NOT FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

THE EDWARDS FAMILY PARTNERSHIP, LLP, Plaintiff, v. ROBIN BAY REALTY, LLC, Defendant.	SX-09-CV-351 ACTION FOR DEBT AND FORECLOSURE OF LIEN ON REAL PROPERTY

MEMORANDUM OPINION

THIS MATTER came before the Court on Plaintiff's Motion for Summary Judgment, filed January 14, 2010. On February 3, 2010, Defendant filed an Opposition to Plaintiff's Motion for Summary Judgment and a Statement of Undisputed Facts. On February 12, 2010, Plaintiff filed a Reply to Defendant's Opposition. The Reply was then followed by a Supplemental Motion for Summary Judgment by the Plaintiff filed on April 19, 2011. The Defendant filed its Opposition thereto on May 9, 2011.

FACTS

On January 10, 2007, Plaintiff and Defendant executed a promissory note in the principal amount of $15,000,000.00 (hereinafter, the "Promissory Note") and a first priority mortgage (hereinafter, the "Mortgage") against certain property located in St. Croix, U.S. Virgin Islands (hereinafter, the "Property") to secure payment. According to the Promissory Note, the entire unpaid principal balance of the Promissory Note, $21,828,204.28 together with all unpaid interest accrued thereon was due on December 1, 2008. According to the Mortgage, failure to pay the said amount due on December 1, 2008 within ten (10) days of maturity is an event of default. After the purchase of the property was completed on January 10, 2007, Plaintiff sent a document entitled "Share Purchase & Option Agreement" for Robin Bay Realty LLC which he signed and permitted the managing member of Robin Bay Realty, LLC to sign as well. The Share Purchase & Option Agreement reference the shares of stock transferred to him by Curtis Robinson and Bamaco, Inc., managing members of Robin Bay Realty, LLC. Plaintiff also sent an Operating Agreement to the managing members of Robin Bay Realty LLC, which was signed by him, and evidenced Plaintiff's ownership in Robin Bay Realty LLC at 61.2%. The Operating Agreement also stated that the interest could be repurchased by the managing members of the company on or before December 1, 2008. Before these agreements were executed, changes were made to the Share Purchase Agreement to reflect the same figures in the Operating Agreement, and signed by two of the managing members of Robin Bay Realty LLC. The Operating Agreement was also amended and then signed by Plaintiff and two of the managing members of Robin Bay Realty, LLC, Michael Mitchell and Curtis Robinson. At this time Defendant contends that Plaintiff's loan evidence by the promissory note and mortgage was then converted into an equity interest.

After the execution of the Share Purchase Agreement and the Amended Operating Agreement, Defendant filed tax returns and provided Plaintiff with K-1 statements for him to file with his tax returns. The K-1 statements made reference to Plaintiff's 61.2% interest in Robin Bay Realty LLC.

On July 22, 2009, Plaintiff filed a Complaint against Defendant alleging that the loan Plaintiff made to Defendant was never converted to an ownership interest and since the promissory note was past due, Plaintiff was moving to foreclose the lien of the Mortgage against Robin Bay Realty, LLC. Subsequently, Plaintiff filed a Motion for Summary Judgment that was opposed by Defendant; and Defendant's Opposition was followed by Plaintiff's Reply.

DISCUSSION

Motion for Summary Judgment

Rule 56 (c) of the Federal Rules of Civil Procedure provides that summary judgment is appropriate 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 judgment as a matter of law." FED. R. CIV. P. 56(c)[1]. A party may file a motion for summary judgment at any time until thirty (30) days after the close of all discovery. FED. R. CIV. P. 56(b). The moving party bears the initial burden of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact or the absence of evidence to support the nonmoving party's case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the moving party's initial burden is satisfied, the burden shifts to the non-moving party who cannot rest on the allegations of the pleadings and must "do more than simply show that there is some metaphysical doubt as to the material facts." *See Matsushita Elec. Indus. Co., Ltd v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

A factual dispute is deemed genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Id.* at 247-48. The Court may not make credibility determinations or weigh evidence. *Id.* at 255. "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine

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[1] Rule 56(c) of the Federal Rules of Civil Procedure is made applicable to the Superior Court of the Virgin Islands by Superior Court Rule 7:

> The practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and, to the extent not inconsistent therewith, by the Rules of the District Court, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence. V.I. Super. Ct. R. 7.

issue for trial'." *Matsushita Elec. Indus. Co.*, 475 U.S. at 587. In considering this motion for summary judgment, this Court must view the record in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *See Morton Intern., Inc. v. A.E. Staley Mfg. Co.*, 343 F.3d 669, 680 (3d Cir. 2003); *Nicini v. Morra*, 212 F.3d 798, 806 (3d Cir. 2000).

In the case at bar, Plaintiff argues that there are no genuine issues as to any material fact in this matter—Defendant's failure to make the required payment under the Promissory Note constitutes as an event of default, thereby authorizing Plaintiff to foreclose the Mortgage.

Defendant, in its Opposition,[2] argues that there are indeed genuine issues of material fact in dispute in this matter. Defendant claims that the loan Defendant owed to Plaintiff under the Promissory Note had been converted into equity in Robin Bay Realty, LLC (Defendant) and thereby extinguishing the loan.

Here, the Court finds that Plaintiff did not meet the initial burden of showing that there are no genuine issues as to any material fact that exists concerning its claims against Defendant. Plaintiff maintains that the parties had initially agreed that Plaintiff would loan $15,000,000.00 to Defendant and that Plaintiff would receive a promissory note, a mortgage and a 61.2% interests in Defendant. Therefore, Plaintiff asserts that the loan could not have been converted into equity in Defendant and thereby extinguished. Plaintiff further asserts that Defendant defaulted on the Promissory Note when it failed to pay the principal balance on the note together with the unpaid interest accrued thereon December 1, 2008. Plaintiff also claims that in the event of default, Plaintiff is authorized to foreclose on the Mortgage and utilize the sale

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[2] Defendant also argued in its Opposition that the Court should deny Plaintiff's Motion for Summary Judgment because it was filed prematurely since discovery is not complete. The Court does not find this Motion for Summary Judgment to be filed prematurely. As mentioned above, under Fed. R. Civ. P. 56(b), a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

proceeds to pay all proper costs, including but not limited to the unpaid balance on the Promissory Note, and interest thereon to the date of payment.

Defendant contends that the initial loan to equity conversion began with a "Share Purchase & Option Agreement," which allotted a percentage of ownership in Robin Bay Realty Inc. to the Plaintiff in exchange for $15,000,000, but that document was never properly executed. Defendant also asserts that the agreement contained a buy back provision, which allowed Defendant to repurchase $15,000,000 worth of stock from Plaintiff by December 1, 2008. After the closing, Plaintiff tendered a signed Sales Agreement, and an Operating Agreement[3] to the Defendant, which contained the terms of the transaction, along with detailed information regarding the ownership shares that Plaintiff retained in Robin Bay Realty, LLC. Defendant further asserts that there was an error in the total number of shares listed in the original agreements, which prompted the parties to amend the Sales Agreement and the Operating Agreement to reflect the correct number of shares Plaintiff would receive. The Amended Operating Agreement was then signed by all three of the Managing Members of Robin Bay Reality Inc.[4]; at that time, it was Defendant's assertion that the loan was converted into an equity interest in favor of the Plaintiff. This assertion is supported by the fact that when Defendant filed its tax returns in 2007, and 2008, Plaintiff was provided with K-1 Statements[5] which confirmed his 61.2% ownership of Robin Bay LLC.

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[3] An Operating Agreement is an Agreement among limited liability company members, governing the LLC's business, and member's financial and managerial rights and duties.

[4] According to the Amended Operating Agreement of Robin Bay Realty, L.L.C., Charles C. Edwards, MD, Robert M. Mitchell and Curtis D. Robinson were the Company's Managers.

[5] A Schedule K-1 is used by a Partnership or S-Corporation to report a partner/shareholder's distributed share of income. This return will distribute the net profit to the shareholder or partners based upon their percentage of stock or how the partnership agreement reads. Rather than being a financial summary for the entire group, the Schedule K-1 document is prepared for each partner or shareholder individually.

In the Supplement to Plaintiff's Motion for Summary Judgment, Plaintiff refutes Defendant's claim that the Sales Agreement and Operating Agreement are enforceable. Plaintiff argues that the documents were not signed by all the members of the business. To counter this argument Defendant alleges that the agreements only required the signatures of Managing Members in order to be enforceable.

It is well established that "Where there is a dispute as to a fact that might affect the outcome of the case, summary judgment cannot be granted." *Creque v. Antilles, Ltd.*, 41 V.I. 107, 109-110 (D.V.I. 2003). (citing *Carty v. Hess Oil Virgin Islands Corporation*, 42 V.I. 125, 129 (D.V.I. App. Div. 1999)). This case rests primarily upon the issue of whether the agreements the parties entered converted Plaintiffs initial loan into an equity interest. At this juncture, the Court finds that genuine issues of fact remain, and based on the existing record, viewed in favor of Defendant, a reasonable jury could find that the Plaintiff converted his loan to an equity interest with the execution of the Amended Operating Agreement.

CONCLUSION

At this stage, viewing the facts and evidence in the light most favorable to Defendant, the Court finds that the Plaintiff has failed to meet its initial burden of showing that there are no genuine issues of material facts that exist in regard to Plaintiff's claim against Defendant. Accordingly, the Court will deny Plaintiff's Motion for Summary Judgment. Finally, an order will be issued consistent with this Memorandum Opinion.

ATTEST:
Venetia Harvey-Velazquez
Clerk of the Court
By: ______________________
Deputy Clerk

Dated: 1/30/13

HAROLD W. L. WILLOCKS
Judge of the Superior Court