

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**U.S. BANK NATIONAL ASSOCIATION,  
in its capacity as Trustee for the Registered  
Holders of GS Mortgage Securities  
Corporation II, Commercial Mortgage Pass-  
Through Certificates, Series 2004-GG2,  
Plaintiff,**

**CIVIL ACTION**

**NO. 14-5017**

**v.**

**BLUE BELL ASSOCIATES, L.P.,  
Defendant.**

**ORDER**

**AND NOW**, this 12th day of November, 2014, upon consideration of Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(3) and 12(b)(6) – Improper Venue-Forum Selection Clause (“Motion to Dismiss”) (Document No. 6, filed October 15, 2014), and Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint (Document No. 7, filed October 29, 2014), **IT IS ORDERED** that defendant's Motion to Dismiss is **DENIED**.

**IT IS FURTHER ORDERED** that a preliminary pretrial conference will be scheduled in due course.

The decision of the Court is based on the following:

1. This is a commercial mortgage foreclosure action in which plaintiff U.S. Bank National Association alleges that defendant Blue Bell Associates, L.P. defaulted on a \$3.6 million loan secured by real property located in Montgomery County, Pennsylvania.<sup>1</sup> The Promissory Note (“Note”) accompanying the mortgage contains a forum selection clause which, as relevant here, states that “Borrower [i.e. defendant]. . . agrees that any [] action, suit[,] or

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<sup>1</sup> The Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332.

proceeding [arising from or relating to this Note] may be brought in any state or federal court of competent jurisdiction sitting in either the city or the county where the land is located . . .” and that “Borrower [i.e. defendant] will not bring any action, suit[,] or proceeding in any other forum.”

2. Presently before the Court is defendant’s Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(3) and 12(b)(6). In its Motion, defendant argues that plaintiff is barred from bringing suit in this Court because the forum selection clause limits both plaintiff’s and defendant’s choice of venue exclusively to a court that sits in Montgomery County, Pennsylvania, the county in which the real property at issue is located. The Court rejects defendant’s argument as inconsistent with the plain language of the forum selection clause.

3. Under federal law, “[f]orum selection clauses are entitled to great weight, and are presumptively valid.”<sup>2</sup> Wall St. Aubrey Golf, LLC v. Aubrey, 189 F. App’x 82, 85 (3d Cir. 2006) (citing Coastal Steel Corp. v. Tilghman Wheelabrator Ltd., 709 F.2d 190, 202 (3d Cir. 1983)). In determining the scope of a forum selection clause, the Court looks first to the plain language of the clause “to determine whether it unambiguously states the parties’ intentions.” John Wyeth & Bro. Ltd. v. CIGNA Int’l Corp., 119 F.3d 1070, 1074 (3d Cir. 1997). To be unambiguous, a forum selection clause “must be reasonably capable of only one construction.” Am. Flint Glass Workers Union, AFL-CIO v. Beaumont Glass Co., 62 F.3d 574, 581 (3d Cir. 1995). In deciding whether a forum selection clause is unambiguous, “a court does not just ask whether the language is clear; instead it ‘hear[s] the proffer of the parties and determine[s] if

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<sup>2</sup> In a diversity case, the effect to be given to a forum selection clause is determined by federal law. Jumara v. State Farm Ins. Co., 55 F.3d 873, 877 (3d Cir. 1995) (“Because [q]uestions of venue and the enforcement of forum selection clauses are essentially procedural, rather than substantive, in nature, federal law applies in diversity cases irrespective of Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938).”) (citation omitted) (alteration in original). Accordingly, the Court applies federal law.

there are objective indicia that, from the linguistic reference point of the parties, the terms of the [forum selection clause] are susceptible of different meanings.” Id. (citations omitted).

4. Applying these principles, the Court concludes that the language in the forum selection clause is unambiguous and does not bar plaintiff from pursuing its mortgage foreclosure action in this Court. Contrary to defendant’s assertion that “[both] parties have expressed an intent to limit the forum to either the city or county in which the land is located,” the forum selection clause at issue plainly applies only to “Borrower,” i.e. defendant, and it states that defendant, not plaintiff, agrees that it will not bring suit in a forum other than in “any state or federal court of competent jurisdiction sitting in either the city or the county where the land is located.”<sup>3</sup> This is not a case where the clause applies to both parties. Cf. Wall St. Aubrey Golf, LLC, 189 F. App’x at 85 (affirming District Court’s dismissal of case where forum selection clause stated: “This Lease shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, with venue laid in Butler County, Pennsylvania”); Med. Reimbursement Data Mgmt., LLC v. Aetna Health Inc., No. 12-1699, 2012 WL 2873566, at \*2 (E.D. Pa. July 12, 2012) (dismissing case where forum selection clause stated that both parties “agree that any action brought under this Agreement shall be exclusively brought in the courts of the

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<sup>3</sup> The fact that the forum selection clause is nonreciprocal does not render it unenforceable. See, e.g., Karl Koch Erecting Co. v. New York Convention Ctr. Dev. Corp., 838 F.2d 656, 659 (2d Cir. 1988) (holding that a nonmutual forum selection clause that required only plaintiff to bring an action in state court was enforceable); Silverman v. Carvel Corp., 192 F. Supp. 2d 1 (W.D.N.Y. 2001) (“It is clear . . . that the nonmutuality of [a] forum-selection clause does not render it invalid.”) (citation omitted); C.I.N. Const., LLC v. Hunt Const. Grp., Inc., No. 08-5810, 2009 WL 2998965, at \*7 (D.N.J. Sept. 18, 2009) (“As to a lack of mutuality between the parties, the Court finds this contention unavailing . . . [H]ere, the forum selection clause, which lacks mutuality between CIN and Hunt, is nonetheless, enforceable.”).

Commonwealth of Pennsylvania, County of Montgomery”). Accordingly, defendant’s Motion to Dismiss is denied.<sup>4</sup>

**BY THE COURT:**

/s/ Hon. Jan E. DuBois  
**DuBOIS, JAN E., J.**

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<sup>4</sup> Because the Court has concluded that the forum selection clause plainly applies only to defendant’s choice of forum, the Court need not consider defendant’s argument that this Court is not a proper venue for plaintiff’s action since the Court does not physically “sit” in Montgomery County, Pennsylvania.