

CURCIO MIRZAIAN SIROT LLC

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Attorneys for Defendants,
Sean Richway and Alicia Richway
and Third-Party Plaintiff,
CFRE Investment Flips I Corporation

KEVIN TILLERY,

Plaintiff,

v.

SEAN RICHWAY, ALICIA RICHWAY,
JANET TERRY, ANGELO BAGNARA
and SIRISHA FIGUEROA

Defendants,

CFRE INVESTMENT FLIPS I
CORPORATION,

Third-Party Plaintiff,

KEVIN TILLERY, WEALTH
ARCHITECTS F.P., LLC, and TILLERY
INVESTMENTS, LLC

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
UNION COUNTY: LAW DIVISION

DOCKET NO.: UNN-L-3943-19

CIVIL ACTION

**DEFENDANT SEAN RICHWAY AND ALICIA
RICHWAY'S ANSWER, AFFIRMATIVE
DEFENSES AND COUNTERCLAIM TO
PLAINTIFF'S COMPLAINT AND THIRD-PARTY
PLAINTIFF CFRE INVESTMENT FLIPS I
CORPORATION'S COMPLAINT AGAINST
KEVIN TILLERY, WEALTH ARCHITECTS F.P.,
LLC, AND TILLERY INVESTMENTS, LLC**

Defendants, Sean Richway (“Sean Richway”) and Alicia Richway (“Mrs. Richway,” and collectively with Sean Richway, “Defendants”) and third-party plaintiff CFRE Investment Flips I Corporation (“CFRE” or “Third-Party Plaintiff”) by and through their counsel, Curcio Mirzaian Sirot LLC, by way of Answer, Affirmative Defenses, Counterclaim, and Third-Party Complaint, in response to the Complaint of plaintiff Kevin Tillery in this matter, come forth and state, as

follows:

1. All allegations in Paragraph 1 of Plaintiff's complaint are denied, but for the address of defendants Sean and Alicia Richway.

2. Denied.

FORM A

1. Denied.

2. Denied.

3. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by duress.

Third Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by estoppel.

Fourth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by failure of consideration and/or performance.

Fifth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by Plaintiff's breaches of contract and/or duty, fraud and improper illegal acts or omissions to act.

Sixth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

Seventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

Eighth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by release.

Ninth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrine of res judicata.

Tenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the statute of frauds.

Eleventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

Twelfth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver and ratification.

Thirteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

Fourteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the Economic Loss Doctrine.

Fifteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, for failure to join an indispensable party.

Sixteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by virtue of the doctrine of unclean hands.

Seventeenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the Doctrines of Setoff, Recoupment and counterclaim.

Eighteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, due to improper service upon Defendants.

Nineteenth Affirmative Defense

Plaintiff's claims are barred, due to lack of personal jurisdiction over the Defendants.

Defendants reserve and preserve their right to assert and or raise any additional defenses.

WHEREFORE, Defendants demand judgment against Plaintiff as follows:

1. For dismissal of all claims against Defendants with prejudice; and
2. For an award of attorneys' fees, costs, and expenses to Defendants; and
3. For such other relief as the Court deems just and necessary.

STATEMENT OF FACTS COMMON TO COUNTERCLAIM

AND THIRD-PARTY COMPLAINT

1. Defendant, CFRE Investment Flips I Corporation ("CFRE") is a Maryland corporation with an address of 10411 Motor City Drive, 7th Floor, Bethesda, Maryland 20817.

Defendant Sean Richway ("Sean Richway") is the principal of CFRE.

2. Plaintiff, Kevin Tillery ("Plaintiff") is an individual with an address of 9 Caldwell Place, Elizabeth, New Jersey 07201.

3. Tillery is the owner of various entities including, but not limited to, Wealth Architects F.P., LLC ("Wealth") and Tillery Investments, LLC ("Tillery").

4. CFRE entered into a Local Investor Services Agreement with Tillery on or about March 26, 2019 (the "Agreement"), whereby CFRE purchased, and Tillery rehabilitated, and then CFRE sold the property in question located at 326 Pine Street, Roselle, New Jersey 07203 (the "Roselle Property"). In essence, the Investor Agreement was a profit-sharing agreement between CFRE and Tillery.

5. Additionally, CFRE, Wealth, and Plaintiff entered into various agreements including, but not limited to, a Loan Agreement (the "Loan Agreement"), an Open-End Commercial Mortgage ("Mortgage"), a Security Agreement Fixture Filing, (the "Fixture Filing"), the Commercial Non-Revolving Line of Credit Promissory Note, (the "Note"), the personal Commercial Guaranty (the "Guaranty"), and Pledge and Security Agreement, (the "Pledge Agreement," collectively with the Loan Agreement, the Mortgage, the Fixture Filing, the Note, and the Guaranty, the "Loan Documents" all dated September 11, 2018).

6. Pursuant to the Loan Documents, CFRE provided funding under the Note to Wealth for the purchase and rehabilitation of another property located at 819 Columbus Street, Burlington, New Jersey 08016 (the "Burlington Property").

7. Pursuant to the Loan Documents, Wealth was to rehabilitate and sell the Burlington Property and repay CFRE the Note balance along with interest thereon.

8. Plaintiff also signed the Personal Guaranty to be personally liable to repay the Note balance, plus interest thereon, should Wealth default on its obligations thereunder.

9. The payments that were supposed to have been made by Wealth and Plaintiff under the Loan Documents matured on September 11, 2019.

10. On or about October 16, 2019, CFRE communicated to Plaintiff and Wealth that the Loan Documents had matured and payment thereunder was owed or in the alternative to transfer the property in question to CFRE.

11. Plaintiff and Wealth failed to pay the loan amount in response to this demand. Plaintiff responded in the affirmative that he would review documents prepared by CFRE to effectuate the alternative transfer.

12. On or about December 2, 2019, CFRE sent a Notice of Sale Pursuant to the Loan Documents to Plaintiff, Tillery and Wealth, stating that they owed CFRE, in the aggregate, the sum of \$155,088.05 representing principal, nominal interest, late fees, and default interest under the Agreement and Loan Documents.

13. Despite due demand, Plaintiff, Tillery, and Wealth remain in default under the Agreement and the Loan Documents.

14. Plaintiff, Tillery, and Wealth's breaches of the applicable agreements have caused Sean Richway and CFRE to suffer damages.

15. In addition to Plaintiff, Tillery, and Wealth's breaches of the Agreement and the Loan Documents, Plaintiff has also made a concerted effort to defame Sean Richway and his company CFRE.

16. The statements contained in the Complaint are statements, purporting to be truthful statements made under oath, available to, and made to, the public at large.

17. Additionally, Plaintiff has posted numerous false and/or misleading statements on a wide array of social media and internet platforms.

18. Specifically, beginning on or around November 6, 2019, Plaintiff began to compose and distribute defamatory and disparaging statements about and concerning Sean Richway and CFRE via the website ripoffreport.com. Additionally, Plaintiff posted substantially similar posts on biggerpockets.com, Facebook.com, Craigslist.org, and Connectedinvestors.com, among others.

19. Specifically, posted on the website 'ripoffreport.com' was:

“INVESTORS BEWARE!!! .The first and last 60/40 JV deal I closed with this company (see below) settled on 10/28. Monday morning. It’s now Saturday afternoon, 11/2, and I still haven’t received my money (over 25K). An amount send via email in a spreadsheet, 2 days ater the date we agreed I would receive payment was equal to 12% of the net profits...

Vastly different from the 60% split I anticipated after rehabbing, managing and selling the property...This calculation included doubled the closing costs, recouping revenue and expenses that were already subtracted from the HUD/CD.”

20. In early December 2019, Plaintiff posted on biggerpockets.com:

“I’m writing you to save you and yours from dealing with a thief, a liar and a fraud. Read the entire message and inform everyone you know to prevent others from experiencing such financial loss...”

21. On or about November 26, 2019, Plaintiff reported Defendants and CFRE to the Better Business Bureau of Greater Maryland.

22. On or about November 15, 2019, Plaintiff also sent copies of the above referenced posts directly to various contacts of Defendants on Facebook.

23. Through his actions, Plaintiff has intentionally, maliciously, and willfully tarnished and damaged the reputation of Sean Richway and CFRE, causing serious and permanent damages.

COUNTERCLAIM

FIRST COUNT **(Defamation)**

24. Defendants repeat and reallege each and every allegation set forth in the previous paragraphs of their Answer and Counterclaim as if set forth at length herein.

25. Plaintiff’s Complaint is replete with claims that were and remain demonstrably false.

26. Additionally, Plaintiff has posted numerous false and/or misleading statements on a wide array of social media and internet platforms.

27. The disparaging and defamatory statements made by Plaintiff concern the personal, professional, and business reputation and character of Defendants, and were made negligently, maliciously, and with the intent to destroy the character, career, and reputation of CFRE and Sean Richway.

28. CFRE and Sean Richway are not public figures.

29. Plaintiff's Complaint was filed with the intent to harm CFRE and Sean Richway by virtue of damaging and defaming their reputations within the community and to cause them economic loss.

30. As a direct and proximate result of Plaintiff's conduct, CFRE and Sean Richway have been impaired in their ability to earn a living and maintain business, thereby causing CFRE and Sean Richway damages.

31. As a direct and proximate result of Plaintiff's conduct, CFRE and Sean Richway have suffered and continue to suffer emotional distress and severe mental anguish.

32. As a direct and proximate result of Plaintiff's conduct, the reputation of CFRE and Sean Richway have been damaged and they have sustained, and will continue to sustain, damages.

WHEREFORE, Defendants request that judgment be entered against Plaintiff, as follows:

- A. For compensatory, consequential and incidental damages;
- B. For attorney's fees and costs of suit;
- C. For punitive damages;
- D. For interest; and

E. For such other relief as the Court may deem just and proper.

THIRD-PARTY COMPLAINT

FIRST COUNT
(Breach of Contract)

33. CFRE repeats and realleges each and every allegation set forth in the previous paragraphs of their Answer, Counterclaim and Third-Party Complaint as if set forth at length herein.

34. Plaintiff and/or Tillery were required to make monthly security payments to CFRE pursuant to the Agreement.

35. Wealth and Plaintiff were required to make a payment to CFRE on September 11, 2019 pursuant to the Loan Documents.

36. A significant amount of the work done by Wealth on the Burlington Property was of such poor workmanship that it had to be redone by a licensed professional at a significant cost to CFRE.

37. To date, Tillery has made none of the required payments under the Agreement.

38. To date, Wealth and Plaintiff have not made the required payments under the Loan Documents.

39. At all times relevant hereto, Plaintiff, Tillery and Wealth have and remain in default of the Contract thereby causing CFRE damages.

WHEREFORE, CFRE request that judgment be entered against Plaintiff, Tillery and Wealth, as follows:

A. For compensatory, consequential and incidental damages in the amount of not less than \$189,281.44, plus continuing pre-judgment interest;

- B. Costs of suit, including an award of reasonable attorney's fees incurred in this action;
- C. Post-judgment interest;
- D. Attorney's fees and costs pursuant to the Contract; and,
- E. For such other and further relief as the Court may deem just and proper.

SECOND COUNT
(Unjust Enrichment)

40. CFRE repeats and realleges each and every allegation set forth in the previous paragraphs of their Answer, Counterclaim and Third-Party Complaint as if set forth at length herein.

41. CFRE provided financing to Plaintiff, Tillery, and Wealth, and Plaintiff, Tillery, and Wealth accepted such financing from CFRE by executing all of the Loan Documents and the Agreement.

42. By retaining and refusing to pay Defendants for the sums they are owed Plaintiff, Tillery, and Wealth have been unjustly enriched to the detriment of CFRE.

WHEREFORE, CFRE requests that judgment be entered against Plaintiff, Tillery and Wealth, as follows:

- A. For compensatory, consequential and incidental damages in the amount of not less than \$189,281.44, plus continuing pre-judgment interest;
- B. Costs of suit, including an award of reasonable attorney's fees incurred in this action;
- C. Post-judgment interest;
- D. Attorney's fees and costs pursuant to the Contract; and,
- E. For such other and further relief as the Court may deem just and proper.

THIRD COUNT
(Breach of Implied Covenant of Good Faith and Fair Dealing)

43. CFRE repeats and realleges each and every allegation of their Answer, Counterclaim and Third-Party Complaint as if the same were set forth at length herein.

44. By reason of the aforementioned conduct, Plaintiff, Tillery, and Wealth breached their implied covenant of good faith and fair dealing with respect to the Agreement and Loan Documents at issue.

45. As a consequence, CFRE was wrongfully deprived of the fruits and benefits of its bargain with Plaintiff, Tillery, and Wealth, CFRE has been, and will continue to be, severely damaged as a result.

WHEREFORE, CFRE requests that judgment be entered against Plaintiff, Tillery, and Wealth, as follows:

- A. For compensatory, consequential and incidental damages in the amount of not less than \$189,281.44, plus continuing pre-judgment interest;
- B. Costs of suit, including an award of reasonable attorney's fees incurred in this action;
- C. Post-judgment interest;
- D. Attorney's fees and costs pursuant to the Contract; and,
- E. For such other and further relief as the Court may deem just and proper.

CURCIO MIRZAIAN SIROT LLC

Attorneys to Defendants,
Sean Richway and Alicia Richway
and Third-Party Plaintiff,
CFRE Investment Flips I Corporation

By: _____

Daniel E. Schlossberg

Dated: January 15, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, Benjamin C. Curcio, Esq., is hereby designated as trial counsel on behalf of Defendants and Third-Party Plaintiff, in the within matter.

DEMAND FOR DOCUMENTS
PURSUANT TO R.4:18-2

Defendants and Third-Party Plaintiff hereby demand copies of documents referred to in the Complaint, to be served within five (5) days after service of this demand.

DEMAND FOR JURY TRIAL

Defendants and Third-Party Plaintiff hereby demand a jury trial as to all issues hereinabove.

CERTIFICATION PURSUANT TO R.4:5-1

I hereby certify, pursuant to R.4:5-1, other than Kevin Tillery v. Sean Richway with a docket number of UNN-DC-000670-20 filed on or about January 8, 2020, that the matter in controversy is not, to the best of my knowledge, information, and belief, the subject of any other action pending in any Court or pending arbitration proceeding. I further certify that no other Court action or arbitration is contemplated by defendants herein and that no other person, party or claim should be joined as a party to this action at the present time.

CURCIO MIRZAIAN SIROT LLC

Attorneys to Defendants,
Sean Richway and Alicia Richway
and Third-Party Plaintiff,
CFRE Investment Flips I Corporation

By: _____
Daniel E Schlossberg

Dated: January 15, 2020

CERTIFICATION PURSUANT TO R. 1:38-7(c)

I certify that confidential identifies have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CURCIO MIRZAIAN SIROT LLC
Attorneys for Defendants,
Sean Richway and Alicia Richway
and Third-Party Plaintiff,
CFRE Investment Flips I Corporation

By: _____


Daniel E. Schlossberg

Dated: January 15, 2020

Civil Case Information Statement

Case Details: UNION | Civil Part Docket# L-003943-19

Case Caption: TILLERY KEVIN VS RICHWAY SEAN

Case Initiation Date: 11/08/2019

Attorney Name: DANIEL ELI SCHLOSSBERG

Firm Name: CURCIO MIRZAIAN SIROT LLC

Address: 5 BECKER FARM RD STE 406

ROSELAND NJ 07068

Phone: 9732264534

Name of Party: DEFENDANT : RICHWAY, ALICIA

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: CONTRACT/COMMERCIAL TRANSACTION

Document Type: Answer

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

01/15/2020

Dated

/s/ DANIEL ELI SCHLOSSBERG

Signed