

February 6, 2024

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

PREPARED BY THE COURT

ANCHOR LOANS, L.P., ANCHOR FUND, LLC, and ANCHOR ASSETS V, LLC,

Plaintiff,

v.

RICHARD SAJOUS, et al.,

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
UNION COUNTY

DOCKET NO. UNN-L-4147-20

ORDER

THIS MATTER having been opened to the Court by plaintiffs Anchor Loans, L.P., Anchor Fund, LLC, and Anchor Assets V, LLC (collectively “Plaintiffs”), by and through its attorneys, Riker Danzig LLP, by motion for an Order granting Anchor summary judgment on its Second Amended Complaint (the “Motion”), and the Court having considered the papers submitted in connection with this motion, any papers filed in opposition thereto, and any oral argument, and for good cause shown;

IT IS ON THIS 6th day of February, 2024 **ORDERED** as follows:

1. Plaintiffs’ Motion is hereby **GRANTED** as to Counts I, II, III, and V of the Second Amended Complaint;
2. Count IV of the Second Amended Complaint is hereby **DISMISSED**;
3. Plaintiffs’ Motion as to Count VI of the Second Amended Complaint for equitable relief is hereby **DENIED** without prejudice;
4. Plaintiffs’ request for attorney’s fees and costs is hereby **DENIED** without prejudice;
5. A proof hearing as to the issue of damages shall be held by this Court on **March 8, 2024, at 2:30PM**;
6. The judgment herein does not apply to defendants Alain Sajous, Silvy Payan, and Ralph LaFortune as an automatic stay has been initiated with respect to only these parties in this matter; and
7. Counsel for Plaintiffs shall serve a copy of this Order on all parties in this matter within seven (7) days of receipt.

/s/ Robert J. Mega

HON. ROBERT J. MEGA, P.J. Ch.

See Statement of Reasons attached.

Opposed

Unopposed

Statement of Reasons

Presently before this Court is Plaintiffs Anchor Loan, L.P., Anchor Fund, LLC, and Anchor Assets V, LLC (collectively “Plaintiffs”) Motion for Summary Judgment against Richard Sajous (“Defendant” or “Richard”) and Alain Sajous (collectively the “Sajous Brothers”), their alleged co-conspirators Silvy Payan (“Payan”) and Ralph LaFortune (“LaFortune”), and the Sajous Brothers’ controlled entities NJ Single Units Holdings, LLC, League Union County Holdings, LLC, League Irvington Multi Inv, LLC, League SFR Holding LLC, NJ UC League Investments, LLC, League Essex Holdings, LLC, NJ East Orange Portfolio, LLC, NJ League Holdings LLC, League Irvington Holdings, LLC, NJ East Orange Holdings LLC (collectively “the League Entities”) and LPM Construction Group, LLC (“LPM”), as well as more than twenty entities allegedly controlled by Payan or LaFortune (the “Seller Entities”). Defendant Richard Sajous filed their Opposition to Plaintiffs’ Motion on December 26, 2023, to which Plaintiffs filed a Reply on January 10, 2024. No other defendant in this matter filed Opposition to Plaintiffs’ Motion.

By way of background, Plaintiffs are a mortgage lender who primarily provides loans for the purchase and renovation of property. Plaintiffs provided more than two hundred (200) loans to the Sajous Brothers and their entities from 2016 through 2019. This matter concerns twenty-three loans for which Plaintiffs provided \$4,907,750.00 to the Sajous Brothers’ entities for the purchase of properties. Plaintiffs allege that for twenty-two of those transactions, they were the victim of a fraudulent scheme by the Sajous Brothers, LaFortune, and Payan, where the transactions were fraudulently conducted to solicit loan funds from Plaintiffs so that the defendants could pocket the proceeds rather than use them to purchase and rehabilitate the subject properties. As for the relationship between the individual defendants, the Sajous Brothers are friends with LaFortune and Payan, with Richard Sajous being Payan’s brother-in-law.

Plaintiffs assert that the Sajous Brothers, LaFortune, and Payan used a number of limited liability companies to defraud Plaintiffs into providing twenty-two loans supposedly secured by properties in which they never had title. Plaintiffs note that for the remaining transaction pertaining to property located at 605 Court Street, Elizabeth, NJ (the “Court Street Loan”), the League Entities obtained title but transferred it without Plaintiffs’ knowledge or consent. The properties were subject to foreclosure sheriff’s sales in Essex and Union County. For thirteen (13) of the sales, Ricardo Sosa, a third-party real estate investor, obtained the big rights then assigned said rights to

Richard Sajous and a League Entity in return for the deposit and an additional fee. As for the other ten (10) sheriff's sales, either (i) Richard and a League Entity obtained the bid rights, (ii) an assignment from a third party was obtained by Richard similar to the assignments by Ricardo Sosa, or (iii) the Sajous Brothers nor the Seller Entities ever obtained bid rights. For the sales that fell under (i), Richard placed the winning bid in the name of a Seller Entity and said entity was to supposedly sell the property to one of the League Entities.

Plaintiffs contend that after the Sajous Brothers obtained bid rights on the properties and placed their respective deposits, the defendants provided numerous documents to Plaintiffs which contained fraudulent misrepresentations—including that they had title to the subject properties—to obtain the loans at issue, and the sheriff's sales were never completed and the bids were vacated. Plaintiffs assert that the defendants knew the Seller Entities lacked title to the properties and Plaintiffs' loan funds were transferred between entities owned by the Sajous Brothers. Plaintiffs further allege that the parties to each transaction used the same bank account. Plaintiffs assert that LaFortune and Payan state they did not know of the Seller Entities they allegedly served as principals for nor did they know of the transactions they were involved in. Plaintiffs allege that LaFortune and Payan received payments from the Sajous Brothers' bank account as part of their role as "straw" persons in the alleged scheme. Plaintiffs state that the League Entities defaulted on their loans and Plaintiffs have no recourse to foreclose on the mortgages. Plaintiffs note that when asked about these events, all involved parties invoked their Fifth Amendment rights against self-incrimination.

Plaintiffs' Motion

Plaintiffs state that although the Sajous Brothers, Payan, and LaFortune invoked their Fifth Amendment rights against self-incrimination, Plaintiffs are entitled to an adverse inference against them because this is a civil matter.

1. Plaintiffs' Arguments as to Counts I and II of the Second Amended Complaint for Breach of Notes and Breach of Guaranties

Plaintiffs assert that they are entitled to summary judgment on Counts I and II of their Second Amended Complaint for breach of notes and breach of guaranties. Plaintiffs aver that each of the Notes were executed by Defendant on behalf of the League Entities and promised that said entities would make timely monthly payments on the Notes' respective loan and pay back the loans

in full by their maturity dates, which were within six months of loan issuance. Plaintiffs claim that the Notes were never repaid in full. Plaintiffs state that the Notes set forth that the proceeds were only to be used for business and commercial purposes and that any breach of the covenants in accompanying loan documents would constitute default. Plaintiff adds that the Certificates of Business purpose similarly state that loan proceeds would only be used to “purchase, refinance, construct, or rehabilitate” the property offered as security for the loan. Plaintiff further notes that in the event of non-payment, the Notes provided that Plaintiffs could collect late fees, interest, and reasonable attorney’s fees and costs. Plaintiffs assert that the Mortgage additionally contains a default provision delineating instances of default, including:

[T]he vesting of title, or any sale, conveyance, transfer, leasing, assignment or further encumbrance in any manner whatsoever of any interest in the Mortgaged Property, or any part thereof, in or to anyone other than the present owner, or any change in title or ownership of the Mortgaged Property, or any part thereof, without the prior written consent of Mortgagee[.]

[Mortgages, Page 9, Ex. 27 to the O’Donnell Cert.]

Plaintiffs argue that the League Entities breached these obligations because the loans were never repaid, title to the subject properties was never obtained, and the loan proceeds were never paid to the Seller Entities for the purchase of the properties nor were they used to rehabilitate the properties. Plaintiffs assert that an adverse inference of liability under the Notes must be drawn against the League Entities in exchange for the Sajous Brothers, who, in their capacity as corporate representatives, utilized the Fifth Amendment in responding to discovery regarding this issue.

Plaintiffs aver that each transaction included a Guaranty executed by Defendant where he guaranteed payment of the League Entities’ debt under the Notes. Plaintiffs therefore argue that since the loans were never fully repaid, Defendant is liable under each Guaranty he executed.

Plaintiffs state that for the Mortgage associated with the property located at 605 Court Street, Elizabeth, NJ, the breach occurred from the Sajous Brothers’ and League Union County Holdings, LLC’s transferring the property back to the prior owners through a separate deed without the written consent of Plaintiffs or repayment of the associated loan funds. As for the other twenty-two properties at issue, Plaintiffs assert that the League Entities did not hold title to them which thereby breached their respective Mortgage, Nots, and Guaranties.

Plaintiffs aver that each additional document executed in connection with the Notes, Guaranties, and Mortgages contained representations which were false and/or never complied with. Plaintiffs argue that breaching these documents further constitutes a breach of the Notes and Guaranties.

Plaintiffs argue that there is no dispute that the parties entered into the aforementioned agreements, that Plaintiffs delivered the loans, that the Sajous Brothers and League Entities breached the agreements, and that Plaintiffs suffered the loss of the loan funds as a result of the breach.

2. Plaintiffs' Arguments as to Count III of their Second Amended Complaint for Fraud

Plaintiffs argue that the defendants indisputably committed fraud. Plaintiffs state that the Sajous Brothers prepared and furnished doctored bank records to obtain further loans from Plaintiffs and avoid financial scrutiny. Plaintiffs specifically articulate three fraudulent misrepresentations that arose from said records: (1) that in March 2019, LPM possessed \$260,245.42 when they actually had \$245.10; (2) that in April 2019, LPM possessed \$460,037.42 when the actual amount was \$17.10; and (3) that in May 2019, LPM possessed \$407,029.42 when they actually possessed \$497.10. Plaintiff further asserts that the Sajous Brothers knowingly ensured that all loan proceeds were paid into LPM's bank account, which the Sajous Brothers controlled, instead of being paid to the Seller Entities to acquire the properties at issue as represented to Plaintiffs.

Plaintiffs aver that other documents executed by the Sajous Brothers and provided to Plaintiffs contained known misrepresentations which Plaintiffs relied upon in issuing the subject loans. Specifically, Plaintiffs contend that the Sajous Brothers represented that the loan funds were to be used to purchase and rehabilitate the properties which were collateral for the loans but the loans were never used to serve this purpose. Plaintiffs add that with the exception of the Court Street property, the League Entities never took title to those properties. Plaintiffs further note that Defendant, in executed Affidavits of Title, represented that the League Entities possessed valid title although he knew they never possessed and would never acquire such title. Plaintiffs assert that Defendant additionally signed HUD-1 Settlement Statements representing that the received loan funds would be paid to the property seller while knowing that said funds would instead be funneled back to bank accounts controlled by the defendants and were not being paid to a Seller

Entity. Plaintiffs state that Defendant additionally took assignments of the bids and personally bid on nineteen (19) of the twenty-two (22) properties, thereby making the Sajous Brothers responsible for ensuring that the Seller Entities acquired title to the properties from the sheriff's sales and conveyed them to the League Entities in order for Plaintiffs to hold a valid mortgage with the properties as security for the loans. Plaintiffs aver that the Sajous Brothers knew that the sheriff's sales would never be completed, nor that Plaintiffs' loan proceeds would be used for them; rather, the Sajous Brothers pocketed the loan proceeds. Plaintiffs assert that for the three (3) remaining properties, no defendants had rights to them. Plaintiffs state that when asked about these issues in written discovery and at deposition, the Sajous Brothers declined to respond and instead invoked their Fifth Amendment rights, which Plaintiffs argue allows this Court to draw an adverse inference in this matter.

Regarding LaFortune and Payan, Plaintiffs state that these defendants were also involved in the execution of the fraudulent Deeds, Contracts of Sale, and HUD-1 Settlement Statements which were a part of each transaction at issue. Plaintiffs assert that LaFortune and Payan misrepresented that title to the property was being transferred and they, as the Seller Entity, received consideration for the property when it was actually the Sajous Brothers who received all loan funds from LPM. Plaintiffs add that the Seller Entity never acquired or transferred title. Plaintiffs then state that LaFortune and Payan claimed in their interrogatory responses that they have no knowledge regarding any of the transactions or materials in contravention of the documents they executed, which Plaintiffs argue demonstrates their roles as fraudulent straw persons. Plaintiffs add that LaFortune and Payan also invoked their Fifth Amendment rights when questioned on these topics at deposition, so this Court should draw an adverse inference against them.

3. *Plaintiffs' Arguments as to Count IV of the Second Amended Complaint for Unjust Enrichment*

Plaintiffs state that all defendants were unjustly enriched by the events underlying this matter. Plaintiffs assert that they issued the loans which are the basis of this action and the loan funds were received by the Sajous Brothers through the LPM bank account. Plaintiffs further aver that LaFortune and Payan received payments from that bank account during the period where this scheme occurred from April 3, 2018 until July 2, 2019. Plaintiffs add that LaFortune received twenty-three (23) checks from LPM amounting to \$137,500 and Payan received twenty-eight (28)

checks and one wire transfer from LPM amounting to \$92,500. Plaintiffs assert that it was also admitted that the subject loans, along with their associated late fees and interest charges, were never paid in full to Plaintiffs.

Plaintiffs therefore argue that the Sajous Brothers, LPM, and the League Entities were conferred the benefit of receiving loan funds (1) while Plaintiffs were never provided a valid security interest in return for said funds; (2) absent of valid mortgages provided to Plaintiffs; (3) while the defendants never obtained title to the properties supposedly securing the loans; (4) while utilizing said funds for any purpose in contravention to the specific purposes set forth by the loan documents; and (5) without ever repaying Plaintiffs for said funds. Plaintiffs add that LaFortune and Payan were conferred the benefit of receiving payments from the loan funds for their roles as “straw” persons.

4. Plaintiffs’ Arguments as to Count V of the Second Amended Complaint for Civil Conspiracy

Plaintiffs argue that the defendants are all liable for civil conspiracy because they each acted in concert to obtain loans from Plaintiffs under false pretenses. Plaintiffs assert that each defendant understood the “general objective” of the scheme, which was to obtain loan funds from Plaintiffs. Plaintiffs aver that each defendant had a role to further the scheme and the participation of each party was necessary to complete said scheme. Specifically, Plaintiffs state that LaFortune, Payan, and the Seller Entities executed fraudulent contracts of sale, settlement statements, and property deeds with the knowledge that Plaintiffs were relying on these documents to issue loans and without the knowledge of whether the Seller Entities obtained or were to obtain title to the subject properties and were never compensated for the sales. Regarding the Sajous Brothers, Plaintiffs aver that these defendants obtained bid rights to nineteen (19) of the twenty-two (22) properties with the knowledge that they had no rights to the remaining three (3) properties, knowingly executed multiple fraudulent loan documents, provided the fraudulent documents to LaFortune and Payan who were to personally execute them, and paid LaFortune and Payan for their involvement in the scheme. Plaintiffs further note that the Sajous Brothers, LaFortune, and Payan each invoked their Fifth Amendment rights when questioned on these topics, so an adverse inference must be drawn against them.

5. *Plaintiffs' Arguments as to Damages for Each Cause of Action*

i. Breach of Notes & Guaranties

Plaintiffs list the twenty-three (23) loans which are currently in default for non-payment, with said non-payment constituting a breach of the Notes and Guaranties executed under each loan. Plaintiffs assert that total owed on the loans, excluding attorney's fees, is \$8,745,313.16. Based on the calculation, Plaintiffs argue that judgment should be entered on Counts I and II of their Second Amended Complaint against Richard Sajous for \$8,745,313.16 and against: (1) NJ Single Unit Holdings, LLC for \$2,683,655.83; (2) League Essex Holdings LLC for \$2,622,045.76; (3) NJ League Holdings LLC for \$975,708.78; (4) League SFR Holding LLC for \$576,170.64; (5) NJ UC League Investments LLC for \$519,581.91; (6) NJ East Orange Portfolio for \$363,967.30; (7) NJ East Orange Holdings LLC for \$350,173.01; (8) League Irvington Multi Inv LLC for \$338,993.80; (9) League Irvington Holdings LLC for \$278,823.00; and (10) League Union County Holdings LLC for \$36,193.13.

ii. Fraud & Civil Conspiracy

Plaintiffs list the amount owed on twenty-two (22) loans under which the Sajous Brothers, LPM, LaFortune, Payan, and each of the involved League Entities and Seller Entities committed fraud, excluding those associated with the 605 Court Street property. Plaintiffs assert that the total owed under these loans is \$8,709,120.03. Plaintiffs argue that judgment should be entered under Counts III and IV of the Second Amended Complaint against (1) Richard Sajous, Alain Sajous, and LPM for \$8,709,120.03 in unpaid principal, interest, and late fees due on the twenty-two loans; (2) NJ Single Unit Holdings, LLC for \$2,683,655.83; (3) League Essex Holdings LLC for \$2,622,045.76; (4) NJ League Holdings LLC for \$975,708.78; (5) League SFR Holding LLC for \$576,170.64; (6) NJ UC League Investments LLC for \$519,581.91; (7) NJ East Orange Portfolio for \$363,967.30; (8) NJ East Orange Holdings LLC for \$350,173.01; (9) League Irvington Multi Inv LLC for \$338,993.80; (10) League Irvington Holdings LLC for \$278,823.00; (11) Ralph LaFortune for \$4,827,874.36, consisting of the unpaid principal, interest, and late fees due on the twelve loans in which he was involved; (12) individually against each LaFortune-controlled Seller Entity for the amount due on its associated loan as summarized in Plaintiffs' moving brief; (13) Silvy Payan for \$3,881,245.67, consisting of the unpaid principal, interest, and late fees due on the ten loans in which she was involved; (14) individually against each Payan-controlled Seller Entity

for the amount due on its associated loan as summarized in Plaintiffs' moving brief; and (15) awarding punitive damages.

iii. Unjust Enrichment

Plaintiffs state that their unjust enrichment claim is pled in the alternative to their Breach of Notes and Guaranties claims. Plaintiffs therefore assert that if this Court does not grant summary judgment for Plaintiffs on Counts I and II of the Second Amended Complaint, a judgment should be entered against Richard Sajous and LPM for \$8,745,313.16 and against: (1) NJ Single Unit Holdings, LLC for \$2,683,655.83; (2) League Essex Holdings LLC for \$2,622,045.76; (3) NJ League Holdings LLC for \$975,708.78; (4) League SFR Holding LLC for \$576,170.64; (5) NJ UC League Investments LLC for \$519,581.91; (6) NJ East Orange Portfolio for \$363,967.30; (7) NJ East Orange Holdings LLC for \$350,173.01; (8) League Irvington Multi Inv LLC for \$338,993.80; (9) League Irvington Holdings LLC for \$278,823.00; (10) League Union County Holdings LLC for \$36,193.13; (11) Ralph LaFortune for \$137,500; and (12) Silvy Payan for \$92,500.

6. *Plaintiffs' Arguments for Equitable Relief Releasing its May 21, 2020 Restraints Freezing Funds*

Plaintiffs state that, per their request and pursuant to a May 21, 2020 Court Order, the Essex County Sheriff is currently holding \$78,000 in deposit funds pertaining to the 111-113 Richelieu Terrace, Newark, New Jersey and 53 William Street, East Orange, New Jersey properties. Plaintiffs assert that the Essex County Sheriff is specifically holding \$18,000 for the 53 William Street property which is connected to the February 19, 2019 deposit by Michael Hernandez that was then assigned to Defendant and later vacated. Regarding the 111-113 Richelieu Terrace property, Plaintiffs aver that the Sheriff is holding \$60,000 pertaining to two bid deposits which were both vacated.

Plaintiffs add that the Superior Court Trust Fund Unit is holding \$28,863.20 in "surplus" funds related to the 605 Court Street property due to the Final Judgment of Foreclosure and Sheriff's fees involved in the redemption of the property amounting to \$141,001.59 and \$8,428.16 respectively and totaling at \$149,429.75. Plaintiffs state that the Sajous Brothers remitted \$178,292.95 to the Sheriff resulting in an overpayment of \$28,863.20 and said overpayment

amount being sent by the Sheriff's office to the Superior Court Trust Fund Unit thereby restraining that amount.

Plaintiffs request that the restraints be lifted as to the \$30,000 deposited by Elizondo. Regarding the \$30,000 Sosa deposit, \$18,000 Hernandez deposit, and \$28,863.20 in overpayment funds, Plaintiffs additionally request that the restraints be lifted and the funds be transferred to Plaintiffs because they represent funds due to be returned to the Sajous Brothers or League Entities as a result of their bids having been vacated in connection with their scheme, so they may offset the defendants' liability owed if summary judgment is granted for Plaintiffs. Plaintiffs accordingly assert that this Court lift the May 21, 2020 Order, release the restraints enforced by said Order, and permit access to the funds.

7. Plaintiffs' Arguments for Attorneys' Fees and Costs

Plaintiffs argue that in the event of default on the subject loans, the loan documents provide that Plaintiffs are entitled to attorneys' fees and costs. Plaintiffs therefore assert that judgment should be entered against the Sajous Brothers and League Entities for the full value of Plaintiffs' attorney's fees and expenses resulting from this matter, with the amount to be determined through a submission of a supplemental Certification and entered by supplemental judgment.

Defendant's Opposition

Only Defendant Richard Sajous responded to Plaintiffs' Motion, and he states that the complexity of the matters involved as well as the presence of substantial material disputes require a full trial to ensure justice and due process. Regarding Plaintiffs' claim for Breach of Notes, Defendant asserts that Plaintiffs fail to provide precise allegations and substantiate the prerequisites to establish this claim. Defendant avers that the disputed facts central to this claim show that a trial is necessary. Defendant admits to executing the Notes on behalf of the League Entities but denies (1) that the League Entities breached the Notes because they complied with the obligations set forth therein and (2) that Plaintiffs suffered damages as a result of the alleged breaches.

As for Plaintiffs' claim for Breach of Guaranties, Defendant questions the validity of the purported contractual ties underlying this claim and states that the disputed material facts demonstrate that a trial should occur. Defendant admits to executing the Guaranties but (1) denies

that he breached the Guaranties because the obligations were fulfilled; (2) argues that any failure to make payments pursuant to the Guaranties is due to circumstances beyond his control; and (3) denies that Plaintiffs suffered damages as a result of any alleged breach.

For Plaintiffs' Fraud claim, Defendant denies any intent to defraud Plaintiffs and states that he is ready to present corroborative evidence, such as communication records, to show Plaintiffs' knowledge and involvement in comparable transactions. Specifically, Defendant (1) admits to the representations made; (2) denies that there was fraudulent intent; (3) denies that misrepresentations were knowingly or recklessly made to Plaintiffs; (4) asserts that any discrepancies were inadvertently made to Plaintiffs and were not intended to defraud them; (5) denies that he received compensation for any role in the alleged scheme; and (6) argues that Plaintiffs did not suffer damages as a result of the alleged misrepresentations.

Defendant avers that there is a dispute as to whether he was unjustly enriched by receiving loan funds without proper collateral. Defendant argues that Plaintiffs must show that benefits were conferred upon him, requiring examination at trial. Defendant specifically (1) denies that benefits received in the transactions at issue were unjustly obtained; (2) states that the funds he received were used pursuant to the loan documents; (3) denies that LaFortune and Payan were compensated with the loan proceeds; and (4) avers that any benefits received were not at Plaintiffs' expense.

Defendant states that Plaintiffs allegations in support of their claim for civil conspiracy are conjectural and lack sufficient evidence of a conspired agreement or joint action. Specifically, Defendant (1) denies that he engaged in civil conspiracy; (2) asserts that his actions were within the scope of legal business transactions; (3) denies that he committed overt acts to further the alleged conspiracy; and (4) avers that Plaintiffs did not suffer damages as a result of the alleged conspiracy.

Defendant argues that Plaintiffs' request for injunctive relief is unwarranted because there is no showing of immediate or irreparable harm justifying this remedy and the facts should be evaluated at trial. Defendant denies that he inappropriately received funds from the Sheriff's Sales. Furthermore, Defendant (1) states that Plaintiffs were aware of the fund distribution and did not object when it occurred; (2) avers that any action taken was pursuant to the terms of the loan documents; and (3) denies that he should not receive the funds due to him.

Defendant requests that this Court deny Plaintiffs' Motion in its entirety and allow this matter to proceed to trial.

Plaintiffs' Reply

Plaintiffs initially note that defendants Alain Sajous, the League Entites, LPM, Payan, LaFortune, and the Seller Entities failed to submit opposition to this Motion, and therefore request that summary judgment be entered against those parties as unopposed. Plaintiffs argue that Defendant's Opposition lacks merit and the denials within are insufficient to survive summary judgment. Plaintiffs state that Defendant did not respond to Plaintiffs' Statement of Undisputed Facts with citations to the motion record, which warrants treatment of all facts set forth by Plaintiffs as admitted. Plaintiffs assert that the Opposition merely contains generic denials of the claims at issue which are not supported and are even contradicted by the presented evidence. Plaintiffs further aver that the time for Defendant to present evidence in support of his arguments was in opposition to this Motion, not at trial. Plaintiffs contend that the Opposition should also be disregarded, and summary judgment be granted because Defendant elected to invoke his Fifth Amendment rights in responding to written interrogatories and at deposition, which entitles Plaintiffs to an adverse inference that Defendant cannot refute Plaintiffs' allegations.

Plaintiffs reiterate that Defendant fails to support his denials with any evidence. Plaintiffs further explain how the evidence presented herein refutes Defendant's claims and supports a granting of summary judgment for Plaintiffs as requested in their Motion.

Law and Analysis

A. Asserting the Fifth Amendment Privilege Against Self-Incrimination in a Civil Matter

When a party in a civil matter asserts the privilege against self-incrimination, the fact-finder may draw an adverse inference. Attor v. Attor, 384 N.J. Super. 154, 165-66 (App. Div. 2006) (citing Mahne v. Mahne, 66 N.J. 53, 60 (1974)); see also Bastas v. Bd. of Review, 155 N.J. Super. 312, 315 (App. Div. 1978) (holding that the Board could draw an adverse inference where claimant for unemployment benefits asserted Fifth Amendment privilege and refused to testify on facts related to the claimant's qualification for benefits); Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527, 531-32 (App. Div. 1967) (concluding that in a civil action, the court may draw an adverse inference when a litigant invokes the Fifth Amendment and refuses to testify

concerning a matter within his or her personal knowledge), certif. denied, 50 N.J. 404 (1967); SEC v. Graystone Nash, Inc., 25 F.3d 187, 190 (3rd Cir. 1994) (noting that "reliance on the Fifth Amendment in civil cases may give rise to an adverse inference against the party claiming its benefits") (citing Baxter v. Palmigiano, 425 U.S. 308, 318 (1976)).

In the present matter, the Sajous Brothers, LaFortune, and Payan each asserted their Fifth Amendment privilege against self-incrimination several times in interrogatory responses and depositions. The exceptions are LaFortune and Payan's interrogatory responses, attached as Exhibit 4 and 5 to the Motion respectively, where no such privilege is asserted therein. The Sajous Brothers asserted the privilege throughout their interrogatory answers, attached to this Motion as Exhibits 8 for Richard and 62 for Alain, when asked about their relationships with or knowledge of any persons or entities involved in this matter, any financial transferred by them or anyone on their behalf, whether they or the League Entities had an interest in the properties at issue, how loan proceeds were disbursed, among other topics. The Sajous Brothers' deposition answers, attached as Exhibit 10 for Richard and Exhibit 9 for Alain, similarly show their invocation of the Fifth Amendment privilege against self-incrimination throughout the entire transcript. Exhibits 11 and 12 attached to Plaintiffs' Motion respectively contain LaFortune and Payan's deposition answers, also show both defendants asserting their Fifth Amendment privilege when asked questions pertaining to this matter.

Accordingly, this Court may draw an adverse inference where the Sajous Brothers, LaFortune, and Payan asserted their fifth amendment privilege against self-incrimination.

B. Standard of Review

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). The Supreme Court of New Jersey, in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995), articulated the analysis as follows:

A determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party,

are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

[Brill, 142 N.J. at 540].

The Court in Brill encouraged trial courts not to hesitate in granting summary judgment when the appropriate circumstances are presented, such that the “evidence is so one-sided that one party must prevail as a matter of law.” Id. Furthermore, Brill also held that a non-moving party cannot defeat a motion for summary judgment by pointing to any mere fact in dispute, rather, a non-moving party must point to competent evidence that leads to substantial issue of material fact. Id. at 529. In sum, “where the party opposing summary judgment points only to disputed issues of fact that are of an insubstantial nature, the proper disposition is summary judgment.” Id. Since New Jersey does not follow the “scintilla of evidence rule,” it is plaintiff’s burden to establish “by competent evidential material that a genuine issue of material fact exists.” Goldome Realty Credit Corp. v. Harwick, 236 N.J. Super. 118, 124 (Ch. Div. 1989).

A party does not create a genuine issue of fact simply by offering a sworn statement. Carroll v. N.J. Transit, 366 N.J. Super. 380, 388 (App. Div. 2004). Also, “conclusory and self-serving assertions’ in certifications without explanatory or supporting facts will not defeat a meritorious motion for summary judgment.” Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 425-26 (App. Div. 2009) (citations omitted). “[O]nce the moving party presents sufficient evidence in support of the [summary judgment] motion, the opposing party must ‘demonstrate by competent evidential material that a genuine issue of fact exists.’” Globe Motor Co., 225 N.J. at 479-80 (quoting Robbins v. Jersey City, 23 N.J. 229, 241 (1957)). “Competent opposition requires ‘competent evidential material’ beyond mere ‘speculation’ and ‘fanciful arguments.’” Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014) (quoting Hoffman, 404 N.J. Super. at 425-26).

Before analyzing Plaintiffs’ claims, this Court must determine the adequacy of Defendant Richard Sajous’s Opposition. Rule 4:46-2(b) sets forth the requirements for opposition to a motion for summary judgment:

A party opposing the motion shall file a responding statement either admitting or disputing each of the facts in the movant's statement. **Subject to R. 4:46-5(a), all material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically**

disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue as to the fact. An opposing party may also include in the responding statement additional facts that the party contends are material and as to which there exists a genuine issue. Each such fact shall be stated in separately numbered paragraphs together with citations to the motion record.

[R. 4:46-2(b) (emphasis added).]

A party opposing a motion for summary judgment has the affirmative duty of complying with R. 4:46-2(b). Polzo v. County of Essex, 196 N.J. 569, 586 (2008). Defendant's Opposition is six (6) pages and lacks a responsive statement of material facts. Defendant broadly denies elements of Plaintiffs' claims with no supporting facts or evidence attached. Accordingly, the Opposition does not comply with R. 4:46-2 and all material facts in Plaintiffs' statement are therefore deemed admitted.

i. Counts I & II – Breach of Notes & Breach of Guaranties

A contract is “an agreement resulting in obligation enforceable at law.” Borough of W. Caldwell v. Borough of Caldwell, 26 N.J. 9, 24 (1958). A contract is binding “if [it] has been mutually agreed upon by the parties, is supported by valid consideration, and does not violate codified standards or offend public policy.” Hoffman v. Supplements Togo Mgmt., LLC, 419 N.J. Super. 596, 606 (App. Div. 2011). In order to assert a claim for breach of contract, “plaintiff has the burden to show that the parties entered into a valid contract, that the defendant failed to perform his obligations under the contract and that the plaintiff sustained damages as a result.” Murphy v. Implicito, 392 N.J. Super. 245, 265 (App. Div. 2007).

Importantly, a party bringing a claim for breach of contract must prove all elements of the cause of action, including damages. See Cumberland Cty. Improvement Auth. v. GSP Recycling Co., 358 N.J. Super. 484, 503 (App. Div. 2003). Failure to prove any element of a cause of action for breach of contract, including failure to prove that the non-breaching party suffered damages, is fatal to the cause of action. See Lone v. Brown, 199 N.J. Super. 420, 425 (App. Div.) (holding summary judgment on breach of contract claim was appropriate because claimant could not assert damages), appeal dismissed 103 N.J. 480 (1986). The damages suffered must be foreseeable, that is, “a reasonably certain consequence of the breach.” Donovan v. Bachstadt, 91 N.J. 434, 445 (1982) (citations omitted). However, mere uncertainty as to the amount of damages is an insufficient basis on which to deny the non-breaching party relief. Id. Moreover, even if the non-

breaching party did not suffer any damage that arose from the breach, the breach may still support a claim for nominal damages or punitive damages. See Harris v. Schenkel, 26 N.J. 166, 167 (1958).

In the present matter, Plaintiff sufficiently shows that summary judgment is warranted for Counts I and II of their Second Amended Complaint. It is not disputed that Plaintiffs and the League Entities were bound by the Notes. As the signatory to the Guaranties, Defendant is also bound by the Notes because the Guaranties establish that a breach of their respective loan documents constitutes a breach of the Guaranty itself.

The League Entities and Defendant breached several obligations under the Notes and Guaranties. First, the League Entities were required to pay back the full balance of each Note's respective loan via monthly payments, but failed to do so, resulting in a default. Furthermore, at the time of default for each loan, the League Entities did not have title to the properties which Plaintiff required to be secured under the Notes and Mortgages, which constitutes a breach of the Notes as Plaintiff is left without a remedy under their terms. Additionally, the Notes established that the proceeds provided to the League Entities were to be used for business and commercial purposes, namely, the purchase of their respective subject properties from the Seller Entities. The evidence, however, shows that the proceeds were paid to the Seller Entities absent any transaction involving transfer of the subject properties or any other business or commercial purpose. As for the Note and Guaranty regarding the Court Street Loan, Section 2.01 of its respective Mortgage articulates that the following event of default:

[T]he vesting of title, or any sale, conveyance, transfer, leasing, assignment or further encumbrance in any manner whatsoever of any interest in the Mortgaged Property, or any part thereof, in or to anyone other than the present owner, or any change in title or ownership of the Mortgaged Property, or any part thereof, without the prior written consent of Mortgagee;

While the League Entities had title to the Court Street Loan property at the time the Note and Guaranty were executed, they later transferred the property to its prior owners through a separate deed without Plaintiffs' written consent. This constitutes a breach of the Court Street Loan Note and Guaranty.

It is also not disputed that Plaintiffs suffered damages as a result of the League Entities and Defendant's breach. Plaintiffs provided millions of dollars in loan funds to the League Entities,

and when an event of default occurred on every loan, Plaintiffs had no collateral to obtain relief under the Notes and Guaranties. Therefore, Plaintiffs lacked a remedy by which they could address the defaults and regain the loan funds through foreclosure proceedings.

For the foregoing reasons, Plaintiffs motion for summary judgment is hereby **GRANTED** for their Breach of Notes claim against the League Entities. Summary judgment is also **GRANTED** for Plaintiffs' Breach of Guaranties claim against Defendant Richard Sajous.

ii. *Count III – Fraud Against the Sajous Brothers, Payan, LaFortune, & the Seller Entities*

The elements of legal fraud are "(1) 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." Banco Popular No. America v. Gandi, 184 N.J. 161, 172-73 (2005) (quoting Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997)). Equitable fraud is distinguished from legal fraud by the lack of scienter as an element. See Jewish Center of Sussex Cty. v. Whale, 86 N.J. 619 (1981). A claim for common law fraud "must relate to a present or preexisting fact and cannot ordinarily be predicated on representations [that] involve things to be done in the future." Anderson v. Modica, 4 N.J. 383, 391-92 (1950). However, "a present intention to act or not act in the future" can constitute an actionable misrepresentation if the person making the representation did not intend to act, or not act, when the statement was made. Stochastic Decisions, Inc. v. DiDomenico, 236 N.J. Super. 388, 395-96 (App. Div. 1989) (citing Van Dam Egg Co. v. Allendale Farms, Inc., 199 N.J. Super. 452, 457 (App. Div. 1985) ("A promise to pay in the future is fraudulent if there is no present intent ever to do so.")).

a. Economic Loss Doctrine

Under New Jersey law, a tort remedy does not arise from a contractual relationship unless the breaching party owes an independent duty imposed by law." Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 316 (2002). In other words, a party cannot maintain a tort action, in addition to a contract action, unless the plaintiff can establish that there was an independent duty of care. Id. at 314. Essentially, the economic loss doctrine is designed to prevent parties from transforming simple breach of contract claims, not based on malfeasance, into tort actions. Id. at 310.

The economic loss doctrine has evolved "as part of the common law as an effort to establish the boundary between contract and tort remedies." Dean v. Barrett Homes, Inc., 204 N.J. 286, 295

(2010). Accordingly, when a party suffers only economic loss, the doctrine precludes recovery under a tort theory of liability. Id. at 295.

The economic loss doctrine demarcates tort and contract liability for economic losses on the basis that contract law is generally better suited to resolve claims for economic loss. Spring Motors Distrib. v. Ford Motor Co., 98 N.J. 555, 579-80 (1985). Defendants concede that the economic loss doctrine "does not bar claims for fraud in the inducement of a contract." Bracco Diagnostics Inc. v. Bergen Brunswig Drug Co., 226 F. Supp. 2d 557, 563-64 (D.N.J. 2002). Fraud in the inducement is fraud that induces the other party to enter into the contract. Walid v. Yolanda for Irene Couture, 425 N.J. Super. 171, 186 (App. Div. 2012).

b. Fraud Against LLC Members

As a general rule, the debts, obligations, and liabilities of a limited liability company are not the debts, obligations, and liabilities of its members or managers. N.J.S.A. 42:2C-30(a). Personal liability for a member or manager of a limited liability company can be established only where extraordinary circumstances, such as fraud or injustice, warrant piercing the corporate veil. See State, Dept. of Env't'l Protection v. Ventron Corp., 94 N.J. 473, 500 (1983).

In the present matter, the economic loss doctrine does not apply because Plaintiffs' fraud claim pertains to misrepresentations that induced Plaintiffs to enter into the loan agreements at issue. Furthermore, although the Sajous Brothers, LaFortune, and Payan were acting as members of their respective entities, Plaintiffs' allegations of fraud pertain to their own actions on behalf of said entities. Accordingly, a claim for fraud is permissible against these defendants in their individual capacity.

There is no genuine issue of material fact that the Sajous Brothers, acting on behalf of the League Entities, as well as LaFortune and Payan acting on behalf of the Seller Entities, knowingly made several misrepresentations to induce Plaintiffs into providing the subject loans. As noted above, the loans provided by Plaintiff were contingent on the Sajous Brothers' representation that the funds would be used to purchase and rehabilitate the subject properties. The record shows that aside from the Court Street Loan property, the League Entities never obtained title to any of the properties at issue. For the Court Street property, however, the League Entities transferred title after receiving the loan funds and therefore did not utilize said funds in accordance with its respective Note and Mortgage. Defendant Richard Sajous also represented via Affidavits of Title

that the League Entities possessed title to the subject properties. Additional representations were made by Richard that the loan funds would go to the seller by signing HUD-1 Settlement Statements articulating same.

Moreover, Richard obtained the bid rights to nineteen (19) of the twenty-two (22) properties, thereby obligating him to ensure that the Seller Entities obtained title to said properties so that they could convey same to the League Entities. As the record shows, the sheriff's sales were never completed and the League Entities never obtained title to said properties. Furthermore, no defendant ever obtained rights to the remaining three (3) properties.

The record also shows that Alain Sajous produced doctored bank records in order to obtain loan funds. Plaintiffs attach as Exhibit 59 to their Motion LPM's bank records for the months of March, April, and May 2019, which show balances for each month of \$245.10, \$17.10, and \$497.10, respectively. Attached as Exhibit 41 are the LPM bank records for those same months which Alain provided to Plaintiffs; however, their respective balances for March, April, and May 2019 are \$260,245.42, \$460,037.42, and \$407,029.42. The bank records produced by Alain were used to demonstrate the Sajous Brothers' financial position to Plaintiffs in order to obtain the subject loans.

LaFortune and Payan, as principals of the Seller Entities, also made misrepresentations constituting fraud. Both parties were signatories to the Contracts of Sale, HUD-1 Uniform Settlement Statements, and Deeds, which fraudulently stated that the Seller Entities would transfer title to the subject properties and said entities received consideration for their respective sales. Conversely, LaFortune and Payan assert in their interrogatory responses that they have no information as to whether the Seller Entities ever possessed title to the subject properties.

The aforementioned facts, along with an adverse inference arising from the Sajous Brothers, LaFortune, and Payan's invocation of their Fifth Amendment privilege against self-incrimination when asked about these occurrences, show that the defendants and their entities knowingly made misrepresentations with the intention that Plaintiffs rely on them. The Sajous Brothers' intention is also demonstrated by bank wire records, attached as Exhibit 34, where loan funds were deposited into LPM's bank account controlled by them. Additionally, LaFortune and Payan received checks from LPM during the period which the loans at issue were being made to the League Entities. Specifically, LaFortune received twenty-three (23) checks from LMP

amounting to \$137,500 and Payan received twenty-eight (28) checks and one wire transfer from LPM amounting to \$92,500. Furthermore, Plaintiffs reasonably relied on the documents mentioned above to provide said loans under the belief that the subject properties would serve as collateral. Upon default on the loans, Plaintiffs had no collateral by which they could seek remedies for the unpaid funds, and the resulting damages were a result of the defendants' misrepresentations.

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment is hereby **GRANTED** as to Count III of the Second Amended Complaint for fraud.¹

iii. Count IV – Unjust Enrichment Against All Defendants

This Court observes that “the existence of an express contract excludes the awarding of relief regarding the same subject matter based on quantum meruit.” Kas Oriental Rugs, Inc. v. Ellman, 394 N.J. Super. 278, 286 (App. Div. 2007). A party may still plead breach of contract and quantum meruit in the alternative and, where sufficient evidence exists for each, have both claims submitted to the jury. Caputo v. Nice-Pak Prods., Inc., 300 N.J. Super. 498, 504 (App. Div. 1997). But once the jury concludes that an express contract exists, recovery may not be had under the alternative theory. N.Y.-Conn. Dev. Corp. v. Blinds-To-Go (U.S.) Inc., 449 N.J. Super. 542, 557 (App. Div. 2017). Additionally, parties may plead and pursue alternative and even inconsistent theories, such as a contractual and quantum theory, although recovery cannot be obtained on both. See Ellman, 494 N.J. Super. at 287-88.

This Court granted Plaintiff summary judgment on both their breach of notes and breach of guaranties claims. Accordingly, Plaintiffs' claim for unjust enrichment is hereby **DISMISSED**.

iv. Count V – Civil Conspiracy Against All Defendants

As set forth in Banco Popular N. Am. V. Gandi, 184 N.J. 161, 177 (2005) to make a claim of civil conspiracy, Plaintiff must establish the following:

[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.

¹ Although liability may be granted in this matter as to Plaintiffs' breach of notes and guaranties claims as well as their fraud claim, this Court notes that Plaintiffs must elect to be awarded damages on only one theory of liability: breach or fraud.

[Id. (quoting Morgan v. Union County Bd. Of Chosen Freeholders, 268 N.J. Super. 337, 364 (App. Div. 1993), cert. denied, 135 N.J. 468 (1994).]

Notably, the “gist of the claim is not the unlawful agreement, ‘but the underlying wrong which, absent the conspiracy, would give a right of action.’” Morgan, 268 N.J. Super. at 364 (internal citations omitted). Additionally, “a conspiracy is not actionable absent an independent wrong.” Tynan v. Gen. Motors Corp., 248 N.J. Super. 654, 668 (App. Div. 1991), rev’d on other grounds in part, 127 N.J. 269 (1992). Plaintiffs “are not required to provide direct evidence of the agreement between the conspirators[,]” and may prove the existence of such an agreement through circumstantial evidence. Morgan, 268 N.J. Super. at 365.

In the present matter, there is no dispute of material fact showing that summary judgment should be denied for Plaintiffs’ civil conspiracy claim. The defendants acted in concert to obtain mortgage loans from Plaintiffs, keep the loan funds, and leave Plaintiffs with no collateral for which they could recover said funds upon the event of default. As noted above, LaFortune, Payan, and the Seller Entities for which they are principals participated in the overall conspiracy by executing the fraudulent Contracts of Sale, HUD-1 Settlement Statements, and Deeds in order to represent that they had title to the subject properties and intended to sell same to the League Entities. Additionally, LaFortune and Payan received payments—outside of the property sales which were supposed to occur—from LPM an entity controlled by the Sajous Brothers.

Furthermore, the Sajous Brothers, LPM, and the League Entities played a role in the civil conspiracy alleged herein. Richard, acting on behalf of the League Entities, obtained bid rights for nineteen (19) of the twenty-two (22) properties and never obtained such rights to the remaining three (3). The Sajous Brothers executed documents containing fraudulent representations, such as the Notes, Mortgages, HUD-1 Settlement Statements, Affidavits of Title, and LPM bank records, to induce Plaintiffs to provide the loans at issue. Moreover, the Sajous Brothers, through LPM, paid LaFortune and Payan outside the scope of the property transactions which were represented to occur.

The Sajous Brothers, LaFortune, and Payan each failed to provide explanation disproving Plaintiffs’ alleged civil conspiracy in the interrogatory answers and their depositions, and invoked their Fifth Amendment privilege against self-incrimination when questioned on the circumstances

surrounding this claim. Accordingly, summary judgment is hereby **GRANTED** for Plaintiffs on their civil conspiracy claim.²

C. Count VI – Equitable Relief

This Court finds that Plaintiffs’ request for equitable relief to release the May 21, 2020 restraints freezing deposit funds is premature in a request for summary judgment. The request seemingly amounts to a motion to turn over funds, but no legal basis is provided by which this Court may grant such relief. Accordingly, this Court denies Plaintiffs’ request without prejudice and Plaintiffs may file a motion for the relief sought after judgment is entered. For the foregoing reasons, Plaintiffs’ request for equitable relief is hereby **DENIED** without prejudice.

D. Plaintiffs’ Request for Attorney’s Fees and Costs

Similar to Plaintiffs’ request for equitable relief, this Court finds that attorney’s fees may be properly considered upon a post-judgment motion supported by a certification outlining said fees and demonstrating their reasonableness in accordance with R. 1.5. Accordingly, Plaintiffs’ request for attorney’s fees and costs is hereby **DENIED** without prejudice.

E. Judgment to Be Entered Against the Defendants

This Court finds that in order to properly evaluate the evidence and assess the damages due to Plaintiff, a proof hearing shall be held on the issue of damages on March 8, 2024 at 2:30PM. Plaintiffs shall present a witness familiar with said issue who can testify as to the loans’ initial principal amounts, events of default, unpaid principal balances, resulting fees and costs, and the current total amount due.

² This Court notes that defendants Alain Sajous, Silvy Payan, and Ralph LaFortune filed Chapter 13 Bankruptcy Petitions with the United States Bankruptcy Court for the District of New Jersey. Accordingly, this matter has been stayed as to those defendants and the judgment herein does not apply to them until the stay is lifted.