

20. William Turkish testified that Jason Turkish performed due diligence for Plaintiff prior to the subject transaction.

21. William Turkish testified that Evan Berlin communicated by e-mail with Jason Turkish as to the subject transaction between March 24, 2007 and March 27, 2007. (Dkt. 199-1, p. 161).

22. William Turkish testified that he did not discuss the Security Agreement with Evan Berlin prior to the closing and at the closing. (Dkt. 199-1. pp. 195-196).

23. William Turkish testified that, following the execution of the Security Agreement on March 27, 2007, the next time he communicated with Evan Berlin as to the security agreement was probably when he learned GLRS was being sold. (Dkt. 199-1, p. 196).

24. As to repayment of Plaintiff's \$400,000, William Turkish testified (Dkt. 199-1, pp. 199-200):

Q. What is your understanding with respect to the closing which occurred on March 27, 2007, as to when, if at all, you were to receive your \$400,000 back?

A. When was I supposed to receive it? I was supposed to receive it when GLRS closed, when TT closed. I was supposed to receive it if I didn't get an upgrade by May the 1<sup>st</sup>. And also, I think there was something in there that LeFevre put in there that I get \$400,000 if the property was sold.

25. William Turkish further testified (Dkt. 199-2, p. 6):

Q. And Mr. Turkish, you made reference to the last sentence of paragraph 4—I'm not trying to discourage you from what you brought up—which was about the GLRS and

TT, LLC. What did you want to say about that?

A. That the obligations are secured by Seller's ownership interest in TT, LLC and GLRS, LLC.

Q. Is it your understanding that Mr. LeFevre pledged his partial ownership in TT and GLRS to secure the obligations to BCJJ?

A. He pledged the profits of GLRS—of GLRS and TT, LLC. And not only did he do that, he gave me a Power of Attorney. He also indicated that if anything was mortgaged or there was any transfer of interest or property that there was affirmative obligation, to contact me to discuss it, to get my approval, to either remortgage, sell, which he never did.

26. William Turkish admitted that the Unit Upgrade Agreement (Dkt. 148-5) provides that the \$400,000 would be repaid upon the sale of the property, or the closing of the last residential unit, whichever occurs first.

27. William Turkish admitted that there was never a closing on the last residential unit, and denied any knowledge of the sale of the property. (Dkt. 199-1, p. 201.).

### **Testimony of Jason Turkish**

28. Jason Turkish testified as to the terms of "Transaction 1" (Dkt. 196-3, pp. 68-71):

Q. Please describe for me your understanding of transaction 1 as you understand the term.

A. Transaction 1 began with Thomas LeFevre asking us to invest \$400,000 into a commercial property in Sarasota. He had Mr. Berlin contact us to discuss what the dynamics of that transaction would be. I understood from the zoning hearing that the commercial property was owned by

Bayonne Investments but Mr. Berlin suggested that we would be purchasing membership units in an entity called Tom's Friends, LLC.

I had a discussion with Mr. Berlin about what Tom's Friends, LLC was and how it related to Bayonne Investments. And Mr. Berlin's office forwarded me operating agreements for various entities, including Tom's Friends and Bayonne Investments. When I reviewed the operating agreement for Tom's Friends, I looked mainly at just the Exhibit A, which showed the members and their capital contributions. And I looked at the Exhibit A for Bayonne Investments. And I noted that the—I noted that there wasn't—that money was collected into Tom's Friends that wasn't reflected into Bayonne Investments.

So, for instance, the total capital contributed or reflected to be contributed into Tom's Friends was over \$3 million and there was a much smaller number for Tom's Friends capital account in Bayonne Investments. So I expressed to Evan that I had concern about investing in Tom's Friends because it seemed like they would have to make a very large—that Bayonne Investments would have to make a very large profit just for them to break even.

And then Evan relayed to me that that was correct and the reason why was because he had set up Tom's Friends for Mr. LeFevre because Mr. LeFevre didn't really want partners in Bayonne Investments. He essentially wanted to borrow money from the individuals in Tom's Friends.

So he collected money from these individuals and then entered into what he called a buy/sell agreement in which they agreed to automatically sell the shares back to Tom at a higher price irrespective of what happened with the market or the status of the entity. This all concerned me because I thought that there should be a dollar for dollar—a dollar for dollar representation of our investment in the entity that actually owns the property.

So I indicated to Mr. Berlin that we would want to be involved in Bayonne Investments but that we also understood that the mortgage was in default or near default,

that they were not current in their mortgage. And that Tom had offered to upgrade the condominium to Unit 441 as opposed to Unit 241.....

A. That Tom had agreed to upgrade the Unit to Unit 441, which was a Unit that—for the same price as Unit 241, a Unit that would be worth—worth a lot more than Unit 241. So that hopefully our investment would be protected. That was my understanding of the—of Transaction 1.

Q. Let me try to summarize Transaction 1, Mr. Turkish. Going just to economic terms, if I understand correctly, Transaction 1 was BCJJ puts in \$400,000 and in return BCJJ gets two things: one, seven units in [Bayonne Investments]; and two, a condo upgrade. Is that correct?

A. I think that's correct.

Q. Why was it important to get the condo upgrade from 241 to 441?

A. I think there would be two reasons why it was important. The first reason is that there was concern about the health of Bayonne Investments, and the hope would be that if BCJJ purchased Unit 441 for the lower price that Unit 241 was purchased for, it would make up for any potential loss that could occur within Bayonne Investments.

And the second reason was—is that Bill, my father, had some concern that Unit 241, which was marketed as having a water view, that during the zoning hearing, Ms. Patten had to assure the Commission that the mangroves would not be trimmed. And I—I believe they were at a height that would completely obscure the view from Unit 241.

29. Jason Turkish testified that BCJJ did not sign a written agreement with Evan Berlin or the Berlin Law Firm as to representation for the subject transaction, and he did not request a written fee agreement with Evan Berlin or Berlin Law Firm. (Dkt. 200-1, p. 78). Jason Turkish testified:

Q. Did you request a written fee agreement with Evan Berlin or the Berlin Law Firm?

A. Not to my knowledge.

Q. Why not?

A. It was my understanding that Evan was willing to provide these legal services because he had a \$100,000 investment in BI through his company Berland Investments and that if—given that BI's only asset was this property, if its first mortgage was foreclosed on, it would make his investment—he would realize a total loss. And that he was willing to perform these services because our investment would stop a foreclosure which would result in him losing his money.

(Dkt. 200-1, pp. 78-79).

30. Jason Turkish testified that, prior to March 24, 2007, Evan Berlin and Berlin Law Firm had not represented Plaintiff BCJJ, LLC, William Turkish and Jason Turkish on other matters, and that there was no long-standing relationship. (Dkt. 200-1, p. 135.)

31. Jason Turkish testified that Evan Berlin discussed Evan Berlin's investment in Bayonne Investments, LLC, indicating that he was the manager of Berland Investments, LLC, which was a member of Bayonne Investments, LLC, prior to the closing on March 27, 2007. (Dkt. 200-1, pp. 19-20).

32. Jason Turkish testified that Evan Berlin offered to prepare the Security Agreement as to "Transaction 2" and Plaintiff BCJJ, LLC's acceptance of this offer created an attorney-client relationship. (Dkt. 200-1, p. 90).

33. Jason Turkish identified the due diligence as to Bayonne Investments, LLC that he performed prior to the transaction. (Dkt. 200-1, pp. 23-24).

34. Jason Turkish testified as to how additional security was proposed to Plaintiff BCJJ, LLC (Dkt. 200-1, pp. 93-94):

Q. ...Did Tom Lefevre suggest TT and GLRS as potential security for the \$400,000 investment by BCJJ in this project?

A. No. Tom Lefevre and Evan Berlin on a conference call with me while I was in Ann Arbor talked me through security that they could offer. They referred to them not by the names at first of TT and GLRS but rather of the Shell Road property and a trailer park.

Q. What did Tom Lefevre say to you about TT or GLRS on March 24<sup>th</sup>?

A. Well, again, it was on or about March 24<sup>th</sup>. It was after the rejection of Transaction 1 and before the time that Evan prepared the security agreement on March 26<sup>th</sup> for Transaction 2. Mr. LeFevre indicated he would be willing to pledge his interests in those two—he was referring to them at the time as properties, not entities.

Q. So if I understand correctly, on or about March 24<sup>th</sup> Tom LeFevre suggested to you the possibility of pledging the Shell Road property and the trailer park property as additional security for the \$400,000 investment by BCJJ and the subject property?

A. I think it was slightly more nuance than that. The discussion was if the unit upgrade did not occur, then he would pay us \$400,000, and that those entities would secure the payment of the \$400,000.

35. Jason Turkish further testified (Dkt. 200-1, pp. 95-97):

Q. Did Mr. Lefevre indicate to you that he had some controlling or other interest in TT and GLRS?

A. He did. He indicated that he was a member and

manager of both and that Evan was his partner on TT.

Q. Did you agree on the March 24<sup>th</sup> conference call to utilizing the TT and GLRS interests to secure the BCJJ investment in the subject property?

A. In principal, but Evan had offered to start to prepare some documents and was going to e-mail them to me and I—I wanted to—I wanted to look at those because it was occurring to me that there were a few layers to this. That it was first a condo unit upgrade, then an obligation to pay \$400,000, and then the security. I wanted to understand how those events would be triggered.

.....

Q. Other than indicating that he would prepare the security agreement on the March 24<sup>th</sup>, 2007, call, what else did Mr. Berlin say on that call?

A. ....Mr. Berlin indicated—he had a discussion with me about potentially granting BCJJ mortgages on those two properties. He discussed pledging the membership units. He discussed structuring the security agreements and discussed a timeline for getting that done, because it seemed that it was a lot of work to try to get done by when the bank needed. He posed to us whether it had to be done before the closing with M&I Bank.

Q. ....Have you told me the substance of all the communications by Evan Berlin between the end of transaction 1 and the completion of the closing on March 27<sup>th</sup>?

A. No.

Q. Okay.

A. I don't think so, because on March 26<sup>th</sup> he—we communicated via e-mail. And I read his communication and the document in which he indicated that he wrote a representation and warranty that Tom had the authority to pledge these membership units or that he had obtained all the approvals that he needed.

Q. When was the conversation that you're referring to?

A. I indicated that it was an e-mail communication.

Q. When was the communication?

A. March 26<sup>th</sup>, the evening those documents were sent to me.

Q. So that would be Monday night?

A. Monday night, correct. And that was also I believe the time in which Evan talked about the security agreement as being what we're looking for, was what I think his terms were.

36. Jason Turkish testified that the involvement of Christopher Sullivan in the draft Unit Upgrade Agreement provided to Evan Berlin was significant. (Dkt. 200-1, p. 114.)

37. Jason Turkish acknowledged that Evan Berlin revised the draft "Unit Upgrade Agreement" and sent a copy back to him on March 26, 2007. (Dkt. 200-1, p. 151). Jason Turkish further testified that Evan Berlin provided a full set of final documents to him on the evening before the closing, and that he read the documents. (Dkt. 200-1, p. 151).

38. Jason Turkish testified that he did not ask for a copy of the Operating Agreement for TT, LLC and for GLRS, LLC prior to the closing (Dkt. 200-1, p. 104).

39. Jason Turkish testified that the first time he asked to see the consents of other members in GLRS, LLC and TT, LLC to the security agreement was in April, 2008. (Dkt. 200-1, p. 105).



40. Jason Turkish further testified (Dkt. 200-1, p. 110):

Q. Prior to the closing on March 27<sup>th</sup>, did you discuss the consents with Evan Berlin?

A. I only read it in his text.

Q. In other words, when you say that Mr. Berlin represented certain things had been done, that is based on the text of a document prepared by Mr. Berlin, that specific document being the security agreement, correct?

A. Correct.

### **Testimony of Evan Berlin**

41. Evan Berlin testified that he never met with William Turkish or Jason Turkish to discuss an investment in Bayonne Investments, LLC. (Dkt. 202-1, p. 65).

42. Evan Berlin testified that he became aware of a potential deal for the sale of seven investment units in Bayonne Investments, LLC around March 20, 2007. (Dkt. 202-1, p. 67), through phone and e-mail communications (Dkt. 202-1, p. 68).

43. Evan Berlin testified that he and Berlin Law Firm, P.A. were not involved in the negotiation and drafting of documents related to the condominium upgrade agreement until Monday, March 26, 2007. (Dkt. 202-1, p. 101). Evan Berlin testified that he became aware of the condominium upgrade component of the transaction when the draft Unit Upgrade Agreement was delivered by Jason Turkish on Sunday evening, March 25, 2007. Evan Berlin further testified that he and Berlin Law Firm, P.A. did not prepare the initial draft. (Dkt. 202-1, p. 102).

44. Evan Berlin testified as to a conference call between Thomas LeFevre and William Turkish and Jason Turkish, at which Evan Berlin was present, which took place on March 26, 2007:

Q. Okay. So on Monday, March 26<sup>th</sup> of 2007, you become aware that BCJJ is requesting additional security in the form of interests in TT and GLRS; is that correct?

....

A. They originally requested a mortgage, if I recall correctly, on the TT, LLC, and GLRS parcels.

Q. Who did they make their request to, to Tom?

A. It was a conversation that Jason and Tom had at which I was present.

Q. Okay. Was this a conference call?

A. I believe so, yeah.

Q. Okay. And what was the, what was the conclusion of that call?

A. The conclusion of that call was Tom was not able to deliver mortgages or was not able to establish mortgages encumbering those parcels because he held membership units in entities that owned those parcels.

Q. And this conference call happened on March 26<sup>th</sup>, the Monday?

A. I believe so, yes, in the afternoon.

Q. Okay. Because the mortgage could not encumber the parcels, what happened after that?

A. Tom asked—there was a conversation about conceptually would it be possible to establish lien rights associated with

those two projects, and the conversation evolved into Tom pledging membership units in GLRS and TT, LLC.

Q. When you say "those two projects," you're talking about TT and GLRS?

A. Yes.

Q. And that negotiation—would it be fair to call that a negotiation?

....

A. It was a discussion. Negotiation, yeah.

Q. Okay. And what happened after the conference call that happened on Monday evening?

A. I would say—I think our—I think my—to the best of my recollection, it was Monday afternoon.

Q. Okay. It was Monday afternoon?

A. Yeah.

Q. And was that accepted by BCJJ?

....

A. Jason did agree, yes.

(Dkt. 202-1, pp. 102-104).

45. Evan Berlin testified that the proposed transaction included the sale of seven investment units in Bayonne Investments, LLC to William and Francine Turkish for \$400,000, a commitment from Thomas LeFevre to use his best efforts to try to get a condominium upgrade; if the condominium upgrade did not take place by May 1, 2007, then that would automatically trigger a deferred obligation to repay \$400,000, payable at the sale of the last residential unit on the Bayonne piece or at the point in time when

the Bayonne parcel was sold. (Dkt. 202-1, pp. 105-106).

46. Evan Berlin further testified that William and Francine Turkish got a Security Agreement that purported to establish a lien on Thomas LeFevre's membership units in TT, LLC and GLRS, LLC. (Dkt. 202-1, pp. 106-107). Evan Berlin testified that the Security Agreement was not intended to and did not convey membership interests; the secured party had no rights to the membership interests other than as a secured party. (Dkt. 202-1, p. 108.).

47. Evan Berlin testified that the lien interests were not valid because, as to TT, LLC, the consent of the three managers was not obtained, and, as to GLRS, LLC, the consent of the other members was not obtained. (Dkt. 202-1, pp. 110-111). The managers of TT, LLC were Tom's S Corp, Emmanuel J. Rothis and Don Stutrud. The other members of GLRS, LLC were Don Stutrud, and Emmanuel J. Rothis. (Dkt. 202-1, pp. 112-113).

48. Evan Berlin testified that Berland Investments, LLC owned 1.75 units in Bayonne Investments, LLC. (Dkt. 202-1, p. 79), and Berland Investments, LLC's capital contribution to Bayonne Investments, LLC was \$100,000.00. (Dkt. 202-1, p. 89).

49. Evan Berlin testified that Berland Investments, LLC was not an active participant in the development of the commercial property on behalf of Bayonne Investments, LLC. He testified that, prior to the Turkish transaction, Thomas Lefevre was an active participant, and after the Turkish transaction, Jason Turkish was an active participant. (Dkt. 202-1, p. 61).

50. When Evan Berlin was deposed on August 5, 2010, Evan Berlin testified that Berland Investments, LLC became a member of TT, LLC in February, 2007 (Dkt.

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202-1, p. 86), and that TT, LLC owned SaraBay Trailer Park. (Dkt. 202-1, p. 87). Evan Berlin further testified that Sabal Palm Bank was in the process of foreclosing the mortgage on Sarabay Trailer Park, and that the capital contribution from himself or Berland Investments, LLC to TT, LLC was zero. (Dkt. 202-1, p. 89).

51. Evan Berlin testified that GLRS, LLC owned the "Shell Road" property, and that he had no knowledge of any other property owned by GLRS, LLC. (Dkt. 202-1, p. 93). Evan Berlin testified that he and Berland Investments, LLC never were a member or owned an interest in GLRS, LLC. (Dkt. 202-1, p. 91).

52. Evan Berlin testified that he became aware that the consents were not obtained when Jason Turkish and William Turkish told him in April, 2008. (Dkt. 202-1, pp. 114-115).

## V. Discussion

### 1. Controlling Principles of Law

#### A. Choice of Law

The documents which comprise the transaction which closed on March 27, 2007 were prepared and executed in the State of Florida. It is not disputed that Florida law controls the construction and interpretation of these documents.

#### B. Contracts

The Second Amended Complaint includes causes of action arising under federal and Florida statutes, Florida tort claims, and a claim for equitable relief under Florida law. While there is no breach of contract claim asserted as to Defendants Evan Berlin, Berlin Law Firm, P.A. and Berland Investments, LLC, the contracts which document the

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transaction entered into by the parties are central to and will guide the Court's consideration. The Court therefore briefly summarizes the controlling principles of contract interpretation, and other relevant principles.

The well-established principle in the Eleventh Circuit is that contract interpretation is generally a question of law. Lawyers Title Insurance Corp. v. JDC (America) Corp., 52 F.3d 1575, 1580 (11th Cir. 1995) (affirming summary judgment in declaratory action involving interpretation of coverage provisions of insurance policy). The interpretation or construction of a written contract is particularly suitable for summary judgment. Central National Bank v. Palmer, 806 F.Supp. 253, 256 (M.D. Fla. 1992). Questions of fact arise only if there is an ambiguity in a contract term. Lawyers Title, 52 F.3d at 1580. An ambiguity does not exist merely because a contract can be interpreted in more than one manner. Id. However, if there is a genuine inconsistency, uncertainty or ambiguity in meaning after resort to ordinary rules of construction under applicable state law, then an ambiguity exists. Id. For instance, an ambiguity exists if a contract contains conflicting or repugnant clauses. In Re Finevest Foods, 159 B.R. 972, 978 (Bankr. M.D. Fla. 1993).

Under the parol evidence rule, evidence of prior or contemporaneous oral statements or agreements cannot be introduced to vary, contradict or affect the unambiguous language of a valid contract. Johnson Enterprises of Jacksonville, Inc. v. FPL Group, 162 F.3d 1290, 1308 (11th Cir. 1998). With an unambiguous contract, the best evidence of the parties' intentions is the actual language used in the contract. See In re Atkins, 228 B.R. 14, 18 (Bkrtcy. M.D. Fla. 1998). Subsequent oral statements or actions of parties to ascertain their intent in entering into a contract should be considered only if a contract is ambiguous. See In re Yarn Processing Patent Validity Litigation, 462 F.Supp. 340 (S.D. Fla. 1978).

As recognized by the Eleventh Circuit in Johnson Enterprises, one way in which

parties to a contract demonstrate their intent that the written contract incorporate their final and complete agreement, such that evidence of prior or contemporaneous agreements is not admissible to contradict the terms of the contract, is through the use of a merger or integration clause. Johnson Enterprises, 162 F.3d at 1308.

Parol evidence may be admitted to show that an oral agreement induced the signing of a written contract, or to explain a latent ambiguity in a written contract. The inducement exception requires that the oral agreement be shown by evidence that is clear, precise and indubitable. Johnson Enterprises, 162 F.3d at 1310.

### C. Attorney/Client Relationship

The determination of the presence of an attorney/client relationship is a question of fact, and the burden of establishing the presence of that relationship rests with the party claiming that such a relationship was present.

The existence of a formal retainer agreement is not essential to finding an attorney-client relationship, and the client need not pay a fee to form an attorney-client relationship. The test Florida courts have used to determine whether a lawyer-client relationship exists in the absence of a formal retainer is a subjective one, and hinges upon the client's belief that he is *consulting* a lawyer in that capacity and his *manifested intention* is to seek professional legal advice. However, the subjective belief must be a reasonable one.

The subjective belief test is applied **after** a putative client consults with an attorney, and is used to emphasize that, *following a consultation*, it is the belief of the putative client and not the lawyer's actions that determines whether a lawyer-client relationship has developed. Requiring a subjective belief to be reasonable makes sense, since the subjective belief of a "client" that he has retained a lawyer whom he

has never consulted—or even spoken to—cannot be an objectively reasonable one. That an actual consultation with a lawyer is required before a putative client can develop a reasonable subjective belief in the relationship is reflected in the Florida Evidence Code’s definition of a “client” as “one who *consults* a lawyer with the purpose of obtaining legal services or who is rendered services by a lawyer.” Fla Evidence Code, Sec. 90.502(1)(b)(emphasis added).

[Florida Bar v. Beach] [675 So.2d 106 (Fla. 1996)] makes clear that regardless of a putative client’s subjective beliefs, there can be no attorney-client relationship when the client does not consult with the attorney, especially when there is no contact between them. An attorney-client relationship cannot be formed when the attorney has literally no basis to know that a putative client thinks the lawyer has been retained.... See Jackson v. Bellsouth Communications, 372 F.3d 1250, 1281-1284 (11<sup>th</sup> Cir. 2004)(citations omitted).

#### D. Agency

The existence of an agency relationship is generally a question of fact under Florida law; however, when the moving party fails to produce any supportive evidence or when the evidence presented is so unequivocal that reasonable persons could reach but one conclusion, that question of fact becomes a question of law to be determined by the court. West’s F.S.A. § 620.1402(1). See Degirmenci v. Sapphire-Fort Lauderdale, LLC, 693 F.Supp.2d 1325 (S.D. Fla. 2010).

To establish an actual agency relationship, the following elements must be established: “(1) acknowledgment by the principal that the agent will act for it, (2) the agent’s acceptance of the undertaking, and (3) control by the principal over the actions of the agent.” State v. Am Tobacco Co., 707 So.2d 851, 854 (Fla. 4th DCA 1998).



To establish that an apparent agency exists, the following elements must be present: "(1) a representation by the purported principal; (2) reliance on that representation by a third party; and (3) a change in position by the third party in reliance upon such representation." Blunt v. Trip Scott, P.A., 962 So.2d 987, 989 (Fla. 4th DCA 2007) (quoting Lensa Corp. v. Poinciana Gardens Ass'n., 765 So.2d 296, 298 (Fla. 4th DCA 2000)).

#### E. Agency of Members And Managers or Managing Members of Limited Liability Company

Ch. 608.4235, Florida Statutes, provides:

....

(2) Subject to subsection (3), in a manager-managed company:

(a) A member is not an agent of the limited liability company for the purpose of its business solely by reason of being a member. Each manager is an agent of the limited liability company for the purpose of its business, and an act of a manager, including the signing of an instrument in the limited liability company's name, for apparently carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the company binds the limited liability company, unless the manager had no authority to act for the limited liability company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

(b) An act of a manager which is not apparently for carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the limited liability company binds the limited liability company only if the act was authorized under s. 608.422.

#### 2. Preliminary Issues

In the Amended Complaint, Plaintiff BCJJ alleges that:

"Defendant Evan Berlin ("Berlin") is an individual, sui juris, and a resident of Florida. Berlin is president of the Berlin Law Firm, and is also a manager of both Berland and TT. At

all times relevant to this action, Berlin acted as an agent for both Berland and TT, as well as BI [Bayonne Investments, LLC] (the latter of which Berland is a member.”

Plaintiff further alleges that Berland Investments, LLC is a member of BI [Bayonne Investments, LLC], and “[a]t all times relevant to this action, Berland acted as an agent of BI [Bayonne Investments, LLC]. BCJJ alleges that Evan Berlin and Berlin Law Firm, P.A. represented BCJJ as to the subject transaction, which is disputed by Defendants Evan Berlin and Berlin Law Firm, P.A.

#### A. Parties to the Transaction

The parties to the Purchase Agreement for Membership Interest were Plaintiff BCJJ, LLC (“Purchaser”), and Thomas J. LeFevre, as Trustee of the Thomas J. LeFevre Living Trust dated October 8, 2001 (“Seller”) and Tom’s Friends, LLC (“Company”). (Dkt. 148-2, p. 2). The Members of Tom’s Friends, LLC executed consents, as follows: Thomas J. LeFevre executed a consent as Trustee of Thomas J. LeFevre Living Trust dated October 8, 2001, as a Member/Manager; Emanuel J. Rothis, Robert Cole, Jason M. Lewis, William LaFranca, Kevin C. Rinke, Michael A. Lasha, and Carl Rashid, Jr. executed consents as Members. (Dkt. 148-3). Tom’s Friends, LLC executed an Assignment. (Dkt. 148-4). Thomas J. LeFevre executed the Assignment as Thomas J. LeFevre, Trustee of Thomas J. LeFevre Living Trust dated October 8, 2001, Manager of Tom’s Friends, LLC, as Assignor. Thomas J. LeFevre executed the Assignment on behalf of Bayonne Investments, LLC, in his capacity as President of Tom’s S Corp, Manager of Bayonne Investments, LLC. Thomas J. LeFevre executed the Assignment as a Company Member, as President of Tom’s S Corp, and as Trustee of Thomas J. LeFevre Living Trust dated October 8, 2001, Manager of Tom’s Friends, LLC. Evan Berlin executed the Assignment as a Company Member, as Manager of Berland Investments, LLC. (Dkt. 148-4). Thomas J. LeFevre executed the Unit Upgrade Agreement as Trustee of Thomas J. LeFevre Living Trust

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dated October 8, 2001, the "Seller." (Dkt. 148-5). Thomas J. LeFevre executed the Security Agreement and Collateral Assignment of Distributions and Profits in his individual capacity and as Trustee of Thomas J. LeFevre Living Trust as the "Borrower". (Dkts. 148-6, 148-7)). Thomas J. LeFevre executed the Closing Agreement in his capacity as Trustee of Thomas J. LeFevre Living Trust, the "Seller." (Dkt. 148-8).

There is no dispute as to the identity of the Seller and the identity of the Buyer as to "Transaction 1" and "Transaction 2." While there is no executed contract that shows that Evan Berlin and Berlin Law Firm, P.A. agreed to represent Thomas J. LeFevre, or any "LeFevre entity" for that transaction, Evan Berlin and Thomas J. LeFevre provided affidavits, and Evan Berlin testified in his deposition as to this issue.

It is undisputed that Evan Berlin and Berlin Law Firm, P.A. provided copies of documents to Christopher Sullivan, Plaintiff's representative, and to Jason Turkish, on behalf of Thomas LeFevre, relating to "Transaction 1." (Dkt. 257-1, Dkt. 196-1, pp. 44-48, pp. 52-57, pp. 59-61). It is also undisputed that Johanna Wood, on behalf of Evan Berlin, transmitted the Closing Agreement to Jason Turkish and Christopher Sullivan on March 22, 2007, and requested the "side agreement prepared by Mr. Sullivan" to be provided as soon as practical; Johanna Wood, on behalf of Evan Berlin, transmitted the revised Closing Agreement to Jason Turkish and Christopher Sullivan on March 23, 2007. Johanna Wood again requested a draft of the side agreement from Christopher Sullivan. (Dkt. 257-3). The above e-mail exchanges show that Plaintiff BCJJ treated Evan Berlin and Berlin Law Firm, P.A. as Defendant Thomas J. Lefevre's representative between March 20, 2007 and March 23, 2007. William Turkish admitted that Evan Berlin did not represent him in "Transaction 1." (Dkt. 196-1, p. 150).

B. Existence of Attorney-Client Relationship Between Plaintiff BCJJ, LLC and Evan Berlin and Berlin Law Firm, P.A. From March 24, 2007 to March 27, 2007

In the Second Amended Complaint, Plaintiff alleges that Thomas J. LeFevre approached William Turkish and Jason Turkish on March 15, 2007 to inquire whether BCJJ would be interested in investing \$400,000 in Bayonne Investments, LLC. (Dkt. 148, p. 5). After Plaintiff rejected the proposed transaction, Plaintiff alleges that on March 24, 2007, Thomas J. LeFevre, accompanied by Evan Berlin, asked whether Plaintiff would be interested in making the investment of \$400,000 in Bayonne Investments, LLC, in exchange for additional security and an upgrade to a more expensive condominium unit in Grande Bay condominium. (Dkt. 148, pp. 5-6).

The Court understands the above allegations to refer to the conference call which took place on March 26, 2007 between Thomas J. LeFevre and William and Jason Turkish, at which Evan Berlin was present. William Turkish testified that it was not a[n in-person] meeting, but a phone call. (Dkt. 196-1, p. 114). The Court understands BCJJ to contend that between March 24, 2007, and March 27, 2007, Defendant Berlin acted as an agent of Berland Investments, LLC, TT, LLC and Bayonne Investments, LLC, in actively participating in the subject transaction between Thomas J. LeFevre and Plaintiff BCJJ. The Court also understands BCJJ to contend that between March 20, 2007 and March 23, 2007, BCJJ was represented by Christopher Sullivan as to "Transaction 1," and between March 24, 2007 and March 27, 2007, BCJJ was represented by Evan Berlin and Berlin Law Firm, P.A. in negotiating the terms of, and preparing documents to close, "Transaction 2." (Dkt. 196-1, pp. 23-26, 28, 150).

It is undisputed that Jason Turkish transmitted the draft side agreement to Evan Berlin on March 25, 2007. (Dkt. 257-5). In response, Evan Berlin transmitted a revised side agreement to Jason Turkish and Thomas LeFevre on March 26, 2007, and stated

"I think we need a call on this. I made some changes, but do not understand this agreement at all...." (Dkt. 257-6). Johanna Wood, on behalf of Evan Berlin, transmitted the final Revised Agreement, Security Agreement and Collateral Assignment of Distribution and Profits to Jason Turkish on March 26, 2007. (Dkt. 257-7).

It is undisputed that there was no formal retainer agreement between Plaintiff BCJJ and Defendants Evan Berlin and Berlin Law Firm, P.A., and there is no document or copy of a check which establishes that Plaintiff BCJJ, LLC, William Turkish or Jason Turkish paid a fee to Evan Berlin or Berlin Law Firm, P.A. as to "Transaction 2." Therefore, the Court relies on the subjective test in determining whether an attorney-client relationship was formed, which hinges on the belief of Plaintiff BCJJ, LLC, through its managers and/or agents William Turkish, and Jason Turkish, that Plaintiff consulted Evan Berlin and Berlin Law Firm, P.A. with the manifested intention of seeking professional legal advice.

The transaction at issue started as an arms-length transaction in which each party, Seller and Buyer, was represented by its own counsel. Seller Thomas J. LeFevre, acting in his various capacities, was represented by Evan Berlin, and Berlin Law Firm, P.A., and Buyer BCJJ, LLC, was represented by Christopher Sullivan, Esq.

After Buyer BCJJ determined not to proceed with "Transaction 1" and communicated this decision to Seller, LeFevre, there were further negotiations in which Buyer, BCJJ, requested additional terms, and Seller, Thomas J. LeFevre, offered additional terms,. The draft Unit Upgrade Agreement was transmitted to Evan Berlin by Jason Turkish on March 25, 2007, there was a conference call on March 26, 2007 between Seller and Buyer, and revised final documents were transmitted to Buyer on March 26, 2007. The closing of "Transaction 2" took place on March 27, 2007.