[Cite as *Kendall Group Ltd. v. Fifth Third Bank*, 2010-Ohio-4733.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The Kendall Group Limited,	:	
Plaintiff-Appellant,	:	
		No. 09AP-772
v.	:	(C.P.C. No. 07 CVH 04 5035)
Fifth Third Bank,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 30, 2010

Cooper & Elliott, LLC, Rex H. Elliott, Charles H. Cooper, Jr., and *John C. Camillus*, for appellant.

Kegler, Brown, Hill & Ritter Co., *LPA*, and *Timothy T. Tullis*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by plaintiff-appellant, The Kendall Group Limited, from an entry of the Franklin County Court of Common Pleas, granting summary judgment in favor of defendant-appellee, Fifth Third Bank, on appellant's claims for breach of contract, lender liability, and unjust enrichment.

{¶2} On November 15, 2002, appellant and appellee entered into an "Acquisition and Development Loan Agreement" (hereafter "the 2002 original loan agreement"). The background information section of the 2002 original loan agreement recited that appellant

had entered into five real estate purchase contracts consisting of approximately 567 acres of undeveloped land in Huber Heights, Ohio, as well as an option to acquire 100 additional acres. The background section further recited that borrower had applied to the lender for an acquisition/development loan in the amount of up to $5,675,000, and that borrower "desires to obtain financing for the acquisition of the Property and the development on a portion thereof of a residential subdivision and building lots." The loan maturity date of the 2002 original loan agreement was November 14, 2004. Appellant executed and delivered to appellee a cognovit promissory note, dated November 15, 2002, in the principal amount of $5,675,000. Peura Affidavit at ¶4.

{¶3} Appellee subsequently loaned additional sums to appellant on the following dates: April 29, 2002 (a $225,000 line of credit), May 15, 2003 (a $1,100,000 term loan), and July 1, 2003 (a $325,000 term loan) (collectively "the subsequent loans"). Appellant's obligations to repay the subsequent loans were evidenced by cognovit promissory notes.

{¶4} Appellant sought additional funding, leading to appellee's issuance of three letters to appellant; specifically, appellee initially issued a "financial commitment" letter on December 22, 2003, in which appellee stated it was "pleased to provide the following financial commitment for the development of a planned golf community." The terms of the loan provided in part:

> Modification and extension of existing $5,675,000 loan as follows: total advances increased from $8,400,000 to $11,245,000 made in conjunction with the Modified Component Budget below; extension of loan term to November 1, 2006.
>
> Modification and extension of existing loans of $1,100,000 and $325,000, each extended to November 1, 2004.

{¶5} The December 22, 2003 commitment letter provided that the "Project Budget" had been modified; the letter listed various increased amounts associated with land components, soft cost components and hard cost components, and the revised budget also included $1,500,000 for a golf course. The commitment letter set forth a loan closing date on or before January 30, 2004. No closing, however, occurred with respect to the December 22, 2003 loan commitment letter.

{¶6} Appellee issued a "revised financing proposal" on March 5, 2004. The proposal contemplated two loans: specifically, (1) a loan in the amount of $10,000,000 "[t]o finance the land development of residential land surrounding the Benchrock Golf Course"; and (2) a loan in the amount of $3,500,000 "[t]o finance the development of the Benchrock Golf Course." The expiration date of the proposal was March 31, 2004. The revised financing proposal further provided: "In order to proceed with this proposal toward a loan commitment, Borrower must deliver a signed copy of this proposal with additional requirements * * * to Lender by March 12, 2004." No loan closing took place in relation to the March 5, 2004 revised financing proposal.

{¶7} On May 14, 2004, appellee issued a commitment letter regarding a "Proposed $13,850,000 Amended and Restated Acquisition and Development Loan and $1,500,000 Golf Course Development Loan." The terms of that letter contemplated (1) a "development loan in the principal amount of up to $13,850,000," designated as "the 'Residential Loan,' " and (2) a "development loan in the principal amount of up to $1,500,000," designated as "the 'Golf Course Loan.' " Pursuant to the letter, the borrower was to execute, in addition to other documents, "an amended and restated acquisition and development loan agreement." The commitment letter further stated in part: "The

Loan shall be closed on or before June 11, 2004, otherwise all of Lender's obligations under this Commitment shall automatically terminate." No closing occurred with respect to the May 14, 2004 letter.

{¶8} On June 29, 2004, the parties executed an "Amended and Restated Acquisition and Development Credit Agreement" (hereafter "the 2004 amended and restated agreement"). The "Background Information" portion of the 2004 amended and restated agreement provided in part:

> On November 15, 2002, Borrower and Lender entered into that certain Acquisition and Development Loan Agreement, pursuant to which Lender provided Borrower acquisition/development financing in an amount of up to $5,675,000 (as amended, the "Original Loan") for the acquisition of the Original Acreage and the development on a portion thereof of a residential subdivision and building lots (the "Project"), including streets, utilities and other infrastructure improvements (the "Improvements").
>
> Subsequent to the making of the Original Loan and pursuant to various loan documents and promissory notes, Borrower and Lender entered into: (1) a $225,000 line of credit dated April 29, 2002; (2) a $1,100,000 term loan dated May 15, 2003; and (3) a $325,000 term loan dated July 1, 2003 (the "Subsequent Loans").
>
> Borrower desires to obtain additional financing for the continued development of the Project. In connection therewith, Borrower has applied to Lender for an $8,375,000 development loan which will be used to consolidate all of Borrower's existing indebtedness under the Original Loans and the Subsequent Loans in one loan facility with additional availability for the continued development of the Project and a modified maturity date (the "Loans").

{¶9} Effective September 1, 2004, the parties entered into a "First Amendment to Amended and Restated Acquisition and Development Credit Agreement," whereby the maturity date of the note associated with the 2004 amended and restated agreement was

extended from September 1, 2004 to November 1, 2004. Peura Affidavit at ¶20. The parties subsequently executed a "Second Amendment to Amended and Restated Acquisition and Development Credit Agreement," whereby the maturity date of the replacement note was extended from November 1, 2004 to January 7, 2005. Peura Affidavit at ¶21.

{¶10} On May 6, 2005, appellee filed an action in the Miami County Court of Common Pleas, seeking to foreclose the lien of the mortgage securing the replacement note on all real property as to which such lien had not previously been released, and to sell the mortgaged property to pay amounts due and owing from appellant to appellee. Pigman Affidavit at ¶2. Those amounts included the principal sum of $7,869,669.20 due under the replacement note, together with accrued interest (in the amount of $230,313.72) through May 2, 2005, default interest on the principal balance, and late charges in the amount of $402,698.22.

{¶11} On June 22, 2005, appellant filed an answer and counterclaim in the foreclosure proceeding. In its counterclaim, appellant alleged that appellee had issued commitment letters on December 22, 2003, March 5, 2004, and May 14, 2004, respectively, whereby appellee agreed to increase the terms of several existing loans and to increase the amount of loan funds available for the "Benchrock project" to between $14,000,000 and $15,000,000. Appellant's counterclaim alleged causes of action for breach of contract, lender liability, and unjust enrichment. On April 13, 2006, appellant filed a notice of partial voluntary dismissal in which it dismissed the counterclaims against appellee without prejudice. By agreed judgment entry and decree in foreclosure filed on June 29, 2006, the Miami County Court of Common Pleas granted judgment against

appellant on the note in the principal sum of $7,869,669.20, together with accrued interest in the sum of $1,398,240.31, and late charges in the amount of $449,359.23.

{¶12} On April 12, 2007, appellant filed a complaint in the Franklin County Court of Common Pleas against appellee, alleging causes of action for breach of contract, lender liability, and unjust enrichment in connection with the three loan commitment letters originated by appellee and dated December 22, 2003, March 5, 2004, and May 14, 2004 (collectively "the commitment letters"). In the complaint, appellant contended that the commitment letters constituted binding contracts and that appellee had breached those agreements.

{¶13} On November 7, 2008, appellant filed a motion for leave to file an amended complaint, which the trial court granted. On June 8, 2009, appellee filed a motion for summary judgment, asserting that the letters at issue were not contracts because appellant never closed on the financing proposed in the letters; appellee further argued that appellant and appellee had entered into an amended and restated loan agreement on June 29, 2004, and that such agreement superseded all prior loan obligations and released appellant's right to bring an action related to the letters. On August 4, 2009, appellant filed a memorandum contra appellee's motion for summary judgment.

{¶14} On July 27, 2009, the trial court filed a decision and entry granting appellee's motion for summary judgment. In its decision, the trial court held: (1) appellee had no obligation to loan appellant money under any of the three letters because a condition precedent had not occurred; (2) appellant's claims were released under the terms of the 2004 amended and restated agreement; (3) appellant's claims were barred because they constituted compulsory counterclaims in the foreclosure action; and (4)

appellant's unjust enrichment claim was not supported by the evidence and precluded by the parties' underlying contract.

{¶15} On appeal, appellant sets forth the following four assignments of error for this court's review:

> 1. The Trial Court erred in granting summary judgment based on its view that the commitment letters did not bind Fifth Third.
>
> 2. The Trial Court erred in granting summary judgment based on its view that plaintiff released its claims against Fifth Third.
>
> 3. The Trial Court erred in granting summary judgment on the ground that plaintiff's claims are barred by Rule 13 and possibly by *res judicata.*
>
> 4. The Trial Court erred in granting summary judgment on plaintiff's claim for unjust enrichment.

{¶16} In the present case, the trial court's decision granting summary judgment in favor of appellee cited several distinct grounds for its ruling. This court reviews de novo a trial court's ruling on summary judgment. *Bonacorsi v. Wheeling & Lake Erie Ry. Co.,* 95 Ohio St.3d 314, 2002-Ohio-2220, ¶24, citing *Doe v. Shaffer,* 90 Ohio St.3d 388, 390, 2000-Ohio-186. Pursuant to Civ.R. 53(C), "summary judgment shall be granted when the filings in the action, including depositions and affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Bonacorsi* at ¶24.

{¶17} For purposes of analysis, we will consider appellant's assignments of error out of order. We will first address the third assignment of error, under which appellant argues that the trial court erred in holding that appellant's claims were barred because they constituted compulsory counterclaims in the prior foreclosure action in Miami County.

Appellant argues the subject matter of the foreclosure complaint was the residential real estate loans outlined in the several acquisition and development agreements, while the subject matter of appellant's claim in the instant case relates to a commitment by appellee to provide funding for golf course construction; appellant maintains that the claims arise from different transactions, and further argues that the doctrine of res judicata does not apply because a valid judgment has never been entered regarding appellant's claims.

{¶18} Civ.R. 13(A) provides in part:

> A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

{¶19} The Supreme Court of Ohio has stated the following "two-pronged test" for applying Civ.R. 13(A): "(1) does the claim exist at the time of serving the pleading * * *; and (2) does the claim arise out of the transaction or occurrence that is the subject matter of the opposing claim." *Geauga Truck & Implement Co. v. Juskiewicz* (1984), 9 Ohio St.3d 12, 14.

{¶20} In determining whether claims arise out of the same transaction or occurrence, Ohio has adopted the "logical relation" test, under which " '[a] compulsory counterclaim is one which "is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts." ' " *Rettig Enterprises, Inc. v. Koehler*, 68 Ohio St.3d 274, 278, 1994-Ohio-127, Staff Notes (1970) to Civ.R. 13, quoting *Great Lakes Rubber Corp. v. Herbert Cooper Co.* (C.A.3, 1961), 286 F.2d 631, 634. This test

"comports with the object and purpose of Civ.R. 13(A), * * * to avoid a multiplicity of actions and to achieve a just resolution by requiring in one lawsuit the litigation of all claims arising from common matters." *Rettig* at 278.

{¶21} The word " 'transaction' " is given a "flexible meaning," and "may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship. * * * That they are not precisely identical, or that the counterclaim embraces additional allegations * * * does not matter." Id., quoting *Moore v. New York Cotton Exchange* (1926), 270 U.S. 593, 610, 46 S.Ct. 367, 371. Therefore, "multiple claims are compulsory counterclaims where they 'involve many of the same factual issues, or the same factual and legal issues, or where they are offshoots of the same basic controversy between the parties.' " *Rettig* at 279, quoting *Great Lakes Rubber Corp*. at 634.

{¶22} As noted under the facts, appellee initiated its foreclosure action in the Miami County Court of Common Pleas on May 6, 2005. Appellee's complaint in foreclosure recited the history of the parties' transactions, including the "Original Notes" arising out of the 2002 original loan agreement, the "Cognovit Promissory Note" arising from the 2004 amended and restated agreement, and the various other amendments.

{¶23} As also noted above, appellant filed a counterclaim in the foreclosure action, alleging breach of contract, lender liability, and unjust enrichment, based upon allegations that appellee failed to honor the commitment letters. Specifically, appellant's counterclaim alleged in part that: (1) appellee issued a commitment letter to appellant on December 22, 2003, for a loan in connection with the "Benchrock project," involving "the development and sale of single and multi-family homes, as well as a golf course"; (2)

under the terms of the December 22, 2003 loan commitment letter, appellee agreed to extend the term of two existing loans, and to increase the amount of loan funds available, to a combined total of approximately $14,000,000; (3) on March 5, 2004, appellee issued a revised commitment letter in which appellee again committed nearly $14,000,000 to the Benchrock project; (4) on May 14, 2004, appellee issued a term sheet in which it reconfirmed its commitment to fund the Benchrock project, "indicat[ing] a funding commitment of nearly $15,000,000"; (5) in reliance upon appellee's repeated promises, appellant "continued to draw upon the loan funds to develop the Benchrock homes and golf course"; (6) appellee, however, "eventually changed its mind and refused to disburse almost half the funds it had promised to provide," resulting in a loan shortfall and the end of construction; (7) because appellee failed to carry out its obligation, appellant "was unable to complete and sell homes, the existing loans fell into default, and Fifth Third began to demand large payments of interest"; and (8) due to appellee's actions, "the project slid into foreclosure."

{¶24} With respect to the first inquiry of the two-pronged test, there can be no dispute that the claims asserted in the instant case existed at the time of the foreclosure action. Appellant, in fact, raised the identical claims in its dismissed counterclaim (i.e., breach of contract, lender liability, and unjust enrichment arising out of appellee's alleged failure to honor the commitment letters). Further, as in the counterclaim filed in Miami County, appellant has alleged in its amended complaint in this case that, after issuing the commitment letters, appellee "eventually changed its mind and refused to disburse almost half the funds it had promised to provide." Appellant has also alleged in the amended complaint that, "[b]ecause Fifth Third defaulted on its obligations, [appellant] was unable

to complete and sell homes, the existing loans fell into default, and Fifth Third began to demand large payments of interest and penalties."

{¶25} While appellant argues that the claims in this appeal relate solely to loans for the golf course portion of the project (as opposed to residential development loans), those claims are based upon the commitment letters which, according to appellant's own allegations, involve loan agreements that would have modified and increased the loans that were the subject of the foreclosure action. In this respect, the bulk of the funding contemplated under each of the three commitment letters involved loans designated for residential development. As noted above, appellant's counterclaim in the Miami County foreclosure action (and the amended complaint in the instant action) alleged that, under the terms of the December 22, 2003 loan commitment letter, appellee committed to extending the terms of several existing loans, "and to increase the amount of loan funds available, to a combined total of approximately $14,000,000." According to the terms of that commitment letter, $11,245,000 of the loan funds represented a modification and extension of the $5,675,000 loan from the 2002 original loan agreement.

{¶26} Similarly, appellant's counterclaim and amended complaint alleged that the March 5, 2004 revised commitment letter "committed nearly $14,000,000 to the Benchrock project." That commitment letter contemplated a loan of $10,000,000 to finance "the land development of residential land," and a loan of $3,500,000 to "finance the development of the Benchrock Golf Course." Finally, appellant alleged that the term sheet dated May 14, 2004 "indicates a funding commitment of nearly $15,000,000." The May 14, 2004 term letter contemplated a development loan of up to $13,850,000 for residential purposes, and a developmental loan of up to $1,500,000 for a golf course.

{¶27} Upon review, we find that appellant's claims asserted in the instant action were logically related to the claims of the foreclosure action, involving "many of the same factual issues" and arising from "the same basic controversy." *Lewis v. The Sabina Bank* (June 16, 1997), 12th Dist. No. CA96-10-019 (in addition to claim that appellee breached note that was subject of foreclosure, appellant's claim that appellee refused to extend additional loans implicates "many of the same factual issues as the foreclosure action and arose from the same basic controversy," and, therefore, the claims constituted compulsory counterclaims that should have been raised in creditor's foreclosure action).

{¶28} In *Ratcliff v. Citizens Bank* (Ind.App.2002), 768 N.E.2d 964, the defendant-bank loaned money to the plaintiffs ("the Ratcliffs") to finance a farming operation. When the Ratcliffs suffered crop losses, the president of the bank assured the Ratcliffs that the bank would provide additional financing; the Ratcliffs, however, never received any additional financing from the bank, and the bank ultimately filed a foreclosure action on the original loan. Following the foreclosure proceedings, the Ratcliffs brought a separate original civil complaint against the bank, alleging in part breach of a commitment to lend. The trial court granted the bank's motion to dismiss on the basis that the Ratcliffs' claims were compulsory counterclaims that should have been filed in the foreclosure action.

{¶29} On appeal, the Ratcliffs asserted that the trial court erred as a matter of law in finding that their claims were compulsory counterclaims that should have been filed during the earlier foreclosure proceedings. In *Citizens Bank* at 968-69, the appellate court rejected this argument, holding in part:

> The Ratcliffs' complaint makes clear that the soured business relationship between the Bank and the Ratcliffs gave rise to the Ratcliffs' loan defaults and subsequent foreclosure

> proceedings as well as the Ratcliffs' civil claims against the Bank and [its president] for failing to loan them the money as promised. In essence, the parties' relationship spawned several loans and several promises by the Bank * * * to make loans. The Bank's failure to deliver on its promises to lend caused the Ratcliffs to default on those loans that had been successfully executed. This interaction created a logical relationship or aggregate set of operative facts that spawned the foreclosure and receivership actions as well as the Ratcliffs' subsequent civil claims against the defendants.

{¶30} Similarly, in the instant case, the commitment letters arose out of the relationship between appellant and appellee in funding the residential portion of the Benchrock project and, as noted above, the bulk of the funding contemplated under the commitment letters was intended to increase/modify the loan amounts for the residential development (i.e., the subject of the foreclosure action). As also noted, appellant's counterclaim and amended complaint both alleged that, because appellee defaulted on its obligations under the commitment letters, appellant "was unable to complete and sell homes, the existing loans fell into default," and the project slid into foreclosure. Here, there is a logical relation between the loan that was the subject of the foreclosure action and the claims related to the validity of the commitment letters which, "if performed, would have avoided default on the note." *North Carolina Fed. Sav. & Loan Assn. v. DAV Corp.* (1989), 298 S.C. 514, 518 (finding logical relationship between action on a note brought by lender to foreclose and the validity of a purported oral agreement modifying the note, and therefore counterclaim was compulsory). See also *Fox v. Maulding* (C.A.10, 1997), 112 F.3d 453, 457 (claims asserted in present action were compulsory counterclaims in earlier foreclosure action; even though the present case involves loans not at issue in the foreclosure action, the issues of law and fact arise out of same debtor/creditor relationship

and appellant alleged that appellee's activities resulted in ultimate default on underlying loan); *Floridian Community Bank, Inc. v. Bloom* (2009), 25 So.3d 43 (claims for breach of loan extension agreement involved parties, properties, facts, and circumstances identical to those in mortgage foreclosure proceeding and constituted compulsory counterclaims).

{¶31} As recognized by the trial court, the allegations in the amended complaint that appellee's breach of the loan commitment agreements caused the existing loans to fall into default, leading to initiation of the foreclosure proceeding, constituted compulsory counterclaims in the earlier foreclosure action which should have been (and in fact were) raised as defenses to foreclosure. Further, Civ.R. 13(A) operates as a bar "even though a party has voluntarily withdrawn a compulsory counterclaim." *L.M. Lignos Enterprises v. Beacon Ins. Co. of Am.* (Feb. 13, 1997), 8th Dist. No. 70816, citing *Stern v. Whitlatch & Co.* (1993), 91 Ohio App.3d 32.

{¶32} Finding that the claims for breach of contract, lender liability, and unjust enrichment bear a logical relation with the foreclosure action, we conclude that the trial court did not err in holding that appellant's claims were compulsory counterclaims in the prior foreclosure proceedings and, as such, those claims are barred in this case by the doctrine of res judicata. *Lewis* ("[s]ince appellant's claims involve many of the same factual issues as the foreclosure action and arose from the same basic controversy, * * * [trial] court did not err in finding that appellant's claims were compulsory counterclaims and barred from being litigated under the doctrine of res judicata"). See also *Dyer v. Hellkamp* (Apr. 9, 1986), 1st Dist. No. C-850387 (appellant's claim was a compulsory counterclaim in earlier foreclosure action and, therefore, barred by doctrine of res judicata); *Jarvis v. Wells Fargo Bank,* 7th Dist. No. 09 CO 6, 2010-Ohio-3283, ¶28

("[f]ailure to assert a compulsory counterclaim constitutes a form of res judicata and acts as a bar to subsequent litigation").

{¶33} Accordingly, the third assignment of error is without merit and is overruled.

{¶34} Based upon our disposition of the third assignment of error, finding that the claims raised in appellant's amended complaint are barred because they were compulsory counterclaims in the foreclosure action, we need not address other issues raised in this appeal. Nevertheless, we agree with appellee that a separate and independent ground exists for affirming the trial court's grant of summary judgment. In addition to its determination that the claims constituted compulsory counterclaims, the trial court also found that language within the 2004 amended and restated agreement served as a release of claims that appellee may have otherwise possessed.

{¶35} Appellant challenges the trial court's ruling on this issue under its second assignment of error. In addressing this issue, the trial court rejected appellant's "attempts to distinguish the matters covered by the [2004 amended and restated agreement] and the subject matter of the Letters into distinct categories of real estate and golf course to avoid the effect of the language contained in * * * Section 20(b)."

{¶36} Section 20(b) of the 2004 amended and restated agreement recited the fact that, as of the date of that agreement, the original and subsequent loans were in default. Further, Section 20(b) provided in relevant part that:

> In consideration for Lender's willingness to forbear from enforcing its rights with respect to such Existing Default, enter into this Agreement and consider such Existing Default to be cured, Borrower and each Guarantor each hereby * * * release, acquit and forever discharge Lender * * * of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation

> whatsoever which Borrower * * * might have because of anything done, omitted to be done, or allowed to be done by any one or more of the Released Parties and in any way connected with the Original Loan, any Subsequent Loan or this Agreement or the other Loan Documents as of the date of execution of this Agreement, whether known or unknown, foreseen or unforeseen, including without limitation, any specific claim raised by Borrower and/or each Guarantor, and also including without limitation any settlement negotiations and also including without limitation, any damages and the consequences thereof resulting or to result from the events described, referred to or inferred hereinabove ("Released Matters"). Borrower and Each Guarantor each further agree never to commence, aid or participate in any legal action or other proceeding based in whole or in part upon the foregoing.
>
> Borrower and each Guarantor each agree that this waiver and release is an essential and material term of this Agreement and that the agreements in this paragraph are intended to be in full satisfaction of any alleged injuries or damages in connection with the Released Matters.

{¶37} We agree with the trial court that appellant's attempt to focus solely on the provisions in the commitment letters relating to funding for the golf course ignores the fact that each of the commitment letters, upon which the claims are based, also dealt with funding for the residential development. As discussed more extensively above under the third assignment of error, the commitment letters contemplated the modification of both the original loan and the subsequent loans. Thus, the December 22, 2003 commitment letter proposed "[m]odification and extension of existing $5,675,000 loan" (i.e., the original loan), as well as "[m]odification and extension of existing loans of $1,100,000 and $325,000" (i.e., the subsequent loans), while the March 5, 2004 revised financing proposal included a loan amount of $10,000,000 for residential development, and the

May 14, 2004 letter included a "[p]roposed $13,850,000 Amended and Restated Acquisition and Development Loan" with respect to residential development.

{¶38} The scope of Section 20(b) is broad, i.e., providing for a release of all claims "in any way connected with" the original and subsequent loans. The commitment letters purport to amend the original and subsequent loans, and we agree with the trial court's determination that the subject language is sufficiently broad to encompass claims based upon those letters. Accordingly, we overrule appellant's second assignment of error.

{¶39} In light of our disposition of the second and third assignments of error, we find the issues raised by appellant under the first assignment of error to be moot. Similarly, in light of our determination that appellant's claims, including its claim for unjust enrichment, constituted compulsory counterclaims in the earlier foreclosure action, the issues raised by appellant under its fourth assignment of error are rendered moot.

{¶40} Based upon the foregoing, appellant's second and third assignments of error are overruled, the first and fourth assignments of error are rendered moot, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BRYANT and McGRATH, JJ., concur.

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