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| Wells Fargo Bank, N.A. v Hampshire Global Partners, LLC |
| 2014 NY Slip Op 32306(U) |
| August 25, 2014 |
| Sup Ct, New York County |
| Docket Number: 652058/2014 |
| Judge: Eileen Bransten |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: EILEEN BRANSTEN
Justice

PART 3

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**WELLS FARGO BANK, N.A., f/k/a Wells Fargo
Bank Minnesota, N.A., as Trustee for the
Registered Holdings of Salomon Brothers
Mortgage Securities VII, Inc., Commercial
Mortgage Pass-Through Certificates, Series 2000-
C2,**

**Index No.: 652058/2014
Motion Date: 8/1/2014
Motion Seq. No.: 001**

Plaintiff,

-against-

HAMPSHIRE GLOBAL PARTNERS, LLC,
Defendant.

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The following papers, numbered 1 to 3, were read on this motion for preliminary injunction.

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| Notice of Motion/Order to Show Cause - Affidavits - Exhibits | No(s) <u>1</u> |
| Answering Affidavits - Exhibits | No(s) <u>2</u> |
| Replying Affidavits | No(s) <u>3</u> |
| Cross-Motion: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |

This matter comes before the Court on Defendant Hampshire Global Partners, LLC's ("Hampshire") motion for a preliminary injunction, seeking to enjoin Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") from disbursing, transferring or otherwise alienating any proceeds received from the sale of property located at 400 Blair Road, Carteret, New Jersey.

This action centers on a two loan agreements: (1) the "Blair Loan Agreement," under which Plaintiff Wells Fargo agreed to sell Hampshire a mortgage loan secured by the 400 Blair Road property; and, (2) the "Jefferson

Loan Agreement,” under which Wells Fargo agreed to sell Hampshire a mortgage loan secured by a property at 205 Jefferson Road, Parsippany, New Jersey.

In its Complaint, Plaintiff Wells Fargo contends that the Blair Loan Agreement has been terminated, since the agreement contained a condition precedent, requiring that the Blair Loan close simultaneously with the Jefferson Loan. According to Wells Fargo, since the Jefferson Loan was paid off by the borrower before closing, the Jefferson Loan was terminated and the condition precedent in the Blair Loan Agreement cannot be met. Hampshire disagrees and has filed three counterclaims, each asserting that Wells Fargo breached its contract to sell the Blair Loan to Hampshire, notwithstanding the termination of the Jefferson Loan. Accordingly, Hampshire brings the instant motion for preliminary injunction, seeking to prevent Wells Fargo from dissipating the proceeds it receives from selling the Blair Loan to another purchaser, since Hampshire maintains that it is entitled to the sale proceeds under the Blair Loan Agreement.

Under CPLR § 6301, “[a] preliminary injunction may be granted in any action... where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.” A preliminary injunction is a “drastic remedy,” and thus “is appropriate only where a party has established (1) likelihood of success on the merits of the pending action, (2) irreparable injury absent such relief, and (3) a

balancing of equities in favor of the relief sought." *N.Y. Auto. Ins. Plan v. N.Y. Sch. Ins. Reciprocal*, 241 A.D.2d 313, 314 (1st Dep't 1997) (citations omitted).

Based on the record submitted to the Court on this motion, Hampshire has failed to make the requisite showing for a preliminary injunction. In particular, Hampshire has failed to demonstrate a likelihood of success on the merits of its counterclaim.

Hampshire's reading of the Blair Loan Agreement ignores the clear language of the contract. Section 6.2 of the Blair Loan Agreement, captioned "Conditions Precedent to the Obligations of the Seller," states, in relevant part that:

[t]he obligation of [Wells Fargo] to sell the Mortgage Loan is subject to the fulfillment on or prior to the Closing Date of each of the following conditions: ... (d) [Hampshire] shall simultaneously with the closing of the transaction contemplated by this Agreement close and purchase the loan secured by the property located at 205 Jefferson Road, Parsippany, New Jersey 07054 (the 'Jefferson Contract').

Here, the parties agree that Hampshire could not close and purchase the Jefferson Loan, since by the closing date, the loan had been paid off by the borrower. Therefore, the condition precedent that Hampshire simultaneously close on the Blair and Jefferson loans could not be fulfilled.

Notwithstanding this clear language, Hampshire maintains that it should be allowed to purchase the Blair Loan by itself. In support, Hampshire attempts to draw the Court's attention to extrinsic evidence, namely discussions it had with Wells Fargo regarding the Blair Loan Agreement pre-dating the agreement's signing regarding Hampshire's ability to purchase one of the loans if the other

was paid off prematurely. However, this extrinsic evidence cannot be considered. “A familiar and eminently sensible proposition of law is that, when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms. Evidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing.” *W.W.W. Assoc., Inc. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990). That rule holds true here. The language of the Blair Loan Agreement is clear, and evidence of the parties’ discussions cannot be used to vary the clear condition precedent in Section 6.2(d).

Hampshire next argues that additional language in Section 6.2(d) “leaves no doubt that the intention was that only Hampshire had that right to terminate” the Blair Loan Agreement upon payoff of the Jefferson loan. (Hampshire’s Moving Br. at 15.) The language cited by Hampshire states:

“[T]o the extent [Hampshire] has timely and properly terminated the Jefferson Contract pursuant to a specific right to do so whereby [Hampshire] is entitled to a return of the Earnest Money Deposit thereunder, then this Agreement shall also be deemed similarly terminated and the Earnest Money Deposit returned to Purchaser.”

Plainly stated, this language does not provide Hampshire with the sole ability to terminate the Blair Loan Agreement. Instead, this provision simply provides a remedy for Hampshire in the event that Hampshire properly terminated the Jefferson Loan Agreement. As a result, this language does not support Hampshire’s interpretation of the contract.

Accordingly, the Court concludes that Hampshire has failed to show a likelihood of success on the merits of its specific performance, breach of

