

FOR PUBLICATION

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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4	COMMONWEALTH DEVELOPMENT) CIVIL ACTION NO. 01-0442A
5	AUTHORITY,)
6)
7	Plaintiff,)
8) ORDER GRANTING IN PART, AND
9	vs.) DENYING IN PART, PLAINTIFF'S
10) MOTION FOR SUMMARY JUDGMENT
11	SY'S CORPORATION d.b.a. PACIFIC)
12	GARDENIA HOTEL,)
13	RONALD D. SABLAN,)
14	MARIA ANA T. SABLAN,)
15	JEANETTE D. SABLAN a.k.a.)
16	JEANETTE SABLAN YAMASHITA,)
17	LPP MORTGAGE, LTD.,)
18	CNMI DEPARTMENT OF FINANCE,)
19	AND JOHN DOE,)
20)
21	Defendants.)
22)
23)

I. Introduction

THIS MATTER came before the Court for a hearing on Plaintiff Commonwealth Development Authority's ("CDA") Motion for Summary Judgment on March 31, 2004, at 9:00 a.m. before the Honorable Presiding Judge Robert C. Naraja.¹ Present at the hearing for CDA was its counsel, F. Matthew Smith, Esq., from the Law Offices of Vicente T. Salas. Also present were Defendants Sy's Corporation d.b.a. Pacific Gardenia Hotel ("Sy's"), Ronald D. Sablan ("RDS"), and Maria Ana T. Sablan ("MTS") (collectively, the "Sablans"), through their counsel,

¹ Subsequent to the hearing, Presiding Judge Naraja recused himself, and after further proceedings, this case was assigned to the undersigned judge on June 8, 2005.

1 G. Anthony Long, Esq.; Defendant Jeanette D. Sablan a.k.a. Jeanette Sablan Yamashita
2 (“Yamashita” or “JSY”) through her counsel, Joaquin C. Arriola, Esq., from Arriola, Cowan &
3 Arriola; Defendant LPP Mortgage, Ltd. (“LPP”) through its counsel, Bruce L. Mailman, Esq.,
4 from White, Pierce, Mailman, & Nutting; and Defendant Department of Finance (“DoF”)
5 through its counsel, Assistant Attorney General James R. Stump. Having considered the
6 arguments of counsel, the materials submitted and the applicable laws, the Court now issues its
7 decision, granting in part, and denying in part, Plaintiff CDA’s Motion for Summary Judgment
8 for the reasons that follow.

9 **II. Factual and Procedural Background**

10 This action was commenced on August 7, 2001, with the filing of Plaintiff CDA’s
11 COMPLAINT TO FORECLOSE AND FOR MONEY DUE. On August 22, 2003, CDA filed its FIRST
12 AMENDED COMPLAINT TO FORECLOSE AND FOR MONEY DUE (“First Amended Complaint”). In
13 the amended complaint, CDA seeks a monetary judgment against RDS, MTS and Sy’s under
14 three outstanding consolidated and revised loan accounts, and against RDS, MTS and JSY under
15 the promissory notes and personal guaranty agreements. It also seeks to foreclose upon five
16 properties mortgaged by RDS, MTS and Sy’s securing the three consolidated and revised loan
17 accounts. Co-defendants LPP and DoF are made a part of this lawsuit because they have
18 claimed an interest in the mortgaged properties.

19 **Mortgaged Property No. 1: Lot 008 H 37 (or “Lot 37”)**

20 Lot 008 H 37 is a security for the three consolidated loans from CDA to RDS and MTS
21 for \$871,550.84 (“\$871,550.84 LOAN”), known as account CD-31857.² In addition to the three

22 ² CDA initially extended three separate direct loans to RDS and MTS from July 1985 to April 1986. The first loan
23 was issued on July 19, 1985, for \$451,300. In return, RDS and MTS executed a promissory note promising to repay
the loan, plus 9% interest per annum, in set monthly installments beginning on July 19, 1986, until the loan is paid
in full on June 19, 2005. The promissory note was secured by a loan agreement, a fee simple mortgage (First

CDA loans, RDS and MTS received three more loans from the United States Small Business Administration (SBA) in March 1992, in the aggregate original principal amount of \$259,400.³ All three loans were issued to RDS and MTS as SBA disaster loans as authorized by federal law. All three SBA loans were also secured with three separate mortgages on Lot 008 H 37. LPP is the present holder in due course of all three SBA loans to RDS and MTS, which LPP purchased and received through an assignment from SBA on August 3, 2000.⁴ LPP's direct lien interest through the assigned mortgages is limited to Lot 37 only.

Mortgage), a security agreement, an assignment of rents, and a receivables and inventory security agreement. The First Mortgage was registered with the Commonwealth Recorder's Office on August 30, 1985, as File No. 85-1650. The second loan was issued on November 8, 1985, for \$25,000, and in return, RDS and MTS executed a second promissory note promising to repay the loan, plus 9% interest per annum, in set monthly installments beginning on July 19, 1986, until the loan is paid in full on June 19, 2005. The promissory note was secured by a loan agreement, a fee simple mortgage (Second Mortgage), a security agreement, an assignment of rents, and a receivables and inventory security agreement. The Second Mortgage was registered at the Commonwealth Recorder's Office on November 19, 1985, as File No. 85-2408. At the time the second loan was executed, CDA, RDS, and MTS executed a consolidation of loans, mortgages and security agreements. The consolidation combined the first two direct loans and the accrued interest, for a new principal amount of \$478,700.15, as amended on February 10, 1986, to correct a computation error. In return, RDS & MTS agreed to repay the consolidated loans, plus 9% interest per annum, in set monthly installments beginning on July 19, 1986, until the loan is paid in full on June 19, 2005. The third loan was issued on April 16, 1986, for \$177,000. In return, RDS and MTS executed a promissory note promising to repay the loan, plus 9% interest per annum, in set monthly installments beginning on July 19, 1986, until the loan is paid in full on June 19, 2005. The promissory note was secured by a loan agreement, a fee simple mortgage (Third Mortgage), a security agreement, an assignment of rents, and a receivables and inventory security agreement. The Third Mortgage was registered with the Commonwealth Recorder's Office on April 16, 1986, as File No. 86-0716. At the time the third loan was executed, CDA, RDS, and MTS executed a second amended consolidation of loans, mortgages, and agreements. This consolidation combined the previously-consolidated loans, the accrued interest, and the third loan, resulting in a new principal amount of \$667,989.44. Subsequently, beginning on September 5, 1986 and ending on March 25, 1993, RDS and MTS executed five revision agreements with CDA, revising the consolidated loan each time, resulting in the last principal amount of \$871,550.84.

³ The three original loans secured by the three mortgages were for \$60,200; \$152,300; and \$46,900. See First and Second SBA Mortgages on Lot 37 filed with the Commonwealth Recorder's Office on April 10, 1992, as File No. 92-1265 and 92-1266, respectively; and Third SBA Mortgage filed on April 14, 1992, as File No. 92-2639. SBA subsequently extended an additional loan of \$28,000 and \$11,200, increasing the total loan amount to \$298,600.

⁴ LLP's Assignments of Mortgage 1 & 3 were both filed with the Commonwealth Recorder's Office on June 27, 2001, as File No. 01-0313 and 01-0314, respectively. LLP's Assignment of Mortgage 2 was registered on July 17, 2001, as File No. 01-1417.

1 The Department of Finance also has an interest in Lot 37. On March 3, 1995, DoF filed
2 nine tax liens against Sy's Corporation totaling approximately \$761,000.⁵ These tax liens attach
3 to all of Sy's Corporation's property, including all real property that Sy's Corporation owns or
4 holds property rights in. Lot 008 H 37, formerly owned by RDS and MTS, is now owned by
5 Sy's Corporation.

6 Finally, on August 10, 1999, CDA extended a direct loan to Sy's Corporation in the
7 principal amount of \$263,000 ("\$263,000 LOAN"), and in return, Sy's mortgaged to CDA its
8 interest to Lot 37 as part of the security for the loan amount.⁶ This \$263,000 loan is known as
9 account CD-33940.

10 **Mortgaged Property No. 2: Lot 008 H 33 (or "Lot 33")**

11 As to Lot 008 H 33, Sy's Corporation mortgaged its interest to CDA on this real property
12 on two different occasions, for two different loan amounts. First, Sy's executed a mortgage (First
13 Mortgage) to CDA placing its interest in Lot 33 as security for the \$197,130.92 direct loan it
14 received from CDA on March 26, 1993 ("\$197,130.92 LOAN").⁷ This \$197,130.92 loan is
15 known as account CD-3315. Sy's executed a second Fee Simple Mortgage (Second Mortgage)
16

17 ⁵ All nine tax liens were dated March 2, 1995, and include Tax Lien Nos.: 00148-95, File No. 95-536; 00147-95,
18 File No. 95-537; 01137-94, File No. 95-538; 01137-94, File No. 95-540; 01137-94, File No. 95-541; 01137-94, File
19 No. 95-542; 01137-94, File No. 95-543; 01137-94, File No. 95-544; 01137-94, File No. 95-545.

20 ⁶ Sy's executed a promissory note agreeing to repay this loan amount, and secured this note with a fee simple
21 mortgage (Fifth Mortgage) on Lot 008 H 37. This Fifth Mortgage was registered with the Commonwealth
22 Recorder's Office on September 1, 1999, as File No. 99-2070. The promissory note was further secured by a loan
23 agreement, three other fee simple mortgages on other real properties, a leasehold mortgage, a security agreement, a
receivables and inventory security agreement, two guaranty collateral mortgages, and three guaranty agreements.

⁷ Sy's executed a promissory note and agreed to repay the loan, plus 9% interest per annum, in set monthly
installments beginning on July 26, 1993, until the loan is fully paid on June 26, 2003. Sy's secured the promissory
note with a Fee Simple Mortgage (First Mortgage) on Lot 33, which was registered on March 29, 1993, as File No.
93-1076.

on this same lot, as part of the security for the 1999 loan it received from CDA for \$263,000.⁸

The DoF has a tax lien attached to this property pursuant to the nine tax liens it filed in 1995 against Sy's Corporation.

Mortgaged Property Nos. 3, 4, and 5: Lot 008 H 29, Lot 008 H 36, and Lot 008 H 31

In addition to executing separate mortgages on Lots 37 and 33 as security for the \$263,000 loan Sy's received from CDA, defendants Sy's, RDS and MTS also executed mortgages on Lot 008 H 29 ("Lot 29"), Lot 008 H 36 ("Lot 36"), and Lot 008 H 31 ("Lot 31") as further security for the same loan amount.⁹ All of the nine tax liens that DoF filed against Sy's Corporation in 1995 also attach to Lots 29, 36, and 31.

On February 18, 2004, CDA filed its Motion for Summary Judgment, seeking a judgment in its favor, alleging that the Sablans defaulted by failing to make the required payments on those three outstanding loan accounts. Defendants Sablans, Yamashita, LPP, and DoF each filed their Opposition to Plaintiff's Motion for Summary Judgment. CDA filed a reply to the Sablans' and LPP's opposition, but not to Yamashita's and DoF's opposition.

At the March 31, 2004, motion hearing, CDA conceded to Yamashita's objection to CDA's motion on the grounds that CDA cannot foreclose on Yamashita's Guaranty Collateral Mortgage dated August 10, 1999. Therefore, CDA's motion against Yamashita remains only as to CDA's enforcement of its agreements with Yamashita for her personal liability.

⁸ This Second Mortgage on Lot 33 was registered on September 1, 1999, as File No. 99-2067. This Second Mortgage is part of the security for the promissory note executed by Sy's, wherein it agreed to repay the loan, plus 9% interest per annum, in set monthly installments beginning on September 10, 1999, until the loan is paid in full on August 10, 2009.

⁹ Sy's executed a leasehold mortgage on Lot 29 and a fee simple mortgage (First Mortgage) on Lot 36, mortgaging its interests to CDA in both properties. As further security for the amount Sy's owes to CDA, RDS and MTS executed a Fee Simple Mortgage (Second Mortgage) on Lot 31, mortgaging to CDA their interest in this same lot. All three mortgages were recorded on September 1, 1999, as File Nos. 99-2071, 99-2072, and 99-2069, respectively.

1 CDA also conceded to DoF's objection to CDA's motion in regards to Lots 29, 31 and 36
2 (Properties 3, 4, and 5) by agreeing that DoF's nine tax liens are superior over CDA's
3 subsequently filed mortgages for the \$263,000 loan to Sy's.¹⁰ CDA further agreed that DoF has
4 a junior lien status as against the first three mortgages filed by CDA on Lot 37, and as against the
5 first mortgage filed by CDA on Lot 33 (Properties 1 and 2). At the same time, CDA conceded to
6 DoF's senior lien status of its 1995 tax liens to CDA's subsequently filed mortgages in 1999 for
7 Sy's \$263,000 loan on the same two lots.

8 **III. Issues**

9 The remaining issues to be decided by this Court are CDA's motion for summary
10 judgment against the Sablans (RDS, MTS and Sy's) and Yamashita for money due; for
11 foreclosure of the mortgaged properties with a determination of the priority of interests asserted
12 by co-defendant LPP; and for an award of fees and costs against the Sablans only.

13 Jurisdiction is vested in this Court by N.M.I. Const. art. IV, § 2.

14 **IV. Applicable Legal Standard**

15 Plaintiff CDA has moved for summary judgment on its monetary claims and foreclosure
16 action on the mortgages. Summary judgment is appropriate where the materials submitted to the
17 Court demonstrate "that there is no genuine issue of material fact and that the moving party is
18 entitled to judgment as a matter of law." Com. R. Civ. P. 56(c); *see, e.g., In re Estate of Roberto*,
19 2002 MP 23 ¶14. "In deciding a summary judgment motion, a court will construe the evidence
20 and inferences drawn therefrom in favor of the non-moving party." *Santos v. Santos*, 4 NMI
21 206, 209 (1995), *citing Rios v. Marianas Pub. Land Corp.*, 3 NMI 512, 518 (1993). A "genuine"
22 dispute exists "if the evidence is such that a reasonable jury could return a verdict for the non-

23 ¹⁰ See "STIPULATED JUDGMENT BETWEEN CDA AND DoF AND ORDER" filed on December 7, 2005 in this case.

moving party.” *Eurotex, Inc. v. Muna*, 4 NMI 280, 284 (1995) (citations omitted). A non-
1 moving party “may not rest upon mere allegations or denials” of the moving party’s pleading,
2 but must “set forth specific facts showing that there is a genuine issue for trial.” Com. R. Civ. P.
3 56(e); *see, e.g., Eurotex v. Muna, supra*.

V. ANALYSIS

1. CDA has moved for summary judgment on all its claims against all the parties, and therefore, it is not limited to the mortgages only.

6 The Sablans argue that CDA has moved for summary judgment only on the mortgages,
7 and that it is not moving for summary judgment on the promissory notes or personal guaranties
8 of Ronald and Maria Ana T. Sablan as CDA has not submitted any facts or arguments relating to
9 those documents or issues. The Court agrees that CDA’s moving memorandum could better
10 present its arguments. However, it finds that the motion and memorandum contains adequate
11 assertions of facts and arguments for this Court to conclude that CDA’s motion is not limited to
12 the mortgages only, but also includes the promissory notes and personal guarantees. Rule 56(a)
13 of the Commonwealth Rules of Civil Procedure allows a motion for summary judgment for
14 CDA’s claims “with or without supporting affidavits for a summary judgment in the party’s
15 favor upon all or any part thereof.” In this instance, CDA directed the Court and the parties to
16 the three verified accounts shown on the attached exhibits to the Declaration of Maria Lourdes S.
17 Ada (“Ada Declaration”), and the relevant loan documents attached to the First Amended
18 Complaint. CDA’s motion also states that the admissions contained in the parties’ answers to
19 CDA’s First Amended Complaint further support the entry of summary judgment. Finally, the
20 Ada Declaration asserts that the Sablans have failed to make the payments required under the
21 terms of their loan documents. The fact that CDA attached copies of the mortgages only to its
22 motion does not limit its motion to the mortgages only. It is adequate that CDA incorporated by
23

reference all the relevant loan documents attached to the First Amended Complaint, and cited to the parties' admissions in their answers when making its factual assertions. Based on these facts, this Court concludes that CDA is moving for summary judgment on all its claims against all the parties, and not just on the mortgages.

2. CDA's motion for summary judgment for a Monetary Judgment against RDS, MTS and Sy's Corporation.

CDA moves for summary judgment claiming it is entitled to all its claims, including a monetary judgment against the Sablans for failing to make the required payments on three verified loan accounts. CDA presented evidence of the balances of the three loan accounts through the Ada Declaration. However, the Sablans opposed CDA's motion by arguing, *inter alia*, that the Ada Declaration is defective and that this defect necessitates the striking of the Ada Declaration and the exhibits attached to the declaration. However, at the motion hearing, CDA's Loan Officer, Greg P. Calvo, testified and presented Exhibits A, B, and C, which the Court accepted into evidence. The three exhibits gave the updated balances on these same three loan accounts referenced in the Ada Declaration, as of March 31, 2004, to wit:

	<u>Ex.</u>	<u>Borrower(s)</u>	<u>Original Principal</u>	<u>Total Due</u>
Account CD-31857	A	RDS and MTS	\$871,550.84	\$1,679,060.14
Account CD-3315	B	Sy's Corp.	\$197,130.92	\$394,101.36
Account CD-33940	C	Sy's Corp.	\$263,000.00	\$366,945.62

Based on the testimony of CDA's loan officer, and the exhibits admitted into evidence therefrom, this Court concludes that any issue as to CDA's burden of presenting admissible evidence through the Ada Declaration regarding the loan account balance and status is mooted by the sworn testimony of the loan officer and the exhibits received therefrom.

In addition to presenting evidence on the account balances, CDA generally directed the Court to the defendants' answers to establish its claims under the three loan accounts. In this

1 case, RDS, MTS and Sy's admitted in their Answer to the First Amended Complaint that RDS
2 and MTS agreed to repay the direct loans under the executed promissory notes in set monthly
3 installments. *See* Sablans' Answer at ¶ 1, 4, 5 (to First Amended Complaint's ¶¶ 11-12, 16-33,
4 35-39). In particular, RDS and MTS admitted that they executed a Fifth Revision Agreement
5 making a new principal amount of \$871,550.84. This amount is the original principal of
6 Account CD-31857, i.e. the "\$871,550.84 LOAN."

7 As for Sy's Corporation, it admitted in its Answer to the First Amended Complaint that it
8 executed the Promissory Notes for the \$197,130.92 loan (the principal amount of Account CD-
9 3315) and the \$263,000 loan (the principal amount of Account CD-33940). *See* Sablans'
10 Answer at ¶ 1 (to First Amended Complaint's ¶¶ 46-55, 62-75). Both the Sablans and Sy's,
11 however, dispute through their Answer that they have failed to make the payments and are in
12 default of their loan obligations. However, CDA has presented admissible evidence, through
13 Loan Officer Calvo's testimony, which establishes that the Sablans (RDS, MTS and Sy's) have
14 failed to make the required payments on the three verified loan accounts. As of March 31, 2004,
15 RDS and MTS were "114 periods late" on their account; and Sy's was "120 periods late" on the
16 \$197,130.92 loan, and "52 periods late" on the \$263,000 loan. These facts are evidence that the
17 Sablans are in default with CDA for failing to make the required payments. Neither the Sablans,
18 nor Sy's offered any evidence to show that they did not sign the promissory notes agreeing to
19 repay said loans, or that they are current in their payments. Accordingly, this Court finds that
20 there is no genuine issue of material fact that RDS, MTS and Sy's have defaulted on their CDA
21 loans. Therefore, this Court concludes that CDA is entitled to a monetary judgment on all three
22 outstanding verified loan accounts against RDS, MTS and Sy's, and grants CDA's motion for
23 summary judgment for money due on the \$871,550.84 LOAN, the \$197,130.92 LOAN, and the
\$263,000 LOAN.

3. CDA’s Foreclosure on the Mortgages.

1 Having concluded that RDS, MTS and Sy’s are in default for their failure to make the
2 timely required payments, this Court now turns to CDA’s request to enforce its right to foreclose
3 on the mortgages that secured the three verified loan accounts pursuant to 2 CMC § 4537. In
4 deciding whether to grant CDA’s foreclosure request, the first issue to address is whether CDA
5 complied with the CNMI’s Real Estate Mortgage Law, found at 2 CMC § 4511 *et seq.*

a. CDA’s Defective Notice of Default as required by 2 CMC § 4534 (c) and (d).

7 Section 4534(c) of Title 2 of the Commonwealth Code requires written notice which
8 contains “[t]he amount due for principal and interest, separately stated.” The Sablans argue that
9 the “amount due” as used in Section 4534(c) and (d) does not mean the accelerated principle. In
10 support of this argument, the Sablans point to Section 4532, which provides that “[n]o
11 acceleration of the unpaid principal of the underlying debt shall be effective until 30 days after
12 receipt of the notice of default provided for in 2 CMC § 4534.” Reading Sections 4532 and 4534
13 of Title 2 together, the Sablans conclude that the CNMI’s Real Estate Mortgage Law requires
14 CDA to give defendants 30 days to become current on the past due, before accelerating the debt
15 or instituting a foreclosure action. This Court agrees, and our Commonwealth Supreme Court
16 also reached the same conclusion after the motion in this case was briefed and argued. In
17 *Commonwealth Dev. Auth. v. Tenorio*, our Supreme Court concluded that “the Notice of Default
18 was to notify the [mortgagors] of the amount needed to be paid to bring the loan current, not the
19 entire amount owed by the [mortgagors] at the time.” 2004 MP at ¶36. Having reviewed the
20 January, 2001, notices of default issued to RDS, MTS and Sy’s for the three verified loan
21 accounts, this Court concludes that CDA’s notices of default fail to comply with the CNMI’s
22 Real Estate Mortgage Law for failing to contain the amount due for principal and interest,
23 separately stated, to notify the mortgagors RDS, MTS and Sy’s of the amounts needed to be paid

to bring the loans current. Absent any other facts, this Court would have to deny CDA’s motion for failure to comply with the statutory requisites of the Commonwealth’s Real Estate Mortgage Law. *See EDLF v. Pangelinan*, 2 CR 451, 461-463 (App. Div. 1986).

CDA, however, has argued that even if the notices of default are defective, the Sablans have waived this requirement of the Real Estate Mortgage Law and therefore its action for foreclosure on the mortgages survive. The issue then turns on whether the mortgagors may legally waive this statutorily required information in their notices of default.

b. The Sablans’ Waiver of Defective “Notice of Default.”

The Sablans do not dispute that they, through counsel, waived any “Notice of Default” defect through a signed stipulation entered into with CDA. They only argue that pursuant to statute and case law, Commonwealth law mandates that a mortgagor or borrower cannot waive the rights and privileges conferred pursuant to the Commonwealth Real Estate Mortgage Law.

CDA on the other hand argues that its August 2003 stipulated written agreement signed by all the defendants (RDS, MTS, Sy’s and JSY) through their respective attorneys show that the Sablans explicitly agreed not to contest or dispute the effectiveness of the Notices of Default served upon each of them, and that they have waived this defense.¹¹ In addition, CDA argues that the Real Estate Mortgage Law does not prohibit the waiver of any alleged defects in the Notices of Default, and cites to Section 4520 of that law. Section 4520 addresses void instruments or agreements. Section 4520(b) in particular provides that:

[a]ny express agreement made or entered by a borrower at the time of or in connection with the making or renewing of any loan secured by a mortgage or other instrument creating a lien on property, whereby the borrower agrees to waive the rights or privileges conferred upon the borrower by this chapter, is void and of no effect.

¹¹ Defendant Yamashita did not join the Sablans in asserting the defective “notice of default” defense.

2 CMC § 4520(b) (emphasis added). This Court agrees that Section 4520(b) does not prohibit
1 the stipulated agreement entered into in this case. The plain text of the statute addresses
2 agreements made *at the time of or in connection with the making or renewing of any loan*
3 secured by a mortgage. The stipulated agreement in this case was made and entered at the time
4 of pending litigation, and was not connected with the making or renewing of any loan. In fact,
5 the agreement was connected to the termination of loans.

6 The Sablans cited to the case of *Bank of Saipan v. Carlsmith Ball, Wickman Case &*
7 *Ichiki*, Civil Action No. 98-0057 (Order, D. N.M.I. Feb. 25, 1999) to argue that the stipulation is
8 unenforceable. This Court concludes that the *Carlsmith* case is distinguishable. In the *Carlsmith*
9 case, the district court found that Title 7, section 2513 of the Commonwealth Code expressly
10 prohibited the tolling agreement Plaintiff wanted to enforce. The plain text of Section 2513
11 declared agreements made for a period of limitation different from the period described in the
12 code invalid. In this case, Section 4520 of the Real Estate Mortgage Law does not prohibit the
13 express agreement in this case. Accordingly, this Court concludes that CDA has satisfied the
14 notice of default requirement in this case based on the legally permissible express agreement by
15 the Sablans to waive the right to receive a proper Notice of Default as conferred upon them by
16 the Real Estate Mortgage Law.

17 In connection to responding to the Sablans' opposition to its motion based on this
18 particular legal issue involving Notices of Default, CDA moved for an order awarding fees and
19 costs pursuant to Com.R.Civ.P. 11(b)(1). *See* CDA's Reply to the Def's Opp'n to Summ. J.
20 Rule 11 of the Commonwealth Rules of Civil Procedure allows the Court to impose sanctions for
21 a violation of subdivision (b). However, CDA must comply with the requirements of Rule
22 11(c)(1). In this instance, CDA did not separately make this motion for sanctions from other
23 motions or requests, and did not show that it served the motion pursuant to Rule 5 without filing

or presenting to the court unless certain conditions were satisfied. Therefore, this Court will not address CDA's improperly initiated motion for an order awarding fees and costs, and therefore denies it without prejudice.

c. CDA's Guaranty Collateral Mortgage executed by Jeanette Sablan Yamashita (JSY) fails to comply with the Real Estate Mortgage Law.

In opposition to CDA's motion for summary judgment, defendant JSY argued that the Guaranty Collateral Mortgage dated August 10, 1999, that she executed to secure Sy's indebtedness to CDA fails to comply with the Real Estate Mortgage Law's requirement because it does not comply with 2 CMC § 4519, which requires a clause conspicuously located notifying the mortgagor that the mortgagor is entitled to a translation of the mortgage instrument in either Chamorro or Carolinian. *See also, EDLF v. Pangelinan*, 2 CR 451, 461-463 (App. Div. 1986). At the motion hearing, CDA conceded this point. Accordingly, CDA's motion to foreclose on the real property under the August 10, 1999, Guaranty Collateral Mortgage executed by JSY is denied.

4. The effect of CDA's foreclosure action on the priority of liens on all the mortgages on Properties 1 through 5, as against co-defendant LPP Mortgage, Ltd.

Having concluded that CDA has satisfied the requirements of the Real Estate Mortgage Law and, therefore, is entitled to the foreclosure of the mortgages against the five lots securing the three verified loan accounts, this Court now addresses the priority of liens asserted by co-defendant LPP.

LPP's direct interest is limited only to Lot 37, as the holder in due course of three SBA mortgages. LPP has not opposed CDA's assertion that its First, Second, and Third mortgages on Lot 37, the security for the \$871,550.84 loan, are superior to SBA's three mortgages. LPP, however, argues that SBA's three mortgages on Lot 37 should take priority over CDA's post-SBA loans on the basis that CDA's \$197,130.92 loan in 1993, and \$263,000 loan in 1999 to Sy's

1 have materially prejudiced LPP's interest. CDA, on the other hand, argues that, in the CNMI, if
2 a person accepts a junior mortgage, the person takes that mortgage subject to the terms of any
3 existing senior mortgage. *Citing* 2 CMC § 4537(f). The CNMI's Real Estate Mortgage Law
4 does allow not only the creation of a mortgage, but also amendments, renewals, and extensions.
5 *See* 2 CMC §§ 4519, 4521 and 4552. It also requires the recording of the mortgages with the
6 Commonwealth Recorder's Office, which gives notice to the public of the priority of interests on
7 record. 2 CMC §§ 4521(a), 4522, 2523. CDA contends that the general rule that applies here is
8 that so long as the senior mortgagee reserved the right to modify, then subsequent lienors are on
9 notice of the possibility for modification. CDA submits that its "purpose" language in all its
10 mortgage instruments contain the "right to modify" reservation language in its mortgages.¹²
11 Citing the Restatements of the Law of Property on mortgages, CDA asserts that its 1999 filing of
12 its "Fifth Mortgage" is entitled to retain priority against any intervening lien holder, including
13 the three 1992 SBA mortgages, because it is a modification to its prior recorded mortgages of
14 1985 and 1986 to secure the additional loan amount extended in 1999.¹³

14 The Restatement (Third) of Property: Mortgages, § 7.3, in relevant part, provides that:

15 (b) If a senior mortgage or the obligation it secures is modified by the parties, *the*
16 *mortgage as modified retains priority as against junior interests* in the real
17 estate, except to the extent that the modification *is materially prejudicial* to
18 the holders of such interests and *is not within the scope of a reservation* of
19 right to modify as provided in Subsection (c).

18 (c) If the mortgagor and mortgagee reserve the right in a mortgage to modify the
19 mortgage or the obligation it secures, *the mortgage as modified retains*

20
21 ¹² This Court notes that the "purpose" language contained in each of CDA's mortgage document is exactly the same
22 as SBA's mortgage documents with RDS and MTS.

22 ¹³ "In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the
23 American Law Institute . . . shall be the rules of decision in the courts of the Commonwealth, in the absence of
written law or local customary law to the contrary." 7 CMC § 3401.

priority even if the modification is materially prejudicial to the holders of junior interests in the real estate,

1 Restatement (Third) of Property: Mortgages, § 7.3 (1997). Although CDA raised this legal
2 argument in its reply to LPP’s opposition to CDA’s motion for summary judgment, CDA did not
3 raise the same legal argument against DoF, even though DoF’s tax liens were filed *after* the SBA
4 mortgages. In fact, CDA did not file a reply brief to DoF’s opposition brief, and conceded to
5 DoF’s arguments at the March 31, 2004 hearing.¹⁴ At the December 2, 2005 status conference
6 hearing for this case, the Court inquired as to the legal reasoning for CDA’s concession to the
7 priority of DoF’s tax liens against CDA’s 1999 “Fifth Mortgage.” Counsel for both CDA and
8 DoF responded that it is solely because of DoF’s prior filing of its 1995 tax liens. Based on this
9 concession by CDA, this Court concludes that CDA has abandoned its prior legal assertion of
10 priority rights by conceding to the legal premise that DoF’s prior filing to CDA’s Fifth Mortgage
11 on Lot 37 entitles DoF to assert a senior lien interest as to the Fifth Mortgage only. Similarly,
12 CDA’s post-SBA loan filing of the Fifth Mortgage makes the Fifth Mortgage on Lot 37 junior to
13 LPP’s current interest in all three 1992 SBA mortgages. Accordingly, this Court denies CDA’s
14 motion to the extent that it concludes that the foreclosure of CDA’s 1999 mortgage on Lot 37 for
15 the \$263,000 loan will not extinguish any of LPP’s interest in all three of the SBA mortgages on
16 Lot 37.

17 As an additional basis for this conclusion, this Court notes that CDA’s Fifth Mortgage
18 contains a subordination clause that explicitly subordinated itself to the 1992 mortgage from
19 RDS and MTS to SBA, which was filed at the Commonwealth Recorder’s Office as File No. 92-
20 1266, to secure the \$152,300 loan from SBA. Accordingly, based on the subordination clause,
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¹⁴ See Stipulated Judgment between CDA and DoF and Order filed December 7, 2005.

1 this Court concludes that CDA's Fifth Mortgage on Lot 37 is junior to SBA's mortgage for the
2 \$152,300 loan.¹⁵

3 Having concluded that LPP's interest in Lot 37 is senior in priority as against CDA's
4 Fifth Mortgage, the Court next addresses LPP's assertion that its interest in the 1992 SBA loans
5 should also be superior to CDA's 1993 first mortgage on Lot 33 for the \$197,130.92 loan it
6 extended to Sy's.

7 LPP contends that the post-SBA loans from CDA (\$197,130.92 loan in 1993; and
8 \$263,000 loan in 1999) substantially prejudiced LPP's predecessor (SBA's) rights, and
9 materially impaired its security because, at the time the post-SBA loans were extended, the
10 Sablans and Sy's Corporation did not have the ability to repay their loans, and the collateral for
11 the loans was not sufficient to properly secure the combined debt load. Even though LPP does
12 not have any direct interest in the four other lots, it argues that a senior mortgagee must not harm
13 a junior mortgagee's security interests by over-lending. This "over-lending" argument creates a
14 factual argument as to the value of all the collateral in 1993 and 1999, the overall financial status
15 of the Sablans and Sy's Corporation at each time, and CDA's procedures in assessing these
16 factors. LPP's counsel conceded in LPP's opposition brief that there is no case on point on the
17 principal LPP is proffering: that a senior mortgagee must not harm a junior mortgagee's security
18 interest *by over-lending* to the borrower/mortgagor, even though the borrower provides separate
19 real estate for collateral. This Court finds that allowing a junior lienholder to require the Court to
20 delve into the factual assessment required to establish the propriety, or the impropriety, of a
21 mortgagee's decision to lend to the mortgagor would seriously impair the purpose of the Real
22 Estate Mortgage Law. The purpose of the law "is to establish a system of mortgage law in the

23 ¹⁵ RESTATEMENT (THIRD) OF PROP.: MORTGAGES, § 7.7 SUBORDINATION (1997).

Commonwealth *which will induce lenders to make a secured commercial and residential loans*, while at the same time ensuring that residents of the Commonwealth who execute mortgages will have a full comprehension of the nature and consequences of their act. All provisions of this chapter shall be construed in such a manner as to best effectuate its purpose.”
2 CMC § 4511 (emphasis added).

As CDA has pointed out in its reply to LPP’s opposition, SBA was also in the practice of modifying its loans and mortgages. In fact, as noted earlier by the Court, the “purpose” language in all of SBA’s mortgage instruments are the exact same language that CDA used in all its mortgage instruments in this case, and to which CDA asserts as containing the necessary reservation language for its right to modify or revise its mortgages. CDA also pointed to SBA’s modifications of its second note and mortgage to the Sablans, which increased the principal amount owed to it, as evidence that LPP itself is in the practice of modifying loans and mortgages to which it now wants the Court to hold against CDA. This Court agrees that CDA has not done anything different from what SBA has done in regards modifying its loans and mortgages. CDA’s first post-SBA loan (the \$197,130.92 LOAN) was extended less than a year after SBA’s last mortgage was filed. This loan appears to have assisted SBA’s security interest because it extended the time for SBA to collect on its loans, and was secured by a separate real property. Six years passed before CDA extended the second post-SBA loan (the \$263,000 LOAN). During this six year period, SBA did not take any action to sue on the notes, or foreclose on the mortgages. During this same six year period between the two post-SBA loans, DoF filed its nine tax liens totaling approximately \$761,000. Yet SBA did not pursue a foreclosure action on its mortgages. The only difference in events is the amount of the loans and modifications extended by CDA and SBA. Accordingly, this Court finds that the facts of this case do not give adequate cause to grant LPP’s request to divest CDA of its priority as senior

lienor for CDA's modifications made after SBA's liens were filed. Therefore, this Court grants CDA's motion for summary judgment to foreclose on the other four lots: Lots 29, 31, 36 and 33, without denying priority to CDA's senior interest in these four lots' proceeds, as against LPP.

V. CONCLUSION

For the foregoing reasons, this Court grants CDA's motion for summary judgment as follows:

1. Judgment for CDA on its claim for money due in the principal amount of \$1,679,060.14 against Ronald D. and Maria Ana T. Sablan for Account CD-31857 (\$871,550.84 LOAN), plus pre-judgment and post-judgment interest as well as any late charges which accrued from March 31, 2004, at 9% interest per annum, and for reasonable attorneys fees and costs;

2. Judgment for CDA on its claim for money due in the principal amount of \$394,101.36 against Sy's Corporation, Ronald D. and Maria Ana T. Sablan, and Jeanette D. Sablan, jointly and severally, for Account CD-3315 (\$197,130.92 LOAN), plus pre-judgment and post-judgment interest as well as any late charges which accrued from March 31, 2004, at 9% interest per annum, and for reasonable attorneys fees and costs;

3. Judgment for CDA on its claim for money due in the principal amount of \$366,945.62 against Sy's Corporation, Ronald D. and Maria Ana T. Sablan, and Jeanette D. Sablan, jointly and severally, for Account CD-33940 (\$263,000 LOAN), plus pre-judgment and post-judgment interest as well as any late charges which accrued from March 31, 2004, at 9% interest per annum, and for reasonable attorneys fees and costs;

4. CDA's mortgaged interest in Lot 008 H 37, Lot 008 H 33, Lot 008 H 29, Lot 008 H 31, and Lot 008 H 36, as particularly described in paragraphs 13, 50, 70, 67, and 66 in the First Amended Complaint, respectively, all located in Chalan Kanoa, Saipan, shall be sold at a public auction, in the manner as prescribed by 2 CMC § 4537.

5. The mortgaged chattels or other security or accounts shall be seized and sold, pursuant to law, by Plaintiff;

6. Any party to this action is hereby allowed to become a purchaser at any sale;

7. The proceeds of any sale shall be applied in the manner as prescribed by 2 CMC § 4537; and,

8. Plaintiff may seek a deficiency judgment against Sy's, RDS, MTS, and JSY for any deficiency which may remain after applying all the proceeds of all sales.

SO ORDERED this 15th day of December 2005.

/s/

RAMONA V. MANGLONA, Associate Judge