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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2380-20**

JIM KWON,

Plaintiff,

v.

MDTV REALTY LLC,  
and PAUL ARGEN,

Defendants,

and

MDTV REALTY LLC and  
PGA-MV LLC,

Defendants/Third-Party  
Plaintiffs-Appellants,

v.

WOODSTONE CUSTOM  
BUILDERS, LLC, THOMAS  
DANIELS, SKIP LIGUORI,  
JIM KWON, 27 NORTH AVENUE,  
LLC, 26-30 NORTH AVENUE,  
LLC, and J. TIMOTHY BAK,

Third-Party Defendants-

Respondents,  
  
and  
  
27 NORTH AVENUE LIMITED  
LIABILITY COMPANY,

Intervenor-Plaintiff,

v.

MDTV REALTY LLC and  
PGA-MV LLC,

Intervenor-Defendants.

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Argued January 10, 2023 – Decided May 24, 2023

Before Judges Gilson, Rose, and Gummer.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Union County, Docket No.  
C-000003-14.

Kenneth Rosellini argued the cause for appellants.

Geoffrey T. Bray argued the cause for respondents Jim  
Kwon, 27 North Avenue Associates, LLC and 26-30  
North Avenue Associates, LLC (Bray & Bray, LLC,  
attorneys; Geoffrey T. Bray, on the brief).

PER CURIAM

MDTV Realty LLC (MDTV) and PGA-MV LLC (PGA) appeal from a  
February 16, 2021 order denying their summary-judgment motion and granting

the summary-judgment motion and cross-motion of Jim Kwon, 27 North Avenue Associates, LLC, and 26-30 North Avenue Associates, LLC (collectively, the Kwon parties). MDTV and PGA also appeal from an April 16, 2021 order denying their motion for reconsideration and a March 17, 2021 order entering final judgment in favor of the Kwon parties. Based on our de novo review of the summary-judgment motions, we affirm.

### I.

We discern the material facts from the summary-judgment record, viewing them in the light most favorable to non-moving parties. See Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021).

On December 18, 2000, MDTV and PGA executed a promissory note in the amount of \$555,000 for a loan with Unity Bank. The promissory note was secured by two mortgages: one from PGA on property owned by PGA located at 26-30 North Avenue in Cranford and another from MDTV on property owned by MDTV located at 27 North Avenue in Cranford. The mortgages (Unity mortgages) were recorded on December 20, 2000.

On January 25, 2005, MDTV and PGA signed a letter of agreement regarding the development of 26-30 North Avenue and 27 North Avenue (the

properties) with Woodstone Builders, LLC (Woodstone).<sup>1</sup> In the letter of agreement, Woodstone agreed to pay MDTV and PGA \$500,000 in return for a fifty-percent ownership of both MDTV and PGA.

On April 13, 2005, Woodstone, MDTV, and PGA signed a joint venture agreement (JVA) to develop the properties. In a section entitled "Mortgage," the JVA provided:

[Woodstone] shall file a mortgage on the [properties] for \$500,000.00 as collateral security pending completion of the Development, refinancing or transfer of the ownership to a newly formed third party entity of which [MDTV and PGA] and [Woodstone], or their respective designees, each maintain a 50% ownership interest. The mortgage shall be paid in full upon sale or refinancing of the [properties].

On the same day, MDTV and PGA executed a mortgage on the properties to Woodstone. The mortgage, described as "a second mortgage lien" on the properties, was "intended to secure the equity purchase of the [m]ortgagor[s], by the [m]ortgagee in the amount of \$500,000[] and paid in accordance with a certain [JVA] between [m]ortgagor[s] and [m]ortgagee and in accordance with the obligations, rights and responsibilities set forth therein." In a section entitled

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<sup>1</sup> In other documents, pleadings, and briefs, the parties refer to Woodstone as "Woodstone Custom Builders, LLC." Based on the parties' use of both names to reference Woodstone, we understand "Woodstone Builders, LLC" and "Woodstone Custom Builders, LLC" to reference the same entity.

"Incorporation of [JVA]," the mortgage provided the "terms not otherwise defined" in the mortgage would have the meaning given to them in the JVA and that, in the event of a conflict, the terms of the JVA would control. The mortgage (Woodstone mortgage) was recorded on April 15, 2005.

According to MDTV's chief executive officer Paul Argen, MDTV and PGA were compelled to sell the properties to satisfy the Unity mortgages because Woodstone had failed to meet its obligations under the JVA and never developed the properties. On December 20, 2013, Kwon and MDTV entered into a written agreement of sale, which provided Kwon would purchase the 27 North Avenue property from MDTV for \$570,000. The agreement contained a handwritten note stating the closing would take place on or before January 15, 2014. Prior to closing, Thomas Daniels, the registered agent and a manager of Woodstone, told Argen that Woodstone would not agree to discharge the Woodstone mortgage until it received \$500,000. According to Argen, MDTV could not close on the sale of the 27 North Avenue property to Kwon because Woodstone refused to discharge its mortgage.

On January 9, 2014, Kwon filed a verified complaint against MDTV and Argen, seeking specific performance of the sale agreement or, alternatively, damages for fraud. Initially, MDTV filed an answer in which it asserted Maria

Villalonga-Argen, who was Argen's wife, was the managing member and majority owner of MDTV; MDTV owed \$412,000 pursuant to a mortgage with Unity Bank and \$500,000 pursuant to a mortgage with Woodstone; and Argen had not acted on behalf of MDTV. In a January 31, 2014 order, a judge enjoined MDTV and Argen from transferring or encumbering the 27 North Avenue property but denied the other relief requested in Kwon's application for an order to show cause. The judge also issued a case management order.

On April 8, 2014, Kwon and Unity Bank signed a confidentiality agreement to share certain confidential information "in connection with a potential agreement for the purchase of a non-performing loan." The loan was identified as MDTV's loan.

On April 9, 2014, Unity Bank filed a foreclosure complaint for the unpaid balance of the Unity mortgage (Foreclosure Case). The court issued a judgment of foreclosure on August 13, 2014.

On September 15, 2014, Kwon and Unity Bank entered an "agreement to purchase non-performing loan," in which Kwon purchased for \$379,349.52 the loan Unity Bank had issued to MDTV and PGA. On September 30, 2014, Unity Bank assigned the Unity mortgages and other loan-related agreements to 26-30

North Avenue LLC and 27 North Avenue LLC, entities owned and controlled by Kwon (collectively, Kwon's companies).

On October 1, 2014, Kwon and Woodstone entered an agreement in which Woodstone agreed to sell to Kwon "or his assignee" the JVA and the Woodstone mortgage for \$325,000. In a November 8, 2014 amendment to that agreement, Woodstone and Kwon agreed Kwon or his assignee would purchase only the Woodstone mortgage for \$225,000. On November 24, 2014, Woodstone executed an assignment of the Woodstone mortgage regarding the property located at 26-30 North Avenue to 26-30 North Avenue, LLC, and the property located at 27 North Avenue to 27 North Avenue, LLC. According to Kwon, on November 25, 2014, the \$225,000 purchase price for the assignment of the Woodstone mortgage was paid. On January 26, 2016, Woodstone executed an assignment of the Woodstone mortgage to 26-30 North Avenue, LLC, and 27 North Avenue, LLC. That assignment was recorded on February 17, 2016. The record does not contain an explanation as to why Woodstone executed assignments in 2014 and 2016. The result, nevertheless, is the same: the Woodstone mortgage was assigned to Kwon's companies.

On February 20, 2015, MDTV filed an amended answer and counterclaim, pleading causes of action for fraudulent inducement, breach of contract, breach

of the implied covenant of good faith and fair dealing, tortious interference with prospective economic advantage and with contract, a declaratory judgment that the property sale agreement was not enforceable, breach of fiduciary duty, and civil conspiracy. MDTV also included in the amended answer a third-party complaint filed with PGA against Woodstone, Daniels, Daniel's business partner Skip Liguori, Kwon's attorney J. Timothy Bak, Esq., and Daniel's attorney John Fierri, Esq.

Following an order to show cause filed on behalf of MDTV and PGA, the judge then assigned to the case entered an amended order on October 15, 2015, directing the sale of the properties to the Township of Cranford for \$1.3 million. The judge also ordered payment of the sale proceeds to the estimated \$470,000 balance of the Unity mortgage and reasonable closing costs, with the remaining proceeds to be held in the trust account of MDTV's and PGA's attorney. In the attached statement of reasons, the judge noted Kwon "for the first time" had disclosed to the court 27 North Avenue, LLC and 26-30 North Avenue, LLC were the assignees of the Woodstone mortgage. Because the remaining proceeds from the sale would be held in escrow, the judge was "satisfied" "special circumstances" existed such that the Woodstone mortgage could be discharged, thereby enabling the sale of the properties to proceed.



The sale to Cranford took place on December 1, 2015. \$488,809.95 of the sale proceeds were used to satisfy the Unity mortgage. The remaining proceeds, \$793,808.37, were placed in escrow in MDTV's and PGA's counsel's trust account pursuant to the October 15, 2015 order. As a result of motion practice in the Foreclosure Case, the judge on April 12, 2016, ordered counsel for 27 North Avenue, LLC and 26-30 North Avenue, LLC to hold \$56,811.78 in escrow and dismissed that action.

On April 1, 2016, MDTV and PGA filed a third amended third-party complaint against Woodstone, Daniels, Liguori, Kwon, 27 North Avenue Associates, LLC, 26-30 Associates, LLC, and Bak. As to the Kwon parties, MDTV and PGA sought a judgment declaring void the assignment of the Woodstone mortgage and pleaded causes of action for aiding and abetting breach of fiduciary duty, unlawful civil conspiracy, breach of the implied covenant of good faith and fair dealing, and tortious interference with contract. On April 16, 2016, the Kwon parties filed an answer to the third amended third-party complaint and a counterclaim against MDTV and PGA seeking a declaratory judgment that the Woodstone mortgage was valid and enforceable and that they were bona fide purchasers and holders in due course of the mortgage.

On March 27, 2017, MDTV and PGA moved for summary judgment, seeking to dismiss the counterclaim against them. Citing N.J.S.A, 12A:3-302, the judge found "Kwon could be considered as a holder in due course with the [JVA] acting in place of the usual Note." Concluding Kwon had established a factual dispute by producing "sufficient evidence" regarding Daniels's "authority . . . to sell and the purchase by Kwon," the judge denied the motion on February 26, 2019.

On December 23, 2020, MDTV and PGA moved for summary judgment on their affirmative claims. The Kwon parties moved for summary judgment, seeking an order releasing \$56,811.78 from the funds held in escrow by their counsel and \$500,000 from the funds held in escrow by MDTV's and PGA's counsel, and cross-moved for summary judgment dismissing MDTV's and PGA's claims. A different judge heard argument on the motions and subsequently issued an order on February 16, 2021, granting the Kwon parties' motion and cross-motion and denying MDTV's and PGA's motion.

In an attached statement of reasons, the judge decided as a threshold issue that "the Woodstone mortgage is, in fact, a mortgage [and] is not a capital contribution." The judge next found the Kwon parties were holders in due course of the Unity and Woodstone mortgages "by way of the assignments which

he purchased for value," the assignments were "valid and enforceable," and Kwon was entitled to enforce and receive payment on the mortgages, including payment on accrued interest, taxes, and expenses.

The judge then analyzed MDTV's and PGA's causes of action. The judge denied MDTV's and PGA's motion as to the non-Kwon parties for various reasons, including that material issues of fact existed. Those fact issues did not apply to MDTV's and PGA's claims as to the Kwon parties.

With respect to MDTV's fraud claim against Kwon, the judge found that any claim Kwon had failed to disclose he owned the mortgages pursuant to an assignment was not material: "Kwon held a mortgage; MDTV was required to pay the mortgage. Kwon purchased the mortgages . . . as a holder in due course. Regardless of who owned the mortgages, the mortgage payments were still due and MDTV did not pay." The judge found the fiduciary-duty claims against the Kwon parties failed because they were not fiduciaries to MDTV, PGA, the joint venture, or the parties to the joint venture. The judge also rejected "any claim for breach of fiduciary duty related to the assignment of mortgages" as "moot" based on the finding that "Daniels had the authority to sell/assign the Woodstone mortgage to Kwon . . . ." Because Kwon was not a party to the JVA and the Kwon parties were "clearly in an adversarial position" with MDTV and PGA,

the judge held MDTV and PGA did not have a basis for a claim of a breach of the implied covenant of good faith and fair dealing as to the Kwon parties.

The judge also rejected the tortious-interference claims. The judge held Kwon had not tortiously interfered with the JVA but instead had "validly purchased an interest in the mortgage created by the [JVA]" and that the Woodstone mortgage had been validly assigned pursuant to that agreement. The judge rejected the claim of tortious interference with MDTV's prospective economic advantage, finding no facts supporting the claim and concluding MDTV had an obligation to pay off the mortgage no matter who held it. Finally, the judge rejected MDTV's claim of civil conspiracy, which was based on an allegation of purposeful withholding of information. The judge found "any act that resulted from these alleged withholding of information does not constitute an unlawful act, nor an act committed by unlawful means" given the valid and lawful assignment of the Woodstone mortgage.

The judge denied MDTV's and PGA's subsequent motion for reconsideration. On March 17, 2021, the judge issued an order entering final judgment and directing the \$500,000 held in escrow by MDTV's and PGA's counsel and the \$56,811.78 held in escrow by the Kwon parties' counsel be released to the Kwon parties.

On appeal, MDTV and PGA argue the judge erred in concluding Kwon was a holder in due course and in failing to find Kwon had taken assignment of the Woodstone mortgage subject to the terms of the JVA and to MDTV's and PGA's claims against Woodstone. They also contend the judge erred in denying their summary-judgment motion and granting the Kwon parties' cross motion on their claims against Kwon for common law fraud, breach of the implied covenant of good faith and fair dealing, and tortious interference with contract and prospective economic advantage and on their claims against the Kwon parties for breach of fiduciary duty and civil conspiracy. Unpersuaded by those arguments, we affirm.

## II.

We review a trial court's summary-judgment decision de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm.,

Inc., 247 N.J. 1, 13 (2021) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). To rule on summary judgment, a court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007)).

"A dispute of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Gayles by Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 22 (App. Div. 2021) (quoting Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017)). "Rule 4:46-2(c)'s 'genuine issue [of] material fact' standard mandates that the opposing party do more than 'point[] to any fact in dispute' in order to defeat summary judgment." Globe Motor Co., 225 N.J. at 479. Insubstantial arguments based on assumptions or speculation are not enough to overcome summary judgment. Brill, 142 N.J. at 529; see also Dickson v. Cmty. Bus Lines, Inc., 458 N.J. Super. 522, 533 (App. Div. 2019) ("[C]onclusory and self-serving assertions by one of the parties are

insufficient to overcome' a motion for summary judgment." (quoting Puder v. Buechel, 183 N.J. 428, 440-441 (2005))).

We agree with the judge's threshold determination that the Woodstone mortgage was a valid and enforceable mortgage. A "negotiable instrument" is

an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time;  
and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral . . . .

[N.J.S.A. 12A:3-104(a).]

"[A] promise . . . is unconditional unless it states an express condition to payment, that the promise . . . is subject to or governed by another writing, or that rights or obligations with respect to the promise . . . are stated in another writing." N.J.S.A. 12A:3-106(a).

MDTV and PGA assert the Woodstone mortgage was "not an unconditional obligation" and, consequently, not a negotiable instrument under N.J.S.A. 12A:3-104(a)(3). To support that assertion, they note the Woodstone mortgage "refers to another writing," presumably the JVA, and contend "there are conditions in the [JVA], namely performing all of the obligations." However, as the statute provides, "[a] reference to another writing does not of itself make the promise . . . conditional." N.J.S.A. 12A:3-106(a).

The reference to the JVA in the Woodstone mortgage did not render the mortgage conditional. The Woodstone mortgage expressly incorporates the terms of the JVA. A plain reading of the Woodstone mortgage with the wholly incorporated language of the JVA makes clear that MDTV and PGA made an unconditional promise to pay the mortgage in full "upon sale or refinancing" of the property.

We also agree with the judge's determination that Kwon's companies were holders in due course of the mortgages.

Under the New Jersey Uniform Commercial Code (UCC), N.J.S.A. 12A:3-302(a), to be a holder in due course one must take "an instrument for value, in good faith, and without notice of dishonor or any defense against or claim to it on the part of any person." Triffin v. Quality Urban Hous. Partners, [352 N.J. Super. 538, 541 (App. Div. 2002)]. "Good faith" includes "the observance of reasonable commercial



standards of fair dealing." N.J.S.A. 12A:3-103(a)(4). Further, the document must not be "so irregular or incomplete as to call into question its authenticity." N.J.S.A. 12A:3-302(a)(1); see Triffin v. Pomerantz Staffing Servs., LLC, 370 N.J. Super. 301, 307 (App. Div. 2004).

[Triffin v. Licardi Ford, Inc., 417 N.J. Super. 453, 456 (App. Div. 2011).]

As the judge correctly concluded, Kwon's companies purchased the Woodstone mortgage by way of an assignment for value, \$225,000, and in good faith. MDTV and PGA assert Kwon, "as an experienced banker, lender, and real estate mogul, . . . knew that the Woodstone mortgage was invalid . . . ." That bald assertion is not sufficient to defeat the Kwon parties' summary-judgment motion. See Dickson, 458 N.J. Super. at 533. MDTV and PGA also fault Kwon for not disclosing to them the purchase of the Unity mortgages or to the judge the assignment of the Woodstone mortgage until MDTV's and PGA's order to show cause regarding the sale of the property to Cranford. In making that argument, MDTV and PGA fail to establish Kwon had an obligation to advise them and the judge sooner of the assignments or how his purported failure to disclose the assignments sooner demonstrated a lack of good faith in obtaining the mortgages through the assignments. See N.J.S.A. 12A:3-103(a)(4).

MDTV and PGA argue broadly that the Kwon parties were subject to the defenses MDTV and PGA had against Woodstone based on the Woodstone mortgage and the JVA. Statutory law, however, expressly limits the defenses to which a holder in due course is subject. Subparagraph (a) of N.J.S.A. 12A:3-305 identifies generally the defenses that may apply in an action to enforce an obligation:

a. Except as stated in subsection b. of this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on infancy of the obligor to the extent it is a defense to a simple contract, duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument

if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

Subparagraph (b) of N.J.S.A. 12A:3-305 expressly limits the defenses applicable to a holder in due course:

b. The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in paragraph (1) of subsection a. of this section, but is not subject to defenses of the obligor stated in paragraph (2) of subsection a. of this section or claims in recoupment stated in paragraph (3) of subsection a. of this section against a person other than the holder.

See also N.J. Mortg. & Inv. Corp. v. Berenyi, 140 N.J. Super. 406, 408-09 (App. Div. 1976) (noting the limited defenses applicable to a holder in due course). As holders in due course, Kwon's companies were subject only to the defenses set forth in N.J.S.A. 12A:3-305(a)(1), none of which apply.

"[O]rdinary fraud will not avail as a defense against a holder in due course . . . ." N.J. Mortg. & Inv. Co. v. Dorsey, 60 N.J. Super. 299, 303 (App. Div. 1960). N.J.S.A. 12A:3-305(a)(1) includes "fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms." That type of fraud has been described not as

fraud in the inducement but as "fraud in the essence or fraud in the factum," meaning the obligor was "tricked into signing a note in the belief that it is merely a receipt or some other document" and that "the signature on the instrument is ineffective because the signer did not intend to sign such an instrument at all." N.J.S.A. 12A:3-305 cmt. 1. "Under this provision the defense extends to an instrument signed with knowledge that it is a negotiable instrument, but without knowledge of its essential terms." Ibid.; see also Dorsey, 60 N.J. Super. at 303-04 (finding holder in due course is subject to a defense of fraud in the factum and describing the rationale behind fraud in the factum as being that "one cannot be bound on an obligation he does not know he is entering into"). MDTV and PGA do not contend they executed the Woodstone mortgage "without knowledge of its essential terms." See N.J.S.A. 12A:3-305 cmt. 1.

Finally, we agree with the judge's conclusions regarding MDTV's and PGA's causes of action against the Kwon parties. As for fraud, MDTV and PGA have not identified a material misrepresentation the Kwon parties made to them to induce their reliance in connection with the mortgages or established that the Kwon parties deliberately suppressed a material fact they had an obligation to disclose. See Allstate N.J. Ins. Co. v. Lajara, 222 N.J. 129, 147 (2015) (outlining the elements of a common law fraud claim); N.J. Econ. Dev. Auth. v. Pavonia

Rest. Inc., 319 N.J. Super. 435, 446 (App. Div. 1998) (addressing the elements of a fraud claim based on a failure to disclose).

The implied covenant of good faith and fair dealing requires parties to a contract to "refrain from doing 'anything which will have the effect of destroying or injuring the right of the other party to receive' the benefits of the contract." Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 224-25 (2005) (quoting Palisades Props., Inc. v. Brunetti, 44 N.J. 117, 130 (1965)). MDTV and PGA alleged the Kwon parties violated the implied covenant of good faith and fair dealing contained in the real estate purchase agreement between Kwon and MDTV by secretly acquiring the Unity and Woodstone mortgages. Acquiring the Unity and Woodstone mortgages after MDTV already had breached the terms of the contract by failing to close on the sale is not what deprived MDTV of the benefits of the contract and does not constitute a breach of the implied covenant.

Regarding their claims of tortious interference with contract and economic advantage, MDTV and PGA argue on appeal that Kwon tortiously interfered with the JVA. However, in the counterclaim, MDTV alleged Kwon tortiously interfered with their rights to sell the property and with their "contract rights with Unity Bank" and make no mention of the JVA in those causes of action.

See N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015) (finding "[a]n issue that is not briefed is deemed waived upon appeal"). MDTV and PGA based the tortious-interference claims pleaded in the third amended third-party complaint on the Kwon parties' alleged interference with the JVA. But MDTV and PGA have not demonstrated that acquisition of mortgages by assignment constituted tortious interference with the JVA. See Patel v. Soriano, 369 N.J. Super. 192, 242 (App. Div. 2004) (setting forth the elements for a claim of tortious interference with economic advantage); Dello Russo v. Nagel, 358 N.J. Super. 254, 268 (App. Div. 2003) (setting forth the elements for a claim of tortious interference with contract).

As a threshold matter in a breach-of-fiduciary-duty claim, the party alleging the breach must establish the existence of a fiduciary relationship. Namerow v. PediatriCare Assocs., LLC, 461 N.J. Super. 133, 146 (Ch. Div. 2018). "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." F.G. v. MacDonell, 150 N.J. 550, 563 (1997). As the judge correctly held, MDTV and PGA failed to establish the existence of a fiduciary relationship between them and the Kwon parties.

MDTV's and PGA's civil-conspiracy claim against the Kwon parties also fails as a matter of law.

[A] civil conspiracy is "a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damage."

[Banco Popular N. Am. v. Gandi, 184 N.J. 161, 177 (2005) (quoting Morgan v. Union Cnty. Bd. of Chosen Freeholders, 268 N.J. Super. 337, 364 (App. Div. 1993)).]

To prevail on a civil-conspiracy claim, a party must "establish that defendants committed an unlawful act or a wrong against him that constitutes a tort entitling him to a recovery." G.D. v. Kenny, 205 N.J. 275, 312 (2011). In the civil-conspiracy claim pleaded in the third amended third-party complaint, MDTV and PGA allege the Kwon parties entered into an agreement with Woodstone, Daniels, and Bak to deprive them of their rights under the JVA and to the properties. On appeal, MDTV and PGA argue Kwon and Daniels "had to be acting in concert, as there is no reasonable explanation for why they both continued to withhold material information from MDTV, PGA, and the trial court." That conclusory assertion is not enough to defeat the Kwon parties' summary-judgment motion. See Dickson, 458 N.J. Super. at 533. Moreover, as

the judge found, MDTV and PGA did not establish the Kwon parties' alleged withholding of information was unlawful.

For all of these reasons, we affirm the order granting the Kwon parties' motion and cross-motion for summary judgment and denying MDTV's and PGA's summary-judgment motion. Having affirmed the summary-judgment order, we also affirm the order denying MDTV's and PGA's motion for reconsideration and the order entering final judgment pursuant to the summary-judgment order.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION