SCAN

SHORT FORM ORDER

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SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 4

Present: HON. UTE WOLFF LALLY
Justice

JOSEPH VENABLES,

Plaintiff,

-against-

PHILIP J. SAGONA and BLACKWOOD, LTD.,

Defendants.

Motion Sequence #9
Submitted February 4, 2010

INDEX NO: 15433/06

The following papers were read on this motion for summary judgment:

Notice of Motion, Affs and Exhibits.....1-5
Affs in Opposition.....6&7
Affs in Reply.....8&9
Memoranda of Law.....10&11

Upon the foregoing papers, it is ordered that motion for an order pursuant to CPLR 3212 by defendants Philip J. Sagona and Blackwood, Ltd. granting summary judgment in their favor dismissing the plaintiff's amended complaint is disposed of as follows:

At some point prior to March of 2002, co-defendant Philip J. Sagona approached the plaintiff Joseph Venables and allegedly invited him to participate in a potentially lucrative, "bond trading" program (A. Cmplt., ¶¶ 2-5; Venables Aff., ¶¶ 2-7).

Venables, who describes himself as a sales executive/business owner, contends that he and Sagona were high school friends and attended college together (Venables Aff.,

¶¶ 2-4). After serving in the Korean war, Venables worked as an executive for Sagona's company for some two years, after which he left and operated his own business "distributing luxury items on the duty free export market". The men then lost touch for some 50 years until 2001, when they renewed their friendship (Venables Aff., ¶¶ 2-7).

In August, 2001, Sagona sent various written materials to Venables describing the bond trading program mentioned above and Venables claims that he ultimately agreed to invest in the venture at that time (Venables Aff., ¶¶ 2-7).

Thereafter, between August of 2001 and March of 2002 – and pursuant to instructions from Sagona – Venables delivered the sum of $160,000.00 in four installments, to co-defendant Blackwood, Ltd ["Blackwood"], an entity wholly owned by Sagona (A. Cmplt., ¶ 7). At the time, Sagona was also apparently owner and/or principal of another corporate entity known as "Governor's Island Development Corp" ["Governor's"].

The plaintiff's advances were memorialized in a series of transmittal letters and attached promissory, "demand" notes drafted by Sagona, culminating in the March 27, 2002 note. Said note superseded the previously issued instruments and incorporated the entire $160,000.00 indebtedness into its provisions.

The subject March note refers to the $160,000.00 advance and then obligates Blackwood to repay that sum, albeit with the very substantial interest amount of $2,400,000.00, and which amount materially exceeds the underlying principal. Pursuant to the terms of the note, principal and interest were both due and payable on demand one year later, *i.e.*, on March 27, 2003 (Defs' Exh., "2").

In May of 2002, Sagona allegedly informed the plaintiff about another, distinct business opportunity. Specifically, Sagona advised the plaintiff that he supposedly "had sources which could finance the acquisition" of a "substantial" business upon terms where the purchaser "would not be required to furnish any of the purchase[ ] price" (Venables Aff., ¶¶ 15-16).

Venables was interested and, in response, he notified Sagona that he personally knew of a business known as "Roberto DiCamerino Companies" ["RDC"], which could be purchased for the sum of $20 million, and that he "would like to acquire it" (Venables Aff., ¶ 15).

To assist Venables in making the RDC acquisition, Sagona then allegedly introduced Venables to an English Insurance agency, called the "Burley Group," which in turn, referred Venables to a Robert Michaels – a sureties broker and principal of an entity known as "Northamerican Sureties" (Venables Aff., ¶¶ 16-18). Venables claims that Michaels told him that in order to obtain the surety bond required to facilitate the proposed RDC acquisition, it would be necessary for Venables to make an allegedly refundable, $800,000.00 deposit toward the bond premium. Venables later wired the sum of $340,000.00 towards the bond deposit to Michaels (Venables Aff., ¶¶ 18-19).

Subsequently, when it became clear that Michaels could not supply the required acquisition financing as promised, Venables demanded the return of his deposit, but no refund was forthcoming. Michaels was later indicted for his role in soliciting the deposit, and thereafter pleaded guilty to federal wire fraud in New Jersey.

In March 27, 2003, the Blackwood note matured, but the plaintiff did not receive Blackwood's payment as required by the note; namely, the principal sum of $160,000.00, together with interest of $2,400,000.00. Instead, Sagona allegedly urged the plaintiff to forbear in connection with the note obligation. More particularly, Sagona allegedly informed the plaintiff that several, then pending financial transactions would soon be consummated, after which Blackwood would be then able to satisfy its note obligations to Venables (A. Cmplt.,¶¶ 21-23; Venables Aff., ¶¶ 22-24).

Thereafter, from July, 2004 through 2006, Sagona wrote several letters to Venables, in which he represented that Blackwood would repay the promissory note – and also reimburse Venables for the $340,000.00 advance he made to Michaels (Venables Aff., ¶¶ 26-33). According to the plaintiff, however, the promised payments were never made.

In 2006, the plaintiff advised Sagona that he could not wait any longer for repayment and that he intended to take legal action in the event he did not receive the payments upon his return from a Europan business trip (Venables Aff., ¶¶ 33-35). In response, Sagona allegedly informed Venables that he would arrange for checks in the sum of $261,000.00 to be deposited into Venables' brokerage account, which deposits would be made prior to Venables' return (Venables Aff., ¶¶ 34-35). By e-mail dated May 3, 2006, the plaintiff advised, *inter alia*, that the three checks "will be held until you notify me to deposit them" (Defs' Exh., "10").

When the plaintiff returned, however, he discovered that the checks had not been deposited. At a May, 2006 meeting between the two men, Sagona gave the plaintiff three checks dated May 2, 2006, in the amounts of $160,000.00, $100,000.00 and $1,000.00.

Sagona directed him, however, not to deposit them for a few days until he contacted the plaintiff (Venables Aff., ¶¶ 35-38).

The plaintiff contends that despite several inquiries over the next two months, Sagona consistently requested that the plaintiff refrain from depositing the checks. In mid-July, Sagona allegedly informed the plaintiff that an unnamed bank executive would be wiring money into Blackwood's account so that the checks could then be funded.

On July 20, 2006, the plaintiff attempted to deposit the funds, but all three checks were dishonored and returned with notations that payment had been stopped (A. Cmplt., ¶¶ 30-31 *see*, Defs' Exhibit "19"). Blackwood is currently in default with respect to the notes.

Based upon the foregoing factual transactions, the plaintiff commenced the within action as against Sagona and Blackwood. The plaintiff's original complaint set forth five causes of action grounded upon, *inter alia*, the defendants' failure to pay the March, 2002 note; the dishonor of the May, 2006 checks; breach of contract; fraudulent/promissory inducement; and fraud.

The defendants have answered, denied the material allegations of the complaint, and interposed various affirmative defenses, including the second affirmative defense predicated upon criminal and civil usury (A. Ans., ¶ 9; *see also*, Banking Law § 14-a [1]; General Obligations Law §§ 5-511; 5-521; Penal Law § 190.40).

In December of 2006, the defendants made their first motion for summary judgment. By order dated January 29, 2007, this Court dismissed the plaintiff's first cause of action to recover on the note, as well as the third through fifth causes of action - although the

Court sustained the second cause of action, which was based on the dishonor of the $261,000.00 in checks Sagona gave to Venables in May of 2006 (Order at 3).

As to the first cause of action arising out of the March, 2002 demand note, this Court held that the interest payable – $2.4 million on a $160,000.00 principal amount – was plainly usurious. The Court also rejected the plaintiff's then unpleaded theory that the notes actually evidenced a business investment, not a loan. Similarly, the Court rejected his alternative claim that Sagona should be estopped from raising the usury defense, *i.e.*, the claim that Sagona allegedly exploited the parties' friendship by drafting the usurious repayment terms himself, without informing Venables of its potential illegality and/or advising him to seek the advice of independent counsel (Order at 2).

Thereafter, the plaintiff appealed this Court's January 2007 order and the Appellate Division reversed, albeit solely on the non-substantive ground that the defendants' motion was premature absent further discovery. The Second Department held in this respect that "[o]n the limited facts presented in this pre-discovery record, those branches of the defendants' motion which were to dismiss the first, third, fourth, and fifth causes of action should have been denied as premature, with leave to renew upon completion of discovery" (*Venables v. Sagona*, 46 AD3d 672, 673).

Some 18 months after the Appellate Division's order was handed down, the plaintiff moved for, and was granted, leave to amend his complaint so as to add the previously unpleaded claim that the 2002 transaction was actually a business investment, not a loan, and was not subject to the prohibitions contained in the usury statutes (Venables Aff. in Support of Mot. To Amend, ¶ 10, dated April, 10, 2009 [Defs' Exh., "13"]; *Schaaf v Borsher*,

82 AD2d 880 *cf., Stanley Weisz, P.C. Retirement Plan v NCHD Associates, Inc.*, 237 AD2d 276).

In support of his motion to amend, the plaintiff advised the Court, *inter alia*, that upon reading the defendants' prior summary judgment papers in 2007, his recollection was "refreshed" and that he now recalled that the transaction was actually "a business investment and not a loan that would be subject to the usury laws" (Venables Aff. in Support of Mot. To Amend, ¶ 11).

Discovery has now been conducted and the defendants have herein renewed their application for summary judgment dismissing the plaintiff's newly amended complaint. The defendants' motion should be granted to the extent indicated below.

Significantly, the plaintiff concedes that as written on its face (*Matter of Dane's Estate*, 55 AD2d 224, 226 *cf.*, *Hort v Devine*, 1 AD3d 266), the interest rate set forth in the March, 2002 demand note is plainly usurious. However, the plaintiff again argues that: (1) issues of fact exist as to his estoppel theory; and (2) alternatively, that the alleged advance was not a loan, but rather, a business investment exempt from the usury statutes. The Court disagrees.

"Pursuant to General Obligations Law § 5-501, it is illegal to charge or receive any money, goods, or things in action as interest on the loan or forbearance of any money, goods, or things in action, at a rate exceeding 16% per annum, the maximum rate prescribed in Banking Law § 14-a" (*DeStaso v Bottiglieri*, 52 AD3d 453 *see,* General Obligations Law § 5-501[2]; Banking Law § 14-a[1]; *O'Donovan v Galinski*, 62 AD3d 769, 770; *Browowski v Falleder*, 296 AD2d 301; *Matias v Arango*, 289 AD2d 459; *Russo v*

Carey, 271 AD2d 889 *see also, Seidel v 18 East 17th Street Owners, Inc.*, 79 NY2d 735, 740; *Bietola v McCue*, 308 AD2d 416).

"A usurious contract is void and relieves the plaintiff of the obligation to repay principal and interest thereon" (*Abir v Malky, Inc.*, 59 AD3d 646, 649 *see also, Seidel v 18 East 17th Street Owners, Inc.*, *supra*; *Szerdahelyi v Harris,* 67 NY2d 42, 47-50;*O'Donovan v Galinski*, *supra*, 62 AD3d at 770).

"A loan is usurious if the lender intends to take and receive a rate of interest in excess of that allowed by law even though the lender has no specific intent to violate the usury laws, and even though 'the borrower sets the rate of interest * * *'" (*Pemper v Reifer*, 264 AD2d 625; *Matter of Dane*, *supra*, 55 AD2d 224, 226 *see also*, *Elghanian v Elghanian*, 277 AD2d 162; *Hammond v Marrano*, 88 AD2d 758, 759-760).

Notably, "[w]hen determining whether a transaction constitutes a usurious loan it must be considered in its totality and judged by its real character, rather than by the name, color, or form which the parties have seen fit to give it'" (*Abir v Malky, Inc.*, *supra*, 59 AD3d 646, 649; *see also, O'Donovan v Galinski, supra, 62 AD3d 769; Feinberg v Old Vestal Road Associates, Inc.*, 157 AD2d 1002; *DeSimon v Ogden Associates*, 88 AD2d 472).

Even though a loan may be or is usurious, a borrower may be estopped from relying on a usury defense when, *inter alia*, "through a special relationship with the lender, the borrower induces reliance on the legality of the transaction" (*Seidel v 18 East 17th Street Owners, Inc., supra*, at 743-744; *DeSantis v General Advisory & Funding Corp.*, 21 AD3d 1051; *Goldstein v CIBC World Markets Corp.*, 6 AD3d 295, 296; *Russo v Carey*, *supra*, 271 AD2d 889, 890; *Angelo v Brenner*, 90 AD2d 131, 132-133; *Hammond v Marrano*, *supra*,

88 AD2d 758, *see also, Pemper v Reifer, supra,* 264 AD2d 625, 626; *Min Computer Consultants Inc. Retirement Trust v Easton*, 230 AD2d 718, 719; *Abramovitz v Kew Realty Equities, Inc.*, 180 AD2d 568).

With these principles in mind, the Court agrees that the defendants have *prima facie* established their entitlement to judgment as a matter of law, dismissing the plaintiff's first "failure to pay" cause of action to recover the sums referenced in the note, *i.e.*, $2.56 million (A. Cmplt., ¶ 33).

Specifically, the defendants have submitted, *inter alia*, the March, 2002 demand note which, as the plaintiff himself concedes, provides on its face for an interest payment of $2,400,000.00 on a principal amount of only $160,000.00 (see *Clark v Daby*, 225 AD2d 974, 975; *Matter of Dane*, *supra*, 55 AD2d 224, 226 *cf.*, *Greenfield v Skydell*, *supra*, 186 AD2d 391). It is undisputed that the rate of interest payable on the foregoing amount materially exceeds the lawful statutory rate.

Nor does the post-discovery record now before the Court support the existence of an estoppel to assert the usury defense (*Matter of Dane*, *supra*, 55 AD2d 224, 226).

A review of the applicable authorities establishes that estoppel defenses based on, *inter alia*, a "special relationship" as enunciated by the Court of Appeals (*Seidel v 18 E. 17th St. Owners*, *supra*), have generally been sustained where, among other things, unusual and/or "peculiar facts" exist (*Hammond v Marrano*, *supra*, 88 AD2d at 759) namely, where the debtor, often an attorney or fiduciary, (*e.g.*, *Greenfield v Skydell*, *supra*, 186 AD2d 391; *Abramovitz v Kew Realty Equities, Inc.*, *supra*; *Schaaf v Borsher*, 82 AD2d 880) has represented that the allegedly usurious interest rate is actually legal (*Russo v*

Carey, supra, 271 AD2d 889; *Angelo v. Brenner*, *supra,* 90 AD2d 131); where the debtor has drafted the documents and/or the evidence suggests that the illegal rate may have been deliberately inserted by the debtor (*Russo v Carey, supra*; *Abramovitz v Kew Realty Equities, Inc.*, *supra,* 180 AD2d 568 *but see, Matter of Dane's Estate*, *supra*, 55 AD2d 224); and where a fiduciary-type, or equivalent relationship exists, accompanied by a marked disparity in sophistication and knowledge, which the alleged debtor then unfairly exploits (*e.g., Seidel v 18 E. 17th St. Owners*, *supra*; *DeSantis v General Advisory & Funding Corp.*, 21 AD3d 1051; *Abramovitz v Kew Realty Equities, Inc.*, *supra; Angelo v Brenner*, *supra; Schaaf v Borsher*, 82 AD2d 880; *see also, Hufnagel v George*, 135 F.Supp.2d 406, 408 [S.D.N.Y. 2001]; *Greenfield v Skydell*, *supra*, 186 AD2d 391).

Here, in contrast, the operative facts do not establish the existence a special relationship marked by a disparity in experience and knowledge, and/or any other "unusual" or compelling facts (*DeSimon v Ogden Associates, supra,* 88 AD2d at 481; *see*, *Russo v Carey, supra; Hammond v. Marrano*, *supra,* 88 AD2d 758).

While the parties had renewed their friendship – albeit after a 50-year hiatus – the mere assertion the two experienced businessmen were friends does not give rise to a fiduciary relationship or alone create a special relationship (O'Donovan v Galinski, *supra*, 62 AD3d 769; *Hufnagel v George*, *supra, cf., Hammond v Marrano*, *supra*, 88 AD2d 758). Nor does the record contain factual details illuminating the specific nature, scope and extent of Sagona's allegedly superior expertise, or explain precisely how he wrongfully employed it.

Specifically, the evidence does not show that Sagona did or said anything which overbore the plaintiff's will before he made the $160,000.00 advance; that the plaintiff was particularly vulnerable at the time in question (*Russo v Carey, supra*, 271 AD2d 889); or that Sagona unduly pressured him into making the payments (*e,g., Clark v Daby,* 225 AD2d 974; *see also*, *Seidel v 18 E. 17th St. Owners*, *supra*). Nor is there any claim that Sagona expressly assured the plaintiff that the loan rate was legal or that Venables relied upon any specific and concrete statements to this effect (*see*, *O'Donovan v Galinski*, *supra*, 62 AD3d at 770; *Russo v Carey*, *supra*, 271 AD2d 889; *Pemper v. Reifer*, *supra*, 264 AD2d 625; *Hammond v. Marrano*, *supra*, 88 AD2d 758).

Similarly, the plaintiff's suggestion that he was unsophisticated, or a neophyte with respect to things financial, lacks support in the record. To the contrary, the evidence indicates that the plaintiff was an experienced and successful businessman in the international cosmetics and luxury goods industry and that he served as a CEO and/or owned his own businesses for many years. Indeed, the plaintiff's claims that he lacked financial experience are further belied by his conduct with respect the RDC acquisition. The evidence establishes in this respect that upon being advised by Sagona that certain businesses could be acquired with minimal financial outlay, the plaintiff himself affirmatively suggested RDC as a potential target, explaining that he would "like to acquire" it, *i.e.,* an international corporate entity with an estimated price tag of some $20 million (Venables Aff., ¶¶ 15-16).

While the plaintiff also asserts that he was not represented by counsel in the matter (Sagona too, claims he acted without counsel), nevertheless by the plaintiff's own

admission, he "had a lawyer whom * * * [he] used for many years," but decided not to utilize him or her – allegedly because he trusted the defendant (Venables Aff., ¶¶ 12-13; Meglio Reply Aff., Exh., "20"). However, there is nothing in the record demonstrating that the plaintiff could not have consulted with his counsel at any time, or that Sagona's conduct prevented the plaintiff from resorting to what was a readily available source of legal advice.

Similarly unsupported by the record is the plaintiff's claim that the transaction was not really a loan, but rather, a business venture to which the usury laws are inapplicable (*see, Kaufam v Horowitz,* 178 AD2d 632; *1080 Warburton Corp. v Torrisi,* 167 AD2d 336; *DeSimon v Ogden Associates*, 88 AD2d 472, 479-481 *see also*, *Abir v Malky, Inc., supra,* 59 AD3d at 649).

The plaintiff's opposing submissions provide only unsubstantiated allegations and rely on a series obliquely framed allegations concerning the claimed investment. Further, the plaintiff's complaint, even as recently amended, is equally obscure in its descriptive content (A. Cmplt.,¶¶ 5-6)

More particularly, the plaintiff has not provided a contextual background which explains why the note should be viewed as evidencing something other than a simple loan debt, *i.e.*, why the parties elected to structure the transaction through the execution of the demand notes, if an entirely different purpose was actually intended. Nor has the plaintiff identified precisely what investment returns, benefits, *etc.*, he was to receive upon advancing those funds (*cf., Schaaf v Borsher*, *supra*, 82 AD2d 880); and/or how the specific note amounts in question are, in reality, traceable to, and based upon, the terms of the allegedly distinct investment agreement. Significantly, the contemporaneous letters

written by the plaintiff himself make no reference to an underlying investment transaction of the sort alleged now, but rather seek enforcement of the March, 2002 note in accord with its written tenor as a loan. Further, and despite providing discovery responses advising that he was always aware that the transaction was solely an investment, the plaintiff's original complaint made no reference to the foregoing factual theory, which was first added as a formally pleaded claim years later in 2009 (Meglio Aff., ¶¶ 27-29, Exh., "14").

Although summary judgment is a drastic remedy, "'[a]verments merely stating conclusions, of fact or of law, are insufficient" to "defeat summary judgment" (*Banco Popular North America v Victory Taxi Management, Inc.,* 1 NY3d 381, 38; *quoting from, Mallad Constr.Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290).

Accordingly, and upon the facts presented here, the Court agrees that the plaintiff's first cause of action alleging entitlement to the sums set forth in the March, 2002 note, should be dismissed as barred by the defendants' usury defense.

As to the second cause of action, which the Court originally sustained in its prior order, the plaintiff claims that the Blackwood checks dated May 2, 2006, were wrongfully dishonored upon proper deposit in mid-July, 2006, thereby entitling the plaintiff to recovery in their face amount, *i.e.,* $261,000.00 (A. Cmplt., ¶¶ 34-35 Defs; Exh., "2").

The defendants' opposing assertions are, as they were on the first motion, based upon the theory that the tender of checks was conditional, i.e., that the checks were not to be deposited unless and until authorization was received from Sagona, which Sagona claims was allegedly never given.

In disposing of this claim, on the first motion, this Court held that issues of fact existed as to whether the plaintiff deposited the checks in violation of the Sagona's directive not to do so until he authorized the deposit. The Court reaches the same result here.

While the defendants have now submitted an e-mail dated July 19, 2006, in which Sagona himself recounts that the plaintiff supposedly violated a July 17, 2006 oral directive not to deposit the checks, there still exist disputed facts and conflicting allegations surrounding the deposit which cannot be summarily resolved as a matter of law (Defs' Exh., "19"). The Court notes that the portions of the July 19, 2006 e-mail are partially obscured on the exhibit copy attached to the defendants' papers (Defs' Exh., "19").

However, that branch of the defendants' motion which is to dismiss the third through fifth causes of action, should be granted.

The third, fourth and fifth causes of action, which basically recast the note cause of action in differing permutations and legal terminology. Although they are nominally labeled as breach of contract, "promissory fraud" and "fraud" claims, they again effectively assert entitlement to essentially the same amounts set forth in the March, 2002 note - albeit together with the allegedly unpaid portions of the $340,000.00 Michaels advance (A. Cmplt., ¶¶ 36-37; 38-40).

As to the contract theory, the plaintiff claims that in reliance upon Sagona's promises that the foregoing amounts would be paid, he refrained from commencing legal proceedings to recover those sums (A. Cmplt., ¶¶ 36-37). The promissory fraud/fraud causes of action (4th and 5th) assert in sum, that: Sagona made a string of repayment

promises over a three-year period which he never intended to keep; that the promises were made to induce the plaintiff's forbearance; that Venables relied upon and conveyed Sagona's payment assurances to unnamed creditors; and that he thereby (as to the "fraud" claim) suffered damage as a result (A. Cmplt.,¶¶ 38-43).

Significantly, the defendants advise, and the plaintiff does not dispute, that, *inter alia*, Michaels has since been sentenced by the Federal District Court; that he is currently paying restitution to the plaintiff as a part of his sentence; and that by virtue of those Court ordered payments, the debt balance has been reduced to at least $185,000.00, as opposed to the sum of $260,000.00 sought in the complaint (Meglio Aff., ¶¶ 47-50; A. Cmplt., ¶¶ 36-37).

At bar, the post-discovery record contains nothing which would prompt or require the Court to depart from its prior holding dismissing these specific causes of action; namely its prior rulings that the plaintiff cannot circumvent the usury bar simply by restyling and/or recasting his dismissed "note" cause of action as a fraud and/or "breach of contract" claim. No less applicable is the Court's previous determination that, in any event, the plaintiff's forbearance in response to Sagona's post-advance promises was not a valid contract consideration or a basis for reasonable reliance, because the purported forbearance related to claims which themselves were never enforceable or colorable in the first instance (Order at 3)(*see generally, Hammond Oil Co. v Standard Oil Co. of New Jersey,* 259 NY 312, 323 [1932]; *Springstead v Nees*, 125 App Div 230; *Pash v Wagner,* 2 Misc.2d 822, 825-826 [Supreme Court, Appellate Term, 2nd Dept 1956]; *Caruana v Prudential Spice Co.*, ___Misc___,178 NYS 401 [App. Term 1st Dept. 1919]; 22 NYJur.2d, contracts, § 91

[2010]).

Lastly, the Court agrees that in opposition to the defendants' *prima facie* showing, the plaintiff has failed to raise factual issues as to Sagona's alleged personal and/or individual liability for the debts and claims sued upon (*see generally*, *Williams v Lovell Safety, Management Co., LLC,* ___AD3d___, 896 NYS2d 150, 151-152 [2nd Dept. 2010]; *Goldman v Chapman*, 44 AD3d 938; *see also, Schwartz v Tepper*, 67 AD3d 688).

The Court has considered the parties' remaining contentions and concludes that they are lacking in merit.

Accordingly, it is,

ORDERED that the motion pursuant to CPLR 3212 by the defendants Philip J. Sagona and Blackwood, Ltd. for summary judgment dismissing the complaint is granted to the extent that the first, third, fourth and fifth causes of action are hereby dismissed, and the motion is otherwise denied.

Dated: April 19, 2010

UTE WOLFF LALLY, J.S.C.

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