STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: December 29, 2014]

MATTHEW J. MCGOWAN, as Receiver of Commerce Park Realty, LLC, NICHOLAS E. CAMBIO and VINCENT A. CAMBIO Plaintiffs,	:	
v.	:	**C.A. No. PB 09-7314**
POTOMAC REALTY CAPITAL, LLC, CAPITAL MANAGEMENT SYSTEMS, INC., Alias, and DANIEL M. PALMIER Defendants.	:	

DECISION

SILVERSTEIN, J. Plaintiff Matthew J. McGowan, as Receiver for Commerce Park Realty, LLC (CPR or Receivership Plaintiff) brings this Motion for Partial Summary Judgment pursuant to Super R. Civ. P. 56 (Rule 56) against Defendant Potomac Realty Capital, LLC (Potomac) as to Count III of Receivership Plaintiff's and Non-Receivership Plaintiffs' Amended Complaint (Amended Complaint) seeking declaratory relief under the Uniform Declaratory Judgments Act, G.L. 1956 § 9-30-1 (UDJA). Additionally before the Court is Plaintiffs Nicholas E. Cambio (N. Cambio) and Vincent A. Cambio's (collectively the Cambios) Motion for Partial Summary Judgment as to Counts VI, IX, XII, XV, and XVIII of the Amended Complaint, each also seeking declaratory relief under the UDJA. Dependent on the Court's ultimate finding with respect to the above-referenced motions, Receivership Plaintiff additionally moves for summary judgment on Count I of Defendants Potomac and Daniel M. Palmier's (collectively Defendants) Counterclaim for breach of contract.

By Order dated July 24, 2014, the Rhode Island Supreme Court remanded the within matter to this Court to "attend to the matters set forth in the remand motions, and for such other

purposes as the trial justice may deem appropriate." Receivership Plaintiff's motion to remand was for this Court to enter default and default judgment against Potomac and Daniel M. Palmier due to Potomac's failure to answer the Amended Complaint.[1] Accordingly, the sole issue for the Court to now decide is whether the series of five loans made by Potomac to CPR from 2006 to 2008 are usurious and therefore violate G.L. 1956 § 6-26-2. Jurisdiction is pursuant to § 9-30-1.

I

Facts and Travel

The facts of the lending relationship between Potomac and the Centre of New England parties[2] are the subject of several other motions—as well as other related actions—presently pending before the Court. Given the limited nature of this Decision[3] however, only those facts relevant to Receivership Plaintiff and the Cambios' Motions for Partial Summary Judgment are presented below.

A

The Potomac Loans

CPR, a Rhode Island Limited Liability Company, the Cambios, as managers of CPR and as co-makers, and Roney A. Malafonte (Malafonte),[4] entered into a series of loan transactions with Potomac from 2006 through 2008. (N. Cambio Aff. ¶¶ 1-3, Aug. 28, 2014). On April 24, 2006, CPR and the Cambios executed a promissory note in favor of Potomac for $6,000,000 (the First Six Million Dollar Note). Id. Ex. A. The First Six Million Dollar Note was secured by a

[1] Potomac reminds the Court in its opposing memorandum to Receivership Plaintiff's Motion for Partial Summary Judgment that Defendants have not yet filed their response to the Amended Complaint. For purposes of this Decision, Defendants will be deemed to have answered the Amended Complaint. See Pl.'s Mot. Partial Summ. J. 11 n.9. The Court considers this Motion as an appropriate continuation of the matter.

[2] The parties include, but are not limited to, Receivership Plaintiff and the Cambios.

[3] This Decision does not address those issues relative to Capital Management Systems, Inc. and should be read accordingly.

[4] Malafonte signed several of the instant loans but is not a party to this action and will thus not be named with respect to the following loan transactions.

mortgage which covered approximately thirty acres of land, with improvements, in West Greenwich, Rhode Island and approximately seventy lots located within the Highlands at Hopkins Hill in Coventry, Rhode Island. Id. ¶ 11. One of the provisions contained in the First Six Million Dollar Note was an "Exit Fee" wherein the makers of the promissory note agreed to pay $1,000,000 to Potomac, upon demand, if the principal and interest accumulated on the note was not fully paid by the maturity date of May 1, 2007. Id. Ex. A. The First Six Million Dollar Note provided for an annual interest rate of 17% that increased to 24% in the event of default. Id. Ex. A.

On August 23, 2006, a second promissory note was executed and delivered by CPR and the Cambios to Potomac for $6,000,000 (the Second Six Million Dollar Note). Id. ¶ 12, Ex. E. The Second Six Million Dollar Note similarly contained a $1,000,000 "Exit Fee" and provided for 15% annual interest increasing to 24% upon default. Id. Ex. E. This promissory note was secured by the same security as was granted for the First Six Million Dollar Note together with an additional 111 lots of land in Coventry, which was amended to reflect a $12,000,000 security interest. Id. ¶ 16. The parties also entered into a third loan arrangement on October 27, 2006 where CPR and other co-makers borrowed $2,920,000 from Potomac at a 15% per annum interest rate with a default rate of 24% (the 2.92 Million Dollar Note). Id. ¶ 17, Ex. H. Again, the mortgage (then serving as the security interest for the First Six Million Dollar Note and the Second Six Million Dollar Note) further was amended by increasing the amount covered to $14,920,000. Id. ¶ 23-24. According to the Amended Complaint, CPR, along with other co-makers, additionally borrowed $1,350,000 from Potomac for the construction of five residential units at the property in Coventry evidenced by a 1.35 Million Dollar Note. (Am. Compl. ¶ 16; see N. Cambio Aff. Ex. M).

Thereafter, on September 28, 2007, CPR and the Cambios executed a promissory note in favor of Potomac in connection with a $1,000,000 loan (the One Million Dollar Demand Note) and received a $1,000,000 advance from Potomac evidenced by an allonge to the First Six Million Dollar Note (the One Million Dollar Allonge). (N. Cambio Aff. ¶¶ 27-29, 32). The One Million Dollar Demand Note provided a 15% per annum interest rate, increasing to 24% in the event of default. Id. Ex. N. Essentially, the One Million Dollar Allonge was made part of the First Six Million Dollar Note and incorporated all of its terms, including the default interest rate of 24%. Id. Ex. O. Specifically, the One Million Dollar Allonge stated:

> "The Maturity Date of the Note occurred May 1, 2007. Section 2.7 of the Note is no longer applicable. The entire principal balance of the Note from time to time outstanding, together with interest at the Default Rate from May 1, 2007, plus all other amounts due under the Note or secured by the Security Instrument are due and payable in full." Id. Ex. O.

In other words, the One Million Dollar Allonge expressly provided that Potomac would charge 24% default interest on the $1,000,000 that was advanced on the First Six Million Dollar Note. Prior to the advancement of this $1,000,000, the $6,000,000 principal on the First Six Million Dollar Note had been paid off resulting in a corresponding balance of $0.00, although the security for that loan was not previously discharged. See id. Ex. O. According to Anna M. Collins' Affidavit (Collins was Chief Operating Officer of Potomac until December 2014 when Potomac dissolved), the rates of interest in the promissory notes were freely negotiated between CPR and Potomac and CPR voluntarily agreed to repay each of the loans. (Collins Aff. ¶¶ 6, 11, Sept. 24, 2014).

B

Consolidation of Loans and Ultimate Default

On April 3, 2008, Potomac and CPR, among other entities and individuals, agreed to consolidate the Second Six Million Dollar Note, the 2.92 Million Dollar Note, the 1.35 Million

Dollar Note, and the One Million Dollar Demand Note (collectively the Consolidated Loans). Id. ¶ 33, Ex. Q at Exhibit A. Based on this consolidation, the outstanding balance on the Consolidated Loans was $11,011,662[5] and subject to an interest rate of 16% and a default rate of interest charged on each of the underlying loans at 24%. Id. Ex. Q. Collins attests the issue of usury was never discussed in relation to the loans or that the Consolidated Loans Agreement was prepared to avoid any issue of usury. (Collins Aff. ¶ 18).

The maturity date of all the underlying loans were collectively extended to September 1, 2008 with a conditional extension right reserved for the borrowers to further extend to December 31, 2008. (N. Cambio Aff. Ex. Q). The Consolidated Loans Agreement further provided that "Exit Fees in the aggregate amount of $3,000,000.00 are payable under the Notes. Id. To secure the consolidated balance, the mortgages previously amended pursuant to the underlying loans were cross-collateralized. See id. Ex. Q at Exhibit A. Section 3 of the Consolidated Loans Agreement stated "an Event of Default under any one of the Notes or Mortgages constitutes an Event of Default under all of the Notes and Mortgages." Id. Ex. Q.

Pursuant to a letter dated February 23, 2009, Potomac claimed an Event of Default under the Consolidated Loans Agreement. Id. Ex. S. Thus, from January 1, 2009 and onward, Potomac charged interest on the Consolidated Loans at the default rate of 24% and claimed the "Exit Fee" of $3,000,000 was due and payable to Potomac. Id. Furthermore, Potomac noted its right to exercise its rights under its security interests, including its right to foreclose on the mortgaged property. The balance under the loans remains outstanding. (Collins Aff. ¶ 19).

This matter was commenced on December 23, 2009, and a receiver for CPR was substituted as Receivership Plaintiff on June 19, 2013. The Amended Complaint sets forth, inter alia, Count III requesting this Court, pursuant to the UDJA, "enter Judgment with a declaration

[5] The respective outstanding principal balances remaining on the loans were $6,684,000, $3,111,017, $139,145, and $1,077,500 as of March 31, 2008. Id. Ex. Q at Exhibit B.

that the Consolidated Loans are void, invalid and unenforceable in violation of the Rhode Island Usury statute and that all security instruments, liens, and property interests securing or given for said Consolidated Loans must be avoided . . . ." The Amended Complaint also sets forth Counts VI, IX, XII, XV, and XVIII seeking a declaratory judgment on the Second Six Million Dollar Note, the 2.9 Million Dollar Note, the 1.35 Million Dollar Note, the One Million Dollar Allonge, and the Consolidated Loans, respectively.[6] As indicated above, this case presently is before the Court following a remand from our Supreme Court on July 24, 2014. Receivership Plaintiff's Motion was filed on August 29, 2014 and a hearing on the Motion was held on November 20, 2014. Defendants object to the Motion.

II

Standard of Review

A motion for summary judgment will be granted when a trial justice, in reviewing the evidence in the light most favorable to the nonmoving party, concludes that no genuine issues of material fact must be decided and the moving party is entitled to judgment as a matter of law. See Kirshenbaum v. Fid. Fed. Bank, F.S.B., 941 A.2d 213, 217 (R.I. 2008); DelSanto v. Hyundai Motor Fin. Co., 882 A.2d 561, 564 (R.I. 2005). It is well-established that a genuine issue of material fact is one where reasonable minds could differ. See, e.g., Brough v. Foley, 572 A.2d 63, 67 (R.I. 1990). Importantly, the court, on a motion for summary judgment "does not pass upon the weight or the credibility of the evidence but must consider the affidavits and other

[6] The Court notes a discrepancy between the Consolidated Loans Agreement and the Amended Complaint. Paragraph 19 of the Amended Complaint states that the One Million Dollar Allonge was part of the Consolidated Loans whereas the Consolidated Loans Agreement itself states that the One Million Dollar Demand Note was consolidated. Compare Am. Compl. ¶¶ 19, 54, 108-111 with N. Cambio Aff. Ex. Q at Exhibit A. However, Receivership Plaintiff correctly identifies the One Million Dollar Demand Note as part of the Consolidated Loans in its supporting memorandum for its Motion for Partial Summary Judgment on Count III, whereas the counts relative to the Cambios' causes of action in the Amended Complaint incorrectly identify the One Million Dollar Allonge as part of the Consolidated Loans.

pleadings in a light most favorable to the party opposing the motion." Palmisciano v. Burrillville Racing Ass'n, 603 A.2d 317, 320 (R.I. 1992) (citing Lennon v. MacGregor, 423 A.2d 820 (R.I. 1980)); see also Lavoie v. N.E. Knitting, Inc., 918 A.2d 225, 227-28 (R.I. 2007) (citing Super. R. Civ. P. 56(c) ("Summary judgment is proper if no genuine issues of material fact are evident from 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any' and, in addition, the motion justice finds that the moving party is entitled to prevail as a matter of law."). The court's purpose during the summary judgment procedure is issue finding, not issue determination. O'Connor v. McKanna, 116 R.I. 627, 359 A.2d 350 (1976).

The moving party bears the initial burden of proving that no genuine issues exist for a finder of fact to resolve with respect to the material facts of the case. Estate of Giuliano v. Giuliano, 949 A.2d 386, 391 (R.I. 2008); see Heflin v. Koszela, 774 A.2d 25, 29 (R.I. 2001). "If the moving party satisfies this burden, the nonmoving party then must identify any evidentiary materials already before the court and/or present its own competent evidence demonstrating that material facts remain in genuine dispute." Doe v. Gelineau, 732 A.2d 43, 48 (R.I. 1999). "The nonmovant may not rely upon 'mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.'" Giuliano, 949 A.2d at 391 (quoting Tanner v. Town Council of East Greenwich, 880 A.2d 784, 791 (R.I. 2005)). A trial justice must review the evidence without passing on its weight and credibility and will accordingly deny a motion for summary judgment where the opposing party has demonstrated the existence of a triable issue of fact. See Mitchell v. Mitchell, 756 A.2d 179, 181 (R.I. 2000); Palmisciano, 603 A.2d at 320. However, the Court shall enter summary judgment "'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case . . . .'" Lavoie, 918 A.2d at 228 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

III

Discussion

Receivership Plaintiff has moved for partial summary judgment as to Count III, and the Cambios have moved for partial summary judgment as to Counts VI, IX, XII, XV, and XVIII seeking declaratory relief pursuant to the UDJA. For purposes of discussion, the Court notes that the Cambios have joined in the arguments advanced in Receivership Plaintiff's supporting memorandum. Specifically, Receivership Plaintiff seeks a declaration from the Court that the Consolidated Loans are usurious and that all related security instruments for those underlying loans be declared void. In opposition, Defendants aver that Receivership Plaintiff is improperly seeking summary judgment on its UDJA count because the Court is effectively determining facts through a declaration that the loans are usurious, which is inherently inappropriate at the summary judgment phase.

First and foremost, the UDJA, pursuant to § 9-30-1, affords the Superior Court the power to grant or deny declaratory relief; however, the exercise of that power is purely discretionary. See R.I. Orthopedic Soc'y v. Blue Cross & Blue Shield of R.I., 748 A.2d 1287, 1289 (R.I. 2000); Berberian v. Travisono, 114 R.I. 269, 273, 332 A.2d 121, 123 (1975). Second, § 9-30-2 of the UDJA provides:

> "Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." Sec. 9-30-2.

As our Supreme Court stated, "the purpose of the UDJA also is to protect parties, resolve controversies, and 'afford relief from uncertainty and insecurity with respect to rights, status, and

other legal relations . . . .'" Haviland v. Simmons, 45 A.3d 1246, 1257 (R.I. 2012) (quoting § 9-30-12).

Thus, if the Court declares that the loans in the instant matter were indeed usurious, the Court is properly entitled to grant Receivership Plaintiff's and the Cambios' Rule 56 motion on the applicable counts requesting such declaratory relief. The Court now will engage in an analysis to decide whether summary judgment on the declaratory relief is appropriate in this case.

A

The Consolidated Loans are Usurious

In its opposition to partial summary judgment, Defendants rely on the Court's equitable powers in finding that Receivership Plaintiff would be unjustly enriched through the application of Rhode Island's usury statute because, if Receivership Plaintiff prevails in this matter, the funds given to CPR to develop property will remain un-repaid and all security interests securing those loans will be deemed void and unenforceable by Defendants. Defendants further maintain partial summary judgment is inappropriate in this matter because Defendants should be permitted to engage in additional fact discovery regarding four main points in its brief regarding the rates of interest under the loans, whether the fees charged by Potomac are interest, whether the exit fees charged were a form of penalty, and whether the Consolidation Agreement's modification to the underlying loans renders the usury argument moot. In two recent decisions, the Rhode Island Supreme Court has largely provided decisive guidance on the issues raised in this case. See generally LaBonte v. New England Dev. R.I., 93 A.3d 537, 541 (R.I. 2014); NV One, LLC v. Potomac Realty Capital, LLC, 84 A.3d 800 (R.I. 2014). Consequently, the Court's analysis in this matter flows directly from these two cases. Thus, the Court need not delve into great depths in reanalyzing the same issues already decided by the Court on two prior occasions.

As the Supreme Court explained in NV One, "[l]iability for usurious interest rates in Rhode Island is well settled and clear. The maximum allowable interest rate is a statutory construct whereby interest rates in excess of 21 percent per annum are deemed usurious." NV One, 84 A.3d at 805 (citing § 6–26–2(a)). If a loan is found to violate § 6-26-2 by charging more than the maximum 21% per annum interest, § 6-26-4(a) provides "[e]very contract made in violation of any of the provisions of § 6-26-2, and every mortgage, pledge, deposit, or assignment made or given as security for the performance of the contract, shall be usurious and void." Sec. 6-26-4(a); see LaBonte, 93 A.3d at 542. Even though Defendants note there was no intent to violate this State's usury laws, a lender's subjective intent to comply with those laws is immaterial in finding a violation of § 6-26-2. See Burdon v. Unrath, 47 R.I. 227, 132 A. 728, 730 (1926). "Because the lender's intent . . . is immaterial to a determination of usury (and the invocation of penalties resulting therefrom), it is clear that the Legislature intended an inflexible, hardline approach to usury that is tantamount to strict liability." NV One, 84 A.3d at 807.

In the present case, Defendants cannot meet their burden of showing that the loans from Potomac to CPR were not usurious. See Sheehan v. Richardson, 315 B.R. 226, 240 (D.R.I. 2004), aff'd, 185 F. App'x 11 (1st Cir. 2006) (noting Rhode Island usury law places burden on lender to charge legal interest rate). According to Receivership Plaintiff's chalk,[7] there are several different ways in which the Court can determine that the loans are usurious. For

[7] As a Massachusetts court has explained, a "chalk" is used to illustrate testimony and does not constitute evidence in the ordinary sense of the word. Commonwealth v. Shea, 644 N.E.2d 244, 247 (Mass. App. Ct. 1995), abrogated on other grounds, Commonwealth v. Sexton, 680 N.E.2d 23 (Mass. 1997). Chalks may be provided as a form of demonstrative evidence for a fact finder, and a trial judge will have considerable discretion as to whether a chalk may be used. See Alholm v. Town of Wareham, 358 N.E.2d 788, 794 (Mass. 1976); cf. State v. Momplaisir, 815 A.2d 65, 72 (R.I. 2003) ("The admissibility of evidence is a question addressed to the sound discretion of the trial justice and will not be disturbed on appeal absent a clear abuse of that discretion."). Receivership Plaintiff's counsel submitted this chalk at the motion hearing on November 20, 2014. The Court ordered the chalk be made part of the record, despite Defendants' subsequent objection and request for Receivership Plaintiff to amend the summary judgment motion.

example, when Potomac declared an Event of Default on the Consolidated Loans, an interest rate of 24% was charged which, on its face, exceeded the statutory maximum interest of 21%. See NV One, 84 A.3d at 806 (citing § 6-26-2) (finding 24% default interest rate charged by defendant usurious on its face). Indeed, as Potomac's letter claiming default proclaimed, "[f]rom January 1, 2009 forward, *interest has accrued on the Loans at the Default Rate [24%]*, and the Exit Fee in the amount of $3,000,000.00 is considered earned, due and payable to Lender." (N. Cambio Aff. Ex. S). As a result of any finding that each of the underlying loans in the Consolidated Loans are usurious, Receivership Plaintiff argues that—based on the cross-collateralization of the loans—all of the mortgages securing those loans must be avoided and discharged, even if only one of the loans is deemed usurious. See § 6-26-4(a). The Court agrees.

As our Supreme Court indicated in NV One, just because the interest rate is found usurious does not automatically end the Court's analysis. In that case—as is the case here—the loan documents contained a "usury savings clause" which provided that the "Default Rate" under the loans was "the lessor of (a) twenty four percent (24%) per annum and (b) the maximum rate of interest, if any, which may be collected from Maker under applicable law." (N. Cambio Aff. Exs. A, E, H). Ultimately, the NV One Court held that, "in loan contracts such as the instant loan, usury savings clauses are unenforceable as against the well-established public policy of preventing usurious transactions." NV One, 84 A.3d at 810. The exact same usury savings clause that was held enforceable as a violation of public policy is present in the loan documents here. Accordingly, Potomac may not rely on such language in arguing that the default rate of interest did not exceed 21%.

However, assuming arguendo that the Court was to find that the rate of interest charged pursuant to an Event of Default did not render the loans usurious, Receivership Plaintiff provides three other avenues for a finding that the underlying loans and their respective security interests

must be avoided. Receivership Plaintiff first represents (based on its mathematical calculations outlined in its chalk) when the $3,000,000 Exit Fee charged on the Consolidated Loans is applied from April 3, 2008 to the date of default on January 1, 2009, an effective per annum interest rate of 52.39% results. Cf. LaBonte 93 A.3d at 542-45 (determining "commercial loan commitment fee" could not be excluded from being considered part of interest on loan). Similar to LaBonte, the Exit Fee must be included in the interest rate calculations. Next, Receivership Plaintiff represents that if the Court were to instead apply a pro rata application of the Exit Fee on the Consolidated Loans to determine the individual interest rates applied to each of the underlying loans also results in an effective interest rate greater than 21%. The Second Six Million Dollar Note, the 2.92 Million Dollar Note, the 1.35 Million Dollar Note, and the One Million Dollar Demand Note result in interests rates of 37.1%, 59.5%, 41.78%, and 38.5%, respectively. Lastly, Receivership Plaintiff notes that the money actually disbursed by Potomac on the First Six Million Dollar Note and the 2.92 Million Dollar Note resulted in usurious interest rates. See NV One, 84 A.3d at 806 (affirming this Court's determination that interest charged on amount actually disbursed exceeded 21% and therefore was usurious).

It is without question that the underlying loans comprising the Consolidated Loans are usurious and thus violate § 6-26-2. Defendants have failed to provide any evidence to meet its burden on summary judgment that a material fact exists to prevent judgment in Receivership Plaintiff and the Cambios' favor as a matter of law.[8] See Lavoie, 918 A.2d at 228. Accordingly,

[8] As argued in its papers, Defendants note their view of the importance for the General Assembly to review the usury statute in light of the impact on commercial lending. Ultimately, while Defendants' arguments are unmeritorious today, such arguments may in fact garner different results if brought before the General Assembly, but such issues are not for the Court to delve into. Indeed, as the Rhode Island Supreme Court expressed in LaBonte:

> "We are well aware that the General Assembly has opted for a rather draconian manner of dealing with the problem of usury. But we certainly cannot say that the General Assembly's strong

declaratory relief, as requested under Count III and pursuant to § 9-30-1, shall enter against Defendants. Furthermore, due to the above discussion and findings with respect to Count III, partial summary judgment shall also enter in favor of the Cambios on Counts VI, IX, and XII which seek a similar declaration with respect to the subject loans. However, due to the discrepancy noted above between the Amended Complaint and the Consolidated Loans Agreement, partial summary judgment cannot presently enter on Counts XV and XVIII which assert that the One Million Dollar Allonge (as incorrectly part of the Consolidated Loans) is usurious and its respective security interests avoided.[9] Therefore, all underlying loans of the Consolidated Loans are hereby deemed void as usurious and their corresponding security interests effectively discharged.

B

Defendants' Counterclaim for Breach of Contract

Receivership Plaintiff further requests summary judgment enter on Defendants' Counterclaim for breach of contract. Essentially, Defendants seek to again rely on the equitable principles of unjust enrichment in asserting that, because Defendants in Counterclaim (Receivership Plaintiff and the Cambios) have breached the agreements with Potomac but have nonetheless retained the benefit of the bargain, they should thus be liable for damages to Defendants. Stemming from the Court's previous decision in NV One declaring the loans in that case void, this Court subsequently had occasion to find that "[b]ecause the Loan is now void, [the defendant] lacks an enforceable contract. Accordingly, there is no contract to be breached and no guaranties to be enforced. Therefore, the Court grants summary judgment to the

> medicine in this domain is arbitrary or wrongful, and our role is not to second-guess such legislative judgments. We are mindful of the ancient maxim *dura lex sed lex* ('The law is hard but it is the law.')." LaBonte, 93 A.3d at 543.

[9] See footnote 6, supra.

Plaintiffs on the Defendant's Counterclaims [for, inter alia, breach of contract]." NV One, LLC v. Potomac Realty Capital, LLC, No. PB-09-7159, 2012 WL 6554150 (R.I. Super. Dec. 11, 2012) (Silverstein, J.). A similar result is warranted here. Because the Consolidated Loans are void, there is no contract left to be breached, and therefore summary judgment is appropriate on Defendants' Counterclaim for breach of contract.

IV

Conclusion

After due consideration of the arguments set forth in the papers, this Court grants Receivership Plaintiff's Motion for Partial Summary Judgment on Count III requesting a declaration that the Consolidated Loans are usurious in violation of § 6-26-2. The Court additionally grants the Cambios' Motion for Partial Summary Judgment on Counts VI, IX, and XII, requesting a similar declaration on three of the underlying loans. As a result, all mortgages and liens set forth in the loan documents are avoided and discharged. Lastly, summary judgment shall enter in favor of Receivership Plaintiff on Defendants' Counterclaim for breach of contract.

Prevailing counsel shall present an Order consistent herewith which shall be settled after due notice to counsel of record. Counsel shall also schedule a conference in chambers on how to proceed in this matter with respect to the above findings.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**McGowan v. Potomac Realty Capital, LLC, et al.**
CASE NO:	**PB 09-7314**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 29, 2014**
JUSTICE/MAGISTRATE:	**Silverstein, J.**
ATTORNEYS:	
For Plaintiff:	**See attached list**
For Defendant:	**See attached list**

Matthew J. McGowan, et al v. Potomac Realty Capital, LLC, et al.
C.A. No. PB 09-7314

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