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LEONITE CAPITAL, LLC, Plaintiff, v. PIERRE U. MARTIN, et al., Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: BERGEN COUNTY DOCKET No. F-14896-18 **OPINION** Argued: July 24, 2020 Decided: July 30, 2020

Appearances: Michael J. Cicala, Esq., (the Law Offices of Geoffrey D. Mueller, Esq., attorneys) for Defendant

Charles A. Gruen, Esq., (the Law Offices of Charles A. Gruen, Esq., attorneys) for Plaintiff

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HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter comes before the Court by way of Notice of Motion for Reconsideration of the Court's May 13, 2020 Order entering Final Judgment of Foreclosure, filed by the Law offices of Geoffrey D. Mueller, Esq., attorneys for Defendant Pierre U. Martin ("Defendant"), filed on June 2, 2020. Plaintiff Leonite Capital, LLC ("Plaintiff"), by and through counsel the Law offices of Charles A. Gruen, filed opposition to the Motion for Reconsideration on July 9, 2020. On July 20, 2020, Defendant filed a reply to Plaintiff's opposition. Oral argument was heard on July 24, 2020.

LEGAL STANDARD

A reconsideration motion is governed by Rule 4:49-2 and is a matter to be exercised in the trial court's sound discretion. A motion for reconsideration under Rule 4:49-2 "shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or to which it has erred." R. 4:29-1; Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521 (2008); Lahue v. Pio Costa, 263 N.J. Super. 575, 598 (App. Div. 1993). Reconsideration should be granted where the court's decision rests upon "a palpably incorrect or irrational basis," or the court "did not consider or failed to appreciate the significance of probative, competent evidence." Dover-Chester Assocs. v. Randolph Twp., 419 N.J. Super. 184, 196 (App. Div. 2011) (quoting Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)); Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Clearly the magnitude of the error claimed must be a game-changer for reconsideration to be appropriate. Put another way, "a litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

Disagreement with a ruling, however, is not a valid ground for a motion. Ibid. ("[A] litigant should not seek reconsideration merely because of dissatisfaction with a decision of the court"). Motion practice must come to an end at some point, and if repetitive bites at the proverbial apple are allowed, the core swiftly sours. See Cummings, 295 N.J. Super. at 382. Thus, a court must view carefully a motion for reconsideration, mindful that excessive use of such motions is disapproved: "[o]ur observation is that such motions have been made with increasing frequency

when essentially there is little more than disagreement with the court's decision." Palumbo v. Township of Old Bridge, 243 N.J. Super. 142, 147 n.3 (App. Div. 1990).

ANALYSIS

Defendant seeks reconsideration of this Court's Order, entering Final Judgment on May 13, 2020, pursuant to R. 4:49-2. Defendant claims that reconsideration is warranted because the Court incorrectly included, in its determination of Final Judgment, a calculation of interest on the $25,000.00 penalty that was added to the principal amount owed following the First Amendment to the Promissory Note (the "Note") and a failure to pay the amount due by the extended maturity date. Moreover, Defendant contends that this inclusion of interest on the $25,000.00 Forbearance Interest Penalty (the "$25,000.00 penalty") confers an "unearned" benefit on Plaintiff, serves as another penalty against Defendant, and is unconscionable.

In support of this argument, Defendant cites to Feller v. Architects Display Buildings, Inc., contending that the Appellate Division found additional interest payments arising after default on a second note to be unconscionable and unenforceable as a penalty. Feller v. Architects Display Buildings, Inc., 54 N.J. Super. 205 (App. Div. 1959). In addition, Defendant also cites to Spiotta v. William H. Wilson, Inc., noting that on certain occasions courts have decided to not enforce interest rates that were agreed to based on the fact that they were penal and unconscionable. Spiotta v. William H. Wilson, Inc., 72 N.J. Super 572 (App. Div. 1962).

Defendant also argues that when a defendant defaults on the note or mortgage, a plaintiff could only recover interest earned until acceleration of maturity but nothing more than this interest calculation. New Jersey Mortg. & Inv. Corp. v. Young, 134 N.J. Super. 392, 396 (Law Div. 1975) (citing Block v. Ford Motor Credit Co., 286 A. 2d 228 (D.C. Ct. App. 1972); see also Northtown Theatre Corp. v. Mickelson, 226 F. 2d 212 (8 Cir. 1955).

Plaintiff, in opposition to Defendant's Motion, claims that Defendant has rehashed the same arguments that were used in his opposition to the Motion for Final Judgment and thus fall short of the standard for a reconsideration motion. In addition, Plaintiff contends that the plain language of the First Amendment clearly adds $25,000.00 to the principal amount of the Note in the event that the Note is not paid by the extended maturity date. Accordingly, it is argued that interest should be included on this $25,000.00 penalty because it is a portion of the principal amount of the Note, which undoubtedly collects interest.

In addition, Plaintiff contends that Defendant's reliance on the Feller case is improper because the Feller case ultimately found that the interest rate after maturity on the first note was enforceable. Whereas the interest rate that the Appellate Division in Feller found unconscionable and unenforceable was the interest rate before maturity on a different loan, which jumped from 15.87% to 32.87%. Thus, Defendant argues that Feller is vastly different from this matter because here the interest rate on the agreed to $25,000.00 penalty was only 12% with another 5% added after default.

Plaintiff also distinguishes this matter from the Spiotta case, which Defendant also relies on. In Spiotta, the Appellate Division found that an interest rate increasing more than 8% at the moment of default was unconscionable and unenforceable. However, Plaintiff points out that here, the interest rate is much different because the terms of the obligation and interest were clearly and expressly laid out and agreed to, whereas in Spiotta the specific obligation terms were more ambiguous and not clearly delineated beforehand.

For a court to grant a reconsideration motion, it must be shown that the court acted under "a palpably incorrect or irrational basis," or the court "did not consider or failed to appreciate the significance of probative, competent evidence." Dover-Chester Assocs. v. Randolph Twp., 419

N.J. Super. 184, 196 (App. Div. 2011) (quoting Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)); Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010).

Here, Defendant has failed to demonstrate that the Court made a palpably incorrect or irrational ruling. Although Defendant does provide additional case law for the Court to consider, he has not stated with specificity as to how the Court has erred, how the Court has overlooked controlling decisions, or how the additional case law provided is relevant to this case or controlling. In addition, much of Defendant's arguments are the same as in his opposition to the Motion for Final Judgment.

The Court has similarly already addressed Defendant's argument that the $25,000.00 penalty should not be granted to Plaintiff in its May 13, 2020 Order entering Final Judgment and in its August 2, 2019 Order. In these orders, the Court found that the $25,000.00 penalty could be included in the principal amount due. In addition, as stated in the Court's previous orders, the First Amendment, which has already been found to apply to Defendant, clearly and expressly states that the $25,000.00 penalty was to be included in the principal amount and that interest was to be paid.

Accordingly, as mentioned above, the magnitude of the error claimed must be a game-changer for reconsideration to be appropriate. In other words, "a litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

Defendant seems to ignore the express language of the First Amendment that was previously agreed to. Furthermore, the Court agrees with Plaintiff's distinction of the facts at hand with both the Feller case and Spiotta case. Here, the interest rate is reasonable unlike Feller which pertains to interest on a secondary loan before maturity of the amount due and with an interest rate

change of 15.87% to 32.87%. The interest rate here is also unlike in Spiotta where the Appellate Division found an eight percent increase in the interest rate at the moment default was declared to be unconscionable. Defendant offers no explanation as to why the facts of Spiotta are similar to this case. This is not a case in which the interest rate unwittingly and unfairly increased at the moment default was declared. Rather, it is clear that the First Amendment expressly lays out the $25,000.00 penalty's inclusion in the principal amount and the calculation of interest on that principal amount. Thus, the interest rate was well known before default occurred and the debt/loan structures and interest accrual do not bear the same rate increase as in Spiotta. The interest rate here clearly differs from the interest rate the Appellate Division found unconscionable in Spiotta. As such, the Spiotta case does not apply and the interest calculation on the penalty is not unconscionable.

Defendant, in his reliance on New Jersey Mortg. & Inv. Corp. v. Young, fails to consider the fact that unlike in Young, here the maturity date was extended and the $25,000.00 penalty was included in the principal amount, which was set to collect interest. Had the intention of the First Amendment been to include a penalty outside of the principal amount so as not to collect interest, then this would have been agreed to and included in the First Amendment. Nevertheless, the penalty was knowingly included in an interest-bearing principal amount.

Defendant has not demonstrated that the Court has acted in an arbitrary, capricious, or unreasonable manner and has similarly not shown any new case law, nor sufficiently expounded on the case law provided, to warrant the Court to reconsider its previous May 13, 2020 Order entering Final Judgment. Moreover, as the Court has previously decided in both its May 13, 2020 Order and August 2, 2019 Order, that: (1) the First Amendment is binding on Defendant; (2) the

First Amendment includes the $25,000.00 penalty in the principal amount; and (3) interest should accrue on the total principal amount upon default after the extended maturity date.

Thus, not only is the $25,000.00 penalty proper, but the interest previously calculated on the principal amount, including the $25,000.00 penalty, is also reasonable. Therefore, Defendant's Motion for Reconsideration is denied. An order accompanies this decision.