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IN THE CIRCUIT CIVIL COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

FIFTY BUILDINGS L.L.C.,

Case No.: CACE21-007137 (09)

Plaintiff,

vs.

RJD HOLDINGS, LLC,

Defendant.

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON 05/15/2024
BY [Signature]

**FINAL JUDGMENT DECREERING
SPECIFIC PERFORMANCE AND RELATED RELIEF**

THIS MATTER came before the Court on April 22-24, 2024, May 3, 2024, and May 10, 2024, for a Final Non-Jury Trial. The parties concluded the presentation of evidence on May 10, 2024, and provided closing arguments on May 10, 2024. The Court is well aware of the facts stipulated to by the parties, both as stated in their Joint Pretrial Stipulation filed with the Court on May 23, 2023, and as presented during the trial. At trial, the Court heard testimony from the following fact witnesses: (i) Scott Kleiman, transactional attorney for Plaintiff; (ii) Mark Irwin, Transaction Broker with Town Real Estate, Inc.; (iii) Scott Abrams, CFO of Plaintiff Fifty Buildings L.L.C.; (iv) Edward A. Walsh, Executive Assistant to Scott Abrams; (v) Lilian Hoyt, spouse of Eric Hoyt; and (vi) Eric Hoyt of Defendant RJD Holdings, LLC. In addition, the Court heard the testimony of Plaintiff's expert witness, Walter B. Duke, III, real estate appraiser with Walter Duke + Partners, Inc.

Prior to trial, the parties agreed to the admissibility of forty-five (45) Joint Trial Exhibits ("JTE"), which included: (i) emails (JTE 1-27; JTE 29-34); (ii) text messages (JTE 28); (iii) the 2002 Warranty Deed by which RJD acquired the Property (JTE 35); (iv) Plaintiff's commercial lease with Defendant (JTE 36); (v) Plaintiff's initial \$675,000.00 offer for the Property (JTE 37); (vi) the Commercial Contract (JTE 38); and (vii) Walter Duke's appraisal of the Property as of March 1, 2021 and August 10, 2022 (JTE 39), and deposition transcripts of the fact witnesses (JTE 40-45). During



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the testimony of Scott Abrams, Plaintiff introduced without objection from Defendant an April 2, 2021 email from Mark Irwin that included as an attachment the Corrected Commercial Contract, which included a revision on page 2, line 81, that shifted financial responsibility for a title insurance commitment to Plaintiff. The April 2, 2021 email and attached Corrected Commercial Contract were admitted into evidence as JTE 46.¹

The Court, having fully and carefully considered all the evidence presented and admitted during the trial, having fully considered all legal issues as framed by the parties in their pleadings and their presentations at trial, having reviewed the court file and record, and having heard closing arguments of counsel, and after being fully advised in the premises, finds as follows:

Findings of Fact

Introduction

This is an action based upon a breach of a commercial real estate purchase agreement, wherein the Plaintiff, Fifty Buildings L.L.C. ("Fifty Buildings" or "Plaintiff"), seeks a judgment of specific performance against the Defendant, RJD Holdings, LLC ("RJD" or "Defendant"), as well as Plaintiff's incidental damages pursuant to *Walker v Benton*, 407 So. 2d 305 (Fla. 4th DCA 1981). The property at issue is located at 3038 North Federal Highway, #F and #G, Fort Lauderdale, Florida 33306 (the "Property"). Fifty Buildings leased a portion of the Property from RJD in 2020 and sought to buy the entire Property in March 2021. Fifty Buildings demonstrated that on March 30, 2021, Fifty Buildings and RJD entered into a valid, binding and enforceable Commercial Contract (the "Commercial Contract") wherein RJD agreed to sell to Fifty Buildings the Property. On April 1, 2021, the Commercial Contract was subsequently revised (the

¹ Plaintiff filed a Motion for Leave to Amend Plaintiff's Amended Complaint to Conform to Evidence Presented at Trial, which was granted in a separate Order.



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"Corrected Commercial Contract") to shift the financial responsibility for obtaining a title insurance commitment from RJD to Fifty Buildings. However, on April 3, 2021, RJD unilaterally terminated the Corrected Commercial Contract without cause, much less explanation. Fifty Buildings would only learn after filing this lawsuit that Lilian Hoyt, the wife of Eric Hoyt of RJD, had, in fact, signed her husband's name not only to Fifty Building's lease with RJD but also to the Commercial Contract.

Fifty Buildings proved at trial that RJD breached the Corrected Commercial Contract by failing to consummate the sale transaction of the Property and that Fifty Buildings has no adequate remedy at law. Fifty Buildings also showed that it was ready, willing, and able to complete the sale transaction with RJD at the time that RJD breached the Corrected Commercial Contract, entitling Fifty Buildings to specific performance of the Corrected Commercial Contract, together with incidental damages arising from RJD's breach.

The Parties, Their Principals, and Their Agents

Eric Hoyt ("Eric") is a successful, ad executive living in Fort Lauderdale, Florida with his primary office in Miami. He started Defendant RJD to acquire real estate, and it owns and rents a commercial building consisting of three (3) suites, the Property, as well as a residential property. His wife, Lilian Hoyt ("Lilian") is a former medical assistant and teacher's assistant that since 2020 has aided Eric in his management of RJD. Plaintiff Fifty Buildings is engaged in the buying and selling of commercial real estate. Its principals are Marc Tanner ("Tanner"), who serves as C.E.O. and Scott Abrams ("Abrams"), who is C.F.O. Edward Walsh ("Walsh") is employed as an executive assistant to both Tanner and Abrams. Mark Irwin ("Irwin") is a real estate broker and has known the Hoyts since RJD acquired the Property in 2002 and has known Marc Tanner and Abrams for nearly as long. Irwin, who owns his own commercial property, has assisted RJD over the years by bringing potential

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tenants for the Property to RJD and also providing repair/maintenance contacts to RJD that he has amassed through the running of his own commercial building. Irwin has also served as a real estate broker to Fifty Buildings in other transactions.

RJD's Lease to Fifty Buildings

In the summer of 2020, Irwin was involved in the lease transaction between RJD and Fifty Buildings that brought Fifty Buildings to the Property as a tenant. He had, in fact, revised a lease he used at his own commercial property for RJD to use in its lease with Fifty Buildings. While the lease appeared to be signed by Eric, it was not until after this litigation had commenced that Irwin and Fifty Buildings learned that Lilian had signed Eric's name to the lease at Eric's direction. Abrams testified that he had no reason to believe anyone other than Eric had signed the RJD lease with Fifty Buildings. Abrams Testimony, 8:18-21.

Tenant Relationship between Fifty Buildings and RJD

From 2002 to 2020, Irwin dealt with Eric on maintenance and tenant issues related to the Property. Beginning in 2020, Lilian became involved with the Property when Eric was unavailable due to business travel. Lilian stated that she helps Eric with RJD's affairs "when he asks her to," although she is not an officer or employee of RJD. Lilian Hoyt Testimony, 6:15-25. Irwin testified that Eric told him at that time, "in the future, just run this through Lilian." The Court asked Irwin what this statement meant to him, and he indicated that it meant that Lilian was more responsive and would be better with day-to-day issues and maintenance. Although she claimed she "wasn't in charge of" RJD, Lilian has had "signatory authority" on RJD's checking account since 2020. Lilian Hoyt Testimony, 11:11-17; 34:23-35:5. Notably, at RJD's other property, a rental home, there was a property manager that did not have check signing authority. Lilian stated she started to deal with Irwin concerning the Property approximately five (5) years ago and could not recall if Eric told her to

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do this. Lilian Hoyt Testimony, 14:4-18. Although Lilian testified that it was frustrating to deal with the Property's tenants (Lilian Hoyt Testimony, 33:2-6), she indicated that Eric sometimes does not have enough time to handle RJD's affairs, so she would assist. Lilian Hoyt Testimony, 20:11-14.

When Fifty Buildings moved into the upstairs suite at the Property, Walsh had a number of text conversations with Lilian about logistics. *See generally* JTE 28, pg. 1-10. These conversations took place in August 2020, and in them, Lilian answered Walsh's questions about the payment of rent, wind insurance, and utilities. Lilian referred to the tenants as "my tenants (sic)," and importantly, she stated that "[m]y husband used to run rentals but handed it over to me and [word obscured] doesn't like me giving [word obscured] account info." JTE 28, pg. 8. She also gave Walsh a Zelle account to which he could send rent payments and indicated that the account was tied to her personal email address – lilianhoyt@gmail.com. JTE 28, pg. 7. In a later text conversation occurring on April 2, 2021, Lilian indicated that if Mark did not have keys to the other suites in the Property, she had a set. JTE 28, pg. 10. Eric was so absent from the Property during the course of Fifty Building's lease that neither Abrams nor anyone else at Fifty Buildings ever met Eric until this litigation commenced. Abrams Testimony, pg. 96:24-97:2. Fifty Buildings has been in compliance with the lease since it was executed, including the payment of all rent due thereunder. Abrams Testimony, 58:18-23.

The Purchase of the Property

In early March 2021, Irwin reached out to Lilian to have a call about a potential offer to purchase the Property. JTE 1. After discussing the terms of Fifty Building's offer with Abrams (JTE 3), Irwin forwarded a contract to Lilian to purchase the Property for \$675,000.00. JTE 5. Lilian replied that she received the contract and "forwarded it to Eric." JTE 5. It appears that Lilian

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forwarded the contract to Eric on March 22, 2021². *Id.* The \$675,000 offer was signed and initialed by Abrams on behalf of Fifty Buildings on March 19, 2021. JTE 37, pg. 1-8. Irwin reached out to Lilian on March 26 and asked if Eric would reply to the offered contract that week. JTE 7. Lilian responded that Eric would reply but that she did not think he would accept the offer. *Id.* She also agreed to ask Eric to make a counteroffer. *Id.* On March 29, 2021, Eric emailed Irwin and Lilian his counteroffer and stated: "The sale price we are asking is \$800k, ready to transact at that price.... we are thankful for their business and your continued partnership." JTE 6. Notably, Eric did not tell Irwin to remove Lilian from these email communications or ask why Irwin was including her. Later that day, Irwin emailed Eric, copying Lilian, that he would prepare a revised contract with a purchase price of \$800,000.00. JTE 10, pg. 1. Eric replied, copying Lilian: "OK, great. \$800k + 3% commission for you...\$824k. Let's make it happen☺[.]" *Id.* Irwin testified that he then spoke with Eric on the phone, and Eric agreed on a counteroffer of \$800,000 inclusive of Irwin's commission and not a purchase price of \$824,000. Irwin proceeded to prepare a revised page 1 to the \$675,000 contract that changed the purchase price to \$800,000 and emailed it to Eric, copying Lilian. JTE 13, pg. 1-2. Irwin addressed that email to "Eric/Lilian." *Id.* at pg. 1. He then followed up with Eric and Lilian about whether Eric would return the signed contract that day. JTE 12, pg. 1. Lilian replied to only Irwin that she would print the \$800,000 offer for Eric at their home and have him sign in 45 minutes. JTE 14, pg. 1. This email was sent by Lilian at 3:40 p.m. when Eric was allegedly at his office in Miami. *Id.* Lilian then emailed Eric and Irwin a copy of page 1 of the contract, ostensibly initialed by Eric, at the \$800,000 purchase price. JTE 15, pg. 1.

The next day, March 30, 2021, Irwin let Lilian know that he had only received an initialed page 1 and needed Eric to sign the last page and initial every page. JTE 16, pg. 1. Irwin then sent

² At all times relevant to this litigation, Eric received and sent emails from his active, business email -- Eric.hoyt@vmltyr.com. See JTE 6, 8, 9, 10, 11, 12, 13, 15, 23, 24, 26, 27, 29, 30, 33, and 34.



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Lilian a copy of the entire contract, which she said she would return “in a few.” *Id.* Lilian sent the fully signed and initialed Commercial Contract back to Irwin on March 30, 2021. JTE 17. Irwin was unaware that Lilian had signed and initialed Eric’s name on the Commercial Contract. Lilian stated that she “took it upon [herself] to sign” so Irwin would “back off.” Lilian Hoyt Testimony, 51:3-6. When asked why she did not just tell Irwin that Eric was unavailable, Lilian said because she “wanted to be nice to him.” Lilian Hoyt Testimony, 51:12-15.

Scott Kleiman (“Kleiman”) testified that he is a real estate transaction attorney and is also a title agent. His title company, in fact, served as title agent for RJD’s initial acquisition of the Property in 2002. JTE 35, pg. 1. The transaction was brought to him by Irwin, who Kleiman has also known for years. On March 31, 2021, Kleiman received a copy of the Commercial Contract via email from Walsh. JTE 18, pg. 1. Kleiman testified that at the time he received the Commercial Contract, RJD was administratively dissolved by the State of Florida Division of Corporations. JTE 19, pg. 1. At trial, he noted that for title insurance purposes, it is preferred that the seller in a real estate transaction be an active entity, but it was not a bar to closing. He provided ways in which a sale could close without a seller being reinstated, including an affidavit from the last president before dissolution. After his review of the Commercial Contract, Kleiman sought confirmation that the provision in the Commercial Contract that required RJD to pay for the title commitment was correct because that was not the norm in Broward County. *Id.*

On March 31, 2021, Irwin emailed Eric and Lilian and asked if RJD could be reinstated. JTE 23, pg. 1. He also informed them that he was working on correcting the executed Commercial Contract to shift the cost of the title commitment to Fifty Buildings. *Id.* That same day, Eric responded to that email by asking “Is buyer interested?,” but inexplicably did not address the other emails he had been sent, including the one containing the contract’s first page initialed by Lilian. *Id.*

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On March 31, 2021, Irwin emailed Kleiman indicating that he had just spoken with Eric on the phone about RJD's inactive status and that Eric wanted to proceed with the sale without having to reinstate RJD. JTE 21, pg. 2. Irwin said Eric told him he would rather let RJD "die on the vine." *Id.* When asked about when she learned that RJD had been administratively dissolved by the State of Florida, Ms. Hoyt's trial testimony conflicted with her deposition testimony. *Compare* Lilian Hoyt Testimony, 20:19-22 ("I heard about [the dissolution] during these proceedings") with JTE 41, 36:18 ("It was before 2020"). She admitted that "many years have gone by since this started so my memory might be failing me occasionally." Lilian Hoyt Testimony, 26:11-13.

On April 1, 2021, Irwin sent Lilian an email asking Eric to initial a revision on page 2, line 81 that would shift the cost of title insurance to Fifty Buildings. JTE 24, pg. 2. He also asked for copies of the Property's leases and historical repair information. *Id.* Lilian replied the same day with an initialed copy of the revised page 2 and copied Eric on the email. JTE 24, pg. 1. Lilian forwarded a copy of one of the other tenant's leases at the Property and indicated that Eric would reach out to Irwin regarding the building information he sought in his previous email. *Id.* Lilian never told her husband she indicated that he would be reaching out with this building information. Lilian Hoyt Testimony, 65:13-22. Around the same time, Abrams also initialed the revised page 2 of the Corrected Commercial Contract. Abrams Testimony, 33:8-15. Lilian never told her husband after each time she signed his name or initialed for him on the Commercial Contract or Corrected Commercial Contract. Lilian Hoyt Testimony, 67:3-10. She claims he found out all at once when he "caught up with his emails." Lilian Hoyt Testimony, 67:11-16. Abrams never knew that Lilian signed for RJD on the Commercial Contract. Abrams Testimony, pg. 104:9-13.

Although Eric came home from his job in Miami every evening between March 29 and April 1 and worked from home on April 2, Lilian never gave him a summary of what she had been doing

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in connection with Commercial Contract, inspection planning or tenant information. Lilian Hoyt Testimony, 73:21-76-7. Lilian admitted, however, that she had “plenty of time” to update her husband about these matters. Lilian Hoyt Testimony, 80:12-18. Lilian said she sometimes signed emails as being just from her and other times as being from her and Eric depending on whether Irwin asked for Eric to do something in that email. Lilian Hoyt Testimony, 88:17-25.

On April 2, 2021, Irwin emailed Walsh, Lilian, and Eric to inform them that he had scheduled an inspection for the morning of April 8. JTE 29, pg. 1-2. Walsh testified that around this time, he had a phone conversation with Eric, in which Eric advised Walsh to “talk to Lilian, she’ll help you coordinate, get the tenants to come do the inspection.” Edward Walsh Testimony, 10:18-20. Lilian let Walsh, Eric and Irwin know that she would be sending Walsh tenant contact information via text and would even contact the tenants if needed. JTE 26, pg. 2-3. Irwin also forwarded a copy of the Corrected Commercial Contract to Lilian, Abrams, Walsh, and Kleiman that morning. JTE 27; JTE 46. In response to being sent the Corrected Commercial Contract, Lilian wrote “Received, thank you. Eric and Lilian.” JTE 27, pg. 1. The Corrected Commercial Contract was initialed on each page by Abrams and by Lilian in Eric’s name and signed on the last page by Abrams and Lilian, again using Eric’s name. Abrams Testimony, 16:16-17; 16:21-17:1; 17:22-18:6. Lilian even wrote RJD’s tax ID number on the signature page of the Commercial Contract after looking it up.

The Court finds it hard to believe that Lilian did not know that she was signing a contract and not an offer because the document was clearly labeled as a contract. The Court also finds that Lilian was Eric’s “right hand person” when it came to managing RJD’s affairs with authority to act for RJD. Lilian claimed to not be day-to-day contact person for the Property’s tenants, but she received rent from them at a Zelle account linked to her personal gmail address. JTE 28, pg. 7. It is incredulous that Lilian never spoke to her husband about the contract given all that Lilian did to sign and initial

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multiple times and the numerous emails between Irwin, Eric and her. Lilian claimed to have never spoke to Eric about the contract despite saying that she did not know what she was signing.

The next morning, April 3, 2021, Eric sent an email to Irwin, copying Lilian, terminating the Corrected Commercial Contract, stating: "1. Cannot sell/transact this property now. The property is not for sale. 2. Therefore, please stop this process, on all fronts with all parties, immediately. 3. Do not schedule inspectors, do not proceed any further. If interested, I/we can revisit this opportunity after July 1st, 2021. I will call you this AM and provide more context." JTE 29, pg. 1. Irwin was "astonished" when he read the email. Abrams considered it a unilateral cancelation of the Corrected Commercial Contract. Abrams Testimony, 50:7-11; 56:3-5. The Corrected Commercial Contract did not provide RJD with a right of unilateral termination in this fashion. See JTE 46. After sending his cancelation email, Eric called Irwin and told him, "I did something stupid. It was my fault." Irwin inquired what had happened, but Eric would not divulge any details about why he was not proceeding with the sale. Importantly, Eric never told Irwin that Lilian had signed and initialed Eric's name on the Corrected Commercial Contract. He also did not mention the fact that RJD was administratively dissolved or why the issue could be revisited after July 1, 2021. Lilian thinks Eric read all the emails about the agreement on April 3, realized what she had done, and then wrote the cancelation email. Lilian Hoyt Testimony, 112:11-24. Eric believed that he caught up with the emails on April 2 and then had a "difficult conversation" with Lilian. After Eric terminated the Corrected Commercial Contract, Kleiman spoke with Eric as well, but Eric provided no explanation as to why he was terminating other than citing family issues. Kleiman testified that Eric also did not express significance of why sale could possibly occur after July 1, 2021. JTE 29, pg. 1. Importantly, Eric did not tell Kleiman, an attorney, that Lilian had, in fact, signed Eric's name to the Commercial Contract and that was why he was canceling.

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On April 8, 2021, Eric emailed Irwin, copying Lilian, and repeated his message from April 8 in which he terminated the sale and said the issue could be revisited after July 1, 2021. JTE 33, pg. 1. He also said that he had spoken with Walsh about halting the inspection process. *Id.* Walsh testified that Eric did not tell him why he was not going forward with the sale or that Lilian had signed and initialed the Corrected Commercial Agreement. Edward Walsh Testimony, 23:10-15; 24:14-19. Again, on April 12, 2021, Eric emailed Walsh, copying Irwin and Lilian, that the “building is not for sale... Inspections/appraisals will not occur and access will not be provided.” JTE 34, pg. 1.

Eric’s trial testimony consisted mainly of denying that the events and calls other witnesses testified to did not occur, even when supported by email evidence. He claimed that Lilian never told him of the interest from Fifty Buildings to purchase the Property on March 9 despite her email to Irwin stating otherwise. JTE 1. Curiously, Eric stated that he included Lilian on the emails with Irwin “out of courtesy.” His two admissions were that (1) he did speak with Lilian about the \$675,000 offer but again denied that they spoke about the \$800,000 offer; and (2) he never told anyone that Lilian had signed and initialed his name on the Commercial Contract. Eric said Lilian became part of the “stream” of discussions for “transparency, accountability” but did not say why this was needed if she was not supposed to be involved with RJD. Eric denied ever speaking with Irwin on the phone about the sale or RJD’s dissolved status before calling him on April 3 after he had sent the email terminating the agreement. Irwin stated that he spoke with Eric on March 29 and March 31, and the Court finds that his testimony was credible. In fact, Irwin sent an email memorializing the call with Eric on March 31 in which they discussed RJD’s administrative dissolution and options for consummating the sale without having to reinstate the company. JTE 21, pg. 2. In response to questioning that he was copied on emails transmitting initialed pages of the contract, Eric said he did nothing about it because it was clear to him that there was no deal if the purchase price was not \$824,000. This undermines his prior

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statements that he caught up with the emails all at once on Friday, April 2. Even though Eric maintained that he was the “end all be all” of RJD, he was not curious about why Irwin continued to work through Lilian and denied ever giving Irwin the instruction to do so. Other than Eric’s testimony, there is no evidence that Eric ever told Irwin not to deal with Lilian on RJD matters. In sum, Eric failed to exercise reasonable care to prevent Lilian from signing and initialing in his name on the agreement. Eric’s explanation about why he did not alert Irwin that he was canceling the sale – that he was “doing other things” – does not comport with his current defense that Lilian lacked the authority to sign for him. Eric claimed that he did not bring up all the reasons he did not want to transact on April 3 because the price was not his price of \$824,000. He admitted that he “unilaterally canceled” the agreement and that he “pulled the plug.”

Terms and Conditions Set Forth in the Corrected Commercial Contract

Turning to the document itself, the Corrected Commercial Contract was a form commercial real estate contract promulgated by the Florida Association of Realtors. JTE 46, pg. 9. Its Effective Date was March 30, 2021, the date it was fully countersigned and initialed by Lilian (in Eric’s name) and delivered to Irwin. *Id.* at pg. 2. Fifty Buildings tendered a deposit of \$10,000 on or about March 31, 2021, and the deposit is still being held in escrow by Irwin’s brokerage firm. Abrams Testimony, pg. 119:6-12; 120:23-121:7. Fifty Building was required to apply for third-party financing on or before five (5) days after the Effective Date, or April 4, 2021. *Id.* at pg. 3. In addition, Fifty Buildings was required to “use good faith and reasonable diligence to obtain Loan Approval within 45 days of the Effective Date” or May 14, 2021. *Id.* Fifty Buildings was in compliance with the Corrected Commercial Contract as of April 3, 2021, the date of Eric’s termination. Abrams Testimony, pg. 119:13-16. Eric terminated the Corrected Commercial Contract before any of the deadlines for Fifty Buildings had occurred. *Id.* The parties used Irwin as a middleman for the sale of the Property.

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Abrams Testimony, pg. 95:7-10. Abrams testified that because a broker – Irwin – was involved, it would have been a breach of protocol to communicate directly with Eric during the negotiations and due diligence planning. Abrams Testimony, pg. 99:21-100:6.

Fifty Building's Efforts to Secure Third-Party Financing

Beginning around March 31, 2021, Walsh reached out to a banker with Synovus Bank, with whom Fifty Buildings had a pre-existing relationship of many years, about setting up a conference call to discuss obtaining a loan to purchase the Property and sent the banker a copy of the Commercial Contract. JTE 34, pg. 5; Abrams Testimony, pg. 72:14-15. The banker indicated to Walsh that Fifty Buildings would qualify for a conventional loan for owner-occupied real estate at a 3.75% fixed rate, 25 year amortization. JTE 34, pg. 4-5. Abrams testified that because of Fifty Building's relationship with Synovus Bank, it would not have to file a new application in connection with obtaining financing for the purchase of the Property because Synovus Bank already had Fifty Building's financial information on file from other recent loan transactions. Abrams Testimony, pg. 72:17-73:1. Abrams also stated that Synovus had never issued a rejection letter to Fifty Buildings concerning any prospective loan. Abrams Testimony, pg. 73:11-14. Because Fifty Buildings was already a tenant, Abrams indicated that he was generally aware of the conditions of the Property but still required an expert to come in and verify the Property's condition. Abrams Testimony, pg. 78:3-7. Because of this dispute, Fifty Buildings did not look for alternative buildings. Abrams Testimony, pg. 78: 12-23. It has also been unable to collect any rents that would have been due to it had the Property been sold to it on the original closing date of the Corrected Commercial Agreement. Abrams Testimony, 58:22-23. Abrams hired counsel to initiate a lawsuit for specific performance against RJD. Abrams Testimony, 56:18-57:12.

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Plaintiff's Expert Witness, Walter Duke, III on the Property's Value

Walter Duke, III, Plaintiff's expert witness, was asked to give an opinion on the Property's value as of March 1, 2021 and August 10, 2022. After stating his credentials, which were not challenged by Defendant, Mr. Duke indicated that he assessed the value of the property to be \$800,000 as of March 1, 2021, and \$870,000 as of August 10, 2022. JTE 39, pg. 3. Upon the Court's inquiry, Mr. Duke indicated that the appreciation of the Property between March 1, 2021, and August 10, 2022, was due to a general improvement in the real estate market as well as the Property's fully occupied status.

Conclusions of Law

Legal Standard for Specific Performance of a Real Estate Contract

A judgment of specific performance is an equitable remedy granted at the discretion of a trial court and appropriate only when there is no other adequate remedy at law. *Linkous v Linkous*, 941 So. 2d 530, 530 (Fla. 1st DCA 2006) (citing *Castigliano v. O'Connor*, 911 S. 2d 145, 148 (Fla. 3d DCA 2005)). Specific performance is proper when: (i) a plaintiff shows entitlement to specific performance; (ii) there is no other adequate remedy at law; and (iii) justice so requires. *Invego Auto Parts, Inc. v. Rodriguez*, 34 So. 3d 103, 104 (Fla. 3d DCA 2010) (reversing denial of specific performance); *All Seasons Condo. Assoc., Inc. v. Patrician Hotel, LLC*, 274 So. 3d 438, 445-46 (Fla. 3d DCA 2019) (citing *Castigliano*, 911 So. 2d at 148 (Fla. 3d DCA 2005)). "The first of these three factors encompasses the elements of breach of contract." See *Orange Destin Props. LLC v. Disiere*, No. 3:23-CV-424-MW/ZCB, 2024 WL 1514469, at *1 (N.D. Fla. Feb. 20, 2024).

A party seeking the remedy of specific performance must prove that the subject contract is clear, definite, and certain. *Boardwalk at Daytona Devel. v Paspalakis*, 220 So. 3d 457, 461 (Fla. 5th DCA 2016) (citing *Muniz v. Crystal Lake Project, LLC*, 947 So. 2d 464, 469 (Fla. 3d

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DCA 2006)). To obtain a judgment of specific performance to enforce a contract for purchase and sale of real property, the statute of frauds requires the contract to be in writing and signed by the party against whom enforcement is sought. *All Season Condo. Assoc., Inc.*, 274 So. 3d at 446 (citing *India Am. Trading Co., Inc. v. White*, 896 So.2d 859, 860 (Fla. 3d DCA 2005)). A party seeking specific performance must also prove that it was ready, willing, and able to perform the contract. *Orange Destin Props. LLC*, 2024 WL 1514469, at *1.

The Commercial Contract Satisfies the Statute of Frauds

A party requesting specific performance of a real estate contract must show that the writing satisfies the Statute of Frauds. Section 725.01, *Florida Statutes*, provides, in pertinent part, that “[n]o action shall be brought...to charge any person...upon any contract for the sale of lands...unless the agreement or promise upon which such action shall be brought...shall be in writing and signed by the party to be charged therewith or by some other person by her or him thereunto lawfully authorized.” As stated on page 8 of the Corrected Commercial Contract, the terms of the purchase and sale of the Property were set forth in a form contract for the sale of commercial property that is promulgated by the Florida Association of Realtors. JTE 46, pg. 9. The Corrected Commercial Contract contained all the essential terms for the purchase and sale of the Property, including: identification of the parties (JTE 46, pg. 2), identification of the Property with its legal description (JTE 46, pg. 2); the purchase price (JTE 46, pg. 2); the effective date of the Corrected Commercial Contract (JTE 46, pg. 2); the financing terms (JTE 46, pg. 3); the timeframes for making deposits (JTE 46, pg. 2); the closing date (JTE 46, pg. 2); and the purported parties’ signatures (JTE 46, pg. 9). In addition, there has been no evidence presented that any additional category of contract term was required by either party. Therefore, the Court finds that the Corrected Commercial Contract on its face satisfies the Statute of Frauds under Florida law.

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The Court will now address the fact that Lilian signed Eric's name on page 8 of the Corrected Commercial Contract and initialed for him on all the pages.

Lilian Hoyt's Signing of Eric Hoyt's Name to the Corrected Commercial Contract

The Court was presented with conflicting arguments regarding what effect the fact that Lilian signed Eric's name on page 8 of the Corrected Commercial Contract has on whether the Corrected Commercial Contract is enforceable against RJD. Fifty Buildings has argued that Lilian possessed actual authority to bind RJD, that she had authority as an apparent agent of RJD, and/or that she had the authority as an agent by estoppel of Defendant. In addition, Fifty Building contends that as a matter of law, RJD cannot escape liability under the Corrected Commercial Contract because Eric put Lilian, as RJD's actual or apparent agent, in a position to commit a fraud on Fifty Buildings.

In its affirmative defenses and at trial, Defendant has argued that Plaintiff's claim is barred because "Eric Hoyt, the sole principal of [Defendant], never made any representations concerning, or held Lilian Hoyt out to any to have, apparent authority, or any other authority, to accept offers for the sale of [the Property], enter into contracts for the purchase and/or sale of any of [Defendant's] assets including [the Property], or otherwise make any financial decisions for Defendant." Answer and Affirmative Defenses to Amended Complaint, pg. 7. In addition, Defendant contends that "Eric Hoyt never ratified any conduct by Lilian Hoyt concerning any purchase/sale of any of [Defendant's] assets, including [the Property]. *Id.* Finally, Defendant maintains that "Plaintiff did not rely on (and could not have relied on) any representations of authority from Eric Hoyt, [Defendant's] sole principal" and "Plaintiff did not change its position based on any purported representation of authority." The Court will consider each of the parties' arguments in turn as well as the relevant law applicable to them.

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At the outset, however, the Court must note that Defendant seeks to capitalize on the fact that Plaintiff only learned during this litigation that Lilian executed its commercial lease with Defendant in Eric's name and executed the Commercial Contract in Eric's name. The caselaw concerning agency/authority arose from situations in which the purported agent was not acting as a principal "in disguise." Here, many of Defendant's arguments rely on the fact that Eric did not alert Plaintiff contemporaneously that Lilian had signed the commercial lease in his name on his behalf or that she signed and initialed the Commercial Contract in his name. And while this behavior does undermine the credibility of the testimony of the Hoyts, the Court cannot permit Defendant to prevail on factual defenses that are only available through the obfuscations the Hoyts perpetrated.

In addition, the fact that Irwin was used by RJD and Fifty Buildings as an intermediary in the negotiating and signing of the Corrected Commercial Contract cannot be construed against Plaintiff as it is customary for parties to rely on a transaction broker to ferry information and signed documents back and forth between parties. That is to say, Irwin cannot serve as a buffer between Fifty Building and RJD to shield RJD from liability when Irwin served in a customary transaction broker role. As a consequence of this role, Irwin necessarily transmitted Eric's representations of Lilian's authority to Fifty Buildings as part of the sale negotiations and agreement execution.

*a. Lilian Hoyt Was an Actual Agent When Signing
Eric Hoyt's Name to the Corrected Commercial Contract*

The testimony of Lilian and Eric and their credibility are critical to the Court's analysis of whether Lilian had actual authority to sign Eric's name to the Corrected Commercial Contract. During the trial, Lilian's explanations as to the manner in which she conducted herself during the time the agreement was negotiated and signed begged even more questions. However, those concerns simply reinforce the Court's conclusion that the Hoyts did operate in concert to sign and

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initial the Commercial Contract in a fashion that was sufficient to bind RJD to its terms. The elements to show “the existence of an actual agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent’s acceptance of the undertaking; and (3) control by the principal over the actions of the agent.” *Ilgen v. Henderson Properties, Inc.*, 683 So. 2d 513, 515 (Fla. 2d DCA 1996) (citing *Goldschmidt v. Holman*, 571 So. 2d 422, 424 n.5 (Fla. 1990)). “When one considers an action based on actual agency, it is the right to control, rather than actual control, that may be determinative.” *Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 853 (Fla. 2003).

The record evidence supports a finding that Lilian was acting as an actual agent for RJD and had the authority to sign for RJD on the Commercial Contract. Irwin testified credibly that in 2020, Eric told him run issues related to the Property through Lilian. Lilian also admitted that in July 2020 she had been directed by her husband to execute the commercial lease between Plaintiff and Defendant in Eric’s name. JTE 36; Lilian Hoyt Testimony, 7:8-12; 9:12-10:4; 10:9-13. She also was authorized to write checks on behalf of Defendant to pay vendors with her husband’s consent. Lilian Hoyt Testimony, 11:11-17; 34:23-35:5. She also was the point of contact for tenants, much to her annoyance. Lilian Hoyt Testimony, 33:2-14. Lilian was also included on emails from Eric in connection with the negotiation and eventual termination of the Corrected Commercial Contract. *See* JTE 8, 10, 13, 29, 33, 34.

Based on the foregoing actions of Lilian and Eric, the three (3) elements of an actual agency relationship can be inferred. First, Eric acknowledged that Lilian would act for him as an actual agent by directing Lilian to sign his name to Defendant’s commercial lease with Plaintiff, pay Defendant’s vendors, and deal with tenants at the Property. This is supported by the fact that no one from Fifty Buildings even met Eric until after this litigation had commenced. It is

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inconsequential for agency purposes that Plaintiff had any idea that Lilian was an actual agent. Second, Lilian accepted this undertaking as evidenced by her engaging in these activities for over five (5) years. Finally, Eric exercised a right of control over Lilian's actions as Lilian recognized that she only acted on behalf of Defendant when her husband told her to do so. Lilian Hoyt Testimony, 12:11-16; 12:18-13:7. Therefore, Lilian was an actual agent of RJD when she executed and initialed the Corrected Commercial Contract, making it enforceable against Defendant. Even looking at these facts in a light more favorable to Defendant would show that Lilian was an actual agent of Defendant to the extent that she was authorized by Eric to be an intermediary between him and the Property concerning tenant issues as well as the negotiation and delivery of the signed Commercial Contract to Irwin.

The Court does not find it credible that Lilian would have had the actual agency to sign Defendant's commercial lease with Plaintiff, issue checks to vendors, and deal with the Property's tenants, but then lack the actual agency to execute the Corrected Commercial Contract. It is of no moment that the purported principal, Eric, now contends that Lilian lacked the authorization to execute and initial the Corrected Commercial Contract when she exercised significant authority to bind Defendant in so many other areas. The Court is mindful that there are times when the scope of agency can be circumscribed to limit the scope of the agent's authority. That concern is not present here, however, as there is stipulated evidence that Lilian executed a major contract – Defendant's commercial lease with Plaintiff – and also managed other affairs of Defendant as authorized by her husband.

*b. Lilian Hoyt Was an Apparent Agent or Agent by Estoppel
in Signing Eric Hoyt's Name to the Corrected Commercial Contract*

An apparent agency exists if all three of the following elements are present: (a) a representation by the purported principal; (b) a reliance on that representation by a third party; and

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(c) a change in position by the third party in reliance on the representation. *Mobil Oil Corp. v. Bransford*, 648 So. 2d 119, 121 (Fla. 1995). An apparent agency relationship may be created by silence if the principal had notice that the agent was acting as if authorized or that a third party would believe a transaction would bind the principal. *See Irving v. Drs. Hosp. of Lake Worth, Inc.*, 415 So. 2d 55, 59 (Fla. 4th DCA 1982) (hospital is liable to emergency room patients for negligence of independent contractor doctors due to apparent agency); *Belik v. Carlson Travel Grp., Inc.*, 864 F. Supp. 2d 1302, 1311 (S.D. Fla. 2011) (allegations that principal was silent despite knowledge of agent's representations of its authority sufficient to state claim against principal). Apparent authority exists only where the principal creates the appearance of an agency relationship. *Id.*

Florida courts typically analyze both apparent agency and agency by estoppel together. "The doctrine of agency by estoppel is similar to the doctrine of apparent authority such that there is no significant difference between them." *Carolina-Georgia Carpet & Textiles, Inc. v. Pelloni*, 370 So. 2d 450, 451 (Fla. 4th DCA 1979). In order to hold the principal liable, it must be established (1) that the principal manifested a representation of the agent's authority or knowingly allowed the agent to assume such authority; (2) that the third person in good faith relied upon such representation; and (3) that relying upon such representation such third person has changed his position to his detriment. *Id.*; *State Dep't. of Trans. v. Heckman*, 644 So. 2d 527, 529 (Fla. 4th DCA 1994) (emphasis added). The Restatement (Third) of Agency provides another useful definition, especially for the purposes of this case, of agency by estoppel:

A person who has not made a manifestation that an actor has authority as an agent and who is not otherwise liable as a party to a transaction purportedly done by the actor on that person's account is subject to liability to a third party who justifiably is induced to make a detrimental change in position because the transaction is believed to be on the person's account, if:

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- (1) the person intentionally or carelessly caused such belief; or
- (2) having notice of such belief and that it might induce others to change their positions, the person did not take reasonable steps to notify them of the facts.

Restatement (Third) of Agency § 2.05 (Am. Law. Inst. 2006).

- i. *Eric Hoyt Knowingly, and at a Minimum, by His Silence, Allowed Lilian Hoyt to Assume the Authority to Bind RJD*

In the case at bar, Lilian signed Eric's name to the commercial lease agreement and to the Commercial Contract. Based upon the fact that Eric knowingly allowed his wife, Lilian, to be cloaked with authority to execute a commercial lease, sign checks, hire maintenance for the building, Eric cannot in any way dispute that he conducted business in a manner that resulted in third parties, like Fifty Buildings, reasonably believing that Eric held Lilian out to be his agent and an equal member of RJD. Eric cannot now pick and choose, after the fact, which actions Lilian could perform for Eric and RJD. RJD cannot dispute that representations were made by Eric that resulted in Irwin, and thus Fifty Buildings, reasonably believing that Lilian had the authority to bind RJD.

In addition, Eric knowingly allowed Lilian to assume the authority to execute the Commercial Contract as evidenced by the fact he was sent copies of the revised first page of the contract initialed by Lilian and did nothing to stop it. JTE 15, pg. 1. His deliberate attempt to appear transparent and accountable by including Lilian in the sale and contracting process led to her signing and initialing the contract in his name with apparent authority. And importantly, Eric never told Irwin or Fifty Buildings that Lilian had delivered a purportedly fraudulently signed agreement.

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At a minimum, the record demonstrates that Lilian had the apparent, and likely actual, authority to work as an intermediary between Irwin and Eric with respect to the Commercial Contract. Eric had numerous opportunities to inform Irwin that Lilian was not to be involved in the process, but he chose to include her repeatedly when dealing with Irwin in matters concerning the Property as well as emails concerning its sale. In fact, Eric testified that he included Lilian on the emails with Irwin out of “transparency, accountability,” which only makes sense if she had a role to play in the process, even if it was just to ferry documents back and forth for Eric’s signature.

Under the Restatement’s standard for finding agency by estoppel, Eric’s actions clearly permit a finding that RJD is bound by Lilian’s signature on the Commercial Contract. First, Eric intentionally and at least carelessly caused Fifty Buildings and Irwin to believe that he had signed the Commercial Contract by including Lilian in his communications with Irwin and communicating that he was interested in transacting at \$800,000. Second, and more importantly, having realized that Lilian had signed the Commercial Contract, he did not take any reasonable steps to notify Fifty Buildings or Irwin that the signature was not genuine.

Defendant relies heavily on *Stalley v. Transitional Hospitals Corp. of Tampa, Inc.*, 44 So. 3d 627 (Fla 2d DCA 2010), because it involves a husband and wife -- a superficial similarity to the facts of this case. In *Stalley*, a wife rushed to a hospital ahead of an ambulance carrying her husband and signed admission papers and an arbitration agreement on his behalf. *Id.* at 628. After the husband died and his estate sued the hospital, the hospital tried to enforce the arbitration agreement the wife signed. *Id.* The only question for the court in *Stalley* was whether his wife was acting as the husband’s apparent agent when she signed the arbitration agreement. *Id.* at 630. The only evidence regarding the husband’s intent, who was deceased at the time, was that, according to the wife, he had authorized the wife to sign the admission papers. *Id.* The court found that there

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was therefore no evidence that the husband had authorized his wife to sign the arbitration papers or that the arbitration papers were necessary to permit the husband to receive care. *Id.* Essentially, the court found that there was no evidence the husband had any idea that his wife had signed an arbitration agreement. *Id.* at 631. In this case, the record is replete with representations to Fifty Buildings that Lilian was Eric’s “right hand person” when it came to managing RJD’s Property or her lesser apparent authority, communicated through Irwin, to act as intermediary with respect to getting Eric’s signature on the Commercial Contract. He was on notice that Lilian had initialed for him on the first page of the Commercial Contract.

ii. FB Reasonably Relied Upon Eric Hoyt’s Representation That Lilian Hoyt Had the Authority to Bind RJD

Fifty Buildings reasonably relied on the signed Commercial Contract because it had no reason to believe it was signed by Lilian. The law in Florida is clear on this issue. A third party’s reliance upon the statements or actions of a principal “must be reasonable and rest on the actions of or appearances created by the principal”. See *Cambridge Credit Counseling Corp. v 7100 Fairway, LLC*, 993 So. 2d 86 (Fla. 4th DCA 2008) (citing *Lensa Corp. v Poinciana Gardens Association*, 765 So. 2d 296, 298 (Fla. 4h DCA 2000)). Irwin sent Lilian and Eric documents with the express instruction that they were for Eric to execute. Despite all the email activity directed to his work email account between March 29 and April 2, Eric never spoke up and let the parties know that Lilian signed for him until well after this lawsuit commenced.

iii. Fifty Buildings Changed Its Position in Reliance Upon The Representation that Lilian Hoyt Had The Authority to Bind RJD

The final prong of the test to determine whether apparent authority exists is whether the party affected by the agency representations changed its position in reliance upon those representations. Clearly, Fifty Buildings changed its position in reliance upon Eric’s

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representations as to Lilian's Authority. This appearance of authority to Irwin lead to Fifty Buildings making detrimental changes in position, including making a deposit and scheduling an inspection. In addition, because the sale was terminated by Eric and this lawsuit commenced before anyone was told Lilian had signed the Commercial Contract, Fifty Buildings incurred the cost of retaining counsel and court filing fees.

*c. RJD is Liable For the Fraud Committed
by Lilian in the Scope of Her Actual or Apparent Agency*

An additional tenet of agency law applicable here is that a principal may not escape liability for the actions of his actual or apparent agent when the agent commits a fraud on a third party in the scope of the agent's actual or apparent authority. *American Lease Plans, Inc. v. Silver Sand Co. of Leesburg, Inc.*, 637 F.2d 311, 314 (5th Cir. 1981) (citing Restatement (Second) of Agency § 261 (1958)). Further, "[w]here a principal has, by his voluntary act, placed an agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform a particular act, and therefore deals with the agent, the principal is estopped, as against such third person, from denying the agent's authority." *Id.* (internal citations omitted). The third party must be justified in relying on the authority in question and not have been confronted with circumstances sufficient to put him on inquiry as to the legitimacy of the agent's authority. *Id.* (citing *Industrial Ins. Co. of New Jersey v. First Nat'l Bank of Miami*, 57 So. 2d 23, 26 (Fla. 1952)). "Public policy dictates that such reasonable undertakings by an agent clothed with the authority so to act be sufficient to bind a principal." *Id.* at 315. Importantly, it is irrelevant whether the principal authorized or had knowledge of the deceit or misrepresentation. *Moro-Romero v. Prudential-Bache Securities, Inc.*, 1991 WL 494175 at *3 (S. D. Fla. 1991). "Moreover, the principal is not relieved from liability even if the agent acted entirely for the agent's own purposes." *Id.*

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As noted above, Lilian can be seen as an actual or apparent agent of RJD to bind RJD when she fraudulently signed Eric’s name to the Commercial Contract. At the very least, Lilian was an actual or apparent agent with authority to operate as an intermediary, along with Irwin, between Eric and Fifty Buildings concerning the Property. Accordingly, RJD must be imputed with the consequences of her delivery to Irwin and Fifty Buildings of the purportedly fraudulently signed agreement. It is important to note that upon receipt of the signed and initialed Commercial Contract, Fifty Buildings and Irwin would have had no duty to inquire if the signatures/initials were genuinely Eric’s because the signature resembled the signature on its lease with RJD. It is also immaterial that Eric said that he did not authorize her to sign and initial on his behalf. *American Lease Plans, Inc.*, 637 F.2d at 315 (“It is of no avail to argue that Surbaugh did not have the authority to certify falsely, or to guarantee fraudulently; most assuredly he did not.”).³

RJD Breached the Commercial Contract, and FB Has no Adequate Remedy at Law

RJD breached the Commercial Contract on April 3, 2021, when Eric, on behalf of RJD, conveyed to Irwin that RJD was not going forward with the sale of the Property and instructed Irwin to not allow Fifty Buildings to proceed with its due diligence inspections despite the terms of the Corrected Commercial Contract. JTE 29. An award of money damages to Fifty Buildings for RJD’s breach of the Corrected Commercial Contract would be inadequate as a matter of law because all property is considered unique. See *Henry v Ecker*, 415 So.2d 137 (Fla. 5th DCA 1982). In *Henry*, the Court stated eloquently that “specific performance of contracts for the sale and purchase of real property is generally granted as a matter of right where their terms are fair, certain and definite and they have been entered into without misunderstanding or

³ The Court notes that had the Corrected Commercial Contract been a negotiable instrument Eric’s failure to exercise due care that led to Lilian’s unauthorized signature would have precluded him from asserting that Fifty Buildings could not enforce the agreement against RJD. See *Flagship Bank of Seminole v Complete Interiors, Inc.*, 450 So. 2d 337, 340 (Fla. 5th DCA 1984) (citing § 673.406, *Florida Statutes*).



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misrepresentation. *Id.* at 140. The Corrected Commercial Contract in this action, is clear, concise, fair and definite as to all terms, including price, closing date and all other essential items. The Commercial Contract is, in fact, the Standard Florida Realtor Contract. Accordingly, Fifty Buildings is entitled to specific performance of the Corrected Commercial Contract as a matter of right.

*Fifty Buildings was Ready, Willing, and Able to Perform
Under the Corrected Commercial Contract When It Was Breached by RJD*

A party seeking specific performance must also prove that it was ready, willing, and able to perform the contract. *Orange Destin Props. LLC*, 2024 WL 1514469, at *1. In the context of a real estate contract, this means the purchaser must prove that it paid the contract sum, tendered the purchase price, was ready, willing, and able to do so, or is excused from doing so. *Invego* at 105 (Fla. 3d DCA 2010) (finding that the plaintiff's loan guarantee was clear and convincing evidence that it was ready, willing, and able to pay the contract sum) (internal citation omitted).

"A purchaser may provide sufficient evidence that he is ready, willing and able to perform a contract when he provides proof that 'he was personally possessed of assets and a credit rating which would enable him with reasonable certainty to command the requisite funds to close.'" *Taylor v. Richards*, 971 So. 2d 127, 131 (Fla. 4th DCA 2007) (citing *Hollywood Mall, Inc. v. Capozzi*, 545 So. 2d 918, 920 (Fla. 4th DCA 1989)). Evidence of the financial responsibility and business standing of a proposed purchaser is also admissible to prove financial ability. *Id.* (citing *Perper v. Edell*, 160 Fla. 477, 485, 35 So. 2d 387 (Fla. 1989)).

As a preliminary and dispositive point on this issue, none of the deadlines related to third-party financing – submitting a loan application, obtaining a loan commitment – had been reached by the time Eric terminated the Corrected Commercial Contract. However, beginning around March 31, 2021, Walsh reached out to a banker with Synovus Bank and sent the banker a copy of the

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Commercial Contract. JTE 34, pg. 5; Abrams Testimony, pg. 72:14-15. The banker advised that Fifty Buildings would qualify for a conventional loan for owner-occupied real estate at a 3.75% fixed rate, 25 year amortization. JTE 34, pg. 4-5. Abrams testified that it would not have to file a new application for financing because Synovus Bank already had Fifty Building's financial information on file from other recent loan transactions and their pre-existing business relationship. Abrams Testimony, pg. 72:17-73:1. Abrams also stated that Synovus had never issued a rejection letter to Fifty Buildings concerning any prospective loan. Abrams Testimony, pg. 73:11-14. It is clear that with Fifty Buildings's credit rating, business standing and the absence of any evidence of financial irresponsibility, it satisfies its burden of showing it was ready, willing, and able to consummate the sale.

Final Judgment

The third element that must be met in granting specific performance – that “justice so requires” – is often not discussed, but as an equitable remedy, justice concerns must be evaluated when asked to issue a decree of specific performance. The Court is reminded of the maxim that “he who seeks equity must do equity.” *Manufacturer' Finance Co. v. McKey*, 294 U.S. 442, 449 (1935). This maxim bears heavily on the Court's analysis of this case. On the one hand, there is Fifty Buildings, a company that thought it was buying the Property and had no reason to think otherwise. And on the other, there is RJD and the Hoyts, who have failed to provide any logical reason for acting in the manner they did in connection with the sale. The Court therefore concludes that Plaintiff is entitled to a decree of specific performance because it has demonstrated by a preponderance of the evidence that, as alleged in the Amended Complaint:

- (i) the Corrected Commercial Contract is a valid, binding, and enforceable written contract for the purchase and sale of the Property that satisfies the statute of frauds;

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(ii) the Corrected Commercial Contract is enforceable against Defendant because:

- (1) Lilian had actual authority to sign Eric's name to the contract;
- (2) Lilian was acting as an apparent agent when she signed Eric's name to the contract;
- (3) Lilian was acting as an agent by estoppel when she signed Eric's name to the contract; and/or
- (4) RJD's actual or apparent agent, Lilian, caused a purportedly fraudulently signed contract to be delivered to Plaintiff, and as a result, RJD is estopped from denying Lilian's authority.

(iii) Defendant breached the Corrected Commercial Contract on April 3, 2021, when Eric Hoyt sent an email to Mark Irwin that the Property was not for sale and that the sale/inspection process should be "[stopped] on all fronts, with all parties, immediately." (JTE 29).

(iv) Plaintiff has no adequate remedy at law because it wanted to buy this unique Property and not another building. Abrams Testimony, 78:13-79:5.

(v) Plaintiff was ready, willing, and able to perform its obligations under the Corrected Commercial Contract at the time of Defendant's breach of the contract. Abrams Testimony, 73:8-25.

Further, Defendant's affirmative defenses as set forth in their Answer and Affirmative Defenses to the Amended Complaint are legally insufficient and/or not supported by the evidence presented at trial.

Having addressed all issues presented to the Court for trial, and having made the findings of fact and conclusions of law as set forth above, it is hereby

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ORDERED AND ADJUDGED that Plaintiff's Motion for Leave to Amend Plaintiff's Amended Complaint to Conform to Evidence Presented at Trial filed on May 2, 2024, is hereby granted. Due to the absence of an objection from Defendant as to the admissibility of the Corrected Commercial Contract as JTE 46, the Corrected Commercial Contract shall be treated in all respects as if it had been attached to Plaintiff's Amended Complaint as Exhibit C. It is further

ORDERED AND ADJUDGED that the Court ENTERS this Final Judgment Decreeing Specific Performance and Related Relief in favor of Plaintiff Fifty Buildings L.L.C. and against Defendant RJD Holdings, LLC on Count 1 of Plaintiff's Amended Complaint seeking Specific Performance of the Corrected Commercial Contract pursuant to Paragraph 14(a) thereof. It is further

ORDERED AND ADJUDGED that the Corrected Commercial Contract is deemed a valid, binding, and enforceable contract between the parties and is hereby deemed reinstated in its entirety with an Effective Date, as defined in Paragraph 3 thereof, of the date of entry of this Final Judgment with all deadlines in the Corrected Commercial Contract based on the Effective Date adjusted accordingly. It is further

ORDERED AND ADJUDGED that due to the entry of this Final Judgment Decreeing Specific Performance and Related Relief in favor of Plaintiff, Plaintiff is hereby entitled, and, at its option, may elect, to recover from Defendant its incidental damages that were incurred due to Defendant's breach of the Corrected Commercial Contract on April 3, 2021 in an amount that shall return the parties hereto to the status quo had the Corrected Commercial Contract been completed on June 28, 2021 ("Plaintiff's Incidental Damages"). In the event that the parties cannot agree on the amount of Plaintiff's Incidental Damages, Plaintiff shall file a Motion for Final Judgment of Incidental Damages in this Court, in which it shall set forth the amount and basis for Plaintiff's Incidental Damages. It is further

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ORDERED AND ADJUDGED that Plaintiff is the prevailing party in this action and that it is entitled to recover its reasonable attorneys' fees, costs and expenses from Defendant pursuant to Paragraph 15 of the Corrected Commercial Contract ("Plaintiff's Costs and Attorneys' Fees"). Plaintiff shall file a Motion for Costs and Attorneys' Fees in Compliance with Fla. R. Civ. P. 1.525 within thirty (30) days of the date of entry of this final Judgment. In order to advance the timely adjudication of Plaintiff's prevailing party claim for Plaintiff's Costs and Attorneys' Fees, Plaintiff's counsel is **DIRECTED** to compile and transmit to Defendant's counsel all of Plaintiff's supporting cost documentation (such as invoices for depositions, transcript copies, etc.), as well as Plaintiff's counsel's timesheets showing the amount of time expended by Plaintiff's counsel and the amount of attorneys' fees which Plaintiff has incurred in connection with this matter, to specifically include the parties' mediation. This is to be done within twenty (20) days of the date of entry of this Final Judgment.

After this documentation has been supplied by Plaintiff's counsel and not in lieu of a response to Plaintiff's Motion for Costs and Attorneys' Fees, Defendant shall have thirty (30) days from the date of delivery to file and serve its specific and itemized objections to either a timekeeper's entry, the amount billed, an hourly rate, or to the specific cost or costs incurred by Plaintiff. If Defendant intends to introduce evidence, either by attorney testimony or expert testimony, which seeks to compare any time entry or expense of Plaintiff to a comparable time entry or expense incurred by Defendant, then Defendant shall produce its own counsel's timesheets and/or supporting cost documentation denoting the time entry or expense in question, otherwise such an objection and comparison shall be deemed waived. It is further

ORDERED and ADJUDGED that any payments made or to be made by Plaintiff in connection with the Corrected Commercial Contract shall be held in escrow by Town Real Estate,

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Inc. and not released to Defendant until the parties have agreed to, and/or this Court has determined, as the case may be, the amount of Plaintiff's Incidental Damages and the amount of Plaintiff's Costs and Attorneys' Fees. After the amount of Plaintiff's Incidental Damages and/or the amount of Plaintiff's Costs and Attorneys' Fees have been agreed to by the parties and/or determined this Court, said amount(s) shall be released directly from escrow to Plaintiff by Town Real Estate, Inc. If the amount of Plaintiff's Incidental Damages or the amount of Plaintiff's Costs and Attorneys' Fees is agreed to by the parties and/or determined by this Court prior to the date of closing under the Corrected Commercial Agreement, Plaintiff shall be entitled to credit said amount(s) against the balance of the Purchase Price under the Corrected Commercial Agreement as defined in Paragraph 2 therein (the "Purchase Price"). If, at closing, the sum held in escrow by Town Real Estate, Inc., together with any amounts credited by Plaintiff against the balance of the Purchase Price, exceeds the Purchase Price, such surplus shall be released directly from escrow to Plaintiff by Town Real Estate, Inc. It is further

ORDERED and ADJUDGED that the Court hereby reserves and retains jurisdiction over the parties to: (i) enter a Final Judgment for Incidental Damages; and (ii) enter any such other or further Orders as may be necessary to carry out and enforce this Final Judgment, including but not limited to jurisdiction over the parties in connection with the adjudication of Plaintiff's prevailing party attorneys' fees and costs claim as well as any post-judgment collection proceedings or proceedings supplementary that may be initiated hereafter.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 15 day of May, 2024.



MARK A. SPEISER
Circuit Judge

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