NO. 22-CV-34

IN THE
DISTRICT OF COLUMBIA COURT OF APPEALS

1814 INGLESIDE, LLC, *et al.*

Appellants,

v.

SANTORINI CAPITAL, LLC

Appellee.

Appeal from the Superior Court for the District of Columbia
NO. 2021 CA 000577 B

APPELLEE'S BRIEF

June 13, 2022

Roger C. Simmons (12195)
Jacob R. Dziubla (1742874)
Gordon & Simmons, LLC
1050 Key Pkwy, Suite 101
Frederick, MD 21702
(301) 662-9122
rsimmons@gordonsimmons.com
Counsel for Appellee Santorini Capital, LLC

TABLE OF AUTHORITIES

Cases

Rules

Treatises

Other Authorities

TABLE OF CONTENTS

CONFLICT STATEMENT

Pursuant to D.C. Ct. App. 28(a)(2)(A), all parties, intervenors, amici curiae, and their counsel in the trial court proceedings and in the appellate court proceeding are listed as follows:

1. Appellee/Plaintiff: Santorini Capital, LLC

2. Counsel for Appellee/Plaintiff:
Roger C. Simmons (12195)
Jacob R. Dziubla (1742874)
Gordon & Simmons, LLC
1050 Key Parkway
Suite 101
Frederick, Maryland 21702
(301) 662-9122
rsimmons@gordonsimmons.com
jdziubla@gordonsimmons.com

3. Appellant/Defendant: 1814 Ingleside, LLC

4. Appellant/Defendant: Christopher A. Harrison

5. Counsel for Appellants/Defendants:
Vanessa Carpenter Lourie (250068)
4400 MacArthur Boulevard, N.W.
Suite 205
Washington, D.C. 20007
(202) 342-8000
vlourie@carpenterlourie.com

STATEMENT OF THE CASE

This case is about 1814 Ingleside, LLC's ("Ingleside") and Christopher A. Harrison's ("Harrison") (together, Ingleside and Harrison are collectively referred to as "Ingleside/Harrison") breach of two commercial promissory notes made on October 2, 2017, by Santorini Capital, LLC to Ingleside and which were guaranteed by Harrison, the sole member of Ingleside. Appellant's App. ("App") at 13, 15, 17. The first note was in the amount of $1,075,000 and the second in the amount of $75,250 (together, the two notes and guaranty are collectively referred to as the "Loan"). *Id.* at 13, 16, 20. The purpose of the Loan was for Ingleside to acquire and develop real property known as 1814 Ingleside Terrace, N.W., Washington, D.C. 20010. *Id.* at 13.

Under the terms of the notes, Ingleside/Harrison was to repay the loan beginning with interest payments on November 1, 2017. *Id.* at 13, 16, 20. The entire debt was due and payable six months from the date of execution of the notes. *Id.* Throughout the term of the Loan, Santorini issued monthly statements to Ingleside recording the balance of the debt. *Id.* at 14.

Ingleside/Harrison failed to make payments as promised in the Notes. *Id.* at 14-5. On April 2, 2019, Santorini mailed a default letter to Ingleside/Harrison (the "Default Letter") declaring the Loan to be in default and accelerating the outstanding balance. *Id.* Initially, Ingleside/Harrison resumed payments to Santorini. *Id.* Despite

these payments, however, much of the Loan remains unpaid over four years after the execution of the notes. *Id.* Specifically, as of the filing of the Complaint on February 25, 2021, approximately $1,278,372.73 remained unpaid, not including pre- and -post-judgment interest, attorneys' fees, and court costs. *Id.*

As a result of the breach and the ensuing damages, Santorini filed the Complaint on February 25, 2021 against Ingleside/Harrison for breach of contract. *Id.* at 13-27. Subsequent to the filing of the Complaint, Ingleside/Harrison filed a motion to dismiss for failure to state a claim upon which relief can be granted on March 31, 2021. *Id.* at 28-41. The Superior Court denied the motion to dismiss on May 3, 2021. Docket No. 24. After the close of discovery, Santorini filed a motion for summary judgment on November 1, 2021. *Id.* at 71-84. Ingleside/Harrison's opposition followed on November 15, 2021. *Id.* at 85-105. The Superior Court granted Santorini's motion for summary judgment on November 18, 2021, and awarded a judgment in favor of Santorini in the amount of $1,373,717.45, plus reasonable attorneys' fees and costs according to Ingleside/Harrison's contractual obligations under the Loan. Docket No. 52. On December 2, 2021, Ingleside/Harrison filed a "Motion for Reconsideration." *Id.* at 140-45. The following day, Santorini filed a motion for attorneys' fees and costs. *Id.* at 106-128. Ingleside/Harrison filed an opposition to that motion on December 16, 2021.

Separately, Santorini filed its opposition to the "Motion for Reconsideration" on December 13, 2021. *Id.* at 150-163.

On December 22, 2021, the Superior Court denied the "Motion for Reconsideration" and partially granted the motion for attorneys' fees. Docket Nos. 61, 62.[1] Shortly after Santorini began serving discovery in aid of execution on December 28, 2021, Ingleside/Harrison filed a Notice of Appeal with this Court on January 20, 2022. While this case has proceeded, Harrison has used the loan proceeds to develop the property and is currently marketing it for sale with a listing price of $1,600,000, contract pending. He continues to refuse to make any payments towards the Loan, however.

SUMMARY OF THE ARGUMENT

Preliminarily, Santorini does not dispute and adopts the jurisdictional statement contained in Ingleside/Harrison's Brief. As to the substance of the arguments themselves, Santorini sufficiently pled claims for breach of contract against Ingleside/Harrison, and Ingleside/Harrison failed to challenge the legal

[1] In violation of D.C. Ct. App. Rule 30(a)(1)(C), Ingleside/Harrison failed to include in their Appendix the May 3, 2021 Order denying Ingleside/Harrison's motion to dismiss, the November 18, 2021 Order granting Santorini's motion for summary judgment, and the December 22, 2021 Orders denying Ingleside/Harrison's "Motion for Reconsideration" and partially granting Santorini's motion for attorneys' fees. As a result, references to the orders are made using the docket numbers listed in the Docket Sheet in the Appendix at pages three through 11.

sufficiency of Santorini's complaint. Instead, Ingleside/Harrison raised a nuanced factual issue in their motion to dismiss that was not appropriate for resolution under a motion to dismiss for failure to state a claim upon which relief can be granted and had nothing to do with the legal sufficiency of the Complaint. Second, regarding the Superior Court's determination to grant Santorini's motion for summary judgment, Ingleside/Harrison did not genuinely dispute any of the material facts, and, as a result, Santorini is entitled to judgment as a matter of law. Third, the Superior Court appropriately exercised its discretion in granting Santorini's motion for attorneys' fees and reducing the award by 50 percent after considering the record and the pertinent factors. Finally, Santorini did not engage in sanctionable conduct under Rule 11 or the bad faith exception to the "American rule."

STANDARD OF REVIEW

I. Motion to Dismiss Under Rule 12(b)(6).

A motion to dismiss a complaint pursuant to Super. Ct. R. Civ. P. 12(b)(6) is reviewed *de novo* because the adequacy of a complaint is a question of law. *See, e.g., Solers, Inc. v. Doe,* 977 A.2d 941, 947 (D.C. 2009) (citations omitted). A question of law "refers to the rule of law pertinent to the inquiry to be reviewed." *United States v. Felder,* 548 A.2d 57, 61 (D.C. 1988). When an appellate court reviews a decision under the *de novo* standard, the court will make an independent judgment based on its own review of the record. *Id.* (describing the various standards

of review). Specifically, regarding the review of a motion to dismiss under Rule 12(b)(6), "[the Court] appl[ies] the same standard as the trial court, meaning [it] accept[s] the allegations of the complaint as true, and construe[s] all facts and inferences in favor of the plaintiff." *In re Estate of Curseen,* 890 A.2d 191, 193 (D.C. 2006) (internal citations and quotation marks omitted).

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint. *See, e.g., Carey v. Edgewood Mgmt. Corp.,* 754 A. 2d 951, 954 (D.C. 2000). Pursuant to the standards set forth in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), adopted by this Court in *Equal Rights Ctr. v. Props. Int'l*, 110 A.3d 599, 602-03 (D.C. 2015), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Id.* (*quoting Twombly,* 550 U.S. at 570). As a result, "a defendant raising a 12 (b)(6) defense cannot assert any facts which do not appear on the face of the complaint itself." *Carey,* 754 A.2d at 954.

The minimum requirements for pleading a claim for relief are found in Rule 8(a)(1)-(3). These provisions state that a claim for relief must contain:

> (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
>
> (2) a short and plain statement of the claim showing that the pleader is entitled to relief; [and]

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Id; see also In re Estate of Curseen, 890 A.2d at 194 (the complaint ". . . must simply 'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" (*citing Conley v. Gibson,* 355 U.S. 41, 47, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)).

II. Motion for Summary Judgment.

As with a review of a motion to dismiss, a motion for summary judgment is reviewed *de novo* on appeal because an evaluation of whether a genuine dispute of a material fact exists and a party is entitled to judgment are issues involving questions of law. *Woodland v. Dist. Council 20,* 777 A.2d 795, 798 (D.C. 2001). Under Rule 56(c), summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* (citations omitted). The appellate court must view the evidence in the light most favorable to the non-movant and all reasonable inferences must be drawn in their favor. *Id.* (*citing Brown v. Consolidated Rail Corp.,* 717 A.2d 309, 311 (D.C. 1998)).

A material fact is "one which, under the applicable substantive law, is relevant and may affect the outcome of the case." *Rajabi v. Potomac Elec. Power Co.,* 650 A.2d 1319, 1321 (D.C. 1994). The movant has the initial burden of proving that there is no genuine issue of material fact in dispute; after satisfying that burden, the burden

then shifts to the non-moving party. *Bradshaw v. District of Columbia,* 43 A.3d 318, 323 (D.C. 2012) (*quoting Beard v. Goodyear Tire & Rubber Co.,* 587 A.2d 195, 198 (D.C. 1991)). The non-moving party has the burden to counter a motion for summary judgment with specificity. *Miller v. Am. Coal. of Citizens with Disabilities, Inc.,* 485 A.2d 186, 191 (D.C. 1984). This means that a nonmoving party must show more than a mere dispute of material facts. *See William J. Davis, Inc. v. Tuxedo, LLC,* 124 A.3d. 612, 624 (D.C. 2015) (citation omitted). To meet this standard, the nonmoving party must show that the fact is material and that there is "sufficient evidence supporting the claimed factual dispute to require" resolution by a trier of fact. *Id.* (citations omitted).

The purpose of summary judgment is "to pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required." *See Ayala-Gerena v. Bristol Myers-Squibb Co.*, 95 F.3d 86, 94 (1st Cir. 1996). (citations and quotations omitted). Summary judgment is "properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the [Superior Court Rules] as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action." *Mixon v. Wash. Metro. Area Transit Auth.,* 959 A.2d 55, 58 (D.C. 2008) (quotations and citations omitted). To that end, District of Columbia courts have "recognized that summary judgment is vital." *Doe v. Safeway Inc.,* 88 A.3d 131, 133 (D.C. 2014).

III. Motion for Attorneys' Fees.

"[A] very strong showing of abuse of discretion" is required to overturn a trial court's decision as to a motion for attorneys' fees. *Steadman v. Steadman,* 514 A.2d 1196, 1200 (D.C. 1986) (*quoting Ritz v. Ritz,* 197 A.2d 155, 156-57 (D.C. 1964)). This review is "limited" because "disposition of such motions is firmly committed to the informed discretion of the trial court." *Id. quoting Smith v. Smith,* 445 A.2d 666,669 (D.C. 1982), *cert. denied,* 459 U.S. 1115, 74 L. Ed. 2d 968, 103 S. Ct. 749 (1983) (further citations omitted).

ARGUMENT

I. The Superior Court Correctly Denied Ingleside/Harrison's Motion to Dismiss.

A. Santorini sufficiently pled claims for breach of contract against Ingleside and Harrison.

Santorini's Complaint consists of two counts, one against Ingleside and the other against Harrison, for breach of contract stemming from their default under a commercial loan from Santorini. App. at 14-15. The operative deed of trust notes, guaranty, and default letter, were attached as exhibits. *Id.* at 16-27. The factual narrative, as well as the application of those facts to the claims themselves, are plain and straightforward. In fact, the Motion to Dismiss, in which Ingleside/Harrison cite to Rule 12(b)(6) as the sole basis for bringing the Motion,[2] does not actually dispute

[2] After citing to Rule 12(b)(6), Ingleside/Harrison then state that, "It is defendants'

the legal sufficiency of the Complaint. Ironically, by focusing their Motion to Dismiss on an argument that is more appropriate in a motion for summary judgment, Ingleside/Harrison, not Santorini, fall short of their burden.

A complaint should be dismissed for failure to state a claim under Rule 12(b)(6) only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Fingerhut v. Children's Nat'l Med. Ctr.,* 738 A.2d 799, 803 (D.C. 1999) (citations omitted). Stated differently, when a plaintiff fails to adequately plead the elements for a cause of action, then the complaint should be dismissed for failure to state a claim. *See Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co.,* 870 A.2d 58, 62 (D.C. 2005) (upholding trial court's granting of motion to dismiss under Rule 12(b)(6) because the complaint "does not allege the elements" of a cause of action). In the context of a breach of contract, a complaint at a minimum, show that "(1) a valid contract [existed] between the parties; (2) [there was] an obligation or duty arising out of the contract; (3) [there was] a breach of that duty; and (4) [there were] damages caused by the breach." *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009) (internal citations omitted) (describing the minimum pleading requirements necessary to overcome a Rule 12(b)(6) motion directed at a breach of

---

position that plaintiff's Complaint does fail to state a claim upon which relief can be granted at this time."

contract claim); *see also Francis v. Rehman,* 110 A.3d 615, 620 (D.C. 2015) (citation omitted) (a complaint sufficiently pleads a claim for breach of contract when it "describe[s] the terms of the alleged contract and the nature of the defendant's breach.").

Santorini's Complaint sufficiently pled each of these elements and, at a bare minimum, outlined the relevant terms of the contracts at issue, as well as Ingleside/Harrison's breach. The Complaint demonstrates that the parties entered into valid contracts on October 2, 2017, in the form of two promissory notes in favor of Santorini. App. at 13, ¶ 7. The consideration for these notes was a loan from Santorini to Ingleside for the purpose of acquiring real property located at 1814 Ingleside Terrace, N.W., Washington, D.C. 20010. *Id.* at ¶ 9. The notes required Ingleside to repay the loan beginning with interest payments on November 1, 2017, and provided that the entire debt is due and payable six months from the date of the execution of the Notes. *Id.* at ¶¶ 10-11. In Counts I and II, Santorini sets forth that Ingleside and Harrison failed to make payments as promised. *Id.* at 14 ¶ 15, 15 ¶ 25. Additionally, Santorini established a contractual basis for damages comprised of the loan principal, interest, attorneys' fees, and court costs. *Id.* at 3-4. The notes, guaranty, and default letter were each attached to the complaint as exhibits.

None of these elements were challenged by Ingleside/Harrison in their Motion to Dismiss. The sole basis offered by Ingleside/Harrison in support of that Motion is

that Santorini is "prohibited from pursuing this breach of contract lawsuit" because it "failed to comply with the statute." *Id.* at 31-32. As discussed below, this is a nuanced factual issue that does not relate to the adequacy of the pleadings and, therefore, is not an issue that can be resolved through a Rule 12(b)(6) motion.

Accordingly, because Santorini satisfactorily pled a claim for breach of contract against Ingleside/Harrison, and because Ingleside/Harrison did not actually challenge the sufficiency of the Complaint, the Court correctly denied Ingleside/Harrison's Rule 12(b)(6) motion.

B. Santorini's compliance with a statute is a factual issue not appropriate for resolution by a Rule 12(b)(6) motion to dismiss.

Rather than using Rule 12(b)(6) for its proper purpose, Ingleside/Harrison argue, not that the Complaint itself is legally deficient, but that Santorini is "prohibited from pursuing this breach of contract lawsuit" because Santorini allegedly did not comply with a statute. *Id.* This, however, is a "factual defense that has nothing to do with the legal sufficiency" of the Complaint. *See American Ins. Co. v. Smith,* 472 A.2d 872, 874 (D.C. 1984). For this reason, Santorini was not required to preemptively negate this defense by pleading certain facts otherwise in the Complaint. *See* 5 Charles Alan Wright & Arthur R. Miller, Fed. Practice and Procedure § 1276 (3d ed. 2002) ("The pleading requirements . . . do not compel a litigant to anticipate potential affirmative defenses, . . . and to affirmatively plead facts in avoidance of such defenses."). Resolution of a factual issue is best left to

other devices, such as motions for summary judgment, after the parties have had a chance to exchange discovery and adduce evidence to support their contentions.

A motion to dismiss under Rule 12(b)(6) tests whether or not a complaint sufficiently pleads the elements of a cause of action. *See Carey*, 754 A.2d at 954. In reviewing a motion to dismiss for failure to state a claim, the only facts considered by the court are those contained within the four-corners of the complaint relative to the causes of action asserted. *See Smith,* 472 A.2d at *id.* ("The Rule 12(b)(6) motion . . . is intended solely to test the legal sufficiency of the complaint.").

Sensibly, since the only facts at issue in a Rule 12(b)(6) motion are those which were raised in the complaint, such motions "may not rely on any facts that do not appear on the face of the complaint itself." *Id; followed by Luna v. A.E. Eng'g Servs., LLC,* 938 A.2d 744, 748 n. 13 (D.C. 2007) (*citing Smith,* 472 A.2d at 874). If a motion to dismiss relies upon facts outside of the complaint, the trial court has the option of treating the motion as a motion to dismiss or, alternatively, for summary judgment. *See Grimes v. District of Columbia,* 89 A.3d 107, 111 (D.C. 2014) ("A trial court is not required to convert a Rule 12 (b)(6) or Rule 12 (c) motion into a motion for summary judgment, however, as long as the court does not consider matters outside the pleadings."). A motion for summary judgment under Rule 56 requires a showing that there is no genuine issue of material fact in dispute. *Id.* at (a)(1). Importantly, a motion for summary judgment must refer to "particular parts

of materials in the record." *Id.* at (c)(1)(A). As a corollary, summary judgment is generally only appropriate *after* there has been an "adequate time for discovery." *See Kibunja v. Alturas, LLC,* 856 A.2d 1120, 1124 (D.C. 2004) (emphasis added) (*citing Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)). For this reason, courts are exceedingly hesitant to entertain pre-discovery motions for summary judgment, let alone grant them. *see Wilson v. Hunam Inn, Inc.,* 126 F. Supp. 3d 1, 8 (D.D.C. 2015) ("Generally, courts are reluctant to consider a motion for summary judgment prior to discovery.") (*citing Convertino v. Dep't of Justice,* 684 F.3d 93, 99, 401 U.S. App. D.C. 297 (D.C. Cir. 2012)).[3]

Francis v. Rehman, involving a defendant's attempt to dismiss a breach of contract claim based on a plaintiff's alleged noncompliance with a section of the D.C. Code regulating the licensure of architects, is on point. 110 A.3d 615 (D.C. 2015). There, Francis entered into a contract with the Rehman to "design" a restaurant and nightclub in Washington, D.C. *Id.* at 617. Under the contract, Francis was required to procure the services of a licensed architect, which they in fact did. *Id.* at 617-18. The complaint alleges that Rehman did not fully pay the plaintiffs their compensation as set out in the terms of the deal. *Id.* Francis sued for breach of

[3] This Court can look to federal cases interpreting Fed. R. Civ. P. 56 for guidance. *See Cormier v. D.C. Water & Sewer Auth.,* 959 A.2d 658, 664 (D.C. 2008) (". . . we think that Super. Ct. Civ. R. 56 should be construed consistently with its federal counterpart.").

contract and unjust enrichment. *Id.* Rehman then moved to dismiss under Rule 12(b)(6). *Id.* In his motion, Rehman argued that plaintiff was not a licensed architect under the relevant provisions of the D.C. Code and, as a result, could not sue the defendant for breach of contract because the contract was void and unenforceable as a result of the "illegality." *Id.* at 619. The Superior Court granted the motion to dismiss. *Id.* On appeal, in describing the standard of review for a Rule 12(b)(6) motion, this Court cited a relevant case from California which stated that ". . . it is not necessary to allege and prove compliance with the act . . . but that noncompliance therewith is a matter of defense to be pleaded and proved by defendant in the action." *Id.* at 621 (*quoting Harris v. Bucher,* 25 Cal. App. 380, 143 P. 796 (Cal. Ct. App. 1914)). Reversing the lower court's ruling, this Court said that, "nowhere in the First Amended Complaint did appellants state that [plaintiff] is not licensed" and that, in any event, "[plaintiffs] were not required" to plead their compliance with the statute. *Id.* at 623. Finally, while raising facts outside the complaint may not automatically turn a motion to dismiss into a motion for summary judgment, the Superior Court was nonetheless "obligated" to construe the motion as one for summary judgment because it considered those facts in reaching its decision. *Id.* at 624.

Similarly, in *Luna v. A.E. Eng'g Servs.,* LLC, 938 A.2d 744 (D.C. 2007), Luna sued a defendant-LLC and its officers for breach of contract and other similar causes of action for the defendants' allegedly improper installation of a boiler in Luna's

home. *Id.* at 746. The defendants filed a motion to dismiss relating to one of the entity's officers. *Id.* at 748. The basis for their motion was that the officer could not be personally liable based on the corporate status of the limited liability company of which the officer belonged to and because of the officer's limited individual role in the functions of the entity. *Id.* The trial court granted the motion to dismiss and this Court reversed. *Id.* In explaining its reasoning, this Court first reviewed the allegations made in the complaint and determined that the "extent of [the officer's] participation and responsibility . . . was a quintessential question of fact that could not be answered at the pleading stage" and that the trial court "acted prematurely" in granting the dismissal. *Id.* Relying on *Smith,* 472 A.2d, this Court found that the granting of the motion to dismiss effectively "den[ied]" the allegations against the defendant even though the motion "raised a *factual* defense which had nothing to do with the legal sufficiency" of the complaint. *Id.* at 748-49 (emphasis added) (citation and internal quotations omitted).

Unlike the trial court's actions in *Francis* and *Luna,* the Superior Court in this case properly denied Ingleside/Harrison's motion to dismiss. In that Motion, which was filed before any discovery had been conducted in the case and prior to the Superior Court's scheduling order,[4] Ingleside/Harrison cite to facts that are not found

[4] The Initial Scheduling Order in this case was issued on March 1, 2021, and did not contain any dates for discovery. By contrast, the Scheduling Order issued on May 21, 2021 (after the Motion to Dismiss was denied on May 3, 2021),

anywhere in the Complaint. To wit, they accuse Santorini of "fail[ing] to offer a payment plan in compliance with the mortgage deferment requirements." App. at 31. To support this narrative, they include a letter from Santorini to Ingleside/Harrison as an exhibit. *Id.* This letter was not attached to, or referenced at all, in Santorini's Complaint. Based on their reliance on allegations extraneous to the Complaint itself, Ingleside/Harrison's Motion to Dismiss was merely a one-sided attempt to resolve a factual issue which has nothing at all to do with the adequacy of Santorini's pleadings. Put another way, their Motion to Dismiss is actually a premature motion for summary judgment in disguise.

The Superior Court, however, correctly declined to treat the Motion to Dismiss as one for summary judgment and appropriately denied the Motion by discarding any facts not raised in the Complaint. *See* Docket No. 24. Emphasizing Ingleside/Harrison's improper use of Rule 12(b)(6), the Court aptly noted that Ingleside/Harrison "cite to no other law to support their contention that this matter must be dismissed." *Id*. Given that the legal sufficiency of the Complaint has not actually been challenged by Ingleside/Harrison, and given their attempted end-run around the proper use of a motion to dismiss for failure to state a claim, the Superior

establishes a deadline for the close of discovery. No modifications were ever made to either of the orders.

Court's denial of the Motion to Dismiss was appropriate. That ruling should be not disturbed on appeal and this Court should reach an identical result.

II. The Superior Court Correctly Granted Santorini's Motion for Summary Judgment.

Similarly, the Superior Court's decision to grant Santorini's Motion for Summary Judgment was correct because the complaint sufficiently and fairly pled a claim for breach of contract and Ingleside/Harrison failed to genuinely dispute any material fact in conjunction with that breach.

A. The Superior Court did not make any findings of fact and this Court, therefore, reviews the motion for summary judgment under the *de novo* standard.

Preliminarily, Ingleside/Harrison's argument rests upon a flawed premise: that the Superior Court made unsupported findings of fact. In reality, the Superior Court did not make *any* findings of fact in granting Santorini's Motion for Summary Judgment. Contrary to Ingleside/Harrison's characterization, the Superior Court only assessed whether or not a genuine dispute of a material fact existed warranting a trial on the merits. For this reason, Ingleside/Harrison's position that the "clearly erroneous" standard applies is incorrect.

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c). A material fact is "one which, under the applicable substantive law, is relevant and may affect the outcome of the case." *Rajabi,* 650 A.2d at 1321. The movant has

the initial burden of proving that there is no genuine issue of material fact in dispute; after satisfying that burden, the burden then shifts to the non-moving party. *Bradshaw,* 43 A.2d at 323 (*quoting Beard,* 587 A.2d at 198).

As evidenced in the plain language of Rule 56(c), summary judgment is not used to resolve facts, but to determine whether or not facts are disputed to the extent that they require resolution at trial. *Id; see also Int'l Underwriters, Inc. v. Boyle,* 365 A.2d 779, 782 (D.C. 1976) (summary judgment is appropriate when there is ". . . sufficient evidence supporting the claimed factual dispute to require a jury or judge to resolve the parties' differing versions of the truth at trial."). As summarized by this Court:

> . . . trial courts need not -- indeed, cannot -- make findings of fa[ct] (sic) when granting a motion for summary judgment.
>
> . . .
>
> To require the court to make findings of fact when granting a motion for summary judgment would be fundamentally inconsistent with the very nature of summary judgment.

District of Columbia v. W.T. Galliher & Brother, 656 A.2d 296, 302 (D.C. 1995); *see also Boyle,* 365 A.2d at *id.* (". . . in deciding a motion for summary judgment it is not the function of the court to resolve any fact issues but rather merely to determine whether any factual issue pertinent to the controversy exists."); *see also Joyner v. Sibley Mem'l Hosp.,* 826 A.2d 362, 370 n.8 (D.C. 2003) (characterizing a trial court's fact finding in ruling on a motion for summary judgment as "impermissible").

Joyner, a case involving claims of negligent supervision, among other torts, is illustrative. *Id.* A central issue in that case was whether a hospital had legitimate, non-discriminatory reasons for terminating Joyner's employment. One of the reasons given by the hospital was that Joyner failed to maintain necessary oversight over medical files. *Id.* at 369. The defendant hospital ultimately moved for summary judgment, which was opposed by plaintiff Joyner. *Id.* at 367. The trial court granted summary judgment on some claims, including age and race discrimination, but denied it as to others. *Id.* With regard to the age and race discrimination claims, the trial court made the factual determination that Joyner left the files unattended even though she denied that she had done so. *Id.* at 370 n.8. Although this Court determined that whether or not the files were actually unattended was not a material fact, it admonished the trial court for "impermissibl[y]" engaging in fact-finding at the summary judgment stage. *Id.* By contrast, in this case, Santorini established that Ingleside/Harrison entered into a commercial loan agreement/contract with Ingleside/Harrison (as borrower and guarantor, respectively) and that Ingleside/Harrison breached that contract and damaged Santorini as a result. These material facts are unchallenged by Ingleside/Harrison and they do not cite to anything in the record showing that the Court engaged in factual findings, material or otherwise, with respect to that breach.

Because a court does not make any findings of fact in ruling on a motion for summary judgment, those motions are reviewed *de novo* on appeal because they involve only questions of law. *See, e.g., Woodland,* 777 A.2d at 799. Therefore, contrary to Ingleside/Harrison's argument, the clearly erroneous standard, which applies to a review of a trial court's findings of fact, does not apply. *See, e.g., Redmond v. State Farm Ins. Co.,* 728 A.2d 1202, 1205 (D.C. 1999) ("We review the trial court's findings of fact under a 'clearly erroneous' standard, and its conclusions of law de novo.") (citations omitted); *see also Phenix-Georgetown, Inc. v. Chas. H. Tompkins Co.,* 477 A.2d 215, 221 n.20 (D.C. 1984) (appellee's argument that the clearly erroneous standard applied to a review of a grant of summary judgment was an "incorrect statement of law" because a summary judgment proceeding is a "determination that the record does not present a fact to be tried.") (citations omitted).

Consistent with the purpose of summary judgment, the Superior Court in this case made no findings of fact in granting Santorini's Motion for Summary Judgment. It, instead, applied the proper summary judgment standard. Order at 4. For support, the Court did not make any factual findings, but found that Ingleside/Harrison "do not contest the validity or dispute the terms of the Notes and Guarantees" and that they do not dispute that they have not "complied with their obligations." *Id.* Each of these are resolutions of questions of law; namely, whether or not a genuine dispute

of a material fact exists. Consequently, the *de novo* standard applies to this Court's review of the Motion for Summary Judgment.

A. None of the material facts are genuinely disputed.

Summary judgment was appropriately granted by the Superior Court because the parties do not genuinely dispute the material facts of this case and Santorini established with evidence from the record that it was entitled to summary judgment as a matter of law. In stark contrast, Ingleside/Harrison opposed the Motion with nothing more than conclusory, unsupported allegations as to the calculation of damages. Importantly, they did not dispute any of the material facts concerning the existence of the contract or Ingleside/Harrison's liability for breach. Summary judgment in Santorini's favor was, therefore, warranted.

A genuine issue of a material fact occurs when "the record contains some significant probative evidence . . . so that a reasonable fact-finder could return a verdict for the non-moving party." *1836 S St. Tenants Ass'n, Inc. v. Estate of Battle,* 965 A.2d 832, 836 (D.C. 2009) (citations and quotation omitted). To meet this burden, an opposing party must counter a motion for summary judgment with specificity. *Miller,* 485 A.2d at 191. For this to occur, a party must set forth "sufficient evidence" that does more than create a "mere dispute." *William J. Davis, Inc.,* 124 A.3d at 624; *see also* Rule 56(c)(1)(B) (dictating that a nonmoving party must "show[] that the materials cited do not establish the absence. . . of a genuine

dispute."); *see also, e.g., Jones v. AMTRAK.,* 942 A.2d 1103, 1106 (D.C. 2008) (the "mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party]") (internal quotation marks and citations omitted). If the nonmoving party does not properly address an assertion of fact made by the moving party, a court is permitted under Rule 56(e)(2) to consider the fact undisputed. *See id; see also generally Magwood v. Giddings,* 672 A.2d 1083 (D.C. 1996).

A material fact is "one which, under the applicable substantive law, is relevant and may affect the outcome of the case." *Rajabi,* 650 A.2d at 1321. "The substantive law applicable to an individual case determines when a fact is material, and only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Linen v. Lanford,* 945 A.2d 1173, 1179 (D.C. 2008) (citation and internal quotations omitted). The elements for a claim of breach of contract are (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach. *See, e.g., Tsintolas Realty Co.,* 984 A.2d at 187 (internal citations omitted).

These same principles (*i.e.,* an opposing party must set forth specific evidence from the record to create a genuine dispute) apply to summary judgment on the issue of damages. Conclusory arguments unsupported by any concrete evidence are

insufficient. *See SEIU Nat'l Indus. Pension Fund v. Bristol Manor Healthcare Ctr., Inc.,* 153 F. Supp. 3d 363, 375-76 (D.D.C. 2016) (summary judgment as to damages was appropriate when opposing party failed to "point to specific facts in the record," "produced no admissible evidence contradicting" the calculation of damages, and did not assert "any colorable argument" calling into question the accuracy of the damage calculations); *see also West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.,* 78 F.3d 61, 63-4 (2d Cir. 1996) (citations omitted) (conclusory statements in affidavit in support of opposition to summary judgment were insufficient when the opposing party "merely assert[ed] that there is a dispute over the amount owed" and failed to cite to specific evidence in the record for support).

Ingleside/Harrison do not dispute the existence of a contract; they do not dispute that they had a duty under the contract to timely repay the loan; they do not dispute that they breached that duty; and they do not dispute that Santorini suffered damages. Significantly, Ingleside/Harrison's argument vis-à-vis Santorini's compliance with the statute, which was prematurely asserted in the Motion to Dismiss, was ultimately *not* raised in Ingleside/Harrison's Opposition to the Motion for Summary Judgment. Therefore, that issue was not properly preserved for appeal and may not be considered by this Court. *See, e.g., B.J.P. v. R.W.P.,* 637 A.2d 74, 78 (D.C. 1994) ("Questions not properly raised and preserved during the proceedings under examination, and points not asserted with sufficient precision to indicate

distinctly the party's thesis, will normally be spurned on appeal."); *see also Sherman v. District of Columbia,* 653 A.2d 866, 868 (D.C. 1995) (declining to address appellant's argument because it was not brought before the Superior Court).

Thus, the sole basis for Ingleside/Harrison's Opposition centers upon the extent of damages. In their view, summary judgment is not appropriate because "[t]he Complaint was not verified, and plaintiff failed to provide an accounting as to how it arrived" at its damage calculation. App. at 90. Despite Defendants' suggestions otherwise, nothing in the Superior Court Rules requires a party to produce a verified complaint as part of its summary judgment motion, nor do the rules require an accounting or any other form of specific evidence. Santorini, on the other hand, did all it was obligated to do under Rule 56(c): it cited to admissible materials in the record for support. *See id.* at (1)(A).

Additionally, attached to the Opposition is the Affidavit of Christopher Harrison, which vaguely states that "Ingleside has continued to make payments on the loans during the course of this litigation," but no dollar figure, the dates of these alleged payments, or any specific, meaningful evidence was provided. App. at 94-5. Indeed, no specific evidence was produced by Ingleside/Harrison to in any way counter the amount calculated by Santorini (which can be directly traced to the figures in the loan documents) or support Ingleside/Harrison's contention that payments were made, nor did they present an alternative method to calculating the

amounts due. Compounding this, Ingleside/Harrison received default letters and balance/interest calculations from Santorini through discovery. Yet, they did not dispute the validity of any of these documents or contest the amounts contained within them by offering verifiable calculations of their own. An opposing party's decision not to dispute damage-related calculations exchanged in discovery strongly weighs in favor of summary judgment for the harmed party. *See SEIU Nat'l Indus. Pension Fund,* 153 F. Supp. 3d at 375 (party claiming that a party who claimed that a plaintiff's damage figures were "inaccurate" was obligated to "rebut [those figures] with affirmative evidence of its own.").

To reiterate, there must be more than a "mere existence of a scintilla of evidence" in order to create a genuine dispute of a material fact. *Jones,* 942 A.2d at 1106 (internal quotation marks and citations omitted). Here, all Ingleside/Harrison have done is merely dispute the extent of damages and have not offered any evidence from the record that could convince a fact-finder to rule in their favor. Even if Ingleside/Harrison had in fact relied upon evidence in the record, the fact remains that they do not dispute that they breached the contract and, thus, owe the total principal, interest, late fees, and post-judgment interest under the loan documents. For these reasons, the Superior Court properly granted Santorini's Motion for Summary Judgment and that decision should not be reversed on appeal.

III. The Superior Court Correctly Granted Santorini's Motion for Attorneys' Fees.

In awarding, but reducing, reasonable attorneys' fees and expenses to Santorini, the Superior Court validated Ingleside/Harrison's contractual obligation to reimburse Santorini for those amounts and appropriately exercised discretion in determining the award. It follows that Ingleside/Harrison have not met the demanding standard for overturning a trial court's award of attorneys' fees.

The District of Columbia aligns itself with the majority of jurisdictions in generally requiring each party to pay its own expenses in litigation. *Cave v. Scheulov*, 64 A.3d 190, 193 (D.C. 2013). This general rule, however, is subject to a number of exceptions. In *6921 Georgia Ave., N.W., Ltd. Partnership v. Universal Community Development, LLC*, the Court of Appeals concisely summarized the law as follows:

> The responsibility for paying attorneys' fees stemming from litigation, in virtually every jurisdiction, is guided by the settled general principle that each party will pay its respective fees for legal services. However, this American Rule is subject to exception premised upon statutory authority, **contractual agreement**, or certain narrowly defined common law exceptions.

954 A.2d 967, 971 (D.C. 2008) (emphasis added) (citations omitted); *Hundley v. Johnston*, 18 A.3d 802, 805–06 (D.C. 2011).

Whether or not an award of attorneys' fees is reasonable is committed to the "sound discretion of the trial court." *See, e.g., Frazier v. Franklin Inv. Co.,* 468 A.2d 1338, 1341 (D.C. 1983). Trial courts are given this wide latitude in affixing fee

awards because they have "superior understanding of the litigation" and because appellate courts should refrain from reviewing "what are essentially factual matters." *Id.* (*quoting Hensley v. Eckerhart,* 461 U.S. 424, 103 S. Ct. 1933, 1941, 76 L. Ed. 2d 40 (1983)) (internal quotations omitted); *see also In re Estate of Green,* 896 A.2d 250, 253 n.4 (D.C. 2006) ("Reviewing requests for attorney's fees is . . . a quintessential function of the trial court.") (*quoting Frazier,* 468 A.2d at 1341); *see also Bagley v. Found. for the Pres. of Historic Georgetown,* 647 A.2d 1110, 1115 (D.C. 1994). ("Our vantage point is necessarily removed from the fray, while the trial judge was on the scene and in a far better position than we are to assess what this case required . . ."). Consistent with this deference afforded to trial courts, awards of attorneys' fees can be overturned only upon a showing of abuse of discretion:

> In reviewing a trial court's ruling on a motion for attorney's fees, our scope of review is a limited one because disposition of such motions is firmly committed to the informed discretion of the trial court. Therefore, it requires a very strong showing of abuse of discretion to set aside the decision of the trial court.

Steadman, 514 A.2d at 1200 (citations and quotations omitted); *see also Darling v. Darling,* 444 A.2d 20, 23 (D.C. 1982) (reversal of award of attorneys' fees is justified only upon an "extremely strong showing [that will] convince this court that an award is so arbitrary as to constitute an abuse of discretion.") (citations and quotations omitted). "[I]n reviewing a trial court's exercise of discretion, an appellate court

should take cognizance of the nature of the determination being made and the context within which it was rendered. If need be, it may examine the record and infer the reasoning upon which the trial court made its determination." *Johnson v. United States,* 398 A.2d 354, 365-66 (D.C. 1979).

This Court has adopted a list of twelve factors in to assess a court in determining the reasonableness of an award of attorneys' fees. *Frazier,* 468 A.2d at 1341 n.2. Those factors consist of:

(1) the time and labor required;
(2) the novelty and difficulty of the questions;
(3) the skill requisite to perform the legal service properly;
(4) the preclusion of other employment by the attorney due to acceptance of the case;
(5) the customary fee;
(6) whether the fee is fixed or contingent
(7) time limitations imposed by the client or the circumstances;
(8) the amount involved and the results obtained;
(9) the experience, reputation, and ability of the attorneys;
(10) the "undesirability" of the case;
(11) the nature and length of the professional relationship with the client; and
(12) awards in similar cases.

A mechanical application of each of these factors is not necessary, however. "Not all of these potentially relevant factors are pertinent in every case . . . and most are subsumed within the basic criterion that the time expended and the rate charged be reasonable." *Fed. Mktg. Co. v. Va. Impression Prods. Co.,* 823 A.2d 513, 530 (D.C. 2003) (citation omitted). Likewise, a court retains discretion to reduce the amount of fees "where the documentation is inadequate." *See, e.g., Hampton Courts Tenants*

Ass'n v. D.C. Rental Hous. Comm'n, 599 A.2d 1113, 1116 (D.C. 1991) (citation and internal quotations omitted); *see also In re Meese,* 285 U.S. App. D.C. 186, 907 F.2d 1192 (D.C. Cir. 1990) (reducing award of attorneys' fees by 10 percent "for numerous inadequately documented billings" which made it "impossible for the court to verify . . . the reasonableness of the billings") (citations and internal quotations omitted).

Here, the record shows that, after considering the *Frazier* factors and reviewing the evidence supplied by Santorini, the Superior Court decided to reduce Santorini's attorneys' fees by 50 percent. In doing so, the Superior Court properly exercised its discretion (to Santorini's detriment) in halving the fee request.

As an initial matter, Ingleside/Harrison contractually agreed to reimburse Santorini for its reasonable attorneys' fees incurred. Specifically, the two promissory notes at issue state that,

> "If, and as often as, this Note is referred to an attorney for the collection of any sum payable hereunder or under any of the Loan Documents, Borrower agrees to pay Lender all costs incurred in connection therewith, including reasonable attorneys' fees."

App. at 18, 23.

Ingleside/Harrison's observation that the Superior Court's decision was "arbitrary" in light of the "defects" in Santorini's Motion and the trial court's "acknowledgment" of those "defects" is equally unavailing. Appellant's Br. at 18. This same "acknowledgment" underscores the Superior Court's appropriate use of

its discretion. Implicit in Ingleside/Harrison's argument is that the Superior Court did not adequately explain the reasoning for its decision and that the Superior Court should not have awarded any fees whatsoever. *See id.* at 15. However, the Superior Court was not required to provide a detailed recitation and application of the *Frazier* factors to the facts of this case. *See, e.g., Ungar v. D.C. Rental Hous. Comm'n.,* 535 A.2d 887, 890 (D.C. 1987) (". . . a precise analysis under *Frazier*, utilizing each of the *Frazier* factors, is not required.") (*citing Frazier,* 468 A.2d at 1342). Regardless, a lack of adequate documentation is not a complete bar, per se, to attorneys' fees, and Ingleside/Harrison cite to no caselaw to support their position otherwise.[5] In fact, this Court has opined that *Frazier* is "not for making the threshold determination that attorneys' fees should be awarded in the first place" but is a tool for analyzing the reasonableness of an award. *Ungar,* 535 A.2d at *id.*

Ironically, two cases cited by Ingleside/Harrison, *Clark v. District of Columbia,* 674 F. Supp. 2d 149, 158-59 (D.D.C. 2009) and *Dickens v. Friendship-Edison P.C.S.,* 724 F. Supp. 2d 113, 124-25 (D.D.C 2010) support, rather than

---

[5] Ingleside/Harrison relies on two unreported federal cases: *Coleman v. District of Columbia,* 2007 U.S. Dist. LEXIS 32743, 2007 WL 1307834, at *7 (D.D.C. May 3, 2007) and *Kingsberry v. District of Columbia,* 2005 U.S. Dist. LEXIS 16123, 2005 WL 3276193, at *4 (D.D.C. Aug. 9, 2005). Unpublished opinions are not binding within the federal D.C. Circuit and should therefore be afforded slight precedential value by this Court. *See United States v. Epps,* 707 F.3d 337, 344 (D.C. Cir. 2013).

undermine, the Superior Court's reduction of attorneys' fees.[6] The court in both of those cases reduced, but did *not* completely reverse, the award of attorneys' fees based on the documentation provided by counsel. *Id; see also Watkins v. District of Columbia,* 944 A.2d 1077, 1084 (D.C. 2008) (upholding Superior Court's "short order" partially granting a motion for attorneys' fees when trial court's decision was less than a paragraph); *see also In re Meese,* 907 F.2d at *id.*

This is not a situation where the trial court produced an order that was effectively unreviewable on appeal because of a failure to articulate any reasons whatsoever for its decision.[7] As demonstrated by the fact Judge Hiram Puig-Lugo presided over the case from its inception, had a thorough understanding of the case

---

[6] *In re Estate of Delaney,* 819 A.2d 968 (D.C. 2003), cited by Ingleside/Harrison, is a will contest case involving materially different circumstances than the breach of contract action before this Court. That case involved a statutory claim for attorneys' fees under D.C. Code § 20-751 (1993). Under that section, a claimant was explicitly required to include certain documentation as part of their claim for fees. Ultimately, this Court found that the trial court did not abuse its discretion because the trial court "considered the proper statutory factors; made findings as to those factors . . . and clearly articulated" the reasons for a 10 percent reduction in the award. *Id.* at 995.

[7] *Coulter v. Gerald Family Care, P.C.,* 964 A.2d 170 (2009), cited by Ingleside/Harrison for the proposition that a court's failure to articulate the reasons for a fee award renders the decision "unreviewable" involves a situation markedly different than the circumstances before this Court. In *Coulter,* the Superior Court incorrectly treated the motion for attorneys' fees as unopposed. *Id.* at 204 n. 46. The motion for attorneys' fees also failed to explain why the parties should not bear their own litigation costs. *Id.* at 204. These distinguishing facts are not present in the case at bar.

as a result, explicitly considered the *Frazier* factors, and ultimately decided to exercise discretion by reducing the award by 50 percent, the Superior Court "paid careful attention to the size and propriety of the award it entered," and altered the award as appropriate. *See Fed. Mktg. Co,* 823 A.2d at 530. A court's inability to verify the reasonableness of copies of billings does not entirely preclude the award of attorneys' fees, but is a factor subsumed in the reasonableness calculus. In *Craig v. District of Columbia,* cited by Ingleside/Harrison, the United States District Court noted that, "Where the documentation of hours is inadequate, the [court] may reduce the award accordingly," and that "[a] fixed, percentage reduction may be warranted when a large number of billing entries suffer from one or more deficiencies." 197 F. Supp. 3d 268, 278 (D.D.C. 2016) (citations and quotations omitted). That being said, to the extent that a fee applicant has established billing rates for the same kind of work in the past, the Court of Appeals for the D.C. Circuit has stated that *"[i]n almost every case, the firms' established billing rates will provide fair compensation.*" *Laffey v. Northwest Airlines,* 746 F.2d 4, 24 (D.C. Cir. 1984) (emphasis in original).

In sum, Ingleside/Harrison have not surpassed the great burden imposed upon them in persuading this Court to overturn an award of attorneys' fees. The Superior Court analyzed and accordingly reduced the amount of the award after careful

deliberation. Importantly, the Superior Court explained the rationale for its decision. It therefore did not abuse its discretion and its decision should be upheld.

IV. Ingleside/Harrison Did Not File This Action in Bad Faith.

This action for breach of a commercial loan was not filed in bad faith, as was repeatedly signified by the decisions of the Superior Court. In particular, the trial court implicitly considered and rejected Ingleside/Harrison's bad faith argument in its May 3, 2021 Order denying Ingleside/Harrison's Motion to Dismiss. *See* Docket No. 24. In that Order, the Superior Court correctly found that Santorini was not barred under District law from pursuing breach of contract claims against Ingleside/Harrison. Docket No. 24. This was reaffirmed in the Superior Court's granting of summary judgment against Ingleside/Harrison, by which the Superior Court noted that it had "already considered and rejected" Ingleside/Harrison's bad faith argument. Docket No. 52. In their appellate brief, Ingleside/Harrison resurrect these unfounded and conclusory claims once again. As they have done previously, Ingleside/Harrison cite to the filing of this Complaint as *prima facie* evidence that Santorini engaged in bad faith. *See* Appellant's Br. at 19.

While it is not readily apparent from Ingleside/Harrison's brief, appellants are relying upon two sources for sanctions – the "bad faith" exception to the "American rule" and sanctions under Rule 11. Appellants' attempt to gain traction for these arguments can be ascertained from their reliance on *Gen. Fed'n of Women's Clubs v.*

Iron Gate Inn, Inc., 546 A.2d 1123 (D.C. 1988) and *Stansel v. Am. Security Bank,* 547 A.2d 990 (D.C. 1998), respectively. Each of the foregoing rules are discussed, applied, and rejected below in turn.

A. The "Bad Faith" Exception to the American Rule

Under the "American rule," each party bears their own respective litigation costs and attorneys' fees. *See generally In re Antioch Univ.*, 482 A.2d 133 (D.C. 1984). An exception to this rule occurs when one party has "been so egregious that such fee shifting is warranted as a matter of equity." *Gen. Fed'n of Women's Clubs,* 537 A.2d at 1127-28 (internal quotations and citations omitted). This has been termed the "bad faith" exception, and it applies only in "extraordinary cases." *See id.* The reason for a court's reluctancy to invoke this exception is because its purpose is to "punish" and "deter" bad actors from exploiting the litigation process. *Id.* (*quoting Synanon Foundation, Inc. v. Bernstein,* 517 A.2d 28 (D.C. 1986)). To avoid creating a chilling effect upon the filing of meritorious claims, courts "must scrupulously avoid penalizing a party for a legitimate exercise of the right of access to the courts." *Synanon,* 517 A.2d at 37. Further, "[a] party is not to be penalized for maintaining an aggressive litigation posture, nor are good faith assertions of colorable claims or defenses to be discouraged." *Id.* (*quoting Lipsig v. National Student Mktg. Corp.,* 214 U.S. App. D.C. 1, 3-4, 663 F.2d 178, 180-81 (D.D.C. 1980) (per curiam)). Accordingly, to receive attorney's fees under this exception, a party

must set forth clear and convincing evidence of bad faith. *In re Jumper,* 984 A.2d 1232, 1248 (D.C. 2009) (*citing Fischer v. Flax,* 816 A.2d 1, 12 (D.C. 2003)). *See also Lumpkins v. CSL Locksmith, LLC,* 911 A.2d 418, n.7 (D.C. 2006) (clear and convincing evidence is an "intentionally elevated" standard requiring "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.") (citations and internal quotations omitted).

This Court uses a relatively straightforward test to assess whether or not a party has acted in bad faith under the above exception. "An action is brought in bad faith when the claim is entirely without color and has been asserted wantonly, for purposes of harassment or delay, or for other improper reasons." *Synanon,* 517 A.2d at 40 (internal quotations and citations omitted).

A claim is colorable when it has "some legal and factual support, considered in light of the reasonable beliefs of the individual making the claim." *Id.* (internal quotations and citations omitted). If a party knew or should have known that a filing lacked the necessary legal or factual support, the claim is, generally, without color. *Gen. Fed'n of Women's Clubs.* at 1128-29 (explaining that the appellant's contempt motion was "without color" because "competent legal counsel[] knew or should have known" that the contempt charges" "did not have the requisite legal . . . [or] factual support"). Likewise, a claim is wantonly filed "for purposes of harassment or delay, or for other improper reasons" when, based upon the specific backdrop of

the parties' actions and the surrounding circumstances, a claim is not colorable or a party has used the legal process, not to recover what is legitimately owed, but to extort or "inflict severe financial punishment" without any proper justification. *See id.* at 1129.

i. Santorini's claims are colorable and have not been asserted for an improper purpose.

Ingleside/Harrison have not shown by clear and convincing evidence that Santorini engaged in any form of bad faith in filing this action. When Ingleside/Harrison defaulted on the Loan, Santorini had a legitimate right to sue for breach of contract to recover the unpaid amounts. That there is a statute addressing COVID-19-related hardship relief does not mean that a creditor cannot sue a debtor for their default under a commercial loan. To support its claims, Santorini attached the operative Loan Documents to the Complaint and set out in plain terms the factual background underpinning the causes of action. Santorini did not reassert any claims that the Superior Court had dismissed; it did not set forth any unsupported or wholly irrelevant claims; and, as magnified by the Superior Court's ruling that there was not a genuine dispute of a material fact, Santorini did not rely upon groundless or egregiously tenuous evidence.[8] *Compare with Gen. Fed'n of Women's Clubs,* 537

[8] As a counterpoint, in denying Ingleside/Harrison's Motion for Reconsideration, the Superior Court admonished Ingleside/Harrison for merely "restat[ing] the conclusory arguments from their opposition to summary judgment." In the same Order, the Superior Court emphasized that "Defendants cannot use a motion for

A.2d at 1129 (party acted in bad faith when allegations were "easily refuted" by the adverse party's witnesses). *Ginsberg v. Granado*, 963 A.2d 1134, 1136 (D.C. 2009), provides a useful example of a party's bad faith, the likes of which are not present in this case. Ginsberg filed a complaint against Granados and other defendants alleging negligence. The trial court granted the defendants' motion to dismiss and held that Ginsberg acted in bad faith by filing the complaint. *Id.* Agreeing with the trial court's findings, this Court found that the complaint "could have been dismissed" for a number of reasons and that, as a result, Ginsberg "was acting far outside the bounds of the law" in filing the complaint. Id. at 1139 (citations and internal quotations omitted). By contrast, the Superior Court, here, denied Ingleside/Harrison's Motion to Dismiss, granted Santorini's Motion for Summary Judgment, and, by doing so, implicitly recognized the good faith basis for Santorini's claims.

Put simply, Ingleside/Harrison have not set forth any set of facts to justify the extreme remedy of attorneys' fees for bad faith behavior.

---

reconsideration to repeat unsuccessful arguments."

B. Rule 11 Sanctions

Generally, Rule 11 allows for sanctions when a signed paper filed with a court was made for an improper purpose. *See id.* at (a)-(b). Specifically, by filing a paper, the filer certifies that

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Id. The Rule places an "affirmative duty" upon attorneys to "reasonably [] inquire into the facts, the law, and the client's purpose" before a "paper" is signed and filed with the court. *Kleiman v. Aetna Cas. & Sur. Co.*, 581 A.2d 1263, 1266 (D.C. 1990).

Sanctions under Rule 11 are awarded "only if reasonable pre-filing inquiry would have disclosed that the pleading, motion, or paper was not well grounded in fact, was not warranted by existing law, or was interposed for an improper purpose." *Id.* To determine whether or not bad faith has occurred, "[p]apers must not be viewed with 20/20 hindsight . . . Rather, the trial judge should test the signer's conduct by

inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted." *Id.* (internal quotations and citations omitted). A court's denial of an opposing party's dispositive motion is strong evidence that a paper was filed in good faith. *See id.* ("[the Superior Court's order denying appellee's motion for judgment on the pleadings is evidence of the reasonableness of appellant's legal position at the time of filing.").

i. Rule 11 Sanctions are Not Appropriate Under the Circumstances.

First, this Court need not consider Ingleside/Harrison's request for Rule 11 sanctions because they failed to move for such sanctions before the case was terminated. As a condition precedent, a party must file a separate motion seeking sanctions pursuant to Rule 11 before the case has been resolved by the trial court. *See Goldberg, Marchesano, Kohlman, Inc. v. Old Republic Sur. Co.,* 727 A.2d 858, 864 (D.C. 1999) ("'[A] party cannot delay serving its Rule 11 motion until after the conclusion of the case (or judicial rejection of the offending contention).'") (*quoting* Advisory Committee Note to 1993 Amendments to Fed. R. Civ. P. 11). If a party fails to do so, their request for sanctions must be denied. *Ginsberg,* 963 A.2d at 1137 ("Because appellees filed their Motion for Attorneys' Fees after the trial court dismissed the [Complaint], appellees could not obtain relief under Rule 11."). Ingleside/Harrison never moved for Rule 11 sanctions during the proceedings with the Superior Court, nor did they ever provide Santorini with a "safe harbor" letter

allowing Santorini a 21-day opportunity to cure any alleged transgressions. *See* Rule 11(a); *see also Goldschmidt v. Paley, Rothman, Goldstein, Rosenberg & Cooper, Chtd.,* 935 A.2d 362, 379 (D.C. 2007) (a post-judgment motion for Rule 11 sanctions is untenable because "there would be no way to provide the twenty-one-day notice and opportunity for correction. . ."). Ingleside/Harrison cannot now, at the appellate stage and after the Superior Court's repeated validation of Santorini's claims, seek Rule 11 sanctions with this Court.

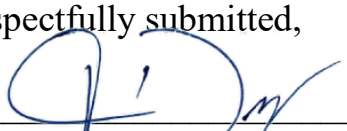
Even if a motion had been properly made, Ingleside/Harrison have not proffered any evidence supporting their conclusory allegations. Nor have they offered any meaningful legal support for their request. In *Stansel,* the sole case cited by Ingleside/Harrison for support, this Court did not actually determine whether Rule 11 sanctions were appropriate. 547 A.2d at 996. Rather, in that case, this Court remanded the issue because it could not "determine whether the court's ruling was correct or incorrect." *Id.*

For these reasons, this Court should reject Ingleside/Harrison's arguments that Santorini acted in bad faith or otherwise engaged in sanctionable conduct during the course of this litigation.

CONCLUSION

WHEREFORE, Appellee Santorini Capital, LLC respectfully requests that this appeal be denied and the Superior Court's rulings be affirmed, in addition to any other relief this Court deems appropriate.

Respectfully submitted,

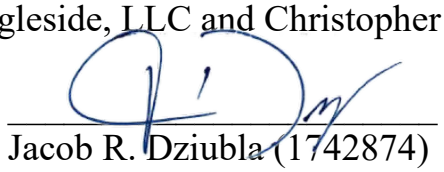


Roger C. Simmons (12195)
Jacob R. Dziubla (1742874) ✓
Gordon & Simmons, LLC
1050 Key Pkwy, Suite 101
Frederick, MD 21702
(301) 662-9122
rsimmons@gordonsimmons.com
jdziubla@gordonsimmons.com
Counsel for Appellee Santorini Capital, LLC

CERTIFICATE OF SERVICE

I certify that on June 13, 2022, a copy of the foregoing was served electronically via the Court's electronic filing system upon:

Vanessa Carpenter Lourie (250068)
440 MacArthur Blvd., NW, Suite 205
Washington, D.C. 20007-2521
(202) 342-8000
vlourie@carpenterlourie.com
Counsel for Appellants 1814 Ingleside, LLC and Christopher A. Harrison



Jacob R. Dziubla (1742874)

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

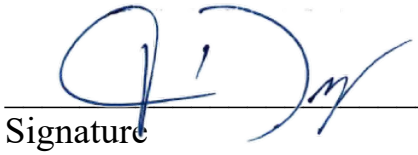
2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.



Signature

22-CV-34
Case Number(s)

Jacob R. Dziubla (1742874)
Name

06/13/2022
Date

jdziubla@gordonsimmons.com
Email Address