

EXHIBIT 1

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IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, OHIO

iStar Tara

Case No. 2016 CV 03332

Plaintiff,

Judge Dennis J. Langer

v.

Stevens Aviation, Inc., et al

**DEFENDANT STEVENS AVIATION'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF iSTAR TARA LLC'S MOTION
FOR SUMMARY JUDGMENT**

Defendants.

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Attorney for Defendants Stevens Aviation

Now comes Defendant Stevens Aviation, Inc. ("Stevens"), by and through counsel, and for its memorandum in opposition to Plaintiff iStar Tara LLC's ("iStar") Motion for Summary Judgment, states as follows:

iStar's Motion for Summary Judgment is not ripe for review and must be denied or held in abeyance until the South Carolina Court of Appeals in the case of *iStar Tara, LLC v. Stevens Aviation, Inc., et al.*, Case No. 2016-001691, renders its decision.

Stevens agrees with the first two paragraphs of the Introduction to iStar's Motion for Summary Judgment. Stevens also agrees that the debt under one of the two notes was scheduled to mature on March 1, 2015 pursuant to the terms of the parties' amended Loan of March 31, 2011. Further, Stevens agrees that iStar initiated a lawsuit in South Carolina in the Court of Common Pleas, Thirteenth Judicial District, as Case No. 2015-CP-06023 ("the South Carolina Case"), seeking to foreclose

on the collateral located in South Carolina and to collect money damages and other equitable remedies against Stevens, pursuant to the terms of the same Loan which is at issue in this case. But, Stevens' counterclaims in the South Carolina Case have not been disposed of as stated by iStar in its Motion for Summary Judgment. Stevens appealed the trial court's decision in the South Carolina Case to the South Carolina Court of Appeals in the case of *iStar Tara, LLC v. Stevens Aviation, Inc., et al.*, Case No. 2016-001691, ("South Carolina Appeal"), so a final decision relating to the exact terms of the agreement between iStar and Stevens has not been reached. Thus, iStar is not entitled to a ruling on summary judgment or disposition of its claims against Stevens in the instant action until final disposition of Stevens' counterclaims against iStar in the South Carolina Case has been obtained.

In the South Carolina Case and South Carolina Appeal, Stevens disagrees that it defaulted on the Loan with iStar because it is Stevens' position, as evidenced by Stevens' counterclaims in the South Carolina Case, that Stevens and iStar entered into an oral agreement that replaced the then-existing Loan between the parties. This oral agreement is the basis for Stevens' counterclaims against iStar in the South Carolina Case as well as Stevens' affirmative defenses in this case.

As stated by iStar, Stevens argued in the South Carolina Case that the parties had entered into an oral contract which is referred to by Stevens as the "Discounted Payment Contract." It is Stevens' position that under the Discounted Payment Contract, Stevens agreed that by August 31, 2015, it would make a discounted payoff to iStar of \$8 million, and iStar would receive certain proceeds from the sale of certain equity. Pursuant to the terms of the Discounted Payment Contract, iStar would no longer be entitled to foreclose on any properties owned and/or leased by Stevens, including the lease/property at issue in the instant case. Stevens asserted

counterclaims in the South Carolina Case against iStar based on the alleged breach of the oral Discounted Payment Contract by iStar.

In the South Carolina Case, iStar then filed a Motion to Dismiss Stevens' counterclaims pursuant to Rule 12(b)(6) on the grounds that the Discounted Payment Contract was an unenforceable attempted oral modification of the Loan Agreement, which was prohibited by the Loan Agreement. The Court in the South Carolina Case found that dismissal of Stevens' claims was appropriate pursuant to Rule 12(b)(6); however, Stevens timely appealed that decision to the South Carolina Court of Appeals in the South Carolina Appeal, which is still pending.

In the meantime, iStar filed its Complaint for Foreclosure against Stevens in this case, even though the time for appeal of the trial court's ruling in the South Carolina Case had not yet run; thus, a final disposition with respect to Stevens' counterclaims in the South Carolina Case has not been reached. Stevens has filed its brief on appeal in the South Carolina Appeal, which was filed on January 13, 2017. (See a copy of the Initial Brief of Appellant, Stevens, in South Carolina Court of Appeals Case No. 2016-001691, which is being filed with the court in this case simultaneously with Stevens' Brief in Opposition to iStar's Motion for Summary Judgment, as Exhibit S-1.)

If it is determined in the South Carolina Case that the parties entered into a valid, oral agreement, which extinguishes or takes the place of the prior agreements between the parties, then this action filed by iStar is moot and void. Only if the decision of the trial court in the South Carolina Case is upheld by the South Carolina Court of Appeals are iStar's claims in this case potentially valid and enforceable, to an extent which would then have to be determined by this court.

"For a cause to be justiciable, there must exist a real controversy presenting issues which are ripe for judicial resolution and which will have a direct and

immediate impact on the parties.” *Eagle Fireworks, Inc. v. Ohio Dept. of Commerce, State Fire Marshal*, 4th Dist. No. 03CA28, 2004-Ohio-509 (Jan. 28, 2004) at P8, citing *State v. Stambaugh* (1987), 34 Ohio St.3d 34, 38, 517 N.E.2d 526, 530 (Douglas, J., concurring in part and dissenting in part), citing *Burger Brewing Co. v. Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 97-98, 296 N.E.2d 261. “Generally, a claim is not ripe if the claim rests upon “future events that may not occur as anticipated, or may not occur at al.”” *Eagle Fireworks* at P9, citing *Texas v. United States* (1998), 523 U.S. 296, 300, 118 S.Ct. 1257, 140 L.Ed.2d 406. See also, *JPMCC 2004-CIBC10 7th Street Office, LLC v. URS Tower, LLC*, 987 N.E.2d 349 (2013).

Because the issue regarding the applicable contract between the parties to this case has not yet been disposed of because of the appeal filed by Stevens in the South Carolina Case, this case is not yet ripe for adjudication. If the South Carolina Court of Appeals would overrule the decision of the trial court in the South Carolina Appeal, iStar’s claims against Stevens in the instant action would be directly affected, and may be moot or void. Thus, iStar’s Motion for Summary judgment as well as iStar’s claims against Stevens, in general, are not ripe for judicial resolution and any decisions relating to iStar’s claims in this case should be held in abeyance or dismissed in this case until after final disposition of the South Carolina Case.

WHEREFORE, Defendant Stevens Aviation, Inc. states that Plaintiff iStar Tara, LLC’s Motion for Summary Judgment should be denied or held in abeyance until the issues relating to the counterclaims of Stevens Aviation, Inc. in the South Carolina Case has reached final disposition.

Respectfully submitted,

/s/ Robert J. Bahret

Robert J. Bahret
Attorney for Defendant Stevens Aviation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Defendant Stevens Aviation's Memorandum in Opposition to Plaintiff iStar Tara LLC's Motion for Summary Judgment** has been sent on this 13th day of February 2017 through the court's electronic filing system to Justin W. Ristau, Esq. (jristau@bricker.com), attorney for Plaintiff; to Lynne R. Nothstine, Esq. (nothstine@mcoho.org), attorney for Defendant Treasurer of Montgomery County; and to Leonard.bazelak@daytonohio.gov), attorney for Defendant City of Dayton.

/s/ Robert J. Bahret

Robert J. Bahret

Attorney for Defendant Stevens Aviation

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05/25/2018

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SC Court of Appeals

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