

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

EZRA CELESTIN and SHELIA CELESTIN,)
Appellants/Defendants,) S.Ct. Civ. No. 2007/014
)
v.) Sup.Ct. Civ. No. 741/2001
)
LLP MORTGAGE LTD., f/k/a/ LOAN)
PARTICIPANT PARTNERS, LTD., a)
Texas Limited Partnership,)
)
Appellee/Plaintiff.)
_____)

NOTICE OF ENTRY OF JUDGMENT/ORDER

TO: Members of the Supreme Court Panel Hon. Darryl D. Donohue
Judge of the Superior Court Ezra and Shelia Celestin,
Samuel T. Grey, Esq. Venetia H. Velazquez, Esq.
Supreme Court Law Clerks

Please take notice that on November 7, 2007, a **JUDGMENT ORDER OF THE COURT** dated November 7, 2007, was entered by the Clerk in the above-entitled matter.

Dated: November 9, 2007

VENETIA H. VELÁZQUEZ, ESQ.
Clerk of the Court

By: 

TICEY A. THOMAS
Deputy Clerk II

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

EZRA CELESTIN and SHELIA) **S. Ct. No. 2007-014**
CELESTIN,) **Re: Super. Ct. Civ. No. 741-2001**
)
Appellants/Defendants,)
)
v.)
)
LLP MORTGAGE LTD., f/k/a LOAN)
PARTICIPANT PARTNERS, LTD., a)
Texas Limited Partnership,)
)
Appellee/Plaintiff.)
)

On Appeal from the Superior Court of the Virgin Islands
Considered: September 21, 2007
Filed: November , 2007

BEFORE: Rhys S. Hodge, Chief Justice; Ive Arlington Swan, Associate Justice; and Edgar D. Ross, Designated Justice.¹

APPEARANCES:

Ezra Celestin, *Pro Se.*

Shelia Celestin, *Pro Se.*
For Appellants.

Samuel T. Grey, *Esq.*
For Appellees.

JUDGMENT ORDER OF THE COURT

PER CURIAM.

Appellants Ezra and Sheila Celestin's ("Appellants") appeal the Superior Court's order of summary judgment in favor of Appellee LLP Mortgage Ltd., f/k/a Loan

¹ Judge Ross is a Senior Sitting Judge of the Superior Court of the Virgin Islands sitting in this matter by Designation pursuant to 4 V.I.C. §24(a).

Participation Partners, Ltd., a Texas limited partnership (“Appellee” or “LLP”). For the reasons stated below, the Superior Court summary judgment order will be affirmed.

I. BACKGROUND

On April 1, 1990, Appellants signed a note and mortgage with the Small Business Administration (“SBA”) for \$68,600.00. SBA assigned the note to LLP. The mortgaged property is an unimproved .6592 U.S. acres plot of land located at Plot No. 16 D of Estate Sion Hill, Queen Quarter, St. Croix, U.S. Virgin Islands. Appellant in the moving papers denied but at oral argument admitted receiving the disbursements from the loan. Appellants made some payments on the loan. As of January 18, 2007 the principal owed on the mortgage was \$63,013.46 but with interest, payment of property taxes to protect the security interest, and costs, the total accrued to \$99,608.59.

The summary judgment entered in favor of LLP by the Superior Court on January 17, 2007, ordered a Marshal’s sale of the property. On February 8, 2007 Celestin filed this appeal. On May 1, 2007 this Court denied Appellants motion for a stay of the judgment pending appeal. As Appellants were unable to post a *supersedeas* bond the property was sold at auction and is now subject to the statutory redemption period.

II. DISCUSSION

Appellants appeal the Superior Court order of summary judgment in favor of LLP. The standard of review in an appeal from a grant of summary judgment is *de novo*. *Peter Bay Homeowners Ass'n, Inc. v. Stillman*, 294 F.3d 524 (3d Cir. 2002). When reviewing an order granting summary judgment we apply the same test the [trial] Court should have performed. *Medical Protective Co. v. Watkins*, 198 F.3d 100, 103 (3d Cir.1999). Viewing the facts in the light most favorable to the nonmoving party, we look to see if there is a

genuine issue of material fact; and, if not, whether the moving party was entitled to judgment as a matter of law. *Redland Soccer Club, Inc. v. Department of Army of U.S.*, 55 F.3d 827 (3d Cir. 1995)(citing *see* Fed.R.Civ.P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986); *In re Paoli R.R. Yard PCB Litigation*, 916 F.2d 829, 860 (3d Cir.1990)). Rule 56 of the Federal Rules of Civil Procedure provides that judgment shall be rendered in favor of the moving party “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.”

A mortgage is a conveyance or retention of an interest in real property as security for performance of an obligation. Restatement (Third) of Property (Mortgages) § 1.1 (1997). Consideration is not necessary to the enforceability of a mortgage. Restatement (Third) of Property (Mortgages) § 1.2(a) (1997). Under common law, “[t]o constitute a loan there must be (i) a contract, whereby (ii) one party transfers a defined quantity of money, goods, or services, to another, and (iii) the other party agrees to pay for the sum or items transferred at a later date.” *In re Mehta*, 310 F.3d 308, (3d Cir. 2002)(citing *In re Renshaw*, 222 F.3d 82, 88 (2d Cir. 2000); *see also, In re Grand Union*, 219 F. 353, 356 (2d Cir. 1914)). Courts will attach a sufficiently definite meaning to the terms of a bargain to make it enforceable. *Baer v. Chase*, 392 F.3d 609 (3d Cir. 2004)(citations omitted). Where the parties are under a duty to perform under a loan that is definite and certain the courts will enforce a duty of good faith, including good faith negotiation, in order that a party not escape from the obligation he has contracted to perform. *Merrill Lynch Private Capital, Inc. v. Abou Khadra*, 764 F.Supp. 921 (S.D.N.Y. 1991). In the Virgin Islands a lien upon real property,

other than that of a judgment . . . shall be foreclosed, and the property adjudged to be sold to satisfy the debt secured thereby, by an action of an equitable nature. 28 V.I.C. § 531

In this case Appellants acknowledge that they signed the contract (note and mortgage), received the funds and for a while made loan repayments. There is no showing of fraud, coercion or other nefarious inducement into the contract. Rather this is simply a case where one party to a loan contract's trying to avoid their obligation to repay a loan.

Appellants present a novel argument in contending that the note they signed was the funding vehicle which SBA deposited into the Federal Reserve Bank as cash and it was this cash that was disbursed to Appellants. As their note created the money, Appellants contend that SBA did not give them anything of value and as such they do not have to repay the loan.

Appellants' interpretation of the banking system misconstrues accounting principles. Additionally, the accounting methods employed by the SBA have nothing to do with Appellants obligation to repay a properly executed note and mortgage. Appellants received and used the loan proceeds and incurred the obligation to repay according to the terms of the loan. The judgment of the Superior Court will be affirmed.

III. CONCLUSION

There is no genuine issue of material fact that Appellants signed a note secured by a mortgage on the Sion Hill property and that they are now in default. The accounting systems employed by SBA and LLP are separate from Appellants obligation to repay the loan. The granting of summary judgment in favor of Appellee by the trial court was proper and will be affirmed.

ATTEST:
VENETIA HARVEY VELAZQUEZ
Clerk of the Court

By: 
Deputy Clerk

CERTIFIED A TRUE COPY
Date: November 9, 2007

VENETIA H. VELAZQUEZ
Clerk of the Court
BY: 
Deputy Clerk

Copies to:
Members of the Supreme Court Panel
Honorable Darryl D. Donahue
Judges of the Superior Court
Ezra and Sheila Celestin, *Pro Se*
Samuel T. Grey, Esq.
Venetia H. Velazquez, Esq., Clerk
Supreme Court Law Clerks