

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: June 21, 2019]

COMMERCE PARK REALTY, LLC, :
LLC, NICHOLAS E. CAMBIO and :
VINCENT A. CAMBIO, :
Plaintiffs, :
:

v. : C.A. No. PB-2009-7314

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

DECISION

TAFT-CARTER, J. Before this Court for decision is a motion for summary judgment. The motion, originally filed as a motion to dismiss, was converted to a motion for summary judgment pursuant to Super. R. Civ. P. 12(c) by this Court by Order dated April 12, 2019. In the motion, Capital Management Systems, Inc. (CMS) asks this Court to grant summary judgment in their favor for all counts against it in the Amended Complaint dated February 21, 2019. Plaintiffs Nicholas E. Cambio and Vincent A. Cambio (collectively, the Non-Receivership Plaintiffs) and Intervener Commerce Park Realty 3, LLC (CPR 3) object to both the above-referenced motions. Jurisdiction is pursuant to Super. R. Civ. P. 56.

I

Facts and Travel

The Plaintiffs are the Non-Receivership Plaintiffs: Nicholas E. Cambio (N. Cambio) and Vincent A. Cambio (V. Cambio), both residents of Rhode Island, and the Receivership Plaintiff, Commerce Park Realty, LLC (CPR) (all three parties, collectively, the Plaintiffs). Amended

Compl. (Compl.) ¶¶ 1, 3-4. Due to the receivership in the associated case PM-2013-0350, Matthew J. McGowan (Receiver) was substituted for CPR in this matter on June 19, 2013. *Id.* ¶ 2. Defendant CMS is alleged by the Non-Receivership Plaintiffs to be “a general and/or managing partner of Potomac [Realty Capital, LLC].” *Id.* ¶ 47.

Beginning in April 2006 until April 2008, the Plaintiffs entered into a number of loans with Potomac Realty Capital, LLC (Potomac). Due to the alleged relationship between Potomac and CMS, the Non-Receivership Plaintiffs allege in the Amended Complaint that CMS is liable for a series of breach of contract, fraud, and RICO violations.

In the Amended Complaint, the Non-Receivership Plaintiffs allege sixteen counts against CMS (Counts VIII, XI, XIV, XVII, XIX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI). These counts consist of seven counts under the Rhode Island Racketeer Influenced and Corrupt Organizations Act (RICO) G.L. 1956 §§ 7-15-1, *et seq.*, four counts of breach of contract, four counts of tortious interference with contractual relations, and one count of fraud. CMS moves for summary judgment on all sixteen counts.

II

Standard of Review

“Summary judgment is appropriate when no genuine issue of material fact is evident from ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any.’” *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013) (quoting *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012)). When deciding a motion for summary judgment, the trial justice “views the evidence in the light most favorable to the nonmoving party.” *Mruk*, 82 A.3d at 532 (citing *Beauregard v. Gouin*, 66 A.3d 489, 493 (R.I. 2013)). In order to show it is entitled to judgment as a matter of law, the “nonmoving party bears the burden of proving by competent evidence the existence of a disputed

issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.” *Id.* (quoting *Daniels v. Fluette*, 64 A.3d 302, 304 (R.I. 2013)).

III

Analysis

According to CMS, the Non-Receivership Plaintiffs failed to demonstrate a relationship between CMS and Potomac which would indicate CMS is liable for the wrongdoings of Potomac. Pointing to the Non-Receivership Plaintiffs’ supporting exhibits, CMS asserts that the “CMS” company mentioned in the exhibits is not the same company as the CMS in this case. Furthermore, CMS asserts that through previously answered interrogatories in a separate matter involving the Non-Receivership Plaintiffs, CMS stated there is no legal relationship between Potomac and CMS. The Non-Receivership Plaintiffs, on the other hand, rely on the exhibits attached to their memorandum opposing the motion, claiming that said exhibits demonstrate there is a legal, business relationship between CMS and Potomac.

“Although [] summary judgment is an extreme remedy which should not be used as a substitute for a trial . . . Rule 56 is designed to decide in an expeditious fashion cases presenting groundless claims and actions.” *Gallo v. Nat’l Nursing Homes, Inc.*, 106 R.I. 485, 487, 261 A.2d 19, 21 (1970) (citing 1 Kent, *Rhode Island Practice* § 56.1 at 414(1969)). “It is the underlying purpose of the summary judgment process to expose a sham claim or untenable defense by requiring a party to commit himself under oath by an affidavit in support of the allegations in his pleadings.” *Scarborough v. Wright*, 871 A.2d 937, 939 (R.I. 2005) (quoting *Farrell v. Theriault*, 464 A.2d 188, 193 (Me. 1983)). Rule 56 places the burden on the nonmoving party to “set forth facts showing that there is a genuine issue of fact that will be resolved at trial. Such party must act diligently and in good faith to rebut the evidence presented in support of the motion.” *Gallo*,

106 R.I. at 488, 261 A.2d at 21; *see Ludwig v. Kowal*, 419 A.2d 297, 302 (R.I. 1980) (finding unsworn statements made by counsel were “not equivalent to sworn statements of fact at a summary-judgment hearing”); *see also Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 160-61 (1970) (unsworn statement does not meet requirement of Federal Rule of Civil Procedure 56(e)).

Here, CMS provided sworn interrogatories, signed under the pains and penalties of perjury. In its answers to the interrogatories, CMS specifically states that “there is no contractual relationship and/or contractual business relationship between Potomac Realty Capital, LLC and Capital Management Systems, Inc. Capital Management Systems, Inc. has no business dealings or affiliation with Potomac Realty Capital, LLC, and is not a general and/or managing partner of Potomac Realty Capital, LLC.” Mem. Supp. CMS’ Mot. to Dismiss, Tab A at 3. Later, CMS also states “[a] subsidiary relationship does not exist between or among Potomac Realty Capital, LLC and Capital Management Systems, Inc.” *Id.* at 4.

In contradiction to these verified statements, the Non-Receivership Plaintiffs argue that three documents establish a legal relationship exists between CMS and Potomac. This Court disagrees. In Exhibit A, a memorandum providing an “Update on the CMS Portfolio,” at no point details if the “CMS” or “Potomac” referred to are, in fact, the two parties involved in this case. Mem. Supp. Obj. CMS’ Mot. to Dismiss, Ex. A. The document makes no distinction between the various companies with similar names (*see* Mem. Supp. CMS’ Mot. to Dismiss, Tab A at 3-4) and the two companies in this case. Further, the document is not supported by an affidavit verifying either the authenticity of this document or explaining what “CMS” refers to in said document. Exhibit B is a Notice of Sale of Securities form for the United States Securities and Exchange Commission. While this form also refers to “CMS,” it does not specifically reference “Capital Management Systems, Inc.,” nor does it reference “Potomac Realty Capital, LLC,” the two named

parties at issue in this case. Non-Receivership Plaintiffs' Mem. Supp. Obj. to CMS' Mot. Dismiss, Ex. B. Again, this exhibit is not supported by an affidavit verifying its authenticity or confirming that the "CMS" referred to is in fact the CMS in this case. Finally, Exhibit C is a Uniform Consent to Service of Process. This exhibit also does not specifically refer to "Capital Management Systems, Inc." or "Potomac Realty Capital, LLC," and is also not supported by any affidavit. *Id.* at Ex. C.

The Non-Receivership Plaintiffs ask this Court to rely on documents which are not supported by any sworn statement. *See Scarborough*, 871 A.2d at 939 n.4 ("[o]ur legal system treats with great seriousness a statement that has been sworn to before a notary public"). Though the exhibits refer to "CMS," there is no evidence to suggest that the "CMS" in those documents is the same as the CMS (Capital Management Systems, Inc.) involved in this matter. *See Flynn v. Nickerson Community Center*, 177 A.3d 468, 475 (R.I. 2018) ("[a] party must submit 'competent evidence' in order 'to defeat a motion for summary judgment'" (quoting *Mruk*, 82 A.3d at 532 (affirming summary judgment against party whose arguments were "largely barren of particularized factual support and fail[ed] to set forth any specific facts that would be admissible evidence"))). As the Supreme Court has repeatedly held, in order to survive a motion for summary judgment, the non-moving party "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." *Gallo*, 106 R.I. at 488, 261 A.2d at 21 (a "bald assertion . . . does not put the plaintiff beyond the reach of a summary judgment").

The Non-Receivership Plaintiffs have failed to provide specific facts to indicate there is a genuine issue of material fact which must be decided at trial. Rather, CMS provided this Court with a sworn interrogatory denying any "contractual relationship and/or contractual business

relationship” between Potomac and CMS, and the Non-Receivership Plaintiffs failed to adequately rebut that interrogatory. *See* Mem. Supp. CMS’ Mot. Dismiss, Tab A at 3; *see also Gallo*, 106 R.I. at 488, 261 A.2d at 21-22 (“[s]omething more than conclusionary statements must be offered by the party opposing the entry of a summary judgment . . . he must demonstrate that he has evidence of a substantial nature, as distinguished from legal conclusions”) (citing *Cottrell Employees Credit Union v. Pavelski*, 106 R.I. 29, 34, 255 A.2d 162, 164 (1969)).

IV

Conclusion

For the above stated reasons, this Court grants summary judgment in favor of CMS on the sixteen counts (Counts VIII, XI, XIV, XVII, XIX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI) of the Amended Complaint. Counsel shall submit the appropriate judgment for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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

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COURT: Providence County Superior Court

DATE DECISION FILED: June 21, 2019

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

For Plaintiff: Richard G. Riendeau, Esq.; Stephen M. Schonhoff, Esq.;
Matthew J. McGowan, Esq.

For Defendant: Jeffrey S. Brenner, Esq.; William J. Delaney, Esq.; Joseph V. Cavanagh III, Esq.