

the settlement company that held in escrow the proceeds from the sale of the property. Gidey challenges the trial court's November 19, 2019, and April 20, 2020, rulings on several dispositive motions as well as the court's rulings pertaining to attorney's fees and costs. For the reasons that follow, we affirm the trial court's rulings.

I. Factual Background and Procedural History

In 1993, Gidey and Yehdego purchased a home located at 5401 8th Street, N.W. (the "Property"), which they held as tenants by the entireties. In 1996, Yehdego filed for divorce, and he obtained a default judgment against Gidey after she failed to timely respond. The judge in the divorce case awarded Yehdego sole title to the Property. In 2008, Yehdego used the Property as security to obtain a \$180,000 loan through a Home Equity Line of Credit ("HELOC") from Bank of America (the "Bank of America loan" or the "HELOC loan").

In 2014, Gidey filed a motion for relief from the default judgment entered against her in the divorce case, asserting that she had not been properly served, and, initiating a separate case, also filed a complaint for Declaratory Judgment against Yehdego, requesting that the court find that the Property was joint marital property and enjoin Yehdego from encumbering, selling, or transferring it unilaterally. The two cases were consolidated, and in 2016, the court granted relief to Gidey: it vacated the divorce, entered a declaratory judgment that the Property was joint marital property,

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and prohibited Yehdego from encumbering, selling, or transferring it unilaterally.

In February 2018, Gidey and Yehdego signed a Standard Purchase Agreement ("SPA") to sell the Property to a purchaser that subsequently assigned its rights to the Property to 5401 8th St. The SPA identified the Bank of America loan as an "existing lien" on the property and provided that Gidey and Yehdego would "convey the Premises free and clear of all liens."

The SPA also set out the following "per diem damages clause":

When Seller is able to convey the property free from liens . . . the parties shall proceed to Settlement either: (1) as scheduled on the Settlement Date [March 31, 2018]; (2) if there was a delay in obtaining the title report or survey, if needed, within the 10 business days noted above; or, (3) within 7 days after clearing any and all issues in order to satisfy Seller's obligations. If Seller delays closing more than 7 days beyond any of the time periods noted in the prior sentence, then Purchaser shall have the option to either terminate the contract immediately . . . or charge a per diem of \$150.00 for each day closing is delayed beyond 7 days, the total amount of which shall be credited to Purchaser from Seller's proceeds at Settlement.

In addition, the SPA provided that:

In any action or proceeding involving a dispute between Purchaser and Seller arising out of this Contract, Purchaser will be entitled

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to receive from Seller reasonable attorney's fees, court costs, and process server's fees and expenses. In the event a dispute arises resulting in the Settlement or Escrow Agent being made a party to any litigation or if those agents are required to bring litigation to enforce or interpret this Contract, Purchaser and Seller agree to indemnify the Settlement and Escrow Agents . . . for all attorney fees and costs of litigation.

Settlement was delayed after a dispute arose between Gidey and Yehdego as to whose share of the sale proceeds would be used to pay off the HELOC loan. The parties agreed to change the settlement date to May 1, 2018, to allow Gidey and Yehdego additional time to resolve the dispute. On May 1, 2018, with Gidey and Yehdego still unable to resolve their dispute, Gidey, Yehdego, 5401 8th St, and Settlement Corp. signed an Escrow Agreement (sometimes hereafter referred to as "the Agreement") that allowed the closing on the sale of the property to occur.

The Escrow Agreement provided that the sale proceeds would be placed in an escrow account, to be held by Settlement Corp., until Gidey and Yehdego came to "a written agreement as to the division of sales proceeds." The Escrow Agreement further provided:

[T]he parties agree that said escrow shall not be held for a period exceeding 30 days, at which time [Settlement Corp.] shall proceed to file an interpleader action in the Superior Court of the District of Columbia placing the escrowed funds in the Registry of the Court

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until such time as the Court determines how the sales proceeds are to be divided. . . .

The Agreement also contained other provisions relevant to the instant dispute, described below.

Thirty days passed, and Gidey and Yehdego were still unable to resolve their dispute. On or about June 3, 2018, with Settlement Corp. having not yet filed an interpleader action, Gidey requested that Settlement Corp. not release any of the escrowed funds pending a challenge she intended to bring to the validity of the HELOC lien. Thereafter, on July 17, 2018, Gidey commenced a quiet title action against Yehdego and Bank of America. Multiple times, Gidey communicated that Settlement Corp. was not to file an interpleader action and was to keep the sale proceeds in the escrow account.² On April 17, 2019, the court in the quiet title case ruled in favor of Gidey, ordering that the HELOC indebtedness be fully satisfied from Yehdego's portion of the sale proceeds. Thereafter, Settlement Corp. paid off the HELOC loan using Yehdego's portion of the

² The trial court found, for example, that on June 9, 2018, Gidey's counsel emailed Settlement Corp. and 5401 8th Street, stating that "all proceeds from the sale of the property should be kept in the escrow account until [Gidey] obtain[s] the declaratory judgment from the courts." On June 13, 2019, Gidey's counsel wrote a letter to 5401 8th St and Settlement Corp., saying, "It seemed obvious that in view of [the quiet title case] there was no need to file a separate interpleader action to determine how the sale proceeds should be divided and to deposit the escrow funds in the court registry. . . . [T]here is therefore no issue or controversy arising from the terms of the escrow agreement that requires an interpleader action. . . ."

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proceeds, and on June 20, 2019, 5401 8th St obtained clear title to the Property.

With the HELOC loan repaid, Gidey requested disbursement of her share of the remaining sale proceeds. Settlement Corp. responded by advising Gidey and Yehdego that, pursuant to the SPA's per diem damages clause, it proposed to pay \$88,976 of the proceeds to 5401 8th St based on the sellers' delay in providing clear title to the Property. After Gidey objected that 5401 8th St was not entitled to damages for the delay, Settlement Corp. filed the instant interpleader action, naming Gidey, Yehdego, and 5401 8th St as defendants.

5401 8th St filed an answer as well as a cross-claim against Gidey and Yehdego for breach of contract. In addition to answering Settlement Corp.'s complaint and 5401 8th St's cross-claim, Gidey filed three counterclaims against Settlement Corp. for breach of fiduciary duty, breach of contract, and recovery of unpaid interest on the escrowed funds; a cross-claim against 5401 8th St for breach of contract; and a cross-claim against Yehdego for indemnification for any costs or damages Gidey might be ordered to pay to Settlement Corp. or 5401 8th St. 5401 8th St sought dismissal of Gidey's cross-claim against it for failure to state a claim, and the court granted that motion on November 19, 2019.

On March 11, 2020, the court held a hearing at which it entered judgment against Yehdego on 5401 8th St's cross-claim. Also at this hearing, the court

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ordered Gidey's counsel to personally pay 5401 8th St's attorney's fees in connection with its motion to extend time for discovery due to counsel's failure to respond appropriately to discovery requests.

Settlement Corp., 5401 8th St, and Gidey each filed a motion for summary judgment on their various claims, counterclaims, and cross-claims. On April 20, 2020, the trial court issued its rulings on these various motions.³ On May 18, 2020, the trial court also entered judgment against Gidey and Yehdego and in favor of 5401 8th St and Settlement Corp. for their legal fees and costs. Finally, on June 8, 2020, the trial court entered judgment against Gidey on her cross-claim against Yehdego. We consolidated Gidey's appeals from these various rulings.⁴

³ The court granted Settlement Corp.'s motion to interplead in part and denied it in part. In its motion, Settlement Corp. requested that the court 1) require Gidey, Yehdego, and 5401 8th St to litigate their competing claims to the remaining sale proceeds; 2) allow Settlement Corp. to deposit the sale proceeds into the court registry; and 3) award Settlement Corp. \$2,000 to cover the cost of bringing the interpleader case. The trial court granted the motion as to the first and third requests. It denied the motion as moot as to the second request because the court had already ruled, on March 11, 2020, that the portion of the Escrow Agreement requiring Settlement Corp. to deposit the funds into the court registry was unenforceable, given that the court was not a party to the case. Gidey assigns error to the trial court's failure to order Settlement Corp. to disburse funds to her, but does not specifically challenge the court's ruling relating to the availability of the court registry. We express no opinion as to whether that ruling was legally correct.

⁴ Gidey's reply brief asserts that "[o]n May 31, 2021, this Court entered an Order granting [a]ppellant's motion which

II. Standard of Review

We review the trial court's rulings on the motions for summary judgment de novo, applying the same standard the trial court was obligated to apply. *Santos v. George Washington Univ. Hosp.*, 980 A.2d 1070, 1073 (D.C. 2009). Thus, we will assess whether the moving parties demonstrated "that there [was] no genuine issue of material fact and that they [were] entitled to judgment as a matter of law." *Colbert v. Georgetown Univ.*, 641 A.2d 469, 472 (D.C. 1994) (en banc) (citing Super. Ct. Civ. R. 56(c)). Our review is also de novo with regards to the trial court's ruling on the motion to dismiss for failure to state a claim. *Abdullah v. Roach*, 668 A.2d 801, 804 (D.C. 1995). We review the trial court's order that Gidey's counsel pay 5401 8th St's attorney's fees related to the motion to extend time for discovery under an abuse of discretion standard. *Roe v. Doe*, 73 A.3d 132, 135 (D.C. 2013). "We disturb a discovery sanction on appeal only if the trial judge has abused his or her discretion by imposing a penalty too strict or unnecessary under the circumstances." *Id.* (internal quotation marks omitted). Our review is de novo as to issues of contract interpretation. *Tillery v. District of Columbia Contract Appeals Bd.*, 912 A.2d 1169, 1176 (D.C. 2006).

asked the Court to grant the relief requested in her Brief. . . ." We have no record of such an order and thus disregard this assertion.

III. Analysis

A. Settlement Corp.'s Summary Judgment Motion to Interplead and for Contractual Indemnity

In granting Settlement Corp.'s motion for summary judgment on its count asking that the defendants be required to interplead, the trial court found that there was no genuine dispute as to the existence of a disagreement over the proper disbursement of the sale proceeds. The court noted that Gidey's only argument in opposition was that 5401 8th St's claim to the sale proceeds was "plainly false" and "frivolous," such that Settlement Corp. was not actually exposed to multiple liabilities and, therefore, an interpleader action was unwarranted. Gidey makes no claim, however, that Settlement Corp. proceeded in bad faith in seeking interpleader,⁵ and we agree with the trial court's reasoning that the merit *vel non* of 5401 8th St's claim to a portion of the escrowed funds did not negate Settlement Corp.'s right to file an interpleader action where the parties disagreed about their rights to the funds.⁶

⁵ Gidey highlights that Settlement Corp. "willfully" and "intentionally" avoided adhering to the deadline specified in the Escrow Agreement for filing an interpleader action, but she does not suggest that Settlement Corp. lacked a good faith belief as to the existence of a dispute between the parties as to their entitlement to the escrowed funds. Moreover, Gidey's communications conveying that there was "no need" to file an interpleader action (see *supra* note 1) undermine Gidey's willfulness argument to the extent that it attributes an improper motive to Settlement Corp.

⁶ Cf. *Union Cent. Life Ins. Co. v. Hamilton Steel Prods., Inc.*, 448 F.2d 501, 504 (7th Cir. 1971) ("[S]o long as there exists a real and reasonable fear of exposure to double liability or the vexation

On the record before us, we are entirely unpersuaded by Gidey's argument that the trial court "wrongly declared that Gidey doesn't dispute that a disagreement exists between 5401 8th St, on the one hand, and Gidey . . . related to the disbursement of the purchase proceeds."

On appeal, Gidey raises new arguments as to why interpleader was improper: (1) the Escrow Agreement did not authorize disbursement of any proceeds to 5401 8th St; (2) the Escrow Agreement provided for an interpleader action only in the event of a dispute between the two sellers, not in the event of a dispute between the sellers and the purchaser; (3) the interpleader action is "unseasonable" because the Escrow Agreement required Settlement Corp. to bring it thirty days after settlement, if at all; and (4) Settlement Corp. was obligated to disburse the funds to Gidey (and Yehdego) once the (clear title) condition in the Escrow Agreement was fulfilled because, at that time, Settlement Corp. ceased being the dual agent of sellers and purchaser and became the sole agent of the sellers as to the sale proceeds.

of conflicting claims . . . , jurisdiction in interpleader is not dependent upon the merits of the claims of the parties interpleaded. . . ." (internal quotation marks omitted)); *W. Coast Stock Transfer, Inc. v. Terra Tech Corp.*, No. SACV 19-745 JVS(JDEx), 2019 U.S. Dist. LEXIS 221994, at *19 (C.D. Cal. July 23, 2019) (reasoning that even if the interpleader plaintiff was ultimately shielded from liability based on indemnification, the threat of litigation made interpleader appropriate).

This court has long maintained that “[o]rdinarily, arguments not made in the trial court are deemed waived on appeal.” *Hollins v. Fed. Nat’l Mortg. Ass’n*, 760 A.2d 563, 572 (D.C. 2000); *see also Williams v. Gerstenfeld*, 514 A.2d 1172, 1177 (D.C. 1986) (noting that we may “deviate[] from this principle only in exceptional situations and when necessary to prevent a clear miscarriage of justice apparent from the record”). However, even considering Gidey’s new arguments, we discern no error in the trial court’s decision to require the defendants to interplead.⁷

Pursuant to Rule 22 of the Superior Court Rules of Civil Procedure, “[p]ersons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead.” Super. Ct. Civ. R. 22(a)(1). In this case, the dispositive fact was not the particular terms of the Escrow Agreement, but the fact that multiple parties asserted claims to the same sale proceeds in Settlement Corp.’s custody, exposing Settlement Corp. to potential multiple liability. Thus, permitting interpleader was an appropriate application of Rule 22. Further, because Settlement Corp., and not just the sellers and purchaser, was a party to the Escrow Agreement, paragraph 4.e of that Agreement entitled it to bring a court action (which it brought as a complaint for interpleader) to resolve the

⁷ We do not say that our analysis that follows is necessary to avert a clear miscarriage of justice, but we are mindful of Gidey’s representations about her difficult financial circumstances, and we also share the trial court’s concern that Gidey—who asserts that to date she has received none of the sale proceeds—may have been ill-served by some of the legal advice she received.

issue of the sellers' and purchaser's entitlement to the escrowed funds. While, as Gidey emphasizes, paragraph 2.d of the Escrow Agreement did specify that Settlement Corp. was to bring an interpleader action within thirty days after settlement if Gidey and Yehdego could not agree in writing on a division of the sale proceeds, paragraph 4.e of the Agreement separately and more broadly authorized *any* of the parties to seek court assistance "if the parties . . . shall be in disagreement about . . . their rights and obligations" under the Agreement, and it also specifically provided that Settlement Corp. "shall be fully protected in suspending all or a part of its activities under this Agreement until a final judgment, order or decree in the [court] action is received."

Finally, with regard to Gidey's argument that Settlement Corp. was the sellers' sole agent as to the sale proceeds, an escrow agent becomes sole agent to a party only "in respect to those things placed in escrow to which [the] party has . . . become entitled." *Ferguson v. Caspar*, 359 A.2d 17, 22 (D.C. 1976). Here, because the SPA contemplated that per diem damages might be "credited to Purchaser from Seller's proceeds at Settlement,"⁸ and because there was a dispute regarding the entitlement of the sellers and purchaser to a

⁸ Thus, it is of no moment that "neither the settlement statement nor the escrow agreement contained any provision authorizing the distribution of the net sales proceeds, or any portion, to 5401 8th St." And, contrary to Gidey's argument in her reply brief, 5401 8th St was not required to "file a separate complaint for money judgment against the sellers" in order to assert an adverse claim to a portion of the escrowed funds.

portion of the proceeds of the sale transaction, an issue existed as to whether Gidey had become entitled to the portion of the escrowed funds that 5401 8th St. also claimed.

We also agree with the trial court's determination that, pursuant to the Escrow Agreement, Settlement Corp. was entitled to recover \$2,000 toward its fees for and costs of bringing the interpleader action. The Agreement specified that the parties would reserve \$2,000 of the sale proceeds to cover Settlement Corp.'s costs in filing the contemplated interpleader action. Gidey's only rationale for assigning error to the trial court's determination regarding the \$2,000 is her argument, which we have already rejected, that Settlement Corp. was not entitled to maintain an "unseasonable" interpleader action. But even if the \$2,000 was not authorized for costs of an interpleader action filed outside the 30-day window specified in paragraph 2.d of the Escrow Agreement, it was authorized by the Agreement's provision requiring Gidey and Yehdego to indemnify Settlement Corp. for "any and all costs . . . which it may incur . . . by reason of its acting as Escrow Agent under this Agreement" (the "indemnification clause").

We uphold the trial court's ruling that Settlement Corp. established its entitlement to contractual indemnity for its fees, costs, and expenses incurred in bringing and defending itself in this case. In the trial court, Gidey did not state a reason for her opposition to Settlement Corp.'s motion for summary judgment on its indemnification claim, but on appeal, she argues,

without citation to authority or reference to specific language of the Agreement, that the indemnification clause applies only to costs incurred as a result of claims by third parties, and not to claims by parties to the agreement. Again, we generally deem arguments not made before the trial court to be waived, but even if we were to consider this argument, we would find it unpersuasive. We see no reasonable reading of the indemnification clause under which it would apply only to costs incurred because of claims brought by third parties, and we are aware of no law dictating such a reading.⁹

B. 5401 8th St's Motion for Summary Judgment

In granting summary judgment on 5401 8th St's cross-claim against Gidey for breach of contract, the trial court found that undisputed facts established all of the requisite elements: the existence of a valid contract between the parties, an obligation arising from that contract, a party's breach of that obligation, and damages caused by that breach. *See Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009). The trial court found that the SPA—a valid contract—unambiguously obligated Gidey and Yehdego to provide clear title to 5401 8th St upon settlement; that it was undisputed that they did not provide clear title upon

⁹ As described above, a provision of the SPA provided for both the sellers and purchaser to indemnify Settlement Corp. for its fees and costs incurred in litigation to enforce or interpret the SPA. Gidey has not argued that 5401 8th St is jointly liable for Settlement Corp.'s fees and costs, so we do not consider that issue.

settlement; and that damages had arisen from the breach of that obligation.

On appeal, Gidey again raises three arguments that she raised before the trial court: that consideration of the SPA is barred by the parol evidence rule; that the SPA was not breached because the requirement to settle was contingent on the resolution of all issues; and that the per diem damages clause is a penalty and therefore unenforceable as against public policy.¹⁰

None of the foregoing arguments is persuasive. As to the first, we agree with the trial court that the parol evidence rule is inapplicable here. Under the parol evidence rule, "when the parties to a contract have reduced their entire agreement to writing, the court will disregard and treat as legally inoperative parol evidence of the prior negotiations and oral agreements." *Stamenich v. Markovic*, 462 A.2d 452, 455 (D.C. 1983)

¹⁰ Gidey also raises a new argument: that 5401 8th St accepted the Property "as is," excusing Gidey and Yehdego from any obligation to provide clear title at settlement. She cites a rule that "if the purchaser delays the settlement while attempting to have the seller remedy a claimed defect in the title of the property, he must, when it becomes clear that seller [sic] will not meet his demands either accept the title as it is, or cancel the contract." The case Gidey cites as support for this proposition (*Clark v. Route*, 951 A.2d 757 (D.C. 2008)) not only states that rule but also explains that the recourse of a purchaser in that situation who accepts title is to "complete the closing and then take appropriate legal action to require the seller to comply with that term of the contract." *Id.* at 764. That essentially is what 5401 8th Street did by proceeding against Gidey for per diem damages payable until clear title was arranged.

(quoting *Giotis v. Lampkin*, 145 A.2d 779, 781 (D.C. 1958)). In this case, the SPA was neither a prior negotiation nor an oral agreement but instead was a written contract in and of itself. Because the SPA and Escrow Agreement were separate contracts that governed separate aspects of the parties' transaction, it cannot be said that the trial court was required to disregard the terms of the SPA as parol evidence with respect to the Escrow Agreement. Further, the court did not look to the SPA to help interpret the Escrow Agreement but instead applied the terms of the SPA itself.

We also reject Gidey's argument that the SPA's per diem damages clause is inconsistent with, and thus was overridden by, the Escrow Agreement. Although the Escrow Agreement does not mention the SPA's per diem damages provision, one of the Escrow Agreement's recitals explicitly acknowledges the SPA, and no language in the Escrow Agreement purports to supersede any term of the SPA other than the scheduled settlement date (May 1, 2018, rather than March 31, 2018). We note that although Gidey now suggests that the Escrow Agreement alone "governs this case," the record shows that earlier, through counsel, she acknowledged that the SPA's per diem damages clause was in effect.

Also unpersuasive is Gidey's argument that she did not breach the SPA because the terms of the SPA were conditioned on the "clearing of the Sellers' issues." Instead, what triggered the SPA timeline was the "clearing [of] any and all issues *in order to satisfy Seller's Obligation*" (emphasis added). Gidey is correct

that "any and all issues" were not cleared until after a Superior Court judge ruled that the HELOC loan was to be paid off from Yehdego's share of the sale proceeds. But, as the trial court reasoned, the question of which seller was responsible for paying off the HELOC loan was not one that had to be answered before paying off the loan from the total sale proceeds so that the Bank of America lien could be removed, clear title could be achieved, and settlement with clear title (the "Seller's Obligation") could be effected; apportionment of responsibility as between Gidey and Yehdego could come later. Thus, when Gidey insisted that Settlement Corp. refrain from disbursing funds to pay off the HELOC loan—a pay-off that was necessary so that lien-free title could be conveyed—this caused a breach of the Sellers' obligation under the SPA to proceed to settlement with clear title. Gidey emphasizes that 5401 8th St accepted the title as it was and completed the sale transaction—i.e., participated in settlement—by transferring the purchase money to be held in escrow, but we agree with the trial court that the sellers' breach was in their failure to timely settle by conveying *clear* title.

The trial court did not address Gidey's argument that the per diem damages clause was unenforceable as against public policy. However, this court has long upheld contractually agreed-upon liquidated damages provisions. *See Burns v. Hanover Ins. Co.*, 454 A.2d 325, 327 (D.C. 1982) ("It is well-settled that parties to a contract may agree in advance to a sum certain to be forfeited as liquidated damages for breach of contract.").

Gidey has not shown why this rule would not apply here.

Finally, we agree with the trial court that 5401 8th St is entitled to attorney's fees and costs associated with bringing the cross-claim, pursuant to the unambiguous language of paragraph 11 of the SPA entitling it to such: "In any action or proceeding involving a dispute between Purchaser and Seller arising out of this Contract, Purchaser will be entitled to receive from Seller reasonable attorney's fees, court costs, and process server's fees and expenses."

C. Settlement Corp.'s Motion for Summary Judgment as to Gidey's Counterclaims

Next, we address the trial court's grant of Settlement Corp.'s motion for summary judgment on Gidey's counterclaims against it for breach of fiduciary duty, breach of contract, and unpaid interest on the escrowed funds. Gidey alleged that Settlement Corp. breached fiduciary and contractual duties to (1) file an interpleader action on June 1, 2018, (2) to disburse the escrowed funds to Gidey and Yehdego following the April 17, 2019, determination that the HELOC loan should be paid off solely using Yehdego's share of the sale proceeds, and (3) to deposit the escrowed funds in an interest-bearing account. We agree with the trial court that Settlement Corp. was entitled to judgment as a matter of law on all three claims.

There is no dispute that Settlement Corp. failed to file its interpleader action by the specified date and

that the Escrow Agreement declared time to be of the essence. But the Escrow Agreement also contained a provision that Settlement Corp. "shall not be liable for any mistakes of fact, or errors of judgment, or for any acts or omission of any kind unless caused by its willful misconduct or gross negligence." Like the trial court, we see nothing in the record that would support a finding that Settlement Corp. engaged in willful misconduct or gross negligence by failing to file an interpleader action once 30 days had passed given the undisputed evidence that Gidey, through counsel, repeatedly insisted, in the days following that failure, that Settlement Corp. not do so (even admitting that it was "obvious" that there was no need to do so). *See supra* note 2. Effectively, Gidey waived any claim that Settlement Corp. committed a breach by delaying its filing of an interpleader action.

Gidey also argues that Settlement Corp. breached its contractual duty to disburse the escrowed funds to Gidey and Yehdego once the sellers' dispute over the division of the funds was resolved. In granting Settlement Corp.'s summary judgment motion on this issue, the trial court found that this issue was barred by collateral estoppel because, in an order in the quiet title action, the judge presiding over that case stated that Gidey was "mistaken in her apparent belief that the [c]ourt ordered [Settlement Corp.] to release escrowed funds to her." *Gidey v. Bank of America*, No. 2018 CA 005066, slip op. at 2 (D.C. Super. Ct. Aug. 6, 2019). Gidey argues on appeal that the trial court was mistaken in holding that her claim was barred by

collateral estoppel because the court in the quiet title case merely clarified that it had not previously ordered Settlement Corp. to release escrowed funds to Gidey, and did not determine that Settlement Corp. had no obligation to do so.

We agree with Gidey on this point; the trial court erred in finding that Gidey's claim was barred by collateral estoppel. However, considering the merits of Gidey's claim that Settlement Corp. breached its contractual duty to disburse the escrowed funds to Gidey and Yehdego once their dispute over the division of the funds was resolved, we conclude that Settlement Corp. was nonetheless entitled to judgment as a matter of law on this claim. Although by its terms the Escrow Agreement required Settlement Corp. to release the escrowed funds to Gidey and Yehdego once their dispute was resolved in writing, Settlement Corp. was facing a competing claim by 5401 8th St to a sizeable portion of the same funds. Because it was proper for Settlement Corp. to file an interpleader action before releasing the funds to Gidey and Yehdego, and because the Escrow Agreement authorized Settlement Corp. to "suspend[] all or part of its activities under the Agreement" until it received a court resolution and, further, indemnified Settlement Corp. for its actions as an escrow agent, even for "errors of judgment," we conclude that Gidey cannot succeed on this claim as a matter of law.

Finally, we agree with the trial court that Settlement Corp. is entitled to judgment as a matter of law on Gidey's claim that it breached its fiduciary duty by

failing to place the escrowed funds in an interest-bearing account. The trial court treated this as a breach of contract claim (which failed because the Escrow Agreement was silent as to the funds being placed in an interest-bearing account), but Gidey insists that it is a breach of fiduciary duty claim. However, Gidey cites no authority supporting her argument that an escrow agent has a fiduciary duty to place escrowed funds in an interest-bearing account when not required to do so by the escrow agreement.¹¹ Further, the persuasive authority of which we are aware is to the contrary. See *Hannon v. W. Title Ins. Co.*, 260 Cal. Rptr. 21, 24 (Cal. Ct. App. 1989) (holding that "an escrow holder has no duty to deposit funds in an interest-bearing account, absent instruction to do so"). Furthermore, the Escrow Agreement explicitly provided that Settlement Corp.'s duties "shall be limited to the safe-keeping of the Escrow Funds and the disposition of the same in accordance with the terms" of the Agreement; that Settlement Corp. undertook to perform "only such duties as are expressly set forth" in the Agreement; and that "no implied duties or obligations" were to be read into the Agreement against Settlement Corp. We see no evidence upon which a jury could conclude that Settlement Corp. had any duty to place the funds in an interest-bearing account.

¹¹ Settlement Corp. argues that Gidey must support her fiduciary duty claims with expert testimony on the standard of care applicable to an escrow agency. We need not address that argument because Gidey has not supported her claim with any authority, let alone expert testimony.

Accordingly, we affirm the trial court's grant of Settlement Corp.'s motion for summary judgment on all three of Gidey's counterclaims. We also affirm the trial court's ruling that Settlement Corp. is entitled to legal fees and costs incurred in defending against Gidey's counterclaims, pursuant to the indemnification clause of the Escrow Agreement.

D. Gidey's Motions for Summary Judgment

Having affirmed the trial court's rulings on 5401 8th St's motion for summary judgment on its cross-claim against Gidey and on Settlement Corp.'s motion for summary judgment on Gidey's counterclaims against it, we also affirm the trial court's denial of Gidey's motions for summary judgment in her favor regarding those same claims. Gidey's only remaining motion for summary judgment is on her cross-claim against Yehdego. Gidey claims that Yehdego should indemnify her for any damages or costs she may be required to pay Settlement Corp. or 5401 8th St, on the ground that, by refusing to pay off the HELOC loan from his share of the sale proceeds, Yehdego caused Gidey to incur liability. She further argues that Yehdego owed her an implied duty, in light of their marital relationship, not to encumber their marital property and to pay off the lien in a timely manner.

We have said that "a right to indemnity exists where a duty to indemnify may be implied out of a relationship between the parties to prevent a result which is unjust." *Howard Univ. v. Good Food Serv., Inc.*,

608 A.2d 116, 123 (D.C. 1992). The trial court found no basis in the record for concluding that Yehdego should be required to indemnify Gidey to prevent injustice. We uphold that ruling because, as the trial court found, the record shows that Gidey committed her own breach when, through counsel, she caused the delay in clearing title by instructing Settlement Corp. not to disburse the funds to pay off the Bank of America loan while she pursued her quiet title claim. Therefore, even ~~assuming arguendo that spouses who are tenants-by-the-entireties have the general non-encumbrance duty~~ Gidey posits, we cannot say that it was unjust to impose on Gidey joint and several liability to indemnify Settlement Corp. for expenses and damages incurred from the escrow arrangement, as she agreed to do in signing the Escrow Agreement,¹² and to hold her liable for the per diem damages payable to 5401 8th St based on the delay in conveying clear title.

E. Trial Court's Order That Gidey's Attorney Pay Attorney's Fees

We also affirm the trial court's order that Gidey's attorney pay 5401 8th St's attorney's fees in connection with its motion to extend discovery as a result of Gidey's counsel's failure to respond appropriately to discovery requests. The court found that Gidey's attorney's discovery responses were "insufficient, incomplete, and deficient"; that his assertions of the

¹² Gidey highlights that she signed the SPA prior to being represented by counsel, but she had counsel when she signed the Escrow Agreement.

work-product doctrine were baseless; and that it would not be fair to Gidey to make her pay the consequences of her counsel's failure to respond to discovery. On appeal, Gidey argues again that these documents were covered by the work-product doctrine and, citing *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980), faults the trial court for requiring her counsel to pay 5401 8th St's attorney's fees without having made a finding of bad faith by counsel.

Roadway Express recognized the inherent authority of courts to impose contempt sanctions "absent a statute or rule expressly notifying counsel of that potential sanction." *Charles v. Charles*, 505 A.2d 462, 466 (D.C. 1986) (interpreting and applying *Roadway Express*). The *Roadway Express* Court also recognized, however, that "Federal Rule of Civil Procedure 37(b) authorizes sanctions for failure to comply with discovery orders." *Roadway Express*, 447 U.S. at 763. Because the district court had relied on civil rights statutes instead of Rule 37 in imposing sanctions, the Court remanded to allow the lower court to consider sanctions under FRCP Rule 37, or in the alternative, to impose sanctions using its inherent authority to do so upon a specific finding of bad faith. *Id.* at 756, 767. Here, because Superior Court Rule of Civil Procedure 37(b) expressly authorized sanctions for failure to cooperate in discovery, the court did not need to rely on its inherent authority to impose sanctions and, thus, was not required to make a specific finding of bad faith.

We also agree that the work-product doctrine did not cover the documents Gidey's attorney refused to

produce. Gidey argues that she should not have been required to produce “e-mail communications with Settlement Corp., and others, in preparation for the [quiet title] lawsuit” because they “were exchanged in preparation of that lawsuit” and contained the attorney’s “mental impressions, opinions and believes [sic].” The trial court properly found that the work-product doctrine did not protect these emails from discovery because, even if they contained the attorney’s “mental impressions, legal research, or theories,” Gidey’s attorney voluntarily sent them to third parties. See *United States v. Deloitte, LLP*, 610 F.3d 129, 140 (D.C. Cir. 2010) (“[T]he voluntary disclosure of attorney work product to an adversary or a conduit to an adversary waives work-product protection for that material.”). Gidey’s counsel complains that the court entered its order without affording him an opportunity to call witnesses and present evidence, but her brief does not explain what witnesses could have added, what evidence could have been presented, or how such evidence was relevant.

We discern no reason to disturb the trial court’s factual finding that Gidey’s counsel had “no intention of cooperating with [the discovery] process” or its conclusion that a sanction therefore was warranted. We are not persuaded that the sanction was “too strict or unnecessary under the circumstances,” *Roe v. Doe*, 73 A.3d 132, 135 (D.C. 2013), given that Gidey’s counsel was required to pay only the attorney’s fees associated with 5401 8th St’s motion to extend discovery, which

was the direct consequence of counsel's failure to provide appropriate discovery responses.

F. 5401 8th St's Motion to Dismiss

Finally, we turn to, and affirm, the trial court's grant of 5401 8th St's motion to dismiss Gidey's cross-claim against it for failure to state a claim upon which relief could be granted. In her cross-claim, Gidey asserted that 5401 8th St breached the Escrow Agreement and SPA by requesting that per diem damages be paid to it from the sale proceeds and opposing the disbursement of funds to the sellers without that adjustment. To survive a motion to dismiss on a breach of contract claim, the complaint must have alleged the elements of a legally viable breach of contract claim: the existence of a contract, a duty arising from that contract, a breach of that duty, and damages resulting from the breach. *See Francis v. Rehman*, 110 A.3d 615, 620 (D.C. 2015). Here, Gidey's cross-claim did not allege what duties, arising from either the Escrow Agreement or the SPA, 5401 8th St allegedly breached. Viewing the cross-claim in the light most favorable to Gidey, we cannot find that it identifies a breach of either contract.

IV. Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed. We remand to the trial court, however, to address whether Settlement Corp. has an obligation to disburse any funds to Gidey after

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applying the escrowed funds toward the awards upheld in this opinion. See note 3 *supra*.

So ordered.

ENTERED BY DIRECTION
OF THE COURT:

/s/ Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies sent to:

~~Honorable Hiram E. Puig-Lugo~~

Director, Civil Division QMU

Workneh Churnet, Esquire

Gregory Z. Sussman, Esquire

Justin M. Flint, Esquire

Gabriel T. Bluestone, Esquire

Michael Z. Bluestone, Esquire

Yeekkalo Yehdego

P.O. Box 34193

Washington DC 20043

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**SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

SETTLEMENT CORP. DBA : Case Number:
SETTLEMENTCORP : 2019 CA 004678 B
v. :
RODA GIDEY, *et al.* : Judge:
: Hiram E. Puig-Lugo

ORDER

(Filed Apr. 20, 2020)

The parties in this case have filed a plethora of motions as part of this protracted litigation. The pleadings related to these motions are (1) plaintiff/counterclaim defendant Settlementcorp's Opposed Motion for Summary Judgment to Interplead the Escrowed Funds and for Contractual Indemnity, filed March 4, 2020, defendant/counterclaim plaintiff/crossclaim defendant/crossclaim plaintiff Roda Gidey's Opposition, filed March 17, 2020, and Settlementcorp's Reply, filed March 20, 2020; (2) defendant/crossclaim plaintiff 5401 8th Street NW LLC's Motion for Summary Judgment Against crossclaim defendants Roda T. Gidey and Yeekkalo Yehdego, filed March 9, 2020, Roda Gidey's Opposition, filed March 24, 2020, and 5401 8th Street NW LLC's Reply, filed April 14, 2020; (3) plaintiff/counterclaim defendant Settlementcorp's Opposed Motion for Summary Judgment Regarding Roda Gidey's Counterclaim, filed March 11, 2020, Roda Gidey's Opposition, filed March 26, 2020, and Settlementcorp's Reply, filed April 1, 2020; and (4) defendant/counterclaim

plaintiff/crossclaim defendant/crossclaim plaintiff Roda Gidey's Motion for Summary Judgment against Settlementcorp, 5401 8th Street NW LCC, and Yeekkalo Yehdego, filed March 12, 2020, Settlementcorp's Opposition, filed March 26, 2020, and 5401 8th Street NW LLC's Opposition, filed April 14, 2020.

Upon consideration of the parties' filings, the relevant statutory and case law, and the entire record herein, plaintiff/counterclaim defendant Settlementcorp's Opposed Motion for Summary Judgment to Interplead the Escrowed Funds and for Contractual Indemnity is **GRANTED IN PART**, defendant/crossclaim plaintiff 5401 8th Street NW LLC's Motion for Summary Judgment Against crossclaim defendants Roda T. Gidey and Yeekkalo Yehdego is **GRANTED**, plaintiff/counterclaim defendant Settlementcorp's Opposed Motion for Summary Judgment Regarding Roda Gidey's Counterclaim is **GRANTED**, and defendant/counterclaim plaintiff/crossclaim defendant/crossclaim plaintiff Roda Gidey's Motion for Summary Judgment against Settlementcorp, 5401 8th Street NW LLC, and Yeekkalo Yehdego is **DENIED AND DENIED AS MOOT**.

Procedural Posture

On July 17, 2019, Settlementcorp filed a complaint for Interpleader and Declaratory Relief ("the Interpleader Case") against Yeekkalo Yehdego ("Yehdego"), Roda Gidey ("Gidey"), and 5401 8th Street NW LLC ("5401 8th Street").

On August 13, 2019, 5401 8th Street filed an answer to Settlementcorp's complaint and a crossclaim against Yehdego and Gidey alleging Breach of Contract.

On October 7, 2019, Gidey filed an answer to Settlementcorp's complaint and 5401 8th Street's crossclaim and also filed three counterclaims against Settlementcorp alleging Breach of Fiduciary Duty, Breach of Contract, and Unpaid Interest on the Escrowed Funds, one crossclaim against 5401 8th Street, and one crossclaim against Yehdego.

On November 15, 2019, Yehdego, *pro se*, filed an Answer.¹

On November 19, 2019, the Court granted 5401 8th Street's motion to dismiss Gidey's crossclaim, filed October 29, 2019.

On December 3, 2019, Settlementcorp filed an answer to Gidey's counterclaims.

On March 11, 2020, the Court granted 5401 8th Street's Partial Consent Motion for Judgment against Yehdego, filed February 14, 2020, and judgment was entered against Yehdego on 5401 8th Street's crossclaim.

¹ Yehdego did not clarify whether his Answer was in response to Settlementcorp's complaint, 5401 8th Street's Crossclaim, Gidey's Crossclaim, or all three. Given the latitude afforded to *pro se* parties in matter of pleadings, the Court will construe Yehdego's Answer as responding to all three.

Accordingly, the claims still active in this lawsuit are (1) Settlementcorp's complaint for Interpleader and Declaratory Relief against Yehdego, Gidey, and 5401 8th Street; (2) 5401 8th Street's crossclaim against Gidey; (3) Gidey's counterclaims against Settlementcorp; and (4) Gidey's crossclaim against Yehdego.

Background

This matter is part of a long and complicated history between Gidey and Yehdego, which includes litigation over real property located at 5401 8th Street NW, Washington, DC 20011 ("the Property"). The relevant timeline of events is summarized below.

In 1993, Gidey and Yehdego purchased the Property in dispute. They were married at the time. Settlementcorp SOMF ¶ 1. Some three years later, on June 14, 1996, Yehdego filed a complaint for absolute divorce in Case No. 1996 DRB 001728 ("Divorce Case"). *See id.* ¶ 2. On October 21, 1996, an order of default was entered against Gidey in the Divorce Case after Gidey failed to timely respond pursuant to Rule 55. Gidey SOME ¶ 3. On January 28, 1997, Judge Suda entered a default judgment awarding Yehdego an Absolute Divorce from Gidey and sole title to the Property. *Id.* Ten years later Yehdego recorded a Deed of Property transferring to himself sole ownership of the Property. Settlementcorp SOMF ¶ 2. In 2008, as the sole owner of record, Yehdego obtained a Home Equity Line of Credit ("HELOC") for \$180,000 from Bank of America and

executed a Credit Line Deed of Trust on the Property to secure the HELOC. *Id.*

On August 11, 2014, almost twenty years after Yehdego was awarded sole title to the Property in the Divorce Case and six years after he obtained the HELOC, Gidey filed a complaint against Yehdego for Declaratory Judgment in Case No. 2014 CA 004950 ("Declaratory Judgment Case"). *See* Case Docket 2014 CA 004950. In her complaint, Gidey requested that the Court find that the Property was joint marital property and enjoin Yehdego from encumbering, selling, or transferring it. *Id.*

On September 2, 2015, while the Declaratory Judgment Case was pending in the Civil Division, Gidey filed a motion in Family Court to vacate the January 28, 1997 order granting a default judgment. Gidey SOMF ¶ 7. In her motion for relief from judgment, Gidey claimed that she had not been properly served with Yehdego's complaint for Absolute Divorce. *Id.* Because the Divorce Case and the Declaratory Judgment Case involved the same parties and common questions of law and fact, the cases were consolidated before Judge McCabe. *See* Case Docket 1996 DRB 001728.

On February 26, 2016, a hearing took place before Judge McCabe on Gidey's motion for relief from judgment. *Id.* Gidey, represented by counsel, and Yehdego, *pro se*, appeared for the hearing. *Id.* Based on the parties' representations, Judge McCabe granted Gidey's motion for relief from judgment and vacated both the

October 21, 1996 default entered against Gidey and the January 28, 1997 Judgment for Absolute Divorce, including the order awarding the Property to Yehdego. See Case No. 1996 DRB 001728, Mar. 1, 2016 Judge McCabe Order; *accord* Gidey SOMF ¶ 8. Subsequently, Gidey and Yehdego appeared for a status hearing on May 11, 2016. See Case Docket 1996 DRB 001728. At the hearing, Judge McCabe granted Gidey's request for injunctive relief in the Declaratory Judgment Case and entered an order finding that the Property was owned by Gidey and Yehdego as joint marital property and prohibiting Yehdego from encumbering, selling, or transferring the Property. See 2014 CA 004950, May 12, 2016 Judge McCabe Order; *accord* Gidey SOMF ¶ 9. On May 12, 2016, the Declaratory Judgment Case and the Divorce Case were closed. See Case Docket 1996 DRB 001728.

Some time around February or March 2018, Gidey and Yehdego executed a Standard Purchase Agreement ("SPA") selling the Property to Residential Growth Properties, LLC for \$600,000.² Settlementcorp SOMF ¶ 3. Gidey, Yehdego, and the purchaser agreed to proceed to final Settlement on March 31, 2018. 5401 8th Street SOMF ¶ 4. At the time the parties executed the SPA, the HELOC that Yehdego transacted in 2008

² Residential Growth Properties, LLC is not a party to this action. Shortly after executing the SPA, Residential Growth Properties, LLC assigned its rights under the SPA to 5401 8th Street. 5401 8th Street Summ. J. at 1 n.2. Accordingly, to avoid confusion throughout this section, the Court will refer to Residential Growth Properties, LLC and 5401 8th Street as "the purchaser."

remained attached to the Property and was identified in the SPA as an "existing lien" to be paid off prior to Settlement. *Id.* ¶ 3. Under terms of the SPA, should Gidey and Yehdego fail to convey clean title to the Property within seven days of final Settlement, the purchaser would be entitled to receive \$150.00 each day that Settlement was delayed for failure to convey clean title. *Id.* ¶¶ 8-9.

On March 31, 2018, the HELOC had not been paid off as Gidey and Yehdego disagreed as to whose share of the purchase proceeds should be used to repay the loan. *Id.* ¶ 10. Thus, the parties agreed to extend the final Settlement date to May 1, 2018 to allow Gidey and Yehdego time to resolve their dispute. *Id.* But alas, Gidey and Yehdego were unable to come to an agreement as to how the HELOC should be repaid by May 1, 2018. *Id.* ¶ 12. Consequently, the parties were unable to complete Settlement because Gidey and Yehdego could not convey clean title to the Property. *Id.* However, to allow the sale of the Property to close, Gidey, Yehdego, and the purchaser³ executed an Escrow Agreement with Settlementcorp to place the funds used to purchase the Property into an Escrow Account. *Id.*

The Escrow Agreement noted the following: (1) that Gidey and Yehdego entered into a SPA selling the Property to the purchaser for \$600,000; (2) that Gidey

³ At the time the parties executed the Escrow Agreement, the rights of the purchaser had been assigned to 5401 8th Street. Thus, 5401 8th Street is a named party of the Escrow Agreement.

and Yehdego disputed how to distribute the purchase proceeds between them, centering on whose obligation it was to repay the HELOC; (3) that Gidey, Yehdego, and the purchaser agreed to place the purchase proceeds and any and all seller payments in an Escrow Account held by Settlementcorp; and (4) that the purchase proceeds and any and all seller payments would be held by Settlementcorp until Gidey and Yehdego came to an agreement on the division of the purchase proceeds. Settlementcorp SOMF ¶¶ 5-9. In the event Gidey and Yehdego were unable to agree how the purchase proceeds should be disbursed, the agreement provided for Settlementcorp to file an interpleader action. *Id.* ¶ 12.

Between May 1, 2018 and June 3, 2018, Gidey, Yehdego, and the purchaser attempted to come to an agreement on how to divide the purchase proceeds after repayment of the HELOC and compensation to the purchaser for delay in transferring clean title to the Property. *Id.* ¶ 17. The negotiations were unsuccessful as Gidey refused to repay the HELOC with her portion of the purchase proceeds. 5401 8th Street SOMF ¶ 5. Therefore, on June 3, 2018, Gidey requested to cancel the settlement agreement. Settlementcorp SOMF ¶ 18. However, one day later, Gidey withdrew her request to cancel the settlement agreement and instead requested that all of the purchase proceeds be held in the Escrow Account until she was able to challenge the validity of the HELOC. *Id.* ¶ 20. On June 9, 2018, present counsel for Gidey sent a follow up email to Settlementcorp and the purchaser reiterating her demand

“that all the proceeds from the sale . . . be kept in the Escrow account until [she] obtain[ed] [a] declaratory judgment from the Courts.” *Id.* ¶¶ 21-22.

Subsequently, on July 17, 2018, Gidey filed a complaint in Case No. 2018 CA 005066 seeking quiet title to the Property against Yehdego and Bank of America (“Quiet Title Case”). *Id.* ¶ 23. On December 28, 2018, Gidey filed an agreed motion for entry of consent judgment as to Bank of America. Gidey SOMF ¶ 21. On February 6, 2019, Yehdego filed an Answer. *Id.* On February 19, 2019, Gidey filed a motion for judgment on the pleadings against Yehdego. *Id.* Yehdego failed to respond to both the agreed motion for entry of consent judgment and the motion for judgment on the pleadings. *Id.* ¶ 22. Accordingly, on April 17, 2019, Judge Pan granted Gidey’s agreed motion for entry of consent judgment and Gidey’s motion for judgment on the pleadings and ordered that the “[HELOC] shall be satisfied in full from defendant Yeekalo Yehdego’s portion of the proceeds from the sale of the Property. . . .” *See* 2018 CA 005066, April 17, 2018 Judge Pan Order; *accord* Gidey SOMF ¶ 22. Thus, on May 28, 2019, Settlementcorp paid off the HELOC from Yehdego’s portion of the purchase proceeds, and on June 20, 2019 the purchaser obtained clean title to the Property. 5401 8th Street SOMF ¶¶ 20-21.

Throughout the pendency of the Quiet Title Case, Gidey’s counsel requested that Settlementcorp abstain from filing an interpleader action and keep the purchase proceeds in the Escrow Account. Settlementcorp SOMF ¶ 24. However, once the HELOC had been

repaid, Gidey requested that Settlementcorp disburse her share of the purchase proceeds. *Id.* ¶ 27. Settlementcorp then provided Gidey and Yehdego with a breakdown of proposed disbursements noting that Gidey's portion of the purchase proceeds was \$250,947.95 while Yehdego's portion of the purchase proceeds was \$62,177.25. *Id.* ¶ 28. Taken out of Yehdego's portion was the \$180,000 repayment of the HELOC, pursuant to Judge Pan's Order. *Id.* ¶¶ 29-30. In addition, both Gidey and Yehdego's portions were reduced by \$44,488 to reflect a total payment of ~~\$88,976 to the purchaser based on the delay in providing clean title to the Property.~~ *Id.*

After receiving the proposed disbursement, Gidey ~~refused to allow the purchase proceeds to be distrib-~~uted, arguing that the purchaser was not entitled to any payment based on the delay in providing clean title. *Id.* ¶ 29. Accordingly, the purchaser advised Settlementcorp to file an interpleader action for judicial determination as to distribution of the purchase proceeds. *Id.* ¶ 34. Gidey opposed the purchaser's request for an interpleader action and filed a motion for an order to show cause in the Quiet Title Case against Settlementcorp alleging that Settlementcorp violated Judge Pan's April 17, 2019 order by failing to disburse the purchase proceeds to Gidey. *Id.* ¶¶ 32, 36.

On July 17, 2019, before an order issued to resolve Gidey's motion to show cause, Settlementcorp filed the Interpleader Case naming Gidey, Yehdego, and 5401 8th Street as defendants. *Id.* ¶ 38. Shortly thereafter, on August 6, 2019, Judge Pan denied Gidey's motion to

show cause concluding that Gidey “is mistaken in her apparent belief that the Court ordered [Settlementcorp] to release the escrowed funds to her.” See 2018 CA 005066, August 6, 2019 Judge Pan Order; *accord* Settlementcorp SOMF ¶ 37. Thus, the Quiet Title Case remained closed, and the parties continued to litigate their dispute over the purchase proceeds in the Interpleader Case.

The parties have engaged in extensive motions practice within the Interpleader Case culminating in the four motions for summary judgment now pending before this Court. The Court addresses each motion in turn.

Standard of Review

To prevail on a motion for summary judgment, the moving party must establish that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Hunt v. District of Columbia*, 66 A.3d 987, 990 (D.C. 2013) (citing *Grant v. May Dep’t Stores Co.*, 786 A.2d 580, 583 (D.C. 2001)); Super. Ct. Civ. R. 56(c). A material fact is “one which, under the applicable substantive law, is relevant and may affect the outcome of the case.” *Rajabi v. Potomac Elec. Power Co.*, 650 A.2d 1319, 1321 (D.C. 1994). The moving party has the initial burden of proving there is no genuine issue of material fact in dispute; after satisfying that burden, the burden shifts to the non-moving party to establish that such an issue exists. *Bradshaw v. District of Columbia*, 43 A.3d 318,

323 (D.C. 2012) (quoting *Beard v. Goodyear Tire & Rubber Co.*, 587 A.2d 195, 198 (D.C. 1991)). The non-moving party must set forth "significant probative evidence tending to support the complaint," *Barrett v. Covington & Burling LLP*, 979 A.2d 1239, 1245 (D.C. 2009) (internal citations omitted), consisting of specific facts showing there is a genuine issue for trial. *See also* Super. Ct. Civ. R. 56(e) ("Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.").

In considering the merits of the moving party's request, the Court reviews the record in the light most favorable to the non-moving party, "drawing all reasonable inferences from the evidence in the non-moving party's favor." *See Medhin v. Hailu*, 26 A.3d 307, 310 (D.C. 2011). The Court may not "resolve issues of fact or weigh evidence at the summary judgment stage." *Barrett*, 979 A.2d at 1244 (internal citation omitted). In ruling upon a motion for summary judgment, the Court reviews "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to determine whether there is a genuine issue as to any material fact." *See District of Columbia v. Gray*, 452 A.2d 962, 964 (D.C. 1982) (internal citations omitted).

1. Plaintiff/Counterclaim Defendant Settlementcorp's Opposed Motion for Summary Judgment to Interplead the Escrowed Funds and for Contractual Indemnity ("Motion to Interplead")

On July 17, 2019, Settlementcorp filed a two-count complaint against Gidey, Yehdego, and 5401 8th Street. Count 1 is an "Action for Interpleader" and requests that the Court (1) require Gidey, Yehdego, and 5401 8th Street to litigate their conflicting and competing claims as to their entitlement to the remaining purchase proceeds; (2) allow Settlementcorp to deposit the purchase proceeds into the court registry; and (3) award Settlementcorp \$2,000 from the escrowed funds to cover fees associated with bringing the Interpleader Case. *See generally* Settlementcorp Compl. ¶¶ 7-20. Count 2 seeks to enforce the contractual indemnity clause of the Escrow Agreement requiring Gidey and Yehdego to indemnify Settlementcorp for all costs and fees incurred in bringing the Interpleader Case as well as defending against Gidey's counterclaims. *See id.* ¶¶ 21-23.

In the Motion for Summary Judgment to Interplead, Settlementcorp seeks judgment on Counts 1 and 2 of its complaint. Gidey opposes Settlementcorp's request. For the following reasons, the motion is granted in part.

**A. Settlementcorp's Request to Interplead,
Deposit Purchase Proceeds into the Court
Registry, and Receive Fees Associated
with Bringing the Interpleader Case**

Settlementcorp asserts that it is entitled to judgment on Count 1 of its complaint as "the existence of a disagreement between [Gidey and 5401 8th Street] about how to divide up and distribute the [purchase proceeds] is not in dispute." Mot. to Interplead at 9. Accordingly, because the parties disagree on how to disburse the purchase proceeds, pursuant to the terms of the Escrow Agreement, Settlementcorp is required "to file an interpleader action in the Superior Court of the District of Columbia placing all proceeds and seller related payments in the Registry of the Court." *Id.* at 3 (citing Escrow Agreement § 2(d)).

In her opposition, Gidey does not dispute that a disagreement exists between the parties related to the disbursement of the purchase proceeds. Moreover, Gidey does not dispute that section 2(d) of the Escrow Agreement requires Settlementcorp to file an interpleader when the parties are unable to agree how to divide the purchase proceeds. Rather, Gidey challenges the merits of 5401 8th Street's crossclaim as "plainly false" and "frivolous" and asks the Court to deny Settlementcorp's Motion to Interplead on this ground alone. Gidey Opp'n at 1.

Gidey misses the point in her opposition. Whether or not 5401 8th Street will ultimately prevail on its claim against Gidey has no bearing on whether the

parties should be required to interplead. Pursuant to Rule 22, “[p]ersons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead.” Super. Ct. Civ. R. 22(a)(1). Here, Gidey and 5401 8th Street have asserted conflicting and competing claims to the purchase proceeds that could expose Settlementcorp to double or multiple liability. *See id.* Moreover, the Escrow Agreement contemplated the situation in which the parties now find themselves. Gidey provides no reason why the Court should not effectuate the parties’ intent to resolve this dispute through an interpleader action. Accordingly, the request to require Gidey, Yehdego, and 5401 8th Street to interplead is granted.

Furthermore, consistent with the terms of the Escrow Agreement, Settlementcorp is entitled to receive \$2,000 of the escrowed funds to cover fees associated with bringing the interpleader action. *See Settlementcorp Summ. J. at Ex. E “Escrow Agreement” at para. 7 (“The parties agree that an initial payment of \$2000 be collected as a line item . . . to cover initial filing fees for the interpleader action, and any costs related thereto, including legal fees to Settlementcorp.”).*

With respect to Settlementcorp’s request to deposit the purchase proceeds into the court registry, the Court denies the request as moot as the Court ruled on March 11, 2020, that the portion of the Escrow Agreement requiring the Court to keep all proceeds and seller related payments in the court registry is not enforceable. The Superior Court of the District of Columbia is not a party to this case and the parties have

failed to provide any legal authority supporting their request for funds to be placed in the court registry.

B. Settlementcorp's Request that Gidey and Yehdego Indemnify Settlementcorp pursuant to the Escrow Agreement

Settlementcorp asserts that it is entitled to judgment on Count 2 of its complaint as section 4(d) of the Escrow Agreement states,

Yehdego and Gidey jointly and severally agree to indemnify Settlementcorp and hold it harmless from any and all costs, claims, liabilities, losses, actions mistakes of fact, errors of judgment, acts or omissions, suits or proceedings at law or in equity, or any other expenses, fees or charges of any character in nature, which it may incur or with which it may be threatened by reasons of its acting as Escrow Agent under this Agreement, and in connection therewith, to indemnify Settlementcorp against any and all expenses, including attorney's fees and the costs of filing or defending any action, suit or proceeding or resisting any claims.

See Settlementcorp Summ. J. at Ex. E "The Escrow Agreement." Accordingly, Settlementcorp claims that it is entitled to receive its full amount of attorney's fees, costs, and expenses incurred in bringing the Interpleader Case and defending against Gidey's counterclaims. *Id.* at 11.

Gidey's opposition ignores Settlementcorp's request for relief under Count 2 of its complaint. Thus, the Court finds that there is no genuine dispute of material fact that Gidey and Yehdego signed a valid contract to indemnify Settlementcorp against all costs and fees, including attorney' fees, incurred in connection with filing and defending this litigation. Consistent with the terms of the contract they signed, Gidey and Yehdego are jointly and severally liable for those expenses.

Accordingly, Plaintiff/Counterclaim Defendant Settlementcorp's Opposed Motion for Summary Judgment to Interplead the Escrowed Funds and for Contractual Indemnity is **granted in part** as to Count 1 and **granted** as to Count 2.

2. Defendant/Crossclaim Plaintiff 5401 8th Street NW LLC's Motion for Summary Judgment Against Crossclaim Defendants Roda T. Gidey and Yeekalo Yehdego

5401 8th Street seeks summary judgment on its crossclaim for Breach of Contract against Gidey and Yehdego.⁴ In addition, 5401 8th Street requests that the Court award it attorney's fees and costs arising

⁴ As previously mentioned, judgment has already been entered against Yehdego on 5401 8th Street's crossclaim See 2019 CA 4678, Mar. 11, 2020 Judge Puig-Lugo Order. Accordingly, 5401 8th Street "requests that this motion [be] construed against Gidey only." 5401 8th Street Summ. J. at 1 n.1.

from this action. Gidey opposes 5401 8th Street's request. For the following reasons, the motion is granted.

To prevail on a claim of breach of contract, a party must establish (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach." *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009).

In this motion, 5401 8th Street claims that it is entitled to summary judgment as the undisputed facts establish, as a matter of law, the required elements for its breach of contract claim. 5401 8th Street Summ. J. at 1. Specifically, 5401 8th Street contends that there is no dispute that (1) the SPA is a valid and enforceable contract; (2) the SPA obligated Gidey and Yehdego to convey clean title to the Property; (3) Gidey and Yehdego breached the SPA when the Property was conveyed encumbered by the HELOC; and (4) 5401 8th Street suffered damages as a result of Gidey and Yehdego's breach. *Id.* at 9.

The requirement that Gidey and Yehdego convey clean title to the Property appears twice in the SPA. Paragraph 3 of the SPA identified that an existing Bank of America Lien remained on the property that was to be paid off prior to Settlement. *Id.* at Ex. 1 "SPA" ¶ 3(B). Directly underneath Paragraph 3 reads that "[Gidey and Yehdego] shall deliver to Purchaser before the day of settlement written payoff statements signed by the lien holder(s) itemizing the total payoff amount(s). . . ." *Id.* In addition, Paragraph 9 of the SPA

addresses when Gidey and Yehdego were required to convey clean title the Property: “[Gidey and Yehdego] shall sign and deliver all required documents to convey the [Property] free and clear of all liens . . . to complete settlement conditions (“Settlement”) on or about March 31, 2018.” *Id.* at Ex. 1 “SPA” ¶ 9. Moreover, Paragraph 9 explains how damages will be calculated for failure to comply with a settlement condition: “If [Gidey and Yehdego] delay closing more than 7 days . . . Purchaser shall have the option to . . . charge a per diem of \$150.00 for each day closing is delayed beyond 7 days, the total amount of which shall be credited to Purchaser from [Gidey and Yehdego’s] proceeds at Settlement.” *Id.*

5401 8th Street contends that Gidey and Yehdego breached the SPA in two ways. *Id.* at 8. First, 5401 8th Street maintains that “[Gidey and Yehdego] were required to proceed to Settlement on March 31, 2018, and when they failed to do so, 5401 8th Street became entitled to per diem damages for the delay.” *Id.* at 9. Second, 5401 8th Street claims that Gidey and Yehdego breached the SPA when Gidey refused to repay the HELOC with purchase proceeds and caused the HELOC to encumber the Property when it was conveyed. *Id.* As a result of these breaches of the SPA, clean title was not provided until June 20, 2019, 439 days after the original Settlement date. *Id.* at 10. Accordingly, 5401 8th Street states that it is entitled to judgment on its Breach of Contract claim because it is disputed that Gidey and Yehdego failed to timely convey clean title to the Property.

Gidey, in opposition, argues that 5401 8th Street is not entitled to summary judgment for three reasons. None of Gidey's arguments create a genuine dispute of material fact as to whether or not Gidey breached the SPA.

First, Gidey claims she could not have breached the SPA because title to the Property was clean and unencumbered when transferred to 5401 8th Street as "there [was] no Bank of America Lien on the property."

Gidey Opp'n at 13. The basis for this argument is the belief that two prior judicial rulings rendered title to the property clean and unencumbered. Specifically, Gidey contends that the Property was unencumbered based on Judge McCabe's May 12, 2016 Order in the Declaratory Judgment Case and Judge Pan's April 17, 2019 Order in the Quiet Title Case. Gidey argues that these two orders "clearly and unambiguously provided that the title was clean and unencumbered and remained to [sic] such until the transfer. . . ." *Id.* at 3. **Gidey misreads and misinterprets both orders.**

Judge McCabe's May 12, 2016 Order prohibited Yehdego from solely "encumbering, selling, or transferring" the Property as of May 12, 2016. *See* 2014 CA 004950, May 12, 2016 Judge McCabe Order. The order said nothing about the validity of the HELOC that had been obtained eight years prior to the Declaratory Judgment and that remained on the Property when Judge McCabe issued his order. There is no reason to read into the order a result that it does not state and which relates to an issue that was not brought to Judge McCabe's attention for his consideration.

Similarly, Judge Pan's April 17, 2019 Order does not support any conclusion that the Property was unencumbered at the time the Property was conveyed to 5401 8th Street. *See* 2018 CA 005066, Apr. 17, 2019 Judge Pan Order. In fact, Judge Pan's April 17, 2019 Order notes that the HELOC still encumbered the Property when the parties executed the SPA. Indeed, noting the existence of the HELOC, Judge Pan ruled that Yehdego was responsible for payment of the debt from his share of purchase proceeds. *See id.* It stands to reason that if at the time Judge Pan issued the April 17, 2019 Order the Property was still encumbered by a HELOC transacted in 2008, then Property was similarly encumbered when the parties executed the SPA a year prior to the order. Contrary to Gidey's assertion, the orders that Judge McCabe and Judge Pan issued did not render the Property unencumbered on May 1, 2018.

It is disingenuous for Gidey to claim that the HELOC did not exist when the SPA and Escrow Agreement both expressly identify the existence of the HELOC. And it was a need to address the existence of the HELOC which prompted Gidey to file a complaint for Quiet Title and triggered events that culminated in the instant case. Even Gidey, herself, relies on the existence of the HELOC as a foundation for her counterclaims against Settlementcorp and her crossclaim against Yehdego. Simply put, Gidey cannot rewrite history to create a factual dispute that does not exist.

Second, Gidey argues "that the [SPA] should not be looked at to assess the rights and obligations

between her and 5401 8th Street because the [SPA] is inadmissible parol evidence." 5401 8th Street Reply at 8; *accord* Gidey Opp'n at 15-17. **The parol evidence does not apply to the present litigation.**

The parol evidence rule provides that extrinsic evidence which contradicts, varies, adds to, or subtracts from the terms of a valid, plan and unambiguous, written contract is inadmissible in disputes related to the contract. *See Segal Wholesale, Inc. v. United Drug Service*, 933 A.2d 780, 783 (D.C. 2007).

In this case, Gidey, Yehdego, and the purchaser signed the SPA to address the terms of the sale of the Property, "including representations and warranties, requirements to deliver clean title, the purchase price, and damages for delays." 5401 8th Street Reply at 8. After the parties executed the SPA, Gidey, Yehdego, 5401 8th Street, and Settlementcorp entered into the Escrow Agreement to address the dispute between Gidey and Yehdego related to the HELOC and when the Escrow Agent would distribute purchase proceeds. Accordingly, the parol evidence rule is inapplicable for the simple fact that the SPA and the Escrow Agreement are two separate contracts. As separate contracts, language of neither "contradicts, varies, adds to, or subtracts" from the terms of the other. *See id.* Thus, as a signatory to the SPA and the Escrow Agreement, Gidey is required to comply with the obligations set forth under both contracts and can be held liable for damages caused from breaching either contract.

Third, Gidey argues that even if the HELOC existed, she did not breach the SPA because Gidey and Yehdego were not required to convey clean title to the Property if conveyance was not possible. Gidey Opp'n at 18. **This argument contradicts the plain language of the SPA.**

Under Paragraph 9 of the SPA, Gidey and Yehdego were required "to convey the [Property] free and clear of all liens . . . on or about March 31, 2018." 5401 8th Street Summ. J., Ex. 1 "SPA" ¶ 9. It is clear that the SPA unambiguously obligated Gidey and Yehdego to convey clean title to the Property as a condition precedent to Settlement. Here, there is no dispute that the Property was not conveyed with clean title on March 31, 2018. To the extent that Gidey claims that the SPA did not require her to provide clean title if she was unable to do so, Gidey has failed to provide any basis, beyond her own demand that the HELOC not be repaid with the purchase proceeds, for why she was unable to convey clean title to the Property by March 31, 2018. It was possible to pay the debt from purchase proceeds and then apportion responsibility for the HELOC between Gidey and Yehdego. There was no need to delay conveyance of the property until after Gidey and Yehdego had resolved their dispute.

In moving for summary judgment, the moving party carries the initial burden of showing there is no genuine issue of material fact in dispute. *See Bradshaw*, 43 A.3d at 323. 5401 8th Street has fulfilled its burden related to Gidey. Even when viewing the facts in the light most favorable to Gidey, the Court does not

find a genuine issue as to any material fact. Under the SPA, Gidey agreed to convey the Property free and clear of all liens prior to March 31, 2018. After the parties were unable to proceed to Settlement on March 31, 2018, the parties agreed to extend the final Settlement date to May 1, 2018. In the event the Property was not conveyed with clean title within seven days of Settlement, the SPA entitled 5401 8th Street to receive \$150.00 per day for each day that clean title was not provided. ~~Here, the record is clear that the property was not conveyed with clean title until June 20, 2019.~~ Accordingly, after viewing the evidence in the light most favorable to Gidey and drawing all reasonable inferences from the evidence in Gidey's favor, the Court concludes that 5401 8th Street is entitled to judgment ~~as matter of law on its breach of contract claim against~~ Gidey and is awarded \$150.00 for each day between May 8, 2018 and June 20, 2019. Moreover, under the SPA, 5401 8th Street is entitled to its legal fees and costs incurred in bringing this action. See 5401 8th Street Summ. J., Ex. 1 "SPA" ¶ 11 ("In any action or proceeding involving a dispute between [5401 8th Street] and [Gidey and Yehdego] arising out of [the SPA], [5401 8th Street] will be entitled to receive from [Gidey and Yehdego] reasonable attorney's fees, court costs, and process serve's fees and expenses.").

Accordingly, Defendant/Crossclaim Plaintiff 5401 8th Street NW LLC's Motion for Summary Judgment Against Crossclaim Defendants Roda T. Gidey and Yeekalo Yehdego is **granted**.

3. **Plaintiff/Counterclaim Defendant Settlementcorp's Opposed Motion for Summary Judgment Regarding Roda Gidey's Counterclaim**

On October 7, 2019, Gidey filed three counterclaims against Settlementcorp alleging Breach of Fiduciary Duty, Breach of Contract, and Unpaid Interest on the Escrowed Funds. In its motion, Settlementcorp seeks summary judgment as to all three of Gidey's counterclaims and requests that the Court award it attorney's fees and costs incurred in connection with defending against Gidey's counterclaims. Gidey opposes Settlementcorp's motion. For the following reasons, the motion is granted.

A. Gidey's Counterclaim for Unpaid Interest on the Escrowed Funds

Gidey's counterclaim for unpaid interest alleges that Settlementcorp "is liable to pay interest on the escrowed funds since June 1, 2018, to present, the deadline set forth in the escrow agreement for depositing the escrowed funds in the court registry." Gidey Counterclaim ¶ 32. While not labeled as such, Gidey's counterclaim for unpaid interest is fundamentally a breach of contract claim. Therefore, Gidey must establish (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach." *Tsintolas Realty Co.*, 984 A.2d at 187.

Settlementcorp moves for summary judgment on grounds that Gidey is unable to make out a prima facie case for breach of contract. Settlementcorp asserts that it did not have a duty or obligation under the Escrow Agreement to maintain the escrowed funds in an interest-bearing account. Settlementcorp Summ. J. at 11-12. Settlementcorp notes that the Escrow Agreement is the only contract between Gidey and Settlementcorp. *Id.* Thus, Settlementcorp argues that nothing in the record supports Gidey's counterclaim. *Id.* at 12.

In her opposition, Gidey fails to identify any evidence to establish that Settlementcorp had an obligation under the Escrow Agreement to maintain the escrowed funds in an interest-bearing account. Rather, Gidey relies on the conclusory statement that "in breach of its obligations under the Escrow Agreement, Settlementcorp held the escrowed funds in a non-interest bearing account" without citing to any language within the Escrow Agreement that supports her position. Gidey Opp'n at 2.

Accordingly, the Court finds that Gidey has failed to proffer sufficient evidence for a jury to reasonably conclude that Settlementcorp owed Gidey a duty to place the funds in an interest-bearing account and breached that duty as alleged in her counterclaim. Thus, Settlementcorp is entitled to judgment as a matter of law on Gidey's counterclaim for unpaid interest on the escrowed funds.

B. Gidey's Claims for Breach of Fiduciary Duty and Breach of Contract

Gidey's counterclaims for breach of fiduciary duty and breach of contract maintain that Settlementcorp breached the Escrow Agreement and breached its fiduciary duties by (1) failing to file an interpleader by June 1, 2018, (2) failing to disburse the purchase proceeds to Gidey after repayment of the HELOC, and (3) failing to keep the escrowed funds in an interest-bearing account. Gidey Counterclaim ¶¶ 18(B)-(D), 25(A)-(C).

As an initial matter, the Court notes that for the reasons discussed above, Gidey cannot maintain either counterclaim on the ground that Settlementcorp failed to keep the escrowed funds in an interest-bearing account. *See Supra* at 18-19. In addition, the issue of whether Settlementcorp was obligated to disburse the escrowed funds to Gidey after repayment of the HELOC was actually litigated in the Quiet Title Case, and was resolved by a valid, final judgment on the merits by Judge Pan. *See* Case No. 2018 CA 005066, Aug. 6, 2019 Judge Pan Order (“[Gidey] is mistaken in her apparent belief that the Court ordered Settlementcorp to release escrowed funds to her.”). Thus, Judge Pan’s August 6, 2019 Order collaterally estops Gidey from claiming, yet again, that Settlementcorp breached its obligations under the Escrow Agreement by failing to disburse the purchase proceeds to Gidey after the HELOC was repaid. Thus, the only remaining cause of action within Gidey’s counterclaims for breach of contract and breach of fiduciary duty is whether

Settlementcorp breached its duties under the Escrow Agreement by failing to file an interpleader by June 1, 2018.

In its motion, Settlementcorp contends that the Court should grant its motion for summary judgment because Gidey has not identified any expert witnesses, produced any expert opinions to establish the applicable standard of care, or explained how Settlementcorp violated any applicable standard of care. Settlementcorp Summ. J. at 8-10. Settlementcorp asserts that, without this evidence, there is no necessary and competent evidence to prove that Settlementcorp breached its duties under the Escrow Agreement. See *id* at 7. In addition, Settlementcorp also asserts that it is entitled to judgment based on a limited liability provision in the Escrow Agreement. *Id.* at 12.

In opposition, Gidey argues that Settlementcorp is not entitled to summary judgment as (1) the Escrow Agreement required Settlementcorp to file an interpleader action within thirty days of signing the Escrow Agreement; (2) Settlementcorp failed to timely file an interpleader action pursuant to the Escrow Agreement; and (3) expert testimony is not necessary to prove either counterclaim at trial. Gidey Opp'n at 2-3. Gidey does not address Settlementcorp's argument based on the limited liability provision in the Escrow Agreement.

It is not necessary to address Settlementcorp's argument that Gidey has failed to produce the requisite expert testimony to establish her entitlement to relief

at trial because Gidey agreed in the Escrow Agreement that "Settlementcorp shall not be liable for any mistakes of fact, or errors of judgment, or any acts or omission of any kind unless caused by its wilfull misconduct or gross negligence." Settlementcorp Summ. J. at 12 (quoting Escrow Agreement ¶ 4(f)). Moreover, Gidey fails to explain how Settlementcorp engaged in "wilfull misconduct or gross negligence" when it was her attorney who repeatedly instructed Settlementcorp to delay in filing an interpleader and Settlementcorp complied with the request.

Specifically, Gidey contends that Settlementcorp breached the Escrow Agreement and breached its fiduciary duties when it failed to file an interpleader by June 1, 2018. Gidey Opp'n at 2. Thus, Gidey seeks to hold Settlementcorp liable for an act or omission, an outcome the Escrow Agreement expressly precludes absent evidence of wilfull misconduct or gross negligence. *See* Escrow Agreement ¶ 4(f). Gidey fails to proffer any evidence upon which a jury could reasonably rely to conclude that Settlementcorp engaged in wilfull misconduct or gross negligence. Moreover, the record makes obvious that the reason why Settlementcorp did not file an interpleader action was because Gidey repeatedly instructed Settlementcorp NOT to file an interpleader action.⁵ Therefore, it was

⁵ For example, on June 3, 2018, Gidey's counsel, emailed Settlementcorp and 5401 8th Street asking Settlementcorp to keep the escrowed funds in the escrow account "until resolution of the [Quiet Title Case]. . . ." Settlementcorp. Summ. J., Ex. E. Then again, on June 9, 2018, Gidey's counsel emailed Settlementcorp and 5401 8th Street reiterating that "all proceeds from the sale of

Gidey who created the situation for which she now seeks remedy. For these reasons Settlementcorp is entitled to judgment as a matter of law on Gidey's breach of contract and breach of fiduciary duty counterclaims.⁶

Finally, Settlementcorp is entitled to its legal fees and costs incurred in defending against this action, as provided for in section 4(d) of the Escrow Agreement. Settlementcorp Summ. J. at Ex. D "Escrow Agreement" ("Yehdego and Gidey jointly and severally agree to . . . indemnify Settlementcorp against any and all expenses, including attorney's fees and the costs of filing

the property should be kept in the escrow account until [Gidey] obtain[s] the declaratory judgment from the courts." *Id.*, Ex. F. On June 13, 2019, more than one year after the date Gidey now claims Settlementcorp needed to file an interpleader, Gidey's counsel sent a letter to Settlementcorp and 5401 8th Street stating, "It seemed obvious that in view of the Quiet Title Case, there was no need to file a separate interpleader action to determine how the sale proceeds should be divided and to deposit the escrow funds in the court registry. . . . there is therefore no issue or controversy arising from the terms of the agreement that requires an interpleader action. . . . I advise the escrow holder not to comply with [5401 8th Street's] instructions to file an interpleader action. . . ." *Id.*, Ex. F.

⁶ In the alternative, assuming without deciding that Gidey did have a viable claim for breach of contract and breach of fiduciary duty under the theory that Settlementcorp breached its duties under the Escrow Agreement by (1) failing to disburse the purchase proceeds to Gidey after repayment of the HELOC or (2) failing to keep the escrowed funds in an interest-bearing account, Gidey has failed to proffer evidence in this record that either action was caused by Settlementcorp's wilfull misconduct or gross negligence.

or defending any action, suit or proceeding or resisting any claims.”).

Accordingly, Plaintiff/Counterclaim Defendant Settlementcorp’s Opposed Motion for Summary Judgment Regarding Roda Gidey’s Counterclaim is **granted**.

4. **Defendant/Counterclaim Plaintiff/Cross-claim Defendant/Crossclaim Plaintiff Roda Gidey’s Motion for Summary Judgment Against Plaintiff/Counterclaim Defendant Settlementcorp, Defendant/Crossclaim Plaintiff 5401 8th Street NW LLC, and Defendant/Crossclaim Defendant Yeekalo Yehdego**

Gidey requests that the Court enter summary judgment in her favor on (1) 5401 8th Street’s breach of contract crossclaim; (2) her three counterclaims against Settlementcorp; and (3) her crossclaim against Yehdego. Based on the Court’s ruling granting judgment in favor 5401 8th Street on its crossclaim against Gidey and in favor of Settlementcorp on Gidey’s three counterclaims, see supra 13-22, Gidey’s motion is **denied as moot** for these two requests. Accordingly, the only remaining issue for the Court to address is Gidey’s request for summary judgment on her crossclaim against Yehdego. For the following reasons, the Court denies Gidey’s request for summary judgment on her crossclaim against Yehdego and *sua sponte* requests Gidey to show cause why the Court should not dismiss her crossclaim against Yehdego for failure to state a claim.

Gidey filed a crossclaim against Yehdego on October 7, 2019. Gidey writes in her crossclaim that Yehdego should “cover her losses that caused the purchaser to sue her for damages for the delay caused by the lawsuit she filed against Yehdego when Yehdego refused to pay the loan that he borrowed from Bank of America.” Gidey Crossclaim at 1. On November 15, 2019, Yehdego filed an answer stating that he “disagree[d] totally.”

In the instant motion, Gidey claims that she is entitled to summary judgment as Yehdego’s Answer “constitutes an admission of the essential elements of Defendant Gidey’s crossclaim.” Gidey Summ. *J.* at 9. Therefore, Gidey requests that the Court enter an order requiring Yehdego “to indemnify . . . Gidey if this Court orders her to pay damages or costs to either [Settlementcorp or 5401 8th Street].” *Id.* at 10.

To prevail on a motion for summary judgment, the moving party must establish that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Hunt*, 66 A.3d at 990 (D.C. 2013) (citing *Grant*, 786 A.2d at 583 (D.C. 2001)); Super. Ct. Civ. R. 56(c). Gidey fails to establish that she is entitled to judgment as a matter of law.

The common law remedy of indemnity may arise from an express or implied contract “giving right of reimbursement to one party who has been compelled to pay that which should have been paid by another.” *Howard Univ. v. Watkins*, 856 F. Supp. 2d 67, 72-73

(D.D.C. 2012); see *Quadrangle Dev. Corp. v. Otis Elevator Co.*, 748 A.2d 432, 435 (D.C. 2000); cf. *Hercules Inc. v. United States*, 516 U.S. 417 (1996). Where there is no express contract provision, the Court may require a party to indemnify another to prevent injustice. *Quadrangle Dev. Corp.*, 748 A.2d at 435 (citing *East Penn Mfg. Co. v. Pineda*, 578 A.2d 1113, 1126 (D.C. 1990)).

Here, Gidey has not produced either an express or implied contract providing her the right to be indemnified by Yehdego. Moreover, there is nothing in the record that leads the Court to conclude that Yehdego should indemnify Gidey to prevent injustice. The damages awarded to 5401 8th Street were based on Gidey and Yehdego's failure to meet their joint and several contractual obligations under the SPA. Accordingly, as both Gidey and Yehdego breached the SPA, neither is entitled indemnity against the other. Allowing Gidey to shift responsibility from herself to Yehdego for her own breach would be contrary to indemnity principles. Similarly, the damages awarded to Settlementcorp were based on an express provision in the Escrow Agreement where Gidey agreed to be jointly and severally liable for Settlementcorp's attorney's fees and costs. Gidey cannot evade her contractual obligations under the Escrow Agreement. Thus, Gidey has not met her burden under Rule 56 showing that she is entitled to judgment as a matter of law on her crossclaim against Yehdego.

Accordingly, defendant/counterclaim plaintiff/crossclaim defendant/crossclaim plaintiff Roda Gidey's

Motion for Summary Judgment against Settlementcorp, 5401 8th Street NW LLC, and Yeekkalo Yehdego is **denied as moot and denied**.

For the reasons stated above, Gidey is directed to show cause why her crossclaim against Yehdego should not be dismissed. See Super. Ct. Civ. R. 41(b)(1)(A)(ii) ("the court may, on its own initiative, enter an order dismissing the action or any claim."). If Gidey is unable to identify any valid legal authority supporting her position that her claim is actionable, the Court may enter an order dismissing Gidey's cross-claim against Yehdego in 2019-CA-004678.

Accordingly, it is this 20th day of April, 2020, hereby:

-
1. **ORDERED** that plaintiff/counterclaim defendant Settlementcorp's Opposed Motion for Summary Judgment to Interplead the Escrowed Funds and for Contractual Indemnity is **GRANTED IN PART**; and it is further
 - a. **ORDERED** that Settlementcorp's request to deposit the Escrowed Funds into the Court Registry is **denied as moot**; and it is further
 - b. **ORDERED** that Settlementcorp is awarded \$2,000 of the Escrowed Funds; and it further
 - c. **ORDERED** that judgment is entered against Yeekkalo Yehdego and Roda Gidey for the full amount of attorneys' fees, costs, and expenses incurred by Settlementcorp with filing and defending this case, as certified to the Court within fifteen days of this Order.

2. **ORDERED** that defendant/crossclaim plaintiff 5401 8th Street NW LLC's Motion for Summary Judgment Against crossclaim defendants Roda T. Gidey and Yeekalo Yehdego is **GRANTED**; and it is further
 - a. **ORDERED** that judgment is entered against Roda Gidey and Yeekalo Yehdego, jointly and severally, and in favor of 5401 8th Street NW LLC in the amount of \$61,200, plus prejudgment interest in the amount of \$4,609.77, plus reasonable legal fees and costs, as certified to the Court within fifteen days of this Order, plus post judgment interest at the applicable statutory rate; and it is further
 - b. **ORDERED** that Settlementcorp pay to 5401 8th Street NW LLC \$61,200 from the escrowed funds it holds pursuant to the sale of real property located at 5401 8th Street NW, Washington, DC 20011, within five days of entry of this order, plus any amounts later awarded for legal fees and any other costs issued by the Court in this matter.
3. **ORDERED** that plaintiff/counterclaim defendant Settlementcorp's Opposed Motion for Summary Judgment Regarding Roda Gidey's counterclaim is **GRANTED**; and it is further
 - a. **ORDERED** that Roda Gidey's Counterclaim against Settlementcorp is **dismissed with prejudice**; and it is further
 - b. **ORDERED** that judgment is entered against Yeekalo Yehdego and Roda Gidey for the full amount of attorneys' fees, costs, and expenses

incurred by Settlementcorp with defending
Roda Gidey's Counterclaim, as certified to the
Court within fifteen days of this Order.

4. **ORDERED** that defendant/counterclaim plaintiff/crossclaim defendant/crossclaim plaintiff Roda Gidey's Motion for Summary Judgment against Settlementcorp, 5401 8th Street NW LLC, and Yeekkalo Yehdego is **DENIED AND DENIED AS MOOT**; and it is further

- a. **ORDERED** that Roda Gidey has up to and including May 18, 2020 to file a response showing cause why her crossclaim against Yeekkalo Yehdego in this case is actionable by this Court; and it is further
- b. **ORDERED** that Yeekkalo Yehdego has up to and including June 2, 2020 to file a reply.

SO ORDERED.

/s/ Hiram E. Puig-Lugo
Hiram E. Puig-Lugo
Associate Judge
Signed in Chambers

COPIES TO:

Copies e-served to:
Justin Flint, Esq.
Gregory Sussman, Esq.
Gabriel Bluestone, Esq.
Michael Bluestone, Esq.
Workneh Churnet, Esq

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Copies sent by First Class Mail to:

Yeekkaló Yehdego

P.O. Box 34193

Washington, DC 20043

Yeekkaló Yehdego

817 Walker Road,

Great Falls, VA 22066

**SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION**

SETTLEMENT CORP. DBA : Case Number:
SETTLEMENTCORP : 2019 CA 004678 B
v. : Judge:
RODA GIDEY, *et al.* : Hiram E. Puig-Lugo

ORDER

(Filed May 18, 2020)

This matter comes before the Court on defendant/
crossclaim plaintiff 5401 8th Street NW LLC's (5401
8th Street's) Certification of Bill of Fees and Costs
Pursuant to April 20, 2020 Order, filed April 23, 2020,
and plaintiff/counterclaim defendant Settlementcorp's
("Settlementcorp's") Certification of Bill of Fees and
Costs Pursuant to April 20, 2020 Order, filed May 5,
2020. The Court addresses each Certification in turn.

Background

On April 20, 2020, this Court issued an Order (1)
granting in part Settlementcorp's Opposed Motion for
Summary Judgment to Interplead the Escrowed
Funds and for Contractual Indemnity; (2) granting
5401 8th Street's Motion for Summary Judgment
Against crossclaim defendants Roda T. Gidey ("Gidey")
and Yeekkalo Yehdego ("Yehdego"); (3) granting Settle-
mentcorp's Opposed Motion for Summary Judgment
Regarding Gidey's counterclaim; and (4) denying and

denying as moot Gidey's Motion for Summary Judgment against Settlementcorp, 5401 8th Street, and Yehdego. As part of its April 20, 2020 Order, the Court entered judgment against Gidey and Yehdego for the "reasonable legal fees and costs" incurred by 5401 8th Street pursuant to paragraph 11 of the Standard Purchase Agreement ("SPA") and for "the full amount of attorneys' fees, costs, and expenses" incurred by Settlementcorp pursuant to section 4(d) of the Escrow Agreement. *See* April 20, 2020 Judge Puig-Lugo Order at 26, 27. The Court ordered 5401 8th Street and Settlementcorp to submit their legal fees and costs incurred along with a certification that the bill is true and correct. Pursuant to this Court's Order, on April 23, 2020, 5401 8th Street filed its Certification of Bill of Fees and Costs, and on May 5, 2020, Settlementcorp filed its Certification of Bill of Fees and Costs.

1. 5401 8th Street's Certification of Bill of Fees and Costs Pursuant to April 20, 2020 Order ("5401 8th Street's Certification")

5401 8th Street requests \$28,874.50 in outstanding legal fees and \$403.24 in costs.¹ 5401 8th Street

¹ 5401 8th Street states that it has incurred legal fees totaling \$61,408.50. 5401 8th Street Certification ¶ 3. However, as a result of this Court's March 11, 2020 Order granting 5401 8th Street's Partial Consent Motion for Judgment against Yehdego, "5401 8th Street received \$31,234 which was credited against its legal fees incurred through February 5, 2020 . . . reducing the legal fee balance to \$30,174.50." *Id.* ¶ 7. In addition, "5401 8th Street received \$1,300 from . . . counsel for Gidey, as payment to be made against legal fees incurred pursuant to this Court's

Certification ¶ 3. In support of its request, 5401 8th Street provided a six-page itemized bill of its fees and costs. *See id.*, Ex. A.

As noted above, the Court determined that 5401 8th Street is entitled to its reasonable legal fees and costs based on paragraph 11 of the SPA entered into by Gidey, Yehdego, and 5401 8th Street. *See* April 20, 2020 Judge Puig-Lugo Order at 18. Paragraph 11 of the SPA states, in relevant part, “In any action or proceeding involving a dispute between Purchaser and Seller arising out of this Contract, Purchaser will be entitled to receive from seller reasonable attorney’s fees, court costs, and process server’s fees and expenses.” (emphasis added). Therefore, at this stage, the Court is only evaluating the reasonableness of 5401 8th Street’s requested amount.

The determination of the “reasonableness” of an award is within the sound discretion of the trial court. *Frazier v. Franklin Inv. Co.*, 468 A.2d 1338, 1341 (D.C. 1983). In determining whether attorneys’ fees are reasonable, the Court first determines the “lodestar,” which is “the number of hours reasonably expended multiplied by a reasonable hourly rate – and then, in exceptional cases, make[s] upward or downward adjustments as appropriate.” *Campbell-Crane & Associates v. Stamenkovic*, 44 A.3d 924, 947 (D.C. 2010). Several jurisdictions, including our own, have adopted a list of twelve factors to be considered by the trial

Order of March 11, 2020.” *Id.* ¶ 8. Thus, the outstanding legal fees for 5401 8th Street totals \$23,874.50.

judge in making a fee determination. The list of factors is:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the "undesirability" of the case;
- (11) the nature and length of the professional relationship with the client; and
- (12) awards in similar cases.

Frazier, 468 A.2d at 1341.

There is no basis for rejecting 5401 8th Street's initial calculations based on the lodestar. However, that preliminary assessment does not determine the outcome here. It is necessary to consider the reasonableness of 5401 8th Street's request as well.

The Court turns to the twelve factors to be considered by the trial judge in making a fee determination. For the first factor, "the time and labor required," 5401 8th Street certifies that its legal fees include 138.9 hours of work by Zachary Bluestone and 34 hours of work by Gabriel Bluestone. *See Frazier*, 468 A.2d at

1341; 5401 8th Street Certification ¶ 4. The Court finds that the hours expended are reasonable based on the plethora of motions filed by the parties as part of this protracted litigation. *Id.* Specifically, the Court notes that many of the work performed by 5401 8th Street's counsel was necessitated by the persistent filings of Gidey. In addition, 5401 8th Street's itemized bill discloses that counsel spent a significant amount of time preparing pleadings and answers, reviewing case documents, attending hearings, and obtaining discovery through depositions and interrogatories. Therefore, the Court does not find it necessary to reduce the number of hours claimed by 5401 8th Street.

As to the second factor, "the novelty and difficulty of the questions," the Court notes that 5401 8th Street's crossclaim against Gidey was for Breach of Contract *Id.* The Court finds that such claims are not novel or particularly difficult, but that reviewing materials from previous proceedings involving the parties and responding to Gidey's multiple filings, including successfully dismissing Gidey's crossclaim against 5401 8th Street, added complexity and difficulty to this case. This factor weighs in favor of 5401 8th Street's requested amount.

As to factor three, "the skill requisite to perform the legal service properly," the Court finds that competent litigation skills were needed to properly perform the services provided here. *Id.* This factor weighs in favor of 5401 8th Street's requested amount.

Factor four considers, “the preclusion of other employment by the attorney due to acceptance of the case.” *Id.* The Court finds that there is insufficient information to make this determination.

Factor five considers, “the customary fee.” *Id.* The Court finds that there is insufficient information to determine the customary fee for such a case, but that the hourly rate is reasonable as 5401 8th Street’s counsels’ hourly rates are lower than the hourly fee for attorneys with similar experience set forth in the *Laffey* matrix. See 5401 8th Street Certification ¶¶ 4-6.

Factor six considers, “whether the fee is fixed or contingent.” *Frazier*, 468 A.2d at 1341. Here, the attorneys’ fees appear to be fixed at an hourly rate of \$365 for the work of Zachary Bluestone and \$315 for the work of Gabriel Bluestone. 5401 8th Street Certification 4-6. This factor weighs in favor of 5401 8th Street’s requested amount.

The seventh factor considers the “time limitations imposed by the client or the circumstances.” *Frazier*, 468 A.2d at 1341. The Court finds insufficient information regarding this factor.

Next, the Court considers factor eight, “the amount involved and the results obtained.” *Id.* On April 20, 2020, the Court granted 5401 8th Street’s Motion for Summary Judgment on its crossclaims against Gidey and Yehdego thereby eliminating the need for the case to proceed to trial. At the time the Court entered judgment in favor of 5401 8th Street, no pretrial or trial date had been set. Thus, the Court cannot

determine whether 5401 8th Street's counsel had begun trial preparation. However, this case involved significant motions practice, culminating in the filing of four dispositive motions, and the parties completed discovery before the Court entered judgment in 5401 8th Street's favor. The Court finds that these actions, as well as the outcome of various hearings, and the dispositive motions, weigh in favor of awarding 5401 8th Street's requested amount.

Factor nine considers "the experience, reputation, and ability of the attorneys." *Frazier*, 468 A.2d at 1341. The Court finds insufficient information regarding the attorney's experience and reputation, but counsel provided competent and effective representation.

Factor ten considers the "undesirability" of the case. *Id.* The Court has no reason to conclude that the case was undesirable, although the long and complicated history between Gidey and Yehdego, which includes litigation over the real property at issue, suggest an acrimonious quality to the litigation.

Factor eleven considers "the nature and length of the professional relationship with the client." *Id.* The total length of this case was approximately nine (9) months. During that time, 5401 8th Street devoted almost 173 hours to this dispute. 5401 8th Street Certification ¶¶ 4-6. Based on the number of filings submitted by the parties that necessitated a response from 5401 8th Street, the Court has no reason to conclude that the hours expended were unreasonable given the relatively short life of the case.

Lastly, factor twelve considers “awards in similar cases.” *Frazier*, 468 A.2d at 1341. The Court lacks information to make a determination on this factor. Nonetheless, the Court notes that in *Ungar v. District of Columbia*, 535 A.2d 887 (D.C. 1987), the Court of Appeals affirmed the decision of attorneys’ fees in its entirety because the hearing examiner properly considered the *Frazier* factors in analyzing the requested fee amount. Here, the Court has carefully analyzed each of the *Frazier* factors in their entirety.

The Court has weighed the relevant factors and determines that there appears no reason to believe that these fees are excessive based on the hours billed. Therefore, the Court awards 5401 8th Street legal fees in the amount of \$61,408.50, and costs in the amount of \$403.23. The Court finds that this award takes into account the claims litigated and the overall reasonableness of the fees.

2. Settlementcorp’s Certification of Bill of Fees and Costs Pursuant to April 20, 2020 Order (“Settlementcorp’s Certification”)

This Court’s April 20, 2020 Order entered judgment against Gidey and Yehdego for the full amount of Settlementcorp’s legal fees and costs based on the language of the parties’ Escrow Agreement. *See* April 20, 2020 Judge Puig-Lugo Order at 12, 23. Specifically, pursuant to section 4(d) of the Escrow Agreement, “Yehdego and Gidey jointly and severally agree[d] to indemnify Settlementcorp . . . from *any and all* costs

... or any other expenses, fees or charges of any character or nature, ... and ... against *any and all* expenses, including attorney's fees and the costs of filing or defending any action, suit or proceeding or resisting any claims." (emphasis added). Notably absent from section 4(d) of the Escrow Agreement is any qualifying language that the fees and expenses awarded to Settlementcorp be determined by a Court as reasonable. Consequently, the Court will not evaluate the reasonableness of Settlementcorp's requested amount.

Settlementcorp's Certification requests \$98,960 in legal fees and \$7,512.39 in costs. Settlementcorp Certification ¶ 6. Settlementcorp's legal fees include 452 hours of work by Gregory Sussman at an hourly rate of \$170, 119.2 hours of work by Justin Flint at an hourly rate of \$185, and .4 hours of work by Channing L. Shor at an hourly rate of \$170. *Id.* ¶¶ 7-10. Settlementcorp provided ninety-seven pages of exhibits, including itemized bills of its fees and costs for each attorney on this case and corresponding receipts. *See id.*, Ex. A. In addition, Settlementcorp provided a certification that its bill of fees and costs is correct. *Id.* at 3. Accordingly, consistent with the language of the Escrow Agreement, the Court will award Settlementcorp its full amount of legal fees and costs. Therefore, it is this 18th day of May, 2020, hereby:

ORDERED that judgment is entered against Roda T. Gidey and Yeekkalo Yehdego in favor of 5401 8th Street NW LLC, for its legal fees in the amount of \$61,408.50, and for its costs in the amount of \$403.23; and it is further

ORDERED that Settlementcorp shall pay to 5401 8th Street NW LLC legal fees of \$28,874.50, plus costs of \$403.23, plus prejudgment interest of \$4,609.77 (as awarded in this Court's April 20, 2020 Order),² from the escrowed funds it holds pursuant to the sale of real property located at 5401 8th Street NW, Washington, DC 20011, within five days of entry of this order; and it is further

ORDERED that judgement is entered against Roda T. Gidey and Yeekkalo Yehdego, in favor of Settlementcorp, for its legal fees in the amount of \$98,960, and for its costs in the amount of \$7,512.39, less \$2,000;³ and it is further

ORDERED that Settlementcorp shall withdraw \$104,472.39 from the escrowed funds it holds pursuant to the sale of real property located at 5401 8th Street NW, Washington, DC 20011, within five days of entry of this order.

SO ORDERED.

/s/ Hiram E. Puig-Lugo
Hiram E. Puig-Lugo
Associate Judge
Signed in Chambers

² In its April 20, 2020 Order, the Court awarded 5401 8th Street prejudgment interest of \$4,609.77 but inadvertently omitted a clause ordering Settlementcorp to release \$4,609.77 to 5401 8th Street from the escrowed funds.

³ In its April 20, 2020 Order, the Court awarded Settlementcorp \$2,000 of the escrowed funds to cover fees associated with the bringing the Interpleader Case.

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COPIES TO:

Copies e-served to:

Justin Flint, Esq.

Gregory Sussman, Esq.

Gabriel Bluestone, Esq.

Michael Bluestone, Esq.

Workneh Churnet, Esq

Copies E-mailed to:

Yeekalo Yehdego at Yeekalo104@gmail.com

App. 76

**District of Columbia
Court of Appeals**

Nos. 20-CV-356, 20-CV-395 & 20-CV-397

RODA T. GIDEY,

Appellant,

v.

CAB4678-19

SETTLEMENT CORPORATION,
et al.,

Appellees.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman,*
Beckwith, Easterly, McLeese, Deahl,*
Howard and AliKhan, Associate Judges;
Thompson,* Senior Judge.

ORDER

(Filed May 17, 2022)

On consideration of appellant's petition for rehearing or rehearing *en banc*, and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

ORDERED by the merits division* that appellant's petition for rehearing is denied. It is

FURTHER ORDERED that appellant's petition for rehearing *en banc* is denied.

PER CURIAM

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Copies to:

Honorable Hiram E. Puig-Lugo

Director, Civil Division

Copy e-served to:

Workneh Churnet, Esquire

Gregory Z. Sussman, Esquire

Justin M. Flint, Esquire

Gabriel T. Bluestone, Esquire

Michael Z. Bluestone, Esquire

Copy mailed to:

Yeekkalé Yehdego

P.O. Box 34193

Washington, DC 20043

pii
