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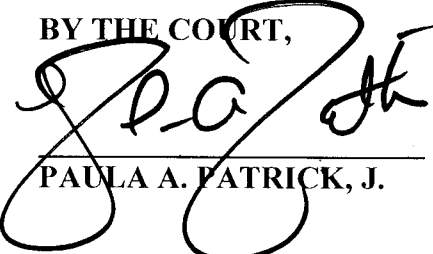
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

STOBBA RESIDENTIAL ASSOCIATES, L.P.,	:	June Term 2021
And STOBBA ASSOCIATES, L.P.	:	
Plaintiffs	:	No. 2543
v.	:	
FS RIALTO 2019-FL 1 HOLDER, LLC and	:	Commerce Program
RIALTO CAPITAL ADVISORS, LLC	:	
Defendants.	:	Control Number 22102744

ORDER

AND NOW, this 6th day of February 2023, upon consideration of Defendants' Motion for Summary Judgment, Plaintiffs' Response in Opposition, all matters of record and the attached Opinion, it hereby is **ORDERED and DECREED** that the Motion for Summary Judgment is **GRANTED**. Judgment is entered in favor of Defendants and against Plaintiffs on all claims in the Amended Complaint.

BY THE COURT,


PAULA A. PATRICK, J.

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COMMERCE PROGRAM

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RIALTO CAPITAL ADVISORS, LLC	:	
	:	
Defendants.	:	Control Number 22102744

OPINION

This action arises from a lender/borrower relationship between Plaintiffs Stobba Residential Associates and Stobba Associates, L.P. (“Borrower”) and Defendants FS Rialto 2019-FL 1 Holder, LLC and Rialto Capital Advisors, LLC (“Lender”). Presently before the Court is Lender’s Motion for Summary Judgment. For the reasons set forth below, Lender’s Motion for Summary Judgment is GRANTED.

BACKGROUND

On August 2, 2019, Lender’s predecessor in interest FS Creit Originator LLC made a loan to Borrower in the amount of \$24,250,000.¹ The Loan is evidenced by a Loan Agreement (“The Loan Agreement”) and a Promissory Note (the “Note”)² and is secured by an Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (“Mortgage”).³ Borrower also executed a Deposit Account Control Agreement (the “DACA”).⁴

¹ Lender’s Motion for Summary Judgment ¶ 15. Borrower’s response in Opposition ¶ 15.

² Id. at ¶ 16.

³ Id. at ¶ 17.

⁴ Id. at ¶ 18.

The Loan Agreement requires Borrower to make monthly payment to Lender on each payment date.⁵ The Loan Agreement provides that an “Event of Default” occurs if, “any portion of the Debt is not paid on or before the date the same is due and payable.”⁶

Borrower granted Lender a security interest in the Property defined to include specific units within Headhouse Flats and Abbots Square developments in Philadelphia, and all Leases and Rents in connection with the Property.⁷ To protect the security interest in the Property, Borrower is required to have all tenants deposit rents into the DACA Account at Wells Fargo. The contents of DACA are to be disbursed into the Cash Management Account at Wells Fargo daily.⁸

Borrower has not made any payments on the Loan since December 2020.⁹ Additionally, the Loan matured on August 9, 2022 and Borrower has not paid the Loan in full.¹⁰ Borrower contends its performance under the Loan Agreement is excused due to Lender’s pre occurring breaches.¹¹

Pending Lawsuits

⁵ Exhibit “8”, Loan Agreement ¶ 2.2.3 attached to Borrower’s Response in Opposition to Lender’s Motion for Summary Judgment.

⁶ Id. at ¶ 7.1 (i).

⁷ Exhibit “D”, Open Mortgage, Assignment of Leases and Rent, Security Agreement and Fixture Filing attached to Lender’s Motion for Summary Judgment.

⁸ Exhibits “E” and “F”, DACA Agreement and Cash Management Agreement attached to Lender’s Motion for Summary Judgment.

⁹ Borrower’s Response in Opposition to Lender’s Motion for Summary Judgment ¶ 1.

¹⁰ Exhibit “8”, Loan Agreement p. 3 and ¶ 2.2.7 attached to Borrower’s Response in Opposition to Lender’s Motion for Summary Judgment. Pursuant to the Loan Agreement, the Maturity Date may be extended but there is no evidence in the record that Lender agreed to extend the maturity date.

¹¹ See, Amended Complaint.

On May 21, 2021, Lender commenced an action alleging breach of contract against Borrower.¹² Lender alleges that Borrower breached the Loan Agreement by failing to make the required monthly payments, failing to provide financial reporting and misrepresenting the status of tenant leases at the Property. Borrower filed an Answer with New Matter and Counterclaims.¹³

In June 2021, Lender filed a Petition to Appoint a Receiver. The Court denied the Petition to Appoint a Receiver but ordered Borrower to provide Lender and the Court with certain records and required that Borrower instruct the tenants to pay rent as required by the Loan Agreement. The Order has been appealed to the Pennsylvania Superior Court by Borrower and Lender.¹⁴

Lender also filed an action to Confess Judgment against the Guarantor Eric Blumenfeld, which is currently stayed pending the resolution of the Lender Action and this action.¹⁵ Additionally, Lender filed a Mortgage Foreclosure action against Borrower.¹⁶

The Giant Lease

On March 9, 2016, Fresh Formats, LLC (“Fresh Formats”) entered into a Lease with Borrower for commercial space at Abbotts Square to operate a “Bfresh” Market.¹⁷ The Fresh

¹² *FS Rialto 2019 -FL1 Holder, LLC v. Stobba Residential Associates, L.P. et al.*, Court of Common Pleas of Philadelphia County, 2105-1951. (“Lender Action”)

¹³ The counterclaims filed by Borrower in the Lender Action were the same claims alleged here by Borrower against Lender.

¹⁴ See, 73 EDA 2022 and 101 EDA 2022

¹⁵ *FS Rialto 2019-FL1 Holder LLC v. Blumenfeld*, 2107-643.

¹⁶ *SKW-B Acquisitions Seller C, LLC v. Stobba Residential Ass.*, 2111-331.

¹⁷ Borrower’s Answer and New Matter to Lender’s Motion for Summary Judgment ¶ 23, Section A.

Formats' Lease was assigned to Giant Food Stores, LLC ("Giant") on December 31, 2017. Giant agreed to accept the premises "as is" and began paying rent to Borrower.¹⁸

In December 2019, Giant began to fit the space for use as a grocery store and discovered the leased space was not serviced by 277/480-volt, 800 amp electric, the electric service Giant required for its purposes.¹⁹ In March 2020, due to the COVID 19 Pandemic, the City of Philadelphia and the Commonwealth of Pennsylvania issued orders shutting down Giant's fitting out of the space.²⁰ Additionally, construction stalled because PECO required the entire building be converted to High Tension Service to accommodate Giant's electric needs.²¹

On August 31, 2020, Giant issued a notice of default to Borrower because Borrower failed to provide Giant with 277/480-volt, 800 amp electric-service.²² On November 20, 2020, Giant stopped paying rent to Borrower²³ and on December 23, 2020, Giant filed a lawsuit against Borrower in the Eastern District of Pennsylvania alleging breach of the Lease.²⁴

On February 18, 2021, during an email exchange between Borrower and Lender, Borrower provided an update to Lender regarding the Giant electric issue including the lawsuit filed by Giant

¹⁸ Id. ¶ 24.

¹⁹Exhibit "26", *Giant Food Stores, LLC n/k/a The Giant Company LLC v. Stobba Associates, L.P.*, 2:20-cv-06480 attached to Borrower's Praecipe to Supplement/Attach Exhibits to Borrower's Response in Opposition to Lender's Motion for Summary Judgment, ¶¶ 32-33.

²⁰ April 27, 2020 email attached to Borrower's response in Opposition as Exhibit "16".

²¹ Id.

²²Exhibit "17", Notice of Breach dated August 31, 2020, attached to Borrower's Response to Lender's Motion for Summary Judgment.

²³ Amended Complaint ¶ 69.

²⁴ *Giant Food Stores, LLC n/k/a The Giant Company LLC v. Stobba Associates, L.P.*, 2:20-cv-06480.

against Borrower.²⁵ At Lender's request, Borrower provided Lender with documents including its engineering report, Giant's default letter, engineering drawings and the Lease.²⁶ Thereafter, the following emails were exchanged between Lender and Borrower regarding the Giant issue:

-On March 1, 2021, Lender emailed Borrower as follows: "we [Lender] have some contacts at Giant that we have worked with a lot in the past. Do you mind if we [Lender] reach out to them to discuss their thoughts on what's going on here?"²⁷

-On March 1, 2021, Borrower responded, "...if you feel that a conversation between Rialto [Lender] and Giant will be helpful then please do so...I hope the conversation is fruitful."²⁸

-On March 2, 2021, Lender sent an email to Giant stating in part, "...We [Lender] are involved in this deal as the lender and understand that there is a little bit of a disconnect regarding the delivery of the specific electrical service that you require, so we wanted to quickly touch based with you on this. Might you have some time this week for a quick call?"²⁹

-On March 4, 2021 10:36 a.m., after having received no response from Giant to the March 2, 2021 email, Lender sent a follow up email.³⁰

-On March 4, 2021, 10:35 a.m., Borrower emailed Lender stating that after speaking with Blumenfeld, "and apologies for the reversal but Blumenfeld did not want lender/tenant communications. We have an opportunity to right size our process and he feels your involvement might skew our process."³¹

²⁵ Exhibit "20" (Stobba 000005), February 18, 2021 email attached to Borrower's Response in Opposition to Lender's Motion for Summary Judgment.

²⁶ Id.

²⁷ Exhibit "M", March 1, 2021 email attached to Lender's Motion for Summary Judgment.

²⁸ Id.

²⁹ Exhibit "N", March 2, 2021 email attached to Lender's Motion for Summary Judgment.

³⁰ Exhibit "N", March 4, 2021 email attached to Lender's Motion for Summary judgment.

³¹ Exhibit "O", March 4, 2021 email attached to Lender's Motion for Summary Judgment.

-On March 4, 2021, at 10:51 a.m., Lender emailed Giant and asked them to "...please disregard the request for the call..."³²

-On March 4, 2021 at 11:33 a.m., Giant emailed Lender and apologized for the delayed response and stated "...After talking with counsel I've been advised not to comment because of pending litigation. I would suggest you seek a copy of the pleadings."³³

Kimley-Horn, an engineering firm hired by Lender regarding the electric issue, conducted an onsite investigation of the Giant space on March 12, 2021 and issued a report to Lender on April 12, 2021.³⁴

On May 20, 2021, Borrower emailed Lender with the following update:

Borrower provided Lender with correspondence from Giant's Chief engineer outlining the additional requirements from PECO over and above the cost of installing the HT service at Abbots Square. We [Borrower] believe that the approximate cost of these 2 components will be in the range of \$500k. We are currently working with the local code officials to see if some concessions can be made to address Giant's concerns as outlined in the letter. It is our intention to resolve these issues and then agree to split these costs with Giant to move forward. Eric [the Guarantor] has asked that I keep you advised as to the progress on a regular basis.³⁵

On July 1, 2021, Giant voluntarily dismissed the action filed against Borrower without prejudice and entered into a consensual Stay and Tolling Agreement to attempt resolution of their dispute consensually.³⁶

Forbearance Requests

³²Exhibit "24" (Stobba 000027), March 4, 2021 email attached to Borrower's Praecipe Supplementing and Attaching Exhibits to Borrower's Response in Opposition to Lender's Motion for Summary Judgment.

³³Exhibit "N", March 4, 2021 email attached to Lender's Motion for Summary Judgment.

³⁴ Exhibit "29", Kimley- Horn report dated April 12, 2021 attached to Borrower's Praecipe Supplementing and Attaching Exhibits in Opposition to Lender's Motion for Summary Judgment.

³⁵ Exhibit "P", May 20, 2021 email attached to Lender's Motion for Summary Judgment.

³⁶ Exhibit "12", Notice of Voluntary Dismissal without Prejudice attached to Borrower's Response in Opposition to Lender's Motion for Summary Judgment.

The Borrower submitted two requests to Lender for loan forbearance, April 27, 2020 and September 3, 2020.³⁷ Lender received the requests, requested information to support the requests but, Lender never presented Borrower with a forbearance agreement.³⁸

This Action

On July 1, 2021, Borrower filed this action against Lender (“Borrower Action”). Lender filed Preliminary Objections to the Complaint which were overruled by the Court. On January 18, 2022, Borrower filed an Amended Complaint. The Amended Complaint alleges causes of action for breach of contract/breach of the duty of good faith and fair dealing (count I), tortious interference with contract (count II), promissory estoppel/detrimental reliance (count III), and seeks a declaratory judgment (count IV). Lender filed Preliminary Objections to the Amended Complaint which were overruled by the Court on March 8, 2022. On March 23, 2022, Lender filed an Answer with New Matter to the Amended Complaint. Presently before the Court is Lender’s Motion for Summary Judgment which is ripe for disposition.

DISCUSSION

I. There is no evidence that Lender interfered with Giant’s Lease causing Giant to stop paying rent and file a lawsuit against Borrower.

In Count II of the Amended Complaint, Borrower purports to state a claim for tortious interference with contract. Specifically, Borrower alleges that Lender intentionally and knowingly

³⁷ Exhibit “30” (Stobba 000031/32, Stobba 000128), April 27, 2020 and September 30, 2020 letters attached to Borrower’s Praeipie Supplementing and Attaching Exhibits in Opposition to Lender’s Motion for Summary Judgment.

³⁸ Exhibit “19”, N.T. November 18, 2021 p. 17 L9-11 in Lender Action attached to Borrower’s Praeipie Supplementing and Attaching Exhibits in Opposition to Lender’s Motion for Summary Judgment; and Exhibit “33” attached to Borrower’s Praeipie Supplementing and Attaching Exhibits in Opposition to Lender’s Motion for Summary Judgment.

interfered with Borrower's relationship with Giant causing Giant to stop paying rent and file suit against Borrower.³⁹ A party is liable for pecuniary loss due to tortious interference with a contractual relationship when the party "intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract ..." ⁴⁰

The elements of the cause of action are (1) the existence of a contractual relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of defendant's conduct.⁴¹ In determining whether a particular course of conduct is improper, the following factors are taken into consideration by the court: 1) the nature of the actor's conduct; 2) the actor's motive; 3) the interests of the other with which the actor's conduct interferes; 4) the interests sought to be advanced by the actor; 5) the proximity or remoteness of the actor's conduct to interference, and 6) the relationship between the parties.⁴²

Here, while a contractual relationship existed between Borrower and Giant, there is no evidence that Lender caused any harm to Borrower by interfering with that relationship. Lender,

³⁹ Additionally, Borrower alleges in count I of the Amended Complaint that Lender's interference with Giant's Lease constituted a pre occurring breach of the Loan Agreement which excused Lender's performance under the Loan Agreement.

⁴⁰ *Walnut Street Associates, Inc. v. Brokerage Concepts, Inc.*, 982 A.2d 94, 97–98 (Pa. Super. 2009), citing Rest. 2d Torts § 766 (1979); *see also York Group v. Yorktowne Caskets, Inc.*, 924 A.2d 1234, 1249–50 (Pa. Super. 2007).

⁴¹ *Id.* citing *Phillips v. Selig*, 959 A.2d 420, 429 (Pa. Super. 2008), *appeal denied*, 600 Pa. 764, 967 A.2d 960 (2009).

⁴² *Ira G. Steffy & Son, Inc. v. Citizens Bank of Pennsylvania*, 7 A.3d 278, 289 (Pa. Super. 2010), citing *Strickland v. Univ. of Scranton*, 700 A.2d 979, 985 (Pa. Super. 1997) (citations omitted) (emphasis added).

with Borrower's consent, did email Giant to schedule a time to discuss the electric service at the leased space, but the record clearly shows that Lender and Giant never spoke about the electric issue.⁴³ Even before Giant responded to Lender's request for a call, Borrower reversed course, and asked Lender not to discuss the matter with Giant.⁴⁴ This Court could not find any evidence and Borrower did not direct this Court to any evidence that Lender disregarded Borrower's email and engaged in discussions with Giant to harm Borrower's relationship with Giant. The record is clear that Lender honored Borrower's request and emailed Giant telling them to disregard the request for the call.⁴⁵ Additionally, not only does the record show that Lender honored Borrower's request, but it also shows that Giant did not wish to engage in any such discussions with Lender and was instructed by its legal counsel not to speak to Lender about the issue due to the pending lawsuit.⁴⁶ At best, the evidence shows that Lender attempted to "interfere", but the attempted "interference" was with the consent of Borrower.

Additionally, there is no evidence that Lender's "interference" caused Borrower actual damage. Borrower alleges and argues that as a result of Lender's "interference", Giant stopped paying rent and filed a lawsuit. However, Lender's "interference" in March 2021 could not have caused Giant to stop paying rent in November 2020 and to file the lawsuit in December 2020 as Lender's "interference" occurred **after** the harm which Borrower attributes to Lender.⁴⁷

⁴³ Exhibits "M" and "N".

⁴⁴ Exhibit "O".

⁴⁵ Exhibit "24".

⁴⁶ Exhibit "N".

⁴⁷ Interestingly, the record does show that after Lender's interference", the lawsuit was voluntarily dismissed without prejudice in July 2021.

Chris Cordaro's Verification⁴⁸ and Mr. Blumenfeld's Testimony⁴⁹ supports this conclusion by failing to create a genuine issue of fact. Ignoring the hearsay statements contained within Chris Cordaro's Verification which may not be relied upon to defeat a motion for summary⁵⁰, absent from the Verification and Mr. Blumenfeld's Testimony are any facts as to when Lender's "interference" occurred, which facts are relevant and necessary given the harm Borrower alleges occurred as a result of this interference. Consequently, there are no facts of record that Lender interfered with Borrower's relationship with Giant during the period of August 2020 to December 2020 when Giant declared a default, stopped paying rent and filed a lawsuit against Borrower. A plaintiff cannot survive summary judgment when mere speculation would be required for the jury to find in plaintiff's favor nor is a party entitled to an inference of fact that amounts merely to a guess or conjecture.⁵¹ The "mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for a trial."⁵² Here, Borrower failed to adduce sufficient evidence of interference, which is essential to its case. Consequently,

⁴⁸ Attached to Borrower's Response in Opposition to Lender's Motion for Summary Judgement at Exhibit "6".

⁴⁹ Exhibit "19" N.T. dated November 18, 2021 in Lender Action attached to Borrower's Praecipe Supplementing and Attaching Exhibits to Borrower's Response in Opposition to Lender's Motion for Summary Judgment.

⁵⁰ See, *Turner v. Valley Hous. Dev.* 972 A.2d 531, 537 (Pa. Super. 2009) ("A motion for summary judgment cannot be supported or defeated by statements that include inadmissible hearsay evidence.").

⁵¹ *Kornfeind v. New Werner Holding Co., Inc.*, 241 A.3d 1212, 1217 (Pa. Super., 2020) quoting *Juliano v. Johns-Manville Corp.*, 416 Pa. Super. 321, 611 A.2d 238, 239 (Pa. Super. 1992) (stating that "[i]n the absence of sufficient evidence demonstrating that plaintiff worked with or near the asbestos materials of a particular defendant, a jury cannot find, except by speculation, that it was a defendant's product which caused plaintiff's injury. Speculation, however, is an inadequate basis for recovery."). See also, *InforSage Inc. v. Mellon Ventures, L.P.*, 896 A.2d 616 (Pa. Super. 2006) and *Krauss v. Trane U.S. Inc.*, 104 A.3d 556, 568 (Pa. Super. 2014).

⁵² *Curran v. Philadelphia Newspapers, Inc.*, 497 Pa. 163, 176, 439 A.2d 652, 658 (1981)

Lender's Motion for Summary Judgment is granted and the claim for tortious interference with contract is dismissed.

II. The claim for Breach of Contract/ Breach of the Duty of Good Faith and Fair Dealing also fails.

In Count I of the Amended Complaint, Borrower alleges that Lender breached the Loan Agreement by declaring an erroneous and unfounded default, seeking a money judgment against Borrower in violation of the Loan Agreement, failing to grant forbearance and interfering with Borrower's relationship with Giant. This Court has found that Lender did not interfere with Borrower's relationship with Giant, and therefore, the claim for breach of contract based on the same interference also fails. Additionally, in the Lender Action this Court has already ruled that the Loan Agreement does permit Lender to bring a money judgment action against Borrower under the Exculpation Clause.⁵³ As such, this claim for breach of contract also fails. Now, the Court will address the remaining alleged breaches by Lender, that is, declaring an erroneous and unfounded default and failing to grant forbearance.

A successful breach of contract action requires "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages."⁵⁴ Additionally, every contract imposes on each party a duty of good faith and fair dealing in its performance and its enforcement.⁵⁵ "Good faith" has been defined as "[h]onesty in fact in the conduct or transaction concerned."⁵⁶ The Supreme Court of Pennsylvania has refused

⁵³ See Order dated January 24, 2023 in Lender Action.

⁵⁴ *CoreStates Bank, N.A. v. Cutillo*, 723 A.2d 1053, 1058 (Pa.Super.Ct.1999) (citation omitted).

⁵⁵ *Creeger Brick and Bldg. Supply Inc. v. Mid-State Bank and Trust Co.*, 560 A.2d 151, 154, 385 Pa. Super. 30, 36 (Pa. Super., 1989) Restatement (Second) of Contracts, § 205.

⁵⁶ *Id.*

to impose a duty of good faith which would modify or defeat the legal rights of a creditor.⁵⁷ A lending institution does not violate a separate duty of good faith by adhering to its agreement with the borrower or by enforcing its legal and contractual rights as a creditor. The duty of good faith imposed upon contracting parties does not compel a lender to surrender rights which it has been given by statute or by the terms of its contract. Similarly, it cannot be said that a lender has violated a duty of good faith merely because it has negotiated terms of a loan which are favorable to itself.

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Borrower alleges that Lender declared an “erroneous and unfounded default”. The record shows that Borrower borrowed \$24,250,000 from Lender’s predecessor, Borrower agreed to pay the Loan in monthly installments on the 9th day of every month and unpaid interest was due in full on August 9, 2022. The Loan Agreement defines an event of default as a failure to pay any portion of the debt on or before the due date and if the entire debt is not paid by the maturity date. A failure to provide quarterly and annual reports as required by the Loan Agreement also is defined as an event of default. Here, the evidence shows that the required monthly payments were not made and that the Loan matured, and Borrower has not paid the loan in full. Borrower is in default per the terms of the Loan Agreement.

Borrower claims that its performance under the Loan Agreement is excused because Lender failed to grant Borrower’s request for Loan forbearance. Lender’s failure to grant Borrower Loan forbearance does not excuse Borrower’s performance under the Loan Agreement. Section 9.2 of the Loan Agreement provides as follows:

Lender’s Discretion. Whenever pursuant to this Agreement Lender exercises any right given to it to approve or disapprove any matter, or any arrangement or term is to be

⁵⁷ Id.

⁵⁸ Id.

satisfactory to Lender, the discretion of Lender to approve or disapprove such matter or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole and absolute discretion of Lender and shall be final and conclusive.

While Borrower made requests for forbearance, Lender exercised their discretion not to act upon Borrower's request for forbearance. As such, Lender may not now be charged with violating the duty of good faith and fair dealing by choosing to adhere to the terms of the Loan Agreement. The terms of the Loan Agreement do not oblige Lender to grant forbearance. As such, Lender's failure to grant Loan forbearance does not constitute a breach of contract and Borrower may not rely upon same to excuse its performance under the Loan Agreement. Based on the foregoing, the claim for breach of contract fails.

III. The Promissory Estoppel/Detrimental Reliance claim also fails.

In Count III of the Amended Complaint, Borrower purports to state a claim for promissory estoppel/detrimental reliance. Borrower alleges that Lender made representations, statements, agreements and promises to Borrower concerning their performance of its scope of work, the Loan and relief from the Loan because of COVID-19.⁵⁹

"Promissory estoppel enables a person to enforce a contract-like promise that would be otherwise unenforceable under contract law principles."⁶⁰ In order to maintain an action in promissory estoppel, the aggrieved party must demonstrate that: "(1) the promisor made a promise that would reasonably be expected to induce action or forbearance on the part of the promisee; (2)

⁵⁹ Amended Complaint ¶ 138.

⁶⁰ *Peluso v. Kistner*, 970 A.2d 530, 532 (Pa. Cmwlth. 2009) (citation omitted).

the promisee actually took action or refrained from taking action in reliance on the promise; and (3) injustice can be avoided only by enforcing the promise.”⁶¹

Here, absent from the record is any evidence that Lender made any promises to Borrower outside of the Loan Agreement. As the record is devoid of any promises, the claim for promissory estoppel fails as a matter of law.

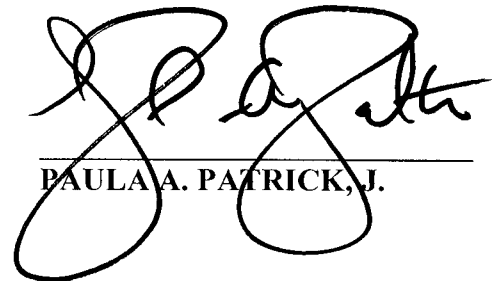
IV. The claim for Declaratory Relief is also dismissed.

In Count IV of the Amended Complaint, Borrower seeks a declaratory judgment as to whether Lender ‘breached the Loan Documents by *inter alia*, seeking a money judgment in violation of the Exculpation Clause, failing to consider and provide the COVID-19 pandemic forbearance relief requested, causing Giant to cease paying rent, and improperly declaring plaintiffs [Borrower] in default”⁶² The basis for Borrower’s claim for declaratory judgment is identical to the claims set forth in counts I, II and III, therefore the Court adopts the reasoning set forth supra. and the claim for declaratory judgment is also dismissed.

CONCLUSION

For the foregoing reasons, Lender’s Motion for Summary Judgment is Granted. Judgment is entered in favor of Lender and against Borrower and the Amended Complaint is dismissed.

BY THE COURT,



PAULA A. PATRICK, J.

⁶¹ Id. at 533.

⁶² Amended Complaint ¶ 144.

