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

BANK OF GUAM,) Civil Action No. 01-0149
)
Plaintiff,) **ORDER**
)
v.)
)
ANTHONY C. REYES and JOANNE P.)
REYES,)
)
Defendants.)

I. PROCEDURAL BACKGROUND

This matter came before the court on August 21, 2001, in Courtroom 220 at 9:00 a.m. on Plaintiff's motion for summary judgment. Michael A. White, Esq., appeared on behalf of the Plaintiff, the Bank of Guam. Joseph A. Arriola, Esq., appeared on behalf of the Defendants, Anthony C. Reyes and Joanne P. Reyes. The court, having reviewed the briefs, affidavits, and declarations, and having heard and considered the arguments of counsel, now renders its written decision.

II. FACTS

On June 7, 1991, Plaintiff and Defendants executed a Promissory Note wherein Defendants, in consideration for the receipt of \$50,000.00, agreed to repayment of the principal sum of \$50,000.00 at 15% per annum interest by making one hundred nineteen (119) monthly payments in the amount of \$809.33 from August 15, 1991, to June 15, 2001.

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1 Also on June 7, 1991, Plaintiffs and Defendants executed a Mortgage wherein Defendants
2 pledged real property designated as Lot No. E.A. 743-4-5-2 to secure repayment of the Promissory Note.

3 On June 24, 1993, Plaintiff and Defendants executed a Revision Agreement wherein the partes
4 agreed to modify the terms of the Promissory Note to require the repayment of the remaining principal
5 balance of \$45,420.01 at 15% interest by paying ninety seven (97) monthly payments in the amount of
6 \$662.20 each commencing on July 25, 1993, and ending on August 25, 2001.

7 On November 13, 2000, Plaintiff sent Defendants a Notice of Default wherein it was noted that
8 Defendants owed a principal sum of \$13, 510.36, with interest thereon at a rate of 12% per annum, and
9 reasonable attorney fees.

10 On December 4, 2001, Defendants submitted a partial payment in the amount of \$4,000.00 to
11 Plaintiff. Four additional partial payments in the amount of \$900.00 each were made on January 3,
12 2001, February 1, 2001, and March 1, 2001.

13 On March 15, 2001, Plaintiff filed a Complaint demanding judgment against Defendants:
14 (1) for the principal sum of \$13,510.36; (2) for interest thereon at a rate of 12% per annum;
15 (3) reasonable attorney's fees; (4) post-judgment interest; and ordering the sale of Lot No. E.A. 743-4-5-
16 2 in accordance with law and that the proceeds of the sale after deducting the expenses thereof, be
17 applied to the payment of the balance due upon the judgment.

18 On May 25, 2001, Defendants filed an Answer and Affirmative Defenses denying that
19 Defendants are in default upon the Promissory Note and denying that there is now due and owing the
20 principal sum of \$13,510.36, with interest thereon at a rate of 12% per annum, and reasonable attorney
21 fees. Defendants further deny that they have failed, refused, and neglected to pay the aforementioned
22 sums to Plaintiff.

23 On July 11, 2001, Plaintiff filed a motion for summary judgment asserting that no genuine issues
24 of material fact exist and that Plaintiff is entitled to judgment as a matter of law.

25 On August 2, 2001, Defendants filed an opposition to Plaintiff's motion for summary judgment
26 asserting that Plaintiff is not entitled to summary judgment because there are genuine issues of material
27 fact as to Plaintiff's claims.

28 **III. ISSUE**

1 Whether the court shall grant Plaintiff's motion for summary judgment pursuant to Com. R. Civ.
2 P. 56 on the grounds that there is no dispute as to material fact and that Plaintiff has shown that he is
3 entitled to judgment as a matter of law as to Plaintiffs' claim that Defendants are in default under the
4 Promissory Note executed on June 7, 1991, as revised on June 24, 1993.

6 IV. ANALYSIS

7 A. Summary Judgment Standard.

8 The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil
9 Procedure. Rule 56(a) provides:

10 A party seeking to recover upon a claim . . . may . . . move with or
11 without supporting affidavits for a summary judgment in the party's
12 favor upon all or any part thereof. Com. R. Civ. P. 56(a).

13 Rule 56(c) continues:

14 The judgment sought shall be rendered forthwith if the pleadings,
15 depositions, answers to interrogatories, and admissions on file, together
16 with the affidavits, if any, show that there is no genuine issue as to any
17 material fact and that the moving party is entitled to judgment as a matter
18 of law.

19 Com. R. Civ. P. 56(c); *see also Celotex v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 92 L.Ed.2d 264
20 (1986). Once a movant for summary judgment has shown that no genuine issue of material fact exists,
21 the burden shifts to the opponent to show that such an issue does exist. *See Riley v. Public School Sys.*,
22 4 N.M.I. 85, 89 (1994); *see also Castro v. Hotel Nikko, Saipan, Inc.*, 4 N.M.I. 268, 172 (1995). In
23 determining whether to grant summary judgment, the court must view the evidence and all inferences
24 to be drawn from the underlying facts in the light most favorable to the nonmoving party. *See Anderson*
25 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

26 Pursuant to Com. R. Civ. P. 56(e):

27 When a motion for summary judgment is made and supported as
28 provided in this rule, an adverse party may not rest upon the mere
allegations or denials of the adverse party's pleading, but the adverse
party's response, by affidavits or as otherwise provided in this rule, must
set forth specific facts showing that there is a genuine issue for trial. If
the adverse party does not so respond, summary judgment, if appropriate,
shall be entered against the adverse party.

1 Com. R. Civ. P. 56(e). To defeat a supported motion for summary judgment, the non-moving party must
2 assert sufficient factual indicia from which a reasonable trier of fact could reasonably find in his or her
3 favor.” *Castro supra*, at 272 (1995), *citing Anderson, supra* at 249; *see also Eurotex, Inc. v. Muna*, 4
4 N.M.I. 280, 284 (1995).

5
6 B. Default on Promissory Note.

7 Plaintiff asserts that there are no genuine issues of material fact and that Plaintiff is entitled to
8 judgment as a matter of law because under the terms of the Promissory Note the Defendants are in
9 default and all sums are presently due and payable at the option of Plaintiff.

10 Defendants do not contest that Defendants and Plaintiff executed a Promissory Note on June 7,
11 1991, and that such Promissory Note was revised on June 24, 1993. Defendants also do not contest the
12 fact that such Promissory Note is secured by a Mortgage executed on June 7, 1991, wherein Defendants
13 pledged real property designated as Lot No. E.A. 743-4-5-2 to secure repayment of the Promissory Note.
14 Defendants do, however, deny that they are in default upon the Promissory Note and deny that there is
15 now due and owing the principal sum of \$13,510.36, with interest thereon at a rate of 12% per annum,
16 and reasonable attorney fees. Defendants further deny that they have failed, refused, and neglected to
17 pay the aforementioned sums to Plaintiff. Defendants note that on December 4, 2001, they submitted
18 a partial payment in the amount of \$4,000.00. Defendants further note that four additional partial
19 payments in the amount of \$900.00 each were made on January 3, 2001, February 1, 2001, and March
20 1, 2001. Defendants, however, admit that no further payments were submitted after the initiation of the
21 present action.

22 Pursuant to the June 7, 1991, Promissory Note, as revised on June 24, 1993, Defendants agreed
23 to pay ninety seven (97) equal monthly installments of \$662.20 commencing on July 25, 1993, and
24 monthly thereafter, until August 25, 2001. *See Plaintiff’s Complaint, Exhibit A (Promissory Note).*
25 Pursuant to the Promissory Note, “[i]f default be made in the payment when due of any part or
26 instalment (sic) of principal or interest, then the whole sum of principal and interest shall become
27 immediately due and payable at the option of the holder of this note, without notice.” *See Plaintiff’s*
28 *Complaint, Exhibit A (Promissory Note).*

1 Plaintiff has submitted the declaration of Marcie M. Tomokane, the Vice President and Branch
2 Manger of the Saipan Branch of the Bank of Guam, which sets forth that as of October 9, 2000,
3 Defendants were in arrears in their payments in the amount of \$5,663.97. Marcie M. Tomokane admits
4 that Defendants made a payment of \$4,000.00 on December 4, 2000. However, despite such payment,
5 Marcie M. Tomakane avers that there remained due and owing on the Promissory Note the principal
6 sum of \$13,510.36 and that the \$4,000.00 payment was insufficient to cure the default.

7 Despite the fact that Defendants have submitted five payments totaling \$7,600.00 after receiving
8 the Notice of Default on November 13, 2000, wherein it was noted that Defendants owed a principal
9 sum of \$13, 510.36, with interest thereon at a rate of 12% per annum, and reasonable attorney fees, such
10 payments were insufficient to cure the default.

11 However, “[c]ourts do not favor forfeiture of rights under contracts.” *See Bank of Saipan v.*
12 *Avanzado*, Civ. Nos. 94-0619 (N.M.I. Super. Ct. May 24, 1995) (Opinion and Order on Defendant
13 Milne’s Motion for Summary Judgment). “They liberally construe contract provisions which may result
14 in forfeitures in the favor of the party against whom the forfeiture may be claimed.” *Id.*

15 Defendants have set forth the affirmative defenses of unclean hands, estoppel, laches, and
16 waiver. “[T]he determination of whether equitable relief against forfeiture should apply is a factual
17 issue.” *Bank of Saipan v. Avanzado, supra*. The court has not been presented with sufficient undisputed
18 facts to rule on the equitable issues. Accordingly, genuine issues of material fact remain which require
19 further proceedings and which necessarily preclude entry of summary judgment. Accordingly,
20 Plaintiff’s motion for summary judgment is **DENIED**.

21 22 V. CONCLUSION

23 For the foregoing reasons, the court finds that it has not been presented with sufficient
24 undisputed facts to rule on the equitable issues. Accordingly, genuine issues of material fact remain
25 which require further proceedings and which necessarily preclude entry of summary judgment.
26 Accordingly, Plaintiff’s motion for summary judgment is **DENIED**.

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28 So ORDERED this 23th day of August, 2001.

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/S/
JUAN T. LIZAMA, Associate Judge