# Hendrickson v. E.P.C. Real Estate Equities, Inc.

United States District Court for the District of New Jersey

May 24, 1991, Filed

Civil No. 90-3505 (CSF)

**Reporter**
1991 U.S. Dist. LEXIS 8341 *; 1991 WL 117806

MARIE E. HENDRICKSON, Plaintiff, v. E.P.C. REAL ESTATE EQUITIES, INC., et al., Defendants

**Notice: [*1]** NOT FOR PUBLICATION

**Judges:** Clarkson S. Fisher, United States District Judge.

**Opinion by:** FISHER

## Opinion

OPINION

Before the court is the motion of defendant Resolution Trust Corporation ("RTC") for summary judgment on its counterclaim, for dismissal of the third count of the complaint of the plaintiff, Marie E. Hendrickson ("Hendrickson"), and for attorney's fees and costs pursuant to rule 11 of the Federal Rules of Civil Procedure. For the reasons set forth below, the court will grant summary judgment in favor of RTC on its counterclaim and will dismiss the third count of the complaint. The court will deny the motion for attorney's fees under rule 11.

*FACTS*

I. *Hendrickson's Transactions with EPC*

In 1983, the plaintiff, Marie E. Hendrickson ("Hendrickson"), a widow, owned vacant farmland, designated as Block 58, Lot 21, on the tax map of the Township of Holmdel, New Jersey. Defendant Eastern Planned Communities ("EPC"), wishing to construct a residential dwelling development to be known as "Wagon Wheel Farm" on this property and contiguous property, offered to buy her land.

On July 14, 1983, Hendrickson entered a contract for the sale of her land, agreeing to sell the property to EPC for $ 1,200,000.00. **[*2]** The addendum to the contract of sale set forth, in pertinent part:

Seller shall agree to subordinate its mortgage to the lien of an institutional land acquisition, development improvement and construction mortgage loan which shall be used to build and improve the parcel for use as residential dwelling units. Seller-mortgagee fully agrees to subordinate its mortgage to the lien of the institutional land acquisition, development, improvement and construction mortgage loan and to further execute any documents which may be required by the institutional lender to perfect such subordination.

Certification of Michael R. O'Donnell exhibit A (filed Feb. 13, 1991).

The terms of the contract of sale obligated EPC to give Hendrickson a purchase money mortgage ("PMM") in the amount of $ 900,000.00 (later increased to $ 960,000.00). On January 20, 1984, Hendrickson closed the transaction and, pursuant to the contract of sale, received the PMM. The PMM contained a subordination provision identical to that in the addendum to the contract of sale. *Id.* exhibit B.

On January 20, 1984, Hendrickson also executed a subordination agreement. The subordination agreement identified City Federal Savings **[*3]** and Loan Association as the "First Mortgagee," Marie Hendrickson as the "Subordinated Mortgagee" and EPC as the "Borrower." *Id.* exhibit C. The subordination agreement provided:

First Mortgagee has refused to disburse any funds to Borrower unless the mortgage held by the Subordinated Mortgagee is completely, unconditionally and fully subordinated to the lien of the aforementioned mortgage between Borrower and First Mortgagee.

*Id.* The subordination agreement also provided that:

The lien of the mortgage held by the Subordinated Mortgagee is, and shall be and remain, subordinated, junior and inferior in all respects to the lien of the aforementioned mortgage between Borrower and First Mortgagee, both as to disbursements made and to be made thereunder, to the full extent of the face amount of the said mortgage, and to all interest due and to become due thereunder, and to all other monies which are or will become due First Mortgagee thereunder including, but not limited to, all foreclosure costs and expenses and legal fees incidental thereto

. . . .

This subordination agreement is unconditional and is made, executed and delivered by the Subordinated Mortgagee with the express **[*4]** understanding that First Mortgagee has the right to make disbursements whether or not in accordance with any Construction Loan or Improvement Agreement between it and Borrower, and regardless of the progress of the work completed at the time a disbursement is made or of the application of the funds by Borrower, even if applied in violation of any such agreement. . . .

The Subordinated Mortgagee hereby consents to any and all extensions, renewals or modifications to the aforementioned mortgage between First Mortgagee and Borrower.

*Id.*

On January 23, 1984, Hendrickson recorded her mortgage. EPC failed to pay Hendrickson $ 800,000.00 on the original maturity date of the PMM, which was January 20, 1989. On February 8, 1989, Hendrickson agreed to a one-year extension of the mortgage. This extension was recorded on March 21, 1989. EPC failed to pay the sum owed to Hendrickson on or before January 20, 1990. On May 28, 1990, that debt had remained unpaid, so Hendrickson filed this action in the Superior Court of New Jersey, Chancery Division, Monmouth County against EPC and City Federal Savings Bank ("City Federal") (incorrectly named as City Federal Savings and Loan Association).

**[*5]** II. *City Federal's Transactions with EPC*

On January 20, 1984, City Federal loaned EPC the sum of $ 2,800,000.00 for the acquisition and development of property designated as Lots 21 and 22 in Block 58 on the tax map of the Township of Holmdel. EPC executed a promissory note in the amount of the loan and a mortgage to secure the note and loan. Certification of Mark Williams exhibit A (filed Feb. 13, 1991). This mortgage encumbered the property Hendrickson had sold to EPC. On January 23, 1984, City Federal recorded the mortgage given to it by EPC.

On June 20, 1985, City Federal loaned EPC an additional $ 5,300,000.00 for the acquisition and development of Lots 20, 21 and 22 of Block 58 ("the Wagon Wheel Farm property"). EPC gave City Federal a business-purpose promissory note in the amount of the loan ("the second note"). *Id.* exhibit C. To secure this second note and loan, EPC gave City Federal another mortgage ("the second mortgage") on the Wagon Wheel Farm property. *Id.* exhibit D. On June 21, 1985, City Federal recorded the second mortgage.

City Federal permitted three modifications to the second note and second mortgage, on October 20, 1986, on January 8, 1988 and on July **[*6]** 24, 1989, loaning EPC an additional $ 14,470,000.00 in connection with the development of the Wagon Wheel Farm property. *Id.* exhibits E,F,G. City Federal recorded these modifications on November 14, 1986, January 27, 1988, and July 28, 1989, respectively. EPC is in default under the terms of the second note and second mortgage and all three modifications. As of February 13, 1991, EPC owed City Federal a total of $ 19,517,648.86 in principal, interest and late charges. *Id.* exhibit I.

III. *The Parties to this Litigation*

By an order dated December 7, 1989, the Office of Thrift Supervision ("OTS") declared City Federal insolvent and placed City Federal into receivership. The OTS appointed the RTC receiver of City Federal.

In an order dated the same day, the OTS appointed the RTC conservator for City Savings Bank, F.S.B. ("City"). In a purchase and assumption agreement dated December 8, 1989, the RTC as receiver for City Federal sold certain assets of City Federal to City. The RTC, as conservator for City, now holds the notes and mortgages originally held by City Federal that are at issue in this action.

Pursuant to section 212(d) of the Financial Institutions Reform, Recovery **[*7]** and Enforcement Act of 1989, 12 U.S.C. § 1821(d), the RTC as conservator or receiver of a failed financial institution succeeds to all rights, titles, powers and privileges of the institution.

On August 30, 1990, the Superior Court of New Jersey permitted the substitution of RTC for defendant City Federal as the proper party in interest in this action. On August 31, 1990, the RTC, as conservator of City, removed this action to federal court.

IV. *The Motion Before this Court*

In the third count of her complaint, Hendrickson asks this court to declare the mortgage given to her by EPC superior to all other mortgages on the property so that she might foreclose as a result of the default in payments under her mortgage.

RTC, as conservator for City, alleges in its counterclaim that the second mortgage, including all three modifications, originally given to City Federal by EPC and now held by City (hereafter "the City

mortgage"), is superior to Hendrickson's mortgage by virtue of the subordination clause in the PMM and the subordination agreement, among other reasons.

The RTC now moves for the dismissal of the third count of Hendrickson's complaint and for the entry of summary judgment **[*8]** in its favor on the counterclaim. In its motion, the RTC also requests attorney's fees and costs under rule 11 of the Federal Rules of Civil Procedure.

*ANALYSIS*

Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Brown v. Hilton,* 492 F. Supp. 771, 774 (D.N.J. 1980). The burden of showing that no genuine issue of material fact exists rests initially on the moving party. *Goodman v. Mead Johnson & Co.,* 534 F.2d 566, 573 (3d Cir. 1976), *cert. denied,* 429 U.S. 1038 (1977). This "burden . . . may be discharged by 'showing' . . . that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). Once a properly supported motion for summary judgment is made, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-48 (1986).

There is no issue for trial unless the nonmoving party **[*9]** can demonstrate that there is sufficient evidence favoring the nonmoving party so that a reasonable jury could return a verdict in that party's favor. *Anderson,* 477 U.S. at 249. In deciding a motion for summary judgment, the court must construe the facts and inferences in a light most favorable to the nonmoving party. *Pollock v. American Telephone & Telegraph Long Lines,* 794 F.2d 860, 864 (3d Cir. 1986). The role of the court, however, is not "to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial." *Anderson,* 477 U.S. at 249.

In New Jersey, contract interpretation is a question of law for the court. *First Jersey Nat'l Bank v. Dome Petroleum Ltd.,* 723 F.2d 335, 339 (3d Cir. 1983); *Landtect Corp. v. State Mut. Life Assurance Co.,* 605 F.2d 75, 80 (3d Cir. 1979); *Southland Corp. v. Ashland Oil, Inc.,* 696 F. Supp. 994, 1001 (D.N.J. 1988). Summary judgment is therefore appropriate if the court determines that the meaning of the contract is clear and unambiguous. *First Jersey,* 723 F.2d at 339; **[*10]** *Landtect,* 605 F.2d at 80.

"An ambiguous contract is one capable of being understood in more sense than one; an agreement obscure in meaning through indefiniteness of expression, or having a double meaning. . . . Before it can be said that no ambiguity exists, it must be concluded that the questioned words or language are capable of [only] one interpretation."

*Landtect,* 605 F.2d at 80 (quoting *Gerhart v. Henry Disston & Sons,* 290 F.2d 778, 784 (3d Cir. 1961)).

The court concludes that the terms of the subordination agreement are not ambiguous. Under that agreement, Hendrickson agreed to "completely, unconditionally and fully subordinate" her mortgage to the lien of City Federal.

Hendrickson does not argue that the terms of the subordination agreement are ambiguous. Hendrickson instead urges this court to look to the terms of the agreement to subordinate contained in the addendum to

the contract of sale and in the PMM. Specifically, Hendrickson argues that the word "parcel" is ambiguous in the following language:

Seller shall agree to subordinate its mortgage to the lien of an institutional land acquisition, development **[*11]** improvement and construction mortgage loan which shall be used to build and improve the *parcel* for use as residential dwelling units.

(emphasis added). Hendrickson argues that this word is ambiguous because it may reasonably be understood to refer to her land only, Lot 21 of Block 58, or to the entire Wagon Wheel Farm property, which included Lots 20, 21, 22 of Block 58. If "parcel" referred to her land only, then EPC failed to meet a condition regarding the agreement to subordinate because the money from City Federal was not used to develop the land sold to EPC by her, but was used to develop other land purchased by EPC for the Wagon Wheel Farm project.

The terms of an unambiguous contract may not be varied or negated by resort to evidence outside the written document. *Franklin Discount Co. v. Ford*, 27 N.J. 473, 494 (1958). As already noted above, the court finds that the terms of the subordination agreement are clear and unambiguous. Therefore, the parties are bound by the terms of that agreement.

The court notes that Hendrickson revealed at her deposition on December 18, 1990, that she had read the documents, discussed them with counsel, and executed them **[*12]** on the advice of counsel. Hendrickson also revealed that she had known that EPC was purchasing the property in order to develop a project of single-family homes, and that she had known prior to the closing that the subordination agreement was required in order to enable EPC to obtain a construction loan from City Federal for the project. For these reasons, the court will not relieve Hendrickson from the subordination agreement. *See Pope v. Savings Bank of Puget Sound*, 850 F.2d 1345, 1352 (9th Cir. 1988).

The court also notes that the July 14, 1983, amendment to the contract of sale between Hendrickson and EPC provided as follows:

It is understood and agreed between the parties above that the purchase of the seller's property is made in conjunction with an adjoining tract, already under contract, between buyers herein and Harry S. Willy [sic]. In the event buyers herein are unable to obtain Title to the Willey tract under their contract or otherwise, then this contract may be voided at the option of the buyer . . . .

Therefore, as of July 14, 1983, Hendrickson knew that the sale of her property was expressly conditioned upon the contemporaneous closing of the **[*13]** sale of the land owned by Harry S. Willey (Lot 22 of Block 58) to EPC for development as part of Wagon Wheel Farm. Were the court to consider the terms of the other agreements, then, the court would find no ambiguity regarding the word "parcel" because Hendrickson could not be said to have reasonably understood that word to refer to her land only and not to tracts contiguous to hers that were part of the Wagon Wheel Farm project.

Finally, Hendrickson argues that the entire transaction with City Federal is suspect, as EPC principals involved in the transaction pled guilty to paying kickbacks to a City Federal loan officer in the amount of $ 440,000.00 in order to obtain $ 20,000,000.00 in loans for the development of Wagon Wheel Farm. With respect to the underlying motion, this information is irrelevant. Hendrickson fails to alert the court to any evidence of foul play with respect to the agreements at issue here.

Therefore, because the court finds the subordination agreement unambiguous, the court will grant the motion of RTC for summary judgment on its counterclaim and will dismiss the third count of the complaint.

II. *Rule 11 Sanctions*

Rule 11 provides in relevant part that

**[*14]** the signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay tot the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Fed. R. Civ. P. 11. The standard developed by courts for imposition of sanctions under Rule 11 is stringent. *Doering v. Union County Bd. of Chosen Freeholders,* 857 F.2d 191, 194 (3d Cir. 1988). **[*15]** There are three reasons for this: sanctions are in derogation of the policy of encouraging resort to the courts for peaceful resolution of disputes; the imposition of sanctions tends to spawn satellite litigation counterproductive to efficient disposition of cases; and sanctions increase tensions among the litigating bar and between the bench and the bar. *Id.*

For these reasons, Rule 11 is violated only when it is patently clear that a claim has absolutely no chance of success. *Id.* The question, therefore, is whether the Hendrickson's claim that her mortgage was superior to the City mortgage had absolutely no chance of success as of the date the complaint was filed. The interpretation of a contract was at issue in this case, making it necessary for a court to determine whether the terms of the agreement were ambiguous. Because it was not patently apparent at the time of the filing that this court would conclude that the terms of the subordination agreement were unambiguous, the court will deny RTC's request for sanctions under rule 11.

*CONCLUSION*

Because the court determines that the terms of the subordination agreement are clear and unambiguous, the court grants summary **[*16]** judgment in favor of RTC on its counterclaim and dismisses the third count of the complaint. The court denies the motion for attorney's fees under rule 11. An order accompanies this opinion. No costs.

ORDER - May 24, 1991, Filed

This matter having come before the court on motion by defendant Resolution Trust Company for summary judgment on its counterclaim, for dismissal of the third count of the complaint, and for attorney's fees and costs pursuant to rule 11 of the Federal Rules of Civil Procedure; and the court having considered the written submissions and oral argument of counsel; and for good cause shown,

IT IS on this 24th day of May, 1991,

ORDERED that defendant's motion for summary judgment on its counterclaim and on the third count of the complaint be and hereby is granted, and the counterclaim of Resolution Trust Company and the third count of the complaint are hereby dismissed; and it is further

ORDERED that defendant's motion for attorney's fees under rule 11 be and hereby is denied.

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