

- 1) Plaintiffs are awarded damages from Saul Flores in an amount not less than \$5,615 based on Saul Flores's intentional misrepresentation;
- 2) Plaintiffs are awarded damages jointly and severally from EHL and William Wortz, in an amount not less than \$8,383 based on intentional misrepresentations by EHL, imputed to principal William Wortz;
- 3) Ground Zero is ordered to release its Mechanics Lien claim forthwith against Plaintiffs by completing, signing, notarizing, and recording the form Release of Mechanics Lien consistent with California Civil Code §§ 8120-8130, 8400 *et seq.* If Ground Zero fails or refuses to release its lien, Plaintiffs may request the Clerk of the Bankruptcy Court to sign the release of lien; and
- 4) Plaintiffs' request for permanent injunctive relief is denied. Art Flores is awarded damages in the amount of \$100,000 from Saul Flores and Ground Zero, jointly and severally.

END OF JUDGMENT

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COURT SERVICE LIST

Via ECF:

All ECF Recipients



The following constitutes the order of the Court.
Signed: May 12, 2023

M. Elaine Hammond

M. Elaine Hammond
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re) Case No. 21-50227 MEH
ERICA NICOLE FLORES,) Chapter 13
Debtor.)

ERICA NICOLE FLORES and) Adv. No. 21-05030
ARTHUR FLORES,)
Plaintiffs.)
v.) Date: January 24 & 25, 2023
SAUL ROBERTO FLORES,) Time: 9:00 a.m.
GROUND ZERO CONSTRUCTION) Ctrm: 11
CO. INC., WILLIAM H. WORST)
a/k/a WILLIAM H. WORTZ, and)
EAGLE HOME LOANS, INC.,)
Defendants.)

AMENDED MEMORANDUM DECISION AFTER TRIAL

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1 Plaintiffs Erica Flores and Arthur Flores brought an adversary proceeding against
2 Defendants Saul Flores, Ground Zero Construction Co. (“Ground Zero”), William H. Wortz,¹
3 and Eagle Home Loans, Inc.,² (collectively, “Defendants”). Plaintiffs allege Saul³ and
4 additional Defendants made fraudulent misrepresentations to Art regarding the renovation and
5 associated costs for the real property at 1172 Woodborough Place, San Jose (“Property”). In
6 addition, Plaintiffs seek declaratory relief, injunctive relief, and setoff of claims.

7 Trial was held on January 24 and 25, 2023. Appearances were as stated on the record.
8 Following trial, the matter was taken under submission.

9 This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The
10 mechanics lien dispute is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K). The
11 remaining matters are non-core. Both parties agreed to entry of final order and judgment by
12 the Bankruptcy Court.

13 On March 29, 2023, Defendants filed a *Motion to Amend Memorandum Decision*
14 (Dkt. # 40). Defendants moved under Federal Rule of Bankruptcy Procedure (“FRBP”)
15 7052(b) to amend the court’s memorandum decision entered on March 15, 2023 (Dkt. # 39).
16

17 BACKGROUND

18 1) Parties to the Action

19 This case is primarily a family dispute. Saul and Arthur (“Art”) are brothers.
20 Elizabeth Flores-Tellez (“Liz”) is their sister. Erica is the daughter of Art. Saul is a licensed
21 general contractor and the owner of Ground Zero. Ground Zero is a construction company.
22 Eagle Home Loans, Inc. (“EHL”) is a loan broker. William H. Wortz (“Wortz”) is a regular
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25 ¹ At various times, William H. Wortz is referred to as “William H. Worst.” At trial, Mr.
26 Wortz confirmed the correct spelling of his name is William H. Wortz.

27 ² Defendant Eagle Home Loans, Inc. is separate from Eagle Home Loans, LLC, who is not a
28 party to this action.

³ Because several parties retain the same surname, we refer to them by their first names to
identify them. No disrespect is intended by their first name references.

1 investor with EHL. Non-party James McClenahan is the sole owner of EHL and the Vice
2 President of Ground Zero.

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4 2) Select Portfolio Servicing, Inc. (“SPS”) Loan Modification

5 On March 19, 2016, Art was released from prison after serving just under a year for
6 marijuana cultivation on the Property.

7 During Art’s incarceration, Liz, acting on Art’s behalf, applied for a loan modification
8 with Art’s lender SPS. On May 17, 2016, Art was granted a loan modification by SPS. The
9 loan modification was effective June 1, 2016 and the first modified payment was due on July
10 1, 2016.⁴ Around this time, Art moved in with Saul. Liz and Saul each claim to have made
11 the first three modification payments required to finalize the loan modification. Liz provided
12 evidence supporting her testimony that she made the payments.

13
14 3) First Agreement

15 While Art was living with Saul, they discussed renovating the house and selling Art’s
16 Property to make a profit. On behalf of Ground Zero, Saul agreed to do the work with
17 payment to be provided from the sale proceeds. Art testified that Saul proposed the
18 renovation would be limited to cosmetic work costing around \$20,000. This arrangement was
19 the basis for the “First Agreement” between the parties—and the basis of the Mechanics’ Lien
20 Ground Zero asserts against Plaintiffs.

21 As discussed more fully below, Art alleges he was never provided with a written
22 contract memorializing the First Agreement. Saul contends there was a written contract but
23 did not produce a contract in discovery.

24 Around the time that Liz obtained a modification with SPS for Art, Saul instructed Art
25 to stop making payments on the SPS Loan because Saul believed he could get a better loan
26 modification. Saul was unable to obtain a better loan modification and Erica learned around
27 February 2017 that the SPS loan was in default.

28 ⁴ Exhibit B.

1 4) Renovation of Property

2 On June 6, 2016, Art signed a general power of attorney (“POA”) authorizing Saul to
3 act on Art’s behalf. Saul told Art that he needed the POA in order to evict a tenant from the
4 Property, to apply for a second loan modification, and to complete Art’s taxes.

5 In June 2016, Ground Zero obtained permits from the City of San Jose and began
6 work on the Property. During this period, Art worked for Ground Zero on his Property and
7 other Ground Zero projects. While Art had experience as a mason, he worked in multiple
8 areas for Ground Zero.

9 Saul testified that he created a job binder for each of his projects. Based on this job
10 binder Saul asserted that Ground Zero demolished two of the grow structures, replaced
11 cabinetry, built a new bathroom, and installed countertops, tile, drywall, appliances, millwork,
12 and provided electrical work around the house. Saul testified that renovation of the Property
13 was 98% finished by November of 2016.

14 Significant trial time was spent discussing competing pictures as to the status and
15 quality of the construction and trying to reconcile the work performed to Saul’s job binder.
16 Aside from the mechanics’ lien dispute, Plaintiffs do not assert a claim for damages based on
17 the work performed.

18
19 5) 2016 EHL Loan

20 To help cover the cost of construction, Saul took Art to EHL for a loan. On
21 November 14, 2016, Art signed a Straight Note (“Note”) with a two-month term from EHL in
22 the amount of \$52,500.⁵ The EHL Loan was funded by Wortz. Wortz is identified as the
23 payee/beneficiary on the Note. The Note is secured by a deed of trust on the Property. The
24 Note required Art to pay the loan back without interest, by the date of maturity on January 14,
25 2017. The Note further provided that a late charge of 10% would apply to any and all

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27 ⁵ Exh. E. A “straight note” is used in real estate financing as a bridge loan. It is generally a
28 short-term obligation with interest-only payments and the principal paid in full at maturity.
See Zackary Smigel, Real Estate Terms, Straight Note Definition, REAL ESTATE LICENSE
WIZARD (March 4, 2023), <https://realestatelicensewizard.com/straight-note>.

1 payments after the date of maturity. Art signed the Note and it was notarized on November
2 15, 2016.

3
4 6) Second Agreement

5 Art and Saul testified that at the end of 2016, Art, Saul, and other family members
6 went on a family trip to Cabo, Mexico. Around this period, Art decided he no longer wanted
7 to sell the Property and wanted to move back into it instead.

8 Art asserted he made this decision because he learned that he was not going to obtain
9 any money from the sale. Art testified that when he decided not to sell the Property, he did
10 not know Ground Zero claimed it was owed over \$100,000 for the work performed. Art
11 disputes this amount.

12 Saul testified that as the original plan was for Ground Zero to be paid from the sale
13 proceeds, a new agreement was needed. He asserts Art offered to transfer two classic cars
14 that Art had restored to Saul and/or Ground Zero. When operational, the vehicles were valued
15 by the parties at \$50,000 each.⁶ According to Saul, this exchange was the basis for the
16 “Second Agreement.”

17 Art contends that he did not voluntarily transfer the cars to Saul or Ground Zero.
18 Instead, the cars were moved at the beginning of construction on the Property so that Ground
19 Zero could use the garage as a staging area and to protect the cars from damage during
20 construction. He asserts that Saul took Art’s key to the storage location on Saul’s property
21 and that he has not had access to the cars since that period.

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23 7) Erica’s Involvement

24 In February 2017, at Art’s request his daughter, Erica, her boyfriend, best friend, and
25 younger sister moved into the Property. Due to her father’s limited ability to read, Erica
26 assumed responsibility over Art’s financial situation. At that point, Erica discovered that the

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28 ⁶ The vehicles consist of a fully-restored 1969 Corvette Stingray and a fully-restored 1955
Chevrolet Bel Air. Art testified that each car was worth approximately \$50,000.

1 SPS Loan was ten months in default, presumably based on Saul's instruction to Art to stop
2 making payments in order to obtain a better loan modification. Erica then began making
3 double payments to bring the SPS loan current.

4 When she moved in Erica was not aware of the EHL Loan. Yet around this time, the
5 EHL Loan was extended by approximately one month, triggering an unstated extension fee.
6 Throughout 2017, Erica and Art received letters from EHL demanding payments on the EHL
7 Loan and threatening foreclosure. In response to the threats, Erica testified that she paid
8 \$11,300 on the EHL Loan after she moved into the Property.⁷

9 Art continued to work for Ground Zero during this time but received a reduced portion
10 of his wages. Saul represented to Art that a portion of his Ground Zero salary was to be paid
11 to EHL for interest payments on the loan.

12 Plaintiffs requested documents regarding the EHL Loan from McClanahan and EHL
13 on September 26, 2018.⁸ In return, they received a payment demand dated October 15, 2018.⁹
14 On October 17, 2018, Art revoked Saul's POA and shortly thereafter recorded a grant deed
15 transferring title on the Property to Erica.

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17 8) Ground Zero's Demand

18 On March 21, 2019, Ground Zero sent an invoice to the Property asserting the total
19 amount owed for work performed was \$153,428.25, less a payment of \$54,000 on November
20 16, 2016.¹⁰ This invoice stated a total amount remaining of \$99,428.25.

21 Six days later, Ground Zero sent a letter to Art informing him that the work on his
22 Property was official closed. In that letter, Ground Zero accused Art of stealing the written
23 contract between Ground Zero and Art. On the same day, Ground Zero recorded its
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25 ⁷ Exh. 16 and 24.

26 ⁸ Exh. J.

27 ⁹ Exh. 12.

28 ¹⁰ Exh. Q. It is unclear how the \$153,428.25 value was calculated. The Job Binder (Exh. I)
lists \$133,281.66 as the total balance due. No party has explained the reason for this
discrepancy.

1 Mechanics Lien against the Property, in the amount of \$109,371.01. It remains unclear why
2 the value of the Mechanics Lien is different than the value listed on the invoice.

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4 LEGAL ANALYSIS

5 I. Intentional Misrepresentation

6 To prove actual fraud under California law based on intentional misrepresentations,
7 Plaintiffs bear the burden of establishing five required elements:

- 8 (1) A false representation or concealment of a material fact susceptible of knowledge;
- 9 (2) Made with knowledge of its falsity or without sufficient knowledge on the subject
10 to warrant a representation;
- 11 (3) With the intent to induce the person to whom it is made to act upon it; and this
12 person must
- 13 (4) Act in reliance upon the representation;
- 14 (5) To his or her damage.¹¹

15 Plaintiffs assert that Defendants knowingly and intentionally made false
16 representations and concealments that caused harm to Plaintiffs.

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18 A. Intentional Misrepresentation by Saul Flores

19 Art asserts a claim for intentional misrepresentation against Saul based on Saul's
20 statements regarding the renovation of his home and Art's need to obtain financing. In June
21 2016, Saul discussed with Art a quick renovation of Art's home in order for him to increase
22 its potential sale value. Art understood that the renovation would cost approximately
23 \$20,000. Saul testified that his construction company, Ground Zero, would handle the
24 construction and then be paid from the sale proceeds.

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27 ¹¹ See *American Express Travel Related Servs. Co. v. Hashemi (In re Hashemi)*, 104 F.3d
28 1122, 1125 (9th Cir. 1996); *Citibank (South Dakota), N.A. v. Eashai (In re Eashai)*, 87 F.3d
1082, 1086 (9th Cir. 1996); 1 Witkin, Summary of Cal. Law, Contracts § 287 (11th ed. 2022).

1 No signed or unsigned written contract for this construction has been produced.¹²
2 Further, Saul's testimony that Art stole the contract with Ground Zero is preposterous. At
3 multiple points, Saul's testimony was simply not credible.¹³ Art's educational limitations
4 were addressed at trial. The allegation that Art broke into Ground Zero's office at Saul's
5 home, rummaged through the files, and stole a contract that Art does not believe existed is
6 contrary to the consistent action taken by Art's family members to direct his decision-making
7 and actions, particularly those with financial implications. From at least 2015 (and probably
8 much earlier), Art relied extensively on family members including Saul, Liz, and Erica, to
9 read, write, and pay his bills. As such, multiple family members held powers of attorney for
10 Art, and Art generally did what a family member told him to do.

11 Art testified that Saul told him that he needed to sign documents for a loan.¹⁴ The
12 loan was managed by EHL and stated to be in the amount of \$52,500. The documents were
13 signed and notarized on November 15, 2016, and the Deed of Trust was recorded on
14 November 16, 2016.

15 There was no contract requiring Art to provide funds for the renovation prior to sale.
16 Both Saul and Art testified that Art would not be required to pay for the construction prior to
17 completion of work. Ground Zero would front the costs prior to completion of the work and
18 sale of the Property. Prior to the period that Art changed his mind and decided to keep the
19 refurbished home instead of selling it, Saul took Art to EHL. Art had no need to obtain a loan
20 in November 2016. But it is quite likely that Saul and Ground Zero did.

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23 ¹² Saul's inability to produce an unsigned version of the contract after a recently recalled
computer crash, is convenient but not credible.

24 ¹³ At trial, Saul claimed without support to have been responsible for paying at least three
25 mortgage payments on behalf of Art while he was in prison. His sister, Liz provided
26 impeachment evidence that she made those payments. Exh. 44. Further, a letter purportedly
27 from Art related to a tax issue affecting Saul was clearly not written by Saul and provides an
entirely new story behind the work on Art's Property. Exh. 33.

28 ¹⁴ Plaintiffs assert that Saul misrepresented his intent in obtaining a power of attorney for
Saul. However, Saul did not sign the EHL Loan using the power of attorney. Instead, he
directed Art to sign it.

1 As Saul and Ground Zero agreed to be paid from the sale proceeds, Saul's statement
2 that Art needed to borrow additional funds was a misrepresentation. Saul knew his demand
3 that Art obtain the loan because Art needed the funds was false. Saul intended and expected
4 Art to rely on his directions as the Flores family has a history of directing Art's actions or
5 acting for him.¹⁵ Based on Art's relationship with Saul, including Art's granting Saul a power
6 of attorney, Art did as Saul requested. Art was damaged by incurring a loan in the amount of
7 \$52,500 that he did not require.

8 Accordingly, I find that Plaintiffs incurred damages in the amount of any funds paid
9 by Plaintiffs on the EHL Loan because Art was directed by Saul to enter into the EHL Loan.
10 The EHL Loan benefited Ground Zero but not Art. The evidence presented at trial
11 established that Plaintiffs paid at least \$5,615 on the EHL Loan.

12
13 B. Intentional Misrepresentation by EHL

14 The evidence presented at trial indicates that separate from Saul's actions, EHL
15 intentionally misrepresented the terms of the Note signed by Art, resulting in damage to
16 Plaintiffs. William H. Wortz is the named payee/beneficiary on the Note. EHL acted as a
17 servicing agent for Wortz's investment in second deed of trust loans. As such, EHL was
18 Wortz's agent on the EHL Loan. The general rule is that when a contract is in the name of the
19 principal, the agent will not be liable on a written contract. But if there is bad faith by the
20 agent, California rules makes the agent liable on the contract as a principal. Based on the bad
21 faith addressed below, both EHL and Wortz are liable on the EHL Loan.¹⁶

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26 ¹⁵ At trial, Art's sister Liz Flores-Tellez testified that she prepared and submitted a loan
27 modification application for Art during a period he was in prison. Saul testified that he
28 assisted Art with the loan modification by pretending to be Art in a call with the lender.

¹⁶ See Restatement (Third) of Agency § 7.01 (2006); 3 Witkin, Summary or Cal. Law:
Agency (11th ed. 2017) § 207, p. 269.

1 1. EHL Made Misrepresentations Based on the Note

2 EHL provided minimal information in the Note.¹⁷ The accounting provided is almost
3 nonexistent. The most extensive information regarding the amount due on the EHL Loan is a
4 letter dated October 15, 2018, demanding payment from Art (“Demand Letter”).¹⁸ A
5 commercial loan servicer should have the ability to provide a correct accounting yet EHL’s
6 Demand Letter includes incorrect information and is devoid of detail. Further, Erica testified
7 that she was unable to refinance the EHL Loan as EHL failed to provide sufficient
8 information to establish the amount required for payoff. There are multiple problems with the
9 EHL Loan and the demand made based on it.

10 First, contrary to the Demand Letter, the Note does not provide for interest. Instead,
11 the Note states:

12 [the principal sum], with interest from November 14, 2016, until paid at the
13 *rate of n/a percent per annum.*¹⁹

14 Yet, EHL’s Demand Letter states the loan has an interest rate of 12%, which is
15 included in the demand.

16 EHL was the sole drafter of the Note and no evidence was provided to establish Art
17 was involved in negotiation or determination of the terms of the Note prior to or at the time
18 when he signed it. No mutual intent can be ascertained between Art, Wortz, and/or EHL.²⁰

19 The California Civil Code provides a series of rules to apply in ascertaining the
20 intention of the parties to a contract.²¹ The first rule to be applied looks to the language of the
21 contract to ascertain intent. “The language of a contract is to govern its interpretation, if the
22 language is clear and explicit, and does not involve an absurdity.”²² The language provided in
23 the Note is clear and explicit. The relevant portion states: “the principal sum of Fifty Two
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25 ¹⁷ Exh. E.

26 ¹⁸ Exh 12.

27 ¹⁹ Exh. E (emphasis added).

28 ²⁰ Cal. Civ. Code § 1636.

²¹ Cal. Civ. Code § 1637.

²² Cal. Civ. Code § 1638.

1 Thousand Five Hundred dollars, *with interest* from November 14, 2016, until paid at the *rate*
2 *of n/a percent per annum*” (emphasis added). While the Note indicates Art shall pay the Note
3 with interest, it continues to provide that the rate is “n/a.” This is a commonly recognized
4 abbreviation for “not applicable,” thus, the language is clear and explicit that interest is not
5 applicable to this Note. Thus, interpreting the Note as not including interest “does not involve
6 an absurdity.”²³

7 Second, the Note contains inconsistent amounts for the principal sum. The principal
8 sum is written as “Fifty Two Thousand Five Hundred dollars,” but the Note later states that
9 the “[l]oan [is] advanced to be \$55,000, with Amount due at maturity of \$57,500.”²⁴

10 California law provides that, “[i]f an instrument contains contradictory terms, typewritten
11 terms prevail over printed terms, handwritten terms prevail over both, and words prevail over
12 numbers.”²⁵ Thus, the Note’s written principal sum prevails over the arithmetic number. As
13 such, the language of the contract supports the conclusion that the Note’s principal sum is
14 \$52,500.

15 Third, the initial term of the Note was 60 days. The Demand Letter was sent on
16 October 15, 2018, when EHL provided the Demand Letter in response to a request for
17 information. The Demand Letter references extension fees in an unstated amount. No
18 evidence was presented that Plaintiffs were informed of any ongoing negotiations or
19 extension fees, despite the fact Erica held a POA for Art since early 2017. The Demand
20 Letter states that extension fees were attached to that document but they were not
21 incorporated with the exhibit at trial. EHL had a responsibility to inform Art, as payor, of any
22 additional fees incurred. It did not do so.

23 Fourth, the Demand Letter also includes a demand that a cashier’s check payable to
24 Saul Flores be sent to EHL in the amount of \$3,250 for interest paid by Saul, and in the
25 amount of \$3,900 if the November 2018 payment is not paid. As addressed above, there was

26 ²³ *Id.*

27 ²⁴ Exh. E.

28 ²⁵ Cal. U. Com. Code § 3114; 1 Witkin, Summary of Cal. Law, Contracts § 777 (11th ed. 2022).

1 no interest on this loan. More relevant to this point, there is no basis for EHL to act as Saul's
2 collection agent. Saul was neither the lender nor the beneficiary on the Note. Commercial
3 loan servicers or brokers operating in arms-length transactions do not seek to have an
4 individual that made payments on behalf of the borrower reimbursed. Their concern is
5 payment on the loan, not the source of funds.

6 Fifth, the schedule of payments provided by EHL fails to include a \$5,000 payment
7 made by Plaintiffs on April 22, 2017.²⁶ A subsequent payment of \$615 made on August 2,
8 2017 is also missing. These payments were evidenced by cancelled checks.²⁷ EHL's
9 inability to identify a payment received in an amount greater than all other payments
10 combined raises serious concerns about both its recordkeeping and its intentions. While the
11 payor is either Art or Erica, these payments demonstrate Art made some interest payments
12 between December 2016 and May 2018. In sum, EHL misrepresented to Plaintiffs that
13 interest was due on the EHL Loan and that Art had an obligation to repay Saul for interest
14 payments.

15 Each of these misrepresentations were material and false when made or were made
16 recklessly and without regard for the truth. The misrepresentations increased the amount
17 EHL sought to recover on the Loan. The misrepresentations were intended to induce reliance
18 by Plaintiffs to satisfy the payments demanded. Plaintiffs' reliance was justifiable. This
19 resulted in damage to Plaintiffs by overstating funds owed and forcing Plaintiffs to incur
20 attorneys' fees in seeking resolution of a demand based on the Note.

21
22 **2. EHL Acted in Bad Faith**

23 EHL acted in bad faith by extending obligations to Art that surpassed the terms of the
24 Note. "The covenant of good faith and fair dealing, implied by law in every contract, exists
25 merely to prevent one contracting party from unfairly frustrating the other party's right to

26 _____
²⁶ Exh. 23.

27 ²⁷ Exh. 24. The payments EHL did not record are Check # 103, in the amount of \$5,000 to
28 EHL, posted April 20, 2017, and Check # 108, in the amount of \$615 to EHL, posted August
2, 2017.

1 receive the benefits of the agreement actually made.”²⁸ In California, a claim for breach of
2 the implied covenant of good faith and fair dealing is the same as a claim for bad faith.²⁹ Bad
3 faith sufficient to constitute a breach of the covenant under California law includes conduct
4 described as subterfuge, lack of diligence, evasion of the spirit of the bargain, and abuse of
5 power.³⁰ In addition, the covenant “cannot impose substantive duties or limits on the
6 contracting parties beyond those incorporated in the specific terms of their agreement.”³¹

7 As a loan agreement, the Note is subject to the covenant of good faith and fair dealing.
8 EHL demanded Plaintiffs pay interest in the Demand Letter, even though the Note did not
9 require interest. Thus, EHL’s demand placed a substantive duty on Plaintiffs to make interest
10 payments that exceeded the obligations of the Note.

11 The Demand Letter overstated interest owed by Art as 12%. This is contrary to the
12 Note and the California default rate. EHL failed to keep and maintain diligent records of
13 Plaintiffs’ payments. The evidence presented at trial establishes that Plaintiffs paid at least
14 \$8,383 on the EHL Loan. This is supported by two checks totaling \$5,615, added to the
15 \$2,768 in interest payments recorded by EHL. As such, I find that EHL breached the
16 covenant of good faith through inaction, failing to account for payments received, and by
17 imposing interest payments on Art that extended the obligations in the Note.³² Thus, EHL is
18 liable as Wortz’s agent.

19
20 3. Damages

21 At trial, Saul offered several paystubs from Ground Zero to Art for work performed
22 between April and June of 2018.³³ However, it is not clear that Art fully received the money
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24 ²⁸ *Guz v. Bechtel Nat'l, Inc.*, 24 Cal. 4th 317, 349 (2000).

25 ²⁹ *Mony Life Ins. Co. v. Marzocchi*, 857 F. Supp. 2d 993, 996 (E.D. Cal. 2012).

26 ³⁰ *Best Buy Stores, L.P. v. Manteca Lifestyle Ctr., LLC*, 859 F. Supp. 2d 1138, 1152 (E.D. Cal. 2012) (citations omitted).

27 ³¹ *Guz*, 24 Cal.4th at 350.

28 ³² See *Donohue v. Apple, Inc.*, 871 F. Supp. 2d 913, 932 (N.D. Cal. 2012); *Das v. WMC Mortg. Corp.*, 831 F. Supp. 2d 1147, 1164 (N.D. Cal. 2011).

³³ Exh. O.

1 that Ground Zero purported to pay him. At trial, Art testified that Saul kept a portion of the
2 wages Art earned from working for Ground Zero. According to Art, Saul would write out a
3 check to Jim McClenahan at EHL on behalf of Art, and have Art deliver the checks to EHL.
4 Art never questioned Saul's payment method because he trusted Saul, who was in control
5 Art's work and had induced Art to sign the EHL Note. None of the checks that Art delivered
6 to EHL were produced, nor was an accounting provided of cash received by EHL.

7 Accordingly, Plaintiffs are awarded damages in the amount of \$8,383 against EHL
8 and Wortz for interest payments not required by the Note, failure to provide information to
9 Art as borrower, and failure to properly account for payments received.

10
11 C. Intentional Misrepresentation by Ground Zero

12 Plaintiffs asserted a claim for intentional misrepresentation against Ground Zero. The
13 only evidence presented regarding this issue relates to the Mechanics Lien issue. The parties'
14 dispute regarding the Mechanics Lien is addressed separately. No evidence was presented to
15 support a claim for intentional misrepresentation on alternate grounds

16
17 D. Intentional Concealment by Defendants

18 Plaintiffs also asserted claims for intentional concealment against Defendants,
19 contending they were engaged in a "steal the equity plan" based on Saul's authority as power
20 of attorney. While Saul held a power of attorney for Art, Art signed the EHL Note. No
21 evidence was presented to show that Saul used the power of attorney to conceal his actions
22 from Art. Thus, there are no grounds for relief based on intentional concealment.

23
24 II. Mechanics Lien by Ground Zero

25 On March 27, 2019, Ground Zero recorded a mechanics lien against the Property in
26 the amount of \$109,371. Plaintiffs dispute that Saul or Ground Zero complied with the
27 requirements necessary to perfect and enforce the Mechanics Lien. As lien claimant, Ground
28

1 Zero bears the burden of establishing the validity of the lien.³⁴ Further, the trial court is not
2 required to strike an excessive mechanics' lien in its entirety. Instead, the court may reduce
3 the lien to its proper amount.³⁵

4 Around May or June 2016, Art entered into a contract with Saul, on behalf of Ground
5 Zero for renovation of Art's home. The work included demolition of exterior structures on the
6 Property. Ground Zero began work around June 6, 2016.

7 Art asserts that he never received a written contract from Ground Zero or Saul. He
8 testified that Saul told him Ground Zero would provide cosmetic renovations to the Property
9 costing \$20,000. The plan was to improve Art's Property so it would sell for a higher price.
10 Then, once construction was completed, Saul's wife, a real estate agent, would list the
11 Property. Following sale, Ground Zero would be paid for its services from the sale proceeds.

12 In contrast, Saul testified that Art and Ground Zero signed a written home
13 improvement contract. But neither Saul nor Ground Zero produced a written contract. At the
14 same time as Ground Zero filed the Mechanics' Lien, Ground Zero sent a letter accusing Art
15 of stealing the signed contract and addendum while Art lived with Saul in 2016.³⁶ When Saul
16 was challenged at trial as to why an unsigned version of the contract was not available, he
17 testified for the first time that Ground Zero's computer hard drive crashed in 2017 and the
18 company lost the documents.

19 As addressed above, Saul's trial testimony was not credible. On multiple occasions
20 Saul presented an unlikely explanation for an issue he saw as potentially damaging while also
21 failing to respond to discovery on these issues.

22 The testimony of Art and Saul supports a finding that an oral contract existed between
23 Art and Ground Zero. Ground Zero was to provide \$20,000 in materials and labor to increase
24 the appeal and value of the Property. Upon completion of the work, the Property would be
25 sold, with Ground Zero paid from the sale proceeds.

26 _____
27 ³⁴ See *Basic Modular Facilities, Inc. v. Ehsanipour*, 70 Cal. App. 4th 1480, 1485 (Cal. App.
1999).

28 ³⁵ *Id.*

³⁶ Exh. L.

1 A. Mechanics Lien Preliminary Notice

2 Plaintiffs sought to establish at trial that Ground Zero failed to properly serve a
3 preliminary notice on Art, therefore the Mechanics Lien is invalid. Plaintiffs' argument
4 regarding the preliminary notice is without merit. As Ground Zero was a direct contractor to
5 the owner, the only party Ground Zero needed to serve was the direct lender.³⁷ No relief is
6 sought as to EHL or any other reputed direct contractor.

7
8 B. Application of Mechanics Lien Law

9 The California Constitution provides for mechanics liens which are further addressed
10 through California Civil Code §§ 8000 *et seq.* In order to obtain a mechanics lien a work of
11 improvement must be performed at the request of the owner. A "direct contractor" is a
12 contractor who has a direct contractual relationship with the owner.³⁸ As a result, a
13 mechanics lien is dependent on an underlying express or implied contract. While most
14 contracts are in writing there is no statutory requirement.

15 A direct contract is deemed to exist when a direct contractor performs work on the
16 owner's land, with the owner's knowledge, unless a notice of non-responsibility is posted and
17 recorded.³⁹ Here, Ground Zero performed work on Art's Property, Art knew the work was
18 being performed, and Art did not post a notice of non-responsibility. As a result, a direct
19 contract was formed with Art as owner and Ground Zero as direct contractor.

20 A mechanics lien only secures payment of the contract price between a claimant and
21 the other party to the contract, or the reasonable value of the labor, material and services
22 provided, whichever is less.⁴⁰ A direct contractor's lien is limited to the contract price, less
23 amounts paid by the owner, plus proper charges for extra work.

24
25 _____
³⁷ Cal. Civ. Code § 8430.

26 ³⁸ Cal. Civ. Code § 8018.

27 ³⁹ Cal. Civ. Code § 8442.

28 ⁴⁰ Cal. Civ. Code § 8430. *See Prince v. Hill*, 170 Cal. 192, 193 (1915) (holding that recovery by a contractor or subcontractor is limited to the contract price).

1 Based on the evidence presented, I find that the contract price was \$20,000. Saul
2 testified that he incurred additional expenses, in particular metal work on the staircase to
3 increase the appeal of the Property. There is no indication that additional work was requested
4 or approved by Art, thus it is not a proper charge for extra work performed as a modification
5 to the contract. The March 21, 2019 invoice supporting the Mechanics Lien claim of
6 \$109,371 asserts Ground Zero was paid \$54,000 on November 16, 2016. As the \$20,000
7 contract price is less than the \$54,000 in funds received, the Mechanics Lien filed by Ground
8 Zero was fully satisfied.

9 Ground Zero is hereby ORDERED to release its Mechanics Lien claim against
10 Plaintiffs by completing, signing, notarizing and recording the form Release of Mechanics
11 Lien consistent with California Civil Code §§ 8120-8130, 8400 *et seq.* no later than 21 days
12 after entry of Judgment.

13
14 III. Request for Injunction for Return of Cars

15 Plaintiffs request entry of a permanent injunction requiring Saul to turnover two
16 classic cars, a 1969 Corvette Stingray, and a 1955 Chevrolet Bel Air (collectively, “Cars”)
17 restored by Art. As before, there is no written agreement regarding the Cars.

18 Art and Saul agree that the Cars were moved from a garage on the Property to Saul’s
19 garage when construction began. This was done to allow Ground Zero to stage the
20 construction in the garage, and to avoid damage to the Cars during construction.
21 Subsequently, Saul took away Art’s key to the garage preventing Art from accessing the Cars.
22 The Cars remain in Saul’s garage.

23 Saul testified that when Art decided against selling the Property, it was Art who
24 suggested that Ground Zero be paid in part by transfer of the Cars. Saul claims that Art knew
25 he owed Ground Zero money for the work done. So, Art offered the Cars valued at
26 approximately \$50,000 each because he had no other assets. According to Saul, Art
27 voluntarily turned over the keys to Saul. The Cars required some repairs and were not
28 registered.

1 Art states that he did not voluntarily turnover the cars to Saul and he expected Ground
2 Zero's costs to be lower. While Art's position may seem naïve, it is consistent with
3 California law that recovery is based on the contract amount.

4 As recognized by the Supreme Court, a party seeking a permanent injunction must
5 demonstrate that:

- 6 (1) It has suffered irreparable injury;
- 7 (2) Remedies available at law, such as monetary damages, are inadequate to
8 compensate for that injury;
- 9 (3) Considering balance of hardships between plaintiff and defendant, remedy in
10 equity is warranted; and
- 11 (4) Public interest would not be disserved by permanent injunction.⁴¹

12
13 Here, whether a permanent injunction should be granted is to be determined based on
14 competing oral testimony. Plaintiffs bear the burden of proof.

15 The primary factor weighing in favor of Art's retaining an interest in the Cars is that
16 Ground Zero did not apply a \$100,000 deduction to the Invoice, while it applied a \$54,000
17 deduction on the March 21, 2019 invoice for the EHL Loan.⁴² From this it can be inferred
18 that neither Ground Zero nor Saul accepted the vehicles as payment, in full or in part.

19 The second issue to be determined is whether remedies at law, including monetary
20 damages, are inadequate to compensate for the injury. No argument was presented that
21 monetary damages are insufficient to remedy Plaintiffs' damages. As a result, permanent
22 injunctive relief is denied.

23 As neither Saul nor Ground Zero established an ownership interest in the Cars, an
24 award of damages in the amount of \$100,000 shall be owed to Art, jointly and severally by
25 Saul and Ground Zero.

26
27 _____
28 ⁴¹ *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006).

⁴² Exh. Q.

1 IV. Setoff

2 Bankruptcy Code § 553 preserves the right to setoff in a bankruptcy case, subject to
3 limitations not relevant here. The requirements for setoff are that the obligations must be
4 mutual such that each party asserts a claim against the other and each claim is held in the
5 party's name. The offsetting obligations must both arise prepetition or post-petition and both
6 obligations must be valid and enforceable. Triangular setoffs are generally not permitted.⁴³

7 Plaintiffs assert that setoff is appropriate in this adversary proceeding because the debts
8 are mutual, each of the parties as to which setoff applies are held in their own name, and the
9 debts were incurred prepetition as evidenced by the prepetition state court suit filed by
10 Defendants and cross-complaint filed by Plaintiffs.⁴⁴

11
12 A. Setoff of Claims Between Art and Ground Zero

13 Litigation between Art and Ground Zero began pre-petition. Ground Zero filed a
14 Mechanics Lien asserting \$109,371 was owed by Art to Ground Zero for construction at the
15 Property. After filing the Mechanics Lien, Ground Zero sought to foreclose on the lien. In
16 response, Art filed a cross-complaint. These claims are mutual, held in each party's name,
17 and arose prepetition. However, I found in this Memorandum Decision that Ground Zero's
18 Mechanic's Lien is limited to a maximum amount of \$20,000 based on the oral contract. This
19 amount was already paid through the EHL Loan as reflected by the invoice supporting the
20 Mechanic's Lien. As such, Art has no further obligation to Ground Zero and the parties no
21 longer have mutual claims. Accordingly, setoff is denied as between Art and Ground Zero.

22
23 B. Setoff of Claims Between Art and EHL/Wortz

24 Prepetition, Wortz funded the EHL Loan with EHL acting as his agent. The EHL
25 Loan was issued in the amount of \$52,500. As discussed above, contrary to the terms of the

26
27 ⁴³ 5 Collier on Bankruptcy ¶ 553.03 [3] [b] [i] (16th ed. 2022).

28 ⁴⁴ *Ground Zero Construction v. Flores et al.*, Case No. 19-cv-349779, is currently pending,
but stayed, in Santa Clara County Superior Court.

1 Note, EHL alleged interest at 12% was required in the Demand Letter. As such, Art owes
2 Wortz for the amount due on the Note, less any interest paid on the Note by any party,
3 including the damages awarded for intentional misrepresentation in favor of Plaintiffs. Setoff
4 may be applicable, but I find based on the evidence presented that I have insufficient
5 information to determine the amounts to be setoff.

6
7 **END OF AMENDED MEMORANDUM DECISION**
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COURT SERVICE LIST

Via ECF:

All ECF Recipients