



AMALGAMATED BANK v. BONOMO et al

2014 | Cited 0 times | E.D. Pennsylvania | August 21, 2014

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

AMALGAMATED BANK, Plaintiff, v. SAMIR BONOMO, et al., Defendants.

CIVIL ACTION NO. 13-0936

OPINION Slomsky, J. August 21, 2014 I.

Before the Court is a dispute over a loan. Liability is not in issue. Instead, the critical issue here is the amount of money owed. The facts leading up to this litigation are not in dispute. 1

ent \$33,000,000 (Doc. No. 19-9 at 1.) The Loan provided funds

for the construction of a condominium building in Philadelphia, Pennsylvania. (Id.) On September 2, 2005, the Debtor executed and delivered a Promissory Note for \$33,000,000 in

and delivered to Plaintiff a Construction Loan Mortgage Id. at 2.) As further security for the Note, Defendants Samir Bonomo and Rimas Properties, LLC (together, (Id.) In the Guaranty, Defendants guaranteed to Plaintiff the full, prompt and unconditional payment

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of all the obligations under the Note. (Id.) The maturity date of the Note was March 2, 2009, but the Debtor failed to repay the Loan by this date. (Id. at 3.) Defendants also failed to pay the amount due under the Note by the maturity date. (Id.) On June 10, 2009, after numerous Id.) The principle amount of the Judgment is \$28,496,782.72, plus costs. (Id. at

4.)

To collect on this debt, Plaintiff listed the condominium S 6. (Id.) Unit 418 was purchased by a third-party for \$625,000, and Plaintiff eventually received net proceeds in the amount of \$607,760.93 from the sale of that unit. (Doc. No. 19-3 at 5.) Then, Plaintiff petitioned the Philadelphia Court of Common Pleas to fix the fair market value of the Property. (Doc. No. 19-9 at 4-5.) The Court of Common Pleas determined the fair market value of the Property to be \$18,890,562.24. (Id. at 5.)



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Pursuant to Pennsylvania law, Plaintiff reduced the principle amount of the Judgment by the fair market value of the Property and the proceeds from the sale of Unit 418. Later, Plaintiff received \$100,000 in proceeds from the sale of another property owned by Defendant Samir Bonomo (th reduced the principle amount of the Judgment by this amount as well.

refused to pay the remaining amount due under the Judgment, Plaintiff brought in Count I a breach of the Guaranty arising from amount. (Doc. No. 1 at 7.) In Count II, Plaintiff alleges that Defendants are responsible to pay

\$12,785,395.04, plus daily interest from January 1, 2014 to the present of \$1,977.84. (Id. at 8.)

On December 20, 2013, Plaintiff filed a Motion for Summary Judgment on both Counts. (Doc. No. 19.) On January 6, 2014, Defendants filed a Response, arguing that Plaintiff had miscalculated the outstanding amount, but conceding breach of conditions relating to the Loan. (Doc. No. 25.) On January 13, 2014, Plaintiff filed a Reply. (Doc. No. 27.) On March 5, 2014, a hearing was held on the Motion. (Doc. No. 31.) The issue is now ripe for disposition. For reasons that follow, the Court . II.

as to any ma 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) affect the outcome of the suit under the governing law Id. A party seeking summary judgment always bears the initial responsibility for informing the district court of the ba the pleadings, depositions, answers to interrogatories, and admissions on file, together with the which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (internal citations omitted).

Where a non-moving party bears the burden of proof on a particular issue, the moving pointing out to the district court-that there is an absence of evidence to support the nonmoving party's case. Id. at 325. evidence demonstrating no issue of material fact exists, the non-moving party has the duty to set forth specific facts showing that a genuine issue of material fact exists and that a reasonable , 601 F.3d 212, 216 (3d Cir. 2010) (quoting Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 252 (3d

Cir.1999)). Per Rule 56, a federal court must view the evidence presented on the motion in the light most favorable to the non-moving party. Anderson, 477 U.S. at 255. Put another way, he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor Id.

Here, Defendants do not dispute that by failing to pay the amount due on the Loan, they breached the Guaranty. (Doc. No. 4.) Accordingly, there is no genuine dispute as to Count I, and Plaintiff is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). For this reason,

III.



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The Pennsylvania Deficiency Judgment Act controls the procedure a judgment creditor must follow in order to collect on a judgment against a debtor. The relevant provisions of the Act are as follows:

Deficiency Judgments Whenever any real property is sold, directly or indirectly, to the judgment creditor in execution proceedings and the price for which such property has been sold is not sufficient to satisfy the amount of the judgment, interest and costs, and the judgment creditor seeks to collect the balance due on said judgment, interest and costs, the judgment creditor shall petition the court to fix the fair market value of the real property sold. . . . After . . . the determination by the court . . . of the fair market value of the property sold, . . . the debtor shall be released and discharged of such liability to the judgment creditor to the extent of the fair market value of said property determined by the court . . . and . . . thereupon the judgment creditor may proceed by appropriate proceedings to collect the balance of the debt. 2

2 The Act protects debtors by mandating that debtors are released from liability for the fair market value of the property at issue, plus the amount the property sold for at a S

42 Pa. C.S.A. § 8103.

Interest on Judgments Except as otherwise provided by another statute, a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award. 42 Pa. C.S.A. § 8101. set in 41 Pa. S.A. § 202:

Reference in any law or document enacted or executed heretofore document to an without specification of the applicable rate shall be construed to

refer to the rate of interest of six per cent per annum. 41 Pa. S.A. § 202. Here, after the Debtor and Defendants failed to pay the amount due under the Note, Plaintiff filed the confession Judgment against the Debtor in the Philadelphia Court of Common Pleas. (Doc. No. 19-9 at 3.) Plaintiff then became a The principle amount of the Judgment was \$28,496,782.72, plus costs. (Doc. No. 19-9 at 4.) To collect on this debt, Plaintiff listed the Property for S residential units, except Unit 418. (Id.) Unit 418 was purchased by a third-party for \$625,000, and Plaintiff eventually received net proceeds in the amount of \$607,760.93 from the sale of that unit. (Doc. No. 19-3 at 5.)

Because the price for which the Property sold not sufficient to satisfy the amount of the judgment, petition[ed] the court to fix the fair market value of the real property sold. 42 Pa. C.S.A. § 8103. On April 10, 2012, the Philadelphia Court of Common Pleas fixed the fair market value of the property at \$18,890,562.24. (Doc. No. 19-17.) Pursuant to the Act,

f the Property (\$18,890,562.24).



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(\$607,760.93). Later, the debt was also reduced by \$100,000, after Plaintiff received the proceeds from the sale of the 218 Church Street Property. According to Plaintiff, the final amount owed by Defendants was calculated using the following formula:

To calculate the amount owed, [Plaintiff] started with the amount of the Judgment that was entered on June 10, 2009. [\$28,496,782.72, plus costs] [Plaintiff] then calculated interest on this Judgment at the statutory rate of 6%, less reductions in the amount owed due to (a)

(b)

(c)

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In its Motion for Summary Judgment, Plaintiff included the following chart which

Principal Amount of the Judgment: [entered June 10, 2009]

\$28,496,782.72 Plus: Interest at the statutory rate of 6% against the amount of the Judgment from June 11, 2009 through April 21, 2010, the date of [sic] the first Sh

\$1,470,902.43

Less: Fair market value of the Units [Plaintiff] acquired at the S

(\$18,890,562.24) Less: Proceeds from the sale of Unit 418. . . .

(\$607,760.93)

Sub-total: Total amount owed as of April 21, 2010.

\$10,469,361.98 Plus: Interest at the statutory rate of 6% against the total amount owed . . . from April 22, 2010 through December 14, 2012, the date when [Plaintiff] received a share of the proceeds from the sale of [the 218 Church Street Property].

\$1,662,477.32

Less: Proceeds from the sale of [218 Church Street Property].

(\$100,000.00) Sub-Total: Amount owed as of December 14, 2012.



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\$12,031,839.29 Plus: Interest calculated at the statutory rate of 6% against the total amount owed . . . from December 15, 2012 through December 31, 2013.

\$753,555.74

TOTAL OWED AS OF DECEMBER 31, 2013 \$12,785,395.04 Daily Interest Commencing January 1, 2014 ($\$12,031,839.29 \times 6\% \div 365$)

\$1,977.84

(Id. at 10) (emphasis in original). Additionally, in the Guaranty, the parties agreed that Plaintiff should recover costs, -13 at 7.) Section Eleven of the Guaranty reads as follows:

Guarantor agrees that if a default or Event of Default occurs hereunder or under any of the Loan Documents, Guarantor will reimburse Lender for (and the Indebtedness shall be deemed to include) all costs and expenses (including without limitation, es) incurred by Lender, whether or not suit is instituted, in enforcing or exercising any rights, powers, privileges or remedies granted to Lender under this Guaranty Agreement and/or the Loan Documents and in realizing upon any security for the Indebtedness or Obligations, and for all costs and expenses of Lender incurred in connection with the administration and enforcement of this Guaranty Agreement and/or the Loan Documents. (Id.)

The due under the Loan, and finds that under the Pennsylvania Deficiency Judgment Act, Plaintiff is entitled to

\$12,785,395.04, plus daily interest from January 1, 2014 of \$1,977.84. The Court also finds that Section Eleven of the Guaranty is enforceable against Defendants and Plaintiff is entitled to

Specifically, Defendants argue that: 1) Plaintiff is not entitled Property; interest award should be reduced. The Court will discuss each of

A. Judgment is the only document upon which Plaintiff may rely to enforce its rights under the loan.

Defendants argue that because of the doctrine of merger, the terms of the Note and the Mortgage merged into the Judgment at foreclosure and no longer provide a basis of relief.

the terms of a mortgage are merged into a foreclosure judgment and thereafter [the terms of the mortgage] no longer provide the basis for determining the obligations of the parties. In re Stendardo, 991 F.2d 1089, 1095 (3d Cir. 1993) (citing In re Presque Isle Apartments, 112 B.R. 744, 747 (Bankr.W.D.Pa.1990); In re Herbert, 86 B.R. 433, rrect in her assertion that the mortgage is merged in a judgment entered in a mortgage foreclosure action (internal citations omitted)).



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Here, pursuant to the doctrine of merger, the terms of the Note and the Mortgage did merge determining the obligations of the parties *Id.* However, Case 2:13-cv-00936-JHS Document 32 Filed 08/21/14 Page 8 of 12 Note or the Mortgage. 3

(Doc. No. 19-12; Doc. No. 1-3 at 75.) The Note and the Mortgage were agreements between Plaintiff and the Debtor. (*Id.*) Indeed, Plaintiff obtained the Judgment against the Debtor, not Defendants. (Doc. No. 19-15.) *It* arises from the Guaranty.

agreement because this agreement, unlike the Note and the Mortgage, did not merge with the

Judgment. See *In re Clark Grind & Polish, Inc.*, 137 B.R. 172, 175 (Bankr. W.D. Pa. 1992) (finding that once a lender entered judgment on a Note fees and costs under the Note was extinguished. However, the right to attorneys fees under a separate Asset Purchase Agreement was not extinguished because the Asset Purchase Agreement did not merge into the Judgment.) (emphasis in original.) There is no genuine dispute on a material fact as to whether Plaintiff is entitled The Guaranty clearly allows for them, and the Guaranty survives the Judgment as an enforceable contract. Therefore, on this issue.

B.

sale proceeds received by Plaintiff property. (Doc. No. 25 at 3.) Since the date of the Sale, Plaintiff has been renting and selling units within the Property. (Doc. No. 31 at 20-21.) Defendants contend

(Doc. No. 25 at 4-5.) Defendants have cited no authority to support the argument that they are

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entitled to an offset or , and instead rely on principles *Id.* at 3.)

Id.) Defendants further argue (*Id.* at 5.)

Defendants are correct insofar as the Act was adopted in order to remedy abusive practices by judgment creditors. The Act:

was passed in the 1940s to remedy a practice prevalent among judgment creditors during the Great Depression. The practice was that creditors would credit only the price of the property purchased at a sheriff's sale towards their judgments, rather than credit the fair market value of the property. The provisions of the [Deficiency Judgment Act] protect judgment debtors whose real estate is sold in execution, by requiring the judgment creditor to give credit for the fair market value of the property the judgment creditor purchased at his execution and not merely to credit the price at which the property was sold. *In re Zinchiak*, 406 F.3d 214, 221 (3d Cir. 2005) (citing *First Fed. Sav. and Loan Ass'n of Carnegie v. Keisling*, 746 A.2d 1150, 1155 (Pa. Super. 2000)).



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Here, the protective purpose has been fulfilled Plaintiff has credited Defendants with the fair market value of the Property, and with the sale proceeds from the purchase of Unit 418. This is all the protection that a debtor is afforded under the Act. Defendants are not entitled to a credit for any subsequent benefit the Plaintiff received as a result of ownership of the Property.

Additionally, Plaintiff make issue:

a position is ridiculous. By owning and holding the condominium

units, [Plaintiff] took all the risk. [Plaintiff] was responsible for all operations, including the hiring of a management company, development, marketing and all costs. During this time, the value of the condominium units could have increased or decreased. Indeed, one can easily imagine Defendants protesting loudly any effort by [Plaintiff] to increase the amount of the Judgment based on a decline in the value of the condominium units. To suggest that [Plaintiff] is not entitled to enjoy the fruits of its efforts and financial risks it assumed is simply untenable. (Doc. No. 27 at 7-8.) The Court agrees with Plaintiff. There is no logical or legal reason to grant Defendants a . Again, because there is no genuine dispute on a material fact involving this issue, Defend

C.

erest award should be reduced because in reaching a conclusion on the fair market value of the property, the Court of Common Pleas took into account cost of capital which Defendants represented . . . [P] loss of use of money for two years as the property would be developed Doc. No. 31 at 18.) Defendants argue (Id.) Accordingly, interest calculation should be reduced to reflect this amount.

of the components of the fair market value calculation to establish Court, but the Court has reviewed the appraisal document that was used by the Philadelphia

Court of Common Pleas to set the

Page seventy-eight of the Appraisal explains that will be applied the Property at a rate of twelve percent. (Doc. No. 25-4 at 78.) This discount is

termed Id.) On pages seventy-nine and eighty of the Appraisal, there are charts calculating the of the Property. (Id. at 79-80.) In these charts, the is subtracted (Id.) Accordingly, regardless of one thing is clear: the cost of capital did not increase the Judgment, it decreased it. Accordingly, the cost of capital was not a credit representing two

Under the Act, Plaintiff is entitled to lawful interest on the Judgment from the date the Judgment was issued until the day the Judgment is paid. 42 Pa. C.S.A. § 8101. In Pennsylvania, lawful interest is



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statutorily defined as six percent. 41 Pa. S.A. § 202. There is no genuine issue of material fact here. Plaintiff is entitled to receive six percent interest on the Judgment, as above. IV.

(Doc. No. 19) will be granted. An appropriate Order follows.

