

IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

FILED
IN COMMON PLEAS COURT

2023 OCT -4 PM 1:10

SHEILA M. BEVINGTON
CLERK OF COURTS
GEAUGA COUNTY

TRUIST BANK, a North Carolina
Banking Corporation,

Plaintiff,

vs.

WEST 117 DEVELOPMENT
FIELDHOUSE LLC, et al.

Defendants.

CASE NO. 23M000556

JUDGE CAROLYN J. PASCHKE

JUDGMENT ENTRY

This cause came before the Court upon the Complaint of Plaintiff Truist Bank (“Plaintiff”) against Defendants West 117 Development Fieldhouse LLC (“West 117”), Studio West 117 Fieldhouse LLC (“Studio West”), DLB Holdings LLC (“DLB”), BVF, LLC (“BVF”), West 117 Development, LLC (“WD”), Studio West 117, LLC (“SW”), Daniel L. Budish (“Budish”), and Betsy V. Figgie (“Figgie”) (collectively, “Defendants”) with respect to three cognovit promissory notes, Note No. 1, Modified No. 2, and Note No. 3 (as each are defined in the Cognovit Complaint) and Guaranty No. 1 and Guaranty No. 2 (as each are defined in the Cognovit Complaint) (collectively, “Cognovit Documents”) executed by Defendants in favor of Plaintiff, as attached to the Cognovit Complaint as Exhibits A, C, D, E, F1 through F6, and G1 through G6. Attached as Exhibit B to the Cognovit Complaint is an affidavit of a representative of Truist detailing the amounts owed under Note No. 1, Modified Note No. 2, Note No. 3, Guaranty No. 1 and Guaranty No. 2 (as each are defined in the Cognovit Complaint), which are all jointly referred to herein as “Loan Documents”.

Patricia B. Fugee, and Ohio attorney acting as attorney in fact, pursuant to the warrant to attorney contained in each of the Cognovit Documents, and R.C. § 2323.13, filed an answer for

Defendants confessing judgment as to the claims for relief in the Cognovit Complaint. Based upon the pleadings (including the exhibits to the Cognovit Complaint), the Court finds that:

1. On or about March 2, 2022, West 117 and Studio West (each a Borrower) executed a Cognovit Promissory Note in favor of Truist in the amount of \$5,112,809.65 (“Note No. 1”). See Cognovit Complaint at ¶ 13.

2. On or about March 2, 2022, West 117 and Studio West each executed a Cognovit Promissory Note in favor of Truist in the amount of \$3,578,966.74 (“Note No. 2”). Cognovit Complaint at ¶ 22. On June 2, 2023, Truist and the two Borrowers entered a modification to Note No. 2 (“Modification”). Id. Note No. 2 after the Modification is hereinafter referred to as “Modified Note No. 2.”

3. On or about March 2, 2022, Borrower Studio West executed a Cognovit Promissory Note in favor of Truist in the amount of \$775,000.00 (“Note No. 3”). Cognovit Complaint at ¶ 31.

4. On March 2, 2022, DLB, BVF, WD, SW, Budish, and Figgie, each a Guarantor, each executed a separate, identical, cognovit Unconditional Guaranty Agreement (“Guaranty No. 1”) under which each Guarantor unconditionally guaranteed the due and punctual payment of all amounts owed by each Borrower to Truist under each of the three Notes. Cognovit Complaint at ¶ 40.

5. On March 2, 2022, DLB, BVF, SW, Budish, Figgie, and West 117 each executed a separate, identical, cognovit Unconditional Guarantee (“Guaranty No. 2”) under which DLB, BVF, SW, Budish, Figgie, and West 117 each unconditionally guaranteed the due and punctual payment of all amounts owed by Studio West under Note No. 3. Cognovit Complaint, ¶ 43.

6. Defendants are each in breach of the Loan Documents signed by them by failing and refusing to make the required payments to Plaintiff as required under each of the three Notes and each of the Guarantees. Complaint and Answer for Confession of Judgment.

7. Under the Loan Documents, each Defendant waived all rights of presentment, protest, and notice of dishonor. Further, Defendants in the Loan Documents each authorized any attorney to appear in a court of record and confess judgment without process against them in favor of Plaintiff for any unpaid amounts due under Note No. 1, Modified Note No. 2, and Note No. 3, plus attorneys' fees and expenses and costs of suit. The Loan Documents also each contain the statutory warning required by Ohio Revised Code § 2323.13 for confession of judgment. Complaint, ¶¶ 17, 26, 35, 46, 49, and 50; Complaint Exhibits A, C, D, E, F(1) through F(6) and G(1) through G(6).

8. As of September 7, 2023, the total outstanding balance owed on the Note No. 1, modified Note No. 2, and Note No. 3, included principal, interest, and late charges, is \$9,795,847.25, plus interest at the rate of \$1,784.66 per diem from the date of judgment until the judgment is paid in full, plus attorneys' fees and expenses and court costs incurred by Plaintiff in pursuing its rights under the Loan Documents. Complaint, ¶¶ 21, 30, 39, 49, 50, and Exhibit B.

9. Defendants have each waived the issuing of service of process in this action and have confessed judgment in favor of Plaintiff. Complaint, ¶¶ 17, 26, 35, 46, 49, and 50; Complaint, Exhibits A, C, D, E, F(1) through F(6), and G(1) through G(6).

10. Defendants have each released and waived all exceptions, errors, and rights of appeal and stays of execution as to the claim for relief asserted in the Cognovit Complaint.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff Truist Bank is hereby granted judgment against Defendants West 117 Development Fieldhouse LLC, Studio West 117 Fieldhouse LLC, DLB Holdings LLC, BVF, LLC, West 117 Development, LLC, Studio West 117, LLC, Daniel L. Budish, and Betsy V. Figgie, jointly and severally, as follows:

- A. As of September 7, 2023, the total amount due on Note No. 1 is \$5,151,692.69 (\$5,086,562.75 principal + \$65,129.94 interest). Interest due on the principal beginning on September 8, 2023, is 8.75% until the debt is paid in full.

- B. As of September 7, 2023, the total amount due on Note No. 1 is \$3,673,883.92 (\$3,578,966.74 principal + \$94,917.18 interest). Interest due on the principal beginning on September 8, 2023, is 10% until the debt is paid in full.
- C. As of September 7, 2023, the total amount due on Note No. 1 is \$758,908.76 (\$747,307.05 principal + \$11,601.71 interest). Interest due on the principal beginning on September 8, 2023, is 5.75% until the debt is paid in full.
- D. Any collateral received by plaintiff shall be applied proportionate to the amount of debt on the existing notes and shall reduce the principal of the debts based on the current fair market value of the collateral upon receipt.
- E. Costs to be divided equally between the Defendants.

In accordance with Civil Rule 54 (B), there is no just reason for delay.

IT IS SO ORDERED.



JUDGE CAROLYN J. PASCHKE

TO THE CLERK: Serve notice of this Judgment and its journalization date on all parties who are not in default for failure to appear. See Civ.R. 5.

COURT SERVICE TO:

- ✓ WEST 117 DEVELOPMENT FIELDHOUSE LLC
- ✓ STUDIO WEST 117 FIELDHOUSE LLC
- ✓ DLB HOLDINGS LLC
- ✓ BVF LLC
- ✓ WEST 117 DEVELOPMENT LLC
- ✓ STUDIO WEST 117 LLC
- ✓ DANIEL L. BUDISH
- ✓ BETSY V. FIGGIE