

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER COURT
LOCATION: Portland
Docket No. BCD-13-CV-18

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THE BANK OF MAINE, f/k/a, SAVINGS
BANK OF MAINE,

Plaintiff,

v.

BOOTHBAY COUNTRY CLUB, LLC, et
al.,

Defendants

DECISION AND ORDER
(Motions to Dismiss)

In this matter, Counterclaim Defendant The Bank of Maine (the Bank) and Third-party Defendants PGC1, LLC, PGC2, LLC, and Paul Coulombe have moved for dismissal of the pending counterclaim and third-party complaint. Through their motions, the Bank and the Third-party Defendants seek the dismissal, pursuant to M.R. Civ. P. 12(b)(6), of the claims asserted by Defendants Boothbay Country Club, LLC, (the Club) and James Reeves (Defendant Reeves).¹

FACTUAL BACKGROUND

On October 30, 2008, the Club purchased certain property (real and personal) located in Boothbay and Boothbay Harbor (the Property). At the time, Defendant Reeves was an owner of the Club. To finance the purchase, the Club obtained a loan from the Bank in the amount of \$2,890,000, and executed a promissory note in that amount in favor of the Bank. To secure the Club's obligations under the promissory note, the Club granted a mortgage on the Property. In addition, Defendant Reeves executed a commercial guaranty of the Club's financial obligations to the Bank.

¹ The Court will refer to the Club and Defendant Reeves collectively as "Defendants."

The Club defaulted on its obligations, and on October 30, 2012, the Bank forwarded notices of default to the Defendants by certified mail. Neither the Club nor Defendant Reeves cured the default. As of January 28, 2013, the outstanding obligation to the Bank was \$2,590,567.45.

Pursuant to 14 M.R.S. § 6203-A, the Bank initiated a power of sale foreclosure of the Property, and scheduled a public sale of the Property for January 28, 2013. The Bank served the Club and Defendant Reeves with notice of the sale. The Bank placed the highest bid at the sale, and obtained the Property for \$1.5 million.

In this action, the Bank seeks to recover a judgment in the amount of the difference between the sale price and the balance of the Club's debt to the Bank. The Club and Defendant Reeves contend that the foreclosure sale is invalid because the Bank did not comply with the statutory requirements of the foreclosure process.

Through their Counterclaim and Third-party Complaint, the Club and Reeves seek to set aside the foreclosure sale. In addition, the Club and Reeves seek monetary damages for the Bank's alleged breach of confidentiality under 9-B M.R.S. § 162, and for the Bank's alleged conspiracy with Third-party Defendants Paul Coulombe and PGC1 in violation of 10 M.R.S. § 1101 et seq. The Club and Reeves also seek damages from Third-party Defendants Coulombe and PGC2 for conversion, trespass, and tortious interference.

The Bank seeks dismissal of the Counts asserted against it in the Counterclaim. Third-party Defendants request dismissal of the Third-party Complaint.

DISCUSSION

In their motions, the Bank and Third-party Defendants contend that the Club and Reeves have failed to assert an actionable cause of action. More specifically, they argue that the Club and Reeves have not alleged any facts to support their claims. Rather, according to the Bank and

Third-party Defendants, the Club and Reeves have simply asserted legal conclusions, which are insufficient.

A motion to dismiss pursuant to M.R. Civ. P. 12(b)(6) “tests the legal sufficiency of the complaint and, on such a challenge, the material allegations of the complaint must be taken as admitted.” *Shaw v. S. Aroostook Comm. Sch. Dist.*, 683 A.2d 502, 503 (Me. 1996) (quotation marks omitted). When reviewing a motion to dismiss, this Court examines “the [pleading] in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Id.* A dismissal under M.R. Civ. P. 12(b)(6) will be granted only “when it appears beyond a doubt that the plaintiff is entitled to no relief under any set of facts that he might prove in support of his claim.” *Id.* (quotation marks omitted).

All of the claims, at least to some degree, are based on Defendants’ contention of the Club and Reeves that the Bank did not conduct the foreclosure sale properly. In their motions to dismiss, therefore, the Bank and Third-party Defendants primarily focus on the allegation regarding the sale. In particular, the Bank and Third-party Defendants cite the failure of the Club and Reeves to allege that they suffered any actual harm as the result of the purported improper sale.

In Count 1 of the counterclaim and third-party complaint, the Club and Reeves, pursuant to Maine’s Declaratory Judgments Act (14 M.R.S. § 5951, et seq.), request that the Court determine that the Bank did not complete the sale properly and, therefore, that the sale is void. 14 M.R.S. § 5954 (2012) provides in pertinent part, “[a]ny person whose rights, status or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the statute and obtain a declaration of rights, status or other legal relations thereunder.” Here, the Club and Reeves seek a declaration that the foreclosure sale is

void because the Bank did not conduct the foreclosure sale in accordance with 14 M.R.S. § 6203-A, et seq. The Club and Reeves, therefore, assert that their rights in the property have been affected by the power of sale statute,² and seek a declaration of their rights under that law (i.e., whether the statute's requirements were satisfied and, if not, the consequences of the noncompliance). The Club and Reeves thus have stated a claim for declaratory relief.

As mentioned above, the remaining counts of the counterclaim and third-party complaint are at least in part related to the validity of the sale. That is, through their declaratory judgment action and several other theories, the Club and Reeves allege that the Bank improperly conducted the sale of property in which the Club and Reeves had an interest, that as a result of the sale the Club and Reeves no longer have an interest in the property, and that the actions of the Bank and Third-party Defendants in the disposition of the property form the basis of additional claims (e.g., conversion). While the Court acknowledges that the Club and Reeves have not asserted all of their claims with great specificity, except as discussed below, the Court cannot conclude that "it appears beyond a doubt that [they are] entitled to no relief under any set of facts that he might prove in support of [their] claim." *Shaw v. S. Aroostook Comm. Sch. Dist.*, 683 A.2d 502, 503 (Me. 1996).³

The only remaining claims that warrant further comment are Count three of the Club's counterclaim and Count four of Defendant Reeves' counterclaim in which claims the Club and

² The Bank and Third-party Defendants argue that the Club and Reeves have not alleged actual harm that they suffered as the result of the sale. Given that their interest in the property was extinguished in the sale, their "rights [in the property] ... are [allegedly] affected by the [power of sale] statute ..." 14 M.R.S. § 5954 (2012).

³ The Defendants also allege that the Bank and Third-party Defendants Paul Coulombe and PGC1, LLC, conspired to restrain trade in violation of Maine's antitrust statute (10 M.R.S. § 1101, et seq.). In support of their request for dismissal of the claim, the Bank and Third-party Defendants argue that the Club and Reeves have failed to allege sufficient facts to support the claim, and that the claim is illogical. The Club and Reeves assert that the same law firm represented the Bank and purchaser, and that there was an attempt to limit the potential bidders. The issue at this stage of the proceedings is whether the Club and Reeves have stated a claim, not whether they are likely to prevail (i.e., whether the claim is logical). Given that the Club and Reeves have alleged that the parties conspired to limit the number of people who bid on the property, they have stated a claim that the parties contracted or conspired to restrain trade.

Reeves allege the Bank's violation of 9-B M.R.S. § 162, which prohibits the Bank's dissemination of its customer's financial records. In these counts, Defendants seek the imposition of civil penalties pursuant to 9-B M.R.S. § 164, which provides that a financial institution that "intentionally or knowingly furnishes financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$5,000 per violation." 9-B M.R.S. § 164 (2012). The plain language of the statute provides that the superintendent [of financial institutions] is authorized to impose a civil penalty in the event an institution improperly disseminates financial records. The same statute does not confer upon the court jurisdiction to consider the imposition of civil penalties. In the Court's view, the civil penalty is available in an administrative enforcement action, and not in this proceeding.

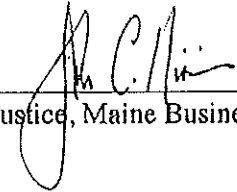
CONCLUSION

Based on the foregoing analysis,

1. The Court grants the Bank's Motion to Dismiss Count three of the Club's counterclaim.
2. The Court grants the Bank's Motion to Dismiss Count four of Defendant Reeves' counterclaim.
3. The Court otherwise denies the Bank's Motion to Dismiss.
4. The Court denies the Third-party Defendants' Motion to Dismiss.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Order into the docket by reference.

Date: 6/27/13


Justice, Maine Business & Consumer Court