

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

U.S. DISTRICT COURT  
WESTERN DISTRICT ARKANSAS  
FILED

AUG 22 2011

CHRIS R. JOHNSON, CLERK

DEPUTY CLERK

THE F&M BANK & TRUST COMPANY

BY

Plaintiff,

vs.

NO. 5:10-cv-05158-JLH

GARY BRANDON ENTERPRISES, INC.,  
GARY L. BRANDON; SHERRI D.  
BRANDON; CAVE SPRINGS  
MUNICIPAL PROPERTY OWNERS'  
IMPROVEMENT DISTRICT NO. 4 -  
OTTER CREEK; FIRST COMMUNITY  
BANK, AS TRUSTEE FOR  
BONDHOLDERS; and CAVE SPRINGS  
MUNICIPAL PROPERTY OWNERS'  
IMPROVEMENT DISTRICT NO. 3 - THE  
CREEK'S SPECIAL SEWER DISTRICT

Defendants.

AGREED JUDGMENT

This matter comes before the Court pursuant to a settlement of the issues between Plaintiff The F&M Bank & Trust Company ("F&M Bank") and Defendants Gary Brandon Enterprises, Inc. ("GBE") and Gary L. Brandon ("G. Brandon"). The issues being joined, and the matter being presented to the Court pursuant to a settlement reached between the parties, and the Court being fully advised in the premises, the Court hereby enters this Agreed Judgment in favor of F&M Bank and against Defendants GBE and G. Brandon on Counts I and II of the Amended Complaint, and finds as follows:

1. F&M Bank is an Oklahoma banking corporation, and a citizen, with its principal place of business located in Tulsa, Oklahoma.

2. GBE is a citizen and an Arkansas corporation with its principal place of business located in Fayetteville, Arkansas.

3. G. Brandon is a citizen and an individual residing in the State of Arkansas. G. Brandon is an officer of GBE.

4. This Court may properly exercise jurisdiction over F&M Bank, GBE, and G. Brandon, and the subject matter of this action.

5. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391(a).

6. GBE and F&M Bank are parties to that certain Construction and Development Loan Agreement executed July 22, 2005 (the "Loan Agreement"), pursuant to which F&M Bank loaned GBE \$12,400,000 (the "Loan"), for the purpose of developing a 193 residential home subdivision in Cave Springs, Arkansas (the "Otter Creek Subdivision").

7. In connection with the Loan Agreement and contemporaneously therewith, GBE executed and delivered to F&M Bank that certain promissory note (the "Note") dated July 22, 2005, in the principal sum of \$12,400,000.00, evidencing the Loan.

8. In order to secure repayment of the Loan, G. Brandon executed and delivered to F&M Bank that certain Guaranty dated July 22, 2005, absolutely and unconditionally guaranteeing all of GBE's obligations under the Loan Agreement and the Note (collectively with the Guaranty, the "Loan Documents").

9. On April 20, 2009, GBE executed and delivered to F&M Bank the First Amendment to Construction and Development Loan Agreement (the "Amended Loan Agreement").

10. On April 20, 2009, GBE renewed its debt to F&M Bank by executing and delivering to F&M Bank a Demand Promissory Note ("First Note") in the principal sum of

\$8,338,768.56 and a Demand Promissory Note ("Second Note") in the principal sum of \$4,000,000.00 (collectively the "Renewal Notes").

11. On April 20, 2009, G. Brandon executed and delivered to F&M Bank that certain Guaranty Agreement, in which he guaranteed payment of all outstanding indebtedness owed to F&M Bank.

12. The Loan Documents and the Amended Loan Agreement and related documents (collectively, the "Renewal Loan Documents") are valid, binding and enforceable agreements against GBE.

13. G. Brandon has guaranteed all indebtedness of GBE to F&M Bank.

14. Pursuant to the Guaranty, G. Brandon is obligated to pay to F&M Bank all indebtedness owed under the Loan Documents and Renewal Loan Documents.

15. GBE is in default under the Loan Documents and the Renewal Loan Documents.

16. G. Brandon is in default of his guaranty obligations.

17. F&M Bank has complied with all conditions precedent to the enforcement of its rights and remedies under the terms of the Loan Documents and the Renewal Loan Documents, including the Guaranty of G. Brandon.

18. F&M Bank is entitled to a money judgment against GBE and G. Brandon, jointly and severally, equaling all principal, accrued interest, unpaid charges and expenses pursuant to the terms of the Loan Documents and Renewal Loan Documents, only for the amounts due and owing pursuant to the terms of the First Note.

19. With respect to the Second Note, the parties have separately entered into a settlement of all amounts due thereunder and such indebtedness is not a part of this Agreed Judgment.

20. With respect to the First Note, as of August 15, 2011, F&M Bank is entitled to a joint and several judgment against GBE and G. Brandon in an amount equal to the sum of \$9,128,123.75 in principal and accrued interest, plus pre-judgment interest continuing to accrue at the *per diem* rate of \$1,374.92, and post-judgment interest accruing at the applicable federal court judgment interest rate.

21. The amount of this judgment shall be reduced and satisfied to the extent of the net proceeds received by F&M Bank from the sale of collateral and real property securing the Renewal Notes. Provided however, nothing herein is intended to waive, prejudice or affect F&M Bank's right to foreclose its mortgage lien on the real property that remains as security for the First Note including without limitation, that certain real property lying in Washington County, Arkansas. Provided further, F&M Bank's decision to enter into this Agreed Judgment shall not constitute an election of remedies.

IT IS THEREFORE ORDERED that this Agreed Judgment shall be entered in favor of F&M Bank and against Defendants GBE and G. Brandon, jointly and severally, in the amount of \$9,128,123.75 in principal and accrued interest, with pre-judgment interest continuing to accrue at the *per diem* rate of \$1,374.92 from August 15, 2011 until the date of this judgment, plus post-judgment interest accruing, pursuant to 28 U.S.C. § 1961, at the applicable federal court judgment interest rate from the date of this judgment until paid.

IT IS FURTHER ORDERED that this Agreed Judgment shall be certified for registration in any other judicial district in the United States or any other appropriate foreign jurisdiction, including any judicial or provincial court, without delay.

The Court further finds that this judgment addresses all the claims and causes of action between F&M Bank and GBE and G. Brandon and there is no just reason for delay in entering or

enforcing this final judgment on all claims adjudicated herein. Execution on this Agreed Judgment shall issue in any manner provided by law.

IT IS SO ORDERED.

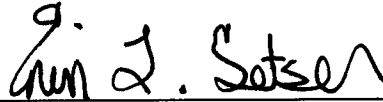
Dated this 22nd day of August, 2011.

US DISTRICT COURT  
WESTERN DIST ARKANSAS  
FILED

AUG 22 2011

CHRIS R. JOHNSON, Clerk  
By

Deputy Clerk



---

THE HONORABLE ERIN L. SETSER  
UNITED STATES MAGISTRATE JUDGE

AGREED AND APPROVED:



M. Scott Hall, ABA #2007067

James M. Reed, OBA #7466

Pamela H. Goldberg, OBA #12310

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.

75 North East Avenue, Suite 402

Fayetteville, AR 72701

Telephone (479) 973-5200

Facsimile (479) 973-0520

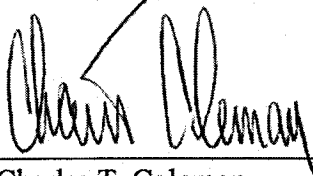
shall@hallestill.com

jreed@hallestill.com

pgoldberg@hallestill.com

*Attorneys for Plaintiff,*

*The F&M Bank & Trust Company*



Charles T. Coleman

WRIGHT, LINDSEY & JENNINGS LLP

200 West Capitol Ave. Suite 2300

Little Rock, AR 72201

(501)212-1276

(501)376-9442 Fax

ccoleman@wlj.com

*Attorneys for Gary Brandon Enterprises, Inc.,*

*Gary L. Brandon, and Sherri D. Brandon*