STATE OF MAINE
SAGADAHOC, ss.

BUSINESS AND CONSUMER DOCKET
Location: West Bath
Docket No. BCD-WB-CV-08-19

HL 1, LLC, et al.,

Plaintiffs

v.

DECISION AND ORDER
(Motion for Summary Judgment/Motion for Stay)

Riverwalk, LLC, et al.,

Defendants

This matter is before the Court on the Motion of Defendants Pennbrook Properties II, LLC (Pennbrook), and Defendants Intercontinental Fund IV Ocean Gateway, LLC, Intercontinental Real Estate Investment Fund IV, LLC and Intercontinental Real Estate Corporation (collectively Intercontinental) for summary judgment on all counts of Plaintiffs' Amended Complaint.

Also before the Court is the motion of Plaintiffs Hl1, LLC, Shipyard Brewing Company, LLC and Fred M. Forsley (collectively Plaintiffs), pursuant to M.R. Civ. P. 56(f), to stay consideration of Defendants' motion in order to permit additional discovery.

Factual Background

A review of the record reveals that Plaintiff Fred Forsley (Forsley) has invested in a variety of different businesses in the Portland area, is president and manager of Shipyard, owns an 80% interest in Plaintiff Shipyard Brewing Company, LLC (Shipyard), and is the sole owner and member of Plaintiff HL 1, LLC (HL 1). Forsley, through HL 1, along with Drew Swenson (Swenson), Steve Bracket, and Sandy Spaulding, through their wholly owned limited liability companies, Pennbrook, Downeast Holdings, LLC, and HP Longfellow, LLC, are principals of Defendant Riverwalk (collectively Riverwalk Partners). The principals formed Riverwalk Partners to undertake real estate development

projects on behalf of Riverwalk's members, including the development of and construction of a multi-use real estate project on Fore Street and on the waterfront in Portland (Riverwalk Project).

As contemplated, the Riverwalk Project was to include condominiums (Condominiums), an office building, retail space, and a parking garage (Garage). Riverwalk was to purchase the necessary land for the project from the City of Portland, Shipyard, and at least one other party. Forsley represented Shipyard's interests in the negotiations between Shipyard and Riverwalk for the sale of the land that Shipyard was to contribute to the Riverwalk Project. When Shipyard sold the project land to Riverwalk, Shipyard received two promissory notes (Shipyard Notes).

Ocean Gateway Garage, LLC (Ocean Gateway) is a limited liability company formed by the Riverwalk Partners to manage the Garage.[1] Pursuant to a promissory note executed by Ocean Gateway, Ocean Gateway agreed to pay Shipyard $1,000,000 upon sale of the Garage (Garage Note). LRAR, LLC, a Maine limited liability company formed for the purpose of, among other things, developing real estate, executed a promissory note by which it agreed to pay Shipyard $1,000,000, contingent on the per-unit price of the Condominiums meeting or exceeding $600 per square foot.

The Riverwalk Partners formed OGG, LLC (OGG) on September 27, 2006, primarily for OGG to purchase the Garage after it was built. OGG is governed by the OGG Operating Agreement executed by the Riverwalk Partners.

On September 29, 2006, Intercontinental agreed to loan up to $19,000,000 to Riverwalk pursuant to the terms of a mezzanine loan (Mezzanine Loan). The $19,000,000 in funding provided by the Mezzanine Loan was to be used to fund construction of the Riverwalk Project, including without limitation, the Garage.

Also on September 29, 2006, OGG executed a purchase and sale agreement to buy the Garage for $11,000,000 on the 120th day following the City of Portland's issuance of a Certificate of

[1] According to Plaintiffs, Ocean Gateway was also formed to own the real estate upon which the Garage was built and to construct the Garage.

Occupancy for the Garage, which was to have space for approximately 720 cars (Garage P&S). Following execution of the Mezzanine Loan, Riverwalk drew upon funds made available under the Mezzanine Loan in order to fund construction of the Garage.

In the fall of 2007, Intercontinental informed Forsley and the Riverwalk Partners that it did not intend to advance funds for the Condominiums component of the Riverwalk Project. On November 16, 2007, at least in part because Intercontinental considered the Riverwalk Project proceeds to be out of balance with the costs of the project, Intercontinental sent Riverwalk a notice of default condition pursuant to Section 4.4.4 of the Mezzanine Loan (Notice of Default).

Following the issuance of the Notice of Default, Forsley had various discussions with the other Riverwalk Partners, and with Intercontinental, about how Intercontinental and the Riverwalk Partners might resolve the issues that led to the Notice of Default. During the negotiations between the parties, Intercontinental forwarded to the Riverwalk Partners a proposed memorandum of understanding (the MOU) outlining the terms under which Intercontinental would be willing to continue funding for the Riverwalk Project. Upon receipt of the MOU, the Riverwalk Partners discussed their possible response. As part of the discussions, Forsley spoke to his personal interests, including the impact of the MOU on the Shipyard Notes. The MOU provided for, among other things, modification of the Garage P&S such that the purchase price would be twelve million dollars ($12,000,000), instead of eleven million dollars ($11,000,000).

After some discussion and the exchange of proposals, the parties signed the MOU. Following the execution of the MOU, Riverwalk and Intercontinental began the process of drafting the documents to reflect the terms of the MOU. The parties did not complete and sign the documents.

In this case, the parties dispute the validity of, the enforceability of, and the effect of the MOU. Plaintiffs contend that the MOU is not a valid or duly authorized agreement of Riverwalk, Ocean Gateway or OGG because, among other things, it was not authorized by Shipyard, it lacks consideration, and it has been repudiated by the actions of Riverwalk, Ocean Gateway, OGG and/or Intercontinental.

Conversely, Defendants maintain that the MOU constitutes a valid, binding agreement between the parties.

Procedural Background

On March 27, 2008, Plaintiffs filed their original Complaint in this action, alleging, among other things, that they had not authorized the MOU, that it was not binding, and that the original Garage Note and Garage P&S remain binding. Plaintiffs subsequently amended the Complaint. Plaintiffs' Amended Complaint contains the following claims:

Count I seeks a declaration that:

(a) The MOU is not binding, valid, properly authorized, or otherwise enforceable against the parties thereto, nor is any other document or agreement that is executed and delivered pursuant thereto or to evidence the terms thereof;

(b) The MOU is unenforceable because there is no valid consideration for it, there having been no event of default under the Mezzanine Loan Agreement;

(c) The Garage P&S is a binding, valid and enforceable agreement in accordance with its terms, and such agreement has not been modified or amended by the MOU or by any document or agreement purported to be executed and delivered in connection with the MOU; and

(d) The promissory note held by Shipyard Brewing Company, LLC is valid, binding and enforceable in accordance with its terms, and such promissory note has not been modified or amended by the MOU or any document or agreement purported to be executed and delivered in connection with the MOU.

Count II seeks a declaration that "Fred M. Forsley is the sole manager of OGG" and "HL1, LLC is the sole member of OGG." Counts III-V of Plaintiffs' Amended Complaint can be summarized as follows:

Count III alleges that Ocean Gateway Garage has repudiated and breached the original Garage P&S through the execution and delivery of the MOU, which altered the original terms of the sale of the Garage, and by refusing an offer to purchase the Garage for the original purchase price;

Count IV seeks judicial dissolution of Ocean Gateway Garage, LLC under 31 M.R.S. § 702(2), based on Ocean Gateway Garage, LLC's alleged insolvency; and

Count V seeks the appointment of a liquidating trustee to oversee the judicial dissolution of Ocean Gateway Garage, LLC.

Upon Defendant's request, the Court stayed further proceedings and required the parties to submit their dispute to arbitration based upon a provision of the OGG Operating Agreement, to which Pennbrook and HL1 are parties. *See HL1, LLC v. Riverwalk, LLC*, BCD-WB-CV-08-19 (Me. Super. Ct., Sag. Cty. June 27, 2008). Following the arbitration hearing and the issuance of the arbitrators' Award, Pennbrook and the Intercontinental Defendants filed a Motion to Confirm the Award and Dismiss Plaintiffs' Complaint. The Court bifurcated its consideration of Defendants' motion and considered first Defendants' request to confirm the Award.

On April 3, 2009, after determining that judicial review was not warranted under Maine's Uniform Arbitration Act, 14 M.R.S. §§ 5927-5949, the Court confirmed the Award. Based on the record before the Court on Defendants' motion to dismiss, the Court subsequently dismissed Plaintiffs' claims for relief in paragraphs A & B of Count I, but denied Defendants' request for dismissal of the remaining claims.

Defendants have now filed a motion for summary judgment with an evidentiary record for the Court's consideration. Defendants contend that the undisputed facts and the record evidence establish that the Arbitration Award fully and finally resolved all of the issues central to Plaintiffs' remaining claims, and, therefore, Plaintiffs' claims are barred.

Discussion

M.R. Civ. P. 56(c) provides that summary judgment is warranted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." M.R. Civ. P. 56(c)). For purposes of summary judgment, a "material fact is one having the potential to affect the outcome of the suit." *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575. "A genuine issue of material fact exists when there is sufficient evidence to require a fact-finder to choose between competing versions of the truth at trial." *Lever v. Acadia Hosp. Corp.*, 2004 ME 35, ¶ 2, 845

A.2d 1178, 1179. If ambiguities in the facts exist, they must be resolved in favor of the non-moving party. *Beaulieu v. The Aube Corp.*, 2002 ME 79, ¶ 2, 796 A.2d 683, 685.

In this case, Defendants maintain that the principles of *res judicata* preclude Plaintiffs from recovering. *Res judicata* "prevents the relitigation of matters already decided." *Portland Water Dist. v. Town of Standish*, 2008 ME 23, ¶ 7, 940 A.2d 1097, 1099. The doctrine of *res judicata* is comprised of two distinct, though related, components: claim preclusion and issue preclusion. *Id.*

> Claim preclusion prevents relitigation if: (1) the same parties or their privies are involved in both actions; (2) a valid final judgment was entered in the prior action; and (3) the matters presented for decision in the second action were, or might have been litigated in the first action.

Id. ¶ 8, 940 A.2d at 1100.

When considering whether a claim is barred, courts "apply a transactional test, 'examining the aggregate of connected operative facts that can be handled together conveniently for purposes of trial to determine if they were founded upon the same transaction, arose out of the same nucleus of operative facts, and sought redress for essentially the same basic wrong.'" *Id.* (quoting Norton v. Town of Long Island, 2005 ME 109, ¶ 18, 883 A.2d 889, 895)). Under the doctrine of *res judicata*, "[s]uch a claim is precluded even if the second action relies on a legal theory not advanced in the first case, seeks different relief than that sought in the first case, or involves evidence different from the evidence relevant to the first case." *Id.* (quotation marks omitted).

"Issue preclusion, or collateral estoppel, prevents the relitigation of factual issues already decided if the identical issue was determined by a prior final judgment, and the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding. Whereas claim preclusion is focused on the claims set forth in the prior proceeding, collateral estoppel concerns factual issues, and applies even when the two proceedings offer different types of remedies. Collateral estoppel can be applied to administrative proceedings as well as to court proceedings." *Id.* ¶ 9, 940 A.2d at 1100 (internal citations and quotation marks omitted). Insofar as Defendants maintain that the arbitration

proceeding resolved the *issues* that are central to Plaintiffs' claims in this action, Defendants' argument is one of issue preclusion.

I. Count I: Paragraphs C and D

As explained above, after reviewing the Arbitration Award and noting that the arbitrators expressly concluded that "the MOU is binding and enforceable in accordance with its terms," the Court previously granted that portion of Defendants' Motion to Dismiss relating to paragraphs A and B of Count I of Plaintiffs' Amended Complaint.[2] As part of their current motion, Defendants' request that the Court enter judgment in their favor on paragraphs C and D of Count I of the Amended Complaint.

In paragraph C, Plaintiffs seek a declaration that the Garage P&S was not modified by the terms of the MOU. Defendants contend that summary judgment is warranted because the arbitrators' conclusion that the MOU is binding and enforceable pursuant to its terms operates as a bar to this claim for relief.

Under the terms of the Garage P&S, OGG agreed to buy the Garage for $11,000,000. The MOU, which the arbitrators determined was binding, modified these terms by substituting a new entity as buyer, and by increasing the purchase price for the Garage from $11,000,000 to $12,000,000. Nevertheless, Plaintiffs argue that summary judgment is not appropriate in part because the MOU has been repudiated by virtue of the parties' operating agreements, which agreements, according to Plaintiffs, materially altered the terms of the MOU in ways that are prejudicial to Plaintiffs. Thus, Plaintiffs contend that the MOU, including any change it purported to make to the terms of the original

[2] In their opposition to the instant motion, Plaintiffs suggest that this Court's prior Order did not, in fact, dismiss claim for relief B in its entirety. *See* Pls.' Opp. at 22 & 23. Plaintiffs further argue that the MOU is not enforceable because it has been repudiated. According to Plaintiffs, the MOU has been repudiated by the operating agreements for the Garage JV and the Project JV because those agreements "contained material terms and conditions that were both prejudicial to Forsley and his partners, and not agreed upon as part of the MOU." Contrary to Plaintiffs' suggestion, however, the Court did in fact previously dismiss claim for relief B based on language in the Arbitration Award that makes clear the arbitrators expressly considered the issue and concluded that the MOU is binding and *enforceable*. *See also* Pls.' A.S.M.F. ¶ FF. It should also be noted that Plaintiffs previously conceded that claims for relief A *and* B had been previously decided by the arbitrators and may not be relitigated in this case. *See* Pls.' Opp. to Mot. Dismiss at 12 ("Clearly, requests for relief A and B – namely a finding that the MOU is not binding or enforceable – have been decided by the Arbitrators . . .."). To the extent any ambiguity exists as to the Court's prior order, claims for relief A and B of Count I of the amended complaint are dismissed and judgment on those claims is entered in favor of Defendants.

Garage P&S, is unenforceable. More specifically, Plaintiffs contend that: "[u]nder the MOU deal, the Garage P&S was modified to include a higher purchase price. The parties recognized that this created a disconnect with the Garage Note, which was to be funded at a lower sale price, and a consequently lower performance bar. Recognizing this disconnect, they recognized the need to modify the Garage Note, but they left the matter to be resolved in a later agreement."[3] As such, Plaintiffs maintain that "[t]he parties agreed to try to agree to modify the Garage Note. The MOU was, at best, nothing more than an executory agreement to agree. Under Maine law, such 'agreements to agree' are not legally enforceable."[4]

Plaintiffs' contentions are unavailing. The Arbitration Award plainly established that the MOU is binding and enforceable in accordance with its terms. The terms of the MOU provide that the purchase price reflected in the original Garage P&S of $11,000,000 "shall be $12,000,000." The language of the MOU is unequivocal on that point. Therefore, to the extent that paragraph C requests that the Court determine that the MOU is an unenforceable "agreement to agree," the claim for relief asserted in paragraph C fails as the arbitrators addressed that issue. Furthermore, and as is discussed more fully in connection with Count III below, Plaintiffs' "repudiation" argument fails to save claim for relief C from the preclusive effect of the Arbitration Award. The parties' performance, or alleged lack of performance, under the terms of the MOU, as a basis to invalidate the MOU, was an issue presented to and considered by the arbitrators. In fact, the parties directly addressed the issue of repudiation during the hearing. Because the repudiation issue was presented to and necessarily decided by the arbitrators as part of their determination that the MOU was binding and enforceable, Plaintiffs' claim for relief set forth in paragraph C of Count I is barred under the principle of collateral estoppel. *Portland Water Dist. v. Town of Standish*, 2008 ME 23, ¶ 9, 940 A.2d 1097, 1100 ("Issue preclusion, or collateral

[3] Pls.' Opp. to Mot. Summ. J. at 17-18.
[4] *Id.* at 18.

estoppel, prevents the relitigation of factual issues already decided if the identical issue was determined by a prior final judgment, and the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding.").

In paragraph D of Count I, Plaintiffs seek a declaration that the Garage Note held by Shipyard is valid, binding and enforceable in accordance with its terms, and has not been modified or amended by the MOU. Defendants contend that the increased purchase price established by the MOU necessarily altered the Garage Note such that Shipyard is not entitled to payment unless and until the Garage is sold at the new purchase price. In further support of their motion, Defendants note that the arbitrators concluded that Forsley and Shipyard consented to the MOU.[5] Defendants also note that the MOU expressly amended the Shipyard Note.[6]

By its express terms, the MOU alters the Shipyard Note to make it comport with the new $12,000,000 purchase price. Further, the arbitrators found as a fact that Plaintiffs, including Shipyard, consented to the terms of the MOU without condition. Additionally, although Plaintiffs contend that the parties' failure to complete documentation relating to the amendment of the Shipyard Note constitutes a repudiation of the MOU, the record reflects that this was an argument considered and rejected by the arbitrators. Indeed, the arbitrators determined that Forsley, and not the Defendants, was responsible for the failure of the parties to complete the documentation. The record evidence reflects, therefore, that the arbitrators considered and addressed the issues relevant to the relief that Plaintiffs seek in paragraph D of Count I. Under principles of collateral estoppel, the Court cannot and will not revisit those issues in this case.

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[5] *See* Award at 1 ("Based on the evidence we find that Forsley, in his individual capacity and as the duly authorized principal of HL 1, LLC and Shipyard Brewing Company LLC, voted to authorize the execution of the MOU without condition.")

[6] *See* MOU at ¶ 4(iii)(b) ("If anything less than $12,000,000 in third party funds is paid to Seller for the purchase price proceeds, the amount otherwise payable to Shipyard Brewing Company on the first installment note shall be deferred until all such $12,000,000 purchase price proceeds are paid to Seller.")

II. Count II: Whether "Fred M. Forsley is the sole manager of OGG" and "HL1, LLC is the sole member of OGG."

In the Arbitration Award, the arbitrators explained that one of the issues presented for their consideration was whether "Fred Forsley is . . . entitled under Section 5.08 of the OGG, LLC Operating Agreement to become Manager of OGG, LLC" and whether "HL 1, LLC [is] entitled to become the sole member of OGG, LLC." The parties agree, and the record reflects, that the arbitrators answered these questions in the negative.[7] Additionally, Plaintiffs concede that the issues underlying Count II were previously litigated in the arbitration proceeding and "should not now be relitigated."[8] In short, a review of the record reveals that the arbitrators addressed the issues generated by Count II of Plaintiffs' Amended Complaint. Defendants are, therefore, entitled to summary judgment on Count II of the Amended Complaint.

III. Count III: Repudiation

In Count III of their Amended Complaint and, as mentioned above, to some extent in claims for relief in paragraphs C and D of Count I, Plaintiffs contend that Ocean Gateway Garage has repudiated and breached the original Garage P&S through the execution and delivery of the MOU and by refusing an offer to purchase the Garage for the original purchase price. Plaintiffs thus maintain that the repudiation issue survives regardless of whether the arbitrators concluded that the MOU was binding and enforceable. In other words, Plaintiffs argue that even if the MOU constitutes a binding agreement, whether the MOU constituted a repudiation of the Garage P&S and Note and whether Defendants breached the MOU are questions that are appropriately generated in this matter, and to which the principles of collateral estoppel do not apply.

Under Maine law:

> [a]n anticipatory repudiation of a contract is "a definite and unequivocal manifestation of intention on the part of the repudiator that he will not render the promised performance when the time fixed for it in the contract arrives." The manifestation of an intention to repudiate a contract

[7] *See* Pls.' Opp. at 5.

[8] *See id.* at 3.

> may be made and communicated by either words or conduct. The words or conduct evidencing such refusal or inability to perform, however, must be definite, unequivocal, and absolute.

Wholesale Sand & Gravel v. Decker, 630 A.2d 710, 711 (Me. 1993) (quoting, *inter alia*, 4 Corbin, *Corbin on Contracts* § 973 (1951); and RESTATEMENT (SECOND) OF CONTRACTS § 250 (1979)). Anticipatory repudiation, therefore, is treated as a breach of contract and is compensable as such. RESTATEMENT § 250 cmt. a. Further, the Law Court has previously explained that "a request or demand to modify a contract [generally] does not by itself constitute a repudiation unless the party seeking the modification threatens a total breach of the contract." *Drinkwater v. Patten Realty Corp.*, 563 A.2d 772 at 776 (Me. 1989).

In this case, it is undisputed that the arbitrators expressly ruled that the MOU is enforceable and binding and that each of the Plaintiffs consented to its terms without condition. The arbitrators' conclusion that the MOU is an enforceable – and therefore lawful – agreement necessarily precludes this Court from now holding that the MOU constitutes an unlawful breach of the contracts it expressly amended. Because the arbitrators determined that the MOU was binding and enforceable, Plaintiffs are not entitled to a declaration that the MOU repudiated the original Garage P&S or Garage Note.

Plaintiffs also contend that subsequent to December 28, 2007, the MOU has been repudiated by virtue of the terms of the operating agreements, which Plaintiffs contend materially altered the terms of the MOU, and because the documentation contemplated by the MOU has not been completed. In support of their motion for summary judgment, Defendants argue that they have not repudiated the MOU in part because the operating agreements have never been completed. Defendants also note that the arbitrators concluded that the unfinished and incomplete state of the operating agreements is the result of Mr. Forsley's "unwillingness to participate in negotiations while this present litigation is pending[.]"[9]

[9] Award at 2-3.

A review of the Award reveals the fact that in connection with their decision as to the enforceability of the MOU, the arbitrators considered whether the execution – or lack thereof – of additional documents needed to implement the MOU served to repudiate the MOU. As noted above, the Arbitrators expressly concluded that even though the implementing documents remained incomplete as a result of Mr. Forsley's conduct, the MOU nevertheless remained binding and enforceable. By virtue of the fact that the implementing documents were considered by the arbitrators in connection with their consideration of the validity of the MOU, the arbitrators also necessarily concluded that the proposed terms of those unexecuted documents did not serve to repudiate the MOU. Collateral estoppel thus precludes Plaintiffs from litigating that issue in this forum.

IV. Counts IV and V: Judicial Dissolution and Appointment of a Liquidating Trustee.

In Counts IV and V, Plaintiffs assert that OGG is insolvent and, therefore, ask the Court to dissolve OGG and to appoint a liquidating trustee to oversee OGG's dissolution. Plaintiffs' dissolution claims are brought pursuant to 31 M.R.S. § 702(2). Section 702 provides in relevant part:

> The Superior Court of this State may decree the dissolution of, and liquidate the assets and business of, a limited liability company:
>
> . . .
>
> 2. ACTION FILED BY CREDITOR. In an action filed by a *creditor* of the limited liability company when it is established that the limited liability company is insolvent or that its debts exceed its assets;
>
> . . .

Id. (emphasis added). Section 703 provides that the court may appoint a liquidating trustee to assist in the winding up of a dissolved limited liability company. 31 M.R.S. § 703(1).

Defendants have moved for summary judgment on Counts IV and V based on their assertion that Plaintiffs lack standing to seek judicial dissolution of OGG. According to Defendants, because Shipyard is not entitled to payment under the Shipyard Note until and unless the Garage sells for $12,000,000, and because such a sale has not yet occurred, Shipyard is not a creditor of OGG and, consequently, Shipyard cannot maintain an action for judicial dissolution. Defendants also contend that the undisputed facts demonstrate that OGG is not insolvent such that it need not be dissolved. As part of their opposition,

Plaintiffs request that the Court stay consideration of Defendants' motion in order to permit Plaintiffs to conduct additional discovery on the alleged insolvency of OGG.

As outlined above, under the terms of the MOU, which the Arbitration Award expressly deems binding and enforceable in accordance with its terms, performance under the Shipyard Note is to be deferred until "$12,000,000 in third party funds is paid to Seller[.]" In order to have standing to seek judicial dissolution of a limited liability company pursuant to Section 702(2), one must be a creditor of the LLC it seeks to dissolve.

In this case, Plaintiffs claim that Shipyard is a creditor of OGG by virtue of the Garage Note.[10] The Court disagrees. Although Maine's Limited Liability Company Act does not define the term "creditor,"[11] the Act does distinguish between "creditors" and "claimants."[12] Here, Plaintiffs have a claim that is contingent upon the sale of the Garage. Plaintiffs do not dispute that the Garage has not been sold for the new $12,000,000 purchase price. Shipyard is not, therefore, owed the money at this time. Under these circumstances, Shipyard is at best a claimant with a contingent claim. Because Shipyard is not a creditor, Shipyard cannot seek the judicial dissolution of OGG.

Given that the Court has determined as a matter of law that Shipyard is not a creditor, the Court need not address the issue of OGG's insolvency and, therefore, Plaintiffs' request for a stay in order to conduct additional discovery is denied.

Conclusion

Based on the foregoing analysis, the Court orders:

1. The Court denies Plaintiffs' Motion to Stay.

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[10] According to Plaintiffs, "the Garage Note stands repudiated, in default, and unpaid. Shipyard, as a creditor of Ocean Gateway is entitled to enforce it. . . . By reason of the default in the Shipyard Note . . . and Ocean Gateway's failure to pay it, Ocean Gateway is insolvent because it is not paying its debts as they become due. Such insolvency warrants dissolution of Ocean Gateway at the request of Shipyard, a creditor." Pls.' Opp. at 25.

[11] *See generally* 31 M.R.S. § 602

[12] *See e.g.* 31 M.R.S. § 706

2. The Court grants Defendants' Motion for Summary Judgment. Judgment is entered in favor of Defendants and against Plaintiffs on all counts of the Amended Complaint.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Order into the docket by reference.

Date: 4/20/10

Justice, Maine Business & Consumer Docket

Docket entry: 4/22/10