STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Northwood Plaza, LLC, Plaintiff, vs. Stockbridge Enterprises, Inc., and Stockbridge Myrtle Beach, LLC, Defendants.	)	CASE NO.: 2020-CP-26-03473 **FINAL ORDER**

The parties tried this case before the Court, without a jury, on May 30–31, 2023. Walter H. Cartin, Esq. and J. Evan Phillips, Esq. represented Plaintiff Northwood Plaza, LLC ("Northwood"). Robert W. Buffington, Esq. represented the Defendants Stockbridge Enterprises, Inc. and Stockbridge Myrtle Beach, LLC (collectively, "Stockbridge"). After having reviewed the parties' pleadings, motions, and other filings, and having considered the documentary evidence, witness testimony, and arguments of counsel presented at trial, and for the reasons set forth below, the Court (i) finds in favor of Northwood; (ii) grants the relief requested by Northwood, including an award of its attorneys' fees and expenses; and (iii) denies all relief requested by Stockbridge.

SUMMARY

I. NORTHWOOD'S CLAIMS

This case began as a simple collections action when Northwood initiated a lawsuit against Stockbridge to enforce the terms of the Contract of Sale (the "Contract") governing the parties' post-closing monetary reconciliation obligations after Northwood's sale, and Stockbridge's purchase, of an approximately 197,888 square foot shopping center located at 7753 North Kings Highway, Myrtle Beach, South Carolina 29572 (the "Property" or "Northwood Plaza"). Specifically, after Stockbridge refused to make certain post-closing payments due to Northwood

under the Contract in the amount of $129,394.82 (the "Post-Closing Reconciliation"), Northwood filed this lawsuit, asserting causes of action for breach of contract and conversion[1] to recover the Post-Closing Reconciliation, plus its attorneys' fees and expenses incurred to enforce the parties' contractual obligations.

The Post-Closing Reconciliation is made up of three components. First, Northwood claims it is entitled to be reimbursed by Stockbridge in the amount of $41,909.27 (the "CTI Reconciliation") for the excess of the total CTI[2] charges Northwood incurred over the total CTI payments received from tenants from January 1, 2019 through the day before the closing date[3] (the "Adjustment Period"). After Northwood requested that Stockbridge reimburse it for the CTI Reconciliation pursuant to the Contract, Stockbridge refused and claimed it was not required to do so because those payments had not been collected from tenants. Northwood then informed Stockbridge that its right to the CTI Reconciliation under the Contract was not dependent on Stockbridge's collections. However, Stockbridge again refused to reimburse Northwood for the CTI Reconciliation claiming Stockbridge had not received any of the money from tenants.

Second, Northwood claims it is entitled to be reimbursed by Stockbridge in the amount of $79,718.61 for the real estate taxes paid by Northwood at the closing (the "2019 RE Taxes"). The 2019 RE Taxes are comprised of the real estate taxes for the Property's four annual taxpayers: (i)

[1] Northwood's original complaint also asserted a cause of action for a declaratory judgment requesting that the Court declare that Northwood would be entitled to certain post-closing payments which Stockbridge was only contractually obligated to pay upon its receipt of the same (i.e., 2019 RE Taxes and Closing Month Rents). At the start of trial, Northwood moved to amend its complaint to bring all amounts claimed under its breach of contract and conversion claims. Northwood explained its rationale for the amendment was because sufficient information was obtained through discovery to conclusively establish what payments for 2019 RE Taxes and Closing Month Rents Stockbridge actually received. Accordingly, the Court granted Northwood's motion to amend pursuant to Rule 15, SCRCP.

[2] The "CTI charges" represent the actual costs Northwood incurred for the Property's common area expenses, taxes, and insurance. *See* JX_1 at 015–16; Tr. 111:11–14. The "CTI payments" represents the payments tenants made to Northwood based on estimates of what each tenant's proportionate share of common area expenses, taxes, and insurance would be for the year. *See id.*

[3] The "closing date" means October 15, 2019.

Food Lion, (ii) Fresh Market, (iii) Stein Mart, and (iv) Pizza Hut. Prior to the initiation of this lawsuit, Stockbridge admitted that it received the 2019 RE Taxes from Food Lion and Fresh Market and that Northwood's pro-rata share for each was $31,307.58 and $13,590.36, respectively. However, Stockbridge claimed it never received the Stein Mart payment. At trial, Stockbridge ultimately admitted to receiving this payment, but argued it should be entitled to keep the entire payment because Stein Mart owed one month's rent at the time it paid its 2019 taxes. Stockbridge argued that it does not owe the Pizza Hut payment based on a note, which conflicts with the Settlement Statement itself, on the last page of an exhibit to the Settlement Statement. Additionally, Stockbridge's reconciliation "offer" was only a portion of Northwood's pro-rata share of Food Lion and Fresh Market's 2019 RE Taxes. As referenced above, this was because Stockbridge attempted to deduct excess CTI payments made by tenants to Northwood through the Adjustment Period, without accounting for the fact that Northwood incurred CTI charges in excess of *all* CTI payments for *all* tenants through the Adjustment Period.[4]

Third, Northwood claims it is entitled to its pro-rata share (i.e., for October 1–14, 2019) of the closing month rents Stockbridge received from tenants in the amount of $7,766.94 (the "Closing Month Rents"). The Closing Month Rents are comprised of the October 2019 rent payments for the following tenants: (i) Pigtails & Crewcuts; (ii) Signworld; (iii) Balloons, Décor and More; (iv) Royal Ramen; and (v) Gore & Company. Despite demanding and receiving November 2019 rents from Northwood, Stockbridge claims it never received any of the Closing Month Rents from these tenants.

[4] To avoid confusion, the CTI Reconciliation required Northwood to send Stockbridge a detailed breakdown, on a tenant-by-tenant basis, of (i) the CTI charges Northwood incurred for each tenant through the Adjustment Period; and (ii) the CTI payments Northwood received from each tenant through the Adjustment Period. *See* JX_1 at 015–16; Tr. 110:22–113:6. If the CTI charges Northwood incurred for *all* tenants through the Adjustment Period was greater than the CTI payments Northwood received from *all* tenants, then Stockbridge was required to pay Northwood the difference, and vice-versa. *Id.*

II. STOCKBRIDGE'S COUNTERCLAIMS

In response to Northwood filing a collections action, Stockbridge initially filed an Answer and asserted no counterclaims. Then, Stockbridge filed an amended Answer and asserted a host of counterclaims, including fraud in the inducement of a contract, negligent misrepresentation, violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), negligence, and breach of contract.

Stockbridge's claims for fraud and negligent misrepresentation were based on the claim that the *projected* net operating income ("NOI") within the Property's offering memorandum was not accurate. Stockbridge claims that it relied exclusively on the offering memorandum's projected NOI to determine a purchase price of the property. To support its claim that the projected NOI represented a false representation, Stockbridge alleges that Northwood knew Stein Mart was going to later declare bankruptcy and that other tenants were in financial trouble. Although Northwood provided all information relating to the Property's tenants requested by Stockbridge, Stockbridge nevertheless claims it relied, and had a right to rely, exclusively on the projected NOI in the offering memorandum to determine the purchase price for the Property.

Stockbridge's breach of contract claim is based on allegations that Northwood failed to maintain the Property in the normal manner through the closing date and also failed to make certain repairs Stockbridge requested prior to the closing date. Specifically, Stockbridge claims that Northwood's alleged failure to perform certain common area maintenance tasks prior to the closing caused Stockbridge to incur maintenance costs it otherwise would not have incurred. Stockbridge never alleged a precise monetary amount but claimed at trial that it incurred approximately $40,000 worth of additional common area maintenance costs.

In defense of Northwood's claims, Stockbridge asserted certain affirmative defenses claiming that it was only obligated to pay Northwood $33,914.71 under the Contract, that it had

tendered that amount to Northwood as full and final payment, which Northwood refused to accept. And, for the reasons stated above, Stockbridge claims it was entitled to pay less than the full Post-Closing Reconciliation because it did not owe Northwood's pro-rata share of Stein Mart's and Pizza Hut's 2019 real estate taxes. Stockbridge also claimed it should be entitled to offset some of the Post-Closing Reconciliation for certain common area maintenance costs it incurred when it took over management of the Property.[5]

III. FINDINGS

As explained in greater detail below, the Court finds that based on a preponderance of the evidence, Stockbridge breached the Contract by failing to pay Northwood the Post-Closing Reconciliation in the amount of $129,394.92. The Court also finds that Stockbridge failed to participate in the post-closing reconciliation process in good faith and without concern for its contractual obligations. Accordingly, the Court further finds that Stockbridge's failure to remit the Post-Closing Reconciliation to Northwood after demand was a wrongful conversion of Northwood's property.

For the CTI Reconciliation, the $41,909.27 claimed by Northwood was never disputed by Stockbridge, and Stockbridge's argument that the Contract only required it to reimburse Northwood upon Stockbridge's receipt of these payments from tenants is without merit. These were CTI costs actually incurred by Northwood in excess of the CTI payments received from all tenants through the Adjustment Period. Section 8.1(e) plainly and unambiguously requires Stockbridge to reimburse Northwood for these costs, irrespective of whether Stockbridge ultimately collected any CTI payments from tenants.

[5] Stockbridge has never made any substantive allegations relating to, or otherwise explained the basis of, its claims for violation of SCUTPA or negligence.

It is also indisputable that Stockbridge received $101,622.71 in 2019 RE Taxes from tenants Food Lion, Fresh Market, Stein Mart, and Pizza Hut, and that Northwood's pro-rata share was equal to $79,718.61. Stockbridge's argument that it should be entitled to keep Stein Mart's 2019 RE Taxes because Stein Mart owed one-month rent at the time of payment is meritless. To allow Stockbridge to retain this payment would allow Stockbridge to act in direct conflict with the plain terms of Section 8.1(a) of the Contract, which required Stockbridge to remit Northwood's pro-rata share of the payment "upon receipt." Stockbridge's argument as to why it is not required to pay to Northwood its pro-rata share of Pizza Hut taxes also fails. The documentary evidence conclusively establishes that Northwood paid its pro-rata share of Pizza Hut's 2019 RE Taxes at the closing, and despite Stockbridge's arguments, one stray note (which conflicts with the entries on the Settlement Statement showing the flow of funds) on the last page of an exhibit of the Settlement Statement does not change this fact.

For Closing Month Rents, the Court finds that Stockbridge collected, but failed to pay, Northwood its pro-rata share of Closing Month Rents in the amount of $7,766.94. Although these payments were received by Stockbridge and Section 8.1(d) required Stockbridge to reimburse Northwood for its pro-rata share "promptly upon receipt," Stockbridge never offered Northwood any amount for Closing Month Rents. Stockbridge's bad faith refusal to perform its contractual obligations is further underscored by the fact that Stockbridge demanded and received post-closing rents from Northwood in the amount of $31,773.86, but simultaneously claimed it was entitled to keep pre-closing rent payments it had received.

With respect to Stockbridge's counterclaims, the Court finds that each is completely without merit. Stockbridge's claims for fraud in the inducement and negligent misrepresentation appear to have been asserted primarily for the purpose of delaying Northwood from recovering the Post-Closing Reconciliation with the hope that Northwood would drop the matter entirely. There

was no credible evidence presented to this Court that Northwood made a false representation or that Stockbridge relied on a false representation. Even if Stockbridge had shown a false representation, which it did not, the Court was not presented with any credible evidence establishing that Stockbridge's reliance would have been reasonable or justified. Northwood's sale of the Property to Stockbridge was an arm's length transaction between two sophisticated entities, both of which are managed by mature, educated individuals. The evidence establishes that Stockbridge acted as a sophisticated owner and operator of commercial real estate when it conducted its own in-depth due diligence analysis (assisted by qualified real estate professionals) prior to making an offer on the Property and throughout the inspection period before closing on the Property. Stockbridge had ample opportunity to discover any and all relevant information and could have walked away for any reason or no reason at all. Instead of walking away, Stockbridge closed on the Property. The evidence also establishes that the Property outperformed Stockbridge's expectations in the first full year of operation. Thus, even if Stockbridge had not failed to establish all the other elements of fraud and negligent misrepresentation, Stockbridge cannot show any ascertainable damages.

Stockbridge's counterclaim for breach of contract fares no better. Stockbridge's sole contractual remedies for its claim that Northwood breached the Contract by failing to maintain the Property in the normal manner were to either seek specific performance or terminate the Contract and receive a return of the earnest money. Stockbridge did not choose to seek either remedy, and made no complaints about the maintenance of the property until after Northwood demanded payment for the Post-Closing Reconciliation. Furthermore, the only credible evidence presented to this Court was that Northwood continued to maintain the Property in the normal manner through the closing date. Stockbridge failed to produce any credible evidence establishing that Northwood failed to perform required maintenance or that Stockbridge was damaged in any way.

Stockbridge's counterclaim for violation of the SCUTPA is equally without merit. There is no evidence that Northwood acted unfairly or deceptively. There is no evidence that Northwood ever engaged in "falsely assuring" Stockbridge the Property would "generate certain cash flow projections."

Finally, Stockbridge's counterclaim for negligence fails as a matter of law. The only "duty" Stockbridge claimed Northwood owed was to perform maintenance in the normal manner as required by the Contract. Accordingly, the duty allegedly breached was a duty subsumed entirely by that party's contractual duties. Thus, Stockbridge's negligence claim is barred by South Carolina's economic loss doctrine.

Therefore, the Court finds that (1) Stockbridge breached the Contract by failing to pay Northwood the Post-Closing Reconciliation; (2) Stockbridge wrongfully converted the Post-Closing Reconciliation for its own use and benefit; (3) Stockbridge's breach of the Contract and wrongful conversion of the Post-Closing Reconciliation caused damage to Northwood; (4) Northwood is entitled to actual damages in the amount of $129,394.92, plus its attorneys' fees and expenses incurred to prosecute its claims and defend Stockbridge's counterclaims; and (5) Stockbridge's claims all fail, and Stockbridge is entitled to none of the requested relief.

PROCEDURAL HISTORY

On June 10, 2020, Northwood filed its Complaint, seeking a declaratory judgment and alleging causes of action for breach of contract and conversion. On July 29, 2020, after previously requesting an extension, Stockbridge filed its Answer and asserted no counterclaims. On August 26, 2020, Stockbridge filed an Amended Answer and Counterclaims, asserting counterclaims for fraud in the inducement of a contract, negligent misrepresentation, violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), negligence, and breach of contract. On September 16, 2020, Northwood filed its Reply to Answer and Counterclaim.

On August 7, 2020, Northwood served its First Set of Interrogatories and First Set of Requests for Production. On September 8, 2020, Stockbridge's former counsel requested a 30-day extension. As a courtesy, Northwood's counsel granted this request. Then, on November 2, 2020, Northwood was forced to file a Motion to Compel.

On December 7, 2020, Stockbridge's prior counsel filed a Motion to be Relieved as Counsel pursuant to Rule 1.16(b)(5) of the South Carolina Rules of Professional Conduct. On December 17, 2020, an Order relieving Stockbridge's first counsel from representation was entered. On December 23, 2020, Stockbridge's current counsel filed a Notice of Appearance.

On January 26, 2021, a hearing was held on Northwood's Motion to Compel. Because Stockbridge's current counsel had just taken over representation, Northwood's counsel agreed prior to the hearing that Stockbridge's counsel could have an additional 21-day extension to provide Stockbridge's discovery responses. That agreement was memorialized in the January 26, 2021 Order granting Northwood's Motion to Compel.

On February 19, 2021, Stockbridge served responses to Northwood's first set of discovery requests. When Northwood did not receive complete discovery responses by the due date requested, Northwood was forced to file its Second Motion to Compel on March 10, 2021.

On January 26, 2021; February 2, 2021; February 19, 2021; and March 26, 2021, Northwood's counsel sent emails to Stockbridge's counsel about scheduling the court-mandated mediation. Stockbridge did not respond to any of those emails and offer proposed mediators or proposed dates. On March 31, 2021, Northwood was forced to file a Motion to Compel Mediation.

On June 7, 2021, a hearing was held on Northwood's Motion to Compel Stockbridge's discovery responses and Northwood's Motion to Compel Mediation. On June 8, 2021, an Order was entered on Northwood's Second Motion to Compel, in which Stockbridge was ordered to fully respond to the outstanding discovery requests within 30 days of the Order. On June 18, 2021, the

Court entered a Consent Order on Northwood's Motion to Compel Mediation ordering that mediation shall be conducted on or before August 31, 2021.

On August 13, 2021, mediation between the parties took place with Costa M. Pleicones serving as mediator. However, the mediation was unsuccessful and an impasse was declared.

On January 27, 2022, Northwood filed a Motion for Summary Judgment on all claims asserted by Northwood and all counterclaims asserted by Stockbridge. On March 30, 2022, a hearing was held on Northwood's Motion for Summary Judgment was held. On May 23, 2022, an Order denying Northwood's Motion for Summary Judgment was entered.

On November 28, 2022, Northwood filed its Third Motion to Compel. At issue on Northwood's third discovery motion included, among other things, continued deficiencies in Stockbridge's discovery responses to Northwood's first set of discovery requests, which were served on Stockbridge two years prior. On March 6, 2023, an Order granting Northwood's Third Motion to Compel was entered.

On May 30–31, 2023, this Court presided over a two-day bench trial. At the beginning of trial, Northwood made an oral motion to amend its Complaint to eliminate its cause of action for a declaratory judgment and, instead, bring all amounts Northwood claimed it was owed from Stockbridge ($129,394.82) under its breach of contract and conversion causes of action in order to conform to the evidence. Stockbridge did not object to Northwood's motion, and the Court granted Northwood's motion to amend the Complaint pursuant to Rule 15, SCRCP.

At the trial, Northwood presented witness testimony from Jonathan Gaines, Brian Holder, Tim Lake, and Keith Nemes. Stockbridge's only testifying witness at trial was its principal agent and manager, Mahmoud Al-Hadidi, M.D. At the trial, the parties also stipulated to the admission of 42 joint exhibits, the transcript of the deposition of John Bridges, the transcript of Stockbridge's 30(b)(6) deposition, and Stockbridge's responses to Northwood's Requests for Admission.

After having reviewed the parties' pleadings, motions, and other filings, and having considered the evidence, witness testimony, and arguments of counsel presented at trial, the Court makes the following findings of fact based on a preponderance of the evidence:

FINDINGS OF FACT

I. PARTIES & SUMMARY OF WITNESS TESTIMONY

A. Northwood

Northwood is a Delaware limited liability company, with its principal place of business in South Carolina. Compl. ¶ 1. Northwood owned the Property prior to selling the Property to Stockbridge. JX_1. Northwood was managed by Rivercrest Realty Associates, LLC ("Rivercrest"). Tr. 15:14–16. Rivercrest manages almost 100 commercial real estate properties, including shopping centers, office complexes, and multifamily projects. Tr. 16:13–16.

1. Jonathan Gaines

Jonathan Gaines is employed by Rivercrest, and is a Manager and Member of Northwood. Tr. 15:1–11. He testified at trial that Rivercrest was formed by his father, his uncle, and two of their friends in the late 1960s, it bought its first multifamily asset in 1969, and steadily grew through the 1970s and 1980s. Tr. 15:19–24. When Mr. Gaines began his employment at Rivercrest in 1992, there were between seven and eight assets. Tr. 16:11–12.

Mr. Gaines has over 30 years of experience in the commercial real estate industry and manages approximately 90 shopping centers on behalf of Rivercrest. Tr. 16:7–16. He testified that the Property was purchased around 2003 and that the Property was financially successful during Northwood's ownership. Tr. 16:24–17:11. He also testified that Northwood built up the occupancy significantly throughout its ownership and completed substantial renovations to the Property throughout Northwood's ownership in order to attract new, national tenants. Tr. 17:13–17. On cross-examination, Mr. Gaines was questioned about a variety of topics related to Stockbridge's

counterclaims. Specifically, Mr. Gaines was questioned about whether he knew Stein Mart was in "financial trouble" at the time of sale and whether Northwood maintained the physical condition of the property in the normal manner up to and through the closing date. *See* Tr. 25–27. With respect to Stein Mart, Mr. Gaines testified that he had no knowledge Stein Mart was in financial trouble, their sales at the Property were well above average, and that they had recently renewed their lease without negotiation. Tr. 25:10–13. With respect to maintenance of the Property, Mr. Gaines testified that Northwood maintained the property prior to the closing date, just as Northwood had always done. Tr. 26:24–25.

2. Brian Holder

Brian Holder is employed by Rivercrest and is primarily engaged in acquisitions and dispositions of the assets Rivercrest manages, along with the associated due diligence. Tr. 28:10–13. Mr. Holder has almost 30 years of experience in the commercial real estate industry. Tr. 28:14–16. Mr. Holder was involved with the decision to hire CBRE as the broker for the Property and to select Stockbridge as the purchaser; the negotiations of the underlying purchase and sale agreement, including Stockbridge's representations regarding what due diligence activities it would perform; Northwood's maintenance activities throughout its ownership of the Property, which continued in the normal manner through the closing date; and Stockbridge's requests for certain repairs prior to the closing and Northwood's responses to Stockbridge that those repairs would not be completed by Northwood prior to the closing date. *See generally* Tr. 28–42.

3. Tim Lake

Tim Lake is employed by Rivercrest as asset manager. Tr. 69:6–13. Mr. Lake has a master's degree in business administration, with a concentration in real estate. Tr. 69:7–9. He has approximately 30 years of experience in the commercial real estate industry. *Id.* Mr. Lake testified about the financial information shared by tenants with landlords, which is generally only what is

required under the tenant's lease; the purposes and standards of offering memorandums and that the offering memorandum in this case was standard for the commercial real estate industry; certain of the Property's tenants' histories and communications during Northwood's management; and Northwood's maintenance practices throughout Northwood's ownership of the Property, which were continued in the normal manner through the closing date. *See generally* Tr. 69–102.

4. Keith Nemes

Keith Nemes is employed by Rivercrest as the Director of Lease Administration. Tr. 106:10–15. Mr. Nemes has a master's degree in business administration and has approximately 30 years of experience in the commercial real estate industry. *Id.* He has worked for Rivercrest in their leasing administration department since 2010. *Id.* His job duties include handling all aspects of tenant leases including any charges billable through the lease, collecting money billed to tenants, and posting the charges and payments to the tenants' accounts. Tr. 106:21–24. Mr. Nemes was involved with the post-closing reconciliation process that occurred under the Contract, reconciliation communications with Stockbridge and reviewed Stockbridge's internal accounting records to determine what post-closing payments were due and owing to Northwood. *See generally* Tr. 106–122.

The Court assigns substantial weight to the trial testimonies of Northwood's witnesses. The Court finds their testimonies credible and convincing based on the candor and level of factual detail in which they testified.

B. Stockbridge

Stockbridge Enterprises, Inc. is a Michigan corporation. Answer & Countercl. ¶ 2. Stockbridge Myrtle Beach, LLC is a Michigan limited liability company, *id.* ¶ 3, and is managed and controlled entirely by Mahmoud Al-Hadidi, M.D. Tr. 173:4–9. Stockbridge's only testifying witness was Dr. Al-Hadidi—no other witnesses testified on Stockbridge's behalf at trial.

1. Dr. Al-Hadidi

Dr. Al-Hadidi is a Michigan resident and practicing physician who specializes in pulmonary medicine and intensive care. Tr. 133:19–23. Dr. Al-Hadidi has over twenty years of experience in investing in commercial real estate. Tr. 172:16–18. Dr. Al-Hadidi purchased his first shopping center in 2011. Tr. 172:.22–25. In addition to Stockbridge Myrtle Beach, LLC, Dr. Al-Hadidi operates and manages five other shopping centers similar to the Property. Tr. 173:1–9.

Dr. Al-Hadidi testified on direct-examination that he relied almost exclusively on the information within the offering memorandum prepared on Northwood's behalf to market the Property (the "OM") to evaluate the financial condition of the Property and its tenants. Tr. 135:5–6; *see also* Tr. 174:21–175:1. The basis for Stockbridge's fraud and negligent misrepresentation claims was Dr. Al-Hadidi's claim that the projected NOI in the Rent Roll section of the OM was based on false information. Tr. 165:9–24.

Specifically, Dr. Al-Hadidi claimed that Northwood knew Stein Mart would declare bankruptcy in the future and that multiple tenants were going to vacate after the closing. Tr. 166:16–19.[6] However, Stockbridge did not produce any evidence (whether documentary evidence or through the testimony of Dr. Al-Hadidi) to support the proposition that Northwood had any prior knowledge about Stein Mart's future bankruptcy. In fact, when questioned in his deposition and on cross-examination at trial, Dr. Al-Hadidi was unable to articulate any basis for Stockbridge's claim that Northwood knew that Stein Mart was going to later declare bankruptcy

[6] When Dr. Al-Hadidi was asked on cross-examination when the allegedly high number of tenant vacancies that he complained of began, he could not even provide an estimated time. Tr. 230:17–22 (Q. As I have looked at your vacancy reports, your tenants basically stayed the same up until -- maybe on or two issues -- up until around May of 2020? **A. I don't recall. All I know is that the transition period was horrible.**") (emphasis added); *but see* JX_18 at 004 (showing that actual NOI was $101,024 over budgeted NOI for the same time period).

and liquidate at the time it sold the Property to Stockbridge. For example, in Stockbridge's 30(b)(6) deposition, Dr. Al-Hadidi testified as follows:

> Q. So you believe that Northwood, one of their representatives, had knowledge [about Stein Mart] that was not publicly available information they did not disclose to you, is that what you're saying?
>
> **A. I did not say that. That was not publicly known. I did not say that, that they had knowledge**.

Stockbridge 30(b)(6) Dep. 172:9–15 (emphasis added); *see also* Tr. 215:21–217:20 (Dr. Al-Hadidi unable to point to any fact or circumstance to support his claim that Northwood knew Stein Mart would later go bankrupt and liquidate).[7]

Furthermore, when questioned on cross-examination about his claims that the Property was performing below Stockbridge's expectations (as compared to the projected NOI in the OM), Dr. Al-Hadidi admitted that the Property had performed better after the closing than even Stockbridge projected. *See* Tr. 231:5–20 (Dr. Al-Hadidi admitting the Property had outperformed Stockbridge's expectations through the first two and a half months ownership); Tr. 233:3–234:9 (admitting the full 2020 calendar year NOI exceeded Stockbridge's projected NOI despite Stein Mart vacating the Property in the middle of the year).[8] Dr. Al-Hadidi also admitted that purchasing the Property was not a bad investment. Tr. 228:24–229:1.

[7] Dr. Al-Hadidi's claims about Northwood's "knowledge" of Stein Mart's future bankruptcy is not only completely unsubstantiated, but in direct conflict with all other evidence on this issue. For one, Dr. Al-Hadidi admitted that he knew Stein Mart was a publicly traded company and, thus, would have publicly available information. Stockbridge 30(b)(6) Dep. 169:7–11. However, Dr. Al-Hadidi maintained that, despite having no previous knowledge of Stein Mart, he did not review their publicly available information, did not ask anyone including John Bridges whether they knew anything about Stein Mart, and did not so much as perform a Google search to learn more information. *Id.* at 159:13–20; *id.* at 173:7–174:5. Second, Stein Mart's sales at the Property were 25–30% above the national average. Tr. 79:19–80:4 (Tim Lake testifying to Stein Mart's sales reported in the OM); *see also* JX_5 at 42. Third, Stein Mart exercised a five-year renewal shortly prior to the OM without even negotiating the lease terms. Tr. 81:5–13. Fourth, Stein Mart did not go bankrupt because of underlying troubles with the chain, but, rather, their decision to liquidate was a direct result of COVID-19. Tr. 81:18–82:1.

[8] *See also* Tr. 237:14–240:13 (Dr. Al-Hadidi admitting on cross-examination that the Property had a lower percentage of delinquent tenants than all of the other properties he manages).

To support his breach of contract claim, Dr. Al-Hadidi testified there were certain needed repairs and maintenance items he noted on his August 2019 site visit and that Northwood promised to fix. Tr. 136:23–137:23. However, in his deposition and on cross-examination, Dr. Al-Hadidi was unable to recall anyone from Northwood ever promising that they would make the requested repairs. *See* Tr. 218:6–291:21; Stockbridge 30(b)(6) Dep. 81:22–82:4. Dr. Al-Hadidi could not even recall whether he sent anyone to the Property to perform another inspection after his repair requests but before expiration of the Inspection Period, Tr. 199:1–9,[9] and he admitted that he had no idea how Northwood maintained the Property throughout Northwood's ownership. Tr. 192:23–193:1.

Dr. Al-Hadidi also admitted that he was told by Northwood on multiple occasions after the August 2019 site visit that the requested repairs would not be made by Northwood prior to the closing. Tr. 217:23–219:21; *see also* JX_6 at 016. Additionally, when he was questioned about the documents purporting to be proof of the charges Stockbridge incurred to make the associated repairs, he stated "I don't know" five times throughout this line of questioning on direct examination. Tr. 159:16 ("**I don't know** exactly what this is . . . .") (emphasis added); Tr. 160:6–7 ("Obviously, forgive me, **I don't know** exactly the details of what he did . . . .") (emphasis added); Tr. 160:12 ("Again, **I don't know** the exact . . . .") (emphasis added); Tr. 161:6–7 ("Again, **I don't know** the exact things they did for that amount.") (emphasis added).[10]

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[9] "Q. Did you send anybody out to the property to take one more peek around . . on October 8th . . . to check out whether the sidewalk was repaired? Did you do that? **A. I don't remember the details of that period.** Q. So you don't know -- is your testimony that you did or did not? **A. I don't remember.**" (emphasis added); *see also* Tr. 248:4–12 ("Q. Dr. Al-Hadidi, I believe you said the lights that we failed to replace was near Bay Naturals in your complaint; is that correct? **A. I don't remember**. Q. This one's [sic] here is some work that was done for the wall pack near the Fresh Market. If you don't remember, I guess we didn't do anything wrong? **A. I didn't say, I just don't remember exactly which invoice for which light, and I'm not involved in that part**.") (emphasis added).

[10] On cross-examination, Dr. Al-Hadidi's lack of personal knowledge regarding the purported "invoices" Stockbridge offered to support its damages claim was highlighted even more. *See* Tr. 248:7 ("I don't remember"); Tr. 248:12–14 ("I just don't remember exactly which invoice for which light, and I'm not involved in that part."); Tr. 248:24–25 ("**You are asking me about invoices and particulars that was**

Furthermore, despite his claim that the alleged maintenance costs damaged Stockbridge in the amount of approximately $40,000, Dr. Al-Hadidi admitted that the vast majority, if not all, of these costs would ultimately be passed through to, and paid by, tenants as common area maintenance expenses Tr. 219:22–220:19 (answering "yes" when asked whether common area maintenance fees are passed through to the tenants and include items like parking lot repairs, light replacement, and landscaping). More importantly, Dr. Al-Hadidi admitted that any recovery for these alleged damages would result in a double recovery and a windfall to Stockbridge. Specifically, Dr. Al-Hadidi admitted to the following:

> Q. So if you were to prevail and [Northwood] were to cut you a check for $40,000 [for repairs], **you would have been paid twice for that, wouldn't you? You would have recouped it from your tenants and then we would paying** . . .
>
> A. **Assuming we recouped it, yes**.

Tr. 222:1–6 (emphasis added).

With respect to the post-closing reconciliation process between the parties, Dr. Al-Hadidi testified that he relied entirely on John Bridges to perform the reconciliation. 142:7–17. However, Dr. Al-Hadidi's testimony on this issue is in direct conflict with Mr. Bridges' testimony. *See* Bridges Dep. at 87:15–18. The evidence shows not only that Dr. Al-Hadidi did not rely on Mr. Bridges when offering $33,914.71 as the final reconciliation, but Stockbridge only ever offered to pay a portion of Food Lion's and Fresh Market's 2019 real estate taxes as full and final payment for the entire reconciliation. Tr. 144:5–8 ("Q. So with that your calculation -- Stockbridge's calculation of what was owed under the CTI reconciliation was $33,814.71. **A. For taxes, yes.**") (emphasis added). In other words, at no point in time did Stockbridge ever offer to pay Northwood

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provided by our manager and the maintenance guy that I don't remember exactly what is what. I'm under oath. I'm not just going to answer whatever. I have to answer the truth. I don't remember. I don't know.") (emphasis added).

for the CTI Reconciliation due under Section 8.1(e) or the Closing Month Rents due under Section 8.1(d) of the Contract.

Dr. Al-Hadidi testified that Stockbridge did not owe Northwood any portion of Stein Mart's or Pizza Hut's 2019 RE Taxes. For Stein Mart, Dr. Al-Hadidi testified that he did not owe Stein Mart's tax payment because Stein Mart owed Stockbridge rent money by the time it paid its real estate taxes. Tr. 145:25 (Dr. Al-Hadidi testifying that it was applied to rent); *but see* JX_18 at 028 & JX_30 at 030 (**showing that Stockbridge did not apply Stein Mart's payment for 2019 RE Taxes to "Rent" until after Northwood filed this lawsuit**).

Dr. Al-Hadidi's claim that Stockbridge did not owe Northwood any portion of Pizza Hut's 2019 RE Taxes was because a note on page 18 of the Settlement Statement stated "This is 100 percent reimbursed by Pizza Hut. Buyer to pay full amount at closing and collect from tenant." Tr. 138:16–21; *see also* JX_08 at 018. However, when questioned about this note and the contradiction based on the actual flow of funds from the Settlement Statement, Dr. Al-Hadidi testified that he was "not sophisticated enough to tell [ ] whether that title company made an error." Tr. 212:2–8; *see also* Stockbridge 30(b)(6) Dep. 154:22–155:4 (Dr. Al-Hadidi testifying in his deposition that "if somebody made a mistake [on Exhibit A to the Settlement Statement] and gave me the wrong info," then Northwood would be entitled to $10,427 of Pizza Hut's 2019 RE Tax payment).

Overall, the Court finds that Dr. Al-Hadidi was not credible. Many portions of his testimony on direct examination were directly contradicted by his own testimony in Stockbridge's 30(b)(6) deposition or on cross-examination, the trial testimony of Northwood's witnesses, the deposition testimony of his own bookkeeper John Bridges, and the documentary evidence introduced at trial. Therefore, the Court assigns very little, if any, weight to Dr. Al-Hadidi's testimony.

2. John Bridges

John Bridges is the Director of Management Solutions for the Thomas Duke Company, a full-service commercial real estate broker and property management firm. Bridges Dep. 12:20–13:13. Mr. Bridges has over 35 years of experience serving as an accountant and property manager. Bridges Dep. 10:2–13:10. He has experience in assisting Thomas Duke's brokerage team with preparing information for prospective buyers and he regularly provides advice and counsel to clients wanting to purchase additional properties. Bridges Dep. 16:3–17.

i. Due Diligence

Mr. Bridges assisted Stockbridge with front-end due diligence before purchasing the Property, and he followed his typical due diligence process when doing so. Bridges Dep. 41:15–21. As part of his typical due diligence process, he reviewed a variety of financial documents relating to revenues, expenses, and receivables and then made assumptions on what costs will actually be to determine a projected NOI. *Id.* at 26:21–27:9. Mr. Bridges also reviewed all leases, tenants' outstanding account receivables, and tenant payment histories to include history of rent, common area maintenance, and real estate tax payments. *Id.* at 29:1–30:24. He also compared the NOI presented in offering memorandum provided to Stockbridge against Northwood's financial statements. *Id.* at 31:3–8.

ii. Accounting and Bookkeeping

Mr. Bridges has also provided bookkeeping services to the shopping centers operated and managed by Dr. Al-Hadidi for approximately 10 years. Bridges Dep. 39:23–40:8. As part of his bookkeeping services, he and his team prepare monthly and annual reports, which he personally reviews and reconciles every month against Stockbridge's bank statements. *Id.* at 24:19–23 & 25:16–17. Each monthly and annual report contains a monthly status report, a budget variance report, statement of income, statement of operating expenses, accounts receivable and accounts

payable aging reports, an activity reconciliation, a cash journal, check register, expense distribution, rent roll, lease expiration summary, bank reconciliation, bank statements, trial balance, and general ledger. *Id.* 23:24–25:17.

Preparing the monthly and annual reports requires that tenant payments be posted to certain charge categories as those payments are received. *Id.* at 34:19–35:2. Mr. Bridges stated "best practices" is to apply tenant payments in the manner the tenant intended. *Id.* 37:23–38:4. Throughout the 10 years maintaining the financial records for the properties managed by Dr. Al-Hadidi, Mr. Bridges could only recall one instance where he was asked by Dr. Al-Hadidi to reverse the application of a tenant's payment and apply it to a different charge category: the 2019 real estate tax payment received from Stein Mart at issue in this case. *Id.* at 80:4–6.

iii. Reversing Stein Mart's Tax Payment in Monthly Reports

Mr. Bridges originally applied Stein Mart's 2019 real estate tax payment of $31,022.89 to the "Real Estate Tax" charge category when the payment was received by Stockbridge on May 27, 2020. JX_18 at 028; Bridges Dep. 74:4–75:17. Then, one-month after Northwood filed this lawsuit against Stockbridge, Dr. Al-Hadidi directed Mr. Bridges to reapply those funds to the "Rent" charge category and recreate an outstanding balance for the "Real Estate Tax" charge category. *See* JX_20 at 30; Bridges Dep. 78:13–79:12. Despite complying with Dr. Al-Hadidi's direction, Mr. Bridges was concerned with his request "[b]ecause typically when a specific ACH or an amount comes in that matches an actual charge, we apply it there. It's what we've always done." Bridges Dep. 81:1–5. Dr. Al-Hadidi's request particularly concerned Mr. Bridges in this instance because "the dollar amounts specifically matched the charge that was outstanding." *Id.* at 81:15–17. Mr. Bridges also explained that applying tenant payments in the way the tenant intended is "best practices" for avoiding tenant disputes because "the hardest thing to do is collect rent from a tenant when your books don't match theirs." *Id.* at 38:1–4.

iv. Reconciliation

Mr. Bridges was also responsible for communicating Stockbridge's proposed final reconciliation payment of $33,914.71 to Northwood. Mr. Bridges had previously performed a number of post-closing reconciliations, and when doing so, he typically reviews the relevant contractual provisions to determine how the parties agreed to perform a post-closing reconciliation. Bridges Dep. 68:1–5. However, Mr. Bridges never reviewed the Contract prior to performing the post-closing reconciliation in this case. *Id.* at 62:25–63:4. In fact, he never received a copy of the Contract from Stockbridge. Instead, all information Mr. Bridges conveyed to Northwood regarding the proposed reconciliation was provided to Mr. Bridges by Dr. Al-Hadidi. *Id.* at 87:15–18.

The Court finds John Bridges' testimony to be very credible and assigns substantial weight to his deposition testimony, which was introduced into evidence by Northwood, without objection by Stockbridge. Unlike Dr. Al-Hadidi's testimony, John Bridges' testimony was directly supported by, and entirely consistent with, the documentary evidence and the trial testimony of Northwood's witnesses.

II. PRE-CONTRACT ACTIVITIES

A. The Offering Memorandum

Northwood contracted with CBRE, Inc., an international commercial real estate services and investment company, to prepare the OM (i.e., an offering memorandum) to provide to prospective purchasers of the Property. CBRE's reputation as one of the world's leading real estate investment and brokerage firms is not in dispute. Tr. 73:6–7; *see also* Tr. 140:19–21 (Dr. Al-Hadidi testifying that "CBRE is an honorable company. We've worked with them before. They do not lie or falsify."). Similar to other offering memorandums used within the commercial real estate industry, the OM was used simply to generate interest by highlighting the Property's main features. *See* JX_5; Tr. 73:11–17; *see also* Bridges Dep. 47:4–14. Consistent with industry standard, the

OM set forth a summary of the details of the Property (e.g., size, age, geographical and demographic information, site plan, etc.) and highlighted the Property's anchor and other nationally recognized tenants. JX_5 at 001–30; Bridges Dep. 47:4–14.

The OM also contained a "Financial Analysis" section, in which it set forth the Property's Rent Roll, Survey of Financial Assumptions, Cash Flow Projection, In-Place Proforma, Lease Expiration Schedule, and Tenant Sales. *See id.* at 031–42. The Rent Roll is a statement of each tenant's material lease terms. *Id.* at 032–35; Tr. 175:8–23. The Rent Roll does not purport to be, nor does it include, any information pertaining to tenants' payment history. Tr. 50:17–20 & 74:11–13. Rather, the Rent Roll simply shows what tenants are contractually obligated to pay under their leases each month. Tr. 50:24–51:1; *see also* Tr. 175:12–23 (Dr. Al-Hadidi agreeing that the information in the Rent Roll is taken directly from the leases and does not purport to provide any information on tenants' payment histories).

The Survey of Financial Assumptions[11] sets forth for prospective purchasers all assumptions made in the OM's Cash Flow Projection and included assumptions relating to, among other things, vacancy and credit loss, retention ratio, rent adjustments, and tenant renewals. JX_5 at 036–37. These assumptions were developed by CBRE, not Northwood. Tr. 75:24–4. The Cash Flow Projection is simply an illustration of one way the Property could perform in in the future; however a change to any one of the assumptions would result in a differing cash flow projection. Tr. 75:24–76:25.

The In-Place Proforma sets forth the potential revenue, expenses, and net income based on the current tenant's Rent Roll. *Id.* at 038. No information within the Financial Analysis purported to represent the Property's or any tenant's past financial performance. *See* JX_5 at 032–38; Tr. p.

[11] On cross-examination, Dr. Al-Hadidi agreed that nothing in the Survey of Financial Assumptions was a promise of future performance. Tr. 178:21–24 ("Q. Do you see anything in here that this is a promise that this will occur in the future? A. No. It is an assumption.").

178:21–23. It is not industry standard practice to include tenant payment histories, such as aged delinquencies or history of default notices within offering memorandums. Tr. 78:20–79:2.

Additionally, the following statement was conspicuously located at the bottom of each page of the OM's Financial Analysis: "You are solely responsible for independent verifying the information in this Memorandum. ANY RELIANCE ON IT IS SOLELY AT YOUR OWN RISK." JX_5 at 032–39 (emphasis in original). The OM also contained the following statements and disclaimers:

> This memorandum contains selected information pertaining to the Property and **does not purport to be a representation of the state of affairs of the Property or the owner of the Property** . . ., to be all-inclusive or to contain all or part of the information which prospective investors may require to evaluate a purchase of real property. All financial projections and information are provided for general refence purposes only and are based on assumptions relating to the general economy, market conditions, competition and other factors beyond the control of the Owner and CBRE, Inc. **Therefore, all projections, assumptions and other information provided and made herein are subject to material variation**. . . .
>
> Additional information and an opportunity to inspect the Property will be made available to interested and qualified purchasers. In this Memorandum, certain documents, including leases and other materials, are described in summary form. **These summaries do not purport to be complete nor necessarily accurate descriptions of the full agreements referenced. Interested parties are expected to review all such summaries and other documents of whatever nature independently and not rely on the contents of this Memorandum in any manner**.
>
> Neither the Owner or CBRE, Inc., or any of their respective directors, officers, Affiliates, or representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of this Memorandum or any of its contents, and no legal commitment or obligation shall arise by reason of your receipt of this Memorandum or use of its contents; and **you are to rely solely on your investigations and inspections of the Property in evaluating a possible purchase of the real property**.

Id. at 043 (emphasis added).

Accordingly, the Court finds that all information contained within the OM either related to historical facts (none of which are in dispute) or was clearly intended to be a *projection* based on a number of articulable assumptions, any of which if changed could dramatically affect the NOI

projected in the OM. The Court further finds that the OM clearly and conspicuously warned prospective purchasers not to rely on the information within the OM and to independently verify all information. Thus, the Court finds that it would have been unreasonable for any sophisticated purchaser, such as Stockbridge, to have purchased the Property solely on the basis of the OM.

B. Determining the Purchase Price & Pre-Contract Negotiations

Dr. Al-Hadidi testified that he relied almost exclusively on the information in the OM to evaluate this deal and determine a purchase price. Tr. 135:5–6; Stockbridge's 30(b)(6) Dep. 170:5–10. To do so, he testified that he divided the projected NOI used in the OM by a capitalization rate of 0.08. 30(b)(6) Dep. 53:14–16 ("So you divide 1.8 million or whatever in the brochure divided by .08 and you reach a price you could live with."); Tr. 179:16–18. However, the projected NOI in the OM was approximately $1,800,000, which would have resulted in purchase price of $22,500,000. Tr. 179–180. Additionally, on cross-examination Dr. Al-Hadidi admitted that the NOI he used to determine the purchase price was actually closer to $1,600,000. Tr. 180:8–14.

Dr. Al-Hadidi's testimony on cross-examination regarding his due diligence activities to derive a purchase price also comports with the deposition testimony of John Bridges. Mr. Bridges testified in his deposition that he was asked by Dr. Al-Hadidi to prepare a proforma for Stockbridge's use in determining the proposed purchase price for the Property. Bridges Dep. 43:4–8. To put together that proforma, he reviewed the OM and had a discussion with Dr. Al-Hadidi. *Id.* at 43:17–18. Mr. Bridges testified that the assumptions in the OM were not relevant to him Bridges or Dr. Al-Hadidi in preparing the proforma. *Id.* at 49:22–24.

Rather than using the assumptions in the OM to build a proforma, he used assumptions provided directly by Dr. Al-Hadidi.[12] *Id.* at 51:13–16. Based on Dr. Al-Hadidi's assumptions and

[12] Mr. Bridges also testified in his deposition that Dr. Al-Hadidi specifically provided his own assumptions for vacancy and credit loss, expense and income growth, reduction in certain tenant's base rent, and the exclusion of certain tenants all together, including Pizza Hut, Mojitos, Signworld, Gore & Company, and

at Dr. Al-Hadidi's request, Mr. Bridges prepared a proforma to project the NOI based on "due diligence" and a "worst case" scenario. The projected NOI based on Dr. Al-Hadidi's due diligence for calendar year 2020 was equal to $1,518.320, and the projected NOI based on Dr. Al-Hadidi's "worst case" scenario was $1,393,844. *Id.* at 52:23–54:5.

On July 13, 3019, Dr. Al-Hadidi, on Stockbridge's behalf, presented to CBRE an offer to purchase the Property. JX_33-005. The pertinent terms of Dr. Al-Hadidi's first offer were (i) a proposed purchase price of $20,000,000; (ii) earnest money of $200,000; (iii) a 45-day due diligence period; and (iv) a closing date to occur within 30 days after due diligence. *Id.* In response to Dr. Al-Hadidi's first offer, CBRE communicated to Dr. Al-Hadidi on Northwood's behalf that Northwood was requesting a best and final offer from certain selected bidders, and also requested that Stockbridge provide a due diligence checklist and an outline of all due diligence activities Dr. Al-Hadidi intended to conduct as part of the purchase process. *Id.* at 003–4. In response, Dr. Al-Hadidi submitted a best and final offer to purchase the Property for $20,500,000 and outlined his intended due diligence activities. *Id.* 001–2.

With respect to Stockbridge's intended due diligence activities, Dr. Al-Hadidi represented the following on Stockbridge's behalf:

> . . . The offer was approved, and the final approval will be given **once all DD are done and info in the OM is verified.**
>
> . . .
>
> We visited the property and reviewed OM. We always do survey / phase one / and appraisal / and PCA on all deals, the lender may have additional requests. **We will verify the financials in the OM against the leases and will request copies of rent payment or proof of payments of rent and service contracts to draft our own projected budget.** Usually we allow up to 5–10% variation but not more. We have not seen any leases or reviewed and concessions or co tenancy clauses. We expect seller to pay all due commissions and TI or concessions before or on closing.

Royal Ramen. Bridges Dep. 51–53. On cross-examination at trial, Dr. Al-Hadidi admitted that despite Pizza Hut still being a tenant at the Property, he initially excluded Pizza Hut as a tenant for purposes of his assumptions, which resulted in a reduction to his projected NOI of approximately $86,000. Tr. 180:20–181:2.

> . . .
>
> Once we have a binding PSA **our team will start a fast and efficient review of all DD and will have our in-house Attorney and Management team spend time and money to close the deal and that will include verification of all info in the OM**.
>
> . . .
>
> **We assume all info in the OM is accurate of course and will verify against leases and proof of income / expenses**.

JX_33 at 002 (emphasis added).

The Court finds that, although Stockbridge claims it relied exclusively on the OM to calculate the proposed purchase price of the Property, the evidence presented at trial clearly establishes that Stockbridge's proposed purchase price was derived through, and the result of, Stockbridge's own pre-contract due diligence activities. Accordingly, the Court further finds that even if such reliance were reasonable (which it would not be), Stockbridge did not actually rely on the projected NOI in the OM to determine the Property's purchase price or otherwise evaluate this deal.

III. THE CONTRACT OF SALE

After Stockbridge's initial inspection of the Property and review of the OM, Northwood and Stockbridge Enterprises, Inc. entered into the Contract, effective as of August 22, 2019 (the "Effective Date"). *See* JX_1. Prior to the sale of the Property, Stockbridge Enterprises, Inc. assigned all of its rights and obligations under the Contract to Stockbridge Myrtle Beach, LLC. Tr. 134:13–15. Prior to the closing, the parties entered into two amendments for purposes of extending the Inspection Period (as defined below). *See* JX_2 & JX_3. The Contract, along with the amendments, represents the full agreement and understanding between the parties with respect to Northwood's sale and Stockbridge's purchase of the Property. JX_1–JX_3; Tr. 31:23–32:1.

A. Purchase Price & Earnest Money

The parties agreed that Stockbridge would pay to Northwood a purchase price of $20,500,000 (the "Purchase Price"). JX_1 at 002. Within 3 days of the Effective Date, Stockbridge made an initial deposit of $200,000 with an escrow agent (the "Earnest Money"). *Id.* at 018.

B. Property Sold As Is, Where Is

The parties agreed that the Property was being sold in "as is" and "where is" condition, and limited Northwood's liability for any oral representations or statements that were not made an express part of the Contract. In full, Section 3.2 provides as follows:

> 3.2 Except for the representations and warranties expressly set forth in Section 3.0, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE PROPERTY. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE PROPERTY IS BEING SOLD IN "AS IS" AND "WHERE IS" CONDITION. Seller shall not be liable for, or be bound by, any verbal or written statements, representations, real estate broker, agent, employee, servant, or any other person unless the same are specifically set forth in writing in this Contract. The provisions of this paragraph shall survive Closing.

Id. at p. 006 (emphasis in original).

In Section 3.0 of the Contract, Northwood made certain representations and warranties in connection with the sale of the Property. However, Northwood made no representations or warranties regarding any tenant's overall financial condition or projected future performance at Northwood Plaza. *See id.* at 003–6.

C. Inspection Period and Due Diligence

1. Terms of Inspection Period under the Contract

Section 6.2 of the Contract provided Stockbridge a 30-day inspection period (the "Inspection Period") to make any inspections and investigations of the Property, the "Due Diligence Items in Exhibit D" to the Contract, and any other matters that Stockbridge desired to

inspect or investigate. JX_1 at 010–11. Because Stockbridge was not satisfied with the length of the Inspection Period, Northwood agreed to extend the inspection period for an additional 17 days, giving Stockbridge a total inspection period of 47 days. JX_2. This caused the Inspection Period to run until October 8, 2019, or one week prior to the closing. Tr. 31:7–12.

2. Site Visit During Inspection Period and Stockbridge's Repair Requests

In August 2019, Dr. Al-Hadidi and John Bridges met with Brian Holder and members of CBRE's team to visit the Property. Tr. 188:8–189:7; Stockbridge 30(b)(6) Dep. 76:19–77:14; Bridges Dep. 41:22–42:15. All individuals present at the site meeting who offered testimony on the issue agreed that Dr. Al-Hadidi requested that Northwood make certain repair items prior to the Closing during a lunch meeting. *See id.*; Bridges Dep. 44:10–24 However, despite Stockbridge's allegations in its counterclaim that Northwood agreed to repair the items noted by Dr. Al-Hadidi at the August 2019 site visit, both Dr. Al-Hadidi and John Bridges testified that they had no recollection of Mr. Holder ever making those promises. Stockbridge 30(b)(6) Dep. 81:21–82:4 ("Q. . . . I just want to know what you remember Brian [Holder] specifically telling you that would be fixed. A. I'm under oath. **I cannot specifically remember what he said**, but I am under the impression that he promised that he will fix the things that normally need to be fixed. **I cannot remember specifically what he said, no.**") (emphasis added); Bridges Dep. 46:9–11 (Q. Did Brian Holder ever tell you he would fix those items? Yes, or no? **A. No.**") (emphasis added).

After the site visit, Dr. Al-Hadidi sent an email to Brian Holder and CBRE on September 14, 2019, which was over three weeks before the expiration of the Inspection Period, in which he listed 5 items that he believed needed to be addressed at the Property as part of regular maintenance. JX_6 at 013. Specifically, he stated: "several parking lot lights are out"; "vacant spaces are very dirty smell and dirt etc."; "the land scape needs immediate attention Overgrown

grass mess flower beds no mulch"; "some roof leaks"; and "the sprinkler system needs to be evaluated and repaired[.]" *Id.*

On September 24, 2019, which was still over two weeks before the expiration of the Inspection Period, CBRE sent a response on Brian Holder's behalf, in which Dr. Al-Hadidi was informed that (1) roof leaks are addressed when reported by the tenant, Northwood was only aware of one roof leak listed at Food Lion which was already being repaired, and Northwood was going to confirm whether the leak was still active; (2) the section of drywall that had water damage in the vacant space would be removed and repaired; and (3) the previously reported parking lot light outages were already completed. *Id.* at 016. With respect to the irrigation system, Northwood informed Dr. Al-Hadidi that Northwood "**had not used the irrigation system since we've owned the property**" and "**the irrigation system will be transferred as is**." *Id.* at 017 (emphasis added). With respect to landscaping, Northwood informed Dr. Al-Hadidi that it had been cleaned up after a recent hurricane and the mulching, which Northwood only performed once per year, was previously completed in May 2019. *Id.*

In response, Dr. Al-Hadidi sent an email on the same day and stated "[t]hat's great how about the trip hazard Side Walk and wash away reported Please see pictures." *Id.* at 016. CBRE reconveyed Northwood's earlier response on the same day and stated "**[t]hose minor site items will be transferred as is**." *Id.* at 015 (emphasis added). Dr. Al-Hadidi also separately emailed Brian Holder and said "[t]his needs to be addressed before closing please." *Id.* at 021. Mr. Holder responded "**[t]hese conditions will be transferred as is**." *Id.*

No evidence was presented to the Court indicating that the parties ever communicated about these site conditions again prior to the expiration of the Inspection Period. No evidence, besides the unsubstantiated testimony of Dr. Al-Hadidi, established that Northwood failed to complete any maintenance items it said it completed or was going to complete. The only credible

evidence presented to the Court was that Northwood maintained the Property in the normal manner through the closing date.[13]

3. Financial Due Diligence Activities

Prior to the execution of the Contract, the parties previously agreed to a negotiated list of Due Diligence Items as evidenced by Exhibit D to the Contract. JX_1 at 043. The Due Diligence Items in Exhibit D were requested by Stockbridge and included, among other items, the following: current rent roll; all leases; accounts receivable report; tenant sales report; the property's financial operating results for the last three complete calendar years; tenant ledgers reflecting collections in the last six months and invoices paid; and a schedule of any delinquent rents. *Id.* at p. 043. The evidence establishes that all items on Exhibit D to the Contract were provided to Stockbridge by Northwood. JX_29; JX_30; Tr. 34:4–10. In addition to the Due Diligence Items, Stockbridge also requested and received on two occasions tenant aging reports, which indicated the tenants that were behind on rent or other payments due under the tenant's leases, including the amount of arrearage and how old the arrearages were. JX_36 & JX_37.

After the Contract was executed, Mr. Bridges also assisted Stockbridge with the Property's pre-closing due diligence, and he followed his typical due diligence process when doing so. Bridges Dep. 41:15–21. As part of his typical due diligence process, he reviewed a variety of financial documents relating to revenues, expenses, and receivables and then made assumptions on what costs would actually be to determine a projected NOI. Bridges Dep. 26:21–27:9. Mr.

[13] *See* Tr. 26:24–25 (Mr. Gaines testifying that "[w]e maintained the property right up until the minute of closing"); Tr. 36:3–7 (Mr. Holder testifying that "[w]e operated on the same machine. We act as if we own the property until the wire clears, is the statement we have. It is not sold until the wire clears. So we maintained it like we would have it forever"); Tr. 87:22–21 (Mr. Lake testifying that Northwood maintained all service contracts, including those for landscaping and maintenance, through the closing date because "until the property closes, we assume we'll own it continuously"); JX_34 (showing numerous invoices for maintenance and repairs Northwood had completed at the property from July 24, 2019 through October 17, 2019); JX_35 (showing all Food Lion work orders had been completed and closed as of September 27, 2019).

Bridges also reviewed all leases, outstanding account receivables for tenants, and tenant payment histories to include history of rent, common area maintenance, and real estate tax payments. *Id.* at 29:1–30:24. He also compared the NOI presented in offering memorandum provided to Stockbridge against Northwood's financial statements. *Id.* at 31:3–8.

D. Stockbridge's Contractual Remedies for Pre-Closing Breach of Contract

The Contract provided Stockbridge with certain rights and obligations for any alleged breach by Northwood of its representations and warranties under the Contract, including those related to the physical condition of Northwood Plaza or the financial condition of its tenants. Under Section 3.1, Stockbridge agreed that if it did not give notice (in accordance with the Contract's notice provisions) to Northwood within 12 months following the Closing Date, then Northwood would be fully released and discharged from any liability that may arise out of Northwood's representations and warranties contained in the Contract. JX_1 at 006. There is no evidence that Stockbridge ever provided Northwood with the requisite notice under the Contract.

Further, Section 3.1 also states that if Stockbridge had "actual knowledge" prior to closing that "any representation or warranty is materially untrue or incorrect," then Stockbridge "shall have the right as its sole and exclusive remedy to terminate this contract and refund of the earnest money, or alternatively to close and take title to the property subject to the truth of the applicable matter, in which case purchaser shall be deemed to have waived any claims against seller based on the representation or warranty being untrue." JX_1 at 006. In other words, if Stockbridge knew of any tenant delinquencies that were unacceptable to Stockbridge, then Stockbridge could have walked away from the deal all the way up until the closing date and received a refund of the Earnest Money. Tr. 202:21–202:23. The evidence establishes that Stockbridge had notice and knowledge of all tenant delinquencies at the Property prior to and on the closing date. *See* JX_36 (Northwood sending current tenant aging reports on September 12, 2019 per Dr. Al-Hadidi's request); JX_37

(Northwood sending current tenant aging reports on October 11, 2019 per Dr. Al-Hadidi's request); JX_8 at 006–014 (Settlement Statement containing as an exhibit all outstanding Closing Month Rents and a tenant aging report as of October 13, 2019).

Additionally, under Section 11.0 of the Contract, Stockbridge agreed to two sole and exclusive remedies for an alleged breach of the Contract prior to the expiration of the Inspection Period. Those remedies were either to (i) enforce specific performance of the Contract, or (ii) terminate the Contract and receive a refund of the Earnest Money. *Id.* at p. 020. Moreover, Section 6.2 of the Contract also provided Stockbridge the right to terminate the Contract if after inspection and due diligence, Stockbridge was not satisfied with the physical condition of the Property or the financial condition of the tenants and the Northwood Plaza (or for no reason at all), and have the Earnest Money returned. *Id.* at pp. 10–11. However, prior to the expiration of the Inspection Period or the closing, Stockbridge did not exercise its right to seek specific performance or terminate the Contract. Instead, Stockbridge chose to close on the sale of the Property on October 15, 2019. Tr. 198:24–25.

IV. CONTRACTUAL POST-CLOSING RECONCILIATION OBLIGATIONS

The only continuing obligations between the parties following the closing date at issue in this case involve the Post-Closing Reconciliation. Because the closing occurred in the middle of a calendar month and year, Section 8.1 of the Contract required the parties to make post-closing monetary adjustments and reconciliations related to the tenant leases on a per diem basis as of the day preceding the Closing Date. JX_1 at p. 015–16. Sections 8.1(a), (d), and (e) of the Contract governs the parties' post-closing obligations with respect to real estate taxes, insurance and common area maintenance charges, and rents required to be reconciled between Northwood and Stockbridge.

A. Pre-Lawsuit Attempt at Reconciliation

On December 30, 2019, which was within 90 days after the closing, Keith Nemes sent to Dr. Al-Hadidi and John Bridges a link to the CTI Reconciliation. JX_7 at 001. Before receiving a response, Mr. Nemes sent another email informing Stockbridge that it had received a $38,000 insurance refund (thus, reducing the CTI charges incurred by Northwood)[14] and sent revised invoices for all tenants. *Id.* The CTI Reconciliation showed that Northwood incurred CTI charges in the total amount of $228,428.07, but had only received CTI payments from tenants in the amount of $186,518.80. JX_28. When the CTI reconciliation is broken down on a tenant-by-tenant basis, it shows that some tenants made higher payments than charges incurred by Northwood, but most tenants made lower payments than actual charges incurred by Northwood. *See id.* When you aggregate the tenants who made higher payments than charges incurred, the total is $10,983.23. *See id.* For the tenants who made lower payments than actual charges incurred, the total is $52,892.46, resulting in a net amount of $41,909.23 for the total CTI charges Northwood incurred in excess of total CTI payments received from all tenants. *See* JX_28; *see also* JX_7 at 007.

On February 27, 2020, which was more than 120 days after the closing, John Bridges responded to Mr. Nemes email. JX_7 at 010. Mr. Bridges responded to Mr. Nemes email by agreeing with the total CTI Reconciliation and admitting that 2019 RE Taxes were received from Food Lion and Fresh Market. JX_7 at 010. However, instead of offering both Northwood's pro-rata share of the 2019 RE Taxes Stockbridge had received ($44,897.94) plus the entire CTI Reconciliation ($41,909.27), Mr. Bridges communicated that Stockbridge was prepared to offer Northwood's pro-rata share of the 2019 RE Taxes received less $10,983.23 for the tenants who were owed a CTI credit. This partial offer was rejected by Northwood.

[14] Importantly, as a result of this reduction in CTI charges incurred by Northwood, there was a corresponding reduction in the amount Stockbridge owed Northwood for the CTI Reconciliation. Tr. 132:15–23.

After several email exchanges between the parties, Brian Holder emailed Dr. Al-Hadidi on May 14, 2020, in which he stated that (i) Stockbridge acknowledged receiving $44,897.94 in 2019 RE Taxes due to Northwood; (ii) the CTI Reconciliation of $41,909.27 was due to Northwood and was not dependent on collections; and (iii) future monies due under the Contract upon collection included Stein Mart's and Pizza Hut's 2019 RE taxes in the amount of $24,393.34 and $10,427.33, respectively, as well as Closing Month Rents from certain tenants. JX_7 at 007.

> In response to Mr. Holder's email, Mr. Bridges responded as follows:
>
> According to our records, we have received tax payments from:[15]
>
> Fresh Market: $13,590.36
> Food Lion: $31,307.58
>
> Taking into account the $10,983.23 2019 CAM credits to the tenants, the ownership is prepared to cut a check for $33,914.71 upon your agreement.
>
> We have not received any 2019 CTI Rec dollars to date.

JX_7 at 006. Dr. Al-Hadidi then interjected into the conversation, and stated, among other things, the following:

> We either settle this matter now
> With the amount received as outlined by John or it will be settled in court if the seller elects to go that rout
> With the current situation it will be a waste of every ones time and money
>
> ***And will drag for years***
> I tried to call you to finalize
> Buyer had performed all of it's obligation
> In this deal on time will full cooperation
>
> Feel free to call me any time or send
> Acceptance of this offer Or we wait
>
> If we receive any further money it will be allocated to delinquent rent first and legal fees then we Will amend this offer [sic]

JX_7 at 005–6 (emphasis added).

[15] Although Stockbridge failed to ever disclose its receipt of Pizza Hut's payment for 2019 RE Taxes, Stockbridge received that payment on February 29, 2020. *See* JX_15-023 & JX_11-001.

B. Facts Obtained through Discovery

1. CTI Reconciliation

Mr. Bridges never reviewed the Contract prior to performing the post-closing reconciliation in this case. Bridges Dep. 62:25–63:4. In fact, he never received a copy of the Contract from Stockbridge. *Id.* at 87:11–14. Instead, all information Mr. Bridges conveyed to Northwood regarding the proposed reconciliation was provided to Mr. Bridges by Dr. Al-Hadidi. *Id.* at 87:15–18. At his deposition, when confronted with Section 8.1(e)'s language governing the reconciliation process, he stated: "So the way the contract reads is the tenant or the buyer would pay to the seller any additional amount due from the tenants. And then, I guess, it would be assumed that the buyer would then go back to the tenants and recoup or collect any of the charges." *Id.* at 94:21–25.

2. 2019 RE Taxes

Although Stockbridge claimed it had not received Pizza Hut's payment for 2019 RE Taxes, it was later determined that payment had been received by Stockbridge on February 29, 2020. JX_15 at 023 & JX_11 at 001. There is no evidence that Stockbridge informed Northwood of its belief that it was not required to pay Northwood its pro-rata share of Pizza Hut's payment for 2019 RE Taxes, even after Northwood demanded it, until after this lawsuit was initiated. Stein Mart's payment for 2019 RE Taxes was received on May 27, 2020. JX_18 at 028. Stockbridge never admitted to receiving this payment, even after it was received.

Rather, Dr. Al-Hadidi maintained throughout trial that this payment was applied to rent. However, Stockbridge's own internal records show that when the payment was received, John Bridges applied it to real estate taxes, and it was not until July 2020 (one month after Northwood filed this lawsuit) that Stockbridge reversed the entry and reapplied the funds. Bridges Dep. 74:4–79:12; *see also* JX_20 at 030.

The evidence presented at trial conclusively establishes that Stockbridge received 2019 RE Taxes as follows:

Tenant	2019 RE Taxes Received by Stockbridge	Northwood's Prorated Share	Date of Receipt
Food Lion	$40,048.33	$31,307.58	12/13/2019
Fresh Market	$17,290.60	$13,590.36	12/31/2019
Stein Mart	$31,022.54	$24,393.34	05/27/2020
Pizza Hut	$13,261.24	$10,427.33	02/29/2020
TOTAL	**$101,622.71**	**$79,718.61**	

See JX_7 at 006; JX_18 at 028; JX_11 at 001 & JX_15 at 023.

3. Closing Month Rents

The evidence establishes that Stockbridge received all Closing Month Rents, but Stockbridge has paid no Closing Month Rents to Northwood. Pigtails & Crewcuts ("Pigtails") owed $2,970.86 in rents as of the closing date. *Id.* at 006. Pigtails made one payment in the amount of $1,500 for "**lease Sept/Oct 2019**" on October 17, 2019 and another payment of $2,000 on November 5, 2019. *See* JX_10 at 006 & 019. Pigtails was still a tenant at the Property as of December 31, 2022, and had a $0 balance for Rent. JX_26. Thus, the Court finds that Pigtails paid Closing Month Rents to Stockbridge, and Northwood's pro-rated share is $1,341.68.

Signworld owed $2,347 in rents as of the closing date. JX_8 at 006. Signworld made payments in the amount of $1,200 and $2,205.76 after the closing. JX_10 at 048–49. Signworld was still a tenant at the Property as of December 31, 2022, *see* JX_27 at 035, and had a $0 balance for Rent as of December 31, 2020. JX_25 at 035. Thus, the Court finds that Signworld paid Closing Month Rents to Stockbridge and Northwood's pro-rated share is $1,060.06.

Balloons, Décor and More ("Balloons") owed $4,409.52 in rents as of the closing date, plus an additional $2,755.64 for prior months rents it had not paid to Northwood. JX_8 at 007 &

012. Balloons made payments in the amount of $3,370.60 and $3,486.61 on October 16, 2019 and November 13, 2019. JX_10 at 018 & 054. Thus, the Court finds that Balloons paid Closing Month Rents to Stockbridge and Northwood's pro-rated share is $1,991.40.

Royal Ramen owed $5,642.59 in rents as of the closing date. JX_8 at 008. Royal Ramen made two separate payments in the amount of $5,2924 on October 1, 2019 and November 1, 2019. JX_10 at 043–44. The October 1, 2019 check stated it was to "**Pay Rent for 10/01/2019**." *Id.* (emphasis added). Royal Ramen was still a tenant as of December 31, 2022. JX_27 at 036. Thus, the Court finds that Royal Ramen paid Closing Month Rents to Stockbridge and Northwood's pro-rated share is $2,548.27.

Gore & Company ("Gore") owed $1,827.96 in rents as of the closing date. JX_8 at 008. Gore made a payment to Stockbridge on October 10, 2019 in the amount of $1,827.96. Thus, the Court finds that Gore paid Closing Month Rents to Stockbridge and Northwood's pro-rated share is $825.53.

Furthermore, the evidence establishes that despite not receiving any Closing Month Rents from Stockbridge, Northwood delivered to Stockbridge post-closing rents Northwood received from tenants Stein Mart, Orange Theory, and Avail Vapor in the amount of $31,773.86. JX_10 at 051.

CONCLUSIONS OF LAW

I. BURDEN OF PROOF

Establishing the right to recovery generally requires proving by a preponderance of the evidence the material allegations in the party's respective pleadings. *See Ford v. Atlantic Coast Line R. Co.*, 169 S.C. 41, 168 S.E. 143 (1932) ("[I]f the evidence in support of the allegations of the complaint preponderates, or outweighs the other side, then the plaintiff has sustained the allegations of [its] complaint by the preponderance of the evidence."). "Findings of fact based

upon a 'preponderance' of the evidence are those supported by the greatest 'weight, amount, credibility or truth' as reflected by the whole of the evidence before the court, or 'evidence which convinces as to its truth." *Janasik v. Fairway Oaks Villas Horizontal Property Regime,* 307 S.C. 339, 346, 415 S.E.2d 384, 388 (1992) (quoting *Frazier v. Frazier*, 228 S.C. 149, 89 S.E.2d 225, 235 (1995)). This standard applies to all claims, counterclaims, and affirmative defenses in this lawsuit, except for Stockbridge's counterclaim for fraud in the inducement of a contract. For that particular claim, all elements of fraud "must be proven by clear, cogent, and convincing evidence." *Shnellmann v. Roettger*, 373 S.C. 379, 383, 645 S.E.2d 239, 241 (2007).

II. NORTHWOOD'S CLAIMS

A. Breach of Contract

The evidence presented to this Court establishes that Stockbridge breached the Contract by failing to remit the Post-Closing Reconciliation to Northwood. Proving a breach of contract claim requires a showing of (1) the existence of a contract; (2) a breach of the contract; and (3) damages caused by the breach. *E.g., Allegro, Inc. v. Sully*, 418 S.C. 24, 34, 791 S.E.2d 140, 145 (2016). "[C]onstruing a contract is a question of law for the Court." *Crenshaw v. Erskine College*, 432 S.C. 1, 26, 850 S.E.2d 1, 14 (2020).

"If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 499, 649 S.E.2d 494, 502 (Ct. App. 2007) (citing *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993)). "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Id.* (quoting *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004)).

It is undisputed that the Contract is a valid contract between the parties. The question for this Court to determine is whether, and to what extent, the Contract obligated Stockbridge to pay the Post-Closing Reconciliation to Northwood.

1. CTI Reconciliation

The Court finds that Stockbridge breached the Contract by failing to pay to Northwood the CTI Reconciliation in the amount of $41,909.27. Section 8.1(e) of the Contract governed the parties' respective obligations to perform a reconciliation of the charges for the tenants' share of common area expenses, and insurance (the "CTI Reconciliation"). *See* JX_1 at 015–16. Specifically, the Contract provided that beginning on January 1, 2019 and ending October 14, 2019 (the "Adjustment Period"), Northwood and Stockbridge were to work together in good faith after the closing to compare on a tenant-by-tenant basis the actual CTI charges incurred by Northwood against the actual tenant CTI reimbursement payments received by Northwood up to the closing date. JX_1 at 016.

Within 90 days after the closing, Northwood was required to deliver to Northwood (i) a schedule showing all CTI charges collected by Northwood during the Adjustment period; (ii) a detailed accounting of all reimbursable expenses incurred by Northwood during the Adjustment Period; and (iii) a tenant-by-tenant reconciliation for the Adjustment Period (the "Reconciliation"). *Id.* Then, within 120 days after the closing, Northwood and Stockbridge were to mutually agree upon and sign the Reconciliation setting forth on a tenant-by-tenant basis the actual CTI charges incurred by Northwood and the actual CTI payments received from tenants during the Adjustment Period. *Id.*

Depending on what the Reconciliation established, the Contract required the parties to reimburse one another as follows:

> If a Reconciliation shows that for a given Tenant [Northwood] has received more [CTI Payments] than [CTI Charges] have been incurred which are applicable to the

> Adjustment Period, then [Northwood] shall promptly pay to [Stockbridge] any such overage within ten (10) days after [Northwood] and [Stockbridge] have signed the Reconciliation Schedule, at which time [Stockbridge] shall then be responsible for reimbursing the applicable Tenant for any overages for their [CTI Payments] incurred for the entire calendar year, if any. **In the event that the Reconciliation schedule shows any cases where [Northwood] has incurred a greater amount in [CTI charges] which are applicable to the Adjustment Period than [CTI payments] received for an applicable Tenant, then [Stockbridge] agrees to promptly pay to Northwood such overpayment within ten (10) days after [Northwood] and [Stockbridge] have signed the Reconciliation schedule.**

Id. (emphasis added). Importantly, because this contractual provision is to reconcile for charges already incurred by Northwood (or paid by tenants) this contractual language does not condition entitlement to the CTI funds on any party's receipt of those funds. *Id.*; *see also* Tr. 127:17–25.

As an initial matter, Northwood provided the Reconciliation to Stockbridge within the required timeline of 90 days. *See* JX_7 & JX_28. However, Stockbridge breached Section 8.1(e) of the Contract by failing to respond to the Reconciliation until after the 120-day deadline for the parties to agree to the Reconciliation had expired. JX_7 at 010. Thus, the Court finds that Stockbridge failed to comply with the timing requirements for the CTI Reconciliation set forth in Section 8.1(e) of the Contract.

Additionally, the Court finds that Stockbridge failed to participate in the CTI Reconciliation in "good faith" as required by Section 8.1(e). *See* JX_1 at 016. "Good faith" means "[a] state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage." GOOD FAITH, Black's Law Dictionary (11th ed. 2019). The evidence establishes that John Bridges was directed by Dr. Al-Hadidi to convey Stockbridge's proposed CTI Reconciliation to Northwood at Dr. Al-Hadidi's direction alone, without ever seeing the terms of the Contract. Bridges Dep. 62:25–63:4 & 87:15–18. Mr. Bridges explained this is atypical when requested to perform a post-closing

reconciliation because he would need to review contractual provisions to conclusively establish what each party was entitled to under the contract. *Id.* 68:1–5.

Dr. Al-Hadidi's testimony also establishes that he operates under a belief that he is entitled to apply any and all tenant payments received first to his property without any regard to other contractual obligations. *See, e.g.*, Tr. 228:7–10 (Dr. Al-Hadidi testifying that "for the seller to be whole with all of their money, and we are just to get all of the deficit and the blame and the sequences over bad tenant [sic]? That seems to be unfair"). This belief was further evidenced through his request to Mr. Bridges to reapply the Stein Mart 2019 real estate tax payment received to outstanding rent, which he did not do until after this lawsuit was initiated by Northwood. *See* JX_18 at 028 and JX_30 at 030. Thus, the Court finds that Stockbridge failed to participate in the reconciliation process in good faith because, at a minimum, Stockbridge failed to observe reasonable commercial standards of fair dealing.

Moreover, Stockbridge not only refused to reimburse Northwood for the CTI charges Northwood incurred in excess of CTI payments Northwood received from tenants for the Adjustment Period, but Stockbridge attempted to claim it was entitled to deduct from Food Lion's and Fresh Market's 2019 RE Taxes (admittedly owed to Northwood) the amount of excess CTI payments Northwood had received. JX_7-006 (John Bridges stating, "[t]aking into account the $10,983.23 2019 CAM credits to the tenants, the ownership is prepared to cut a check for $33,914.71 upon your agreement. **We have not received any 2019 CTI Rec dollars to date**.") (emphasis added). In other words, Stockbridge attempted to have Northwood agree that Stockbridge could reap the benefit from those certain tenants who had made CTI payments in excess of the actual charges incurred, without having to give effect to the rest of Section 8.1(e) of the Contract requiring Stockbridge to reimburse Northwood for excess CTI charges Northwood

incurred through the Adjustment Period. This is further evidence that Stockbridge exercised bad faith when performing the CTI Reconciliation.

Furthermore, there is no evidence disputing the CTI Reconciliation of $41,909.27 previously sent to Stockbridge on January 10, 2019. Rather, the only disagreement between the parties was that Stockbridge believed the CTI Reconciliation amount was contingent upon its receipt of certain funds from tenants. *See* Tr. 154:6–12 (Dr. Al-Hadidi testifying that he only disputes the $41,909.27 CTI Reconciliation because "we never received it").[16] However, Section 8.1(e) of the Contract plainly and unambiguously establishes that Northwood's right to be reimbursed for CTI charges incurred in excess of CTI payments received from tenants was **not** contingent upon Stockbridge's receipt of any funds. JX_01 at 016. The evidence presented at trial establishes that Northwood incurred CTI charges in the amount of $228,428.07 during the Adjustment Period, but only received $185,518.80 in CTI payments. JX_28; Tr. 111:3–113:9 (Keith Nemes explaining to the Court the net result of the tenant-by-tenant reconciliation Northwood sent to Stockbridge). Therefore, the Court finds that Stockbridge breached the Contract by failing to pay the CTI Reconciliation to Northwood, and Northwood was damaged in the amount of $41,909.27 as a result of Stockbridge's breach.

2. 2019 RE Taxes

The Court finds that Stockbridge breached the Contract by failing to remit to Northwood its pro-rated share of 2019 RE Taxes in the total amount of $79,718.61 upon Stockbridge's receipt

[16] For the first time, Dr. Al-Hadidi disputed the CTI Reconciliation during his direct examination on the grounds that Food Lion had not paid its 2019 insurance. Tr. 151:13–152:24. Dr. Al-Hadidi went so far as to testify that Stockbridge never received this payment. Tr. 154:6–9. However, the documentary evidence shows this is not true. *Compare* JX_25-038 (showing outstanding balance for Food Lion's 2019 CAM reconciliation in the amount of $17,683.56 as of December 2021) *with* JX_26-042 (showing no outstanding balance as of December 2022). Although irrelevant because the CTI does not depend on whether or not Stockbridge ultimately collected these funds from tenants, *see* JX_01 at 016, this contradiction between Dr. Al-Hadidi's testimony and the documentary evidence is yet another example of why this Court assigns very little weight to his testimony.

of the same for tenants Food Lion, Fresh Market, Stein Mart, and Pizza Hut. Section 8.1(a) of the Contract provides as follows:

> Real estate and personal property taxes shall be adjusted between [Northwood] and [Stockbridge] on the basis of the year to which they are applicable. Tax Reimbursements from Tenants applicable to any period after the Closing Date, but collected by Seller prior to the Closing Date, shall be remitted to Purchaser at Closing. **Tax Reimbursements from Tenants applicable to any period prior to the Closing Date shall, upon receipt, be equitably prorated and reimbursed to [Northwood]**.

JX_1 at 015 (emphasis added). Stockbridge admitted to receiving $40,048.33 from Food Lion and $17,290.60 from Fresh Market for 2019 RE Taxes, and that Northwood was entitled to $31,307.58 and $13,590.36 of those respective payments. JX_7 at 006.

With respect to Stein Mart's 2019 RE Tax payment, the Court does not agree with Stockbridge's argument that because Stein Mart owed rent for April 2019 when it made its 2019 RE Tax payment, Stockbridge should be entitled to retain these funds. Section 8.1(a) of the Contract plainly and unambiguously requires Stockbridge to remit any payments received from tenants for 2019 RE Taxes "upon receipt." JX_1 at 015. Nowhere does the Contract allow Stockbridge to withhold payment Stockbridge received for the real estate taxes Northwood incurred as of the closing, simply because the tenant got behind on rent—months after the closing. To accept Stockbridge's interpretation of its rights under the Contract would require this Court to impose words into the Contract—a function this Court may not do. *Lee v. Univ. of S.C.*, 407 S.C. 512, 518, 757 S.E.2d 394, 398 (2014) (holding it impermissible to impose additional terms into a contract) (citing 17A Am.Jur.2d *Contracts* § 507); *see also Layman v. State*, 368 S.C. 631, 640, 630 S.E.2d 265, 269 (2006) ("Once the bargain is formed, and the obligations set, a contract may only be altered by mutual agreement and for further consideration.").

Furthermore, Stockbridge's argument is undermined by its own internal record keeping practices, which show that Stockbridge did not take this position until *after* Northwood filed its

collections lawsuit. *See* JX_18 at 028 & JX_30 at 030. Rather, when the payment was first received by Stockbridge, it was applied to the "Real Estate Tax" charge category. JX_18 at 028. Application of Stein Mart's payment to the "Real Estate Tax" charge category is consistent with Stockbridge's historical practice for applying tenant payments, which is also consistent with "best practices" according to Stockbridge's bookkeeper, John Bridges. *See* Bridges Dep. 37:23–38:4 & 80:4–6 (Mr. Bridges testifying that "best practices" is to apply tenant payments in the manner the tenant intended and that this was the only instance in keeping Stockbridge's (and the other shopping centers managed by Dr. Al-Hadidi) records that a payment was ever applied in this manner). Again, this is further evidence that Stockbridge failed to participate in the Post-Closing Reconciliation in good faith. Thus, the Court finds that Stockbridge breached the Contract by failing to pay Northwood $24,393.34 after Stockbridge received payment for Stein Mart's 2019 RE Taxes in the amount of $31,022.54.

With respect to Pizza Hut's 2019 RE Tax payment, the Settlement Statement conclusively establishes that Northwood paid Pizza Hut's 2019 RE Taxes applicable to the period January 1–October 14, 2019. JX_8 at 001–2. Keith Nemes explained to the Court that despite the contradictory note on the last page of an exhibit to the Settlement Statement, line 511 of the Settlement Statement conclusively shows that Northwood paid for Pizza Hut's 2019 RE Taxes through the Adjustment Period and that it was included in the amount to be reimbursed by Stockbridge. Tr. 115:7–116:13.[17] Thus, the Court finds that Stockbridge breached the Contract by

[17] *See also* Tr. 123:11–21, Mr. Nemes testifying as follows on cross-examination:

> Q. Do you have evidence that -- my client didn't pay [the Pizza Hut 2019 RE Taxes] at closing?
>
> A. Yes, Because the highlighted amount there, that 138,000 in the column right next to the statement you just had me read includes $10,427.33. That [is] the prorated share of the Northwood's ownership for the time period the total tax bill of the 13,261. That $138,000 flows into the settlement statement as a reduction to the amount due to the seller for real estate taxes. So, clearly, Northwood has contributed their share of the Pizza Hut as part of the $138,000.

failing to pay Northwood $10,427.33 after Stockbridge received payment for Pizza Hut's 2019 RE Taxes in the amount of $13,261.24.

Accordingly, the Court finds that Stockbridge received all 2019 RE Taxes from applicable tenants in the amount of $101,622.71. The Court further finds that because Stockbridge failed to pay Northwood its pro-rated share promptly upon receipt of the same, Stockbridge breached the Contract by failing to remit to Northwood its pro-rated share of 2019 RE Taxes in the total amount of $79,718.61.

3. Closing Month Rents

The Court finds that Stockbridge breached the Contract by failing to pay to Northwood the Closing Month Rents in the amount of $7,776.94. Section 8.1(d) of the Contract states as follows:

> Rents and other fixed charges payable and collected under the Tenant Leases. At the Closing, [Northwood] shall furnish to [Stockbridge] a complete and correct schedule of all rents and other fixed charges (the "*Closing Month Rents*"). The Closing Month Rents shall be adjusted as of the Closing with [Stockbridge] receiving a credit for the portion of the Closing Month Rents which are collected and applicable to the period on or after the Closing Date. **To the extent any revenues for the month of Closing are not collected prior to the Closing Date, [Northwood] shall be entitled to a reimbursement from [Stockbridge] for [Northwood's] share of same promptly upon receipt by [Stockbridge] after Closing and [Stockbridge] shall be entitled to a reimbursement from [Northwood] for [Stockbridge's] share of same promptly upon receipt of same by [Northwood] after Closing, which obligations shall survive Closing**.

JX_1 at 015 (emphasis added).

The evidence establishes that Northwood furnished to Stockbridge a schedule of Closing Month Rents to Stockbridge at Closing, JX_8 at 006–11. The Closing Month Rents schedule showed that tenants Pigtails, Signworld, Balloons, Royal Ramen, and Gore owed $17,198.20 in Closing Month Rents unpaid and that Northwood's pro-rata share for October 1–14, 2019 was equal to $7,677.94. *See id.* The evidence also establishes that Stockbridge received $7,766.94 for Northwood's pro-rata share of Closing Months Rents, *see* JX_10, but that Stockbridge did not pay Northwood its pro-rated share of Closing Month Rents upon Stockbridge's receipt of the same.

Therefore, this Court finds that Stockbridge breached Section 8.1(d) of the Contract by failing to pay Northwood $7,766.94 for Northwood's pro-rated share of Closing Month Rents.

4. Conclusion - Post-Closing Reconciliation

By failing to remit Post-Closing Payments to Northwood as required by the Contract, Stockbridge breached Section 8.1 of the Contract. As a result of Stockbridge's breach, Northwood has suffered $129,394.82 in damages, plus its attorneys' fees and costs incurred in enforcing the Contract's terms.

B. Conversion

The Court finds that Stockbridge wrongfully converted the Post-Closing Reconciliation by failing to pay the same to Northwood after demand. "In order to prevail in a conversion action, the plaintiff must prove either title or right to possession of the property at the time of the conversion." *Oxford Fin. Cos., Inc. v. Burgess*, 303, S.C. 534, 539, 402 S.E.2d 480, 482 (1991) (citing *Causey v. Blanton*, 281 S.C. 163, 314 S.E.2d 346 (1984)). An authorized detention of property belonging to another, after demand, is sufficient to establish a claim for conversion. *See id*. (citing *Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964); *see also Ray v. Pilgrim Health & Life Ins. Co.*, 206 S.C. 344, 347, 34 S.E.2d 218 (1945) ("Conversion may arise either by a wrongful taking of the chattel or by some other illegal assumption of ownership, by illegally using or misusing it, **or by wrongful detention**." (quoting *Young v. Corbitt Motor Truck Co.*, 148 S.C. 511, 146 S.E. 534, 542 (1929)) (emphasis added). Furthermore, "[m]oney may be the subject of conversion when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified." *Moore v. Weinberg*, 383 S.C. 583, 681 S.E.2d 875 (2009); *see also SSI Medical Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990); *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496–97, 220 S.E.2d 116, 119 (1976); *Ray*, 206 S.C. at 348, 34 S.E.2d 218.

Northwood had the right to possession of the Post-Closing Reconciliation pursuant to Section 8.1 of the Contract. Northwood demanded that Stockbridge remit the Post-Closing Reconciliation to Northwood, but Stockbridge refused to do so. The Post-Closing Reconciliation is properly the subject of conversion because the finds are capable of being identified. *See* JX_28; JX_7, JX_11, JX_15 & JX_18; and JX_10. Therefore, Stockbridge wrongfully converted $129,394.82 due and owing to Northwood under the Contract for the Post-Closing Reconciliation.

II. STOCKBRIDGE'S COUNTERCLAIMS

A. Breach of Contract

The Court finds that Stockbridge counterclaim for breach of contract fails. Stockbridge failed to produce any credible evidence that Northwood breached the Contract. Even if Stockbridge had produced credible evidence that Northwood breached the Contract (which it did not), the Court would still find that Stockbridge's exclusive remedies under the Contract would have been to either terminate the Contract and walk away with its Earnest Money or enforce specific performance of the Contract. Stockbridge did not exercise either remedy.

Stockbridge claims that Northwood breached the Contract by failing to repair and maintain items at the Property that were damaged or broken pursuant to Section 5.0 of the Contract. Answer and Countercl. ¶ 83; *see also* Tr. 136:15–22. Specifically, Stockbridge argues that Northwood was required to repair the irrigation system, the landscaping, the parking lot lights, and certain concrete work as part of the seller's covenant to maintain the Property in the normal manner up until the Closing Date. Answer & Countercl. ¶ 84; *see also* Tr. 136:23–137:23. However, the evidence presented at trial establishes that Northwood maintained the Property in the normal manner through Closing and had no other contractual obligation to make "requested" repairs. *See* JX_36; Tr. 26:24–25; Tr. 36:3–7; Tr. 87:22–88:21.

In Section 3.2 of the Contract, Northwood disclaimed all express and implied warranties, and further stated that property was being sold in as is, where is condition. Specifically, Section 3.2 provides as follows:

> Except for the representations and warranties expressly set forth in Section 3.0, SELLER MAKES NO WARRANT OR REPRESENTATION, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE PROPERTY. **EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE PROPERTY IS BEING SOLD IN "AS IS" AND "WHERE IS" CONDITION. Seller shall not be liable for, or be bound by, any verbal or written statements, representations, real estate broker, agent, employee, servant, or any other person unless the same are specifically set forth in writing in this Contract.** The provisions of this paragraph shall survive the Closing.

JX_1 at 006 (bold emphasis added; capitalization in original).

In addition to Section 3.2's express disclaimer that the Property was being sold in "as is" and "where is" condition, the Contract provides further evidence that Northwood had no obligation to make the repairs that Stockbridge *requested*. Pursuant to Section 1.0(g), the inspection period ran from the Effective Date for a period of 30 days. *Id.* at 001. Because Stockbridge was not satisfied with the duration of the Inspection Period, Northwood agreed to extend the Inspection Period for a period of 17 additional days, giving Stockbridge a total Extended Inspection Period of 47 days. *See* JX_2.

Moreover, Section 6.2 of the Contract provided Stockbridge with certain rights during the Extended Inspection Period. Specifically, Stockbridge had the right "to make such inspections, surveys and investigations of the Property, Due Diligence Items in Exhibit D,[18] or otherwise, as [Stockbridge] deems desirable." JX-1 at 010. The Extended Inspection Period ran from August 22, 2019 until October 8, 2019. JX_2. Before the end of the Extended Inspection Period, Stockbridge

[18] There are no repair obligations of any kind in Exhibit D to the Contract. *See* JX_1 at 043.

was told on no less than two occasions that the items Stockbridge requested be repaired would be transferred "as is." JX_6. Stockbridge sent an email requesting that Northwood repair the very items it complains of on September 13, 2019. JX_6 at 013. In three separate emails on September 24, 2019, Northwood's representative communicated to Stockbridge that "[t]hose minor site items will be transferred as is" and "[t]he other minor site items and the irrigation system will be transferred as is." *Id.* at 015, 016–17, & 021. Stockbridge could have terminated the Contract over the fact that Northwood refused to make the requested repairs, because Stockbridge was entitled to terminate the Contract for any reason or no reason prior to the end of the Extended Inspection Period. However, Stockbridge did not terminate the Contract, and, thus, accepted the Property in "as is" and "where is" condition.

Furthermore, the Court finds that Northwood was not obligated by Section 5.0 of Contract to repair the irrigation system, correct the landscaping, fix the parking lot lights, or complete concrete work. The Court also finds that even if Section 5.0 of the Contract obligated to make certain repairs (i.e., normal maintenance items), Stockbridge failed to produce any credible evidence that Northwood failed to maintain the Property in the "normal manner" prior to the closing. Mr. Gaines, Mr. Holder, and Mr. Lake all testified that Northwood maintained the Property in normal manner as it had always done all the way up until the closing date. Tr. 26:24–25; Tr. 36:3–7; Tr. 87:22–21. The only evidence presented by Stockbridge to support these allegations was the unsupported and contradicted testimony of Dr. Al-Hadidi, as well as certain documents purporting to be invoices. However, Dr. Al-Hadidi admitted he had no personal knowledge of the invoices and could not explain to the Court what maintenance items each purported invoice related to. Tr. 159:16; T. 160:6–7; 160:12; 161:6–7; Tr. 248:7; Tr. 248:12–14; Tr. 248:24–25. Additionally, even if Northwood failed to perform certain items required to maintain the Property in the normal manner (which the Court did not find), Stockbridge has not

incurred any damages as a result because these costs are passed through to the Property's tenants. Tr. 219:22–220:19.

Accordingly, there was no credible evidence presented to the Court that Northwood breached the Contract by failing to make the requested repairs or that Northwood failed to maintain the Property in the normal manner. Therefore, Stockbridge's claim for breach of contract fails.

B. Fraud in the Inducement of a Contract

Stockbridge's counterclaim for fraud in the inducement of a contract fails. Establishing a claim for fraud in the inducement requires that a party **"establish through clear and convincing evidence**" the following nine elements: (1) a representation; (2) the representation was false; (3) the false representation was material; (4) the maker of the false representation knew that it was false or demonstrated a reckless disregard of its truth or falsity; (5) the maker's intent that the false representation be acted upon; (6) the hearer's ignorance that the representation was false; (7) the hearer's reliance on the truth of the representation; (8) the hearer's right to rely on the false representation; and (9) the hearer's consequent and proximate injury. *E.g., Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) (emphasis added).

In support of its cause of action for fraud, Stockbridge claims that Northwood induced Stockbridge to purchase the Property by representing to Stockbridge through the OM that all tenants were in stable condition and the Property would generate certain cash flows. However, Stockbridge did not present any credible evidence that any false representations were made by Northwood. In fact, aside from Dr. Al-Hadidi's testimony on direct examination, which is directly contradicted by the documentary evidence, the testimony of Northwood's witnesses, the deposition testimony of John Bridges, and Dr. Al-Hadidi's testimony on cross-examination, the evidence shows the opposite.

Although Stockbridge alleges it was assured of cash flow projections and the tenants' financial condition *through the marketing materials*, the plain language of those marketing materials negates any argument that the information equates to a false representation. Specifically, the OM contained the following disclaimer on every page with tenant financial information: "You are solely responsible for independently verifying the information in this Memorandum. ANY RELIANCE ON IT IS SOLELY AT YOUR OWN RISK. JX_5 at 032–39. The marketing materials also stated that "[a]ll financial projections and information are provided for general reference purposes only and are based on assumptions relating to the general economy, market conditions, competition and other factors beyond the control of the Owner and CBRE, Inc. *Therefore, all projections, assumptions and other information provided and made herein are subject to material variation*." *Id.* at 043 (emphasis added). The marketing materials further stated that "[i]nterested parties are expected to review all such summaries and other documents of whatever nature *independently and not rely on the contents of this Memorandum in any manner*." *Id.* (emphasis added).

Stockbridge also argues, without any supporting evidence, that Northwood knew that Stein Mart was going to declare bankruptcy but failed to disclose this information to Stockbridge. Stockbridge's claims about Northwood's "knowledge" of Stein Mart's future bankruptcy are not only completely unsubstantiated, but in direct conflict with all the other evidence on this issue. For one, Dr. Al-Hadidi admitted that he knew Stein Mart was a publicly traded company and, thus, would have publicly available information. Stockbridge 30(b)(6) Dep. 169:7–11. However, Dr. Al-Hadidi maintained that, despite having no previous knowledge of Stein Mart, he did not review their publicly available information, did not ask anyone including John Bridges whether they knew anything about Stein Mart, and did not so much as perform a Google search to learn more information. *Id.* at 159:13–20; *id.* at 173:7–174:5. Second, Stein Mart's sales at the Property were

25–30% above the national average. Tr. 79:19–80:4 (Tim Lake testifying to Stein Mart's sales reported in the OM); *see also* JX_5 at 42. Third, Stein Mart exercised a five-year renewal shortly prior to the OM without even negotiating the lease terms. Tr. 81:5–13. And fourth, Stein Mart did not go bankrupt because of underlying troubles with the chain, but, rather, their decision to liquidate was a direct result of COVID-19. Tr. 81:18–82:1.

Even if Northwood made a false representation (which there is no evidence to support), Stockbridge had no right to rely. *Florentine Corp., Inc. v. PEDA I, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985) ("When there is no confidential or fiduciary relationship and an arm's length transaction between mature, educated people is involved, *there is no right to rely*. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests.") (emphasis added). "The absence of [the right to rely] is enough to defeat the claim of fraud." *Id.* at 387, 339 S.E.2d at 114. Stockbridge had 47 days during the Inspection Period to perform any due diligence activities it wanted to conduct. The sale of the Property was an arm's length transaction, and both Stockbridge and Northwood are sophisticated entities operated by mature, educated people. Neither party had any right to rely on the other party's representation which would be sufficient to support a claim for fraud. Therefore, Stockbridge's claim for fraud in the inducement of a contract fails. *See id*. at 387, 339 S.E.2d at 114.

And even if a false representation was made (which it was not), and even if Stockbridge had a right to rely on such a representation (which it did not), all of Stockbridge's allegations of misrepresentations made by Northwood are entirely predicated on unfulfilled promises or statements as to future events. This is not sufficient. *Beneficial Financial I, Inc. v Windham*, 431 S.C. 256, 271, 847 S.E.2d 793, 803 (2011) ("[T]o be actionable, a statement must relate to a preexisting fact, and cannot be predicated on unfulfilled promises or statements as to future events."). Therefore, Stockbridge's claim for fraud in the inducement of a contract fails.

C. Negligent Misrepresentation

Stockbridge's counterclaim for negligent misrepresentation fails for the same reasons as its claim for fraud in the inducement of a contract—that is, there is no evidence that any false representations were made by Northwood, that Stockbridge relied on any alleged false representations, or that Stockbridge was damaged in anyway by alleged false representations. *See Turner*, 392 S.C. at 123, 708 S.E.2d at 769.

Furthermore, "[t]here is no liability [for negligent misrepresentation] where information is furnished with a clear understanding that the [party] assumes no liability for its accuracy." *AMA Mgmt. Corp. v. Strausburger*, 309 S.C. 213, 420 S.E.2d 868, 874 (Ct. App. 1992). In other words, there is no liability for negligent misrepresentation for matters that the party "could ascertain on his own in the exercise of due diligence." *Id.* As shown above, the OM was furnished to Stockbridge with a clear understanding that Northwood assumed no liability for its accuracy and that Stockbridge was instructed not to rely and, instead, independently verify all information. Stockbridge also had 47 days to exercise its own due diligence and decide whether it wanted to purchase the Property in "as is" and "where is" condition.

D. Violation of the South Carolina Unfair Trade Practices Act

Stockbridge's counterclaim for violation of the South Carolina Unfair Trade Practices Act (the "SCUTPA") fails. Under the SCUTPA, "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are deemed unlawful." *Robertson v. First Union Nat. Bank*, 350 S.C. 339, 350, 565 S.E.2d 309, 315 (Ct. App. 2002) (citing S.C. Code Ann. § 39-5-20). To recover under a claim for violation of the SCUTPA, the party must show: (1) the other party engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the party suffered an ascertainable loss of property or money as a result of the other party's unfair or deceptive acts.

Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006) (citing S.C. Code Ann. §§ 39-5-10 to -560).

Stockbridge did not produce any evidence that Northwood's actions were in anyway "unfair" or "deceptive." However, even if Stockbridge could show that Northwood acted unfairly or deceptively (which it cannot), Stockbridge's SCUTPA claim still fails because there is no evidence that the public interest has been affected. Rather, Stockbridge's claims relate entirely to conduct that purportedly affects only Stockbridge. "[C]onduct which only affects the parties to the transaction provides no basis for a [SCUTPA] claim." *Jefferies*, 316 S.C. at 527, 451 S.E.2d at 23; *see also Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 479, 351 S.E.2d 347, 350–51 (Ct. App. 1986) ("An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act's embrace and we so hold."). A breach of a valid contract—even if deliberate or intentional—"does not constitute a violation of the SCUTPA." *Ardis v. Cox*, 314 S.C. 512, 519, 431 S.E.2d 267, 271 (Ct. App. 1993) (citing *The Key Co., Inc. v. Fameco Distributors, Inc.*, 292 S.C. 524, 357 S.E.2d 476 (Ct. App. 1987)). "Otherwise, every intentional breach of a contract within a commercial setting would constitute an unfair trade practice and thereby subject the breaching party to treble damages." *Id.*

Any complained of conduct in this case—whether it is Northwood's conduct or Stockbridge's conduct—affects only the parties to the Contract (i.e., Northwood and Stockbridge). Thus, Stockbridge cannot show that Northwood's conduct affected the public interest or that it was a violation of the SCUTPA.

E. Negligence

Stockbridge's counterclaim for negligence fails. In order to maintain a cause of action for negligence, Stockbridge must be able to show (1) the existence of a duty on the part of the Northwood to protect Stockbridge; (2) the failure of Northwood to discharge the duty; and (3)

injury to the plaintiff resulting from Northwood's failure to perform. *See S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). "In most instances, a negligence action will not lie when the parties are in privity of contract." *Tommy L. Griffin Plumbing and Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 55, 463 S.E.2d 85, 88 (1995). Only when there is a "special relationship between the alleged tortfeasor and the injured party not arising in contract" will a breach of the duty of care support a tort action. *Id.* And, "where duties are created *solely* by contract[,] . . . no cause of action in negligence will lie." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 149, 687 S.E.2d 47, 50 (2009) (quoting *Kennedy v. Columbia Lumber and Mfg. Co., Inc.*, 299 S.C. 335, 347, 384 S.E.2d 730, 737 (1989)).

In this case, Stockbridge has not produced any evidence to show that there was a special relationship between Northwood and Stockbridge, outside of the terms of the Contract, that imposed any duty on Northwood. Second, no duty could have arisen from Northwood's alleged "promised repairs and maintenance" because Northwood never promised that any repairs and maintenance would be completed. Instead, Northwood expressly stated to Stockbridge that the requested repairs and maintenance would not be completed.

South Carolina law is clear: a party's contractual duties do not create a duty for purposes of a tort action. *See, e.g., Sapp*, 386 S.C. at 149, 687 S.E.2d at 50; *Kennedy*, 299 S.C. at 347, 384 S.E.2d at 737. Accordingly, Northwood did not owe any duty to Stockbridge, separate and apart from each parties' respective duties under the Contract. Moreover, even assuming *arguendo* that a special relationship existed between Northwood and Stockbridge (which there did not) and even assuming *arguendo* that Northwood owed a duty to Stockbridge outside the terms of the Contract (which it did not), Stockbridge has not produced any evidence to show that Northwood breached that duty or that Stockbridge was in anyway damaged. Therefore, Stockbridge's negligence claim fails.

III. ATTORNEYS' FEES AND EXPENSES

This Court finds that Northwood, as the prevailing party, is entitled to an award of its attorneys' fees and expenses incurred in connection with the prosecution of its claims and defense of the counterclaims asserted against it by Stockbridge. The general rule is that attorneys' fees are recoverable if authorized by the parties' contract. *E.g.*, *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). Pursuant to section 14.7 of the Contract, the prevailing party (i.e., Northwood) "shall be entitled to an award of its attorneys' fees and expenses" that were incurred in "any legal action or other proceeding . . . to enforce or interpret any term or provision of [the] Contract. . . ." JX_1 at 022. The Contract further provides that "[t]he phrase 'prevailing party' shall include a party who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise." *Id.*

"A prevailing party is a party who successfully prosecutes the action by prevailing on the main issue and 'in whose favor the decision or verdict is rendered and judgment entered.'" *Douan v. Charleston Cty. Council*, 373 S.C. 384, 386, 645 S.E.2d 241, 243 (2007) (quoting *Heath v. Cty. of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990)). "The key factor in determining whether a party is a prevailing party is the degree of success obtained by the party seeking attorney's fees." *Id.* Because the Court finds that Northwood is entitled to all requested relief and Stockbridge is not entitled to any requested relief, the Court, thus, finds that Northwood is the prevailing party in this action.

The Court also notes that Northwood's attorneys' fees and expenses are likely to be substantially higher than the amount awarded to Northwood for its breach of contract and conversion claims. However, "there is no requirement that [attorneys' fees] be less than or comparable to a party's monetary judgment" and an award of attorneys' fees that "substantially exceed[s] the actual recovery" is proper under South Carolina law. *Taylor v. Medenica*, 331 S.C.

575, 582, 503 S.E.2d 458, 462 (1998). The Court finds that Northwood's attorneys' fees and expenses were elevated significantly as a direct result of Stockbridge's conduct since the initiation of this lawsuit.

First, Northwood initiated this lawsuit as a simple collections action. In response, Stockbridge made the decision (after first filing only an answer with no counterclaims) to assert counterclaims for fraud in the inducement of a contract and negligent misrepresentation, among others,[19] all of which required Northwood to vigorously defend itself from claims that were ultimately adjudicated to be meritless. Given the baselessness of these claims, and Stockbridge's pre-lawsuit threats to make this litigation drag on for years,[20] this Court finds that Stockbridge's counterclaims were asserted in bad faith and solely for the purposes of delay. Accordingly, Northwood will be entitled to an award of attorneys' fees and expenses for not only prosecution of its claims, but also defense of Stockbridge's counterclaims. *See Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, 647 S.E.2d 488 (Ct. App. 2007) (holding recovery of substantial attorneys' fees incurred in defending counterclaims proper); *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 483–84, 458 S.E.2d 431, 439 (Ct. App. 1995) ("The trial court clearly found that the facts and issues surrounding the promissory note were intertwined with those of the **counterclaims which required extensive discovery and transformed a normally uncomplicated action on a note into complex litigation**.") (emphasis added).

Second, Stockbridge's bad faith delay tactics continued throughout discovery, which further drove up Northwoods' attorneys' fees and expenses. The Court notes, as a matter of public record, that Northwood was forced to file four motions to compel in this case (three to compel

[19] The Court notes that Stockbridge's counterclaims were filed on its behalf by its former counsel before they formally withdrew as counsel pursuant to Rule 1.16(b)(5) of the South Carolina Rules of Professional Conduct.

[20] *See* JX_7 at 005–6 (Dr. Al-Hadidi threatening that if Northwood refused to take Stockbridge's initial $33,914.71 "offer" that "it will be a waste of every ones [sic] time and money [a]nd will drag for years[.]"

discovery responses and one to compel mediation), all of which resulted in a court order finding in Northwood's favor. As a further result of Stockbridge's failure to participate in discovery in good faith, Northwood was required to obtain much of the evidence introduced at trial through third-party discovery, including out-of-state subpoenas for documents and information within Stockbridge's possession.

Therefore, the Court finds that Northwood is entitled to the attorneys' fees and expenses it incurred to prosecute its breach of contract and conversion claims, as well as the attorneys' fees and costs incurred to defend itself against Stockbridge's counterclaims. Within ten (10) business days after the entry of this Order, Northwood shall file a motion for attorneys' fees and expenses, accompanied by an affidavit of counsel and supporting documentation to establish the amount of fees and expenses incurred in this lawsuit (the "Motion for Attorneys' Fees"). Within five (5) business days after Northwood's filing of the Motion for Attorneys' Fees, Stockbridge may file any objections to the attorneys' fees and expenses requested by Northwood.

ORDER

IT IS THEREFORE ORDERED that Stockbridge breached the Contract and wrongfully converted funds belonging to Northwood by failing to pay to Northwood the Post-Closing Reconciliation in the amount of $129,394.82.

IT IS FURTHER ORDERED that Stockbridge is not entitled to any relief requested for any of its counterclaims.

IT IS FURTHER ORDERED that Northwood is the prevailing party and is entitled to the attorneys' fees and expenses Northwood incurred to prosecute its claims and defend Stockbridge's counterclaims in an amount to be determined upon the Motion for Attorneys' Fees to be submitted by Northwood within ten (10) business days after the entry of this Order and that

Stockbridge may file any objections to the Motion for Attorneys' Fees within five (5) business days after Northwood's filing of the same.

AND IT IS SO ORDERED.

July ___, 2023

_____, South Carolina

_____

The Honorable Michael G. Nettles

Horry Common Pleas

Case Caption: Northwood Plaza LLC VS Stockbridge Enterprises Inc , defendant, et al

Case Number: 2020CP2603473

Type: Order/Judgment and Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140