IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE LOAN SOURCE INC. and THE 1993 STEVEN D. KRAVITZ FAMILY TRUST, Plaintiffs, v. NEWITY LLC and ACAP SME, LLC, Defendant.	
ACAP SME, LLC, Counterclaim Plaintiff, v. THE LOAN SOURCE INC. and THE 1993 STEVEN D. KRAVITZ FAMILY TRUST, Counterclaim Defendants.	Civil Action No. 22-1255-GBW

FINAL JUDGMENT

On March 23, 2026 and March 24, 2026, the Court held a two-day bench trial on the issues of breach of contract and declaratory judgment brought by Plaintiffs The Loan Source Inc. ("TLS") and the 1993 Steven D. Kravitz Family Trust (the "Trust") (collectively, "Plaintiffs") against Defendant ACAP SME, LLC ("ACAP"). ACAP also asserted a counterclaim against Plaintiffs seeking the return of approximately $1.2 million dollars in alleged overdistributions arising from a separate but related contract, the Correspondent Agreement, between the parties. Prior to trial, on March 23, 2026, the Court granted Defendant NEWITY LLC's ("NEWITY") Motion for Partial Judgment under Fed. R. Civ. P. 52(c). D.I. 182. On September 15, 2026, the Court entered an Order and Memorandum Opinion that ruled on the claims presented by the parties at trial.

IT IS HEREBY ORDERED AND ADJUDGED that, for the reasons set forth in the Court's March 23, 2026 Order on NEWITY's Rule 52 Motion (D.I. 182) and for the reasons set forth in the Court's September 15, 2026 Memorandum Opinion and Order (D.I. X; D.I. X), that Judgment be and is hereby entered in the above-captioned matter as follows:

1. Judgment is entered in favor of ACAP on Count I of Plaintiffs' Amended Complaint - Breach of Contract – OPEX Adjustment (D.I 55).

2. Judgment is entered in favor of ACAP on Count II of Plaintiffs' Amended Complaint - Breach of Contract – Break-Up Fee (D.I 55).

3. Judgment is entered in favor of ACAP on Count III of Plaintiffs' Amended Complaint - Declaratory Judgment - Break-Up Fee (D.I. 55).

   a. ACAP is entitled to the Break-Up Fee of $1,000,000.00 currently held in escrow at Kingdom Trust.

   b. If this Judgment is appealed, then, upon conclusion of the appeal or, if this Judgment is not appealed, within thirty (30) days after expiration of the time for appealing this Judgment, Plaintiffs and ACAP shall take all action necessary under the June 8, 2020 Escrow Agreement to cause Kingdom Trust to release the $1 million in the Break-Up Fee escrow to ACAP.

   c. ACAP is entitled to prejudgment interest in the amount of $354,753.42[1] from January 1, 2023 through entry of this Judgment. *See Northland Ins.*

[1] ($1,000,000.00 × 9.50% ÷ 365) x 1363 days from January 1, 2023 through entry of this Judgment on September 25, 2026.

Co. v. Lincoln Gen. Ins. Co., 153 F. App'x 93, 97 (3d Cir. 2005) (upholding an award of prejudgment interest in a declaratory judgment action).

d. ACAP is also entitled to post-judgment interest, which shall accrue beginning with the date of entry of this Judgment.

4. Judgment is entered in favor of Plaintiffs on Count IV of Plaintiffs' Amended Complaint - Breach of Contract – NECB Line (D.I 55).

a. Plaintiffs are entitled to a judgment for the NECB Line in the amount of $50,000.00.

b. Plaintiffs are entitled to prejudgment interest of $17,737.67 [2] as "a matter of right." *See Chris Episcopo Const. Co. v. Int'l Underwriters Ins. Co.*, No. 86C-04-063, 1994 WL 555381, at *3 (Del. Super. Ct. Aug. 31, 1994).

c. Plaintiffs are also entitled to post-judgment interest, which shall accrue beginning with the date of entry of this Judgment.

5. Judgment is entered in favor of NEWITY on Counts I-IV of Plaintiffs' Amended Complaint (D.I 55) consistent with the Court's March 23, 2026 Memorandum Order (D.I. 182).

6. Judgment is entered in favor of TLS on Count I of ACAP's Amended Counterclaims – Unjust Enrichment (D.I. 140).

[2] ($50,000.00 × 9.50% ÷ 365) x 1363 days from January 1, 2023 through entry of this Judgment on September 25, 2026. The Court finds that January 1, 2023, the date of ACAP's termination, is the appropriate due date. The First Amendment provides that payment for NECB Line was to be made at closing if the NECB Line was not refinanced or extended before June 1, 2021. *See* D.I. 199 ¶ 30. Because closing did not occur as a result of ACAP's termination, the Court finds that payment for the NECB Line became due upon termination on January 1, 2023.

7. Judgment is entered in favor of TLS on Count II of ACAP's Amended Counterclaims – Theft/Conversion (D.I. 140).

8. Judgment is entered in favor of TLS on Count III of ACAP's Amended Counterclaims – Money Had and Received (D.I. 140).

9. Judgment is entered in favor of TLS on Count IV of ACAP's Amended Counterclaims – Restitution/ Payment by Mistake (D.I. 140).

10. Judgment is entered in favor of TLS on Count V of ACAP's Amended Counterclaims – Breach of Implied Duty of Good Faith and Fair Dealing (D.I. 140).

a. Plaintiffs are entitled to a judgment in the amount of $579,429.57 for the funds that were withheld from Plaintiffs.

b. Plaintiffs are entitled to prejudgment interest of $182,834.34.[3] *See Rossdeutscher v. Viacom, Inc.*, 768 A. 2d 8, 20 (Del. 2001) ("A breach of implied covenant is like a breach of contract."); *see also Pedrick v. Roten*, 70 F. Supp. 3d 638, 653 (D. Del. 2014) (discussing that under Delaware law, prejudgment interest is awarded "as a matter of right and not judicial discretion" for a breach of contract claim).

c. Plaintiffs are also entitled to post-judgment interest, which shall accrue beginning with the date of entry of this Judgment.

[3] The Court has reviewed Exhibit A of Plaintiffs' letter (D.I. 202, Ex. A) and finds the calculations set forth therein to be correct, subject to the correction of the date on which the cause of action arose for the NECB Line, which is not included in this stated amount. This amount awarded includes prejudgment interest for the funds that were withheld from Plaintiffs calculated through entry of this Judgment on September 25, 2026.

11. Judgment is entered in favor of Plaintiffs on Count VI of ACAP's Amended Counterclaims – Breach of Implied Duty of Good Faith and Fair Dealing (D.I. 140)[4].

12. Each party achieved some success in this litigation. Therefore, the Court finds that neither party is the prevailing party, and each party shall bear its own attorneys' fees and costs.

GREGORY B. WILLIAMS
UNITED STATES DISTRICT JUDGE

[4] ACAP presented no evidence in support of this claim and, therefore, failed to carry its burden of proof. *See* In re Cath. Diocese of Wilmington, Inc., 437 B.R. 488, 492 (Bankr. D. Del. 2010) ("The absence of evidence in the record [on this claim] means that the party with the burden of proof, i.e., [ACAP], cannot make their case and must lose."); *see also Nicholas A. Ruggerio v. Est. of Michael A. Poppiti, Sr., Edmund F. Lynch, Adm Cta, Ciro C. Poppiti, Michael A. Poppiti, Jr., Sandy Poppiti & Cricklewood Assocs., L.P.*, No. 18961-NC, 2005 WL 5756901, at *5 (Del. Ch. Oct. 5, 2005) ("A claimant's total failure to present evidence in a trial generally leads a court to conclude that the party is unable to carry their burden of proof with respect to their claims.")