SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49

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CARDBECK MIAMI TRUST,

Plaintiff,

-against-

BANK OF NEW YORK MELLON,

Defendant.

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DECISION AND ORDER
Index No.: 657019/2017

Motion Sequence No.: 001- 003

O. PETER SHERWOOD, J.:

Motion sequences 001, 002, and 003 are consolidated for disposition. Under motion sequences 001 and 002, defendants seek to dismiss the amended complaint in its entirety. The amended complaint asserts a single cause of action in which plaintiff / debtor Cardbeck Miami Trust seeks a declaratory judgment that the governing loan documents are ambiguous as to whether plaintiff must make a final balloon payment on the maturity date of the Class B Note. The Class B Note's maturity date is set to occur on June 11, 2018.

"The fundamental rule of contract interpretation is that agreements are construed in accord with the parties' intent . . . and '[t]he best evidence of what parties to a written agreement intend is what they say in their writing' . . . . Thus, a written agreement that is clear and unambiguous on its face must be enforced according to the plain terms, and extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous [internal citations omitted]" (*Riverside South Planning Corp. v CRP/Extell Riverside LP*, 60 AD3d 61, 66 [1st Dept 2008], *affd* 13 NY3d 398 [2009]). Whether a contract is ambiguous presents a question of law for resolution by the courts (*id.* at 67).

In accordance with these principles, a court should interpret a contract "so as to give full meaning and effect to the material provisions" (*Beal Savings Bank v Sommer*, 8 NY 3d 318, 324

[2007], quoting *Excess Ins. Co. Ltd. v Factory Mut. Ins. Co.*, 3 NY3d 577, 582 [2004]). "A reading of a contract should not render any portion meaningless . . . . Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose" (*id.* at 324-325, quoting *Matter of Westmoreland Coal Co. v Entech, Inc.*, 100 NY2d 352, 358 [2003]).

The Class B Note provides for a bifurcated repayment schedule consisting of an "Initial Term Period," in which plaintiff was to make a $272,972.98 monthly payment that was applied to interest only, followed by the "Remaining Term Period," in which plaintiff made a $418,000.00 monthly payment that was applied to both interest and the principal (*see* NYSCEF Doc. No. 6 ["Class B Note"] at 1). The final payment of $418,000.00 was to be made on May 11, 2018, and thereafter "the balance of said principal sum together with all accrued and unpaid interest thereon [would] be due and payable on the eleventh day of June, 2018 (the 'Maturity Date')" (*id.*).

Despite these unambiguous terms, plaintiff contends that the loan documents are unclear as to whether any additional payments are required after the monthly payment occurring on May 11, 2018. In support of this argument, plaintiff relies on language in the First Amendment to Loan Agreement which states that, following the Initial Term Period, the Class B Note "shall thereafter provide for monthly payments on a schedule which will fully amortize the Class B Note by its Maturity Date" (NYSCEF Doc. No. 4 ["First Amendment to Loan Agreement"] § 1.1). Plaintiff reads this language as providing that the $418,000.00 monthly payments alone – without the final balloon payment – would "fully amortize the Class B Note." Thus, plaintiff argues, this clause is in conflict with the Class B Note's express provision requiring payment of "the balance of said principal sum together with all accrued and unpaid interest thereon" on the Maturity Date. Although plaintiff concedes that at the provided interest rate of 7.54% per annum, the $418,000.00

monthly payments by themselves would not fully amortize the Class B Note, plaintiff contends that the loan documents "should be interpreted to mean that the interest rate adjusts after the Initial Term Period so as to 'fully amortize' the debt balance over the . . . Remaining Term Period" (NYSCEF Doc. No. 45 at 4). No portion of the loan documents supports plaintiff's reading of a variable interest rate; both the Class B Note and the First Amendment to Loan Agreement state unequivocally that the interest rate is set at 7.54% per annum. Moreover, plaintiff's suggestion that the First Amendment to Loan Agreement and the Class B Note somehow conflict on whether there should be a final balloon payment fails to recognize that the Remaining Term Period is specifically defined as "that portion of the Term of the Loan from and including September 11, 2008 *through and including* the Maturity Date" (Class B Note at 2 [emphasis added]). Thus, the loan documents fully anticipate that the final balloon payment would be included the "schedule which will fully amortize the Class B Note by its Maturity Date." Accordingly, the motions to dismiss are hereby GRANTED.

Under motion sequence 003, plaintiff seeks leave to supplement its opposition to the motions to dismiss with evidence purportedly demonstrating accord and satisfaction of the remaining debt on the Class B Note. However, as plaintiff's sole cause of action in this case seeks a declaratory judgment that the "loan documents . . . are ambiguous" as discussed above, such an argument – even if accepted – is wholly irrelevant to defendants' motions and this case. Accordingly, that motion is hereby DENIED.

In accordance with the forgoing, it is hereby

ORDERED that plaintiff's motion for leave to supplement plaintiff's response is hereby DENIED; and it is further

ORDERED the motions to dismiss (motion seq. no. 001, 002) are granted and the complaint is dismissed in its entirety, with costs and disbursements to the defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of defendants.

This constitutes the decision and order of this court.

DATED: June 7, 2018

E N T E R,

O. PETER SHERWOOD J.S.C.