

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2017-026857-CA-01

AVRA JAIN,

Plaintiff,

vs.

BUCHANAN INGERSOLL &
ROONEY, PC, a Foreign Profit
Corporation, and RICHARD A.
MORGAN, an individual,

Defendants.
_____ /

COMPLAINT

Plaintiff, Avra Jain, (“Jain”) sues Defendants, Buchanan Ingersoll & Rooney, PC (“BI”) and Richard A. Morgan (“Morgan”) (collectively “Defendants”) all individually, jointly and severally and allege:

PARTIES, JURISDICTION, AND VENUE

1. This is an action for Legal Malpractice and Breach of Fiduciary Duty seeking damages in excess of \$750,000.00, exclusive of interest, court costs and attorneys’ fees. The total amount of damages exceeds the sum of 15 million dollars.
2. Jain is an individual residing in Miami-Dade County, Florida.
3. BI is a Foreign Profit Corporation and conducts business in Miami-Dade County, Florida.

4. Morgan is a lawyer and partner in BI and practices law in Miami-Dade County, Florida.

5. Venue and jurisdiction are proper in Miami-Dade County, Florida as the Defendants committed legal malpractice in this county and this action accrued and the parties conduct business in said county.

GENERAL ALLEGATIONS

6. Jain is a well-known and respected real estate investor and developer in Miami-Dade County, Florida.

7. Jain learned about a project in Sunny Isles, Florida owned in whole or in part by Abraham Cohen ("Cohen").

8. Cohen and his partners, needed investment partners in a real estate project in Doral (the "Doral Project") and would not allow investment in the Sunny Isles project unless Jain invested in the Doral Project.

9. In May, 2006, Jain and Paul Murphy ("Murphy") each invested \$2.5 million in the Doral project.

10. In July, 2006, Jain and Murphy again had to invest an additional \$10 million in the Doral Project to allow the project to continue.

11. In 2007, Cohen asked for Jain to buy him out of the Doral Project which was structured through a Jain entity –H-H Investments, LLC ("H-H") in which Cohen was to receive 5 million dollars in the form of a \$500,000.00 deposit and a Promissory Note (The "Note") (attached as Exhibit "A") in the amount of \$4.5 million,

which was personally guaranteed by Jain (a copy of the guarantee is attached as Exhibit "B").

12. The Note called for ten payments with a balloon payment of \$4.5 million.

13. The balloon payment was to be paid from the proceeds of the completed Doral Project.

14. After making nine (9) monthly payments of \$50,000.00, H-H ceased making payments in April, 2008 because Jain learned that Cohen had made material misrepresentations about the Doral Project to induce the Jain investment.

15. Jain met with Cohen and he agreed to tear up the Note, in return to get back into the Doral Project.

16. Cohen was able to get back into the project in 2008 and never demanded any payments under the Note.

17. Cohen then sued Jain under the personal guaranty in February, 2009 for failure of H-H to make the Note payments.

JAIN RETAINS COUNSEL

18. In 2009 Jain retained BI and Morgan to represent her in a case styled *Abraham Cohen vs. Avra Jain*, Miami-Dade County Circuit Court Case No.: 2009-014497-CA-01 (the "Litigation").

19. BI and Morgan held themselves out to be a full service law firm and further represented that it had substantial experience and expertise in commercial litigation.

20. In reliance on the Defendants' representations of experience and expertise, Jain retained the Defendants to as her counsel in connection with the Litigation.

COUNT I AGAINST DEFENDANTS
LEGAL MALPRACTICE

Plaintiff hereby realleges the general allegations contained in Paragraphs 1 through 20, and for Count I of the Complaint further alleges:

21. BI represented Jain in the Litigation starting in 2009 when Cohen initiated the Litigation.

22. In the Litigation, Cohen sought to collect on the Note against H-H and enforce the guaranty against Jain and Murphy.

23. H-H and Murphy had insufficient assets to pay the Note, so Defendants knew and were told that the real target in the Litigation was Jain.

24. Jain believed that she did not owe any money to Cohen because of misrepresentations Cohen made to Jain in making the investment decision that lead to the Litigation and because Cohen had torn up the Note.

25. Jain told Defendants that Cohen had recognized the issues and that he tore up the original Note.

26. Defendants knew that one of the central defenses to the Litigation was that the original Note was not in existence.

27. Among the information Defendants were told is that Jain was not liable to Cohen under her guaranty because Cohen told Jain that the original Note did not exist.

28. The Litigation proceeded from 2009 until November 2015 when the case was tried before a jury.

29. During the trial, Cohen introduced a copy of the Note into evidence, but never filed or introduced into evidence the original Note.

30. Defendant Morgan allegedly inquired during the case at the trial to Cohen's counsel whether they would file the original Note and yet no filing was made.

31. Plaintiff rested his case without introducing into evidence the original Note and Defendants did not raise the failure to introduce the original Note into evidence in any motion.

32. The Litigation ended disastrously for Jain when the court entered a directed verdict against her on November 19, 2015 and entered a Final Judgment on January 27, 2016, which was affirmed by the Third District Court of Appeal in 2017 (a copy of the Final Judgment is attached hereto as Exhibit "C").

33. Defendants never raised the failure to produce the original Note with the Court prior to the entry of the Final Judgment.

34. Defendants filed a Motion for Rehearing and New Trial on December 8, 2015, but did not assert the failure to produce the original Note.

35. The Motion for Rehearing and for New Trial was denied on January 27, 2016 and at no time in filings or in argument did Defendants raise the failure to produce the original Note.

36. It was not until April 14, 2016, nearly five (5) months after the trial, that Defendants asserted the failure to produce the original Note in the form of a Motion for Relief from Judgment Pursuant to Rule 1.540 (the "1.540 Motion").

37. By order dated May 24, 2016, the Court denied the 1.540 Motion and ruled "This argument has been waived. The motion is made untimely".

38. The Defendants each owed Jain a duty to exercise due care in carrying out their representation of Jain in the Litigation.

39. The Defendants', as set forth more fully herein, breached the standard of care for legal professionals. The errors and omissions committed by the Defendants include, but are not limited to, the following:

- a. Failing to raise any issue about the non-existence of the original Note prior to May 11, 2016, nearly six (6) months after the trial;
- b. The Court denied the 1.540 Motion for relief on May 27, 2016. In issuing the order the Court concluded, *inter alia*, that Jain had waived the right to assert the absence of the original Note and that the 1.540 Motion was untimely;
- c. Defendants failed to timely assert a claim, defense or objection raising the absence of the original Note at any point in the six years before trial;
- d. Failed to timely disclose documents which were excluded from evidence at trial in support of Jain's counterclaim against Cohen, which the Court then entered a directed verdict against Jain on her

counterclaim. These documents/exhibits were imperative to prove the counterclaim of the material misrepresentations made by Cohen;

- e. Failing to object or otherwise raise the absence of the original Note when Cohen sought to and introduced a copy of the Note into evidence at trial; and
- f. Failing to raise the failure to introduce the original Note at any time from when plaintiff rested his case, at the conclusion of the case or in post-trial motions filed before the Final Judgment was entered.

40. As a result of the actions of the Defendants as described herein, the Plaintiff has been damaged. These damages include compensatory, consequential and special damages, including, but are not limited to the following:

- a. Jain had to pay the amount of the Judgment, together with prejudgment interest, pretrial and post-trial court costs and attorneys' fees;
- b. Jain was required to pay counsel to defend her and her affiliated entities in post-judgment collection proceedings by Cohen and his counsel;
- c. Jain was required to sell property and membership/shareholder interests in numerous ventures at below market prices in order to post the supersedeas bond and satisfy her investors;

- d. Jain lost numerous business opportunities as a result of the negative impact on her ability to obtain financing and liquidity as a result of the Final Judgment entered against her;
- e. Jain lost the amount of attorneys' fees and costs paid to BI;
- f. Jain lost her counterclaim seeking the return of her investment in the Doral Project together with interest, court costs and reasonable attorneys' fees;
- g. Cost of the Supersedeas Bond premium; and
- h. Costs incurred to borrow funds to post the Supersedeas Bond.

WHEREFORE, Plaintiff, Avra Jain, prays this Court enter judgment in her favor against each of the Defendants, Buchanan Ingersoll & Rooney, PC and Richard Morgan, all individually, jointly and severally for compensatory, special and consequential damages together with interest, costs and any other relief this Court deems just and proper.

COUNT II
BREACH OF FIDUCIARY DUTY AGAINST DEFENDANTS

Plaintiff hereby realleges the general allegations contained in Paragraphs 1 through 40, and for Count II of the Complaint further alleges:

41. At all times material to the action, Defendants owed Jain a fiduciary duty in representing her in the Cohen Matter.

42. Defendants breached their fiduciary duty by failing to properly represent Jain as set forth above.

43. As a result of breaching their fiduciary duty, Jain suffered damages as set forth in paragraph forty (40) and its subparts above.

WHEREFORE, Plaintiff, Avra Jain, prays this Court enter judgment in her favor against each of the Defendants, Buchanan Ingersoll & Rooney, PC and Richard Morgan, all individually, jointly and severally for compensatory, special and consequential damages together with interest, costs and any other relief this Court deems just and proper.

BOIES, SCHILLER, FLEXNER LLP
Total Bank Tower, Suite 2800
100 S.E. 2nd Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

By: /s/ Bruce Alan Weil
BRUCE ALAN WEIL
Fla. Bar No. 816469
STEVEN W. DAVIS
Fla. Bar No. 347442

Exhibit

A

PROMISSORY NOTE

\$4,500,000.00

June 14, 2007

FOR VALUE RECEIVED, the undersigned borrower (the "Borrower") promises to pay to the order of ABRAHAM COHEN ("Payee"), at _____, or at such other address as may be specified in writing from time to time by the holder hereof, the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) (the "Loan"), same being payable in lawful money of the United States of America, as follows:

Principal and interest due and owing hereunder shall be paid in the following manner:

(a) Principal reduction payments in the amount of \$50,000.00 shall be paid monthly commencing on the 1st day of August, 2007, and continuing on the 1st day of every month thereafter until and including the 1st day of May, 2008. The payments made under this Section (a) shall bear interest, from the date hereof, at a rate of zero percent (0%) per annum.

(b) A final balloon payment in the amount of \$4,000,000.00 plus all accrued and unpaid interest shall be due and payable in full on June 2, 2008 (the "Maturity Date"). The payment made under this Section (b) shall bear interest, from the date hereof, at a rate of five percent (5%) per annum, non compounding.

Notwithstanding anything herein to the contrary, in the event that a payment date falls on a Saturday, Sunday, or legal holiday, then such payment shall be due on the following day that is not a Saturday, Sunday, or legal holiday. This Note may be prepaid in whole or in part prior to Maturity Date without penalty.

In the event that the entire outstanding principal balance of the Loan is not paid within ten (10) days following the Maturity Date, the same shall constitute a default hereunder.

During the period of any default under the terms of this Note, and from and after maturity, the interest rate on the entire indebtedness then outstanding shall be at a rate of at twelve percent (12%) per annum. If default is made in the payment of any installment of principal, then, at the option of the holder hereof, the entire outstanding principal sum, together with all accrued and unpaid interest shall become immediately due and payable.

The undersigned agrees to pay all filing fees and similar charges and all costs incurred by the holder hereof in collecting or securing or attempting to collect or secure this Note, including reasonable attorney's fees. The undersigned shall be responsible for the payment of any documentary stamp taxes which may now or hereafter apply to this Note.

In any action or proceeding brought in connection with this Note, the undersigned hereby: (a) waives demand, presentment, protest, notice of dishonor, suit against or joinder of

any other person, and all other requirements necessary to charge or hold the undersigned liable with respect to the Loan; (b) submits to the jurisdiction of the state and federal courts in the State of Florida for purposes of any such action or proceeding; and (c) agrees that the venue of any such action or proceeding may be laid in Miami-Dade County, Florida and waives any claim that the same is an inconvenient forum. No provision of this Note shall limit the holder's right to serve legal process in any other manner permitted by law or to bring any such action or proceeding in any other competent jurisdiction.

The total charges for interest and in the nature of interest shall not exceed the maximum amount allowed by law, and any excess portion of such charges that may have been paid shall be deemed to have been prepayments of principal.

This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida.

BORROWER:

H-H INVESTMENTS, LLC, a
Florida limited liability company

By: [Signature]
Print Name: Harold K. Kivins
Title: Managing Director

THIS NOTE IS NOT SECURED BY AN INTEREST IN FLORIDA REAL PROPERTY. CONSEQUENTLY, PURSUANT TO FLORIDA STATUTES SECTION 201.08(1)(a) (AS SUCH SECTION WAS AMENDED IN 2002) DOCUMENTARY STAMPS IN THE MAXIMUM AMOUNT OF \$2,450.00 HAVE BEEN PAID TO THE FLORIDA DEPARTMENT OF REVENUE WITH RESPECT TO THIS PROMISSORY NOTE.

Exhibit

B

GUARANTY AGREEMENT

The undersigned hereby request that Abraham Cohen (hereinafter referred to as "Lender") give to H-H Investments, LLC, a Florida limited liability company (hereinafter referred to as "Borrower"), a loan in the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000.00), and in consideration of such loan and receipt of an option from Borrower to acquire a membership interest in Blueview, L.L.C., a Florida limited liability company, the undersigned Guarantors, jointly and severally, guaranty prompt payment when due and at all times thereafter of the monetary payments under that certain Promissory Note in the original principal amount of Four Million Five Hundred Thousand Dollars (\$4,500,000.00), of even date herewith and executed by Borrower in favor of Lender, and all renewals, increases, extensions and modifications thereof; and the undersigned waive notice of the acceptance of this guaranty and of any and all such indebtedness and liability, renewals, extensions and modifications thereof at any time. The undersigned hereby waive presentment, protest, notice, demand or action on delinquency in respect of any such indebtedness.

The Guaranty Agreement is a guaranty of payment and not a guaranty of collection. It shall not be necessary for Lender, in order to enforce such payment by Guarantors, to first institute suit or pursue or exhaust any rights or remedies against Borrower.

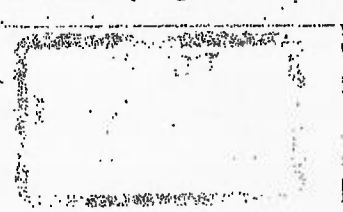
This Guaranty Agreement shall be governed in all respects by the laws of the State of Florida,

~~THE UNDERSIGNED HEREBY WAIVE (1) ALL RIGHTS TO RELY ON OR ENFORCE ANY ORAL STATEMENTS MADE PRIOR TO CONTEMPORANEOUSLY WITH OR SUBSEQUENT TO THE SIGNING OF THIS GUARANTY AGREEMENT; AND (2) THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, OR WITH RESPECT TO DEALINGS BETWEEN LENDER AND THE UNDERSIGNED CONCERNING ANY COURSE OF CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO PROVIDE CREDIT TO THE BORROWER.~~

VENUE AND JURISDICTION SHALL BE IN MIAMI-DADE COUNTY, FLORIDA, FOR ANY AFFIRMATIVE OR DEFENSIVE LEGAL PROCEEDING IN CONNECTION WITH THIS GUARANTY AGREEMENT.

[signatures to Guaranty Agreement on following page]

Handwritten notes:
K.P. - m
12/12/12
= \$5.3 m




[signatures to Guaranty Agreement]

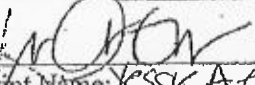
IN WITNESS WHEREOF, the undersigned has duly executed this guaranty as of this 14 day of June, 2007.


Witnesses:

Guarantor:

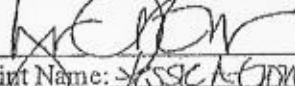

Print Name: CHRIS CASTRO


AVRA JAIN


Print Name: JESSICA A. GONZALEZ


PAUL CASHMAN MURPHY

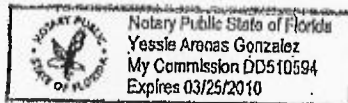

Print Name: CHRIS CASTRO

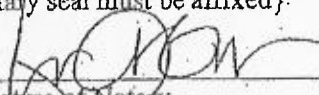

Print Name: JESSICA A. GONZALEZ

STATE OF FLORIDA)
) :SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 14th day of June, 2007, by Avra Jain. She is personally known to me or produced a _____ Driver's license as identification.

{Notary seal must be affixed}




Signature of Notary

Name of Notary (typed, printed or stamped)

My Commission Expires: _____

[notary acknowledgement continues on following page]

Exhibit

C

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

Case No: 09-14497 CA.59

ABRAHAM COHEN

Plaintiff,

v.

AVRA JAIN, PAUL CASHMAN MURPHY,
and H-H INVESTMENTS, LLC

Defendants.

FINAL JUDGMENT

THIS CAUSE having come to be heard upon the Court granting directed verdict and related relief in favor of Plaintiff, ABRAHAM COHEN ("Plaintiff"), on Counts I - III of his Complaint against Defendants, AVRA JAIN ("Jain"), PAUL MURPHY ("Murphy") and H-H INVESTMENTS, LLC ("HH") (collectively, "Defendants"), as well as on the Third Amended Affirmative Defenses 1-17 and Counts I - XXI of the Third Amended Counterclaim, and the Court having reviewed the Court file, the Plaintiffs' Motion, having heard the substantial testimony and evidence adduced at trial commencing on November 9, 2015 and continuing through November 18, 2015, having heard extensive argument of counsel, and being otherwise fully advised in the premises, and for the more specific reasons set forth on the record, it is hereupon **FOUND AND DECIDED**:

1. That Plaintiff ABRAHAM COHEN, an individual, shall have and recover from the Defendants, AVRA JAIN, an individual, PAUL MURPHY, an individual, and H-H INVESTMENTS, LLC, a dissolved Florida limited liability company, jointly and severally, the principal sum of Four Million and Fifty Thousand and 00/100 Dollars (\$4,050,000.00), together with non-compounding interest of five percent (5%) from June 17, 2007 through May 1, 2008 of One Hundred and Seventy Four Thousand, Seven Hundred and Ninety Four

and 52/100 Dollars (\$174,794.52) and non-compounding annual interest of twelve percent (12%) from May 1, 2008 through January 15, 2016 of Three Million, Nine Hundred and Sixty Four Thousand, Two Hundred and Sixty Five and 52/100 Dollars (\$3,964,265.52), for a total sum due of Eight Million, One Hundred and Eighty Nine Thousand, and Sixty and 04/100 Dollars (\$8,189,060.04), that shall thereafter bear interest at the statutory rate until paid, for all of which sum let execution issue.

2. The Court finds that Plaintiff is entitled to recovery of his reasonable attorney's fees and costs incurred in connection with the prosecution of this case pursuant to the agreements between the parties. The Court retains jurisdiction for a determination of the amount of attorney's fees and costs to which the Plaintiff is entitled.

3. The Defendants AVRA JAIN, PAUL MURPHY and H-H INVESTMENTS, LLC shall complete under oath Form 1.977(a) or (b), Fla. R. Civ. P. (the "Fact Information Sheets"), including all required attachments, and serve it on Plaintiff's attorney, Stok Folk + Kon, 18851 NE 29th Avenue, Suite 1005, Aventura, FL 33180, within forty-five (45) days from the date of this Final Judgment, unless the Final Judgment is satisfied or post-judgment discovery is stayed.

4. The Defendants shall file with the Clerk of Court a notice of compliance after the original Fact Information Sheets, together with all attachments, have been delivered to the Plaintiffs' attorney.

A. The Plaintiff's address is:

c/o Stok Folk + Kon
18851 N.E. 29th Avenue, Suite 1005
Aventura, Florida 33180

B. Defendant Jain's last known address and social security number is:

c/o Buchanan Ingersoll & Rooney, P.C.
Miami Tower.

100 S.E. Second Street, Suite 3500
Miami, FL 33131

Social security number: unknown

- C. Defendant Murphy's last known address and social security number is:

c/o Buchanan Ingersoll & Rooney, P.C.
Miami Tower
100 S.E. Second Street, Suite 3500
Miami, FL 33131

Social security number: unknown

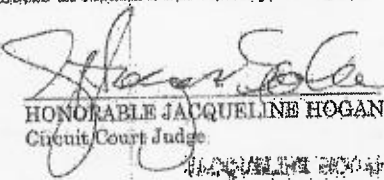
- D. Defendant HH's last known address and Federal Identification Number is:

c/o Buchanan Ingersoll & Rooney, P.C.
Miami Tower
100 S.E. Second Street, Suite 3500
Miami, FL 33131

Federal Identification Number: unknown

5. The Court shall retain jurisdiction of this cause and the parties hereto for the purpose of granting all such other and further relief as may be necessary, including, but not limited to, the entry of further judgments on fees and costs and orders on proceedings supplementary or that are proper to compel the Defendants to comply with this Final Judgment or to compel the Defendants to complete under oath Form 1.977(a) or (b), Fla. R. Civ. P., including all required attachments, and to serve it on Plaintiff's attorney.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on this 27th day of January, 2016.


HONORABLE JACQUELINE HOGAN SCOLA
Circuit Court Judge

Copies furnished to:
Robert A. Stok, Esq. and Joshua R. Ken, Esq., for Plaintiff

JACQUELINE HOGAN SCOLA
CIRCUIT JUDGE

CONFIRMED COPY

JAN 27 2016

JACQUELINE HOGAN SCOLA
CIRCUIT COURT JUDGE

Richard Morgan, Esq., Matthew Feeley, Esq., Jennifer Olmedo Rodriguez, Esq. and Jose Florez, Esq., for Defendants

Richard Morgan, Esq., Matthew Feeley, Esq., Jennifer Olmedo-Rodríguez, Esq. and Jose
Florez, Esq., for Defendants