FILED DISTRICT COURT
Third Judicial District

APR 11 2016

SALT LAKE COUNTY

By _____ Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
SALT LAKE DEPARTMENT

KINGSWICK HOLDINGS, LLC, a Utah limited liability company, Plaintiff, v. RS KINGSLAND, LLC, a Utah limited liability company, Defendant.	**FINDINGS OF FACT AND CONCLUSIONS OF LAW** Case No. 140900578 Judge Laura S. Scott April 11, 2016

This matter came before the Court for a bench trial on January 19, 20, and 21 and February 11, 2016. Plaintiff Kingswick Holdings, LLC (Kingswick) was represented by Bryce D. Panzer and Michael S. Wilde of Blackburn & Stoll, LC. Defendant RS Kingsland, LLC (RS) was represented by Mark A. Larsen and Lisa C. Rico of Larsen & Rico, PLCC.

The Court previously ruled on several claims and defenses pursuant to motions filed by the parties. The remaining issues at trial were (1) whether Shane Baldwin had apparent authority to execute the Assignment of Loan Documents (Assignment) on behalf of SilverLeaf Financial, LLC (SilverLeaf) and, if not, (2) whether SilverLeaf ratified Shane Baldwin's execution of the Assignment. At trial, the Court heard testimony from the parties and their witnesses, received exhibits, and considered the arguments of counsel. Now being fully advised, the Court enters its Ruling and Order as follows:

FINDINGS OF FACT

RS Kingsland, LLC

1. RS is a Utah limited liability company. It was formed on December 19, 2011. The manager is RealSource Commercial, LLC (RealSource). (Ex. 138) Stan Hanks is the manager of RealSource. (Ex. 170)

SilverLeaf Financial, LLC

2. SilverLeaf is a Utah limited liability company. It was formed on September 15, 2008. (Ex. 51) SilverLeaf's business was purchasing distressed loans. For each loan, it would form an

entity and issue a private placement memorandum to potential investors.

3. Initially, SilverLeaf was "member managed" and its members were SilverLeaf Companies, LLC and Ross Baldwin. Shane Baldwin was manager of SilverLeaf Companies. (*Id.*)

4. On July 23, 2009, Amended and Restated Articles of Organization were filed for SilverLeaf, by which it became "manager managed." SilverLeaf Companies was designated manager of SilverLeaf and Shane Baldwin was designated President/CEO. (*Id.*)

5. On August 12, 2009, another Amended and Restated Articles of Organization was filed on behalf of SilverLeaf, which designated SilverLeaf Ventures LLC as manager and Shane Baldwin as President/CEO. Shane Baldwin was manager of SilverLeaf Ventures. (*Id.*)

6. On March 25, 2010, another Amended and Restate Articles of Organization was filed on behalf of SilverLeaf, which designated SilverLeaf Ventures and Mark Staples as managers and Mark Staples as President/CEO. (*Id.*)

7. On August 11, 2010, the Second Amended and Restated Articles of Organization was filed on behalf of SilverLeaf, which designated Mark Staples as manager and President/CEO. Julia Roper was designated as the registered agent. (*Id.*)

8. SilverLeaf's Second Amended and Restated Operating Agreement, effective August 11, 2010, provides that from time to time, the manager (Mark Staples), pursuant to the directives of the members (*i.e.,* SilverLeaf Ventures (Shane Baldwin), Ross Baldwin, and Cary Clark), "may allocate specific managerial activities among the various employed staff." (Section 4.2) It further provides that the manager is "a chief executive officer" and may sign certain documents "except in cases where the signing or execution is expressly delegated by the members or by this agreement or by statute to some other officer or agent of [SilverLeaf]." (Section 4.3) The Operating Agreement does not require the delegation to be in writing. (Ex. 102)

9. On June 22, 2012, a Certificate of Amendment was filed on behalf of SilverLeaf, which designated Shane Baldwin as manager and President/CEO. (Ex. 51)

Kingswick Holdings, LLC

10. Kingswick is a Utah limited liability company. It was formed on March 28, 2011. From March 28, 2011 through September 28, 2012, SilverLeaf was manager of Kingswick. Effective October 4, 2012, Ross Baldwin was appointed manager of Kingswick. (Ex. 53)

11. Kingswick was formed for the purpose of acquiring two commercial real estate loans, which were secured by real property located in Zurich, Illinois and St. Louis, Missouri.

12. The loan secured by the real property located at 1431 Kingsland Avenue, St. Louis, Missouri (Kingsland Property) is referred to as the Kingsland loan. (Ex. 54 – Promissory Note, Ex. 55 – Deed of Trust)

13. The cover page for the Private Placement Memorandum for Kingswick states that it is managed by SilverLeaf "Attn: Shane Baldwin and/or Mark Staples." The Management section states that SilverLeaf is "beneficially owned" by Shane Baldwin through SilverLeaf Ventures. Shane Baldwin is identified as an "executive officer" and "Principal" of SilverLeaf. (Ex. 2)

14. The transaction at issue in this case involves a $700,000 loan from RS to Kingswick. This loan was to be secured by the Kingsland Property. Shane Baldwin executed the documents in connection with this loan, including the Assignment. Kingswick alleges that Shane Baldwin did not have authority to execute the Assignment and, therefore, it is void. RS alleges that Shane Baldwin had apparent authority to execute the Assignment. Alternatively, RS alleges that Kingswick ratified the Assignment.

SilverLeaf's Communications with Stan Hanks and RealSource in 2010

15. Prior to the Kingsland transaction, SilverLeaf communicated with RealSource regarding potential deals and RealSource was involved in at least one SilverLeaf deal with Mark Staples and Shane Baldwin, which is described below.

16. As stated above, prior to March 25, 2010, Shane Baldwin was SilverLeaf's President/CEO. (Ex. 3) While President/CEO, Shane Baldwin sent an email to Stan Hanks regarding an "Ohio Savings Bank" deal on February 19, 2010. The signature block on the email identifies Shane Baldwin as follows:

> D. Shane Baldwin, CEO
> SilverLeaf Companies

The signature block also included the SilverLeaf logo and web address. (Ex. 211)

17. From March 25, 2010 through June 2012, Mark Staples was designated as SilverLeaf's President/CEO according to its amended Articles of Organization.

18. Notwithstanding this change in the Articles of Organization, Shane Baldwin continued to use the email signature block that identified him as the CEO.

19. Although Mark Staples and Ross Baldwin knew that Shane Baldwin was using this signature block on emails sent to third parties, including potential investors such as Stan Hanks, they did not attempt to stop Shane Baldwin from using the signature block or undertake any efforts to correct the impression it gave to potential investors that Shane Baldwin continued to be the CEO of SilverLeaf after March 25, 2010.

20. In addition to emails related to the transactions discussed specifically below, Shane Baldwin, on behalf of SilverLeaf, sent other emails to Stan Hanks that included the signature block identifying him as CEO of SilverLeaf Companies.

21. For example, on April 29, 2010, Shane Baldwin, on behalf of SilverLeaf, sent Stan Hanks an email regarding a "Tannery Office Park" deal. The signature block on the email identifies Shane Baldwin as the CEO of SilverLeaf Companies. (Ex. 212)

22. On December 23, 2010, Shane Baldwin, on behalf of SilverLeaf, sent Stan Hanks an email regarding the "Baymeadows Apartment Complex" deal. The signature block on the email identifies Shane Baldwin as the CEO of SilverLeaf Companies. (Ex. 213)

23. Although Kingswick points out that SilverLeaf Companies is different than SilverLeaf, the Court finds that this distinction would not be apparent to a reasonable person receiving an email from Shane Baldwin given that his email signature block also includes the SilverLeaf logo and web address.

24. Moreover, notwithstanding the change in March 2010, others at SilverLeaf continued to view Shane Baldwin as the CEO of SilverLeaf. For example, Colby Bond testified that Shane Baldwin continued to refer to himself as CEO after March 2010 and that is how he (Colby) saw him (Shane), including during December 2011 when the transaction at issue occurred. Julia Roper also testified that she understood Shane Baldwin was CEO of SilverLeaf during this period of time.

25. Mark Staples could not recall whether Shane Baldwin was re-appointed as CEO of SilverLeaf after August 2010. Ross Baldwin could not identify a business purpose using the titles of CEO or President in a limited liability company.

26. Notwithstanding the fact that Mark Staples was manager of SilverLeaf, he sometimes signed documents as President of SilverLeaf. (*See, e.g.,* Ex. 204).

SilverLeaf's Website and Marketing Materials

27. The 2010 SilverLeaf Media Resource Guide identifies Shane Baldwin as Chief Executive Officer. He is featured first in the Guide. Mark Staples is identified as President. No manager of SilverLeaf is identified. (Ex. 225) SilverLeaf passed out the Guide to potential investors.

28. During the relevant time period, Shane Baldwin was featured prominently on the SilverLeaf website. (Ex. 226) In video clips on the website, Shane Baldwin is identified as "Founder and CEO" and President/CEO of SilverLeaf. In his biography on the website, which is listed first, Shane Baldwin is identified as Principal.

29. Mark Staples and Ross Baldwin were aware of the website and had viewed some if not all of the videos clips. Some of the video clips feature other "executives" of SilverLeaf, including Heston Nielsen and Mark Staples. Cary Clark viewed the video clips. The "Fred Thompson" video was played in a SilverLeaf staff meeting.

30. Notwithstanding their knowledge that the website and video clips identified Shane Baldwin as the Founder and CEO or President/CEO of SilverLeaf, Mark Staples and Ross Baldwin

took no action to correct or update the information on the website or remove the video clips.

31. In the 2011 SilverLeaf marketing brochure, Shane Baldwin is described as the "driving force" behind SilverLeaf. He is identified as Chief Executive Officer/Founder of SilverLeaf. Mark Staples is identified as President. With the exception of Cary Clark and Ross Baldwin, who are identified as Principals, the other individuals in the brochure have corporate titles, *i.e.,* CFO, Vice President, etc. The SilverLeaf Companies are identified as SilverLeaf Financial, SilverLeaf Realty, and SilverLeaf Asset Management. (Ex. 235)

32. The brochures were available at SilverLeaf's offices. They were handed out to potential investors. Colby Bond testified that they handed out "dozens" of the brochures at each convention. Despite their knowledge of the brochures, Ross Baldwin and Mark Staples took no action to revise or destroy the brochures after the change in March 2010.

33. Mark Staples was aware that Shane Baldwin was creating marketing materials for SilverLeaf, including the brochures, but did not review them for accuracy. Mark Staples further testified that he did not care what title Shane Baldwin used and never thought about whether third parties might be relying on his CEO title in doing business with SilverLeaf.

34. Stan Hanks had a copy of the brochure at the time of the Kingsland transaction, which he had received from SilverLeaf. Stan Hanks had looked at SilverLeaf's website but does not recall viewing the videos. He had received emails with Shane Baldwin's signature block identifying him as CEO of SilverLeaf. Stan Hanks reasonably believed that Shane Baldwin was CEO of SilverLeaf during the relevant time period and a CEO was "higher in rank" than a manager or president. No one ever told Stan Hanks that Shane Baldwin was not CEO of SilverLeaf.

Trailhead Lodge

35. Trailhead Lodge Acquisitions, LLC (Trailhead) was formed in September 2011 for the purpose of acquiring a Bank of America loan secured by 58 unsold condominium units in the Trailhead Lodge luxury condominium development in Steamboat Springs, Colorado. SilverLeaf was manager of Trailhead. (Exs. 104, 107, 208)

36. On September 23, 2011, Mark Staples, as manager of SilverLeaf, executed a Loan Sale and Assignment Agreement with Bank of America. Pursuant to the Agreement, Trailhead agreed to purchase a $48 million loan secured by 58 luxury condominiums for $23.1 million. (Ex. 210)

37. The cover page for Private Placement Memorandum for Trailhead Lodge states that it is managed by SilverLeaf "Attn: Shane Baldwin and/or Mark Staples." In the Management section, it states that SilverLeaf is "managed by Mark Staples" and "beneficially owned" by Shane Baldwin through SilverLeaf Ventures. It further identifies the "executive officers" of SilverLeaf as Mark Staples as "Manager and President" and Shane Baldwin as "Principal." (Ex. 115)

38. On September 22, 2011, Shane Baldwin sent an email to Stan Hanks regarding the

Trailhead Lodge deal. The email attached certain documents, including an Asset Summary, and stated that the deal was going to close on September 29, 2011. (Ex. 103)

39. On October 10, 2011, Shane Baldwin sent another email to Stan Hanks regarding the Trailhead Lodge deal. Mark Staples was copied on the email. In the email, Shane Baldwin states that "we are in the middle of closing [and] need 2M to get it across the finish line [and] it has to close this week. Let me know if you guys have some interest in either coming in as debt or as part of the equity." (Ex. 104)

40. On October 10, 2011, Shane Baldwin and Stan Hanks exchanged emails regarding the Trailhead Lodge deal. (Exs. 104 - 107) Shane Baldwin attached the Articles of Organization and Operating Agreement for Trailhead to one of the emails. (Ex. 107) The Articles identify SilverLeaf as manager of Trailhead and the Operating Agreement identifies Mark Staples as manager of SilverLeaf. (*Id.*) The Bank of America Loan Sale and Assignment Agreement executed by Mark Staples as manager of SilverLeaf was also attached to the email. (*Id.*)

41. Stan Hanks reviewed the PPM for Trailhead Lodge.

42. RealSource ultimately brokered a short-term bridge loan for the Trailhead Lodge deal. In connection with the loan transaction, RealSource was to receive an $80,000 broker fee to be paid by SilverLeaf. SilverLeaf paid $25,000 to RealSource prior to the closing of the transaction. SilverLeaf was to pay RealSource $27,500 on or before October 24, 2011 and $27,500 on or before October 31, 2011. (Exs. 108, 109)

43. On October 17, 2011, Stan Hanks emailed certain loan documents to Shane Baldwin and Mark Staples. These documents, which were prepared by the lender's counsel, included a Secured Promissory Note, Escrow Instructions, Transfer of Common Membership Interest, and Pledge Agreement to be signed by Mark Staples as manager of SilverLeaf. They also included an Individual Guaranty to be signed by Shane Baldwin. (Ex. 108)

44. On October 18, 2011, Stan Hanks and Mark Staples exchanged emails regarding the closing of the Trailhead Lodge loan. Shane Baldwin was copied on these emails. Attached to one of the emails was an Agreement for Mortgage Broker Origination Fee for RealSource. It was signed by Mark Staples as manager of SilverLeaf. (Exs. 109, 111)

45. Also on October 18, 2011, Stan Hanks notified Mark Staples that a $20,000 check was returned by the bank and asked Mark Staples to call him as soon as possible. Mark Staples responded "[w]ill do." (Ex. 110)

46. On October 24, 2011, Stan Hanks emailed Mark Staples and Shane Baldwin requesting that SilverLeaf wire the $27,500 payment. (Ex. 112)

47. On October 31, 2011 at 11:23 a.m., Mark Staples sent an email to Stan Hanks requesting "a copy of the final executed docs for our deal on Trailhead." The subject line of the email is "Executed Final Docs." The signature block on the email identifies Mark Staples as

"President." (Ex. 215)

48. Approximately 10 minutes later, Stan Hanks emailed the executed Trailhead Lodge loan documents to Mark Staples. These documents included the Transfer of Common Membership Interest, Pledge Agreement, and Secure Promissory Note, which were executed by Shane Baldwin as manager of SilverLeaf. They also included the Individual Guaranty, which was executed by Shane Baldwin and attested to by Mark Staples. (Ex. 113)

49. At trial, Mark Staples admitted that he knew the Trailhead Lodge loan transaction had closed. He testified that he does not recall whether he opened the attachments to the email or not. He acknowledged that if he had opened the attachments, he would have seen that Shane Baldwin signed the loan documents as manager of SilverLeaf. When asked whether he would have notified Stan Hanks that Shane Baldwin was not authorized to sign them, Mark Staples equivocated.

50. From his attestation of Shane Baldwin's signature on the Individual Guaranty and his receipt of the executed loan documents a few minutes after requesting them, the Court finds that Mark Staples knew that Shane Baldwin had executed the Trailhead Lodge loan documents as manager of SilverLeaf and that he did not object to Shane Baldwin doing so.

51. At trial, Kingswick did not present any evidence that SilverLeaf objected to Shane Baldwin executing the Trailhead Lodge loan documents as manager of SilverLeaf or that SilverLeaf specifically delegated that authority to him through a resolution or other written authorization.

52. On November 15, 2011, Stan Hanks emailed Mark Staples and Shane Baldwin requesting an update on Trailhead Lodge and expressing concern the loan was in default. (Ex. 117)

53. On or about November 21, 2011, SilverLeaf executed a Forbearance Agreement for the Trailhead Lodge loan, which Mark Staples forwarded to Stan Hanks on November 22, 2011. The Forbearance Agreement was executed by Mark Staples as manager and Shane Baldwin individually. (Ex. 118)

54. Thereafter, Stan Hanks continued to email Mark Staples and Shane Baldwin regarding the Trailhead Lodge loan and SilverLeaf's failure to pay the loan. (Ex. 119, 120, 125)

55. SilverLeaf has never challenged the Trailhead Lodge loan as being invalid because Shane Baldwin signed the loan documents as manager of SilverLeaf.

56. Mark Staples never told Stan Hanks that Shane Baldwin was not authorized to sign on behalf of SilverLeaf notwithstanding his execution of the Trailhead Lodge loan documents.

57. By allowing Shane Baldwin to execute loan documents as manager of SilverLeaf, Mark Staples and SilverLeaf led Stan Hanks to reasonably believe that Shane Baldwin had authority to execute documents on behalf of SilverLeaf notwithstanding the fact that Mark Staples was identified as manager of SilverLeaf in the Operating Agreement.

Colorado Cornerstone

58. In December 2011, SilverLeaf was awarded the bid on a 6,000 acre Greg Norman golf course resort development in Telluride, Colorado referred to as Cornerstone. (Ex. 122)

59. On December 2, 2011, Shane Baldwin sent Stan Hanks an email regarding the Cornerstone deal.

60. On December 5, 2011, Stan Hanks sent Shane Baldwin an email to let him know that he had a group that might be interested. (Ex. 124)

61. On December 14, 2011, Shane Baldwin sent an email to Stan Hanks which states that he needs "2M on Cornerstone. They would get a first trust deed if they did that amount." He further stated that he needs "2M of equity or Mezz on Broadway." (Ex. 126)

Broadway Park Lofts

62. Broadway Park Loft Holdings, LLC (Broadway Park) was formed on December 6, 2011 for the purpose of acquiring a US Bank loan secured by the Broadway Park Lofts condominiums in Salt Lake City, Utah. SilverLeaf was manager of Broadway Park. (Ex. 241)

63. Shane Baldwin, on behalf of SilverLeaf, offered to purchase the US Bank loan for $7.25 million. This offered was confirmed in an email sent by Shane Baldwin on December 2, 2011. Ross Baldwin was copied on the email. (Ex. 23)

64. SilverLeaf was the winning bidder for the US Bank loan. (Ex. 26)

65. On December 6, 2011, Julia Roper, on behalf of SilverLeaf, gave Stan Hanks access to ShareVault for the Broadway Park Lofts transaction. (Ex. 31)

66. Although the amount, parties, and specific loan terms evolved, Stan Hanks agreed to loan money to SilverLeaf to be used to close Colorado Cornerstone and Broadway Park Lofts and to pay the broker fee that SilverLeaf still owed to RealSource in connection with Trailhead Lodge. It was agreed that this loan would be secured by real property.

67. On December 17, 2011, Shane Baldwin sent an email to Stan Hanks regarding the Broadway Park Lofts deal. Mark Staples is copied on the email. The email attaches certain draft loan documents prepared by SilverLeaf's attorney. These loan documents were drafted for Mark Staples' signature as manager of SilverLeaf. (Ex. 130)

68. Also on December 17, 2011, Shane Baldwin sent an email to Stan Hanks attaching fully executed documents related to Security National's loan for the Broadway Park Lofts deal. These documents, which are executed by Mark Staples as manager of SilverLeaf, include a Limited

Liability Company Resolutions for SilverLeaf Financial and Broadway Park. Mark Staples is copied on the email. (Ex. 26)

69. On December 19, 2011, Mark Staples, as manager of SilverLeaf, signed the Closing Statement for Broadway Park's purchase of US Bank's loan. (Ex. 218) The Closing Statement reflects a deposit in the amount of $725,000 and an additional deposit of $150,000 received on December 13, 2011. It also reflects that extension fees totaling $150,000 were received on December 16, 2011. (*Id.*)

70. Also on December 19, 2011, Ross Baldwin sent an email to Shane Baldwin and Mark Staples. He copied SilverLeaf's attorney, Wayne Bennett of Richards Brandt, on the email. Ross Baldwin expressed concerned that proceeds from the short sale of the Wicks Building on December 16, 2011 were going to be used to fund the Broadway Park Lofts "shortfall." (Ex. 7)

71. On December 20, 2011 at 2:03 p.m., US Bank sent an email to Mark Staples and Shane Baldwin regarding its receipt of the "final wire" for the closing of the Broadway Park Lofts transaction. (Ex. 12)

72. That same day, Shane Baldwin sent an email to Ross Baldwin, Cary Clark, Colby Bond and others regarding the closing of the Broadway Park Lofts transaction. (*Id.*)

73. In a letter dated December 20, 2011 from US Bank to the borrower, US Bank identifies Shane Baldwin as the contact person for Broadway Park. (Ex. 219)

74. Mark Staples testified that he recalled some discussions with Shane Baldwin and Stan Hanks about RealSource investing in Broadway Park Lofts. Ross Baldwin knew that Shane Baldwin would be "in the hunt" for money to close the Broadway Park Lofts transaction.

Kingsland Transaction

75. On December 19, 2011, Shane Baldwin sent emails to Stan Hanks attaching a First American Commitment for Title Insurance for the Kingsland Property (Ex. 131), a Cash Flow Analysis (Ex. 132), an Asset Summary (133), For Sale Brochure (Ex. 134), and Final Bid Award (Ex. 135).

76. On December 19, 2011 at 12:31 p.m., Julia Roper, on behalf of SilverLeaf, sent an email to Stan Hanks with the wire instructions for the Broadway Park Lofts closing. (Exs. 32, 140, 152)

77. On December 19, 2011 at 12:53 p.m., Stan Hanks sent Shane Baldwin an email requesting a closing statement and copy of the purchase and sale agreement for the Kingsland loan. Stan Hanks also states that he will come by SilverLeaf's offices and pick up the original promissory note. (Ex. 137)

78. That same day, Julia Roper emailed Stan Hanks and Shane Baldwin certain

documents related to the Kingsland loan. These documents were signed by Mark Staples as manager of SilverLeaf. She also provided Stan Hanks and his attorney with access to ShareVault for Kingsland. (Exs. 33, 36)

79. On December 19, 2011 at 3:49 p.m., Stan Hanks sent Shane Baldwin an email attaching draft loan documents, including the Guaranty and Loan Sale and Assignment Agreement. The signature block for these documents is for the manager of SilverLeaf. (Ex. 139)

80. At approximately 4:30 p.m., Stan Hanks went to the SilverLeaf offices and picked up the original Kingsland promissory note. (Ex. 140)

81. In accordance with the Loan Sale and Assignment Agreement, RS wired $320,000 to US Bank for the closing of the Broadway Park Lofts transaction and $80,000 to Trailhead Every Glory for RealSource's broker fee related to the Trailhead Lodge loan. (Exs. 147, 152)

82. On December 20, 2011 at 2:10 p.m., Colby Bond, Vice President of SilverLeaf, emailed wire instructions to Stan Hanks for the Colorado Cornerstone closing. (Ex. 154) That same day, RS wired $300,000 to the closing agent for the Colorado Cornerstone deal. (Ex. 155)

83. On December 20, 2011 at 3:27 p.m., Stan Hanks emailed revised loan documents to Shane Baldwin with the request that he sign them. These documents included the Pledge Agreement (which specifically identifies Mark Staples as manager of SilverLeaf), Allonge Indorsement, Loan Sale and Assignment Agreement, and Guaranty. (Ex. 149)

84. Approximately 30 minutes later, Stan Hanks emailed a "corrected" Pledge Agreement with Shane Baldwin as manager. (Ex. 150)

85. Shane Baldwin executed the Loan Sale and Assignment Agreement, Pledge Agreement, and Allonge Indorsement, The typed signature blocks on these documents identify his title as manager of SilverLeaf. He also executed the Guaranty, which has "manager" hand-written in the signature block. (Ex. 158)

86. RS authorized the closing agent to release the $300,000 for the Colorado Cornerstone closing. Shane Baldwin and Colby Bond were copied on this email. (Ex. 157)

87. Stan Hanks testified that he knew Mark Staples was manager of SilverLeaf but that Shane Baldwin told him that he (Shane) had authority to sign on behalf of SilverLeaf. Consequently, Stan Hanks believed that Shane Baldwin had authority to sign the Assignment and other documents. Although Stan Hanks did not review the Department of Commerce filings for SilverLeaf or confirm Shane Baldwin's actual authority to sign, his reliance on Shane Baldwin's apparent authority was reasonable, particularly given that Shane Baldwin had signed the Trailhead Lodge loan documents as manager of SilverLeaf and Mark Staples never objected. (Ex. 158)

88. RS paid $700,000 for the Assignment. $400,000 was paid on December 19, 2011 as follows: $320,000 was wire transferred to "Broadway Park, LLC" and $80,000 was wire transferred

to RS for "Trailhead Ever Glory, LLC." On December 20, 2011, $300,000 was wire transferred to "Colorado Cornerstone Project."

89. On December 21, 2011, Mr. Hanks sent an email to Mark Staples and Shane Baldwin with the subject line "RS Kingsland executed documents." The email attached the Loan Sale and Assignment Agreement, Pledge Agreement, Allonge Indorsement, and Guaranty signed by Shane Baldwin as manager of SilverLeaf. (Ex. 27)

90. Mark Staples testified that he does not recall whether he opened the email. Based on the evidence presented at trial, including Mark Staples' general practice of opening emails, the Court finds that it is more likely than not that Mark Staples received the email and opened the attachments.

91. But even if he did not, the Court finds that RS has established by a preponderance of the evidence that Mark Staples knew about the RS loan and that Shane Baldwin had executed the loan documents on behalf of SilverLeaf.

92. Indeed, Mark Staples knew Stan Hanks was loaning money to SilverLeaf in some capacity. Mark Staples did not know the source of the $300,000. Ross Baldwin knew Shane Baldwin had taken money from Kingswick to close the Broadway Park Lofts transaction.

93. On January 4, 2012, Stan Hanks sent an email to Shane Baldwin regarding the execution and recording of the Assignment, which would be recorded in Missouri. Shane Baldwin responds that he is out of the office with a sick child and that Mark Staples is in Arizona. (Ex. 165)

94. On January 10, 2012, Shane Baldwin executed the Assignment. It is notarized by Julia Roper, the registered agent of SilverLeaf from August 16, 2011 through May 18, 2012, who hand-wrote "Shane Baldwin" in the signature block. (Ex. 172)

95. On April 11, 2012, Stan Hanks sent an email to Shane Baldwin and Mark Staples. The subject line stated "Kingsland" and the email stated "Just checking in, did the sales contract get executed." (Ex. 238)

96. On April 13, 2012, Stan Hanks sent an email to Shane Baldwin and Mark Staples with the subject line "Update." In the email, Stan Hanks inquires whether there is anything on "the timing of proceeds from any of these projects – Broadway, Cornerstone or Kingsland." (Ex. 28)

97. On April 17, 2012, Stan Hanks sent an email to Shane Baldwin and Mark Staples. The subject line stated "Kingsland contract" and the email stated "Can one of you send me the executed contract?" (Ex. 239).

98. Mark Staples did not respond to the emails or contact Stan Hanks to ask him why he was inquiring about Kingsland or an executed sales contract for Kingsland. Mark Staples testified that he relied on Shane Baldwin to respond to emails related to deals.

99. Mark Staples testified that he had no knowledge or awareness of the Assignment and

would not have authorized any such assignment if he had been made aware of it. The Court does not find his testimony to be credible on this point.

100. SilverLeaf and/or Kingswick did not object to Shane Baldwin's execution of the RS loan documents, including the Assignment, within a reasonable period of time.

Ross Baldwin Promissory Note

101. Shane Baldwin, on behalf of Broadway Park Lofts, executed a Promissory Note dated December 19, 2011 in the principal amount of $300,000 in favor of Kingswick to pay back money that was borrowed from Kingswick to close the Broadway Park Lofts transaction. (Ex. 13) Although Shane Baldwin was not the manager of Broadway Park on December 19, 2011, Ross Baldwin nevertheless claimed the Promissory Note is valid.

102. In January 2012, Ross Baldwin was provided access to all deals on ShareVault, including the Broadway Park Lofts transaction and the RS loan transaction. (Ex. 236)

Deed in Lieu of Foreclosure Transaction

103. On March 28, 2012, Kingswick accepted a Special Warranty Deed from the borrower under the Kingsland Loan in lieu of foreclosure. (Ex. 172)

104. Also on March 28, 2012, Mark Staples executed the Settlement and Mutual Release Agreement as manager of SilverLeaf. (Ex. 16)

105. At trial, Mark Staples had no specific recollection of the deed in lieu or the Settlement Agreement. Consequently, the Court does not find his execution of these documents to be persuasive evidence that he did not know about the RS loan or the Assignment.

Shane Baldwin's Testimony:

106. In an email to Ross Baldwin sent on March 2, 2015, Shane Baldwin states that "at the time of signing I thought I had authority. I was signing a ton of stuff for Broadway ect [sic] at that time as well." (Ex. 229)

107. At trial, Shane Baldwin asserted his Fifth Amendment right against self-incrimination and refused to answer any questions posed by counsel for RS.

Terry McEwen Lawsuit

108. In May 2012, McEwen Properties, LLC (McEwen) and ITRI's Family Real Estate, LLC, in their own right and derivatively for and on behalf of Kingswick, filed an action against, among others, Kingswick, SilverLeaf, Shane Baldwin, and Mark Staples. Paragraphs 17 and 19 of the Verified Amended Complaint alleges as follows:

> 17. Although the nominal manager of Kingswick is [SilverLeaf], and although the nominal manager of [SilverLeaf] is [Mark] Staples, Shane Baldwin in fact acts as a manager with the authority to bind both [SilverLeaf] and Kingswick, and has consistently represented to [McEwen] from at least June 2011 through the present that he (Shane Baldwin) has such authority.
>
> 19. At all relevant times, Kingswick and [SilverLeaf] were aware that Shane Baldwin was holding himself out as one who had authority to bind Kingswick and [SilverLeaf], and did nothing to prevent Shane Baldwin from doing so.

(Ex. 233)

109. Notwithstanding his involving in the McEwen lawsuit, Ross Baldwin testified that he first learned of the Assignment in December 2012. While Ross Baldwin may not have known about the Assignment or the specific details of the RS loan, he knew that Shane Baldwin's "hunt" for money to close the Broadway Park Lofts transaction had been successful.

Shane Baldwin Had Authority to Bind SilverLeaf and Kingswick

110. Although Mark Staples was the nominal manager, Shane Baldwin controlled SilverLeaf at all relevant times. As explained in an audit statement prepared by Ross Baldwin for Kingswick in September 2012, even when Mark Staples was the manager of SilverLeaf, "he worked under the direction of Shane Baldwin, who was the majority member of SilverLeaf [which] as manager had all responsibility for managing Kingswick." (Ex. 6)

111. Shane Baldwin was the "face" of SilverLeaf. Shane Baldwin, not Mark Staples, decided which deals to do. Shane Baldwin would find the opportunities, raise the money for the deposit required to purchase the distressed loans, and find the investors to close the loans. Importantly, Mark Staples testified that he was manager of SilverLeaf "in title only" and that SilverLeaf was Shane Baldwin's company. Without Shane Baldwin, there would be no SilverLeaf.

112. According to his testimony at trial, Mark Staples was generally aware of SilverLeaf's deals but did not always have "direct" involvement in the transactions. He acted with Shane Baldwin's "blessing." He did not really know how SilverLeaf functioned. He did not review SilverLeaf's books. He conceded that the Operating Agreement did not accurately reflect how SilverLeaf actually operated.

113. Shane Baldwin managed SilverLeaf's employees. Shane Baldwin controlled SilverLeaf's bank accounts and cash disbursements. Mark Staples did not have signature authority on the SilverLeaf accounts. He did not have authority to keep Shane Baldwin from moving funds from one transaction to another transaction.

114. Although Ross Baldwin and Mark Staples had concerns about Shane Baldwin's honesty, they did not take any affirmative steps to remove Shane Baldwin from a position of authority or control or to get more "adult supervision" in the room.

115. In September 2011, Ross Baldwin and Mark Staples knew that Shane Baldwin was signing documents as manager of SilverLeaf. (Ex. 21) During the relevant period of time, Shane Baldwin was signing 40-50 documents a month. But other than a staff meeting that did not include Julia Roper, SilverLeaf's only notary, neither Ross Baldwin nor Mark Staples could identify a single action they took to ensure that Shane Baldwin did not have the opportunity or means to execute documents on behalf of SilverLeaf.

116. Julia Roper testified that Mark Staples never told her that Shane Baldwin could not sign for SilverLeaf. The Court found her testimony credible and persuasive.

117. SilverLeaf's conduct significantly increased the general risk that Shane Baldwin would execute documents that he was ostensibly precluded from signing. Moreover, SilverLeaf knowing permitted Shane Baldwin to sign documents as manager of SilverLeaf as evidenced by the Trailhead Lodge transaction.

118. RS, reasonably and in good faith, believed that Shane Baldwin had actual authority to execute documents on behalf of SilverLeaf. RS correctly assumed that SilverLeaf's CEO had actual authority to execute documents on behalf of SilverLeaf. Although Shane Baldwin executed the Assignment as manager, not CEO, of SilverLeaf, the Court does not find this fact to be determinative because SilverLeaf caused RS and Stan Hanks to believe that Shane Baldwin was authorized to execute documents on behalf of SilverLeaf as manager by allowing Shane Baldwin to execute the Trailhead Lodge loan documents as manager of SilverLeaf.

119. SilverLeaf placed Shane Baldwin in such a position that Stan Hanks was justified in presuming that Shane Baldwin had authority to execute documents on behalf of SilverLeaf as manager, CEO, or otherwise.

120. Shane Baldwin's representation to Stan Hanks that he had authority to sign documents on behalf of SilverLeaf was consistent with SilverLeaf's actions in connection with these transactions.

121. Mark Staples had access to ShareVault, which is a virtual data room. Once an account is established, the account holder, *e.g.,* Shane Baldwin or Mark Staples, receives an email automatically notifying him of the update, what the new information is, and providing a link to access. (Ex. 236) Thus, Mark Staples could have easily monitored Shane Baldwin's deals.

122. SilverLeaf, as manager of Kingswick, had full knowledge of all material facts regarding the RS loan. To the extent that SilverLeaf lacked knowledge of any particular material fact, it was only because Mark Staples remained willfully ignorant and purposely shut his eyes to the means of information within his possession and control.

RS Loan Furthered SilverLeaf's Business

123. Shane Baldwin's execution of the RS loan documents, including the Assignment, was

in the furtherance of SilverLeaf's and Kingswick's business. Indeed, Shane Baldwin's execution of the Assignment was motivated, in significant part, by SilverLeaf's interests. These interests included SilverLeaf's interest in the Trailhead Lodge, Colorado Cornerstone, and Broadway Park Lofts.

124. The RS loan was similar to other loans that SilverLeaf obtained to close deals.

125. When considering which party should suffer from Shane Baldwin's alleged wrongful conduct, the Court finds that the loss should fall on SilverLeaf, and thus Kingswick, because its conduct created the circumstance which made the loss possible.

CONCLUSIONS OF LAW

Based on the findings of fact, the Court makes the following conclusions of law:

1. Shane Baldwin had apparent authority to execute the RS loan documents, including the Assignment.

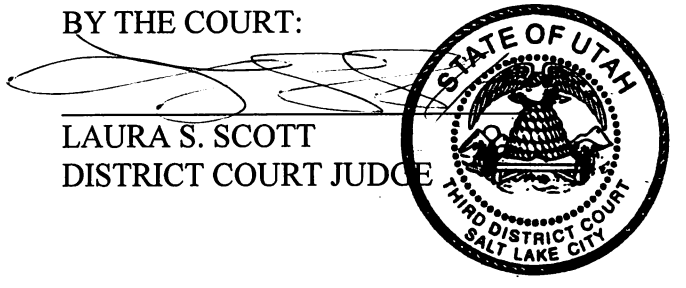
2. Even if Shane Baldwin did not have apparent authority, Kingswick and/or SilverLeaf ratified the Assignment by failing to disaffirm Shane Baldwin's alleged lack of authority to execute the RS loan documents when Mark Staples received them on December 21, 2011.

CONCLUSION

Counsel for Defendant RS Kingsland, LLC is directed to prepare and serve a proposed order and final judgment consistent with the Court's decision.

DATED this 11th day of April, 2016.

BY THE COURT:



LAURA S. SCOTT
DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 140900578 by the method and on the date specified.

MANUAL EMAIL: MARK A LARSEN mlarsen@larsenrico.com
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Date: 04/11/2016 /s/ DEVONYA B GALLIVAN

Deputy Court Clerk