Lucky of 195 Madison St. Roofing & Contr. Inc. v CREIF 109 LLC
2025 NY Slip Op 34833(U)
December 15, 2025
Supreme Court, New York County
Docket Number: Index No. 153437/2017
Judge: Denis Reo

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 65

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LUCKY OF 195 MADISON STREET ROOFING & CONTRACTING INC,

Plaintiff,

- v -

CREIF 109 LLC,BIL-MAN ASSET MANAGEMENT, LLC,PROPERTY RESEARCH, GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP, ROBERT LO SCHIAVO, ASK ABSTRACT, BALLON STOLL BADER & NADLER, VANO HAROUTUNIAN, OLD REPUBLIC TITLE INSURANCEE CO., MAIN STREET TITLE AGENCY INC.,SRUN TAING A/K/A SRUNG TAING A/K/A SRUN C. TAIN, ALLAN J. STEVO A/K/A ALLAN JAMES STEVO, DOES 1-100 INCLUSIVE,

Defendant.

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INDEX NO.	153437/2017
MOTION DATE	02/18/2025, 02/18/2025, 02/18/2025, 02/18/2025, 02/18/2025, 02/18/2025, 02/18/2025
MOTION SEQ. NO.	028 029 030 031 032 033 034

DECISION + ORDER ON MOTION

CREIF 109 LLC

Plaintiff,

-against-

LYNDON CHIN, JOSEPH BARISIC, CLAUDEL JEANNOT, DEAN MASTRANGELO, STEPHEN SEUNG

Defendant.

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Third-Party
Index No. 595086/2021

CREIF 109 LLC

Plaintiff,

-against-

BIL-MAN ASSET MANAGEMENT LLC

Defendant.

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Second Third-Party
Index No. 595686/2022

STEPHEN SEUNG

Plaintiff,

-against-

Third Third-Party
Index No. 595001/2024

MAIN STREET TITLE AGENCY, LTD., STEWART TITLE INSURANCE COMPANY, CREIF (LENDER) LLC, CREIF (REIT) LLC, CASTELLAN HOLDINGS LLC, LIBERTY PLACE PROPERTY MANAGEMENT LLC, ROBERT LOSCHIAVO, GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP, SNOWPOINT CAPITAL LLC

Defendant.

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HON. DENIS REO:

The following e-filed documents, listed by NYSCEF document number (Motion 028) 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1240, 1241, 1248, 1249, 1250, 1251, 1252, 1253, 1254

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND).

The following e-filed documents, listed by NYSCEF document number (Motion 029) 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 1232, 1233, 1234, 1235, 1236, 1243

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 030) 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1244, 1245, 1246, 1247

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 031) 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1237, 1238, 1239, 1242

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 032) 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1170, 1255

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 033) 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1257

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 034) 1162, 1163, 1164, 1181, 1182, 1183, 1184, 1256

were read on this motion to/for JUDGMENT - SUMMARY

This action arises out of the attempt of plaintiff Lucky of 195 Madison Street Roofing & Contracting, Inc. (Lucky or plaintiff) to dispute the legitimacy of various mortgages and liens placed upon four properties that it owns (the Properties) on the basis that the mortgages were executed by "false parties who had no authority or secured interest to place such mortgage liens on the Propert[ies]" (second amended complaint [NYSCEF Doc No. 113], ¶ 16). The Properties are identified as: (1) 164 Orchard Street, New York, New York, (2) 189 Orchard Street, New York, New York, (3) 35 Market Street, New York, New York, and (4) 37 Market Street, New York, New York (*id.*, ¶ 10). Lucky seeks to invalidate these allegedly fraudulent liens on the Properties, and asserts causes of action for declaratory judgment, injunctive and equitable relief, and for compensatory, special, general and punitive damages (*id.*, ¶ 15). Three third-party actions have been filed in response to the main action.

Motion sequences nos. 0028, 0029, 0030, 0031,0032, 0033 and 0034 are consolidated for disposition. In motion sequence no. 0028, third-party defendant Dean Mastrangelo, Esq. (Mastrangelo) moves, pursuant to CPLR 3212, for summary judgment dismissing the first third-party complaint filed by defendant/third-party plaintiff Creif 109 LLC (Creif) as against him, and all related cross-claims.

In motion sequence no. 0029, defendant/second third-party plaintiff Creif moves, pursuant to CPLR 3212, for summary judgment on its breach of contract claim asserted in the second third-party complaint against defendant/second third-party defendant Bil-Man Asset Management LLC (Bil-Man).

In motion sequence no. 0030, plaintiff moves, pursuant to CPLR 3212, for summary judgment against defendant Creif: (1) on the first cause of action in the second amended complaint for lack of standing; (2) on the second cause of action to quiet title as to the Properties; (3) on the third cause of action for a declaratory judgment declaring that (a) the mortgage held by Creif has no validity and should be set aside as a matter of law, (b) the mortgage held by Creif is not valid and must be set aside and stricken from the New York County Clerk's records and docket of mortgages, (c) Creif has no authority to enforce the provisions of any mortgage set forth herein on the Properties, (d) Lucky is entitled to the exclusive possession of the Properties, (e) Lucky is entitled to quiet and peaceful title free from Creif's mortgage on the Properties, and (f) Creif, and all persons claiming under it, has no estate, right, title, lien or interest in and to the Properties; and (4) on the fourth cause of action to set aside the mortgage recorded by Creif against the Properties.

In motion sequence no. 0031, defendant/third-party plaintiff Creif moves, pursuant to CPLR 3212, for summary judgment on its fraud claim asserted in the amended third-party complaint as against third-party defendant Stephen Seung (Seung), and to strike the Initial Expert Report, Supplemental Expert Report, and deposition testimony of Peter Leibundgut.

In motion sequence no. 0032, defendant/second third-party defendant Bil-Man, moves, pursuant to CPLR 3212, for summary judgment dismissing the second third-party complaint filed by defendant/second third-party plaintiff Creif.

In motion sequence no. 0033, third-party defendant Seung moves, pursuant to CPLR 3212, for summary judgment dismissing the cause of action for fraud asserted by defendant/third-party plaintiff Creif in the amended third party complaint.

In motion sequence no. 0034, third-party defendant Seung moves, pursuant to CPLR 3212, for summary judgment dismissing the cross-claims for contribution and indemnification asserted

by third-party defendants Mastrangelo and Joseph Barisic (Barisic) and defendant/second third-party defendant Bil-Man.

For the reasons set forth below, Bil-Man's motion to dismiss the second third-party complaint (motion sequence no. 0032) is granted. Seung's motion for summary judgment dismissing Bil-Man's and Barisic's cross-claims for contribution and indemnification, and Mastrangelo's cross-claim for contribution (motion sequence no. 0034) is granted. The rest of the motions are denied.

BACKGROUND

Overview

In both the second amended complaint and the first third-party complaint (NYSCEF Doc No. 117), plaintiff Lucky and defendant/third-party plaintiff Creif allege that third-party defendants Lyndon Chin (Chin), Barisic, Claudel Jeannot (Jeannot), Mastrangelo and Seung entered into a scheme to help steal the equity in the Properties, which they did not own, and to defraud lenders, including Bil-Man and Creif, into giving them millions of dollars of loans by falsely claiming that certain of the third-party defendants and other co-conspirators were the owners of the Properties, and had the authority to enter into binding loan transactions secured by the Properties (first third-party complaint, ¶ 1; second amended complaint, ¶ 16). Specifically, plaintiff and Creif both allege that, while working with the third-party defendants, defendants Srun Taing (Taing) and Allan Stevo (Stevo) held themselves out as the sole member and secretary of Lucky in order to obtain up to $15 million in mortgages on the Properties from Bil-Man and Creif (first third-party complaint, ¶ 3, second amended complaint, ¶ 19). The parties further allege that Lucky was actually owned by Lucky Conti (Conti), and that neither Taing nor Stevo had any authorization to take any loans on the Properties. Moreover, the corporate governance documents and authorizations presented to the lenders were false, having been fabricated by the co-

conspirators, and the millions of dollars they received from the loans was actually distributed to the co-conspirators, and not to plaintiff (first third-party complaint, ¶ 4, second amended complaint, ¶¶ 17-18, 20).

The Bil-Man Mortgages

Bil-Man is a lender which lends funds secured by real estate (aff of Yusuf Bildirici, Bil-Man's managing member [NYSCEF Doc No. 1066], ¶ 2). On October 14, 2015, Bil-Man entered into a mortgage agreement with Lucky, pursuant to which Bil-Man loaned $5 million to Lucky (the 2015 Bil-Man Mortgage), which mortgage was secured by the Properties (*id.*, ¶ 7; *see* 2015 note and mortgage [NYSCEF Doc Nos. 1067-1068]). Bil-Man estimated that the Properties were valued at $27 million (*id.*, ¶¶ 4-5).

Several months later, Lucky sought a second loan, allegedly to fund the acquisition of additional real estate, and Bil-Man agreed to provide a $3.5 million line of credit to Lucky for that purpose (*id.*, ¶ 10). Accordingly, on March 23, 2016, Bil-Man and Lucky entered into a second mortgage, which provided that Bil-Man's additional $3.5 million loan would be secured by the Properties (the 2016 Bil-Man Mortgage and together with the 2015 Bil-Man Mortgage, the Bil-Man Mortgages) (*id.*, ¶ 11; *see* 2016 note and mortgage [NYSCEF Doc Nos. 1069-1070]).

Both of the Bil-Man Mortgages were executed by defendant Stevo, who represented himself as Secretary of Lucky, and such authority was purportedly granted by defendant Taing (second amended complaint, ¶ 19). Indeed, Bil-Man alleges that, prior to entering into the Bil-Man Mortgages, it was advised and provided with documentation evidencing that Stevo was authorized to act on Lucky's behalf, i.e., that Stevo became a 50% owner of Lucky after Conti resigned as officer of Lucky, transferred all 200 of his shares in the company to Taing, who thereafter transferred half of the company's shares to Stevo (*see* Vano Haroutunian dep [NYSCEF

Doc No. 1075], at 27:9-29:6, 34:3-35:19, 38:12-44:15, 47:15-52:18, 58:18-59:20, 75:16-76:22). Those corporate documents included: (1) a letter of resignation, dated July 15, 2013, signed by Conti (*see* NYSCEF Doc No. 1076); (2) a Resolution of the Board of Directors and Shareholders of Lucky, dated July 15, 2013, confirming that Taing was, as of that date, the sole director, officer and shareholder of Lucky, and which was signed by Taing and Conti (*see id.* at 2); (3) a voided stock certificate dated July 15, 2013, indicating that Srun transferred half of his shares in Lucky to Stevo (*see* NYSCEF Doc No. 1077); and (4) stock certificates indicating that Stevo and Taing each owned 50% of the shares (i.e., 100 shares each) of Lucky (*see* NYSCEF Doc Nos. 1078-1079).

Lucky's counsel also provided documentation to Bil-Man's attorneys, Vano Haroutunian and Harvey Guberman, confirming that Stevo was authorized to enter into the 2015 Bil-Man Mortgage on behalf of Lucky (*see* 9/10/15 Certificate of Corporate Resolution Authorizing Signatory, dated September 10, 2015 [NYSCEF Doc No. 1080]; 10/14/15 Secretary's Certificate of Resolution Authorizing Execution of Note and Mortgage [NYSCEF Doc No. 1081]). Lucky provided a similar Shareholder's Resolution Authorizing Execution of Note and Mortgage, dated March 13, 2016, prior to the closing of the 2016 Bil-Man Mortgage (i.e., the $3.5 million loan) (*see* NYSCEF Doc No. 1082).

Lucky also provided Bil-Man with up-to-date corporate tax returns prepared and produced by Latrex Multi Service LLC (Latrex), which evidenced that Taing was President of the company, and Stevo and Taing were officers receiving $175,000 each in compensation (*see* NYSCEF Doc No. 1083). Latrex also provided a letter to Bil-Man's title insurer, dated October 13, 2015, and confirming that Latrex had prepared and reviewed Lucky's federal tax returns since February of 2009 (*see* NYSCEF Doc No. 1086).

Bil-Man obtained title insurance for the transaction, and prior to issuing the title insurance policy, the title insurance company also did its own due diligence into the potential transaction, and Stevo's authority to enter into the transaction (Bildirici aff, ¶13).

Bil-Man alleges that, even though it subsequently learned that the documents provided to it during the loan process were fraudulent, no one at Bil-Man knew that the Bil-Man Mortgages were unauthorized, and no one, including the attorneys and title insurance companies, raised any doubts during that time about whether there was an issue with title to the mortgages (*id.*, ¶ 17).

It is alleged that the co-conspirators distributed the bulk of proceeds of the 2015 Bil-Man Mortgage and 2016 Bil-Man Mortgage to themselves, but that they also caused some payments to be made on the mortgages to maintain the illusion to Bil-Man that they had the authority to borrow on behalf of Lucky, so that they could obtain additional funds from future lending institutions (first third-party complaint, ¶ 19).

The Creif Mortgages

In the summer of 2016, Bil-Man was advised that Lucky planned to take out a larger loan in the amount of $15 million from Creif, a hard money lender, and that it therefore wished to pay off the loans that Bil-Man had made to it (Bildirici aff, ¶ 14).

Creif alleges that, prior to acquiring the Bil-Man Mortgages and extending the $15 million loan to Lucky, Creif and its attorneys conducted substantial and extensive due diligence into the Properties, Lucky, and Stevo and Taing, its purported owners. For example, Paul Sahib (Sahib), a principal of Castellan Holdings LLC and Creif (REIT) LLC, parent entities to Creif, testified that Creif conducted thorough background checks of Lucky, Stevo and Taing—including criminal histories, judgments against them, bankruptcies, and other information—reviewed those individuals' resumes and biographies, analyzed the Properties' rent rolls, and conducted appraisals

of the Properties (*see* Sahib dep [NYSCEF Doc No. 1006], at 17:9-13; 21:7-22:17; 26:9-14; 29:22-33:3; 35:3-2; 37:12-21).

Similarly, Robert LoSchiavo, Esq. (LoSchiavo) of Goldberg Weprin Finkel Goldstein LLP (GWFP), Creif's transactional counsel in connection with Creif's loan to Lucky, testified that Creif "did quite a bit" to determine who the owners of Lucky were, including reviewing the organizational documents, such as the corporate kit with completed share certificates, completed stock ledger, certificate of incumbency and resolution, and other documents (*see* LoSchiavo dep [NYSCEF Doc No. 1092], at 22:16-24:6, 68:20-69:25). LoSchiavo further testified that Creif conducted thorough due diligence into Lucky, Stevo and Taing, and also required Lucky to provide resolutions of authority similar to those provided to Bil-Man. According to LoSchiavo, as a result, Creif did not have any notice that the mortgages were unauthorized, and it therefore decided to acquire the Bil-Man Mortgages, as well as make its own additional $7,550,000 loan to Lucky, for a total loan of $15 million (*id.*).

Subsequently, on August 19, 2016, Creif extended a $15 million loan to Lucky through the execution of simultaneous transactions. First, Creif loaned $7,550,000 to Lucky in exchange for a mortgage lien on the Properties (the Creif Mortgage) (first third-party complaint, ¶ 20; *see* gap mortgage agreement [NYSCEF Doc No. 987]). The Creif Mortgage was executed on behalf of Lucky by Stevo, and his signature was notarized (*id.*).

Second, on August 30, 2016, pursuant to an Assignment of Mortgages, Bil-Man assigned to Creif the $5 million 2015 Bil-Man Mortgage and the $3.5 million 2016 Bil-Man Mortgage (third-party complaint, ¶ 21; Paul Salib affirmation [NYSCEF Doc No. 992], ¶¶ 2-3; *see* assignment [NYSCEF Doc No. 988]). In exchange for Bil-Man assigning the Bil-Man Mortgages to Creif, Creif paid Bil-Man the full amount of the principal, interest and penalties due and owing

to Bil-Man under the Bil-Man Mortgages, which amounted to S7,7991,046.50, representing principal and interest as of the date of the Assignment of Mortgages, plus an additional $31,129.00, representing the legal fees and expenses as of the date of the Assignment of Mortgages (Salib affirmation, ¶ 4).

Third, Creif and Lucky entered into a Consolidation, Extension and Modification Agreement (the CEMA), which consolidated the 2015 Bil-Man Mortgage, the 2016 Bil-Man Mortgage, and the Creif Mortgage, for a total amount of $15,000,000 (first third-party complaint, ¶ 22).

Creif also required Lucky to provide, among other corporate documents, executed resolutions confirming Stevo's authority to enter into the Creif Mortgage. Creif alleges that, however, in connection with the Creif Mortgage, Stevo provided Creif with a number of corporate documents designed to allegedly trick Creif into believing that Taing was the sole member of Lucky and that Stevo was the Secretary of Lucky, and authorized to enter into the Creif Mortgage on Lucky behalf (*id.*, ¶ 21). Specifically, Creif received the following documents:

1. A "Unanimous Written Consent of the Shareholders of Lucky of 195 Madison Street Roofing and Contracting, Inc.," signed by Taing, authorizing and empowering Stevo to execute and take all such other steps as necessary to enter into the Creif Mortgage;

2. Lucky's Biennial Statement publicly filed with the New York State Division of Corporations on February 10, 2016, indicating that Taing was the Chief Executive Officer of Lucky at that time;

3. A Certification from Taing identifying him as the President of Lucky and certifying that the attached stock certificate truly and correctly sets forth his interest as a shareholder in Lucky;

4. A Certificate of Corporate Resolution Authorizing Signatory, dated June 10, 2016, and signed by Taing and Stevo, which provided Stevo with full authority to sign on behalf of Lucky, including as an authorized representative for mortgages against the Property; and

5. A Certification of Corporate Resolution and Incumbency, dated August 19, 2016, in which Stevo certified that he was the duly appointed and qualified Secretary of Lucky

(*id.*).

According to Lucky and Conti, its principal, each of the corporate documents described above in connection with the Bil-Man Mortgages and the Creif Mortgage were apparently false, and the co-conspirators knew these documents to be false, knew that they did not have the authority to cause Lucky to enter into the Creif Mortgage, and provided these documents to Bil-Man and Creif to induce them to enter into the mortgages (amended complaint, ¶¶ 20, 23; first third party complaint, ¶ 24).

In addition, as part of the documents that it received in connection with its agreement to enter into the Creif Mortgage and the CEMA, Creif also received, addressed to it, a legal opinion from Seung, a licensed attorney, dated August 19, 2016 (the Legal Opinion Letter), in which Seung opined that "Borrower and Guarantor have the right, power, and authority to execute and deliver, and has duly authorized, executed and delivered, each of the Loan Documents" (first third-party complaint, ¶ 25, quoting Opinion Letter, ¶ 2).

Creif alleges that, according to Lucky and Conti, the Legal Opinion Letter is false, in that Stevo and Taing had no authority to act on behalf of Lucky, and Lucky did not have the authority to enter into the Creif Mortgage (*id.*, ¶ 26). Creif further alleges that, according to Lucky and Conti, Seung knowingly made false and misleading statements in the Legal Opinion Letter, which specifically stated that Creif could rely upon it, knowing that Creif would rely upon it, in order to induce Creif to enter into the Creif Mortgage and the Assignment of Mortgage (*id.*, ¶ 27).

Finally, Creif obtained a $15 million title insurance policy from Stewart Title Insurance Company (Stewart Title) in which Stewart Title insured "good and marketable title" to the Bil-

Man Mortgages (which were assigned to Creif) and the Creif Mortgage (*see* NYSCEF Doc No. 1097]).

According to Creif, in order to maintain the illusion that the Creif Mortgage and the Bil-Man Mortgages were authorized indebtedness of Lucky and to prevent their fraudulent scheme from being discovered, the co-conspirators caused payments to be made to Creif as follows:

1. On January 12, 2017, a mortgage payment of $125,000 was made by "Lucky of Madison Street," which had Chin's address of 3 Dionne Court, Northport, New York 11768;

2. On February 5, 2017, a mortgage payment of $70,000 was made by the Law Offices of Dean Mastrangelo, out of the attorney trust account;

3. On February 10, 2017, a mortgage payment of $55,000 was made by the Law Offices of Dean Mastrangelo;

4. On March 31, 2017, a mortgage payment of $125,000 was made by "Lucky of Madison Street"

(*id.*, ¶ 29).

Creif alleges that, to further maintain the illusion that the Creif Mortgage and the Bil-Man Mortgages were authorized indebtedness of Lucky and to prevent the fraudulent scheme from being discovered, from January 2017 to March 2017, Stevo corresponded with representatives of Creif regarding insurance payments and late mortgage payments (*id.*, ¶ 30).

Creif continues to hold the mortgages on the Properties (*id.*, ¶ 34).

The Confession of Judgment

Subsequently, Lucky filed a criminal complaint with the Manhattan District Attorney's Office regarding the alleged fraud. In June 2018, Chin was indicted by the Grand Jury of the County of New York Manhattan District Attorney's Office for his role in obtaining the two Bil-Man Mortgages (not the Creif Mortgage) and stealing the equity in Lucky (third-party complaint, ¶ 32). Chin was later convicted, and on September 15, 2020, he executed an Affidavit of Judgment

by Confession (NYSCEF Doc No. 991) in favor of Lucky in the amount of $8.5 million for his role in the fraudulent scheme to obtain the two Bil-Man Mortgages, and in which he details at least part of the conspiracy to defraud Lucky and Conti. Chin identified Stevo, Taing, Barisic, Jeannot, and Mastrangelo as participants in this scheme (*id.*, ¶ 33).

Chin confessed that he, along with others, including Stevo, Taing, Barisic, Jeannot, and Mastrangelo, "falsely claimed that we were owners, shareholders, or members of Lucky of 195 in order to take mortgages" on the Properties (Confession of Judgment, ¶ 3 [a]). Chin also confessed that he and the others "knowingly did [this scheme] without the knowledge, permission, or authority of Lucky Conti, who is and was the shareholder of Lucky of 195" (*id.*, ¶ 3 [b]). Chin further confessed that he and the others "intentionally aided each other in our efforts to steal such equity in such properties" and that "[b]ased on conversations with and observations of [Stevo, Taing, Barisic, Jeannot, and Mastrangelo], it is [Chin's] belief that [these parties] intended to steal such equity in the ... properties owned by Lucky of 195" (*id.*).

In connection with the Bil-Man Mortgages, Chin also confessed to Stevo, Taing, Barisic, Jeannot, and Mastrangelo's creation of the following false documents in order to carry out the conspirators' fraudulent scheme:

> • A "false resignation letter and a false Stock Certificate, created by Joseph Barisic and Dean Mastrangelo, both dated July 15, 2013, both bearing the forged signature of Lucky Conti, and both of which purportedly transferred all of the ownership rights and shares of Lucky of 195 from Lucky Conti to Srun Taing";
>
> • A "second false Stock Certificate for Lucky 195, created by Joseph Barisic and Dean Mastrangelo, dated July 1, 2014, which purportedly transferred half of the shares of Lucky 195 from Srun Taing to Allan Stevo";
>
> • A "false Certificate of Corporate Resolution Authorizing Signatory for Lucky of 195, created by Joseph Barisic and dated September 10, 2015, which listed Srun Taing as the 'President' and Allan Stevo as the 'Secretary' of Lucky of 195. This document falsely gave Allan Stevo several powers, including the

purported authority to sign contracts and take out mortgages, on behalf of Lucky of 195";

- A "false Certificate of Corporate Resolution Authorizing Signatory for Lucky of 195, created by Joseph Barisic and dated September 10, 2015, which listed Srun Taing as the 'President' and Allan Stevo as the 'Secretary' of Lucky of 195. This document falsely gave Allan Stevo several powers, including the purported authority to sign contracts and take out mortgages, on behalf of Lucky of 195";

- A "false Biennial Statement with the State of New York Department of State Division of Corporations on February 10, 2016, that listed the 'Officer' of Lucky of 195 as Srun Taing and changed the address of the company to 235 Sullivan Street, Suite 6, New York, NY 10012"; and

- A "second, false 'Secretary's Certificate of Resolution Authorizing Execution of Note and Mortgage", created by Joseph Barisic and dated March 23, 2016, falsely stating that the members of Lucky of 195 met on that day and agreed to take out a $3,500,000.00 mortgage from Bil-Man. This document is signed by Allan Stevo, as Secretary, and by Srun Taing, as President of Lucky of 195".

(Confession of Judgment, ¶¶ 3 [c] [i], [ii], [iv], [v], [viii] and [ix]).

Chin also admitted that he opened a Capital One bank account using the false incorporation documents that listed him as Director of Lucky, that he was the sole account holder, and that he deposited the proceeds from the 2015 Bil-Man Mortgage and the proceeds from the first closing of the 2016 Bil-Man mortgage into this account (*id.*, ¶¶ 3 [c] [iii], [vii] and [xi]). He further admitted that "[t]he proceeds from the $5,000,000.00 mortgage, approximately $4,494,069.47, were deposited into the Capital One account," as well as $186,732.74 from the first closing of the 2016 Bil-Man Mortgage, and that he "disbursed $1,352,899.20 to Claudel Jeannot, and $100,000.00 to Allan Stevo," retaining the rest for himself (*id.*, ¶¶ 3 [c] [vii] and [xi]).

With respect to the second closing of the 2016 Bil-Man Mortgage, Chin admits that the proceeds in the amount of $1,907,613.66 went into a second Capital One account, and that he "disbursed $597,787.50 to Joseph Barisic, $10,000.00 to Allan Stevo, and $21,000.00 to Dean Mastrangelo," retaining the rest for himself (*id.*, ¶ 3 [c] [xii]).

Procedural History

On May 19, 2017, Lucky filed this action for declaratory judgment, injunctive and equitable relief, and compensatory, special, general, and punitive damages. Lucky alleges that Conti is, and always has been, the sole member of Lucky, and that the Bil-Man and Creif Mortgages are not legitimate liens on the Properties in that they were executed by parties who had no authority or secured interest to place such mortgage liens on the Properties. The second amended complaint is the operative pleading in this action. On October 6, 2017, Lucky discontinued the main action, without prejudice, as against Bil-Man (*see* NYSCEF Doc No. 66).

On January 22, 2021, Creif filed the first third-party complaint in which it alleges that third-party defendants Chin, Barisic, Jeannot, Mastrangelo and Seung were conspirators in a "scheme to help steal the equity in [the Properties] they did not own and to defraud lenders, including Creif, into giving them millions of dollars of loans by falsely claiming that certain of the Third-Party Defendants and other co-conspirators were the owners of [the Properties] and had the authority to enter into binding loan transactions secured by [the Properties]" (first third-party complaint, ¶ 1).

On August 29, 2022, Creif filed its second third-party complaint against Bil-Man (NYSCEF Doc No. 284). Creif does not allege that Bil-Man engaged in any fraudulent or wrongful acts, but alleges that, to the extent that the mortgages that Bil-Man and Creif obtained from Lucky were fraudulent, Bil-Man and Creif were both duped by the co-conspirators (*id.*, ¶¶ 14, 16-19, 23-27). Nevertheless, Creif alleges that Bil-Man breached the Assignment of Mortgages pursuant to which Bil-Man assigned the Bil-Man Mortgages to Creif. In the Assignment of Mortgages, Bil-Man "covenants that it is the record owner and beneficial owner of and has good and marketable title to, the Mortgages, free of any and all liens or options in favor of or claims of, any other person and that the Mortgages have not been previously assigned, sold, transferred, pledged or

encumbered" (*id.*, ¶¶ 22, 32; *see* assignment). Creif asserts that Bil-Man breached this "covenant" because, at the time of the assignment, it did not have "good and marketable title" to its two mortgages (*id.*, ¶ 33).

On December 29, 2023, Seung filed the third third-party complaint (NYSCEF Doc No. 681) against third third-party defendants Main Street Title Agency, Ltd., Stewart Title Insurance Company, Creif (Lender) LLC, Creif (REIT) LLC, Castellan Holdings LLC, Liberty Place Property Management, LLC, LoSchiavo, GWFG, and Snowpoint Capital, LLC, asserting claims for contribution, abuse of process, civil conspiracy, and declaratory judgment.

Defendants Stevo and Taing, and third-party defendants Chin and Jeannot have all defaulted. Third-party defendant Barisic has filed for bankruptcy protection. Mastrangelo is the only alleged co-conspirator who has appeared in this action.

DISCUSSION

Summary Judgment Standard

"'[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact'" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993] [citation omitted]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden is a heavy one: the facts must be viewed in the light most favorable to the non-moving party and every available inference must be drawn in the non-moving party's favor (*Sherman v New York State Thruway Auth.*, 27 NY3d 1019, 1021 [2016]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853; *see also Lesocovich v 180 Madison Ave. Corp.*, 81 NY2d 982 [1993]).

The party opposing summary judgment has the burden of presenting evidentiary facts sufficient to raise triable issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *CitiFinancial Co. [DE] v McKinney*, 27 AD3d 224, 226 [1st Dept 2006]). Summary judgment may be granted only when it is clear that no triable issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]), and "is inappropriate in any case where there are material issues of fact in dispute or where more than one conclusion may be drawn from the established facts" (*Friends of Thayer Lake LLC v Brown*, 27 NY3d 1039, 1043 [2016]; *see also Brunetti v Musallam*, 11 AD3d 280, 280 [1st Dept 2004] [citations omitted] "summary judgment is a drastic remedy and should not be granted where triable issues of fact are raised and cannot be resolved on conflicting affidavits"]). The role of the court on a motion for summary judgment is issue finding, not issue resolution, and it cannot make credibility determinations (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012]). All inferences must be drawn in favor of the non-movant (*Matter of Eighth Jud. Dist. Asbestos Litig.*, 33 NY3d 488, 496 [2019]).

Third-Party Defendant Mastrangelo's Motion to Dismiss Third-Party Plaintiff Creif's Fraud Cause of Action (Motion Sequence No. 0028)

The first third-party complaint alleges one cause of action for fraud as against Mastrangelo, an attorney who represented certain of the alleged conspirators (first third-party complaint, ¶¶ 35-43). In support of its fraud claim, Creif alleges that Mastrangelo "participated in a scheme with Stevo and Taing to steal equity from Lucky 195 and to fraudulently obtain loan proceeds from Creif using falsified corporate documents to create the false impression that they were authorized to enter into the mortgages on behalf of Lucky 195," "intentionally made materially false representations and created the false Lucky 195 corporate documents to induce Creif to enter into the Creif Mortgage," and "took the Mortgage proceeds for themselves and others" (*id.*, ¶¶ 36, 38, and 40). Creif further alleges that Mastrangelo "concealed th[is] fraud by, among other things,

making periodic mortgage payments and causing Stevo to continue to communicate with Creif after the Creif Mortgage and CEMA had closed" (*id.*, ¶ 41).

The required elements of a fraud claim are: "a misrepresentation or a material omission of fact which was false and known to be false by the defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (*Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 31 NY3d 569, 579 [2018]; *see also Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 421 [1996]).

To support its allegations of fraud, Creif points to the Confession of Judgment, arguing that Mastrangelo, a licensed attorney, is specifically named by Chin, the convicted ringleader of the fraudulent conspiracy, as one of the co-conspirators of the scheme. In the Confession of Judgment, Chin confessed that he, Mastrangelo, and the others "falsely claimed that we were owners, shareholders, or members of Lucky of 195 in order to take mortgages" on the Properties, and that they "knowingly did [this scheme] without the knowledge, permission, or authority of Lucky Conti" (Confession of Judgment, ¶¶ 3 [a] and [b]). Chin further confessed that he, Mastrangelo, and others "intentionally aided each other in our efforts to steal such equity in such properties" and that "[b]ased on conversations with and observations of ... Mastrangelo, it is [Chin's] belief that ... Mastrangelo intended to steal such equity in the ... properties owned by Lucky of 195" (*id.*). Chin specifically confessed that two of false documents that furthered the scheme were created by Mastrangelo:

> • A "false resignation letter and a false Stock Certificate, created by Joseph Barisic and Dean Mastrangelo, both dated July 15, 2013, both bearing the forged signature of Lucky Conti, and both of which purportedly transferred all of the ownership rights and shares of Lucky of 195 from Lucky Conti to Srun Taing"

(*id.*, ¶ 3 [c] [i]); and

> • A "second false Stock Certificate for Lucky 195, created by Joseph Barisic and Dean Mastrangelo, dated July 1, 2014, which purportedly transferred half of the shares of Lucky of 195 from Srun Taing to Allan Stevo"

(*id.*, ¶ 3 [c] [ii]). Finally, Chin admitted that the conspirators distributed the bulk of the proceeds from the Bil-Man Mortgages to themselves, including $21,000 disbursed by Chin to Mastrangelo (*id.*, ¶ 3 [c] [xii]).

Creif argues that this document establishes its cause of action for fraud against Mastrangelo because the two false corporate documents that Mastrangelo authored in connection with the Bil-Man Mortgages constitute fraudulent misrepresentations that induced Bil-Man to enter into the Bil-Man Mortgages. Creif further argues that, pursuant to the Assignment of Mortgages, it stands in the shoes of Bil-Man, and was thus fraudulently induced to enter into the Creif Mortgage, and was damaged thereby.

In support of his motion for summary judgment dismissing the first third-party complaint and all crossclaims, Mastrangelo argues that the only evidence that supports the fraud claim against him is the Confession of Judgment, which is inadmissible hearsay, as it was not made under penalty of perjury, and thus, does not qualify as an affidavit capable of supporting the fraud claim.

The court rejects Mastrangelo's argument. The Confession of Judgment was both notarized and sworn to before Justice Thomas Farber, an Acting Supreme Court Justice, and contains the admissions of a party to this action. Moreover, Mastrangelo does not dispute the authenticity of the Confession of Judgment. Under these circumstances, this court finds that the Confession of Judgment is admissible, and sufficient to support the fraud cause of action (*see Rodriguez v New York City Trans. Auth.*, 118 AD3d 618, 619 [1st Dept 2014]; *Quality Psychological Servs., P.C. v Hartford Ins. Co.*, 38 Misc 3d 1210[A], * 10-11 [Civ Ct, Kings County 2013]). Indeed, the only case cited by Mastrangelo for the proposition that the Confession

of Judgment is inadmissible hearsay is *People v Penaflorida* (34 Misc3d 420, 424 [Rye City Court 2011]), which involved an unsworn declaration. Here, in contrast, the Confession of Judgment was both notarized and sworn.

Importantly, Mastrangelo fails to submit an affidavit with his motion papers denying Chin's sworn statements with respect to his participation in the scheme, denying that he drafted the fraudulent documents referenced by Chin, or pointing to any deposition testimony that he did not do so. Instead, he submits only his attorney's affirmation and his counsel's statement in the memorandum of law that he did not make any representations with intent to deceive (*see* memorandum of law [NYSCEF Doc No. 967], at 6). That failure is fatal to Mastrangelo's motion for summary judgment (*see* CPLR 3212 [b] [a motion for summary judgment "shall be supported by affidavit ... (t)he affidavit shall be by a person having knowledge of the facts"]; *JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373, 384-385 [2005] ["an affidavit by an individual without personal knowledge of the facts does not establish the proponent's prima facie burden"]; *see e.g. Gentile v 2400 Johnson Ave. Owner, Inc.*, 224 AD3d 542, 543 [1st Dept 2024] [denying motion for summary judgment because it "was supported only by their attorney's affirmation and did not include an affidavit by a person with personal knowledge"]).

Although Mastrangelo does submit an affidavit on reply in which he denies participating in the conspiracy to steal equity from Lucky, and denies preparing any of the allegedly fraudulent documents (Mastrangelo reply aff [NYSCEF Doc No. 1249], ¶¶ 2, 4), these denials, which are in direct conflict with Chin's sworn version of the relevant facts, only serve to present issues of credibility that must be resolved by the factfinder, thus precluding summary judgment (*see Melendez v Alliance Hous. Assocs., L.P.*, 201 AD3d 437, 438 [1st Dept 2022]; *Sanyang v Davis*, 198 AD3d 522, 522 [1st Dept 2021]; *Dunn v New Lounge 4324, LLC*, 180 AD3d 510, 510 [1st Dept

2020]; *see also Brunetti v Musallam*, 11 AD3d 280, 280 [1st Dept 2004] ["summary judgment is a drastic remedy and should not be granted where triable issues of fact are raised and cannot be resolved on conflicting affidavits"]).

Accordingly, Mastrangelo's motion for summary judgment is denied.

Creif and Bil-Man's Motions for Summary Judgment with Respect to the Second-Third Party Complaint (Motion Sequence Nos. 0029 and 0032)

Both Creif and Bil-man move for summary judgment on the second third-party complaint. In the second third-party complaint, Creif alleges that Bil-Man breached the Assignment of Mortgages, pursuant to which Bil-Man covenanted that "it is the record owner and beneficial owner of and has good and marketable title to, the Mortgages, free of any and all liens or options in favor of or claims of, any other person and that the Mortgages have not been previously assigned, sold, transferred, pledged or encumbered" (second third-party complaint, ¶¶ 22, 32). Creif asserts that Bil-Man breached this "covenant" because, at the time of the assignment, it did not have "good and marketable title" to the two Bil-Man Mortgages (*id.*, ¶ 33). Importantly, Creif does not allege that Bil-Man engaged in any fraudulent or wrongful acts, and it does not allege that Bil-Man was aware, at any time, of the mortgage fraud that Stevo allegedly committed. In fact, Creif alleges that, to the extent that the mortgages Bil-Man and Creif obtained from Lucky were fraudulent, Bil-Man and Creif were both duped by Stevo and his alleged co-conspirators (*id.*, ¶¶ 14, 16-19, 23-27).

Nevertheless, Creif now moves for summary judgment on the second-third party complaint, arguing that, after it entered into the Assignment of Mortgages, the two Bil-Man Mortgages were found to have been procured by fraud and without authorization, and thus Bil-Man, as a matter of law and fact, never had "good and marketable title" to the Bil-Man Mortgages when it entered into the Assignment of Mortgages with Creif.

In opposition to the motion, and in support of its motion for summary judgment dismissing the second third-party complaint, Bil-Man contends that, after years of discovery, there is no evidence that anyone—neither Bil-Man nor Creif, nor their respective attorneys or title insurers—had any inkling that the alleged conspirators were carrying out a sophisticated mortgage fraud scheme. Bil-Man argues that, in fact, discovery has demonstrated that Lucky provided documentation to it evidencing that Stevo was an owner and officer of Lucky, and that Stevo was expressly authorized to enter into the subject mortgages with Bil-Man. Bil-Man asserts that, under New York law, it was entitled to rely on that documentation, and that where, as here, a lender makes a loan in good faith and without notice of alleged fraud, the lender's title to the mortgage is valid. Therefore, Bil-Man argues, it did have "good and marketable title" to its mortgages when it assigned them to Creif, and Creif's claim fails as a matter of law.

This court agrees with Bil-Man and finds that, based on well-settled New York precedent, Bil-Man has established, prima facie, its entitlement to judgment as a matter of law dismissing the second third-party complaint. Creif's motion for summary judgment is denied.[1]

Pursuant to Real Property Law (RPL) § 266, "[a] bona fide purchaser or encumbrancer for value ***is protected in its title*** unless it had previous notice of the fraudulent intent of its immediate grantor" (*Fleming-Jackson v Fleming*, 41 AD3d 175, 176 [1st Dept 2007] [emphasis added]; *see e.g. Vithoulkas v Meta*, 61 Misc 3d 1207[A], 2018 NY Slip Op 51398[U], * 4 [Sup Ct, Queens County 2018] ["Sterling, by compelling evidence ... showed prima facie that HVB made a bona fide encumbrance for value, had no notice of any fraud being perpetrated by defendant Meta, and

[1] The court recognizes that both Bil-Man and Creif may be bona fide lender's for value; however, issues of fact regarding notice of the fraud were only raised by Plaintiff as to Creif. Plaintiff discontinued its claims against Bil-Man and therefore does not raise any issues of fact as to them. Furthermore, Creif's opposition notes that Bil-Man was a bona fide lender for value and it fails to establish that it had any notice of the alleged fraud.

was therefore entitled to the protection of Real Property Law § 266"]). It is equally well-settled that "mortgagees 'do not have a duty of care to ascertain the validity of the documentation presented by an individual who claims to have authority to act on behalf of a borrower corporation or entity'" (*334 Corp. v Jericho Plaza, LLC*, 128 AD3d 679, 679 [2d Dept 2015], quoting *LZG Realty, LLC v H.D.W. 2005 Forest LLC*, 87 AD3d 727, 729 [2d Dept 2011]; *accord Gross v Neiman*, 147 AD3d 505, 506-507 [1st Dept 2017]; *B King Chick LLC v Organization for Defense of Four Freedoms for Ukraine, Inc.*, 2024 NY Slip Op. 30673[U], at **3 [Sup Ct, NY County 2024]).

Accordingly, New York courts have held that mortgages are valid where, as here, the transactional documents are executed by an individual who provided documentation claiming that he has authority to so act on behalf of the borrower corporation, even if it turns out that fraudulent documents were provided, and where the encumbrancer had no notice of any such fraud (*see e.g. Gross*, 147 AD3d at 506 ["The complaint was correctly dismissed as against defendant M&T Bank, a bona fide encumbrancer for value that had no notice of Neiman's lack of authority to convey the subject property on behalf of Gracon"]; *334 Corp.*, 128 AD3d at 680 [where LLC member presented false documents at closing on behalf of LLC, court held that "(h)ere, the plaintiffs established their prima facie entitlement to judgment as a matter of law dismissing the defendants' affirmative defenses which were based upon the alleged invalidity of the mortgage, by submitting evidence demonstrating that (the fraudster) submitted documents at the closing which indicated that he was the sole member of the LLC, and had the authority to enter into the mortgage on its behalf" and where plaintiffs/mortgagees had no notice of the fraud]; *see also Tenenbaum v Gibbs*, 27 AD3d 722, 723 [2d Dept 2006] ["as a mortgagee bank, Eastern Bank did

not owe any duty of care to ascertain the validity of the documentation presented by the individual who falsely claimed to have authority to act on behalf of the borrower corporation"]).

Based upon this precedent, Creif cannot establish that Bil-Man breached its covenant that it had "good and marketable title" to the Bil-Man Mortgages because those mortgages were signed by Stevo after he provided documentation evidencing that he was a partial owner of Lucky, and was authorized to enter into the mortgages. Specifically, prior to the closing of the 2015 Bil-Man Mortgage, Lucky's counsel provided (1) proof that Stevo and Taing were each 50% owners of Lucky; (2) corporate tax returns demonstrating that Stevo and Taing were officers of Lucky; (3) a Certificate of Corporate Resolution Authorizing Signatory, providing that Stevo was "empowered to sign as authorized representative for mortgages against the properties owned by the corporation in any amount he sees fit"; and (4) a Secretary's Certificate of Resolution Authorizing Execution of Note and Mortgage, providing that Stevo was authorized "to execute and deliver to Lender the Note evidencing the Loan and to secure this Corporation's obligations under the Note with a mortgage covering the [Properties]" for the $5 million loan). Before entering into the 2016 Bil-Man Mortgage, Bil-Man was provided with another Shareholder's Resolution Authorizing Execution of Note and Mortgage, dated March 13, 2016, which confirmed Stevo's authority to enter into the 2016 Bil-Man Mortgage. Thus, Stevo and Lucky's counsel provided Bil-Man with an array of documentation evidencing that Stevo was authorized to enter into the Bil-Man Mortgages on behalf of Lucky. Indeed, Creif cannot dispute that Bil-Man was justified in relying on the documentation that Stevo and Lucky's counsel provided to it, since Creif, as testified to by LoSchiavo of GWFG, its transactional counsel, also relied on these documents when determining whether to issue its own, much larger loan to Lucky (*see* LoSchiavo dep [NYSCEF Doc No. 1092], at 68:20-11).

Of significance, Creif does not allege that Bil-Man was aware, at any time, of the mortgage fraud that Stevo allegedly committed. Salib, Creif's principal, testified that at the time that Creif made the $15 million loan to Lucky, Creif had no suspicions at all that the alleged conspirators were engaging in unauthorized transactions (Salib dep [NYSCEF Doc No. 1088], at 138:23-139:4); had no suspicion that those individuals were defrauding Creif (*id.* at 139:5-13); and had no suspicions that the alleged fraudsters defrauded Bil-Man when it made the Bil-Man loans (*id.* at 139:14-18).

LoSchiavo also reaffirmed that, at the time of the closing of the Creif Mortgage on August 19, 2016, he had no reason to believe that Stevo was acting without authorization, and he concluded—based on a review of all pertinent documents—that the transactional documents were valid and authorized (LoSchiavo dep, at 68:20-25; 161:10-15). He also confirmed that he had no information to suggest that, at the time of the closing, Bil-Man had knowledge that the mortgages were fraudulent (*id.* at 161:24-162:4).

Various other deponents confirmed that they had no information suggesting that Bil-Man and/or Creif knew the loans were fraudulent at the time of the relevant transactions, including: Conti (*see* Conti dep [NYSCEF Doc No. 1099], at 273:19-275:17); Sabet Yousef, the broker who introduced the deal to Bil-Man's counsel (*see* Yousef dep [NYSCEF Doc No. 1100], at 48:3-49:10, 60:23-61:9); Mastrangelo (*see* Mastrangelo dep [NYSCEF Doc No. 1101], at 22:5-25:20, 34:13-38:12, 176:4-16); Barisic, who assisted with expediting the transactions (*see* Barisic dep [NYSCEF Doc No. 1102], at 204:4-213:8); Seung, transactional counsel for Lucky in connection with the Bil-Man Mortgages and the Creif Mortgage (*see* Seung dep [NYSCEF doc No. 1103], at 223:22-226:15); Keith Madden, Underwriting Counsel and Vice President of Stewart Title (*see* Madden dep [NYSCEF Doc No. 1104], at 11:20-12:3, 210:6-211:21); and Randy Foster, a Vice President

of Main Street Title, which was the agent of Stewart Title in connection with the title insurance policy that Stewart Title issued to Creif (*see* Foster dep [NYSCEF Doc No. 1105], at 10:5-8, 115:6-116:14; 118:10-119:3; 125:4-9; 127:2-16).

Moreover, at the closing of the Creif Mortgage, when the Bil-Man Mortgages were assigned to Creif, Stewart Title conducted its own due diligence. and, with respect to the assignments to Creif of the Bil-Man Mortgages, Stewart Title insured such mortgages against loss caused by:

> "2. Any defect in or lien or encumbrance on Title.
>
> a) A defect in the Title caused by
>
> (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
>
> (ii) Failure of any person or Entity to have authorized a transfer or conveyance;
>
> (iii) A document affecting Title not properly created, executed, witnessed, sealed, acknowledged notarized or delivered;
>
> 3. Unmarketable Title"

(*see* title insurance). Thus, "good and marketable title" to the Bil-Man Mortgages was certified and insured by Stewart Title when Bil-Man assigned the Bil-Man Mortgages to Creif.

Accordingly, it is clear that Bil-Man was entitled to rely on the extensive documentation that Lucky provided to Bil-Man and its counsel, indicating that Stevo was authorized to enter into the Bil-Man Mortgages. Thus, it had no obligations to inquire further, given the well-settled New York law that a lender "do[es] not have a duty of care to ascertain the validity of the documentation presented by an individual who claims to have the authority to act on behalf of a borrower corporation or entity" (*LZG Realty*, 87 AD3d at 729; *see also Vermont Equity and Funding Corp. v Brown*, 235 AD3d 808, 811 [2d Dept 2025] ["Here, the plaintiff (lender) established its prima

facie entitlement to judgment as a matter of law (dismissing counterclaim and affirmative defense alleging mortgage was invalid) by submitting ... the operating agreement that Brown had provided prior to the closing, which indicated that Brown had sole authority to enter into the subject note and mortgage agreement on behalf of the defendant"]; *Gross*, 147 AD3d at 506 [dismissing complaint against lender, holding lender did not "have a duty of care to ascertain the validity of the documentation presented" by individual claiming to act on behalf of borrower]; *Banque Nationale de Paris v 1567 Broadway Ownership Assoc.*, 214 AD2d 359, 360 [1st Dept 1995] [mortgage valid because no duty "to authenticate or guarantee the genuineness of the signatures" on the mortgage or "ascertain the true identities of other parties executing the mortgage"]; *Titan Capital ID v Lincoln Upreal*, 2019 WL 4390344, * 1 [Sup Ct, Kings County 2019] [granting motion for summary judgment and finding that "notes and mortgages [we]re valid" even though the individuals who executed and delivered the subject notes and mortgages were allegedly unauthorized to do so, because they provided unanimous written consents and other documentation evidencing such authority]).

Moreover, since it is undisputed, even by Creif, that Bil-Man had no actual notice of the fraud allegedly committed by Stevo, Taing or their alleged co-conspirators, Bil-Man was therefore a bona fide lender for value, who was "protected in its title", and thus acquired good and marketable title to the Bil-Man Mortgages as a matter of law (*see Fleming-Jackson*, 41 AD3d at 176; RPL § 266 ["This article does not in any manner affect or impair the title of a purchaser or encumbrancer for valuable consideration, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor"]; *see e.g. Emerson Hills Realty, Inc. v Mirabella*, 220 AD2d 717, 717 [2d Dept 1995] [affirming order dismissing action to declare transfer of real property null and void because "(t)he respondents

... each established that they were bona fide purchasers in that they purchased their subject parcels for valuable consideration and they did not have knowledge of the alleged prior fraud by the seller.... Accordingly, since the plaintiff failed to submit sufficient evidence to raise a triable issue of fact concerning whether the respondents knew or should have known about the seller's alleged prior fraud, the Supreme Court properly granted the respondents' motions for summary judgment dismissing the complaint insofar as it is asserted against them"]; *Motorola, Inc. v Abeckaser*, 2010 WL 415290, * 6 [EDNY 2010] ["Plaintiff has provided no evidence suggesting that (third-party purchaser of property) was aware, or should have been aware, that the parties had filed a stipulation restricting conveyance of the Property. Accordingly, setting aside conveyance of the Property is not available as a remedy for (transferor)'s breach of the Stipulation"]; *see also 334 Corp.*, 128 AD3d at 680 [rejecting defense that mortgage was invalid where alleged fraudster "submitted documents at the closing which indicated that he was the sole member of the LLC, and had the authority to enter into the mortgage on its behalf," and where mortgagee had no notice of the fraudster's fraudulent intent]).

In addition, under long-established New York law, even if Lucky ultimately proves that it was defrauded, since Bil-Man did have valid title to the Bil-Man Mortgages, Lucky cannot assert a claim to invalidate them:

> "It is a familiar rule of law that a fraudulent purchaser of real or personal property obtains the legal title to the property purchased, and that he may convey a good title to any bona fide purchaser from him for value. He may not only convey the property, but he may deal with it as owner, and may mortgage it; and whoever purchases the property or takes a mortgage thereon from him or under him, in good faith, for value, or deals with him in good faith in reference thereto will be protected against the claims of the defrauded vendor"

(*Simpson v Del Hoyo*, 94 NY 189, 194 [1883]; *accord Citibank, N.A. v Brigade Cap. Mgt., LP*, 49 F4th 42, 85 [2d Cir 2022]).

In response to Bil-Man's showing of its prima facie entitlement to summary judgment as a matter of law, Creif concedes that Bil-Man was a bona fide lender for value who had no prior notice of any alleged fraud committed by Stevo and his coconspirators, but nonetheless argues that summary judgment should be denied to Bil-Man, and granted in its favor, because Bil-Man's "good faith" belief that the transactions were authorized is irrelevant to whether Bil-Man breached its contractual covenant to Creif that Bil-Man held good and marketable title to the Bil-Man Mortgages (*see* Creif's opposition brief [NYSCEF Doc No. 1170], at 2). The court rejects this argument. To the contrary, the fact that Bil-Man was a bona fide lender for value with no prior notice of the fraud is critically relevant as a matter of law, since under RPL § 266 and numerous Appellate Division cases, Bil-Man acquired valid title to the Bil-Man Mortgages, which cannot be successfully challenged by Lucky. Indeed, because Creif concedes that Bil-Man was a bona fide lender for value, it cannot simultaneously argue that Bil-Man breached the Assignment of Mortgages because it did not have good and marketable title to the Bil-Man Mortgages. Significantly, Lucky has never claimed that Bil-Man was not a good faith lender for value; it has only challenged Creif's alleged disregard of its own due diligence procedures and disregard of alleged red flags (*see* infra with respect to motion sequence no. 030, Lucky's motion for summary judgment as against Creif). Lastly, Creif does not dispute that Stewart Title certified and insured "good and marketable title" to the Bil-Man Mortgages, that was "free of any and all liens," when Bil-Man assigned the Bil-Man Mortgages to Creif.

Accordingly, given the fact that, under clear New York law, Bil-Man did have good and marketable title to the Bil-Man Mortgages, Creif's claim that Bil-Man breached its covenant in the Assignment of Mortgages that it held good and marketable title to the Bil-Man Mortgages fails as

a matter of law, and the second third-party complaint must be dismissed. Thus, Bil-Man's motion for summary judgment is granted, and Creif's motion for summary judgment is denied.

Lucky's Motion for Summary Judgment As Against Creif (Motion Sequence No. 30)

In the main action, Lucky seeks to set aside Creif's mortgage as fraudulent, and now moves for summary judgment as against Creif on its first cause of action for lack of standing; the second cause of action to quiet title as to the Properties; the third cause of action for a declaratory judgment that the Creif Mortgage is invalid and must be set aside; and the fourth cause of action to set aside the mortgage recorded by Creif against the Properties. In support of its motion for summary judgment as against Creif, Lucky argues that Creif is not a bona fide encumbrancer as a matter of law because it failed to perform adequate due diligence, and also turned a blind eye to numerous "red flags", including, among other things, the questionable transfer of ownership of the company from Conti to Taing, the financial health of both Lucky and the guarantors, Stevo and Taing, Stevo's participation in a fraudulent scheme involving another property that was in litigation at the time of the closing, and the condition and marketability of the Properties. According to Lucky, these red flags and other glaring discrepancies and irregularities would have caused a reasonable, prudent lender to conduct additional investigation into Stevo and Taing, the borrowers, yet Creif performed no such investigation. As such, Lucky argues, it is entitled to summary judgment.

Lucky's motion for summary judgment is denied, because, as more fully discussed herein, Creif has raised multiple material issues of fact as to whether it is a bona fide encumbrancer of the Properties, who, despite the alleged fraud, would be entitled to enforce the Creif Mortgage.

As previously discussed, RPL § 266 protects the rights of a purchaser or encumbrancer for valuable consideration. Pursuant to that statute, "[a] bona fide purchaser or encumbrancer for value is protected in its title unless it had previous notice of the fraudulent intent of its immediate

grantor" (*Commandment Keepers Ethiopian Hebrew Congregation of the Living God, Pillar & Ground of Truth, Inc. v 31 Mount Morris Park, LLC*, 76 AD3d 465, 465 [1st Dept 2010]; *accord M.L.C. Constr., Inc. v Hui Ru Zhang,* 162 AD3d 410, 411 [1st Dept 2018]). "A mortgagee will be charged with constructive notice if it is 'aware of facts that would lead a reasonable, prudent lender to make inquiries of the circumstances of the transaction at issue'" (*Miller-Francis v Smith-Jackson*, 113 AD3d 28, 34 [1st Dept 2013] [citation omitted]; *see also Anderson v Blood*, 152 NY 285, 293 [1897] [a person is deemed to have inquiry notice when he or she has knowledge of facts that would "excite the suspicion of an ordinarily prudent person and he (or she) fails to make some investigation"; such person is then "chargeable with th(e) knowledge which a reasonable inquiry, as suggested by the facts, would have revealed"]). "If a 'reasonable inquiry' would reveal some evidence of fraud, then failure to 'make some investigation' will divest the mortgagee of bona fide encumbrancer status" (*Miller-Francis*, 114 AD3d at 34 [citation omitted]; *accord Vermont Equity and Funding Corp.*, 235 AD3d at 811 ["'[a] mortgagee is not a bona fide encumbrancer where, despite being aware of facts that would lead a reasonable, prudent lender to make inquiries of the circumstances of the transaction, it fails to make such inquiries'" [citation omitted]).

In support of its argument that Creif cannot demonstrate a threshold entitlement to bona fide encumbrancer status under New York law, Lucky argues that Creif "engaged in only the most minimal of inquiries, declining to inquire into the identities of the purported shareholders of the Borrower, and eschewing even a simple appraisal of the Properties in advance of the closing" (Lucky memorandum of law [NYSCEF Doc No. 1042], at 12-13). Lucky further argues that "even the minimal investigation that Creif did do revealed a series of items riddled with red flags and warning signs—just the sort of signals that would have alerted any legitimate lender that it was engaging in a dubious, questionable transaction" (*id.* at 13).

To support its position, Lucky submits the report of its expert, Frederick C. Braun, III (Braun) (*see* NYSCF Doc No. 1007]), in which he concludes that the due diligence conducted by Creif in advance of the closing of the Loan on August 19, 2016 was not reasonable and prudent based on standards of practice in the industry for similar loans, and that, instead of conducting proper due diligence, Creif chose to "focus almost entirely on the loan-to-value ratio between the value of the Properties and the Loan amount" (*id.*, ¶ 8). Lucky argues that "[t]his tunnel vision ultimately led to the perpetration of the fraud by Stevo and Taing" (affirmation of Cari Lewis, Esq. [NYSCEF Doc No. 995], ¶ 13).

Specifically, Braun opines that "many documents that should have been diligently reviewed by Creif either were not properly evaluated or were never received, or even requested, from the Borrower, and yet the Loan was permitted to close" (*id.*, ¶ 9). According to Braun, Creif did not obtain tax returns or personal financial statements from the Borrower or the guarantors (Stevo and Taing) (*id.*, ¶¶ 10, 11), relied on Bil-Man's prior appraisal of the Properties without requesting a new one (*id.*, ¶ 12), did not request DHCR rent rolls for most of the Properties (*id.*, ¶¶ 19-23), did not attempt to verify the accuracy of the statements in Seung's opinion letter for the loan (*id.*, ¶ 27), and failed to request specific documentation with respect to the alleged change in corporate ownership, including new and voided stock certificates, a share ledger, a corporate resolution, and a stock purchase agreement (*id.*, ¶ 28).

Furthermore, according to Braun, "based on the limited due diligence that Creif did perform, certain warning signs, or "red flags," were uncovered that should have led Creif to make additional inquiries into the credentials of the Borrower, Stevo, and Taing, and such inquiries should have led to Creif's discovery of the fraud" (*id.*, ¶ 32). These red flags included the fact that Creif initially received the wrong set of stock certificates for a different corporation (not Lucky),

as well as the fact that there were two sets of stock certificates for Lucky, with one set containing an eagle insignia (*id.*, ¶¶ 34-35).

Braun asserts that, in addition, in the borrower's executive summary prepared by NFC Global Worldwide Due Diligence (NFC Global), who Creif hired to conduct due diligence investigations into Lucky, Stevo, and Taing, Conti is listed as an officer of Lucky with both the New York Secretary of State and the Dun and Bradstreet record, but Stevo is not listed anywhere in the summary, despite his alleged status as a shareholder (*id.*, ¶¶ 36-37). In Stevo's executive summary, his affiliation with Lucky is not listed anywhere therein, despite the fact that he purported to be shareholder of Lucky for at least two years prior to the report being issued (*id.*, ¶ 38). Taing's executive summary revealed that he had a prior bankruptcy, numerous judgments against him (almost all of which seemed to be collection cases, many by banks), and even active cases against him (*id.*, ¶ 39).

Braun also points to an action that he denominates as the South 5th Street action, in which it is alleged that Sean Glenn fraudulently transferred a deed to Flash Property, a company of which Stevo was the sole shareholder, and that Stevo knew about the alleged fraudulent transfer. Braun asserts that Creif knew about this litigation prior to closing, but made no further inquiry into the allegations contained therein as against Stevo (*id.*, ¶¶ 40-44).

Braun also asserts that, with respect to the Properties, there were significant discrepancies between the leases, the number of units, and the rent rolls, as compared to the New York State Division of Housing and Community Renewal (DHCR), that should have alerted Creif that additional inquiry was required (*id.*, ¶¶ 45-46).

In its motion for summary judgment, Lucky also sets forth other alleged "red flags" not set out in Braun's expert report, such as the fact that the Properties had thousands of dollars in unpaid

violations from numerous New York City agencies, including, but not limited to, the New York City Environmental Control Board (ECB), as well as sidewalk liens (Lewis affirmation, ¶ 47). In addition, Lucky points to the fact that two of the Properties lacked a Certificates of Occupancy, and argues that Creif failed to perform suitable follow-up to determine the severity of the violations or the actions needed to rectify them, and that if they had done so, proper due diligence into the financial health of the Borrower and guarantors would have been warranted, and which, if conducted, could have led to the discovery of the fraud (*id.*, ¶ 54).

In his expert report, Braun concludes that:

> "several of these warning signs, standing alone, would have led a reasonable mortgagee to make further inquiry, but when viewed in the aggregate, it is clear that a reasonable, prudent lender would have made further inquiries and conducted additional due diligence, including into the purported transfer of ownership of Borrower from Lucky Conti to Stevo and Taing. Based on the documents I reviewed, it appears that Creif made no such inquiries and should not be protected as an encumbrancer for value"

(Braun expert report, ¶ 47).

However, in opposition to the motion, Creif presents evidence that it engaged in substantial due diligence prior to its issuance of the loan, as well as evidence raising issues of fact as to whether it was aware of facts that would have lead a reasonable, prudent lender to make inquiries of the circumstances of the transaction at issue.

The due diligence conducted by Creif is set forth in the expert opinion of Paul Mullaney (*see* Mullaney expert report [NYSCEF Doc No. 1007], and Mullaney reply expert report [NYSCEF Doc No. 1229]), who opines that Creif conducted thorough and reasonable due diligence consistent with that of a reasonably prudent lender, and in accordance with industry standards, in support of its decision to enter into the subject transactions with Lucky. Creif also submits the affirmations of Salib, its principal (NYSCEF Doc No. 935) and LoSchiavo, its

transactional counsel (NYSCEF Doc No. 1198), who detail Creif's due diligence efforts. In these submissions, Creif specifically contests Lucky's conclusion that Creif "conducted minimal due diligence," had "tunnel vision" and "solely relied on the ratio between the loan amount and asset value of the Properties" (*see* Lewis affirmation, ¶¶ 12-13).

Salib asserts that the Lucky transaction was referred to Creif by Scott Vandersnow (Vandersnow) of Snowpoint Capital, LLC (Salib affirmation, ¶ 5). Vandersnow received certain documents regarding the borrower and its principals from Barisic that he forwarded to Creif, including rent rolls, appraisal reports, income and expense statements, resumes of Taing and Stevo, comparative market analysis, and personal financial statements for Taing and Stevo (*see* 8/2/16 email from Vandersnow to LoSchiavo [NYSCEF Doc No. 1221). Creif staffed the Lucky opportunity with a managing director-level employee, Etan Slomovic, and two analysts, Liam Harvey and David Kaplan, who handled the day-to-day responsibilities for the transaction under the supervision of Salib, including conducting due diligence and analyzing the results of such due diligence (Salib affirmation, ¶ 8). Salib asserts that, on or around August 3, 2025, one or more of the members of this team conducted a site visit of the Properties as part of Creif's evaluation of the transaction, which is memorialized in a contemporaneous email (Salib affirmation, ¶ 12; *see also* 8/2/16 email).

According to Salib, Creif utilized a model (*see* NYSCEF Doc No. 1222) to evaluate the proposed loan to Lucky, which evaluated not only the value of the Properties, but also the ability of the income from the Properties to pay the interest on the Creif Mortgage (Salib affirmation, ¶ 10). Based on its extensive experience in the market for these types of buildings, Creif valued the Properties at $35-$40 million (Salib affirmation, ¶11). Creif advised Lucky that it was willing to

loan it up to $24 million, but Lucky turned down such additional money, and only wanted to borrow $15 million (*id.*).

Likewise, Creif reviewed the appraisals of the Properties provided to it by Vandersnow. These appraisals were prepared in connection with the Bil-Man loans and were less than one year old (Salib affirmation, ¶ 6). According to Mullaney, given the nature of the Properties, there is very little that would have changed in less than a year, and he opined that these appraisals were appropriate to rely on as part of Creif's due diligence (Mullaney opposition expert report, at 6).

Creif also requested and received the commercial leases for the Properties and the signed estoppel certificates from the commercial tenants (Salib affirmation, ¶ 17). Salib asserts that Creif did not collect the rent-stabilized residential leases, which are common to forgo, given the large number of units and the time and effort it would take to scan such leases (*id.*). At closing, Creif received certified rent rolls for the Properties (*id.*).

Although plaintiff questions the fact that there were discrepancies between the rent rolls provided by Lucky and the DHCR rent rolls for the two buildings that were rent stabilized (Lewis affirmation, ¶¶ 15-18), Mullaney opines that such inaccuracies in DHCR filings are not unusual. Housing filings for properties owned by entities or individuals who lack robust back-office administration are not uncommon, and thus not fully up to date (Mullaney opposition expert report, at 7). According to Mullaney, the existence of such inaccuracies does not mean that someone is committing fraud, or that a lender is acting unreasonably by making a loan secured by such an asset or that anything untoward has occurred (*id.*).

Plaintiff also faults Creif for not requesting tax returns from the guarantors. However, according to Salib, the guarantors' independent income streams were not material for this transaction because the loan to value ratio was low and, thus, the transaction was so low-risk that

Creif sensibly did not believe that it would ever need to rely on the guarantors' assets or income stream to recoup its investment upon a default (Salib affirmation, ¶ 18). Likewise, Creif did not ask for tax returns or bank statements from Lucky because the actual resale value of the Properties was more than sufficient to collateralize the loan, and Lucky's income stream was not an added factor in the decision to loan the money, although it did analyze that (*id.*).

Salib asserts that Creif engaged Main Street Title to conduct appropriate title searches to determine whether Lucky held clear title to the Properties that would secure the loan, and if there were any title defects or encumbrances on the Properties (*id.*, ¶ 19). The title report demonstrated that Lucky had clear title to each of the Properties (*see* title report). It also identified the existing encumbrances on the Properties: a first mortgage held by Banco Popular, and the second and third position mortgages held by Bil-Man (*see id.*).

Although the title searched revealed ECB violations against the Properties, LoSchiavo, the transactional counsel, asserts that yhe existence of the ECB violations was not a problem to the transaction as Creif was willing to close the loan with ECB violations as they have done on other properties in the past (LoSchiavo affirmation, ¶ 9). LoSchiavo attests that, likewise, the mere existence of ECB violations did not raise any issues of concern regarding the authority of Lucky to enter into the loan (*id.*; *see also* Mullaney expert report, at 12-13). Mullaney asserts that many buildings, especially buildings like those owned by Lucky, have ECB violations, and as Creif owns similar real estate, and is not just a lender, ECB violations, Certificate of Occupancy problems, or maintenance issues were not an issue for Creif, a hard money lender, as it might be for a commercial bank (reply Mullaney expert report, at 3). In addition, according to LoSchiavo, such violations are meaningless with respect to the due authority of the borrower to enter into the loan. (LoSchiavo affirmation, ¶ 9).

Creif retained GWFG, led by LoSchiavo, as counsel to represent it in connection with the Lucky loan, and to conduct any necessary legal due diligence (Salib affirmation, ¶ 23). LoSchiavo asserts that he requested and received a number of items from Seung, Lucky's counsel, such as a copy of the antenna lease, rent rolls for the buildings, and FEMA Flood Certifications (*see* 8/16/2106 email from LoSchiavo [NYSCEF doc No. 1223]).

According to LoSchiavo, Taing and Stevo also executed a number of documents to establish their authority to act as principals, and to affirm Lucky's corporate authority to enter into the subject agreements (LoSchiavo affirmation, ¶ 16). In addition, LoSchiavo's firm obtained Lucky's Biennial Statement, filed on February 10, 2016, from the Secretary of State, indicating that Taing was the Chief Executive Officer of Lucky at that time (*see* NYSCEF Doc No. 1224). LoSchiavo asserts that he was aware of Conti's prior relationship with Lucky, and specifically inquired into how Conti's interest as the sole shareholder of Lucky was transferred to the current shareholders, Taing and Stevo (LoSchiavo affirmation, ¶ 11; *see also* 8/15/2016 email from LoSchiavo [NYSCEF Doc No. 1029]).

LoSchiavo also asserts that he was provided the original corporate kit, which included four original stock certificates showing Apostalis Condis as the sole shareholder of 200 shares in 1977 (when the company was formed), then a transfer of those 200 shares from Conti to Taing in 2013, then a transfer of 100 shares from Taing to Stevo in July 2014 (*see* stock certificates [NYSCEF Doc No. 1225]). After this review, LoSchiavo was satisfied regarding the transfer of ownership of Lucky from Conti to Taing and Stevo (LoSchiavo affirmation, ¶ 17). During its own due diligence on the Bil-Man Mortgages, Bil-Man had been provided a Letter of Resignation signed by Conti, dated July 15, 2013, and the Resolution of the Board of Directors and Shareholders of Lucky confirming the resignation of Conti, dated July 15, 2013 (*see* NYSCEF Doc Nos. 1204 and

2205). LoSchiavo asserts that he reviewed these same resignation documents at the closing, and that they satisfied him that Lucky was no longer associated with plaintiff (LoSchiavo affirmation, ¶ 15).

Although plaintiff questions why Creif or LoSchiavo did not make further inquiries into the transfer, such as asking to see the stock purchase agreement (Lewis affirmation, ¶ 38), LoSchiavo and Marc Hamroff (Hamroff), Creif's rebuttal expert, explain that a stock purchase agreement is not necessary to transfer shares in a company (LoSchiavo affirmation, ¶ 18; Hamroff expert report [NYSCEF Doc No. 1226], at 8). Hamroff, an attorney who represents lenders in real estate transactions, opined that LoSchiavo's inquiries and analysis were in accordance with his professional obligations, and were reasonable (Hamroff expert report, at 8).

LoSchiavo also points out that GWFG and Creif both required that borrower's counsel provide a legal opinion letter as an extra layer of protection. (LoSchiavo affirmation, ¶ 19; Salib affirmation, ¶ 24). The purpose of the opinion letter was to document that counsel for the borrower had undertaken its own independent review of the borrower and the borrower's corporate governance documents, and had investigated the borrower and principals to confirm their authority to enter into the subject transactions on behalf of the borrower, and for borrower's counsel to opine that the loan documents were thus "duly executed" (Mullaney expert report, at 17). Seung's office asked GWFG to provide a template for the opinion letter that he requested, which it provided before the closing (LoSchiavo affirmation, ¶ 20). The legal opinion letter opined that, based on Seung's examination and inquiries, Lucky and its principals had the authority to enter into the Creif Mortgage (*id.*, ¶ 21).

LoSchiavo asserts that, one additional issue that arose during legal due diligence was the discovery of the South 5th Street action, a lawsuit that had been filed against Bil-Man and others

by 331 South 5th LLC arising out of Flash Property's purchase of the property located at 331 South 5th Street, Brooklyn, New York, using proceeds from the 2016 Bil-Man Mortgage (LoSchiavo affirmation, ¶ 23). According to LoSchiavo, Bil-Man was named because it had filed a UCC Financing Statement against the property (*id.*, ¶ 24). The lawsuit alleged that the individual who executed the deed transferring the Brooklyn property was not the managing member of 331 South 5th LLC, and was not authorized to sell the property (this was not Stevo), and the lawsuit sought to have the sale rescinded and a UCC Financing Statement filed by Bil-Man against the property removed (*id.*).

Although Lucky concludes that the existence of the South Street action was an enormous red flag that should have scuttled the Creif Mortgage, LoSchiavo asserts that he inquired into the circumstances surrounding the litigation; that there were only the most conclusory allegations of fraud against Stevo and Bil-Man; and that the parties had reached a resolution (*id.*, ¶ 25). Hamroff, Creif's legal expert, also opined that GWFG's inquiry into this matter was reasonable (Hamroff expert report, at 8-9).

Finally, Salib asserts that Creif appropriately engaged NFC Global to perform background checks on Taing, and Stevo (Salib affirmation, ¶14). According to Salib and Mullaney, the reports did not return any concerning or disqualifying information regarding the borrower or its principals (*id.*; Mullaney opposition expert report, at 4). Although plaintiff argues that these reports were inaccurate in that Conti is still listed as an officer of Lucky, Stevo's executive summary does not include an affiliation with Lucky, and Taing's summary revealed a prior bankruptcy, judgments, and litigation, Mullaney explained that the public sources that these reports pull information from are not necessarily always up to date on corporate affiliations (Mullaney opposition expert report, at 4).

This court finds that these submission raise issues of fact as to whether Creif had notice of circumstances and facts that would lead a reasonable prudent lender to make inquiries of the circumstances of the transaction at issued. For instance, there are issues of fact as to whether appropriate inquiry was made into the transfer of the shares from Conti to Taing, then to Stevo, the presumed current shareholders, whether Creif failed to require sufficient documents from Stevo to verify his authority to act on behalf of plaintiff, and whether it failed to take reasonable steps to confirm that the questionable documents presented by Stevo were valid. That inquiry was conducted by LoSchiavo, Creif's outside counsel, who believed that he received adequate and appropriate documentation. Although plaintiff and its expert disagree, Creif's attorney was satisfied that authority had been established, and Creif's expert agrees. The conflicting views on whether Creif's due diligence was adequate, or the conclusions reached were reasonable, present material disputed facts that cannot be resolved on summary judgment.

These issues of fact require denial of the motion (*see e.g. Wells Fargo, NA v Savinetti*, 116 AD3d 765, 767 [2d Dept 2014] ["plaintiff's submissions ... raised a triable issue of fact as to whether the moving defendants had a duty to inquire" with respect to "the circumstances of the transaction at issue," and thus whether they were bona fide encumbrancers"]; *U.O.M. Trading Corp. v 85 South Ocean Realty Corp.*, 251 AD2d 652, 652 [2d Dept 1998] [denying summary judgment on ground that "material issues of remain as to whether Tosti had apparent authority to execute a mortgage on behalf of the corporate defendant (and) whether the plaintiff (lender) fulfilled its duty to conduct a reasonable inquiry into the scope of Tosti's alleged authority"]; *Haider v Mashriqi*, 2022 NY Slip Op 32452[U], ** 9 [Sup Ct, Queens County 2022] [given conflicting deposition testimony and surrounding circumstances with respect to the transfer of title, court found "triable issues of fact regarding whether (lender) had no notice of circumstances and

facts that would lead a reasonable prudent lender to make inquiries of the circumstances of the transaction at issue"]; *see also Hudson City Savings Bank v Cohen*, 120 AD3d 1304, 1305 [2d Dept 2014] [vacating judgment of foreclosure on ground that "(t)he documentary evidence submitted in support of the motion raises issues including, among others, whether the plaintiff had 'knowledge of facts that would lead a reasonable, prudent lender to make inquiries of the circumstances of the transaction at issue'"] [citation omitted]; *Williams v Mentore*, 115 AD3d 664, 665 [2d Dept 2014] ["Wells Fargo failed to establish its prima facie entitlement to judgment as a matter of law on its counterclaim for equitable subrogation" because "(t)riable issues of fact exist as to whether Wells Fargo should have been aware of potential fraud in connection with the conveyance"]).

Moreover, summary judgment is also inappropriate because the parties rely on competing expert testimony with respect to whether Creif failed to conduct sufficient due diligence, or deliberately ignored red flags that would it have alerted it to the alleged fraud. Braun opines that Creif was not a reasonable, prudent lender, while Mullaney opines that Creif's conduct as an asset based lender was reasonable and prudent under the circumstances, and given the particulars of the transaction. The conflicting reports submitted by plaintiff and Creif present a classic "battle of the experts situation" (*see Sason v Dykes Lbr. Co., Inc.*, 221 AD3d 491, 492 [1st Dept 2023] [affirming denial of summary judgment because competing expert opinions "constituted the classic 'battle of the experts'"]). These issues of fact include but are not limited to:

- The significance to be given to the fact that Lucky was timely making payments and was in good standing with the Bil-Man Mortgages, which were executed by the same principals as the Creif Mortgage. Plaintiff's expert assigns zero weight to this issue, but Creif's expert opines that it supports Creif's good faith belief that the Creif Loan was authorized (*see* Braun reply expert report [NYSCEF Doc No. 1008], ¶ 16 v Mullaney opposition expert report [NYSCEF Doc No. 1017], at 3);

- Whether it was unreasonable for Creif not to obtain new appraisals for the Properties prior to closing the Creif Mortgage when it was able to physically inspect the Properties before the closing, had access to existing Bil-Man appraisals that were less than a year old, and had expertise in valuing properties in this market space (Braun expert report, ¶¶ 17-18 v Mullaney opposition expert report, at 6);

- Whether the discrepancies cited by plaintiff in the professional NFC Global reports commissioned by Creif were "red flags" indicating fraud or, as explained by Mullaney, are not unusual given the way such type of reports are typically generated and where the often outdated public sourced information is culled from, and that Conti's name appearing on them and not Stevo was thus not an issue (Braun expert opposition report to Mullaney report [NYSCEF Doc No. 1018], ¶¶ 16-19 v Mullaney opposition expert report, at 11-12);

- How much weight to give to the presence of ECB violations and the lack of a certificate of occupancy. Plaintiff and its expert are of the view that such issues are conditions that a prudent lender would not lend to, but Creif explained, and its expert agrees, that, while the Properties may have had problems, the loan still made business sense, especially where Creif is an expert in this market space (Braun reply expert report, ¶¶ 10-14 v Mullaney reply expert report, at 3);

- The significance of the discrepancies in the certified rent rolls versus the DHCR rent rolls for two out of the four Properties, which Creif's expert opined were inconsequential (Braun expert report, ¶¶ 19-23 v Mullaney opposition expert report, at 4-5);

- Whether it was unreasonable for Creif to forgo tax returns for the borrower and its principals given that it was not relying on the income for any of them in making its credit analysis (Braun expert report, ¶¶ 10-12 v Mullaney opposition expert report, at 4-5); and

- The conclusions to be drawn from the existence of the settled Flash lawsuit against Stevo and Bil-Man in which they were accused in conclusory fashion of "fraud" involving another, unrelated property, which Creif found had nothing to do with Stevo's due authorization to enter into the Creif Loan (Braun expert report, at ¶¶ 40-44 v Mullaney reply expert report, at 8-9).

These conflicting expert reports regarding whether Creif's conduct was that of a reasonable, prudent lender entitled to bona fide encumbrancer status "'raise issues of fact and credibility that cannot be resolved on a motion for summary judgment'" (*Carter v HP Lafayette Boynton Hous. Dev. Fund Co., Inc.*, 210 AD3d 580, 581 [1st Dept 2022], quoting *Bradley v*

Soundview Healthcenter, 4 AD3d 194, 194 [1st Dept 2004]; *see e.g. Beadell v Eros Mgmt. Reality, LLC*, 229 AD3d 43, 69 [1st Dept 2024] ["At the very least, based on the competing expert affidavits, plaintiffs have raised an issue of fact"]; *Network-1 Techs., Inc. v Netgear, Inc.*, 224 AD3d 548, 550 [1st Dept 2024] ["a triable issue of fact exists as to whether plaintiff breached a most-favored-licensee provision in the agreement by entering into a contract with ShoreTel in 2015 as plaintiff and defendant submitted expert reports proffering conflicting opinions regarding the applicable royalty rates"]).

Accordingly, Lucky's motion for summary judgment as against Creif is denied.

Creif and Seung's Motions for Summary Judgment with Respect to the Amended Third Party Complaint (Motion Sequence Nos. 0031 and 0033)

Creif moves for summary judgment on the fraud claim that it asserts in the amended third-party complaint as against Seung. Creif also moves to strike the Initial Expert Report, Supplemental Expert Report, and deposition testimony of Peter Leibundgut (Leibundgut), Seung's expert. Seung separately moves for summary judgment dismissing the fraud claim. All of these motions are denied.

1. Creif's Motion to Strike

In support of its motions to strike, Creif argues that discovery has revealed that Seung acted recklessly in issuing the Opinion Letter. Creif asserts that Seung testified, throughout his representation of Stevo, Taing and Lucky, that he never entered into an engagement letter, never met either Stevo or Taing, and did not know, or remember, whether Taing or Stevo provided documents relating to their purported ownership of Lucky to his office (*see* Seung dep [NYSCEF Doc No. 1053], at 31:17-23; 30:18-25; 36:13:21, 38:7-18). Creif further asserts that Seung also testified that he was not aware of, or did not remember, what documents his office reviewed for due diligence to verify that the principals of Lucky had the authority to enter into the Bil-Man

Mortgage transactions, nor did he know, or remember, who from his office would have conducted this work (*see* Seung dep, at 127:5-18; 141:15-21).

Creif asserts that, nevertheless, on August 19, 2016, Seung issued an opinion letter (the Opinion Letter [NYSCEF Doc No. 1116]) on the day of the closing of the Creif Mortgage. The Opinion Letter was addressed to Creif on behalf of Lucky, Taing and Stevo, and contained various representations about Lucky, Stevo and Taing's authority to execute the loan documents. The letter stated that Seung "examined the original or certified copies of the documents of formation relating to the creation and organization of Borrower and other inquiries with respect to Borrower, and the Loan as we have deemed necessary or appropriate for the purpose of this opinion" (Opinion Letter, at 1). The Opinion Letter further stated that plaintiff authorized the Creif 109 Mortgage.

Creif alleges that, in issuing the Creif Mortgage, it relied on the statements made by Seung in the Opinion Letter, specifically that Seung reviewed all of the relevant corporate documents and made additional inquiries as needed to verify that his client did indeed have the authority to execute the loan documents (Salib affirmation [NYSCEF Doc No. 1044], ¶¶ 8-9). According to Creif, despite the unqualified representations made in the Opinion Letter, Seung testified that he cannot remember what documents he reviewed prior to issuing the Opinion Letter, and that he does not possess any records or bills indicating that he conducted any of the document review or inquiry described in the Opinion Letter (*see* Seung dep, at 87:4-17; 204:3-210:21).

Creif asserts that, based on these facts, this court must disregard both Leibundgut's Initial Expert Report dated September 12, 2024 (the Initial Report [NYSCEF Doc No. 1059), and the Supplemental Expert Report, dated November 11, 2024 (the Supplemental Report [NYSCEF Doc No. 1060), as both are conclusory and speculative with respect to Seung's foregoing conduct, in

that he failed to do the required analysis to demonstrate that Seung complied with customary due diligence in connection with issuance of a borrower's counsel's legal opinion.

The Initial Report references the deposition testimony of Salib and Joel Hammer (Hammer), two of Creif's principals, LoSchiavo, Creif's closing attorney, Vandersnow, the mortgage broker who brokered the Creif Mortgage, and Keith Madden (Madden) of Stewart Title, who all testified that there was no evidence that Seung committed a fraud, and that the Creif Mortgage was a valid mortgage (*see* Salib dep [NYSCEF Doc No. 1108], at 21:19-22; Hammer dep [NYSCEF Doc No. 1135], at 80:16-18; LoSchiavo dep [NYSCEF Doc No. 1110], at 157:10-13; Vandersnow dep, at 32:15-33:5]; Madden dep [NYSCEF Doc. No. 1109], at 102:23-103:4). The Initial Report provides that:

> "Paul Salib, Joel Hammer, Keith Madden, Robert LoSchiavo, Esq. and/or Scott Vandersnow has no knowledge or reason to suspect a fraud as alleged was being perpetrated. That is especially true regarding Seung. Paul Salib, Joel Hammer, Keith Madden, Robert LoSchiavo, Esq, and Scott Vandersnow could not articulate any alleged fraud by Seung, because there was no fraud by Seung against the Lender. Additionally, the theory that Seung was somehow grossly negligent and/or reckless in his representation of the Borrower and Guarantors with regard to the Loan is baseless and untenable, as there is no evidence at all to support claims for fraud, gross negligence or recklessness against Seung. The testimony of Paul Salib, Joel Hammer, Keith Madden, Robert LoSchiavo, Esq. and Scott Vandersnow is overwhelming to show that no one could articulate any fraud, grossly negligent conduct or reckless conduct committed by Seung in connection with the Lender or the Loan. The only place that the allegations of fraud, grossly negligent conduct or reckless conduct against Seung come from is conjecture and prevarication by Lender's litigation counsel but not based on any evidence or Documents"

(Initial Report, at 21).

Leibundgut concluded in the Initial Report that:

> "Based on the Opinions expressed herein, I am, with a reasonable degree of professional certainty based on my forty (40) plus years of experience, of the Opinion that Stephen Seung, Esq., in acting as Borrower's and Guarantors' counsel (i) did not commit any fraud, (ii) was not grossly negligent conduct, and (iii) did not engage in any reckless conduct, with regard to the Lender or the Loan"

(*id.* at 21-22).

Creif argues that the Initial Report only addresses the responsibilities of the lender and its transaction counsel, rather than Seung himself, and the duties and responsibilities associated with the issuance of his Opinion Letter. Creif further argues that, in support of his conclusion that there was no evidence that Seung was reckless or committed fraud, Leibundgut only cites deposition testimony from various individuals associated with Creif, as well as the broker and title representative, stating that they had no knowledge of fraud committed by Seung. Creif asserts that this testimony does not examine or opine on Seung's conduct, or what steps he took to fulfill his obligations in issuing his Opinion Letter.

In support of its position, Creif submits the October 23, 2024 expert report of Michael Finder, its expert, who opines that Seung acted recklessly in connection with his issuance of the Opinion Letter:

> "To sign a legal opinion letter and solely rely upon documents collected by his untrained legal assistant without closely reviewing the documents and going over the matter in detail with his client or client representatives that counsel is familiar with on a $15 million dollar transaction such as this, especially in the context of the "red flags" already presented to Seung, is utterly reckless and not what is required of a lawyer when giving such an opinion.
>
> ***
>
> In my expert opinion, based on my training and experience in the law, specifically with regard to the representation of borrowers where I have issued an opinion letter on behalf of a borrower regarding the authority to enter into a loan. Seung did not act in conformity with the customs and practices of borrower's counsel, and, in fact, the above acts often singularly or in combination demonstrated that Seung acted recklessly in issuing his Opinion Letter for the reasons stated above"

(Finder expert report [NYSCEF Doc No. 1057], at 21).

Creif asserts that, similarly, the Supplemental Report, which is in reply to Finder's expert report, does not address whether Seung's conduct with regard to the Opinion Letter was reckless,

but instead, merely states that Seung had the assistance of an associate attorney and staff member, and that there is no rule that paralegals be licensed or certified, and that, therefore, Creif's expert's opinion is "meritless" (Supplemental Report, at 7). Creif argues that, as such, Leibundgut's reports, as they relate to what Seung did or did not do, are conclusory and unsupported, and should be disregarded by this court.

Creif also argues that this court should also disregard Leibundgut's deposition testimony because it relies on testimony from individuals other than Seung that had "no knowledge" of what Seung did, and because Leibundgut could not recall what documents Seung or his associate reviewed in conjunction with the issuance of his Opinion Letter (*see* Leibundgut dep [NYSCEF Doc No. 1784], at 76:3-9).

Creif's motion to strike Leibundgut's reports and testimony is denied. In making this motion, Creif misrepresents the role and purpose of expert testimony, and mischaracterizes the substance of Leibundgut's analysis. Contrary to what Creif argues, Leibundgut was not retained as a fact witness to testify regarding Seung's personal conduct or memory, but as a legal expert offering his opinion on whether Seung's conduct, viewed through the lens of the record, rose to the level of fraud, or was consistent with legal and industry standards. This court finds that the Leibundgut reports appropriately address the duties of borrower's counsel in issuing legal opinion letters, and reflect a professional and well-reasoned analysis of the legal framework applicable to Seung's conduct. Under well-established New York law,

> "Whether or not expert testimony is admissible on a particular point is a mixed question of law and fact addressed primarily to the discretion of the trial court. As a general rule the expert should be permitted to offer an opinion on an issue which involves a 'professional or scientific knowledge or skill not within the range of ordinary training or intelligence'"

(*Selkowitz v Nassau County*, 45 NY2d 97, 101 [1978]). Here, whether Seung's conduct rose to the level of fraud or recklessness in connection with his legal opinion is plainly a question that benefits from expert interpretation of legal industry practices.

It is equally well settled that "[t]he opinion testimony of an expert must be based on facts in the record or personally known to the witness" (*Cassano v Hagstrom*, 5 NY2d 643, 646 [1959]). An expert cannot testify, "despite his lack of knowledge, as to what he assumed or believed defendant had done" and then draw an inference from those assumptions, because that opinion is "worthless as evidence" (*id.*). Moreover, "an opinion is also considered 'worthless' if 'predicated on the speculations of [an] expert, which were in turn based on assumed facts not supported by the evidence'" (*People by James v Trump*, ___ AD3d ___, 237 NYS3d 443, 484 [1st Dept 2025] [citation omitted]).

Leibundgut has complied with this standard, basing his opinions on the full record, including deposition transcripts and accompanying exhibits, and not speculating about facts outside that record. Based on his review of the record and depositions, including that of Seung, Leibundgut concluded that the evidence does not support a finding of fraud or recklessness by Seung:

> "Seung issued the Opinion Letter dated August 19, 2016 in a form and substance provided by Lender and/or Lender's counsel, based upon the loan documentation and due diligence materials that was provided to Seung, which was reviewed by Seung, as well as reviewed by Lender and its due diligence staff and Lender's counsel. Seung executed the Opinion Letter and gave the opinion that the loan documents were enforceable in accordance with the terms and conditions set forth therein, and that does not equate to any fraud"

(*id.* at 6, ¶ 19).

These conclusions are not conclusory or speculative—they are supported by both analysis and the application of standards governing borrower's counsel. The suggestion that the Initial

Report failed to address Seung's conduct is contradicted by the report itself, which details Seung's role, responsibilities, and conduct in the context of a borrower's counsel issuing an opinion letter (*see* Initial Report, at 16-17), and finding that "[i]n this case, Seung adhered to the Industry Standards (and professional standard) of a borrower's counsel" (*id.* at 18; *see also id.* at 4, ¶ 4 ["Seung DID NOT deviate from the professional or industry standard of care, duty and loyalty applicable for an attorney admitted to practice law in the State of New York representing a borrower in a commercial mortgage loan transaction"; *id.* at 4, ¶ 5 ["Seung DID NOT breach any duty that he owed to the Lender or to the Borrower in his role as Borrower's counsel in connection with the Loan"]).

Creif's argument that Leibundgut failed to identify the specific documents that Seung reviewed misunderstands the role of an expert. Experts are not tasked with establishing what a party did or did not review; they are not fact witnesses. Rather, they assess, based on the facts in the record, as well as their particular expertise, whether the conduct at issue rose to the level of fraud, or aligned with or deviated from industry norms. That is exactly what Leibundgut did here.

Importantly, Leibundgut did not offer unsupported conclusions. Leibundgut drew upon deposition testimony from key individuals—including Salib, Hammer, LoSchiavo, Madden, Vandersnow, and Foster—each of whom acknowledged either a lack of knowledge of any fraud, or an absence of any evidence implicating Seung. This testimony was not speculative; it formed part of the foundation for Leibundgut's expert opinion that fraud was not established on the record.

Moreover, in support of its motion to preclude, Creif does not argue that the expert reports lacked any evidentiary foundation, but rather that Leibundgut failed to consider certain evidence that Creif considers to be important, or relied too heavily on certain deposition testimony. However, the adequacy and completeness of Leibundgut's analysis "goes to the weight and not

the admissibility of the [reports], and is thus an issue for the finder of fact to determine at trial" (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 39 Misc 3d 1220[A], 2013 NY Slip Op 50677[U], * 16 [Sup Ct, NY County 2013]), citing *Harding v Noble Taxi Corp.*, 182 AD2d 365, 370 [1st Dept 1992] [holding that "it is the jury's function to determine the credibility of witnesses and the weight to be accorded the testimony of experts"]; and *Schlansky v Augustus v Riegel, Inc.*, 9 NY2d 493, 497 [1961] [holding that an expert's "lack of further information affected the weight but not the admissibility of his evidence"]).

Therefore, Creif's motion to strike the expert reports and deposition testimony is denied (*see e.g. Almanzar v Ankrah*, 226 AD3d 496, 497 [1st Dept 2024] ["Contrary to defendants' assertions, plaintiff's experts' opinions were not speculative, as they were based upon record facts"]; *see also Gobind v Nercessian*, 227 AD3d 464, 465 [1st Dept 2024] [same]).

2. Creif's and Seung's Motions for Summary Judgment

Both Creif and Seung move for summary judgment on the fraud cause of action. Creif argues that its motion for summary judgment on the fraud claim must be granted, as the evidence in the record has established that Seung acted recklessly when he issued the Opinion Letter. Conversely, Seung argues that discovery has revealed that he was not reckless when he issued the Opinion Letter, and that thus, the elements required to state a cause of action for fraud to survive a motion for summary judgment are not present here. Both motions are denied as there are material issues of disputed fact as to whether Seung's actions in connection with the issuance of the Opinion Letter amount to recklessness.

In support of its motion, Creif asserts that "it is not necessary to establish that a party intentionally engaged in fraud if there is a showing that they acted recklessly" (Creif memorandum of law [NYSCEF Doc No. 1063], at 11, citing *Curiale v Peat, Marwick, Mitchell & Co.*, 214 AD2d

16, 28 [1st Dept 1995] ["In other words, heedlessness and reckless disregard of consequence may take the place of deliberate intention"]). Creif further asserts that, "[t]herefore, a showing of gross negligence or recklessness will permit an inference that fraud was in fact perpetuated" (*id.* at 12, citing *DaPuzzo v Reznick Fedder & Silverman*, 14 AD3d 302, 302 [1st Dept 2005]; *Factors v Kandel & Co.*, 215 AD2d 305, 308 [1st Dept 1995] ["an opinion, especially an opinion by an expert, may be found to be fraudulent if the ground supporting it are so flimsy as to lead to the conclusion that there was no genuine belief back of it"]).

Creif argues that it has established that Seung was reckless in his issuance of his Opinion Letter, because, as demonstrated by Seung's own testimony, he failed to comply with industry standards by failing to verify the information provided by his "client." Specifically, the Opinion Letter stated in part that:

> "Borrower and Guarantor have the right, power, and authority to execute and deliver, and has duly authorized, executed, and delivered, each of the Loan documents. The Loan Documents constitute legal, valid, and binding obligations of the Borrow and Guarantor as applicable, enforceable in accordance with their respective terms, subject only to applicable bankruptcy, insolvency, reorganization, or moratorium law, or other laws affecting creditors' rights generally"

(Opinion Letter, at 2).

In addition, the Opinion Letter was unqualified and contained the affirmative statement that:

> "We have also examined the original or certified copies of the documents of formation relating to the creation and organization of Borrower and such other certificates, documents and opinions and have made such other inquiries with respect to Borrower, and the Loan as we have deemed necessary or appropriate for the purpose of this opinion"

(Opinion Letter, at 1).

Creif points to Seung's deposition testimony in which he testified that he does not remember the particulars of the due diligence that he conducted in connection with the issuance of

the Opinion Letter, including what specific documents that he relied on (*see* Seung dep, at 127:5-18; 204:3-210:21). Creif argues that this demonstrates that Seung did not take the requisite steps to verify any of the information, and was thus reckless in the issuance of the Opinion Letter. Creif also points to the Finder expert report, in which Finder opines that Seung was reckless as a matter of law (Finder expert report, at 21).

In opposition to the motion, and in support of his motion for summary judgment dismissing the fraud claim, Seung submits an affidavit in which he refers to his deposition, which took place seven years after the events at issue, in which he testified that he believed that he looked at the original stock certificates, the certified certificate of incorporation and the bylaws, as he always did when issuing an opinion letter (*see* Seung aff [NYSCEF Doc No. 1238], ¶ 15, citing Seung dep (NYSCEF Doc No. 1145], at 204:19-22; *see also* Seung dep, at 209:22-25; 210:2-4).

Seung alleges that, the fact that he was not able to remember each document that he reviewed seven years after the transaction at issue is not indicative of his failure to perform due diligence (*id.*, ¶ 16). Indeed, he asserts that he maintained over 1100 pages of records demonstrating what actions were taken during his representation of Lucky, as well as the execution of the Opinion letter (*id.*). Seung alleges that, when representing a corporate borrower, it is his regular practice to review a company's corporate documents as part of his due diligence to verify that the individuals representing the company actually have the authority to take out the loan (*id.*, ¶ 18). He specifically denied just recklessly signing off on opinion letters, as Creif claims (*id.*).

He further alleges that, prior to executing the Opinion Letter, he reviewed the corporate documents relating to the formation of Lucky (*id.*, ¶ 19). He also points to his deposition testimony that, whatever was in his file, he reviewed, and that he produced his file to Creif during discovery which contained the corporate resolutions, a copy of the Conti resignation letter, the New York

Department of State Biennial Statement, Lucky's 2014 tax return, as well as the other corporate and closing documents contained in his office file that was produced initially during discovery (*id.*, ¶ 21; *see also* Seung dep, at 208:22-25; 212:2-3). He reiterates that, since it is his customary practice to review all of the loan documents prior to the execution of a loan, "I reviewed all of the loan documents relating to this loan prior to issuing the Opinion Letter" (*id.*, ¶ 35). Seung also specifically denies that he had knowledge that any of Lucky's corporate documents were forged or fraudulent (*id.*, ¶ 39). Seung argues that these submissions establish, as a matter of law, that he did not act recklessly in issuing the Opinion Letter.

The court finds that these submissions, rather than establishing Seung's entitlement to summary judgment, raise issues of fact and credibility as to which documents he reviewed, and whether he was reckless in his issuance of the Opinion Letter. Indeed, "under most circumstances, the intent to defraud or deceive," including recklessness, "'is ordinarily a question of fact which cannot be resolved on a motion for summary judgment'" (*DirecTV, LLC v Nexstar Broad., Inc.*, 230 AD3d 439, 441 [1st Dept 2024], quoting *Shisgal v Brown*, 21 AD3d 845, 847 [1st Dept 2005]).

For example, Seung fails to affirm that he did, in fact, definitively review *all* of the Lucky corporate documents referenced in the Opinion Letter prior to the issuance of the letter. Indeed, he reiterates in his affidavit that he does not specifically remember what documents he reviewed. He then refers to his "customary practice," and states that he likely, but not definitely, reviewed the documents contained in his file. Accordingly, there are triable issues of fact as to which documents that Seung relied on in issuing the Opinion Letter, and thus whether Seung made representations in the Opinion Letter that were recklessly made, requiring denial of both motions for summary judgment (*Klembczyk v Di Nardo*, 265 AD2d 934, 936 [1st Dept 1999] [denying summary judgment on fraud cause of action on ground that issues of fact were raised as to whether

defendant's conduct was reckless]; *see also Clarke v Fifth Ave. Dev. Co., LLC*, 211 AD3d 460, 461 [1st Dept 2022] ["the record presents an issue of fact whether defendants had the intent to defraud — a necessary element of a fraud claim"]).

In addition, the competing expert affidavits also raise issues of fact (*compare* Finder expert report, at 21 [Seung's actions in connection with the Opinion Letter were "utterly reckless and not what is required of a lawyer when giving such an opinion"] *with* Initial Report, at 21 ["the theory that Seung was somehow grossly negligent and/or reckless in his representation of the Borrower and Guarantors with regard to the Loan is baseless and untenable, as there is no evidence at all to support claims for fraud, gross negligence or recklessness against Seung"]; *see Castellanos v 57-115 Assocs., L.P.*, 211 AD3d 459, 460 [1st Dept 2022] ["the parties' conflicting expert opinions ... raise an issue of fact"]).

Accordingly, both motions for summary judgment are denied.

3. Seung's Request for a Declaratory Judgment on his Counterclaims

Seung also seeks summary judgment on his counterclaim for a declaratory judgment that Creif does not have standing to bring its fraud cause of action against Seung, as well as dismissal of Creif's affirmative defenses as asserted in its reply to Seung's counterclaims (*see* NYSCEF Doc No. 679). However, Seung failed to include these requests for relief in his notice of motion. Rather, the notice of motion only sought "Dismissal pursuant to CPLR Sections 3212 of the Second Cause of Action stated in Third-Party Plaintiff's Amended Complaint" (*see* NYSCEF Doc No. 1106).

CPLR 2214 (a) requires that a notice of motion specify "the relief demanded and the grounds therefor." Therefore, a court may not grant relief not specifically requested in the notice of motion (*see Onofre v 243 Riverside Dr. Corp.*, 232 AD3d 443, 444 [1st Dept 2024] ["Supreme

Court correctly declined to grant relief not specifically requested in the motion of motion"]; *Guarino v North Shore Towers Apts. Inc.*, 2025 WL 2682973, * 2 [Sup Ct, NY County 2025] ["the balance of relief sought as against North Shore Towers is denied as it is not referenced in anyway in the notice of motion, which only asks for dismissal of the complaint"]). Accordingly, because Seung failed to include these requests for relief in his notice of motion, it would be procedurally improper to consider and/or grant such relief (*see Arriaga v Michael Laub Co.*, 233 AD2d 244, 245 [1st Dept 1996] [as plaintiffs failed to formally and specifically demand in notice of motion that counterclaims be stricken, the trial court did not err in denying such relief]).

Motion Sequence No. 034 – Seung's Motion to Dismiss Cross Claims

Third-party defendant Seung moves for summary judgment dismissing the cross-claims for contribution and indemnification asserted against him by second third-party defendant Bil-Man (*see* answer [NYSCEF Doc No. 549], at 9), third-party defendant Barisic (*see* answer [NYSCEF Doc No. 132], at 3), and third-party defendant Mastrangelo (*see* answer [NYSCEF Doc No. 137], at 22), on the ground that these cross-claims fail to state the existence of a duty by Seung to any of these parties.

As an initial matter, neither Bil-Man nor Barisic has opposed Seung's motion, and thus, their cross-claims against Seung must be dismissed as abandoned (*see Jones v Vornado N.Y., RR One L.L.C.*, 223 AD3d 467, 468 [1st Dept 2024] ["(b)ecause (defendant) Con Ed did not oppose (its co-defendants') motion for summary judgment dismissing its crossclaim for indemnification, the cross-claim was properly dismissed"]; *see also Jamie Ng v NYU Langone Med. Ctr.*, 157 AD3d 549, 550 [1st Dept 2018] ["Plaintiff's failure to oppose so much of the motion as sought dismissal of the lack of informed consent claim, constituted an abandonment of the claim"]; *Saidin v Negron*, 136 AD3d 458, 459, [1st Dept 2016] ["Plaintiff abandoned his claim against the individual police

officer by failing to oppose that part of the motion to dismiss the claim as against him"]). Although Mastrangelo does oppose the motion with respect to the contribution cross-claim, he does not address the indemnification cross-claim and thus, this cross-claim is also dismissed as abandoned.

With respect to the cross-claim for contribution asserted by Mastrangelo, Seung argues that, in order to plead the contribution claim, Mastrangelo must demonstrate that Seung owed a duty to him, and a breach of that duty contributed to alleged injuries (*see* Seung memorandum of law [NYSCEF Doc No. 1164], at 9). Seung asserts that because he owed no duty to Mastrangelo, his cross-claim for contribution must be dismissed.

However, Seung misstates the law underlying contribution claims. Contrary to Seung's argument, contribution claims are permissible among defendants, each of whom owed a duty to the injured party (*Trump Vil. Section 3, Inc. v NY State Hous. Fin. Agency*, 307 AD2d 891, 896 [1st Dept 2003] [Contribution is generally available as a remedy "when 'two or more tortfeasors share in responsibility for an injury, in violation of duties they respectively owe[] to the injured person'"]). Thus, "'[c]ontribution is available where two or more tortfeasors combine to cause an injury and is determined in accordance with the relative culpability of each such person'" (*Shelton v Chelsea Piers, L.P.*, 214 AD3d 490, 491 [1st Dept 2023] [citation omitted]).

In the first cause of action of its amended third-party complaint, Creif asserts a claim for fraud against Mastrangelo and other third-party defendants, claiming that, as result of their alleged fraud, it suffered $15,000,000 in damages because it is unable to recover the amount of the loans against the Properties (*see* amended third-party complaint, ¶¶ 38 and 47). In the second cause of action, Creif asserts a claim for fraud against Seung, claiming that, as a result of his alleged fraud, it suffered $15,000,000 in damages because it is unable to recover the amount of the loans against

the Properties (*id.*, ¶ 57). As such, Creif alleges that both Mastrangelo and Seung owed obligations to it, but failed to fulfill them, and as a result, injured Creif.

In response to Creif's claims, Mastrangelo asserted a crossclaim for contribution against Seung, alleging that, if Creif sustained any of its alleged damages and Mastrangelo was found responsible, then Seung and the other third-party defendants should be held responsible for their respective portions of liability for Creif's alleged loss (*see* answer to third-party complaint, at 22 ["in the event that CREIF is awarded any damages against the Mastrangelo, Mastrangelo is entitled to indemnity and contribution from ... STEPHEN SEUNG ... in the amount of any excess paid by Mastrangelo over and above his equitable share of any judgment recovered by CREIF as determined in accordance with the relative culpability of the parties"]). Thus, Mastrangelo is essentially seeking apportionment by contribution.

This court finds that Mastrangelo has asserted a valid claim for contribution against Seung. Creif's claims against Mastrangelo and Seung both sound in fraud. Creif alleges that both Mastrangelo and Seung made misrepresentations that either caused or augmented its alleged injuries. In addition, Creif seeks the recovery of the same damages from both Mastrangelo and Seung. Mastrangelo's cross-claim, therefore, fulfills the obligation for such contribution crossclaims, as it permits Mastrangelo to hold Seung accountable for his share of any potential liability for the fraud damages sought by Creif (*see Rosenbach v The Diversified Group*, 85 AD3d 569, 570-71 [1st Dept 2011] [fraud-based claims are subject to contribution]).

Moreover, although a party can defeat a claim for contribution with a showing that it was free from liability (*Agurto v One Boerum Dev. Partners, LLC*, 221 AD3d 442, 444 [1st Dept 2023]), here, however, because issues of fact exist as to whether Seung committed fraud in this action, he is not entitled to summary judgment dismissing Mastrangelo's cross-claim for contribution as

against him (*see Mena v 5 Beekman Prop. Owner LLC*, 212 AD3d 466, 467 [1st Dept 2023] [affirming the denial of a third-party defendant's motion for summary judgment to dismiss the claim for contribution against it where issues of fact remained]).

Thus, Seung's motion to dismiss Mastrangelo's cross-claim for contribution is denied.

Accordingly, it is hereby

ORDERED that the motion of defendant/second third-party defendant Bil-Man Asset Management, LLC for summary judgment dismissing the second third-party complaint filed by defendant/second-third party defendant Creif 109 LLC (motion sequence no. 0032) is granted, and the second third-party complaint is dismissed; and it is further

ORDERED that the motion of third-party defendant Stephen Seung for summary judgment dismissing certain cross-claims for contribution and indemnification (motion sequence no. 0034) is granted to the limited extent that the cross-claims for contribution and indemnification asserted by third-party defendant Joseph Barisic and defendant/second third-party defendant Bil-Man Asset Management, LLC, and the cross-claim for indemnification asserted by third-party defendant Dean Mastrangelo, are dismissed as abandoned, and the motion is denied in all other respects; and it is further

ORDERED that the motion of third-party defendant Dean Mastrangelo, Esq. for summary judgment dismissing the first third-party complaint filed by defendant/third-party plaintiff Creif 109 LLC as against him, and all related cross-claims (motion sequence no. 0028) is denied; and it is further

ORDERED that the motion of defendant/second third-party plaintiff Creif 109 LLC for summary judgment on its breach of contract claim asserted in the second third-party complaint

against defendant/second third-party defendant Bil-Man Asset Management LLC (motion sequence no. 0029) is denied; and it is further

ORDERED that the motion of plaintiff Lucky of 195 Madison Street Roofing & Contracting, Inc. for summary judgment as against defendant Creif 109 LLC (motion sequence no. 0030) is denied; and it is further

ORDERED that the motion of defendant/third-party plaintiff Creif 109 LLC for summary judgment on its fraud claim asserted in the amended third-party complaint as against third-party defendant Stephen Seung, and to strike the Initial Expert Report, Supplemental Expert Report, and deposition testimony of Peter Leibundgut (motion sequence no. 0031) is denied; and it is further

ORDERED that the motion of third-party defendant Stephen Seung for summary judgment dismissing the cause of action for fraud asserted by defendant/third-party plaintiff Creif 109 LLC in the amended third-party complaint (motion sequence no. 0033) is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: December 15, 2025

ENTER:

Denis Reo

HON. DENIS REO, A.J.S.C