NOT TO BE PUBLISHED WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

LANDCOR HOLDINGS, L.P, Plaintiff, vs. RICHARD W. BROWN, JR, Defendants.	SUPERIOR COURT OF NEW JERSEY BURLINGTON COUNTY LAW DIVISION DOCKET NO. BUR-L-1619-20 CONSOLIDATED: BUR-L-854-20 CIVIL ACTION **OPINION**
LANDCOR HOLDINGS, L.P, Plaintiff, vs. EVESHAM MORTGAGE, LLC, RICHARD W. BROWN, JR., OASIS MARKETING, LLC, C3G INVESCO, LLC, WILLIAM McGOEY, MICHAEL FAVOR III, ROBERT KELLEY, JOSEPH CORDOVA, and JOHN DOES 1-7, Defendants/Counterclaimants, vs. LANDCOR HOLDINGS, L.P., Counterclaim Defendant.	

Argued: May 12, 2023
Decided: May 12, 2023

David R. Dahan, Esq. and Megan Knowlton Balne, Esq. appearing on behalf of Plaintiff Landcor Holdings, L.P.

William S. Ruggierio, Esq. appearing on behalf of Defendants Evesham Mortgage, LLC, Richard Brown, Jr., Robert Kelley, and Joseph Cordova.

Richard J. Angowski, Esq. appearing on behalf of Defendants William McGoey and Michael Favor III.

I. <u>PRELIMINARY STATEMENT</u>

Defendants, Richard W. Brown, Jr, William McGoey, Michael Favor III, Robert Kelley, and Joseph Cordova (hereinafter "Individual Defendants"), together with Defendant Evesham Mortgage, LLC (hereinafter "Evesham Mortgage") moved for summary judgment seeking the dismissal of Defendant McGoey, Defendant Favor, Defendant Kelley, and Defendant Cordova. Defendants argue that the corporate veil shields the Individual Defendants from liability, that the Individual Defendants' lack of managerial involvement precludes their liability, and that Count One of the Plaintiff's Amended Complaint is moot.

Plaintiff, Landcor Holdings, L.P. (hereinafter "Landcor"), opposes the Defendants' motion and also moved for summary judgment, seeking alleged overdue commission payments, payment of a September 2013 Promissory Note, dismissal of Count 5 of the Defendants' Counterclaim, and a purchase of Landcor's interest in Evesham Mortgage pursuant to <u>N.J.S.A</u>. 42:2C-48.

For the reasons set forth herein, the Court **DENIES** the Defendants' Motion for Summary Judgment and **GRANTS** the Plaintiff' Motion for Summary Judgment

II. <u>STATEMENT OF FACTS AND PROCEDURAL HISTORY</u>

This matter arises from a corporate relationship in which the Plaintiff is alleging the Defendants violated provisions of the New Jersey Revised Uniform Limited Liability Company Act (hereinafter the "RULLCA"). Specifically, Plaintiff is alleging minority member oppression, breach of contract, promissory estoppel, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, fraud, conversion, improper distributions, fraudulent inducement, default of a promissory note, and is additionally seeking that the Court impose a constructive trust and require an accounting of all financial information for Evesham Mortgage.

Plaintiff's allegations arise from a business relationship between the Plaintiff and Evesham Mortgage wherein the Plaintiff became a 5% owner of Evesham Mortgage. The parties

then allegedly consummated a "Profit Sharing Agreement" which went into effect on March 1, 2012, which stated that Landcor "will receive profit on each closed loan in the amount of 10 Basis Points…" (Pl. Exhibit 15). According to the Profit Sharing Agreement, basis points were to be calculated by multiplying the total closed loan volume by 0.10%. The Profit Sharing Agreement states that "[t]his agreement will be in effect as long as Landcor Holdings, LP holds ownership in Evesham Mortgage, LLC." Id. Plaintiff contends that it has not received commission payments pursuant to the Profit Sharing Agreement and contends that the Defendants have instead improperly paid themselves several million dollars over several years.

Defendants contend that the Profit Sharing Agreement and Evesham Mortgage's Operating Agreement were both modified by subsequent oral agreements between Landcor's owner, Joseph Samost (hereinafter "Samost"), and Defendant Brown. Defendants also assert that the Individual Defendants were not involved in the management of Evesham Mortgage and assert that they are shielded by the corporate veil such that any of the Plaintiff's claims against the Individual Defendants must be dismissed.

On April 15, 2020, Plaintiff filed their first complaint under Docket No. BUR-L-854-20. That action named Richard Brown, Jr. as the sole defendant. Plaintiff also initiated an action in the Chancery Division under Docket No. BUR-C-24-20 in which the Plaintiff had named Evesham Mortgage, LLC, Richard W. Brown, Jr., Oasis Marketing, LLC, C3G Invesco, LLC, William McGoey, Michael Favor III, Robert Kelley, Joseph Cordova, and John Does 1-5 as defendants. On August 13, 2020, this Court consolidated the two matters under Docket No. BUR-L-1619-20. The Plaintiff's claims against C3G Invesco, LLC, were then dismissed via stipulation on June 2, 2021.

Defendants then filed the instant Motion for Summary Judgment on March 30, 2023, to which the Plaintiff lodged a timely opposition. On that same date, Plaintiff filed its own Motion

for Summary Judgment to which the Defendants lodged a timely opposition. The discovery end date in this matter elapsed on March 31, 2023, and a trial date has been set for May 22, 2023.

III. LEGAL STANDARD

a) Motion for Summary Judgment Standard

A motion for summary judgment is governed by R. 4:46-2 of the New Jersey Court Rules. The rule provides that summary judgment shall be "rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law." R. 4:46-2.

The case of Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995), set forth a new standard for a trial court to apply when determining whether an alleged disputed issue should be considered "genuine" for the purposes of R. 4:46-2. The Brill court stated that:

> Under this new standard, 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party.

142 N.J. at 540.

The Brill court further clarifies that, "[i]f there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of R. 4:46-2." Id. Rather, when the evidence "is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment." Id. (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

IV. ANALYSIS

1) Defendants' Motion for Summary Judgment

Defendants set forth a "Motion for Dismissal of Defendants William McGoey, Michael Favor III, Robert Kelly and Joseph Cordova for Failure to State a Claim and/or for Summary Judgment." While Defendants caption their Motion as a motion to dismiss, they cite to the summary judgment standard and also reference facts outside of the pleadings. Therefore, the Court will apply the summary judgment standards set forth in R. 4:46-2.

a. The Corporate Veil

Defendants first argue that the Plaintiff cannot pierce the corporate veil and attach liability to the Individual Defendants because the Individual Defendants did not engage in "any conduct approaching fraud as against Landcor." (Def. Br., 4).

The New Jersey Revised Limited Liability Company Act provides that "[t]he debts, obligations, or other liabilities of a limited lability company, whether arising in contract, tort, or otherwise … are solely the debts, obligations, or other liabilities of the company." N.J.S.A. 42:2C-30. However, the RULLCA also provides that such liability protection only exists so long as "the company agent complied with the duties stated in sections 35 and 39 of this act." N.J.S.A. 42:2C-38(c). Section 35 of the Act relates to distributions while Section 39 relates to the standards of conduct of members. Accordingly, if a plaintiff can show that an individual member defendant of an LLC violated either Section 35 or Section 39, that individual member defendant no longer receives the protections from liability afforded under the RULLCA. Additionally, the RULLCA provides that "a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this act or arising independently of the membership relationship." N.J.S.A. 42:2C-67(a).

Here, Landcor, as a member of Evesham Mortgage, is bringing an action against the LLC, its members, and its manager alleging violations of several provisions of the RULLCA, breach of the Operating Agreement, breach of fiduciary duty, fraud, improper distributions, and several other causes of action which arise out of the membership relationship. Accordingly, the Court finds that the Plaintiff has sufficiently pled claims, and proffered evidence in support of those claims, which precludes the individual Defendants at this time from invoking the indemnity provisions of the RULLCA pursuant to both N.J.S.A. 42:2C-67(a) and N.J.S.A. 42:2C-38(c). Therefore, Defendants' Motion for Summary Judgment is **DENIED** as to their Point One.

b. Individual Liability

Defendants next argue that the Individual Defendants were not personally involved in any interactions with Joseph Samost and Landcor and that they therefore should not be held liable for any transactions or interactions that they did not know about. (Def. Br., 4). However, the problem for the Defendants is they point to no facts in the record and include no certifications which support this argument. The Plaintiff, on the other hand, points to the deposition transcript of Defendant Brown who stated that the Individual Defendants had an equal say in business matters and that they had access to, and regularly discussed, Evesham Mortgage's financial information. The Plaintiff also points to several annual audit reports which state that "Landcor joined the Company as a 5% member in 2012. Landcor earns profit on the closed loan volume for the duration of the company, commencing March 1, 2012." (Pl. Exhibit 70). Accordingly, the Court finds that there are undisputed facts in the record which contradict the Defendants' unsupported claims.

Defendants also assert that the Individual Defendants could not be liable for conversion as any claims brought by Landcor only arise from an alleged breach of contract. Plaintiff contends that conversion claims have been applied in this context before.

"Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." Chicago Title Ins. Co. v. Ellis, 409 N.J. Super. 444, 454 (App. Div. 2009) (quoting Restatement (Second) of Torts § 222A(1) (1965)). Although conversion claims normally involve chattel, money may be the subject of conversion claims as well. Chicago Title Ins. Co., 409 N.J. Super. at 454-55 (internal citations omitted).

Defendants point to Bondi v. Citigroup, Inc., 423 N.J. Super. 377 (App. Div. 2011), to assert that a claim of conversion will not lie in the context of a mere debt between parties. (Def. Br., 7). However, as Plaintiff points out, the Bondi case actually appears to support the Plaintiff's claims for conversion.

In Bondi, Defendant Citigroup, Inc. had loaned money to a company which ultimately filed for bankruptcy. The administrator brought claims against Citigroup for aiding and abetting in alleged financial fraud. Bondi, 423 N.J. Super. at 384-386. Citigroup then filed a counterclaim for fraud, negligent misrepresentation, conversion, and breach of warranties. Id. at 386. The jury ultimately returned a verdict in favor of Citigroup on its counterclaims for conversion which prompted an appeal by the plaintiff who asserted that the trial court erred in denying plaintiff's motion to dismiss Citigroup's conversion claims. Id. at 420.

The Appellate Division affirmed the trial court's decision to permit Citigroup's conversion counterclaim and noted that the tort of conversion "has evolved to apply to 'money, bonds, promissory notes, and other types of securities, as long as the plaintiff has an actual interest in the security and it is capable of misuse in a way that would deprive the plaintiff of its

benefit.'" Id. at 431 (quoting Cargill Global Trading v. Applied Dev. Co., 707 F.Supp.2d 563, 578 (D.N.J. 2010)). The Court noted that, in order to avoid transforming a breach of contract into an act of conversion, a plaintiff must show that "the money converted by a tortfeasor must have belonged to the injured party," that the funds be identifiable, and that the injured party show that the tortfeasor "exercised dominion over its money and repudiated the superior rights of the owner." Id. at 432 (citing Muller v. Technical Devices Corp., 8 N.J. 201, 207 (1951)). Said repudiation "must be manifested in the injured party's demand for funds and the tortfeasor's refusal to return the monies sought … the demand must be at a time and place and under circumstances such that the defendant is able to comply and any refusal to comply must be wrongful." Id.

Here, the Plaintiff alleges that it was entitled to distributions of the profits from Evesham Mortgage and that the Defendants were aware of this obligation before "paying themselves over $10 million." (Pl. Opp. Br., 14). Plaintiff contends that Landcor sent a demand to the Defendants for an accounting, distributions, and payment of the overdue funds which was rejected by the Defendants. Id. (See Pl. Exhibit 129). Defendants then allegedly ignored the demand and made "excessive payments to themselves." Id. The Defendants do not rebut these claims or point to facts undermining the Plaintiff's conversion claims. Defendants instead assert that "[w]hatever the merits of the Plaintiff's claims that it was not paid pursuant to the agreements made, the non-payment was not a conversion." (Def. Br., 7). The Plaintiff is able to point to the Agreements which outline what funds Plaintiff is entitled to, points to the demand made to the Defendants seeking said funds which was ignored by the Defendants, and points to evidence of alleged misappropriation of company funds. While the Court cannot make factual determinations as to whether the Defendants' conduct rises to the level of conversion, the Plaintiffs have set forth

facts which could allow a jury to find that conversion occurred. Therefore, the Defendants' Motion for Summary Judgment is **DENIED** as to Point Two.

c. Count One of Plaintiff's Amended Complaint

Lastly, Defendants argue that Count One of the Plaintiff's Amended Complaint must be dismissed as moot because the alleged transaction with C3G Invesco LLC was never consummated, and funds never changed hands. (Def. Br., 9).

Count One of the Plaintiff's Complaint is titled "Violation of New Jersey Revised Uniform Limited Liability Company Act Minority Oppression Provisions." (Pl. Amended Complaint). Count One notes that it incorporates all allegations in the proceeding paragraphs and that the actions of the Defendants "constitute a violation of the RULLCA," and that "Defendants have acted, are acting, and have indicated that they intend to act in a manner that is oppressive … and/or will be directly harmful to Landcor in violation of N.J.S.A. §42:2C-48(a)(5)…" (Pl. Amended Complaint, ¶42-45). As Plaintiffs point out in their opposition, Count One includes allegations that the individual Defendants were "making payments to themselves and to other parties while refusing to properly account for and pay sums due to Landcor." (Pl. Amended Complaint, ¶45(a)). While the preceding paragraphs incorporated within Count One reference the proposed transaction with C3G Invesco, LLC, Count One clearly appears to encompass substantially more alleged conduct than merely said proposed transaction.

Accordingly, given the facts in the record which support the Plaintiff's RULLCA claims, the Court will **DENY** the Defendants' Motion for Summary Judgment.

2) Plaintiff's Motion for Summary Judgment

Plaintiff first argues that the Defendants should be ordered to pay any overdue commission payments to Landcor and to comply with payment obligations going forward. Defendants contend that alleged oral agreements between Defendant Brown and Samost create

questions of fact and a jury must determine which agreement controls. Defendant asserts that amendments to an operating agreement can be oral, and asserts that New Jersey's "Dead Man Statute" does not apply in this situation.

a. Alleged Oral Agreement

First, it must be noted that Defendants do not point to any exhibit or certification in support of their argument that an oral agreement existed between Brown and Samost amending the relevant written agreements. It must also be noted that the Defendants point to no record evidence or affidavits to support the assertions within their Statement of Material Facts submitted in support of their opposition brief, contrary to R. 4:46-2(b). While this alone would sufficiently warrant granting of summary judgment in favor of the Plaintiff, the Court will nonetheless address the merits of the arguments presented.

As highlighted by the Plaintiff, there are numerous problems with the Defendants' claims of an overriding oral agreement. First, Defendants point to nothing in the record which supports their claims of an oral agreement either in the moving papers or at oral argument of the motions. Moreover, the alleged oral agreement advanced by the Defendants has seemingly evolved over the course of this litigation. The Appellate Division has held that "self-serving assertions, unsupported by documentary proof in their dominion and control, are 'insufficient to create a genuine issue of material fact.'" Miller v. Bank of America Home Loan Servicing, L.P., 439 N.J. Super. 540, 551 (App. Div. 2015) (quoting Heyert v. Taddese, 431 N.J. Super. 388, 414 (App. Div. 2013)). While the Defendants point to no documents or deposition testimony to support their claims of an oral agreement, Plaintiff points to 23 separate exhibits which contradict the terms of the alleged oral agreement. (See Pl. Exhibits 6, 11, 13, 15, 19, 18, 26, 27, 29, 37, 39, 43, 50, 67 69, 72, 79, 81, 82, 89, 90, 92, and 202). Accordingly, the Court finds that the Defendants' assertion of an alleged overriding oral agreement is clearly a self-serving assertion which is

completely unsupported by documentary proof and conflicts with clear documentary evidence to the contrary.

Second, while Defendants assert that the alleged oral agreement amends the Operating Agreement of Evesham Mortgage, Defendants also assert that none of the Individual Defendant Members, aside from Defendant Brown, knew about the oral agreement. This alone would invalidate any provisions of the alleged oral agreement relating to the Operating Agreement as it is undisputed that N.J.S.A. 42:2C-37 controls amendments of the Operating Agreement. Pursuant to N.J.S.A. 42:2C-37(b)(5), the operating agreement of a member-managed limited liability company "may be amended only with the consent of all members." Here, if the other individual Defendant Members were not even aware of the alleged oral agreement, they could not have manifested their consent to amend the Operating Agreement.

Lastly, Plaintiff points to emails sent from Defendant Brown which both seemingly support the written agreements in question and undermine some provisions of the alleged oral agreement set forth by Defendant Brown. According to the Defendants, Samost made a specific verbal agreement with Brown that "Samost (via Landcor) would get 10 basis points on FHA Mortgages (commissions) funded by Evesham Mortgage directly once Evesham secured approval from the FHA to write them." (Def. Opp. Br., 6). However, it is undisputed that on December 10, 2011, Defendant Brown sent an email to Joseph Bernardino, who worked for Samost, which read as follows:

> Joe,
>
> I just wanted to give you an update. I have 2 new groups to be starting with me in 2012. Our company will now be approaching $100,000,000 in closed loan production next year. JS will get10bps of our overall production according to our agreement. If we close $100,000,000 that will be $100,000 to JS in a year.
>
> The only issue is I must be FHA approved for these guys to come aboard. In order for that to work I need the money in the mortgage

> company in December. My accountant wanted it in the middle of December but I know that will be tough. I know you are doing all you can for us, but I wanted you to know the sense of urgency I am under at this point. I made some agreements assuming this would be done. Please let me know if there is anything I can do to help you in this matter. I look forward to hearing from you.
>
> Thanks
>
> Rick Brown

Pl. Exhibit 6

The language of this email from Defendant Brown shows that Brown agreed that "[Joseph Samost] will get 10bps of our overall production according to our agreement. If we close $100,000,000 that will be $100,000 to JS in a year." This explanation from Defendant Brown supports the language of the January 15, 2012, Profit Sharing Agreement which states that "Beginning March 1, 2012 and continuing through the partnership between the two parties, Landcor Holdings, LP will receive profit on each closed loan in the amount of 10 Basis Points." (Pl. Exhibit 15). Neither the email nor the Profit Sharing Agreement indicate that Landcor was to be paid 10 basis points on FHA mortgages. Instead, both plainly indicate that Landcor would be paid based upon "overall production." Additionally, when looking to audit reports generated by Rosenberg Rich Baker Berman & Company ("RRBBC"), "Note 6" of the audits reads as follows:

> Landcor joined the Company as a 5% member in 2012. Landcor earns profit on the closed loan volume for the duration of the company, commencing March 1, 2012. For the year ended December 31, 2015, Landcor's total earnings on closed loan volume amounted to $77,850, of which $16,954 was outstanding and included in accrued commissions at December 31, 2015.

(Pl. Exhibit 70).

This language clearly undermines the Defendants' contentions that the alleged oral agreement is based solely upon FHA loans, and instead shows a course of performance which coincides with the written agreements set forth by the Plaintiffs.

Finally, at oral argument, Defendants argued, without any proofs, that the claimed oral modification occurred sometime in February 2014; however, by way of example, as of August 2014, Evesham Mortgage issued to Plaintiff checks in the amount of $13,965 and $23,900, covering the first six months of 2014, which were treated by Evesham Mortgage as ordinary and deductible commission expenses and reduced the income of Evesham Mortgage and its members. (Pl. Exhibits 44, 202). Again, the undisputed record evidence clearly contradicts the Defendants' unsupported claims.

Accordingly, the Court finds that there is no basis to deny summary judgment due to the allegations of an oral modification agreement. Defendants fail to point to any documents, testimony, or course of performance which substantiates the claims of any oral agreement which altered the written agreements set forth by the Plaintiff. Instead, the Defendants' unsubstantiated self-serving claims of an oral agreement appear to be the precise type of conduct outlined by the Appellate Division in Miller v. Bank of America Home Loan Servicing, L.P.

b. Commission Payments

Defendants have not set forth any other arguments against the Plaintiff's assertions that it is entitled to overdue commission payments. Defendants have not challenged the Plaintiff's calculations of damages and have not set forth credible facts creating any material questions which undermine the Plaintiff's theory of liability or damages. Accordingly, the Court will **GRANT** Plaintiff's Motion for Summary Judgment as to its claim for commission payments of 0.10% on all closed loans from 2012 through the present pursuant to the Profit Sharing Agreement. At this point, liability for the Plaintiff's claim for unpaid commission payments will

lie with Evesham Mortgage. However, at this time, and without depositions or further factual support relating to the Individual Defendants, the Court will not extend liability for the commission payments to the Individual Defendants; rather, liability on the commission payments may be expanded to include the Individual Defendants at the time of trial based on the jury's factual findings.

c. September 16, 2023, Promissory Note

Plaintiff next asserts that Defendant Brown and Evesham Mortgage should be ordered to pay the amount due and owing under the September 16, 2013, Promissory Note, as well as any interest, court costs, and attorney's fees. Defendants argue that the Promissory Note is a business obligation and not a personal loan to Defendant Brown, and that no individual member utilized the funds, therefore the corporate veil cannot be pierced.

The September 16, 2013, Promissory Note identifies Richard W. Brown, Jr. as the "Borrower(s)" and Landcor Holdings, LP of 230 Cooper Road, West Berlin, New Jersey 08091 as the "Lender." (Pl. Exhibit 33). The Note includes the following provisions:

> **Borrower's Promise to Pay Principal and Interest.** In return for the loan, borrower promises to pay One Hundred Fifty Thousand Dollars and Zero Cents ($150,00.00) (called "principal") plus interest to the Lender. The maturity date for this loan will be one year from the date of execution or September 16, 2014 of this note. Interest at an annual rate of two percent (2.0%) will start accruing 60 days from the date of execution of this note. All payments will be made to the Samost Family Services at the above address or to such other address as the Lender may designate from time to time.
>
> **Prepayment.** The Borrower shall have the right to pay the then outstanding principal balance due hereunder at any time prior to maturity without penalty.
>
> **Late Charge for Overdue Payments.** If Lender does not receive any payment within fifteen (15) days of the date on which it is due, the Borrower will pay a late charge of 5% of the monthly payment. The late charge will be due and payable with the late payment or with the next regular payment, as the Lender may direct.

> **Default.** If Borrower fails to make any payment within fifteen (15) days of its due date, the Lender may declare Borrower to be in default on this Note by providing written notice to Borrower at the above address, by telefax, certified mail, return receipt requested, regular mail, or hand delivery … Borrower shall have five (5) days to cure said default. In the even [sic] Borrower fails to cure said default, including all late fees accrued thereon, the Lender shall have the right to require the Borrower to immediately pay the principal balance then due under this Note, the unpaid interest thereon from the date of default at a rate of twelve (12%) per year, the Lender's costs of collection and reasonable attorney's fees. If the Lender does not declare the Borrower in default on any particular occasion, even though he has the right to do so, this will not prevent the Lender from declaring the Borrower in default in the future.
>
> **Modifications.** This note can only be modified by a written agreement signed by the Lender and the Borrower.

(Pl. Exhibit 33).

Here, the Promissory Note clearly identifies that the note was made between Defendant Brown as the borrower and Landcor Holdings as the lender. The Note was for a principal amount of $150,000.00 plus a 2% annual interest rate. The maturity date for the loan was set for September 16, 2014. There is nothing in the record which indicates that the loan was repaid or subsequently modified. On April 3, 2020, a letter was sent from Steven D. Samost to Defendant Brown demanding payment under the Promissory Note. (Pl. Exhibit 129).

While Defendants argue that the loan was not a personal loan to Defendant Brown and argue that it was a business obligation, the plain language of the Promissory Note indicates that liability for the loan rests upon Defendant Brown alone. There is no mention of Evesham Mortgage in the Promissory Note, and the note includes a provision that states that "[t]he Lender may enforce any of the provision of this Note against any one or more of the Borrower's [sic] who sign this Note." (Pl. Exhibit 33). However, the only two signatures on the Note are by Richard W. Brown, Jr., and Christine Beikman, General Partner of Landcor Holdings LP. As

such, the plain unambiguous language of the Note indicates that Defendant Brown is solely liable for any obligations under the Note.

Accordingly, the Court finds it appropriate to **GRANT** the Plaintiff's Motion for Summary Judgment on Count 12 of the Plaintiff's Amended Complaint and finds that Defendant Brown alone is liable for the obligations under the Promissory Note.

d. Count V of Defendants' Counterclaim

Plaintiff next argues that Count 5 of the Defendants' Counterclaim should be dismissed with prejudice as there is no written document of obligation by Landcor. Defendants lodge no opposition to the Plaintiff's argument.

The Court notes that the record includes a mortgage for a property located at 25 Stag Run, Washington Township, New Jersey which lists Jiva Holdings LP as the Borrower and Evesham Mortgage LLC as the Lender. (Pl. Exhibit 64). The mortgage was recorded in Mortgage Book 14549 at page 275. The record also includes a "Discharge of Mortgage" entered into between Jiva Holdings, LLC, and Evesham Mortgage, LLC, which states that the mortgage recorded in Mortgage Book 14549 at page 275 has been "PAID IN FULL or otherwise SATSIFIED AND DISCHARGED." (Pl. Exhibit 74). And while the Court notes that Jiva Holdings, LLC, appears to have the same address as Landcor, the two entities appear to be separate and distinct, and Jiva Holdings is not named as a party in this action. Therefore, it appears that any liability for the mortgage would have rested with Jiva Holdings, but that said liability was subsequently discharged by Evesham Mortgage.

Given the lack of opposition from the Defendants, either written or at the time of oral argument, and the lack of evidence which could create any material facts as to Count 5 of the Defendants' Counterclaim, the Court will **GRANT** Plaintiff's Motion for Summary Judgment and will dismiss Count 5 of the Defendants' Counterclaim with prejudice.

e. Purchase of Landcor's Interest in Evesham Mortgage

Finally, Plaintiff contends that it is entitled to relief under N.J.S.A. 42:2C-48. Specifically, Plaintiff contends that the Defendants are "acting in a manner that is oppressive and was, is, or will be directly harmful to Landcor, mandating judicial intercession." (Pl. Br., 58). Plaintiff seeks the purchase of Landcor's interest in Evesham Mortgage, or alternatively, "the appointment of a Custodian or provisional manager to oversee the appropriate maintenance of funds and operation of Evesham Mortgage…" (Pl. Br., 60). Defendants again offer no opposition to Plaintiff's argument.

Plaintiff points to N.J.S.A. 42:2C-48 as the basis for the relief that it is seeking. N.J.S.A. 42:2C-48 reads as follows:

> a. A limited liability company is dissolved, and its activities shall be wound up, upon the occurrence of any of the following:
>
> (1) an event or circumstance that the operating agreement states causes dissolution;
>
> (2) the consent of all the members;
>
> (3) the passage of 90 consecutive days during which the company has no members;
>
> (4) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that:
> (a) the conduct of all or substantially all of the company's activities is unlawful; or
> (b) it is not reasonably practicable to carry on the company's activities in conformity with one or both of the certificate of formation and the operating agreement; or
>
> (5) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that the managers or those members in control of the company:
> (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
> (b) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

> (6) A certificate of dissolution is filed before the delayed effective date of a certificate of formation pursuant to subsection e. of section 18 of this act.
>
> b. In a proceeding brought under paragraph (4) or (5) of subsection a. of this section, the court may order or a party may seek a remedy other than dissolution, including, but not limited to, the appointment of a custodian or one or more provisional managers. The court shall appoint a custodian or one or more provisional managers if it appears to the court that such an appointment may be in the best interests of the limited liability company and its members. In any proceeding under this section, the court shall allow reasonable compensation to any custodian or provisional manager for his or her services and reimbursement or direct payment of all his or her reasonable costs and expenses, which amounts shall be paid by the limited liability company. The court may appoint a custodian or one or more provisional managers in a summary proceeding or otherwise; or order the sale of all interests held by a member who is a party to the proceeding to either the limited liability company or any other member who is a party to the proceeding, if the court determines in its discretion that such an order would be fair and equitable to all parties under all of the circumstances of the case.

N.J.S.A. 42:2C-48

The statute notes that the Court has the power to appoint a custodian, provisional manager, or "order the sale of all interests held by a member who is a party to the proceeding to either the limited liability company or any other member who is a party to the proceeding, if the court determines in its discretion that such an order would be fair and equitable to all parties under the circumstances of this case." N.J.S.A. 42:2C-48(b).

Here, the Court does not find it appropriate to order a dissolution of Defendant Evesham Mortgage as doing so would not be fair or equitable to all parties under these circumstances. Additionally, the Court finds that the appointment of a custodian or provisional manager would create additional complications and challenges for all parties involved. Instead, the Court finds that the most appropriate remedy to safeguard Landcor's interests is to order Evesham Mortgage to purchase Landcor's interest in the LLC. As noted by New Jersey's Supreme Court, "the most

sensible remedy to resolve problems of deadlock, dissension, or oppression often will be to effect a corporate divorce," and that "a purchase and sale of shares at a fair price may be more desirable to all parties than a dissolution." Sipko v. Koger, Inc., 251 N.J. 162, 181 (2022).

Given the lack of opposition from the Defendants, the Court finds it appropriate to **GRANT** the Plaintiff's Motion for Summary Judgment as to their request for relief under N.J.S.A. 42:2C-48(b). Accordingly, Defendant Evesham Mortgage shall be required to buy out the Plaintiff's interest in Evesham Mortgage with valuation of the Plaintiff's interest to be determined at trial. However, at this time, and without depositions or further factual support relating to the Individual Defendants, the Court will not extend liability for the buy out to the Individual Defendants; rather, liability may be expanded to include the Individual Defendants at the time of trial and based on the jury's factual findings relating to the Individual Defendants.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** the Defendants' Motion for Summary Judgment and **GRANTS** the Plaintiff's Motion for Summary Judgment.