

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

EMPLOYEES' RETIREMENT PLAN OF
CONSOLIDATED ELECTRICAL
DISTRIBUTORS, INC., an employee
pension benefit trust,

Plaintiff,

vs.

Case No. 2014-947-CB

HARBOR THIRTEEN MILE – 20600 LLC,
a Michigan limited liability company, and
CRAIG SCHUBINER,

Defendant.

OPINION AND ORDER

Defendant Harbor Thirteen Mile-20600, LLC ("Defendant Harbor") has filed a motion to compel Plaintiff to discharge mortgage and release UCC liens. Plaintiff has filed a response and requests that the motion be denied.

In addition, Defendant Harbor has filed a motion to prohibit Plaintiff from collecting rents and for order returning rents. Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

This matter arises out of a loan evidenced by a series of promissory notes executed by Defendant Harbor beginning with a note executed in favor of Plaintiff's predecessor in interest, Charter One Bank, N.A. ("Charter"). In its complaint, Plaintiff alleged that Defendant Harbor failed to make the required monthly payments under the loan documents, and is therefore in default. Plaintiff thereafter accelerated the balance

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and demanded repayment in full. Defendant Harbor failed to pay as demanded. In its first amended complaint ("Complaint"), Plaintiff alleged claims for: Count I- Claim and Delivery against Defendant Harbor, Count II- Breach of Contract against Defendant Harbor and Breach of Guaranties against Defendant Schubiner, and Count III- Appointment of a Receiver over Defendant Harbor. Plaintiff's claims against Defendant Harbor have since been dismissed with prejudice pursuant to a February 4, 2016 stipulated order of dismissal.

On January 12, 2016, the Court issued its Opinion and Order, *inter alia*, granting Plaintiff's motion for summary disposition as to the Count II against Defendant Schubiner, the only claim remaining open in this case. Specifically, the Court held that Defendant Schubiner liable under his guaranties, as reaffirmed in the Second Modified Loan Docs. The Court subsequently denied Defendant Schubiner's motion to reconsider the January 12, 2016 Opinion and Order.

The issue of damages was heard at a February 1, 2016 bench trial. On March 10, 2016, the Court entered its Opinion and Order in which it held that Plaintiff is entitled to recover the \$3,033,259.52 loan balance, interest of \$1,081,626.64, property taxes in the amount of \$129,574.51, late charges of \$10,793.45 and insurance premiums of \$4,009.00 from Defendant Schubiner. In addition, the Court held that Plaintiff is entitled to recover its costs of collection in accordance with ¶8.9 of the Third Restated Note in an amount to be determined.

On May 11, 2016, the Court held a hearing on the issue of the amount of collection costs Plaintiff is entitled to recover from Defendant Schubiner. On June 22, 2016, the Court issued its Opinion and Order in which it awarded Plaintiff \$95,046.00 in attorney

fees and \$4,267.46 in costs. The Opinion and Order resolved all pending claims and closed the case.

On July 28, 2016, Defendant Harbor filed its instant motion to compel Plaintiff to discharge the Mortgage and to release UCC liens it holds. On September 8, 2016, Plaintiff filed its response to the motion and requests that the matter be denied. On September 12, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

On September 20, 2016, Defendant Harbor filed its instant motion to prohibit Plaintiff from collecting rents and for order returning rents. On September 26, 2016, Plaintiff filed a response and requests that the motion be denied. On September 26, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Arguments and Analysis

In its motions, Defendant Harbor avers that Plaintiff's claims under the Mortgage are barred by res judicata and/or compulsory joinder. In support of its position, Defendant Harbor avers that Plaintiffs claims against it were dismissed with prejudice and that as a result it cannot pursue those claims again pursuant to the doctrine of res judicata, and that it may not pursue other claims according to compulsory joinder rule.

The Court is convinced that it lacks jurisdiction to address Defendant Harbor's positions. Both of Defendant Harbor's motions seek to obtain declaratory relief providing that the Mortgage is discharged and that Plaintiff's rights under the Mortgage have been extinguished. However, Defendant Harbor did not have a claim for declaratory relief in this case, the Court has not made any such rulings in this case, and Defendant Harbor

has not cited to any authority whatsoever that would grant this Court jurisdiction in this case to enter an order barring Defendant Harbor from seeking to pursue its rights under the Mortgage now or in the future after the matter has been closed. While res judicata and/or compulsory joinder are both doctrines which could potentially preclude Plaintiff from pursuing certain claims, those arguments are not appropriately raised in post-judgment motions filed in an attempt to avoid either having to file its own separate case and/or defend a second suit brought by Plaintiff. Accordingly, the Court is convinced that it does not have jurisdiction to rule on Defendant Harbor's motions. As a result, Defendant Harbor's motions must be denied.

III. Conclusion

Based upon the reasons set forth above, Defendant Harbor's motion to compel Plaintiff to Discharge the Mortgage and Release UCC Lien is DENIED. Further, Defendant Harbor's motion to prohibit Plaintiff from collecting rents and for order returning rents is DENIED. In compliance with MCR 2.602(A)(3), the Court states this matter REMAINS CLOSED.

IT IS SO ORDERED.

Date: SEP 30 2015

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge