

**APPENDIX**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 21-1164  
JEAN COULTER,  
Appellant

v.

PAUL LAURENCE DUNBAR COMMUNITY  
CENTER; GRACE YOUTH AND FAMILY  
FOUNDATION; CATHERINE DONNELLY; ...

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On Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. Civil Action No. 2:16-cv-00125)  
District Judge: Honorable Arthur J. Schwab

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**SUR PETITION FOR REHEARING**

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BEFORE: SMITH, Chief Judge, and AMBRO,  
CHAGARES, JORDAN, SHWARTZ, KRAUSE,  
RESTREPO, BIBAS, PORTER, MATEY, PHIPPS,  
and COWEN, Circuit Judges

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The petition for rehearing filed by appellant,  
Jean Coulter, in the above-entitled case having been  
submitted to the judges who participated in the  
decision of this Court and to all the other available  
circuit judges of the circuit in regular active service,  
and no judge who concurred in the decision having  
asked for rehearing, and a majority of the judges of  
the circuit in regular service not having voted for  
rehearing, the petition for rehearing by the panel  
and the Court en banc, is denied. Judge Cowen's vote

1a.

is limited to denying rehearing before the original panel.

BY THE COURT:  
s/ Robert E. Cowen  
Circuit Judge  
DATED: August 9, 2021

**NOT PRECEDENTIAL**  
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**FOR THE THIRD CIRCUIT**

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for the Western District of Pennsylvania  
(D.C. Civil Action No. 2:16-cv-00125)  
District Judge: Honorable Arthur J. Schwab

Submitted Pursuant to Third Circuit LAR 34.1(a)  
July 7, 2021

Before: CHAGARES, PHIPPS, and COWEN, Circuit  
Judges  
(Opinion filed July 8, 2021)

\_\_\_\_\_  
**OPINION\***

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\* This disposition is not an opinion of the full Court  
and pursuant to I.O.P. 5.7 does not constitute  
binding precedent.

2a.

PER CURIAM

Pro se appellant Jean Coulter appeals from the judgment of the United States District Court for the Western District of Pennsylvania, rejecting her claim for fraud in the inducement. For the following reasons, we will affirm.

The history of this case is set forth in two of our prior opinions, Coulter v. Paul Laurence Dunbar Cnty. Ctr., 685 F. App'x 161 (3d Cir. 2017), and Coulter v. Paul Laurence Dunbar Cnty. Ctr., 765 F. App'x 848 (3d Cir. 2019). Accordingly, and because we write primarily for the parties, we will only recite the facts necessary for our discussion. In May 2019, Coulter filed a second amended complaint, raising claims relating to a \$50,000 loan that she made to the now-defunct Paul Lawrence Dunbar Community Center ("the Dunbar Center" or "the Center"). (ECF 100.) In addition to the Dunbar Center, Coulter named as defendants the Center's Executive Director, Catherine Donnelly, the Grace Youth and Family Foundation, the Linn Law Group, and various individuals. Coulter alleged that she was fraudulently induced into (1) providing a loan to the Dunbar Center; (2) discontinuing the accruing of interest on the loan; and (3) delaying legal action. Coulter also asserted that the Dunbar Center breached its contract by failing to repay the principal and accrued interest on the loan.

The defendants filed a motion to dismiss. (ECF 109 & 110.) The District Court granted that motion in part and denied it in part, dismissing the majority of Coulter's claims but concluding that her allegations, accepted as true, stated claims that she was fraudulently induced into providing an interest-free loan and that the defendants breached the

contract related to that loan. (ECF 120.) The defendants next filed a motion for judgment on the pleadings. (ECF 166 & 167.) The District Court granted that motion in part and denied it in part, dismissing the remaining fraudulent inducement claim as to all defendants with the exception of the Dunbar Center, Donnelly, and the Grace Youth and Family Foundation, an organization which, according to Coulter, comingled its assets with those of the Dunbar Center. (ECF 178.) The defendants filed a motion for summary judgment, (ECF 299 & 300), which the District Court granted in part and denied in part. (ECF 310 & 311.) In particular, the District Court concluded that the Dunbar Center breached its contract and granted judgment in favor of Coulter in the amount of \$50,000.<sup>1</sup> See Fed. R. Civ. P. 56(f)(1). But the District Court granted the defendants' motion for summary judgment as to Coulter's fraudulent inducement claim. Coulter filed a timely motion under Federal Rule of Civil Procedure 59(e) (ECF 318), which the District Court denied. (ECF 340.) Coulter timely appealed. (ECF 342.)

We have jurisdiction under 28 U.S.C. § 1291.<sup>2</sup> We review district court decisions regarding both summary judgment and dismissal for failure to state a claim

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1 The District Court held, however, that Coulter was not entitled to recover interest on the loan because the agreement was for an interest-free loan. (ECF 310, at 23 n.13.) Coulter has not meaningfully challenged that determination on appeal. See Hall v. Susquehanna Twp. Sch. Dist., 969 F.3d 120, 124 n.2 (3d Cir. 2020) (holding that claims were forfeited where appellant failed to raise them in her opening brief).

2 The Appellees argue that our jurisdiction is limited to only the order granting in part their motion for summary judgment. See Appellees' Br. at 7-8. We disagree. We also

under the same de novo standard of review.” Barefoot Architect, Inc. v. Bunge, 632 F.3d 822, 826 (3d Cir. 2011). We also review the grant of a motion for judgment on the pleadings under a plenary standard. Rosenau v. Unifund Corp., 539 F.3d 218, 221 (3d Cir. 2008); see also Spruill v. Gillis, 372 F.3d 218, 223 n.2 (3d Cir. 2004) (holding that the standards governing Rule 12(c) motions are the same ones that govern motions to dismiss under Rule 12(b)(6)). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotations omitted). Summary judgment is proper where, viewing the evidence in the light most favorable to the nonmoving party and drawing all inferences in favor of that party, there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Kaucher v. County of Bucks, 455 F.3d 418, 422-23 (3d Cir. 2006).

Under Pennsylvania law, a plaintiff alleging fraud in the inducement must prove the following elements by clear and convincing evidence: “(1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its

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have jurisdiction over the orders addressing the motion to dismiss and the motion for judgment on the pleadings. See Phelps v. Kapnolas, 123 F.3d 91, 93 (2d Cir. 1997) (explaining that order “which dismissed the complaint as to five of the original defendants ... was not a final order, and therefore,

[plaintiff] could not appeal it until final judgment was entered ...."); McAlister v. Sentry Ins. Co., 958 F.2d 550, 552-53 (3d Cir. 1992) ("[A]n appeal from a denial of a Motion for Reconsideration brings up the underlying judgment for review.").

falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance." Freeman v. Pittsburgh Glass Works, LLC, 709 F.3d 240, 256-57 (3d Cir. 2013) (quoting EBC, Inc. v. Clark Bldg. Sys., 618 F.3d 253, 275 (3d Cir. 2010)). Coulter claimed that she "was deceived into making the Loan, based on knowingly untruthful statements by Donnelly about both the Center's financial circumstances at that time, as well as Donnelly's assurances that Donnelly had secured the approval of the Center's Board of Directors for Donnelly to accept the terms of the Loan Agreement (while Donnelly was acting in her role as Executive Director of the Community Center)." (ECF 302 at 5). But, as explained below, the summary judgment record, viewed in the light most favorable to Coulter, supports the District Court's conclusion that no reasonable jury could find by clear and convincing evidence that Donnelly's statements to Coulter were false or that the statements were made with the intent of misleading Coulter.

Coulter asserted that she was induced into making the loan based on Donnelly's representation that the Dunbar Center was in financial trouble solely because the Commonwealth of Pennsylvania had failed to reimburse the Center for expenses related to a food program. This statement was false,

according to Coulter, because the Dunbar Center's financial difficulties were caused by factors beyond the delayed reimbursement from the Commonwealth. In support of that claim, Coulter cited the Center's purported initiation of a loan request in September 2013, tax forms supposedly indicating that the Center was "hemorrhaging cash for years," and an alleged failure to successfully fundraise. (ECF 302, at 12, 24 of 30.) But that evidence does not establish that Donnelly's statement about the Center's finances was false. Instead, it merely provides a partial picture of the Dunbar's finances over the course of several years. Moreover, the record does not establish that Donnelly made the statement with the intent to mislead Coulter. Donnelly claimed that she did not remember telling Coulter about the Center's finances and asserted that it would have been out of character for her to ask Coulter for a loan. (ECF 299-1, at 63, 67 of 539.) Notably, Coulter asserted that she initiated the loan offer, without being solicited by Donnelly or anyone at the Dunbar Center. (ECF 299-1, at 212 of 539.)

Coulter further claimed that Donnelly falsely represented that the Board had approved the loan, when in fact the Board had been led to believe that the \$50,000 was a donation. The defendants asserted that Donnelly's statement to Coulter was not false. In support of that contention, the defendants submitted affidavits from a fundraiser at the Dunbar Center, Heather Dovenspike, as well as two board members, Louise Baldauf and Lorraine DiDomenico. Dovenspike remembered that Donnelly "told the board that there was a friend that offered to loan the money interest [free] until the other money that

Dunbar was waiting for came through." (ECF 299-1, at 423 of 539.) Baldauf recalled that Donnelly "presented and told us at a meeting that we had a loan from a friend of hers." (Id. at 519.) DiDomenico stated that Donnelly "said that she [was] getting some type of a loan from a friend that cared about Dunbar and that it was anonymous and that it was interest free." (Id. at 469.) Coulter did not "come forward with specific facts" showing that there is a genuine issue for trial concerning whether Donnelly made a false statement about the Board's loan approval. See *Santini v. Fuentes*, 795 F.3d 410, 416 (3d Cir. 2015) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)) (internal quotation marks omitted). Accordingly, because there was no genuine issue of material fact about whether Coulter was fraudulently induced into providing the loan to the Dunbar Center, the District Court properly granted summary judgment in favor of the defendants.<sup>3</sup>

With respect to the claim that Coulter was fraudulently induced into discontinuing the loan interest and delaying legal action, the defendants are entitled to judgment as a matter of law. Coulter did not justifiably rely on a misrepresentation by the defendants or establish that any injury she suffered was proximately caused by a misrepresentation. According to Coulter, a representative of the Dunbar Center "conned" her "into believing that [the Center] was in possession of monies which were 'earmarked' for beginning repayment of the Loan—but that the ... [representative] ... use[d] the funds as a 'bargaining chip' to convince Coulter to discontinue" the interest payment requirement

3 To the extent that Coulter alleged that defendants other than Donnelly fraudulently induced her into providing the loan, the District Court properly granted the defendants' motion for judgment on the pleadings. The factual allegations in the second amended complaint concerning Dovenspike and Jennifer Linn, an attorney for the Dunbar Center, pertain to conversations that occurred after Coulter entered into the loan agreement. In addition, the second amended complaint did not contain plausible factual allegations that the remaining defendants made any representations to Coulter concerning the loan.

and "delay[] commencement of legal action ...." (ECF 100, at 11 of 16.) At no point, however, did Coulter rely on that alleged misrepresentation to cancel the interest on the loan. Instead, according to the complaint, Coulter notified the defendants that she would "immediately call the loan," informed them that "any amounts that remain unpaid would be subject to interest[,] and "insisted that she be paid with any available funds, but refused to cancel the interest charges." (Id.) Moreover, even if the alleged misrepresentation caused Coulter to delay the commencement of legal action, she has not demonstrated an injury that was proximately caused by that reliance, especially given that she was awarded \$50,000 in her breach of contract claim. Thus, District Court properly granted the defendants' motion to dismiss as to Coulter's claim that she was fraudulently induced into discontinuing the interest on the loan and delaying legal action.<sup>4</sup>

For the foregoing reasons, we will affirm the judgment of the District Court.

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<sup>4</sup> We also conclude that the District Court did not abuse its discretion in denying Coulter's Rule 59(e) motion because she did not set forth grounds for reconsideration, such as an

intervening change in controlling law, new evidence, or a need to correct a clear error of fact or law or prevent manifest injustice. See Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010). There was also no abuse of discretion in the District Court’s denial of Coulter’s motion for recusal, which primarily was based on unfavorable rulings. Securacomm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000).

ON THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA  
**16CV0125 ELECTRONICALLY FILED**

JEAN COULTER, Plaintiff,

V

PAUL LAURENCE DUNBAR COMMUNITY  
CENTER ET AL, Defendants.

**MEMORANDUM ORDER ON DEFENDANTS'**  
**MOTION FOR SUMMARY JUDGMENT**

Pending is a Motion For Summary Judgment filed by Defendants Paul Laurence Dunbar Community Center (“Dunbar Community Center” or “Center”), Grace Youth and Family Foundation (“GYFF”), and Catherine Donnelly (“Donnelly”). (Doc. 299). By way of their Motion for Summary Judgment, Defendants seek dismissal of all remaining claims contained in pro se Plaintiff Jean Coulter’s (“Plaintiff” or “Coulter”) Second Amended Complaint (Doc. 100).

## I. Background

The history of this litigation is well known to the parties.<sup>2</sup> Therefore, the Court recounts only the history of the case relevant to the pending Motion for Summary Judgment.

10a.

On May 2, 2019, Plaintiff filed a Second Amended Complaint in which she asserted breach of contract and fraudulent inducement claims against the Dunbar Community Center, GYFF, Donnelly,

1 While Plaintiff is pro se, she is an experienced, prolific litigator, who has filed more than one dozen lawsuits in federal and state courts. (Doc. 299-1 at 131-176).

2 The United States Court of Appeals for the Third Circuit also is familiar with this litigation, given Plaintiff's numerous appeals in this case to the United States Court of Appeals for the Third Circuit. See Case Nos. 16-2809, 17-2868, 17-3495, 19-2396, and 19-3595.

and a number of now former defendants. (Doc. 100). After the Court ruled on a Motion to Dismiss and a Motion for Judgment on the Pleadings filed by the current and former defendants as to Plaintiff's Second Amended Complaint, "the remaining claims in this case are: (1) Plaintiff's breach of contract claim against Defendant Paul Laurence Dunbar Community Center based upon its failure to repay the Loan [Coulter made to the Dunbar Community Center]; and (2) Plaintiff's fraudulent inducement claim against Defendants Catherine Donnelly, Paul Laurence Dunbar Community Center, and Grace Youth and Family Foundation (including Plaintiff's request for punitive damages) related to Plaintiff being induced into providing the Loan to the Dunbar Center." (Doc. 178 at 11-12).

## II. Standard of Review

Summary judgment is only proper when there is no genuine issue of material fact in the case and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c)(2); *Horn v. Thoratec Corp.*, 376 F.3d 163, 165 (3d Cir. 2004). In reviewing

a motion for summary judgment, the role of the Court is “not to weigh the evidence or to determine the truth of the matter, but only to determine whether the evidence of record is such that a reasonable jury [fact finder] could return a verdict for the nonmoving party.” *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d Cir. 2009). If so, summary judgment will not be granted.

The district court must view all of the facts in the light most favorable to the non-moving party, who is entitled to “every reasonable inference that can be drawn from the record,” and if “there is a disagreement about the facts or the proper inferences to be drawn from them, a trial is required to resolve the conflicting versions of the parties.” *Reedy v. Evanson*, 615 F.3d 197, 209 (3d Cir. 2010) (quoting *Merkle v. Upper Dublin Sch. Dist.*, 211 F.3d 782, 788 (3d Cir. 2000); *Peterson v. Lehigh Valley Dist. Council*, 676 F.2d 81, 84 (3d Cir. 1982)). A party cannot, however, defeat a motion for summary judgment by pointing to fragmentary inferences that could be massaged to support his or her position. The non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)

Additionally, with respect to a fraudulent inducement claim which is brought under Pennsylvania law, in order to survive a summary judgment motion on said claim, a plaintiff must point to sufficient evidence in the record to support a reasonable jury's finding by clear and convincing evidence that the defendant is liable on each element of what constitutes fraudulent inducement under Pennsylvania law. *Tuno v. NWC Warranty Corp.*,

*Civ. No. 11-3958, 2013 WL 3939487, at \*13 (E.D. Pa. July 31, 2013), aff'd on other grounds, 552 F. App'x. 140 (3d Cir. 2014).*

**III. Relevant Facts of Record Viewed in a Light Most Favorable to Plaintiff as the Non-Moving Party**

***A. July 2013 Events***

In early to mid-July 2013, Coulter learned that Defendant Dunbar Community Center was having financial issues. (Doc. 299-1 at 206). Coulter had used the services of the Dunbar Community Center, and been friends with Defendant Donnelly, the Executive Director of the Center during the time period relevant to this lawsuit, since approximately 2000. (*Id.* at 182).

Coulter telephoned Donnelly, and during the course of the conversation, Donnelly told Coulter “that their only problem was that they had this money that was due to them that they had been delayed in getting.” (*Id.* at 213, 229) (emphasis added). “This money that was due to them” referred to reimbursement that was due to the Dunbar Community Center from the Commonwealth of Pennsylvania (“the Commonwealth”) for a food program the Center was running in the Butler, Pennsylvania area. (*Id.* at 213).

Based upon Donnelly’s statements to Coulter during their conversation about the source of the Center’s financial issue, Coulter offered to loan \$50,000 to the Dunbar Community Center. (*Id.* at 212). Notably, Donnelly did not ask Coulter to loan the Center any money. (*Id.*).

Coulter did not review the Center’s financial documents or books prior to her conversation with Donnelly. (*Id.* at 191). Coulter did not request to

speak to the Dunbar Community Center's Board prior to agreeing to lend the Center the funds. (Id. at 219). Coulter did not ask to speak to the Center's Board before making the loan because Donnelly told Coulter that "she was going to have to talk to the board and have the board[']s approval." (Id.).

On or about July 30, 2013, Donnelly and Coulter had another telephone conversation. (Id. at 298). Based on that conversation, on July 30, 2013, Coulter mailed Donnelly a certified check for \$50,000, payable to the Dunbar Community Center, along with a letter that set forth the terms of the loan. The letter stated in pertinent part:

Dear Kate;

Pursuant to our conversation earlier this afternoon, I am enclosing a Cashier's Check ... in the amount of \$50,000.00 (Fifty Thousand Dollars and no cents (sic.)) which I am sending to be used as an INTEREST FREE LOAN to the Paul Lawrence Dunbar Community Center.

As I understand it, the money due for the meals being served to the children has been coming in even slower than expected. So, I am thinking that, when reimbursement eventually arrives, the Paul Laurence Dunbar Community Center will repay this loan. If the States (sic.) has still not made repayment or (sic.) the amounts that they are currently in arrears, by December 31, 2013, then the Paul Laurence Dunbar Community Center will begin repaying the loan, at the rate of \$1,0000.00 (One thousand Dollars and no

cents) per month, until the States (sic.) catches up with the over-due re-imbursement, or until the full amount of the \$50,000.00 (Fifty Thousand Dollars and no cents) Interest-Free Loan is re-paid in full.

If these terms are acceptable with you, then go ahead and deposit the check.

...  
It's a good thing that Dunbar is doing for the kids. I'd hate to see the Community Center have to discontinue the meals just because the delay in reimbursement is causing financial problems.

(*Id.* at 298).

The \$50,000 check received from Coulter, with the notation "LOAN" on it, was deposited. (*Id.* At 299).

*B. The Dunbar Community Center's Receipt of a \$500,000 Bequest*

The conversations in July 2013 were not the only time Coulter and Donnelly spoke about funding for the Dunbar Community Center's food program. In approximately 2011, after the Center received a \$500,000 anonymous restricted bequest some time in 2010 ("the Bequest"), Coulter and Donnelly discussed how the Dunbar Community Center would fund the food program. (*Id.* at 28, 199-200, Doc, 302-2 at 3). Donnelly explained to Coulter that "[t]hey'd be putting out, I think, you know, roughly \$50,000 before they'd be getting the reimbursements," and so that the bequest would be used as a buffer, "[t]hat it was only going to be --- that the money was not going to be spent that way.

It was just going to be borrowing from the bequest and returning to the bequest. Well, returning to the program that the bequest was funding." (Doc. 299-1 at 199-200).

Coulter originally found out about the Bequest from an employee of the Center who was her friend, Marianne Dandilli. (*Id.* at 194). At some point later, Donnelly explained to Coulter that the Bequest was restricted to improving the Center's facility. (*Id.*). Donnelly never told Coulter that the Dunbar Community Center's building and the Bequest were the Center's only assets. (*Id.* at 191-192).

*C. The Attempted Late Repayment of Loan to Plaintiff*

The Dunbar Community Center did not pay Coulter \$1,000 in January 2014, as required under the terms of the loan. (*Id.* at 246). Coulter inquired about payment, and was told by Heather Dovenspike/Fennell ("Dovenspike/Fennell"), now the Executive Director of the Dunbar Community Center (Donnelly left the Center in February 2014), and a former defendant in this case, that the Center had no intention of repaying Coulter, and that the Center would repay Coulter "when we're good and ready." (*Id.* at 246, 248).

Thereafter, on or about July 2, 2015, approximately 19 months after the latest date when the first payment of \$1,000 was due on the loan,<sup>3</sup> Lorraine DiDomenico ("DiDomenico"), then President of the Center's Board, and a former defendant in this case, mailed a cashier's check for \$50,000, and a letter, to Coulter. (*Id.* at 301). The letter stated, in pertinent part, "that your cashing of this check acknowledges your acceptance of it as payment in

full for the \$50,000.00 loan you previously made to the Paul Laurence Dunbar Community Center.” (*Id.*). The payor on the check was Defendant GYFF. (*Id.* at 302).

Thereafter, on July 15, 2015, William Halle (“Halle”), a former defendant in this case, then a member of the Dunbar Community Center’s Board and also in charge of GYFF, informed Coulter, by email, that a \$50,000 check had been mailed to her for the funds owed to her by the Center. (*Id.* at 306). Coulter replied by email to Halle, and told Halle that she refused to accept the check because it did not include interest which Coulter asserted she was due. (*Id.*).

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3 Under the terms of the loan, the latest date for the first \$1,000.00 payment was January 2014. (Doc. 299-1 at 298). Had the Commonwealth reimbursed the Dunbar Community Center prior to December 31, 2013, payment on the loan would have been due earlier than January 2014. (*Id.*).

#### *D. William Halle*

Halle became a Dunbar Community Center Board member in May 2014. (*Id.* at 368). Halle was asked to join the Dunbar Community Center’s Board to: (1) look at the Center’s financial situation; (2) provide a report to the Center’s Board; (3) try to figure out a way to pay the Center’s creditors and vendors (one of which was GYFF); and (4) try to keep the Center “alive.” (*Id.* at 353-354).

Prior to joining the Dunbar Community Center’s Board, Halle asked to look at the Center’s balance sheet, and saw numerous errors. (*Id.* at 356). One error Halle discovered was that whenever the Center would receive an in-kind donation, i.e., a non-monetary donation, the donation would be

entered into the Center's accounting system as an asset. (*Id.*). This error was one reason why the Center showed numerous assets, valued at tens of thousands of dollars, for which no one could account. (*Id.* at 356-357). Halle straightened out, eliminated, and cleaned up the Center's balance sheets. (*Id.* at 357).

*E. The Paul Laurence Dunbar Community Center after July 2013*

Ultimately, the Dunbar Community Center only got a small percentage of the money it was owed from the Commonwealth as reimbursement for the food program. (*Id.* at 360). This was due to an error on the part of the Commonwealth, to which it admitted, but could not correct, because the money the Commonwealth owed to the Center came from federal funds, and the federal budget could not be reopened. (*Id.*).

Sometime in late 2014 or early 2015, the Dunbar Community Center sold its community center building. (*Id.* at 323). At the end of 2017, the non-profit corporation was dissolved. (*Id.* at 380).

Any money that remained after the sale of the Dunbar Community Center's building was used to pay the outstanding bills of the Dunbar Community Center. (*Id.* at 337-338). Importantly, Coulter was the first creditor of the Center offered repayment of money owed. (*Id.* at 338). But after Coulter refused to accept the \$50,000 offered, towards the end of the Center's existence, other creditors of the Dunbar Community Center, including GYFF, were paid with Dunbar Community Center funds. (*Id.* at 336-338, 377). Specifically, GYFF was paid in excess of \$50,000 for services that GYFF had provided to the Center, including rental of space in GYFF's building

after the Center sold its community center building. (Id. at 337).

*F. Defendant Grace Youth and Family Foundation (“GYFF”)*

GYFF was not responsible for any of the terms of Donnelly's employment with the Dunbar Community Center. (*Id.* at 64). GYFF did not make any employment decisions for the Center at the time Donnelly was employed by the Dunbar Community Center, and did not have any control over how Donnelly performed her work duties while she was employed at the Center. (*Id.* at 64, 390, 392).

The bank accounts of GYFF and the Dunbar Community Center were never combined in any way in 2013. (*Id.* at 392). Nor were any of the two entities' assets co-mingled in 2013. (*Id.* at 392-393). Prior to Donnelly leaving the Center, other than Donnelly and Halle participating in meetings together, the Center and GYFF “had no connection whatsoever.” (*Id.* at 64).

*G. Defendant Catherine Donnelly*

Donnelly had been the Executive Director of the Dunbar Community Center since at least 2000. (*Id.* at 182). In Donnelly's position as the Executive Director of the Center, except for a time period well before the time period at issue in this litigation,<sup>4</sup> Donnelly “put together” the Center's financial statements, which she presented at every Board meeting. (*Id.* at 30, 46). During the time period relevant to this lawsuit, Donnelly did not remember any of the Center's Board members, including the treasurer, Matt Perrotti (“Perrotti”), looking at the Center's bank statements. (*Id.* at 33-34, 47). Perrotti only looked at what he was given by Donnelly. (*Id.* at 47).

Donnelly did not remember, or otherwise have any recollection, of much of what occurred relevant to this litigation. (*Id.* at 31). Donnelly did not remember Coulter contacting her to make a loan to the Dunbar Community Center. (*Id.* at 63). Donnelly did not remember Coulter making a loan to the Center. (*Id.* at 63). Donnelly did not remember ever soliciting a loan from anyone, including Coulter. (*Id.* at 67-68). Donnelly recalled she and Coulter talked in July, 2013, but did not “remember specifically what [their communications] were about.” (*Id.* at 68).

Donnelly had no recollection of the Dunbar Community Center’s financial picture from the time the Center received the \$500,000 Bequest in approximately 2010, until the time she stopped working for the Center in approximately February 2014. (*Id.* at 27, Doc. 302-2 at 3). Donnelly had no recollection what was the reaction of the Center’s Board to “the fact that Dunbar’s assets were dropping more than \$100,000 every year,” other than that it would have been included in the Center’s Board meeting minutes. (Doc. 299-1 at 31). Donnelly had no recollection when she discussed with the Center’s Board that Coulter had offered a loan, or how she discussed that topic with the Board. (*Id.* at 32).

4 There had been a time, when George Frost (“Frost”) was the Dunbar Community Center Board’s treasurer, that he did the financial reports, and Donnelly was not allowed to touch bank statements or look at the bills. (Doc. 299-1 at 34). But Frost “left ages ago.” (Doc. 299-1 at 34). After Frost, the treasurers were Betty Balore and then Perrotti. (*Id.* at 35, 46).

Donnelly remembered that Dovenspike/Fennell, who originally was hired by the Dunbar Community Center as a program manager and fundraiser, "was fabulous working with the [Commonwealth]," but did not remember if Dovenspike/Fennell was otherwise successful in terms of fundraising. (*Id.* at 39). Donnelly did not remember whether in-kind donations to the Center were booked in its accounting system as cash. (*Id.* at 47). Donnelly did not remember the Center's checks bouncing in early 2014 before she left her employment with the Center. (*Id.* at 60). Donnelly did not remember if, or when, the Center's Board knew that checks were bouncing in early 2014. (*Id.*). Donnelly either was not aware that the Center's Board had received a loan from Northwest Savings Bank, or did not remember that such a loan was made to the Center. (*Id.* at 49).

H. Lorraine DiDomenico, Heather Dovenspike/Fennel, and Louise Baldauf Dunbar Community Center Board President Lorraine DiDomenico also had no recollection of the Dunbar Community Center bouncing checks in January and February, 2014. (*Id.* at 498-499).

Dovenspike/Fennell was employed by the Dunbar Community Center as a project manager and fundraiser from approximately 2010-2011 until the end of 2013 or the beginning of 2014, when she became the Center's Executive Director. (*Id.* at 414, 420). Dovenspike/Fennell did not remember what was the Center's financial picture when she first became involved with the Center. (*Id.* at 413). Dovenspike/Fennell was involved in obtaining a loan for the Center from Northwest Savings Bank at a point in time after Coulter had loaned the Center

\$50,000, but did not recall whether the bank was told about Coulter's \$50,000 loan to the Center. (*Id.* at 421-422).

With respect to Donnelly's communications with the Dunbar Center Community's Board about Coulter's offer of a \$50,000 loan, Dovenspike/Fennell recalled that Donnelly "told the board that there was a friend that offered to loan the money interest fee (sic.) until the other money that Dunbar was waiting for came through. She did not provide who it was. She said it was an anonymous person." (*Id.* at 423-424). Louise Baldauf ("Baldauf"), a Dunbar Community Center Board member during the relevant time period, and a former defendant in this case, remembered, "Kate [Donnelly] presented and told us at a meeting that we had a loan from a friend of hers." (*Id.* at 519). Finally, Center Board President DiDomenico stated that Donnelly "said that she has (sic.) getting some type of loan from a friend that cared about Dunbar and that it was anonymous and that it was interest free." (*Id.* at 469).

*I. The Dunbar Community Center's Finances Between 2008 and 2012*

The Dunbar Community Center's 990 tax forms from 2008-2012 were "Open to Public Inspection." (*Id.* at 1-3, 6, 8). These tax forms show that: (1) in 2008, the Center received \$95,315 from contributions and grants, and generated \$7,772 from other revenue; (2) in 2009, the Center received \$136,847 from contributions and grants, and generated \$7,775 from other revenue; (3) in 2010, the Center received \$595,116 from contributions and grants, and generated \$14,914 from other revenue; (4) in 2011, the Center received \$69,283 from

contributions and grants, and generated \$21,752 from program services, gaming and fundraising events, and other revenue; and (5) in 2012, the Center received \$81,961 from contributions and grants, and generated \$15,271 from program services and other revenue. (Doc. 302-2). The Dunbar Community Center's 990 tax forms from 2008, 2011, and 2012 further showed that, in those years, the Center's expenses exceeded its revenue by \$4,451 (2008), \$128,663 (2011), and \$149,838 (2012). (*Id.* at 1, 6, 8). Finally, the Center's 2012 990 tax form indicated that at the end of 2012, the Center's "Net assets or fund balances" was \$241,185. (*Id.* at 8).

On September 9, 2013, the Center applied to Northwest Savings Bank for a \$50,000 loan for "working capital." (Doc. 302-1).

*J. Coulter Files Lawsuit and Defendants Offer Full Repayment by Offer of Judgment*

Coulter originally filed this lawsuit on February 1, 2016. (Doc. 1). Less than 30 days later, on February 29, 2016, Defendants filed an Offer of Judgment which stated: "Dunbar hereby offers to the Plaintiff the entry of a judgment in Plaintiff's favor and against Dunbar in the amount of Fifty Nine Thousand Dollars (\$59,000.00) inclusive of interest, if any, plus costs accrued to the date of this offer." (Doc. 2). Coulter did not accept the Offer of Judgment.

**IV. Discussion of Defendants' Motion for Summary Judgment**

*A. Coulter's Fraudulent Inducement Claim against Defendants Dunbar Community Center, GYFF, and Donnelly*

Coulter states her fraudulent inducement claim as follows: "Coulter was deceived into making

the Loan, based on knowingly untruthful statements by Donnelly about both the Center's financial circumstances at that time, as well as Donnelly's assurances that Donnelly had secured the approval of the Center's Board of Directors for Donnelly to accept the terms of the Loan Agreement (while Donnelly was acting in her role as Executive Director of the Community Center)." (Doc. 302 at 5).

In order to state a fraud in the inducement claim against Defendants Dunbar Community Center, GYFF, and Donnelly, Coulter must prove "the following elements by clear and convincing evidence: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance." *EBC, Inc. v. Clark Bldg. Sys., Inc.*, 618 F.3d 253, 275 (3d Cir. 2010). See also *Mattern Hatchery, Inc. v. Bayside Enterprises, Inc.*, 775 F. Supp. 803, 809 (M.D. Pa. 1991) (explaining, "[t]o avoid summary judgment on a fraud claim, the plaintiff must establish by clear and convincing evidence a prima facie case for each of the five elements necessary to prove fraud at trial") (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986)).

"A misrepresentation is material if the party would not have entered into the agreement but for the misrepresentation." *Eigen v. Textron Lycoming Reciprocating Engine Div.*, 874 A.2d 1179, 1186 (Pa. Super. 2005) (quotation omitted). A plaintiff "need not prove that [a] fraudulent misrepresentation was the sole inducement to the investment of money, a

material inducement is sufficient.” *Silverman v. Bell Sav. & Loan Assoc.*, 533 A.2d 110, 113 (Pa. Super. 1987) (citation and quotation omitted).

“To be justifiable, reliance upon the representation of another must be reasonable.” *Porreco v. Porreco*, 811 A.2d 566, 571 (Pa. 2002) (citing *In re Allegheny International, Inc.*, 954 F.2d 167, 178 (3d Cir. 1992)). The *Porreco* court further explained:

While the nature of the relationship between the parties may affect the reasonableness of one's reliance, we hesitate to find justifiable reliance where the party claiming reliance had an adequate opportunity to verify the allegedly fraudulent statements.... Whether reliance on an alleged misrepresentation is justified depends on whether the recipient knew or should have known that the information supplied was false.... Where the means of obtaining the information in question were not equal, the representations of the person believed to possess superior information may be relied upon.

*Porreco*, 811 A.2d at 571 (citations and internal quotations omitted). “[T]he issue of whether reliance on a representation is reasonable (or justifiable) is generally a question of fact that should be presented to the jury.” *Tran v. Metro. Life Ins. Co.*, 408 F.3d 130, 139 (3d Cir. 2005).

Defendants assert that summary judgment must be granted as to the entirety of Coulter's fraudulent inducement claim because Coulter cannot establish the following elements of said claim. First, that the statements Donnelly made to Coulter were false. (Doc. 300 at 13). Second, that Donnelly made

the statements with the intent to induce Coulter to loan the Dunbar Community Center \$50,000. (Id.). Third, that Coulter's reliance on these statements was "justifiable." (*Id. at 16*).

The Court will address each of Donnelly's alleged misrepresentations separately.

1. *Donnelly's July 2013 statement that the lack of reimbursement from the Commonwealth was the only source of the Dunbar Community Center's financial trouble*

a. *Whether Donnelly's statement was false*

With respect to Donnelly's July 2013 statement that the Dunbar Community Center's financial trouble was solely due to the Commonwealth's delay in reimbursement of funds related to the Center's food program, the Defendants first contend that Coulter cannot demonstrate that this statement was false. Coulter disputes this contention, and in support thereof, asserts that the Center's 990 tax forms "show that the Center was hemorrhaging cash for years - and it is believed that indeed, Dovenspike had been completely unsuccessful in even covering her own salary at any time during her (sic.) Dovenspike's employment by the Center . . ." (Doc. 302 at 24).

Even viewing the facts of record in a light most favorable to Plaintiff as the non-moving party, the Court finds that Coulter has not pointed to sufficient evidence in the record to support a reasonable jury's finding by clear and convincing evidence that Donnelly's statement that the source of the Center's financial problem was solely due to the Commonwealth's delay in reimbursement was false.<sup>5</sup>

To the extent Plaintiff relies on the Center's 990 tax forms to establish the falsity of Donnelly's

statement, that in 2008, 2011, and 2012, the Center's expenses exceeded its revenue, does not create a genuine issue of material fact as to whether or not the Commonwealth's lack of reimbursement was the sole cause of the Center's financial trouble in July 2013. Similarly, that on September 9, 2013, the Center applied for a \$50,000 loan, for "working capital," does not create a genuine issue of material fact as to whether or not the Commonwealth's lack of reimbursement was the sole cause of the Center's financial trouble in July 2013.

Further, to the extent that Plaintiff opines that Dovenspike/Fennell's lack of fundraising was a source of the Center's financial trouble in July 2013, the Center's 990 tax forms submitted by Coulter do not establish, as posited by Plaintiff, that Dovenspike/Fennell did not fundraise or otherwise generate enough money for the Center to cover her \$50,000 salary. Dovenspike/Fennel began working for the Center in 2010 or 2011. (Doc. 299-1 at 414). First, the tax forms do not state who raised the funds or other revenue generated by the Center. Further, between 2010 and 2012, the Center raised in excess of \$50,000 yearly in contributions and grants.<sup>6</sup> (Doc. 302-2 at 3, 6, 8).

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<sup>5</sup> While Coulter attached to her Response to Defendants' Motion/Brief for Summary Judgment an Affidavit which states, "I hereby certify that any information in the foregoing Response to Defendants' Motion/Brief for Summary Judgment, which is not supported by references to Exhibits, is true and correct to the best of my knowledge and belief," Doc. 302 at 2, Plaintiff's non-specific Affidavit does not create a genuine issue of material fact as to whether Donnelly's statement that the Center's financial trouble was solely due to the Commonwealth's delay in reimbursement of funds related to the Center's food program was false. See Fed. R. Civ. P. 56(c)(4)

(stating, “[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated”).

6 In 2010, the Dunbar Community Center received \$595,116 from contributions and grants. (Doc. 302-2 at 3). In 2011, the Center received \$80,703 from contributions, grants, and gaming and fundraising events. (Id. at 6). In 2012, the most recent 990 tax form provided by Coulter, the Center received \$81,961 from contributions and grants. (Id. at 8).

*b. Whether Donnelly's statement was made with the intent to induce Coulter into loaning money to the Center*

Defendants next contend that Coulter cannot demonstrate that Donnelly made the statement that the source of the Center's financial problem was solely due to the delay in the Commonwealth's reimbursement with the intent to induce Coulter into loaning money to the Center. While Coulter contests Defendants' contention, she does not cite to any specific evidence in the record to support that Donnelly's statement was intended to induce Coulter into providing the loan. (See Doc. 302 generally).

Even viewing the facts of record in a light most favorable to Coulter as the non-moving party, the Court finds that Coulter has not pointed to sufficient evidence in the record to support a reasonable jury's finding by clear and convincing evidence that Donnelly made the statement that the source of the Center's financial problem was solely due to the Commonwealth's delay in reimbursement of funds with the intent to induce Coulter into loaning money to the Center.<sup>7</sup> In fact, to the contrary, even viewing the evidence in a light most favorable to Coulter, the undisputed evidence of record is that Donnelly did not ask Coulter to loan the Center money. (Doc. 299-1 at 212). Rather,

Coulter offered, unsolicited by Donnelly or anyone else associated with the Center, to loan the Center \$50,000. (Id. at 212).

Accordingly, because even viewing the evidence in a light most favorable to Plaintiff, Coulter has failed to present sufficient evidence to support a reasonable jury's finding by clear and convincing evidence that: (1) Donnelly's statement that the source of the Center's financial

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7 Plaintiff's non-specific Affidavit attached to her Response to Defendants' Motion/Brief for Summary Judgment, Doc. 302 at 2), does not create a genuine issue of material fact as to whether Donnelly made this statement with the intent to induce Coulter into loaning money to the Dunbar Community Center. See Fed. R. Civ. P. 56(c)(4) (stating, "[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated").

trouble in July 2013 was due solely to the Commonwealth's delay in reimbursement for expenses related to the Center's food program was false and (2) said statement was made with the intent to induce Coulter to loan the Center money, Defendants' Motion for Summary Judgment on Plaintiff's fraudulent inducement claim against the Defendants shall be granted to the extent that Plaintiff's fraudulent inducement claim is premised upon said statement.<sup>8</sup>

2. *Donnelly's statement that the Dunbar Community Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center*

*a. Whether Donnelly's statement was false*

Turning to Donnelly's statement to Coulter, on or about July 30, 2013, that the Dunbar Community Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center, Defendants first argue that Plaintiff cannot demonstrate that this statement was false. While Coulter contests Defendants' contention, she does not cite to any specific evidence in the record to support that Donnelly's statement that the Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center was false. (See Doc. 302 generally).

Even viewing the evidence of record in a light most favorable to Coulter as the non-moving party, the Court finds that Coulter has not pointed to sufficient evidence in the record to demonstrate that Donnelly's statement to Coulter that the Dunbar Community Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center was false.<sup>9</sup> To the contrary, even viewed in a light most favorable to Coulter, the undisputed evidence of

8 In light of this conclusion, it is not necessary to address Defendants' final contention that Coulter's reliance on Donnelly's statement as to the single source of the Center's financial problem was not justifiable, and the Court elects not to do so.

9 Plaintiff's non-specific Affidavit attached to her Response to Defendants' Motion/Brief for Summary Judgment, Doc. 302 at 2, does not create a genuine issue of material fact as to whether Donnelly's statement that the Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center was false. See Fed. R. Civ. P. 56(c)(4), *supra*.

record, from the Center's employee Dovenspike/  
Fennell, and the Center's Board members

DiDomenico and Baldauf, is that the Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center. Specifically: (1) Dovenspike/Fennell recalled that Donnelly "told the board that there was a friend that offered to loan the money interest fee (sic.) until the other money that Dunbar was waiting for came through. She did not provide who it was. She said it was an anonymous person;" (2) Baldauf remembered, "Kate [Donnelly] presented and told us at a meeting that we had a loan from a friend of hers;" and (3) DiDomenico stated that Donnelly "said that she has (sic.) getting some type of loan from a friend that cared about Dunbar and that it was anonymous and that it was interest free." (*Id.* at 423-424, 469, 519).

*b. Whether Donnelly's statement was made with the intent to induce Coulter into loaning money to the Center*

Defendants next assert that Coulter cannot demonstrate that Donnelly made the statement to Coulter that the Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center with the intent to induce Coulter into loaning the Center money. Again, Coulter disputes Defendant's assertion, but does not cite to any specific evidence in the record to support that Donnelly's statement that the Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center was made with the intent to induce Plaintiff into loaning money to the Center. (See Doc. 302 generally).

Even viewing the evidence of record in a light most favorable to Coulter as the non-moving party, the Court finds that Plaintiff has not produced any evidence from which a reasonable fact finder could

conclude that Donnelly's statement that the Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center was made with the intent to induce Coulter into loaning the Center money.<sup>10</sup> Notably, the undisputed evidence is that Coulter never told Donnelly that said approval was required, as a condition of the loan or otherwise. *Further, the language of the loan itself only required Donnelly to approve of the terms of the loan. See Doc. 299-1 at 298* (Coulter's July 30, 2013 letter, which accompanied the \$50,000 check, was addressed to Donnelly, and stated "[i]f these terms are acceptable with you, then go ahead and deposit the check").

Accordingly, because even viewing the evidence in a light most favorable to Plaintiff, Coulter has failed to present sufficient evidence to support a reasonable jury's finding by clear and convincing evidence that: (1) Donnelly's statement that the Center's Board had approved of Donnelly accepting the terms of Coulter's loan to the Center was false; and (2) said statement was made with the intent to induce Coulter to loan the Center money, Defendants' Motion for Summary Judgment on Plaintiff's fraudulent inducement claim against the Defendants shall be granted to the extent that Plaintiff's fraudulent inducement claim is premised upon said statement.<sup>11</sup>

*B. Coulter's Claim for Punitive Damages  
against Dunbar Community Center, GYFF,  
and Donnelly*

Plaintiff's claim for punitive damages is premised upon Donnelly fraudulently inducing Coulter into loaning \$50,000 to the Dunbar Community Center. Because this Court has found

that the Defendants are entitled to summary judgment on Plaintiff's fraudulent inducement claim, Coulter cannot recover punitive damages against the Defendants. Accordingly,

10 Plaintiff's non-specific Affidavit attached to her Response to Defendants' Motion/Brief for Summary Judgment, Doc. 302 at 2, does not create a genuine issue of material fact as to whether Donnelly made this statement with the intent of inducing Coulter to lend money to the Center. See Fed. R. Civ. P. 56(c)(4), *supra*.

11 In light of this conclusion, it is not necessary to address Defendants' final contention that Coulter's reliance on Donnelly's statement that the Center's Board had approved of Donnelly accepting the terms of Coulter's \$50,000 loan was not justifiable, and the Court elects not to do so.

Defendants' Motion for Summary Judgment on Plaintiff's claim for punitive damages shall be granted.

*C. Coulter's Breach of Contract Claim*

When advancing a claim for a breach of contract, a plaintiff must plead: "(1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resultant damage." *Presbyterian Medical Center v. Budd*, 832 A.2d 1006, 1070-71 (Pa. Super. Ct. 2003) (citation omitted).

1. Whether Plaintiff's breach of contract claim is moot

Defendants first argue that summary judgment must be granted on Plaintiff's breach of contract claim "on the grounds that their tender of a \$50,000 check to Plaintiff and an offer of judgment in the amount of \$59,000, which represents the balance owed under the loan effectively (sic.) agreement and costs, respectively, effectively moots the claim."

(Doc. 300 at 8) (citing *Weiss v. Regal Collections*, 385 F.3d 337 (3d Cir. 2004). “The burden of demonstrating mootness ‘is a heavy one.’” *Los Angeles County v. Davis*, 440 U.S. 625, 631 (1979) (citation omitted).

Defendants’ argument that Plaintiff’s breach of contract claim is moot is based upon the decision of the United States Court of Appeals for the Third Circuit in Weiss, *supra*. The Weiss decision, however, was abrogated by the United States Supreme Court’s decision in *Campbell Ewald Co. v. Gomez*, 577 U.S. 153 (2016). In *Campbell-Ewald Co.*, *supra*., the Supreme Court held, “[i]n sum, an unaccepted settlement offer or offer of judgment does not moot a plaintiff’s case.” *Campbell-Ewald Co.*, 577 U.S. at 165. See also *Richardson v. Bledsoe*, 829 F.3d 273, 282 (3d Cir. 2016) (explaining, “[t]he Supreme Court, however, disagreed with our first holding [in Weiss, *supra*], and instead explained that ‘an unaccepted settlement offer or offer of judgment does not moot a plaintiff’s case....’”) (quoting *Campbell-Ewald*, *supra*). Consistent with the Supreme Court’s holding in *Campbell-Ewald*, Inc., *supra*., the Court finds that neither Defendants’ tender of a \$50,000 check to Coulter, nor their Offer of Judgment in the amount of \$59,000, both which Coulter rejected, rendered Plaintiff’s breach of contract claim moot.

*2. Whether Plaintiff has demonstrated a material breach of the parties’ agreement*

Defendants further argue that summary judgment should be granted as to Plaintiff’s breach of contract claim because the Dunbar Community Center’s delayed payment to Coulter of the \$50,000 owed did not constitute a material breach of the

parties' agreement, which did not have a "time is of the essence" clause. (Doc. 300 at 10).

Contrary to the Defendants' assertion, the Court finds that the Dunbar Community Center's failure to make any payments to Coulter until July 2015, when DiDomenico mailed Coulter a \$50,000 check, which was approximately 19 months after the latest date when the first payment should have been made to Coulter, was a material breach of the loan by the Center.

*3. Whether Plaintiff has conceded that her breach of contract claim should be dismissed*

Finally, Defendants contend that summary judgment must be granted as to Plaintiff's breach of contract claim against both the Dunbar Community Center and GYFF because Plaintiff has conceded that her breach of contract claim should be dismissed:

she repeatedly has stated that she does not believe that the Center is appropriately considered responsible for the principal amount of the loan. See **Exhibit C**, 194:515; **Exhibit G**. Additionally, she does not believe that the Grace Youth and Family Foundation can be deemed liable for the principal amount of the loan, either. See **Exhibit C**, 194:19 - 195:1; **Exhibit G**. In other words, Plaintiff does not believe that either the Center nor the Grace Youth and Family Foundation can be held liable for the breach of contract claim. See **Exhibit C** 200:11-201:6, **Exhibit G**.

(Doc. 300 at 11-12) (emphasis in original).

With respect to Coulter's challenged statements, Plaintiff is *pro se*, and accordingly her

filings must “be liberally construed.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Having reviewed Exhibit C and Exhibit G in their entirety,<sup>12</sup> as well as Plaintiff’s arguments in her Response to Defendants’ Motion/Brief for Summary Judgment, the Court does not construe Coulter’s statements in these exhibits as an admission by Coulter that neither the Center nor GYFF can be held liable for the principal amount of the loan at issue in this case or for breach of contract. Rather, the Court interprets Coulter’s statements as an assertion of her opinion/belief that these defendants lack the ability to repay Coulter the \$50,000 Coulter loaned to the Center because, without having any authority to do so, former defendant Halle took the funds from the Center and then, either paid the funds over to GYFF, or kept the funds for himself.

Further, as to GYFF, Coulter’s sole claim against GYFF in her Second Amended Complaint is her fraudulent inducement claim; there is not a pending breach of contract claim against GYFF. (See Doc. 178 at 11-18) (“[t]hus, the remaining claims in this case are:

- (1) Plaintiff’s breach of contract claim against Defendant Paul Laurence Dunbar Community Center based upon its failure to repay the Loan; and
- (2) Plaintiff’s fraudulent inducement claim against Defendants Catherine Donnelly, Paul Laurence Dunbar Community Center, and Grace Youth and Family Foundation (including Plaintiff’s request for punitive damages) related to Plaintiff being induced into providing the Loan to the Dunbar Center”).

Accordingly, as it pertains to Plaintiff’s breach of

contract claim, Coulter's statements with respect to whether

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12 Exhibit C is Plaintiff's March 11, 2020 deposition transcript. (Doc. 299-1 at 72). Exhibit G is Plaintiff's "Argument in Opposition to Dismissal of the Appeal for Lack of Appellate Jurisdiction," filed with the United States Court of Appeals for the Third Circuit in Case No. 19-3595. (Id. at 310).

GYFF can be deemed liable for the principal amount of the loan or whether GYFF can be held liable for the breach of contract claim, are immaterial and irrelevant.

For all of the above stated reasons, Defendants' Motion for Summary Judgment on Plaintiff's breach of contract claim against the Dunbar Community Center shall be denied.

**V. Judgment is Granted in Favor of Plaintiff as to Her Breach of Contract Claim against the Dunbar Community Center**

The issue of whether the Dunbar Community Center breached the loan agreement has been fully briefed by the parties in their papers filed with respect to Defendants' Motion for Summary Judgment, and it is clear from the record in this case that even viewing the facts of record in a light most favorable to the defendants: (1) in July, 2013, the Dunbar Community Center and Coulter entered into a valid loan agreement whereby Coulter loaned the Center \$50,000 interest-free; (2) the Dunbar Community Center breached the loan agreement when it did not attempt to repay Coulter \$50,000 until on or about July 2, 2015; and (3) the Dunbar Community Center owes Coulter \$50,000. Indeed,

Defendants tried, albeit unsuccessfully, to pay Plaintiff the \$50,000 owed. Thus, were this case to proceed to trial, the Court will have to direct a verdict in Plaintiff's favor on the breach of contract claim against the Dunbar Community Center, and grant a judgment in favor of Plaintiff, and against the Center for exactly \$50,000.<sup>13</sup>

Federal Rule of Civil Procedure 56(f)(1) states: “[a]fter giving notice and a reasonable time to respond, the court may: (1) grant summary judgment for a nonmovant.” Fed. R. Civ. P. 56(f)(1). This rule must be read in conjunction with Federal Rule of Civil Procedure 1, which provides: “[these rules of civil procedure] should be construed, administered, and employed by

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<sup>13</sup> Given that the loan agreement was for an interest-free loan, Plaintiff is not entitled to recover interest on the loan. (Doc. 299-1 at 298).

the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1.

Because ultimately, the Court will have to enter a directed verdict for Plaintiff on the breach of contract claim against the Dunbar Community Center in the amount of \$50,000, it is clear that neither party in this case will benefit from going to trial on the claim. This lawsuit is almost 5 years old. The docket contains more than 300 filings. Sufficient time and money has been spent by all parties.

Accordingly, while Plaintiff did not file a motion for summary judgment, as she was ordered to do, see Doc. 298 (“Plaintiff and defendants shall file cross-motions for summary judgment”), the Court finds that because Plaintiff has consistently argued

that she is entitled to a judgment against the Dunbar Community Center with respect to her breach of contract claim, including so asserting in her Response to Defendants' Motion/Brief for Summary Judgment, the parties have had ample notice and opportunity to respond with respect to Plaintiff's entitlement to summary judgment against the Center on her breach of contract claim. The Court further concludes that, because, as stated *supra*., viewing the facts of record in a light most favorable to the Dunbar Community Center, there is no genuine issue of material fact with respect to any element of Plaintiff's breach of contract claim against the Dunbar Community Center, Plaintiff is entitled to summary judgment against the Dunbar Community Center on her breach of contract claim against the Center in the amount of \$50,000. As such, the Court shall enter Judgment in favor of Plaintiff, and against the Dunbar Community Center, as to Plaintiff's breach of contract claim against it, in the amount of \$50,000.

## **VI. Conclusion**

For all of the reasons stated above: (1) Defendants' Motion for Summary Judgment (Doc. 299) is GRANTED as to Plaintiff's fraudulent inducement and punitive damages claims against Defendants Paul Laurence Dunbar Community Center, Grace Youth and Family Foundation, and Catherine Donnelly, and is DENIED as to Plaintiff's breach of contract claim against Defendant Paul Laurence Dunbar Community Center; and (2) Summary Judgment is granted in favor of Plaintiff, and against Defendant Paul Laurence Dunbar Community Center, as to Plaintiff's breach of

contract claim against the Center in the amount of \$50,000.

A separate Judgment Order shall be issued forthwith.

The Clerk of Court shall mark this case CLOSED.

SO ORDERED this 3rd day of November, 2020.

s/Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
PENNSYLVANIA**

Case No. : 2:16-cv-00125-AJSjean coulter, p  
**JURY TRIAL DEMANDED**

Jean Coulter, Plaintiff

v.

Paul Laurence Dunbar Community Center, Grace Youth and Family Foundation, ...

Second Amended COMPLAINT FOR CIVIL ACTION  
NOW COMES Pro Se Plaintiff, JEAN COULTER and files Second Amended Complaint for Civil Action in this court pursuant to 28 U.S. Code Section 1332 (a)(1) :

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs. and is between (1) citizens of different states  
... "

40a.

Pursuant to the Order by Judge Schwab of April 11, 2019, this amendment is restricted to the claims of Fraud in Inducement and Breach of Contract.

The total amount of damages including Punitive Damages is \$250,000.00 (Two Hundred Fifty Thousand Dollars and No Cents) from the Defendants individually and/or collectively.

a.) PARTIES TO THE CIVIL ACTION

1.) Jean Coulter ("Coulter"), Pro Se Plaintiff, is a resident of New Jersey, with mailing address :  
3000 Chestnut Street  
P.O. Box 8094  
Philadelphia, PA 19101

2.) Defendant PAUL LAURENCE DUNBAR COMMUNITY CENTER ("Dunbar"), recipient of the loan, was a Non-Profit with a physical address which was located in Butler, PA and with current mailing address believed to be :

c/o Grace Youth and Family Foundation  
100 Center Avenue  
Butler, PA 16001

...

It must be noted that, to date, Defendants have consistently denied Coulter access to even the names of Board Members, much less access to the Board at any time, and, Dunbar has failed to provide even the most basic information about the financial picture of the organization at critical times including in relation to the sale of the building (the last remaining asset). As the result, Coulter has been forced to utilize information that she has heard from

outside sources, which often is non-specific and potentially unreliable.

b.) INTRODUCTION

For several years before the events which form the basis of this Civil Action, Coulter and members of Coulter's family were part of the Dunbar Community Center's "Family". Donnelly had consistently been in charge of the Community Center, ever since Coulter's first introduction to Dunbar - and, over the years Coulter learned that Donnelly (and the Community Center in general) were talented in stretching every dollar received in donations, to make it serve the most good. So, under the direction of Donnelly, Dunbar served the community by uncovering unserved needs of the Butler area and finding a way to serve the community through assisting with those previously unaddressed needs.

While Donnelly was able to make Dunbar's role in the community a significant source of assistance to a small portion of the community, Dunbar's resources were very limited, as were the Community Center's assets. Dunbar's budget had always been very modest, coming mainly from the financial assistance provided by the United Way along with a number of small grants from various government programs, and of course, the occasional donation by local residents and businesses. Eventually though, Coulter was told that Dunbar had received a very large bequest from a member of the local community, who had placed two restrictions on the gift - first that the identity of the donor be concealed, and that the donation be utilized exclusively to provide an improved building to house

**the Community Center. Thus, the contents of the bequest, along with the value of the existing building owned by Dunbar, constituted the entirety of Dunbar's "assets"!**

With the newly acquired bequest, Donnelly and Dunbar's Board decided to hire a fund-raiser to accomplish their goal of supplementing the funds from the bequest and building a much larger Community Center, so that Dunbar could help a much larger portion of the Butler area population. Dovenspike was hired by the community center, with her (very large by Dunbar's standards) salary paid for from the funds in the restricted request – on the basis that Dovenspike's fund raising would be intended exclusively toward the goal of a larger, improved building.

Eventually, Dunbar purchased a site for a new building in their target area, also using the funds from the bequest, and architectural studies, etc. began.

Donnelly had contacted Coulter at one point, to ask that Coulter look at a "mini-grant" funded by Disney, and asked if Coulter could find a way that Dunbar could become involved in the grant. Coulter was able to develop a program which became a recipient of the Disney grant - where Dunbar, working with another non-profit, could utilize the grant to bring together the youth served by Dunbar, along with elderly recipients of services from another non-profit in the Butler Area. So, it was not entirely unexpected when Donnelly contacted Coulter asking for Coulter's assistance in finding out about a program funded by the federal government, which was intended to provide additional nutrition beyond that provided during the school days. (Although

Dovenspike was employed by Dunbar at this same time, Coulter believed (and still believes) that Donnelly came to Coulter (instead of Heather), because Heather was "restricted" to fund raising which could be directly related to the new building (by the terms of the bequest).) And, Dunbar began serving nutritious meals and snacks first to students from one local school building, and eventually extending the "food program" to another school as well.

Because of Coulter's and Coulter's family's long-term involvement with Dunbar (and Donnelly), when Coulter heard that the Community Center had been having financial "issues", Coulter called Dunbar to speak with Donnelly - to see if they needed Coulter's assistance. During that July 2013 telephone conversation, Donnelly described Dunbar's situation as being exclusively the result of delays in reimbursement for the "food program" expenditures – making no mention of the actual circumstances and depth of Dunbar's severe financial difficulties. Coulter explained to Donnelly that Coulter would be willing to provide an interest-free loan to Dunbar which would be repaid at the rate of \$1,000.00 per month (beginning at the end of the next January), until such time as Dunbar finally received the highly delayed re-imbursement from the first days of the "food program" (at which time, any unpaid balance of the loan would be immediately repaid).

Coulter had heard the stories from Dunbar's history - about the extensive community involvement that was required (over a period of years), to accomplish the construction of the community center's building. And, because Coulter realized that Dunbar's assets were limited to only the building

occupied by the community center, along with the value of the bequest which remained restricted to use for providing a new (or at least improved) building for the community center – Coulter was anxious to assure that everyone understood that the money was available for use by Dunbar (for a very limited time) – and would have to be repaid! Coulter was anxious that the Board must be certain that fund-raising efforts would be sufficient to sustain this additional line-item in their budget,

Before Coulter had the opportunity to state Coulter's requirement that Coulter be permitted to speak with Dunbar's Board about the terms of the loan, Donnelly stated that Donnelly would have to present the terms of the loan to the Board, before Donnelly could be authorized to accept the offer that Coulter was making. Coulter explained that Coulter was interested in attending the meeting as well, but Donnelly indicated that the discussion was not something that the Board would determine would be appropriate for Coulter to attend - but promised to thoroughly explain both the agreement related to the loan and its terms, as well as Coulter's expectation that Coulter's identity would also be held in confidence.

c.) FACTS UPON WHICH THE CLAIMS ARE  
MADE

i.) Claim I – Fraud In Inducement – Summer 2013

1.) As explained above, Coulter understood the implications of Dunbar treating the loan as a "gift" – specifically because Dunbar would likely be forced to sell its building to repay the loan - and the sale of the building would most certainly mean the permanent end to the Paul Laurence Dunbar

Community Center! So, Coulter (as well as Donnelly) understood that it was absolutely imperative that the members of Dunbar's Board be made fully aware of the consequences of the money being used to accomplish only the most well-thought/long-term goals. However, based upon the Frauds by Donnelly (a person that Coulter had known for many years in Donnelly's role as head of the community center as well as personally) - which were accomplished through statements made to Coulter during their telephone conversation on the day before Dunbar received Coulter's check for the loan, along with Donnelly's deceptions asserting that the problems experienced by Dunbar were exclusively the result of a cash-flow issue - Coulter was "conned" into providing a check for what Coulter believed was understood by Dunbar's Board to be a Loan. Unfortunately for the entire community, the Board was unaware of the requirement for repayment until after the entire building was "spent"!

2.) Indeed, rather than Dunbar spending the entirety of the bequest for capital improvements or emergencies, the vast majority of the money was instead spent on day to day extravagances (rather than providing the basics on a reasonably-restricted budget) - including numerous expenditures authorized by Donnelly and/or Dovenspike which were undoubtedly made completely without the knowledge or approval of any member of Dunbar's Board!

ii.) Fraud In Inducement December 2013 through 2014

1.) The frauds at time of the inception of the original Interest-Free Loan, were not the only frauds committed for the purpose of inducing Coulter to take steps which would allow time for Donnelly and Dovenspike to "spend the building".

In both conversations and emails, Dovenspike convinced Coulter that Dovenspike had undertaken numerous communications with the Board about the Loan. And, upon learning that Coulter was not even scheduled to be paid by March 1, 2014, Coulter explained that Coulter would immediately "call" the loan based upon the second breach of the terms of the contract (as had been previously discussed)! Coulter also informed Dovenspike that any amounts that remained unpaid, would be subject to interest at the rate of 1 1/12 % per month (or 18% per year) – and Dovenspike chose to permit interest to be charged, rather than reign in her spending! From emails subsequently sent by Jennifer Linn, it is clear that at least some point, Linn (and according to Linn, all of Dunbar's Board (including all of the Defendants)) was eventually made aware of both the initial interest-free terms of the Loan, as well as the fact that the Loan was no longer interest-free (as of early March 2014). Thus, again, Coulter was subjected to Frauds in Inducement, this time by Linn who conned Coulter into believing that the Board was in possession of monies which were "earmarked" for beginning repayment of the Loan – but that the Board had authorized Linn to use the funds as a "bargaining chip" to convince Coulter to discontinue the imposition of the condition that interest be paid. But, Linn's claims of available payments were inevitably disproven when Coulter insisted that she

be paid with any available funds, but refused to cancel the interest charges – as each time Coulter made this demand, Linn explained that there was actually no money available for repayment. Thus, Coulter had been again "conned" into delaying commencement of legal action against the community center, believing that the Board understood the totality of the circumstances that they were acting under (and would therefore understand the necessity to assure that the building would not be "spent") – until every penny of Dunbar's assets, including the building had been "spent" by Dovenspike!

It eventually became obvious that neither Dovenspike nor Linn had actually had any discussions with the Board (before the Loan was subject to repayment with Interest), and both were intentionally deceiving Coulter in order to permit Dovenspike to continue to act in a manner which would benefit Dovenspike personally, but not assist assist Dunbar in meeting their obligations to any of Dunbar's creditors, its members or the community as a whole, or even Coulter! And, when Jennifer Linn willfully joined in with the deceptions which resulted in Coulter to again continue to delay legal action, Linn was also attempting to use her supposed knowledge of the law, to increase the likelihood that Coulter fall prey again to their frauds. Thus the acts by both Dovenspike and Linn also resulted in damages to Coulter by each of their Frauds in Inducement to continue the Loan, rather than commencing this Legal Action – actions which had convinced Coulter to again delay legal action (and permitted the Loan to continue despite the fact that Dunbar had concealed the fact that the community

center had absolutely no intention to pay the interest that had begun accruing). And, without Linn's role, it is likely that Dunbar's building could have been "spent" before the Board became aware of how at least some of the Board's Members had been taken-in as well.

d.) **Claim II - BREACH OF CONTRACT / BREACH OF IMPLIED CONTRACT**

1.) **Dunbar Community Center has already acknowledged that, in July 2013, there was a Loan made to the community center by Coulter.**

a.) Coulter contacted Defendant Donnelly, to offer a limited term "interest -free" loan, to cover what Coulter had been led to believe were financial difficulties due (as Coulter was made to believe) exclusively to delayed repayment of monies associated with a grant Dunbar had received. The grant, issued by the United States Government, was designed to repay monies advanced by Dunbar in relation to the children's "food program" that Dunbar ran at a number of locations in Butler. (The U.S. Government grant is believed to be administered in Pennsylvania by the Pennsylvania Department of Education.) Although representatives of the community center (with the exception of Donnelly and Dovenspike) initially denied knowledge of the loan – Donnelly and Dovenspike always acknowledged the existence of the Loan, and Defendant Linn eventually admitted that they had found a copy of the Loan Agreement in Dunbar's files.

b.) On July 30,2013, Coulter had a phone conversation with Defendant Donnelly where

Donnelly informed Coulter that the Board had approved Donnelly's acceptance of the loan. At Donnelly's request Coulter immediately over-nighted a Cashier's Check in the amount of \$50,000.00 (Fifty Thousand Dollars and no Cents), made payable to the Paul Laurence Dunbar Community Center, to the attention of Defendant Donnelly, at Dunbar's address - along with a copy of a hastily written Loan Agreement (Previously attached to the initial Complaint as Exhibit A).

c.) Defendant Donnelly signed the agreement in her role as Dunbar's Executive Director (kept a signed copy in Dunbar's files and returned a signed copy to Coulter), and deposited the check in Dunbar's account.

2.) Dunbar has acknowledged that the formerly interest-free loan became subject to repayment with interest at the rate of 1 ½% per month (18% per year), in conversations, as well and emails sent to Coulter by Linn.

a.) Eventually, at the time that the second monthly payment was over-due, Coulter discussed with Dovenspike that the full amount of the Loan would be due immediately unless Dunbar agreed to pay interest at the rate of 1 ½% per month, until the full amount of the Loan (plus interest) was repaid. Dovenspike chose to continue to delay repayment, despite the fact that the money could no longer be repaid without the added interest charges.

Again, it is important to note that the addition of the responsibility for payment of interest on the Loan, has also been acknowledged in emails sent by Linn in her role as Dunbar's Legal Counsel.

## CONCLUSION

For unexplained reasons, the Officers and Members of the Board of Dunbar chose to look the other way to ridiculous purchases by Dovenspike (the new Executive Director) - after looking the other way for years as Dovenspike failed miserably in her position of fund-raiser for Dunbar. Dovenspike had refused to hold Spaghetti Dinners and other small fundraisers, in favor of flashy parties which never succeeded in even paying the expenses of the party itself, much less making a dent in Dovenspike's exorbitant salary. So, it is inexcusable that Dunbar's Officers and Board of Directors expect Coulter to forego the interest that she is due, on a loan which was frittered away by Dovenspike's laziness and extravagant tastes.

Excuses have been many, to explain why Dovenspike chose to remodel Dunbar's building, when it was obvious that their programming could never be completed. And, while Coulter did not always fall for the lies she was told, the money had already been spent - in large part because certain Members of the Board (possibly, the group which, at one point, was referred to as the "Executive Committee"), chose to conceal the truth from the rest of the Board, thus costing Coulter significant money and causing significant stress.

Dunbar's Board, as a whole, has miserably failed to uphold their responsibilities to over-see the financial position of Dunbar and protect both Dunbar's clients as well as Dunbar's creditors. It is inconceivable that none of these educated professionals ever demanded to see even one single Bank Statement which would have proven that Dunbar's financial crisis was inevitable. However, the actions by those identified as the "Executive

Committee" (those with whom Coulter was independently able to directly inform of Dunbar's actual situation), consciously chose to keep both the remainder of the Board Members and Coulter in the dark, so that they could permit Dovenspike to spend at will. Therefore, those members of the "Executive Committee", along with Dovenspike and Linn, have, I believe committed serious crimes, and most certainly should pay a significant price for their actions. Thus, it is necessary for the Jury to determine, and the Court to Order, those Defendants pay Punitive Damages, as well as direct compensation for losses Coulter has suffered – particularly as Coulter must now understand that had it not been for her failing to assure that the Board fully understood the conditions tied to the money – Dunbar would not have been forced to permanently close!

**PRAYER FOR RELIEF**

Coulter seeks recovery for injuries in the amount of \$250,000.00 (Two Hundred Fifty Thousand Dollars and No Cents) including punitive damages along any other Relief which the Court finds appropriate.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully Submitted,

Jean Coulter, Plaintiff

**ORDER OF COURT**

AND NOW, this day of April, 2016, for the reasons set forth in the Memorandum Opinion filed

contemporaneously with this Order, the Court hereby GRANTS Defendants' Motions to Dismiss Plaintiff's Amended Complaint (doc. nos. 32 and 34), and in so doing, Plaintiffs Amended Complaint is DISMISSED WITHOUT PREJUDICE for lack of subject-matter jurisdiction. Plaintiffs pending Renewed Motion for Recusal and Renewed Motion for stay to Permit Discovery (doc. no. 35) are DENIED AS MOOT.

s/Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

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J. Pullar - by Ms. Coulter  
end of July of 2013, and you're saying you were not directly involved with the board in August. You would have been in July that they could have called you on as their attorney to look at things had the board known. To the best of your knowledge then, she did not discuss it with anyone until she did it the end of November or December?

A. Right. It was at the end of the year; but, it was, again, a potential anonymous person. A friend of Kate's was giving Kate money to assist. That was my understanding at that point. I became aware of that on June 3 when I was asked to handle the matter. That was when I was told -- your name was first brought up on February 24.

Q. Just so you have a little bit of background, anyone whose name I knew was on the board, I had already written to them in January

saying, are you aware of the situation; are you aware of what the books are saying?

Now, have you had a chance to look at Dunbar's books? Because they're all gone and

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L. DiDomenico - by Ms. Coulter

Not me specifically, but when was the first time that you heard there was a \$50,000 loan to the community center?

A. Kate said that she has getting some type of a loan from a friend that cared about Dunbar and that it was anonymous and that it was interest free. That's what I remember, that we didn't have to pay any interest.

Q. Except I'm asking when?

A. Oh, jeez, Jean.

Q. Was it near the time when you got the letter from me that explained about it? Was it after that when Kate told you about it?

A. I honestly, in my heart of hearts, have to tell you, I can't remember a lot of this. I was lucky to be at a meeting once every month or every have two months. So I don't remember I can't remember.

Q. I realize it's been a while and it's been a while particularly because we have to keep going on appeal and on appeal after the judge comes up one after another decisions that get overturned on appeal, but -- and it's also t

L. Baldauf - by Ms. Coulter

So you stayed on pretty much until the bitter end. Do you remember when Kate left?

A. I'm not sure of the date. I know she turned in her resignation. I can't remember what date.

Q. Well, just for -- just to let you relax tonight and not have to think about it, that was in February of 2014 that she left. So at that point did you have any idea whether it was long before that or shortly before that that you heard about the loan that I had made to the community center?

A. Shortly before that.

Q. So you're talking about maybe a month or two, or is six months shortly before?

A. A couple of months.

Q. Now, did you attend most of the meetings? I know your name was always --

A. Yes.

Q. I mean everybody remembered your name. So it had to be either that or the Tai Chi. I can't remember which.

A. Yes.

Q. So you were very good board member.

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C. Donnelly - by Ms. Coulter

meals and they backed out at the very last minute. She helped to find a restaurant owner that was willing to provide the meals for us. She worked at finding board members, made

applications for various donations.

Q. When the financial situation -- I should start back a step.

At the board meetings, the board I was on, a big part of the board meeting every month was the financial situation.

A. Yeah.

Q. Would you say it was similar in Dunbar?

A. Well, I put together the financial statement based on all receipts, all payments, all incoming, all outgoing using QuickBooks so we had a statement as to income and outgo. And QuickBooks did the mathematical equation to figure out what a full statement would look like, and that was presented at every board meeting.

Q. And you did that or --

A. Yeah, I did that.

Q. What did the treasurer for Dunbar do?

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C. Donnelly - by Ms. Coulter

A. Write checks.

Q. Okay. How was the budget set on things?

A. At the beginning -- well, prior to the beginning of the year the board would -- I would make a suggestion for a budget and the board with adapt it, adjust it, approve or disapprove.

Q. As the look -- when I first looked at Dunbar's statements, I was in absolute shock, when I started looking at the 990's. How did the board deal with the fact that Dunbar's assets

were dropping more than \$100,000 every year?

A. All of that would have been included in the board meeting minutes. I can't tell you. I don't know. It would have been included there.

Q. I mean, what was their reaction?

A. I don't know. I can't tell you that.

Q. Do you not attend the board meetings?

A. I did, but I was in total burnout. I don't remember most of that stuff. It was all

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C. Donnelly - by Ms. Coulter written down in the board minutes. There wasn't a reason to try to remember it, and I didn't.

Q. Okay. Well then, when did you discuss with the board and how did you discuss with the board that I had offered a loan?

A. I don't remember that, Jean. It would have been in the board meeting minutes.

Q. Unfortunately, Kate, they're all gone. Nobody at all will admit to having them.

A. All I can tell you is that when I was there I had a filing cabinet in the office that held all board meeting minutes, all financial reports, all receipts, all -- anything like that for the twelve months prior to whatever it was; and anything older than that went into filing cabinets down in the dungeon. I kept meticulous records. What happened after that, I can't tell you. I don't have them.

Q. Now, I remember being there when

Heather was there and there was -- I'm thinking maybe she was a senior aide that was in there and Heather was constantly coming and complaining that the senior aide was not booking the expenses properly.

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...

Q.

I remember it being a woman

A. have no memory at all of her though, just that  
Q. was a woman treasurer,

...

Q. Now, did anyone on the board, the  
the president, anyone on the board  
a look actually at the bank statements?

A, I couldn't answer that

I don't

Q. Well, even before that time, did  
the board

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Q. at the bank statements?

A. Not that I remember

Q. The reason I'm asking this is, remember  
very distinctly, because it was very  
strange, you --

door, and on double door.

had walked in through the front  
the side of the door it was a big  
On the side was the mailbox And  
you walked in with your hands full  
of mail  
and

you said to me would I please go out and get the bank statement out of the mailbox

And I just

sort of looked at you and rolled my eyes, because at the time I was dealing with my mother with her Alzheimer's,

I said, Kate, you have the mail  
In your hands

And you explained to me that you  
were not allowed to touch the envelope.

It was

only the treasurer who was allowed to touch the envelope

A. Oh, that was Mr. Frost

He left ages - -

Q. It wasn't - -

As long as he was the treasurer  
ago

A, allowed to touch that stuff  
I wasn't allowed to see that stuff  
He - - reports and it was entirely up  
deposits, wrote the checks  
I - - look at the bills

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What I remember it being was a  
rather plump old lady, kind of like I am now, who  
was treasurer at that point

I do not remember

her name, but

Well, after

I don't remember who  
was the treasurer after George, but Betty was  
Betty Balore was the treasurer

Q. Betty is the one I remember

so you didn't have to do that with her? Because like I say, I remember very distinctly because was very odd. That was just so strange it

A. George Frost

Q. No.

That would have been with

Well,

can you tell me about how there was the decision to get a new building rather than do renovations?

A. Practically from the time I arrived nothing in the building met code The disability ramp in the front didn't make ADA requirements

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...

The cost of renovating or anything to meet code far exceeded the cost of the building So from the very get-go we were trying to figure out how to get a new building

Q. Okay. Well , what made - it seemed Bauer to sign a check so you could postage stamps get a roll of one.

A. I don't remember that one.

Q. Does that sound like - -

A. I don't know.

Q. Well, were you able to was there any way for you - did you have petty cash or credit cards or something like that that you would be able to use that type of thing?

A. We had a credit card. I can't remember whether it was a general one or for a specific store. I don't know

Q. Because I was wondering, before

Heather ever left there was, I believe, three or  
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C. Donnelly - by Ms. Coulter  
explained it, it may have been Marianne or  
someone else, that way you could have a spur of  
the moment party without having the board approve  
it.

Does that sound familiar?

A. We had an account with Freedman's  
so that if we had any last minute needs, we could  
meet them, yeah.

Q. And I remember one time you  
indicated that -- I think you had to get Betty  
Bauer to sign a check so you could get a roll of  
postage stamps --

A. I don't remember that one.

Q. Does that sound like --

A. I don't know.

Q. Well, were you able to -- was there  
any way for you -- did you have petty cash or  
credit cards or something like that that you  
would be able to use that type of thing?

A. We had a credit card. I can't  
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specific store. I don't know.

Q. Because I was wondering, before  
Heather ever left there were, I believe, three or

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Q. Now, from the meeting notes that I  
I don't think they're in this stack  
there was a discussion. program when they

had in

money from the sale

So gotten the first payment the building

This was for the summer their hands the hand

this came after they had on the

after selling

A. been signed,

A. After the building agreement had  
you mean?

Q. Yeah, the agreement had been  
signed

And you were going to be running the  
I assume you were running it under  
program

A. Dunbar's name.

Q. Because the meeting notes that I  
have said that the agreement was that you  
were to

get the hand money that they had  
from the sale of the building; and  
other than

that, you were going to look for other  
sources, but, meanwhile, Grace

Youth & Family Foundation was going  
to be

financing running the summer programs in the  
parks

A. Okay.

That's not accurate.

The

way I can try and explain it

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W. Halle by Ms. Coulter

I'm wearing multiple hats

So I am Grace  
& Family Foundation as a vendor at that  
doing the program, because Dunbar had no  
to pay their food provider  
So the Grace  
& Family Foundation is actually the  
organization that brought that whole program into  
Butler County, one of three organizations  
So we  
were already providing food for kids  
So we took that over  
So we were providing that  
Dunbar had to let go all of their  
employees except a couple, and most people at  
that point were working as a volunteer even  
though they were still  
listed at a position  
So we were actually  
- it was Grace Youth & Family  
Foundation staff under our purview, under our  
responsibility, under our insurance, et cetera,  
that were providing the actual program.  
So, yes,  
there was discussion of us being paid at some  
point for that  
But, yes, part of what you stated  
that was accurate was that Grace Youth & Family  
Foundation as a vendor had agreed to continue to  
do the program  
under Dunbar's name for several  
reasons. One, we wanted you know,

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63a.

IN THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

JEAN COULTER, Pro Se Plaintiff  
v. Case No. : \_\_\_\_\_

PAUL LAURENCE DUNBAR COMMUNITY  
CENTER, ..., Defendants

Amended EMERGENCY PETITION  
FOR WRIT OF PROHIBITION/WRIT OF  
MANDAMUS

NOW COMES, Jean Coulter, Plaintiff in the above-entitled action in the District Court – a case which has already been brought before this court on two (2) separate appeals where two separate panels have overturned the decisions from the same District Court - based on the need to correct highly biased decisions by the same District Court which continues to hear the case. In support of the Requests for Extraordinary Relief by this court, Coulter states :

1.) On June 14, 2016 and again on August 25, 2017 (and November 13, 2017), Coulter filed Notices of Appeal, seeking review of decisions by District Judge Schwab. And on April 13, 2017 and March 19, 2019, this court issued decisions which over-turned the dismissals produced by District Judge Schwab, and remanded the case, for consideration again by Judge Schwab.

2.) At the time of the very first appeal of the Instant Matter, Coulter's Brief argued that Judge Schwab had refused to even consider one of Coulter's Motions for Recusal – arguing that the District Court's action displayed a clear Abuse of

Discretion. This court ruled that Judge Schwab's decision to wait to rule on pending motions for recusal until first ruling on dispositive motions, was "not ideal", stating :

"... Coulter also argues that the District Court abused its discretion by waiting to rule on her renewed motion for disqualification until it already had decided to dismiss her complaint and then denying her motion as moot. Taking that approach was not ideal. ..."

3.) Coulter has again been forced to request Recusal by the same District Court, based on obvious displays of extreme bias, and again the Judge Schwab has chosen to ignore Coulter's pending Motion for Recusal, so that Judge Schwab might have the opportunity to first DISMISS the extreme majority of Coulter's Claims, without regard to the clear bias which was displayed. *And, again, Judge Schwab has chosen to delay consideration of the pending Motion for Recusal (as well as Coulter's accompanying Motion for Stay), until after first dismissing the extreme majority of Coulter's Claims. And it was not until later, apparently after receiving a copy of Coulter's Petition for Writ of Prohibition / Writ of Mandamus), that Judge Schwab again denied the Pending Motion for Recusal (as well as the Motion for Stay) as moot!*

4.) *Indeed, in his most recent decision (dismissing many of Coulter's Claims), Judge Schwab chose to also Dismiss Coulter's Claims for interest due on the Loan, despite the fact that Defendants' Counsel has not asserted any "issues" with regard to the interest damages - other than*

asserting that Coulter failed to show that their contract was breached (exclusively) as the result of Defendants' decision to allow interest to accrue. However, it is readily evident that Coulter clearly pled that the contract was breached prior to the time that the accrual of interest began, as Coulter described that the first breach occurred when the January payment was not received – and it was not until Coulter learned that Defendant Dovenspike had not make a timely payment for February either, that Coulter demanded either repayment in full, or that Defendants agree to pay interest as described in the Complaints. Indeed, Defendants' Counsel, instead of requesting Dismissal of Claims for interest on the Loan, Defendants' Counsel solely requested Dismissal for breach of contract (without mention of the interest which was accruing) on the basis that the breach of the contract was not sufficiently pled, stating in their Reply Brief :

"... Plaintiff failed to sufficiently allege facts supporting that the Dunbar Defendants breached any contract or that any breached [sic] resulted in recoverable damages, Plaintiff's breach of contract claim must be dismissed as a matter of law." (page 4 of Reply Brief)

And, in their Brief to the Second Amended Complaint, Defendants' Counsel only stated :

"Plaintiff alleges that she advised Defendant Dovenspike at some point that the entire loan amount was due, unless the Dunbar Center agreed to pay interest at a rate of 1 1/2% per month until the full amount was repaid. *Id.*

*Lastly, Plaintiff alleges that Defendant Dovenspike chose to continue to delay repayment, despite the fact that the money could no longer be repaid without interest charges. Id." (page 5 of Brief)*

...

*"Plaintiff has failed to allege that allowing interest to accrue breached any terms of the contract. Further, Plaintiff has not shown that she suffered any damages as a result of the Dunbar Defendants allowing interest to accrue. Accordingly, as Plaintiff failed to sufficiently allege facts supporting her claim that the Dunbar Defendants breached any contract or that any alleged breached resulted in recoverable damages, plaintiff's breach of contract claim must be dismissed as a matter of law." (page 11 of Brief)*

*It is clear that Defendants' Counsel has only argued that the Breach of the Contract Claim was not sufficiently pled, if Coulter's is claiming that the Breach of Contract was exclusively based upon the fact that Defendants had allowed interest to accrue – and, indeed, Defendants have not asserted that they do not owe the interest which is/was accruing.*

5.) *It is also clear that Defendants' have never denied that they have a clear obligation to repay the (accruing) interest due as well as repaying the principle. Despite these facts, Judge Schwab has chosen to refuse to permit Coulter to recover for losses of the interest due – despite the fact that Defendants' Counsel has never asserted that interest is/was not due to Coulter. In fact, Judge Schwab wrote :*

*"... 4. Defendants' Motion to Dismiss Plaintiff's claim that Defendant breached the parties' contract because it failed to make payments with additional interest accrued thereon is GRANTED."*

6.) *In addition to the "issues" discussed above, it should be explained that the most recent Motion for Recusal was prompted by Judge Schwab's ORDER of June 4, 2019, where Judge Schwab specifically ORDERED the Licensed and Experienced Counsel employed by Defendants, to address, in detail, specific Issues which Judge Schwab has determined would most easily be utilized by Judge Schwab (TEXT Order, doc. 112) :*

**"TEXT ORDER> In Defendants' Reply (due on 6/7/19), Defendants shall address the Second Amended Complaint's averments of materiality and proximate cause as those elements are critical ..."**

It should be noted that while Defendants' Counsel did, previously, submit a Motion to Dismiss the entirety of Coulter's Second Amended Complaint, none of the Issues raised in Defendants' Motion and Brief for their Motion to Dismiss, in any way raised the Issues which Judge Schwab has just determined that he wished to have available for his utilization at this time. It is also noteworthy that Judge Schwab swiftly filed his 16-page Ruling just two (2) working days after Defendants' new filing was docketed – and one day after the filing of Coulter's most recent Motion for Recusal.

5.) While failure of a District Court to recuse is generally considered to be sufficiently

addressed at the time of appeal, Case Law has repeatedly determined that consideration of a judge's refusal to recuse, by the Appellate Court prior to appeal, is desirable and even necessary any time that it is believed that to permit the District Court to continue, might result in the loss of confidence in the impartiality of the Justice System by the Public, as explained in In re Kensington Intern. Ltd., 353 F. 3d 211 - Court of Appeals, 3rd Circuit 2003 :

"Mandamus is a proper means for this court to review a district court judge's refusal to recuse from a case pursuant to 28 U.S.C. § 455(a), where the judge's impartiality might reasonably be questioned."<sup>[7]</sup> Alexander, 10 F.3d at 163. Indeed, "[v]irtually every court of appeals has recognized the necessity and propriety of interlocutory review of disqualification issues on petitions for mandamus to ensure 220\*220 that judges do not adjudicate cases that they have no statutory power to hear." Alexander, 10 F.3d at 163 (quoting School Asbestos, 977 F.2d at 778). ..."

*See also* In re School Asbestos Litigation, 977 F. 2d 764 - Court of Appeals, 3rd Circuit 1992. And, it is particularly important that the Writ be GRANTED in this case, as this very simple and small case has already been considered on appeal twice – thus, for both Judicial Economy, as well as the benefit of all of the Parties, it is important that **the case not be required to be brought on appeal for a third time!**

WHEREFORE, It is hard to imagine a situation more likely to "raise eyebrows" among the

Public, than the Instant Matter – particularly in light of the fact that Judge Schwab has improperly assumed the role of Lead Counsel for Defendants as well as both the fact that

a.) This Honorable Court has twice already sent back similarly improper dismissals in this same case, by this same District Court, as well as the fact that

b.) **Twice previously, the Third Circuit has found it necessary to require that the District Court in this case, Judge Schwab, be removed from subsequent determinations – following the successful appeal by one or more of the Parties *in those other, unrelated cases***

It is therefore necessary, at this time, that This Honorable Court review the most recent filings by the Parties in this case (Documents 100, 101 and 109 – 120), (including the District Court's determination that the judge can appropriately order that one of the Parties proceed in a specific and previously un-utilized path for Defendants' argument – so that the District Court might have a plausible basis for its pre-determined outcome). It is readily apparent that every reasonable person would be forced to seriously question if any jurist can be considered to be impartial, after that jurist has chosen to personally direct that a specific Issues must be argued by the experienced and licensed Counsel who represents Defendants in this case!

Further, it is also necessary that Judge Schwab's determination that the extreme majority of Coulter's Claims can be dismissed (without even permitting Coulter time to respond to Defendants' brand-new arguments), must be overturned. This is the only way that a truly unbiased jurist can have

the opportunity to permit both Coulter's response  
(and possible amendment by Coulter) – in order to  
permit at least some of the bias that Coulter has  
been subjected to, to be counterbalanced.

Respectfully Submitted,

Jean Coulter, Plaintiff