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*637 Arnold, LLC and Scott Dolan*

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| EAF ONE, LLC,  Plaintiff,  v.  637 ARNOLD, LLC,  Defendant/Third-Party Plaintiff. | SUPERIOR COURT OF NEW JERSEY  LAW DIVISION – OCEAN COUNTY  DOCKET NO.: OCN-L-002488-19  *Civil Action*  **ANSWER, SEPARATE DEFENSES, COUNTERCLAIM AND THIRD-PARTY COMPLAINT OF 637 ARNOLD, LLC AND SCOTT DOLAN** |
| 637 ARNOLD, LLC and SCOTT DOLAN,  Third-Party Plaintiffs,  v.  STEWART TITLE GUARANTY COMPANY; STANLEY HANS, JR., P.L.S., P.P.; R.C. BURDICK, P.E., P.P, a PROFESSIONAL CORPORATION; ROBERT H. MORRIS, P.L.S.., P.P., MORRIS SURVEYORS, INC.;  Third-Party Defendants. |  |

Defendant/Third-Party Plaintiff 637 Arnold, LLC (“**637 Arnold**”) by way of Answer to the Verified Complaint filed herein states as follows:

**FIRST COUNT**

1. Admitted
2. Admitted
3. 637 Arnold is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and leaves plaintiff to its proofs.
4. Admitted.
5. Denied.
6. Admitted.
7. Admitted.
8. Denied.
9. 637 Arnold neither admits nor denies the allegation of this paragraph.
10. As to 637 Arnold, admitted. As to plaintiff, 637 Arnold is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and leaves plaintiff to its proofs.

**WHEREFORE**, 637 Arnold seeks judgment dismissing the Complaint with prejudice, together with interest, costs of suit and reasonable attorney’s fees and for such other relief that is equitable and just.

**SECOND COUNT**

1. 637 Arnold repeats and realleges its answers to the previous allegations as though set forth herein at length.

2. 637 Arnold is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and leaves plaintiff to its proofs. (And, there is no Ex.C to the Complaint defendant has in its possession).

3. Denied. 637 Arnold has not "claimed" anything, but has relied on its own survey, and others as set forth in Scott Dolan's November 5, 2018 Certification.

4. 637 Arnold is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and leaves plaintiff to its proofs.

5. 637 Arnold neither admits nor denies the allegation of this paragraph.

**WHEREFORE**, 637 Arnold seeks judgment dismissing the Complaint with prejudice, together with interest, costs of suit and reasonable attorney’s fees and for such other relief that is equitable and just.

**AFFIRMATIVE DEFENSES**

**FIRST SEPARATE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND SEPARATE DEFENSE**

637 Arnold incorporates the Certification of Scott Dolan dated November 5, 2018.

**THIRD SEPARATE DEFENSE**

637 Arnold incorporates the letter brief filed on its behalf dated November 5, 2018.

**FOURTH SEPARATE DEFENSE**

637 Arnold reserves the right to amend this answer to assert additional defenses upon completion of further investigation and discovery.

**COUNTERCLAIM**

637 Arnold LLC, by way of counterclaim against the plaintiff EAF One, LLC, says:

1. 637 Arnold repeats and realleges its answers to the foregoing as though set forth herein at length.
2. The Certification of Scott Dolan dated November 5, 2018 is incorporated by reference. It is plaintiff's building that encroaches on defendant's property.

**WHEREFORE**, 637 Arnold LLC demands judgment against the plaintiff EAF One, LLC, dismissing the Complaint and declaring that plaintiff's building encroaches on defendant's property and for costs of suit, attorney's fees, and such other relief as the Court deems equitable and just.

**THIRD PARTY COMPLAINT**

Defendant/Third-Party Plaintiff 637 Arnold, LLC (“**637 Arnold**”) and Third-Party Plaintiff Scott Dolan (“**S. Dolan**”) by way of Third-Party Complaint against Stewart Title Guaranty Company (“**Stewart**”); Stanley Hans, Jr., P.L.S., P.P. (“**Hans**”); R.C. Burdick, P.E., P.P, a Professional Corporation (“**Burdick**”); Robert H. Morris (“**Morris**”) and Morris Surveyors, Inc. (“**Morris, Inc.**”); and says:

**BACKGROUND**

**The Parties and the Property**

1. 637 Arnold LLC is the owner of certain property located in the Borough of Point Pleasant Beach, County of Ocean, State of New Jersey and located at Block 202, Lot 2 on the tax map of the Borough of Point Pleasant Beach (the “**637 Arnold Property**”) and commonly known as 637-639 Arnold Avenue, Point Pleasant Beach, New Jersey.
2. The 637 Arnold Property sits adjacent to a separate property presently owned by EAF One, LLC, located at Block 202, Lot 3 on the tax map of the Borough of Point Pleasant Beach (the “ **641 Arnold Property**”) and commonly known as 641 Arnold Avenue, Point Pleasant Beach, New Jersey.
3. Upon information and belief, at one time, the 637 Arnold Property and 641 Arnold Property were jointly owned by Michael Gottlieb (“**Gottlieb**”). I am sure this is true.
4. S. Dolan is an individual, the managing member of 637 and resident of Point Pleasant Beach, New Jersey.
5. Hans is a surveyor who is, upon information and belief, licensed by the State of New Jersey with an office address of 1023 Ocean Rd, Point Pleasant, NJ 08742.
6. Burdick, P.C. is a surveying and engineering firm with a place of business at 1023 Ocean Rd, Point Pleasant, NJ 08742.
7. Morris is a surveyor who is, upon information and belief, licensed by the State of New Jersey with a business address of 1123 Morris Avenue, Point Pleasant, NJ 08742.
8. Morris, Inc. is a surveying and engineering firm with a place of business 1123 Morris Avenue, Point Pleasant, NJ 08742
9. Stewart is national title insurance agency with a New Jersey office address of 10 Waterview Blvd., Suite 110 Parsippany, NJ 07054.
10. Schwebel Family Trust
11. Sinn, Fitzsimmons, Cantoli, Bogan, & West P.A
12. Giuseppe Carannante

**The Elbert Morris Survey**

1. On or about October 19, 1961, Elbert W. Morris of Morris & Glasgow, Inc. (“**Morris & Glasgow**”) prepared a survey for Michael Gottlieb indicated the building structure located on the 641 Property (the “**641 Building**”) encroached upon the 637 Property (the “**First Morris & Glasgow Survey**”)
2. The First Morris & Glasgow Survey reflects on the northwest corner a notation that the building from the 641 Arnold Property encroaches upon the 637 Arnold Property. Specifically, the First Morris & Glasgow Survey states: “adjacent building over line 0.12’”.
3. On or about November 11, 2001, Elbert W. Morris of Morris & Glasgow prepared another survey (the “**Second** **Morris & Glasgow Survey**”) (the First Morris & Glasgow Survey and Second Morris & Glasgow Survey are hereinafter collectively referred to as the “**Morris & Glasgow Surveys**”) for the former owner of the 637 Arnold Property, BONS, LLC (“**BONS**”), which indicated that the 641 Building encroached upon the 637 Property.
4. The Second Morris & Glasgow Survey reflects on the northwest corner a notation that the 641 Arnold Property encroaches upon the 637 Arnold Property. Specifically, the Second Morris & Glasgow Survey states: “adjacent building over line 0.13’”.
5. The Second Morris & Glasgow Survey reflects on the southwest corner the notation “adjacent building over line 0.16’”.

**The R.C. Burdick January 2014 Survey**

1. 637 Arnold acquired the 637 Arnold Property via Deed dated December 29, 2015, which Deed was between BONS as Grantor and 637 Arnold, as Grantee (the “**637 Arnold Deed**”). The 637 Arnold Deed was recorded in the Ocean County Clerk’s office on December 31, 2015, in Book 16280, Page 1550. Should this be here?
2. Prior to taking title to the 637 Arnold Property, as contract purchaser to the 637 Arnold Property, S. Dolan made an application to the Point Pleasant Beach Brough Planning Board for Preliminary and Final Site Plan Approval and Bulk Variance Approvals (Application No.: 2014-371) (the “**Site Plan Application**”).
3. The Site Plan Application sought to improve and renovate the 637 Arnold Property through the construction of residential apartments and retail uses.
4. In connection with the Site Plan Application, 637 Arnold retained Burdick and Hans to prepare a Change of Use Site Plan and Survey (the “**2014 R.C. Burdick Survey**”).
5. The 2014 R.C. Burdick Survey was dated February 7, 2014 and was certified to by Hans for the managing member of 637 Arnold, Scott Dolan.
6. The 2014 R.C. Burdick Survey reflects on the northwest corner a notation that the building from the 641 Arnold Property encroaches upon the 637 Arnold Property. Specifically, the 2014 R.C. Burdick Survey states: “adjacent building over line 0.13’”.
7. The 2014 R.C. Burdick Survey reflects on the southwest corner the notation “adjacent building over line 0.16’”.
8. The Site Plan Application was heard on July 2, 2014 and Robert Burdick of Burdick testified on behalf of 637 Arnold at the hearing.
9. Based on the 2014 R.C. Burdick Survey and the testimony of Robert Burdick, among other things, the Site Plan Application was approved.

**The December 15, 2015 Morris Survey**

1. Prior to closing on the 637 Arnold Property, S. Dolan and 637 Arnold obtained a survey from Morris which is dated December 15, 2015 (the “**R.** **Morris Survey**”).
2. The R. Morris Survey is certified by Morris as being prepared for 637 Arnold, Scott Dolan, Pegasus Title Agency, Manasquan Bank and William T. Gage, Esq.
3. Similar to the 2014 R.C. Burdick Survey and consistent with the Morris & Glasgow Surveys, the northwest and southwest corners of the R. Morris Survey reflect the same notations that the adjacent building from the 641 Arnold Property is encroaching on to the 637 Arnold Property by .13 feet and .16 feet respectively.
4. Thus, as of December 2015, at least four surveys going back to 1961 all reached the same conclusion – that the 641 Arnold Building encroaches upon the 637 Arnold Property.

**The Schwebel Family Trust**

1. On or around July 27, 2016, The Schwebel Family Trust went under contract to transfer the deed of Lot 3 in block 202 of Borough of Point Pleasant Beach to McStorman Associates, LLC. The Schwebel Family Trust provided McStorman Associates, LLC with a copy of the October 19, 1961, Elbert W. Morris of Morris & Glasgow, Inc. (“**Morris & Glasgow**”) prepared a survey for Michael Gottlieb indicated the building structure located on the 641 Property (the “**641 Building**”) encroached upon the 637 Property (the “**First Morris & Glasgow Survey**”)
2. On or around May 10, 2017, The Schwebel Family Trust went under transfer the deed of Lot 3 in block 202 of Borough of Point Pleasant Beach to Giuseppe Carannante.
3. On June 12, 2017, The Schwebel Family Trust’s seller agent Jon Coletta of Coletta Commercial Real estate agency reach out to 637 Arnold seeking to have 637 Arnold resolve a title issue that was preventing their buyer Giuseppe Carannante from obtaining title insurance and acquiring the property. In order to resolve issue for both parties, 637 Arnold offer to take over the existing contract and reimbursing the buyer for his expense incurred.
4. On June 12, 2017, 637 Arnold offer was rejected by Jon Coletta. After rejecting the offer, Jon Coletta made the allegation that 637 Arnold was encroaching on 641 Arnold Ave. and requested 637 Arnold meet with all the parties involved to resolve the issue.
5. On or around June 14, 2017, At 637 Arnold requests, Jon Coletta provided a survey in question. The provided survey did not support the allegation and contradicted a survey performed by the same survey.
6. On June 21, 2017, The Schwebel Family Trust’s provided Giuseppe Carannante with a loan to purchase 641 Arnold. The mortgage was insured with title policy based on survey show no encroachment and contradicts the alleged allegations.
7. The 641 Arnold Deed was recorded in the Ocean County Clerk’s office on July 7, 2017, in Book 16792, Page 1627.

**The Sinn, Fitzsimmons, Cantoli, Bogan, & West P.A**

1. On or December 29, 2015, Sinn, Fitzsimmons, Cantoli, Bogan, & WestP.A transferred the deed from BON LLC to 637 Arnold. The 637 Arnold Deed was recorded in the Ocean County Clerk’s office on December 31, 2015, in Book 16280, Page 1550 that the 641 Arnold Building encroaches upon the 637 Arnold Property.
2. On June 2, 2017, R.C. Burdick, certified a survey prepared by Hans (the “**1st 2017 R.C. Burdick Survey**”) to Adam Steuerman, Esq. (“**Mr. Steuerman**”) of Sinn, Fitzsimmons, Cantoli, Bogan, & WestP.A.
3. The 1st 2017 R.C. Burdick Survey conflicted with the 2014 R.C. Burdick Survey as it provided that there was no encroachment from any building on either side.
4. On or about June 6, 2017, Mr. Steuerman used the 1st 2017 R.C. Burdick survey of 2017 to obtain a title insurance policy binder for the 641 Arnold Property that obscured the alleged encroachments along the easterly.
5. On or about June 12, 2017, the contract negotiation between Schwebel Family Trust’s and 641 Arnold reached an impasse due to title issue.
6. On or about June 20, 2017, the 637 Arnold informed Steuerman, Carannante, 641 Arnold, & Schwebel Family Trust’s the 1st 2017 R.C. Burdick survey did not indicate any encroachment and the survey is contradicted previous surveys performed by R.C. Burdick.
7. On June 21, 2017, Mr. Steuerman performed the closing and transfer the deed from Schwebel Family Trust to 641 Arnold. The 641 Arnold Deed was recorded in the Ocean County Clerk’s office on July 7, 2017, in Book 16792, Page 1627. The deed and title insurance policy were both based on the 1st  2017 R.C. Burdick survey that indicated no encroachment.
8. On or about June 22, 2017, Mr. Steuerman sent a certified letter to 637 Arnold Ave requesting a copy of the 637 Arnold surveys so he could pursue a boundary dispute. In absence of providing Mr. Steuerman with necessary survey to pursue a boundary dispute he demand 637 Arnold remove the alleged 6” encroachment. Included in the letter was (the “**1st 2017 R.C. Burdick Survey**”) indicating although no encroachment?
9. On or about June 26, 2018, 641 Arnold refinanced the property with Gibraltar Bank and obtained an updated title policy based on the (the “**1st 2017 R.C. Burdick Survey**”) survey indicated no encroachment.
10. On or around Sept 12, 2018, R.C. Burdick provided (“**Mr. Steuerman**”) with (the “**2nd 2017 R.C. Burdick Survey**”) now showing the alleged encroachment of 637 Arnold onto 641 Arnold. This survey was mailed to Scott Dolan with threat of expense of litigation. \*Mail Fraud, knowing misrepresent facts via mail to obtain a copy of my survey to file a fraud boundary dispute.
11. On or around Sept 20, 2018, 637 Arnold respond to the Mr. Steuerman letter offering to meet with Mr. Steuerman and 641 Arnold tp resolve this matter.
12. On or around October, 3 2018, Mr. Steuerman ignored 637 Arnold offer to meet at the properties and to attempt to resolve the matter amicably. Instead Mr. Steuerman used the survey obtained by the threating letter to file complaint C-194.18 in Ocean County Superior Court using the (the “**2nd 2017 R.C. Burdick Survey**”).
13. Upon failure of mediation, Mr. Steuerman furnished to survey by Morgan Engineering & Surveying that was in their possession that indicated no encroachment. The Morgan Engineering & Surveying has mathathical errors and additionally inconsistencies
14. However, the Morgan Survey was mathematically inaccurate as the total frontage for the 641 Arnold Property and 637 Arnold Property did not add up.

**The 637 Arnold Title Policy**

1. Prior to closing on the 637 Arnold Property, 637 Arnold procured a $540,000 title insurance policy from Stewart with a Policy Number ending in -465016 (the “**Policy**”).
2. The Policy insured 637 Arnold against Fraud, loss or damage, not exceeding the amount of the Policy ($540,000) incurred by reason of, among other things, defects in or encumbrances on the title of the Property and encroachments, encumbrances, violations, variations or adverse circumstances affecting the Title.
3. “Encroachment” in the Policy is defined as including “encroachments of existing improvements located on the [Property] onto adjoining land, and encroachments onto the [Property] of existing improvements located on adjoining land.”
4. Further, according to the Policy, Stewart agreed to “pay the costs, attorneys’ fees and expenses incurred in defense of any matter insured against by the[e] Policy….”
5. Consistent with the Morris & Glasgow Surveys, the 2014 R.C. Burdick Survey and the R. Morris Survey, the Policy specifically insured against any enforced removal of: (1) the 641 Arnold Building; (2) pavement extending from the 641 Arnold Property; (3) a roof overhang from the 641 Arnold Property and; (4) sidewalk extending from the 641 Arnold Property onto the 637 Arnold Property.

**The 641 Arnold Action**

1. On or about May 10, 2017, Giuseppe “Joe” Carannante (“**Mr.** **Carannante**”) entered into a contract to purchase the 641 Arnold Property from the Schwebel Family Trust (the “**Trust**”).
2. On or about June 2, 2017, Mr. Carannante’s ~~and his~~ attorney Adam Steuerman, Esq. (“**Mr. Steuerman**”) of Sinn, Fitzsimmons, Cantoli, Bogan, & WestP.A, obtained a June 2, 2017 survey prepared by Hans and Burdick (the “**1st 2017 R.C. Burdick Survey**”).
3. The 1st R.C. Burdick Survey conflicted with the 2014 R.C. Burdick Survey as it provided that there was no encroachment from any building on either side.
4. Upon information and belief, on or about June 6, 2017, Mr. Steuerman ~~and Mr. Carannante~~ used the 1st R.C. Burdick survey to obtain a title insurance policy for the 641 Arnold Property.
5. Upon information and belief, on or about June 10, 2017 Mr. Carannante and the Trust reached an impasse in negotiations with the Trust due to a title and boundary issue for the 641 Arnold Property.
6. ~~Upon information and belief, the impasse arose as a result of the Morris and Glasgow Surveys which the Trust provided to Mr. Carannante in connection with the sale.~~  I don’t know this. I was told by the Trust that they could not obtain title insurance.
7. On or about June 12, 2017, the Trust attempted to persuade 637 Arnold to resolve the alleged title issue and indemnify Mr. Carannante against any damages that might result to the building structure located on the 637 Arnold Property (the “**637 Building**”) if Mr. Carannante decided to demolish the 641 Building. ~~We~~ We need to fix this a little bit.
8. 637 Arnold denied this request from the Trust. I don’t think we need this. I technically resolve the trust the issue for the trust. The Caranannte & Steuerman did not want the purchase the building with the title issue.
9. On or about June 20, 2017, 637 Arnold informed the Trust, Mr. Carannante and Mr. Steuerman of the 2014 R.C. Burdick Survey and the Morris Survey and that they conflicted with the 1st 2017 R.C. Burdick Survey. Does this help us?
10. Upon information and belief, on or about June 21, 2017, Mr. Carrannante closed on the purchase of the 641 Arnold Property from the Trust (taking title through a limited liability company, 641 Arnold Ave, LLC (”**641 Arnold**”)).
11. At closing, the 641 Arnold Property was insured by a title policy which relied on the faulty and conflicting 1st 2017 R.C. Burdick Survey that showed no encroachment from either the 637 Arnold Building or the 641 Arnold Building.
12. On or about June 22, 2017, Mr. Steuerman sent correspondence to S. Dolan formally alleging that the 637 Arnold Building encroached upon the 641 Arnold Property and demanded the removal of the 637 Arnold Building from the 641 Arnold Property within 7 days.
13. Upon information and belief, on or about June 12, 2018, 641 Arnold obtained an updated title policy and a mortgage loan from Gibralter Bank again using the 1st 2017 R.C. Burdick Survey that obscured any encroachment or boundary dispute.
14. Upon information and belief, 641 Arnold failed to disclose the conflicting 2014 R.C. Burdick Survey, the Morris Survey and the Morris & Glasgow Surveys that 641 Arnold knew about to either its lender or title insurer.
15. Sometime between June 12, 2018 and September 12, 2018, Mr. Carannante and/or Mr. Steuerman obtained a revised version of the 1st 2017 R.C. Burdick Survey (the “**2nd 2017 R.C. Burdick Survey**”) which now indicated an encroachment of “.5’” but was ambiguous as to which building was encroaching, the 641 Building or the 637 Building.
16. On September 12,2018 Mr. Steuerman wrote to 637 Arnold alleging that the 2nd 2017 R.C. Burdick Survey “shows a .5 encroachment by the ‘Beach Graffiti’ building onto” the 641 Arnold Property and that as a result of 637 Arnold’s remodeling work, “there is concern [that the] encroachment…needs to be reconciled without delay.” The threatening expense litigation.
17. On September 20, 2018, 637 Arnold offer to meet with Steuerman to attempt to resolve the matter. We need to fix this.
18. ~~Almost two weeks later,~~ on or about September 25, 2018, 641 Arnold filed a Complaint (the “**Complaint**”) in the within action (the “**Action**”) alleging, among other things, that the 637 Arnold Property encroached upon the 641 Arnold Property.
19. Attached in support of the Complaint was the ~~1~~~~st~~ 2nd 2017 R.C. Burdick Survey.
20. As aforementioned, the 1st 2017 R.C. Burdick Survey conflicted with the 2014 R.C. Burdick Survey as it removed any indication that the 641 Arnold Building was encroaching upon the 637 Arnold Property.
21. As aforementioned, the 1st 2017 R.C. Burdick Survey conflicted with the 2nd 2017 R.C. Burdick Survey as it added encroachment indication. I added this
22. Further, and oddly, after obtaining title insurance policies and bank loans relying upon the 1st 2017 R.C. Burdick Survey that showed no encroachment, 641 Arnold, Mr. Carannante and Mr. Steuerman produced the 2nd 2017 R.C. Burdick Survey and then an additional, even further revised and more detailed survey prepared by Hans and R.C. Burdick but also dated June 2, 2017 (the “**3rd 2017 R.C. Burdick Survey**”) (the 1st 2017 R.C. Burdick Survey, 2nd 2017 R.C. Burdick Survey and 3rd 2017 R.C. Burdick Survey are collectively referred to as the “**2017 R.C. Burdick Surveys**”).
23. The 2nd 2017 R.C. Burdick Survey revised the 1st 2017 R.C. Burdick Survey to include a notation near a “.5’” marking (which was also on the 1st 2017 R.C. Burdick Survey) that stated “BLDG OVER-LAP”.
24. The 2nd 2017 R.C. Burdick Survey did not clarify which building was overlapping. The second survey appears to used to solicit a copy of 637 Arnold Ave Survey to force 637 Arnold into expense litigation. I am not sure if this makes sense
25. The 3rd 2017 R.C. Burdick Survey further revised the 1st 2017 R.C. Burdick Survey and the 2nd 2017 R.C. Burdick Survey to now include the notation “bldg. lot 2 over-lap on northwest and southwest corners of Beach Graffiti”.
26. The 3rd 2017 R.C. Burdick Survey directly conflicts with the conclusion reached in the Morris & Glasgow Surveys, 2014 R.C. Burdick Survey, R. Morris Survey and 1st 2017 R.C. Burdick Survey.
27. Upon information and belief, 641 Arnold filed the Action for an improper purpose and collateral benefit in order to exert leverage upon 637 Arnold and get 637 Arnold to agree to pay certain construction costs associated with 641 Arnold’s plans to demolish the 641 Arnold Building. My belief is changing a little bit. I am thinking
28. Upon information and belief, Hans and R.C. Burdick are frequent business partners with Sinn, Fitzsimmons, Cantoli, Bogan, & WestP.A & Mr. Carannante and created the conflicting 2017 R.C. Burdick Surveys at the behest of Mr. Steuerman in furtherance of his clients plans Mr. Carannante’s plan.
29. As a result of the filing of the Action, 637 Arnold was forced to cease moving forward with its plans to remodel and re-develop the 637 Arnold Property.

**Stewart Agrees to Appoint Counsel and Enter an Appearance on Behalf of 637 Arnold**

1. After the Complaint was filed, 637 Arnold put Stewart on notice of the Complaint and Stewart appointed Counsel to defend 637 Arnold, Michael Mezzacca, Esq. of Bourne, Noll & Kenyon, LLP.
2. Mr. Mezzacca refused to send a R. 1:4-8 letter to Mr. Steuerman demanding the withdrawal of the Complaint and reserving S. Dolan’s rights to later recoup attorneys’ fees and costs incurred and related to the frivolous suit.
3. Mr. Mezzacca opined to S. Dolan that the plaintiff did not believe a boundary dispute to truly exist and that the action was filed in order to exert leverage for a construction issue.
4. Mr. Mezzacca knowingly and willing permitted the plaintiff’s Mr. Steuerman attorney to use the proceeding for in proper use.
5. Mr. Mezzacca knowingly and willing permitted the Fraud upon Court to proceed for multiple months with directly intention of the protecting the plaintiff and the plaintiff’s attorney.
6. During the course of the Action Mr. Mezzacca and S. Dolan frequently disputed the manner in which Mr. Mezzacca was handling the Action.
7. Mr. Mezzacca agreed to file some subpoena information and depose witnesses per S. Dolan reques. Than at the formation at Mr. Steuerman requested.
8. Similarly, Mr. Mezzacca refused to depose witnesses, subpoena information and refused bring to the court’s attention S. Dolan’s concerns related to 641 Arnold’s improper motives, fraud upon the court, and abuse of process.
9. Mr. Mezzacca also consented to the removal of the 641 Arnold from the compliant over S. Dolan’s explicit objection.
10. Moreover, Mr. Mezzacca and Stewart informed S. Dolan during the course of the litigation that he needed to separate retain an independent construction counsel to resolve potential construction issues before the court and which, absent a defense, could have resulted in, among other things, the forced removal of the 637 Arnold Building, which was insured by Stewart and which Stewart agreed to defend against under the Policy.
11. For example, when 641 Arnold filed a Planning Board application relying on the 2017 R.C. Burdick Surveys and seeking to obtain approvals for construction work that would affect the disputed portion of the 637 Arnold Property and implicate the ultimate remedy reached in the Action, Mr. Mezzacca advised that Stewart would not represent S. Dolan’s interests in opposition to that application and refused to file a letter or Motion in the Action to enjoin 641 Arnold from proceeding before the Planning Board.
12. Instead, Stewart and Mr. Mezzacca advised S. Dolan to perform the construction at the plaintiff demands.
13. When S. Dolan refused to remove the construction and provide the plaintiff will clean title policy. Mr. Mezzacca demand S. Dolan retain coand pay for independent legal counsel, which S. Dolan did.

**The EAF Proposal and Disclaimer of Coverage**

1. On or about December 3, 2019, EAF One, LLC (“**EAF One**”) purchased the 641 Arnold Property from 641 Arnold.
2. On January 17, 2020, 637 Arnold and 641 Arnold entered into a Consent Order with EAF One, where EAF One substituted into the Action as Plaintiff for 641 Arnold (the “**Substitution Order**”).
3. After the Substitution Order, EAF One proposed a settlement agreement (the “**EAF Proposal**”) whereby 637 Arnold and EAF One ~~would stipulate and agree to not further challenge the true boundary line of the properties~~ ~~and agree to stipulate to the accuracy of a separate survey prepared by Morgan Engineering and Surveying on January 23, 2019 (the “~~**~~Morgan Survey~~**~~”).~~ would agree dismiss the case with prejudiced.
4. 637 Arnold rejected the EAF Proposal because the EAF Proposal would leave many issues unresolved, including exactly where 637 Arnold is permitted to extend its planned renovation activities.
5. Essentially, the parties would be left in an agreed upon perpetual stalemate and have competing claims to the disputed portion of their respective properties forever without a clear resolution as to who owns what – a resolution necessary for 637 Arnold to commence anticipated construction activities and begin earning anticipated rents.
6. Since 637 Arnold did not want to stipulate to the Morgan Survey which was mathematically inaccurate and left the true boundary line ambiguous and because 637 Arnold is entitled to use or be compensated for all of the 637 Arnold Property insured by Stewart, 637 Arnold rejected the EAF Proposal. Needs work.
7. ~~Based on 637 Arnold’s rejection of the EAF Proposal, among other things, Mr. Mezzacca filed a Motion to Withdraw, which was granted.~~
8. Thereafter, on March 5, 2020, Stewart sent 637 Arnold correspondence disclaiming further coverage under the Policy (the “**Disclaimer Letter**”) based on 637 Arnold’s refusal to accept the EAF Proposal and a purported failure to cooperate.
9. Stewart wrongly and improperly disclaimed coverage under the Policy by trying to force 637 Arnold to agree to the EAF Proposal.
10. As aforementioned, the EAF Proposal did not resolve 637 Arnold’s title claims, relied on the mathematically inaccurate Morgan Survey and would have resulted in 637 Arnold losing a portion of the 637 Arnold Property insured by Stewart.
11. On April 15, 2020, 637 Arnold sent Stewart correspondence (the “**Demand Letter**”) rejecting the reasoning set forth in the Disclaimer Letter and demanding that Stewart (1) continue to indemnify and provide coverage to the Insured related to the Action, including, but not limited to, the reimbursement of ongoing attorneys’ fees and costs related to the claims made in the Lawsuit and; (2) indemnify/reimburse 637 Arnold for past and potential future attorneys’ fees, costs and other damages arising from and related to the Action.
12. Stewart has not provided a response to the Demand Letter.

**COUNT ONE**

**(DECLARATORY JUDGMENT AGAINST STEWART)**

1. Third-Party Plaintiffs repeat and reallege the allegations contained in this Third-Party Complaint and make them a part hereof as though fully set forth at length herein.
2. 637 Arnold brings this action pursuant to N.J.S.A. 2A:16-51, et seq. the New Jersey Declaratory Judgments Act, as an actual controversy exists between 637 Arnold and Stewart, requiring a declaration by this Court as to the rights, duties and obligations of the parties pursuant to the Policy and whether Stewart improperly declined further coverage because of 637 Arnold’s decision to not enter into the EAF Proposal.
3. Stewart has previously acknowledged 637 Arnold’s right to coverage under the Policy, thereby causing 637 Arnold to rely on that determination and 637 Arnold has been forced to proceed to obtain independent Counsel in order to defend 637 Arnold’s rights and file the within Third Party Complaint.
4. Prior to the issuance of the Disclaimer Letter 637 Arnold also incurred additional attorneys’ fees and costs related to, among other things, a Planning Board application filed by 641 Arnold that should have been defended by Stewart or put off by way of a simple letter or Motion filed by Mr. Mezzacca in the Action.
5. By reason of the foregoing, a declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations and liabilities that exist among Stewart and 637 Arnold.

**WHEREFORE**, third-party plaintiff, 637 Arnold, LLC, demands the entry of a judgment against the defendant Stewart Title Guaranty Company, as follows:

1. Declaring 637 Arnold is entitled to coverage under the Policy;
2. Requiring Stewart reimburse 637 Arnold for all costs associated with the defense of this Action and defending the title to the 637 Arnold Property, including, but not limited to, reasonable attorney’s fees and costs previously incurred and those to be further incurred;
3. Requiring Stewart to reimburse 637 Arnold for compensatory damages and costs incurred and related to the loss of use of the 637 Arnold Property as a result of the Action and the alleged encroachment which is insured under the Policy; Remedninge need to fix title so it is marketable again.
4. For such other relief as the Court deems equitable and just.

**COUNT TWO**

**(BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)**

1. Third-Party Plaintiffs repeat and reallege the allegations contained in this Third-Party Complaint and make them a part hereof as though fully set forth at length herein.
2. At all relevant times mentioned herein Stewart was under an obligation to act in good faith and to treat 637 Arnold fairly and reasonably in connection with its obligations under the Policy.
3. Stewart breached that duty of good faith and fair dealing in accepting 637 Arnold’s claims under the Policy, acknowledging 637 Arnold’s right to coverage but then later directing 637 Arnold to obtain separate counsel and improperly declining and withdrawing coverage when 637 Arnold refused to accept the EAF Proposal.
4. Stewart has knowingly and purposefully disclaimed coverage improperly to avoid paying 637 Arnold for its damages incurred and related to the Action including, but not limited to, ongoing legal fees and costs associated with the Action.

**WHEREFORE**, third-party plaintiff, 637 Arnold, LLC, demands the entry of a judgment against the defendant Stewart Title Guaranty Company, as follows:

1. Declaring 637 Arnold is entitled to coverage from the Policy;
2. Requiring Stewart to reimburse 637 Arnold for compensatory damages and costs incurred and related to the loss of use of the 637 Arnold Property as a result of the Action and the alleged encroachment which is insured under the Policy;
3. Requiring Stewart reimburse 637 Arnold for all costs associated with the defense of this Action and defending the title to the 637 Arnold Property, including, but not limited to, reasonable attorney’s fees and costs previously incurred and those to be further incurred;
4. For such other relief as the Court deems equitable and just.

**COUNT FOUR**

**(PROFESSIONAL MALPRACTICE AGAINST STANLEY HANS AND RC BURDICK, P.C.)**

1. Third-Party Plaintiffs repeat and reallege the allegations contained in this Third-Party Complaint and make them a part hereof as though fully set forth at length herein.
2. Third-Party Plaintiffs retained Hans and Burdick to prepare the Site Plan Application and the 2014 R.C. Burdick Survey prior to the purchase of the 637 Arnold Property.
3. Third-Party Plaintiffs relied upon Hans and Burdick to prepare an accurate survey of the 637 Arnold Property.
4. The 2014 R.C. Burdick Survey was dated February 7, 2014 and was certified to by Hans for the managing member of 637 Arnold, Scott Dolan.
5. The 2014 R.C. Burdick Survey reflects on the northwest corner a notation that the building from the 641 Arnold Property encroaches upon the 637 Arnold Property. Specifically, the 2014 R.C. Burdick Survey states: “adjacent building over line 0.13’”.
6. The 2014 R.C. Burdick Survey reflects on the southwest corner the notation “adjacent building over line 0.16’”.
7. Subsequent to the 2014 R.C. Burdick Survey, Hans and R.C. Burdick prepared the 2017 R.C. Burdick Surveys.
8. The 2017 R.C. Burdick Surveys directly conflict with the 2014 R.C. Burdick Survey.
9. For example, the 1st 2017 R.C. Burdick Survey did not show any encroachment from either building, the 3rd 2017 R.C. Burdick Survey includes the notation “bldg. lot 2 over-lap on northwest and southwest corners of Beach Graffiti” and the 2014 R.C. Burdick Survey provides just the opposite.
10. Hans and R.C. Burdick have created multiple surveys for the same property line coming to grossly divergent conclusions.
11. Hans and R.C. Burdick have a duty to exercise the degree of knowledge, skill and judgment ordinarily possessed and used by the average surveyor in the profession.
12. Hans and R.C. Burdick failed to comply with the applicable statutory and/or professional standard of care by reaching multiple grossly divergent conclusions between the 2014 R.C. Burdick Survey and 2017 R.C. Burdick Surveys.
13. Hans and Burdick knew or should have known that the survey they prepared for 641 Arnold should have remained consistent with the 2014 R.C. Burdick Survey.
14. As the surveyors retained by Scott Dolan on behalf of 637 Arnold as contract purchaser for the 637 Arnold Property, Hans and R.C. Burdick owed S. Dolan and 637 Arnold a duty of care.
15. Hans and R.C. Burdick breached that duty by failing to comply with the applicable statutory and/or professional standard of care in preparing either the 2014 R.C. Burdick Survey or 2017 R.C. Burdick Surveys.
16. If the 2014 R.C. Burdick Survey is incorrect and had 637 Arnold known the 2014 R.C. Burdick survey was incorrect, 637 Arnold would not have proceeded to purchase the 637 Arnold Property on the same terms and the approvals obtained via the Site Plan Application may be called into question and/or become no longer applicable.
17. If the 2017 R.C. Burdick Surveys are incorrect, then 641 Arnold would not have had any legal basis to file the Action in the first instance and 637 Arnold would never have incurred the significant costs incurred and related to the Action.
18. In either event, the negligence and failure to comply with the applicable professional standard of care on the part of Hans and R.C. Burdick has caused 637 Arnold damages.

**WHEREFORE**, third-party plaintiffs, 637 Arnold, LLC and Scott Dolan, demand the entry of a judgment against the defendants Stanley Hans and R.C. Burdick, as follows:

1. For compensatory damages, reasonable attorneys’ fees and costs;
2. For such other relief as the Court deems equitable and just.

**COUNT FIVE**

**(CONTRIBUTION AGAINST STANLEY HANS AND RC BURDICK, P.C.)**

1. Third-Party Plaintiffs repeat and reallege the allegations contained in this Third-Party Complaint and make them a part hereof as though fully set forth at length herein.
2. In the event that the Court finds in favor of EAF One in the Action and determines that the 2014 R.C. Burdick is inaccurate, any liability on the party of 637 Arnold would be secondary and vicarious to Hans and R.C. Burdick’s liability.

**WHEREFORE**, third-party plaintiffs, 637 Arnold, LLC and Scott Dolan, demand the entry of a judgment against the defendants Stanley Hans and R.C. Burdick, as follows:

1. For compensatory damages, reasonable attorneys’ fees and costs;
2. For such other relief as the Court deems equitable and just.

**COUNT SIX**

**(SLANDER OF TITLE AGAINST STANLEY HANS AND RC BURDICK, P.C.)**

1. Third-Party Plaintiffs repeat and reallege the allegations contained in this Third-Party Complaint and make them a part hereof as though fully set forth at length herein.
2. Hans and R.C. Burdick created and certified to the accuracy of the 2017 R.C. Burdick surveys which are grossly divergent from the 2014 R.C. Burdick Survey.
3. Upon information and belief Hans and R.C. Burdick created the 2017 R.C. Burdick Surveys at the behest of Mr. Carranante to further Mr. Carranante’s improper attempt to pressure 637 Arnold and support 641 Arnold’s claims in the Action.
4. Upon information and belief, Hans and Burdick published the 2017 R.C. Burdick Surveys knowing that they conflicted with the 2014 R.C. Burdick Survey and knowing they would be used for purposes of this Action when they were in fact false.
5. Upon information and belief, Hans and Burdick published the 2017 R.C. Burdick Surveys in bad faith, intentionally and without justification or excuse.
6. The publication of the 2017 R.C. Burdick Surveys has caused 637 Arnold to be damaged.

**WHEREFORE**, third-party plaintiffs, 637 Arnold, LLC and Scott Dolan, demand the entry of a judgment against the defendants Stanley Hans and R.C. Burdick, as follows:

1. For compensatory damages, reasonable attorneys’ fees and costs;
2. For such other relief as the Court deems equitable and just.

**~~COUNT SEVEN~~**

**~~(CONTRIBUTION AGAINST ROBERT H. MORRIS AND MORRIS ASSOCIATES, INC.)~~**

1. ~~Third-Party Plaintiffs repeat and reallege the allegations contained in this Third-Party Complaint and make them a part hereof as though fully set forth at length herein.~~
2. ~~Morris prepared the Morris Survey for 637 Arnold in connection with the purchase of the 637 Arnold Property.~~
3. ~~Although 637 Arnold contends that the Morris Survey is accurate, if the Court finds in favor of EAF One in the Action and determines that the Morris Survey is inaccurate, any liability on the part of 637 Arnold would be secondary and vicarious to Morris’ liability.~~

**~~WHEREFORE~~**~~, third-party plaintiff, 637 Arnold, LLC demands the entry of a judgment against the defendant Robert H. Morris and Morris Surveyors, Inc., as follows:~~

1. ~~For compensatory damages, reasonable attorneys’ fees and costs;~~
2. ~~For such other relief as the Court deems equitable and just.~~

**DEMAND FOR TRIAL BY JURY**

PLEASE TAKE NOTICE that Third-Party Plaintiffs demand a trial of the issues by a jury of six persons.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Third-Party Plaintiffs hereby designate Matthew P. Dolan, Esq. as trial counsel in this matter.

**MEYNER AND LANDIS LLP**

*Attorneys for Third-Party Plaintiffs*

*637 Arnold LLC and Scott Dolan*

By:

Matthew P. Dolan, Esq.

Dated: May 26, 2020