

Exhibit 3

April 21, 2022 Order Denying Rule 59(e) Motions

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

) CASE NO.: 2020-CP-10-00825

MMT, LLC, and The Holland Family Trust, by
and through its Trustee, Mason Holland,

Plaintiffs,

v.

Ascension Air Management, Inc., Jamail
Larkins, Sutlive Aviation, LLC, Traylor and
Associates, LLC, HT Eclipse, LLC, Triple
Holdings, Inc., Executive Visions, Inc., CLBD
Real Estate Holdings, LLC, Universal Weather
and Aviation, Inc., and Universal Fuel, Inc.

Defendants.

CLBD Real Estate Holdings, LLC

Counter & Cross Plaintiff,

v.

MMT, LLC, and The Holland Family Trust, by
and through its Trustee, Mason Holland,
Ascension Air Management, Inc., Jamail
Larkins, Sutlive Aviation, LLC, Traylor and
Associates, LLC, HT Eclipse, LLC, Triple
Holdings, Inc., Executive Visions, Inc.,
Universal Weather and Aviation, Inc., and
Universal Fuel, Inc.,

&

Additional/New Defendants:

Ascension Aircraft, LLC, Larkins Enterprises,
Inc., and Mason Holland,

Counter & Cross-Defendants.

RECEIVED
May 20 2022
SC Court of Appeals

**ORDER DENYING
RULE 59(e) MOTIONS**

THIS MATTER is before the Court on the motions of The Holland Family Trust (“HFT”) and Sutlive Aviation, LLC (“Sutlive”) to Alter or Amend pursuant to Rule 59 (e), SCRCP.

A hearing was held on all pending motions on November 17, 2021, and arguments on the cross motions for summary judgment were made on behalf of each party by counsel of record. The Court issued its Order on March 18, 2022 granting CLBD's Motion for Partial Summary Judgment.

PROCEDURAL HISTORY

Plaintiffs HFT and MMT, LLC ("MMT") (collectively, "Plaintiffs") filed their Complaint on February 14, 2020 seeking quiet title to the N826ES Aircraft ("Aircraft") and a declaratory judgment that the Plaintiffs were entitled to "consolidate" 100% of the ownership of the Aircraft into MMT, which is a separate entity also affiliated with Mason Holland ("Holland") and HFT.

Sutlive filed its Answer, Counterclaim, and Cross-Claim on May 14, 2020, then filed an Amended Answer, Counterclaim, and Cross-Claim on May 18, 2020. In its amended pleading, Sutlive sought by way of cross and counterclaim a declaratory judgment that it has an 8.33% interest in the Aircraft free and clear of all other liens and encumbrances, including those asserted by the HFT and CLBD. CLBD filed its Answer, Counterclaims, and Cross-Claims on June 26, 2020 in which it asserted claims for negligence, SCUTPA, declaratory relief, deficiency judgment, and for an injunction and restraining order.

Plaintiffs filed their motion for summary judgment on September 24, 2021 requesting that the Court find CLBD committed usury. CLBD filed its partial motion for summary judgment on September 30, 2021 requesting that the Court make findings in its favor regarding lien priority and against Plaintiffs' usury argument. Sutlive filed its motion for summary judgment on November 5, 2021 seeking summary judgment on its declaratory judgment counterclaim and crossclaims as to Plaintiffs and CLBD.

FINDINGS OF FACT

The Court finds that the parties generally agree on the pertinent facts and recites the relevant factual matters as concisely as possible herein. Ascension Air Management, Inc. (“Ascension”), a Georgia corporation, purchased an Eclipse aircraft on December 4, 2015. This aircraft was later designated by the Federal Aviation Administration as N826ES (the “Aircraft”). The purchase by Ascension was funded in part by a loan from CLBD for \$1,000,000, which was executed on December 3, 2015 (the “CLBD Note”). The term on the note was 30 days, and it required the payment of 5% of the principal in interest after the expiration of those 30 days. By the terms of the CLBD Note, the CLBD Note is governed by Georgia law. The remainder of the purchase price was funded by a loan from Eclipse Aerospace in the amount of \$2,217,436.00 (the “Eclipse Note”). The security interest of CLBD was recorded with the FAA on December 12, 2015, while Eclipse’s security interest was recorded thereafter on February 3, 2016.

The evidence submitted to the Court in support of summary judgment, including documents and deposition testimony, indicates that one of the principal shareholders of Eclipse at the time, Holland, took an interest in the business of Ascension and spent the early months of 2016 evaluating Ascension’s financial status. Ascension was in financial trouble at this time, and one of the ways Holland expected Ascension to fund its business (and thus pay back its loan) was to sell fractional share interests in the Aircraft. Holland, attempting to invest in Ascension, monitored Ascension’s financial status. This included the ability of Ascension’s principal, Jamail Larkins (“Larkins”), to sell these fractional share interests. Holland stated in deposition testimony that it was always the intent, from the day Larkins purchased the Aircraft on behalf of Eclipse, for Larkins to sell fractional shares of the Aircraft. Sutlive was one of these fractional share interest holders, and it purchased an 8.33% interest in the Aircraft on May 3, 2016.

HFT, through Holland as its Trustee, satisfied the Eclipse Note on May 16 or 17, 2016, as evidenced by the operative documents in this matter. As the FAA record shows, a satisfaction of the Eclipse Note and release of the security interest was filed with the FAA on May 17, 2016. Holland, on behalf of HFT, thereafter took out a new security interest on the Aircraft (the “HFT Note”). Holland and HFT have claimed that the intent of their transaction with Ascension was not to take out a new security interest, but to assume Eclipse Aerospace’s security position. The transaction documents evidence to the contrary, as the information of record with the FAA indicates that the Eclipse Aerospace note was satisfied. The Court finds that the plain language of those transaction documents controls. This finding is further supported by the fact that Holland’s title agent told Holland, as evidenced by emails supplied to the Court for the purposes of summary judgment, that upon reviewing the FAA record of the Aircraft, the lien interest of Eclipse could not be assigned or transferred because it was previously released.

In the meantime, CLBD collected from Ascension more than the \$1 Million dollars principal on its note secured by the Aircraft. Though Ascension was in default of the note almost immediately, it is admitted by CLBD that at least \$1,300,000 was paid by Ascension to CLBD from January 11, 2016 to January 4, 2017. CLBD’s accounting of the loan indicates that it charged default fees, increased default interest, and costs in the amount of \$557,023 between January 2016 and January 2017. CLBD claims over \$1,505,450 remains due on the \$1,000,000 note due to its terms.

Larkins, on behalf of Ascension, either neglected his responsibility or intentionally failed to register the interests of the fractional shareholders, including Sutlive. There were at least six fractional shareholders. Their interests in the Aircraft were finally recorded on March 11, 2019. The documentary evidence and deposition testimony in the record shows Holland and HFT had

actual notice of these fractional interests at all times. As to interest claimed by Plaintiff MMT, it purchased an interest in the Aircraft owned by a company called Birdies Fly, one of the other fractional shareholders, on December 22, 2019. This was both purchased and recorded after the interests of the other fractional shareholders, including Sutlive.

Due to Larkins's continued failure to maintain Ascension's business and its inability to generate funding, Ascension filed a petition under Chapter 7 of the United States Bankruptcy Code on February 10, 2020. The Trustee abandoned the Aircraft upon motion by counsel for the Plaintiffs and consented to an order relieving the parties herein from the stay of this litigation on July 14, 2020. This case proceeded without Larkins and was referred by consent order to this court on September 21, 2021 for final adjudication.

PROCEDURAL FINDING

On March 18, 2022, the Court entered its Order Granting Partial Summary Judgment to CLBD on the cross motions for summary judgment

The Court has reviewed the Motions to Alter or Amend its March 18, 2022 Order from Sutlive and HFT, both filed March 28, 2022. The principal issue before the Court is whether or not the Georgia usury statute applies to loans over \$250,000.00. All parties agree that Georgia law applies in this case. When presented with cross Motions for Summary Judgment, the parties concede that there is no question of fact and that the issue is a question of law for the Court. See *Wiegand v. US Auto Ass'n.*, 391 S.C. 159, 705 S.E. 2d 432 (2011).

The literal language of the Georgia usury statute specifically differentiates loans in excess of \$250,000.00. 28 Ga. Code Ann. § 7-4-2(a)(1)(A) and 28 Ga. Code Ann. § 7-4-2(a)(1)(B).

Notwithstanding the provisions of other laws to the contrary, except Code Section 7-4-18, the parties may establish by written contract any rate of interest. . .where the principal amount involved is more than \$3,000.00 but less than \$250,000.00. . . .

28 Ga. Code Ann. § 7-4-2(a)(1)(A).

Where the principal amount is \$250,000.00 or more. . .the parties may establish by written contract any rate of interest. . . and charges to be paid by the debtor.

28 Ga. Code Ann. § 7-4-2(a)(1)(B).

Title 7-4-18 is part of the Georgia Criminal Code and states that any rate of interest greater than 5% per month is prohibited.¹

This Court reviewed multiple cases involving determination of Georgia’s Usury Statutes. No case was found which specifically holds that loans in an amount greater than \$250,000.00 are subject to the claim of usury.² Instead, the Georgia Court of Appeals found the usury statute clearly did not apply to loans greater than \$250,000.00 in *Barton v. Marubeni America Corp.*, 204 Ga. App. 346, 419 S.E. 2d 342 (Ga. App. 1992). Accordingly, this Court interprets the language from the Georgia Statute as allowing parties - who are in an “equal bargaining position” - are free to contract however they wish in order to reach an agreement. This principle is consistent with this state’s determination that “parties are free to contract as they like,” provided the contract does not violate the law or public policy. *See Pride v. S. Bell Tel. & Tel. Co.*, 244 S.C. at 621, 138 S.E.2d at 157 (1964). This state repealed its usury statute by the 1982 S.C. Acts 835 and established the legal rate of interest with S.C. Code Section 34-31-20. South Carolina courts regularly hold parties to the terms of their agreement, no matter how foolish they may be. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016) and *Bickerstaff v. Prevost*, 398 S.C. 231, 727 S.E.2d 231 (Ct. App. 2012). This appears to be the case in this instance.

¹ The Georgia usury statutes would seem appropriate for a state which was founded for the benefit of English debtors. See Oglethorpe, James G.

² *See S&A Industries v. Bank Atlanta*, 247 Ga. App. 377, 543 S.E.2d 743 (Ga. App. 2000), especially Judge Miller’s concurring opinion.

Mr. Larkin, as the owner of the aircraft, set the terms of the agreement with CLBD apparently thinking he only needed a short-term bridge loan; however, in retrospect, this loan has been ongoing for years. Due to CLBD's initiative as the first to file its security agreement with the FAA, this Court found it to be in the first priority lien position. The other two defendants follow with Sutlive's 8.3% interest and MMT with the remainder interest in the airplane.

This Court did not weigh the evidence nor make credibility assessments in its analysis. The standard for overcoming a summary judgment motion is a scintilla of evidence; the issue here is a question of law as to whether or not the CLBD loan constitutes usury under Georgia law. As stated in the Motion, the Court must presume that the General Assembly meant what it said and said what it meant; i.e., that is the statute must be read as it is written. *See Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) and Judge Miller's concurrence in *S&A, supra*. Accordingly, the Court does not find the agreement to be illegal or usurious or a violation of public policy.

It is on this basis that the Court issued its rulings. To the extent another court determines that the loan is usurious and not of legal force, clearly this Court's ruling would be in error and title would be vested otherwise. However, this Court finds that, due to the parties' ability to contract as they wished, the terms of the note are not usurious and therefore, CLBD retains the superior lienholder position as first to file and secure its claim.

CONCLUSION

For the reasons provided above, the Court respectfully DENIES both Sutlive's and HFT's Motion to Alter or Amend its March 18, 2022 Order.

AND IT IS SO ORDERED!

SIGNATURE PAGE TO FOLLOW



Charleston Common Pleas

Case Caption: Mmt Llc , plaintiff, et al VS Ascension Air Management Inc ,
defendant, et al
Case Number: 2020CP1000825
Type: Order/Other

So Ordered

s/Mikell R. Scarborough 3062