

March 31, 2023

Hon. Robert J. Mega, P.J.Ch.

ORDER PREPARED BY COURT

IRFAN HASSAN AND LITTLE MASON  
PROPERTIES, LLC,

Plaintiffs,

v.

MARC-ROLAND THEOPHILE, EIGHT  
COPELAND ROAD GROUP, LLC; JEST  
HOLDINGS, LLC; REVOLVING  
MORTGAGE INVESTMENT TRUST 2017-  
BRQ1, by U.S. BANK NATIONAL  
ASSOCIATION, AS TRUSTEE; U.S. BANK  
NATIONAL ASSOCIATION as trustee for  
VELOCITY COMMERCIAL CAPITAL  
LOAN TRUST 2018 a/k/a U.S. BANK  
NATIONAL ASSOCIATION as trustee for  
VELOCITY COMMERCIAL CAPITAL  
LOAN TRUST 2018-1; U.S. BANK  
NATIONAL ASSOCIATION as trustee for  
VELOCITY COMMERCIAL CAPITAL  
LOAN TRUST 2018-2; WILMINGTON  
SAVINGS FUND SOCIETY, FSB d/b/a  
CHRISTIANA TRUST, as certificate trustee for  
NRP MORTGAGE TRUST 1; LH-NP-STRAT  
DELAWARE OWNER TRUST; U.S. BANK,  
N.A., as indenture trustee for VCC 2022MC-1  
TRUST AND VELOCITY COMMERCIAL  
CAPITAL, LLC; EDDY JEAN JACQUES, 1ST  
RATE TITLE AND SETTLEMENT  
SERVICES, LLC; EDWARD MCCLOUD;  
CLOSE NOW, LLC; ANTHONY BARBER

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
UNION COUNTY  
DOCKET NO.: C-5-20

**FINAL JUDGMENT PURSUANT**

**TO R. 4:42-2**

**THIS MATTER** having come before the Court initially by way of Plaintiffs Irfan Hassan and Little Mason Properties’ (collectively “Plaintiffs”) Fourth Amended Complaint against the defendants, Marc-Roland Theophile; Eight Copeland Road Group, LLC, (collectively, The “Theophile Defendants”); as well as JEST Holdings, LLC; Revolving Mortgage Investment Trust 2017-BRQ1, by U.S. Bank National Association, as Trustee; U.S. Bank National Association as Trustee for Velocity Commercial Capital Loan Trust 2018; U.S. Bank National Association as Trustee for Velocity Commercial Capital Loan Trust 2018-2; Wilmington Savings Fund Society,

FSB d/b/a Christiana Trust, not in its individual capacity, but solely in its capacity as Certificate Trustee for NRP Mortgage Trust 1; Napier Park LH-NP-Strat Delaware Owner Trust and LH-NP-Strat Delaware Owner Trust (collectively, the “Lender Defendants”); and an answer containing counterclaims and crossclaims having been filed by the Theophile Defendants and the Lender Defendants; and for good cause having been shown:

**IT IS** on this 31<sup>st</sup> day of March 2023:

**ORDERED** that Plaintiffs’ Count One (Quiet Title), Count Two (Ejectment), Count Six (Negligence), Count Seven (Negligence), and Count Eight (Negligent Misrepresentation) seeking relief against the Lender Defendants are herein **DENIED** for reasons set forth in the attached opinion; and it is

**ORDERED** that Plaintiffs’ Count One (Quiet Title), Count Two (Ejectment), Count Three (Fraud), Count Four (Tortious Interference), and Count Five (Conspiracy) seeking relief against the Theophile Defendants are herein **DENIED** for reasons set forth in the attached opinion; and it is

**ORDERED** that the Theophile Defendants’ counterclaim Count One (Unjust Enrichment) and Count Two (Breach of Contract) seeking relief against the Plaintiffs are herein **DENIED** for reasons set forth in the attached opinion; and it is

**ORDERED** that the Lender Defendants’ Count One (Equitable Mortgage) and Count Two (Equitable Subrogation) seeking relief against Plaintiffs are herein **DENIED as moot** for reasons set forth in the attached opinion; and it is

**ORDERED** that the Lender Defendants’ Count Three (Unjust Enrichment) seeking relief against Plaintiffs is herein **DENIED** for reasons set forth in the attached opinion; and it is

**ORDERED** that the Lender Defendants’ crossclaims Count One (Fraud) and Count Two (Negligence) as well as crossclaims for contribution and indemnification seeking relief against the Theophile Defendants are herein **DENIED** for reasons set forth in the attached opinion; and it is

**ORDERED** that all applications for an award of attorneys' fees and costs are herein **DENIED** for reasons set forth in the attached opinion; and

**IT IS FURTHER ORDERED** that a copy of this Order be served upon all Parties upon uploading to eCourts.

/s/ Robert J. Mega  
HON. ROBERT J. MEGA, P.J.Ch.

See attached trial opinion.

IRFAN HASSAN and LITTLE MASON  
PROPERTIES, LLC,

Plaintiffs,

v.

MARC-ROLAND THEOPHILE, et al,  
Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
EQUITY PART  
UNION COUNTY  
DOCKET NO.UNN-C-05-20

### **TRIAL OPINION**

Argued: January 5, 2023 through February 22, 2023

Decided: March 31, 2023

The following attorneys are counsel of record:

Ronald L Davison, Esq. as Counsel for Plaintiffs Irfan Hassan and Little Mason Properties, LLC;

Avram White, Esq as Counsel for Defendants Marc Roland Theophile and Eight Copeland Road Group;

Michael O'Donnell, Esq.; Bethany Abele, Esq; Kori Pruett, Esq. as counsel for JEST Holdings, LLC; Revolving Mortgage Investment Trust 2017-BRQ1, by U.S. Bank National Association, as Trustee; U.S. Bank National Association as Trustee for Velocity Commercial Capital Loan Trust 2018; U.S. Bank National Association as Trustee for Velocity Commercial Capital Loan Trust 2018-2; Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity, but solely in its capacity as Certificate Trustee for NRP Mortgage Trust 1; Napier Park LH-NP-Strat Delaware Owner Trust and LH-NP-Strat Delaware Owner Trust;

Defendant Eddie Jean Jacques has no counsel of record. Eddie Jean Jacques is in default and did not answer or otherwise appear at trial.

By: The Honorable Robert J. Mega, P.J.Ch.

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### **PARTY CLAIMS AND RELIEF SOUGHT**

The present matter before the Court is Plaintiffs Irfan Hassan and Little Mason Properties' Fourth Amended Complaint against the defendants, Marc-Roland Theophile; Eight Copeland Road Group, LLC, (Collectively, The "Theophile Defendants"); as well as JEST Holdings, LLC; Revolving Mortgage Investment Trust 2017-BRQ1, by U.S. Bank National Association, as Trustee; U.S. Bank National Association as Trustee for Velocity Commercial Capital Loan Trust 2018; U.S. Bank National Association as Trustee for Velocity Commercial Capital Loan Trust 2018-2; Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity, but solely in its capacity as Certificate Trustee for NRP Mortgage Trust 1; Napier Park

LH-NP-Strat Delaware Owner Trust and LH-NP-Strat Delaware Owner Trust (collectively, the “Lender Defendants”).

Plaintiffs have put forth the following Counts as to the Lender Defendants: Count One (Quiet Title), Count Two (Ejectment), Count Six (Negligence), Count Seven (Negligence), and Count Eight (Negligent Misrepresentation). Furthermore, as to the Theophile Defendants, Plaintiffs have put forth the following Counts: Count One (Quiet Title), Count Two (Ejectment), Count Three (Fraud), Count Four (Tortious Interference), and Count Five (Conspiracy). As to the Theophile Defendants, Plaintiffs are seeking compensatory damages, punitive damages, as well as costs of suit and attorneys’ fees.

The Theophile Defendants have put forth the following Counterclaims against Plaintiffs: Count One (Unjust Enrichment) and Count Two (Breach of Contract). Amongst other relief, the Theophile Defendants are seeking compensatory damages, punitive damages, as well as costs of suit and attorneys’ fees from the Plaintiff. As for their cross claims, the Theophile Defendants previously sought contribution and indemnification from the other Defendants in this action. However, this claim was resolved as to the Lender Defendants via a consent judgment entered on the note and guaranty. As for Eddie Jean Jacques, this claim was withdrawn on the record.

The Lender Defendants have put forth the following Counterclaims against Plaintiffs: Count One (Equitable Mortgage), Count Two (Equitable Subrogation), Count Three (Unjust Enrichment). The Lender defendants are also seeking an award of costs of suit and attorneys’ fees from the Plaintiff based on these claims. As to the Theophile Defendants, the Lender Defendants are seeking contribution and indemnification, and they have put forth the following Crossclaims: Count One (Fraud) and Count Two (Negligence). Based on these crossclaims, the Lender Defendants are seeking compensatory damages, punitive damages, as well as costs of suit and attorneys’ fees from the Theophile Defendants.

### **EVIDENTIARY FINDINGS**

The Court has entered the following items into evidence based upon findings by the Court and/or stipulation from the parties. A stipulation is when the parties have agreed to certain facts. The Court should treat these facts as undisputed, i.e., the parties agree that these facts are true. As with all evidence, undisputed facts can be accepted or rejected by the Court in reaching a decision.

#### **Joint Exhibits:**

J-1: Cover Letter, Certificate of Formation, and Operating Agreement for Little Mason Properties

J-2: Little Mason Properties Operating Agreement Registered with New Jersey  
J-3: 6/23/17 Email from Theophile to Tom McGrath and Irfan Hassan  
J-4: 7/10/17 Email from Theophile to Hassan  
J-5: 2014 Deed for 5 Barber Street, Little Falls, NJ  
J-6: 2014 Deed for 31 Highland Ave, Passaic, NJ  
J-17: 2013 Deed for 840 Martin Street, Elizabeth, NJ  
J-18: 2011 Deed for 904 Third Avenue, Elizabeth, NJ  
J-22: 2018 Corrective Deed for 1576 Maple Ave, Hillside, NJ  
J-24: 2015 Deed for 5 Barber Street, Little Falls, NJ  
J-27: 2014 Deed for 52 Lincoln Street, Passaic, NJ  
J-28: 2015 Deed for 70 Crest Drive, South Orange, NJ  
J-29: 2014 Deed for 84 Heckel Street, Belleville, NJ  
J-30: 2015 Deed for 306 Court Street, Elizabeth, NJ  
J-31: 2015 Deed for 345 Harrison Street, Passaic, NJ  
J-32: 2014 Deed for 840 Martin Street, Elizabeth, NJ  
J-33: 2015 Deed for 904 Third Avenue, Elizabeth, NJ  
J-34: 2014 Deed for 913 Bond Street, Elizabeth, NJ  
J-35: 2015 Deed for 918 Anna Street, Elizabeth, NJ  
J-36: 2015 Deed for 1062 William Street, Elizabeth, NJ  
J-37: Conditional Loan Proposal for 84 Heckel Street

J-38: Conditional Loan Proposal for 5 Barber Street  
J-39: Conditional Loan Proposal for 1576-80 Maple Ave  
J-40: Closing Ledger for 1576-80 Maple Ave & 203 Williamson Ave  
J-41: 2018 Deed for 5 Barber Street, Little Falls, NJ  
J-42: 2018 Deed for 31 Highland Ave, Passaic, NJ  
J-43: 2015 Deed for 33 Riveredge Drive, Fairfield, NJ  
J-44: 2018 Deed for 34 William Street, Wayne Township, NJ  
J-45: 2018 Deed for 35 Oak Street, Lincoln Park, NJ  
J-46: 2018 Deed for 52 Lincoln Street, Passaic, NJ  
J-47: 2018 Deed for 70 Crest Drive, South Orange, NJ  
J-48: 2018 Deed for 4 Heckel Street, Belleville, NJ  
J-49: 2018 Deed for 228 70<sup>th</sup> Street, Guttenberg, NJ  
J-50: 2018 Deed for 306 Court Street, Elizabeth, NJ  
J-51: 2018 Deed for 345 Harrison Street, Passaic, NJ  
J-52: 2018 Deed for 555 Jefferson Ave, Elizabeth, NJ  
J-53: 2018 Deed for 840 Martin Street, Elizabeth, NJ  
J-54: 2018 Deed for 904 Third Avenue, Elizabeth, NJ  
J-55: 2018 Deed for 913 Bond Street, Elizabeth, NJ  
J-56: 2018 Deed for 918 Anna Street, Elizabeth, NJ  
J-57: 2018 Deed for 1062 William Street, Elizabeth, NJ

J-58: 2018 Deed for 1576-80 Maple Ave, Hillside, NJ  
J-59: First Source Appraisal, LLC Appraisal Report  
J-61: Foreclosure Case Documents  
J-62: 7/21/17 Email from Irfan Hassan to Marc Theophile  
J-63: Complaint for NJDEP v. Little Mason Properties & Irfan Hassan et. al.  
J-64: 6/16/17 Email from Irfan Marc Hassan to Theophile  
J-65: 6/25/17 Email from Marc Theophile to Tom McGrath and Irfan Hassan  
J-66: 6/29/17 Email from Marc Theophile to Irfan Hassan  
J-67: 7/21/17 Email from Irfan Hassan to Marc Theophile  
J-68: 7/10/17 Email from Irfan Hassan to Marc Theophile  
J-69: 1/16/18 Email from Irfan Hassan to Marc Theophile  
J-70: 3/6/18 Email from Marc Theophile to Irfan Hassan  
J-71: 4/13/18 Marc Theophile to Irfan Hassan  
J-73: 2018 Deed for 33 Riveredge Drive, Fairfield, NJ  
J-74: 2/10/18 Email from Marc Theophile to Irfan Hassan  
J-75: Checks for Deed Transfers  
J-76: 2015 Deed for 228 70<sup>th</sup> Street, Guttenberg, NJ  
J-77: HUD Statement for 228 70<sup>th</sup> Street  
J-78: 9/26/17 Email from Irfan Hassan to Brad Spingarn  
J-79: 1/30/18 Email from Marc Theophile to Irfan Hassan  
J-81: HUD Statement for 913 Bond Street

J-82: 2/11/18 Audio Recording  
J-90: 2/22/18 Email from Marc Theophile to Irfan Hassan  
J-91: Texts between Irfan Hassan and Marc Theophile  
J-92: WhatsApp Messages between Irfan Hassan and Marc Theophile  
J-93: 9/25/17 Email from Brad Spingarn to Irfan Hassan  
J-98: 6/23/17 Email from Marc Theophile to Irfan Hassan  
J-99: 6/23/17 Email from Marc Theophile to Tom McGrath and Irfan Hassan  
J-100: 6/25/17 Email from Marc Theophile to Tom McGrath and Irfan Hassan  
J-101: 6/26/17 Email from Tom McGrath to Irfan Hassan  
J-102: 7/12/18 Email from Marc Theophile to Irfan Hassan  
J-103: 7/10/17 Email from Ian Hardcastle to Marc Theophile  
J-104: 8/3/17 Email from Marc Theophile to Irfan Hassan  
J-105: 8/5/17 Email from Marc Theophile to Irfan Hassan and Tom McGrath  
J-106: 8/7/17 Email from Marc Theophile to Irfan Hassan  
J-107: 12/28/17 Email from Marc Theophile to Irfan Hassan  
J-108: 12/29/17 Email from Leiby Nisen to Irfan Hassan  
J-109: 1/24/18 Email from Marc Theophile to Irfan Hassan  
J-110: 1/25/18 Email from Marc Theophile to Irfan Hassan  
J-111: 2/7/18 Email from Marc Theophile to Irfan Hassan

J-112: 7/21/17 Email from Irfan Hassan to Marc Theophile  
 J-113: 2/7/18 Email from Email from Marc Theophile to Irfan Hassan  
 J-114: 3/23/18 Email from Marc Theophile to Irfan Hassan  
 J-115: 3/29/19 Email from Marc Theophile to Irfan Hassan  
 J-116: 2/5/18 Email from Marc Theophile to Irfan Hassan  
 J-129: 1/30/18 Email from Marc Theophile to Irfan Hassan  
 J-147: 6/28/17 Email from Irfan Hassan to Marc Theophile  
 J-150: PSEG Agreement to Discharge Lien Against 1576 Maple Ave  
 J-158: 6/16/17 email from Irfan Hassan to Marc Theophile  
 J-159: 3/6/18 Email from Irfan Hassan to Marc Theophile  
 J-160: 1/16/18 Email from Irfan Hassan to Marc Theophile  
 J-170: Conditional Loan Approval for 31 Highland Avenue  
 J-171: Conditional Loan Approval for 904 3<sup>rd</sup> Avenue  
 J-172: Conditional Loan Approval for 913 Bond Street  
 J-173: Conditional Loan Approval for 5 Barber Street  
 J-174: Conditional Loan Approval for 840 Martin Street  
 J-175: Conditional Loan Approval for 1062 William Street  
 J-176: Conditional Loan Approval for 555 Jefferson Ave  
 J-177: Conditional Loan Approval for 33 Riveredge Drive  
 J-178: Conditional Loan Approval for 31 Highland Ave

J-179: 35 Oak Street Foreclosure Judgment  
 J-180: 5 Barber Street Mortgage  
 J-181: 5/21/18 Velocity Term Note  
 J-182: Guaranty for 5 Barber Street  
 J-183: 31 Highland Ave Mortgage  
 J-184: 6/6/18 Velocity Term Note  
 J-185: Guaranty for 31 Highland Ave  
 J-186: 33 Riveredge Drive Mortgage  
 J-187: 7/6/18 Velocity Term Note  
 J-188: Guaranty for 33 Riveredge Drive  
 J-189: 34 William Street Mortgage  
 J-190: 5/21/18 Velocity Term Note  
 J-191: Guaranty for 34 William Street  
 J-192: 35 Oak Street Mortgage  
 J-193: 7/6/18 Velocity Term Note  
 J-194: Guaranty for 25 Oak Street  
 J-195: 52 Lincoln Street Mortgage  
 J-196: 4/30/18 Velocity Term Note  
 J-197: Guarantee for 52 Lincoln Street  
 J-198: 70 Crest Drive Mortgage  
 J-199: 5/29/18 Velocity Term Note  
 J-200: Guaranty for 70 Crest Drive  
 J-201: 84 Heckel Street Mortgage  
 J-202: 4/30/18 Velocity Time Note  
 J-203: Guaranty for 84 Heckel Street  
 J-204: 228 70<sup>th</sup> Street Mortgage  
 J-205: 5/21/18 Velocity Term Note  
 J-206: guaranty for 228 70<sup>th</sup> Street  
 J-207: 306 Court Street Mortgage  
 J-208: 4/30/18 Velocity Time Note  
 J-209: Guaranty for 306 Court Street  
 J-210: Mortgage for 345 Harrison Ave  
 J-211: 5/21/18 Velocity Term Note  
 J-212: Guaranty for 345 Harrison Ave  
 J-213: 555 Jefferson Ave Mortgage  
 J-214: 5/21/18 Term Note  
 J-215: Guaranty for 555 Jefferson Ave  
 J-216: 840 Martin Street Mortgage  
 J-217: 7/6/18 Velocity Term Note



J-218: Guaranty for 840 Martin Street  
J-219: 904 Third Ave Mortgage  
J-220: 7/6/18 Velocity Term Note  
J-221: Guaranty for 904 Third Ave  
J-222: 913 Bond Street Mortgage  
J-223: 5/4/18 Velocity Time Note  
J-224: Guaranty for 913 Bond Street  
J-225: 918 Anna Street Mortgage  
J-226: 4/30/18 Velocity Time Note  
J-227: Guaranty for 918 Anna Street  
J-228: 1062 William Street Mortgage  
J-228a: 1062 William Street Mortgage  
J-228b: 1062 William Street Mortgage  
J-229: 7/6/18 Velocity Term Note  
J-231: 2018 Recorded Mortgage for  
1576-80 Maple Ave and 203  
Williamson Ave  
J-232: 3/28/18 Promissory Note  
J-233: HUD Statement for 33 Riveredge  
Drive  
J-234: HUD Statement for 35 Oak Street  
J-235: HUD Statement for 850 Martin  
Street  
J-236: HUD Statement for 1062  
William Street  
J-237: Sheriff's Deed for 35 Oak Street  
J-238: 4/12/18 Email from Marc  
Theophile to Irfan Hassan  
J-239: Guaranty for 1576-80 Maple Ave  
and 203 Williamson Ave  
J-243: 3/23/18 Email from Marc  
Theophile to Irfan Hassan  
J-244: Alpha Realty Advisors Email for  
5 Barber Street  
J-245: Alpha Realty Advisors Email for  
913 Bond Street  
J-246: Alpha Realty Advisors Email for  
35 Oak Street  
J-247: Alpha Realty Advisors Email for  
306 Court Street

J-248: Alpha Realty Advisors Email for  
21 Busse Street  
J-249: Alpha Realty Advisors Email for  
228 70<sup>th</sup> Street  
J-250: Alpha Realty Advisors Email for  
1062 William Street  
J-251: 3/23/18 Email from Marc  
Theophile to Irfan Hassan  
J-252: Alpha Realty Advisors Email for  
210 Baltimore Ave  
J-253: 2018 Recording of 2015 Deed for  
33 Riveredge Drive  
J-254: 2015 Deed for 228 70<sup>th</sup> Street,  
Guttenberg, NJ  
J-255: 2015 Deed for 555 Jefferson Ave,  
Elizabeth, NJ  
J-280: HUD Statement for 5 Barber  
Street  
J-281: HUD Statement for 31 Highland  
Ave  
J-282: HUD Statement for 33 Riveredge  
Drive  
J-283: HUD Statement for 34 William  
Street  
J-284: HUD Statement for 35 Oak Street  
J-285: HUD Statement for 52 Lincoln  
Street  
J-286: HUD Statement for 70 Crest  
Drive  
J-287: HUD Statement for 84 Heckel  
Street  
J-288: HUD Statement for 228 70<sup>th</sup>  
Street  
J-289: HUD Statement for 306 Court  
Street  
J-290: HUD Statement for 345 Harrison  
Ave  
J-291: HUD Statement for 555 Jefferson  
Ave

J-292: HUD Statement for 840 Martin Street  
J-293: HUD Statement for 904 Third Ave  
J-294: HUD Statement for 918 Anna Street  
J-295: HUD Statement for 1062 William Street  
J-296: Affidavit of Title for 5 Barber Street  
J-297: Affidavit of Title for 31 Highland Ave  
J-298: Affidavit of Title for 33 Riveredge Drive  
J-299: Affidavit of Title for 34 William Street  
J-300: Affidavit of Title for 35 Oak Street  
J-301: Affidavit of Title for 52 Lincoln Street  
J-302: Affidavit of Title for 70 Crest Drive  
J-303: Affidavit of Title for 84 Heckel Street  
J-304: Affidavit of Title for 228 70<sup>th</sup> Street  
J-305: Affidavit of Title for 306 Court Street  
J-306: Affidavit of Title for 345 Harrison Street  
J-307: Affidavit of Title for Affidavit of Title for 555 Jefferson Ave  
J-308: Affidavit of Title for 840 Martin Street  
J-309: Affidavit of Title for 904 Third Ave  
J-310: Affidavit of Title for 913 Bond Street  
J-311: Affidavit of Title for 918 Anna Street

J-312: Affidavit of Title for 1062 William Street  
J-313: Affidavit of Title for 1576-80 Maple Ave & 203 Williamson Ave

**Plaintiff's Exhibits:**

P-3: Patch of Land Finance Proposal and MT Cover Email  
P-5: 10/5/17 Email from Brad Spingarn to Irfan Hassan  
P-6: 10/5/17 Email from Brad Spingarn to Irfan Hassan  
P-8: Emails from 2/22/18 to 3/9/18 Between Joseph Teichman and others  
P-9: 3/29/18 Email from Marc Theophile to Irfan Hassan  
P-18: Fraud Complaint Filed by JEST against Marc Theophile  
P-21: Acceleration Letter Executed by JEST  
P-22: Loan History Schedule for 3/28/18 Promissory Note  
P-32: Plaintiff's Initial Interrogatories to Defendants Marc Theophile and Eight Copeland Road Group  
P-37: 5 Barber Street Commitment for Title Insurance  
P-38: 31 Highland Ave Commitment for Title Insurance  
P-39: 33 Riveredge Drive Commitment for Title Insurance  
P-40: 34 William Street Commitment for Title Insurance  
P-41: 35 Oak Street Commitment for Title Insurance  
P-42: 52 Lincoln Street Commitment for Title Insurance  
P-43: 70 Crest Drive Commitment for Title Insurance

P-44: 84 Heckel Street Commitment for Title Insurance  
P-45: 228 70<sup>th</sup> Street Commitment for Title Insurance  
P-46: 306 Court Street Commitment for Title Insurance  
P-47: 345 Harrison Street Commitment for Title Insurance  
P-48: 555 Jefferson Ave Commitment for Title Insurance  
P-49: 840 Martin Street Commitment for Title Insurance  
P-50: 904 Third Ave Commitment for Title Insurance  
P-51: 913 Bond Street Commitment for Title Insurance  
P-52: 918 Anna Street Commitment for Title Insurance  
P-53: 1062 William Street Commitment for Title Insurance  
P-54: 1576-80 Maple Ave & 203 Williamson Ave Commitment for Title Insurance  
P-55: 7/21/17 Email from Marc Theophile to Irfan Hassan  
P-56: 7/21/17 Email from Irfan Hassan to Marc Theophile  
P-57: 7/21/17 Email from Irfan Hassan to Marc Theophile  
P-58: Joint Statement of Stipulated Facts  
P-62: Signature Packet for 1576-80 Maple Ave sent to Irfan Hassan  
P-63: WhatsApp Messages Between Irfan Hassan and Marc Theophile (with attachments omitted)  
P-64: Conditional Loan Approvals  
P-65: Eight Copeland Road Group Operating Agreement  
P-66: 284 Mendham Road LLC Bank Records

P-67: 5/1/18 Settlement Statement  
P-68: 6/15/18 Email from Irfan Hassan to Roman Drukarov  
P-69: 9/14/17 Email from Irfan Hassan to Marc Theophile  
P-70: 4/19/18 Email from Richard Azikiwe to Irfan Hassan  
P-71: South Orange Lien Redemption  
P-72: Union Avenue Tax Paid 2016  
P-73: 840 Martin Street Lien Redemption Work Sheet  
P-74: 423 Catherine Street Lien Redemption Work Sheet  
P-75: 161 Union Ave Lien Redemption Work Sheet  
P-76: 110 E Woodcliffe Ave Lien Redemption Spreadsheet  
P-77: 69 Third Street Tax Sale Certificate  
P-78: 196 Autumn Street Tax Sale Certificate  
P-79: 1138 Knoll Road Tax Lien Calculation  
P-80: 297 Sherman Street Lien Redemption Work Sheet  
P-81: 297 Sherman Street Lien Redemption Work Sheet  
P-82: 218 Summer Street Tax Sale Certificate  
P-83: 246-248 Avenue C Tax Redemption Receipt  
P-84: Bertha Avenue Payoff  
P-86: Guttenberg Mortgage Check  
P-87: Certified Check for \$23,000 & \$25,000  
P-88: Sanford Payoff Check  
P-89: Twp of South Orange Daily Receipts  
P-90: 7/15/18 Email with Hassan's Credit Card

P-91: 2/13/19 Email from Marc Theophile to Edward McCloud  
P-96: Text Messages Between Roman Drukarov and Irfan Hassan  
P-97: 7/9/18 Email from Edward McCloud to Richard Azikiwe  
P-98: Lender's Survey Endorsement  
P-99: 4/12/18 Judgment Search  
P-100: 4/19/18 Judgement Search  
P-101: 6/28/21 Deposition of Joseph Teichman

**Defendants' Exhibits:**

D-5: 10/22/19 Transcript of Motion for F-6630-19; F-6631-19; F-6815-19  
D-9: 10/17/18 Letter from Michael Aquino  
D-10: Marc Theophile and Eight Copeland Road Group's Responses to Plaintiffs' Initial Interrogatories  
D-11: Bank of America Bank Statement for Little Mason Properties Acct. No. 1515  
D-15: Text Messages Between Marc Theophile and Irfan Hassan  
D-16: Marc Theophile's Responses to Revolving Mortgage First Interrogatories  
D-17: Eight Copeland Road Group Operating Agreement  
D-18: Eight Copeland Road Group Certificate of Authority  
D-19: 3/27/18 Resolution  
D-20: 11/12/15 Assignment of EIN  
D-21: UNN-L-858-12 Release of Property from Judgment  
D-22: L-733-12 Release of Judgment Lien  
D-23: Marc Theophile's Responses to JEST Holding's First Interrogatories

D-26: Marc Theophile's Responses to Wilmington Savings First Interrogatories  
D-27: 7/9/18 Email to Richard Azikiwe  
D-28: 603 Nassau Street Foreclosure Judgment  
D-29: 1502 Oakland Avenue Foreclosure Judgment  
D-30: 145 Race Street Foreclosure Judgment  
D-31: 165 Florence Avenue Foreclosure Judgment  
D-32: 834 Grove Street Foreclosure Judgment  
D-33: 166 Jacques Street Foreclosure Judgment  
D-34: 139 Madison Avenue Foreclosure Judgment  
D-35: 1091 Sanford Avenue Foreclosure Judgment  
D-36: 816-26 West Grand Street Foreclosure Judgment  
D-46: 7/17/17 Email from Marc Theophile to Irfan Hassan  
D-47: 2/3/18 Email from Marc Theophile to Irfan Hassan  
D-48: 7/21/17 Email from Boris Grinberg to Marc Theophile  
D-49: 4/4/18 Email from Irfan Hassan to Marc Theophile  
D-51: 6/21/18 Email from Marc Theophile to Irfan Hassan  
D-52: 2/2/18 Email from Marc Theophile to Irfan Hassan  
D-53: 4/26/18 Email from Marc Theophile to Irfan Hassan  
D-54: 4/3/18 Email from Marc Theophile to Irfan Hassan  
D-55: 2/11/18 Email from Marc Theophile to Irfan Hassan

D-56: 6/20/18 Email from Marc Theophile to Irfan Hassan  
D-57: 4/16/18 Email from Marc Theophile to Irfan Hassan  
D-58: 4/4/18 Email from Marc Theophile to Irfan Hassan  
D-59: 1/18/18 Email from Marc Theophile to Irfan Hassan  
D-60: 3/6/18 Email from Marc Theophile to Irfan Hassan  
D-61: 2/7/18 Email from Marc Theophile to Irfan Hassan  
D-62: 7/21/17 Email from Marc Theophile to Irfan Hassan  
D-66: 4/12/18 Email from Marc Theophile to Irfan Hassan  
D-67: 2/13/18 Letter from First Rate Title  
D-68: List of Velocity Loans  
D-69: List of Tax Sale Certificates  
D-72: Payoff Statement for 33 Riveredge Drive  
D-73: Payoff Statement for 31 Highland Avenue  
D-74: Payoff Statement for 5 Barber Street  
D-75: Payoff Statement for 34 William Street  
D-76: Payoff Statement for 52 Lincoln Street  
D-77: Payoff Statement for 70 Crest Drive  
D-78: Payoff Statement for 84 Heckel Street  
D-79: Payoff Statement for 228 70<sup>th</sup> Street  
D-80: Payoff Statement for 306 Court Street  
D-81: Payoff Statement for 345 Harrison Street

D-82: Payoff Statement for 555 Jefferson Street  
D-83: Payoff Statement for 840 Martin Street  
D-84: Payoff Statement for 904 Third Avenue  
D-85: Payoff Statement for 913 Bond Street  
D-86: Payoff Statement for 918 Anna Street  
D-87: Payoff Statement for 1062 William Street  
D-89: 54 Lincoln Street Mortgage  
D-90: 185 Pennsylvania Ave Mortgage  
D-91: 246-248 Avenue C Mortgage  
D-92: 58 Augusta Street Mortgage  
D-93: 297 Sherman Street Mortgage  
D-94: 475 Stuyvesant Ave Mortgage  
D-95: 110 E Wood Cliff Ave Mortgage  
D-96: Certification of Richard Welch in Reply to Plaintiff's Motion for Summary Judgment  
D-100: 2018 Deed for 7 Wilbur Avenue, Lake Hiawatha, NJ  
D-105: 6/14/18 Email from Richard Azikiwe to Roman Drukarov  
D-106: 2022 Deed for 210 Baltimore Ave, Hillside, NJ  
D-107: 2015 Deed for 210 Baltimore Ave, Hillside, NJ  
D-108: Text Chain with Irfan Hassan  
D-109: 5/21/18 Velocity Term Note  
D-110: 5/21/18 Velocity Unlimited Guaranty  
D-111: 4/30/18 Settlement Statement  
D-112: 4/30/18 Settlement Statement  
D-113: 7/6/18 Settlement Statement  
D-114: 904 Third Ave Mortgage

## **EQUITABLE MAXIMS**

The Court is mindful of the following Equitable Maxims and Doctrines applying to the present matter:

### **I. Equity Regards That As Done Which Ought To Be Done**

As noted in Martindell v. Fiduciary Counsel:

[This maxim] is intimately related to the maxim that equity regards the substances and intent rather than the form; and it has been termed the foundation of all distinctively equitable property rights, estates and interests. . . .

Where an obligation rests on a party to perform a certain act, a court of equity will treat the party in whose favor the act should have been performed as having the same interest and right as if the act had actually been performed.

Martindell v. Fiduciary Counsel, 133 N.J. Eq. 408, 414 (E. & A. 1942).

### **II. He Who Seeks Equity Must Do Equity**

As noted in Natovitz v. Bay Head Realty Co.,

The maxim simply obliges the party seeking equitable relief to do what is required by conscience and good faith. It demands the enforcement of the equities of the adversary party. It applies only where the principles of equity may thereby be served. But courts of equitable cognizance may not create new substantive rights under the guise of doing equity. The equities which the moving party may be required to concede must exist in fact and be cognizable in law. The party seeking relief is not required to sacrifice his own rights. Equity may not, under this principle, alter the contract of the parties, but must enforce it according to its terms.

Natovitz v. Bay Head Realty Co., 142 N.J. Eq. 456, 463 (E. & A. 1948).

### **III. He Who Comes Into Equity Must Come With Clean Hands**

This maxim is based upon public policy and may be relaxed in the interests of fairness. Rasmussen v. Nielsen, 142 N.J. Eq. 657, 661 (E. & A. 1948). This maxim need not be raised by a party to the case; either a trial court or an appellate court on its own initiative can recognize this doctrine and apply the maxim where the circumstances so justify in the interest of justice and public policy. Trautwein v. Bozzo, 39 N.J. Super. 267, 268 (App. Div. 1956).

The doctrine, however, is not so rigid nor should it be so construed as to allow or permit an unconscionable gain to the wrongdoer at the complainant's expense. In cases of this kind the court should not invoke the principle where there has been no misrepresentation or fraud and the suitor has acted upon the advice of counsel. To permit such a windfall to the wrongdoer would do violence to equity and good conscience.

A. Hollander & Sons. V. Imperial Fur Blending Corp., 2 N.J. 235, 247 (1949).

### **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Direct evidence means evidence that directly proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact. On the other hand, circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn. An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence. It is not necessary that facts be proved by direct evidence. They may be proved by circumstantial evidence or by a combination of direct and circumstantial evidence. Both direct and circumstantial evidence are acceptable as a means of proof. Indeed, in many cases, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence. In any event, both circumstantial and direct evidence should be scrutinized and evaluated carefully. See State v. Allen, 308 N.J. Super. 421, 427-428 (App. Div. 1998).

### **CREDIBILITY FINDINGS**

In considering credibility of each witness, the Court considers the following factors:

- The appearance and demeanor of the witness;
- The manner in which he or she may have testified;
- The witness' interest in the outcome of the trial if any;
- His or her means of obtaining knowledge of the facts;
- The witness' power of discernment meaning his or her judgment - understanding;
- His or her ability to reason, observe, recollect and relate;
- The possible bias, if any, in favor of the side for whom the witness testified;
- The extent to which, if at all, each witness is either corroborated or contradicted, supported or discredited by other evidence;
- Whether the witness testified with an intent to deceive the Court;
- The reasonableness or unreasonableness of the testimony the witness has given;

- Whether the witness made any inconsistent or contradictory statement;
- And any and all other matters in the evidence which serve to support or discredit his or her testimony.

### **FALSE IN ONE – FALSE IN ALL**

Further, if the Court believes that any witness deliberately lied, on any fact significant to the Court's decision in this case, the Court has the right to reject all of that witness' testimony. However, in the Court's discretion, the Court may believe some of the testimony and not believe other parts of the testimony. This is commonly known as false in one, false in all. See State v. Ernst, 32 N.J. 567 (1960).

### **Credibility Findings**

The following witnesses testified at the trial: Irfan Hassan, Marc Roland Theophile, Brad Spingarn, Richard Azikiwe, Eddy Jean Jacques, Edward McCloud, and Roman Drukarov.

#### **Irfan Hassan**

Irfan Hassan (“Hassan”) was the first witness called to testify. Both Plaintiff and Defendants called Hassan in their cases in chief. Hassan is the Plaintiff in the present matter and therefore he has a direct financial interest in the outcome of this trial. As to his means of obtaining knowledge of the facts, Hassan had direct knowledge of the facts he testified about.

Regarding general observations of Hassan's testimony, the Court notes that Hassan was frequently disingenuous and evasive with his responses and demeanor. Hassan frequently tried to respond to questions posed by the Defendants either in a completely unresponsive manner or by attempting to reframe the question. He also frequently tried to claim that he was overwhelmed by his correspondence with Theophile and never opened or read several texts or emails between himself and other parties containing facts that were harmful to his position. These attempts to deny having received or viewed correspondence conveniently did not occur when it came to documents that supported Hassan's version of events. Furthermore, Hassan frequently refused to confirm the contents of documents that went against his interest. He often responded to simple and direct questions about what a document stated with an answer along the lines of “I never opened that document,” or “if that's what [the document] says.” The Court found these answers to be evasive and an example of either Hassan's bias or his inability to reason.

Regarding Hassan's possible bias in favor of the side for whom he testified, although Hassan was called as a witness by both sides, the Court finds that Hassan is biased in favor of



himself as he is the Plaintiff in the matter. His bias was apparent and observable, most notably when he was continuously reluctant to answer both simple and probing questions asked by the Defendants. This bias was also apparent when Hassan was repeatedly unable to recall facts about which he had just testified while being examined by his own attorney. Hassan also continuously tried to provide evasive answers to simple questions about the contents of documents being directly shown to him. As to the extent to which Hassan's testimony is contradicted by other evidence, the Court finds that a large portion of Hassan's testimony is contradicted by both his own testimony and the testimony of other credible witnesses. The contradictions within Hassan's own testimony will be further explored below. As to the reasonableness or unreasonableness of the testimony given, the Court again notes that Hassan frequently testified that he did not read emails or open attachments sent to him by others. The Court finds such to be unreasonable.

Regarding whether Hassan made any inconsistent or contradictory statements, the Court finds as follows. Throughout the initial days of Hassan's testimony, he repeatedly asserted that he and Theophile had no concrete plan in place regarding their business arrangement and that there was no agreement to transfer any interest in Little Mason Properties to Theophile. These initial assertions were directly contradicted by Hassan's July 21, 2017 email to Theophile in which he detailed his understanding of their arrangement at that time. (J-67) This understanding included an overall plan for Theophile to become a shareholder of Little Mason Properties and included an alleged provision that Theophile would receive additional compensation should he obtain a loan with a loan-to-value ratio of at least 60%. (J-67).

Hassan also testified that he and Little Mason Properties were not in financial distress and that he allowed the tax liens on one or more properties to remain unpaid and incur interest for four years at 18% interest. Hassan repeatedly asserted that allowing the tax liens to remain unpaid was a voluntary business decision. This testimony was inconsistent with the fact that at least six of Hassan's properties were lost in tax foreclosure in the years prior to the events in question. (D-28; D-29; D-30; D-31; D- 32; D-33). This testimony is further inconsistent with Hassan's prior assertions that he rejected numerous loan proposals provided to him by Theophile because the interest rates, which ranged from approximately 7.75% to 11%, were too high. Although Hassan later testified that his primary concern was the loan-to-value ratio, Hassan initially indicated that he was also heavily concerned about the interest rates.

Continuing, Hassan initially testified that only one of his properties, the property located in Gutenberg, New Jersey, had a mortgage on it prior to the events in question. This testimony was then contradicted by evidence of a mortgage that was outstanding on another of Hassan's properties, the July 7, 2009 Mortgage on the 52 Lincoln Street Property. In response, Hassan claimed that he simply forgot about this second mortgage during his prior testimony.

Regarding the registration of Little Mason Properties as an LLC in New Jersey, Hassan further asserted multiple times that he did not provide Theophile with permission to conduct this registration. This testimony is somewhat inconsistent with the statements Hassan made under oath on October 22, 2019, at a motion hearing in one of the related foreclosure matters in front of the Honorable Joseph P. Perfilio, J.S.C. (D-5). At that prior hearing, Hassan described a conversation in which Hassan asked Theophile how to register Little Mason Properties in New Jersey. In response, Hassan described how Theophile explained that registration could be done online and allegedly offered to take care of it for Hassan. (D-5; pages 63-64). At a minimum, this prior testimony indicates tacit permission and is otherwise inconsistent with Hassan's statements at trial.

The Court further notes that Hassan admitted to sending Theophile a blank word copy of Little Mason Properties Operating Agreement, a copy of his credit card, and numerous other pieces of identifying information that were ultimately used to register Little Mason Properties as a New Jersey LLC. The Court also recognizes that this information was freely provided despite Hassan having masters degrees in computer science and systems engineering, as well as approximately 15 years of experience working as a software engineer for the United States Department of Defense.

Finally, at various points during, his testimony Hassan asserted that he never gave Theophile any authority whatsoever to enter into any transaction on behalf of Hassan or Little Mason Properties. However, on recross Hassan was asked about Theophile's dealings regarding the lien held by PSE&G. After a degree of evasiveness, Hassan reluctantly agreed and testified that he did in fact give Theophile some authority to enter into at least one settlement agreement regarding the PSE&G lien.

Looking at Hassan's testimony under the totality of the circumstances, his testimony from his direct examination was oftentimes inconsistent with his subsequent testimony when being questioned by the Defense. Further, Hassan's testimony was frequently contradicted by that of the other credible witnesses. Thus, the charge of false in one false in all applies to Hassan's testimony. Accordingly, the Court does not find Irfan Hassan's testimony to be credible. Hassan's testimony

is unreliable primarily due to his selective attempts to claim ignorance as to both communications he appeared to be involved in as well as events going on around him without reasonable explication. Hassan also demonstrated a repeated inability to clearly answer direct and simple questions. For example, when presented with an April 12, 2018 email sent by Theophile to himself along with attached evidence of property insurance documents, Hassan was conveniently unable to read certain text that was somewhat overlapped while having no trouble reading other such overlapping text on the same document. (D-66) The Court notes that Hassan repeatedly insisted that he was unable to read the words “Velocity Commercial” on these documents despite those words only being partially obstructed and remaining plainly visible. Hassan also asserted that he previously had no knowledge of what the term “refi” or “refinance” meant in the context of this case despite those words appearing frequently in texts and emails he exchanged with other parties throughout the events at issue without demonstrating any confusion. Irfan Hassan’s repeated contradictions, frequent evasiveness, and often unsupported assertions throughout his testimony clearly demonstrate his lack of credibility to the Court.

#### **Marc Roland Theophile**

Marc Roland Theophile (“Theophile”) was called to testify by both Plaintiff and Defendants in their cases in chief. Theophile is a Defendant in the present matter and therefore he has a direct financial interest in the outcome of this trial. As to his means of obtaining knowledge of the facts, Theophile had direct knowledge of the facts he testified about.

During his direct examination, Theophile testified that he is the sole owner of both Eight Copeland Road Group (“ECRG”) and 284 Mendham Road LLC. Theophile confirmed that he entered into the loans at issue in this case and understood that in order to enter into these mortgages he or ECRG would have to hold title to the subject properties. On cross-examination, Theophile explained the circumstances surrounding his initial meeting with Hassan. Theophile testified that he and Hassan became friends and that, at the beginning of their relationship, Hassan had asked Theophile to help obtain loans on Hassan’s properties. Theophile asserted that he and Hassan messaged each other frequently through WhatsApp or email, though Theophile stated that the vast majority of their communication occurred over the phone.

Theophile testified that he and Hassan originally planned to complete two sets of loan packages. The first involved the residential properties owned by Hassan, and the second would involve Hassan’s commercial properties. Theophile stated during his cross-examination that early

on in their business relationship the two discussed ECRG being the borrower for the loans on Hassan's properties and Theophile being the guarantor. Theophile asserted that it was necessary for him to obtain the loans because Hassan had bad credit and would be otherwise unable to sell the properties or obtain a mortgage with favorable loan terms. Theophile continuously asserted that the parties ultimately agreed that in return for Theophile's efforts he would obtain these loans and, in return, receive \$2.5 million from the loan proceeds (which would be paid out from the various loan closings after paying off the ongoing liens on the parcels but before Hassan received the remaining loan proceeds).

Theophile repeatedly testified that he and Hassan were in constant communication throughout the process of obtaining the loans. Theophile described how Hassan provided Theophile with any information that was requested by the prospective lenders, helped organize and conduct appraisals on the properties, and provided financial support at various points during the application process. Theophile explained that this financial support included paying for the property appraisals, paying application fees, paying for the registration of Little Mason Properties in New Jersey, and paying off a portion of Theophile's personal credit card debt to further improve Theophile's credit score.

Regarding the registration of Little Mason Properties in New Jersey, Theophile asserted during cross-examination that he completed the registration of Little Mason Properties in New Jersey with Hassan's consent and while in continuous contact with Hassan over the phone. Theophile alleged that Hassan provided him with the blank word copy of Little Mason Properties' operating agreement. Theophile testified that he filled out the blank sections in the operating agreement and left a copy at Hassan's gas station for Hassan to review. Theophile stated numerous times that leaving documents and other items at the gas station was a method both Hassan and Theophile frequently used to pass said items to the other. After leaving a copy of the completed operating agreement at the gas station, Theophile claimed that Hassan called and told him to pick up the document. Theophile testified that upon picking up the document at the gas station, it had a signature on the line designated for Hassan. Theophile then stated that he then signed the document himself and had it notarized. Theophile asserted that he did not ask the notary to backdate this operating agreement and claimed that the notary did so on his own. Subsequently, Theophile stated that he completed the registration using the credit card provided by Hassan to pay the requisite fee.

Theophile also claimed that he sent documents that confirmed the registration to Hassan on June 29, 2017. (J-66).

Theophile spent a significant amount of time explaining the various steps that he took in fulfilling his role in the alleged business arrangement with Hassan. According to Theophile's testimony, these actions included negotiating and obtaining pay-off figures for a number of outstanding liens on both Hassan personally and Hassan's properties, seeking Hassan's input on the various loan term sheets that Theophile obtained from prospective lenders, setting up appraisals which were requested by the prospective lenders, providing a continuous stream of information obtained from Hassan to answer questions posed by lenders, obtaining bank records for Little Mason Properties, etc. Theophile repeatedly asserted that while taking these actions he was in constant communication with Hassan and had Hassan's continuous cooperation.

Theophile further confirmed during cross-examination that he recorded various deeds transferring title to the properties in question from Little Mason Properties to ECRG. Theophile insisted that the recording of these deeds occurred with Hassan's knowledge and at Hassan's direction. Theophile also admitted that in discussing the recording of the aforementioned deeds he asked whether Hassan wanted "seasoned deeds." Theophile testified that he understood this to mean backdating the deed and asserted that Hassan understood this meaning as well. Theophile further stated during his testimony that he informed Hassan of his intent to return title to the properties to Hassan after all of the loans closed. Theophile explained that he had no desire to retain ownership and thus have the responsibility to manage the properties.

Upon being questioned by his own attorney, Theophile stated that after he obtained the loans in question Theophile continued to make loan payments for approximately four to five months. Theophile said that he ceased making payments after all the liens on the properties were satisfied. Following this, Hassan allegedly confronted Theophile and demanded Theophile to turn over all of the remaining loan proceeds or Hassan warned that would go to the police. Continuing with his testimony, Theophile then reconfirmed that his agreement with Hassan involved Theophile receiving \$2.5 million from the loan proceeds in return for his efforts. Additionally, Theophile stated that on top of the aforementioned Little Mason Property deeds Hassan also directed Theophile to help file a deed transferring ownership of a property to one of Hassan's relatives, Yalda Naphzeda.

On subsequent redirect, Theophile testified that he has previously received a real estate agent license but has never obtained a license as a real estate appraiser. Theophile further stated that he owned approximately seven properties not related to the eighteen properties at issue in this case. Theophile admitted that his interrogatories stated that he owned 103 properties which is not accurate. Theophile attempted to explain that he believed the relevant question in the interrogatories to be asking how many properties he has ever bought or sold. Theophile then proceeded to describe his various business ventures in Haiti.

Continuing on, Theophile again testified about the events surrounding how he met Hassan and how the two began their business relationship. Theophile confirmed that Hassan did not directly receive any proceeds from the contested loans, that Theophile signed all the deeds transferring title to the properties from Little Mason Properties to ECRG, and that the date on the Operating Agreement used to register Little Mason Properties in New Jersey is indeed incorrect. Theophile then testified that while his original agreement with Hassan was that Theophile would retain ownership of the properties after the loans were all obtained, Theophile asserted that he changed his mind soon after and wanted to return ownership to Hassan so that the properties can simply be sold.

Theophile testified that Hassan needed Theophile to obtain the loans in his own name because Hassan's liens, and in particular the lien held by the Department of Environmental Protection against Hassan personally, prevented Hassan from being able to sell the properties or otherwise obtain a loan with favorable terms. Theophile agreed with Plaintiff's counsel that Theophile did not actually own the properties when he recorded the deeds transferring title away from Little Mason Properties, and Theophile agreed that he did not have the authority to freely make use of Hassan's or Little Mason Properties' funds without prior permission.

Regarding closings, Theophile confirmed that he received an email from Hassan stating that Hassan needed to provide express approval prior to any closings. Theophile asserted, however, that subsequent communications with Hassan indicated to him that Hassan did not actually require express approval. Additionally, Theophile also confirmed that several texts sent between himself and Hassan indicated that Hassan wished to be present for any and all loan closings, but Theophile again testified that subsequent texts indicated that Hassan wanted Theophile to just proceed with the closings as soon as possible. Theophile later stated that he also did not believe that Hassan

needed to be at the closings because Theophile thought the Operating Agreement filed with New Jersey made Theophile 99% owner of Little Mason Property.

Theophile testified that even after being confronted by Hassan and after Hassan demanded that Theophile hand over the loan proceeds obtained so far, Theophile still tried to convince Hassan to close on loan agreements for the remaining residential properties. Finally, Theophile confirmed that in addition to the original deal in which Theophile would receive \$2.5 million in compensation, he and Hassan agreed to other forms of compensation as well. Theophile stated that this additional compensation included Hassan's promise to provide Theophile with a Range Rover as a bonus upon the completion of the residential loans (Theophile had testified that Hassan had already provided him with a Nissan prior to this point). Theophile asserted that the promise of additional compensation did not indicate that their original agreement was never finalized and testified that the additional compensation was simple recognition that Theophile had to work much harder to obtain the contemplated loans than originally expected.

With respect to the credibility factors, the Court notes that Theophile was eager to answer questions asked of him by all parties. The Court recognizes that Theophile frequently went beyond the scope of the question or was somewhat off-topic. However, this appears to have been done in an attempt to provide even more information or context than was strictly requested rather than trying to avoid a question or admission. Furthermore, Theophile did occasionally show reluctance to answer certain questions asked of him by opposing counsel, although he indicated that this reluctance was due to a belief that opposing counsel was attempting to trick Theophile into admitting something that was not true. Overall Theophile's testimony was often consistent and reasonable, but he also demonstrated some inconsistencies at various points. For example, as was mentioned above, Theophile's testimony was at times inconsistent with the answers provided in his previous interrogatories. Additionally, the Court did not find Theophile's assertion that Eddie Jean Jacques just took it upon himself to backdate the notarization of the operating agreement (which itself was already backdated by Theophile) to be particularly credible. Accordingly, the Court finds that Marc Roland Theophile's testimony was mostly credible and corroborated by subsequent witness testimony as well as admitted evidence.

### **Brad Spingarn**

Brad Spingarn (“Spingarn”) was called to testify by both Plaintiff and Defendants in their cases in chief. Spingarn had direct knowledge of the facts he testified about based on his personal involvement with the parties and events in question.

Spingarn testified that he initially worked with Hassan to obtain conditional loan approvals for prospective loans on some of the properties owned by Little Mason Properties. Spingarn identified that Hassan subsequently introduced Theophile to Spingarn as Hassan’s friend and informed Spingarn that Theophile was going to be the one taking out the loans on the properties. Spingarn repeatedly testified that he believed that Hassan and Theophile were partners in their attempts to obtain loans on the properties owned by Little Mason Properties.

Following this, Spingarn testified that a cash-out refinance loan is an owner loan. Spingarn also stated that he was never informed that the prospective loans he was working on would involve a purchase of the properties in question. Spingarn attested that a borrower would have been required to disclose to the lender any interest in purchasing the property because a lender generally has to know the purpose of the loan transaction. Spingarn asserted that no lender would underwrite a loan and continue pursuing it if they later became aware that the loan also involved a purchase. Spingarn more specifically testified that Velocity likely would not have been able to conduct the refinance of the 70 Crest property (which was Hassan and his family’s personal residence) if Velocity had known that it was not actually a commercial rental property.

Spingarn further testified that when he was working with Hassan, Hassan appeared to be primarily concerned with maximizing the loan-to-value ratio for each property. However, Spingarn stated that Hassan’s credit situation disqualified him from being able to obtain certain loan products and certain favorable loan terms. Spingarn later testified that he did not speak to Hassan after Hassan confirmed that Theophile would be the one handling and obtaining the loans on the properties. Spingarn explained that if Theophile was indeed the main borrower then Spingarn had no need to deal with Hassan other than to obtain financing or assistance in scheduling the appraisals on the property.

With respect to the credibility factors, the Court is satisfied that the witness does not have a direct interest in the outcome of this trial. Addressing the witness’s means of obtaining knowledge of the facts, as well as his ability to reason, observe, recollect, and relate, Spingarn worked with both Hassan and Theophile to seek out loans on the properties owned by Little Mason



Properties. Spingarn also worked on helping Theophile obtain the allegedly wrongful loans that are at issue in this matter. The Court is satisfied that Spingarn has sufficient personal knowledge of the facts about which he testified. The Court further notes that Spingarn was very direct and clear regarding when he was unable to remember certain details or facts. He admitted on a few occasions that he was unable to remember details in response to questioning from both Plaintiff's and Defendants' attorneys. Accordingly, the Court finds that Brad Spingarn's testimony was credible.

### **Richard Azikiwe**

Richard Azikiwe ("Azikiwe") was called to testify by both Plaintiff and Defendants in their cases in chief. Azikiwe had direct knowledge of the facts that he testified about based on his personal involvement as Hassan's attorney during the period in which Hassan and Theophile were working together.

Azikiwe testified that he is a solo attorney licensed to practice law in the state of New Jersey. Azikiwe stated that he has represented Hassan, Hassan's family, and Little Mason Properties in various legal matters since approximately 2014 or 2015. Azikiwe claimed that he first became aware of Theophile in 2017 when Hassan asked Azikiwe to talk with a "loan officer" that ended up being Theophile. Azikiwe asserted that both Hassan and Theophile informed him of Theophile's status as a loan officer. Upon initially conversing with Theophile, Azikiwe stated that he told Hassan that Theophile was highly questionable and that Hassan should be cautious of Theophile's promises because Theophile was not a part of an institution and did not have an office.

Azikiwe then explained that in or around July of 2018, Hassan informed him that title to 1576 Maple Ave was no longer in either Hassan or Little Mason Properties' name. Azikiwe asserted that Hassan was hyperventilating and exasperated and asked Azikiwe to examine whether any other properties were transferred to another title holder. Azikiwe testified that he informed Hassan that title to the 18 properties at issue was transferred to ECRG. Following this discovery, Azikiwe said that he contacted both Theophile and McCloud to discuss the situation. Azikiwe asserted that McCloud provided him with all of the closing documents for the loans and informed Azikiwe of the various documents from which he concluded that Theophile had the authority to obtain the subject loans.

Azikiwe claimed that following these events, he went to Little Mason Property's bank with Theophile to review the transactions at issue in this case. Azikiwe testified that at this time

Theophile did not indicate whether any loan proceeds had been provided to Hassan. Azikiwe asserted that he never threatened Theophile in any capacity and said that he advised Hassan to go to the FBI regarding the loans at issue. Azikiwe also described Hassan as someone with a lot of experience with real estate transactions.

On cross-examination, Azikiwe confirmed that he had one initial conversation with Theophile and did not hear about him again until Hassan came to Azikiwe regarding the transfer of title to 1576 Maple Ave. Azikiwe further acknowledged that in or around the time Hassan met Theophile Hassan had trouble obtaining financing because Hassan had bad credit. Following this, Azikiwe contradicted Hassan's prior testimony by stating that Hassan never informed him that Theophile wanted to buy a portion of Little Mason Properties or purchase any of the properties in Hassan's real estate portfolio. Azikiwe further explained that following his initial conversation with Theophile, Azikiwe told Hassan that it was not advisable to deal with someone like Theophile and that Hassan needed a formal property manager for his properties.

Continuing on, Azikiwe stated that after directing Hassan to go to the FBI, Hassan indicated a preference to go to the local prosecutor instead. Azikiwe stated that Hassan believed the prosecutor had better advice. Azikiwe also confirmed that he initially advised Hassan to seek a freeze order, which Hassan declined to pursue. Azikiwe testified that he was involved with the sale of 84 Heckel Street and acknowledged that the deed for that transaction listed ECRG as the seller of the property. Finally, on redirect, Azikiwe agreed that the liens on Little Mason Properties' properties would have prevented them from being sold until the lien was satisfied as the DEP's lien would encumber all properties owned by Little Mason Properties.

With respect to the credibility factors, the Court is satisfied that the witness does not have a direct interest in the outcome of this trial. The Court does note that Azikiwe was counsel for Hassan during the events in question and has represented Hassan and Hassan's family in numerous actions. As such, much of the information Azikiwe testified about was based on details that Hassan chose to share with him and contains Hassan's sole perspective of the events. Addressing the witness's means of obtaining knowledge of the facts, as well as his ability to reason, observe, recollect, and relate, Azikiwe was involved at the outset and at the end of Hassan's business relationship with Theophile. The Court is satisfied that Azikiwe has sufficient personal knowledge of the facts and personal conversations about which he testified. The Court further notes that although Azikiwe appeared to show some reluctance to answer certain questions that were

unfavorable to Hassan, he ultimately provided direct and clear answers to all questions posed. Accordingly, the Court finds that Richard Azikiwe's testimony was credible.

### **Eddy Jean Jacques**

Eddy Jean Jacques ("Jacques") was called to testify by both Plaintiff and Defendants in their cases in chief. Jacques had direct knowledge of the facts that he testified about based on his personal involvement with Theophile.

Jacques testified that he is a public notary and met Theophile approximately six years ago. He confirmed that he notarized the Operating Agreement used to register Little Mason Properties in New Jersey. (J-2) Jacques admitted that he put the December 4, 2013 date on his signature notarizing the Operating Agreement. He acknowledged that this was an incorrect date but initially insisted that he did not know why he put this date. When pressed, Jacques said that "I just put it." Jacques testified that he did not know anything about the underlying transaction or relationship between Hassan and Theophile.

Throughout his testimony, Jacques was extremely inconsistent in stating that he did not know why he put the December 4, 2013 date on the Operating agreement, that he only put the incorrect date in order to match the date already on the Operating Agreement (not at Theophile's direction), and that he put the incorrect date because Theophile told him to do so. Jacques further confirmed his notary stamp on various deeds (J-22; J-73; J-255; D-100; and D-107) but he could not recall who brought the documents to him or any other details about his notarization of them.

With respect to the credibility factors, the Court finds that the witness does have a direct interest in the outcome of this trial as he is a defaulted defendant in the case. Addressing the witness's means of obtaining knowledge of the facts, as well as his ability to reason, observe, recollect, and relate, Jacques had personal knowledge of the events he testified about, however, he demonstrated either a very poor recollection of the events or alternatively attempted to deceive the Court. Jacques was questioned numerous times regarding why he put the wrong date on the Operating Agreement reflected in J-2. As mentioned above, Jacques gave three separate answers in response to this line of questioning. First Jacques said he could not recall. Second, Jacques asserted that he simply sought to match the date already on the document for a reason he was unable to explain. Finally, Jacques testified that he put the incorrect date on the document at the direction of Theophile. The Court recognizes that these three answers are contradictory and indicate either Jacques' suspect intentions or a faulty memory. Accordingly, the Court finds that

Eddie Jean Jacques' testimony lacked any credibility other than the fact that he admitted that he used the wrong date while notarizing the operating agreement. Thus, Eddie Jean Jacques' testimony will be disregarded entirely pursuant to the charge of false in one false in all.

### **Edward McCloud**

Edward McCloud ("McCloud") was called to testify by both Plaintiff and Defendants in their cases in chief. McCloud had direct knowledge of the facts that he testified about based on his personal involvement with the events at issue.

McCloud is the owner of First Rate Title and was the title agent for all 18 loan transactions at issue in this matter. McCloud testified that he had repeated involvement with Theophile through his work on the aforementioned loan transactions, but only knows Hassan as a result of the present litigation. McCloud stated that Theophile and ECRG were the borrowers for the loans that he was involved with, but McCloud also acknowledged that Little Mason Properties' name came up at various points during the title process.

McCloud was then asked about what process he took to ensure ECRG and Theophile had the authority to sign deeds for the subject properties and enter into the corresponding loans. McCloud testified that he obtained the certificate of formation for Little Mason Properties in Delaware and saw that it did not list its shareholders. McCloud further stated that he obtained the various New Jersey registration documents, which indicated that Theophile was the registered agent for Little Mason Properties. McCloud then asserted that he also had discussions with both Spingarn and Theophile. McCloud testified that, when considered in the totality, this information confirmed that Theophile was the controlling agent of Little Mason Properties and had the ability to pursue the loans at issue. Upon being questioned repeatedly about whether the Operating Agreement used to Register Little Mason Properties in New Jersey was sufficient by itself to support such a conclusion, McCloud consistently responded that it was a necessary piece but only one part of the whole picture and not sufficient by itself.

Continuing, McCloud was asked numerous questions about the details surrounding a portion of the loan proceeds being placed into escrow. McCloud testified that there originally was no escrow required for 1576 Maple Ave as there were sufficient loan proceeds to cover the lien. However, McCloud indicated that he informed Theophile that additional funds had to be escrowed after discovering that the lien on 1576 Maple Ave had risen sharply. McCloud explained that such an escrowing of funds was required to ensure JEST's position as first lien holder on various

properties. McCloud asserted that approximately \$600,000-\$800,000 was subsequently diverted from later loan disbursements and held in his escrow account to cover various liens, such as the DEP judgment, for ECRG (as ECRG was the listed owner of 1576 Maple Ave at that time). McCloud also testified that upon being contacted by Hassan at the outset of the litigation, he consolidated all of the escrowed funds into the account and ledger for 1576 Maple Ave. McCloud claimed that this was done for the sake of clarity and organization.

McCloud testified that throughout his involvement with obtaining the subject loans, he repeatedly requested and obtained additional information from Theophile as was needed. McCloud stated that upon being provided with the additional information, Theophile was very clear that the information ultimately came from Hassan. McCloud confirmed his understanding that Hassan knew about the subject loan transactions and that McCloud believed Theophile was authorized to act on behalf of Little Mason Properties. McCloud further asserted that he was never informed that any of the loan transactions ever involved the purchasing of the properties, as he believed them all to just be refinances.

With respect to the credibility factors, the Court is satisfied that the witness no longer has a direct interest in the outcome of this trial. The Court notes that McCloud was previously a defendant in this matter but was dismissed from the case on Summary Judgment. Addressing the witness's means of obtaining knowledge of the facts, as well as his ability to reason, observe, recollect, and relate, McCloud worked with Theophile over an extended period to obtain and later close on the allegedly fraudulent loans on the properties owned by Little Mason Properties. The Court is satisfied that McCloud has sufficient personal knowledge of the facts about which he testified. The Court further notes that McCloud was very direct and clear regarding when he was unable to remember certain details or facts. Accordingly, the Court finds Edward McCloud's testimony to have been credible.

### **Roman Drukarov**

Roman Drukarov ("Drukarov") was called to testify by both Plaintiff and Defendants in their cases in chief. Drukarov had direct knowledge of the facts that he testified about based on his personal involvement with the events at issue.

Drukarov testified that he met Hassan in 2017 when he saw a "for rent" sign on Hassan's gas station and asked if Hassan would like assistance in leasing out the space. Drukarov asserted

that marketing an office for lease inside Hassan's gas station was the first business dealing he had with Hassan.

Drukarov testified that he had a conversation with Hassan about whether Hassan had other properties that he would like to sell and for which Drukarov could provide assistance. Drukarov stated that Hassan told him that Hassan had other properties he was interested in selling. Drukarov confirmed that he received an email from Hassan with a list of Hassan's properties (P-68). Subsequently, Drukarov said that in looking into these properties he discovered that ownership of 1576 Maple Ave was not held in the name of Little Mason Properties. Drukarov later admitted on cross-examination that Hassan proceeded to look further into the ownership of 1576 Maple Ave and informed Drukarov that the property was listed as being owned by ECRG. Drukarov further confirmed that 70 Crest Drive was on the aforementioned list of properties, but he did not know if there was actually someone on the property paying \$7,000 per month in rent as was represented by Hassan.

With respect to the credibility factors, the Court is satisfied that the witness does not have a direct interest in the outcome of this trial. Addressing the witness's means of obtaining knowledge of the facts, as well as his ability to reason, observe, recollect, and relate, Drukarov only testified as to his personal interactions with Hassan. The Court is satisfied that Drukarov has sufficient personal knowledge of those facts dealing with events he was directly involved in. Accordingly, the Court finds that Roman Drukarov's testimony was credible.

### **FACTUAL FINDINGS**

The Court finds that Hassan and Theophile met in or around June or July of 2017. See Theophile's Testimony; J-91; J-92. Soon after meeting, it is apparent that the two parties came to an agreement to form an alliance/business relationship. See Theophile's Testimony; Spingarn's Testimony; J-91; J-92; J-67. As part of this business relationship, Theophile was to obtain loans using Little Mason Properties' residential properties as collateral. See Theophile's Testimony; Spingarn's Testimony; J-91; J-92; J-67. The Court further acknowledges that at this time it is uncontested that Little Mason Properties did not have a valid operating agreement filed in Delaware or any other state. See Hassan's Testimony; Theophile's Testimony; J-1; J-147. Pursuant to N.J.S.A. 42:2C-1 et. seq. (the "RULLC"), if there is no valid Operating Agreement or if the operating agreement does not otherwise outline rules for adding members to a pre-existing LLC, the rules outlined by the RULLC will apply. See N.J.S.A. 42:2C-11 & 31. The Court finds that

pursuant to N.J.S.A. 42:2C-31, Theophile was made an equitable, equal member of Little Mason Properties based on actions of Theophile and Hassan as well as the apparent and continuously evidenced agreement by all members of Little Mason Properties to mortgage, manage, or sell the real estate owned by Little Mason Properties (of which Hassan was previously the sole member). See N.J.S.A. 42:2C-31; Theophile's Testimony; Spingarn's Testimony; McCloud's Testimony; Azikiwe's Testimony; J-67; J-91; J-92. However, the Court recognizes that both Hassan and Theophile appear to agree that said membership was only intended to apply to the extent that Theophile was to collateralize certain residential properties. Hassan's Testimony, Theophile's Testimony; J-67; J-91; J-92. While Theophile contends that this arrangement was originally meant to apply to all residential properties owned by Hassan and Little Mason Properties, the fact that Theophile stopped seeking loans after the 18 properties at issue in this case were collateralized indicates that said arrangement was limited solely to those 18 properties. Hassan's Testimony, Theophile's Testimony; J-67; J-91; J-92. As such, the Court finds that Theophile did have the requisite authority to act on behalf of Little Mason Properties and otherwise enter into agreements approved by both himself and Hassan. See N.J.S.A. 42:2C-37; Equity Regards That As Done Which Ought To Be Done. Additionally, the Court finds that Theophile's equitable membership in Little Mason Properties extends only as to the 18 properties at issue in this case. Hassan's Testimony, Theophile's Testimony; J-67; J-91; J-92.

Based on the testimony provided by the various witnesses and documents entered into evidence, this Court finds that Irfan Hassan and Marc Theophile were acting in accordance with a common plan and agreement when entering into the 18 loans and mortgages at issue in this case. See Theophile's Testimony; Spingarn's Testimony; McCloud's Testimony; Azikiwe's Testimony; J-67; J-91; J-92. This Court further finds that Theophile was acting with Hassan's knowledge and approval when seeking loan proposals, when registering Little Mason Properties as an LLC in New Jersey, when transferring title to the subject properties from Little Mason Properties to Eight Copeland Road Group, and when entering into the contested loan agreements. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147; D-5.

## **LAW**

### **Quiet Title**

N.J.S.A. 2A:62-1, et seq., and R. 4:62 govern actions to quiet title. The primary purpose of a quiet title action is to allow a party who is in peaceful possession of real property to compel any

other person or entity, who asserts a hostile right or claim or is reputed to hold such right or claim, to judicial determination. Brookdale Park Homes, Inc. v. Bridgewater Township, 115 N.J. Super. 489, 496 (Ch. Div. 1971). The complaint in a quiet title action must describe the real property and describe the manner in which the party either acquired title or the right to possession. R. 4:62-1. A Plaintiff claiming quiet title must allege that they are in peaceable possession and that no lawsuit is pending to test the validity of defendant's claim. See N.J.S.A. 2A:62-1. Any defendant who claims an interest in the subject real property must specify in their answer the value of the claim and the manner and sources through which it was derived. R. 4:62-2. The final judgment should expressly state that the losing party has no interest in the property in question, should describe the property, and should adjudge that the prevailing party has an estate in fee simple. Wilomay Holding Co. v. Peninsula Land Co., 36 N.J. Super. 440 (App. Div. 1995).

"[In a quiet title action, a plaintiff] cannot prove their claim of title by relying on the weakness of defendant's title; rather they must establish their own superior right and title to the property." Brighton Constr., Inc. v. L & J Enterprises, Inc., 121 N.J. Super. 152, 163 (Ch. Div. 1972). "[The quiet title] remedy was designed only to remove clouds, disputes or doubts infecting an otherwise good chain of record ownership. It was not intended to permit a person to create title out of whole cloth or short cut the rigorous requirements of adverse possession to acquire title." Hyland v. Kirkman, 204 N.J. Super. 345, 369 (Ch. Div. 1985). "Allegations in a quiet title action of peaceable possession under a claim of ownership are the jurisdictional foundation of the equitable remedy. If those allegations are not proven, the action is dismissed, and the defendant's title [is] not put to trial." Id. at 370.

### Ejectment

N.J.S.A. 2A:35-1 states that "[a]ny person claiming the right of possession of real property in the possession of another, or claiming title to such real property, shall be entitled to have his rights determined in an action in the [county or] superior court." N.J.S.A. 2A:35-1 is intended to allow a remedy to one who claims title to property in the possession of another. Marder v. Realty Construction Co., 84 N.J. Super. 313, 321 (App. Div. 1964). The statute replaces the common-law action of ejectment and ordinarily is addressed to matters involving both claims to possession by a [landowner] as well as claims by him--real or constructive--to title to the realty. Aeon Realty Co. v. Arth, 144 N.J. Super. 309, 313, (App. Div. 1976) (citing Marder, 84 N.J. Super. at 321). Under N.J.S.A. 2A:35-1, a landowner can elect to pursue an action in the Superior Court claiming



title to real property or claiming the right to possession in lieu of an ejectment action, Gretkowski v. Wojciechowski, 26 N.J. Super. 245, 247, (App. Div. 1953), even when the wrongful possessor has been in possession for twenty years or more. J&M Land Co. v. First Union National Bank, 166 N.J. 493, 521 (2001).

The plaintiff in ejectment "has the burden of establishing his title, and if he fails to establish a good paper title the judgment must go against him." Perlstein v. Pearce, 12 N.J. 198, 204 (1953). "[T]he plaintiff must recover upon the strength of his own title, and . . . cannot rely upon the weakness of that of his adversary." Troth v. Smith, 68 N.J.L. 36, 37 (Sup. Ct. 1902); Brighton Constr., Inc. v. L & J Enters., Inc., 121 N.J. Super. 152, 163 (Ch. Div. 1972). If the plaintiff "fails to support his own title, the defendant will retain possession until he is ousted by someone who has a superior title." Troth, 68 N.J.L. at 37.

#### Fraud

In New Jersey, common law fraud claims are: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997).

"Every fraud in its most general and fundamental conception consists of the obtaining of an undue advantage by means of some act or omission that is unconscientious or a violation of good faith." Jewish Center of Sussex County v. Whale, 86 N.J. 619, 624 (1981). "Depending on the remedy sought, an action for fraud may be either legal or equitable in nature." Id. "In addition, fraud may be either actual or constructive. The distinguishing factor is the element of untruth between the parties required in the former but not in the latter." Id.

As contained herein, "[a] misrepresentation amounting to actual legal fraud consists of a material representation of a presently existing or past fact, made with knowledge of its falsity and with the intention that the other party rely thereon, resulting in reliance by that party to his detriment." Id. "The elements of scienter, that is, knowledge of the falsity and an intention to obtain an undue advantage therefrom, are not essential if plaintiff seeks to prove that a misrepresentation constituted only equitable fraud." Id. at 625. "Thus, whatever would be fraudulent at law will be so in equity; but the equitable doctrine goes farther and includes instances of fraudulent misrepresentations which do not exist in the law." Id.

### Tortious Interference

The recognized family of business torts includes both claims for tortious interference with a contract, Nostrame v. Santiago, 213 N.J. 109, 121 (2013), and claims for tortious interference with a prospective contractual relationship, See Id. The general rule defining tortious interference with an existing contract is:

One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract. Id. at 122

The tort of interference with a business relation or contract contains four elements: (1) a protected interest; (2) malice, or a defendant's intentional interference without justification or excuse; (3) a reasonable likelihood that the interference caused the loss of the prospective gain; and (4) resulting damages. DiMaria Const., Inc. v. Interarch, 351 N.J. Super. 558, 567 (App. Div. 2001), aff'd 172 N.J. 182 (2002).

### Conspiracy

"[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 Cty. Bd. of Chosen Freeholder, 268 N.J. Super. 337, 364 (App. Div. 1993), certif. denied, 135 N.J. 468, 640 A.2d 850 (1994)). The members of a conspiracy must "understand the general objectives of the scheme, accept them, and agree, either explicitly or implicitly, to do [their] part to further them." Ibid. The "gist" of a conspiracy is not the agreement but "the underlying wrong which, absent the conspiracy would give a right of action." Id. at 177-78 (quoting Morgan, 268 N.J. Super. at 364).

### Negligence

A claim of negligence requires a showing of: "(1) [a] duty of care, (2) breach of [that] duty, (3) proximate cause, and (4) actual damages." Weinberg v. Dinger, 106 N.J. 469, 484 (1987). The plaintiff has the burden of proving by competent, credible evidence that the defendant was negligent and that the defendant's negligence was a substantial contributing factor in causing the

plaintiff's loss. Scafidi v. Seiler, 225 N.J. Super. 576, 580 (App. Div. 1988), certif. granted, 114 N.J. 471 (1989), aff'd and modified 119 N.J. 93 (1990). "[N]egligence is a fact which must be proved and which will never be presumed; nor will the mere proof of the occurrence of an accident raise a presumption of negligence." Nelson v. Fruehauf Trailer Co., 11 N.J. 413, 416 (1953). The question of negligence turns on "the reasonableness of the action in relation to the foreseeable risks," which is "an essentially objective determination to be made on the basis of the material facts." Weinberg, 106 N.J. at 484.

"Whether a person owes a duty of reasonable care toward another turns on whether the imposition of such a duty satisfies an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy." Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993). In determining whether imposing a duty of care on a defendant is fair, and, consequently, whether duty of care exists, the Court must "assess the totality of the circumstances that a reasonable person would consider relevant in recognizing a duty of care to another." Id. at 93 (internal citations omitted). The totality of the circumstances must include a determination of whether the harm was foreseeable or known to the defendant, such that the defendant had a duty to protect the plaintiff from it. See ibid.

To render a person liable in negligence when a duty is shown to exist, "there must be some breach of duty, by action or inaction, on the part of the defendant to the individual complaining, the observance of which duty would have averted or avoided the injury" Brody v. Albert Lifson & Sons, Inc., 17 N.J. 383, 389 (1955). Additionally, that breach of duty must have been both the actual cause-in-fact of the plaintiff's injuries, and the proximate or legal cause of the plaintiff's injuries. Dawson v. Bunker Hill Plaza Associates, 289 N.J. Super. 309, 322 (App. Div. 1996). Proximate or legal cause is defined as "any cause which in the natural and continuous sequence, unbroken by an efficient intervening cause, produces the result complained of and without which the result would not have occurred." Fernandez v. Baruch, 96 N.J. Super. 125, 140 (App. Div. 1967), rev'd on other grounds, 52 N.J. 127 (1968). Moreover, the breach of duty must have caused the plaintiff to suffer actual damages that would not have occurred but for the breach of duty. Smith v. Whitaker, 160 N.J. 211, 235 (1999). Should the plaintiff fail to establish any of the requisite elements of negligence, the plaintiff's claim must fail.

In the majority of negligence cases, “the plaintiff is not required to establish the applicable standard of care.” Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (citations omitted). In those cases:

it is not necessary for the plaintiff to prove the standard of conduct violated by the defendant. It is sufficient for plaintiff to show what the defendant did and what the circumstances were. The applicable standard of conduct is then supplied by the jury which is competent to determine what precautions a reasonably prudent man in the position of the defendant would have taken.

Sanzari v. Rosenfeld, 34 N.J. 128, 134 (1961). In such cases, “a layperson’s common knowledge” permits the “jury to find that the duty of care has been breached, without the aid of an expert’s opinion.” Giantonnio v. Taccard, 291 N.J. Super. 31, 43 (App. Div. 1996).

In some cases, however, the “jury is not competent to supply the standard by which to measure the defendant’s conduct.” Sanzari, *supra*, 34 N.J. at 134-35. As such, the plaintiff must “establish the requisite standard of care and [the defendant’s] deviation from that standard” by “present[ing] reliable expert testimony on the subject.” Giantonnio, *supra*, 291 N.J. Super. at 42. New Jersey courts have found that certain more complex subject matters require expert testimony to establish the applicable standard of care, and, in making that determination, courts will decide “whether the matter to be dealt with is so esoteric that jurors of common judgment and experience cannot form a valid judgment as to whether the conduct of the party was reasonable.” Butler v. Acme Markets, Inc., 89 N.J. 270, 283 (1982); *see, e.g., Hopkins*, *supra*, 132 N.J. at 444 (finding that qualified expert testimony is necessary to establish responsibilities and functions of real estate brokers with respect to open house tours); Sanzari, *supra*, 34 N.J. at 136 (finding that expert testimony is necessary to establish standard of care in medical and dental malpractice cases); Ford Motor Credit Co. v. Mendola, 427 N.J. Super. 226, 236-37 (App. Div. 2012) (finding expert testimony is necessary to establish standard of care for proper repair and inspection of automobile); Giantonnio, *supra*, 291 N.J. Super. at 44 (finding expert testimony is necessary to establish proper precautions that should have been used to ensure safety of a funeral procession); Fantini v. Alexander, 172 N.J. Super. 105, 108 (App. Div. 1980) (finding expert testimony is necessary to establish standard of care for karate teachers).

#### Negligent Misrepresentation

Negligent misrepresentation is “[a]n incorrect statement, negligently made and justifiably relied upon,” which “may be the basis for recovery of damages for economic loss or injury

sustained as a consequence of that reliance." H. Rosenblum, Inc. v. Adler, 93 N.J. 324, 334, (1983) (citing Pabon v. Hackensack Auto Sales, Inc., 63 N.J. Super. 476 (App. Div. 1960)). To prove a claim of negligent misrepresentation under New Jersey law, the plaintiff must prove (1) the defendant negligently made an incorrect statement; (2) the plaintiff justifiably relied on the defendant's statement; and (3) the plaintiff was injured as a consequence of relying upon that statement. Carroll v. Cellco Partnership, 313 N.J. Super. 488, 502 (App. Div. 1998); *see also* Rosenblum v. Adler, 93 N.J. 324, 334 (1983). Because negligent misrepresentation does not require scienter as an element, it is easier to prove than fraud." Kaufman v. i-Stat Corp., 165 N.J. 94, 110 (2000). Further, "[t]he element of reliance is the same for fraud and negligent misrepresentation." *Id.* at 109. Reliance upon the representation must be justifiable. H. Rosenblum, 93 N.J. at 334.

#### Unjust Enrichment

"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." Goldsmith v. Camden Cnty. Surrogate's Office, 408 N.J. Super. 376, 382 (App. Div.) (internal quotation marks and citations omitted), *certif. denied*, 200 N.J. 502 (2009). "The unjust enrichment doctrine requires that plaintiff show that it expected remuneration from the defendant at the time it performed or conferred a benefit on defendant and that the failure of remuneration enriched defendant beyond its contractual rights." VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554 (1994). In other words, the plaintiff must demonstrate that the "defendant[s] received a benefit and that retention of that benefit without payment would be unjust." Goldsmith, *supra*, 408 N.J. Super. at 382.

#### Breach of Contract

A plaintiff must satisfy four elements to establish a breach of contract claim: (1) "[t]he parties entered into a contract containing certain terms"; (2) the plaintiff "did what the contract required [him] to do"; (3) the "defendant[s] did not do what the contract required [them] to do," defined as a "breach of the contract"; and (4) the defendants' breach caused a loss to the plaintiff. Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016) (quoting Model Jury Charge (Civil), 4.10A, "The Contract Claim—Generally" (approved May 1998)). Each element must be proven by a preponderance of the evidence." Globe Motor Co., 225 N.J. at 482 (quoting Coyle v. Englander's, 199 N.J. Super. 212, 223 (App. Div. 1985)). To satisfy this standard, "a litigant must establish that

a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met." Ibid. (quoting Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006)).

A contract exists where there is "offer and acceptance and must be sufficiently definite 'that the performance to be rendered by each party can be ascertained with reasonable certainty.'" Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435, 608 A.2d 280 (1992) (quoting Borough of W. Caldwell v. Borough of Caldwell, 26 N.J. 9, 24-25, 138 A.2d 402 (1958)). "[I]f parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract." Ibid. "Mutual assent requires that the parties have an understanding of the terms to which they have agreed." Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442, (2014).

### Equitable Mortgage

New Jersey Courts of equity will impose an equitable mortgage to enforce an oral promise to give a mortgage, where the promisee has partly performed by lending money in reliance on the promise and has otherwise relied on the promise. Cauco v. Galante, 8 N.J. 233 (1951) (affirming judgment enforcing equitable mortgage based on promise of mortgage); Rutherford Nat'l Bank v. H. R. Bogle & Co., 114 N.J. Eq. 571, 573-74 (Ch. 1933); Clark v. Van Cleef, 75 N.J. Eq. 152, 154 (Ch. 1908); see generally 29 N.J. Prac., Law of Mortgages § 9.4 (2d ed. 2019) (discussing promises to mortgage); 4 Powell on Real Property § 37.19 (2020) (stating "[a]n unperformed agreement to give a mortgage on identified land invites the help of equity," and "[w]here the parties have intended to create a security interest, equity decrees the specific lien enforceable by the creditor as an equitable mortgage"). "The whole doctrine of equitable liens or mortgages is founded upon that cardinal maxim of equity which regards as done that which has been agreed to be, and ought to have been, done." Rutherford Nat'l Bank, 114 N.J. Eq. at 573-74. The terms of the promised mortgage must be sufficiently definite to be enforced. Cf. Heim v. Shore, 56 N.J. Super. 62, 71 App. Div. 1959) (declining to enforce oral agreement to sell land upon a "liberal mortgage plan" without clearly establishing "amount, amortization payments, and interest rate").

Part performance and reliance takes the promise outside the Statute of Frauds, which, historically, required a writing to create an enforceable promise to give a mortgage. See Cauco v. Galante, 6 N.J. 128, 137 (1951); Feldman v. Warshawsky, 125 N.J. Eq. 19, 20 (E. & A. 1938). Notably, the modern Statute of Frauds permits enforcement of an oral promise to give a mortgage, if proved by clear and convincing evidence. N.J.S.A. 25:1-13(b). Furthermore, "[a]n equitable lien

or mortgage once created is not waived, expressly or impliedly, by reason of the promisor giving, and the promisee receiving, a formal mortgage which, by reason of fraud, mistake, or otherwise, is ineffectual in giving the specific lien which the former intended to give and the latter intended to receive; nor is it merged in any such instrument.” Rutherford Nat'l Bank, 114 N.J. Eq. at 578.

#### Equitable Subrogation

New Jersey is a race-notice state with respect to mortgaged properties. See Palamarg Realty Co. v. Rehae, 80 N.J. 446, 454 (1979). In that regard, N.J.S.A. 46:26A-12(b) provides that “[a] claim under a recorded document affecting the title to real property shall not be subject to the effect of a document that was later recorded or was not recorded unless the claimant was on notice of the later recorded or unrecorded document.” As a corollary to the rule, parties are generally charged with constructive notice of instruments that are properly recorded. Friendship Manor, Inc. v. Greiman, 244 N.J. Super. 104, 108 (1990).

Despite the general rule prioritizing first-recorded mortgages, New Jersey courts have applied the doctrine of equitable subrogation to ameliorate the harsh consequences of the recording act. See Sovereign Bank v. Gillis, 432 N.J. Super. 36, 44-45 (App. Div. 2013). The doctrine of equitable subrogation is “highly favored in the law.” Culver v. Ins. Co. of N. Am., 115 N.J. 451, 456 (1989). It is rooted in principles of equity, compelling “the ultimate discharge of an obligation by the one who in good conscience ought to pay it.” US Bank, NA v. Hylton, 403 N.J. Super. 630, 637 (Ch. Div. 2008) (quoting First Union Nat'l Bank v. Nelkin, 354 N.J. Super. 557, 565 (App. Div. 2002)).

“[A] mortgagee who negligently accepts a mortgage without knowledge of intervening encumbrances will subrogate to a first mortgage with priority over the intervening encumbrances to the extent that the proceeds of the new mortgage are used to satisfy the old mortgage.” Inv'rs Sav. Bank v. Keybank, 424 N.J. Super. 439, 443 (App. Div. 2012) (quoting Trust Joist Corp. v. Nat'l Union Fire Ins. Co., 190 N.J. Super. 168, 179 (App. Div. 1983)). Equitable subrogation ensures “that the holders of the intervening encumbrances not be unjustly enriched at the expense of the new mortgagee.” Id. at 444 (quoting Trust Joist, 190 N.J. Super. at 179).

Historically, equitable subrogation has been unavailable to a new lender who has actual knowledge of an intervening second mortgage. Gillis, 432 N.J. Super. at 45. More recently, however, courts have rejected the historical approach, finding that “the lender's actual knowledge of an intervening loan is not a bar to its reliance upon equitable principles of priority.” Id. at 49-

50. As we noted in Gillis, "[a]s we recently highlighted in [Inv'rs Sav. Bank,] the Third Restatement has repudiated the traditional majority approach and recommends that subject to certain other factors, 'subrogation can be granted even if the payor had actual knowledge of the intervening interest.'" Id. at 46 (quoting Restatement (Third) of Property: Mortgages, § 7.6 cmt. e, illus. 26 (Am. Law Inst. 1997)).

#### Apparent Authority

An agency relationship arises when one party consents to have another act on its behalf, with the principal controlling and directing the acts of the agent. Sears Mortgage Corp. v. Rose, 134 N.J. 326, 337 (1993). Even if a person does not possess actual authority, he or she may be an agent by virtue of apparent authority based on manifestations of that authority by the principal. Id. at 338. "Apparent authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons." Restatement (Second) of Agency § 8 (1958).

New Jersey courts have applied the doctrine of apparent authority where a principal acts in such a way as to convey the impression to a third party that the agent has certain powers that he may or may not possess. Lobiondo v. O'Callaghan, 357 N.J. Super. 488, 497 (App. Div.), certif. denied, 177 N.J. 224 (2003). The law of apparent authority is well settled:

The rule is that the principal is bound by the acts of his agent within the apparent authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing. The question in every case depending upon the apparent authority of the agent is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.

[C.B. Snyder Realty Co. v. Nat'l Newark & Essex Banking Co. of Newark, 14 N.J. 146, 154 (1953) (quoting Am. Well Works v. Royal Indem. Co., 109 N.J.L. 104, 108 (E. & A. 1932).]

In contract situations, apparent authority imposes liability not as a result of the contractual relationship, but because of actions by a principal which have misled a third party into believing the relationship of authority does, in fact, exist. Wilzig v. Sisselman, 209 N.J. Super. 25, 35 (App.



Div. 1986), certif. denied, 108 N.J. 188 (1987). When one of two innocent parties must suffer a financial loss as a result of a fraud perpetrated by an agent, courts have generally held that the party who enabled the fraud to be committed should shoulder the burden. Sears Mortgage, supra, 134 N.J. at 346; see Clients' Sec. Fund of the Bar of N.J. v. Sec. Title & Guar. Co., 134 N.J. 358, 369 (1993).

Apparent authority is closely related to the doctrine of estoppel, and the essential elements of reliance must be present before apparent authority can be found. Id. at 35-36; see Sears Mortgage, supra, 134 N.J. at 338 ("Of particular importance is whether a third party has relied on the agent's apparent authority to act for the principal."); see also N. Rothenberg & Son, Inc. v. Nako, 49 N.J. Super. 372, 381-82 (App. Div. 1958) (distinguishing between estoppel theory and objective contract theory of apparent authority). Apparent authority does not arise from "the secret instructions of the principal nor [is it] enlarged by the unauthorized misrepresentations of the agent." Ibid. "An agent's success in misleading the third party as to the existence of actual authority does not in itself make the principal accountable." Restatement (Third) of Agency § 2.03 cmt. c.

Also, the third-party's reliance must be reasonable and prudent under the circumstances. "The doctrine of apparent authority 'focuses on the reasonable expectations of third parties with whom an agent deals.'" N.J. Lawyer's Fund for Client Prot. v. Stewart Title Guar. Co., 203 N.J. 208, 220 (2010) (quoting Restatement (Third) of Agency § 7.08 cmt. b). "Some transactions by their nature should strike a dissonant chord for a reasonable third party, given the situation in which an agent has been placed, the nature of the principal or its activities, or what the third party knows of the agent's position within an organization." Restatement (Third) of Agency § 2.03 cmt. d (discussing "reasonable belief" of third party). Apparent authority may not arise from "the carelessness and indifference of the third party." Wilzig, 209 N.J. Super. at 35. A fact-finder must consider the totality of the circumstances to determine whether apparent authority exists. N.J. Lawyer's Fund, 203 N.J. at 220.

## **ANALYSIS**

### **Plaintiff's Count One (Quiet Title)**

Quiet title is an action that allows a party who is in peaceful possession of real property to compel another entity who may assert a hostile claim to judicial determination. Brookdale Park Homes, Inc. v. Bridgewater Township, 115 N.J. Super. 489, 496 (Ch. Div. 1971). A Plaintiff claiming quiet title must allege that they are in peaceable possession and that no lawsuit is pending

to test the validity of their claim. See N.J.S.A. 2A:62-1. In the present action, Plaintiffs have failed to establish that they are in peaceful possession of the 18 properties at issue in this case. While Hassan claimed during his testimony that he still resides at 70 Crest Drive, South Orange, New Jersey, Plaintiffs did not allege or otherwise provide any evidence to suggest that they are in possession of the other subject properties.

Furthermore, the Court notes that the present suit is precisely one in which the parties are seeking to test the validity of Plaintiffs' alleged ownership interest in the 18 properties. Plaintiff brought the present suit for the purpose of testing the transfer of title for all 18 properties from Little Mason Properties to Eight Copeland Road Group. Plaintiff has asserted that this transfer of title was fraudulent and therefore invalid. Thus, a lawsuit is pending to test the validity of ownership claims on behalf of both Plaintiffs and the Theophile Defendants. The Court notes that quiet title is not intended to effectuate the evaluation of two competing claims of ownership. The evaluation of the competing claims for title, in this case, on behalf of Plaintiffs and the Theophile Defendants is substantively addressed below pursuant to Plaintiffs' count two (ejectment).

As such, this Court finds that Plaintiffs have failed to show the requisite elements of quiet title. Accordingly, Plaintiffs have failed to establish count one of their complaint seeking quiet title.

#### Plaintiff's Count Two (Ejectment)

Plaintiffs' ejectment claim rests on the allegation that the Deeds transferring ownership of the Properties from Little Mason Properties LLC to Eight Copeland Road Group LLC were unauthorized and invalid. See e.g. J-41; J-42; J-44; J-45; J-46; J-47; J-48; J-49; J-50; J-51; J-52; J-53; J-54; J-55; J-56; J-57; J-58. Hassan claimed that these deeds were executed and recorded without his knowledge or consent. However, based on the testimony of Theophile, as well as the other evidence presented in this case, this Court finds that Hassan knew and otherwise authorized the transfer of title for the subject properties from Little Mason Properties LLC to Eight Copeland Road Group LLC in order to achieve their goal to obtain loans with more favorable loan-to-value ratios as well as better interest rates. See Theophile's Testimony; J-67; J-92; J-102. But for these transfers of title, Hassan Theophile's scheme was not otherwise obtainable. See Theophile's Testimony; Spingarn's Testimony; McCloud's Testimony.

As discussed above, this Court finds that Theophile was made an equitable, equal member of Little Mason Properties as to the 18 properties in question based on the apparent and

continuously evidenced agreement by all members of Little Mason Properties to mortgage, manage, or sell the real estate owned by Little Mason Properties. See N.J.S.A. 42:2C-31; Theophile's Testimony; Spingarn's Testimony; McCloud's Testimony; Azikiwe's Testimony; J-67; J-91; J-92. As an equitable member of Little Mason Properties, Theophile had "equal rights in the management and conduct of the company's activities." N.J.S.A. 42:2C-37. Further, to dispose or otherwise transfer a substantial amount of Little Mason Properties' Real Estate outside the ordinary course of business, consent of all members is required. N.J.S.A. 42:2C-37.

The Court finds that consent was obtained from all members of Little Mason Properties LLC as to the execution of the deeds transferring ownership of the subject properties to Eight Copeland Road Group. See Theophile's Testimony; J-67; J-92; J-102. First, it is clear and uncontested that Theophile consented and approved of this transfer of title. See Theophile's Testimony, J-41; J-42; J-44; J-45; J-46; J-47; J-48; J-49; J-50; J-51; J-52; J-53; J-54; J-55; J-56; J-57; J-58. As for Hassan, the record reflects that Hassan understood that to obtain loans with favorable interest rates and favorable loan-to-value ratios using the subject properties as collateral, the loans would have to be taken out in the name of Theophile and Eight Copeland Road Group. See Theophile's Testimony; Spingarn's Testimony; McCloud's Testimony; Azikiwe's Testimony; J-67; J-91; J-92. Hassan, therefore, knew of and consented to the transfers of title in order for Theophile to obtain the aforementioned loans. See Theophile's Testimony; Spingarn's Testimony; McCloud's Testimony.

The Court finds that the subject deeds were executed with the active cooperation and consent of both Hassan and Theophile. Regardless of whether Theophile actually was a member of Little Mason Properties, Hassan's knowledge and approval would, nonetheless, have been sufficient to properly transfer title to the properties in question. Thus, the Court concludes that the 18 deeds at issue in this case are valid and that title to the subject properties is properly held by Eight Copeland Road Group. As such, Plaintiffs have failed to establish count two of their complaint seeking ejectment.

#### Plaintiff's Count Three (Fraud)

In New Jersey, a common law fraud claim requires a Plaintiff to establish "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610

(1997). In the present matter, Plaintiffs have failed to show that the Theophile Defendants put forth a material misrepresentation of presently existing or past fact that Plaintiffs reasonably relied upon and that resulted in damages. As previously discussed, the Court finds that Theophile was acting with Hassan's knowledge and approval when seeking loan proposals, when registering Little Mason Properties as an LLC in New Jersey, when transferring title to the subject properties from Little Mason Properties to Eight Copeland Road Group, and when entering into the allegedly fraudulent loan agreements. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147; D-5. The Court also finds that Hassan was fully aware of Theophile's background and abilities. See Theophile's Testimony; J-91; J-92.

Overall, it appears that Theophile was generally up front with Hassan regarding the events in question and kept Hassan accurately up to date regarding the efforts to obtain loans on the subject properties pursuant to their general business arrangement. See Theophile's Testimony; J-91; J-92. Accordingly, Plaintiffs have failed to establish that the Theophile Defendants made any material misrepresentation of a presently existing or past fact. Thus, the third count of Plaintiffs' complaint seeking fraud must fail.

#### Plaintiff's Count Four (Tortious Interference)

In order to prove a claim for tortious interference a party must show: 1) a protected interest; (2) malice, or a defendant's intentional interference without justification or excuse; (3) a reasonable likelihood that the interference caused the loss of the prospective gain; and (4) resulting damages. DiMaria Const., Inc. v. Interarch, 351 N.J. Super. 558, 567 (App. Div. 2001), aff'd 172 N.J. 182 (2002). In the present case, Plaintiffs have failed to put forth sufficient facts and evidence to prove the aforementioned elements. As has been repeatedly stated, this Court finds that Theophile was acting with Hassan's knowledge and approval when seeking loan proposals, when registering Little Mason Properties as an LLC in New Jersey, when transferring title to the subject properties from Little Mason Properties to Eight Copeland Road Group, and when entering into the allegedly improper loan agreements. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147; D-5. Therefore, the Theophile Defendants' actions in no way improperly interfered with any of Plaintiffs' protected interests.

Accordingly, Plaintiffs have failed to establish the requisite elements to put forth a claim for tortious interference. Thus, the fourth count of Plaintiffs' complaint seeking tortious interference must fail.

#### Plaintiff's Count Five (Conspiracy)

"[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 Cty. Bd. of Chosen Freeholder, 268 N.J. Super. 337, 364 (App. Div. 1993), certif. denied, 135 N.J. 468, 640 A.2d 850 (1994)). In the present case, Plaintiffs have failed to put forth sufficient facts and evidence to prove that the Theophile defendants acted unlawfully as to Plaintiffs or that the Theophile Defendants agreed to inflict such wrong against Plaintiffs.

This Court has already found that Theophile was acting with Hassan's knowledge and approval when seeking loan proposals, when registering Little Mason Properties as an LLC in New Jersey, when transferring title to the subject properties from Little Mason Properties to Eight Copeland Road Group, and when entering into the contested loan agreements. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147; D-5. Thus, Theophile was not acting wrongfully as to either Hassan or Little Mason Properties when taking the aforementioned actions. In fact, Theophile's actions resulted in Hassan being able to obtain more favorable loan terms and clear various liens encumbering his properties. See Testimony of Theophile; Testimony of Edward McCloud; J-91; J-92.

Accordingly, Plaintiffs have failed to establish the requisite elements to put forth a claim of conspiracy. Thus, the fifth count of Plaintiffs' complaint seeking conspiracy must fail.

#### Plaintiff's Count Six (Negligence)

A claim of negligence requires a showing of: "(1) [a] duty of care, (2) breach of [that] duty, (3) proximate cause, and (4) actual damages." Weinberg v. Dinger, 106 N.J. 469, 484 (1987). A plaintiff has the burden of proving by competent, credible evidence that the defendant was negligent and that the defendant's negligence was a substantial contributing factor in causing the plaintiff's loss. Scafidi v. Seiler, 225 N.J. Super. 576, 580 (App. Div. 1988), certif. granted, 114 N.J. 471 (1989), aff'd and modified 119 N.J. 93 (1990). The Court notes that no factual testimony, expert testimony, or other evidence was put forth by any party in this case in order to establish the duty of care for a reasonable person in the same or similar position to the Lender Defendants regarding any of the events in question. Plaintiffs also failed to offer any expert testimony or otherwise attempt to argue what the standard of reasonable care is for a title investigator.

Regarding the title investigation itself, the Court also found that Theophile and Eight Copeland Road Group had the authority to pursue and ultimately enter into the loan and mortgage agreements. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147. The Court also notes that McCloud testified as to the extensive amount of documents he requested from Theophile to prove Theophile's authority to act on behalf of Eight Copeland Road Group and Little Mason Properties. See Edward McCloud's Testimony. Plaintiffs have thus failed to show or otherwise establish how the title investigators took any action or inaction which would have led to the avoidance of harm or injury had they acted as a reasonably person would in the same or similar circumstances. See Brody v. Albert Lifson & Sons, Inc., 17 N.J. 383, 389 (1955).

Accordingly, Plaintiffs have failed to establish the requisite elements to put forth a claim of negligence. Thus, the sixth count of Plaintiffs' complaint seeking negligence must fail.

#### Plaintiff's Count Seven (Negligence)

A claim of negligence requires a showing of: "(1) [a] duty of care, (2) breach of [that] duty, (3) proximate cause, and (4) actual damages." Weinberg v. Dinger, 106 N.J. 469, 484 (1987). A plaintiff has the burden of proving by competent, credible evidence that the defendant was negligent and that the defendant's negligence was a substantial contributing factor in causing the plaintiff's loss. Scafidi v. Seiler, 225 N.J. Super. 576, 580 (App. Div. 1988), cert. granted, 114 N.J. 471 (1989), aff'd and modified 119 N.J. 93 (1990). The Court notes that no factual testimony, expert testimony, or other evidence was put forth by any party in this case in order to establish the duty of care for a reasonable person in the same or similar position to the Lender Defendants regarding any of the events in question. Plaintiffs failed to offer any expert testimony or otherwise attempt to argue what the standard of reasonable care is for a mortgage lender.

Regarding the Lender Defendants' decision to enter into a loan and mortgage agreement with Theophile, the Court has found that Theophile and Eight Copeland Road Group had the authority to pursue and ultimately enter into the loan and mortgage agreements. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147. The Court further notes, that Theophile testified that the Mortgage Lenders required extensive information about Theophile himself, as well as both Little Mason Properties and Eight Copeland Road Group. See Theophile's Testimony. Theophile indicated that he was able to obtain all of this required information from Hassan and provide it to the Mortgage Lenders. See Theophile's Testimony. Plaintiffs have thus failed to show or otherwise established the mortgage lenders took any action or inaction which would have led to

the avoidance of harm or injury had they acted as a reasonably person would in the same or similar circumstances. See Brody v. Albert Lifson & Sons, Inc., 17 N.J. 383, 389 (1955).

Accordingly, Plaintiffs have failed to establish the requisite elements to put forth a claim of negligence. Thus, the seventh count of Plaintiffs' complaint seeking negligence must fail.

#### Plaintiff's Count Eight (Negligent Misrepresentation)

To prove a claim of negligent misrepresentation under New Jersey law, the plaintiff must prove (1) the defendant negligently made an incorrect statement; (2) the plaintiff justifiably relied on the defendant's statement; and (3) the plaintiff was injured as a consequence of relying upon that statement. Carroll v. Cellco Partnership, 313 N.J. Super. 488, 502 (App. Div. 1998); see also Rosenblum v. Adler, 93 N.J. 324, 334 (1983).

In this instance, Plaintiffs have failed to show that the Lender Defendants negligently made any incorrect statement upon which Plaintiffs justifiably relied, and which resulted in injury. As previously discussed, the Court finds that Theophile was acting with Hassan's knowledge and approval when seeking loan proposals, when registering Little Mason Properties as an LLC in New Jersey, when transferring title to the subject properties from Little Mason Properties to Eight Copeland Road Group, and when entering into the 18 loan agreements. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147; D-5. The Lender Defendants, therefore, did not make any misrepresentations as to the validity of the titles of the 18 properties when negotiating and executing the loan and mortgage agreements. Furthermore, Plaintiff continuously asserted that he was unaware or otherwise uninvolved in the process of obtaining and agreeing to the loan and mortgage agreements with the Lender Defendants. See Hassan's Testimony. As a result, Plaintiff could not have relied upon any statement made by said Lender Defendants.

Accordingly, Plaintiffs have failed to establish that the Theophile Defendants negligently made any incorrect statements that Plaintiffs justifiably relied upon. Thus, the eighth count of Plaintiffs' complaint seeking negligent misrepresentation must fail.

#### Defendant Theophile's Counterclaim Count One (Unjust Enrichment)

To establish Unjust Enrichment a claimant must demonstrate that the "defendant[s] received a benefit and that retention of that benefit without payment would be unjust." Goldsmith, supra, 408 N.J. Super. at 382. In the present matter, the Court notes that pursuant to the aforementioned deeds and business arrangement, Theophile and Eight Copeland Road Group currently have title to the subject properties, and Theophile has received the portion of the loan

proceeds for the loans taken out as to those subject properties after the liens were satisfied and additional funds were escrowed. See Theophile's Testimony; J-41; J-42; J-44; J-45; J-46; J-47; J-48; J-49; J-50; J-51; J-52; J-53; J-54; J-55; J-56; J-57; J-58. As the Court has already found, the deeds at issue in this case are valid and title to the subject properties is properly held by Eight Copeland Road Group. These loan proceeds and ownership of the properties constitute compensation for the work Theophile did as part of his arrangement with Hassan.

As such, the Theophile Defendants have failed to demonstrate that Plaintiffs have in some way received a benefit of which retention without further payment would be unjust. Accordingly, the Theophile Defendants have failed to meet the burden for count one of their counterclaims asserting Unjust Enrichment.

#### Defendant Theophile's Counterclaim Count Two (Breach of Contract)

A plaintiff must satisfy four elements to establish a breach of contract claim: (1) "[t]he parties entered into a contract containing certain terms"; (2) the plaintiff "did what the contract required [him] to do"; (3) the "defendant[s] did not do what the contract required [them] to do," defined as a "breach of the contract"; and (4) the defendants' breach caused a loss to the plaintiff. Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016) (quoting Model Jury Charge (Civil), 4.10A, "The Contract Claim—Generally" (approved May 1998)). In this case, the Court finds that while Hassan and Theophile did enter into a general business agreement to obtain loans on the real estate owned by Little Mason Properties, the exact terms of that agreement were somewhat uncertain. See Theophile's Testimony; J-67; J-91; J-92. During his testimony, Theophile continuously asserted that his arrangement with Hassan was such that he would receive \$2.5 million from the loan proceeds (which would be paid out from the various loan closings after paying off the ongoing liens on the parcels but before Hassan received the remaining loan proceeds). See Theophile's testimony. The Court, however, finds that Theophile has failed to prove Hassan's agreement to such terms by the preponderance of the evidence. See Theophile's Testimony; J-67; J-91; J-92.

Based on the evidence and testimony provided to the Court, the Court finds that Hassan and Theophile entered into an agreement more akin to a general arrangement to work together to obtain loans. Theophile's Testimony; Spingarn's Testimony; McCloud's Testimony; Azikiwe's Testimony; J-67; J-91; J-92. Further, the Court finds that in line with this general arrangement, Theophile was made an equal member of Little Mason Properties based on the apparent and continuously evidenced agreement by all members of Little Mason Properties to mortgage,



manage, or sell the real estate owned by Little Mason Properties (of which Hassan was previously the sole member). See N.J.S.A. 42:2C-31; Theophile's Testimony; Spingarn's Testimony; McCloud's Testimony; Azikiwe's Testimony; J-67; J-91; J-92. However, as previously noted, the Court recognizes that the evidence suggests said membership was only intended to apply to the extent that Theophile was to collateralize certain residential properties. Hassan's Testimony, Theophile's Testimony; J-67; J-91; J-92. This equitable, yet somewhat limited, membership is further evidenced by the fact that Theophile stopped seeking loans after the 18 properties at issue in this case were collateralized and the business relationship broke down. Hassan's Testimony, Theophile's Testimony; J-67; J-91; J-92. As the Court finds that Theophile and Hassan entered into a general agreement to work together to obtain the 18 loans, the court finds that the loan proceeds are proceeds that belong to Hassan and Theophile's partnership and the portion of Little Mason Properties to which Theophile is an equitable member.

N.J.S.A. 42:2C-34(a) states that "[a]ny distributions made by a limited liability company before its dissolution and winding up shall be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 42 and any order in effect under section 43 of this act." Therefore, the Court concludes that Hassan and Theophile are equally entitled to receive 50% of the proceeds generated from the loan agreements that Theophile and Eight Copeland Road Group entered into on behalf of the aforementioned business arrangement.

Accordingly, the Theophile Defendants have failed to meet the burden for count two of their counterclaims asserting Breach of Contract. Furthermore, both Hassan and Theophile are each entitled to 50% of the net loan proceeds received from loans entered into by Theophile using the properties formerly owned by Little Mason Properties as collateral, less the amounts used or otherwise escrowed to satisfy Hassan and Little Mason Properties' liens.

#### Lender Defendants' Counterclaim Count One (Equitable Mortgage)

New Jersey Courts of equity will impose an equitable mortgage to enforce an oral promise to give a mortgage, where the promisee has partly performed by lending money in reliance on the promise and has otherwise relied on the promise. Cauco v. Galante, 8 N.J. 233 (1951) (affirming judgment enforcing equitable mortgage based on promise of mortgage). However, in this instance, the equitable mortgage claim is somewhat mooted as the court has already found that the actions

taken by Hassan and Theophile properly awarded the Lender Defendants actual mortgages as to the 18 properties.

As the Court has already stated numerous times, Theophile was acting with Hassan's knowledge and approval when seeking loan proposals, when registering Little Mason Properties as an LLC in New Jersey, when transferring title to the subject properties from Little Mason Properties to Eight Copeland Road Group, and when entering into the contested loan agreements. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147; D-5. Thus, either as the sole member of Eight Copeland Road Group and the proper owner of the 18 properties, as an equitable member of Little Mason Properties acting pursuant to the powers granted by N.J.S.A. 42:2C-37, or as an authorized agent acting on Hassan's behalf, Theophile properly executed loan and mortgage agreements with the Lender Defendants collateralizing the 18 properties at issue. See Theophile's Testimony; J-180 through J-229. In return, the Lender Defendants performed pursuant to the loan agreements and provided Theophile with the agreed-upon funds. See Theophile's Testimony; Edward McCloud's Testimony; J-40.

Alternatively, the Court notes that even if Theophile were not authorized to enter into the loan and mortgage agreements with the Lender Defendants, said mortgages would nonetheless be enforceable pursuant to the principle of apparent authority. In contract situations, apparent authority imposes liability not as a result of the contractual relationship, but because of actions by a principal which have misled a third party into believing the relationship of authority does, in fact, exist. Wilzig v. Sisselman, 209 N.J. Super. 25, 35 (App. Div. 1986), certif. denied, 108 N.J. 188 (1987). When one of two innocent parties must suffer a financial loss as a result of a fraud perpetrated by an agent, courts have generally held that the party who enabled the fraud to be committed should shoulder the burden. Sears Mortgage, supra, 134 N.J. at 346. In this instance, the evidence strongly indicates that Hassan was aware that Theophile was continuously pursuing loans on behalf of Little Mason Properties and pursuing those loans as the purported owner of the 18 properties at issue in this case. See Hassan's Testimony, Theophile's Testimony; J-67; J-91; J-92; J-104; J-105; J-107; J-108; J-109; J-110; J-111. Hassan also voluntarily provided Theophile with all the information that was required for Theophile to hold himself out as a member of Little Mason Properties or as the owner of the 18 properties. See Theophile's Testimony; J-66; J-91; J-92.

Overall, the Court finds that in light of the information that Theophile was given by Hassan, the ability to facilitate appraisals with the help of Hassan, and with the New Jersey Registration Documents for Little Mason Properties (of which Hassan was aware), any reasonable person in the position of the Lender Defendants' position would reasonably believe that Theophile had the authority to enter into the loan and mortgage transactions. See Hassan's Testimony, Theophile's Testimony; J-67; J-91; J-92; J-147. Thus, Hassan is bound by the acts of his agent within the apparent authority which he knowingly permitted the agent to assume and which he facilitated with his voluntary actions. See C.B. Snyder Realty Co. v. Nat'l Newark & Essex Banking Co. of Newark, 14 N.J. 146, 154 (1953) (citing Am. Well Works v. Royal Indem. Co., 109 N.J.L. 104, 108 (E. & A. 1932)).

Accordingly, the Court finds that the loan and mortgage agreements executed by both Theophile and the Lender Defendants collateralizing the 18 properties at issue are valid. Thus, the Court finds that Count One of the Lender Defendants' Counterclaim seeking equitable mortgage is moot.

Lender Defendants' Counterclaim Count Two (Equitable Subrogation)<sup>1</sup>

"[A] mortgagee who negligently accepts a mortgage without knowledge of intervening encumbrances will subrogate to a first mortgage with priority over the intervening encumbrances to the extent that the proceeds of the new mortgage are used to satisfy the old mortgage." Inv'r's Sav. Bank v. Keybank, 424 N.J. Super. 439, 443 (App. Div. 2012) (quoting Trust Joist Corp. v. Nat'l Union Fire Ins. Co., 190 N.J. Super. 168, 179 (App. Div. 1983)). Equitable subrogation ensures "that the holders of the intervening encumbrances not be unjustly enriched at the expense of the new mortgagee." Id. at 444 (quoting Trust Joist, 190 N.J. Super. at 179).

In this instance, the Court finds that based on the testimony and evidence presented at trial, as well as the aforementioned conclusion that the Lender Defendants' mortgage agreements are valid, the Lender Defendants' mortgages hold a priority position in regard to the 18 properties at issue in this case. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147. It is the Court's understanding that the mortgages provided to Lender Defendants were first-priority mortgages, and any prior liens on the individual properties were satisfied using the corresponding loan proceeds provided by the Lender Defendants. See Theophile's Testimony; Edward McCloud's

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<sup>1</sup> The Court notes that partial summary judgment was granted as to this count on August 2, 2023. However, the Court finds that its previous finding does not otherwise affect the findings herein.

Testimony; J-280 through J-295. Thus, there are no outstanding liens on the 18 properties with higher priority lien positions that the court can equitably subrogate.

Accordingly, the Court finds that Count Two of the Lender Defendants' Counterclaim seeking equitable subrogation is moot.

Lender Defendants' Crossclaim Count One (Fraud)

In New Jersey, a common law fraud claim requires a Plaintiff to establish “(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.” Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997). In this instance, the Lender Defendants have failed to establish that the Theophile Defendants put forth a material misrepresentation of a presently existing or past fact which ultimately resulted in damages on the part of the Lender Defendants. In regard to the Mortgages granted, Theophile was acting with proper authority and with Hassan's approval when transferring title to the subject properties from Little Mason Properties to Eight Copeland Road Group and when entering into the contested loan and mortgage agreements. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147; D-5. Therefore, Theophile did not make any material misrepresentation when asserting that he was able to enter into the loan agreements with the Lender Defendants and collateralize the 18 properties at issue.

The Court also notes that the Lender Defendants have also alleged that Theophile failed to disclose that the loan transactions involved the transfer of title to the 18 properties, making the loans some form of purchase mortgage rather than simple refinances. However, the Court finds that the Lender Defendants have failed to even state how this misrepresentation was either material or how it resulted in any damages. As the Lender Defendants failed to put forth argument or evidence as to these elements, much less prove them by a preponderance of the evidence, the Court finds that the Lender Defendants have failed to establish the elements of fraud as to this alleged misrepresentation.

Accordingly, the Lender Defendants have failed to establish the requisite elements of fraud as to the Theophile Defendants. Thus, the Court finds that Count One of the Lender Defendants' Crossclaim seeking fraud must fail.

### Lender Defendants' Crossclaim Count Two (Negligence).

A claim of negligence requires a showing of: "(1) [a] duty of care, (2) breach of [that] duty, (3) proximate cause, and (4) actual damages." Weinberg v. Dinger, 106 N.J. 469, 484 (1987). A plaintiff has the burden of proving by competent, credible evidence that the defendant was negligent and that the defendant's negligence was a substantial contributing factor in causing the plaintiff's loss. Scafidi v. Seiler, 225 N.J. Super. 576, 580 (App. Div. 1988), certif. granted, 114 N.J. 471 (1989), aff'd and modified 119 N.J. 93 (1990). The Court notes that no testimony or evidence was put forth by any party in this case as to what duty of care a reasonable person in the same or similar position to Theophile would hold regarding any of the events in question. The Lender Defendants have failed to establish that Theophile or Eight Copeland Road Group took any action or inaction which would have led to the avoidance of harm or injury had they acted as a reasonable person would in the same or similar circumstances. See Brody v. Albert Lifson & Sons, Inc., 17 N.J. 383, 389 (1955). Based on the testimony provided and the evidence put forth by all parties, Theophile was authorized to take the actions he did on behalf of Little Mason Properties as either a member of Little Mason Properties or as an agent acting with Hassan's knowledge and consent. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147; D-5.

Accordingly, the Lender Defendants have failed to establish the requisite elements to put forth a claim of negligence. Thus, count two of the Lender Defendants' Crossclaim seeking negligence must fail.

### Lender Defendants' Crossclaim Count Three (Unjust Enrichment)

To establish Unjust Enrichment a claimant must demonstrate that the "defendant[s] received a benefit and that retention of that benefit without payment would be unjust." Goldsmith, supra, 408 N.J. Super. at 382. In the present matter, the Court notes that the loan and mortgage agreements entered between the Theophile Defendants and the Lender Defendants are valid first liens. See Theophile's Testimony; J-66; J-67; J-91; J-92; J-147. Pursuant to these agreements, the Lender Defendants received mortgages on the 18 properties at issue in this case and Theophile received the agreed-upon loan amounts. See Theophile's Testimony; J-40; J-180 through J-229. Therefore, if same is not paid, the mortgage holders can seek to foreclose on the 18 properties.

As such, the Lender Defendants have failed to demonstrate that the Theophile Defendants have in some way received a benefit of which retention without further payment would be unjust.

Accordingly, the Lender Defendants have failed to meet the burden for count two of their Crossclaim asserting Unjust Enrichment.

#### Lender Defendants' Crossclaim for Indemnification and Contribution

The Court notes that no damages have been awarded in this matter against the Lender Defendants. Thus, there are no damages for which the Lender Defendants can seek indemnification or contribution. Further, the Lender Defendants also have a valid first lien position and therefore can pursue the aforementioned remedy of foreclosure as to those 18 properties. As such, the Court finds that the Lender Defendants' crossclaims for indemnification and contribution are moot.

#### CONCLUSION

In conclusion, the Court finds that Irfan Hassan and Marc Theophile were acting in accordance with a common plan and agreement when entering into the 18 loans and mortgages at issue in this case. This Court further finds that Theophile was acting with Hassan's knowledge and approval when seeking loan proposals, when registering Little Mason Properties as an LLC in New Jersey, when transferring title to the subject properties from Little Mason Properties to Eight Copeland Road Group, and when entering into the 18 loan agreements. As a result, the Court finds that counts one and two of Plaintiffs' complaint fail as title to the 18 properties at issue in this case are properly held by Eight Copeland Road Group, pursuant to the valid deeds executed by Theophile, with Hassan's knowledge and consent pursuant to their general business agreement. Count three, four, five, six, seven, and eight of Plaintiff's complaint also fail as Plaintiff has otherwise failed to establish wrongdoing on the part of either the Theophile Defendants or the Lender Defendants.

Regarding the counterclaims brought forth by the Theophile Defendants, the Court found that Hassan and Theophile had a general agreement to work together in order to obtain loans using Little Mason Properties' residential properties as collateral. As a result of this general agreement, Theophile was made an equitable and equal member of Little Mason Properties. This membership was found to be limited to the 18 properties that Hassan and Theophile ultimately agreed to collateralize in order to obtain loans. The evidence also supports a finding that both Hassan and Theophile ultimately performed as to this general arrangement and successfully obtained loans with sufficient loan-to-value ratios on 18 of Little Mason Properties' former properties. The Court thus finds that counts one and two of the Theophile Defendants' counterclaims have failed as Theophile failed to establish that Plaintiffs have unjustly retained any benefit or that Plaintiffs

breached the aforementioned general agreement. Additionally, both Hassan and Theophile are equally entitled to receive 50% of the proceeds generated from the loan agreements that Theophile and Eight Copeland Road Group entered into on behalf of the business arrangement.

As to the claims put forth by the Lender Defendants, the Court finds that both count one and two of their counterclaims are moot as they appear to be seeking alternative relief if the Court were to otherwise invalidate the loan and mortgage agreements on the 18 properties. As the aforementioned mortgages were upheld as valid first liens on the properties, the Court finds that the issue of equitable mortgage and equitable subrogation are moot. As to the Lender Defendants' crossclaims, the Lender Defendants have otherwise failed to establish substantive wrongdoing on the part of Theophile or Eight Copeland Road Group that resulted in damages to the Lender Defendants. Thus, counts one, two, and three of the Lender Defendants' crossclaims were deemed to have failed.

Finally, as to the various claims for attorney's fees and costs put forth by all parties, the Court notes that no party offered any rule, statute, or argument that would overcome the strong presumption in favor of the American Rule. Because no party has established that an award of attorney's fees and costs are thus warranted, this Court finds that all such applications are herein denied.