**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**[Filed: June 29, 2018]**

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| **BANK OF AMERICA, N.A.,**<br>**Plaintiff,** | : | |
| **v.** | : | **C.A. No. PC-2016-1618** |
| **TIMOTHY G. FAY and DAVID N. PATRICK,**<br>**Defendants.** | : | |

**DECISION**

**SILVERSTEIN, J.** Before the Court for decision is Plaintiff Bank of America, N.A.'s (Plaintiff or BOA) motion for partial summary judgment against Defendants Timothy G. Fay (Fay) and David N. Patrick (Patrick) (collectively, Defendants). Specifically, Plaintiff seeks an order dismissing Defendants' several Affirmative Defenses and finding that the Defendants are liable to BOA under the signed Guaranty. Plaintiff also seeks to establish the indebtedness of Defendants as of November 8, 2017—the date when title to the Connecticut Property vested in Plaintiff following foreclosure action in Connecticut. This Court exercises jurisdiction pursuant to G.L. 1956 § 8-2-13.

## I

## Facts and Travel

On May 15, 2008, Stonestreet Hospitality Realty Company, LLC (Stonestreet), a Connecticut Limited Liability Company, executed and delivered to Plaintiff a Promissory Note (the Note) evidencing a loan in the original principal amount of $21,808,000 in concert with the construction of a 176 room Hyatt Place Mohegan Sun Hotel in Montville, Connecticut (the Property). The Note was secured by a first position mortgage covering the Property. On May 15,

2008, Stonestreet also executed and delivered to BOA a Senior Construction and Interim Loan Agreement (Loan Agreement) associated with the Promissory Note.[1] The same day, Defendants, in connection with the Original Loan Agreement, further executed and delivered a Guaranty of the loan. Both Fay and Patrick were principals of Stonestreet owning seventy percent and thirty percent of the membership interests, respectively; Defendants, however, executed the Guaranty in their individual capacities.

Per the Loan Agreement, payment of the Note in full was due on November 21, 2014 (the Maturity Date). Stonestreet failed to fulfill its obligation to make such payment. As a result, BOA demanded immediate payment from Stonestreet and Defendants, as Guarantors. Following Stonestreet's non-payment, the parties entered into a Loan Forbearance Agreement (Forbearance Agreement) on September 2, 2015. Under the Forbearance Agreement, Stonestreet and Defendants acknowledged Stonestreet's failure to pay the Note on the Maturity Date as required by the Loan Agreement. Moreover, the Forbearance Agreement provided that the Guaranty is enforceable and that the terms and conditions of the Loan Agreement remain in effect. The Forbearance Agreement further included a new Maturity Date of December 15, 2015. Stonestreet again failed to pay the Note by the December 15, 2015 deadline.[2]

Plaintiff filed a foreclosure complaint on May 31, 2016 in Connecticut Superior Court (the Connecticut Court) seeking to foreclose its mortgage encumbering the Property. Pursuant to this action, the Connecticut Court granted BOA's motion for partial summary judgment and

[1] Following the execution of the Loan Agreement, the loan was modified nine times on May 31, 2011; August 1, 2011; March 27, 2012; July 27, 2012; October 23, 2012; April 29, 2013; December 20, 2013; May 14, 2014; and October 8, 2014.

[2] To date, the Note has not been paid by Stonestreet or Defendants as Guarantors.

entered a Judgment of Strict Foreclosure[3] finding the debt owed to BOA to be $23,108,768.17, as of September 25, 2017.[4] On November 8, 2017 (the Ownership Transfer Date), following the Connecticut Court's Judgment, BOA recorded a Certificate of Foreclosure to memorialize the transfer of title. The Connecticut Court later conducted a two-day hearing on February 15 and 27, 2018 to determine the value of the Property on the date of the transfer of ownership from Stonestreet to BOA. In its April 20, 2018 decision, the Connecticut Court concluded that the value of the Property on the Ownership Transfer Date was $18,400,000.

Plaintiff filed the within Complaint on April 12, 2016 against Defendants. Both Defendants answered the Complaint on June 1, 2016. Plaintiff now moves for partial summary judgment against Defendants finding, *inter alia*, Defendants as Guarantors' with joint and several liability under the Guaranty, establishing the amount of the outstanding indebtedness due from Defendants as of the Ownership Transfer Date, and setting forth the appropriate mathematical equation for the entry of final judgment. BOA alleges in its motion that, as of the Ownership Transfer Date, the outstanding indebtedness consists of the unpaid principal in the amount of $21,245,589.14, plus unpaid, accrued default interest in the amount of $2,194,256.12. Plaintiff further asserts other costs such as late charges, costs and expenses including attorney's fees. In total, Plaintiff alleges the outstanding debt of Defendants as of the Ownership Transfer

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[3] "Under [Connecticut] law, an action for strict foreclosure is brought by a mortgagee who, holding legal title, seeks not to enforce a forfeiture but rather to foreclosure an equity of redemption unless the mortgagor satisfies the debt on or before his law day." *Barclays Bank of N.Y. v. Ivler*, 565 A.2d 252, 253 (Conn. App. Ct. 1989) (citing *Cook v. Bartholomew*, 60 Conn. 24, 27, 22 A. 444 (1891)). "Where a foreclosure decree has become absolute by the passing of the law days, the outstanding rights of redemption have been cut off and the title has become unconditional in the [redeeming encumbrancer]. . . . The mortgagor has no remaining title or interest which he may convey." *Id.* (brackets in original).

[4] Periodically throughout its Decision, the Court will refer to orders of the Connecticut Court in connection with a parallel suit in that jurisdiction involving BOA and Stonestreet. This Court, however, does not strictly adopt the findings of the Connecticut Court, but utilizes its decisions in order to provide context to the instant matter.

Date is $23,439,845.26, excluding attorney's fees and expenses. The parties have filed numerous memoranda in support of their respective positions.

## II

## Standard of Review

"It is a fundamental principle that '[s]ummary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.'" *Takian v. Rafaelian*, 53 A.3d 964, 970 (R.I. 2012) (alteration in original) (quoting *Emp'rs Mut. Cas. Co. v. Arbella Prot. Ins. Co.*, 24 A.3d 544, 553 (R.I. 2011)). With that in mind, in ruling on a motion for summary judgment, the Court is instructed to "review[] the evidence and draw[] all reasonable inferences in the light most favorable to the nonmoving party," *id.* at 970 (citation omitted) (internal quotation marks omitted), and to "'look for factual issues, not determine them.'" *Steinhof v. Murphy*, 991 A.2d 1028, 1032-33 (R.I. 2010) (quoting *Steinberg v. State*, 427 A.2d 338, 340 (R.I. 1981)). However, summary judgment is appropriate "'if there exists no genuine issue of material fact and the moving party is entitled to judgement as a matter of law.'" *Takian*, 53 A.3d at 970 (quoting *Classic Entm't & Sports, Inc. v. Pemberton*, 988 A.2d 847, 849 (R.I. 2010) (internal citation omitted)); *see* Super. R. Civ. P. 56(c).

## III

## Discussion[5]

### A

### Applicability of Connecticut General Statutes (C.G.S.) § 49-1

Defendants argue that C.G.S. § 49-1 bars collateral action for a deficiency against guarantors who were not named in the foreclosure action if they could have been made parties to that action and the guarantee was secured by the mortgage. Defendants assert that they clearly could have been made parties to the Connecticut Foreclosure action and because they were not, § 49-1 bars further recovery. They further contend that, at minimum, there is a genuine issue of material fact with regard to whether the Guaranty was secured by the Mortgage or if § 49-1 is applicable in the current matter. Conversely, Plaintiff contends that Defendants are not within the purview of § 49-1 because they (1) are not directly liable under the Mortgage or Note and (2) do not possess an interest in, and concomitant legal and equitable right to redeem the property. Additionally, BOA asserts that the Guaranty was not secured by a mortgage in this instance. BOA concedes, however, that the borrower—Stonestreet—pledged a mortgage to secure the

[5] As part of its Motion for Partial Summary Judgment, Plaintiff moves for the dismissal of Defendants' affirmative defenses as "deficient as a matter of law" because they have not provided sufficient evidence to support their purported defenses. Defendants neglect to respond to this argument by Plaintiff in their numerous memoranda. While courts have generally been disinclined to strike affirmative defenses, this reluctance has been tempered when the court has previously found a defense to be insufficient or immaterial. *See Boston & Maine Corp. v. Chicago, Burlington & Quincy R.R.*, 258 F. Supp. 930, 934 (S.D.N.Y. 1966) ("Since summary judgment on the first claim . . . is granted . . . any defenses directed solely against the first claim must be struck as immaterial . . . ."). Accordingly, affirmative defenses proffered by Defendants may be struck pursuant to this decision.

promissory note, but contends that neither the Guarantors, nor either of them jointly or separately, mortgaged property to secure the Guaranty in this instance.

Section 49-1 provides that:

> "[t]he foreclosure of a mortgage is a bar to any further action upon the mortgage debt, note or obligation against the person or persons who are liable for the payment thereof who are made parties to the foreclosure and also against any person or persons upon whom service of process to constitute an action in personam could have been made within this state at the commencement of the foreclosure; but the foreclosure is not a bar to any further action upon the mortgage debt, note or obligation as to any person liable for the payment thereof upon whom service of process to constitute an action in personam could not have been made within this state at the commencement of the foreclosure."

As cited by both parties, the Connecticut Supreme Court has extensively discussed the applicability of § 49-1 with regard to guarantors in *JP Morgan Chase Bank, N.A. v. Winthrop Properties, LLC*, (*Winthrop*), 312 Conn. 622, 94 A.3d 622 (Conn. 2014).

In *Winthrop*, the defendant borrowed a large sum from Washington Mutual Bank and in return executed a promissory note and a mortgage on a piece of property. 94 A.3d at 625. In addition, the guarantors were required to execute a personal guaranty in which they assumed joint and several liability for the repayment of the note. *Id.* The defendant eventually defaulted on the note and plaintiff, as the successor in interest to Washington Mutual Bank, filed suit. *Id.* Shortly thereafter, the trial court entered summary judgment against defendant and the guarantors as to liability only. *Id.* at 626. Subsequently, the trial court granted plaintiff's motion for strict foreclosure and found the fair market value of the property, along with the value of the debt owed. *Id.* The defendant did not appeal the ruling and did not attempt to redeem the property. *Id.* As a result, title to the property vested in the plaintiff. *Id.*

Plaintiff in *Winthrop* subsequently filed an untimely motion for deficiency judgment.[6] *Id.* In response, defendants objected arguing that because the motion was untimely filed, § 49-1 barred any further action to collect money damages from the guarantors. *Id.* The Trial Court granted a motion to strike defendant's defense with regard to the guaranty finding that it presented "a separate, independent and distinct cause of action." *Id.* The Trial Court then rendered a judgment for the debt owed against the guarantors. *Id.* The Appellate Court reversed the Trial Court's decision and remanded the case with direction to vacate the award finding that the general bar to further recovery under § 49-1 also applied to the guaranty. Ultimately, the Connecticut Supreme Court reversed the judgment of the Connecticut Appellate Court, concluding that "§ 49-1 ha[s] no effect on the plaintiff's ability to recover the remaining unpaid debt from the guarantors because, irrespective of the fact that the plaintiff advanced claims to foreclose the mortgage and to enforce the guarantee in a single cause of action, the guarantors were not parties to the foreclosure claim because their liability [arose] separately under their guaranty."[7] *Id.* at 625.

In its decision, the *Winthrop* Court explicitly "recognized the general principle that a guaranty agreement is a separate and distinct obligation from that of the note or other obligation." 94 A.3d at 630 (citing *Carpenter v. Thompson*, 66 Conn. 457, 463-64, 34 A. 105 (1895)). The court further explained that "it is almost universally recognized in other jurisdictions that a guarantor's liability does not arise from the debt or other obligation secured

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[6] C.G.S. § 49-14 states that "[a]t any time within thirty days after the time limited for redemption has expired, any party to a mortgage foreclosure may file a motion seeking a deficiency judgment." In *Winthrop*, plaintiff filed its motion for deficiency judgment outside of the thirty day window provided for in the statute.

[7] Throughout its decision, the Connecticut Supreme Court uses the spelling "guarantee" as opposed to "guaranty." In order to maintain consistency and improve readability, this Court's decision will continue to use the latter spelling.

by the mortgage; rather, it flows from the separate and distinct obligation incurred under the guaranty contract." *Id.* at 631 (citing *SKW Real Estate Ltd. P'ship v. Gold*, 428 Mass. 520, 523, 702 N.E.2d 1178 (1998)); *see also Palma v. Notarianni*, 52 R.I. 61, 157 A. 422 (R.I. 1931) ("[A] contract of guaranty is an agreement separate and distinct from the main agreement."). The *Winthrop* Court concluded "that § 49-1 lacks the clear expression found in the limited jurisdictions in which a guarantor has been deemed to be a proper party to a foreclosure claim." *Id.* at 632. The court also recognized the original intent of the statute; namely to "protect[] persons directly liable on the note and pledging property subject to the mortgage." *Id.* at 632-33.

The facts of the instant action reflect those of *Winthrop*. As in *Winthrop*, "[a]lthough the guarantors have a general interest in the foreclosure due to their separate and distinct obligation under the guaranty to pay any remaining amount due on the underlying debt, that interest does not render them parties to the foreclosure." *Id.* at 634. In light of the *Winthrop* analysis, this Court finds that there are no genuine issues of material fact with regard to the applicability of § 49-1. Accordingly, despite Defendants' assertions that they ought to have been made parties to the Connecticut foreclosure action, pursuant to the Connecticut Supreme Court's decision in *Winthrop*, Defendants—who both signed the Guaranty in their individual capacities and were not individually party to the Mortgage or Note—were not proper parties to the foreclosure action. Therefore, Defendants' liability arises from a separate contract, *i.e.*, the Guaranty, and § 49-1 does not afford them protection.

**B**

**Governing Law**

Plaintiff contends that the Governing Law Provision contained in the Guaranty—signed by Defendants in their individual capacity—establishes that all rights and obligations set forth by

that agreement are controlled by Rhode Island law. Defendants, on the other hand, maintain that because the Note, Original Loan Agreement, Guaranty, and Mortgage were all signed at the same time, the documents must be construed as one contiguous document; therefore, Defendants assert that variations regarding choice of law throughout the separate documents create an ambiguity as to which law controls. In response, Plaintiff asserts that the differing choice of law provisions do not conflict, but rather references to Connecticut law contained in the Mortgage and Forbearance Agreement must refer to Connecticut law because they represent the "interest in the Connecticut dirt."

Our Supreme Court has stated that "'[t]he formation of a guaranty contract, like any other contract, is governed by the principles of mutual assent, adequate consideration, definiteness, and meeting of the minds.'" *OSJ of Providence, LLC v. Diene*, 154 A.3d 460, 464 (R.I. 2017) (quoting 38 Am. Jur. 2d *Guaranty* § 1 at 948 (2010)). Accordingly, the Court treats a guaranty like any other contract and, therefore, may examine it for ambiguity under the typical judicial construction analysis. "[I]f the court finds that the terms of an agreement are clear and unambiguous, the task of judicial construction is at an end and the agreement must be applied as written." *Id.*

Moreover, it is a "general rule in this jurisdiction that instruments executed 'at the same time, for the same purpose and in the course of the same transaction are to be considered as one instrument and are to be read and construed together.'" *Rotelli v. Catanzaro*, 686 A.2d 91, 94 (R.I. 1996) (quoting *Old Kentucky Distributing Corp. v. Morin*, 50 R.I. 163, 165, 145 A. 403, 404 (1929)) (ellipsis omitted). It is well-settled in this jurisdiction that "parties are permitted to agree that the law of a particular jurisdiction will govern their transaction . . . with some limitations." *Sheer Asset Mgmt. Partners v. Lauro Thin Films, Inc.*, 731 A.2d 708, 710 (R.I.

1999) (citing *Owens v. Hagenbeck-Wallace Shows Co.*, 58 R.I. 162, 172-73, 192 A. 158, 164 (1937)). "Among those jurisdictions in which there is a reasonable basis for choosing the law of that jurisdiction are: (1) the place of performance of one of the parties; (2) the domicile of one of the parties; or (3) the principle place of business of a party." *Id.*

The relevant language of the specific document provisions at issue are as follows. Section 11 of the Guaranty—entitled Governing Law—provides:

> "This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced in accordance with the internal laws of the State of Rhode Island, without giving effect to principles of conflicts of law. In addition, the fact that portions of the Loan Documents may include provisions drafted to conform to the law of the State of Connecticut is not intended, nor shall it be deemed, in any way to derogate the parties' choice of law as set forth herein."

Defendants, however, cite to Sections 17.6.3 and 17.6.4 of the Original Loan Agreement and Section 19 of the Forbearance Agreement for the proposition that conflicts of law within the documents create an ambiguity. Specifically, Section 17.6.3—also entitled Governing Law—of the Original Loan Agreement states that "[t]his Agreement and, except as otherwise provided in Section 17.6.4, each of the other Loan Documents shall in all respects be governed, construed, and interpreted, applied and enforced in accordance with the internal laws of the State of Rhode Island without regard to principles of conflicts of law." Section 17.6.4 outlines exceptions to the Governing Law provision, primarily focusing on matters related to the foreclosure of the liens on the Property.[8] Defendants also point to Section 19—again, entitled Governing Law—of the Forbearance Agreement which provides that:

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[8] The relevant text of Section 17.6.4 is provided below.

> "Exceptions. Notwithstanding the foregoing choice of law:

> "This Agreement is executed and delivered in the State of Connecticut (the "State") and it is the desire and intention of the parties that it be in all respects interpreted according to the laws of the State. Borrower and Guarantors each specifically and irrevocably consents to the jurisdiction and venue of the federal and state courts of the State with respect to all matters concerning this Agreement or the Loan Documents or the enforcement of any of the foregoing. Borrower and Guarantors each agree that the execution and performance of this Agreement shall have a State *situs* and accordingly, consents to personal jurisdiction in the State." (parenthetical and italics in original).

The Court notes that the Guaranty, the Loan Agreement, and the Forbearance Agreement were signed by both Defendant Fay and Defendant Patrick individually as Guarantors. Defendant Fay additionally signed the Loan Agreement as the Manager of Stonestreet.

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> "(a) matters relating to (i) the creation, transfer, perfection, priority and enforcement of the liens on and security interests in the Property or other assets situated in states other than Rhode Island, including by way of illustration, but not in limitation, actions for foreclosure, for injunctive relief, or for the appointment of a receiver, and (ii) the nature of the interest in the Property created, transferred or perfected; the method for foreclosure of the liens on the Property; the nature of the interest in real property that results from foreclosure and the manner and effect of recording or failing to record evidence of a transaction that transfers or creates an interest in real property, shall be governed by the laws of the state where the Property is situated; [and]
>
> "(b) Agent and Lenders shall comply with applicable law in the state where the Property is situated to the extent required by the law of such jurisdiction in connection with the foreclosure of the security interests and liens created under the Mortgage and the other Loan Documents with respect to the Property or other assets situated in States other than Rhode Island . . . .
>
> . . .
>
> "Nothing contained herein or any other provisions of the Loan Documents shall be construed to provide that the substantive laws of the state where the Property is situated shall apply to any parties' rights and obligations under any of the Loan Documents, which, except as expressly provided in clauses (a), (b) and (c) of this Section 17.6.4, are and shall continue to be governed by the substantive law of the State of Rhode Island. In addition, the fact that portions of the Loan Documents may include provisions drafted to conform to the law of the state where the Property is situated is not intended, nor shall it be deemed, in any way, to derogate the parties' choice of law as set forth or referred to in this Agreement or in the other Loan Documents."

In accordance with *Rotelli*, this Court views the Guaranty and Original Loan Agreement as one instrument because they were executed "'at the same time, for the same purpose and in the course of the same transaction[.]'" 686 A.2d at 94 (quoting *Old Kentucky Distributing Corp.*, 50 R.I. at 165, 145 A. at 404). Section 11 of the Guaranty, per its plain language, clearly indicates that the parties intended Rhode Island law to govern the rights and obligations set forth in that Agreement. *See Haviland v. Simmons*, 45 A.3d 1246, 1258 (R.I. 2012) (quoting *Young v. Warwick Rollermagic Skating Ctr., Inc.*, 973 A.2d 553, 558 (R.I. 2009)) ("In determining whether or not a particular contract is ambiguous, the court should read the contract 'in its entirety, giving words their plain, ordinary, and usual meaning.'"). Section 11 further provides that any references to Connecticut law are not intended, nor shall they be deemed, to supplant the parties' choice of Rhode Island law. In contrast, the Forbearance Agreement was executed over seven years after the Guaranty and Original Loan Documents, not at the same time as the other loan documents cited to by Defendants. Moreover, the specific language of the Forbearance Agreement states that it "is executed and delivered in the State of Connecticut and it is the desire and intention of the parties that *it* be in all respects interpreted according to the law of the State." (emphasis added) (internal parenthesis omitted).

The plain language contained in the cited loan documents clearly illustrates the intent of the parties to have Rhode Island law control the Guaranty and the Original Loan Agreement and, likewise, to have Connecticut law control the later Forbearance Agreement. Furthermore, the choice of Rhode Island law to govern the Guaranty, and contemporaneously signed loan documents, is appropriate under the standard articulated by our Supreme Court in *Sheer Asset Mgmt. Partners,* 731 A.2d at 710. This Court will not "seek out ambiguity where there is none." *Roadepot, LLC v. Home Depot, U.S.A., Inc.,* 163 A.3d 513, 519 (R.I. 2017) (citing *Botelho v.*

*City of Pawtucket Sch. Dep't*, 130 A.3d 172, 177 (R.I. 2016)). Accordingly, the Court finds that Defendants are jointly and severally liable to Plaintiff for any and all indebtedness due under the Guaranty.

**C**

**Deficiency Determination**

Finally, Defendants argue that BOA's motion is premature because the value of the Property foreclosed upon by Plaintiff has not been calculated. Thus, as the foreclosed upon property constitutes payment of the debt owed, the existence of a deficiency cannot be determined.

In the period since Defendants advanced this argument, Plaintiff has moved to supplement the record with a decision by the Connecticut Superior Court regarding the fair market value of the Properties subject to the Connecticut foreclosure action. *See Bank of America, N.A. v. Stonestreet Hospitality Realty Co., LLC, et al*, No. CV-16-6026981-S (Conn. Super. Apr. 20, 2018). This Court granted Plaintiff's motion on May 15, 2018. *See Order*, PC-2016-1618 (R.I. Super. May 15, 2018) (Silverstein, J.). While this Court will not necessarily accept the explicit valuation determined by the Connecticut Court, its decision is helpful in determining whether a deficiency indeed exists.

The Connecticut Court held two days of hearings on February 15 and 27, 2018. *Stonestreet*, No. CV-16-6026981-S, at 1. Each party offered testimony regarding the fair market value of the subject properties through appraisal expert witnesses. *Id.* at 3-6. Plaintiff BOA's expert concluded that on November 8, 2018—the Ownership Transfer Date—the subject properties had a fair market value of $15,200,000; Defendant Stonestreet's expert concluded that the fair market value of the properties was $20,535,000. *Id.* After considering the testimony and

analysis of the experts presented, "the court reache[d] the conclusion that on the date the title to the subject parcels vested in the plaintiff . . . the parcels and the personal property had a combined fair market value of $18,400,000[.]" *Id.* at 9.

As previously articulated, the precise value of the deficiency is not presently before this Court. Rather, the immediate question is whether it can be determined that a deficiency exists or if the foreclosure of the Property by BOA extinguished the debt. Both parties presented expert testimony before the Connecticut Court indicating that the value of the subject Property fell short of the total indebtedness of $23,108,768.17 entered by the Connecticut Court on September 25, 2017 according to its Judgment of Strict Foreclosure, and by consent of the parties. *See Order*, No. KNL-CV-16-6026981-S (Conn. Super. Sept. 25, 2017) (Cosgrove, J.). In addition, the expert valuations also fall short of the updated figure presented by Plaintiff in the instant action, *i.e.*, $23,439,845.26 as of the Ownership Transfer Date. Therefore, at this time, without passing judgment on a specific value, this Court is satisfied that Plaintiff has shown the existence of Guarantors indebtedness under the Guaranty and a deficiency following BOA's foreclosure on the Property. The Court, nonetheless, declines to adopt the specific figures reached by the Connecticut Court.

## IV

## Conclusion

For the reasons stated herein, the Court finds that, pursuant to the plain language of the Guaranty, Rhode Island law governs the agreement between Plaintiff and the Defendant Guarantors and that § 49-1 is not applicable to the instant action. Defendants, therefore, are liable for the indebtedness under the Guaranty. The Court is further satisfied that Plaintiff has demonstrated the existence of a deficiency with regard to the indebtedness of Defendants as

determined by the Connecticut Court; however, the Court declines to assign a value to the indebtedness and deficiency. Accordingly, Plaintiff's motion for partial summary judgment is granted in part and denied in part.

Prevailing counsel shall present an appropriate order consistent herewith which shall be settled after due notice to counsel of record.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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| **CASE NO:** | C.A. No. PC-2016-1618 |
| **COURT:** | Providence County Superior Court |
| **DATE DECISION FILED:** | June 29, 2018 |
| **JUSTICE/MAGISTRATE:** | Silverstein, J. |

**ATTORNEYS:**

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| For Plaintiff: | Richard L. Gemma, Esq. |
| For Defendant: | William K. O'Donnell, Esq.; Timothy J. Morgan, Esq. |