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SUPERIOR COURT OF NEW JERSEY  
HUDSON COUNTY  
Chancery Division  
Docket No. C-128-17

OLUSEGUN AWONUSI

Plaintiff

v.

Decision

KENNETH YABOH and  
FAMEK MANAGEMENT CORP.

Defendants

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Decided: February 8, 2019

Stephen S. Berowitz for the Plaintiff, Olusegun Awonusi.

Do K. Lee for the Defendant, Famek Management Corp. (Alter & Barbaro, Esq., attorneys).

Kenneth Yaboh, appears self-represented.

JEFFREY R. JABLONSKI, P.J. Ch.

Olusegun Awonusi (Mr. Awonusi) filed a 5-count amended complaint on July 27, 2018, against the Defendants Kenneth Yaboh (Mr. Yaboh) and Famek Management Corp. (Famek Management). It contained these causes of action:

Count 1: Fraud as to Kenneth Yaboh;  
Count 2: Fraud as to Famek Management Corp.  
Count 3: Breach of fiduciary duty by Kenneth Yaboh;  
Count 4: Unjust enrichment of all the Defendants; and  
Count 5: Conversion

Mr. Awonsui seeks to have this court declare the deed that was signed by Mr. Yaboh is void, to rescind the deed that was signed by Mr. Yaboh to Famek Management, and to direct Famek Management to execute a deed to Mr. Awonsui that returns the property to him. Mr. Awonusi also seeks compensatory damages, punitive damages, attorney fees and costs.

Famek Management answered the complaint on August 20, 2018. Mr. Yaboh did not file an answer and he was defaulted on November 9, 2018. The matter was tried on November 13 and 14, 2019. The parties submitted their written summations approximately one month later.

**The Parties' contentions:**

Mr. Awonusi argues that the transfer of the deed to his premises that Mr. Yaboh made under a power of attorney to Famek Management is void. He also argues that he is entitled to compensatory damages from Mr. Yaboh since Mr. Yaboh did not meet his managerial obligations to Mr. Awonusi. Mr. Awonsui also argues

that Mr. Yaboh should be punished for his actions through the assessment of punitive damages.

In opposition, Famek Management, through Frank Emeka (Mr. Emeka), argues that Famek Management is not liable to Mr. Awonsui under any of the causes of action alleged. Neither Famek Management nor Mr. Emeka made any misrepresentations to Mr. Awonsui that might permit the rescission of the deed. Rather, since Famek Management was a bona fide purchaser for value of the premises, and since the property was transferred under a facially-valid power of attorney, the transaction should remain intact.

**Findings of Fact:**

This court finds these facts following the consideration of the documentary evidence admitted at trial and the witness testimony.

Mr. Awonsui is a professor of English linguistics and currently teaches and lives in Nigeria. On October 14, 2011, he purchased property at 211 Van Nostrand Avenue, Jersey City, New Jersey for \$100,000.00. A little more than 2 years later, on January 28, 2013, Mr. Awonusi gave a power of attorney to Mr. Yaboh, an acquaintance of his, with specific instructions to sell the property. In that document, Mr. Awonusi gave Mr. Yaboh authority to:

- a. execute contracts, deeds, affidavits survey affidavits, RESPA, IRS 1099 and all forms and documents required in connection with the sale by me of my real property located an described as follows: 211 Van Nostrand Ave, Jersey City, 07305, also known as Lot 4 Block 26401, State of New Jersey.
- b. To attend the closing of title and deliver the deed, affidavit of title, survey affidavit, and other closing forms and documents;
- c. To represent [him] in all aspects at the closing including, but limited to, the negotiation, payment, and settlement of all adjustments, liens, claims and encumbrances.
- d. To receive all proceeds from the sale of the property, including any refund of escrow funds or other mortgage payments;
- e. To forward to [him] all of the funds received from the sale of property, after the payment of attorney fees to my attorney;
- f. To do all acts that [he] might or could have done in the sale of the property.

In order to fund a separate, personal, and emergent business endeavor, Mr. Yaboh, in November 2012, borrowed \$35,000.00 in the name of ETF Petroleum Inc. from Famek Management. Famek Management is a New York corporation and has Mr. Emeka as its sole and principal owner. Mr. Yaboh struck a verbal deal with Mr. Emeka: in return for the \$35,000.00 loan, Mr. Yaboh promised to repay Famek Management \$45,000.00 three months later. If Mr. Yaboh did not repay the \$45,000.00, Mr. Yaboh agreed to turn over Mr. Awonsui's property, that Mr. Yaboh used as collateral, to Famek Management.

Mr. Emeka testified that he met Mr. Yaboh through Brent Blackman. Mr. Blackman is a real estate broker who worked with Mr. Emeka on a number of property acquisitions. As to the arrangement with Mr. Yaboh, Mr. Emeka characterized this arrangement as a "hard money" loan. Mr. Emeka acknowledged that he loaned Mr. Yaboh \$35,000.00. The loan would be satisfied with a payment of \$45,000.00 three months later. Mr. Yaboh provided assurances to Mr. Emeka that the loan would, indeed, be paid once the property was sold to "a[n unnamed] Chinese lady." Mr. Yaboh presented the power of attorney given by Mr. Awonsui to him, the deed, and a check for \$100,000.00 to Michael Werner, Esq.. With these documents, Mr. Emeka said that he was satisfied that Mr. Yaboh was the owner of the premises, had the authority to sell the premises, and that Mr. Awonsui was only a "straw buyer."

Mr. Yaboh failed to repay the loan, despite his attempts to do so in January 2013. His check bounced. Two months later, Mr. Yaboh transferred the property at City Abstract Title in Queens, New York on March 7, 2013, under the power of attorney to Famek Management. No contract of sale existed. No written agreement to memorialize the transaction was presented. There was no consideration reflected in the deed. Following the transfer, no proceeds were realized and none were forwarded to Mr. Awonsui.

Before this transfer, Mr. Yaboh, who lived in the United States, and Mr. Awonsui, who remained in Nigeria, discussed the

management of the property. At one point, Mr. Yaboh asked Mr. Awonsui to send certain funds so that Mr. Yaboh could use them to repair, maintain, and then ultimately sell the premises. Mr. Awonsui sent this money to Mr. Yaboh. Mr. Yaboh provided Mr. Awonsui with a June 28, 2012, letter purportedly from Emmanuel M. Agwu, Esq.. This letter was addressed to Weichert Realtors and reported that Ms. Agwu represented "Professor Victor O. Awonsui in the above-mentioned transactions. Please take note that I am holding in my attorney escrow account the sum of \$30,000 . . . for the purpose of purchasing and down payment for this transaction." Mr. Yaboh admitted that he forged this letter. Mr. Yaboh indicated that he never transmitted the funds that he received from Mr. Awonsui to Ms. Agwu and that he kept them.

Mr. Awonsui became frustrated since he had not heard that any progress was being made following the efforts that he believed that Mr. Yaboh was making to sell the premises. Ultimately, on April 20, 2015, Mr. Awonusi provided a power of attorney similar to that previously given to Mr. Yaboh to Mr. Awonsui's daughter to sell the property. Under that power of attorney, Abiodun Awonusi took steps to sell the property by listing the premises on the multiple listing service.

On December 24, 2015, Mr. Awonusi e-mailed Mr. Yaboh detailing the history of the arrangement between the two:

I am forced again to write you on matters concerning the property 211 Van Nostrand Av. Because in the last few months you have not been picking calls [sic] or responding to texts on the subject. Please recall that based on your advice in 2011, I purchased the property for my kids schooling to stay in so as to reduce [sic]cost, but when the institution to which they got admission were not within the vicinity of the property, and I then decided to sell it, you further advised that you can get tenants there so that it could generate some return/money.

Mr. Awonusi continued:

You eventually got a family who stayed there for close to one year paying \$1,000.00 each (as confirmed by the document from Lonny Hirsch of Jersey City: tel 201-656-0701), but you never game me a dime from the rent your collected on my behalf claiming that you used part of it to defray municipal costs and you will give me the balance. You NEVER did. (emphasis in original). Ultimately the tenant left and I insisted the property be put up for sale but based on your advise that we should sell and use it to buy a more expensive property which will give better returns, you requested for [sic] for additional \$20,000.00 which you received and sent me a receipt that it was lodged with Emmanuella law firm which may handle the legal aspects of the sale. It was shocking to discover that the firm said no such money was received from you, even though you used their letter head to write me confirming receipt.

He wrote further:

When I insisted on a sale of the property, in December 2013, you called me several times that you found an alternative offer in Lawrence Street and that if we sell van Nostrand and add the \$20,000.00, we would immediately buy the property and you further said the sale was just nominal. You requested for a [sic] Power of Attorney to enable you to sell the property on my behalf with Clause 1(d) of the document empowering you to receive all proceeds from the property after payment of attorney fees to my attorney and 1(e) adds that you should forward to me all of the funds received from the sale of the property. Based on it, on December 15, 2013, you sent a draft deed urging me to sign [u]rgently so

that payment could be made for Lawrence Street Offer. I raised the issue that the draft you sent to me to sign as the seller/owner of 211 Van Nostrand was to buyer named as 211 Van Nostrand LLC and you called to explain that it didn't matter since it was nominal, urging me to sign urgently. Surprisingly, after that, you immediately sent me another document by Riverside Abstract of 212 Second Street Suite 502, Lakewood, NJ 08701 (Tel no. 718-252-4200) on Chicago Title Insurance Company to provide insurance for the property. In the Riverside Abstract document you now referred to me as the owner of 211 Van Nostrand selling the property to Summermei LLC (Tel no 917-858-1745) which is different from Van Nostrand LLC on the deed you sent earlier. I then refused to sign the insurance document commitment.

He continued:

After that I insisted that the property must be properly sold because you did pay to me a dime out of the purported sale to 211 Van Nostrand for \$175,000.00 (sic). You immediately told [m]e you were yet to sell it and was looking for new buyers or may even buy it yourself I was shocked when I did an internet search when last I visi[ted] the US in May 2015 and found that the property was sold to one FANMED company for ONE dollar (\$1.00). I called the number of the company only to be told that the company knows nothing about the Van Nostrand property. I then called Emmanuaella firm and gave me firm the per[m]ission to sell the property directly or through any Real Estate company and the buyer could be anybody or organization including yourself for as long as I get my money from a legitimate sale. You again confirmed no sale had taken place and would look buyers (sic). You would recall that when you requested for a new Power of Attorney (POA) to re-validate the one I gave you in 2013, I told you I had done a new POA in which I asked my child to represent me in selling the property. In the new POA there is a clause 1(g) stating "to take this Power of Attorney as overriding/or invalidating a similar Power of Attorney on the same subject between me and Kenneth Yaboh on . . . .

Additionally, he wrote:

As part of my effort to sell the property, we got a Real Estate Agent who put the property up for sale a few weeks



ago, but was shocked that one person claiming to be Frank Emeka ([w]ho we later discovered is owner of FANMED) called the Estate Agent saying the property belonged to him and cannot be sold, having been sold to him by one Kenneth Yaboh in 2013. Shocking, really shocking!! Who/What is 211n Nostrand LLC/? SSummermei LLC? And now FANMED LLC/Frank Emeka?

Mr. Awonusi concluded:

Kenneth, I have taken you as my young friend till now but you are pushing me to the wall on the issue of this property which I bought through my sweat or legitimate income and now want to sell. Please clear the mess immediately by reversing any illegal or purported sale to any of the three bodies since I have not received any sales money from you as at today (sic). Take this action without one week otherwise you may force me to take some other actions.

Days later, Mr. Awonsui confirmed that his property had been sold. Sonia Quinterio, a real estate broker, emailed:

Title and deed was transferred with \$1 as the amount of the sale. Legally, the deed states that it belongs to [Mr.] Emeka so I would need Emeka llc or Frank Famek to be the Seller of the property. He reached out to me on the 24<sup>th</sup> and said that he was the owner and had not intention of selling. Please speak to your attorney and get clarity on this as I am not a lawyer. If this is possibly to quickly clear up and transfer the deed back to you then let me know asap as I had 4 offers on the property that I had to rescind once I was made aware of the deed and title.

Mr. Awonsui continued to attempt to have Mr. Yaboh rectify the situation and recover the ownership of the property. He was not successful.

Ultimately, Mr. Yaboh apologized to Mr. Awonusi:

I never knew there was court involved. I am not part of [F]amek team, have never communicated for 5 years plus. I was angry from the embarrassment hence, I kept to

myself. I tried getting your house back from famek as a result of my mistakes. I don't have problem talking to resolve this matter. You may ask why now? I don't even have an explanation but only to say I am sorry. I hope that you judge me with my past deeds to you and your family and not on my mistakes and lack of sense and judgment. This court go further than the house and money but I am begging that we keep this to money. I will pay for the house, but I pray everyday that my children and your children that I love so much does to have their best memory of me was my time in jail. The courts may proceed beyond money even if this is started as a civil action. I pray that you find somewhere in your heart to have mercy.

### **Conclusions of Law:**

As a preliminary, yet central, consideration key to the conclusions to be made in this litigation is an assessment of the credibility of each witness. Having watched and considered the testimony of Mr. Awonsui, Mr. Yaboh, and Mr. Emeka, this court concludes that all credibility determinations favor Mr. Awonsui's position as opposed to that of both Defendants.

As this court considered the substance of the testimony as well as the way that it was presented by each witness, this court noted a complete lack of credibility of Mr. Yaboh. His testimony was halting at times and his recollection of the events only favored his position without an acknowledgement of the position nor of the financial predicament that he caused to Mr. Awonsui. Mr. Yaboh admitted that he lied to Mr. Awonsui when Mr. Yaboh acknowledged that the money that he received from Mr. Awonsui was deposited into an attorney's trust account and then forged a letter

to exacerbate the deception. He acknowledged his dishonesty in his apologetic text message.

Although this court acknowledges that there were never any dealings directly between Mr. Awonsui and Famek Management, the overall reasonableness of the position following the circumstances that led to the transaction were suspicious and similarly lack credibility that the transfer of the deed to Famek Management, that, in defense, is postured to be a bona fide purchaser for value. Specifically, the deed was transferred without the benefit of a contract as would be required by the Statute of Frauds. See N.J.S.A. 25:1-13. The consideration for the transfer was \$0.00, and followed the default of a potentially usurious agreement to receive \$35,000.00 with an obligation to repay \$45,000.00 within 3 months or risk losing the collateral. Mr. Yaboh and Mr. Emeka did not negotiate terms of a mortgage, nor was there a promissory note executed. There were no property inspections nor appraisals performed before the transfer of title that would be characteristic of an arms length transaction. No financing was obtained by Mr. Emeka to satisfy the purchase requirements. No application for title insurance was submitted that surely would have included a condition that the power of attorney under which the property was transferred would have been required to be produced for review and an assessment made as to its validity. The power of attorney was never recorded. Although this court recognizes that a party is

presumed to be a bona fide purchaser unless proven otherwise, the consideration of the testimony of Mr. Emeka, particularly combined with the less-than-credible testimony of Mr. Yaboh demonstrates otherwise. Reaves v. Egg Harbor Twp., 277 N.J. Super. 360, 366 (App. Div. 1994).

On the other hand, the testimony of these two witnesses contrasts sharply with that provided by Mr. Awonsui whom this court finds to be most credible. Mr. Awonsui testified directly and succinctly. He was prepared to testify and knew exactly what he was present to discuss. He made good eye contact and provided prompt and relevant answers to the questions. He maintained an even tone throughout the proceedings and demonstrated a good demeanor. Notwithstanding the fact that the tone of his e-mails sent to Mr. Yaboh demonstrated a level of frustration, distrust, and even anger with Mr. Yaboh, Mr. Awonsui did not display those emotions before this court. He did not embellish his answers. He did not avoid any questions on either direct nor on cross examination by his counsel's adversary. He provided reasonable explanations as to his actions, and was, at bottom, inherently believable.

In light of both of the pertinent law and the credibility assessments made as to each witnesses' testimony, this court makes these legal conclusions:

**A. Mr. Yaboh breached his fiduciary duty to Mr. Awonsui.**

When Mr. Yaboh used the power of attorney provided to him by Mr. Awonsui and sold Mr. Awonsui's property following Mr. Yaboh's default on a verbal loan agreement that he collateralized with Mr. Awonsui's property, Mr. Yaboh breached the fiduciary duty that Mr. Yaboh owed to Mr. Awonsui.

The "essence of a fiduciary relationship" involves the "trust and confidence" that one party places in another who is in a dominant or superior position. McKelvey v. Pierce, 173 N.J. 26, 57 (2002) (quoting F.G. v. MacDonell, 150 N.J. 550, 563-64 (1997)). A fiduciary relationship is created when one person is under a duty to act for or to give advice for the benefit of another on matters that are within the scope of a relationship. Restatement (Second) of Torts §874 cmt.a (Am. Law Inst. 1979). A fiduciary's obligations to the dependent party require a duty of loyalty and a duty to exercise reasonable skill and care. Restatement (Second) of Trusts §§170, 174 (Am. Law. Inst. 1959). A fiduciary is liable for harm that results from a breach of those duties. Restatement (Second) of Torts §874 (Am. Law. Inst. 1979).

It is axiomatic that a "'power of attorney authorizing the agent to sign the principal's name to any paper or papers, or notes, &c., does not justify the signing of such documents for purposes outside[sic] of the principal's business," and where a note was put forth for [a] personal benefit [to one] who converted

its proceeds to his own use, although issued under apparent authority, it was held in fraud of the principal." Garibaldi Bldg. & Loan Ass'n v. Garibaldi League of Atl. City., 111 N.J. Eq. 365 (Ch. Div. 1932) (quoting Camden Safe Deposit and Trust Co. v. Abbott, 44 N.J.L. 257 (1882)).

Here, Mr. Yaboh has not disputed the allegation that he transferred the property without the knowledge nor consent of Mr. Awonsui. More so, he apologized for his actions and in doing so admitted them. In transferring the property to alleviate his own financial difficulties, Mr. Yaboh exceeded the scope of the authority that he was provided and, as noted by the Plaintiff, operated "in a manner solely favorable to himself to the detriment of the Plaintiff . . . ."

**B. Mr. Yaboh perpetrated a fraud upon Mr. Awonsui when Mr. Yaboh exceeded the scope of his authority under the power of attorney; however, Famek Management did not.**

Mr. Awonsui has clearly and convincingly demonstrated to this court that Mr. Yaboh committed a fraud against him when Mr. Yaboh exceeded the scope of his authority under the power of attorney. However, the same conclusion cannot be made as to Famek Management since there were no communications nor any dealings that Famek Management had directly with Mr. Awonsui.

Although the complaint does not differentiate between the types of fraud under which Mr. Awonsui alleges to have been victimized, this court recognizes that there are two types for which relief might be available here: legal fraud and equitable fraud. To establish a prima facie claim of legal fraud, a Plaintiff must prove that a Defendant misrepresented a material existing or past fact, that the Defendant made it when he or she knew that it was false, and that there was detrimental reliance on that statement. Jewish Center of Sussex County v. Whale, 86 N.J. 619, 624 (1981). To establish equitable fraud, a Plaintiff must prove, clearly and convincingly, that there was a material misrepresentation of a presently or existing or past fact, and that there was detrimental reliance on the misrepresentation. Liebling v. Garden State Indem., 337 N.J. Super. 447, 453 (App. Div. 2001). Either variation must be proven by clear and convincing evidence. Stochastic Decisions v. DiDomenico, 236 N.J. Super. 388, 395 (App. Div. 1989). Clear and convincing evidence "is evidence that produces in [the mind of a factfinder] a firm belief or conviction that the allegations sought to be proved by the evidence are true. It is evidence so clear, direct, weighty in terms of quality, and convincing as to cause [a factfinder] to come to a clear conviction of the truth of the precise facts in issue." Model Jury Charges (Civil), 1.19 "Burden of Proof-Clear and Convincing Evidence" (revised August 2011).

Here, the misrepresentations made by Mr. Yaboh in the absence of any consent by Mr. Awonsui are legion and include, but are not limited to:

- Misrepresentations about additional funds necessary to maintain the house and the subsequent use of those funds for personal purposes;
- Misrepresentations as to the location of the funds within an attorney's trust account and the forgery of a letter purportedly from that attorney to continue the deception; and
- Misrepresentations that the property was marketed for sale and that difficulties were confronted that prohibited it when the property had already been sold to Famek.

On the other hand, the record does not reflect, and there was no credible testimony provided to establish, that Famek Management perpetrated a direct fraud against Mr. Awonsui. The record is silent as to demonstrate that Famek Management made any material misrepresentations to Mr. Awonsui during the transfer of his property to that business entity. Although this court finds the circumstances surrounding the property transfer as suspicious, those suspicions do not rise to satisfy the advanced burden of proof possessed by Mr. Awonsui to vest liability upon Famek Management under Mr. Awonsui's allegations of fraud against it.



**C. Mr. Yaboh impermissibly converted the premises when he transferred the property to Famek Management and Famek Management was complicit in this scheme.**

To prevail on a claim for conversion, a plaintiff must prove "the wrongful exercise of dominion and control over property owned by another inconsistent with the owners' rights." LaPlace v. Briere, 404 N.J. Super. 585, 595 (App. Div. 2009). "Conversion is an intentional exercise of dominion and control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." Chicago Title Ins. Co. v. Ellis, 409 N.J. Super. 444 (App. Div. 2009) (quoting Restatement (Second) of Torts §222A(1) (Am. Law. Inst. 1965)). Others may be involved in this improper activity and be similarly liable for this intentional act. In order to vest liability upon one who is accused of aiding and abetting the perpetration of a civil wrong, a Plaintiff must prove that the party that the Defendant who or that aids in the intentional wrong must perform a wrongful act that causes an injury; that the defendant must be generally aware of his or its role as part of an overall illegal or tortious activity at the time that he or it provides the assistance; and the defendant must knowingly and substantially assist the principal violation. State, Dept of Treasury, Div. of Inv. Ex rel. McCormac v. Qwest Commc'ns Int'l, Inc. 387 N.J. Super. 469, 483 (App. Div. 2006).

Here, the record is clear that Mr. Yaboh impermissibly asserted personal rights over property that he supervised only in a representative capacity under the power of attorney. When he transferred the premises for zero consideration to Famek Management, Mr. Yaboh unlawfully converted this property. Similarly, despite the argument made that Famek Management "acquired rights of ownership pursuant to a valid conveyance of title to it by Plaintiff's attorney-in-fact Yaboh", this court finds that those perceived rights are invalid. Said differently, Famek Management, under the circumstances presented on this record, could not be considered a bona fide purchaser for value.

A bona fide purchaser for value is "one who has purchased property for value without any notice of any defects in the title of the seller." Blacks Law Dictionary 177 (6<sup>th</sup> ed. 1990). To be considered a bona fide purchaser, "the purchaser must not only have agreed to purchase without notice, but he must also have actually paid the purchase money and taken his deed without such notice." Toplan v. Hoover, 100 N.J. Eq. 466 (1928) (quoting Dean v. Anderson, 34 N.J. Eq. 496 (1881)).

Here, this court does not find that Famek Management was a bona fide purchaser for value that would insulate it from the relief requested in this cause of action. First, the property was transferred by inappropriate means and in excess of the authority provided in the power of attorney since it was used for the payment

of a personal debt rather than for Mr. Awonsui's benefit. The deed reflected zero consideration. The power of attorney was never recorded to provide a clear chain of title to subsequent purchasers. The record is silent as to whether the title company that purported closed the matter had ever reviewed the validity of the power of attorney and considered whether Mr. Yaboh was acting properly under it. Further, this court does not find persuasive the argument that the property was "purchased" for approximately \$70,000.00 or for the \$35,000.00 that was originally paid as a loan to Mr. Yaboh and the balance of the funds paid to rehabilitate the property. If this were to be considered consideration for the purchase of the premises, the deed would have stated this fact. Although Mr. Emeka indicated at trial that he believed that the property could be passed appropriately, a consideration of the entirety of his testimony reveals that a more reasonable and credible approach to be taken by one who was involved with the purchase and sale of real estate should have been placed on reasonable notice that the fact that the property that was being transferred according to a suspicious and usurious scheme that might have been problematic. These self-serving statements are undercut by the other credible evidence of the fact that he should have been placed on notice of some impropriety. This would certainly constitute constructive notice of a possible issue that deprives it of its status as a bona fide purchaser.

Additionally, since the scheme was orchestrated by Mr. Emeka in which the property would be forfeited if the terms of an unreasonable verbal loan arrangement were not satisfied, it is clear to this court that Famek Management had the intent to obtain title under suspicious means that similarly leads to the inescapable conclusion that Famek Management knowingly participated in the improper transfer of title.

**D. Both Mr. Yaboh and Famek Management were unjustly enriched following the impermissible transfer of the Plaintiff's property.**

The doctrine of unjust enrichment rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. Callano v. Oakwood Park Homes Corp., 91 N.J. Super. 105, 108 (App. Div. 1966). "The key words are enrich and unjustly." Id. at 109. To establish relief, a plaintiff must prove that the defendant "received a benefit, and that retention of the benefit without payment [for it] would be unjust." Ibid.

In this case, Famek Management was able to obtain property was originally purchased by Mr. Awonsui for \$100,000.00 essentially for a fraction of that price under means that are, at best, suspicious and, at worst, illegal. This act was performed unabashedly by Mr. Yaboh who used property that did not belong to him to satisfy a personal debt.

Having concluded that Mr. Yaboh is liable to Mr. Awonsui under the breach of fiduciary duty, fraud, conversion, and unjust enrichment counts of the amended complaint, and that Famek Management is similarly liable for its conversion and unjust enrichment, this court now considers the appropriate remedy.

**Remedies:**

**A. The deed is rescinded.**

Because of the inappropriate conduct of both Mr. Yaboh and Famek Management, rescission of the deed is the only appropriate and equitable remedy. As correctly noted by the Plaintiff's counsel in summation, "a judge sitting in a court of equity has a broad range of discretion to fashion the appropriate remedy in order to vindicate a wrong consistent with the principles of fairness, justice, and the law." Graziano v. Grant, 326 N.J. Super. 328, 342 (App. Div. 1999). Indeed, "equity will not suffer a wrong without a remedy." Crane v. Bielski, 15 N.J. 342, 349 (1954). Said differently, where there is a civil wrong, there ought to be a remedy; if the law provides none, equity may take jurisdiction in order to correct the injustice. Britton v. Supreme Council R.A., 46 N.J. Eq. 102, 112 (Ch. Div. 1889).

It is well-established under New Jersey law that courts will "decree the cancellation of a deed or other instrument vitiated by the practice of fraud or misrepresentation in its procurement."

Bajek v. Polack, 120 N.J. Eq. 104, 105 (Ch. 1936). Similarly, the equitable remedy of cancellation of documents is generally based on fraud or mistake in the inception of the document E. Newark Realty Corp. v. Dolan, 15 N.J. Super. 288, 292 (App. Div. 1951).

Here, Mr. Yaboh abused the power of attorney that Mr. Awonsui provided to him and used Mr. Awonsui's property for his own personal gain. These fraudulent actions taken the resulted in a complete deprivation of title to the property without remuneration to Mr. Awonsui and requires this relief. Similarly, although Famek Management has not similarly been found responsible for any ostensible nefarious behavior, this court, nevertheless, has concluded that it could not have been a bona fide purchaser for value because of the circumstances surrounding the transaction. Under the circumstances presented here, fundamental equitable precepts prohibit the retention of the property by Famek.

The court does, however, recognize that Famek Management might have contributed financially either to the maintenance of the property once it obtained ownership. Although the equitable balancing of the parties' interests results in the property being returned to Mr. Awonsui through a rescission of the deed, Famek Management is not without recourse since it might seek to recoup any financial losses through a direct suit against the fraudulent conveyor of these premises- Mr. Yaboh.

**B. Since no evidence was submitted nor any testimony provided as to the compensatory claim for relief, those damages are denied.**

In his summation, Mr. Awonsui argues that contracts exist from 2015 and 2017 with purchase prices in excess of the original purchase amount that place a value upon the property in excess of the purchase price. Further, argument is made as to a "warranted" monthly rental. However, neither testimony nor documentary evidence was provided as to these points at trial. In this case<sup>1</sup>, since there is no presumption of damages, this entitlement to compensatory damages must be proven. See generally, Besler v. Board of Educ. Of West Windsor-Plainsboro Regional School Dist., 201 N.J. 544 576 (2010). Argument alone does not suffice to establish a Plaintiff's burden of persuasion. Mr. Awonsui has not proved a compensable loss by a preponderance of the evidence. Therefore, the request for compensatory damages is denied.

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<sup>1</sup> The gravamen of this dispute focuses on the requested rescission of a fraudulent conveyance. It is not a case in which libel, slander, defamation, nor other injury to reputation is alleged for which presumed damages would be permitted. W.J.A. v. D.A., 210 N.J. 229 (2012).

**C. Punitive damages are appropriately awarded to Mr. Awonsui against Mr. Yaboh for Mr. Yaboh's willful and wanton behavior, however, a similar finding is not made against Famek Management.**

An award of punitive damages is appropriate if a Plaintiff proves clearly and convincingly that the harm he suffered resulted from a Defendant's acts or omissions, and those acts or omissions were taken with actual malice or were accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions. N.J.S.A. 2A:15-5.12(a). In determining whether punitive damages should be awarded, the trier of fact should weigh all relevant evidence, including, but not limited to, the following factors:

1. The likelihood, at the relevant time, that serious harm would arise from the defendant's conduct;
2. The defendant's awareness of reckless disregard of the likelihood that the serious harm at issue would arise from the defendant's conduct;
3. The conduct of the defendant upon learning that his initial conduct would likely cause harm; and
4. The duration of the conduct or any concealment of it by the defendant.

"Something more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage, such as spite or malice, or a fraudulent



or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interest of others that his conduct may be called willful or wanton. Nappe v. Anschelewitz, Barr, Ansell & Bonello, 71 N.J. 37, 50 (1984) (quoting W. Prosser, Handbook on the Law of Torts §2 at 9-10 (2<sup>nd</sup> ed. 1955)).

Here, there is sufficient evidence of a selfish and nefarious motive on the part of Mr. Yaboh and an overwhelming intent to engage in conduct that is both willful and wanton that victimized Mr. Awonsui. In order to alleviate his own self-created financial predicament, Mr. Yaboh blatantly, flagrantly and intentionally lied to and preyed upon the trust and confidence that Mr. Awonsui gave him. Mr. Awonsui trusted Mr. Yaboh to supervise Mr. Awonsui's financial interests. Rather than doing so, Mr. Yaboh exploited that trust for his own interests. This was aggravated by his testimony at trial where he demonstrated little to no remorse following his actions, nor was there any previous affirmative effort taken to rectify his wrong other than the one text-messaged apology. To this court, these actions depict a callous lack of empathy and demonstrates that Mr. Yaboh viewed this transaction merely as a cost of doing business despite the fact that Mr. Yaboh intentionally transferred property that Mr. Awonsui had purchased for \$100,000.00 and likewise stole the additional funds that Mr. Awonsui sent under the pretext of rehabilitating the property.

This court, therefore, is clearly and convincingly persuaded that punitive damages are necessary and a judgment in the amount of \$100,000.00 is entered against Mr. Yaboh. This amount is calculated deliberately not only to punish Mr. Yaboh, but also to be substantial enough to deter any similar future conduct.

Alternatively, a similar finding cannot be made by this court on this record against Famek Management. Although the activities taken by this defendant are quite suspicious, Mr. Awonsui has not proven clearly and convincingly that the actions taken by Mr. Emeka through Famek Management were directed by his company to Mr. Awonsui. This does not meet the heightened evidential burden for the imposition of these damages. Since Famek Management lacked the required scienter to support a finding of malicious intent, the request for punitive damages against this defendant is denied.

### **Conclusion:**

Mr. Awonsui met his burden of proof as to counts 1 and 3 against Mr. Yaboh and as to counts 4 and 5 against Mr. Yaboh and Famek Management.

The March 7, 2013, quitclaim deed vesting title to the property in Famek Management is rescinded. The request for compensatory damages is denied.

The request for punitive damages against Mr. Yaboh is granted and a judgment shall be entered against him in the amount of

\$100,000.00. The request for punitive damages against Famek Management is denied. Each party shall bear its own attorney fees.