

UNOFFICIAL COPY

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

AMERICAN CHARTERED BANK,)

Plaintiff,)

v.)

RICHARD J. CATRAMBONE,)

Defendant.)

No. 05 L 10047



Doc#: 0625732107 Fee: \$28.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 09/14/2006 04:20 PM Pg: 1 of 3

ORDER

This matter having come to be heard upon Plaintiff's motion for summary judgment, due notice having been given, and the Court being otherwise advised in the premises:

The Court makes the following ruling and offers the following reasons thereto:

Facts

Plaintiff brought its verified complaint alleging that Defendant breached his guaranty to pay any indebtedness of CQS Construction, Inc. ("CQS"). CQS had executed and delivered several promissory notes to Plaintiff but later sought the protection of the bankruptcy courts.

Plaintiff proffers the affidavit of John Lazarski, one of its First Vice Presidents. He testifies he has knowledge of the commercial guaranty that Defendant executed on September 3, 2003. The underlying note was secured by a mortgage upon property in Algonquin, Illinois.

The mortgage and note were foreclosed and the property sold at a judicial sale to Plaintiff. The deficiency owed to Plaintiff was \$363,684.99 plus interest. Neither CQS

Box 201

UNOFFICIAL COPY

nor Defendant has paid the deficiency. Interest from February 17, 2006 to September 11, 2006 is \$18,473.20. The total owed as of that date is \$382,158.19.

Court Reasoning

Defendant raises two points in opposition to Plaintiff's motion for summary judgment. First, he claims that Plaintiff violated the implied covenant of good faith and fair dealing in continuing to allow CQS to borrow more money from it. He then claims that he should not be liable as he is not a shareholder of CQS.

Every contract contains an implied covenant of good faith and fair dealing. Northern Trust Co. v. VIII South Michigan Associates, 276 Ill. App. 3d 355, 367 (1st Dist. 1995). Notwithstanding this implied covenant, parties to a contract are entitled to enforce its terms to the letter, and an implied covenant of good faith and fair dealing cannot overrule or modify the express terms of a contract. The covenant of good faith and fair dealing does not allow a party to read an obligation into a contract that does not exist. Northern Trust, 276 Ill. App. 3d at 368; Bank One, Springfield v. Roscetti, 309 Ill. App. 3d 1048 (4th Dist. 1999).

Leaving aside the fact that Plaintiff has not offered this Court any evidence of a claimed breach of the implied covenant, this Court finds that Plaintiff properly allowed it to continue to loan monies to CQS. The guaranty specifically waives any notice of extensions, modifications, or renewals of CQS' indebtedness affecting Defendant's guaranty. As the guaranty directly addresses Defendant's claim of "unfair" dealing, Defendant's claim must be denied.

Turning to Defendant's other claim, *i.e.*, that he is not a shareholder of CQS, this Court does not know how this would preclude him from being a guarantor. Moreover,

UNOFFICIAL COPY

Defendant has not provided this Court with any explanation as how this would change his obligations under the guarantee. Consequently, this Court finds no defense to somehow diminish the effect of the guarantee. Accordingly, it grants Plaintiff's motion for summary judgment.

IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for summary judgment is granted.
2. Judgment is awarded in Plaintiff's favor and against Defendant in the amount of \$382,158.19.

Date: September 11, 2006

JUDGE BARBARA J. DISKO
 SEP 11 2006
 Circuit Court-632

Judge:

I hereby certify that the document to which this certification is affixed is a true copy.
 Date **SEP 12 2006**
 Dorothy Brown
 Clerk of the Circuit Court
 of Cook County, IL

