

FOR PUBLICATION

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

**COMMONWEALTH DEVELOPMENT) CIVIL ACTION NO. 04-0121C
AUTHORITY,)**

Plaintiff,)

v.)

**IGNACIO DLG. DEMAPAN,
FRIEDA R. DEMAPAN, AND
PACIFIC AMUSEMENT, INC.,)**

Defendants.)

**ORDER GRANTING CDA’S
MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANTS
IGNACIO DLG. DEMAPAN AND
FRIEDA R. DEMAPAN**

I. Introduction

THIS MATTER came before the Court on Plaintiff Commonwealth Development Authority’s (“CDA”) Motion for Summary Judgment. Plaintiff appeared through its counsel, F. Matthew Smith, Esq., from the Law Offices of Vicente T. Salas. Defendants Ignacio Dlg. Demapan (“IDD”) and Frieda R. Demapan (“FRD”) (collectively, the “Demapans”), appeared personally with their counsel, Ramon K. Quichocho, Esq. Defendant Pacific Amusement, Inc. (“PAI”) did not appear personally or through counsel.¹ Having considered the arguments of counsel, the materials submitted and the applicable laws, the Court now issues its decision, granting Plaintiff CDA’s Motion for Summary Judgment against the Demapans for the reasons that follow.

¹ On June 11, 2004, an Entry of Default was entered against PAI. Plaintiff has not yet moved for a default judgment against PAI.

II. Factual and Procedural Background

1 CDA initiated this action on March 11, 2004, by filing its COMPLAINT TO FORECLOSE
2 AND FOR MONEY DUE (“Complaint”) against the Demapans and PAI. In its Complaint, CDA
3 (formerly known as the “Economic Development Loan Fund”) seeks a monetary judgment
4 against the Demapans holding them jointly and severally liable under three loans and a bank
5 guaranty it made to the Demapans, including several dependant consolidation and revision
6 agreements.² CDA claims the outstanding principal sum of these three revised and consolidated
7 debts and guaranty total \$277,848.89 as of the filing date. It further claims it is entitled to this
8 principal amount on the loan which matured on July 16, 2002, plus attorneys fees and costs.

9 CDA also seeks to foreclose upon two properties mortgaged by the Demapans securing
10 the three loans and bank guaranty under the consolidated and revised loan and mortgage

11
12 ² In particular, on September 30, 1982, CDA extended a direct loan to IDD and FRD in the principal amount
13 of \$193,757.33. In accordance with a Promissory Note, IDD and FRD agreed to repay the direct loan in set monthly
14 installments and continuing until the loan was paid in full on December, 31, 1992. This Promissory Note was
15 secured by a Fee Simple Mortgage (First Mortgage) on Lot H-175-3 (Part of H-175) executed on September 30,
16 1982 and registered with the Commonwealth Recorder’s Office as File No. 15688. CDA’s Mot. for Summ. J. Ex. 1.

17 On April 30, 1984, CDA extended a second direct loan to IDD and FRD in the principal amount of
18 \$15,000. In accordance with a Promissory Note, IDD and FRD agreed to repay the direct loan in set monthly
19 installments and continuing until the loan was paid in full on October 16, 1989. This Promissory Note was secured
20 by a Fee Simple Mortgage (Second Mortgage) on Lot H-175-3 (Part of H-175) executed on August 16, 1984 and
21 registered with the Commonwealth Recorder’s Office as File No. 84-1684. CDA’s Mot. for Summ. J. Ex. 2.

22 On June 18, 1985, CDA extended a third direct loan to IDD and FRD in the principal amount of \$25,000.
23 In accordance with a Promissory Note, IDD and FRD agreed to repay the direct loan in set monthly installments and
continuing until the loan was paid in full on August 18, 1988. This Promissory Note was secured by a Fee Simple
Mortgage (First Mortgage) recorded on June 27, 1985 at the Commonwealth Recorder’s Office as File No. 85-1215.
Complaint, Ex. I, *citing to* Fee Simple Mortgage to secure \$25,000 note.

On June 22, 1982, CDA executed a Guaranty for the benefit of IDD and FRD, which was subsequently
called by the bank and paid by CDA.

On July 11, 1986, IDD and FRD executed a Consolidation of Loans, Mortgages and Security Agreements
which was registered with the Commonwealth Recorder’s Office as File No. 86-1409. This consolidation agreement
consolidated the three loans extended to IDD and FRD, and the debt owed by IDD and FRD to CDA as a result of
the called bank Guaranty. Complaint, Ex. I. In accordance with the consolidated agreement, IDD and FRD agreed
to repay the consolidated loan amount, plus interest at 9% per annum, until the loan was to be paid in full on July 11,
2001. The consolidated loan amount remained and remains secured by all the aforementioned and previously
executed mortgages and security agreements. Complaint ¶ 29; Answer ¶ 1. The consolidated loan was revised five
times, combining the outstanding principal with the accrued interest, late charges and fees and making a new
payment schedule each time, with the Fifth Revision Agreement executed on August 18, 2000 making a new
principal of \$277,848.89 and a new maturity date of July 16, 2002. Complaint ¶¶ 30, 32, 33, 34, 36 (Ex. N); Answer
¶ 1.

agreements.³ The two properties are Lot H-175-3 (Part of H-175), located in San Vicente, Saipan, and Lot No. 002 C 27, located in Marpi, Saipan. Co-defendant PAI is included in this lawsuit solely because PAI has a claim through a real estate lease that is subordinate in right to that of CDA.

III. Applicable Legal Standard for Summary Judgment

Plaintiff CDA has moved for summary judgment on its monetary claims and foreclosure action on the mortgages. Summary judgment is appropriate where the materials submitted to the Court demonstrate “that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Com. R. Civ. P. 56(c); *see, e.g., In re Estate of Roberto*, 2002 MP 23 ¶14. “In deciding a summary judgment motion, a court will construe the evidence and inferences drawn therefrom in favor of the non-moving party.” *Santos v. Santos*, 4 NMI 206, 209 (1995). A non-moving party “may not rest upon mere allegations or denials” of the moving party’s pleading, but must “set forth specific facts showing that there is a genuine issue for trial.” Com. R. Civ. P. 56(e).

IV. ANALYSIS

1. CDA’s claim for money judgment against the Demapans, jointly and severally, for the loan balance in the principal sum of \$277,848.89 plus accrued interest, penalty charges, attorneys fees and costs.

In CDA’s claim for a money judgment against the Demapans, jointly and severally, CDA submits that the Demapans, as shown by their Answer to CDA’s Complaint, admitted to the existence of the loans, the consolidation and revision of the agreements, and the Demapans’ default. Complaint, ¶¶ 6, 8, 13, 14, 16, 21, 22, 23, 29, 30, 32, 33, 34, 36; Answer, ¶ 1. In

³ The Court notes that the mortgage agreements between the parties in this case included other real properties of the Demapans as security. *See, e.g.,* Ex. 3 to Plt’s Mot. for Summ. J. However, the Complaint seeks a foreclosure on only these two properties discussed herein.

particular, paragraph 36 of the Complaint alleges, and the Demapans admitted in their Answer, that CDA revised the consolidated loan for the fifth time, resulting in a new principal amount of \$277,848.89. *See also*, Complaint, Ex. N. Finally, the Demapans admitted in their Answer that the loan has matured, that they are in default and have failed and continued to fail to make the payments required by the terms of the loan agreements and as demanded by CDA. Answer, ¶ 1 (to Complaint, ¶ 42). Accordingly, CDA claims entitlement to summary judgment.

In their opposition memorandum to CDA's motion, the Demapans do not dispute the fact that CDA revised the consolidated loan on August 18, 2000, creating a new principal amount of \$277,848.89 with revised monthly payments. Opp'n at 5. Based on the foregoing facts of this case, this Court concludes that there is no genuine issue as to any material fact that CDA and the Demapans had a legally enforceable agreement, and that the Demapans are in default of those agreements for their failure to make the requisite payments. Accordingly, this Court concludes that CDA is entitled to summary judgment on its claim for money judgment for the principal amount of \$277,848.89 plus pre-judgment interest, costs (including charges), and attorneys fees and therefore grants CDA's motion as to this claim.

2. CDA's Foreclosure Rights on the Mortgages.

Having concluded that the Demapans are in default on their loans for their failure to make the timely required payments, this Court now turns to CDA's request to enforce its right to foreclose on the mortgages that secured the loans and guaranty, as consolidated and revised, pursuant to 2 CMC § 4537. In deciding whether to grant CDA's foreclosure request, the first issue to address is whether CDA complied with the CNMI's Real Estate Mortgage Law, found at 2 CMC § 4511 *et seq* and any applicable regulations.

a. CDA fully complied with the CNMI's Real Estate Mortgage Law.

1 In support of CDA's motion, CDA attached verified copies of the mortgage documents
2 for the two separate properties that secured the separate promissory notes that, after five
3 revisions and consolidations, amounted to the \$277,848.89 principal balance on these separate
4 loans. CDA presented a verified copy of the First and Second Fee Simple Mortgage on Lot H-
5 175-3 (Part of H-175), situated in San Vicente, Saipan and a verified copy of the First Fee
6 Simple Mortgage on Lot No. 002 C 72, situated in Marpi, Saipan. These mortgage documents
7 were signed by Ignacio DIG. and Frieda R. Demapan, as mortgagors and/or borrowers, and
8 CDA (and its predecessor EDLF), as mortgagee and/or lender, and were duly filed with the
9 Commonwealth Recorders Office. Each of the mortgage instruments contain language that
10 states it was executed as security for a promissory note signed by the Demapans. The Demapans
11 admitted that they received lawful notice of their default, and that more than thirty days passed
12 since they received said notice before the Complaint was filed. Complaint, ¶¶ 40-41; Answer, ¶
13 1.

14 After the Demapans admitted to the \$277,848.89 principal amount that remained unpaid,
15 and after admitting that they mortgaged their interest in Lot H-175-3, they did not produce any
16 evidence to refute CDA's evidence proving the existence and validity of the mortgages. Opp'n
17 at ¶¶ 4, 6, and 14. The Demapans failed to present any admissible evidence that would show that
18 there is a genuine issue for trial about these verified mortgages.⁴As previously stated, a non-
19 moving party may not rest upon mere denials of the moving party's pleading. Accordingly, this
20 Court concludes that Plaintiff CDA has met its burden of establishing its entitlement to summary

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22 ⁴ In their opposition, the Demapans argue that there is no "Attachment 'A'" in Exhibit 1 to the Declaration of
23 Oscar C. Camacho and so Exhibit 1 does not conclusively support CDA's allegation. This Court finds that the
reference to "Attachment 'A'" was for the legal description of the mortgaged property in San Vicente, Saipan.
Because the mortgage document contains the detailed description itself, and the size or legal description is not an
issue in this case, this Court concludes that CDA's failure to include "Attachment 'A'" is not material to this case.

1 judgment to foreclose on the verified mortgages as to Lot H-175-3 (Part of H-175), situated in
2 San Vicente, Saipan and Lot No. 002 C 72, situated in Marpi, Saipan under the CNMI's Real
3 Estate Mortgage Law.

4 The Demapans also argued in their opposition that the consolidations of the first, second
5 and third loans and bank guaranty "effectively paid off or discharged" the obligations owed on
6 the loans and guaranty. As CDA correctly notes in its Reply, however, the consolidation and its
7 subsequent revisions had no such effect. The consolidation agreement states that "[t]he liens of
8 the mortgages, chattel Security Agreement, and Receivables and Inventory Agreement
9 hereinabove mention, as modified herein, are hereby consolidated and coordinated so that
10 together they shall hereafter constitute in law but a single lien," Consolidation of Loans,
11 Mortgages and Security Agreements filed at Comm. Recorder's Office as File No. 86-1409 at 2
12 ("Consolidation Agreement). It further provides that "[t]his instrument shall secure the same
13 indebtedness secured by the notes and Security Agreements, hereinabove mentioned, *and in*
14 *consideration of this Agreement, mortgagors hereby assume, covenant, and agree to pay the*
15 *principal sum and interest as herein set forth. Such Notes and Security Agreements as*
16 *modified by this Agreement, shall continue in full force and effect."* *Id.* (emphasis added) In
17 fact, the fifth and most recent revision of the consolidation agreement specifically states:

18 This agreement is a **revision** only, and **not a novation**; and except as herein
19 provided, all of the terms and conditions of the said Consolidation of Loans,
20 Promissory Note, Loan Agreement, Mortgages and Security Agreements or other
21 documents of lien or encumbrance related thereto **shall remain in full force and**
22 **effect.**

23 Complaint, Ex. N ("Fifth Revision Agreement") at 2 (emphasis added). Furthermore, unless it
says otherwise, an agreement consolidating a mortgage or other security interest does not
ordinarily constitute a novation of either the obligations owed by the debtor or the concomitant
rights of the lender. *Bowden v. Bank of America Nat'l Trust & Sav. Ass'n*, 224 P.2d 713, 716

(Cal. Sup. Ct. 1950) (“the consolidation of several notes and mortgages into single instruments [will not] ordinarily furnish evidence of an agreement to relinquish the prior rights”) (internal citations omitted).

b. CDA complied with the applicable Rules and Regulations on Loans and Mortgages.

The Demapans argue that CDA failed to comply with its duly promulgated and adopted regulations and so they are not in default for foreclosure purposes. Opp’n at 9. In particular, the Demapans argue that CDA’s Rules and Regulations require “the Executive Director of CDA to closely monitor the repayment of Loans, to attempt to contact the borrower by phone, if delinquent, and send a thirty-day delinquent notice and a sixty-day delinquent notice before referral to CDA’s Legal Counsel.” *Id. citing to Com.Reg. Vol. 24, No. 01, p. 18827, 18846-18847 (Jan. 29, 2002).* The Demapans contend that these requirements were violated, because

Mr. and Mrs. Demapan did not receive any phone calls from CDA regarding their delinquent account. Furthermore, Mr. and Mrs. Demapan did not receive any 30-day or 60-day delinquent notice. ***Mr. and Mrs. Demapan did not receive any demand letter from CDA Legal Counsel.*** Instead, CDA chose to disregard the Loan Collection and Foreclosure procedures in order to “hurry into court.”

Opp’n at 9-10 (emphasis added). In response to this allegation, CDA provided a copy of a June 19, 2002 demand for payment letter from CDA’s legal counsel to the Demapans.⁵ Furthermore, CDA provided the Court with additional portions of its relevant rules and regulation. In particular, it cited to Section 19.15 of CDA’s promulgated DCD Rules and Regulations which provides as follows:

⁵ At the hearing on this matter, the Court ordered CDA to submit supplemental materials to demonstrate compliance with these provisions of its regulations. CDA subsequently filed its Supplemental Motion Exhibits. None of the documents in CDA’s submission show a CDA initiated notice to the Demapans about a failure to timely make a payment. The Demapans objected to CDA’s supplemental exhibits, arguing that they are irrelevant, prejudicial, and non-responsive. This Court agrees that they are non-responsive and irrelevant to the issue of compliance with the 30-day and 60-day written notice requirement under CDA’s rules and regulations, and therefore strikes them.

1 **19.15 Controlling Authority.** If any of the above procedures conflict with any
2 applicable provision of law or *any term in any of the Loan documents, then said*
3 *law or contractual term shall control.*

4 CDA's Reply, Ex. 3, *citing to* Com.Reg. Vol. 24, No. 01, p. 18848 (Jan. 29, 2002) ("DCD Rules
5 and Regulations") (emphasis added). Furthermore, CDA submitted a true and accurate Monthly
6 Loan Statement ending October 19, 2004 for the Demapans' loan account. CDA's Reply, Ex. 2
7 ("Statement").

8 This Court first notes that the Rules and Regulations the Demapans rely upon were
9 promulgated after the Demapans were long behind in their payments, and were adopted less than
10 a month before the entire loan matured. The Statement shows the Demapans' payment history
11 from March, 2001 through October, 2004, for the monthly payments that were due beginning
12 December, 2000. CDA's rules and regulations did not take effect until June 17, 2002.⁶

13 Second, the same Rules and Regulations provides that if any of its procedures conflict
14 with any applicable provision of any term in any of the Loan documents, *then said contractual*
15 *term shall control.* Section 19.15 of DCD Rules & Regs. The Fifth Revision Agreement signed
16 by the parties on August 18, 2000 expressly provides that

17 "[t]he Borrower(s) further agrees that should it be in arrears for any
18 monthly payment under the above payment schedule for a period of sixty
19 (60) days, Lender shall have the right to refer its loan documents to
20 Lender's legal counsel for court action, *without further notice to*
21 *Borrower(s).* This right of Lender shall be in addition to any and all rights
22 already stated in the **Consolidation of Loans, Promissory Note, Loan**
23 **Agreement, Mortgages and Security Agreements.**

24 Complaint, Ex. N, p. 1-2. (emphasis added). Referring to the Statement again, it shows
25 that the Demapans were more than 60 days in arrears starting with the December, 2000 due date,
26 they never became current on their payments, and the loan matured on July 16, 2002. Based on

27 ⁶ 1 N.M.I. Admin. Code 25 (2004 ed.)

all these foregoing facts, this Court concludes that Section 19.15 of the DCD Rules and Regulations applies, and the terms of the loan agreements did not require CDA to give the Demapans the prior written notices they assert were necessary prior to concluding that they were legally in default and before CDA could take any court action.

c. The parties' loan documents require written revisions.

The Demapans assert that the former Chairman of CDA orally approved another consolidation revision of their loan in August, 2003. However, they failed to provide any evidence to show reliance on any enforceable revision. The Statement shows that the Demapans made only two payments in 2003, with the next payment in August, 2004. Reply, Ex. 2.

Furthermore, the written agreement governing the consolidated mortgages expressly provides that “[t]his agreement may not be changed or terminated except in writing.” Complaint, Ex. I (Consolidation of Loans, Mortgages and Security Agreements (dated July 11, 1986) at 4, para. 5). As correctly cited by CDA, the CNMI Supreme Court has held that “courts generally give effect to integration clauses which stipulate that any modifications to the lease must be in writing.” *Sablan Enter. v. New Century, Inc.*, 1997 MP 32, ¶ 17, 5 N.M.I. 144, 147. Based on this legal premise, the Demapans’ request for the opportunity to provide evidence of an oral approval of another consolidation revision must be denied.

V. CONCLUSION

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

1. Judgment in favor of CDA on its claim for money due in the principal amount of \$277,848.89 against Ignacio Dlg. Demapan and Frieda R. Demapan, jointly and severally, plus pre-judgment and post-judgment interest at 9% interest per annum, penalty and late charges, and for reasonable attorneys fees and costs. Plaintiff shall have ten (10) days from the date of this order to submit to the court and Defendants its calculation of prejudgment interest and attorneys fees and costs, and proposed Final Judgment. Defendants IDD and FRD shall have seven (7) days thereafter to submit any objection to Plaintiff’s submissions.

1 2. CDA's fee simple mortgage interest in Lot H-175-3 (Part of H-175) and Lot No. 002
2 C 27, as particularly described in paragraphs 10, 18 and 35 in the Complaint, located in San
3 Vicente and Marpi, Saipan, respectively, shall be sold at a public auction, in the manner as
4 prescribed by 2 CMC § 4537.

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

7 4. Any party to this action is hereby allowed to become a purchaser at any sale.

8 5. The proceeds of any sale shall be applied in the manner as prescribed by 2 CMC §
9 4537.

10 6. Plaintiff may seek a deficiency judgment against Ignacio Dlg. Demapan and Frieda R.
11 Demapan, jointly and severally, for any deficiency which may remain after applying all the
12 proceeds of all sales.

13 Based on the foregoing decision, and pursuant to Com.R.Civ.P. Rule 54(b), this Court concludes
14 that there is no just reason for delay to enter a final judgment in this case as to CDA's claims
15 against Ignacio Dlg. Demapan and Frieda R. Demapan, and therefore orders that the entry of
16 judgment be made.⁷

17 SO ORDERED this 29th day of March, 2006.

18 /s/
19 RAMONA V. MANGLONA, Associate Judge

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23 ⁷ Plaintiff CDA must still obtain a separate judgment against co-defendant PAI pursuant to Com.R.Civ.P. 55(b)(2).