

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-23-06023

iSTAR TARA LLC,

Plaintiff,

vs.

STEVENS AVIATION, INC.,
GREENVILLE COUNTY, SOUTH
CAROLINA, and CITY OF
GREENVILLE, SOUTH CAROLINA

Defendants.

ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS
COUNTERCLAIMS

RECEIVED

AUG 16 2016

SC Court of Appeals

This matter is before this Court on Plaintiff iStar Tara LLC's ("iStar") Motion to Dismiss the counterclaims of Defendant Stevens Aviation, Inc. ("Stevens") under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A hearing was held on March 14, 2016. Rebecca Lindahl of Katten Muchin Rosenman LLP and Rivers Stilwell of Nelson Mullins Riley & Scarborough LLP appeared on behalf of iStar; Julio Mendoza, Jr. of Nexsen Pruet appeared on behalf of Stevens. Having reviewed the Motion, the memoranda of the parties, and the pleadings on record, having heard and considered the arguments of counsel and having considered applicable law, the Court finds as follows:

1. The "Discounted Payment Contract"¹ is an unauthorized oral modification to the Loan Agreement in direct contravention of its explicit terms prohibiting oral modification;
2. The permitted limited exceptions to prohibitions regarding oral modifications as outlined in *Towers Charter & Marine Corp. v. Cadillac Ins. Co.*, 894 F.2d 516 (2d. Cir. 1990)²

¹ All capitalized terms in this Order have the meanings defined in the Complaint and Answer



are inapplicable because (a) Stevens' actions were consistent with the terms of the Loan Agreement, and (b) iStar reminded Stevens, by way of the March 6, 2015 Default Notice, that all modifications to the Loan Agreement must be in writing and therefore Stevens could not have reasonably relied on any purported oral modification of the Loan Agreement;

3. Stevens' alleges that it orally modified the Loan Agreement, but said Agreement, by its terms, could not be orally modified. Dismissal of Stevens' counterclaims is therefore appropriate under Rule 12(b)(6) based on the clear language of Loan Agreement setting forth the terms of the agreement.

IT IS ORDERED that the Counterclaims of Stevens are hereby DISMISSED with prejudice.

This the 26th day of April, 2016.

Perry H. Gravely
Circuit Court Judge

² This Court finds that the Loan Agreement is governed by New York law; and, therefore, the Court references applicable New York law.



Greenville Common Pleas

Case Caption: Istar Tara LLC vs. Stevens Aviation Inc , defendant, et al
Case Number: 2015CP2306023
Type: Order/Dismissal

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

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