

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. ____ : ____ -CV- ____ ()

PARK NATIONAL BANK,

Plaintiff,

v.

RIVER'S EDGE NC PROPERTY, LLC,
RIVER'S EDGE NC APARTMENTS,
LLC, SUNWEST MANAGEMENT, INC.
and MICHAEL GRASSMUECK, in his
capacity as Receiver for River's Edge NC
Property, LLC, River's Edge NC
Apartments, LLC and Sunwest
Mangement, Inc.,

Defendants.

COMPLAINT

COMES NOW Plaintiff Park National Bank ("Plaintiff"), complaining of Defendants, and hereby alleges and says:

1. This is action seeks a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure and Section 2201 of Title 28 of the United States Code, to declare the rights and other legal relations surrounding questions of actual controversy that presently exist between Plaintiff and Defendants.

JURISDICTION

2. The Court has original jurisdiction in this action under the provisions of Section 1332 of Title 28 of the United States Code, in that it is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

3. Plaintiff Park National Bank is a national bank with its principal place of business in Chicago, Illinois.

4. Upon information and belief, River's Edge Property NC, LLC is an Oregon limited liability company with its principal place of business in Salem, Oregon. Rivers Edge has a place of business in Cumberland County, North Carolina and owns an interest in real property located in Cumberland County, North Carolina.

5. Upon information and belief, River's Edge NC Apartments, LLC is an Oregon limited liability company with its principal place of business in Salem, Oregon. Rivers Edge NC Apartments, LLC has a place of business in Cumberland County, North Carolina and owns an interest in real property located in Cumberland County, North Carolina. River's Edge Property NC, LLC and River's Edge NC Apartments, LLC are hereinafter collectively referred to as "River's Edge."

6. Upon information and belief, Sunwest Management, Inc. ("Sunwest") is an Oregon corporation with its principal place of business in Salem, Oregon. Sunwest has a place of business in Cumberland County, North Carolina and owns an interest in real property located in Cumberland County, North Carolina. Upon information and belief, River's Edge is owned and controlled by Sunwest.

7. Upon information and belief, Michael Grassmueck (the "Receiver") is a citizen and resident of Oregon. Mr. Grassmueck is named in this lawsuit solely in his capacity as Receiver for Sunwest and River's Edge pursuant to the Order issued by the United States District Court for the District of Oregon on March 10, 2009. A copy of this Order was filed in the Eastern District of North Carolina on March 19, 2009. As the Receiver for Sunwest and River's

Edge, the Receiver is subject to the jurisdiction of the United States District Court for the Eastern District of North Carolina.

VENUE

8. The venue of this action is properly predicated on Section 1391(a) of Title 28 of the United States Code in that jurisdiction is founded on diversity of citizenship and this action is brought within the judicial district in which the property that is the subject of this action is located.

THE LOAN AGREEMENT

9. On or about March 2, 2007, IXIS Real Estate Capital made a loan in the amount of \$22,245,000.00 to River's Edge NC Property, LLC, Bannerman's River's Edge, LLC, Davis' River's Edge, LLC, Duffer's River's Edge, LLC, Miles' River's Edge, LLC, Nancy's River's Edge, LLC, Scheller's River's Edge, LLC, Tringali's River's Edge, LLC, O'Waks' River's Edge, LLC, Smith's River's Edge, LLC, Z'Waks' River's Edge, LLC, Zimmer's River's Edge, LLC and Chen's River's Edge, LLC (the "Loan").

10. The Loan was secured by, among other things, a deed of trust on certain real property recorded in Book 7544, Page 1 *et seq.* of the Cumberland County Register of Deeds (the "Deed of Trust").

11. The real property encumbered by the Deed of Trust is located in Spring Lake, Cumberland County, North Carolina (the "Property"). An apartment complex known as River's Edge Apartments is located on the Property. River's Edge Apartments consists of 24 three-story buildings containing 291 apartment units. The apartment complex also contains a large clubhouse and a pool.

12. River's Edge NC Property, LLC owns 57.51% of the Property. The remaining 42.49% is owned by 19 different LLCs who hold their interests in the Property as tenants in common (the "TIC Owners"). Upon information and belief, River's Edge NC Property, LLC and the TIC Owners sublease the Property to River's Edge NC Apartments, LLC.

13. On or about April 15, 2008, NATIXIS Real Estate Capital, Inc. (formerly known as IXIS Real Estate Capital, Inc.) assigned the Loan and the Deed of Trust to Park National Bank.

THE OREGON CASE

14. On March 2, 2009, the Securities and Exchange Commission (the "SEC") filed suit in the United States District Court for the District of Oregon against Sunwest, Canyon Creek Development, Inc., Canyon Creek Financial, LLC, and Jon M. Harder, Case No. 6:09-cv-06056, alleging numerous violations of federal securities laws (the "Lawsuit"). Among other things, the SEC moved for the appointment of a receiver to preserve Sunwest's assets for the benefit of its investors.

15. Park National Bank was not, and is not, a party to the Lawsuit.

16. On March 10, 2009, the United States District Court for the District of Oregon entered an Order granting the SEC's motion for a preliminary injunction and appointing a receiver (the "Order"). A copy of the Order is attached hereto as Exhibit A. The Order appoints Michael Grassmueck to act as Receiver for a number of Sunwest related entities (referred to in the Order as the "Receivership Entities"), including River's Edge and River's Edge NC Apartments, LLC.

17. The Order further provides that:

“[N]o creditor of or claimant against any of the Receivership Entities, or any person acting on behalf of such creditor or claimant, shall take any action to

interfere with the Receiver's or CRO's control, possession, or management of the Receivership Entities or any of their assets, including but not limited to, the filing of any lawsuits, liens, encumbrances or bankruptcy cases to impact the Receivership Entities or any of their assets without further order of this Court. Without limiting the scope of the preceding sentence, no person or entity, including any creditor or claimant, shall take any action to terminate any management contract between Sunwest and any of the Receivership Entities.

Order, p. 7.

18. A copy of the Order has been filed with the United States District Court for the Eastern District of North Carolina. *See* Case No. 5:09-mc-00012.

THE DEFAULT

19. River's Edge has defaulted on its obligations under the Loan by failing to make principal and interest payments as they come due. Currently, the Loan is past due.

20. On or about May 4, 2009, Plaintiff sent a demand letter to River's Edge and the TIC Owners informing them that the Loan was in default and that the total outstanding loan balance had been accelerated and was due and payable in full (the "May 4th Letter"). As of that date, the total amount of principal and interest due and owing under the Loan was \$22,209,682.03. A copy of the May 4th Letter was also sent to the Receiver.

21. In response to the May 4th Letter, Plaintiff received a letter from Sunwest dated May 13, 2009. In this letter, Sunwest advised Plaintiff that the Order stayed any and all litigation against Sunwest-related entities, including River's Edge. Sunwest further asserted that any action Plaintiff took to foreclose on the Property would violate the terms of the Order.

22. On or about May 13, 2009, the Receiver informed Plaintiff that he considered any foreclosure proceedings initiated by Plaintiff against the Property "to be a violation of the stay imposed in the . . . March 10, 2009 Order by U.S. District Judge Michael Hogan" and that any foreclosure proceedings initiated by Plaintiff would be considered "in contempt of Judge

Hogan's Order." The Receiver further asserted that he would "take all appropriate legal actions in response to such contempt."

23. In mid-May, a representative of Park National Bank conducted a review of the Property. As a result of this review, Plaintiff learned that there is a considerable amount of deferred maintenance on the Property and that the Property is in need of substantial repair. Plaintiff has informed the Receiver that the condition of the Property is deteriorating, but the Receiver has failed and refused to act to take action to address this situation.

24. The Receiver has informed Plaintiff that he will initiate legal action against Plaintiff should Plaintiff attempt to exercise its contractual rights with respect to the Property. Not only is the Loan in default, but Plaintiff is concerned that the condition of the Property (the collateral for the Loan) is swiftly deteriorating.

25. Plaintiff has requested that the Receiver file a motion with the United States District Court for the District of Oregon moving for the release of the Property from the Court's injunction. However, the Receiver has failed and refused to do so.

DECLARATORY JUDGMENT

26. There exists an actual controversy between the parties of sufficient immediacy and reality to warrant issuance of a declaratory judgment.

27. An actual controversy exists between the Parties as to the jurisdiction of the United States District Court for the District of Oregon to enter an Order enjoining Plaintiff from exercising its contractual rights in connection with the Loan. Plaintiff was not a party to the Lawsuit and was not subject to the jurisdiction of the United States District Court for the District of Oregon.

28. The Receiver, Sunwest and River's Edge have taken the position that the Order enjoins Plaintiff from exercising its contractual rights with respect to the Property. Moreover, the Receiver has threatened legal action against Plaintiff in the event Plaintiff seeks to exercise its contractual rights with respect to the Property.

29. Unless and until the Parties' rights in relation to the Order are clarified, Plaintiff cannot take the necessary steps to protect the collateral securing the Loan or to exercise its contractual rights to foreclose on the Property. Plaintiff will suffer harm if it is unable to take action to protect the collateral securing the Loan – which Loan currently has an outstanding balance in excess of \$22,000,000.

WHEREFORE, Plaintiff requests that this Court adjudicate the rights of the parties hereto and enter a judgment declaring that: (i) the United States District Court for the District of Oregon does not have jurisdiction to enjoin Plaintiff from exercising its contractual rights with respect to the Property; (ii) Plaintiff is not bound by the Order and may proceed with the exercise of its contractual rights with respect to the Property; and (iii) granting such other and further relief as the Court deems proper.

This the 15th day of June, 2009.

/s/ James C. Adams, II
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