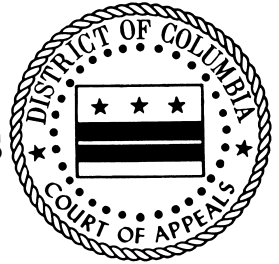


IN THE DISTRICT OF COLUMBIA COURT OF APPEALS



Appeal Nos 23-CV-933 & 24-CV-201

Clerk of the Court
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CARL BERNSTEIN
Appellant-Defendant

v.

LARRY HUANG, ET AL
Appellees-Plaintiffs

On Appeal from the Superior Court of the District of Colombia
(Judge Yvonne Williams)
Case No. 2018-CA-006949-B

APPELLEES-PLAINTIFFS BRIEF

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CARL BERNSTEIN v. LARRY HUANG, et al.
23-CV-933 & 24-CV-201

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Rule 26.1 is not applicable.

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BACKGROUND OF THE CASE

The Joint Appendix contains all docket entries and the trial transcripts (Day 1 & 2). The numbers inside brackets indicate the page number of the Joint Appendix that supports the statement immediately preceding the brackets. In order to avoid confusion, when referring to the trial testimony of the parties, the page and line number will indicate the page and line number of the actual transcript as used by Judge Williams in her Non-Jury Trial Order and Judgment [1124-1152]. E.g. Trial Transcript (Day 1) 104:20-25. For easy reference, in the Joint Appendix, Day 1 is on pages 573-799, and Day 2 is on pages 800-957.

For the sake of continuity, and to avoid confusion between all the parties, counsel have agreed to follow the naming convention used by the Superior Court with regard to the parties, as follows:

“Carl” is Appellant-Defendant Carl Bernstein, a partner with Geoffrey Kuck in the 1436 Foxhall Road LLC, the entity that executed the Contract at issue.

“Geoffrey” is Geoffrey Kuck, a partner with Carl Bernstein in 1436 Foxhall Road LLC.

“1436 Foxhall Road LLC” was the entity that was the party to the Contract that was dismissed from the case after it filed a Notice of Bankruptcy.

The “Huang” are the Appellees-Plaintiffs, who are the collective members of the Huang Family.

“Jim” is Jim Huang, the father of Larry Huang.

“Larry” is Larry Huang, the son of Jim Huang.

The “Parties” are collectively the Huangs and Carl Bernstein, the parties that executed the Contract.

The “CPPA” is the D.C. Consumer Protection Procedures Act.

Plaintiffs filed their original Complaint on October 1, 2018, asserting six claims related to the purchase of land and construction of a custom home located at 1436 Foxhall Road, NW, Washington, D.C. Geoffrey, Carl, and 1436 Foxhall Road LLC were the original Defendants named in the original Complaint. (Only Carl remained as a Defendant by the time the case went to trial.)

On December 14, 2018, Plaintiffs filed an Amended Complaint adding new claims against the previously named Defendants and adding additional LLCs owned or controlled by Defendants Geoffrey and Carl as additional parties.

On December 28, 2019, a Motions to Dismiss was filed by the Defendants Geoffrey and Carl. On January 29, 2019, Plaintiffs filed a Stipulation of Dismissal without prejudice as to Counts Two, Six, and Nine of the Amended Complaint against 1436 Foxhall Road LLC.

On January 31, 2019, 1436 Foxhall Road LLC filed a Notice of Bankruptcy, and an automatic stay was entered on February 7, 2019. On March 15, 2019, Plaintiffs filed a Stipulation of Dismissal which dismissed with prejudice all claims against 1436 Foxhall Road LLC and the other named LLCs.

On April 17, 2019, Judge Lopez denied the remaining Defendants' Motion to Dismiss. Thereafter Geoffrey settled with the Plaintiffs and was dismissed from the case on June 24, 2019. Carl remained as the sole Defendant in the case.

On June 12, 2020, Carl filed a Motion for Summary Judgment. Plaintiffs consented to the dismissal of Count Six (Breach of Fiduciary Duty). All that remained before the Court were the claims against Carl for Fraud and for violations of the CCPA. On October 20, 2020, Judge Lopez denied Defendant's Motion for Summary Judgment as to the Fraud and CPPA counts.

On November 2-3, 2022, a two day non-jury trial was held before Judge Yvonne Williams. The parties both filed Post-Trials briefs. On August 30, 2023, Judge Williams issued a Non-Jury Trial Order and Judgment finding Carl liable under the Fraud and CPPA counts.

On November 3, 2023, Judge Williams issued an Order on Damages awarding damages to Plaintiffs in the total amount of \$1,275,193 for Defendant's common law Fraud and violations of the CPPA. Plaintiffs thereafter filed a Motion for Attorneys' Fees, which Defendant Bernstein opposed. Judge Williams issued an Order granting the Motion on March 4, 2024, awarding the Plaintiffs the total amount of \$287,966.51 for the reasonable attorneys' fees and costs incurred throughout this litigation. The total amount awarded, including both damages and attorneys' fees, was \$1,563,159.51.

On March 14, 2024, the Clerk of Court of Appeals issued an order, *sua sponte*, that consolidated the two appeals separately filed by Defendant’s counsel (23-CV-933 and 24-CV-201).

STATEMENT OF FACTS

In the Court’s Non-Jury Trial Order and Judgment of August 30, 2023, Judge Williams made the following Findings of Fact.¹

The underlying case concerns the unsuccessful sale of a property located at 1436 Foxhall Road, NW, Washington, DC 20016 (the “Property”). In 2017, the Huangs contacted Carl and Geoffrey (collectively the “Defendants”), and expressed an interest in purchasing the Property. Shortly thereafter, the Huangs began negotiating to purchase the Property, which was already permitted and under development. Trial Transcript (Day 1) 15:9-19, 158:11-23; Trial Transcript (Day 2) 42:6-12.

In 2017, the Defendants were working on six new-home construction projects together, each of which was initially financed by Washington First Bank (the “Bank”). Trial Transcript (Day 1) 158:11-15; Trial Transcript (Day 2) 49:4-7. The Huangs decided to purchase the Property, and Carl was the person who primarily negotiated the contract terms with Jim and Larry. Trial Transcript (Day 1) 129: 2-3.

¹ Plaintiffs adopt *in toto*, the Findings of Facts of the Court’s Non-Jury Trial Order and Judgment of August 30, 2023.

At some point, negotiations ceased after Carl and Jim disagreed about certain costs and changes to the pre-existing building plans on the Property (the “Project”). Negotiations eventually reopened, and on April 26, 2017, the Huangs executed a GCARR Sales Contract (the “Contract”) to buy the Property from 1436 Foxhall Road, LLC for \$2,600,000 (the “Purchase Price”), free of liens, and including any subsequent modifications. Trial Transcript (Day 2) 52:9-19, 53:9-25, 54:1-8, 62:1-5.

According to the Contract, 1436 Foxhall Road, LLC agreed to deliver a custom-made home that the Huangs would self-finance with incremental payments throughout the building process. To ensure the Property was customized to the Huang’s preferences, the parties executed various contract amendments, addendums, and change orders over the course of construction where the Huangs agreed to make additional payments or to release escrow funds to Foxhall LLC that were not anticipated in the original Contract. Carl initially anticipated making a \$300,000 profit from the Project after delivering the Property for the Purchase Price at closing. Trial Transcript (Day 2) 59:10-23.

From the time the parties executed the Contract in April 2017, until the summer of 2018, Carl served as the primary project manager on the Project and supervised the Property construction. Trial Transcript (Day 1) 104:5-19; Trial Transcript (Day 2) 60:12-15. Over the course of the Project, Carl prepared approximately 50 budgets for the Property. Trial Transcript (Day 2) 57:7-10, 58:16-

22, 59:10-23. There is no doubt that from an operational basis, Carl was the party primarily in charge of the Project.

As construction slowly progressed, the Huangs grew concerned that the Property would not be completed by the closing date. Trial Transcript (Day 1) 226:16-24. Larry began texting Carl to ask why construction was delayed, despite the numerous cash advances the Huangs provided to hasten the process. Trial Transcript (Day 1) 226:16-24. Over the course of the Project, the Huangs paid at least \$1,081,092.76 for the amendments, addendums, and change orders as they arose. Trial Transcript (Day 1) 33:10-13, 115:15-25, 116:1-5.

Each time the need for an amendment, addendum, or change order arose, Carl typically approached Larry and represented that he needed more money for the Project because the costs for certain contractors were more expensive than expected, or because paying certain amounts would accelerate construction. Trial Transcript (Day 1) 38:5-24, 90:17-35, 91:1-10. The Huangs would then authorize the parties' escrow agent, Stewart Title Group, LLC ("Stewart Title"), to release escrow funds to 1436 Foxhall Road, LLC, or the Huangs would pay additional funds into escrow that Stewart Title would then immediately release to 1436 Foxhall Road, LLC. Trial Transcript (Day 1) 38:5-24, 90:17-35, 91:1-10.

The Defendants Carl and Geoffrey would often divert the money released from Stewart Title to 1436 Foxhall Road, LLC to their other construction projects

or their salaries. Trial Transcript (Day 1) 38:5-24, 90:17-35, 91:1-10. Carl would commonly use a system he called “due to and from” to move money from one project to another depending on each project’s need. Trial Transcript (Day 1) 189:11-20. Carl also testified that he paid himself \$88,500 from 1436 Foxhall Road, LLC for his “management services” though other entities. Trial Transcript (Day 2) 59:25, 60:1-11, 63:1-23.

However, Carl neither told nor thought he was obligated to tell the Huangs that he would use their money for other projects, or to pay his salary, because according to him the Contract did not restrict his use of the funds. Trial Transcript (Day 1) 179:9-16, 180:22-25. Each time the Huangs made a cash advance, Carl assured Larry that the Property would be completed by the settlement date. Trial Transcript (Day 1) 226:16-24.

Contemporaneously and unbeknownst to the Huangs, Carl and Geoffrey’s business relationship was deteriorating. Trial Transcript (Day 2) 51:1-8. While they presented professionally to the Huangs, the two Defendants did not like each other, they were not friendly to each other, and they were no longer compatible or loyal business partners by April 2017. Trial Transcript (Day 2) 16-24. Their business was also in turmoil as they were experiencing significant cash flow issues with 1436 Foxhall Road, LLC, even before executing the Contract with the Huangs. Trial Transcript (Day 1) 101:13-25, 102:1-8.

1436 Foxhall Road, LLC financing problems remained throughout the life of the Project. In April 2018, Geoffrey sent a letter to Carl about 1436 Foxhall Road, LLC's significant cash deficiencies. Trial Transcript (Day 2) 132:1-4. Geoffrey complained that Carl continued to take funds from 1436 Foxhall Road, LLC to pay his salary, even though they could not meet the financial obligations for the Project, pay bills, pay subcontractors, maintain a timely production schedule, or correct liens.

Geoffrey claimed that 1436 Foxhall Road, LLC needed at least \$200,000 to complete the work necessary to complete the Project and go to settlement with the Huangs. Carl claimed that 1436 Foxhall Road, LLC was overleveraged because the Bank only released funding for three of their six construction projects. Trial Transcript (Day 1) 178:1-15.

Carl testified that he wanted to discuss the cash deficiency problems with the Huangs and negotiate a resolution, but Geoffrey would not let him. Trial Transcript (Day 2) 69:25, 70:1-23. Carl never informed the Huangs of the cash flow issues with 1436 Foxhall Road, LLC. Trial Transcript (Day 2) 85:18-25, 86:1-8. Because of his acrimonious relationship with Carl, and the continued cash flow problems, Geoffrey assumed day-to-day management at the Property in June 2018. Trial Transcript (Day 1) 104:5-19; Trial Transcript (Day 2) 18-24.

Carl's relationship with the Huangs also began to deteriorate. Larry began texting and emailing Carl questioning the Project's delays, and his ability to deliver

the Property, which by July 21, 2018, was over 120 past the delivery date anticipated in the Contract. Trial Transcript (Day 1) 104:20-25, 105:1-24. Carl and the Huangs completely stopped communicating by August 2018. Trial Transcript (Day 2) 73:18-21, 138:1-8.

In September 2018, Geoffrey and the Huangs began discussing a final settlement date of October 23, 2018. In anticipation of moving into the Property, the Huangs started moving their furniture into the Property. Larry had contracted to sell the house he was living in, and the Huangs had wired \$1.5 million into the escrow account of Stewart Title to cover the outstanding Purchase Price. Trial Transcript (Day 1) 39:6-14, 108:12-15. The Huangs were ready, willing, and able to proceed to closing. Trial Transcript (Day 1) 116:21-24, 117:1-25.

Despite Carl's consistent assurances that the Property would be ready for closing on September 20, 2018, approximately one month before the proposed new settlement date, Geoffrey emailed the Huangs (while copying Carl), that settlement would not occur because the Project's expenses were far higher than expected and there was insufficient funding. Geoffrey claimed that there was a \$1 million gap between the agreed-upon purchase price and the home's value after construction, such that the Defendants would need to sell the Property at a higher price.

Because the Huangs were unwilling or unable to pay an additional \$1 million to complete the sale, they counter offered an additional \$200,000 to proceed to

closing. Trial Transcript (Day 1) 107:5-25. Geoffrey also agreed to personally contribute \$200,000 towards closing, but Carl did not respond to Larry and Geoffrey's request to provide an additional \$200,000, for a total combined contribution of \$600,000. Despite the financial crisis, Carl continued to take draws from the 1436 Foxhall Road, LLC bank account. Trial Transcript (Day 1) 118:8-20.

On September 26, 2018, Plaintiffs' former counsel, Vernon Johnson, Esq. at Nixon Peabody LLP, sent Carl and 1436 Foxhall Road, LLC a letter requesting confirmation that the Defendants were ready, willing, and able to comply with their obligations under the Contract and go to closing. Trial Transcript 1:103:21-23.

Upon receiving the letter, Carl called Mr. Johnson to inform him of the cash deficiency issue and gave Mr. Johnson contact information for the Bank to discuss a deed in lieu of foreclosure. Trial Transcript (Day 2) 75:16-25. Carl was under the assumption that he could negotiate a resolution of the cash deficiency. and put the cash back where it belonged. Trial Transcript (Day 2) 86:18-23. Ultimately, 1436 Foxhall Road, LLC failed to deliver the Property by the agreed upon closing, and the Huang's initiated the instant litigation.

APPELLANT'S ARGUMENTS

Appellant's Brief presents a myriad of legal arguments, some of which are contradictory and others which were not raised at the Trial, on why the judgment for liability against the Defendant should be overturned, and why the damages and

attorney's fees awarded in the case should be vacated. But the bottom line is much simpler and comes down to the following six issues for this Court to review.

1. Whether Judge Lopez committed reversible error in denying Defendant's Motion to Dismiss.

2. Whether Judge Lopez committed reversible error in denying Defendant's Motion for Summary Judgment.

3. Whether Judge Williams committed reversible error by finding that Plaintiffs proved at trial that Carl was liable for Fraud and for violations of the CPPA.

4. Whether Judge Williams committed reversible error when she used the "Highly Probable" standard when evaluating Defendant's liability under common law Fraud and for violations of the the CPPA.

5. Whether Judge Williams improperly awarded damages in the amount of \$1,275,193 as a result of Defendant's liability for Fraud and for violations of the CPPA.

6. Whether Judge Williams improperly awarded attorneys' fees in the amount of \$287,966.51 as a result of Defendant's liability for Fraud and for violations of the CPPA.

The Appellees submit that Judge Lopez did not err in denying the Motion to Dismiss or the Motion for Summary Judgment, and that Judge Williams properly found, after a two day trial, that Defendant had committed common law Fraud and

had violated the CPPA, and thus properly awarded monetary damages and attorneys' fees to the Huangs.

I. THE COURT'S DENIAL OF THE MOTION TO DISMISS IS NOT APPEALABLE AND THE COURT DID NOT ERR WHEN IT DENIED THE MOTION TO DISMISS THE AMENDED COMPLAINT

This issue has been long put to rest back five years ago when Judge José López, who was not the trial judge, denied Defendant's Motion to Dismiss the Amended Complaint in his Omnibus Order dated April 17, 2019, where he found that that the Fraud and violation of the CPPA claims were proper. Superior Court's Order Denying Motion to Dismiss. [153]

The denial of a motion to dismiss under D.C. Super. Ct. R. Civ. P. 12(b)(6) is not appealable, either immediately or after trial. As the 5th Circuit held in *Bennett v. Pippin*, 74 F. 3d 578 (5th Cir. 1996):

After a trial on the merits, the sufficiency of the allegations in the complaint is irrelevant. A district court must deny a motion to dismiss under Rule 12(b)(6) unless the complaint fails to state any set of facts upon which relief could be granted. *Conley v. Gibson*, 355 U.S. 41, 45-47 (1957). **Rule 12(b)(6) measures the sufficiency of the plaintiff's allegations. When the plaintiff has prevailed after a full trial on the merits, a district court's denial of a Rule 12(b)(6) dismissal becomes moot.** The plaintiff has proved, not merely alleged, facts sufficient to support relief. Any pleading defect may be cured by a motion under Fed. R.Civ.P. 15(b), and the sufficiency of the plaintiff's evidence may be tested by an appeal on that issue. (Emphasis added,)

At least seven circuits hold that "denial of summary judgment is not properly reviewable on an appeal from a final judgment entered after trial." ... The arguments for not considering an appeal from a denial of a Rule 12(b)(6) dismissal after a trial on the merits are stronger than those for not considering a refusal to dismiss under Rule 56, given the ease with which a plaintiff may

amend a complaint after judgment in order to conform to the evidence. See Fed.R.Civ.P. 15(b).

74 F.3d at 585. *See also ClearOne Communications, Inc. v. Biamp Systems*, 653 F.3d 1163 (10th Cir. 2011).² Accordingly, the denial of the Motion to Dismiss is simply not appealable and the Court should simply focus on whether Plaintiff proved a sufficient case at trial.

Nonetheless, to address this issue as if it were appealable, to survive a motion to dismiss under D.C. Super. Ct. R. Civ. P. 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *See District of Columbia v. Holfgard*, No. 2015 CA 003354B at *6 (D.C. Sup. Aug. 15, 2015). In evaluating a motion to dismiss, the court must determine: (1) whether the complaint includes well-pleaded factual allegations, and (2) whether such allegations plausibly give rise to an entitlement for relief. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-52 (U.S. 2009).

When considering a motion to dismiss, the reviewing court must construe all facts and inferences in favor of the non-moving party. *See Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1059 (D.C. App. 2014). The allegations must be sufficient to raise a right to relief above the speculative level. *Pietrangelo v. Wilmer Cutler*

² “While this court is not bound by the federal courts' interpretations of federal rules essentially identical or similar to our rules, those interpretations may be accepted as persuasive authority in interpreting our rules.” *Tupling v. Britton*, 411 A. 2d 349, 351 (D.C. 1980).

Pickering Hale & Dorr, LLP, 68 A.3d 697, 709 (D.C. 2013). Further, the complaint must provide more than mere labels and conclusions. *Grayson v. AT&T Corp.*, 980 A.2d 1137, 1144 (D.C. 2009).

Judge Lopez found that the Amended Complaint sufficiently pled a claim for Fraud and a violation of the CCPA. He concluded that based upon the allegations and facts pled in the Amended Complaint, it was plausible that the Defendants knowingly made false misrepresentations to Plaintiffs about funds needed for the construction of their home, or for the purchase of real property, in order to obtain advanced funding.

The District of Columbia recognizes a viable claim for fraud where there is (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) an action taken in reasonable reliance upon the misrepresentation. *Higgs v. Higgs*, 472 A.2d 875, 876 (D.C. 1984).

The Court specifically found the following:

1. The Amended Complaint alleged that Carl made false representations with regard to the material fact of how Plaintiffs' money would be expended prior to and after the execution of the Contract.
2. The Amended Complaint sets forth that Carl made representations that funds advanced by the Plaintiffs would be put towards either the construction of the home, or purchase of the Property.
3. The Amended Complaint alleged that those representations were false, based upon Carl's transfer of Plaintiffs' funds certain LLCs that were

beneficially owned or controlled by him that were not participating in or attached the Project for which the Plaintiffs designated the funds.

4. The Amended Complaint further sets forth that the misrepresentations were made with knowledge of falsity and intent to deceive the Plaintiffs based upon Defendants' immediate misappropriation of funds.

5. The Amended Complaint alleged that Carl requested Plaintiffs to advance funds for some reason related to the construction of their home or purchase of the Property. However, Carl either immediately or soon hereafter transferred Plaintiffs' funds to the other LLCs, rather than paying off the debts of the Project or the Property.

The Plaintiffs asserted that they relied upon the misrepresentations by Carl, as evidenced by the Plaintiffs advancing the funds in the amounts requested. Plaintiffs put forth that they reasonably relied on Carl's representations that the funds needed to be advanced in order to keep the Project moving. Plaintiffs executed at least ten change orders to the Contract that were based upon representations made by Carl.

Judge Lopez concluded that the Plaintiffs reasonably relied upon those misrepresentations in advancing the funds requested. The Court therefore determined that the Amended Complaint set forth sufficient facts and allegations that gave rise to the plausibility that Plaintiffs were entitled to relief for Fraud, so accordingly he denied the Motion to Dismiss the Fraud claim.

Defendant also moved to dismiss the claim for violation of the CPPA for failure to state a claim upon which relief may be granted, but Judge Lopez found that the Amended Complaint sufficiently plead a viable claim for violation of the

CPPA because the claim under the CPPA was similar to, but with a lower standard of proof, than that of Fraud.

Defendant argued that the party under the Contract was 1436 Foxhall Road, LLC, not him personally, and thus that entity was the only possible “merchant” to the transaction, since he was only performing on behalf of the entity. However, under the CPPA, the definition of “merchant” did not provide the distinction in which he asserted, and thus the definition did not provide a shield to an individual person’s liability for the work they perform for an organized entity.

In *Luna v. A.E. Eng’g Servs., LLC*, 938 A.2d 744 (D.C. 2007), the Court of Appeals determined that it was premature to dismiss claims against an individual in their personal capacity, where the individual conducted business through an LLC. The Court held that the extent of an individual defendant’s “participation in and responsibility for the alleged tort [is] a quintessential question of fact that [cannot] be answered at the pleading stage.” *Luna* at 938 A.2d 744, 748-49 (D.C. 2007).

Judge Lopez found that in the instant matter, it was similarly premature to dismiss the claims against Carl for violation of the CPPA, as his participation in and responsibility for such violations are were quintessential question of fact that could not be answered at the pleading stage.

The Amended Complaint contained specific allegations and issues of fact that could not “be answered at the pleading stage,” and thus the Court denied the Motion

as the claims for Fraud and violation of the CPPA were proper. Therefore, the Motion to Dismiss was properly denied, and no reversible error occurred.

II. THE COURT’S DENIAL OF THE MOTION FOR SUMMARY JUDGMENT IS NOT APPEALABLE

A “denial of a motion for summary judgment is not reviewable on appeal, either during trial or after trial.” *Hammond v. Weekes*, 621 A.2d 838, 839 n. 1 (D.C. 1993) (citations omitted); *Allen v. Yates*, 870 A.2d 39, 45 (D.C. 2005).

Accordingly, the issue of whether Judge Lopez erred in denying the Defendant’s Motion for Summary Judgment is not properly before this Court so no reversible error has occurred.

III. THE COURT DID NOT ERR IN FINDING DEFENDANT LIABLE AT TRIAL FOR FRAUD AND FOR VIOLATIONS OF THE CPPA

The Defendant is arguing that Judge Williams erred because the issue of Defendant’s “liability” turned on the Plaintiffs’ claims that Carl made false statements regarding prior liens on the Property prior to 1436 Foxhall Road, LLC entering into the Contract with the Huangs. Defendant’s argument belies what actually occurred at trial. The Court ruled that this case was a Fraud and CPPA case. Based on the evidence, which included hundreds of emails and documents and the testimony of Carl and Larry over two full days, Judge Williams correctly found that the Plaintiffs had proven that the Defendant had committed common law Fraud and violated of the CPPA.

At trial, Larry testified that Defendant Carl made false representations before signing the Contract, and also concerning Addendum #1, Amendments # 1, 2, 8, 9, and 10 to the Contract, and Change Orders # 1, 2, 3, 5 6, 7, 9, 10, and 11.

The Huangs would not have entered the Contract, or paid over \$1 million to 1436 Foxhall Road, LLC, had they known they would not go to closing. Trial Transcript (Day 1) 116:6-15. Carl denied making any material misrepresentation and maintained that he believed he could have closed on the Contract if given the opportunity to resolve the cash deficiency problems.

Larry testified that, before executing the Contract, Carl falsely represented that 1436 Foxhall Road, LLC owned the Property free and clear, and that no encumbrances existed. Trial Transcript (Day 1) 44:7-13, 48:24-25, 49:1-9, 52:18-22, 60:6-25. He also testified that Carl falsely represented that he had already sold another property, or had a ready and willing buyer. Trial Transcript (Day 1) 44: 9-13, 48:24-25, 49:1-9, 53:8-16, 60:5-13.

Stewart Title confirmed that the Bank held the first lien for a \$2 million construction loan, and Carl's close friend Lance Estes held the second lien position with a \$250,000 secured investor loan. (The Huangs held the third lien position as the buyers.) Trial Transcript (Day 1) 219:10-25, 220:1-25, 221:1-12, 223:10-16; Trial Transcript (Day 2) 27:24-25, 28:1-11. Carl testified that 1436 Foxhall Road LLC received between \$1.5 million and \$2.25 million of initial loan funding for the

Property before the Huangs agreed to purchase it in April 2017. Trial Transcript (Day 1) 187:6-10, 188:14-17.

The Parties executed an addendum simultaneously with the Contract and agreed to various amendments and change orders throughout their contractual relationship. The Huangs agreed to make certain deposits or release funds from escrow in exchange for Carl and Geoffrey making revisions to the original construction plans. The Huangs alleged that Carl made material misrepresentations concerning Addendum #1, the First, Second, Eight, Ninth, and Tenth Amendments to the Contract, and Change Orders # 1, 2, 3, 5, 6, 7, 9, 10, and 11.

Through each of these documents, the Huangs allowed Stewart Title to release money to 1436 Foxhall Road LLC, in reliance on Carl's representations that he would use the money to speed up Property construction or to pay contractors for work completed at the Property. Instead, Carl diverted the funds from 1436 Foxhall Road LLC to other projects, thereby creating a cash deficiency.

Larry testified that had the Huangs known that the money they advanced would not be used towards the Property, or to pay contractors who completed work at the Property, they never would have agreed to release the funds. Trial Transcript (Day 1) 32:8-11, 73:11-19, 78:23-25, 79:22-25, 81:11-25, 86:12-17, 87:9-13, 88:24-25, 89:1-11. Carl maintained that he did not make any misstatements or false representations, especially in reference to the documents that all Parties signed

and mutually agreed to. Trial Transcript (Day 2) 67:6-25, 68:1-22, 69:1-17.

The Parties executed the Addendum and each of the Amendments and Change Orders at issue. By executing the First and Second Amendments, 1436 Foxhall Road LLC agreed to replace the existing Second Deed of Trust on the Property with a Security Second Deed of Trust for \$250,000 in favor of the Huangs and to raise the amount secured in favor of the Huangs to \$500,000. Plaintiffs asserted that they were never given a second lien position and remained unsecured creditors. Trial Transcript (Day 1) 73:23-25, 74:1-21; Trial Transcript (Day2) 127:1-14, 128:1-4.

Carl insisted that he intended to provide the Huangs with the second lien position. Trial Transcript (Day 2) 14:1-12, 65:8-21. Specifically, he claims that he prepared the Modified Deed of Second Trust to move the Huangs to the second security position, that he sent a copy of the document to Larry Huang, and that it was Stewart Title's fault for not ensuring that the Huangs were in the second lien position. Trial Transcript (Day 1) 225:3-9; Trial Transcript (Day 2) 36:24- 35, 37:1-13. The bottom line is that no such Modified Deed of Second Trust was timely filed and the Huangs were never actually given a second lien position of the \$500,000 and remained unsecured creditors, to their detriment.

Contrary to Carl's argument, Larry testified to each element of fraud, as detailed above. Judge Williams properly found that, based on all the evidence, Carl had committed common law Fraud and had violated the CPPA by misrepresenting

that there were no encumbrances on the Property, and by promising to pay contractors for work completed when he knew that 1436 Foxhall Road LLC did not have sufficient funds to pay them.

To prevail on a common law fraud claim, a plaintiff must establish by clear and convincing evidence that there was: “(1) a false representation (2) in reference to material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action is taken in reliance upon the representation.” *Pearson v. Soo Chung*, 961 A.2d 1067, 1074 (D.C. 2008) (citation omitted); *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 438 (D.C. 2013) (quoting *Fort Lincoln Civic Ass'n, Inc. v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1074 n.22 (D.C. 2008)).

Plaintiffs may establish a false representation by providing “either an affirmative misrepresentation or a failure to disclose a material fact when a duty to disclose that fact has arisen.” *Saucier*, 64 A.3d at 438 (quoting *Rothenberg v. Aero Mayflower Transit Co., Inc.*, 495 F. Supp. 399 (D.D.C. 1980)). A misrepresentation is “an assertion that is not in accord with the facts.” *Id.* (quoting *Sarete, Inc. v. 1344 U Street Ltd. P'ship*, 871 A.2d 480, 493 (D.C. 2005)). “A misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.” *Id.* at 439.

Plaintiffs may prove that a defendant had knowledge of the falsity of their representations “by showing that the statements were ‘recklessly and positively made without knowledge of their truth.’” *Id.* (internal citations and brackets omitted). Evidence of common law fraud is clear and convincing if it “will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.” *Lumpkins v. CSL Locksmith, LLC*, 911 A.2d 418, 426 n.7 (D.C. 2006) (internal quotation marks omitted). In other words, “the truth of factual contentions [must] be ‘highly probable’ or substantially more likely to be true than untrue.” *In re Gaskins*, 265 A.3d 997, 1002 (D.C. 2021) (citing *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)).

The Court found that Carl was fraudulent in (1) telling the Huangs that there were no encumbrances on the Property, (2) that 2905 University Terrace had already sold or had a buyer, and (3) by promising to pay for Francis Lawn and Action Fabricator’s services when he knew that 1436 Foxhall Road, LLC would not have the money to pay them without increasing the Purchase Price.

"Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court’s opportunity to judge the witnesses’ credibility." Super. Ct. Civ. R. 52(a)(6). A finding is clearly erroneous "when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm

conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948).

Judge Williams found that although Larry's testimony was the only evidence of Carl's oral misrepresentations, Carl did not refute these allegations at trial. Relying on Carl's representations that there were no encumbrances and that Carl had already sold one of his recent home constructions, Plaintiffs executed the Contract for the purchase of the Property. As such, Carl is liable for common law Fraud for his pre-contractual misrepresentations.

IV. THE COURT DID NOT ERR IN HOLDING DEFENDANT LIABLE FOR PRE-CONTRACT STATEMENTS ALTHOUGH THE CONTRACT CONTAINED AN INTEGRATION CLAUSE

Defendant argues that in *Drake v. McNair*, 993 A.2d 607 (D.C. 2010), the Court of Appeals found an integration clause bars representations not contained in a contract even when the plaintiffs allege fraudulent inducement to enter the contract. At the trial, counsel for Defendant attempted to cross-examine Larry on this issue, and Plaintiffs' counsel objected. Judge Williams addressed this issue as follows:

MR. J.P. SZYMKOWICZ: The contract in April 2017 contained what's called an entireties clause, would you agree?

MR. HUANG. I don't know what that is.

MR. CHARDIET: Your Honor, objection. He's going into legal issues which Judge Lopez has already decided is not relevant here in his order.

MR. J.P. SZYMKOWICZ: That was on the summary judgment.

MR. CHARDIET: Correct.

MR. J.P. SZYMKOWICZ: That doesn't mean that it's not relevant here at trial.

MR. J.P. SZYMKOWICZ: Mr. Huang, there was a statement within this contract and in the statement states: This contract must --

THE COURT: What contract is this? What section are you at?

MR. J.P. SZYMKOWICZ: It's the entireties clause.

THE COURT: But what page is that?

MR. J.P. SZYMKOWICZ: It's toward the end, Your Honor. It might be the last paragraph.

MR. CHARDIET: Your Honor, page 7 of Judge Lopez's order and denial of the motion specifically addresses this issue. It said that it should not be part of the case. Defendant argued that because the contract at issue contained an integration clause, plaintiff cannot rely on any statements not in the contract. The statements that were the basis of fraud counts were opinions open, not material facts the plaintiff should have relied on. Both arguments were previously addressed by this Court in the order issued on April 17, 2019. As previously stated, both arguments are unpersuasive. I would argue that this is the law of the case. That's a legal issue. That's not a question of fact, which why your motion for summary judgment was not granted. And it was not granted on that issue at all. So it's just a question of law.

MR. J.P. SZYMKOWICZ: Your Honor, so we are clear, I cannot ask about the entireties clause?

THE COURT: If it's already been resolved by Judge Lopez --

MR. CHARDIET: It has twice. It's called the law of the case, Judge.

THE COURT: I know what that is. I'm not talking about that. What I'm saying is if it has already been resolved that the case is going to move forward in spite of that integration clause because a legal determination has already been made that it does not void Mr. Huang's arguments, then we don't need to address it.

THE COURT: But your motion for summary judgment was denied; right?

MR. J.P. SZYMKOWICZ: Correct.

THE COURT: Which means --

MR. CHARDIET: What was --

THE COURT: Counsel, counsel. Which means that the Court has already decided that your argument related to the applicability of the integration clause does not win the day. There is nothing there to -- it has legally been resolved. So it can go forward, because your motion for summary judgment was denied. It can't go forward.

MR. J.P. SZYMKOWICZ: But our argument is that that was just on summary judgment. That we could ask that at trial. Summary judgment is something different.

THE COURT: No, summary judgment establishes whether or not there are any issues of fact; right?

MR. J.P. SZYMKOWICZ: Correct.

THE COURT: And so, if your motion for summary judgment was -- you were arguing what, that there were no issues of fact with respect to whether what? That was your argument?

MR. J.P. SZYMKOWICZ: That's correct, the entireties clause. And the fact that there is an issue of fact whether this clause is in the contract. I think we can ask that question, Your Honor.

THE COURT: But the clause is in the contract.

MR. J.P. SZYMKOWICZ: It is.

THE COURT: That's not an issue of fact. It's in the contract. Whether or not Mr. Huang is bound by it given the behavior of Mr. Bernstein is a question of fact....

Trial Transcript (Day 1): 62:12-66:6.

Defendant's argument is premised on a mere comment about inducement that the Court made during the trial. But that was not the Court's ruling. Those remarks from the bench may have been misplaced, or poorly stated, because the Complaint and the evidence (and the elements of fraud) all relate to inducement to do something: enter into the contract, advance funds, etc. Fraud directed at entering into the contract was very much at issue, and the integration clause did not bar consideration of evidence of that very fraud. "An integration clause does not provide a blanket exemption to claims of fraud in the inducement." *Drake v. McNair*, 993 A.2d 607, 624 (DC 2010) (distinguishing misrepresentations of existing fact, as here, from promises of future performance).

The fraud here, related to a matter prior to entry into the Contract, was as to existing facts, and not promises of future performance:

In consideration of the evidence presented at trial and the representations made in the Parties' post-trial briefing, the Court finds that Defendant Carl Bernstein committed common law fraud and violated the CPPA by (1) misrepresenting that there were no encumbrances on the Property and that 2905 University Terrace had already sold....

Non-Jury Trial Order and Judgment (Footnote 9) [1141].

This issue provides no basis to overturn Judge William's judgment against the Defendant as no reversible error occurred.

V. THE COURT DID NOT ERR IN HOLDING DEFENDANT LIABLE FOR HIS OPINION OR PREDICTIONS OR BELIEFS OF FUTURE EVENTS THAT HE COULD DELIVER THE HOME TO THE PLAINTIFFS

Defendant argues that the Huang's claim for fraud against Carl should be dismissed because the allegations of fraud were opinions or predictions or beliefs of future events, and thus do not constitute representations of material fact upon which Plaintiffs successfully may place dispositive reliance.

They cite *Howard v. Riggs National Bank*, 432 A.2d 701 (D.C. 1981), for the proposition that "opinions or predictions or beliefs of future events" do not constitute representations of material fact upon which a plaintiff successfully may place dispositive reliance, and *Bennett v. Kiggins*, 377 A.2d 57 (D.C. 1977), for the proposition that a representation as to future events asserted in a common law fraud action should only be considered a misrepresentation of fact where the evidence

shows that the promise was made without the intent to perform, or that the promisor had knowledge that the events would not occur. Thus, the Defendant argues, the Huangs' claims against Carl should be dismissed because the allegations of fraud were opinions or predictions of future events and thus do not constitute representations of material fact upon which the Huangs successfully may place dispositive reliance.

This argument has no merit, as Plaintiffs proved at trial that Carl made statements which were false. Judge Williams found that based on the evidence presented at trial, and the representations made in the Parties' post-trial briefing, the Defendant committed common law Fraud and violated the CPPA by (1) misrepresenting that there were no encumbrances on the Property and that 2905 University Terrace had already sold, and (2) promising to pay contractors for work completed when he knew 1436 Foxhall Road LLC did not have sufficient funds to pay them.

This issue should not be the basis to overturn Judge Williams' judgment against the Defendant as no reversible error occurred.

VI. THE COURT DID NOT ERR IN HOLDING DEFENDAN LIABLE FOR THE FAILURE OF A THIRD-PARTY SETTLEMENT AGENT IN RECORDING A LIEN AND IN FAILING TO OBTAIN A SUBORDINATION AGREEMENT FROM A PRIOR LIEN HOLDER

Defendant argues that there was no evidence taken at trial with regard to Carl's liability for the negligence of the third-party settlement agent in failing to

record the Huangs' lien or to obtain, from a prior lien holder, a document that subordinated that prior lien to the Huangs' new lien, and that therefore Carl cannot be held responsible for the negligent actions of a third-party settlement agent (Stewart Title).

This argument is misplaced because the trial court did *not* find Carl liable on this issue. In fact, the Court held “Plaintiffs failed to prove their claims that Carl committed common law fraud by making promises in ...the First [or] Second, ...Amendments. ... Through the First and Second Amendments, Carl agreed to provide the Huangs with a second position security lien on the Property and to increase their lien security to \$500,000 and Carl showed that he intended to give the Huangs a second position security lien by drafting the Security Second Deed of Trust and Modification of Security Second Deed of Trust.” Non-Jury Trial Order and Judgment [1145].

There is no reversible error here because Defendant prevailed on this issue at trial so this Court should not even consider this issue.

VII. THE COURT DID NOT ERR WHEN IT USED THE “HIGHLY PROBABLE” STANDARD WHEN EVALUATING DEFENDANT’S LIABILITY UNDER COMMON LAW FRAUD AND THE CPPA

Carl argues that the Court based its ruling on an improper “highly probable” standard, by using the term “highly probable” alone in one place in its ruling. But in reality, the Court was using it as part of the standard for clear and convincing

evidence, as articulated by this Court. Judge Williams wrote the following on this issue in her Opinion as follows:

Evidence is clear and convincing if it “will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.” *Lumpkins v. CSL Locksmith, LLC*, 911 A.2d 418, 426 n.7 (D.C. 2006) (internal quotation marks omitted). In other words, “the truth of factual contentions [must] be ‘highly probable’ or substantially more likely to be true than untrue.” *In re Gaskins*, 265 A.3d 997, 1002 (D.C. 2021) (citing *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)). **While the Court has applied the preponderance of the evidence standard in finding that Carl violated the CPPA, the evidence is so overwhelming as to meet the clear and convincing standard.** (Emphasis added.)

Non-Jury Trial Order and Judgment (Footnote 11) [1151].

The Defendant has maintained throughout this litigation that he never made an intentional misrepresentation to the Huangs about the Property or the Contract. Plaintiffs sought damages for Bernstein’s misrepresentations and omissions under the CPPA, whether they were “intentional” or “unintentional”, and the CPPA does not make such a distinction. *See Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1073 (D.C. 2008) (holding that plaintiff “need not allege or prove intentional misrepresentation or failure to disclose to prevail on a claimed violation of § 28-3904 (e) or (f) of the CPPA.”)

While it is established that the burden of proof for intentional misrepresentations is the clear and convincing proof standard (*Osbourne v. Capital Mortg. Corp.*, 727 A.2d 322, 325 (D.C. 1999)), the Court of Appeals has yet to

establish the burden of proof for unintentional misrepresentations and omissions claims pursuant to the CPPA. *See Caulfield v. Stark*, 893 A.2d 970, 976 (D.C. 2006) (finding that the Court of Appeals “did not address whether the CPPA also embraces claims of unintentional misrepresentation.”)

The Superior Court has previously found that the preponderance of the evidence standard applies to claims for unintentional misrepresentations and omissions under the CPPA. *See District of Columbia v. EADS, LLC*, 2022 D.C. Super. LEXIS 40, *5 (D.C. Super. Ct. Aug. 31, 2022) (finding that “the preponderance of the evidence standard applies to CPPA claims of unintentional acts” because “[t]he preponderance of the evidence standard is the default standard of proof in civil cases”); *see also District of Columbia v. Equity Residential Mgmt.*, 2021 D.C. Super. LEXIS 90, *24 (D.C. Super. Ct. Oct. 8, 2021) (holding that “[w]here a party brings a CPPA claim based on unintentional conduct, as is the case here, the preponderance of the evidence standard applies.”)

Because the CPPA was designed to “overcome problems associated with common law fraud claims by eliminating the requirement of proving certain elements such as intent,” *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013), the heightened clear and convincing burden of proof would contravene the purpose of the statute. Therefore, Judge Williams did not err when she reviewed the Plaintiffs’ claims for unintentional misrepresentations and omissions under the

CPPA under a preponderance of the evidence standard.³

In *Jackson v. Byrd*, 2004 D.C. Super. LEXIS 19, *43, n. 54 (D.C. Super. Ct. May 11, 2004), the Court determined that an unconscionability provision of the CPPA does not require proof of intentional misrepresentation or omission, and Plaintiff must only prove this claim by a preponderance of the evidence. “[T]he preponderance of the evidence standard ‘requires the court to merely determine who has the most competent evidence.’” *In re E.D.R.*, 772 A.2d 1156, 11160 (D.C. 2001) (citing *In re J.S.R.*, 374 A.2d 860, 864 (D.C. 1977)).

Preponderance of the evidence is defined as “‘evidence which is of greater weight or more convincing than the evidence presented in opposition to it; that is evidence which is as a whole shows that the fact sought to be proved is more probable than not.’” *Id.* (quoting BLACK’S LAW DICTIONARY 1182 (6th ed. 1990)). Proving a claim by clear and convincing evidence also satisfies the lower preponderance of the evidence standard. *See Pearson v. Soo Chung*, 961 A.2d 1067, 1076 at n. 10 (quoting *In re A.B.*, 955 A.2d 161 where clear and convincing evidence is defined as “the evidentiary standard that lies somewhere between a

³ In his Post-Trial Brief, the Defendant asked the Court to reconsider its previous finding that the applicable burden of proof for unintentional misrepresentations under the CPPA was the preponderance of the evidence standard. *See* Defendant’s Post-Trial Brief/Page 11. Judge Williams has already addressed this issue when she stated that since the Defendant had the opportunity to file a motion to reconsider her Order, but chose not to do so, the Court declined to reconsider the law of the case after the close of trial. Non-Jury Trial Order and Judgment (Footnote 9) [1148].

preponderance of evidence and evidence probative beyond a reasonable doubt.””)

As previously stated herein, this is a moot issue in this case because as Judge Williams found, even if she had applied the clear and convincing evidence standard, the Huangs would still have succeeded on their claims based on the substantial evidence presented in their favor. Accordingly, Judge Williams ruled that Defendant violated the CPPA with respect to these pre-contractual representations under either the clear and convincing standard, or the preponderance of the evidence standard. As such, there is no reason why this Court should overturn the findings of liability on this issue.

VIII. THE COURT DID NOT ERR IN AWARDING DAMAGES BASED ON MONEYS PAID BY PLAINTIFFS TO DEFENDANT WITH REGARD TO AMENDMENTS AND CHANGE ORDERS

Judge Williams found that Carl committed common law Fraud and violated the CPPA with regard to the Contract, the Tenth Amendment, and Change Order #9, and included in its monetary award money paid by the Huangs for other amendments and change orders.

Defendant argues that if the judgment of liability should remain after the appeal, the Court of Appeals should remand this matter to Judge Williams with instructions to remove from the damage all money paid by the Huangs with regard to amendments and change orders where Carl was not found liable for Fraud or for violating the CPPA.

In its Damages' Brief, Plaintiffs submitted that they had incurred \$1,383,193 in actual damages, representing that Plaintiffs had paid a total of \$1,332,693 pursuant to the Contract and its Addendums, and \$50,500 in direct payments made to vendors and subcontractors pursuant to invoices and change orders. Plaintiffs sought to treble their actual damages as a remedy under the CPPA, bringing their actual damages to a total of \$4,149,579. Plaintiffs also agreed to credit the Defendant the total amount of \$276,000, which represented the \$198,000 payment they had received from Geoffrey pursuant to a Settlement Agreement, and the \$78,000 payment they had received from the Bankruptcy Trustee.

In his Damages Brief, Defendant asserted that the Court could not award compensatory damages arising from the other addendums, amendments, and change orders, because the Court did not find the Defendant liable on those. Thus compensatory damages could only be awarded based on the Tenth Amendment and Change Order #9.

The Defendant further argued that there was no basis for punitive damages, and that any legal costs should be limited to the claims Plaintiffs made against Carl, and not the former Defendants Geoffrey and 1436 Foxhall Road LLC. The Defendant claimed that the upper limit of the damages award should be no more than \$135,427, which was the amount of salary or draws received by Carl from Plaintiffs through various entities he controlled.

The Court ended up awarding Plaintiffs \$1,383,193 in actual damages. The Court only trebled the damages related to the Tenth Amendment and Change Order #9 because Plaintiffs were already awarded actual damages for Defendant's pre-contractual misrepresentations under common law. Pursuant to the CPPA, the Court had discretion to "treble damages, or \$1,500 per violation, whichever is greater, payable to the consumer." D.C. Code §28-3905(k)(2)(A)(i).

Based on Defendant's CPPA violations concerning the Tenth Amendment and Change Order #9, the Court was permitted to award \$3,000 or \$168,000 (\$50,000 from the Tenth Amendment + \$6,000 from Change Order #9 = \$56,000 x 3 = \$168,000). Because the trebled damages were greater, the Court awarded Plaintiffs \$168,000 under the CPPA. The Court denied Plaintiffs' request for punitive damages under the CPPA on the damage amount awarded.

Plaintiffs submit that the damages amount awarded by Judge Willimas was proper. As the Court stated in its Order on Damages dated November 3, 2023, the Court of Appeals has established that "[b]y suing in tort, the defrauded party . . . claims sufficient compensation to make his position as good as it would have been had he not entered into the transaction at all." *Ludwig Robinson, PLLC v. BiotechPharma, LLC*, 186 A.3d 105 (D.C. 2018) (quoting *United Sec. Corp. v. Franklin*, 180 A.2d 505, 510 (D.C. 1962) (brackets and ellipses in original)). "Under a different formulation, the measure of damages is 'what the [defrauded party] lost

as a result of the fraud.” *Id.* (quoting *Espaillet v. Berlitz Schools of Languages, Inc.*, 383 F.2d 220, 223 (D.C. Cir. 1967)).

In the Non-Jury Trial Order and Judgment, the Court had found that Defendant committed common law Fraud by making false representations to Plaintiffs before executing the Contract that there were no encumbrances on the Property and that 2905 University Terrace had already sold or had a buyer. As such, the Court agreed with Plaintiffs that they were entitled to recover the money they paid toward the Property, which they never received. Allowing Plaintiffs to recover the payments they made pursuant to the Contract and the Addendums, and directly to vendors and subcontracts, satisfied both standards articulated by the Court of Appeals, as Plaintiffs would be put in a position as good as they would have been if they had not entered into the Contract, and they would recover what they lost as a result of Defendant’s fraud. *See Ludwig*, 186 A.3d at 115.

The Court also found that Plaintiffs were entitled to attorney’s fees under the CPPA. *See* D.C. Code § 28-3905(k)(2)(B). Plaintiffs had submitted that they had incurred attorney fees in the amount of \$308,026, but the Court could not determine the reasonableness of this amount, based solely on the information provided in Plaintiffs’ Damages Brief.

Accordingly, Judge Williams did not err in awarding Plaintiffs the total amount of \$1,275,193, plus attorney’s fees.

IX. THE COURT DID NOT ERR IN AWARDING ATTORNEYS' FEES

Defendant's counsel does not contest Judge Williams' calculation of attorneys' fees, but states that "Should the Court of Appeals reverse the trial court's judgment on liability, it should also require the trial court to vacate the award of attorneys' fees." Plaintiffs have no issue with this position; if this Court overturns the underlying findings and order of Judge Williams on Defendant's liability, then of course the attorneys' fee award of \$287,966.51 should be vacated accordingly.

If the Court does not overturn the underlying judgment on liability, this Court should maintain the award undisturbed.

X. CONCLUSION

Appellee-Plaintiffs respectfully requests that this Honorable Court affirm the trial court in its entirety.

Respectfully submitted,

/Juan Chardiet/

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Certificate of Service

I hereby certify that on June 4, 2024, Appellees/Plaintiffs' Brief was served by the Court's electronic filing system to the attorneys of record for the Appellant/Defendant, and further state 2 paper copies of same were delivered by U.S. Mail to John T. Szymkowicz and J.P. Szymkowicz, SZYMKOWICZ & SZYMKOWICZ, LLP, P.O., Box 57333, Washington, DC 20037.

/Juan Chardiet/
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