

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BCJJ, LLC,

Plaintiff,

v.

CASE NO. 8:09-CV-551-T-17EAJ

THOMAS J. LEFEVRE,
individually and as
Trustee of THOMAS J.
LEFEVRE LIVING TRUST,
et al.,

Defendants.

ORDER

This cause is before the Court on:

Dkt. 186 Motion for Summary Judgment - Bayonne, LLC
Dkt. 195 Response and Cross-Motion for
Summary Judgment
Dkt. 199 Deposition - W. Turkish
Dkt. 200 Deposition - J. Turkish
Dkt. 201 Deposition - L. Nadolski
Dkt. 202 Deposition - E. Berlin
Dkt. 205 Response

The Second Amended Complaint (Dkt. 148) includes the following claims as to Defendant Bayonne, LLC, f/k/a Bayonne Development, LLC:

Count I	15 U.S.C. Sec. 1703(a)(2) Interstate Land Sales Full Disclosure Act
Count II	Sec. 10b and SEC Rule 10-b(5)
Count III	Ch. 517.301, <u>Florida Statutes</u>
Count IV	Fraudulent Inducement
Count V	Negligent Misrepresentation
Count XI	Ch. 501.201, <u>Florida Statutes</u>
Count XII	Equitable Lien

Defendant Bayonne, LLC moves for summary judgment on each count asserted against Defendant Bayonne, LLC.

Plaintiff BCJJ, LLC opposes Defendant Bayonne, LLC's Motion, and has filed a Cross-Motion for Summary Judgment as to each count asserted against Defendant Bayonne, LLC.

Plaintiff BCJJ, LLC seeks entry of summary judgment on the basis that Defendant Bayonne, LLC was a direct participant in the transaction insofar as Defendant Thomas J. LeFevre, a managing member of Defendant Bayonne, LLC warranted that he "would cause Bayonne to use its 'best efforts' to provide Bayonne (sic) with an upgrade from Unit 241 to Unit 441 as part of the deal." Plaintiff BCJJ, LLC argues that the transaction was grounded on an explicit obligation from Defendant Bayonne, LLC, that in the circumstance that the condominium project was materially changed, was not completed by June 15, 2009, or cancelled due to a sale of the Waterfront Property, Plaintiff would receive a full refund of its deposit paid toward a unit in Grande Bay.

Plaintiff BCJJ, LLC argues that Defendant Thomas LeFevre had actual authority to act on behalf of Defendant Bayonne, LLC, as a manager of Defendant Bayonne, LLC. Plaintiff argues that the manager of a limited liability company is an agent of the LLC for purposes of its business. See Ch. 608.4235(2)(b), Florida Statutes (2009).

Plaintiff BCJJ, LLC further argues that Defendant Thomas LeFevre had apparent authority to act on behalf of Defendant Bayonne, LLC. Plaintiff BCJJ, LLC argues that Defendant Bayonne,

LLC held Defendant Thomas LeFevre out as its managing member and in various other ways as the individual with chief responsibility at Defendant Bayonne, LLC for development of the Waterfront Property. Plaintiff BCJJ, LLC argues that Defendant Thomas LeFevre was the President of Bayonne, LLC, and the signatory to the owner's affidavit for permit application purposes. Plaintiff BCJJ, LLC argues that the engineering firm retained by Defendant Bayonne, LLC to conduct subsurface soil exploration on the Waterfront Property referred to the site as the "LeFevre Project."

Plaintiff BCJJ, LLC argues that there is no record evidence that Defendant Thomas LeFevre lacked authority to act on behalf of Defendant Bayonne, LLC in connection with Plaintiff BCJJ's investment, and there is record evidence which establishes the opposite. Plaintiff BCJJ, LLC argues that Defendant Thomas LeFevre routinely acted on behalf of Defendant Bayonne, LLC in development matters, such as signing the owner's affidavit as part of a permit application, dealing with the architect for the proposed development as Defendant Bayonne, LLC's "president" and retaining the engineering firm which performed the subsurface soil exploration. Plaintiff BCJJ, LLC further argues that Defendant Thomas LeFevre, not Leonard Nadolski, negotiated the initial purchase contract with Plaintiff BCJJ, LLC for Unit 241 of the condominium.

Plaintiff BCJJ, LLC argues that the Operating Agreement does not give notice that Defendant Thomas LeFevre had no authority to bind Defendant Bayonne, LLC. Plaintiff argues that the Operating Agreement establishes Defendant Thomas LeFevre as one of Defendant Bayonne, LLC's two managers, along with Leonard

Nadolski. Plaintiff argues that the Operating Agreement provides that "All decisions shall be made by a majority of the then serving Managers" and provides a mechanism for resolving deadlocks. Plaintiff BCJJ, LLC argues that there is no provision in the Operating Agreement which states that notwithstanding his status as Bayonne's managing member, Defendant Thomas LeFevre is not an agent of Defendant Bayonne, LLC with authority to bind the entity. Plaintiff argues that such a provision would be necessary to defeat the statutory presumption that Defendant LeFevre was an agent of Defendant Bayonne, LLC, pursuant to Ch. 608.4235, Florida Statutes.

Plaintiff BCJJ, LLC argues that Evan Berlin's deposition testimony that Defendant Berlin told Plaintiff BCJJ, LLC that Defendant Bayonne was not a party to the transaction is contradicted by the express terms of the Unit Upgrade Agreement, which places Defendant Bayonne, LLC in direct privity with Plaintiff BCJJ, LLC. Plaintiff further argues that Defendant Thomas LeFevre's status as a managing member, and the lack of any provision in the Operating Agreement of Defendant Bayonne, LLC which restricted Defendant Thomas LeFevre's ability to act on behalf of Defendant Bayonne, LLC, establish Defendant Thomas LeFevre's status as an agent of Defendant Bayonne, LLC.

Plaintiff BCJJ, LLC argues that there is no record evidence of a disagreement between Leonard Nadolski and Defendant Thomas LeFevre as to Plaintiff BCJJ's investment. Jason Turkish testified that Plaintiff BCJJ, LLC was given no reason to believe that Leonard Nadolski objected to the investment transaction with Plaintiff BCJJ, LLC.

Plaintiff BCJJ, LLC argues that it is undisputed that Defendant Evan Berlin was Defendant Bayonne, LLC's counsel. Plaintiff argues that Defendant Berlin's testimony that he did not represent Defendant Bayonne, LLC in connection with Plaintiff BCJJ, LLC's investment transaction is self-serving and should not be credited.

Plaintiff argues that Defendant Berlin prepared the Joint Development Agreement, prepared the documents implementing Plaintiff BCJJ, LLC's transaction, prepared Defendant Bayonne, LLC's corporate documents and the documents for planned condominium on the Waterfront Property. Plaintiff BCJJ, LLC argues that Defendant Bayonne, LLC paid Defendant Berlin's bills, although Defendant Berlin performed work for both Bayonne, LLC and Bayonne Investments, LLC, and Defendant Bayonne Investments, LLC did not pay Defendant Berlin. Plaintiff argues that the evidence establishes that Defendant Berlin represented Defendant Bayonne, LLC at the time of Plaintiff BCJJ's investment, and in connection with that investment.

Plaintiff BCJJ, LLC argues that Defendant Berlin and his firm prepared and provided the documents which falsely represent Defendant Thomas LeFevre's ability to pledge his interest in TT and GLRS as security. Plaintiff argues that Defendant Bayonne, LLC is liable to Plaintiff through the acts of Defendant Berlin as Defendant Bayonne, LLC's agent.

Plaintiff BCJJ, LLC argues that there was a "joint venture" or "joint enterprise" relationship between Defendant Bayonne, LLC and Defendant Bayonne Investments, LLC. Plaintiff contends that the Joint Development Agreement and other evidence establish the

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presence of a joint venture relationship. Based on the presence of the joint venture relationship, Plaintiff argues that Defendant Bayonne, LLC is vicariously liable for the acts of Defendant Bayonne Investments, LLC.

I. Standard of Review

Summary judgment should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits, show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c).

"The plain language of Rule 56(c) mandates the entry of summary judgment after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

The appropriate substantive law will guide the determination of which facts are material and which facts are...irrelevant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). All reasonable doubts about the facts and all justifiable inferences are resolved in favor of the non-movant. See Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1115 (11th Cir. 1993). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." See Anderson, 477 U.S. at 248. But, "[i]f the evidence is merely colorable...or is not significantly probative...summary judgment may be granted."

Id. at 249-50.

II. Judicial Notice

The Court takes judicial notice of the public records of the State of Florida Division of Corporations, which establish that the name of Bayonne Development, LLC was changed to Bayonne, LLC on December 15, 2006.

The Court also takes judicial notice of the public records of the State of Florida Division of Corporations, which establish that Bayonne Investments, LLC was formed on September 27, 2005.

III. Statement of Facts

1. The documents which comprise the transaction of March 27, 2007 from which the claims in this arose are attached to the Second Amended Complaint (Dkt. 148), and include: 1) Exhibit B - Purchase Agreement for Membership Interest (Thomas J. LeFevre as Trustee of Thomas J. LeFevre Living Trust Dated October 8, 2001 ("Seller") and Tom's Friends, LLC ("Company") to BCJJ, LLC ("Purchaser") (Dkt. 148-2); 2) Exhibit C - Tom's Friends, LLC, Unanimous Consent of Members (Dkt. 148-3); 3) Exhibit D - Assignment of Membership Interests (Tom's Friends, LLC (Assignor) to BCJJ, LLC (Assignee)) (Dkt. 148-4); Exhibit E - Agreement between Thomas J. LeFevre as Trustee of Thomas J. LeFevre Living Trust Dated October 8, 2001 ("Seller") to BCJJ, LLC ("Buyer") ("Unit Upgrade Agreement") (Dkt. 148-5); Exhibit F - Security Agreement between Thomas J. Lefevre, Individually and as Trustee of Thomas J. LeFevre Living Trust Dated October 8, 2001

("Borrower") and BCJJ, LLC ("Lender") (Dkt. 148-6); Exhibit G - Collateral Assignment of Distributions and Profits between Thomas J. LeFevre, Individually and as Trustee of Thomas J. LeFevre Living Trust Dated October 8, 2001 ("Borrower") and BCJJ, LLC ("Lender") (Dkt. 148-7); Exhibit H - Closing Agreement between Thomas J. LeFevre as Trustee of Thomas J. LeFevre Living Trust Dated October 8, 2001 ("Seller") and BCJJ, LLC ("Buyer") (Dkt. 148-8).

2. Plaintiff BCJJ, LLC is a limited liability company which was formed for the purpose of purchasing Unit 241 in the Residences of Grande Bay in 2006. (Exhibit A - Contract for Purchase and Sale (Dkt. 148-1)). William Turkish and Francine Turkish were Plaintiff's managing members at that time. William Turkish resides in Florida part of the time and in Michigan part of the time, commuting back and forth. William Turkish has been a solo practitioner practicing Social Security law in Clearwater, Florida since 1982. William Turkish has been acquainted with Defendant Thomas LeFevre since the late 1990's, having met Defendant LeFevre while traveling between Florida and Michigan. In his deposition, William Turkish testified that, at some point after entering into the contract to purchase Unit 241, William Turkish lent Defendant Thomas LeFevre \$70,000 on an unrelated project (Dkt. 199-1, pp. 5-9, 14, 16-17).

3. Jason Turkish is the son of William Turkish and Francine Turkish. At the time of the subject transaction in March, 2007, Jason Turkish had a bachelor's degree in political science from the University of Michigan and was a candidate for a degree in urban planning from the University of Michigan. (Dkt. 200-1, p.

5). In his deposition, Jason Turkish testified that, within an urban planning class, he had looked at materials for projects that had balance sheets in them. (Dkt. 200-1, p. 27). Jason Turkish further testified that his legal training at the relevant time included two legal internships for judges in Michigan, and general office and clerical tasks in the law office of William Turkish. (Dkt. 200-1, p. 6).

4. In his deposition, Jason Turkish testified that, on March 27, 2007, he acted as a manager of Plaintiff BCJJ, LLC, pursuant to the request of William Turkish. (Dkt. 200-1, p., 169).

5. Defendant Thomas LeFevre purchased real property from Elling O. Eide on February 9, 2005. (Dkt. 186-2, p. 8.) The purchase included Tract A-1 and Tract C, the "Waterfront Property" and the "Commercial Property" referred to in the Second Amended Complaint (Dkt. 148).

6. Defendant Bayonne, LLC was formed for the purpose of developing the property then known as the "Bayonne Development Project." (Article 1.3, Dkt. 186-1, p. 61). The legal description of the real property is attached to the Operating Agreement (Exh. B, Dkt. 186-1, p. 41).

7. Defendant Bayonne, LLC was formed on May 11, 2005. Defendant was then known as "Bayonne Development, LLC." (Dkt. 186-1, pp. 8-39.) The membership of Defendant Bayonne, LLC included Thomas LeFevre, Leonard P. Nadolski, and others. (Exh. A, Dkt. 186-1, p. 85). Defendant Thomas LeFevre and Leonard P.

Nadolski were managing members of Defendant Bayonne, LLC. Defendant LeFevre held 24.54 "Units" of Defendant Bayonne, LLC, and Leonard P. Nadolski held 30.10 "Units" of Defendant Bayonne, LLC.

8. Article 6.4 of the Operating Agreement provides:

6.4 Number. There shall initially be two Managers. The Managers shall be **Thomas LeFevre** and **Leonard P. Nadolski**, who may each assign their management responsibilities hereunder to any entity of which either holds a controlling interest. The number of Managers may be increased only by the affirmative vote of the Members holding 70% or more of the outstanding Units. If at any time there is one Manager, then any reference in this Agreement to the "Managers" shall nevertheless refer to the single Manager. All decisions shall be made by a majority of the then serving Managers. If more than one Manager is then serving, any difference arising as to any matter within the authority of the Managers shall be decided by a majority in number of the Managers. A deadlock shall be deemed to exist if, with respect to any issue concerning the Company's affairs or management, the votes for and against the issue are evenly divided (a "Deadlock"). If a Deadlock occurs and is not resolved, then for as long as Leonard P. Nadolski or any entity of which he holds an interest (collectively "Nadolski") hold any Units, the decision/determination of Nadolski shall resolve the Deadlock. Notwithstanding anything contained herein to the contrary, the resolution of a Deadlock as provided herein does not relate to, or otherwise impair each Member's right to vote on any matter as provided elsewhere in this Agreement.

9. Defendant Thomas LeFevre's units in Bayonne, LLC were subject to Defendant LeFevre's obligations in the "Vacant Land Purchase Agreement" which is attached to the Operating Agreement. (Article 7.9, Dkt. 186-1, p. 29, Dkt. 186-1, pp. 43-49). The Vacant Land Purchase Agreement between Defendant Bayonne, LLC and Defendant Thomas LeFevre required Defendant LeFevre to purchase the "Commercial Property" for \$16,004,744.00.

10. The Operating Agreement includes an integration clause (Article 14.2), an interpretation clause (Article 14.7), and an applicable law clause (Article 14.11) (Dkt. 186-1, p. 37).

11. On July 11, 2005, Defendant Bayonne, LLC exercised its option to require Defendant Thomas LeFevre to purchase the Commercial Property under Article 7.9 of the Operating Agreement. (Dkt. 186-2, p. 26). The Option Letter specifies:

"Per that Agreement, the purchase price shall be \$16,004,744.00 plus a pro-rated share of closing costs and soft costs to be detailed in a future correspondence. The closing shall take place on or before September 12, 2005.

An access and utility easement of a specific nature and design to support the future condominium development in the adjacent 13 acre parcel shall be included with this transaction. Specific details of this easement are to be developed with you in the near future. The total costs to develop this access are to be shared between Bayonne Development, LLC and the new US-41 parcel development entity."

12. Defendant Thomas LeFevre formed Defendant Bayonne

Investments, LLC to purchase the Commercial Property from Defendant Bayonne, LLC. Defendant Thomas LeFevre was the sole managing member of Defendant Bayonne Investments, LLC. (Dkt. 148, p. 3, par. 11).

13. On October 25, 2005, the First Amendment to the Operating Agreement of Defendant Bayonne, LLC was executed (Dkt. 186-1, pp. 87-98). Paragraph 2(a) authorized two classes of "Units," "Managerial Units," and "Investment Units." In Paragraph 2(b), the First Amendment authorized a modification to Article 6.1. Article 6.1 of the First Amendment defines the Authority and Power of the Managers. Article 6.1 provides:

6.1 Authority and Power. Except as expressly set forth in this Agreement, and subject to Section 6.2 below, only Members who hold Managerial Units shall be the Managers, and each Member holding Managerial Unit(s) from time to time shall have full, exclusive and complete authority and discretion to manage and control the business of the Company and shall make all decisions affecting the business of the Company. Any person dealing with the Company may conclusively rely on a certificate signed by the Managers as to its identity and authority to act on behalf of the Company and without further inquiry may rely upon the authority of the Managers to perform any act or execute and deliver any instrument for the Company. Except as expressly set forth in this Agreement, the Managers shall have all the rights and powers which may be possessed by the Managers pursuant to the Act, or which are otherwise necessary to operate the Company, including, without limitation, the power to:

.....

(d) enter into agreements and contracts and to give releases, receipts and discharges;...

14. Paragraph 2(c) of the First Amendment authorized a modification to Article 6.4, which provides:

6.4 Number. There shall initially be two Managers, who shall each hold at least one Managerial Unit, as set forth on Exhibit A. The Managers shall be **Tom's S Corp, a Florida corporation**, and **Len's S Corp, a Florida corporation**. To the extent any other Manager's may have previously served in this capacity, the Members each hereby and approve the substitution of the aforesaid Managers for any previously designated/identified Managers. Each may further assign their management responsibilities to any entities of which either holds a controlling interest. The number of Managers and outstanding Managerial Units may be increased only by the affirmative vote of Members holding 70 percent or more of outstanding Units, and then only to the extent at least one Investment Unit is exchanged for at least one Managerial Unit, such that the total Units outstanding from time to time always equals 100. If at any time there is one Manager, then any reference in this Agreement to the "Managers" shall nevertheless refer to the single Manager. All decisions shall be made by a majority of the Managerial Units outstanding from time to time, and each outstanding Managerial Unit shall have one vote as Manager hereunder. If more than one Manager is then serving, any difference arising as to any matter within the authority of the Managers shall be decided by a majority in number of the Managerial Units then outstanding.....

15. Paragraph 2(h) of the First Amendment ratifies and

authorizes the sale of the real property contemplated by the "Vacant Land Purchase Agreement" between Defendant Bayonne, LLC and Defendant Thomas LeFevre. Defendant Bayonne, LLC and each member consented to the assignment of the Vacant Land Purchase Agreement to Defendant Bayonne Investments, LLC, and extended the closing date to 10/12/2005.

16. The Joint Development Agreement ("JDA") was executed on 10/12/2005, and recorded on 10/17/2005. (Dkt. 148-11, pp. 1-32). The JDA between Defendant Bayonne, LLC (then known as Bayonne Development, LLC) and Defendant Bayonne Investments, LLC specifies that it is a binding agreement and runs with the land.

17. In Paragraph 2 of the Operative Provisions, the Memorandum of Joint Development Agreement provides:

2. **Memorandum.** This Memorandum acknowledges and confirms the existence of that certain Joint Development Agreement dated October 12, 2005 (the "Agreement"), which Agreement, among other things (a) apportions responsibility and costs associated with the development, construction, use, and maintenance of certain improvements more particularly set forth therein (b) grants to Bayonne the right to make certain decisions with regard to the planning and development of the Total Property. The Agreement provides that the obligations, covenants and requirements therein shall run with and be binding on the affected parcels and/or their respective successors in interest. The terms and provisions of the Agreement are incorporated herein by reference.

18. The stated purpose of the JDA is "to provide for the development of certain shared infrastructure and the

apportionment of soft and other costs within and adjacent to the Total Property." In Paragraph 3, the JDA identifies the improvements the JDA is intended to cover: the primary access road for ingress and egress to the Waterfront Property, the underground utilities servicing the Commercial Property and the Waterfront Property, drainage facilities servicing both, stormwater retention/collection/drainage areas servicing both, landscaping along the primary access road, decorative features along the primary access road, fountains along the primary access road, ornamental lighting along the primary access road, hardscape detailing along the primary access road, signage along the primary access road, as well as all other improvements, access and Shared Utilities servicing both the Waterfront Property and the Commercial Property. (Dkt. 148-11, pp. 8-9).

19. The improvements to which the JDA applies are permanent improvements which will require ongoing maintenance. In Paragraph 11, the JDA provides for turning over the enforcement of the obligations of the JDA to a master Association to be created for the benefit of all owners, to which the Improvements, Access and Shared Utilities will be dedicated/conveyed/assigned. (Dkt. 148-11, p. 13).

20. In addition to the development of shared infrastructure and cost-sharing, the JDA specifies design approval, signage, marketing, the Guard House and construction timeframes.

21. In Paragraph 20, the JDA includes various reciprocal covenants, including the following:

(b). The Parties shall work together in good faith to establish and prepare a comprehensive and detailed master development plan and construction schedule for the Total Property. The Parties shall work diligently to implement the master development plan within the time frames set forth in the construction schedule. Notwithstanding the foregoing, the Parties reserve the right to create and implement a master plan of development that will not include the other's project (other than the Shared Utilities, Access and Improvements, which are necessary for the development of both projects), and may proceed to rezone its property (and cause its site plan to be approved) independently of the other's Project, provided however, given the location of the Commercial Property in relation to the Waterfront Property, any plans, applications, requests, permits and authorizations for the Commercial Property (a) must be approved by Bayonne, in Bayonne's sole discretion; (b) can have no adverse impact whatsoever on the Access, Share Utilities or Improvements within the Easement areas, and (c) can otherwise have no adverse impact whatsoever on the Waterfront Project. Each Party agrees that it will otherwise fully cooperate with the other to secure any and all local, state and federal approvals necessary to construct, or cause the construction and location of, the Access, Shared Utilities, and other Improvements on the Commercial Property in accordance with the provisions of this Development Agreement.

(c) Notwithstanding anything contained herein, once the Waterfront and Commercial Properties have been re-zoned by the municipality and binding, non-alterable site plans have been approved for each such parcel (the "Plans"), as long as Bayonne Investments, its successors and/or assigns do not attempt to change, modify, alter or deviate from such Plans, Bayonne shall not

have any right to modify, amend, alter, change, vary, ignore, fail to implement or otherwise deviate in any manner from the Plans (as they pertain to the portions of the Commercial Project unrelated to Access, Shared Utilities, or other Improvements) without the consent of Bayonne Investments, its successors and/or assigns, provided however, such consent shall not be required with regard to any matter pertaining to Access, Shared Utilities, or Improvements, or any matter contemplated by, or otherwise permitted by the Access, Drainage, Signage and Utility Easement Agreement of even date.

22. Defendant Bayonne Investments, LLC obtained a purchase money mortgage from Gold Bank to purchase the Commercial Property in 2005. Defendant Bayonne, LLC alleges that the mortgage was recorded after the JDA, and is subordinate to the provisions of the JDA, and foreclosure of the mortgage could not extinguish the obligations of the JDA.

23. Defendant M & I Marshall Bank purchased Gold Bank in 2006, and held the mortgage of Defendant Bayonne Investments, LLC on the Commercial Property at that time.

24. On April 3, 2006, Plaintiff BCJJ, LLC entered into a contract to purchase Unit 241 of Residences of Grande Bay, a Condominium. (Dkt. 148-1, pp. 1-29). William Turkish signed the contract as Purchaser, and Leonard P. Nadolski signed the Contract as Seller, in his capacity as President of Len's S Corp, which was the Manager of Bayonne Development, LLC (now known as Bayonne, LLC). William Turkish paid \$59,940.00 to Defendant Bayonne, LLC for an earnest money deposit.

25. The Purchase Agreement for Unit 241 states that it is subject to the Joint Development Agreement, and indicates that the Agreement is recorded. (Dkt. 148-1, p. 7).

26. In deposition, William Turkish testified that he was the first purchaser of a unit in Grande Bay, that the price of Unit 241 was \$699,000, but Defendant LeFevre sold it to him for \$599,000 "as a friend." (Dkt. 199-1, p. 19). William Turkish acknowledged that the contract allowed the developer to either construct the units or not construct them, in the developer's sole discretion. (Dkt. 199-1, p. 38).

27. In his deposition, William Turkish testified that, prior to making his investment of \$400,000, he did not read the JDA and did not know that the JDA was a recorded public document ((Dkt. 199-1, p. 129).

28. The transaction which culminated in the closing which took place on March 27, 2007 was initiated through a series of telephone communications between Defendant Thomas LeFevre, William Turkish, Jason Turkish, and Defendant Evan Berlin. (Dkt. 199-1, pp. 112-115)

29. In his deposition, William Turkish testified that Christopher Sullivan represented Plaintiff BCJJ, LLC as to "Transaction 1," which involved negotiations between March 15, 2007 and March 23, 2007. "Transaction 1" was to buy seven units of Bayonne Investments, LLC, and get an upgrade to purchase Unit 441 rather than Unit 241, without any security. William Turkish testified that Christopher Sullivan advised him not to accept the

offer of "Transaction 1." William Turkish testified that Christopher Sullivan did not represent Plaintiff BCJJ, LLC as to the transaction after March 23, 2007.

30. In his deposition, William Turkish testified that "Transaction 2" was seven units of Bayonne Investments, LLC, best efforts to upgrade from Unit 241 to Unit 441, and secured by TT, LLC and GLRS. (Dkt. 199-1, pp. 29-30). William Turkish testified that Jason Turkish handled the negotiations for "Transaction 2" from March 24, 2007 through the closing on March 27, 2007, with authorization from William Turkish, and with continuing reporting to William Turkish. (Dkt. 199-1, p. 34). William Turkish further testified that, in performing due diligence prior to making the investment of \$400,000, he drove by the GLRS waterfront home in which Defendant LeFevre had a proprietary interest, and relied on the opinion of Jason Turkish as to whether there was sufficient equity in TT or GLRS. (Dkt. 199-1, pp. 36, 40). William Turkish testified that Defendant Evan Berlin acted as his attorney at the closing of the transaction on March 27, 2007, although Defendant Berlin was not present at the closing. (Dkt. 199-1, pp. 24, 26, 150-155).

31. In his deposition, William Turkish testified that the most important thing to him in making the investment of \$400,000 was getting an upgrade to Unit 441, along with security in the event the condominium was not built or the property was sold. (Dkt. 199-1, pp 37-38, 55). William Turkish testified that the "Unit Upgrade Agreement" was the primary incentive to make the investment, not security for Plaintiff's investment. (Dkt. 199-1, p. 117).