

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON**

WILLIAM MORLAND,  
Plaintiff/Counter-Defendant,

Case No. 20-30831-CB  
Hon. Michael P. Hatty

v.

JJ DEVELIOMENT, INC; THE MARNEY GROUP, INC;  
and JOSEPH TRUPIANO,  
Defendants/Counter-Plaintiffs,

and

JJ DEVELIOMENT, INC; THE MARNEY GROUP, INC;  
and JOSEPH TRUPIANO,  
Third-Party Plaintiffs,

v.

BRANDY MORLAND and MORLAND PROPERTY  
SERVICES, LLC,  
Third-Party Defendants,

and

MORLAND PROPERTY SERVICE, LLC  
Third-Party Defendant/Third-Party  
Counter-Plaintiff,

v

JJ DEVELOPMENT, INC; THE MARNEY GROUP,  
INC; JOSEPH TRUPIANO,  
Third-Party Plaintiffs/Third-Party  
Counter-Defendants.

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**OPINION AND ORDER**

At a session of the 44<sup>th</sup> Circuit Court,  
held in the City of Howell, Livingston County,  
on the \_\_\_\_ day of January, 2023.

THIS MATTER comes before this Court on the Motion for Partial Summary Disposition brought  
by William Morland, Brandy Morland, and Morland Property Service, LLC; the Motion to

Dismiss brought by JJ Development, Inc, the Marney Group, Inc, and Joseph Trupiano; and the Motion for Summary Disposition brought by JJ Development, Inc, the Marney Group, Inc. and Joseph Trupiano. This Court, having read the parties written arguments, having conducted hearings on the motions, and being otherwise fully advised in the premises, DENIES the parties' motions for the reasons stated herein.

William Morland owns a construction business – Morland Property Service, LLC. He also owns a home in Howell with his wife, Brandy. JJ Development, Inc is a real estate development company owned by Joe Trupiano Jr. The Marney Group, Inc is another business partially owned by Trupiano. In April 2015, William and Brandy pledged a mortgage on their Howell home to JJ Development in the amount of \$385,000. In March 2017, William, on behalf of Morland Property Services, LLC contracted with JJ Development to be the general contractor on 2 luxury residential building projects in Oakland County – one off Duck Lake Road, and one in Milford.

Morland claims that he sunk excessive amounts of work and money into developing the 22 acre property in Milford, and building several luxury homes there. He explains that JJ Development, Inc couldn't afford to pay him for all the work he had done, so instead, Trupiano agreed to discharge the mortgage William and Brandy took out in 2015, and reduce the amount due on the mortgage in lieu of paying Morland for the work it had done at the Milford construction site. He asserts JJ Development and Morland then entered into a "replacement mortgage" in February 2019 that would supplant the 2015 mortgage, this one for \$180,463.28.

JJ Development, Inc and Trupiano disagree – contending instead that it set up a fund of over \$1.5million for Morland to draw on as he worked on the Milford and Duck Lake construction sites, so he could pay subcontractors and pay for supplies. However, Trupiano

contends Morland converted much of these funds to his own use and left the construction projects unfinished in parts and shoddily constructed in other parts. JJ Development, Inc and Trupiano further assert that Morland was supposed to show up for the closing on some of these lots with \$180,463.28, which JJ Development had essentially loaned him already. But, it is alleged he could not put up that amount, so he executed a second mortgage to JJ Development, Inc in February 2019 for \$180,463.28 to secure his obligation to pay that amount. By at least 2019, the Morlands became delinquent on the mortgages. The parties have all brought suits, counter-suits, and third-party suits against each other relative to the agreements discussed herein.

This matter was originally pending before Hon. Matthew J McGivney. On March 11, 2021, Judge McGivney heard the parties' competing motions for summary disposition. The motions were all denied, except that he ruled the statute of frauds prevents the Morlands from asserting that the parties had a verbal agreement to modify or discharge the 2015 mortgage through the 2019 mortgage. Case evaluation was held on September 29, 2021, with results filed on November 29, 2021. Most discovery was complete by that time, though depositions of the Morlands were still outstanding. On October 21, 2021, which was after case evaluation but before the outstanding depositions were completed, Judge McGivney denied defendants' motion for leave to file a renewed motion for summary disposition, in that the deadline had passed and they had failed to show good cause.

This Court conducted a settlement conference with the parties on July 13, 2022. The matter did not settle, but this Court did issue a stipulated order that provided:

1. Plaintiff shall pay the property taxes and water bill for the property at 777 Pathway within 21 days with proof [to] the defense counsel.
2. The parties may file motions for summary disposition to be heard on a date to be scheduled.

The Morlands and Morland Property Services, LLC assert that this Court should determine that the mortgages at issue are void due to usurious interest, that foreclosure of the mortgages should be prevented because the notice of acceleration was not effective, and that this Court should find as a matter of law that JJ Development breached the parties' contract relative to two spec homes in the Milford project. In their motion for summary disposition, JJ Development, Inc, the Marney Group, Inc, and Trupiano assert that the complaints asserted against them should be dismissed because the statute of frauds prevents an argument that the parties had a verbal agreement to modify or discharge the 2015 mortgage through the 2019 mortgage and that there is insufficient evidence to show otherwise. These parties further argue that even if this Court were to find the interest rates on the mortgages usurious, that does not make the mortgages void. JJ Development, Inc, the Marney Group, Inc, and Trupiano also argue that the Morlands' argument that the 2019 mortgage was granted under duress relative to the closing of a Lot 6 of the Milford project because the closing in question occurred before the Morlands granted their mortgage. The remaining arguments brought by JJ Development, Inc, the Marney Group, Inc, and Trupiano can be generally stated that they assert there is no genuine issue of material fact that the claims asserted by The Morlands and Morland Property Services, LLC are not supported by the evidence in this matter. Finally, JJ Development, Inc, the Marney Group, Inc, and Trupiano finally argue that this Court should dismiss the claims asserted by the Morlands and Morland Property Services, LLC because the payments required by the July 13, 2022 order of this Court were not made within the 21 days so provided.

Both parties bring their motions for summary disposition under MCR 2.116(C)(10), which tests the factual support for a plaintiff's claim. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Summary disposition under MCR 2.116(C)(10) is available when

“[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10); see also *Coblentz v City of Novi*, 475 Mich 558; 719 NW2d 73 (2006). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *Atty Gen v PowerPick Players’ Club of Mich, LLC*, 287 Mich App 13, 26–27; 783 NW2d 515 (2010). In reviewing a motion brought under MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions, and any other admissible evidence in favor of the nonmoving party. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Granting the nonmoving party the benefit of any reasonable doubt regarding material facts, the court must then determine whether a factual dispute exists to warrant a trial. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617–618; 537 NW2d 185 (1995). If there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996).

First, pursuant to MCR 2.613 and MCR 2.119(F), this Court will not disturb prior rulings reached in this matter absent clear, palpable error. To that end, this Court has not been presented with sufficient grounds to alter the March 11, 2021 opinion of Judge McGivney. Accordingly, the statute of frauds prevents the Morlands from asserting that the parties had a verbal agreement to modify or discharge the 2015 mortgage through the 2019 mortgage. However, it is clear to this Court that the parties did intend that five months of payments from the 2015 mortgage were included in the principal of the 2019 mortgage, those being for October, November, and December of 2018 and January and February of 2019 – each payment being \$3,321 for a total of

\$16,155. Therefore, the accounting of the amounts owed to JJ Development will have to take that agreement of the parties into consideration.

The pertinent provisions of the Michigan usury statutes, being MCL 438.31c(6) and (7), are well stated as follows:

Lenders or vendors not qualified to make loans subject to the interest provision of the statute may make or may have made mortgage loans and land contracts specified in the statute that provide for a rate of interest not to exceed 11% per annum, which interest shall be inclusive of all amounts defined as the "finance charge" in specified provisions of the Truth in Lending Act and the regulations promulgated thereunder. The parties to a purchase money mortgage or a second mortgage may agree in writing for the payment of a rate of interest not to exceed 11% per annum.

24 Mich. Civ. Jur. Usury § 5.

While this Court is of the opinion that JJ Development, Inc, the Marney Group, Inc, and Trupiano have admitted that the effective interest rates of both mortgages is greater than 11 percent, pursuant to paragraph 19 of the Statement of Material Facts alleged by the Morlands and Morland Property Services, LLC's and the response thereto (see MCR 2.111(E)(1)), this Court also finds that there is no genuine issue presented as to this same conclusion of fact. However, JJ Development, Inc, the Marney Group, Inc. and Trupiano are correct that "usurious rate of interest does not make an instrument void" and "[t]o the extent that the usurious interest and principal were fully paid, the borrower cannot recover." *Shaw Inv Co v Rollert*, 159 Mich App 575, 580; 407 NW2d 40 (1987). It is also correct that the interest rate on a mortgage being usurious does not cancel the mortgage. *Windisch v Mortgage Sec Corp of Am, of Norfolk, Va*, 254 Mich 492, 495; 236 NW 880 (1931).

What JJ Development, Inc, the Marney Group, Inc. and Trupiano fail to recognize is that the usurious interest and principal at issue in this matter are not fully paid. Thus, "the borrower is entitled to have any previously paid interest applied against the outstanding principal."

*Washburn v Michailoff*, 240 Mich App 669, 675; 613 NW2d 405 (2000). What the Morlands fail to realize is that “one seeking the equitable relief of avoidance of a usurious contract must first do equity by tendering the unpaid balance owing plus interest at the legal rate.” *Michigan Mobile Homeowners Ass’n v Bank of Commonwealth*, 56 Mich App 206, 216–17; 223 NW2d 725 (1974). Thus, while there may not be any genuine issue of material fact as to whether the interest rates at issue are usurious, in that they are, the parties have not presented this Court with the correct legal conclusions to draw from such a determination, nor is there conclusive evidence presented to this Court as to the proper legal result.

As to the application of the acceleration clause, this Court will again leave Judge McGivney’s previous determination undisturbed. For the reasons discussed herein, this Court finds that there remains a dispute as to the amounts lawfully owed under the mortgage agreements discussed herein, and how payments made should be credited to these obligations. *Washburn* at 672-673. However, this dispute would not ultimately prevent foreclosure when such issues are resolved.

Concerning each parties’ remaining arguments for summary disposition, this Court finds generally that it has not been presented with a material fact to which there is no genuine issue. Therefore, the remaining arguments are similarly DENIED. This Court will specifically point out that JJ Development, Inc, the Marney Group, Inc, and Trupiano’s argument that the closing of Lot 6 of the Milford project occurred before the Morlands granted their mortgage is without merit. Even though the mortgage was effective February 17, 2019, the notarized signatures indicate it was signed by Mr. Morland on February 7, 2019.

the Michigan Supreme Court has held that a dismissal as sanctions is to be used only in extreme situations. In view of fact that dismissal is harsh remedy to be invoked cautiously, trial

court should evaluate length, circumstances, and reasons for delay in light of need for administrative efficiency and policy favoring decisions of cases on their merits, considering, among other things, degree of plaintiff's personal responsibility for delay, amount of prejudice to defendant caused by delay, whether there exists lengthy history of deliberate delay, and whether imposition of lesser sanctions would not better serve interests of justice. *North v Dept of Mental Health*, 427 Mich 659; 397 N.W.2d 793 (1986).

This Court finds that a more suitable remedy concerning sanctions for the untimeliness of the Morlands' compliance with the stipulated order to pay the expenses at issue would be that JJ Development, Inc; the Marney Group, Inc; and Trupiano be compensated for any expenses incurred to ensure the Morlands' compliance, including attorney fees, on or after August 22, 2022. Said expenses should not include anything incurred subsequent to the Morlands' compliance. Accordingly, this Court DENIES the motion for dismissal brought by JJ Development, Inc; the Marney Group, Inc; and Trupiano.

**IT IS SO ORDERED.**



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Michael P. Hatty  
Circuit Court Judge