MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Matthew Foreman, in his capacity as Personal Representative in the Estate of Judith A. Caress, deceased,

Appellant-Plaintiff,

v.

Broken Clays, Inc., d/b/a Jarrett Engineering, John Caress, Jr., Lisa L. Caress, and Ann S. Furgason,

Appellee-Defendant.

September 26, 2023

Court of Appeals Case No. 22A-PL-1142

Appeal from the Marion Superior Court

The Honorable Cynthia J. Ayers, Judge

Trial Court Cause No. 49D04-2010-PL-35290

Memorandum Decision by Judge Pyle

Judges Bradford and Kenworthy concur.

Pyle, Judge.

Statement of the Case

[1] Matthew Foreman ("Foreman"), in his capacity as personal representative in the Estate of Judith A. Caress ("Judith's Estate"), appeals the trial court's denial of his motion for partial summary judgment and its sua sponte entry of summary judgment in favor of Broken Clays, Inc. d/b/a Jarrett Engineering ("Broken Clays") with respect to Broken Clays' obligation to reimburse Judith's Estate in the amount the estate paid to satisfy the balance on a defaulted loan.[1] Foreman raises seven issues for our review, but we need only consider the following dispositive issue: whether the trial court erred when it denied summary judgment in favor of Foreman and sua sponte entered summary judgment in favor of Broken Clays with regard to the corporation's liability to Judith's Estate. Concluding that the trial court properly denied summary judgment to Foreman but erred in granting summary judgment in favor of Broken Clays, we affirm the trial court's denial of summary judgment to Foreman but reverse the trial court's entry of summary judgment in favor of Broken Clays and remand to the trial court for further proceedings.

[2] We affirm in part, reverse in part, and remand for further proceedings.

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[1] Broken Clays, Inc. d/b/a Jarrett Engineering is an Indiana corporation formed in 2002 that operates under the name of Jarrett Engineering, Inc. However, because the parties refer to the corporation as Broken Clays, we do the same but also, when appropriate, refer specifically to Jarrett Engineering, Inc.

Issue

Whether the trial court erred by denying summary judgment to Foreman and sua sponte granting summary judgment in favor of Broken Clays.

Facts

Establishment of Broken Clays

[3] Engineer Greg Day ("Greg") was a longtime employee of Jarrett Engineering, Inc. ("Jarrett Engineering"), which had been in the business of designing machinery and tooling in Indianapolis for over fifty years. The owners of Jarrett Engineering decided to retire and offered to sell the corporation to Greg. In 2002, Greg, along with John Caress, Sr. ("John Sr."), Mike Furgason ("Mike"), and John Caress, Jr. ("John Jr."), formed Broken Clays, Inc., as a closely-held corporation, for the purpose of acquiring Jarrett Engineering.[2] Greg, John Sr., Mike, and John Jr. (collectively, "Original Shareholders") were the sole shareholders in Broken Clays, with Greg and John Jr. each owning one-third interests in the corporation and Mike and John Sr. each owning one-sixth interests in the corporation.

[4] The Original Shareholders agreed that John Jr. would serve as president of Broken Clays and would assume responsibility for payroll, bank relationships, and invoicing. Greg was responsible for managing Broken Clays' business

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[2] The family relations relevant to this appeal are as follows: John Sr. and Judith Caress were married, John Jr. is John Sr.'s son and Judith's stepson, John Sr. is Greg's father-in-law, John Jr. is Greg's brother-in-law, and Foreman is the son of John Sr. and Judith.

operations, business development, project management, and client relations. John Jr. served as Broken Clays' incorporator. The lawyer who aided John Jr. with the incorporation advised John Jr. to prepare bylaws and a shareholder agreement for the corporation. However, John Jr. did not create the documents.

[5] The Original Shareholders agreed that they needed to acquire certain assets of Jarrett Engineering – including its name, business goodwill, and customer list – and then begin doing business as Jarrett Engineering. But Broken Clays had no capital with which to complete the acquisition and fund the corporation's operations.

[6] In 2002, the Original Shareholders approached Fowler State Bank ("the Bank") about securing a $450,000 loan in the form of a line of credit (the "Loan"). The Bank approved the Loan but required that John Sr., Mike, and John Jr. (collectively, "Original Borrowers") pledge their respective property as collateral for the Loan.[3] The Bank formalized the Loan through a promissory note (the "Note") executed by the Original Borrowers.[4] The Bank required the Original Borrowers to renew the Note on a regular basis and make interest-only payments on the Loan. The $450,000 lent by the Bank was deposited into

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[3] Greg did not contribute monetarily in exchange for his one-third ownership interest in Broken Clays, as the Original Shareholders agreed that Greg's initial investment in the corporation would be in the form of his time and talents.

[4] The original Note executed by the Original Borrowers was not included in the record.

Broken Clays' business accounts. The money was used to complete the Jarrett Engineering acquisition for $100,000 and to fund Broken Clays' initial operations.

[7] The Note did not identify Broken Clays as a borrower or obligor for the Loan. However, Broken Clays' business records and tax returns characterized the Loan as an obligation/debt of Broken Clays, and the interest-only payments were made by Broken Clays.

[8] In February 2004, John Sr. passed away, leaving his one-sixth ownership interest in Broken Clays to his widow, Judith. In July 2007, the Bank required that the Loan be secured by property located in Trafalgar, Indiana (the "Trafalgar Property") that was owned by Judith. In September 2009, Mike passed away, leaving his one-sixth ownership interest in Broken Clays to his widow, Ann Furgason ("Ann").

Broken Clays' Financial Troubles and Greg's Lawsuit Against John Jr.

[9] In 2013, Greg became concerned over John Jr.'s handling of Broken Clays' finances. Greg investigated and learned that the corporation was in "dire straits" financially. (Appellant's App. Vol. III at 72). Greg met with the Bank's president about the corporation's financial viability, and the Bank president shared his concerns with what appeared to be Broken Clays' outstanding accounts receivable. This revelation prompted Greg to investigate further, and he soon discovered that John Jr. had improperly invoiced certain customers,

resulting in no payment from the customers to Broken Clays for the work performed by the corporation.

[10] Greg confronted John Jr. about the financial mismanagement, and he asked John Jr. to resign from his position as president and sell Greg a sufficient portion of John Jr.'s interest in the corporation such that Greg would acquire majority control. But John Jr. refused. While John Jr. retained his title as president of Broken Clays and continued to receive his full salary, his role within the corporation was marginalized. From late 2013 forward, John Jr. was "stripped of any meaningful role with Broken Clays[,]" had no substantive or managerial role within the corporation, and was denied access to Broken Clays' finances – other than to review payroll. (Appellant's App. Vol. IV at 206).

[11] On January 2, 2015, the Judith Ann Caress Irrevocable Trust ("Judith's Trust") was formed, and Foreman was named trustee. The Trafalgar Property was transferred to the trust. In July 2015, the property was sold for around $450,000; the proceeds from the sale were placed in a Certificate of Deposit; and Foreman, as trustee of Judith's Trust, assigned the Certificate of Deposit to the Bank as collateral against the Loan.

[12] Meanwhile, in March 2015, Greg, on behalf of himself and Broken Clays, sued John Jr., seeking damages for John Jr.'s alleged mismanagement of Broken Clays' finances. In the facts section of the complaint, Greg provided, in relevant part: "In 2002, *[Broken Clays]/Jarrett approached [the Bank's president]*

regarding a $450,000 [Loan] for [Broken Clays]/Jarrett. . . . The Bank approved the [Loan], secured by liens on property owned by [John Sr., John Jr., and Mike, the Original Borrowers] (but not Day)." (Appellant's App. Vol. II at 133 (emphasis added)). However, Greg later "dropped the lawsuit because the outcome . . . wasn't what [he] was wanting." (Appellant's App. Vol. III at 75).

Note Renewal

[13] While the Loan remained outstanding, the Bank required the Note to be renewed yearly. The most recent Note renewal was dated June 19, 2019, with a maturity date of June 19, 2020, and a principal amount of $450,000. The Note was executed by John Jr.; his wife, Lisa Caress ("Lisa"); Mike's widow, Ann; and Judith (together, "Current Borrowers"). The Current Borrowers were listed as "BORROWERS" on the Note and as "jointly and severally" liable for the Loan. (Appellant's App. Vol. II at 64). The Note listed the purpose of the Loan, as "BUSINESS OP[,]" an abbreviation of "business operations," and was secured by Judith's Certificate of Deposit. (Appellant's App. Vol. II at 64).

[14] Judith passed away on October 16, 2019. Foreman was named the personal representative of Judith's Estate.

Loan Default

[15] On May 4, 2020, prior to the Note's June 19 maturation date, the Bank submitted a claim against Judith's Estate in the amount of $450,739.73 – which included interest that had accrued on the Loan – because the Loan was in default. Broken Clays had stopped making payments on the Loan and, instead,

had prioritized the satisfaction of other loans it had secured. On December 3, 2020, the probate court allowed the Bank's claim against Judith's Estate, and the Bank applied the Certificate of Deposit to the outstanding Loan balance, resulting in a payment from Judith's Estate of $452,663.02.

Sale of John Jr.'s Interest in Broken Clays and Acknowledgment of Indebtedness

[16] On September 11, 2020, Greg and John Jr. agreed that Greg would acquire John Jr.'s entire ownership interest in Broken Clays. At that time, John Jr. still retained the title of president. That morning, Greg provided John Jr. with the stock purchase agreement that reflected an effective date of Friday, September 11, 2020. However, John Jr. told Greg that he could not sign the agreement that day and requested that the parties sign the agreement on the following Monday, September 14, 2020, and make September 14 the new effective date. Greg agreed. However, unbeknownst to Greg, on Sunday, September 13, 2020, John Jr. executed an "Acknowledgement of Indebtedness" ("Acknowledgement of Debt"). (Appellant's App. Vol. II at 67). The Acknowledgement of Debt provided in relevant part:

> Acknowledgment of Indebtedness. Jarrett Engineering hereby acknowledges that the amounts due to [the] Bank related to the . . . Loan specifically the amount of . . . [$452,663.02] are fully due and owing to the Personal Representative [of Judith's Estate] as of the [e]ffective date of this Agreement. Jarrett Engineering further acknowledges that there exist no defenses to payment, setoff rights, or recoupment rights to the indebtedness owed by Jarrett Engineering.

(Appellant's App. Vol. II at 69).

[17] On September 14, 2020, John Jr. signed the stock purchase agreement, selling his entire interest in Broken Clays to Greg. On September 15, John Jr. resigned from Broken Clays. John Jr. hid the existence of the Acknowledgment of Debt from Greg because John Jr. believed Greg would not have purchased his interest in Broken Clays had Greg known about the Acknowledgment of Debt.

Foreman's Complaint

[18] On October 7, 2020, Foreman filed a complaint against Broken Clays and the Current Borrowers (John Jr., Lisa, and Ann) which is the complaint at issue in this appeal ("the Complaint"). Foreman asserted claims against Broken Clays for: (1) breach of its obligation to reimburse Judith's Estate in the amount the estate paid to the Bank to satisfy the Loan; (2) breach of the Acknowledgment of Debt; and (3) unjust enrichment. Foreman asserted claims against the Current Borrowers for breach of duties of performance, contribution, and reimbursement. As to the Current Borrowers, Foreman alleged that pursuant to the Note, John Jr., Lisa, and Ann had signed as borrowers, and they were obligated to reimburse Judith's Estate per their pro rata share of the amount Judith's estate had paid to the Bank to satisfy the Loan.

[19] Broken Clays filed its answer to the Complaint and included a counterclaim against John Jr., alleging that John Jr. had breached the fiduciary duty he owed to Broken Clays by engaging in deceptive practices involving the Acknowledgement of Debt and that John Jr. had committed constructive fraud

by concealing his intent to execute the Acknowledgement of Debt. Broken Clays also sought to have the Acknowledgment of Debt declared void.

Summary Judgment Proceedings

[20] On September 30, 2021, Foreman filed a motion for partial summary judgment, a supporting brief, and a designation of evidence. In his motion, Foreman clarified that his Complaint was based on allegations that the Original Borrowers and Broken Clays had entered into an oral agreement whereby Broken Clays agreed to be liable to the Original Borrowers in exchange for their signatures on the Note and pledge of collateral for the Loan. And, in exchange, Broken Clays "received and utilized a $450,000 line of credit from the Bank." (Appellant's App. Vol. II at 21).

[21] Based on the clarification and Foreman's designated evidence, Foreman claimed that there were no genuine issues of material fact that would prevent the trial court from entering partial summary judgment in his favor regarding:

- The Original Borrowers' obligations to the Bank that "gave rise to an obligation by Broken Clays on a shareholder loan agreement that was recorded in company financial records and tax returns."
- Foreman's entitlement to reimbursement from Broken Clays based on the "shareholder loan agreement" because as personal representative of Judith's Estate, Foreman satisfied the amount of $452,663.02 that was due to the Bank.
- Foreman's unjust enrichment claim against Broken Clays.

(Appellant's App. Vol. II at 21-22). Foreman also claimed that there were no genuine issues of material fact that would prevent the trial court from entering partial summary judgment in his favor regarding:

> - Foreman's entitlement to contribution and reimbursement from the Current Borrowers, as "equal co-makers of the promissory note" that served as collateral for the Bank loan, for their respective shares of the amount that Judith's Estate paid to the Bank to satisfy the loan.

(Appellant's App. Vol. II at 25).

[22] On November 15, 2021, Broken Clays filed its response in opposition to Foreman's motion for partial summary judgment and a designation of evidence. In its response, Broken Clays argued that Foreman's request for partial summary judgment as to Broken Clays should be denied because genuine issues of material fact exist regarding whether: (1) the Original Borrowers' transfer of the proceeds of the Loan to Broken Clays constituted a capital contribution or a shareholder loan; and (2) Broken Clays agreed to be liable to the Original Borrowers with respect to the Loan. However, Broken Clays did not request that the trial court enter summary judgment in its favor. On December 7, 2021, Foreman filed his reply in support of his summary judgment motion.

[23] On March 24, 2022, the trial court held a hearing on Foreman's motion. On April 28, 2022, after receiving proposed findings from Foreman and Broken Clays, the trial court entered its "Order on Plaintiff's Motion for Partial

Summary Judgment as to Broken Clays, Inc. d/b/a Jarrett Engineering" ("Broken Clays Summary Judgment Order"), denying Foreman's motion for partial summary judgment against Broken Clays. In that order, the trial court then sua sponte entered summary judgment in favor of Broken Clays – determining that there were no genuine issues of material fact regarding Broken Clays' liability to Judith's Estate.

[24] In reaching its determination, the trial court found that the question before it was "whether, as a matter of law, there existed a valid and enforceable oral agreement between Broken Clays and its shareholders related to the funds loaned by the Bank to the shareholders or whether this $450,000 transaction was a capital contribution made by shareholders to Broken Clays." (Broken Clays Summary Judgment Order at 6). The trial court concluded:

> Here, of the four elements necessary for contract formation, the fourth element: "a meeting of the minds" was not reached in this business transaction. The bank was certain about who owed the debt to them when it made a claim against the estate and was paid [in] full through an asset held in estate property; a certificate of deposit. Ambiguity existed, however, among the parties, in their oral agreement, on whether shareholder borrowers were making a capital contribution to Jarrett Engineering or if Broken Clays would assume liability on the Note. In this case, due to default, reimbursement to the estate [sic]. There was not a complete meeting of the minds between Broken Clays and the shareholder borrowers on Broken Clays[']s responsibility for repayment in the event of nonpayment and thus the oral agreement ultimately was invalid.

(Broken Clays Summary Judgment Order at 6-8). The trial court, applying certain factors listed in *Roth Steel Tube Co. v. Comm'r of Internal Revenue*, 800 F.2d 625 (6th Cir. 1986),[5] further concluded:

> [T]he designated evidence, as well as the reasonable inferences arising therefrom, establishes that the [Original Borrowers'] transfer of the Bank loan proceeds to Broken Clays constituted a capital contribution, not a loan.
>
> Accordingly, there are no genuine issues of material fact regarding Broken Clays' liability to [Judith's Estate] because of the Estate's payment of the . . . Loan.

(Broken Clays Summary Judgment Order at 7).

[25] Also on April 28, the trial court issued a separate order, titled "Order on Plaintiff's Motion for Summary Judgment Against Defendants John Caress, Jr., Lisa L. Caress and Ann S. Furgason" ("Current Borrowers Summary Judgment Order"), granting summary judgment in favor of Foreman on his claims against the Current Borrowers. The trial court concluded that the Current Borrowers "each were co-makers of the Promissory Note with joint and several liabilities" and that John Jr., Lisa, and Ann each owed Foreman $113,165.76, together

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[5] *Roth Steel Tube Co. v. Comm'r of Internal Revenue*, 800 F.2d 625 (6th Cir. 1986), *cert. denied*, is a federal tax court case that lists eleven factors a court should consider, for tax purposes, when determining whether a transfer of funds is a capital contribution or a loan – including the presence or absence of a fixed maturity date and schedule of payments; the presence or absence of a fixed rate of interest and interest payments; the source of repayments; and the extent to which the advanced funds were used to acquire capital assets. *See id.* at 630.

with post-judgment interest.[6] The trial court added the following language to the order: "There being no just reason for delay, . . . [t]his is a final appealable order." (Appellee's App. Vol. 2 at 5, 8). Foreman now appeals the Broken Clays Summary Judgment Order only.[7]

Decision

[26] Foreman argues that the trial court erred when it denied summary judgment in favor of Foreman and sua sponte entered summary judgment in favor of Broken Clays with regard to the corporation's liability to Judith's Estate.

Standard of Review

[27] Our standard of review of a summary judgment motion is the same standard used in the trial court:

> [S]ummary judgment is appropriate only where the evidence shows there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. All facts and

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[6] The Current Borrowers, John Jr., Lisa, and Ann, did not appeal the trial court's order granting summary judgment in favor of Foreman and against them, and they do not participate in this appeal. However, pursuant to Indiana Appellate Rule 17(A), a party below is a party on appeal.

[7] After the notice of appeal was filed in this case, Foreman filed in the trial court a motion for proceedings supplemental to aid in collecting the judgment that had been levied against Ann. Corresponding orders were issued. However, on July 27, 2023, Foreman filed a notice with the trial court, indicating that Ann had satisfied the judgment. While neither party participating in this appeal challenges this Court's jurisdiction over the matter, we note that the trial court's two summary judgment orders – Broken Clays Summary Judgment Order, together with the Current Borrowers Summary Judgment Order – had the effect of disposing of all issues as to all parties.

It is apparent both from the context of the proceedings and from the contents of the trial court's summary judgment orders that the orders were final judgments. Thus, we treat the order relevant to this appeal, Broken Clays Summary Judgment Order, as a final judgment appropriate for our review under Indiana Appellate Rule 2(H)(1).

> reasonable inferences drawn from those facts are construed in favor of the non-moving party. The review of a summary judgment motion is limited to those materials designated to the trial court. We must carefully review decisions on summary judgment motions to ensure that the parties were not improperly denied their day in court.

Tom-Wat, Inc. v. Fink, 741 N.E.2d 343, 346 (Ind. 2001) (citations omitted).

[28] "The purpose of summary judgment is to terminate litigation about which there can be no material factual dispute and which can be resolved as a matter of law." *Ebersol v. Mishler*, 775 N.E.2d 373, 378 (Ind. Ct. App. 2002), *trans. denied.* Therefore, "[t]he moving party bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law." *Singh v. Singh*, 155 N.E.3d 1197, 1204 (Ind. Ct. App. 2020) (italics omitted). "Summary judgment is improper if the moving party fails to carry its burden, but if it succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact." *Id.*

[29] For summary judgment purposes,

> [a] genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue. To be considered genuine . . . , a material issue of fact must be established by sufficient evidence in support of the claimed factual dispute to require a jury or judge to resolve the parties' differing versions of

> the truth at trial. A fact is material when its existence facilitates resolution of any of the issues involved.

Baker v. Heye-Am., 799 N.E.2d 1135, 1139 (Ind. Ct. App. 2003) (citations omitted), *trans. denied*. "[A]ny doubt as to the existence of an issue of material fact, or an inference to be drawn from the facts, must be resolved in favor of the nonmoving party." *Am. Mgmt., Inc. v. MIF Realty, L.P.*, 666 N.E.2d 424, 428 (Ind. Ct. App. 1996).

[30] "Even if it appears that the non-moving party will not succeed at trial, summary judgment is inappropriate where material facts conflict or undisputed facts lead to conflicting inferences." *Link v. Breen*, 649 N.E.2d 126, 128 (Ind. Ct. App. 1995), *trans. denied*; *see also Brunner v. Trs. of Purdue Univ.*, 702 N.E.2d 759, 760 (Ind. Ct. App. 1998) ("Summary judgment should not be used as an abbreviated trial."), *trans. denied*. Finally, "[o]ur analysis proceeds from the premise that summary judgment is a lethal weapon and courts must be ever mindful of its aims and targets and beware of overkill in its use." *Bunch v. Tiwari*, 711 N.E.2d 844, 847 (Ind. Ct. App. 1999).

Summary Judgment Against Foreman and in Favor of Broken Clays

[31] This case turns on whether the Original Borrowers and Broken Clays agreed that the corporation would be liable to the Original Borrowers in the event the corporation defaulted on the Loan. "Contracts are formed when parties exchange an offer and acceptance." *Kelly v. Levandoski*, 825 N.E.2d 850, 857 (Ind. Ct. App. 2005), *trans. denied*. Oral contracts exist when the parties agree

to all of the terms of the contract. *Id.* If there is no agreement on one essential term of the contract, then there is no mutual assent, and, thus, no contract. *Id.* "A meeting of the minds of the contracting parties, having the same intent, is essential to the formation of a contract." *Id.* Whether the facts presented establish the existence of a contract is a question of law. *Id.* However, considering the designated evidence in the instant case, the issue of whether the parties entered into an oral agreement regarding the Loan cannot be resolved on summary judgment.

[32] Foreman moved for partial summary judgment on the theory that the parties had entered into an oral agreement where Broken Clays had agreed to be liable to the Shareholder Borrowers in the event Broken Clays defaulted on the Loan and that, as a matter of law, Broken Clays owes Judith's Estate the amount the estate paid to satisfy the Loan. The trial court denied Foreman's partial summary judgment motion. The trial court also sua sponte granted summary judgment in favor of Broken Clays and against Foreman with regard to the company's liability to Judith's Estate, and the trial court was well within its discretion to do so. Indiana Trial Rule 56(B) provides that "[w]hen any party has moved for summary judgment, the court may grant summary judgment for any other party upon the issues raised by the motion although no motion for summary judgment is filed by such party." Nevertheless, we find that the trial court erred by entering summary judgment in favor of Broken Clays. The parties' designated evidence, which we discuss in detail below, demonstrates

genuine issues of material fact precluding the entry of summary judgment for either party.

[33] Foreman's designated evidence included :

- The Note;
- Greg's 2015 complaint against John Jr.;
- The Acknowledgment of Debt;
- Broken Clays' tax returns for 2017, 2018, and 2019;
- A summary of Broken Clays' debt structure;
- The Broken Clays deposition that included testimony from Louise Ratts, Broken Clays' accountant from 2013 to present ("Accountant Ratts"), Matthew McNeely, Broken Clays' CFO from 2013 to present ("CFO McNeely"), and Greg;
- The depositions of John Jr. and Ann; and
- Foreman's affidavit.

Broken Clays' designated evidence included:

- Foreman's Complaint;
- The Broken Clays deposition;
- The depositions of John Jr. and Foreman; and
- Affidavits from Greg and CFO McNeely.

[34] Foreman's evidence shows that in the 2015 complaint that Greg filed against John Jr., Greg stated that in 2002, "*[Broken Clays]/Jarrett* approached [the Bank's president] regarding a $450,000 [Loan] for [Broken Clays]/Jarrett[,]" and the Bank approved the Loan, secured by liens on property owned by the Original Borrowers. (Appellant's App. Vol. II at 133 (emphasis added)). The Note listed the purpose of the Loan as "BUSINESS OP[.]" Although the Note was signed by the Current Borrowers and listed the Current Borrowers as the borrowers on the Note, the address provided for the borrowers was Broken Clays' office building address and not each borrower's personal address. (Appellant's App. Vol. II at 64). The Acknowledgment of Debt that John Jr. signed as president of Broken Clays, indicated that Broken Clays acknowledged that it owed Foreman, as personal representative of Judith's Estate, the amount Foreman had paid to the Bank to satisfy the Loan.

[35] Foreman's evidence also shows that Broken Clays' tax returns for tax years 2017, 2018, and 2019, listed the Loan from the Bank as "[l]oans from shareholders[.]" (Appellant's App. Vol. II at 154, 159, 167). The summary of Broken Clay's debt structure that CFO McNeely provided to John Jr., upon John Jr.'s request, listed the $450,000 "Shareholder [Line of Credit]" as a company debt. (Appellant's App. Vol. II at 172. Accountant Ratts testified during the Broken Clays deposition that Broken Clays had treated the Bank Loan as a business loan and deducted the interest on the loan as a business expense.

[36] On the other hand, Broken Clays' designated evidence shows that when the corporation had been formed, no bylaws, shareholder agreements, or other documents were created, and there was no document indicating that the Original Borrowers themselves loaned the $450,000 to Broken Clays or that the borrowers were entitled to reimbursement from the corporation in the event there was a default on the Loan. At its formation, the corporation had no operating capital with which to fund its initial operations. Broken Clays did not own the office building where its business was located. The corporation itself did not provide any collateral against the Loan. And Broken Clays paid the interest-only payments on the Loan directly to the Bank, not to the borrowers. When Broken Clays stopped making the interest-only payments, the Bank looked to the Current Borrowers to collect on the Loan, not Broken Clays. Ann testified that the $450,000 was paid directly to Broken Clays and that the Original Borrowers had not received any of the funds from the Loan. Broken Clays' evidence also shows that when John Jr. executed the Acknowledgment of Debt, he had not signed a contract as the sole signatory on behalf of Broken Clays since being relieved of his responsibility to manage Broken Clays' financial affairs in 2013, he did not communicate with Greg or Ann before executing the document, he executed the document one day before he sold his interest in Broken Clays to Greg, and he hid the existence of the document from Greg.

[37] Simply put, the parties' evidence conflicts as to whether Broken Clays is obligated to reimburse Judith's Estate in the amount the estate paid to satisfy

the balance on the defaulted Loan. Certain evidence would support a judgment in favor of Foreman, and other evidence would support a judgment against Foreman.[8] However, the summary-judgment procedure is designed to resolve claims and issues as to which there is no genuine factual dispute. *Tom-Wat, Inc.*, 741 N.E.2d at 346. Therefore, we conclude that the trial court properly denied Foreman's motion for partial summary judgment but erred by granting summary judgment in favor of Broken Clays. We reverse the trial court's entry of summary judgment in favor of Broken Clays and remand to the trial court for further proceedings.

[38] Affirmed in part, reversed in part, and remanded.

Bradford, J., and Kenworthy, J., concur.

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[8] Foreman also argues that Broken Clays has contradicted previous sworn statements found in the 2015 complaint Greg filed against John Jr., Broken Clays' interrogatory responses, and Greg's affidavit. Foreman contends that under the doctrine of judicial estoppel, Broken Clays is prohibited from doing so. It is well-settled that "[a] party cannot create an issue of material fact for summary judgment purposes by contradicting a prior sworn statement." *Chance v. State Auto Ins. Cos.*, 684 N.E.2d 569, 571 (Ind. Ct. App. 1997), *reh'g denied*, *trans. denied*; *see also Gaboury v. Ireland Rd. Grace Brethren, Inc.*, 446 N.E.2d 1310, 1314 (Ind. 1983) (reasoning that "[i]f a party . . . could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact."). However, to the extent portions of Broken Clays' sworn statements allegedly conflict or are inconsistent with its interrogatory responses and Greg's affidavit, we find that Broken Clays has not contradicted itself such that it has provided self-serving contradictory statements in an effort to create issues of fact sufficient to avert summary judgment.