

Partial Summary Judgment—was a co-maker of the 1.35 Million Dollar Note, along with the Cambios. Indeed, the Consolidated Loans Agreement (Exhibit Q to the N. Cambio Affidavit) notes, at Exhibit A to that Agreement, the 1.35 Million Dollar Note (as one of the four loans that comprised the Consolidated Loans) was executed by CPR3 in favor of Potomac. Accordingly, due to the error in the pleadings, as correctly noted by CPR3 in its Motion, it is clear to the Court that CPR3’s interest is “significantly protectable.” See Tonetti Enters., LLC v. Mendon Rd. Leasing Corp., 943 A.2d 1063, 1073 (R.I. 2008) (quoting Donaldson v. United States, 400 U.S. 517, 531 (1971)).

To that end, CPR3 has (1) “file[d] a timely application;” (2) “claim[ed] an interest relating to the property or transaction which is the subject matter of the action;” (3) demonstrated that “the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest;” and (4) demonstrated that “the applicant’s interest is not adequately represented by current parties to the action” Id. at 1072-73. Therefore, finding that CPR3 has satisfied the relevant standards of Super. R. Civ. P. 24 (Rule 24),² in order to intervene as of right, CPR3’s Motion hereby is granted.

The Court’s prior analysis as to the usurious nature of the 1.35 Million Dollar Note and the Consolidated Loans remains unaffected. The Court’s holding that the Consolidated Loans (including the 1.35 Million Dollar Note) were in violation of the usury statute and its respective

² Rule 24(a) provides, as follows:

“Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” Super. R. Civ. P. 24(a).

security interests were avoided for the reasons set forth in the Court's Decision is affirmed. However, where the Court references CPR as the maker of the 1.35 Million Dollar Note, the Court's Decision is amended to reflect that CPR3 was the actual maker of that promissory note. The Court's Decision further is amended to reflect that CPR3 is also entitled to pursue any claims for damages it may have against Potomac relative to its 1.35 Million Dollar Note.

Lastly, the Court also takes the occasion to amend the following sentence on page 11 of the Court's Decision, which reads, as follows: "The exact same usury savings clause that was held enforceable as a violation of public policy is present in the loan documents here." This sentence, in relevant part, should instead read: "The exact same usury savings clause that was held *unenforceable*"

Except as modified and/or amended hereby, the Court's Decision is affirmed. Prevailing counsel shall present an order consistent herewith which shall be settled after due notice to counsel of record.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: McGowan v. Potomac Realty Capital, LLC, et al.

CASE NO: PB 09-7314

COURT: Providence County Superior Court

DATE DECISION FILED: February 4, 2015

JUSTICE/MAGISTRATE: Silverstein, J.

ATTORNEYS:

For Plaintiff: See attached list

For Defendant: See attached list

Matthew J. McGowan, et al v. Potomac Realty Capital, LLC, et al.
C.A. No. PB 09-7314

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