IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

FIRSTBANK PUERTO RICO,	)
	)
Plaintiff,	) **CASE NO. ST-12-CV-239**
v.	)
	) **ACTION FOR DEBT,**
	) **FORECLOSURE OF**
EDMOND WEBSTER a/k/a EDMOND R. WEBSTER,	) **LIENS, and SPECIFIC**
BERNICE WEBSTER, CLEVE E. WEBSTER a/k/a	) **PERFORMANCE**
CLEVE WEBSTER, OASIS DEVELOPMENT, LLC,	)
and TRIUMPH DEVELOPMENT, LLC,	)
	)
Defendants.	)

MEMORANDUM OPINION

Pending before the Court are Defendants' motion for reconsideration[1] and motion to vacate.[2] For the following reasons, the Court will order Defendants to file an informational motion.

FACTUAL AND PROCEDURAL HISTORY

On March 6, 2013, this Court issued summary judgment in favor of Plaintiff for the principal, interest and costs under the 2008, 2009, and 2010 construction loans. On March 21, 2013, the Court issued a Memorandum Opinion granting in part Plaintiff's motion to enforce an assignment of leases and rents. On March 7, 2014, the Court issued an Order certifying the March 6, 2013, Order as a final judgment.

STANDARD

In the Virgin Islands, there are several rules that apply to a motion for reconsideration. LRCi 7.3 provides that a motion for reconsideration:

[1] The motion for reconsideration, filed on March 21, 2014, challenges the March 7, 2014, Order.
[2] The motion to vacate, filed on May 27, 2014, challenges the March 6, 2013, Order and the March 21, 2013, Order.

> shall be filed within fourteen (14) days after the entry of the order or decision unless the time is extended by the Court ... A motion to reconsider shall be based on:
> 1. intervening change in controlling law;
> 2. availability of new evidence, or;
> 3. the need to correct clear error or prevent manifest injustice.

Superior Court Rule 50 establishes that a court "may set aside an entry of default, judgment by default, or judgment after trial or hearing" for good cause shown. Rules 59 to 61 of the Federal Rules of Civil Procedure govern the application of Superior Court Rule 50. Under Fed. R. Civ. P. 59, a motion for a new trial "must be filed no later than 28 days after the entry of judgment." Fed. R. Civ. P. 60(b) provides that a court may grant relief from final judgment, order or proceeding upon a showing of:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

A party has only a year to file after the entry of judgment under Fed. R. Civ. P. 60(b)(1) thru (3) and a reasonable time for subsections (4) thru (6). The Supreme Court of the Virgin Islands has determined that "[i]f a motion for reconsideration is brought within ten days of the order to be reconsidered, the motion is to be treated as a Federal Rule 59(e) motion to alter or amend judgment."[3] In addition, courts must "consider the motion to

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[3] *Ruiz v. Jung*, Civ. No. 2008-035, 2009 WL 3568182, at *3 (V.I. Oct. 19, 2009).

reconsider as one brought pursuant to Federal Rule 60(b)" if the motion is brought after ten days of the order to be reconsidered.[4]

ANALYSIS

Defendants' motion to vacate was signed by Cleve Webster, pro se, Edmond Webster, pro se, and Bernice Webster, pro se, but the motion was brought on behalf of the Websters, Oasis Development, LLC, and Triumph Development, LLC. Unless one of the Websters is an attorney licensed to practice in the Virgin Islands or admitted pro hac vice, they are not authorized to file legal documents in this Court on behalf of Defendants Oasis Development, LLC, and Triumph Development, LLC.[5]

Similarly, the motion for reconsideration was signed by Cleve Webster, pro se, but was submitted on behalf of all Defendants. Unless Cleve Webster is an attorney licensed to practice in the Virgin Islands or admitted pro hac vice, he is not authorized to file the motion for reconsideration on behalf of Defendants Edmond Webster, Bernice Webster, Oasis Development, LLC, and Triumph Development, LLC.[6]

In addition, both motions, as well as other recent submissions filed before the Court,[7] reflect that one or more of the Websters is an attorney or has an attorney serving as a ghost writer. In fact, in the motion to vacate, the Websters admit that "Defendants and legal consultants have examined the Court's rules and the findings of the March 6,

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[4] *Id.*
[5] See 4 V.I.C. § 443.
[6] See 4 V.I.C. § 443.
[7] See Defendants' motion to stay filed on April 1, 2014; Defendants' motion for an emergency hearing filed on April 1, 2014; Defendants' reply to Plaintiff's supplemental to informational motion filed on June 6, 2014; Defendants' reply to Plaintiff's opposition to, and motion to strike, Defendants' motion for reconsideration filed on April 22, 2014; Defendants' reply to Plaintiff's opposition to, and motion to strike, Defendants' motion to stay filed on April 29, 2014; Defendants' motion to dismiss Defendant Triumph Development, LLC . filed on May 27, 2014.

2013, Order upholding a contract provision that is so egregious as to amount to a breach of the implied covenant of good faith and fair dealing ..."[8]

The "practice of ghost-writing legal documents to be filed with the Court by litigants designated as proceeding pro se is inconsistent with the procedural, ethical and substantive rules" of this Court.[9] Ghost writing "frustrates the application of Fed. R. Civ. P. 11 which requires all attorneys to verify through their signatures that there are sufficient grounds for the arguments in their pleadings."[10] This practice also gives a pro se party "the unwarranted advantage of having a liberal pleading standard applied and skews the process to the distinct disadvantage of the nonoffending party."[11]

As a result, by June 30, 2014, the Websters shall file a sworn memorandum with the Court stating the following information: (1) whether Cleve Webster, Bernice Webster, or Edmond Webster is or has been licensed to practice law in the Virgin Islands or any jurisdiction of the United States of America; and (2) the identity of the "legal consultants" who assisted the Websters in preparation of the motion to vacate and any other recent filing in this matter.[12] Failure to comply with this directive shall result in sanctions.

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[8] Motion to Vacate, at page 3.
[9] *Laremont–Lopez v. Se. Tidewater Opportunity Ctr.*, 968 F.Supp. 1075, 1080–81 (E.D.Va.1997). See also *Greene v. U.S. Dep't of Educ.*, 4:13CV79, 2013 WL 5503086 (E.D. Va. Oct. 2, 2013) aff'd, 14-1006, 2014 WL 2443788 (4th Cir. June 2, 2014) ("it is improper for lawyers to draft or assist in drafting complaints or other documents submitted to the Court on behalf of litigants designated as pro se").
[10] *Karpov v. Karpov*, CIV. 12-1411-GMS, 2013 WL 653965 (D. Del. Feb. 20, 2013).
[11] *Wesley v. Don Stein Buick, Inc.*, 987 F.Supp. 884 (D.Kan.1997).
[12] See the filings listed in footnote seven.

An Order consistent with this Opinion shall follow.

Dated: June 13, 2013

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Estrella George
Acting Clerk of Court __/__/__

for by: __________
Donovan D. Donovan
Court Clerk Supervisor 6/17/14

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

FIRSTBANK PUERTO RICO, **Plaintiff,** **v.** **EDMOND WEBSTER a/k/a EDMOND R. WEBSTER, BERNICE WEBSTER, CLEVE E. WEBSTER a/k/a CLEVE WEBSTER, OASIS DEVELOPMENT, LLC, and TRIUMPH DEVELOPMENT, LLC,** **Defendants.**	**CASE NO. ST-12-CV-239** **ACTION FOR DEBT, FORECLOSURE OF LIENS, and SPECIFIC PERFORMANCE**

ORDER

The Court having issued a Memorandum Opinion on this date, it is

ORDERED that by June 30, 2014, the Websters shall file a sworn memorandum with the Court stating the following information: (1) whether Cleve Webster, Bernice Webster, or Edmond Webster is or has been licensed to practice law in the Virgin Islands or any jurisdiction of the United States of America; and (2) the identity of the "legal consultants" who assisted the Websters in preparation of the motion to vacate and any other recent filing in this matter; [1] and it is

ORDERED that the failure to comply with this Order shall result in sanctions; and it is

[1] See the filings listed in footnote seven in the Memorandum Opinion.

ORDERED that a copy of this Order and the accompanying Memorandum Opinion shall be directed to the parties and counsel of record.

Dated: June 13, 2014

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Estrella George
Acting Clerk of Court __/__/__

by:
for Donna D. Donovan
Court Clerk Supervisor 6 /17 /14

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

FIRSTBANK PUERTO RICO, **Plaintiff,** **v.** **EDMOND WEBSTER a/k/a EDMOND R. WEBSTER, BERNICE WEBSTER, CLEVE E. WEBSTER a/k/a CLEVE WEBSTER, OASIS DEVELOPMENT, LLC, and TRIUMPH DEVELOPMENT, LLC,** **Defendants.**	**CASE NO. ST-12-CV-239** **ACTION FOR DEBT, FORECLOSURE OF LIENS, and SPECIFIC PERFORMANCE**

MEMORANDUM OPINION

Pending before the Court is Plaintiff's renewed motion for partial summary judgment.[1] For the following reasons, Plaintiff's motion will be granted.

FACTUAL AND PROCEDURAL HISTORY

On September 5, 2007, Defendants executed a Note promising to pay Plaintiff a principal amount of $275,000.00 in monthly installments of $1,946.43.[2] The same day, Defendants executed a second Note for the principal amount of $400,000.00 payable in monthly installments of $2,831.17.[3] On September 6, 2007, Plaintiff recorded a Mortgage against Parcel No. 1X-1-D Estate Wintberg, St. Thomas to secure the $400,000.00 loan and recorded a Mortgage against Parcel No. 1X-1-H Estate Wintberg to secure the $275,000.00 loan.[4] On September 30, 2011, the parties modified the 2007 Notes, adjusting Defendants' monthly payment on the $275,000.00 Note to $2,080.68 beginning

[1] Plaintiff filed its motion on March 22, 2013.
[2] Exhibit 7. The Note lists Parcel No. 1X-1-H Estate Wintberg, St. Thomas as a heading.
[3] Exhibit 8. The Note lists Parcel No. 1X-1-D Estate Wintberg, St. Thomas as a heading.
[4] Exhibit 9.

on December 1, 2011, and adjusting the monthly payment on the $400,000.00 Note to $3,017.23 beginning on November 1, 2011.[5] On March 27, 2012, Plaintiff submitted a Notice of Default demand letter to Defendants indicating that they were in default under the terms of the $275,000.00 Note and had until April 26, 2012, to make a payment of $3,775.84 to cure their default, failing which Plaintiff "may, at its option, declare all sums … immediately due and payable without further demand."[6] On the same day, Plaintiff sent a similar letter concerning the $400,000.00 Note, requiring a payment of $5,472.10 by April 26, 2012. Given that Defendants did not cure the debts during the time specified, Plaintiff filed its Complaint on May 11, 2012, and filed a motion for summary judgment on November 8, 2012.

In the Statement of Facts accompanying its motion, Plaintiff asserted that "Defendants have made no mortgage payments under the Notes since their last payment of $11,000.00 on December 17, 2010."[7] In response, Defendants provided evidence that they had made a payment of $3,995.00 on December 31, 2012, for Parcel No. 1X-1-D,[8] and a payment of $2,807.00 on January 15, 2013, for Parcel No. 1X-1-H to FirstBank.[9] Defendants also submitted several other proofs of payments as exhibits to their Counterstatement of Undisputed Material Facts. The Court denied Plaintiff's motion for summary judgment concerning the 2007 Notes on March 6, 2013, because Defendants had submitted evidence of payments made under the Notes that were unacknowledged in

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[5] Exhibit 10. The Modification of the Note incorporated by reference the default provisions of the 2007 Notes.
[6] See Notice of Default letter regarding the $400,000.00 Note, at page 2; see also Notice of Default letter regarding the $275,000.00 Note.
[7] Statement of Facts, at ¶ 34.
[8] Defendants' Exhibit Z-5.
[9] Defendants' Exhibit Z-6.

Plaintiff's Statement of Facts accompanying its motion.[10] The Court also noted that Plaintiff failed to send Defendants a notice of acceleration prior to filing the Complaint. On March 24, 2014, the Court held a hearing to determine the extent of Defendants' payments against the mortgages. The Court heard testimony from Plaintiff's witness Hansley Thomas who gave sworn testimony concerning the exhibits attached to Plaintiff's renewed motion for summary judgment. The Court also heard testimony from Defendant Cleve Webster.

STANDARD

Fed. R. Civ. P. 56 provides that summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In considering a motion for summary judgment, a court must "draw … all reasonable inferences from the underlying facts in the light most favorable to the non-moving party."[11] An issue is "genuine" if a reasonable jury could possibly hold in the non-movant's favor with regard to that issue.[12]

ANALYSIS

The 2007 Notes each have a provision in them stating that in the event of default, Plaintiff "may" send Defendants written notice of default and, if the overdue amount is not paid within 30 days, Defendants may be required to immediately pay the principal

[10] The Court also granted Plaintiff's motion with respect to a separate set of construction loans.
[11] *Battaglia v. McKendry*, 233 F.3d 720, 722 (3d Cir. 2000).
[12] *Andersen v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

amount of the loan.[13] The Notes also indicate that the Security Instrument associated with the Note "describes how and under what conditions [Defendants] may be required to make immediate payment in full of all amounts [they] owe under th[e] Note."[14] Both Mortgages indicate that in the event of default, Plaintiff "shall" give Defendants notice thereof and a period of not less than thirty days to cure the default. The Mortgages also state that if Defendants fail to cure the default, Plaintiff "may require immediate payment in full of all sums secured by the [Mortgage] without further demand and may foreclose the [Mortgage] by judicial proceeding."[15] The Notes also have identical provisions pertaining to a "notice of acceleration."[16] In the event the mortgaged properties were "sold or transferred," Plaintiff could require "immediate payment in full of all sums secured" by the Mortgage. The Notes state further that "[i]f [Plaintiff] exercises this option [and requires immediate payment in full of all sums], [Plaintiff] shall give [Defendants] notice of acceleration."[17] The notice of acceleration "shall provide a period of not less than 30 days from the date the notice is given … within which [Defendants] must pay all sums secured by the [Mortgage, failing which Plaintiff] may invoke any remedies … without further notice or demand on [Defendants]."[18]

Given that the secured properties were not transferred or sold, the Court finds that the notice of acceleration provisions in the Notes were not triggered. As a result, Plaintiff needed only to submit a notice of default to Defendants and give them thirty days to cure

[13] Exhibit 7, at ¶ 6, and Exhibit 8, at ¶ 6.
[14] Exhibit 7, at ¶ 10, and Exhibit 8, at ¶ 10.
[15] Exhibit 9, at at ¶ 22.
[16] Exhibit 7, at ¶ 10, and Exhibit 8, at ¶ 10.
[17] *Id.*
[18] *Id.*

the default before accelerating the debt without further demand and initiating judicial proceedings.[19]

Moreover, Defendants submitted no evidence that they cured their default between March 27, 2012, and April 26, 2012. Rather, the earliest evidence of a payment made by Defendants was in June of 2012 after the Complaint was filed. In addition, the payments Defendants made between June of 2012 and January of 2013 only total an amount of $55,747.00, which is well below the principal amounts due under the Modification of Note.

Nevertheless, because it was not clear whether Plaintiff accounted for all the payments Defendants made against the mortgage, the Court initially denied Plaintiff's motion for summary judgment and scheduled the matter for a hearing. At the March 24, 2014, hearing Plaintiff's witness Hansley Thomas provided credible testimony indicating that Plaintiff's exhibits accounted for each of Defendants' payment receipts present in Defendants' Exhibits Z-5 and Z-6. And, Defendants did not provide any testimony or submit any evidence rebutting Plaintiff's evidence.

Construing the facts in the light most favorable to Defendants, there is no genuine issue of material fact that Defendants are in default and no issue of fact concerning the amount of debt that Defendants owe Plaintiff. Accordingly, Plaintiff is entitled to judgment as a matter of law.

[19] The Complaint indicates that indebtedness due under the Notes were accelerated. See Complaint, at ¶ 32.

An Order consistent with this Opinion shall follow.

Dated: June 12, 2013

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Estrella George
Acting ~~Clerk~~ of Court __/__/__

for by: __________
Donna D. Donovan
Court Clerk Supervisor 6/17/14

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FIRSTBANK PUERTO RICO, **Plaintiff,** **v.** **EDMOND WEBSTER a/k/a EDMOND R. WEBSTER, BERNICE WEBSTER, CLEVE E. WEBSTER a/k/a CLEVE WEBSTER, OASIS DEVELOPMENT, LLC, and TRIUMPH DEVELOPMENT, LLC,** **Defendants.**	**) CASE NO. ST-12-CV-239** **) ACTION FOR DEBT, FORECLOSURE OF LIENS, and SPECIFIC PERFORMANCE**

ORDER

The Court having issued a Memorandum Opinion on this date, it is

ORDERED Plaintiff's motion for partial summary judgment is GRANTED; and it is

ORDERED that a copy of this Order and the accompanying Memorandum Opinion shall be directed to the parties and counsel of record.

Dated: June 12, 2014

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Estrella George
Acting Clerk of Court ___/___/___

by:
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Court Clerk Supervisor 6/17/14