STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 4, 2015)

MATTHEW J. MCGOWAN, as Receiver : of Commerce Park Realty, LLC, NICHOLAS : E. CAMBIO and VINCENT A. CAMBIO, :

Plaintiffs,

v. : C.A. No. PB 09-7314

:

POTOMAC REALTY CAPITAL, LLC, CAPITAL MANAGEMENT SYSTEMS, INC., Alias, and DANIEL M. PALMIER,

Defendants. :

SUPPLEMENTAL AND AMENDED DECISION

SILVERSTEIN, J. This matter returns to the Court following the request of the Cambios' counsel for clarification as to the actual makers of the 1.35 Million Dollar Note, which later comprised one of the Consolidated Loans already found usurious in violation of G.L. 1956 § 6-26-2, as noted in the Court's prior Decision issued on December 29, 2014 (the Court's Decision). At the hearing on Receivership Plaintiff's and the Cambios' respective Motions for Partial Summary Judgment on November 20, 2014, the Court additionally took under advisement Commerce Park Realty 3, LLC's (CPR3) Motion of Non-Receivership Party to Add It as a Party and/or to Intervene and/or to Partially Substitute It as a Party. This Motion was filed with the Court on November 5, 2014. The Court supplements its Decision primarily to address this issue.

In moving in the alternative under Super. R. Civ. P. 21, 24, and 25, CPR3, as a non-receivership entity in this matter, properly notes that it, and not CPR—as initially indicated in the operative Complaint in this matter at paragraph 16 and in Receivership Plaintiff's Motion for

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¹ In this Supplemental and Amended Decision, the Court will continue to use all previously denominated terms to refer to all pertinent parties, loans, agreements, <u>et cetera</u>, as set forth in its original December 29, 2014 Decision.

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" <u>Id.</u> 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

"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).

² Rule 24(a) provides, as follows:

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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