STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: June 19, 2019]

COMMERCE PARK REALTY, LLC,	:	
COMMERCE PARK PROPERTIES, LLC	:	
COMMERCE PARK COMMONS, LLC	:	
COMMERCE PARK ASSOCIATES 4, LLC	:	
COMMERCE PARK ASSOCIATES 11, LLC	:	
UNIVERSAL PROPERTIES GROUP, INC.	:	
DARTMOUTH COMMONS, LLC	:	
WARWICK VILLAGE, LLC	:	
NICHOLAS E. CAMBIO, individually and	:	
NICHOLAS E. CAMBIO, Trustee of the	:	
NICHOLAS E. CAMBIO, RONEY A.	:	
MALAFRONTE & VINCENT A. CAMBIO	:	
TRUST and VINCENT A. CAMBIO,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. PB-2011-1922**
	:	
HR2-A Corp. as General Partner	:	
of HR2-A Limited Partnership, John Doe(s),	:	
the Limited Partners of HR2-A Limited	:	
Partnership and the Investors and the	:	
Beneficiaries of HR2-A Limited Partnership,	:	
HR4-A Corp., as General Partner of HR4-A	:	
Limited Partnership, John Doe(s), the Limited	:	
Partners of HR4-A Limited Partnership,	:	
MR4A-JV Corp., as General Partner of	:	
MR4A-JV Limited Partnership, REALTY	:	
FINANCIAL PARTNERS, DAVID ALLEN	:	
and DONALD BIERER and John Doe(s), the	:	
Officers and agents of REALTY FINANCIAL	:	
PARTNERS,	:	
***Defendants*.**	:	

DECISION

TAFT-CARTER, J. Before this Court for decision are four (4) motions for summary judgment.

The motions seek summary judgment on the issue of an alleged violation of the Rhode Island usury

law as codified in G.L. 1956 § 6-26-2 and the entitlement of monetary damages and other relief in the event that such a usury violation is found. The motions refer to three categories of litigants.

The first category is collectively referred to as the Receivership Plaintiffs. It includes: Plaintiff Commerce Park Realty, LLC (CPR)—a limited liability company organized in the State of Rhode Island, for which the principal place of business is West Warwick, Rhode Island; Plaintiff Commerce Park Properties, LLC (CPP)—a limited liability company organized in the State of Rhode Island, for which the principal place of business is West Warwick, Rhode Island; Plaintiff Commerce Park Commons, LLC (CPC)—a limited liability company organized in the State of Rhode Island, for which the principal place of business is West Warwick, Rhode Island; Plaintiff Commerce Park Associates 4, LLC (CPA 4)—a limited liability company organized in the State of Rhode Island, for which the principal place of business is West Warwick, Rhode Island; and, Receiver Matthew McGowan (Receiver)—appointed Permanent Receiver on February 20, 2013 for the four above-referenced limited liability companies. The second category is collectively referred to as the Non-Receivership Plaintiffs. This category includes: Plaintiff Commerce Park Associates 11, LLC (CPA 11)—a limited liability company organized in the State of Rhode Island, for which the principal place of business is West Warwick, Rhode Island; Plaintiff Dartmouth Commons, LLC (Dartmouth)—a limited liability company organized in the State of Rhode Island, for which the principal place of business is West Warwick, Rhode Island; Plaintiff Warwick Village, LLC (Warwick)—a limited liability company organized in the State of Rhode Island, for which the principal place of business is West Warwick, Rhode Island; Plaintiff Universal Properties Group, Inc. (UPG)—a corporation organized in the State of Rhode Island, for which the principal place of business is West Warwick, Rhode Island; Plaintiff Nicholas E. Cambio individually (N. Cambio), and as Trustee of the Nicholas E. Cambio, Roney A. Malafronte, and

Vincent A. Cambio Trust (N. Cambio, Trustee)—a resident of the Town of East Greenwich, Rhode Island; and, Plaintiff Vincent A. Cambio (V. Cambio)—a resident of Johnston, Rhode Island. Finally, the third category, collectively referred to as the RFP Defendants, includes: Defendant HR2-A Corp. as General Partner of HR2-A Limited Partnership (HR2-A)—a Massachusetts corporation for which the principal place of business is Wellesley, Massachusetts; Defendant HR4-A Corp. as General Partner of HR4-A Limited Partnership (HR4-A)—a Massachusetts corporation for which the principal place of business is Wellesley, Massachusetts; Defendant MR4A-JV Corp., as General Partner of MR4A-JV Limited Partnership—a Massachusetts corporation for which the principal place of business is Wellesley, Massachusetts; and, Defendant Realty Financial Partners (RFP Lenders)—a Massachusetts corporation for which the principal place of business is Wellesley, Massachusetts.

This decision encompasses the following motions and objections now pending before the Court:

1) The Receivership Plaintiffs' motion for the entry of partial summary judgment[1] on the Receivership Plaintiffs' and Non-Receivership Plaintiffs' Amended Complaint Counts I and IV and Counts I and III of the Defendants' Counterclaim;[2]

[1] The Receivership Plaintiffs' motion at issue here is included in Binder A of the documents submitted by the parties. Binder A, Exhibit A, Tab 3 includes a "Table of Exhibits" attached to the Receivership Plaintiffs' Statement of Facts in support of their Motion for Partial Summary Judgment. The Table of Exhibits includes Exhibits 1-10 and accompanying sub-exhibits. Hereinafter, all references to the Receivership Plaintiffs' Motion for Summary Judgment (R. Pls.' Mot.) refer to the exhibits as numbered in the Table of Exhibits included in Binder A, Exhibit A, Tab 3.

[2] The Receivership Plaintiffs attached as an exhibit the RFP Defendants' Answer and Counterclaim, which the RFP Defendants filed on May 13, 2011 in federal court. R. Pls.' Mot. Ex. 11. On June 18, 2014, the Receiver filed an amended complaint (Receivership Plaintiffs' Amended Complaint) in Rhode Island Superior Court. On September 22, 2014, the RFP Defendants filed an answer to the aforementioned amended complaint which did not contain any counterclaims. In its objection to the Receivership Plaintiffs' motion for summary judgment at

2) The Non-Receivership Plaintiffs' Motion for Partial Summary Judgment pursuant to the Third Rule 16 Order; [3]

3) The RFP Defendants' Motion for Summary Judgment on the fifth amended complaint; [4]

4) The RFP Defendants' Motion for Ruling on the Usury Claim Entitlement Issue (Entitlement Motion).[5]

In response to the pending motions, the Court has received the following:

5) Amicus Curiae Brief of the Estate of Louise Cardi in Support of Non-Receivership Plaintiffs' Cross-Motion for Summary Judgment on the Usury Issue;

6) The RFP Defendants' objection to Receivership Plaintiffs' Motion for Partial Summary Judgment;

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issue here, the RFP Defendants do not make any argument to suggest that the RFP Defendants object to the motion as it relates to Counts I and III of the said counterclaim. Therefore, any counterclaims the RFP Defendants may have made in federal court have been rendered moot since the filing of the Receivership Plaintiffs' Amended Complaint in this Court. *See* 1 Kent, *Rhode Island Civil Practice* § 15.7 at 154 (1969) ("An amended pleading is a substitute for the original and supersedes it; the original no longer performs any function in the case. No pleading nor motion need be or should be directed to it.")

[3] The Non-Receivership Plaintiffs' motion at issue here is included in Binder B of the documents submitted by the parties. Binder B includes an "Index of Documents." The Index of Documents includes Tabs (Exhibits) A and B, and accompanying sub-tabs (exhibits). Hereinafter, all references to the Non-Receivership Plaintiffs' Motion for Partial Summary Judgment (N.R. Pls.' Mot.), refer to the tabs as documented in the Index of Documents included in Binder B.

[4] The RFP Defendants' motion at issue here is included in Binder C of the documents submitted by the parties. Binder C includes an "Index of Documents." The Index of Documents includes Tabs (Exhibits) A and B, and accompanying sub-tabs. In Exhibit A, Tab 2, the RFP Defendants incorporate by reference and include all documents filed in federal court for a motion for summary judgment filed on May 11, 2011, concerning the same issues before this Court. For ease of reference, this Court will refer specifically to those documents by name, as there was no other identifying reference provided by the RFP Defendants.

[5] The RFP Defendants' motion at issue here is included in Binder E of the documents submitted by the parties. Binder E includes an "Index of Documents." The Index of Documents includes Tabs (Exhibits) A and B, and accompanying sub-tabs. Within each tab, the documents include exhibit indicators which this Court will use to refer to said documents.

7) The RFP Defendants' objection to the Non-Receivership Plaintiffs' Motion for Partial Summary Judgment;
8) The Receivership Plaintiffs' Limited Objection to the Non-Receivership Plaintiffs' Motion for Partial Summary Judgment relating to their demand for money damages;
9) The Receivership Plaintiffs' objection to the RFP Defendants' Motion for Summary Judgment;
10) The Receivership Plaintiffs' motion supporting in part the RFP Defendants' relief sought in the Entitlement Motion.
11) The Non-Receivership Plaintiffs' objection to the Entitlement Motion.

As common issues of fact and law have been raised, this Court issues one decision for the purposes of judicial economy. This Court exercises jurisdiction pursuant to G.L. 1956 § 9-30-1 and Super. R. Civ. P. 56.

I

Facts and Travel

A

The Loans

The Receivership Plaintiffs and others executed a series of promissory notes, mortgages and security documents to HR2-A and HR4-A prior to July 2000. These promissory notes were secured by mortgages on several hundred acres of land in the Town of Coventry, Rhode Island; Town of West Greenwich, Rhode Island; and Town of East Greenwich, Rhode Island. N.R. Pls.' Mot. Ex. A-3, ¶¶ 3-4; R. Pls.' Mot. Exs. 1-A-1, 1-A-3, 1-B. The financial obligations owed to HR2-A pursuant to the promissory notes executed before July 2000 exceeded $14,000,000. R. Pls.' Mot. Ex. 1-C; N.R. Pls.' Mot. Ex. A-3, ¶ 3. The liability to HR4-A for the pre-July 2000 indebtedness exceeded $7,000,000.00. R. Pls.' Mot. Ex. 1-D; N.R. Pls.' Mot. Ex. A-3, ¶ 4.

The Rhode Island General Assembly, in July 2000, enacted an amendment to the Rhode Island usury statute, [6] which created an exception to the maximum allowable interest rate. Public Law 2000 Ch. 211 was codified into § 6-26-2(e), which states:

> "there is no limitation on the rate of interest that may be legally charged for the loan to, or use of money by, a commercial entity, where the amount of money loaned exceeds the sum of one million dollars ($1,000,000) and where repayment of the loan is not secured by a mortgage against the principal residence of any borrower; provided, that the commercial entity has first obtained a pro forma methods analysis performed by a certified public accountant licensed in the state of Rhode Island indicating that the loan is capable of being repaid." Sec. 6-26-2(e).

After the passage of the legislation, the RFP Defendants demanded payment in full of the then matured pre-2000 debt. R. Pls.' Mot. Ex. 1 ¶ 8. The Receivership Plaintiffs were unable to discharge the pre-2000 debt then owed to the RFP Defendants. Tavenner Aff. ¶ 8, July 25, 2011; R. Pls.' Mot. Ex. 5 ¶ 10. As a result, the RFP Defendants agreed to refinance the pre-2000 indebtedness at interest rates in excess of the previously charged interest rates.[7] Tavenner Aff. ¶ 9, July 25, 2011; R. Pls.' Mot. Ex. 5 ¶¶ 4-5, 11.

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[6] The Rhode Island usury statute provides:

> "[s]ubject to the provisions of title 19, no person, partnership, association, or corporation loaning money to or negotiating the loan of money for another, except duly licensed pawnbrokers, shall, directly or indirectly, reserve, charge, or take interest on a loan, whether before or after maturity, at a rate that shall exceed the greater of twenty-one percent (21%) per annum or the alternate rate specified in subsection (b) of this section of the unpaid principal balance of the net proceeds of the loan not compounded, nor taken in advance, nor added on to the amount of the loan." Sec. 6-26-2(a).

[7] General Counsel for the RFP Defendants, Thomas A. Tavenner, stated the following:

> "In response to paragraph seven (7) of Plaintiffs' Statement of Undisputed Facts: Usury, RFP Defendants (i) state that they agreed to rewrite the pre-July 2000 indebtedness with *an interest rate increase which was in excess of usury rate* subject to the applicable

Before the loan documents relating to the refinance were executed, HR2-A began charging and accruing interest at an interest rate in excess of twenty-one percent against the $14,320,000 (Fourteen Million Dollar Note). R. Pls.' Mot. Ex. 1 ¶ 12; Ex. 1-C; Ex. 6 ¶ 12; Ex. 9. The compounded monthly interest rate amounted to 2.670 percent. This resulted in an effective interest rate of 34%.[8] R. Pls.' Mot. Ex. 5 ¶ 12; Ex. 9. From August 1, 2000 through November 30, 2000, HR2-A assessed $1,591,725.06 in interest charges against the promissory note. R. Pls.' Mot. Ex. 9.

At the same time, HR4-A began charging and accruing interest at a rate in excess of twenty-one percent against the Seven Million Dollar promissory note (Seven Million Dollar Note). R. Pls.' Mot. Ex. 1-D. No funds were distributed to the borrowers at the time the Seven Million Dollar Note was executed. R. Pls.' Mot. Ex. 5 ¶ 14. The compounded monthly interest rate was 2.00%. This resulted in an effective interest rate of 26%. R. Pls.' Mot. Ex. 1-D; Ex. 5 ¶ 13; Ex. 10. From August 1, 2000 to November 30, 2000, HR4-A assessed $626,429.43 in interest charges at an effective interest rate in excess of 21%. R. Pls.' Mot. Ex. 10.

> exemption, and (ii) dispute the characterization of the interest rate increase as 'far in excess' of previous rates.
>
> "In response to paragraph eight (8) of Plaintiffs' Statement of Undisputed Facts: Usury, RFP Defendants (i) state that they agreed to rewrite the pre-July 2000 indebtedness with *an interest rate increase which was in excess of usury rate* subject to the applicable exemption; and (ii) admit that the *effective annual interest rate is as set forth in the underlying loan documents and may exceed 36% for such period.*" (Tavenner Aff. ¶¶ 8, 9, July 25, 2011) (emphasis added).

[8] The Court acknowledges that while N. Cambio states in his affidavit the effective annual interest rate was in excess of 36%, the Receivership Plaintiffs state in their papers the effective annual interest rate was in excess of 34%.

In preparation of the closing for these loans, the RFP Defendants, through counsel, requested that the plaintiffs obtain a pro forma methods analysis from a certified public accountant licensed to do business in Rhode Island.[9] R. Pls.' Mot. Ex. 6-A. This request was subsequently modified. In lieu of the pro forma methods analysis, the RFP Defendants accepted a "Borrower Certification" from the plaintiffs certifying "that the pro forma has been received and that the loan is capable of being repaid." R. Pls.' Mot. Ex. 6-B. According to counsel, this Borrower's Certification was an acceptable substitute for the statutory mandate of a pro forma methods analysis. *Id*.

The loan documents relating to the Fourteen Million Dollar Note and the Seven Million Dollar Note were executed at the closing on December 11, 2000. R. Pls.' Mot. Ex. 6 ¶ 12. These loan documents were backdated to August 1, 2000. Ex. 6 ¶ 12; Ex. 1-C; Ex. 1-D. Between August 1, 2000 and December 10, 2000, the RFP Defendants had charged and accrued over two million dollars in interest. R. Pls.' Mot. Exs. 9, 10.

During the closing, "Borrower Certifications" for the Fourteen Million Dollar Note and the Seven Million Dollar Note were also executed.[10] R. Pls.' Mot. Exs. 1-F-1, 1-F-2. The Receivership Plaintiffs, Commerce Park Associates 11, LLC, Dartmouth Commons, LLC, and Universal Properties Group, Inc., signed the Borrower Certification for the Fourteen Million Dollar Note. R. Pls.' Mot. Ex. 1-F-1. The parties executing the Borrower Certification for the Seven Million Dollar

[9] Also of note, the letter stated that in addition to the pro forma methods analysis, the RFP Defendants required an updated title commitment with copies of any liens and encumbrances, municipal lien certificate(s), good standing certificates from the Secretary of State, tax good standing certificates from the Division of Taxation, opinion letter, and development agreements. R. Pls.' Mot. Ex. 6-A.

[10] According to Nicholas Cambio, during the closing, he asked Defendant Bierer what a pro forma methods analysis was. Additionally, Nicholas Cambio states that RFP Defendants were aware that, at the time of closing, no pro forma methods analysis had been performed. R. Pls.' Mot. Ex. 1 ¶¶ 15-18.

Note included the Receivership Plaintiffs and Commerce Park Associates 11, LLC. R. Pls.' Mot. Ex. 1-F-2. The Borrower Certifications contained the following relevant language:

> "(2) The undersigned have obtained a pro forma methods analysis from a certified public accountant for each of the Borrowers as required by R.I. Gen. Laws § 6-26-2.
>
> "(3) The aforesaid pro forma methods analyses indicate that the Borrowers are capable of repaying the Loan.
>
> "(4) For the purposes of this certification, the Borrowers represent that the term 'pro forma methods analysis' means an analysis of historical sales data, lease valuations based on existing leases and a review of appraisals of existing leases performed for other financial institutions, which analysis indicates that the cash flow value to loan ratio expressed as a percentage exceeds one hundred percent (100%).
>
> "(5) The Lender and its counsel may rely on the foregoing representations of the undersigned." R. Pls.' Mot. Ex. 1-F-1, 1-F-2.

On December 11, 2000, Dartmouth Commons, LLC, Nicholas E. Cambio, Vincent A. Cambio, and Roney A. Malafronte, as borrowers, entered into a promissory note in the original principal amount of $4,300,000 (Four Million Dollar Note). R. Pls.' Mot. Ex. 2-D-1; Tavenner Aff. ¶ 7, May 9, 2011; M. Rinaldi Aff. ¶ 12(c), Mar. 6, 2014. The Four Million Dollar Note was secured by mortgage on land in the Centre of New England in Dartmouth, Massachusetts, and Warwick, Rhode Island. R. Pls.' Mot. Ex. 2-D-1. Notably, the Four Million Dollar Note contained a choice-of-law provision, which stated: "[t]his note for all purposes shall be enforced and construed in accordance with the substantive law of the Commonwealth of Massachusetts, without resort to the state's conflict of laws rules." *Id*. The Four Million Dollar Note included a compounded monthly interest rate of 1.75%, which computed to an effective annual interest rate in excess of 23%. R. Pls.' Mot. Ex. 2-D-1; Ex. 5 ¶ 30. At the closing, the borrowers for the Four

Million Dollar Note executed a Borrower Certification containing the same language as those executed at the earlier closing. R. Pls.' Mot. Ex. 6-H, Ex. 6-D, Ex. 6-F.

Fifty-one days after the execution of the loan documents, the Fourteen Million Dollar Note and the Seven Million Dollar Note matured. R. Pls.' Mot. Ex. 1-C, Ex. 1-D. As of January 31, 2001, the Fourteen Million Dollar Note was not satisfied and, according to the RFP Defendants' Accrual Analysis for the Fourteen Million Dollar Note, the principal and unpaid interest balance was $16,653,639.73. R. Pls.' Mot. Ex. 9. After the maturity date of the Fourteen Million Dollar Note, the RFP Defendants continued to charge interest. R. Pls.' Mot. Ex. 9. The interest rate adjusted to 1.75% compounded monthly. R. Pls.' Mot. Ex. 9. Similarly, the Seven Million Dollar Note was not discharged as of the maturity date. R. Pls.' Mot. Ex. 10. Based on the RFP Defendants' Accrual Analysis for the Seven Million Dollar Note, no payment was made on this loan, and the unpaid principal and interest balance was $5,558,083.24. R. Pls.' Mot. Ex. 10. Following the maturity date of the Seven Million Dollar Note, the RFP Defendants continued to charge interest at a rate of 1.75% compounded monthly. R. Pls.' Mot. Ex. 10.

Subsequent to the maturity of the Fourteen Million Dollar Note loan obligations, the parties executed an "Amended and Restated Demand Promissory Note" (Amended Fourteen Million Dollar Note). R. Pls.' Mot. Ex. 2-A-3. Additionally, the Seven Million Dollar Note was amended and restated (Amended Seven Million Dollar Note). R. Pls.' Mot. Ex. 2-B-3. The payment obligations under these notes were due on demand. R. Pls.' Mot. Ex. 2-A-3, Ex. 2-B-3.[11] There

[11] The Amended Fourteen Million Dollar Note and the Amended Seven Million Dollar Note included the following language: "NOTWITHSTANDING THE INCLUSION IN THIS NOTE OF THE ABOVE EVENTS OF DEFAULT, THIS NOTE IS AND SHALL REMAIN FOR ALL PURPOSES A DEMAND NOTE AND AT ALL TIMES IS PAYABLE ON DEMAND OF HOLDER IRRESPECTIVE OF WHETHER ANY EVENT OF DEFAULT EXISTS." R. Pls.' Mot. Ex. 1, Ex. 1-G-1 at 5, Ex. 1-G-2 at 4.

was no pro forma methods analysis prepared in connection with the reinstated obligations. R. Pls.' Mot. Ex. 1 ¶¶ 19-20; Ex. 2 ¶ 27. An effective interest rate of 23% was charged pursuant to the terms of the amended and restated note from February 2001 until December 10, 2001.[12]

On March 28, 2003, the Receivership Plaintiffs, as the borrowers, entered into a demand promissory note with HR4-A, for the principal sum of $350,000 (Three Hundred Fifty Thousand Dollar Note). R. Pls.' Mot. Ex. 2-C-1. N. Cambio, V. Cambio, and Roney Malafronte, individually, were the guarantors on this note. *Id*. The Three Hundred Fifty Thousand Dollar Note was secured by property described as Assessor's Plat 14, Lot in the Coventry Land Records. *Id*. The interest rate on this Note was 1.75% compounded monthly, which computed to an effective annual interest rate of 23%. R. Pls.' Mot. Ex. 2-C-1; Ex. 5 ¶ 36. Significantly, the Three Hundred Fifty Thousand Dollar Note contained a governing law provision, stating "[t]his Note shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts." R. Pls.' Mot. Ex. 2-C-1.

[12] Of note, the Four Million Dollar Note was amended and restated on September 13, 2005. The Amended Four Million Dollar Note modified the guarantors and the collateral. Dartmouth Commons, LLC, Nicholas E. Cambio, Vincent A. Cambio, and Roney A. Malafronte remained the borrowers and amended guarantors included the Receivership Plaintiffs and Commerce Park Associates 8, LLC. The Amended Four Million Dollar Note was secured by property owned by the Receivership Plaintiffs located in East Greenwich, Rhode Island, West Greenwich, Rhode Island, and Coventry, Rhode Island. R. Pls.' Mot. Ex. 2-D-3; RFP Defs.' Mot. Ruling Usury Claim Entitlement Issue (RFP Defs.' Entitlement Mot.) Ex. A-4, Tavenner Aff. ¶¶ 24-25, Jan. 9, 2015.

B

Payments and Demand Letters

In April 2003, the RFP Defendants demanded payment in full pursuant to the Fourteen Million Dollar and the Seven Million Dollar Notes. The plaintiffs[13] were unable to pay the obligations and on April 24, 2003, they entered into the Forbearance and Conveyance Agreement (Forbearance Agreement). Tavenner Aff. ¶ 12, May 9, 2011; R. Pls.' Mot. Ex. 5-F. Those executing the Forbearance Agreement included the Receivership Plaintiffs, the Non-Receivership Plaintiffs, Dartmouth Commons, LLC, Universal Properties Group, Inc. (collectively, the Forbearance Obligors), and the RFP Defendants. Tavenner Aff. ¶ 12, May 9, 2011; R. Pls.' Mot. Ex. 5-F. Significantly, the Forbearance Agreement provided the Forbearance Loans matured and the obligations were immediately due and payable in their entirety; requested the RFP Defendants forbear from collecting the obligations; confirmed that they were jointly and severally liable on the principal and interest that would continue to accrue; represented and warranted that each had no defenses, setoffs, or counterclaims to their respective liabilities and obligations to the RFP Defendants. R. Pls.' Mot. Ex. 5-F. Moreover, "[t]o the extent any such defenses, setoffs, counterclaims ever existed, they are hereby waived and the Lenders are released, remised, and forever discharged from any and all claims. . . in consideration for the [RFP Defendants'] agreements contained" in this Forbearance Agreement. *Id.* at 9. The Forbearance Agreement contained a governing law provision, deeming Rhode Island as the designated forum relating to the Forbearance Agreement. *Id.* at 15.

[13] Including the parties to the Fourteen Million Dollar Note, the Seven Million Dollar Note, and the Three Hundred Fifty Thousand Dollar Note (collectively, the Forbearance Loans).

After the Forbearance Agreement was executed, payments were made to the RFP Defendants. RFP Defs.' Mot. Entry Order Granting Entitlement Mot. Ex. 2. Most of the payments by third parties were made in conjunction with real estate conveyances within the Centre of New England. RFP Defs.' Entitlement Mot. Ex. A-4, Tavenner Aff. ¶ 20, Jan. 9, 2015. RFP Defendants would discharge their mortgage on the respective parcel in order to credit the Receivership Plaintiffs upon receipt of the payments. RFP Defs.' Entitlement Mot. Ex. A-4, Tavenner Aff. ¶¶ 20-21, Jan. 9, 2015.

Home Depot, Washington Trust, and Randolph Savings Bank also made payments. RFP Defs.' Entitlement Mot. Ex. A-4, Tavenner Aff. ¶ 21, Jan. 9, 2015. In January of 2001, GTWO, LLC and Louis A. Guliano executed and delivered a note in the gross amount of $3,000,000 to the Receivership Plaintiffs, who endorsed and assigned the Note to HR4-A. RFP Defs.' Entitlement Mot. Ex. A-2, Tavenner Aff. ¶ 4, Dec. 12, 2014. Also, during this time, the Town of Coventry purchased three parcels from the Receivership Plaintiffs in accordance with a 2010 settlement agreement for the negotiated price of $3,387,863.22, of which $2,202,111.90 was credited towards RFP Defendants' Fourteen Million Dollar Note. RFP Defs.' Entitlement Mot. Ex. A-4, Tavenner Aff. ¶ 21(e), Jan. 9, 2015.[14] In another set of transactions, Potomac Realty Capital, LLC made payments to the RFP Defendants. RFP Defs.' Entitlement Mot. Ex. A-4, Tavenner Aff. ¶ 21(c), Jan. 9, 2015; RFP Defs.' Entitlement Mot. Ex. A-4-F. In exchange for and in consideration of these payments, the RFP Defendants subordinated their mortgage on real estate owned by the Receivership Plaintiffs and credited those payments to the Receivership Plaintiffs. Tavenner Aff. ¶ 5, Dec. 12, 2014; RFP Defs.' Entitlement Mot. Ex. A-4-F.

[14] For a more detailed breakdown of each individual transaction that took place, see RFP Defs.' Entitlement Mot. Ex. A-4-F.

On April 11, 2011, the RFP Defendants exercised their right to demand payment under the loans. R. Pls.' Mot. Ex. 5-G-1, 5-G-2, 5-G-3, 5-G-4. Pursuant to the Fourteen Million Dollar Note, the RFP Defendants demanded payment for the amount due as of April 11, 2011. The RFP Defendants claimed the balance totaled $92,293,086.09. R. Pls.' Mot. Ex. 5-G-1. The RFP Defendants also issued a demand letter to the Receivership Plaintiffs with respect to the Seven Million Dollar Note. The demand requested payment of the principal and balance within sixty days. The balance owed totaled $44,022,035.84. R. Pls.' Mot. Ex. 5-G-2. The RFP Defendants also issued a demand letter with respect to the Four Million Dollar Note to Dartmouth Commons. The payment of the principal and balance in the total outstanding amount of $7,882,294.72 was demanded within ten days of April 11, 2011. R. Pls.' Mot. Ex. 5-G-3. Finally, the RFP Defendants sent a demand letter to the Receivership Plaintiffs with respect to the Three Hundred and Fifty Thousand Dollar Note. The RFP Defendants demanded payment of the principal and balance within ten days for a total amount of $1,867,048.98. R. Pls.' Mot. Ex. 5-G-4.

The Receivership Plaintiffs and the Non-Receivership Plaintiffs commenced this action on April 8, 2011 by filing a Verified Complaint in Rhode Island Superior Court.[15] On December 10, 2013, Matthew J. McGowan was appointed as Permanent Receiver for the Receivership Plaintiffs. An amended complaint was filed on June 18, 2014 by the Receivership Plaintiffs and the Non-Receivership Plaintiffs. The RFP Defendants responded on September 22, 2014. The parties filed the motions which are presently before the Court.

This Court heard oral argument on January 24, 2019, regarding the motions for summary judgment. The Receivership Plaintiffs move on Counts I and IV of the Amended Complaint,

[15] On April 20, 2011, this case was removed to the United States District Court of Rhode Island. On September 18, 2013, the Honorable Ronald R. Lagueux of the United States District Court for the District of Rhode Island remanded this case to the Rhode Island Superior Court.

which allege two usury violations under § 6-26-2 on the Fourteen Million Dollar Note and the Seven Million Dollar Note (collectively, the Loans). Additionally, the Receivership Plaintiffs seek an award of monetary damages in the amount of $22,075,542.50 reflecting their payments of principal and interest made on the Loans. The Receivership Plaintiffs also move for summary judgment asserting that the Three Hundred Fifty Thousand Dollar Note and the Four Million Dollar Note are governed by Rhode Island law. Lastly, the Receivership Plaintiffs request that this Court declare the Non-Receivership Plaintiffs are not entitled to affirmative recovery under § 6-26-4(c).

The Non-Receivership Plaintiffs move for partial summary judgment on Counts XIII and XIX, which seek declarations that the Loans are usurious and void.[16] The Non-Receivership Plaintiffs also move on Counts XV and XXI of the Amended Complaint, which seek punitive damages for the Loans. The Non-Receivership Plaintiffs also request that this Court grant Count XXXV of the Amended Complaint, asserting Rhode Island law is the applicable law to all loans secured by Rhode Island real estate. Lastly, the Non-Receivership Plaintiffs move for partial summary judgment on Count XXXVI of the Amended Complaint, asserting that the waivers and releases are ineffective against public policy.

The RFP Defendants move for summary judgment on the Receivership Plaintiffs' and Non-Receivership Plaintiffs' Amended Complaint. The RFP Defendants assert that the interest charged on the Loans is not usurious and complies with § 6-26-2(e). Alternatively, the RFP Defendants ask this Court to find that the borrowers waived and released any and all usury claims pursuant to

[16] The Cardi Estate also filed an amicus brief with this Court in support of the Non-Receivership Plaintiffs Motion for Partial Summary Judgment with respect to declaring the Fourteen Million Dollar Note and the Seven Million Dollar Note usurious and void and that Rhode Island law should govern all loan transactions.

the Forbearance Agreement. The RFP Defendants also assert that the valid, binding, and lawful indebtedness was due and owing prior to the execution of the Loans. Furthermore, the RFP Defendants request this Court find the Three Hundred Fifty Thousand Dollar Note and the Four Million Dollar Note are not subject to §§ 6-26-1, *et seq*. as the applicable law is governed by Massachusetts. Lastly, the RFP Defendants ask this Court to rule that the Non-Receivership Plaintiffs are not entitled to any affirmative relief pursuant to § 6-26-4(c).[17]

II

Standard of Review

"Summary judgment is a drastic remedy and should be cautiously applied." *Ardente v. Horan*, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976). "Thus, '[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.'" *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ.*, 93 A.3d 949, 951 (R.I. 2014) (quoting *Peloquin v. Haven Health Ctr. of Greenville, LLC*, 61 A.3d 419, 424-25 (R.I. 2013)). "Only when facts that are undisputably or reliably found point to a single permissible inference can this process be treated as a matter of law." *Steinberg v. State*, 427 A.2d 338, 340 (R.I. 1981). In a summary judgment proceeding, the court does not pass upon the weight or credibility of the evidence. *See DeMaio v. Ciccone*, 59 A.3d 125, 130 (R.I. 2013).

[17] The RFP Defendants argue in both the motion for summary judgment and the motion for ruling on the usury claim entitlement issue that the Non-Receivership Plaintiffs are not entitled to any relief for their claims for direct or punitive damages related to alleged usury violations. This Court will address this argument in the section titled "Motion for Ruling on the Usury Claim Entitlement Issue."

The party who opposes the motion for summary judgment "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1225 (R.I. 1996); *see also McAdam v. Grzelczyk*, 911 A.2d 255, 259 (R.I. 2006). In this context, "'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant." *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

III

Discussion

Motions for Summary Judgment

A

Usury Violations

Usury laws have been justified for economic, political, and religious reasons for centuries. 3 Ann. Rev. Banking L. 309 (1984). These laws were deemed necessary to protect the poor from the financial crushes of lenders. *Schneider v. Phelps*, 41 N.Y.2d 238, 243 (1977). Rhode Island, like most states, has a statute governing usury.[18] In Rhode Island, "[t]he maximum allowable interest rate is a statutory construct whereby interest rates in excess of 21 percent per annum are deemed usurious." *NV One, LLC v. Potomac Realty Capital, LLC*, 84 A.3d 800, 805 (R.I. 2014)

[18] "Subject to the provisions of title 19, *no person, partnership, association, or corporation loaning money* to or negotiating the loan of money for another, except duly licensed pawnbrokers, *shall, directly or indirectly, reserve, charge, or take interest on a loan*, whether before or after maturity, *at a rate that shall exceed the greater of twenty-one percent (21%) per annum* or the alternate rate specified in subsection (b) of this section of the unpaid principal balance of the net proceeds of the loan not compounded, nor taken in advance, nor added on to the amount of the loan." Sec. 6-26-2(a) (emphasis added).

(affirming borrower was entitled to judgment as a matter of law as the loan was in violation of usury). Usury remedies are imposed against lenders to protect borrowers. *See Burdon v. Unrath*, 47 R.I. 227, 231, 132 A. 728, 730 (1926); *see also In re Swartz*, 37 B.R. 776, 778-79 (Bankr. D.R.I. 1984). "Lenders, with the money, have all the leverage; borrowers, in dire need of money, have none." *Schneider*, 41 N.Y.2d at 243. The underlying policy of the usury statutory scheme is to encourage lenders to avoid usurious interest rates and place "the onus [ ] on the lender to ensure compliance with the maximum rate of interest." *NV One, LLC*, 84 A.3d at 808 (noting the "onus is placed instead on the lender, whose business it is to lend money for profit and who is thus in a better position than the borrower to know the law"). *Id.* at 810. This precedent has been firmly established over the years, and the Supreme Court has forewarned that "[i]f the result seems harsh the penalty can be avoided easily by writing loan agreements that exact no more than the law allows." *Nazarian v. Lincoln Fin. Corp.*, 77 R.I. 497, 505, 78 A.2d 7, 10 (1951); *see In re Swartz*, 37 B.R. at 779 (finding an entire loan to be usurious due to a $4 filing fee which caused the interest rate to exceed the maximum allowable rate under the usury statute). The General Assembly "has opted for a rather draconian" approach in dealing with usury. *LaBonte v. New England Dev. R.I., LLC*, 93 A.3d 537, 543 (R.I. 2014) (relating violations of usury to the ancient maxim *dura lex sed lex*—"the law is hard but it is the law"); *see also NV One, LLC*, 84 A.3d at 805. Rhode Island has taken "an inflexible, hardline approach to usury that is tantamount to strict liability." *NV One, LLC*, 84 A.3d at 807.

Importantly, when loans are found to be in violation of the usury law, the contract and the security given to perform the contract are usurious and void. Sec. 6-26-4. "[I]nterest is calculated based on the amount actually received by the borrower." *Id.* at 805 (citing *Indus. Nat'l Bank of Rhode Island v. Stuard*, 113 R.I. 124, 125, 318 A.2d 452, 453 (1974)). As a result, the borrower

is entitled to recover the amount paid on the loan. Sec. 6-26-4; *see* § 6-26-4(a) ("[e]very contract made in violation of any of the provisions of § 6-26-2, and every mortgage, pledge, deposit, or assignment made or given as security for the performance of the contract, shall be usurious and void"); *see also LaBonte*, 93 A.3d at 542 (affirming loan agreement as usurious and void).

"'[T]he burden of charging a legal interest rate [rests] on the lender.'" *NV One, LLC*, 84 A.3d at 808 (quoting *Sheehan v. Richardson*, 315 B.R. 226, 240 (D.R.I. 2004), *aff'd*, 185 F. App'x 11 (1st Cir. 2006)). "For protection of the borrower, it is incumbent upon the lender to ensure full compliance with the provisions for maximum rate of interest, and, apart from the explicit exception in § 6-26-2(e), anything short of full compliance renders the transaction usurious and void." *NV One, LLC*, 84 A.3d at 809.

Like many states, Rhode Island exempts corporate borrowers from usury law. The exemption provides that:

> "[n]otwithstanding the provisions of subsection (a) of this section and/or any other provision in this chapter to the contrary, *there is no limitation on the rate of interest that may be legally charged* for the *loan to, or use of money by, a commercial entity*, where the *amount of money loaned exceeds the sum of one million dollars* ($1,000,000) and where repayment of the loan is *not secured by a mortgage against the principal residence of any borrower*; provided, that the *commercial entity has first obtained a pro forma methods analysis performed by a certified public accountant licensed in the state of Rhode Island* indicating that the loan is capable of being repaid." Sec. 6-26-2(e) (emphasis added).

In other words, a lender may charge any interest rate without violating usury, so long as the specified conditions are satisfied *prior* to issuance of the loan. *See NV One, LLC*, 84 A.3d at 809 n.19 (concluding "[b]y not securing the requisite *pro forma* analysis, [the lender] failed to avail itself of the exception and is therefore bound by the maximum interest rate").

The RFP Defendants, as the lender, bear the burden of compliance with the usury statute. Here, the Receivership Plaintiffs set forth two usury violations. First, it is alleged that the RFP Defendants failed to obtain the required pro forma methods analysis from the Receivership Plaintiffs indicating that the loans were capable of being repaid. In addition, the Borrower Certification executed on December 11, 2000 was executed *after* the Defendants charged and accrued over two million dollars in interest at a usurious rate from August 1, 2000 through December 10, 2000. Finally, from February 2001 through the 2010 demand letter, the RFP Defendants charged an effective interest rate in excess of twenty-one percent to the Amended and Restated Loan. These factors constitute a violation of the Rhode Island usury law according to the Receivership Plaintiffs.

The RFP Defendants argue that the loans fall within the exception provided for in § 6-26-2(e). An analysis of this exception requires that the lender must establish: (1) the amount of money loaned exceeds one million dollars; (2) repayment is not secured by a mortgage against the principal residence of any borrower; and, (3) the commercial entity has first obtained a pro forma methods analysis performed by a certified public accountant licensed to do business in the State of Rhode Island indicating that the loan is capable of being repaid.

There is no dispute that there exists a commercial relationship between the parties. The RFP Defendants are commercial lenders, and the Commerce Park entities are commercial borrowers.[19] Additionally, the Loans both exceed the one million dollar requirement under § 6-26-2(e). Finally, the loans are not secured by any primary residence. The loans are secured with commercial property.

[19] The Non-Receivership Plaintiffs also move for partial summary judgment on Counts XIII and XIX of the Non-Receivership Plaintiffs' Amended Complaint, requesting that this Court declare the Loans are usurious.

There is dispute, however, as to whether the Borrower's Certification executed by the plaintiffs is sufficient to comply with the statutory condition of a pro forma methods analysis by a certified public accountant licensed in Rhode Island indicating that the loans are capable of being repaid.[20] The Borrower Certifications state that the borrowers obtained a pro forma methods analysis from a Rhode Island CPA in accordance with § 6-26-2(e). The Certifications also state that the RFP Defendants could rely on the representations therein. The RFP Defendants argue that they are entitled to rely upon the statements of the Non-Receivership Plaintiffs contained in the Borrower Certifications. These statements alone are sufficient and the Court must reject any suggestion that a pro forma methods analysis must first be obtained. The RFP Defendants, in arguing that this is in compliance with the statute, misconstrue the statute. The RFP Defendants' interpretation reallocates the obligation of compliance with the usury statute. The RFP Defendants' interpretation of the statute fails to account for its purpose. The statute allows for the commercial loan exception *provided*, or, on the condition that, the pro forma methods analysis is obtained. The use of the word "provided" creates a condition precedent. The exception is allowed only after a pro forma methods analysis by a certified public accountant licensed in the state of Rhode Island is obtained. The condition imposed by the legislature when drafting this statute must be met in order to trigger the usury exemption. Here, the closing documents were postdated and the loans had accrued over two million dollars in interest at rates deemed usurious.

[20] The Receivership Plaintiffs echo the assertions by the Non-Receivership Plaintiffs regarding the Borrower Certifications. The Receivership Plaintiffs claim that due to the "financial and power imbalances often present in loan transactions," the Rhode Island usury statute was enacted to "provide protection for borrowers, who, because of economic circumstances, were forced to borrow money at interest rates that the legislature deemed so outrageous as to be contrary to sound public policy." R. Pls.' Mot. Ex. A-2 at 16. As such, regardless of any assertions made in the Borrower Certifications, according to the Receivership Plaintiffs, it was the sole burden of the RFP Defendants to ensure strict compliance with the usury statute.

A conclusion that the Borrower Certifications comply with the statute would be inaccurate as the Borrower Certifications are not an adequate substitute to or waiver of the statutorily mandated requirement that a pro forma methods analysis by a certified public accountant licensed by the state of Rhode Island be performed. Condoning the use of the Borrower Certifications clearly circumvents the protective purpose of the statute. *See NV One, LLC*, 84 A.3d at 808 (quoting *Colonial Plan Co. v. Tartaglione*, 50 R.I. 342, 344. 147 A. 880, 881 (1929)) (rejecting the option for "a borrower [to] contract with a lender to pay more than the permissible interest rate because '[t]o permit it would open the door to the very abuses and opportunities"' the statute was intended to prevent). Furthermore, the statute '"places total responsibility upon the lender for strict compliance,"' it follows that it was the sole responsibility of the RFP Defendants to ensure a pro forma methods analysis, had it in fact been completed rather than relying entirely on the Borrower Certifications. *Id.* at 808-09 (quoting *In re Swartz*, 37 B.R. at 779); *see also Swindell v. Fed. Nat'l Mortg. Ass'n*, 409 S.E.2d 892, 896 (1991)) ("[t]he [usury] statute relieves the borrower of the necessity for expertise and vigilance regarding the legality of rates he must pay. That onus is placed instead on the lender, whose business it is to lend money for profit and who is thus in a better position than the borrower to know the law").[21]

[21] Of note, in cases of dischargeable debt in bankruptcy, the Bankruptcy Code places the burden on the creditor to show both that the debtor intentionally made a false statement or representation to obtain a loan, and that the creditor reasonably relied on that statement or representation of the debtor's financial condition. 11 U.S.C. § 523(a)(2). In *In re Guilmette*, the court found that the creditor, a bank, had a long-standing relationship with a debtor and thus could not show they reasonably relied on the debtor's representations. 12 B.R. 799, 802-03 (Bankr. D.R.I. 1981) (citing *Bennett v. W.T. Grant Co.*, 481 F.2d 664 (4th Cir. 1973) ("even though the debtor's conversion was willful and malicious, [the debt was dischargeable] because the creditor . . . failed to take reasonable steps to protect its security")). The Rhode Island usury statute is even less forgiving, requiring strict compliance by the lender, and allowing no leeway for "reasonable reliance" on alternative certifications indicating compliance with the statute.

The assertion by the RFP Defendants that they *intended* to comply with the usury statute exception by requiring the borrowers to certify that a pro forma methods analysis had been completed is hollow. *See In re Swartz*, 37 B.R. at 779 ("[a] lender's intention to comply with the law is irrelevant under the Rhode Island usury statute"). The trigger to satisfy the mandates of § 6-26-2(e) by obtaining a pro forma methods analysis did not occur. The Loans are not within the exception provided for in the statute.[22] *See NV One, LLC*, 84 A.3d at 807 (referring to the Rhode Island statute as "an inflexible, hardline approach to usury that is tantamount to strict liability").

The RFP Defendants also argue that the borrowers may not now challenge the validity of the loans since they, on their own volition, originally made false representations that a pro forma methods analysis was performed and that the RFP Defendants relied on that representation. The RFP Defendants argue that *Reichwein* applies. *Reichwein v. Kirshenbaum*, 98 R.I. 340, 201 A.2d 918 (1964). There, a borrower alleged a loan was usurious after he voluntarily made prepayments on a loan, prompting the loan to exceed the permissible interest rate under Rhode Island usury law. *Id.* at 343, 201 A.2d at 920. The Rhode Island Supreme Court found that the payment did not violate usury because the loan on its face was not usurious and the borrower voluntarily made the prepayment. *Id.* at 343, 201 A.2d at 919; *see also Marley v. Consol. Mortg. Co.*, 102 R.I. 200, 208, 229 A.2d 608, 612 (1967) (holding usury statute did not prohibit lender from charging more than the permissible maximum interest when borrower opted for prepayment of loan).

[22] The Receivership Plaintiffs argue that the amended and restated Loans required a new pro forma methods analysis or borrower certification in order to comply with § 6-26-2(e). The Court need not address this argument because the Court has already found the RFP Defendants did not satisfy the mandated conditions of § 6-26-2(e) under the original Borrower Certifications and thus, the Loans already violate Rhode Island's usury law prior to the subsequent amendments.

Additionally, the RFP Defendants rely on *Stuard,* which upheld an acceleration clause that caused the loan contract to exceed permissible interest rates. *Stuard,* 113 R.I. at 127, 318 A.2d at 453.

These cases do not apply because the loans in *Reichwein* and *Stuard* were both free from usury violations originally. Furthermore, it was the voluntary payments by the borrowers which caused the loans to exceed the permitted interest rates. Here, the Loans charged facially usurious interest rates of thirty-six percent and twenty-six percent, respectively. The interest rates on both loans apply to the outstanding balance which accrues interest without limit. Finally, the subsequent loans are patently in violation of usury and can only avoid illegality by compliance with § 6-26-2(e). *See DeFusco v. Giorgio,* 440 A.2d 727, 732 (R.I. 1982). Since the RFP Defendants do not fall within the statutory exception and the interest rates exceeded the maximum rate of twenty-one percent, the Loans are in violation of § 6-26-2.

The RFP Defendants aver that even if the Loans violate the usury laws, the borrowers waived any and all claims relating to usury when they freely and voluntarily entered into the Forbearance Agreement. The Rhode Island Supreme Court created a narrow category where a debtor could waive the right to assert a usury violation. *Id*. at 732. In *DeFusco,* the Supreme Court held that "waiver of a usury defense should be permitted when it is freely and knowingly made after reasoned reflection for the legitimate purpose of avoiding or settling litigation." *Id*. This narrow category for a waiver of the usury defense, however, only exists in "cases in which a debtor's release of a usury claim is not merely a subterfuge to evade the usury statutes." *Id.*

Despite holding in *DeFusco* that the parties freely and knowingly entered into a consent judgment which constituted a waiver of any usury claims, the Court cautioned against situations involving coercion or duress. The Court emphasized that

> "the case at bar does not present a situation in which a borrower has executed a release of all claims or defenses of usury either

> contemporaneous with the signing of a promissory note or in exchange for additional advances of funds. *The coercive nature of such situations, in light of the pressing financial needs of the borrower, has persuaded many courts to hold such releases invalid* as contravening state usury statutes." *Id.* (citing 99 A.L.R. 600 (1935)) (emphasis added).

In this case, the Forbearance Agreement was entered into "in light of the pressing financial needs" of the borrowers in order to refinance the prior loan obligations—of which the principal alone totaled twenty-one million dollars. *See id.*; *see also* N.R. Pls.' Mot. Ex. A-3 ¶ 21; Ex. D. The Forbearance Agreement was signed to allow the borrowers to avoid foreclosure. *See* N.R. Pls.' Mot. Ex. A-3 ¶¶ 21-23. The Supreme Court clearly stated in *DeFusco* that situations such as the one here involving the Forbearance Agreement are "coercive. . . in light of the pressing financial needs of the borrower." *DeFusco*, 440 A.2d at 732. Contrary to the circumstances in *DeFusco*, the coercive circumstances in this case make the "narrow category" for waivers inapplicable here. *See* N.R. Pls.' Mot. Ex. A-3 ¶¶ 21-23. This Court remains unconvinced that the Forbearance Agreement constituted a voluntary release of usury claims but rather holds the Forbearance Agreement was a "subterfuge to evade the usury statutes." *DeFusco*, 440 A.2d at 732.

For these reasons, the Court grants the Receivership Plaintiffs' Motion for Partial Summary Judgment on the Receivership Plaintiffs' Amended Complaint Counts I and IV, and finds the Loans usurious and thus void.

B

Choice-of-Law Provision

The RFP Defendants contend that Massachusetts law applies to the Four Million Dollar Note and Three-Hundred and Fifty Thousand Dollar Note due to the choice of law provisions. It

is argued that Rhode Island's public policy against usurious transactions does not preclude giving effect to the parties' choice-of-law provision.

Rhode Island generally honors contractual choice-of-law provisions where the parties to the agreement stipulate to the applicable law governing their transaction. *Sheer Asset Mgmt. Partners v. Lauro Thin Films, Inc.*, 731 A.2d 708, 710 (R.I. 1999) (citing *Owens v. Hagenbeck-Wallace Shows Co.*, 58 R.I. 162, 172, 192 A. 158, 164 (1937)). The Rhode Island Supreme Court, however, has noted "'the right of parties to a contract to have their reciprocal duties and obligations under that contract governed by the law of some particular jurisdiction *is limited to the selection or stipulation by them of the law of a jurisdiction which has a real relation to the contract.*'" *Id.* at 710 (emphasis added). As such, this general rule is subject to some limitations. *Owens*, 58 R.I. at 172, 192 A. at 164.

Rhode Island has adopted the Restatement (Second) of *Conflict of Laws* § 187 (1971), which provides that the express choice-of-law provision in a contract will govern unless

> "application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties." Restatement (Second) of *Conflict of Laws* § 187 (1971) (June 2019 update).

The court, however, "will not interfere" with the right of parties to stipulate to a choice-of-law provision as long as there is "a reasonable basis" for that choice. *Sheer Asset Mgmt. Partners*, 731 A.2d at 710. "Among those jurisdictions in which there is a reasonable basis for choosing the law of that jurisdiction are: (1) the place of performance of one of the parties; (2) the domicile of one of the parties; or (3) the principal place of business of a party." *Id.* at 710 (citing Restatement (Second) of *Conflict of Laws* § 187 cmt. f.

The RFP Defendants rely on *Sheer Asset Management Partners* to demonstrate that despite Rhode Island's strong public policy against usury, the Rhode Island Supreme Court still applied the choice-of-law provision of another state in that case. *Sheer Asset Mgmt. Partners*, 731 A.2d at 710. However, in *Sheer Asset Management*, the borrower's principal place of business and domicile were both in Rhode Island, but those were the borrower's only contacts to the state. *Id*. at 709. There, the Court found that Connecticut had the strongest ties to the contract as the majority of contacts involved Connecticut. *Id*. The case at hand is distinguishable, because the majority of the contacts in this case are to the State of Rhode Island. Additionally, there was no true conflict of law between the two competing jurisdictions in *Sheer Asset Management*, whereas the conflict of law here is clear. *Id*. at 709 (finding "the law of either jurisdiction" would lead to the same outcome in the case).

There is a true conflict of law presently before this Court as Rhode Island imposes a statutory maximum interest rate on loans and Massachusetts does not. Despite the choice of law provision designating Massachusetts as the governing law, the Four Million Dollar Note and Three-Hundred and Fifty Thousand Dollar Note have significant ties to the State of Rhode Island. The Four Million Dollar Note and Three-Hundred and Fifty Thousand Dollar Note were primarily secured by Rhode Island real estate—the location of the subject matter of the contract. The Four Million Dollar Note and Three-Hundred and Fifty Thousand Dollar Note were also a part of the integrated financial plan for the Centre of New England development, which is located in Rhode Island. Additionally, the two loans contain cross-default provisions that link these loans to the Loans—both of which are explicitly governed by Rhode Island law. Notably, the Forbearance Agreement that amended the Three Hundred and Fifty Thousand Dollar Note designates Rhode Island as the governing law. Rhode Island was also the state where most of the integrated

agreements were negotiated. Finally, the borrowers' principal place of business and domicile is Rhode Island. The only Massachusetts contacts for the Four Million Dollar Note and Three-Hundred and Fifty Thousand Dollar Note are the Massachusetts choice-of-law provision and the fact that the principal place of business of the lenders is in Massachusetts.

Here, Rhode Island has a materially greater interest in the subject matter of the dispute. Additionally, Rhode Island has a strong public policy against usury—the issue at the heart of this case—while Massachusetts does not. *NV One, LLC*, 84 A.3d at 810 ("there is a strong public policy against usurious transactions, with lenders—typically in a better position to understand the terms of the loan—bearing the burden of compliance"). In light of the aforementioned substantial contacts of the Four Million Dollar Note and the Three Hundred and Fifty Thousand Note with the state of Rhode Island, as well as Rhode Island's strong policy against usurious transactions, Rhode Island law is the governing law in this dispute.

Motion for Ruling on the Usury Claim Entitlement Issue

A

Entitlement Under § 6-26-4(c)

The RFP Defendants seek summary judgment against the Non-Receivership Plaintiffs with respect to Counts XIII-LII of the amended complaint. The RFP Defendants argue that § 6-26-4(c)—the statute penalizing usurious contracts—is a statute operating in derogation of common law, which requires a strict interpretation of the General Assembly's language. Thus, the RFP Defendants maintain, under the strict construction, the statute limits relief to only those borrowers who make payments to the usurious lenders.

In contrast, the Non-Receivership Plaintiffs contend the statute provides remedial relief, which imposes a liberal interpretation. Under the liberal interpretation, the legislative intent was

to deprive the lender from any benefit derived from an unlawful usurious loan. Consequently, any borrower who renders any direct or indirect benefit to the usurious lender is entitled to relief under the statute. The Non-Receivership Plaintiffs premise this position on the underlying rationale that the General Assembly has adopted an approach concerning lenders violating Rhode Island usury law similar to strict liability against the lender that liberally affords relief to all borrowers. Therefore, according to the Non-Receivership Plaintiffs, the Legislature intended that *all* borrowers obtain an equal share of the penalty against the usurious lender.

The Receivership Plaintiffs agree with the RFP Defendants' position; however, they argue that the Court need not engage in rules of construction as the statute is plain and unambiguous.

Section 6-26-4(a) declares: "[e]very contract made in violation of any of the provisions of § 6-26-2, and every mortgage, pledge, deposit, or assignment made or given as security for the performance of the contract, shall be usurious and void." Sec. 6-26-4(a). Moreover, the provision of § 6-26-4(c) reads in pertinent part as follows:

> "(c) Nothing contained in this section shall affect the rights, duties or liabilities of any persons acting under the provisions of title 19, and if the borrower shall, either before or after suit, make any payment on the contract, either of principal or interest, or of any part of either, and whether to the lender or to any assignee, endorsee, or transferee of the contract, the borrower shall be entitled to recover from the lender the amount so paid in an action of the case. Receipts shall be given whenever payments are made of either principal or interest." Sec. 6-26-4(c).

This provision of the usury statute allows for recovery of damages in the event that a contract is found in violation of the usury statute. However, the crux of the issue before this Court is who is entitled to the relief: the Non-Receivership Plaintiffs or the Receivership Plaintiffs.

When reviewing a statute, the court first addresses whether or not the statute is clear and unambiguous. *See State v. DiCicco*, 707 A.2d 251, 253 (R.I. 1998). It is well-settled that when

"the language of a statute is unambiguous and expresses a clear and sensible meaning, there is no need for statutory construction or the use of interpretive aids." *Mauricio v. Zoning Bd. of Review of City of Pawtucket*, 590 A.2d 879, 880 (R.I. 1991). Thus, "[i]f we find the statute to be unambiguous, we simply apply the plain meaning and our interpretative task is done." *State v. Diamante*, 83 A.3d 546, 550 (R.I. 2014). Accordingly, when the language of the statute is clear and unambiguous, the Court must interpret the statute literally and must apply the plain and ordinary meaning of every word. *O'Neil v. Code Comm'n for Occupational Safety and Health*, 534 A.2d 606, 608 (R.I. 1987). "[T]he plain language of the statute is the 'best indicator of [legislative] intent.'" *LaBonte*, 93 A.3d at 543 (quoting *Olamuyiwa v. Zebra Atlantek, Inc.*, 45 A.3d 527, 534 (R.I. 2012)) (applying the plain and ordinary meaning to the usury statute).

The present argument between the RFP Defendants and the Non-Receivership Plaintiffs involves requests for statutory construction. *See Pastore v. Samson*, 900 A.2d 1067, 1078 (R.I. 2006) (analyzing the distinction between a remedial statute and a statute in derogation of the common law). This Court has concluded that it need not perform this analysis because under the plain language of the statute, a "borrower shall be entitled to recover from the lender *the amount so paid*" on either principal or interest to the lender, assignee, endorsee, or transferee when the contract was deemed usurious and voided. Sec. 6-26-4(c) (emphasis added). Thus, the plain and unambiguous language of the statute entitles the borrower, not a guarantor, to recover the amount so paid. *Id*.

This conclusion reflects the priority of recovery afforded to the borrowers, who suffer direct injury by making payments on these usurious transactions as opposed to guarantors. *See Sheehan v. Richardson*, 315 B.R. at 242. It is well-settled "'the Legislature is presumed to have intended each word or provision of a statue to express a significant meaning, and the court will

give effect to every word, clause, or sentence, whenever possible.'" *LaBonte*, 93 A.3d at 543 (quoting *State v. Bryant*, 670 A.2d 776, 779 (R.I. 1996)). To find the language of the statute holds otherwise would violate the basic canons of statutory construction. *Id*. Accordingly, this Court applies the plain meaning of § 6-26-4(c) to the facts at hand in order to ascertain which individual or entity is entitled to relief under the statute.

The RFP Defendants have produced detailed records in response to the Non-Receivership Plaintiffs' request regarding payments by the borrowers on the usurious loans. These records included the Schedule of Payments, Summary of Payments, and Schedule of Escrow Payments on each transaction pertaining to the Fourteen Million Dollar Note. Importantly, it is uncontested that the production of documents outlines each payment made on the Fourteen Million Dollar Note. In light of this production, the Non-Receivership Plaintiffs aver that the payments listed within the summary were made by third parties who are not affiliated with the Receivership Plaintiffs. Instead, they contend the third parties merely purchased parcels of land in the Centre of New England development.

Based on the Summary of Payments, forty-four of the fifty-one categories of payments consisted of payments by third parties, who made payments to the RFP Defendants in exchange for conveyance of property within the Centre of New England. RFP Defs.' Entitlement Mot. Ex. A-4, Tavenner Aff. ¶ 20, Jan. 9, 2015; Ex. A-4-F. This contractual arrangement involved a third party disbursing payment on behalf of the primary transacting parties in order for the third party to receive title of land. After receiving payment from the third party, the RFP Defendants released or subordinated their security interest in the corresponding Centre of New England Property. RFP Defs.' Entitlement Mot. Ex. A-4, Tavenner Aff. ¶ 18, Jan. 9, 2015. This contractual arrangement

constituted a payment by the Receivership Plaintiffs, as borrowers, to the RFP Defendants, as usurious lenders.

Here, the Receivership Plaintiffs, as the Commerce Park Entities, were the owners of the conveyed property. Instead of receiving payment from the third parties in exchange for the conveyance, the third parties simply made payments to the RFP Defendants on behalf of the Receivership Plaintiffs. Further, the Receivership Plaintiffs received the value of property conveyance by obtaining a credit against their prior indebtedness to the RFP Defendants. This form of transactional arrangement is similar to the rest of the transactions listed in the Schedule of Payments.

Transactions involving real estate conveyances clearly constitute payment by the Receivership Plaintiffs as a borrower under § 6-26-4(c). In consideration of payments made to the RFP Defendants for the various parcels, the RFP Defendants released their mortgage and credited the payment towards the Receivership Plaintiffs' total indebtedness. Thus, the Receivership Plaintiffs rendered value through a form of payment to the RFP Defendants, which was credited against the total indebtedness. Finally, the Non-Receivership Plaintiffs state, "[N. Cambio] and [V. Cambio] acknowledge that they did not write any personal checks or send wires from a personal bank account to [RFP Defendants]." Non-Receivership Pls.' Obj. Entry Order Granting Entitlement Mot. at 12, Feb. 23, 2018. While the Receivership Plaintiffs similarly may not have written personal checks on all transactions, the Receivership Plaintiffs made payments via property conveyances to third parties in exchange for the RFP Defendants' release of the corresponding mortgages.

With respect the Seven Million Dollar Note, the Receivership Plaintiffs are the only borrowers listed on the Note. Based on the Court's Decision herein, the Receivership Plaintiffs

are the only party that may recover under § 6-26-4(c) for the Seven Million Dollar Note. The RFP Defendants also request this Court to dismiss the Non-Receivership Plaintiffs' Count XXX which relates to the Four Million Dollar Note. Since no party thus far has moved to find the Four Million Dollar Note in violation of usury under § 6-26-2, however, this Court denies the Entitlement Motion on Count XXX. Therefore, this Court grants the RFP Defendants' Entitlement Motion seeking the dismissal of Non-Receivership Plaintiffs' Count XIV and XX and denies request for the dismissal of Count XXX.

B

Punitive Damages

The RFP Defendants seek summary judgment against the Non-Receivership Plaintiffs relating to their claim for punitive damages relating to the Fourteen Million Dollar Note, Seven Million Dollar Note, and the Four Million Dollar Note.[23] The RFP Defendants contend that the Non-Receivership Plaintiffs cannot recover under a punitive damages theory if this Court finds that the Non-Receivership Plaintiffs are not entitled to recover under § 6-26-4(c). In opposition, the Non-Receivership Plaintiffs argue that punitive damages are to deter future misconduct by the wrongdoing party; thus, the Non-Receivership Plaintiffs need not point to any specific injury to themselves in order to maintain a punitive damages award.

The purpose of punitive damages is to punish the wrongdoer whose "wrongful conduct was malicious or intentional and to deter him" from future misconduct. *Palmisano v. Toth*, 624 A.2d 314, 317-18 (R.I. 1993) (holding "the party seeking punitive damages has the burden of producing 'evidence of such willfulness, recklessness or wickedness, on the party at fault'"). "The standard in Rhode Island for imposing punitive damages is rigorous and will be satisfied only in instances

[23] Respectively, Counts XV, XXI, and XXXI.

wherein a defendant's conduct requires deterrence and punishment *over and above* that provided in an award of compensatory damages." *Id*. at 318 (citing *Davet v. Maccarone*, 973 F.2d 22, 27 (1st Cir. 1992)) (emphasis added). This phrase has been interpreted as meaning "in addition to"; therefore, "this Court determines that an award of compensatory damages is a prerequisite for an award of punitive damages for deterrence and punishment." *Rowley v. 25 India Point St. Corp.*, No. C.A. PC00-1810, 2004 WL 253566, at *8 (R.I. Super. Jan. 30, 2004) (citing *Hargraves v. Ballou*, 131 A.2d 643, 47 R.I. 186 (1926)). Additionally, "'a vast majority of jurisdictions hold that as a predicate for an award of punitive damages, a plaintiff must establish actual injury and be entitled to an award of at least nominal damages.'" *Id*. (citing Linda L. Schlueter and Kenneth R. Redden, *Punitive Damages* § 6.1(D)(3) (4th ed. 2000)). Therefore, most punitive damages awards are not sustainable if not supported by an established award for compensatory or nominal damages. *Id.*

Here, the Non-Receivership Plaintiffs cannot point to any injury allowing recovery of compensatory damages under the usury statute damages provision—§ 6-26-4(c). The Non-Receivership Plaintiffs have failed to prove that they rendered any payments to the RFP Defendants as lenders in order to be entitled to any form of recovery under the usury statute. Accordingly, the Non-Receivership Plaintiffs are unable to maintain a claim for punitive damages because they lack the prerequisite recovery under § 6-26-4(c). This Court, however, notes that no party has moved to declare the Four Million Dollar Note usurious and void; therefore, the claims related to the Four Million Dollar Note still stand. For the reasons recited above, this Court grants

summary judgment against Non-Receivership Plaintiffs' Counts XV and XXI; but, Count XXXI regarding the Four Million Dollar Note remains.[24]

C

RICO

The RFP Defendants and Receivership Plaintiffs move for summary judgment on the Non-Receivership Plaintiffs' claims of Rhode Island's Racketeer Influenced and Corrupt Organizations Act (RICO) violations. The RFP Defendants aver that summary judgment should be granted in their favor against the Non-Receivership Plaintiffs' RICO claims if this Court finds that the Non-Receivership Plaintiffs are not entitled to relief under § 6-26-4(c). The RFP Defendants assert specifically that the RICO statute affords civil relief for the collection of an unlawful debt, which is an inapplicable remedy for the Non-Receivership Plaintiffs who did not make any payments to the RFP Defendants on the usurious loans.

Section 7-15-4(c) of the Rhode Island General Laws provides civil recovery for certain prohibited activities enlisted in the Racketeer Influenced and Corrupt Organizations Act. Sec. 7-15-4(c) ("[a]ny person injured . . . by reason of a violation of this chapter may sue in any appropriate court and shall recover treble damages"). The RICO statute designates the collection of an "unlawful debt" as one of those prohibited activities. Sec. 7-15-2(a). "Unlawful debt" is defined as a "debt incurred . . . that is unenforceable under state law in whole or in part as to principal or interest because of the law relating to usury." Sec. 7-15-1(d). Additionally, the RICO

[24] Accordingly, the Non-Receivership Plaintiffs are not entitled to recover for direct damages on the Loans. Since the Non-Receivership Plaintiffs are unable to seek relief under the usury statute's direct damages provision, the Non-Receivership Plaintiffs are not able to assert punitive damages claims. *See* § 6-26-4(c). Therefore, this Court also grants the RFP Defendants' Motion for Summary Judgment in part, thereby dismissing the Non-Receivership Plaintiffs' claims relating to damages for the usury violations.

statute provides "[i]n order for an injured person to recover pursuant to this subsection, it is not necessary to show that the defendant has been convicted of a criminal violation of this chapter." Sec. 7-15-4(c).

"Rhode Island usury and RICO laws are meant to protect victims of a usurious loan, as remedies are available to all borrowers." *Sheehan*, 315 B.R. at 242. "Any person" who has been "injured in his, her, or its business or property by reason of a violation of this chapter" may sue under the Rhode Island RICO Act. Sec. 7-15-4(c). "[W]here RICO statutes provide a civil remedy, claims should only be denied if statutes and case law prohibit recovery." *Sheehan*, 315 B.R. at 241.

Here, the Non-Receivership Plaintiffs assert they have incurred damage to their business and property due to the loans issued by the RFP Defendants. Additionally, the Non-Receivership Plaintiffs claim both the cost of the receivership and the subsequent damage to the Non-Receivership Plaintiff's credit ratings has caused personal injury. *See* RFP Defs.' Entitlement Mot. Ex. B-5, N. Cambio Aff. ¶¶ 5, 9, Dec. 30, 2014. The RFP Defendants fail to address these alleged injuries, instead relying on their argument that since the Non-Receivership Plaintiffs did not make any individual payments to the RFP Defendants, the RFP Defendants thus did not collect any unlawful debt from the Non-Receivership Plaintiffs. The RICO statute, however, provides for no such requirement.

Though the Non-Receivership Plaintiffs are not entitled to damages under the usury statute, the RICO statute does not specifically state that a plaintiff must have been the party to make the payments to the party collecting the prohibited unlawful debt. Instead, the statute provides "any person" who has been injured due to the collection of unlawful debt may sue under the RICO statute. *See* Sec. 7-15-4(c). As such, the Non-Receivership Plaintiffs have raised a genuine issue

of material fact as it relates to the RICO counts. Thus, for these reasons, this Court denies the RFP Entitlement Motion as to the Non-Receivership Plaintiffs' Counts XVI, XVII, XVIII, XXII, XXIII, XXIV, XXVI, XXVII, XXVIII, XXXII, XXXIII, XXXIV involving the alleged RICO violations.

D

Causes of Action under G.L. 1956 § 9-1-2 and § 6-26-3

The RFP Defendants also move for summary judgment on the Non-Receivership Plaintiffs' Counts XXXVII through XL, which seek civil liability for a knowing and willful violation of the usury statute. Specifically, the Non-Receivership Plaintiffs allege that they are entitled to an award of damages against the RFP Defendants pursuant to § 9-1-2 for their violation under § 6-26-3—the criminal usury statute. The RFP Defendants contend that § 9-1-2 imposes a ten-year statute of limitations; therefore, the Non-Receivership Plaintiffs are barred from seeking relief since the loans were entered into in December of 2000. On the other hand, the Non-Receivership Plaintiffs assert that they suffered damages during the course of the usurious loans because the funds to the RFP Defendants could have been diverted to paying off other costs and expenses.

Under § 9-1-2, when a "person [ ] suffer[s] any injury to his . . . estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender." Sec. 9-1-2. This statute provides crime victims with a right of recourse where none previously existed. *Da Costa v. Rose*, 70 R.I. 163, 167, 37 A.2d 794, 796 (1944). Thus, § 9-1-2 creates a new right of action where a victim may bring an action for damages even when no criminal complaint was filed, "[h]owever, it does not create a distinct cause of action for purposes of determining the appropriate statute of limitations." *Lyons v. Town of Scituate*, 554 A.2d 1034, 1036 (R.I. 1989). The provision asserting the statute of limitations states, "[e]xcept as

otherwise specially provided, all civil actions shall be commenced within ten (10) years next after the cause of action shall accrue, and not after." Sec. 9-1-13(a). Moreover, § 6-26-2 provides relief when any person "willfully and knowingly violate[d] any of the provisions of § 6-26-2" and is thus guilty of criminal usury. Sec. 6-26-3.

Here, the RFP Defendants violated §§ 6-26-2(a) and 6-26-2(e). These violations occurred at the moment the parties entered into the Fourteen Million Dollar Note and the Seven Million Dollar Note in December of 2000. The Receivership Plaintiffs and the Non-Receivership Plaintiffs commenced this action in Rhode Island Superior Court on April 8, 2011. Accordingly, the action was brought after the statute of limitations ran with respect to the claim in December 2010. As the statute of limitations for the Non-Receivership Plaintiffs' action has expired, there is no genuine issue of material fact. The RFP Defendants' motion for summary judgment is granted with respect to Counts XXXVII through XL in the Non-Receivership Plaintiffs' Amended Complaint.

E

Constructive Trust

The RFP Defendants move for summary judgment against the Non-Receivership Plaintiffs' Counts seeking a constructive trust on all four loans.[25] The RFP Defendants aver that the Non-Receivership Plaintiffs are incapable of obtaining an equitable remedy because they are not entitled to receive funds under § 6-26-4(c). In contrast, the Non-Receivership Plaintiffs argue that the Legislature did not intend to curtail the Court's equitable powers through the imposition of § 6-26-4(c).

[25] RFP Defendants move on Counts XLIII, XLIV, and XLV.

The Rhode Island Supreme Court has reiterated, "'[t]he underlying principle of a constructive trust is the equitable prevention of unjust enrichment of one party at the expense of another in situations in which legal title to property was obtained by fraud or in violation of a fiduciary or confidential relationship.'" *Dellagrotta v. Dellagrotta*, 873 A.2d 101, 111 (R.I. 2005) (quoting *Renaud v. Ewart*, 712 A.2d 884, 885 (R.I. 1998)). In order to impose a constructive trust, the plaintiff must demonstrate "by clear and convincing evidence (1) that a fiduciary duty existed between the parties and (2) that either a breach of promise or an act involving fraud occurred as a result of that relationship." *Manchester v. Pereira*, 926 A.2d 1005, 1013 (R.I. 2007) (citing *Renaud*, 712 A.2d at 885).

This Court has established that the Non-Receivership Plaintiffs are not entitled to damages under the usury statute. This conclusion is dispositive of the Non-Receivership Plaintiffs request that this Court impose a constructive trust. Therefore, the Court grants summary judgment in favor of the RFP Defendants' in their Entitlement Motion as to the Non-Receivership Plaintiffs' Counts XLIII, XLIV, and XLV.

F

Unlawful Foreclosure

Finally, the Non-Receivership Plaintiffs in Count LIII allege wrongful foreclosure on the Centre of New England real property. The RFP Defendants move in Count LIII of the Entitlement Motion on the grounds that the Non-Receivership Plaintiffs lack the ability to assert a wrongful foreclosure claim because they do not own any of the real estate involved. It follows, according to the RFP Defendants, that only the Receivership Plaintiffs have the capability to assert such a claim.

"[E]quity never . . . lends its aid to enforce a forfeiture . . ." *Albertson v. Leca*, 447 A.2d 383, 387 (R.I. 1982) (quoting *Marshall v. Vicksburg*, 82 U.S. 146, 149 (1872)). The party must have an interest in the property in order to assert a wrongful foreclosure action. *See ABAR Associates v. Luna*, 870 A.2d 990, 996 (2005). Equitable title holders are entitled to the benefits of the foreclosure, but the holder of legal title is the party entitled to foreclose on the property. *See Bucci v. Lehman Brother Bank, FSB*, 68 A.3d 1069, 1087 (R.I. 2013).

Here, the Non-Receivership Plaintiffs do not own any property within the Centre of New England. Instead, the Receivership Plaintiffs were at all times the title owners of the real property that was encumbered by the mortgages subject to the RFP Defendants' loans. RFP Defs.' Entitlement Mot. Ex. A-4, Tavenner Aff. ¶ 8, Jan. 9, 2015. The Non-Receivership Plaintiffs are, however, among the borrowers listed on the Fourteen Million Dollar Note and thus have an equitable interest in the property, despite the fact that they do not hold legal title to the property. RFP Defs.' Entitlement Mot. Ex. A-4, Tavenner Aff. ¶ 14, Jan. 9, 2015. As parties with an equitable interest in the property, however, the Non-Receivership Plaintiffs do not have a right to foreclose on the property. *See Bucci*, 68 A.3d at 1087. Rather, they are only entitled to the benefits of foreclosure. Therefore, this Court grants the RFP Defendants' Entitlement Motion relating to unlawful foreclosure with respect to the Non-Receivership Plaintiffs' Count LIII.

IV

Conclusion

After reviewing the entire record and duly considering the arguments made by counsel, this Court:

1. Grants the Receivership Plaintiffs' Motion for Partial Summary Judgment on Counts I and IV of the Receivership Plaintiffs' Amended Complaint. Accordingly, the Court deems the

Fourteen Million Dollar Note and the Seven Million Dollar Note usurious, void and unenforceable. The mortgages associated with the Notes and all other liens and loan documents are void. Furthermore, the Receivership Plaintiffs are solely entitled to recover damages related to the payment of principal and interest made on the usurious notes;

2. Denies RFP Defendants' Motion for Summary Judgment as to Counts I and IV of the Receivership Plaintiffs' Amended Complaint and grants the RFP Defendants' Motion for Summary Judgment as to the Non-Receivership Plaintiffs' claims for damages due to usury violations;
3. Grants the Non-Receivership Plaintiffs' Motion for Summary Judgment Pursuant to the Third Rule 16 Order in part as to Counts XIII, XIX, XXXV, and XXXVI of the Non-Receivership Plaintiffs' Complaint, and denies the motion in part as to Counts XV and XX of the Non-Receivership Plaintiffs' Complaint; and,
4. Grants the RFP Defendants' Entitlement Motion for Summary Judgment in part as to Counts XIV, XV, XX, XXI, XXXVII, XXXVIII, XXXIX, XL, LIII of Non-Receivership Plaintiffs' Complaint and denies the RFP Defendants' Entitlement Motion for Summary Judgment on Counts XVI, XVII, XXII, XXIII, XXIV, XXVI, XXVII, XXVIII, XXX, XXXI, XXXII, XXXIII, XXXIV, XLIII, XLIV, XLV of the Non-Receivership Plaintiffs' Complaint.

Counsel shall confer and submit the appropriate order in accordance with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Commerce Park Realty, LLC, et al. v. HR2-A Corp., et al.

CASE NO: PB-2011-1922

COURT: Providence County Superior Court

DATE DECISION FILED: June 19, 2019

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

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