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

RESOURCE PROPERTIES XLIV, INC., Plaintiff	: MARCH TERM, 2000
	: No. 3750
v.	
	:Commerce Case Program
GROWTH PROPERTIES, LTD., et al. Defendants	:
RESOURCE PROPERTIES XLIV, INC., Plaintiff	: NOVEMBER TERM, 1999
	: No. 1265
v.	
	: Commerce Case Program
PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, et al. Defendants	:
	:

.....

FINDINGS OF FACT, DISCUSSION
AND CONCLUSIONS OF LAW
SUR BENCH TRIAL DECISION

Albert W. Sheppard, Jr., J. ..... August 2, 2002

These cases revolve around the inordinately complex history and activities of the following parties to this action: plaintiff Resource Properties XLIV, Inc. ("Resource"); defendants LLOT, Inc., Growth Properties, Ltd.-LLOT General Partnership and Growth Properties, Ltd., which are defendants in both consolidated actions; Philadelphia Authority for Industrial Development, which is a defendant in the second action set forth above; and Sheridan Associates, which is a defendant in the first action set forth above.[1] Other entities involved include Radnor Financial Group, Inc. and CoreStates Bank. For the reasons discussed, the court finds in favor of the plaintiff in the amount of $2,468,345.03.

[1] The first action set forth in the caption is a subrogation action, while the second is a confession of judgment.

FINDINGS OF FACT

The Parties have stipulated to the following findings of fact:

1. In 1984, Philadelphia National Bank ("PNB") entered into an industrial development loan transaction (The "Loan Transaction") with the Philadelphia Authority for Industrial Development ("PAID").

2. Pursuant to the Construction Loan Agreement dated October 11, 1984, PNB agreed to lend PAID a total of $6,000,000.

3. The Construction Loan Agreement entered into by PNB and PAID is marked as Trial Exhibit 2.

4. Pursuant to the Construction Loan Agreement, CoreStates lent the $6,000,000 to PAID in three serial loans as follows: a loan in the amount of $3,000,000, a loan in the amount of $2,000,000, and a loan in the amount of $1,000,000.

5. As security for the three loans, PAID executed (1) a First Mortgage Note dated October 11, 1984, in the principal amount of $3,000,000; (2) an Amendment and Restatement of First Mortgage dated October 16, 1984; (3) a Second Mortgage Note dated October 11, 1984, in the principal amount of $2,000,000; (4) an Amendment and Restatement of Second Mortgage dated October 16, 1984; (5) a Third Mortgage Note dated October 11, 1984 in the principal amount of $1,000,000; and (6) an Amendment and Restatement of Third Mortgage dated October 16, 1984.

6. The three Notes and the three Amendments and Restatement of Mortgages are marked as Trial Exhibits 3, 4, 5, 11, 12, and 13.

7. The three loans were made to PAID for the benefit of defendants, Sheridan Associates ("Sheridan"), LLOT, Inc. ("LLOT"), and Growth Properties, Ltd. ("Growth Properties").

8. As part of the Loan Transaction, PAID entered into an Installment Sale Agreement ("ISA") with Sheridan, Growth Properties, and LLOT.

9. The ISA is marked as Trial Exhibit 6.

10. Pursuant to the ISA, PAID sold property located at 125-37 South 9th Street, Philadelphia, Pennsylvania, consisting of land and the commercial office building and improvements situated thereon (the "Sheridan Property").

11. Under the terms of the ISA, the Growth Properties and LLOT were granted an equitable ownership and possessory interest in the land, while Sheridan was granted an equitable ownership and a possessory interest in the commercial office building and improvements located on the property.

12. LLOT and Growth Properties entered into the ISA as co-partners, under the partnership of the Growth Properties Limited - LLOT, Inc. General Partnership ("GP-LL Partnership").

13. LLOT held a two-thirds general partnership interest in the GP-LL Partnership, and Growth Properties held the remaining one-third general partnership interest.

14. Growth Properties', Sheridan's and LLOT's monthly payments of the purchase price and interest to PAID under the ISA were substantially equal to the payments of principal and interest that PAID was required to make to PNB under the Notes.

15. As part of the Loan Transaction, PAID assigned its interest in the ISA to PNB by executing (1) a First Assignment of Installment Sale Agreement, (2) a Second Assignment of Installment Sale

Agreement, and (3) a Third Assignment of Installment Sale Agreement.

16. The three assignments of the ISA are marked as Trial Exhibits 7, 8, and 9.

17. As security for the loans under the Construction Loan Agreement, Radnor Financial Group, Inc. ("Radnor") entered into a letter agreement with PNB dated October 11, 1984 (the "Purchase Commitment Agreement").

18. The Purchase Commitment Agreement between PNB and Radnor is marked as Trial Exhibit 10.

19. Radnor owns 100% of the stock of Fidelity Equities Corporation and Fidelity Equities Corporation II, the general partners of GF Associates. GF Associates is the 2% general partner of Sheridan.

20. Radnor is a wholly-owned subsidiary of Fidelity Enterprises, which is a wholly-owned subsidiary of Fidelity Holding Company. Fidelity Holding Company is, in turn, a wholly-owned subsidiary of Fidelity Mutual Life Insurance Company.

21. On or about December 27, 1985, PNB and LLOT, Growth Properties and Sheridan entered into a Note Purchase Agreement.

22. The Note Purchase Agreement is marked as Trial Exhibit 14.

23. By notice dated December 30, 1985, PNB exercised its right under the Note Purchase Agreement to require LLOT, Growth Properties and Sheridan to purchase the Loan Documents (as the term is defined in the Note Purchase Agreement) on September 30, 1991.

24. CoreStates Bank, N.A. ("CoreStates") became the successor-by-merger to PNB.

25. CoreStates designated on its records the loan obligation for the First Note and First Mortgage as "Loan 11388." CoreStates designated on its records the loan obligation for the Second Note and Second Mortgage as "Loan 11387." CoreStates designated on its records the loan obligation for

the Third Note and Third Mortgage as "Loan 11386."

26. In 1992, CoreStates and Radnor entered into an agreement amending the Purchase Commitment Agreement (the "Modified Purchase Commitment Agreement").

27. The Modified Purchase Commitment Agreement is marked as Trial Exhibit 16.

28. Pursuant to the terms of the Modified Purchase Commitment Agreement, Radnor deposited $2,200,000 in a certificate of deposit with CoreStates (hereinafter referred to as the "Cash Collateral").

29. Concurrently with the execution of the Modified Purchase Commitment Agreement, CoreStates entered into a First Amendment to Note Purchase Agreement with LLOT, F.M. Sheridan Land, Inc., and Sheridan.

30. The First Amendment to Note Purchase Agreement is marked as Trial Exhibit 15.

31. The entity, F.M. Sheridan Land, Inc., succeeded to Growth Properties' interest in the GP-LL Partnership.

32. F.M. Sheridan Land, Inc. was indirectly owned by Fidelity Mutual Life Insurance Company.

33. The monthly installment payments under the notes for November 1994, December 1994 and January 1995 were not paid to CoreStates as required under the Installment Sale Agreement and the First, Second and Third Notes and Mortgages.

34. On December 22, 1994, CoreStates sent a letter to Radnor demanding that Radnor complete the purchase of the Second Note and Third Note pursuant to the Purchase Commitment Agreement and the Modified Purchase Commitment Agreement.

35. The December 22, 1994 letter is marked as Trial Exhibit 17.

36. On January 5, 1995, CoreStates sent a letter to Radnor notifying Radnor that it had liquidated the Cash Collateral.

37. The January 5, 1995 letter from CoreStates to Radnor is marked as Trial Exhibit 18.

38. At the time of CoreStates' liquidation of the Cash Collateral, the amount of the Cash Collateral was $2,206,244.19.

39. On December 19, 1994, the outstanding principal balance on the Third Note was $983,420.48.

40. On January 11, 1995, CoreStates applied $233,198.91 from the Cash Collateral to reduce the principal on the Third Note and $2,085.56 from the Cash Collateral to reduce the accrued interest on the Third Note.

41. On February 7, 1995, effective as of January 11, 1995, CoreStates applied $750,221.57 of the Cash Collateral to reduce the principal balance of the Third Note to zero.

42. As of February 27, 1995, the accrued interest owed to CoreStates on the Third Note had been paid in full.

43. Effective as of January 11, 1995, CoreStates applied $1,220,738.15 from the Cash Collateral to the Second Note.

44. Radnor did not agree to CoreStates' liquidation and application of the Cash Collateral in January of 1995, but subsequently agreed in April of 1998 in the CoreStates-Radnor, et. al. Letter Agreement, as defined below, that CoreStates' liquidation and application of the Cash Collateral was proper.

45. In March 1995, CoreStates commenced a civil action against Radnor in this court, captioned CoreStates Bank, N.A. v. Radnor Financial Group, Inc., February Term, 1995, No. 2943 (the

"Commitment Action").

46. In the Commitment Action, CoreStates sought to compel Radnor to pay the balance due on the Second Note after application of the Cash Collateral by CoreStates.

47. The Complaint filed by CoreStates in the Commitment Action is marked as Trial Exhibit 21.

48. Radnor filed an Answer denying liability and asserted defenses and counterclaims against CoreStates in the Commitment Action.

49. Radnor's Answer, New Matter and Counterclaims is marked as Trial Exhibit 22.

50. CoreStates filed an Answer to Radnor's New Matter and Counterclaims.

51. CoreStates' Answer to Radnor's New Matter and Counterclaims is marked as Trial Exhibit 23.

52. On January 5, 1995, CoreStates declared a default under all of the Notes and Mortgages.

53. CoreStates' Notice of Default is marked as Trial Exhibit 19.

54. On February 27, 1995, CoreStates commenced an action in mortgage foreclosure with respect to the Sheridan Property (the "Mortgage Foreclosure Action").

55. The entities named as defendants in the Mortgage Foreclosure Action were PAID, GP-LL Partnership, Growth Properties, Growth Properties, Inc., LLOT, FM Sheridan Land, Inc., Sheridan, GF Associates, Fidelity Equities Corporation and Fidelity Equities Corporation II.

56. On September 29, 1995 CoreStates Vice-President Gregory Graham ordered the preparation of a payoff letter for "Loan 11387" from CoreStates Loan Information System. The payoff letter is marked as part of Trial Exhibit 26.

57. On September 29, 1995 CoreStates Vice-President Gregory Graham ordered the preparation of a payoff letter for "Loan 11388" from CoreStates Loan Information System. The payoff letter is

marked as part of Trial Exhibit 26.

58. During the period from January 1995 through April 1998, when CoreStates collected the rents and income from the operations of the Sheridan Property and was in possession of the Sheridan Property as a mortgagee-in-possession under the first mortgage, CoreStates deposited the rents and other income from the operations of the Sheridan Property into two (2) non-interest bearing checking accounts at CoreStates; one account was designated as the "Operating Account," from which expenses of the Sheridan Property were paid and excess money was accumulated; and the other was the "Tax Escrow Account," in which CoreStates accumulated sufficient funds from the Operating Account to pay for the real estate taxes on the Sheridan Property as they came due.

59. As of December 31, 1997, CoreStates and Resource Properties XLIV, Inc.("Resource Properties") entered into an Agreement of Sale.

60. The Agreement of Sale is marked as Trial Exhibit 33.

61. By letter agreement dated February 27, 1998, (the "February 27, 1998 Letter Agreement") Resource Properties and CoreStates amended the Agreement of Sale.

62. The February 27, 1998 Letter Agreement is marked as Trial Exhibit 36.

63. By letter agreement dated April 24, 1998 (the "April 24, 1998 Letter Agreement"), Resource and CoreStates again amended the Agreement of Sale.

64. The April 24, 1998 Letter Agreement is marked as Trial Exhibit 39.

65. On April 24, 1998, CoreStates, Radnor, Sheridan, F.M. Sheridan Land, Inc., G.F. Associates, Fidelity Equities Corporation and Fidelity Equities Corporation II entered into a letter agreement (the "CoreStates-Radnor, et al. Letter Agreement").

66. The CoreStates-Radnor, et al. Letter Agreement is marked as Trial Exhibit 38.

67. On April 24, 1998, CoreStates executed an Absolute Assignment in favor of Resource Properties.

68. The Absolute Assignment from CoreStates to Resource Properties is marked as Trial Exhibit 43.

69. On April 22, 1998, Radnor executed an Absolute Assignment in favor of Resource Properties.

70. The Absolute Assignment dated April 22, 1998 from Radnor to Resource Properties is marked as Trial Exhibit 36.

71. On April 24, 1998, CoreStates executed an Assignment and Allonge of Mortgages, Promissory Notes and Other Rights in favor of Resource Properties.

72. The Assignment and Allonge of Mortgages, Promissory Notes and Other Rights dated April 24, 1998 from CoreStates to Resource Properties is marked as Trial Exhibit 41.

73. On April 24, 1998, CoreStates, Resource Properties and Resource America, Inc. entered into an Indemnification Agreement.

74. The Indemnification Agreement dated April 24, 1998 by and among CoreStates, Resource America, Inc. and Resource Properties is marked as Trial Exhibit 40.

75. On April 24, 1998, Resource Properties executed a Collateral Assignment of Mortgages, Promissory Notes and Other Rights in favor of CoreStates.

76. The Collateral Assignment of Mortgages, Promissory Notes and Other Rights dated April 24, 1998 from Resource Properties to CoreStates is marked as Trial Exhibit 42.

77. On April 24, 1998, CoreStates and Radnor executed a Praecipe to Settle, Discontinue and End the Commitment Action which is marked as Trial Exhibit 49.

78. On or about April 24, 1998, the Operating Account held by CoreStates contained $771,850.59.

79. On or about April 24, 1998, the Tax Escrow Account held by CoreStates contained $90,586.15.

80. On April 24, 1998, CoreStates and Resource Properties executed a settlement statement entitled CORESTATES/RPI ACCOUNTING, which is marked as Trial Exhibit 47. The settlement statement marked as Trial Exhibit 47 shows the disposition of the funds accumulated by CoreStates in the Operating Account and the Tax Escrow Account as of April 24, 1998.

81. Under the terms of the CoreStates-Radnor, et. al. Letter Agreement, Radnor was paid $325,000.

82. The $325,000 which was used to pay Radnor came from the $771,850.59 that CoreStates had accumulated in the Operating Account for the Sheridan Property.

83. Under the Agreement of Sale between CoreStates and Resource Properties, Resource America wire transferred $3,400,000.00 into the account of CoreStates' Real Estate and Construction Finance Department.

84. The account charge for the wire transfer is marked as Trial Exhibit 45.

85. Previously, on January 14, 1998, Resource America paid a deposit of $200,000.00 to CoreStates in the form of a check.

86. The check from Resource America to CoreStates is marked as Trial Exhibit 34.

87. Resource Properties is a subsidiary of Resource America, Inc.

88. The Third Note and Third Mortgage were never assigned or transferred to Radnor by CoreStates.

89. The Second Note and Second Mortgage were never assigned or transferred to Radnor by CoreStates.

90. On January 31, 2000, the Honorable Esther J. Sylvester entered a Judgment in Mortgage Foreclosure in the Mortgage Foreclosure Action.

91. The Judgment in Mortgage Foreclosure and the Findings of Fact and Conclusions of Law in Support of the Judgment in Mortgage Foreclosure are marked as Trial Exhibit 30.

92. In entering the Judgment in Mortgage Foreclosure, Judge Sylvester adopted Loan Amortization Schedule III prepared by expert witness Edward W. Rimmer.

93. Mr. Rimmer's expert report is marked as Trial Exhibit 54.

94. In preparing Loan Amortization Schedule III, Mr. Rimmer applied the full amount of the monies in the Operating Account (i.e., $771,850.59) and the Tax Escrow Account (i.e., $90,586.15) set forth in the CoreStates/RPI Settlement Accounting which is Trial Exhibit 47 to pay down the outstanding balance on the First and Second Mortgages.

95. In preparing Loan Amortization Schedule III, Mr. Rimmer applied all of the monies generated by the Sheridan Property during the period March 1995 to October 1999 to pay down the First and Second Mortgages.

96. On June 15, 2001, the Pennsylvania Superior Court entered an Order affirming the denial of post-trial relief. Accordingly, the Judgment in Mortgage Foreclosure is a final judgment.

97. Resource has not scheduled a Sheriff's Sale of the Sheridan Property on the Judgment in Mortgage Foreclosure.

98. On December 31, 1991, Radnor, Growth Properties, Growth Services, Inc., GP-LL Partnership, Sheridan, and Fidelity Equities Corporation entered into an Agreement (the "1991 Radnor Agreement") to resolve certain disputes relating to the Sheridan Property.

99. The 1991 Radnor Agreement is marked as Trial Exhibit 63.[2]

DISCUSSION

Because Resource has inherited the rights of both Radnor and PNC, it proceeds against the defendants by exercising the rights of both of these entities. Relying on this bundle of rights, Resource has presented a complete and solid claim for equitable subrogation, as well as alternative additional claims. Accordingly, this court finds in favor of Resource.

I. Resource Has Presented a Valid Claim for Equitable Subrogation

Pennsylvania law recognizes the doctrine of equitable subrogation and defines it as "the substitution of one entity in the place of another with reference to a lawful claim, demand, or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights remedies or securities." Public Serv. Mut. Ins. Co. v. Kidder-Friedman, 743 A.2d 485, 488 (Pa. Super. Ct. 1999) (quoting Molitoris v. Woods, 422 Pa. Super. 1, 9, 618 A.2d 985, 989 (1992)). This doctrine is "a means of placing the ultimate burden of a debt upon the one who in good conscience ought to pay it, and is generally applicable when one pays out of his own funds a debt or obligation that is primarily payable from the funds of another." High-Tech-Enters., Inc. v. General Accident Ins. Co., 430 Pa. Super. 605, 609, 430 A.2d 639, 642 (1993) (citation omitted). To sustain a claim for equitable subrogation, a claimant must establish five elements:

1. The claimant paid the creditor to protect his own interests;

2. The claimant did not act as a volunteer;

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[2] Additional findings of fact are set forth, as appropriate, in the Discussion section of this Opinion.

3. The claimant was not primarily liable for the debt;

4. The entire debt has been satisfied; and

5. Allowing subrogation will not cause injustice to the rights of others.

Tudor Development Group, Inc. v. United States Fidelity & Guaranty Co., 968 F.2d 357, 362 (3rd Cir. 1992) (citing United States Fidelity & Guaranty Co. v. United Penn Bank, 362 Pa. Super. 440, 524 A.2d 958 (1987)).

Here, there is no doubt that Radnor acted to protect its own interests and did not serve as a volunteer. The arrangement among the parties was such that Radnor was obliged to purchase the Notes and Mortgages in the event of a default. Because of these obligations and the repercussions of failing to fulfill them, Radnor's conduct satisfies the first two prongs of this test.

Moreover, Radnor was not primarily liable for the debt in question. While Radnor acted in accordance with its own purchase obligations, its payments for the Notes and Mortgages effectively were payments on the debt itself, for which the defendants were primarily liable and from which the defendants had derived a substantial and direct benefit. To hold that the classification of Radnor's responsibilities as pure purchase obligations made it "primarily liable" and preclude it from recovering would be to pervert the term "primarily liable" and cannot stand. Cf. In re Valley Vue Joint Venture, 123 B.R. 199, 205 (Bankr. E.D. Va. 1991) ("[T]he requirement in equity . . . that a party seeking subrogation must not be 'primarily liable' is designed to prevent a person who received the consideration (e.g., the loan proceeds) from the creditor from being subrogated to the creditor's rights against a guarantor, surety, accommodation comaker or similar party after the debtor has satisfied his own obligations.").

Evidence introduced at trial established that the debt under the Notes has been fully paid,[3] and there is no evidence that allowing subrogation here will prejudice the rights of others. Accordingly, Resource has sustained its equitable subrogation claim against the relevant defendants.

II. In the Alternative, Resource Has Presented a Valid Claim for Unjust Enrichment

Resource asserts an alternative claim for unjust enrichment. The court posits that this claim is meritorious even if Resource's equitable subrogation claim is not.

The elements of a claim for unjust enrichment are "benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value." Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 622 (Pa. Super. Ct. 1999). As a preliminary matter, there is no doubt that Resource is the heir of all rights that both CoreStates and Radnor had in the Notes. As noted previously by this court in its Opinion dated June 5, 2001 ("2001 Opinion"):

> Resource, as Radnor's assignee and in its own right, has satisfied the entire Purchase Price. In exchange for CoreStates' rights in the Second Notes, Resource paid approximately $3.6 million, which represented the total amount of the balance outstanding on the Notes. More importantly, Resource succeeded to all of Radnor's subrogation rights in the Second and Third Notes, including any credit for satisfaction through its payment of the Collateral. Through its inheritance of Radnor's satisfaction rights and its own payment of the outstanding balance on the Notes, Resource could be considered to have satisfied both the Second and Third Notes.

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[3] Even if this were not the case, Resource's purchase of both CoreStates' and Radnor's interests in the Notes and Mortgages entitles it to act with the aggregate rights of both. Between those two entities' rights, there can be no question that Resource has the authority to find that the amounts due under the Notes have been paid in their entirety. See also Resource Props. XLIV, Inc. v. Philadelphia Auth. for Indust. Dev., No. 1265, 3750, 2001 WL 1807414, *5-*6 (Pa. Com. Pl. June 5, 2001) (discussing Resource's inheritance of rights from CoreStates and Radnor).

> This conclusion is bolstered by language elsewhere in the Settlement and Transfer Documents. These documents indicate that all parties believed that Resource had obtained Radnor's subrogation rights to the Second and Third Notes, impliedly recognizing that Radnor had satisfied the LLOT defendants' obligations under the Notes.

2001 WL 1807414, at *5-*6 (citations omitted). This gives Resource the rights that inured to both CoreStates and Radnor.

In this instance, the LLOT defendants received a number of benefits from Radnor. First, the use of the Case Collateral in connection with the transfer of the debt increased the LLOT defendants' equity in the Property by approximately $2.2 million and simultaneously reduced the amount of interest that would have had to be paid. The LLOT defendants appreciated these benefits, as they successfully argued in the Mortgage Foreclosure Action that use of the Cash Collateral reduced the amount that they owed to CoreStates. The court also believes that it would be inequitable for the LLOT defendants to retain these benefits without payment.

The LLOT defendants raise several arguments challenging the propriety of Radnor's assignment of its rights to Resource. None of these arguments is persuasive. First, the Absolute Assignment from Radnor makes it clear that its rights, including rights to an unjust enrichment claim, are transferred to Resource. Even if this were not so, the failure of the such an assignment to appear in writing is not fatal, especially given the parties' conduct that reveals an intent to effectuate such an assignment. Cf. Olmo v. Matos, 439 Pa. Super. 1, 9, 653 A.2d 1, 4 (1994) (addressing equitable assignments).

Defendants' contention that the statute of limitations bars Resource's claim is similarly without merit. In Pennsylvania, unjust enrichment/quantum meruit actions are governed by the four-year statute of limitations. Cole v. Lawrence, 701 A.2d 987, 989 (Pa. Super. Ct. 1997); Bednar v. Marino, 435 Pa.

Super. 417, 427, 646 A.2d 573, 578 (1994). Such actions "begin to accrue as of the date on which the relationship between the parties is terminated." Cole, 701 A.2d at 989. Here, the relationship between Radnor and the LLOT defendants existed until at least April 24, 1998; it was on that date that CoreStates released Radnor from its obligations in support of the LLOT defendants, and up until that time, CoreStates had been pursuing Radnor for its duties in connection with the Second and Third Notes and Mortgages. Because this matter was initiated within four years of that date, the LLOT defendants' statute of limitations argument is unpersuasive.

III. Resource Has Sustained its Confession of Judgment Claim

Resource has also confessed judgment against Philadelphia Authority for Industrial Development ("PAID"), Growth Properties, Ltd. ("Growth"), LLOT, Inc. and GP-LL Partnership. This claim is an alternative claim and provides a third avenue for Resource to recover, to the extent that the Third Note has not been satisfied.

In its confession of judgment claim, Resource has sought to confess judgment for the amounts outstanding under the Third Note and the ISA. Each of these documents has a confession of judgment clause, and the LLOT defendants' response is limited to the argument that CoreStates never assigned the Third Note to Resource. As noted supra, the LLOT defendants have provided no support for their assertion that CoreStates transferred anything less than all of its interest in all of the Notes and Mortgages to Resource. See also 2001 WL 7807414, at *6 (discussing evidence of complete assignment). Accordingly, in the event that the court's reasoning as to Radnor's satisfaction of the amount due under the Third Note is faulty, Resource would be entitled to judgment on its confession of judgment.

IV. The LLOT Defendants' Defenses of Unclean Hands and the Release Are of No Import

In addition to the a defense of setoff, (addressed infra) the LLOT defendants raise the Release and the doctrine of unclear hands as defenses. Neither of these bars the claims at hand.

This court discussed the Release in its 2001 Opinion:

> Generally, a release is to be given effect according to the ordinary meaning of its language. Seasor v. Covington, 447 Pa. Super. 543, 547, 670 A.2d 157, 159 (1996). It must also be construed narrowly and in light of the circumstances at the time of its execution:
>
> The courts of Pennsylvania have traditionally . . . interpreted the release as covering only such matters as can fairly be said to have been within the contemplation of the parties when the release was given. Moreover, releases are strictly construed so as not to bar the enforcement of a claim which had not accrued at the date of the execution of the release.
>
> . . . [A] release covers only those matters within the parties' contemplation. In construing this general release, a court cannot merely read the instrument . . . . [I]t is crucial that a court interpret a release so as to discharge only those rights intended to be relinquished. The intent of the parties must be sought from a reading of the entire instrument, as well as from the surrounding conditions and circumstances.
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> Vaughn v. Didizian, 436 Pa. Super. 436, 439, 648 A.2d 38, 40 (1994) (citations and quotation marks omitted). See also Harrity v. Medical College of Pa. Hosp., 439 Pa. Super. 10, 22-23, 653 A.2d 5, 11-12 (1995) (focusing on limiting language in release and declining to apply release).
>
> In the Release, executed in 1991, Radnor released the "Growth Group" from the following:
>
> any and all actions, causes of actions, proceedings, claims, demands, counterclaims, offsets, deductions, damages, costs, liabilities, agreements, and obligations of any nature whatsoever, whether contingent or matured, known or unknown, in law or equity, asserted or which might have been asserted, directly or indirectly sustained by any of them arising out of or connected with any one or more of the following:
> . . .
> (d) the purchase, financing, construction, operation or ownership of the [Property], and (e) any other relationship between the Radnor Group, or any of them or their affiliates, and the Growth Group, or any of them or their affiliates.

> While this language applies broadly to the then-current disputes, there is no indication that the Release was intended to cover future defaults, including the LLOT defendants' default in December 1994. Rather, the Release appears to focus on addressing Radnor's allegations of default in 1991 and the Growth Group's defenses to those allegations. Thus, the Release does not bar Resource from pursuing its current claims against the LLOT defendants.

2001 WL 1807414, at *3-*4 (footnotes and citations omitted). The LLOT defendants' latest arguments do not require any changes in this analysis. The Release is irrelevant for the purposes of the court's consideration.

The question of unclean hands is more involved and intricate. The Pennsylvania Supreme Court has articulated the doctrine of unclean hands as "a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." Jacobs v. Halloran, 551 Pa. 350, 359, 710 A.2d 1098, 1103 (1999) (citing Shapiro v. Shapiro, 415 Pa. 503, 506-507, 204 A.2d 266, 268 (1964)). It is within the discretion of a chancellor in equity to deny relief, with the chancellor "free not to apply the doctrine if a consideration of the entire record convinces him that an inequitable result will be reached by applying it." Stauffer v. Stauffer, 351 A.2d 236, 245, 465 Pa. 558, 575 (1976).

In Lucey v. W.C.A.B. (Vy-Cal Plastics PMA Group), 557 Pa. 272, 732 A.2d 1201 (1999), our Pennsylvania Supreme Court engaged in an extensive discussion as to what constitutes unclean hands:

> The doctrine of unclean hands is derived from the unwillingness of a court to give relief to a suitor who has conducted himself so as to offend the moral sensibilities of the judge, and the doctrine has nothing to do with the rights and liabilities of the parties. In re Estate of Pedrick, 505 Pa. 530, 544, 482 A.2d 215, 222 (1984). This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with iniquity or bad faith relative to the matter in which he seeks relief. This doctrine is rooted in the historical concept of a court of equity as a vehicle for affirmatively enforcing the requirement of conscience and good faith. Thus, while equity does not

> demand that its suitors shall have led blameless lives as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue. See Id. (citing Shapiro v. Shapiro, 415 Pa. 503, 506-507, 204 A.2d 266, 268 (1964) (quoting Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co., 324 U.S. 806, 814-815, 65 S. Ct. 993, 997-998, 89 L. Ed. 1381 (1945))).

557 Pa. at 279, 732 A.2d at 1204-05. Cf. Terraciano v. Commonwealth, Dept. of Transp., Bureau of Driver Licensing, 562 Pa. 60, 69, 753 A.2d 233, 238 (2000) (rejecting assertions of unclean hands where nothing in the record suggested that petitioner acted unfairly, fraudulently or deceitfully in the matter). As a significant limitation, the doctrine of unclean hands does not operate when there has been general bad conduct and applies only where the questionable conduct relates directly to the matter in dispute. See Stauffer v. Stauffer, 465 Pa. 558, 575, 351 A.2d 236, 244 (1976) ("The bar of unclean hands is applicable in Pennsylvania only where the wrongdoing of the plaintiff directly affects the equitable relationship subsisting between the parties and is directly connected with the matter in controversy."); Equibank v. Adle, Inc., 407 Pa. Super. 553, 558, 595 A.2d 1284, 1287 (1991) ("The doctrine does not bar relief to a party merely because his conduct in general has not been shown not to be blameless.").

The LLOT defendants assert that both Resource and Radnor have unclean hands. This accusation stems from alleged conduct related to Radnor's tax benefit allocation decisions, Radnor's payment of interest and principal and Resource's accounting of the amounts owed by the LLOT defendants. To the extent that these have been proven or rise to the level of fraud or deceit, none of them relate directly to the payment of the amount the LLOT defendants were obligated to pay under the Notes, and none of them impact on Radnor's satisfaction of its obligations to CoreStates. Accordingly, the defense of unclean hands is not applicable here.

V. Resource Is Entitled to $2,468,345.03 in Damages

The most difficult aspect of this dispute is measuring the damages to which Resource is entitled. After considering the parties arguments, the court concludes that Resource is entitled to $2,468,345.03 in damages.

Resource is claiming the following amounts: $983,420.48 for the outstanding balance due on the Third Note and the corresponding portion of the ISA; $631,615.86 in interest on the Third Note for March 1, 1995 through March 31, 2002; $1,220,738.15 for the money applied to pay a portion of the debt to CoreStates on the Second Note and Mortgage; pre-judgment interest on the amount outstanding under the Second Note at the default rate for a total of $785,991.24; and a five percent award of attorneys' fees for a minimum of $80,751.82. This amount totals $3,702,517.55.

The LLOT defendants present a number of bases for limiting the amount of Resource's recovery. The first is the argument that Resource is limited to recovering the $325,000.00 it paid Radnor for its rights. In doing so, the LLOT defendants rely on Associated Hospital Service of Philadelphia v. Putsilnik, 497 Pa. 221, 439 A.2d 114 (1981):

> i. Discharge at a discount. Where the obligation is discharged by the payment of a sum less than the amount of the obligation, or by the transfer of property the value of which is less than the amount of the obligation, the person discharging the obligation is ordinarily not entitled by subrogation to recover the full amount of the obligation, but can recover only the amount he paid or the value of the property used in discharging the obligation. Thus, a surety is entitled by subrogation to recover only the amount which he paid to discharge the obligation. He is entitled to be made whole, but he is not entitled to make a profit. So also, where a person by mistake discharges the debt of another, he is entitled by subrogation to obtain no more than the amount which he paid to discharge the debt.

497 Pa. at 226, 439 A.2d at 1151 (quoting Restatement of Restitution § 162 cmt. i (1937)).

Although this argument has some merit, it is ultimately unconvincing in this situation. The principle set forth in Putsilnik appears to apply to situations where a surety pays only a portion of the debt and then seeks to recover amounts in excess of its payment from the debtor. Here, Resource paid CoreStates over $3.6 million, in addition to the $325,000.00 transferred to Radnor. Thus, the court will not limit the award to the amount Resource paid Radnor.

The LLOT defendants also argue that the $325,000.00 amount functions as a setoff. According to this reasoning, Resource's payment to Radnor reduced the amount of Radnor's unjust enrichment and equitable subrogation claims. This logic is flawed. Resource's payment for Radnor's subrogation rights does not negatively affect those rights themselves. Moreover, in an unjust enrichment claim, the focus is on the degree to which the defendant has been enriched, not the amount that the plaintiff or its successor has been harmed.

The LLOT defendants' final argument is more persuasive. Under the Partnership Agreement, the proportionate interests in GP-LL Partnership's profits and losses were to be two-thirds for LLOT and one-third for Growth Properties, Limited. Growth Properties, Limited assigned its obligations under the Partnership to FM Sheridan. Accordingly, the LLOT defendants argue, one-third of any amount payable by GP-LL Partnership accrues to FM Sheridan, an entity entirely owned by Resource.

Resource's sole defense to this assertion is that the debt at issue is non-recourse and that a judgment can be collected only from the operations and value of the Sheridan Property. If Resource were proceeding on a breach of contract claim solely, perhaps this argument would have merit. However, its primary actions sound in equity, allowing the court to exercise its equitable discretion as to what is just. To allow Resource a full recovery when one of its own entities is responsible for a portion of the judgment

would be inappropriate and unwarranted. Accordingly, the court sides with the LLOT defendants and finds that the amount requested by Resource must be reduced by one-third.

CONCLUSIONS OF LAW

The court has reached the following conclusions of law:

1. Resource has presented and supported a complete claim for equitable subrogation because:
    a. Resource succeeded to Radnor's rights vis-à-vis the Notes and Mortgages;
    b. Radnor paid CoreStates to protect its own interests;
    c. Radnor did not act as a volunteer;
    d. Radnor was not primarily liable for the debt;
    e. The entire amount due under the Second and Third Notes was satisfied; and
    f. Allowing subrogation will not cause injustice to the rights of others.
2. In the alternative, Resource has presented and supported a complete claim for equitable subrogation because:
    a. Resource succeeded to Radnor's rights vis-à-vis the Notes and Mortgages;
    b. Radnor conferred benefits on the LLOT defendants;
    c. The LLOT defendants appreciated these benefits; and
    d. It would be inequitable for the LLOT defendants to retain these benefits without payment of value.

3. The court finds in favor of Resource in the amount of $2,468,345.03.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.