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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WASHOE-MILL APARTMENTS,

Plaintiff,

v.
U.S. BANK NATIONAL ASSOCIATION,

Defendant.

Case No. 3:12-cv-00418-MMD-WGC

ORDER

(Counter-Defendant's Motion for
Summary Judgment – dkt. no. 21)

U.S. BANK NATIONAL ASSOCIATION,

Counterclaimant,

v.
WASHOE-MILL APARTMENTS;
SECRETARY SHAUN DONOVAN,

Counter-defendants.

I. SUMMARY

Before the Court is Counter-defendant Secretary of the Department of Housing and Urban Development Shaun Donovan's ("HUD") Motion for Summary Judgment. (Dkt. no. 21.) For the reasons set forth below, the Motion is granted.

II. BACKGROUND

The parties agree on the majority of the facts in this case. Plaintiff/Counter-defendant Washoe-Mill Apartments ("WMA") is a Nevada General Partnership comprised of eight partners. WMA entered into a partnership agreement in order to construct and operate a HUD subsidized facility for seniors and disabled citizens, the Washoe-Mill Apartments. (Dkt. no. 1 ¶ 4.) In 1993, Bank of America Nevada ("BOAN")

1 and the Washoe Housing Finance Corporation (“WHFC”) entered into a Trust Indenture
2 Agreement (“Agreement”) regarding bonds used to refinance WMA’s mortgage loans for
3 the WMA facility. (Dkt. no. 21 at 3.) The Agreement was executed pursuant to HUD’s
4 tax-exempt bond financing program regulations. (*Id.*) Under the Agreement, BOAN was
5 the trustee of the bond proceeds and was charged with making payment to bondholders.
6 (*Id.* at 4.) U.S. Bank is BOAN’s successor in interest under the Agreement. (*Id.* at 4; dkt.
7 no. 1 ¶ 5.) HUD states that these bonds were tax-exempt, the mortgage was insured by
8 HUD, and WMA received rental subsidies from HUD. (See dkt. no. 21 at 3.)

9 The WMA facility was sold on January 21, 2011, and the payoff amount for the
10 mortgage loan was remitted as full settlement of the mortgage. (See *id.* at 3–4; dkt. no. 1
11 ¶ 6.) A year later, in January 2012, a trust officer for U.S. Bank informed WMA that it
12 had conducted an audit that revealed the existence of \$229,160.81 remaining in the trust
13 account. (See dkt. no. 21 at 4.) U.S. Bank conducted an investigation to determine who
14 the funds belonged to but was unable to reach a conclusion. (See dkt. nos. 21 at 4; 1 ¶
15 8.) U.S. Bank declares that it has no beneficial interest in the remaining balance. (See
16 dkt. no. 6 ¶ 20.)

17 WMA asserts a single claim for conversion. WMA asks that this Court grant it
18 damages for the full amount remaining in the trust, as well as prejudgment and
19 postjudgment interest and the cost of the suit.

20 On October 9, 2012, U.S. Bank answered the Complaint and brought
21 counterclaims against WMA and HUD. (Dkt. no. 6.) On December 18, 2012, Counter-
22 defendant HUD answered and set forth a prayer for relief asking for the full amount
23 remaining in the trust and the cost of the suit. (Dkt. no. 15.) HUD moved for summary
24 judgment on February 14, 2013. (Dkt. no. 21.) WMA filed its response on March 10,
25 2013 (dkt. no. 28), and HUD replied on March 20, 2013 (dkt. no. 29). HUD filed an
26 additional declaration in support of its motion for summary judgment on April 19, 2013.
27 (Dkt. no. 33.)

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1 U.S. Bank's response was limited to a request for attorney fees and costs. (Dkt.
2 no. 27.) U.S. Bank has subsequently filed a motion to be relieved as stakeholder (dkt.
3 no. 37) and a motion for attorney fees and costs (dkt. no. 38). These motions are not
4 addressed in this order.

5 During the pendency of the case, U.S. Bank has deposited \$229,160.81 in
6 interpleaded funds into the registry of the Court. (Dkt. no. 26.)

7 **III. LEGAL STANDARD**

8 The purpose of summary judgment is to avoid unnecessary trials when there is no
9 dispute as to the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18
10 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings,
11 the discovery and disclosure materials on file, and any affidavits "show there is no
12 genuine issue as to any material fact and that the movant is entitled to judgment as a
13 matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is "genuine"
14 if there is a sufficient evidentiary basis on which a reasonable fact-finder could find for
15 the nonmoving party and a dispute is "material" if it could affect the outcome of the suit
16 under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).
17 Where reasonable minds could differ on the material facts at issue, however, summary
18 judgment is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir.
19 1995). "The amount of evidence necessary to raise a genuine issue of material fact is
20 enough 'to require a jury or judge to resolve the parties' differing versions of the truth at
21 trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (*quoting First Nat'l*
22 *Bank v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968)). In evaluating a summary
23 judgment motion, a court views all facts and draws all inferences in the light most
24 favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793
25 F.2d 1100, 1103 (9th Cir. 1986).

26 The moving party bears the burden of showing that there are no genuine issues
27 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). "In
28 order to carry its burden of production, the moving party must either produce evidence

1 negating an essential element of the nonmoving party's claim or defense or show that
2 the nonmoving party does not have enough evidence of an essential element to carry its
3 ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
4 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56's requirements,
5 the burden shifts to the party resisting the motion to "set forth specific facts showing that
6 there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. The nonmoving party "may
7 not rely on denials in the pleadings but must produce specific evidence, through
8 affidavits or admissible discovery material, to show that the dispute exists," *Bhan v. NME*
9 *Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and "must do more than simply show
10 that there is some metaphysical doubt as to the material facts." *Orr v. Bank of Am.*, 285
11 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). "The mere existence of a
12 scintilla of evidence in support of the plaintiff's position will be insufficient." *Anderson*,
13 477 U.S. at 252.

14 **IV. DISCUSSION**

15 HUD moves for summary judgment on the grounds that the contractual language
16 of the Agreement is clear that the interpleaded funds belong to HUD.

17 The Agreement was entered into pursuant to Section 11(b) of the United States
18 Housing Act of 1937. (See dkt no. 21 at 5–6.) HUD explains that Section 11(b) was
19 originally designed to finance the acquisition, construction, or rehabilitation of low
20 income housing. (*Id.* at 5.) After interest rates dropped in the late 1980s, however,
21 Section 11(b) was used exclusively to pay off existing bonds by issuing new bonds at a
22 lower interest rate. (*Id.*) In addition to insuring the mortgage through these tax-exempt
23 bonds, HUD also provides rent subsidies. (*Id.* at 3, 5.) In exchange for these benefits,
24 "[u]pon full payment of the principle and interest on the obligations (including that portion
25 of the obligations attributable to the funding of the debt service reserve), any funds
26 remaining in the debt service reserve shall be remitted to HUD." 24 C.F.R.
27 § 811.108(a)(3).

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1 HUD asserts that Section 413 of the Agreement incorporates this statutory
2 requirement. Section 413 states that, “[u]pon final payment of all principal of, premium, if
3 any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer and
4 the Trustee hereunder . . . any moneys remaining in all Funds shall be paid at the written
5 direction of the Issuer to HUD.” (Dkt. no. 21 at 10 (citing dkt. no. 21-1 at 34).)

6 The parties agree that all bonds have been redeemed, that the mortgages have
7 been satisfied, and that the trustee has been compensated. (See dkt. nos. 21 at 10; 1
8 ¶¶ 6; 27 at 2–3). Additionally, U.S. Bank acknowledges in its response to HUD’s
9 Interrogatory Number 2, that “the funds interpled represent ‘moneys remaining in all
10 Funds’ as described in section 413 of the Trust Indenture Agreement.” (Dkt. no. 33-1 at
11 3.) Plaintiff has, therefore, demonstrated that the interpleaded funds fall within the
12 control of Section 413 of the Agreement, which designates, as required by statute, that
13 the funds belong to HUD.

14 WMA makes two arguments in opposition to HUD’s motion. First, while WMA
15 admits that in the absence of clear evidence of a differing intent, contracts should be
16 read for their plain meaning, it argues that a contract provision should not be read to
17 create an absurd result. (Dkt. no. 28 at 3.) The alleged absurd result here is that
18 according to HUD’s interpretation of the statute, any surplus in the fund belongs to HUD,
19 even if the surplus is the result of a mistake. WMA has not demonstrated, however, that
20 there is any risk of an absurd result in this case. U.S. Bank has stated that it has no
21 interest in the funds and has raised no indication that an error was possible. (Dkt. no. 27
22 at 2–3.) Indeed, U.S. Bank has admitted that the interpleaded funds are governed by
23 Section 413 of the Agreement.

24 Second, WMA argues that U.S. Bank and WHFC’s inability to decide who the
25 money belongs to is evidence that there is a genuine issue of material fact concerning
26 the owner of the interpleaded funds. (Dkt. no. 28 at 4.) WMA further states that in 2012
27 the Vice President of U.S. Bank’s global trust services indicated that the funds might
28 belong to WMA, suggesting that WMA is the rightful owner. (*Id.*)


1 This argument fails for a number of reasons. First, U.S. Bank has stated explicitly
2 that it takes no position regarding the dispute. (Dkt. no. 27 at 2.) The evidence that WMA
3 cites to does not suggest U.S. Bank has, in fact, taken a position. Indeed, in the 2012
4 conversation referenced by WMA, the U.S. Bank trust officer stated that he was not
5 authorized to determine the owner of the funds and that he wanted to get counsel
6 involved. (Dkt. no. 28, Ex. 4.) Second, the mere fact that there is a dispute regarding
7 funds does not mean that there cannot be a resolution as a matter of law. Finally, WMA
8 provides no facts, or legal theory, that supports the conclusion that they, or any other
9 party, are the rightful owner of the funds. WMA has not met its burden in opposing
10 summary judgment by failing to offer admissible evidence to show that a genuine issue
11 of material fact exists to preclude summary judgment. *See Reese v. Jefferson School*
12 *Dist. No. 14L*, 208 F.3d 736, 738 (9th Cir. 2000) (the non-moving party carries the
13 burden of identifying why summary judgment should not be granted).

14 **V. CONCLUSION**

15 The Court notes that the parties made several arguments and cited to several
16 cases not discussed above. The Court has reviewed these arguments and cases and
17 determines that they do not warrant discussion as they do not affect the outcome of the
18 Motion.

19 It is therefore ordered that Counter-Defendant's Motion for Summary Judgment
20 (dkt. no. 21) is granted. The Court will order disbursement of the funds once U.S. Bank's
21 Motion for Attorney Fees and Costs (dkt. no. 38) has been adjudicated.

22 DATED THIS 27th day of September 2013.

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26 _____
27 MIRANDA M. DU
28 UNITED STATES DISTRICT JUDGE