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Superior Court of California,
County of Orange
11/16/2012 at 03:05:00 PM
Clerk of the Superior Court
By Eleanor Sutter, Deputy Clerk

6 Attorney for Defendant Scott E. Peotter

7 **SUPERIOR COURT OF CALIFORNIA**
8 **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**
9

10
11 CALIFORNIA BANK & TRUST, as Assignee of) CASE NO. 30-2012-00546339-CU-BC-CJC
12 the Federal Deposit Insurance Corporation as)
13 Receiver for Vineyard Bank, N.A.,) JUDGE David Chaffee
14)
15 Plaintiff,)
16) **DECLARATION OF SCOTT E. PEOTTER**
17 v.) **IN SUPPORT OF DEFENDANT' MOTION**
18) **FOR SUMMARY JUDGMENT**
19 BARRY J. HAMMOND, an individual and as)
20 trustee for THE BARRY J. AND SUSAN J.) **DATE: February 8, 2013**
21 HAMMOND FAMILY TRUST; SCOTT E.) **TIME: 9:30 a.m.**
22 PEOTTER, an individual; and DOES 1 through 10,) **DEPT: C20**
23 inclusive.)
24) **Complaint Filed: February 17, 2012**
25 Defendants) **Trial Date: March 4, 2013.**
26

27 I, Scott E. Peotter, declare as follows:

- 28
1. I have personal knowledge of the following facts and, if called as a witness, can and will competently testify to them under oath.
 2. I am a Defendant in the above captioned legal action.
 3. I am an individual living in Irvine, California.

1 4. Co-Defendant Barry J. Hammond ("Hammond"), is an individual and trustee of Barry J.
2 and Susan J. Hammond Family Trust.

3 5. Hammond and I were the managing members of Aslan Medical Center, I, LLC ("AMC").

4 6. Hammond was dismissed from this action pursuant to the filing of a personal bankruptcy
5 on or about April 10, 2010.

6 7. I was never provided notice that Plaintiff CALIFORNIA BANK & TRUST was the legal
7 assignee of the Federal Deposit Insurance Corporation as Receiver for Vineyard Bank, N.A.
8 ("Vineyard")

9 8. Vineyard loaned AMC approximately \$13,712,000 to purchase and develop a medical
10 office building in Irvine, California.

11 9. On or about July 20, 2006, Vineyard and AMC entered into a Construction Loan
12 Agreement ("Loan Agreement") to lend AMC the funds necessary to purchase and develop a
13 building in Irvine, California ("Property") that would be converted into a medical office
14 building. The Loan Agreement - **Exhibit "A"** to Appendix of Exhibits, filed herewith.

15 10. Concurrent with the signing of the Loan Agreement, Vineyard required me to sign a
16 Commercial Guaranty that purports to require Defendant to guarantee the repayment of the Loan
17 to AMC (hereinafter referenced as "The Guaranty"). The Guaranty - **Exhibit "B"** to Appendix
18 of Exhibits, filed herewith.

19 11. Hammond was required by Vineyard to sign an identical Commercial Guaranty.

20 12. The acquisition of the Property was at a time that was very close to the peak of the real
21 estate market, if the loan did not occur in a timely manner, AMC would not be able to acquire
22 the Property.

1 13. This project was and is only the second development project Hammond and I had ever
2 undertaken. The first project was the development of raw land into office condominiums located
3 in Irvine, California and commonly known as Aslan Business Park.

4 14. Under the pressure of a firm deadline to purchase the Property, Vineyard sent Hammond
5 and me documents, including the Loan Agreement and the Guaranty, not more than one or two
6 days before the date required to timely signing the documents in order to purchase the Property.
7

8 15. Prior to receiving the Guaranty at that time, I had not been informed by Vineyard the
9 Guaranty would be required in order to secure the loan.

10 16. I was surprised by the inclusion of the Guaranty in the loan documents.

11 17. On or about July 19, 2006, I asked Dave Adams, Vineyard's representative, about the
12 short notice and the necessity of the Guaranty. I expressed concern to Mr. Adams that my
13 attorney would not have time to review the Guaranty prior to signing the loan documents. I was
14 concerned about the Guaranty because my net worth was significantly less than the amount that
15 would be owed by AMC through the Loan Agreement and most of it was going to be invested in
16 the project.
17

18 18. I was told by Dave Adams not to worry about it because it was a "formality" and the
19 Guaranty was only enforceable in the case of fraud or bad acts.

20 19. Dave Adams made similar representations to Hammond prior to the signing of
21 Hammond's Commercial Guaranty.
22

23 20. On July 20, 2006, at the offices of Vineyard, I expressed his concern that the Guaranty
24 was presented at the last minute and Dave Adams reiterated that it was a "formality" and the
25 Guaranty was only enforceable in the case of fraud or bad acts.
26
27
28

1 21. Because of the short notice and representations of Vineyard, I did not seek counsel to
2 review the Guaranty.

3 22. I relied on these representations from Vineyard and would not have signed the Guaranty
4 had these representations not been made by Vineyard.

5 23. On or about January 8, 2009, Vineyard foreclosed on the Property.

6 24. There was no further communication about the loan or debt between Vineyard and me
7 following the foreclosure.
8

9 25. On or about February 2, 2010, AMC received a 1099 Tax Form from Plaintiff stating that
10 on January 22, 2009 there was a "cancellation of debt" of \$13,239,858.59. Moreover, it stated
11 that "BORROWER WAS NOT PERSONALLY LIABLE FOR THE REPAYMENT OF THE
12 DEBT." The 1099 Tax Form is attached as Exhibit "C" to Appendix of Exhibits, filed
13 herewith.
14

15 26. On or about April 10, 2010, Hammond filed for bankruptcy.

16 27. It is my understanding that Plaintiff/Vineyard was notified of Hammond's bankruptcy as
17 a potential claimant; that no claim was filed by Plaintiff or Vineyard in Hammond's bankruptcy;
18 and Hammond's debts were discharged in bankruptcy.

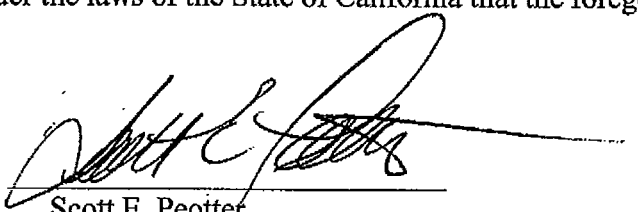
19 28. There has never been any communication with me by Plaintiff or Vineyard concerning
20 the Guaranty prior to my being served with the Complaint in or about May 2012.

21 29. There have been no demands for payment made to Defendant by Plaintiff or Vineyard.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct.
24

25 Date: November 16, 2012

26 By.


27 Scott E. Peotter
28