IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

REPUBLIC FIRST BANK,	**OCTOBER TERM, 2012**
Plaintiff	**NO. 00866**
v.	**COMMERCE PROGRAM**
CRYNELL PROPERTIES, LLC.,	**CONTROL NO. 13102369**
COLLINS COLLISSION CENTER, INC	
GARY COLLINS	
WEATTA L. COLLINS	
Defendants	

ORDER

AND NOW, this 9th day of December, 2013, upon consideration of the partial motion for summary judgment of plaintiff, Republic First Bank, in case 121000866, it is hereby

ORDERED

that the motion is **GRANTED**.

BY THE COURT:

GLAZER, J.

Republic First Bank Vs -ORDER

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

REPUBLIC FIRST BANK, Plaintiff v. CRYNELL PROPERTIES, LLC., COLLINS COLLISSION CENTER, INC GARY COLLINS WEATTA L. COLLINS Defendants	OCTOBER TERM, 2012 NO. 00866 COMMERCE PROGRAM CONTROL NO. 13102369

OPINION

GLAZER, J. December 9, 2013

PROCEDURAL AND FACTUAL HISTORY

Plaintiff, Republic First Bank ("Republic"), commenced the current action against defendants, Crynell Properties, LLC ("Crynell"), Collins Collision Center, Inc. ("CCCI"), Gary Collins, and Weatta L. Collins, alleging claims of breach of contract. Plaintiff has filed a partial motion for summary judgment, and for the reasons set forth below, the motion is granted.

This action is based on two commercial loans Republic made to defendants. The first loan occurred on April 24, 2006 in the principal amount of $205,000. In conjunction with the loan Crynell executed a Business Loan Agreement ("Term Loan Agreement") which specifies

the terms, conditions, and obligations of defendants under the loan. See Plaintiff's Complaint, Exhibit B. The promissory note was secured by an Open-Ended Mortgage ("First Mortgage") on the property located at 5545 Lena Street, Philadelphia, Pennsylvania. See id. at Exhibit C. A second loan ("Demand Loan") was made on February 20, 2007 in the principal amount of $75,000 that was also secured by an Open-Ended Mortgage ("Second Mortgage") on the same property. See id. at Exhibit I, K. CCCI simultaneously executed a Business Loan agreement ("Demand Loan Agreement"), which also specifies the terms, conditions, and obligations of defendants under the loan. See id. at Exhibit J. Both the Term Loan Agreement and Demand Loan Agreement include the following language:

> **AFFIRMATIVE COVENANTS.** Borrower covenant and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:
>
> * * *
>
> **Insurance.** Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be canceled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Id. at Exhibit B, J. The First and Second Mortgages require defendants to procure and maintain insurance on the property and name Republic as mortgagee and pay proceeds to Republic. See id. at Exhibit C, K. Moreover, defendants also signed commercial guaranty agreements which guaranteed the performance and discharge of their obligations under the loans.[1]

[1] CCCI, Gary Collins, and Weatta L. Collins, executed commercial guaranty agreements under the April 24, 2006 loan, whereas Crynell, Gary Collins, and Weatta L. Collins executed commercial guaranty agreements under the February 20, 2007 loan.

Around April 27, 2009, defendants' insurance policy was canceled and then replaced with one from Nationwide. However, Republic was omitted as a loss payee on the new policy. Unfortunately for the parties, the mortgaged property was destroyed by a fire on or around February 11, 2010. Defendants then received the insurance proceeds from Nationwide, but did not pay off either the Term Loan or the Demand Loan in full.

Plaintiff filed the complaint on October 5, 2012 alleging claims of breach of contract due to defendants' failure to maintain insurance naming Republic as loss payee on the collateral securing the Term and Demand Loans. Republic now brings a partial motion for summary judgment as to the issue of liability.

DISCUSSION

In order to successfully establish a claim for a breach of contract, the plaintiff must prove: "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract, and (3) resultant damages." Hart v. Arnold, 884 A.2d 316, 332 (Pa. Super. 2005) (citations omitted). Courts are responsible for interpreting the language of a contract, and, "[w]hen a writing is clear and unequivocal, its meaning must be determined by its contents alone." Hart v. Arnold, 884 A.2d 316, 332 (Pa. Super. 2005) (quoting Murphy v. Duquesne University Of The Holy Ghost, 565 Pa. 571, 591, 777 A.2d 418, 429 (2001)). Since plaintiff's motion is only for liability, the issue of damages need not be discussed at this time.

Moreover, summary judgment shall be granted when, "there is no genuine issue of any material fact as to a necessary element of the cause of action or defense. . . ." Pa.R.C.P. No. 1035.2. Additionally, "[i]n considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." Fine v.

Checcio, 582 Pa. 253, 265, 870 A.2d 850, 857 (2005). Summary judgment may be granted only when the judgment is "clear and free from doubt." Checcio, 582 Pa. at 253 (2005) (citing Marks v. Tasman, 527 Pa. 132, 589 A.2d 205, 206 (1991)).

First, the defendants allege that they were not required to maintain insurance in favor of plaintiff under the Term and Demand Loan Agreements, arguing that the language of the those documents only describe, but do not require, the type of insurance involved. When analyzing the terms of a contract, the language must be considered in whole, and, "specific, express written language is not necessary for a particular contractual intent to exist in an agreement. Rather, it is common for the intent of contracting parties to be inherent in the totality of their contract." Hart v. Arnold, 884 A.2d 316, 332-33 (Pa. Super. 2005) (quoting Murphy v. Duquesne University Of The Holy Ghost, 565 Pa. 571, 591, 777 A.2d 418 at 432 (2001)). Therefore, when evaluating a section of a contract, a provision may clearly be interpreted as a requirement while not using such obvious language. For example, the Term Loan Agreement includes a section that reads, "Insurance: satisfactory fire/ hazard/ contents/ liability insurance naming the Bank as first loss payee and mortgage holder." Plaintiff's Complaint at Exhibit B. Defendants' claim that these provisions are merely statements, but not requirements, is without merit. Despite the fact that the word "requires" does not appear, it unambiguously specifies the type of insurance defendants must purchase and who is to be named as first loss payee and mortgage holder. Similarly, the Demand Loan Agreement contains the following sections:

> Real Estate Insurance: Bank to be named second mortgagee on the property/ casualty insurance as to our interest. Certificate of Insurance required prior to settlement.
> Business Asset Insurance: satisfactory fire/ hazard/ contents/ liability insurance naming the Bank as first loss payee.

Id., at Exhibit K. The intent of the parties is clear. As in the case of the Term Loan Agreement, this language cannot reasonably be read as anything but requiring defendants to maintain various types of insurance and who to name as mortgagee and loss payee. Based on the expressed language of the document, and when read as a whole, defendants breached the contract when they failed to maintain insurance with Republic named as the first loss payee.

Second, defendants claim that there has not been a breach of contract because plaintiff failed to provide defendants with an opportunity to cure the defect. As defined in the Term and Demand Loan Agreements as well as the First Mortgage Agreement, an event of default may occur if defendants "fails to comply with or perform any other term, obligation, covenant or condition contained in this agreement or in any of the Related Documents...." Id. at Exhibits B, J, C. Those documents also contain the following language:

> Right to Cure. If any default, other than a default in payment is curable and if Borrower or Grantor, as the case may be, has not been given notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, *after receiving written notice from Lender* demanding cure of such default: (1) cures the default within twenty (20) days; or....

Id. (emphasis added). Defendants construe this language as creating a requirement based upon a condition precedent; if the condition did not occur then no requirement was established. See Defendants' Memorandum in Response to Plaintiff's Motion for Summary Judgment, pp. 6. In turn, defendants claim that Republic was obligated to give defendants written notice of default and to demand that the default be cured. Then, once defendants received notice, they would have an opportunity to cure such default within twenty days. According to defendants, if no notice was sent, then the requirement was waived.

The event of default in this case arose from defendants failing to maintain insurance naming Republic as loss payee. Failing to abide by such a condition falls under an event of

default as defined in the documents. However, the twenty day opportunity to cure was not a viable option under the circumstances as the default ship, unbeknownst to the plaintiff, had already sailed. This is because once the building was destroyed by a fire, and the insurance money subsequently disbursed, defendants could not have altered who was named as loss payee. The right to cure had become moot. Defendants' argument might have held water if plaintiff brought suit prior to the building being destroyed, since defendants still would have been able to cure the event of default. Because there was no opportunity for defendants to cure, plaintiff was not required to send notice to defendants demanding they cure the defect in its insurance policy.

CONCLUSION

Based on the foregoing, plaintiff's partial motion for summary judgment is granted.

BY THE COURT:

GLAZER, J.