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 7 RONALD J. MALIK and VAN DER MEER, LLC

FILED
 Clerk of the Superior Court

AUG - 5 2009

By

DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SOLANO

11 RONALD J. MALIK and VAN DER
 12 MEER, LLC,

13 Plaintiffs,

14 v.

15 COUNTY BANK, a California
 16 corporation; WESTAMERICA BANK, a
 California corporation; and DOES 1-20,
 inclusive,

17 Defendants.

CASE NO. FLS034030

**DECLARATION OF RONALD J. MALIK
 IN SUPPORT OF EX PARTE
 APPLICATION FOR TEMPORARY
 RESTRAINING ORDER AND OSC RE:
 PRELIMINARY INJUNCTION**

Date: August 6, 2009
 Time: 8:00 a.m.
 Dept: 1
 Judge: Paul L. Beeman

By Fax

19 I, RONALD J. MALIK, declare as follows:

20 1. I am a resident of Modesto, California, and reside at 1709 Lourmarin Court which
 21 has been my home for more than 20 years.

22 2. I am the Sole Member of Van der Meer, LLC, which I formed pursuant to the
 23 express terms of an Operating Agreement dated August 9, 2002.

24 3. Van der Meer, LLC's business purpose is to purchase real property known to me
 25 (as the Sole Member), and to develop, improve, lease, manage, hold for investment, sell,
 26 exchange, and perform any other activities related to any property purchased through this limited
 27 liability company. Essentially, I created this LLC so that I could anonymously pursue certain real
 28 estate investment opportunities.

1 4. Through Van der Meer, I have acquired various development properties in or
2 around Modesto, California. When purchasing properties I would obtain financing from local
3 banks, such as County Bank in Modesto.

4 5. I had an excellent working relationship with County Bank. I transacted a large
5 portion of my business with the bank, kept my payments and accounts current, and maintained
6 substantial cash deposits. County Bank repeatedly informed me that I was an excellent customer.

7 6. On or about November 21, 2005, I entered into a Business Loan Agreement with
8 County Bank ("First Loan Agreement"). As a part of the First Loan Agreement, I executed a
9 November 21, 2005 promissory note in favor of County Bank. This promissory note was for the
10 principal amount of \$10,014,000.00 (this note and its subsequent renewals hereinafter
11 collectively, "First Note"). The First Note consolidated previous loans I held with County Bank.
12 The First Note was secured by the Van der Meer property designated as APNs 003-021-008, 003-
13 018-016, 003-018-019, 003-018-020, 078-013-021, 078-013-022. The First Note was initially
14 intended to be a twelve-month loan. However, County Bank informed me that due to delays
15 caused by illnesses, medical-related unavailability of personnel, and personnel changes, it was
16 unprepared to issue a twelve-month loan. Therefore, County Bank prepared the First Note as a
17 six-month loan with a maturity date of May 21, 2006. Prior to the May 21, 2006 maturity date I
18 requested that County Bank renew the First Note because I had excepted to have a longer term
19 loan in the first place. County Bank agreed to renew the First Note.

20 7. Over the next two years, the First Note was renewed another three times. On each
21 occasion I requested the renewal and County Bank agreed. Yet each time County Bank renewed
22 the First Note there was a delay, causing the renewal to occur after the maturity date. In each
23 instance, County Bank recognized that it had caused the delay and did not charge me any late
24 fees. County Bank informed me that it was agreeable to the renewals of the First Note because I
25 was an outstanding customer and they wanted to keep my business with the bank. Because
26 County Bank continually agreed to renew the First Note, I did not take my business or the First
27 Note to another lender.

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1 8. On or about October 25, 2007, I entered another Business Loan Agreement with
2 County Bank ("Second Loan Agreement"). Prior to this agreement, I had executed a September
3 26, 2006, promissory note in favor of County Bank. The principal amount of this promissory
4 note was \$7,000,000.00 (this note and its subsequent renewals hereinafter collectively, "Second
5 Note"). The Second Note was secured by my property designated as APNs 078-013-006 and
6 078-013-037. The Second Note was a twelve month loan with a maturity date of September 22,
7 2007. As the maturity date neared, I requested a renewal of the Second Note; County Bank
8 agreed to renew the Second Note. As with the First Note, County Bank delayed the renewal of
9 the Second Note and it was not renewed until after the maturity date. Because County Bank
10 caused the delay, it did not charge me any late fees. Once again, County Bank informed me that
11 it would continue to renew the Second Note as needed. As a result of County Bank's assurances I
12 kept my business with County Bank.

13 9. After the renewals of the First Note and Second Note, both notes were set to
14 mature on March 22, 2008. Various County Bank representatives continued to assure me that the
15 First Note and Second Note would be renewed or extended past the March 22, 2008 maturity
16 date. Based on these assurances I believed that County Bank would continue to renew and extend
17 the loans in the future. Therefore, I did not seek alternative financing for these notes, though I
18 could have obtained such refinancing if it was necessary.

19 10. However, in early 2008, and for the first time, County Bank informed me that I
20 needed to obtain financing from another lender for the First Note and Second Note. This
21 information came as a surprise and shock to me because of my excellent history with the bank. I
22 was also surprised that County Bank gave me such short notice to obtain refinancing. At the time
23 that County Bank informed me that I needed to take my business elsewhere, I had less than three
24 months to obtain financing before the March 22, 2008 maturity dates. Also at this time, the
25 economic downturn was significantly impacting real estate values and the availability of
26 financing was considerably worse than it had been a few months earlier. For example, I obtained
27 a substantial loan of approximately \$8,000,000.00 from Premier Bank in late December of 2007.
28 However, the lenders and loans that were available to me in mid-to-late 2007 were increasingly

1 less available to me in early 2008. Had I known that County Bank was not going to extend/renew
2 the First Note and Second Note, I would have taken my business to another bank and sought
3 refinancing much earlier.

4 11. Given the short amount of time I had to obtain refinancing, I immediately began
5 looking for another bank. However, County Bank did not cooperate with my refinancing efforts.
6 For instance, I was negotiating with another bank who attempted to contact County Bank for
7 information regarding the First Note and Second Note. I am informed and believe that County
8 Bank did not return phone calls from this other financial institution. As a result, I was unable to
9 obtain refinancing from that institution.

10 12. Further frustrating my refinancing efforts was the fact that the First Note and
11 Second Note were highly over-collateralized. That is, the properties securing the First Note and
12 Second Note far exceeded the values of the loan amounts. The effect of the over-collateralization
13 was that I had fewer presently unencumbered property that I could offer as collateral for
14 additional refinancing from other lenders. When I brought this issue to County Bank, County
15 Bank insisted on the over-collateralization but assured me that they would release properties from
16 the deeds of trust if I needed them to be released. County Bank never released any property from
17 the deeds of trust.

18 13. As a result of County Bank's delay in notifying me that I needed to take the First
19 Note and Second Note to another lender, I was unable to timely acquire refinancing and interest
20 rates were rising.

21 14. Because I could not find alternative financing for the First Note and Second Note,
22 and because County Bank had hindered my refinancing efforts, I entered into negotiations with
23 County Bank regarding a settlement agreement. The negotiations continued through the summer
24 of 2008.

25 15. On or around September 26, 2008, Van der Meer, my wife, Edna Malik, and I
26 entered into an Extension and Modification Agreement ("Extension Agreement") with County
27 Bank. The Extension Agreement allowed an extension of the First Note and Second Note until
28 December 19, 2008. The Extension Agreement also included an option to extend the term further

1 to March 20, 2009. See Extension Agreement, a true and correct copy of which is attached hereto
2 as Exhibit A.

3 16. More importantly, under the Extension Agreement County Bank agreed to
4 complete an appraisal of the properties securing the notes. County Bank and I agreed that I
5 would continue to seek refinancing during the extension period and an appraisal was critical to
6 my success. The Extension Agreement also provided that I would release my claims against
7 County Bank that arose from County Bank's delays and misrepresentations pertaining to the First
8 Note and Second Note. I only agreed to the release because I understood that County Bank
9 would fully perform under the Agreement, including timely completing an appraisal of the
10 properties.

11 17. After we executed the Extension Agreement, County Bank advised me that it
12 would obtain the appraisal by November 15, 2008. However, as of November 15, 2008 the
13 appraisal was not ready. Through emails and telephone calls, County Bank repeatedly
14 represented that the appraisal would be completed shortly. See emails from County Bank, true
15 and correct copies of which are attached hereto as Exhibit B.

16 18. By early-to-mid December 2008, County Bank continued to represent that the
17 appraisal would be completed and delivered shortly. I had one lender that was specifically
18 waiting for the appraisal, and in response to my inquiries, County Bank continued to inform me
19 that it was not yet prepared to provide the appraisal. At one point, County Bank sent me an
20 invoice in excess of \$7,000.00 for payment of the appraisal cost. When I requested the appraisal,
21 County Bank responded that it was not ready, and instructed me to disregard the invoice.

22 19. By mid-to-late December 2008, County Bank finally advised me that it would not
23 provide a final appraisal for the properties and I should seek an alternative appraisal. At this time,
24 I was still seeking refinancing of the property. Accordingly, I sought an appraisal elsewhere, but
25 it was not until January 2009, that the appraisal was complete. During this time the real estate
26 market had continued to decline. County Bank never provided me with an appraisal of the
27 properties.

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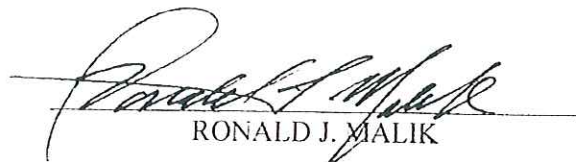
1 20. Because I was unable to obtain another source of financing by December 19, 2008,
2 I paid County Bank \$250,000 to extend the term of the notes to March 2009. County Bank
3 continued to dispute the loans and I continued negotiations with County Bank, which was merged
4 into WestAmerica Bank in or about February, 2009.

5 21. The negotiations led to a proposed Amendment One to the Extension Agreement
6 ("Amendment One"). In late June 2009, believing that we had agreed upon Amendment One, I
7 delivered a signed copy of Amendment One along with WestAmerica Bank's requested payment
8 of \$317,000 to the escrow agent. However, WestAmerica Bank rejected the payment amount and
9 requested an additional \$54,000. WestAmerica did not provide a legitimate explanation for its
10 demand for the additional \$54,000 payment and negotiations ended.

11 22. On or about July 17, 2009, I received a letter, dated July 6, 2009, and postmarked
12 July 14, 2009, from WestAmerica Bank. By this letter, WestAmerica Bank requested a payment
13 of \$1,135,849.55. WestAmerica Bank stated that if the payment was not received by July 28,
14 2009, it would "exercise its remedies provided by the collective Loan Documents," which would
15 include recording notices of default and pursuing foreclosure. See July 6, 2009 WestAmerica
16 Bank letter, a true and correct copy of which is attached hereto as Exhibit C.

17 23. If WestAmerica Bank begins foreclosure proceedings on the properties, my current
18 efforts to refinance the properties will be significantly hindered. Moreover, the properties are
19 currently undeveloped, and if I lose the properties to foreclosure, I will lose the substantial
20 increase in the value of the property as developed.

21 I declare under penalty of perjury pursuant to the laws of the State of California that the
22 foregoing is true and correct and that this Declaration was executed on August 4, 2009, at
23 Modesto, California.

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25 RONALD J. MALIK
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