IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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CLEARVIEW FINANCIAL SERVICES, LLC,	**CASE NO. ST-2014-CV-621**
Plaintiff,	**ACTION FOR DEBT, FORECLOSURE OF MORTGAGES, AND ENFORCEMENT OF GUARANTY**
v.	
JIM TILLETT CARIBBEAN, INC., TOTAL VISION, INC., THE BANK OF NOVA SCOTIA and SILVERDEER ST. JOHN EQUITY PARTNERS I, LLC,	
Defendants	

MEMORANDUM OPINION AND ORDER

Before the Court is a Motion to Dismiss (the "Motion") filed by Defendants Jim Tillett Caribbean, Inc. ("JTC") and Total Vision, Inc. ("TVI") on February 4, 2015. Plaintiff filed a document titled Opposition to Motion to Dismiss Plaintiff's Complaint (the "Opposition") on February 3, 2015, and on March 26, 2015, JTC and TVI filed their Reply to Plaintiff's Opposition. JTC and TVI have moved to dismiss all counts of Plaintiff's Complaint for failure to state claims upon which relief can be granted. Plaintiff's Complaint purports to state claims for debt, foreclosure, and enforcement of a guaranty agreement. Because Plaintiff's Complaint states plausible claims for debt, foreclosure, and enforcement of a guaranty agreement, JTC and TVI's Motion will be denied.

BACKGROUND

This case concerns an agreement between Plaintiff, JTC, and TVI. Plaintiff alleges that JTC and TVI had each previously executed guaranties to Plaintiff in the principal amount of $350,000 on mortgage loan debt owed by Cruz Bay Investors, LLC.[1] In exchange for the reduction of those obligations, JTC executed a note in the principal amount of $225,000 to Plaintiff (the "Note"), and TVI executed a guaranty of that Note in the same amount to Plaintiff (the "Guaranty").[2] Both the Note and Guaranty provide that each shall become due and payable in their entirety by reason of default in the payment of interest or principal when due, among other events of default specified in each instrument.[3]

Plaintiff further alleges that repayment of the Note and Guaranty is secured by a first priority mortgage (the "First Mortgage") granted by TVI to Plaintiff and The Sanford Grishman

[1] Compl. ¶ 8.
[2] *Id.* ¶ 9.
[3] *Id.* ¶ 10.

Revocable Trust Dated October 13, 1994 (the "Trust") on or about June 9, 2005.[4] The First Mortgage encumbers Parcel No. 126-B-2 Estate Annas Retreat, No. 1 New Quarter, St. Thomas, USVI.[5] Although the First Mortgage was originally granted to Plaintiff and the Trust, the Trust subsequently assigned its interest in the First Mortgage to Plaintiff.[6] Plaintiff thus holds all rights to the First Mortgage.

Repayment of the Note and Guaranty is also secured by a second priority mortgage (the "Second Mortgage") granted by JTC to Plaintiff and the Trust on or about September 29, 2005.[7] The Second Mortgage encumbers Parcel 126 Remainder Estate Annas Retreat, No. 1 New Quarter, St. Thomas, USVI.[8] Although the Second Mortgage was originally granted to Plaintiff and the Trust, the Trust subsequently assigned its interest in the Second Mortgage to Plaintiff.[9] Plaintiff thus holds all rights to the Second Mortgage.

Plaintiff filed its Complaint on December 30, 2014, alleging that JTC has defaulted under the terms of the Note and that TVI has defaulted under the terms of the Guaranty.[10] Plaintiff seeks to foreclose on both the First Mortgage and the Second Mortgage, and to obtain a judgment for all outstanding sums due under the Note and Guaranty.[11] JTC and TVI have moved to dismiss Plaintiff's Complaint.

LEGAL STANDARD

"The adequacy of a complaint is governed by Rule 8 of the Federal Rules of Civil Procedure."[12] A complaint must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief."[13] To survive a motion to dismiss for failure to state a claim upon which relief can be granted, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim for relief that is plausible on its face.'"[14] All material allegations in the complaint are taken as true, and the Court must construe all facts in a light most favorable to the non-moving party.[15] However, a plaintiff is obliged to provide "more than labels and conclusions."[16] Determining whether a complaint states "a plausible claim for relief" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."[17] In making the plausibility determination, the Supreme Court of the Virgin Islands instructs that:

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[4] *Id.* ¶ 11.
[5] *Id.*
[6] *Id.* ¶¶ 11–12.
[7] *Id.* ¶ 13.
[8] *Id.*
[9] *Id.* ¶¶ 13–14.
[10] *Id.* ¶ 15.
[11] *See id.* at 5 (listing Plaintiff's requests for relief).
[12] *Brady v. Cintron*, 55 V.I. 802, 822 (V.I. 2011). Federal Rule of Civil Procedure 8 applies to this proceeding through the operation of Superior Court Rule 7.
[13] FED. R. CIV. P. 8(a)(2).
[14] *Ashcroft v. Iqbal*, 559 U.S. 662, 677 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2002)).
[15] *L'Henri, Inc. v. Vulcan Materials Co.*, Civ. No. 206–170, 2010 WL 924259, at *1 (D.V.I. Mar. 11, 2010) (citing *Christopher v. Harbury*, 536 U.S. 403, 406 (2002)).
[16] *Twombly*, 550 U.S. at 555.
[17] *Iqbal*, 559 U.S. at 679.

> First, the Court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either legal conclusions couched as factual allegations or naked assertions devoid of further factual enhancement. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief.[18]

If the remaining facts are sufficient enough for the court to draw a reasonable inference that the defendant is liable based on the elements the plaintiff must plead, then the claim is considered plausible.[19]

ANALYSIS

"In order to 'prevail on a foreclosure claim, the plaintiff must show (1) the debtor executed a promissory note and mortgage, (2) the debtor is in default under the terms of the note and mortgage, and (3) the lender is authorized to foreclose on the property mortgaged as security for the note.'"[20] Plaintiff's Complaint contains sufficient factual allegations to support its foreclosure claims against both JTC and TVI. Because Plaintiff has stated plausible foreclosure claims against JTC and TVI, Plaintiff has also stated plausible claims for the recovery of all amounts due under the Note and Guaranty.

I. PLAINTIFF HAS STATED A PLAUSIBLE CLAIM AGAINST JTC FOR FORECLOSURE OF THE SECOND MORTGAGE.

Plaintiff alleges that JTC executed the Note,[21] and that JTC executed the Second Mortgage.[22] Plaintiff alleges that JTC defaulted under the terms of the Note by failing to make payments of principal and interest when due.[23] Finally, Plaintiff alleges that the Second Mortgage was executed by JTC to secure the repayment of the Note,[24] and that Plaintiff holds all rights in the Second Mortgage.[25] If true, these facts entitle Plaintiff to foreclose against JTC under the terms of the Second Mortgage.

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[18] *Brady v. Cintron*, 55 V.I. 802, 822-23 (2011) (citing *Joseph v. Bureau of Corrections*, 54 V.I. 644, 649–50 (2011)).
[19] *Id.*
[20] *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 232 (V.I. 2011) (citing *Thompson v. Florida Wood Treaters, Inc.*, 52 V.I. 986, 995 (D.V.I. 2009)).
[21] Compl. ¶ 9.
[22] *See id.* ¶ 13 (alleging that JTC mortgaged Parcel No. 126 Remainder Estate Annas Retreat to further secure the repayment of the Note and Guaranty).
[23] *Id.* ¶ 15.
[24] *Id.* ¶ 13.
[25] *See id.* ¶¶ 13–14 (clarifying that Plaintiff is the sole interest holder with regard to the mortgage against Parcel No. 126 Remainder Estate Annas Retreat).

II. PLAINTIFF HAS STATED A PLAUSIBLE CLAIM AGAINST TVI FOR FORECLOSURE OF THE FIRST MORTGAGE.

Plaintiff alleges that TVI executed the Guaranty,[26] and that TVI executed the First Mortgage.[27] Plaintiff alleges that TVI defaulted under the terms of the Guaranty by failing to make payments of principal and interest under the terms of the Guaranty despite demand to do so.[28] Finally, Plaintiff alleges that the First Mortgage was executed by TVI,[29] and that Plaintiffs holds all rights in that mortgage.[30] If true, these facts entitle Plaintiff to foreclose against TVI under the terms of the First Mortgage.

III. PLAINTIFF HAS STATED CLAIMS AGAINST JTC AND TVI FOR THE RECOVERY OF OUTSTANDING AMOUNTS DUE UNDER THE NOTE AND GUARANTY, RESPECTIVELY.

In a foreclosure action, "if it appears that a promissory note or other personal obligation for the payment of the debt has been given by the mortgagor . . . the court shall also adjudge a recovery of the amount of such debt . . . as in the case of an ordinary judgment for the recovery of money."[31] Here, Plaintiff has pled that the Second Mortgage secured the repayment of the Note given by JTC to Plaintiff.[32] Plaintiff has also pled that the First Mortgage secured performance of the Guaranty executed by TVI for Plaintiff's benefit.[33] Because Plaintiff has stated a plausible foreclosure claim against JTC and TVI each, Plaintiff has also stated a claim for the recovery of all sums due under the Note and Guaranty pursuant to the provisions of the Virgin Islands Code.

CONCLUSION

When assumed to be true, the factual allegations of Plaintiff's Complaint entitle Plaintiff to foreclose on the mortgages at issue in this case. Because the Virgin Islands Code provides that the Court shall adjudge a recovery of the debts secured by the First Mortgage and the Second Mortgage, Plaintiff has also stated a claim for the recovery of all amounts due under the Note and Guaranty.

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[26] *Id.* ¶ 9.
[27] *See id.* ¶ 11 (alleging that TVI mortgaged Parcel No. 126-B-2 Estate Annas Retreat to secure the repayment of the Note and Guaranty).
[28] *Id.* ¶ 15.
[29] *Id.* ¶ 11.
[30] *See id.* ¶¶ 11–12 (clarifying that, although another entity held an interest in the mortgage against Parcel No. 126-B-2 Estate Annas Retreat, the interest was conveyed to Plaintiff before the institution of this action).
[31] V.I. CODE ANN. tit 28 § 531(a).
[32] Compl. ¶¶ 9, 13.
[33] *Id.* ¶¶ 9, 11.