made on the properties. Accordingly, Plaintiff Russo and Mr. Hanti would be entitled to 22.5% of those total profits based on the parties' arrangement, or \$100,752.42.

However, as set forth in the Court's Schedule "B", there is to be a credit of \$9,970.00 based on what the Court construes as an overpayment made by the Defendant, which is to be borne equally by Plaintiff Russo and Mr. Hanti. Therefore, the Court will subtract one-half of that credit from Plaintiff Russo and Mr. Hanti's share of the profits, entitling each to \$95,857.42 to their capital accounts. Since Defendant Vaughn kept all of the proceed of the unilateral sale, he is not entitled to a credit of 55% of the net profits being placed in his capital account from the sale of these two properties.

While the Court has found the Plaintiff's recapitulation of their damages to be helpful as an aid to the Court, marked as Exhibit 104(b), with back up testimony being provided by Mr. Hanti and Mr. Michael Russo, the Court has not accepted every line item on that computation for this property as not proven to the Court's satisfaction, but the line items allowed with the corresponding exhibit number are set forth in the Court's schedules.

The Defendant, on the other hand, presented no such aide, but does through his attorney's pre- and post-trial submissions attempt to present a mathematical conclusion that the Plaintiff Nicholas Russo has been fully compensated for his investment in these two (2) properties and, for that matter, any other expenditures he made including the \$45,000 promissory note and investments made in the 543-547 MLK property. The Court has considered the two (2) checks offered by the Defendant's counsel in their brief submissions, which are not denied by the Plaintiffs: (1) a check in the amount of \$394,254.80 issued to Nick Russo on or about June 19, 2014, a day after the sale of 66 Summit Ave; and (2) a check in the amount of \$80,545.20 issued on December 4, 2014, approximately three (3) weeks after the sale of 10

² The Court does not find it necessary to address the other entries, typed or handwritten, set forth in the P94 document. To the extent Plaintiff's rely upon it in asserting additional claims/disbursements under this property transaction, said position is rejected by the Court for insufficient proofs.

Madison Ave. Again, based upon the difference between the Russo/ Hanti contributions as allowed, totaling \$465,010, and the total of these two checks, \$474,800, the Court finds that Mr. Vaughn is entitled to a credit of \$9,790.

The Court has determined, primarily based upon the testimony of Mr. Hanti, which again the Court found credible, and with the obvious fact that the properties were sold unilaterally by Vaughn, that the value of the Plaintiff's reimbursement capital accounts be transferred to their accounts under the property located at 543-547 MLK Drive which remains unsold. By virtue of the Court's finding, infra, title to this property will be transferred into the BFAM LLC in order to effectuate the agreements of the parties.

2(B) 542 Martin Luther King Drive

As to the unsold property located at 542 MLK Drive, since this property is already in the name of the BFAM LLC, the Court will now discuss the reimbursement/capital account status of the three (3) parties. Plaintiff Russo paid the entire purchase price, \$49,000 for the property on June 3, 2014, and also thereafter paid \$40,000 to Defendant Vaughn for renovations by check dated September 7, 2014. Given Plaintiff and Mr. Hanti's arrangement wherein they would "pool" their funds to invest in various projects, they will each be given a credit towards their capital account for one-half of that value. Additionally, as set forth previously, the Court will attribute the \$45,000 carryover principal from the January 2012 promissory note to this property. Plaintiff and Mr. Hanti will therefore be entitled to a combined \$134,000, and therefore \$67,000 will be added to the capital accounts of both Mr. Hanti and Plaintiff Russo for this property. The Court has not received any cognizable proofs of any reimbursable contributions made by Defendant Vaughn, but, of course, he will be entitled to his profit percentage distribution (55%) after the property is sold. (See the Court's computation for the property in Schedule "D").

At the conclusion of the trial, it was acknowledged that there was still a minor amount of renovation needed to complete construction of this property. The Court will provide instruction under the guidance of the fiscal agent, to be appointed under this decision, to complete construction.

2(C) 543-547 Martin Luther King Drive

As to the unsold property located at 543-547 MLK Drive, the Court finds that the Plaintiffs have met their burden of proof to impose a constructive trust on this property based upon the evidence and compel Trevor Vaughn to forthwith sign a deed conveying the property to the BFAM LLC. For the same reasons, the Court further imposes a constructive trust on the liquor license and restaurant business to be connected to that license at 543-547 MLK Drive and compels Trevor Vaughn to forthwith convey his interest in the license and restaurant business to the Boro 6 Bar & Grill LLC. The Court is satisfied under the proofs submitted that the cash contributions of the Russo/Hanti partners included the purchase of the liquor license.

Here, the Court finds, based on the clear and convincing evidence produced at trial, that in 2013, Plaintiff Nicholas Russo, Mr. Hanti, and Defendant Vaughn entered into an agreement

under which Hanti and Russo would supply the money to purchase properties in the names of a limited liability company, BFAM LLC, in which Hanti and Russo each had a 22.5% interest and Vaughn had a 55% interest. Defendant Vaughn would renovate the properties to prepare the properties to be sold.³ Another limited liability company, Boro 6, was to hold title to the liquor license and restaurant business at 543-547 MLK Drive. Thereafter, pursuant to this agreement, Defendant Vaughn purchased the 543-547 MLK Drive property for \$313,750 and the liquor license for \$60,000. The deposit for these purchases were paid by Plaintiff Russo and Mr. Hanti, in the amount of \$13,100 each. Later, in June 2013 Mr. Hanti, on behalf of himself and Plaintiff Russo, transferred a total of \$254,434.12, by two separate checks in the amounts of \$216,000.12 and \$37,434.00, to an attorney trust fund account to pay for the purchase of the property.⁴ Defendant Vaughn contributed \$138,000 toward the purchase, representing proceeds he received in his claim in the bankruptcy court. Mr. Russo then later paid another \$20,000 towards the purchase of the property.

Thereafter, the parties attempted to memorialize the agreement by the preparation of operating agreements, prepared by Mr. Caruso. However, Mr. Vaughn, despite signing an initial draft of the operating agreement, apparently refused to sign an amended version, which was prepared to correct a mistake concerning the voting interests of the parties. Despite the existence of the agreement, and the performance of that agreement by the Plaintiff and Mr. Hanti in paying Defendant for the purchase of the properties, the Defendant failed to transfer the property and liquor license to the appropriate LLCs.

"[A] constructive trust will be impressed in any case where to fail to do so will result in an unjust enrichment." D'Ippolito v. Castoro, 51 N.J. 584, 588 (1968). As observed by the New Jersey Supreme Court:

Generally all that is required to impose a constructive trust is a finding that there was some wrongful act, usually, though not limited to, fraud, mistake, undue influence, or breach of a confidential relationship, which has resulted in a transfer of property. . . . A constructive trust may arise, however, even though the acquisition of the property was not wrongful. It arises where the retention of the property would result in the unjust enrichment of the person retaining it.

Id. at 588-89 (internal citations omitted); see also Stewart v. Harris Structural Steel Co., 198 N.J. Super. 255, 266-68 (App. Div. 1984) (finding that a constructive trust may be imposed to prevent unjust enrichment even where the "acquisition [of the property] was not wrongful"). Here, the

³ While not specifically argued in any great detail by Defendant, the Court finds that the Plaintiffs have met their burden of proving that this agreement affecting the rights to property existed by clear and convincing evidence under the Statute of Frauds. N.J.S.A. 25:1-13(b). Based on the parties' history of dealings with each other, and the subsequent conduct of the parties in purchasing the properties, forming the LLCs, and drafting operating agreements after the purchase to commemorate the deal, the Court finds that the Plaintiffs have met their burden of proving the existence of the contract. See Morton v 4 Orchard Land Trust, 180 N.J. 118, 130 (2004) (noting that in determining whether a valid oral contract was made to bind the parties, courts can look to a variety of factors, including "the circumstances surrounding the negotiation, . . . the relationship of the parties, or . . . the parties' contemporaneous statements and past dealings"); see also Lobiondo v O'Callaghan, 357 N.J. Super. 488, 496 (App. Div. 2003).

⁴ See the Court's Schedule C-1 for a reference to the proofs submitted accepted by the Court for this finding.

Court will impose a constructive trust on the 543-547 MLK Drive property, based on the Defendant's failure to transfer the properties to the BFAM LLC as he was obligated to under the agreement, which is supported by clear and convincing evidence, as detailed above. See Dessel v. Dessel, 122 N.J. Super. 119, 121 (App. Div. 1972), aff'd, 62 N.J. 141 (1973) (noting that New Jersey courts generally require that a constructive trust be established by clear and convincing evidence).

Accordingly, the Court will impose a constructive trust on the property and compel Trevor Vaughn to execute the appropriate documents within thirty (30) days of the order accompanying this opinion (1) transferring his interest in the property located at 543-547 MLK Drive to Brothers From Another Mother, LLC; (2) transferring the liquor license and restaurant to be operated at this property from himself to the Boro 6 Bar & Grill, LLC; (3) compelling Trevor Vaughn to execute the amended operating agreement for the BFAM LLC reflecting the equal voting powers of the three (3) members, more particularly set forth in the document marked P-34 at the trial; and (4) compelling Trevor Vaughn to execute a similar operating agreement for the Boro 6 LLC.⁵

The actions of Defendant Vaughn, in (1) selling the properties at 66 Summit Avenue and 10 Madison Avenue after receiving significant monetary contributions from the Plaintiffs, without consulting with them and obtaining their consents, (2) failing to recognize their carryover profit distribution from the sale of those properties to further investment contributions in the property located at 543-547 MLK Drive, and (3) failing to deliver title to the 543-547 MLK properties and liquor license to the appropriate LLCs, constitutes a violation of the enforceable oral agreement between the parties and a breach of his fiduciary duties to Plaintiff Russo and Mr. Hanti.

The essence of a fiduciary relationship is that one party places trust and confidence in another who is in a dominant or superior position. A fiduciary relationship arises between two persons when one person is under a duty to act for or give advice for the benefit of another on matters within the scope of their relationship. The fiduciary's obligations to the dependent party include a duty of loyalty and a duty to exercise reasonable skill and care. Accordingly, the fiduciary is liable for harm resulting from a breach of the duties imposed by the existence of such a relationship.

F.G. v. MacDonell, 150 N.J. 550, 563 (1997) (internal citations omitted).

Based upon these findings, the Court has set forth in Schedule C-1 to this Court's opinion its monetary findings primarily in favor of the Plaintiff Nicholas Russo against the Defendants regarding the transactions involving 543-547 MLK Drive. More specifically, the Court has considered the monetary investment of Russo and Hanti as two (2) members of the BFAM LLC in the property; applying the appropriate credits to Vaughn, and establishing the reimbursement capital accounts of all three (3) members of BFAM LLC. For completion, the Court has also

⁵ It is anticipated and expected that Plaintiff Nicholas Russo will execute the two operating agreements to be executed by Trevor Vaughn under this opinion. While John Hanti is a non-party to this action, this relief reflects the intent of the parties as testified to by Mr. Hanti and the Court expects, but cannot order him, without further order of the Court, that he will execute these documents as well.

created a schedule of the capital accounts of Boro 6 LLC (Schedule C-2).

**APPOINTMENT OF A TEMPORARY FISCAL
AGENT IS REQUIRED IN THIS CASE**

Since, at the conclusion of the trial, it was acknowledged that there was minor construction required to complete 542 MLK Drive and construction of the restaurant was still ongoing at 543-547 MLK Drive, the Court will provide instruction under the guidance of fiscal agent, to be appointed under this decision, to complete construction at both sites and give the agent the authority to adjust the capital accounts as found by the Court in this decision, based upon the reasonable contributions of the parties following the close of evidence in this case.

Courts of equity have the "inherent power in a proper case to appoint a receiver for a corporation on the ground of gross or fraudulent mismanagement by corporate officers or gross abuse of trust or general dereliction of duty." Roach v. Marquillies, 42 N.J. Super. 243, 245 (App. Div. 1956). However, to limit the "drastic" effects of the appointment of a receiver, courts have consistently approved the *pendent lite* appointment of a special fiscal agent to protect and preserve the assets of a corporation and to play a conciliatory role in resolving issues that may give rise to future litigation. See id. at 245-46; Kelley v. Axelsson, 296 N.J. Super. 426, 437 (App. Div. 1997) (approving the appointment of a fiscal agent or director to represent the interest of oppressed minority shareholders). Ultimately, the appointment of a receiver may be justified by equitable principles, as observed by the Roach court:

Equitable remedies 'are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties.' A lack of precedent, or mere novelty in incident, is no obstacle to the award of equitable relief, if the case presented is referable to an established head of equity jurisprudence -- either of primary right or of remedy merely.

Roach, *supra*, 42 N.J. Super. at 246 (quoting Sears, Roebuck & Co. v. Camp, 124 N.J. Eq. 403, 411 (E&A 1938)) (internal citations omitted). Courts have given special fiscal agents a wide variety of powers, ranging from a peacekeeping role to the power to investigate allegations of shareholder oppression and develop a proposal for the terms and conditions of the sale of stock. See, e.g., Bonavita v. Corbo, 300 N.J. Super. 179, 201 (Ch. Div. 1996). The appointment of a special fiscal agent "to continue the operation of the corporation for both majority and minority until differences are resolved or until oppressive conduct ceases" may even be justified, based on the conduct of the parties, as a less drastic alternative to dissolution of a corporation. See Brenner v. Berkowitz, 134 N.J. 488, 514-15 (1993).

In addition, given the conduct of the Defendant Vaughn, which the Court finds actionable, and given the deterioration of the relationship between the parties, and that it may not be reasonably practicable for them through the aforementioned LLCs to manage and operate, on an ongoing basis, the unsold properties located at 520 MLK Drive and 543-547 MLK Drive and a bar and grill on the latter site, the Court empowers the fiscal agent to determine, at any time during his term, whether any of the members are desirous of selling his share and interest in the

BFAM or Boro 6 LLC with a right of first refusal to the non-requesting member. The fiscal agent shall have the authority to determine the protocols under which this authority will be implemented and can be guided, but not bound, by the provisions of the operating agreements to be entered into by the parties set forth under the paragraph entitled "Withdrawal of Member by Sale" (See, e.g., language in paragraph XV of Exhibit P-34).

The parties, with their attorneys, shall meet with the fiscal agent within thirty (30) days of the date of the order accompanying this decision to address the retainage of the fiscal agent and the members of the LLCs that are to be responsible for his fees based upon the percentage interest of the member in the LLC, more specifically Trevor Vaughn, 55%; Nicholas Russo, 22.5%; and John Hanti, 22.5%. The fiscal agent shall have the right to take any and all reasonable steps to implement this authority under this opinion and accompanying order, including, but not limited to, hiring experts, such as accounting professionals, appraisal experts and counsel.

It is anticipated that the term of the fiscal agent will not be more than six (6) months or the sale of the properties located at 542 MLK Drive and 543-547 MLK Drive and the business connected to the latter property, whichever first occurs. In the event the properties are not sold within the term of the fiscal agent and the fiscal agent is discharged, any further action regarding the conduct of the parties subsequent to the closing date of the record in this case, April 21, 2017, which seeks injunctive relief or a claim for damages based upon, the relationship between the parties and the subject properties, shall be the subject of a new action as permitted by law, including but not limited to actions under the Revised Uniform Limited Liability Company Act.

3. Madison Avenue

As to the property located at 1 Madison Avenue, this transaction is a discrete one between Michael Russo and Trevor Vaughn only, unlike the above transactions, which involve an arrangement between Nicholas Russo, John Hanti and Trevor Vaughn through designated LLCs. The Court finds that the Plaintiff Michael Russo has met the burden of proof that Defendant Vaughn violated their agreement and his fiduciary duty to Russo as an equal partner in the LLC that owned the subject property by selling, without Russo's consent and converting the proceeds to his own use.

Specifically, Michael Russo and Defendant Vaughn established 1 Madison Avenue, LLC to hold title to the property and purchased the property on November 14, 2014. Mr. Russo paid Defendant Vaughn the sum of \$221,065.58 in connection with the purchase of the property, plus an additional \$30,000 for rehabilitation of the property. However, without notice to the Plaintiff Michael Russo, Defendant Vaughn executed an operating agreement for the limited liability company in December 2014, under which he was the sole member, and thereafter sold the property on July 9, 2015, without the knowledge or consent of Michael Russo, for \$385,000. Defendant Vaughn placed the net proceeds of the sale in his own LLC's checking account.

Accordingly, as set forth in Schedule A to this decision, based on Defendant Vaughn's breach of the agreement and breach of his fiduciary duties to Plaintiff Michael Russo, the Court will award Plaintiff Russo one-half of the profit from the sale of the property, plus reimbursement of his investment, for a total of \$290,420.24.

4. Plaintiffs' Ancillary Claims

Plaintiffs, in their proposed findings of fact submitted to the Court following the trial, claim an entitlement to be repaid for an automobile loan purportedly co-signed by Plaintiff Nicholas Russo in favor of defendant Vaughn. In their post-trial submissions, Plaintiffs also claim an entitlement to damages stemming from the Defendant's alleged failure to complete renovation work at the Plaintiff's apartment. However, the Court denies these requests, which are not pled or referenced in Plaintiffs' amended complaint and were not supported by evidence produced at trial.

Plaintiffs request, in their post-trial submissions, at pages 38-39, that the Court amend their complaint to assert an additional count under the Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-36(c)⁶ as to 1 Madison Ave in order to conform with the evidence produced at trial pursuant to R. 4:9-2. The Court denies this request.

Under R. 4:9-2 a party may request an amendment of the pleadings and pretrial order "as may be necessary to cause them to conform to the evidence." While a court's broad discretion to permit amendment to conform to the evidence is normally liberally applied, amendments after trial are not permitted where "undue prejudice would result." See Kernan v. One Washington Park, 154 N.J. 437, 547 (1998). Accordingly, "[a]lthough under R. 4:9-2 the claims of a party may be deemed amended to conform to the proofs at a trial, such amendment should be at the

⁶ N.J.S.A. 42:2C-36 provides as follows:

- a. Except as otherwise provided in subsection b. of this section, if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of section 35 of this act and in consenting to the distribution fails to comply with section 39 of this act, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 35 of this act.
- b. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection a. of this section applies to the other members and not the member that the operating agreement relieves of authority and responsibility.
- c. A person that receives a distribution knowing that the distribution to that person was made in violation of section 35 of this act is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 35 of this act.
- d. A person against which an action is commenced because the person is liable under subsection a. of this section may:
 - (1) implead any other person that is subject to liability under subsection a. of this section and seek to compel contribution from the person; and
 - (2) implead any person that received a distribution in violation of subsection c. of this section and seek to compel contribution from the person in the amount the person received in violation of subsection c. of this section.
- e. An action under this section is barred if not commenced within two years after the distribution.

The triggering events referenced in section 35 could give rise to myriad defenses, which the Defendant in this case, since it was not pled, was not given to the opportunity to assert.

behest of a party and should be granted only if there is a full hearing where the evidence and arguments for and against the issue may be considered." *Essex County Adjustor v. Brookes*, 198 N.J. Super. 104, 114 (App. Div. 1984) (emphasis added). Here, the request to amend the complaint after the completion of the trial and closing of evidence to assert a claim under the New Jersey Revised Uniform Limited Liability Company Act would unfairly prejudice the Defendant, who may have defenses to the relief sought under that Act which were not articulated at trial due to the failure to previously plead this claim. See id.

The Court in this opinion, on equitable and common law grounds, has granted the appropriate relief on the pleadings and proofs adduced at trial.

5. Defendants' Counterclaim

Defendants have also filed a counterclaim for damages for lost development opportunities based on Plaintiffs' alleged failure to provide funding for the opportunities. However, the Court rejects this claim, as Defendant failed to offer any evidence in support of the counterclaim at trial.

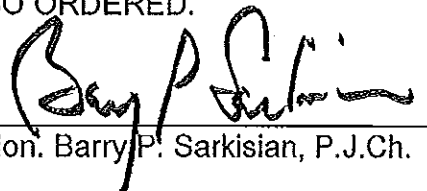
CONCLUSION

Based upon the foregoing, the Court summarizes the relief it has granted in this opinion:

1. The Court imposes a constructive trust on the property and compels Trevor Vaughn to execute the appropriate documents within thirty (30) days of the order accompanying this opinion by (1) transferring his interest in the property located at 543-547 Martin Luther King Drive to Brothers From Another Mother, LLC; (2) transferring the liquor license and restaurant to be operated at this property from himself to the Boro 6 Bar & Grill, LLC; (3) compelling Trevor Vaughn to execute the amended operating agreement for the BFAM, LLC reflecting the equal voting powers of the three (3) members, more particularly set forth in the document marked P-34 at the trial; and (4) compelling Trevor Vaughn to execute a similar operating agreement for the Boro 6 LLC.
2. The Court incorporates by reference as to the unsold properties/entities located at 542 Martin Luther King Drive and 543-547 Martin Luther King Drive; the following schedules attached to the opinion reflecting the current value of the reimbursement capital accounts of the members, Trevor Vaughn, Nicholas Russo and John Hanti: (see Schedules C-1; C-2; and D).
3. Appointing a fiscal agent for the unsold properties with the following authority:
 - a. Establish the protocols for the completion of construction of the properties located at 542 Martin Luther King Drive and 543-547 Martin Luther King Drive. The fiscal agent is given the authority to adjust the capital accounts as found by the Court in this decision, based upon the reasonable contributions of the parties following the close of evidence in this case.

- b. The Court empowers the fiscal agent to determine at any time during his term, whether any of the members are desirous of selling his share and interest in the BFAM, LLC or Boro 6 LLC with a right of first refusal to the non-requesting member. The fiscal agent shall have the authority to determine the protocols under which this authority will be implemented and can be guided, but not bound, by the provisions of the operating agreements to be entered into by the parties set forth under the paragraph entitled "Withdrawal of Member by Sale" (See, e.g., language in paragraph XV of Exhibit P-34).
 - c. The parties with their attorneys shall meet with the fiscal agent within thirty (30) days of the date of the order accompanying this decision to address the retainage of the fiscal agent with the members of the LLCs to be responsible for his fees based upon the percentage interest of the member in the LLC, more specifically Trevor Vaughn, 55%; Nicholas Russo, 22.5%; John Hanti, 22.5%.
 - d. The fiscal agent shall have the right to take any and all reasonable steps to implement his authority under this opinion and accompanying order, including, but not limited to, hiring experts such as accounting professionals, appraisal experts and counsel.
 - e. It is anticipated that the term of the fiscal agent will not be more than 6 months or the sale of the properties located at 542 Martin Luther King and 543-547 Martin Luther King and the business connected to the latter property, whichever first occurs. In the event the properties are not sold within the term of the fiscal agent and the fiscal agent is discharged, any further action regarding the conduct of the parties subsequent to the closing date of the record in this case, April 21, 2017 which seeks injunctive relief or a claim for damages based upon the relationship between the parties and the subject properties, shall be the subject of a new action as permitted by law, including but not limited to actions under the Revised Uniform Limited Liability Company Act.
- 4. Regarding the 1 Madison Avenue transaction, judgment is entered in favor of Plaintiff Michael J. Russo against Defendants Trevor Vaughn and HDS Home and Designs, LLC, jointly and severally in the amount of \$290,420.24 without costs or prejudgment interest.
 - 5. Plaintiff's ancillary claims identified in this opinion and Defendant's Counterclaim are dismissed without costs.
 - 6. All other claims for damages or injunctive relief not specifically identified in this opinion are denied.

SO ORDERED.


Hon. Barry P. Sarkisian, P.J.Ch.

**COURT'S SCHEDULE FOR COMPUTATION OF
PLAINTIFFS' DAMAGES AND/OR CAPITAL ACCOUNTS
AS OF CONCLUSION OF TRIAL ON APRIL 21, 2017**

Court's Schedule A

1 Madison Avenue

Plaintiff Michael J. Russo		BPS Computation		Defendants Trevor Vaughn and HDS Home Designs, LLC	
(Acquisition) P57-58	\$221,065.58	Net Proceeds of Sale	\$309,279.87 (P66)		
Contribution for renovations & misc. expenses recognized by Defendant in findings of fact	30,000.00	Return of Bulk Sale Escrow	20,494.93 (P101)		
		TOTAL PROCEEDS FROM SALE	\$329,774.80		
TOTAL	\$251,065.58	Computation of Profit			
			\$329,734.80		
			251,065.68		
		Gross Profit	\$ 78,709.12		
		Damages Awarded to Plaintiff Michael J. Russo			
			\$251,065.58		
		(1/2 of Gross Profit)	39,354.56		
		TOTAL	\$290,420.24		

**COURT'S SCHEDULE FOR COMPUTATION OF
PLAINTIFFS' DAMAGES AND/OR CAPITAL ACCOUNTS
AS OF CONCLUSION OF TRIAL ON APRIL 21, 2017**

**Court's Schedule B
66 Summit Avenue/10 Madison Avenue**

Plaintiff Nicholas Russo, Individually and on behalf of Brothers From Another Mother, LLC (BFAM)		Court Computation 66 Summit Avenue		Defendants Trevor Vaughn and HDS Home Designs, LLC	
(Acquisition) Nick Russo (P-12)- 12/31/13	\$260,500.00	Date of Sale 06/18/14	Proceeds \$660,433.29 (P16)	Reimbursement Payments from Defendant to Nick Russo Contributed to Nick Russo and John Hanti through BFAM	
John Hanti (P-13)- 12/31/13	182,510.00				
Subtotal	\$443,010.00				
Oil Tank Removal (P14)- 9/7/14	10,000.00				
(P94)	12,000.00				
TOTAL	\$465,010.00*				
Gross Profit Distribution to Nick Russo 22.5% X \$447,788.52*	\$100,752.42	Less settlement charges	\$ 47,383.64	Check dated 6/19/14 (D4)	\$394,254.80
		Net Proceeds	\$613,049.65	Check dated 12/14/14 (D5)	\$ 80,545.20
		10 Madison Avenue		TOTAL	\$474,800.00**
		Date of Sale	Proceeds		
Gross Profit Distribution to John Hanti 22.5% X \$447,788.52*	\$100,752.42	11/11/14	\$325,900.87		
		Less Settlement Charges	26,152.00		
		Net Proceeds	\$299,748.87		
		Total Net Proceeds for both properties	\$613,049.65		
			299,748.87		
		TOTAL	\$912,798.52		
Reduction to Russo/Hanti Accounts based upon Excess Payments by Vaughn to Russo/Hanti		Computation of Profit			
Russo/Hanti Payments*	\$465,010.00		\$912,798.52		
Reimbursements from Vaughn**	474,800.00	Less Russo/Hanti Contribution	465,010.00		
Credit to Def's Account	\$ 9,790.00	TOTAL	\$447,788.52		
Net Profit Distribution to Russo and Hanti after applying excess payment by Vaughn	\$ 95,857.42 ea.***				

*Russo/Hanti payments.

**Reimbursements Vaughn Payments.

***Allocations of interest to be transferred and reinvest of partners in 543-547 MLK (See Schedule C-1).

**COURT'S SCHEDULE FOR COMPUTATION OF
PLAINTIFFS' DAMAGES AND/OR CAPITAL ACCOUNTS
AS OF CONCLUSION OF TRIAL ON APRIL 21, 2017**

Court's Schedule C-1

543-547 MLK Drive

Plaintiff Nicholas Russo, Individually and on behalf of BFAM		Court Computation	Defendants Trevor Vaughn and HDS Home Designs, LLC	
Nick Russo (P52) 5/14/12	\$ 13,100.00		Vaughn's contribution from payment on bankruptcy claim	\$138,000.00
John Hanti (Testimony)	13,100.00		CAP ACCT OF TREVOR VAUGHN	\$138,000.00
Russo/Hanti (P47)- 6/27/13	216,000.12			
Russo/Hanti (P48) -- 7/3/13	37,434.00			
Nick Russo (P38) -- 9/7/14	20,000.00			
SUBTOTAL	\$299,634.12			
Nick Russo	\$ 95,857.42*			
John Hanti	\$ 95,857.42*			
TOTAL NICK RUSSO/JOHN HANTI ACCOUNTS	\$491,348.96			
Nick Russo Cap Acct. before Boro 6 Allocation	\$245,674.48			
Nick Russo Cap Acct. Net after Boro 6 Allocation of \$30,000.00	\$215,674.48			
John Hanti Cap Acct. before Boro 6 Allocation	\$245,674.48			
John Hanti Cap Acct. after Boro 6 Allocation of \$30,000.00	\$215,674.48			

*Carryovers from 66 Summit/10 Madison Avenue

**COURT'S SCHEDULE FOR COMPUTATION OF
PLAINTIFFS' DAMAGES AND/OR CAPITAL ACCOUNTS
AS OF CONCLUSION OF TRIAL ON APRIL 21, 2017**

**Court's Schedule C-2
Boro 6 Bar & Grill, LLC**

Plaintiff Nicholas Russo, individually and on behalf of Brothers From Another Mother, LLC (BFAM)		Court Computation	Defendants Trevor Vaughn and HDS Home Designs, LLC
Nicholas Russo	\$ 30,000.00*	See Court's Opinion	
John Hanti	\$ 30,000.00*		

*1/2 of amount contributed for purchase of liquor license.

**COURT'S SCHEDULE FOR COMPUTATION OF
PLAINTIFFS' DAMAGES AND/OR CAPITAL ACCOUNTS
AS OF CONCLUSION OF TRIAL ON APRIL 21, 2017**

Court's Schedule D
542 MLK Drive

Plaintiff Nicholas Russo, Individually and on behalf of Brothers From Another Mother, LLC (BFAM)		Court Computation	Defendants Trevor Vaughn and HDS Home Designs, LLC
Carryover of Principal in Jan 2012 Promissory Note	\$ 45,000.00		
(P41) 6/3/14	\$ 49,000.00		
(P42) 9/7/14	\$ 40,000.00		
TOTAL NICK RUSSO/JOHN HANTI ACCTS	\$134,000.00		
Nicholas Russo	\$ 67,000.00		
John Hanti	\$ 67,000.00		