

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (DAYTON)**

PNC BANK, NATIONAL ASSOCIATION,	:	CASE NO. 3:12-cv-369
	:	
	:	
Plaintiff,	:	(Judge Walter Herbert Rice)
	:	(Magistrate Judge Michael R. Merz)
vs.	:	
	:	
GATOR PIQUA PARTNERS, LLLP, <i>et al.</i>,	:	ORDER AND ENTRY ON PARTIAL SETTLEMENT
	:	
Defendants.	:	

WHEREFORE, Plaintiff PNC Bank, National Association (“PNC”) and Defendants Gator Piqua Partners, LLLP (“Gator”), and James A. Goldsmith (“Goldsmith”), having reached an agreement on additional terms of the partial settlement reached by the parties and read into the Record of the Court on December 20, 2013, IT IS, THEREFORE, ORDERED AND ADJUDGED that:

1. PNC execute a Release of Mortgage and Termination of Assignment of Rents and UCC-1 Filing Statement (the “Release”) to be recorded in the public records of Miami County, Ohio upon Closing; the Closing shall occur on or before February 5, 2014.
2. PNC provide the original Promissory Note into escrow for delivery to Gator, with the legend – “PAID PURSUANT TO PARTIAL SETTLEMENT AGREEMENT AND COURT CONSENT MOTION AND ORDER DATED FEBRUARY 5, 2014” (“the “Note”);
3. PNC shall deliver the Release and the Note and the UCC-3 termination to the Receiver (the “Closing Agent”) prior to the Closing.

4. PNC, Gator and Goldsmith shall execute a Stipulation of Partial Dismissal of Certain Claims With Prejudice, dismissing of Counts 1 through 5 of PNC's Complaint against Gator, and deliver it to the Closing Agent before the closing;

5. PNC, Gator and Goldsmith shall execute a Consent Motion to Terminate Receiver and deliver it to the Closing Agent before the closing, as adjusted for prorations of rent, taxes and expenses as of Closing date;

6. Gator shall pay "Net Due from Borrower" per the Settlement Statement agreed to and executed by the Parties.

7. Gator's wrongful failure to timely close in accordance with this Order and the escrow closing instructions letter, permits PNC to file the deed in lieu, provided that PNC has complied with its obligations under this Order and the escrow closing instructions letter.

8. PNC, Gator, and Goldsmith reaffirm, acknowledge, agree and represent that all rights, defenses, claims, obligations and remedies available pursuant to the personal Guaranty ("Guaranty") and the Environmental Indemnity Guaranty ("EIG") executed by Goldsmith, remain unchanged and unaffected, except as the Court may decide what effect, if any, the payment described in paragraph 6 has on any amount Goldsmith may owe pursuant to the Guaranty.

9. PNC and Gator shall prior to closing provide the Closing Agent with escrow closing instructions letter agreement signed by PNC and Gator, which shall be signed by the Closing Agent prior to closing. Prior to closing, PNC and Gator shall deliver to the Closing Agent signed settlement statements and the other documents required by the escrow closing instructions letter agreement.

10. Upon request from Gator subsequent to Closing, PNC agrees to execute and deliver such other documents as may be reasonably requested by Gator to clear record title of the subject property from the lien and encumbrance of the loan documents, other than the Guaranty and the EIG, provided that such documents shall be subject to the reasonable approval of PNC. Should the Closing timely occur, PNC shall deliver to Gator within three (3) business days after the Closing, the original Deed in Lieu provided by Gator. Should the Closing not timely occur because of a breach by PNC of its obligations under this Order or under the escrow closing instructions letter, PNC shall deliver to Gator, within three (3) business days after the Closing date, the original deed in lieu provided by Gator.

11. Gator and Goldsmith acknowledge that if for any reason PNC is required to repay to Gator all or part of the Release Price paid to it hereunder (“Claw Back”) for any reason, including as a result of, among other things, an insolvency proceeding filed by or on behalf of Gator or Goldsmith, then the Claw Back amount and the obligations due PNC from Gator are not discharged and the Release provided by PNC to Gator is void.

12. PNC acknowledges and agrees that simultaneous with the Closing, all loan documents other than the Guaranty and the EIG, are released. The Parties acknowledge and agree that this section does not modify, alter or impact Section 8 hereof in any manner.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE