COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

THE HUNTINGTON NATIONAL BANK,	:	**Case No. A2002093**
Plaintiff,	:	**Judge Shanahan**
vs.	:	**DECISION ON MOTION FOR SUMMARY JUDGMENT**
HAROLD SOSNA, et al.,	:	
Defendants.	:	

This case is before this Court on the Motion for Summary Judgment filed by Plaintiff, The Huntington National Bank ("HNB"). At issue is whether HNB may enforce the Guaranty of Payment of Debt ("the Guaranty") signed by Defendant, Raymond Schneider ("Schneider"). Schneider claims that he was fraudulently induced to sign the Guaranty and that there is a genuine issue of material facts preventing summary judgment. Schneider says that HNB knew facts that were unknown to Schneider, resulting in Schneider undertaking more risk than he intended to undertake. Had he known the facts, Schneider says he would not have signed the Guaranty. Schneider has a significant hurdle to overcome: he signed an unambiguous guaranty in which he guaranteed, "absolutely and unconditionally," "prompt payment in full of all of the Debt" in the event the Debt is not timely paid. (The Guaranty, paragraph numbered 3.)

I. Facts

On November 30, 2018, HNB and other lenders provided $76,691,999.90 in loans ("Loans") to Premier Health Care Management, Inc., Euclid Health Care, Inc., Pleasant Ridge Care Center, Inc., Kenwood Terrace Health Care Center, Inc., Southbrook Health Care Center, Inc., Beechwood Terrace Care Center, Inc., Ivy Health Care, Inc., JZB Realty Holding Co., LLC, Pleasant Ridge Realty, LLC, Ivy Health Realty LLC, Keller Road Realty Co., LLC, Steigler Road Realty, LLC, Seminole Avenue Realty, LLC, and 54 Realty, Ltd. (collectively, "Borrowers"), as evidenced by a Credit Agreement ("Credit Agreement") and other loan documents. Harold Sosna and Faye Sosna ("the Sosnas") and Schneider personally guaranteed the loans. The Guaranty includes the following language, to wit:

> 3. GUARANTY OF DEBT. Guarantor hereby absolutely and unconditionally guarantees the prompt payment in full of all of the Debt as and when the respective parts thereof become due and payable. If the Debt or any part thereof shall not be paid in full when due and payable, Agent and the Lenders, in each case, shall have the right to proceed directly against Guarantor under this Agreement to collect the payment in full of the Debt, regardless of whether or not Agent or Lenders shall have theretofore proceeded or shall then be proceeding against any Borrower or any other Person obligated on the Debt or Collateral, if any, or any of the foregoing, it being understood that Agent and the Lenders, in their sole discretion, may proceed against any Borrower or any other Person obligated on the Debt and any Collateral, and may exercise each right, power or privilege that Agent may then have, either simultaneously or separately, and, in any event, at such time or times and as often and in such order as Agent and the Lenders, in their sole discretion, may from time to time deem expedient to collect the payment in full of the Debt.

On May 2, 2019, Borrowers entered into an amendment to the Credit Agreement and the Sosnas and Schneider executed a Reaffirmation of Guaranty and Other Loan Documents ("Reaffirmation"), reaffirming the obligations under the Guaranty dated November 30, 2018. The Reaffirmation provides, in part, as follows:

> The undersigned hereby represent and warrant to Agent and the Lenders, and agree with Agent and the Lenders, that the undersigned have no claim or

> offset against, or defense or counterclaim to, any obligation or liability under the Collateral Documents to which he, she or it is a party, and the undersigned hereby waive and release Agent and the Lenders and all of their respective affiliates, officers, directors, agents, attorneys, employees, shareholders, subsidiaries and representatives from any and all claims, offsets, defenses and counterclaims of which the undersigned is aware, such waiver and release being with full knowledge and understanding of the circumstances and effect thereof and after having consulted legal counsel with respect thereto.

HNB says it notified Borrowers, the Sosnas and Schneider of several defaults under the Credit Agreement on February 27, 2020. Schneider says he was not notified of the defaults and says that HNB only notified and communicated with Harold Sosna ("Sosna"). HNB and Borrowers negotiated potential terms for a forbearance agreement. At approximately the same time HNB and Borrowers were preparing to sign a forbearance agreement, Borrowers disclosed to HNB that Borrower's depository bank had frozen all Borrowers' deposit accounts and refused to release funds to cover Borrowers' payroll, alleging that Borrowers had defrauded it (the depository bank) through a multi-million dollar check kiting scheme resulting in losses of approximately $59 million. Ultimately, HNB accelerated the Loans and demanded payment in full from Borrowers, the Sosnas and Schneider. A receiver was appointed for Borrowers. Schneider says HNB never contacted him or otherwise disclosed to him its knowledge of Sosna's check kiting activities.

When considering a motion for summary judgment, the party opposing the motion is entitled to have the evidence construed most strongly in his favor. Rule 56(C), Ohio Rules of Civil Procedure. For purposes of this motion for summary judgment, the Court is construing the evidence in a light most favorable to Schneider. Schneider states that there are genuine issues of material fact arising from HNB's concealment of material adverse facts relating to: (i) Sosna's deteriorating financial condition; (ii) the financially strapped condition of the entities in the Premier portfolio owned solely by Sosna known as the "JBZ Group"; and (iii) Premier's

precarious financial condition. According to Schneider, this concealment caused Schneider to significantly increase his personal liability: he signed an unlimited, 100 percent guaranty of the entire loan despite the fact that he had no interest in the entities known as the "JBZ Group" that received approximately 54 percent of the Loans. Additionally, Schneider had only a 50 percent ownership interest in the other entities in the Premier portfolio known as the "Keller Group." The Keller Group received approximately 46 percent of the Loans.

A prior loan with Fifth Third Bank was the template for the HNB loan. In the Fifth Third loan, Schneider guaranteed only that portion of the loan that was consistent with his 50 percent ownership interest in the Keller Group. He did not guarantee the portion of the loan to the JBZ Group owned solely by Sosna. HNB's initial loan terms for the refinancing required only a limited guaranty from Schneider, consistent with his 50 percent ownership interest in the Keller Group. Schneider says HNB was familiar with Sosna's history with Fifth Third Bank and knew that Sosna, and the JBZ Group, owned solely by Sosna, were financially deteriorating and HNB did not share this information with Schneider.

Specifically, Schneider says HNB concealed the following facts:

(i) Sosna's personal debt was rapidly increasing and he had a "significant cash flow problem."
(ii) Sosna had $8 million invested in his personal residence, in addition to a $4 million mortgage, but the property was only appraised at approximately $2 million. Despite this, HNB informed Sosna that it would "take a subjective view" if the appraisal came in low.
(iii) The JBZ Group was experiencing a decline in quarterly performance in early 2018 when HNB was seeking to become the new lead agent and increase its participation in the Premier Loan.
(iv) Premier was not covering the payment of its current bills or paying vendors.
(v) Premier was "holding checks," totaling hundreds of thousands of dollars, because of "cash flow issues."
(vi) Sosna was drawing significant sums of money from the Keller Group in February 2018 to pay down Premier's line of credit at Fifth Third.
(vii) MainSource Bank removed Premier's line availability in May 2018 because Premier was overdrawn on its line of credit and its loan was out of compliance.
(viii) Sosna was not properly disclosing from where revenue was coming.

According to Schneider, none of these facts were communicated by HNB to Schneider. In fact, Schneider says Sosna was charged with communicating the terms of the Loans to Schneider, a silent partner in the Keller Group who was not involved in the day-to-day operations. Sosna was in control and possession of the financial statements for the Keller Group. Schneider had no direct involvement in the negotiation of the loan terms and HNB never contacted Schneider when the loan was being negotiated by Sosna over the course of several months.

HNB paused the financing at one point because Sosna and his entities were not achieving their original projections. The eroding financial condition notwithstanding, HNB revised the loan terms, including requiring Schneider to guaranty 100 percent of the Loans. HNB never contacted Schneider to discuss the revision and HNB never disclosed to Schneider the deteriorating financial condition of Sosna, the JBZ Group or Premier.

According to Schneider, Sosna did not disclose adverse facts to Schneider. In fact, Sosna refused to give financial information to Schneider when Schneider requested it. Sosna falsely represented to Schneider that the Keller Group did not have sufficient value to support its portion of the Loans and HNB would not approve the Loans unless Schneider signed a guaranty for the entire Credit Agreement, all $76 million. Schneider did not know Sosna's statements about the companies' value were false and misleading.

II. Law

A. Summary judgment standard

A court should grant summary judgment if: (1) there is no genuine issue of material fact; (2) the movant is entitled to judgment as a matter of law; and (3) reasonable minds could come to

but one conclusion when viewing the evidence in favor of the party opposing the motion, and that conclusion is adverse to the party opposing the motion. Ohio Rule of Civil Procedure 56(C); *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 631 N.E.2d 150 (1994). There is "no requirement . . . that the moving party support its motion for summary judgment with any affirmative evidence[.] [T]he moving party bears [only] the initial burden of demonstrating that there are no genuine issues of material fact concerning an essential element of the opponent's case." *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264, 273 (1996). After a movant meets its burden, the respondent must set forth "specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." *Id.*

Summary judgment "must be awarded with caution, resolving doubts and construing evidence against the moving party, and granted only when it appears from the evidentiary material that reasonable minds can reach only an adverse conclusion as to the party opposing the motion." *Murphy v. City of Reynoldsburg,* 65 Ohio St.3d 356, 358-359, 604 N.E.2d 138, 140 (1992). In determining whether a genuine issue of material fact exists, all inferences drawn from underlying facts must be viewed in the light most favorable to the party opposing the motion. *Horton v. Harwick Chem.Corp.,* 73 Ohio St.3d 679,687, 653 N.E.2d 1196 (1995).

B. Doctrine of increased risk

The unambiguous Guaranty notwithstanding, Schneider argues that, pursuant to the doctrine of increased risk, HNB had a duty to disclose the material adverse facts relating to the precarious financial conditions of Sosna, the JBZ Group and Premier.

According to The Restatement (Third) of Suretyship & Guaranty § 12, the doctrine of

increased risk imposes on lenders a duty to disclose:

> [I]f, before the secondary obligation becomes binding, the obligee:
>
> (a) knows facts unknown to the secondary obligor that materially increase the risk beyond that which the obligee has reason to believe the secondary obligor intends to assume; and
>
> (b) has reason to believe that these facts are unknown to the secondary obligor; and
>
> (c) has a reasonable opportunity to communicate them to the secondary obligor,
>
> the obligee's nondisclosure of these facts to a secondary obligor constitutes a material misrepresentation.

The Restatement (Third) of Suretyship & Guaranty § 12, Comment g, states as follows:

> Determining whether an obligee has reason to believe that certain facts are unknown to the secondary obligor, or that those facts materially increase the risk beyond that which the secondary obligor intends to assume, requires analysis of the facts of the specific case. The nature of the secondary obligor's business and its relationship with the principal obligor, and the ability of the secondary obligor to obtain knowledge of those facts independently, are important factors in the determination.

There is no duty imposed on the creditor to investigate for the secondary obligor's benefit. *Kawasaki Motor Corp., U.S.A. v. Navratil,* 3d Dist. Hancock No. 5-84-26, 1985 Ohio App. LEXIS 9104. Nor is the obligee required to take any particular steps to ascertain whether the secondary obligor is acquainted with facts that the obligee may reasonably believe are known to both of them. The Restatement (Third) of Suretyship & Guaranty § 12, Comment f.

Schneider argues that HNB had reason to believe that the material adverse facts relating to the precarious financial conditions of Sosna, the JBZ Group and Premier were unknown to Schneider because Schneider had no ownership interest in the JBZ Group and was a silent partner in the Keller Group, but HNB took no steps to disclose these facts to Schneider. Specifically, Schneider argues that there is a genuine issue of fact whether 1) HNB knew that Schneider didn't know his risk had been materially increased beyond that which HNB had reason

to believe Schneider intended to assume; 2) HNB had reason to believe the facts were unknown to Schneider; and 3) HNB had a reasonable opportunity to communicate those facts to Schneider.

Schneider relies on *Fifth Third Bank v. N. Cincinnati Serv. Corp.*, 1981 Ohio App. LEXIS 13818, **3-4 (1st Dist.1981), for the proposition that "one who is sought to be held liable as guarantor may defeat the action by showing that the purported...guaranty was not executed by him freely, voluntarily, or understandingly, but that his execution of the instrument was procured by imposition, fraud, concealment or misrepresentation."

C. Fraud in the inducement

"A claim of fraud in the inducement arises when a party is induced to enter into an agreement through fraud or misrepresentation. 'The fraud relates not to the nature or purport of the [contract], but to the facts inducing its execution....'" *ABM Farms, Inc. v. Woods,* 81 Ohio St.3d 498, 502, 692 N.E.2d 574 (1998). Under Ohio law, the elements of a fraudulent inducement claim are: "(1) an actual or implied false representation concerning a fact or, where there is a duty to disclose, concealment of fact; (2) which is material to the transaction; (3) knowledge of the falsity of the representation or such recklessness or utter disregard for its truthfulness that knowledge may be inferred; (4) intent to induce reliance on the representation; (5) justifiable reliance; and (6) injury proximately caused by the reliance." *DeJohn v. DiCello,* 2011-Ohio-471, ¶ 44 (8th Dist.2011) (citing *Info. Leasing Corp. v. Chambers,* 152 Ohio App.3d 715, 740, 2003-Ohio-2670, 789 N.E.2d 1155 (1st Dist.2003)).

D. Debtor-creditor relationship

"[T]he duty to disclose arises when one party has information that the other party is entitled to know because of a fiduciary or similar relation of trust and confidence between them." *BAS Broadcasting Inc. v. Fifth Third Bank,* 2018-Ohio-1325, 110 N.E.3d 171, ¶ 18 (6th Dist.

2018). Under Ohio law, "a debtor-and-creditor relationship does not generally create a fiduciary relationship." *Groob v. KeyBank*, 108 Ohio St.3d 348, 351, 2006-Ohio-1189, 843 N.E.2d 1170 (2006).

> The term "fiduciary relationship" has been defined as a relationship "in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust." *In re Termination of Emp. of Pratt*, 40 Ohio St.2d 107, 115, 69 Ohio Ops.2d 512, 321 N.E.2d 603 (1974). Similarly, "fiduciary" has been defined as " ' "a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with his undertaking." ' " *Strock v. Pressnell* 38 Ohio St.3d 207, 216, 527 N.E.2d 1235(1988), (quoting *Haluka v. Baker,* 66 Ohio App. 308, 312, 20 Ohio Opinions 136, 34 N.E.2d 68 (1941)), (quoting 1 Restatement of the Law, Agency (1933), Section 13, Comment a).

Groob v. KeyBank, 108 Ohio St.3d at 351, 2006-Ohio-1189.

"Absent 'special circumstances,' Ohio law does not recognize a fiduciary duty between a bank and its customer." *BAS Broadcasting Inc. v. Fifth Third Bank,* 2018-Ohio-1325, 110 N.E.3d 171, ¶ 18 (6th Dist. 2018).

The debtor/creditor relationship, without more, is not a relationship that would give rise to a duty to disclose. *Blon v. Bank One, Akron, N.A.,* 35 Ohio St.3d 98, 101, 519 N.E.2d 363 (1988). "[I]n business transactions where parties deal at arm's length, each party is presumed to have the opportunity to ascertain relevant facts available to others similarly situated and, therefore, neither party has a duty to disclose material information to the other." *Id.* at 101.

E. Mitigation of damages

Schneider argues that HNB had a separate and independent duty after closing the loan to disclose to Schneider information relating to Premier's continuing precarious financial condition and a duty to disclose HNB's knowledge of Sosna's check kiting activities in February 2020. According to Schneider, HNB's failure to disclose the foregoing prevented Schneider from stepping in, mitigating losses and salvaging the Keller Group companies in which he had a 50

percent ownership interest. Schneider states that, pursuant to the "mitigation doctrine of avoidable consequences," a party who makes a claim on a contract cannot receive damages that it could have avoided.

Under Ohio law, the injured party in a breach of contract action has a duty to mitigate damages, meaning that the injured party cannot recover damages "that it could have prevented by 'reasonable affirmative action.'" *Four Seasons Environmental, Inc. v. Westfield Cos.*, 93 Ohio App.3d 157, 159, 638 N.E.2d 91 (1st Dist.1994), quoting *F. Ents. v. Kentucky Fried Chicken Corp.*, 47 Ohio St.2d 154, 351 N.E.2d 121 (1976), paragraph three of the syllabus. An injured party need only use "reasonable, practical care and diligence, not extraordinary measures to avoid excessive damages." *Provident Bank v. Barnhart*, 3 Ohio App.3d 316, 320, 445 N.E.2d 746 (1st Dist.1982). The failure to mitigate damages is an affirmative defense, meaning that the burden of proof lies with the breaching party. *Jindal Builders & Restoration Corp. v. Brown & Cris*, 1997 Ohio App. LEXIS 4768, *3 (1st Dist.1997).

The burden of proof on this issue lies with Schneider. Schneider says that HNB never contacted Schneider or otherwise disclosed to him its knowledge of Sosna's fraudulent check kiting activities. Schneider argues that "instead of contacting Schneider when it discovered the check kiting, HNB sought recourse for Sosna's fraudulent conduct by moving for the appointment of a receiver over Premier and filing this lawsuit against Schneider on the Guaranty." (Schneider Opposition to Motion for Summary Judgment, p. 21.) According to Schneider, this prevented Schneider from having any opportunity to step in and mitigate any losses and salvage the Keller Group companies.

III. Discussion

This Court must decide whether, in view of Schneider's clear and unambiguous Guaranty, there is a genuine issue of material fact whether HNB concealed material adverse facts from Schneider and fraudulently induced Schneider to sign the Guaranty.

The Guaranty provides as follows:

> 5.5 Liabilities Absolute and Unconditional. Guarantor's liabilities and other obligations under this Agreement shall be absolute and unconditional irrespective of any lack of validity or enforceability of the Credit Agreement, any Note, any Loan Document or any other agreement, instrument or document evidencing the Debt or related thereto, or any other defense available to Guarantor in respect of this Agreement.

Schneider argues that he did not waive liability arising from fraud nor did he waive any claims of which he was not aware.

This Court finds that a waiver "of any other defense available" is enforceable, that it means any other defense, and that it means any other defense available at the time of execution of the document, whether known or unknown to the guarantor at the time of signing. *Kraft Elec. Cont., Inc. v. Lori A. Daniels Irrevocable Trust,* 2019-Ohio-2029, 136 N.E.3d 951 (1st Dist.2019). *See also: Task v. Nat'l City Bank,* 1994 WL 43883(8th Dist.1994) (given the broad language of the release, it was incumbent upon releasor to ascertain, at that time, whether he had any causes of action against defendant, and if so, to expressly manifest his intent to exclude those claims from the scope of the release).[1]

[1] The Reaffirmation of Guaranty provides that Schneider waives defenses and counterclaims of which he is aware. It also states that Schneider reaffirmed each of his respective obligations under his Guaranty, including the waiver of any defenses available to him. The Court will discuss this ambiguity, *infra.*

Schneider argues that he is a surety rather than a guarantor and that, because of his position as surety, he may avail himself of the doctrine of increased risk. In Ohio, "the primary distinction between a 'surety' and a 'guarantor' is the surety is primarily liable with a principal but 'the liability of a guarantor is secondary and collateral if the principal does not perform.'" *Manor Care Nursing & Rehab Ctr. v. Thomas,* 123 Ohio App.3d 481, 486-487(1st Dist. 1997). The Court finds that Schneider is a guarantor. He was not primarily liable for the debt. HNB could only pursue Schneider after there was a default by the primary obligor. Thus, as a guarantor, the doctrine of increased risk would not apply to Schneider.

However, the Restatement (Third) of Suretyship & Guaranty, which Schneider asserts has been adopted by the General Assembly, abandons the distinction between guaranty and surety and speaks instead in terms of "secondary obligor" and "secondary obligation."

Regarding Schneider as a "secondary obligor" under the doctrine of increased risk, the Court will consider whether HNB knew facts unknown to Schneider that materially increased the risk beyond that which HNB had reason to believe Schneider intended to assume; and whether HNB had reason to believe that these facts were unknown to Schneider; and whether HNB had a reasonable opportunity to communicate the facts to Schneider. Under the doctrine of increased risk, if those elements are present, HNB's nondisclosure of these unknown facts to Schneider may constitute a material misrepresentation.

Schneider says that HNB charged Sosna with the task of communicating to Schneider matters pertaining to the Loans and the Guaranty. Construing the facts most favorably to Schneider as the Court must do at the summary judgment stage, the Court finds that it is plausible that HNB knew facts unknown to Schneider that materially increased the risk beyond that which HNB had reason to believe Schneider intended to assume; and that HNB had reason

to believe that these facts were unknown to Schneider because Sosna would not have been motivated to share them with Schneider.

However, Schneider has further obstacles to overcome in order to defeat HNB's motion. As stated *supra,* the elements of a fraudulent inducement claim are: "(1) an actual or implied false representation concerning a fact or, where there is a duty to disclose, concealment of fact; (2) which is material to the transaction; (3) knowledge of the falsity of the representation or such recklessness or utter disregard for its truthfulness that knowledge may be inferred; (4) intent to induce reliance on the representation; (5) justifiable reliance; and (6) injury proximately caused by the reliance." *DeJohn v. DiCello,* 2011-Ohio-471, ¶ 44 (8th Dist.2011) (citing *Info. Leasing Corp. v. Chambers,* 152 Ohio App.3d 715, 740, 2003-Ohio-2670, 789 N.E.2d 1155 (1st Dist.2003).

The relationship between HNB and Schneider was a debtor-creditor relationship. Paragraph numbered 13. in the Guaranty from Schneider to HNB provides, in part, as follows:

> The relationship between (a) Guarantor and (b) Agent with respect to this Agreement is and shall be solely that of debtor and creditor, respectively, and Agent shall have no fiduciary obligation toward Guarantor with respect to this Agreement or the transactions contemplated hereby.

By the parties' agreement, this was not a fiduciary relationship. HNB, by undertaking to refinance the loan, did not undertake to "to act primarily for the benefit of another (Schneider) in matters connected with his undertaking." *Groob v. KeyBank,* 108 Ohio St.3d 348, 351, 2006-Ohio-1189 (2006). As Schneider states, "HNB was anxious to get the Premier financing, enhance its fees, and secure a larger percentage of the Premier Loan." (Schneider Opposition to Motion for Summary Judgment, p. 7) "The financial incentives for HNB in securing the Premier refinancing were manifest. Closing a loan of this magnitude would generate for HNB nearly $300,000 in private revenue from Sosna and significant 'relationship revenue' from the refinance

– over $700,000...." (Schneider Opposition to Motion for Summary Judgment, p. 8). HNB was not acting for Schneider's benefit. The relationship was that of debtor-creditor. As such, the Court finds there was not a duty to disclose, one of the elements of a fraudulent inducement claim.

Moreover, Schneider's reliance on HNB was not justified, another of the elements for a fraudulent inducement claim. Schneider is a sophisticated businessman and has guaranteed payment of more than one commercial loan. Schneider and Sosna were business partners, each owning a 50 percent interest in the Keller Group. Schneider knew that in prior financing with Fifth Third Bank, and in HNB's initial loan terms for the loan which is the subject matter of this case, only a limited guaranty was required from Schneider, consistent with his 50 percent ownership interest in the Keller Group. Schneider knew there was a pause in the refinancing with HNB between March 2018 and November 2018. Finally, despite Schneider's repeated requests to Sosna, Sosna refused to provide Schneider with vital information about any of the entities in the Premier portfolio that were part of the financing provided by HNB. Yet, when presented with a document obligating him to guaranty 100 percent of the loan, Schneider signed. "When the circumstances would cause a person of ordinary care to investigate, and that person fails to do so, the element of justifiable reliance will not be proven." *Riccardi v. Levine,* 2000 WL 573188, *3 (Ohio 8th Dist.).

According to Schneider, he was unaware of the defense of fraudulent inducement at the time he signed the Guaranty. In light of the Court's finding that Schneider cannot establish duty and justifiable reliance, this Court finds that the ambiguities between the Guaranty and the Reaffirmation of Guaranty are not significant. Schneider cannot establish the elements of a claim for fraudulent inducement. Accordingly, even if the defense of fraudulent inducement was not

waived, there is no genuine issue of material fact that all of the elements necessary for a claim for fraudulent inducement are not present.

Regarding the argument of mitigation of damages and continuing duty to disclose, the Court finds that, as there was no duty to disclose before the Credit Agreement and Guaranty were signed, there is not a duty of disclosure after signing. Further, pursuant to the terms of the Guaranty, HNB was entitled to exercise each right, power or privilege that it had, either simultaneously or separately, at such time or times and as often and in such order as HNB deemed expedient to collect the payment in full of the debt. HNB did not have a duty to provide Schneider an opportunity to step in and mitigate any losses and salvage the Keller Group companies.

IV. Conclusion

Having fully considered the papers filed, the arguments of counsel and the relevant case law, the Court finds that (1) there is no genuine issue of material fact; (2) HNB is entitled to judgment as a matter of law; and (3) reasonable minds could come to but one conclusion when viewing the evidence in favor of Schneider, and that conclusion is adverse to Schneider.

The parties shall submit an entry in accordance with Local Rule 17 of the Hamilton County Local Rules.

11/18/22

Megan E. Shanahan, Judge

ENTERED

NOV 18 2022

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