

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TI-HUD INVESTMENTS I, L.L.C., as)
the successor in interest to REGIONS)
BANK, and TUTERA INV., L.L.C.,)
)
Plaintiff,)
)
v.)
)
CONGREGATION OF THE)
RESURRECTION, also known as)
CONGREGATION OF THE)
RESURRECTION - USA PROVINCE,)
)
Defendant.)

CIVIL ACT. NO. 2:08cv887-CSC

MEMORANDUM OPINION and ORDER

Regions Bank (“Regions”) filed its Complaint against Defendant Congregation of the Resurrection, a/k/a Congregation of the Resurrection – USA Province (the “Congregation”) on November 4, 2008. On July 8, 2009 Plaintiff TI-HUD Investments I, L.L.C. (“TI-HUD”) became the plaintiff in this action as successor in interest to Regions. On September 23, 2009 Tuttera Investments, L.L.C. (“Tuttera,”) in conjunction with the Congregation and TI-HUD filed a Motion to Intervene as Plaintiff in this action. On October 19, 2009, Tuttera’s Motion to Intervene was granted and Tuttera filed its Intervenor’s Complaint against the Congregation.

The Complaint seeks to enforce a guaranty agreement executed by the Congregation (the “First Guaranty”) under which the Congregation guaranteed the performance of a third-party under two promissory notes executed in favor of Regions, and subsequently assigned

to TI-HUD (the “Original Notes”). The Intervenor’s Complaint seeks to enforce a second guaranty agreement executed by the Congregation (the “Second Guaranty”) under which Defendant guaranteed the performance of a third-party under a promissory note executed in favor of Tutera (the “Second Note”).

TI-HUD, Tutera, and the Congregation, by their respective attorneys, consented to the entry of a Consent Judgment as to liability without trial or final adjudication of any issue of fact or law. Pursuant to 28 U.S.C. § 636(c)(1) and M.D. Ala. LR 73.1, the parties have consented to the United States Magistrate Judge conducting all proceedings in this case and ordering the entry of final judgment. On October 23, 2009, the court entered a consent judgment in favor of TI-HUD, and against the Congregation, as to all claims in the Complaint. The court also entered judgment in favor of Tutera, and against the Congregation, as to all claims contained in the Intervenor’s Complaint.

Thereafter, the court ordered the plaintiffs to submit their submission in support of their claim for damages, including reasonable attorney’s fees, and gave the defendant an opportunity to file a response. (Doc. # 45). On November 9, 2009, the plaintiffs filed their motion for damages and supporting evidence. (Docs. # 47 & 48). The defendant has filed a response. (Doc. # 49). The plaintiffs have filed a reply to the defendants’ response. (Doc. # 50). On December 8, 2009, the plaintiffs filed an amended motion for damages. (Doc. # 52). The matter is now before the court on the plaintiffs’ claims for damages, fees and costs.

Plaintiff TI-HUD contends that it is entitled to recover \$2,572,926.51 in principal, interest and fees from the Congregation. This amount represents \$858,969.93 owed by the

Congregation to TI-HUD pursuant to the terms of Clinic Board loan and \$1,713,956.58 owed by the Congregation pursuant to the terms of the Restated loan. The Congregation does not dispute the amounts owed to TI-HUD under the terms of the loan documents. Consequently, TI-HUD will be awarded damages in the amount of \$2,572,926.51.

The plaintiffs also contends that, under the terms of the loan documents, they are entitled to recover reasonable attorney's fees from the Congregation. They seek an award of attorney's fees in the amount of \$21,068.54 to be paid to TI-HUD. The Congregation does not dispute the awarding of attorney's fees and does not assert that the fees sought are unreasonable. Accordingly, the plaintiffs will be awarded reasonable attorney's fees in the amount of \$21,068.54, payable to TI-HUD.

Finally, although Plaintiff Tutera initially contended that it was entitled to recover damages in the amount of \$377,476.41 in accordance with the terms of its loan agreements with the Congregation, on December 8, 2009, Tutera filed an amended motion for damages which the court construes as a motion to amend the motion for damages. (Doc. # 52). In that motion, Tutera acknowledges that the Tutera line of credit was satisfied in full on December 4, 2009. Consequently, Tutera is no longer entitled to any damages for that loan.

Thus, for the reasons as stated, and for good cause, the court concludes that TI-HUD is entitled to recover damages and attorney's fees, and Tutera no longer has a claim for damages.

Accordingly, it is

ORDERED as follows:

1. That, construing Tutera's amended motion as a motion to amend the motion for damages (doc. # 52), the motion to amend be and is hereby GRANTED.

2. That TI-HUD be and is hereby AWARDED damages in the amount of \$2,572,926.51.

3. That the plaintiffs be and are hereby AWARDED reasonable attorney's fees in the amount of \$21,068.54, payable to TI-HUD.

4. That costs be and are hereby TAXED against the DEFENDANT.

5. That the telephone conference presently set for December 16, 2009, be and is hereby CANCELED.

A separate judgment will enter.

Done this 14th day of December, 2009.

/s/Charles S. Coody
CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE