SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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SUTTONGATE HOLDINGS LIMITED, Index No.: 652393/2015

Plaintiff, **DECISION & ORDER**

-against-

LACONM MANAGEMENT N.V., SAMIR ANDRAWOS, VIRGINIA IGLESIAS, KASHMIRE INVESTMENTS, LTD., IMMO KASHMIRE DEVELOPMENT INC., SEDNA GROUP LTD., KUIPER GROUP LTD., and OURISTA N.V.,

Defendants.

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JENNIFER G. SCHECTER, J.:

In 2014, plaintiff Suttongate Holdings Limited (Suttongate) loaned $8 million to Laconm Management N.V. (Laconm) pursuant to a Loan Agreement with defendants Laconm, Samir Andrawos (Andrawos or Samir), Virginia Iglesias (Iglesias or Vicky), Kashmire Investments Ltd. (Kashmire), Immo Kashmire Development Inc. (Immo), Sedna Group Ltd. (Sedna) and Kuiper Group Ltd. (Kuiper). Seven million dollars was used to pay off an earlier bank loan and the remaining $1 million was to be used to fund a real-estate development project in St. Maarten. The closing occurred in July 2014. Iglesias, however, did not attend or sign the loan agreement at that time due to a medical issue. Immo was not included in the original loan agreement that was signed in July.

Subsequently, an updated agreement was "made as of July 15, 2014" (Dkt. 1473 [Loan Agreement]). The only evidence of when the Loan Agreement was signed establishes that it was on December 3, 2014 in St. Maarten. Immo, among others, executed

this valid, enforceable agreement, and is bound by it (*see Suttongate Holdings Ltd. v Laconm Mgt. N.V.*, 173 AD3d 618, 619 [1st Dept 2019]). The Loan Agreement contains signatures corresponding to each party. Iglesias swears, however, that she did not sign the agreement and that her signatures on it are forgeries.

The believable evidence, however, refutes her incredible claim.

Procedural History

On July 7, 2015, Suttongate commenced this action, alleging that defendants breached the Loan Agreement and guarantees of obligations thereunder. Suttongate's operative pleading is its second amended complaint filed on January 18, 2017 (Dkt. 321).

The action was originally tried in 2018.

On appeal, the Appellate Division made the following findings:

- "The Loan Agreement should be enforced against Laconm, Andrawos, Kashmire, Immo, Sedna and Kuiper" (173 AD3d at 619).

- Andrawos, Kashmire, Sedna, Kuiper and Ourista N.V. signed absolute and unconditional guarantees applicable to "all of Laconm's indebtedness to plaintiff" (*id.*).

- A new trial was required to ascertain if the signatures on the Loan Agreement were Iglesias's (she disputed her signature) and whether she breached (*id.* at 618, 620) because those issues were not reached in the 2018 trial.

- "Iglesias did not sign a personal guarantee in plaintiff's favor" (*id.* at 619).

- Fraud and breach-of-fiduciary duty claims against Arie David (David), who was Suttongate's transactional counsel in connection with the 2014 loan, must be dismissed for lack of damages (*id.* at 620).

Per the Appellate Division, the only two issues to be tried were (1) whether Iglesias signed the Loan Agreement and, (2) if so, what, if any, obligations she breached.

February 2020 Trial

The court conducted a bench trial from February 24 through February 27, 2020 (*see* Dkts. 1424-1427). The fact witnesses – David, Powers, Iglesias, Nathan Ferst, Sylvain Defienne and Warren Defienne – provided direct testimony by affidavit (Dkts. 1382-1386, 1389, 1392-1393). The parties' experts, Patricia Zippo and Laurie Hoeltzel (Dkts. 1390, 1391), whose reports and exhibits thereto are in evidence, did so as well (Dkts. 1249, 1523, 1524). The court also considered prior deposition and trial testimony cross-designated by the parties.[1] The parties filed post-trial briefs on May 5, 2020 (Dkts. 1468, 1498).

Having had the opportunity to assess the witnesses' credibility at length and up close, there is no doubt that Iglesias both signed and breached the Loan Agreement. Plaintiff's representatives credibly testified to having personally witnessed Iglesias, as well as all of the other signatories, sign the Loan Agreement at a December 3 meeting, and plaintiff's expert--though unnecessary because nothing convinced the court there was any forgery in the first place--was credible as well.

[1] The court, as finder of fact, must weigh the credible evidence to come to its conclusions. All of the documents on which the court relied are cited herein and are in evidence. The parties' unresolved evidentiary objections are denied as moot. That said, for the avoidance of doubt, the court chose to carefully review ALL of Iglesias's evidence (including the submitted prior testimony) to which Suttongate objected to ensure Iglesias would not be prejudiced by its exclusion.

By contrast, Iglesias was inconsistent, evasive and not credible. From day one, her testimony didn't hold up. The same is true of both Warren and Sylvain Defienne. The court also found the opinions of Iglesias's expert to be unpersuasive.

In sum, Iglesias is bound by the obligations that she personally undertook when she signed the Loan Agreement. Other than belatedly putting first-mortgages on the properties--under a court mandate that she ignored for years--she has not performed.

Findings of Fact

The Parties' Negotiations

Around December 2013, Iglesias and her business partner Andrawos had discussions with David and his daughter Charyn Powers (Powers), who was an investment advisor for Suttongate, about a deal that would result in repayment of a loan that RBC Royal Bank N.V. (RBC) made to companies indirectly owned by Iglesias and Andrawos, which Iglesias and Andrawos had personally guaranteed (the RBC Loan). The RBC Loan had an outstanding balance of approximately $9.5 million. The plan was that Suttongate would purchase the RBC Loan for $7 million and provide Iglesias and Andrawos with another $1 million to develop properties they indirectly owned through interests in other companies. Over the next few months, the parties discussed the parameters of their agreement and how it would be structured. It was agreed that Suttongate would make an $8 million loan to Laconm, which would be secured by 23 lots of property in St. Maarten

and be guaranteed by the corporate entities that owned and managed those properties and by Iglesias and Andrawos personally.[2]

Iglesias denies having had conversations in which these terms--most notably her personal guarantee--were discussed and agreed upon with David and Powers. That testimony is unbelievable. On the contrary, the court finds David's testimony[3] that all of

[2] The parties also later agreed that a company in which David had a minority stake, Waverly Investments Ltd. (Waverly), would acquire an indirect 50% interest in the properties through a stake in the entities that owned such properties. This portion of the deal is no longer material since, by virtue of a settlement reached in July 2019 and an order dated October 8, 2019, Waverly was obligated to give back those interests in exchange for $307,462 in a simultaneous exchange at a closing that was to occur by January 7, 2020 (*see* Dkt. 1123). Waverly's counterparties to that settlement are in violation of the October 8 order and Waverly has moved to hold them in contempt.

[3] The court is mindful that David potentially may have violated one or more ethical rules (173 AD3d at 619 [the Appellate Division assumed arguendo]). His testimony at trial was credible and consistent. His answers were generally responsive. The same holds true for Powers. The opposite is true of Iglesias and the Defiennes. They were consistently evasive and untruthful. For example--and the court cannot be exhaustive because there are so many examples--Iglesias swore that her "general practice" was to initial the pages of contracts she signs (Dkt. 1382 at 9 ¶ 43) purportedly as proof that she did not sign the Loan Agreement, which did not have her initials on each page and was not signed in front of a notary. On the first day of trial, however, asked if it was her practice to put her initials on every page when signing an agreement, she testified "Sometimes, maybe I would put initials. It just depends. Usually, you know, I put initials if there is a notary and I could have one or something out of place, but pretty much put initials. You know, usually I do, if there's a notary in place" (Dkt. 1424 [Tr. at 206]). She then testified: "it depends on whatever the scenario is at the moment" and if her counterpart did not say one thing or another about initialing "then we probably just do the fin – the one signature" (*id.* at 208). Confronted with her affidavit, she backtracked and insisted that she did have a "general practice" to initial a serious document and in St. Maarten "there's no way you could not have a legal—a document and not put all of your initials and your signature" (*id.* at 211). Iglesias could not get her story straight and cannot be believed. She would give testimony and then contradict it or had to have the record corrected. She also arbitrarily "disputed" whether she signed or initialed documents without any coherent rhyme or reason. The Defiennes fared no better. Warren Defienne, for example, testified that he "unfortunately . . . probably didn't read [his direct affidavit] properly" and missed mistakes (Dkt. 1427 [Tr. at 685-86]) and that his father did not sign the Loan Agreement despite his father repeatedly testifying that he had (*id.* at 653, 656, 660). Sylvain Defienne testified that he has no recall of when he signed the Loan Agreement or who was there and also that statements in his affidavits "could be wrong" (*id.* at 660). This is just the tip of the iceberg. There were some

the terms were explicitly discussed and agreed upon by March 2014 and that David personally went through and negotiated the terms of the Loan Agreement with her to be credible. Indeed, the record establishes that Suttongate emailed Iglesias multiple drafts of the Loan Agreement, that she saw those emails and even pointed out that her name had been misspelled.[4] The court does not find Iglesias's denials or any of her testimony about what she knew or agreed to be credible. The court finds that she lied, repeatedly, about her meetings and discussions with David and their agreements. The court does not find Iglesias to be a credible witness based on her evasive testimony, consistent refusal to answer questions in a straightforward manner, alteration of her testimony as she realized the adverse impact of many of her statements, and her general demeanor during her testimony, all of which leave no doubt that she was not telling the truth and cannot be believed.[5]

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instances where Iglesias and the Defiennes testified cogently, responsively and truthfully. Sadly, they were exceptional, isolated and stood out. They were also on immaterial matters. Most importantly, Iglesias and the Defiennes were unbelievable to the extent that any of them at any point denied actually signing the Loan Agreement or remembering that they signed it (indeed, if Warren Defienne knew that he did not sign the agreement that defense would have been raised as to Immo). These defense witnesses also testified to shockingly selective memories. They could recall minute details of minute events but not important details about more significant events.

[4] The first draft was sent to her on February 27, 2014 (Dkt. 1474), and after further negotiations, another draft was sent to her on March 17, 2014 (Dkt. 1477). She also was sent the final version before the closing in July 2014 (Dkt. 1482), but claims to not have reviewed it or attended the closing due to recuperating from surgery (*see* Dkt. 1484). The court knows that Iglesias reviewed the drafts based on Powers' testimony that Iglesias pointed out that her name had been misspelled and that, in response, David attempted to correct the error. The drafts are consistent with that testimony and also show that David did not catch and change all of the misspellings. Iglesias's name remained misspelled on the signature lines in all of the drafts and on the executed contract.

[5] One must personally witness the testimony to have a full appreciation of the person's credibility (or lack thereof) (*see U-Trend N.Y. Inv. L.P. v US Suite LLC*, 179 AD3d 532 [1st Dept 2020]). Iglesias is one of the least believable witnesses this court has observed. She is intelligent and not

The Closing

On July 29, 2014, a closing was held at which the loan agreement, dated as of March 7, 2014, along with other agreements involving RBC were signed (Dkt. 1470). Though she had been sent the loan agreement prior to the closing and was expected to attend (*see, e.g.,* Dkt. 1482), Iglesias was not there because she was recovering from surgery; thus, she did not sign the loan agreement at that time (*see* Dkt. 1484). At the closing, Suttongate paid $7 million to RBC to purchase the RBC Loan and transferred $1 million to David's trust account to fund the balance of the loan to Lanconm, which was later disbursed to it.

The Loan Agreement

Over the next few months, David and Powers sought to arrange a meeting to sign an amended version the loan agreement, dated as of July 15, 2014, for two principal reasons: (1) so that Iglesias could sign; and (2) to add Immo as a party as it had come to light that some of the properties were owned by it (Dkt. 1473 [the Loan Agreement]).[6] It was imperative that Iglesias sign because she had monetary and non-monetary obligations thereunder. Moreover, David and Powers kept urging Iglesias to sign a personal guaranty.

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in the least naïve. The record established that she works very hard to avoid her obligations. She shirked her contractual responsibilities despite receiving substantial benefits from Suttongate.

[6] There were other documents executed at the December 3 meeting whose import is not relevant except to the extent that their execution is further evidence that the December 3 meeting occurred (*see* Dkt. 1468 at 14-15).

The December 3 Meeting

On December 1, 2014, David and Powers traveled to St. Maarten to meet with Iglesias and Andrawos so that all of the outstanding documentation, including the Loan Agreement, could be signed.[7] On December 3, 2014, David and Powers drove in their rental car to the offices of Iglesias and Andrawos, who then drove them all to the offices of Sylvain Defienne, an accountant who handled Iglesias's business and was the sole shareholder of Lanconm. David testified that:

> At Mr. Defienne's office, we went into a conference room and sat around a table. Charyn signed the Loan Agreement on behalf of Suttongate. In my presence, each of Vicky and Samir signed the Loan Agreement in their individual capacities. Warren Defienne (Sylvain's son) signed for Kashmir, Immo, Sedna, and Kuiper, and Sylvain Defienne signed for Laconm. Sylvain's secretary made copies of the Loan Agreement and I retained the original, which I have since provided to my counsel. I have never seen an executed signature page for this Loan Agreement without Vicky's signature (Dkt. 1392 at 14 ¶ 49).

Likewise, and in even more detail, Powers testified as follows:

> On December 3, 2014, Arie and I drove in our rental car to Vicky's and Samir's offices. From there, Vicky and Samir drove us to Sylvain Defienne's office. I sat in the back seat. Both Sylvain and Warren attended the signing, though I remember that Warren arrived quite late and disheveled as he said he had gotten a flat tire and had to wait for someone to pass by on the road to help him.
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> The signing took place in a conference room at the Defiennes' office. Vicky, Samir, Sylvain, Warren, Arie, and I all attended and sat at the same table. Vicky sat to the right of Arie. Samir sat on Arie's left at the head of the table closer to the door. Sylvain sat on the other end of the table, and I sat across from Arie and Vicky with Warren. I asked if we should all sign the Loan Agreement with the same pen, and Sylvain pointed to a cup in the middle of

[7] They submitted their travel records and the court credits their testimony that they were in fact in St. Maarten between December 1 and December 6, 2014 (*see* Dkt. 1512).

> the table that was full of blue pens and responded that all of the pens were the same.
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> I signed the corrected Loan Agreement, which had been re-dated as of July 15, 2014, on behalf of Suttongate and I watched as Vicky and Samir each signed that Agreement as well. I also watched as Sylvain Defienne signed on behalf of Laconm and Warren Defienne signed on behalf of Kashmir, Immo, Sedna, and Kuiper. We each signed twice – on pages 14 and 19. We all signed the same document, so all of our signatures appear on the same two pages. Sylvain's secretary made copies and Arie retained the original.
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> I was shocked to hear Vicky testify that she never signed the Loan Agreement, as I was present when she signed it and personally witnessed her do so. She drove with us to the Defiennes' office in Samir's car and sat right next to Arie in the conference room. Samir, Sylvain, and Warren have not disputed their signatures, yet I have never seen a copy of the Loan Agreement that has their signatures but not Vicky's (Dkt. 1393 at 18-19 ¶¶ 58-61).

David and Powers were credible. Their testimony was consistent with the other credible evidence at trial. Iglesias's testimony to the contrary was not credible and was not consistent with either the documents (including the parties' correspondence) or the course of the parties' post-execution conduct.[8]

The court does not believe the testimony of Sylvain and Warren Defienne to the extent that they either deny or do not remember attending the December 3 meeting and

[8] It cannot be emphasized enough that on cross examination and in responding to the court's questions David and Powers came across as credible, while Iglesias and the Defiennes did not. Iglesias maintains that David and Powers were "rehearsed." If they were fabricating the story of her signing and wanted to rehearse a lie, it would have been much easier for them to make up a story about her being alone with them when she signed. If they or their agents were responsible for forging her signature (which, to be clear, Iglesias does not accuse them of here), they could have done so on a comprehensive personal guaranty instead of just on the Loan Agreement. Everything simply lines up with David's and Powers's account and nothing makes sense about Iglesias's and now Warren Defienne's my-signature-appears-on-the-document-but-I-didn't-sign contention.

signing the Loan Agreement. Based on their demeanor and inconsistencies in their testimony, the court is convinced that they remember the meeting and know they signed. The court does not find any of their contrived testimony about why they might not have signed to be credible. The Defiennes' obvious allegiance to Iglesias--with whom they have a longstanding personal and professional relationship--who paid their travel expenses and for their time testifying, explains their less than forthright, cagey testimony. Nor is the court moved by any of the prior testimony submitted by Iglesias.[9]

Aside from the lack of credibility of Iglesias and her witnesses, there is circumstantial evidence, such as other documents executed at the December 3 meeting, that convince the court that such meeting occurred and that Iglesias was present and signed the Loan Agreement at that time (Dkt. 1468 at 14-15; *see* Dkt. 1507). The notion that the Loan Agreement was too important to sign without being notarized is not credible since the prior version was signed in July 2014 in the presence of a notary, who notarized other documents executed that day – but not that earlier version of the Loan Agreement (*compare* Dkts. 1471, 1472 at 5, *with* Dkt. 1470 at 14, 19). This proves that the parties did not believe a

[9] The court, over Suttongate's objection, considered the prior testimony of Andrawos even though he was in New York during the trial and Iglesias could have subpoenaed him if she truly had no control over him and wanted him to testify on her behalf (*see* Dkt. 1468 at 54). His submitted testimony is worthless. Andrawos swore that when he signed the Loan Agreement "probably" David was present. He does not recall when he signed. He also does not think Iglesias signed and conclusorily testified that he didn't think it was her signature on the document. Later, however, he could not answer whether her signature appeared on a different document and could only confirm his signature (*see* Dkt. 1503 at 165-69). That bare testimony is certainly not convincing particularly when compared to the detailed, thorough testimony given by David and Powers, who this court observed and finds credible.

notary was necessary to sign the Loan Agreement and thus it is not the least bit suspicious that it was not notarized.

The court also does not credit the argument that the lack of each witnesses' initials on every page is suspicious. The parties clearly were inconsistent about when they would initial the pages of every document (indeed Iglesias herself casted doubt on whether she would have initialed in the absence of a notary), and so the absence of some of the parties' initials does not trouble the court. Nor is the court troubled by the fact that Iglesias's printed name below the signature line is misspelled as "Inglesias" (*see* Dkt. 1473 at 14, 19).[10] In any event, and most importantly, the court credits David's and Powers's testimony that they witnessed Iglesias sign the Loan Agreement.

Based on personal observation of her testimony and on her methodology, the court also rejects the testimony of Iglesias's handwriting expert, Laurie Hoeltzel, as extremely unpersuasive. Hoeltzel simply compared a few examples of Iglesias's signature to the iterations on pages 14 and 19 of the Loan Agreement and concluded that they differed enough to believe the iterations on the Loan Agreement are not Iglesias's. This is as unscientific as it gets. It smacks of outcome-oriented cherry picking rather than a desire to

[10] Powers credibly testified that Iglesias's name had been misspelled throughout prior drafts, and that this was mostly corrected after Iglesias brought it to David's attention (Dkt. 1424 [Tr. at 159-64]; *compare* Dkt. 1474 at 2 [name spelled both ways on same page], *with* Dkt. 1477 at 5, 29 [spelling corrected]). It appears that the only instance where the misspelling was not corrected is on the signature lines. Thus, it seems that the misspelling was noticed months before the December 3 meeting and was corrected by David, but that he failed to notice the misspelling on the signature lines. The court credits David's testimony that this was an oversight and this issue does not convince the court that Iglesias did not sign. The court finds that Iglesias simply overlooked or did not catch the misspelling of her name on the signature lines and does not credit her testimony that she would never have done so.

create a representative sample. Unsurprisingly (considering that this court is convinced that Iglesias was present and signed but surprisingly from an analytical perspective), Hoeltzel did not consider other readily available examples of Iglesias's signature – that Iglesias herself did not dispute are authentic – that look extremely similar to the signatures in the Loan Agreement (*see* Dkt. 1468 at 51). When it comes to Iglesias' abbreviated signature, which she has used on important documents that called for her signature (and not just her initials), Iglesias, like many people, does not sign the exact same way every single time. Hoeltzel admitted the obvious fact that peoples' signatures will not always be consistent and that variations must be accounted for before concluding a particular version is a forgery. Hoeltzel conveniently ignored the variations that look quite similar to the versions on the Loan Agreement, rendering her methodology unpersuasive and her conclusions unreliable. Consequently, Hoeltzel did not come close to convincing the court that Iglesias's signature on the Loan Agreement is a forgery.

By contrast, the court found Suttongate's expert, Patricia Zippo, to be credible. While the court found Zippo's methodology and testimony credible and was persuaded that "the Disputed Signatures were written by Ms. Iglesias" (Dkt. 1390 at 20 ¶ 57), the court need not even go that far. Zippo's conclusion is gratuitous since the court believes David and Powers personally witnessed Iglesias sign the Loan Agreement at the December 3 meeting and the court rejects Hoeltzel's contention that there is a reliable basis to conclude that the signatures are forgeries. Credible testimony by people in the room where it

happened takes precedence over an expert's conclusion to the contrary, which is based on a flawed methodology.

Iglesias's other testimony and arguments about why the court should believe she never signed the Loan Agreement are not credible either. Without any doubt, Iglesias signed the Loan Agreement and is bound by its terms.

Conclusions of Law

Because the evidence overwhelmingly and convincingly established that Iglesias signed the Loan Agreement (easily meeting the preponderance standard and there was no credible proof whatsoever of forgery), she, like the other defendants (except for Ourista, which was a guarantor under a separate agreement) is bound by the obligations in the Loan Agreement. The parties dispute what those obligations are.[11] Suttongate maintains that the Loan Agreement obligates Iglesias to personally repay the loan, to put first mortgages on the properties, to obtain insurance and to pay its attorneys' fees. Iglesias urges that the Loan Agreement unambiguously did not impose any of these obligations on her despite alleging to the contrary in her own pleading (Dkt. 328 at 32-33 ¶ 90 [David drafted agreements to provide that Iglesias, among other things, was obligated "to pay $8 million to Suttongate, plus interest"]). Iglesias does not suggest that she has any obligations under

[11] After Suttongate rested, Iglesias made an oral motion for a directed verdict on the meaning of the disputed provisions based on their supposed unambiguity (Dkt. 1426 [Tr. at 506-09]). The court reserved on the motion (*id.* at 509). Because the Loan Agreement is ambiguous, that motion is denied.

the Loan Agreement. Her interpretation, which is not supported by the agreement or the evidence, begs the question of the significance of her signature altogether.[12]

The Loan Agreement must be read as a whole without resort to extrinsic evidence and interpreted according to its plain meaning if it is possible to do so (*W.W.W. Assocs., Inc. v Giancontieri*, 77 NY2d 157, 162 [1990]; *see Beal Sav. Bank v Sommer*, 8 NY3d 318, 324-25 [2007] ["a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose"]). It is only if there is more than one reasonable interpretation of it that extrinsic evidence should be considered to resolve an ambiguity about the parties' intent (*Ellington v EMI Music, Inc.*, 24 NY3d 239, 244 [2014]).

Section 1 of the Loan Agreement provides that Suttongate (defined as the Lender) was making an $8 million loan to Lanconm (defined as the Borrower) (Dkt. 1473 at 4). This is unambiguous and indicates that Lanconm is the primary obligor responsible for repayment.

Section 4 is the critical and most disputed provision here. It provides that the $8 million loan ("Loan") "shall be secured by first mortgages on all the Properties . . . , on any

[12] It is astounding that this case has gotten as far as it has (two trials and multiple appeals) if Iglesias verily believes that signing the "unambiguous" Loan Agreement would only have negligible consequences for her anyway.

leases' income on the Properties, and also shall **be personally guaranteed by each of Vicky**, Samir and Corporations" (*id.* at 5 [emphasis added]).[13]

Iglesias maintains that this provision merely says that the loan "shall" be personally guaranteed by her in the future but that it never actually was and that Suttongate waived that future obligation by not obtaining a separate guaranty. She also argues, now and has done so in the past, that because she personally does not own the properties, it could not have been contemplated that she would be a party responsible for securing the first mortgages. She maintains that the mortgage requirement was waived by its untimely enforcement as well.

That the parties inserted the mortgage and guaranty language in the same provision, when so many of the Corporations' other non-monetary obligations are contained separately in section 9, indicates their intent for the individuals to be liable for these obligations. Section 4, unlike certain provisions of section 9 (*see id.* at 6-7 §§ 9[2], 9[6], 9[11]), does not limit who is responsible for securing the mortgages. When the parties wanted to limit responsibilities, they knew how to and did so. Any and all signatories who had the ability to secure the first mortgages were obligated to do so because the Loan Agreement required that they shall.[14]

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[13] "Corporations" is not a defined term but it clear that it refers to Lanconm and each of the corporate defendants that are parties to the Loan Agreement.

[14] It is inconceivable that the provision unambiguously creates no mortgage obligations, considering that in the context of a preliminary injunction the Appellate Division affirmed that it was likely that Iglesias had a personal obligation in this regard (*Suttongate Holdings Ltd. v Laconm Mgmt. N.V.*, 159 AD3d 514, 515 [1st Dept 2018] ["these are contractually bargained-for rights

Indeed, the word "shall" is used twice in section 4: to describe both the mortgage and guaranty obligations. It makes sense that the word has the same temporal meaning for both obligations. Just as Iglesias agreed in section 4 to procure the mortgages, she also agreed to guarantee the loan. The Appellate Division made that clear, moreover, by describing Suttongate's "**rights** guaranteed by both the individual and the corporate defendants" (159 AD3d at 515 [emphasis added]). Thus, there was no requirement that Iglesias execute another more comprehensive document at a later date.

To be sure, if she had done so in the form that Andrawos did (as the evidence showed she was supposed to do but escaped), she would personally be responsible for all of the obligations set forth there (including all of the RBC indebtedness and attorneys' fees) and under the terms set forth there. That does not mean, however, that her covenant in section 4 is without force. In the Loan Agreement, she committed to personally guaranteeing the Loan and is bound by that obligation. This interpretation is consistent with the language of the agreement, with the understanding set forth in Iglesias's counterclaim and with the credible testimony provided by David and Powers. David explained that he knew the Corporations were shells and this provision was required to ensure that the imposition-of-first-mortgages obligation was not illusory and that there was personal recourse for the

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guaranteed **by both the individual** and the corporate defendants"] [emphasis added]). The evidence at trial emphatically confirmed the likelihood-of-success assessments made by two courts earlier.

loan. This is the very reason that both Iglesias and Andrawos signed in their individual capacities (Iglesias did not even sign on behalf of any of the entities).[15]

Nor does it matter that her guaranty obligation for repayment of the "Loan" itself was not restated in section 9 (*see* Dkt. 1473 at 6 § 9[1] [including the "*additional* undertaking" that "the Corporations will pay the *indebtedness* as hereinbefore provided" [emphasis added]).

The Loan Agreement, thus, obligates Iglesias to secure the first mortgages and guarantee the "Loan" (as opposed to all of the indebtedness in its entirety).[16]

The Loan Agreement does not, however, obligate Iglesias to pay for insurance pursuant to section 9[2] or for attorneys' fees pursuant to section 9[11]. Although section 9 opens with "Each of Samir, Vicky and Corporations covenants with the Lender as follows," that language does not bind the individuals to each and every one of section 9's specific provisions. If it did, for example, language in certain subdivisions would be completely redundant [*see id.* at 7 § 9[8] ["each of Samir, Vicky and the Corporations warrants the title to the Properties"]). It cannot be ignored that many of the "additional undertakings" specify the particular signatory responsible and the court is not persuaded, based on the Loan Agreement's language, that the introductory "each covenants" meant

[15] The Loan Agreement provides, moreover, that who drafted it "shall not be considered a factor in interpreting" it (Dkt. 1473 at 13 § 24).

[16] This may ultimately be an academic distinction in light of the RBC-Loan guaranty that was transferred to Suttongate, which Suttongate is now seeking to enforce in another action (*see* Dkt. 1485 [releasing RBC's claims but making clear Iglesias is still liable as a guarantor on the RBC Loan to Suttongate]).

personal obligations were being imposed for each and every obligation that followed. A better reading is that each of "Samir, Vicky and the Corporations" covenanted that the specified signatories would be responsible for the corresponding undertaking and in the absence of a specific party, they were all responsible. Therefore, it is the Corporations that were required to obtain or pay for insurance (*see* §§ 9[2], 9[9]) and the Corporations that are mandated to pay reasonable counsel fees (*see* § 9[11]).[17]

Iglesias's argument that the Loan Agreement is not enforceable because the "Closing" never took place is rejected. David and Powers credibly testified that the Closing referred to in the Loan Agreement occurred in July 2014 and that the December 3 meeting at which Iglesias signed the Loan Agreement was merely an additional appointment to remedy her absence at the July 2014 Closing and add Immo. In any event, Iglesias waived the right to challenge the enforceability of the Agreement by accepting very substantial benefits thereunder and only raising this hyper technical immaterial issue years later (*see GEM Holdco, LLC v RDX Techs. Corp.*, 167 AD3d 491 [1st Dept 2018]).[18]

The court has considered Iglesias's other contentions and finds them unavailing.

[17] Andrawos was required to pay attorneys' fees based on his separate, comprehensive personal guaranty, the scope of which included the Corporations' non-monetary obligations (Dkt. 1471). The Loan Agreement does not go nearly as far.

[18] Aside from benefitting from her companies getting another $1 million to develop the properties, she was able to avoid liability on her personal guaranty to RBC in 2014 and has been able to forestall collection on that debt for almost a decade.

Conclusions

- Iglesias signed the Loan Agreement.
- She is liable for all unpaid principal and interest on the $8 million loan made by Suttongate.
- In this action, she is not liable for the additional principal and interest due under the RBC Loan.[19]
- Iglesias is responsible for placing first mortgages on the properties.
- Iglesias is not required to procure insurance policies or to pay Suttongate's legal fees in this action.[20]

Accordingly, it is

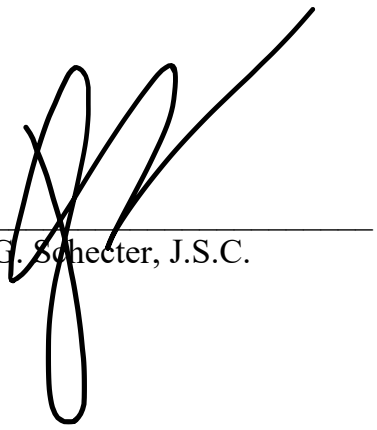
ORDERED that by May 28, 2020, Suttongate shall e-file and email the court a proposed judgment in accordance with this decision, Iglesias may e-file and email the court a counterproposal along with a redline by June 4, 2020, the parties shall meet and confer to attempt to resolve any disputes over the submissions and shall e-file and email the court a joint letter addressing such disputes by June 9, 2020, and a telephone conference will be held on June 11, 2020 at 3:00 p.m. to address the parties' submissions and all other issues necessary to conclude the proceedings in this court; and it is further

[19] As discussed, she may be held liable in another pending action based on the guarantee of that loan.

[20] The parties agreed to defer the attorneys' fees claim until after trial and to have the matter referred to a referee to hear and report (though they need to submit a stipulation to this effect for a reference to actually occur). That reference, by virtue of this decision, shall exclude Iglesias. That said, unless the parties resolve the attorneys' fees prong of Suttongate's contempt motion, Iglesias will be liable for those fees and the parties should consider adjudicating those amounts in the same reference.

ORDERED that, for the avoidance of doubt, the preliminary injunction issued against Iglesias shall remain in effect until the entry of judgment against Iglesias.

Dated: May 22, 2020 ENTER:



Jennifer G. Schecter, J.S.C.