

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|-----------------------|---|---------------------------|
| PNC BANK, N.A., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 4:12-CV-1368 JAR |
| |) | |
| HEYER-MURPHY, LLC and |) | |
| STEPHEN C. MURPHY, |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff PNC Bank's Motion to Authorize Receiver to Pay-Out Funds. (Doc. No. 106) PNC seeks an order approving the Receiver's Final Report; authorizing the Receiver to disburse the sum of \$24,677.68¹ in satisfaction of the remaining indebtedness to PNC under the Promissory Note and Guaranty and distribute the balance remaining, estimated at \$13,537.07, to Maundeigh-Blu LP; discharging the Receiver from his Bond; and entering a Satisfaction of Judgment against Defendants. PNC has submitted an accounting of the payments received from Defendants (Doc. No. 106-2) and an affidavit in support of its request for attorney's fees. (Doc. No. 106-1)

Defendants object to the \$42,702.36 late fee imposed by PNC in February 2011 under the loan documents and seek a principal reduction in that amount plus all interest charges assessed since that date. (Doc. No. 112) In all other respects, Defendants consent to the relief requested by PNC. (Id.) In reply, PNC notes it sought recovery for late fees assessed in connection with

¹ PNC Bank has submitted an amended affidavit to support its request for an additional \$5,050.00 in attorney's fees incurred in connection with Defendants' objection to the Receiver's motion (see Doc. No. 113-2), making the total sum for disbursement \$29,727.78.

Defendants' failure to make the final payment due under the Note in its Complaint filed August 1, 2012. (Compl., Doc. No. 1 at ¶ 17) Having admitted they were obligated to pay the late fee in their Answer filed October 4, 2012, and failing to assert any defense with respect thereto (see Doc. No. 12), the Court finds and concludes that Defendants cannot now contest the late fee assessed.

Despite the Court's concern about entering an order concerning an entity not a party to this action, it appears to be the agreement of the parties that the balance remaining following satisfaction of Defendants' indebtedness to PNC, estimated at \$13,537.07, be distributed to Maundeigh-Blu, L.P. Defendants consent to this arrangement. (See Doc. No. 112 at 2)

Accordingly,

IT IS HEREBY ORDERED that Plaintiff PNC Bank's Motion to Authorize Receiver to Pay-Out Funds [106] is **GRANTED** as follows:

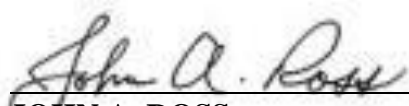
The Receiver's Final Report is approved;

The Receiver shall disburse the sum of \$29,727.78 in satisfaction of the remaining indebtedness to PNC under the Promissory Note and Guaranty and distribute the remaining balance to Maundeigh-Blu LP; and

The Receiver is discharged and the Bond is released.

IT IS FURTHER ORDERED that Satisfaction of Judgment is entered in favor of Plaintiff PNC Bank, N.A. and against Defendants.

Dated this 27th day of July, 2015.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE