At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on the 22nd day of November 2023.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

----------X

CLARENCE BOURNE and OLIVE BOURNE,

Plaintiffs,

Index No. 14851/2014

-against-

DECISION AND ORDER
MS #12 and MS #13

MARTIN DEVELOPMENT & MANAGEMENT, LLC., LAUNCH DEVELOPMENT, LLC., RAJESH MADDIWAR, ESQ., HOMEOWNER ASSISTANCE SERVICES OF NEW YORK, MARIO ALVARENGA, SPRINGFIELD REALTY OF NEW YORK, GREENE TEAM REALTY, FRANK PALADINO, ESQ., ELLIOTT BAKST, ESQ., AMIR MEIRI A/K/A MEIRI AMIR, HERZEL MEIRI, JACOB SAMRA, and 272 MILFORD STREET LLC,

Defendants.

----------X

The following papers numbered on this motion:

	NYSCEF Doc Numbers
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	4-7, 41-42, 58, 130
Answering Affidavit (Affirmation)	69-70, 84, 87, 120
Reply Affidavit (Affirmation)	90
Supplemental Affidavit (Affirmation)	
Pleadings –Exhibits	8-40, 71-82, 122, 59-68
Stipulations – Minutes	
Filed Papers	

Plaintiffs moved for summary judgment on their fraud claims against Defendants HERZEL MEIRI, AMIR MEIRI, and MARIO ALVARENGA ("Co-Conspirator Defendants") and for an Order to quiet title in their home located at 272 Milford Street, Brooklyn, NY ("the Property").

Defendants JACOB SAMRA and 272 MILFORD LLC ("Samra Defendants") cross-move to amend their Answer to assert claims of unjust enrichment and equitable lien defenses.

Plaintiffs' motion

On May 24, 2023, after oral argument, the Court granted Plaintiffs' motion in part and issued an Order quieting title to the Property.

The Court must now decide the remaining portion of Plaintiffs' motion which seeks summary judgment on their claims that the Co-Conspirator Defendants defrauded them.

"The elements of a cause of action sounding in fraud are a material misrepresentation of an existing fact, made with knowledge of the falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation, and damages" (*Abraham v. Torati*, 219 AD3d 1275, 1279 [2d Dept 2023], quoting *Introna v. Huntington Learning Ctrs., Inc.,* 78 AD3d 896, 898, 911 [2010]; *see Eurycleia Partners, LP v. Seward & Kissel, LLP,* 12 NY3d 553, 559 [2009]). "Where a cause of action is based on a misrepresentation or fraud, 'the circumstances constituting the wrong shall be stated in detail'" (*id.*, quoting CPLR 3016[b]). "The purpose of this pleading requirement 'is to inform a defendant of the complained of incidents'" (*id.*, quoting *Eurycleia* at 559). "However, it has been recognized that, in certain circumstances, it may be 'almost impossible to state in detail the circumstances constituting a fraud where those circumstances are peculiarly within the knowledge of [an adverse] party'" (*id.*, quoting *Jered Contr. Corp. v. New York City Tr. Auth.,* 22 NY2d 187, 194 [1968]). "'Under such circumstances, the heightened pleading requirements of CPLR 3016(b) may be met when the material facts alleged in the complaint, in light of the surrounding circumstances, 'are

sufficient to permit a reasonable inference of the alleged conduct' including the adverse party's knowledge of, or participation in, the fraudulent scheme"' *(id*., quoting *High Tides, LLC v. DeMichele,* 88 AD3d 954, 957 [2011]).

Co-Conspirator Defendants pled guilty to conspiracy to commit bank fraud and wire fraud for their roles in defrauding dozens of homeowners, including the Plaintiffs. Given their guilty pleas in the criminal case, Plaintiffs argue that Co-Conspirator Defendants are collaterally estopped from denying fraud in this case. Plaintiffs argue that the Co-Conspirator Defendants guilty pleas are determinative of their fraud claims.

"Collateral estoppel bars a party from relitigating in a subsequent proceeding any issue that was raised in a prior proceeding and decided against that party where the party had a full and fair opportunity to contest the prior determination" (*Kennedy v. Hubsher*, 193 AD3d 705, 706 [2d Dept 2021]). "'Where a criminal conviction is based upon facts identical to those in issue in a related civil action, the plaintiff in the civil action can successfully invoke the doctrine of collateral estoppel to bar the convicted defendant from [re]litigating the issue of his liability'" (*id*., quoting *Morrow v. Gallagher,* 113 AD3d 827, 828 [2d Dept 2014], quoting *McDonald v. McDonald,* 193 AD2d 590, 590 [2d Dept 1993]). "The doctrine applies whether the conviction resulted from a plea or a trial" (*Morrow* at 828). "'The party seeking the benefit of collateral estoppel bears the burden of proving that the identical issue was necessarily decided in the prior proceeding, and is decisive of the present action'" (*id*., quoting *Morrow* at 828, quoting *City of New York v. College Point Sports Assn., Inc.,* 61 AD3d 33, 42 [2d Dept 2009]). "'The party against whom preclusion is sought bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination'" (*id*.).

In opposition, Co-Conspirator Defendants do not dispute Plaintiffs' assertions. Instead, Co-Conspirator Defendants argue that Plaintiffs cannot rely on pleas in cases involving other properties.

However, Plaintiffs' Property is specifically listed in the Order of Forfeiture signed by Judge Ramos on January 20, 2023 in the criminal proceeding and Plaintiffs' allegations in this action match the accusations in the Grand Jury's indictment of the Co-Conspirator Defendants.

In May of 2015, Defendants AMIR MEIRI, MARIO ALVARENGA, and RAJESH MADDIWAR were arrested and charged in the Southern District of New York for bank and wire fraud in a Complaint outlining their roles in defrauding dozens of homeowners in Brooklyn, Queens, and the Bronx, including Plaintiffs. On January 21, 2017, Defendant HERZL MEIRI was extradited from Ukraine to face bank and wire fraud charges in the criminal matter.

The Sealed Indictment and Superseding Indictment laid out the very fact pattern for the fraud that Plaintiffs suffered. The grand jury charged that the Hillside Fraud Team "targeted distressed homeowners living in the New York City area, including the Bronx, Brooklyn and Queens. . . . The Hillside Fraud Team aimed to coerce and trick homeowners into selling or deeding their properties to one of the many businesses" operated by the Hillside Fraud Team.

The indictment also charged that "the Hillside Fraud Team sent mailing under letterhead for Housing Assistance Services of New York ("HASNY") to the owners of distressed properties, inviting them to seek assistance from HASNY to avoid foreclosure and save their homes".

The indictment further charged that "[t]he homeowners, who had been led to believe that they were about to receive a loan modification or would be able to transfer their property to a trusted relative, were then encouraged to sign documents presented by [a criminal co-conspirator], which in some cases were blank".

"In person and over the telephone, members of the Hillside Fraud Team led homeowners to believe that they would be able to receive loan modifications or that they would be able to transfer their properties to trusted relatives. In truth, the Hillside Fraud Team intended to arrange a sale of the homeowners' properties to a Hillside Business."

The Superseding Indictment also stated that "many homeowners soon found themselves forced to vacate their homes or pay rent to . . . a Hillside Business".

The Forfeiture Bill of Particulars in the criminal matter identified Plaintiffs Property as subject to the criminal conduct charged in the Complaint.

On November 3, 2016, Defendant MARIO ALVATENGA pled guilty to conspiring to commit bank and wire fraud. In allocating his plea, Mr. Alvarenga stated that from January 2013 through May 2015, he "submitted fraudulent documents and misrepresentations through mail and wire, as well as the use of telemarketers, to various financial institutions and banks in order to induce them to enter into short sale agreements under false pretenses."

On April 10, 2018, Defendants HERZL and AMIR MEIRI pled guilty to conspiring to commit bank and wire fraud. In allocating their plea, each of the Meiris stated that from 2013 through May 2015, they "knowingly sent fraudulent mailings to homeowners who were underwater inviting them to seek assistance from a company we owned called Homeowners Assistance Services of New York to avoid foreclosure and loss of their

homes. We convinced the distressed homeowners to sign documents that transferred title of the property to Launch Development or the other entities we owned".

On August 30, 2018, Defendant HERZEL MEIRI was sentenced to ten years in a federal prison.

On November 20, 2018, Defendant AMIR MEIRI Meiri was sentenced to five years in a federal prison.

Given the admissions in the allocutions together with the fact that Plaintiff's Property was included in the Order of Forfeiture in the criminal case, the Co-Conspirator Defendants are collaterally estopped from denying Plaintiff's allegations of fraud.

An additional basis to preclude Co-Conspirator Defendants from contesting Plaintiffs' claims is that they failed to respond to Plaintiffs' Statement of Material Facts or refute Plaintiffs' specific allegations of fraud.

Uniform Court Rule 202.8-g provides that where a party making a motion for summary judgment files a statement of material facts:

> (b)In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.
>
> (c)Each numbered paragraph in the statement of material facts required to be served by the moving party may be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

Plaintiffs submitted an affidavit of facts in accordance with Uniform Court Rule 202.8-g(a). Plaintiffs Statement of Material Facts states, in pertinent part:

> 7. In late 2013 or early 2014, Mr. and Mrs. Bourne received a phone call at home from an organization called Homeowner Assistance Services of New York (hereinafter "HASNY"). O. Bourne Aff. at ¶ 5; C. Bourne Aff. at ¶ 5
>
> 10. The caller promised that HASNY could assist the Bournes with their delinquent mortgage. O. Bourne Aff. at ¶ 7; C. Bourne Aff. at ¶ 7.
>
> 11. HASNY was the center of a fraud perpetrated by a group, named the "Hillside Fraud Team" in a U.S. indictment, led by defendant Herzel Meiri, and including defendant Amir Meiri, Mario Alvarenga, and Raj Maddiwar, to steal title to homes of low-income New Yorkers in distress throughout the Bronx, Brooklyn, and Queens. Ex. 2 (Nov. 1, 2016 Superceding Indictment in United States v. Meiri et al, 15-cr-627 (SDNY)) to Herman Aff.
>
> 15. Mr. Alvarenga assured Mr. and Mrs. Bourne that he could help them with this stated objective, and he promised he would help them to remain in their home. O. Bourne Aff. at ¶ 10; C. Bourne Aff. at ¶ 10.
>
> 19. Unbeknownst to the Bournes, the documents were not designed to help them transfer their home to their son, but were instead for the sole purpose of negotiating a short sale of their property with their mortgage servicer. O. Bourne Aff. at ¶ 14; C. Bourne Aff. at ¶ 14.
>
> 31. About a week after the September 2014 closing, Mr. and Mrs. Bourne received a visit from two men, who appeared at their home to inspect the property for damage. O. Bourne Aff. at ¶ 22; C. Bourne Aff. at ¶ 22.
>
> 32. The men demanded that Mr. and Mrs. Bourne send the monthly $1,600 rent they received from the upstairs tenant to HASNY and that the Bournes pay an additional $1,600 per month for their own "rent." O. Bourne Aff. at ¶ 22; C. Bourne Aff. at ¶ 22.
>
> 33. Mrs. Bourne immediately called Mr. Alvarenga, who advised her that her home had been sold to "investors." O. Bourne Aff. at ¶ 23; C. Bourne Aff. at ¶ 23.
> 34. It was only during this conversation that the Bournes realized that they no longer owned their home and that the Defendants had defrauded them. O. Bourne Aff. at ¶ 23; C. Bourne Aff. at ¶ 23.
>
> 35. The Bournes immediately contacted the Brooklyn District Attorney's office to report the crime. O. Bourne Aff. at ¶ 24; C. Bourne Aff. at ¶ 24.

Co-Conspirator Defendants failed to actually respond to or refute any of Plaintiffs numbered, asserted facts contrary to the requirements of Uniform Court Rule 202.8-g(c).

Co-Conspirator Defendants submitted a response that merely stated:

1. Plaintiffs' have no damages.
2. Plaintiffs have no mortgages on the subject property.
3. Plaintiffs cannot sustain their claim for fraud.

Therefore, the facts asserted in Plaintiffs Statement of Material Facts are deemed admitted in accordance with Uniform Court Rule 202.8-g(c) (*see Mendez v. Makhani*, 74 Misc 3d 1228(A) [Sur Ct, Kings County 2022]).

Based on the foregoing, that portion of Plaintiffs' motion for summary judgment on their fraud claims must be granted and the matter scheduled for an inquest to calculate damages.

Samra Defendants cross-motion

The Samra Defendants cross-move to amend their Answer to assert claims of unjust enrichment and equitable mortgage/subrogation.

Defendant JACOB SAMRA alleges that he loaned $1,000,000.00 to the Meiri Defendants which was used to pay off Plaintiffs' two Mortgages. Defendant JACOB SAMRA further alleges that the Meiri Defendants then conveyed the Plaintiffs' Property to the Samra Defendants as security for the loan.

Plaintiffs argue that the cross-motion to amend should be denied because the statute of limitations has run on a claim for equitable subrogation. Plaintiffs assert that the statute of limitations began to run in October of 2014, the date the mortgages on their Property were paid off.

The Samra Defendants counter with two arguments. First, that the statute of limitations only began to run once the Plaintiffs' Property was returned to Plaintiffs rather than the date the Samra Defendants' money was alleged to be used to pay off Plaintiffs mortgages. Second, they argue that even if the statute of limitations had run, their claim for equitable subrogation relates back to the transactions and occurrences that were timely pled in their original Answer.

The Samra Defendants cross-motion must be denied for several reasons.

"'New York law allows the imposition of an equitable lien if there is an express or implied agreement that there shall be a lien on specific property'" (*U.S. Bank N.A. v. Alleyne*, 187 AD3d 1236, 1238 [2d Dept 2020], quoting *Deutsche Bank Trust Co. Ams. v Cox*, 110 AD3d 760, 761 [2d Dept 2013]). "'While [a] court will impose an equitable mortgage where the facts surrounding a transaction evidence that the parties intended that a specific piece of property is to be held or transferred to secure an obligation, it is necessary that an intention to create such a charge clearly appear from the language and the attendant circumstances'" (*id.*; *see JP Morgan Chase Bank, N.A. v. Bank of Am.*, 164 AD3d 565, 567 [2d Dept 2018]).

Here, it is not claimed that the parties explicitly intended that the Samra Defendants would be given a lien on the Plaintiffs Property.

Rather, the Samra Defendants claim is that Plaintiffs were unjustly enriched because their money was used to pay off the mortgage on Plaintiffs Property.

While the Samra Defendants eventually received the Deed to the Property, there is no mortgage or other agreement indicating that the money invested by the Samras was used to pay off the mortgage on the Plaintiffs' Property. In fact, the Guaranty and Promissory Note between the Meiri Defendants and the Samra Defendants states that the

note is secured by 1503 Bushwick Avenue and 454 Willoughby Avenue, not the Plaintiffs' Property.

Therefore, there is no evidence that the parties intended that the Property, 272 Milford Street, was specifically transferred to secure the Meiri Defendants obligation to satisfy their debt to the Samra Defendants.

"A cause of action seeking to establish a lien pursuant to the doctrine of equitable mortgage or the doctrine of equitable subrogation is governed by a six-year statute of limitations" (*Wells Fargo Bank, N.A. v. Burke*, 155 AD3d 668, 670 [2d Dept 2017]; *see* CPLR 231[1]).

"The limitations period for unjust enrichment is six years from the occurrence of the wrongful acts and, as a claim in equity, the same period applies to plaintiff's cause of action seeking an equitable mortgage" (*US Bank Nat. Ass'n v. Gestetner*, 103 AD3d 962, 963 [3d Dept 2013]).

Here, the six-year statute of limitations period started to run on the date of the events that precipitated the Samra Defendants' claim for an equitable mortgage/subrogation claim. Assuming the Samra Defendants allegations as true, the precipitating events would be when Launch Development, LLC ("Launch") used the Samra Defendants' money to satisfy the existing mortgages on Plaintiffs Property in October of 2014.

The Samra Defendants did not assert their equitable mortgage/subrogation claim until June 6, 2022, when they made their cross-motion to amend their Answer, which is after the statute of limitations had run.

The Samra Defendants also argue that the relation-back doctrine permits them to amend their Answer even though the statutory limitations have expired, because their

claims of equitable mortgage/subrogation arise out of the same transactions and occurrences alleged in their original Answer (*see Pendleton v. City of New York*, 44 AD3d 733 [2d Dept 2007]).

However, neither the original Complaint nor the Samra Defendants original Answer allege that the money that the Samra Defendants gave to the Meiri's was used to pay off the mortgage on Plaintiffs Property.

Therefore, those claims do not relate back as they do not arise out of the same transaction or occurrence alleged in the Samra Defendants original Answer.

WHEREFORE, it is ORDERED that the Plaintiffs are GRANTED summary Judgment on their fraud claims against Defendants HERZEL MEIRI, AMIR MEIRI, and MARIO ALVARENGA ; and it is further,

ORDERED that an inquest on damages be held at the time of trial; and it is further

ORDERED that Samra Defendants cross-motion is DENIED.

ENTER,

J.S.C.