IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

AMERICAN BANK	)	
	)	
Plaintiff,	)	
	)	Case No. 376343-V
v.	)	
	)	
BAY BANK, FSB	)	
	)	
Defendant	)	
	)	

MEMORANDUM OPINION AND ORDER

Before the Court are Defendant's Motion for Summary Judgment, (filed on June 5, 2014), Plaintiff's Response thereto (filed on July 7, 2014), and Defendant's Reply (filed on July 21, 2014); and Defendant's Motion to Strike Plaintiff's Second Amended Complaint (filed August 6, 2014), and Plaintiff's Opposition thereto (filed August 12, 2014). Per the agreement of the parties in open court on August 14, 2014, the above motions will now be deemed to target Count I of Plaintiff's Third Amended Complaint, which was filed after the above motions. Having considered the entire record in this matter, including the exhibits accompanying the foregoing papers, and the arguments of counsel, and for the reasons given below, the Court will grant both of the above motions.

Plaintiff, American Bank, is a federal savings bank headquartered in Rockville, Maryland. Defendant, Bay Bank, whose principal place of business is in Baltimore County, Maryland, is another federal savings bank, and the successor by merger to Carrollton Bank. American was one of seven banks that agreed to participate in two commercial loans that Carrollton made to acquire and develop a commercial real estate project known as "Largo Town Center" in Prince George's County, Maryland. The project was owned by Largo Metro Development Co., L.L.C. ("Owner"). The borrower was Washington Management and

Development Co., Inc. ("Borrower"). Among the two loans, $2,400,000.00 was to the Owner for acquisition of 18.119 acres of land ("the Acquisition Loan")("the Property"), and the other was to be a revolving line of credit to the Borrower, with a maximum principal amount outstanding at any one time of $6,150,000.00 ("the Development Loan"). Both loans were to be personally guaranteed by John C. Pyles, III (the "Individual Guarantor"), owner of Largo Metro Development Co., L.L.C. and Washington Management and Development Co., Inc., among other guarantees.

The Participation Agreement between Carrollton and American was executed on March 24, 2005. See Participation Agreement (Attached to Defendant's Motion for Summary Judgment at Exhibit G). Describing the above loans collectively as a "Line of Credit," the Agreement recited the Owner's and Borrower's intentions regarding the loan proceeds, specifically, that the funds would be used to finance purchase of the Property and development of same, through final subdivision, into 72 building pads, on which another entity, NVR, Inc., intended to build condominium units. Retail space was also envisioned. See Affidavit of Darlene Graves (Attached as Exhibit A to Defendant's Motion for Summary Judgment). Anticipated development work included grading, paving, installation of drainage facilities, streets, sidewalks, and other like items.

Appended to the Participation Agreement as Exhibit B and referred to therein as the "Loan Documents" was a list of "all documents" between Carrollton, Owner, and Borrower, and Guarantors, relating to the Acquisition and Development Loans, including the loan agreements, assignments, promissory notes, deeds of trust, and guarantees, among other items. The Acquisition Loan was secured in part by a Purchase Money Deed of Trust, among other things. The Development Loan was secured by a Second Lien Indemnity Development Deed of Trust.

See Participation Agreement. NVR, Inc. held a third deed of trust. See Darlene Graves Supp Affidavit (Attached to Defendant's Reply in Support of Summary Judgment) at Paragraph 6.

Under the Participation Agreement, Carrollton sold American, without recourse, an undivided 12.0885380% interest in each advance ("the Participation Percentage") made by Carrollton to the Borrower under the above Line of Credit. See Participation Agreement at Paragraphs 1, 2, and 9. American promised to pay Carrollton the Participation Percentage of each advance ("the purchase price"), while Carrollton was to remit a like percentage of all principal and interest payments received, less a servicing fee. See Participation Agreement at Paragraphs 1 and 2. Payment of the purchase price "confer[red] on [American] to the extent of its Participation Percentage an interest in "all rights and benefits of [Carrollton] under the Loan Documents and any collateral for the Line of Credit." See Participation Agreement at Paragraph 2. The interests of the six other banks totaled 72.532% in the aggregate. Carrollton retained a 15.380% interest in the loans. See Exhibit D to Plaintiff's Response to Motion for Summary Judgment.

Under the Participation Agreement, Carrollton accepted responsibility for managing the loans. Thus, and subject to various warranties and representations, Carrollton retained "sole discretion" to ". . . give or withhold waivers, consents, extensions, or compromises in connection with the Loan Documents, amend or refuse to amend the Loan Documents, and take or refrain from taking action in connection with the making, handling, collecting, realizing upon, or enforcing the line of credit, any collateral, and-or the Loan Documents." See Participation Agreement at Paragraph 4.

To American, Carrollton represented and warranted that "[Carrollton] owns the Line of Credit that is the subject of this Participation Agreement and has the authority and right to enter into this Participation Agreement and to sell the Participation to Participant," and that

"[Carrollton] has complied with all applicable laws and regulations in acquiring and servicing this Line of Credit, including, but not limited to, applicable usury laws, the Equal Credit Opportunity Act, the Financial Institutions Regulation and Enforcement Act, and all regulations issued pursuant to these laws." Carrollton also represented and warranted "that it is authorized to enter into this Participation Agreement, that it will fund its Participation as agreed, and that its execution of this Agreement complies with its Charter and By-Laws, was approved by its Board of Directors, and is in accordance with all applicable laws and regulations, including regulations concerning net worth, type of investments, and loans made by Participants." See Exhibit G paragraph 5A(i) A(ii) and 5B.

The nature of Carrollton's and American's relationship was specifically defined by Paragraph 7 of the Participation Agreement. It said "[i]t is agreed that [Carrollton] and [American] are not partners or joint ventures, and that the Lender is not to act as agent for the Participant, but is to act in all loan administration and servicing matters here under for the Participant as an independent contractor. The Lender shall hold legal title to the Line of Credit as agent for itself and the Participant." See Participation Agreement at Paragraph 7.

Also addressed at Paragraph 8 of the Participation Agreement was what would happen in the event of a default under the loans. Specifically, the parties agreed that " . . . [Carrollton] shall consult with [American] and make a good-faith effort to agree upon an appropriate course of action. In the event that [Carrollton] and [American] can not, within 5 business days, agree, [Carrollton's] chosen course of action, if made in good faith, shall be binding upon [American.]"

By February 20, 2009, Carrollton notified American and the other participants that it had secured for itself a Fourth Deed of Trust on the Property as part of a forbearance agreement entered into by Carrollton on another development project owned by Mr. Pyles. This project was known as Thrift Manor. See Exhibit M to Plaintiff's Opposition to Motion for Summary

Judgment. The Fourth Deed of Trust provided Carrollton with a fourth lien position on the Property as security for the Thrift Manor loans, which loans had gone into default some time before March, 2008 but after Carrollton's execution of the Participation Agreement with American. Upon learning of the Thrift Manor default and Carrollton's fourth lien position, American and one other participant were upset at having not been notified earlier of the default and the cross-collateralization. See Exhibit N to Plaintiff's Opposition to Motion for Summary Judgment. Nonetheless, on March 3, 2009, American agreed to a 6-month extension of the Largo Loans. See Darlene Graves Supp Affidavit at Paragraphs 5-7.

In September 2009, when the Largo Town Center loans matured, the Borrower had not obtained final approval for the development plan. At that point, the loans for it were in default for some time, with a loan balance at maturity of $4,675,055.21, of which American's participation percentage equaled $565,120.67. See Exhibit A to Defendant's Motion for Summary Judgment at Paragraph 5. After consulting with the Participants, Carrollton listed the Property for sale with a broker, but was unable to sell it "as is" due to uncertainty about whether final approval for the development plan could be obtained and unwillingness among the Participants to advance additional funds for same. See Id. at Paragraph 6.

By October 14, 2009, after consultation with the participants, and based on their requests, Carrollton decided to foreclose on the Property and initiated proceedings to accomplish same. See Id. at Paragraph 7 and Exhibits O, Q, and S to Plaintiff's Response to Motion for Summary Judgment. Following the lifting of a bankruptcy stay, Carrollton consulted further with all of the Participants, and it was decided that Carrollton would accept a deed to the Property in lieu of foreclosure, placing title to the Property in the name of Mulberry Street, LLC, Carrollton's wholly-owned subsidiary for the purpose of maintaining "Other Real Estate Owned" ("OREO

property"). See Exhibit A to Defendant's Motion for Summary Judgment at Paragraph 7. None of the Participants objected. See Id.

Thereafter, Carrollton continued to try to find a buyer for the Property. In November, 2010, after consulting the Participants, Carrollton accepted a $5,000,000 offer from Federal Capital Partners ("FCP") contingent on FCP's securing approval of a revised development plan for the Property. By February 2012, when FCP informed Carrollton that it would likely take two more years to obtain the necessary approvals, FCP advised Carrollton that it was willing to purchase the Property "as is" for $3,000,000 in cash. Although FCP's revised offer would have provided the Participants with an immediate recovery, it would also have required them to realize a loss on their interest in the loans. See Exhibit A to Defendant's Motion for Summary Judgment at Paragraphs 8 and 9.

A January, 2012 appraisal of the Property valued it at $4,850,000. To determine whether FCP's revised offer was justified, one of the other Participants suggested that the Property be looked at by The Michael Companies Inc., ("Michael"), another Prince George's County developer. Michael agreed that the Property was not worth more than $3 million "as is" but estimated that it could be sold for much more if approval could be obtained for its new proposed development plan. See Participation Agreement at Paragraphs 10-11. On June 1, 2012 Carrollton hosted a conference call with the various Participants to discuss Michael's recommendation.

A meeting between Carrollton, the Participants (including American), and Michael followed on June 19, 2012, at which Michael offered to match FCP's $3,000,000 "as is" offer and permit any of the Participants who wish to do so to "joint venture" with Michael in the purchase and development of the Property for what would be that Participant's proportionate share of the net sale proceeds. After discussing the reduced FCP offer and Michael's proposal,

four of the Participants, including American, expressed an interest in participating in the Michael's joint venture and commenced negotiations directly with Michael regarding same. The remaining three Participants and Carrollton elected not to participate in the joint venture. See Exhibit A to Defendant's Motion for Summary Judgment at Paragraph 14.

On December 6, 2012, following delays occasioned by the need for two of the Participants to obtain regulatory approval to participate in the joint venture with Michael, see Exhibit A to Defendant's Motion for Summary Judgment at Paragraph 15, Carrollton's subsidiary, Mulberry Street, LLC, signed a Letter of Intent with Michael to sell the property to a newly formed entity, Largo Crescents, LLC for $3,000,000. See Exhibit P to Defendant's Motion for Summary Judgment. The Letter of Intent lists American Bank as a "Seller Participating Bank" in the sale of the Property from Mulberry Street, LLC to Michael. See Exhibit P to Defendant's Motion for Summary Judgment.

Following the sending of the Letter of Intent, American Bank's Board of Directors attempted to determine whether they would be able to join Largo Crescents venture. Rosenberg Depo., Ex. H to Plaintiff's Response to Motion for Summary Judgment, at 52, 62-63, 74-75, 99-103, 117, 122, 148-49; Deposition of James Plack, Ex. EE to Plaintiff's Response to Motion for Summary Judgment, at 76-79, 86-87; Schuble Depo., Ex. B to Plaintiff's Response to Motion for Summary Judgment at 117-27, 151-52, 156, 169-71. Ultimately, American determined that it could not enter the joint venture with Michael. See *Id.* American then engaged Michael in talks to strike an alternative deal. See Plaintiff's Response to Motion for Summary Judgment at page 17; See Rosenberg Depo., Ex. H to Plaintiff's Response to Motion for Summary Judgment, at 37-41, 101-102, 103-105.

On February 20, 2013, the day set for closing, American notified Carrollton of its objection to the sale to Michael. Thereafter, on March 14, 2013, and following three weeks of

unsuccessful attempts to reach agreement with American, Carrollton, the remaining six Participants, and Michael decided to proceed to close on the sale over American's objection. Carrollton and four of the Participants (including American) received their pro rata share of the net sale proceeds, opting not to participate in the Largo Crescents venture. The remaining three Participants invested their share of the net sale proceeds in Largo Crescents and became joint venture partners with Michael. American received $365,522.30 from the sale. See Exhibit A of Defendant's Motion for Summary Judgment at Paragraphs 18-21.

On April 15, 2013, American initiated this case with a two-count complaint against Carrollton. Count I was for Breach of Contract and Count II was for Breach of Implied Duty of Good Faith and Fair Dealing. On June 18, 2013, American filed an Amended Complaint with a single count for Breach of Contract. In it, American alleged that Carrollton breached the Participation Agreement's express representations and warranties and the Participation Agreement's implied duty of good faith and fair dealing by facilitating sale of the Property to Largo Crescents, despite Michael's obvious conflict of interest, in a deal in which American was unlikely to be able to participate; failing to maximize the Property's value; and accepting an unreasonably low price for the Property. See American's Amended Complaint at Paragraphs 28-38.

On August 9, 2013, the parties appeared for a Scheduling Hearing, at which, among other dates, a ten-day jury trial was scheduled for June 9, 2014. On March 5, 2014, following the parties' joint motion, the Court postponed the trial to September 15, 2014.

On August 5, 2014, after all briefing of Carrollton's pending summary judgment motion, American filed a Second Amended Complaint, in large measure to address some of the issues raised by the summary judgment motion. Like its predecessor, the Second Amended Complaint contained one count for breach of contract. By August 12, 2014, American filed a Third

Amended Complaint that contained three counts: two for breach of contract and a third for breach of trust. On August 14, 2014, at a pretrial/settlement hearing, the parties agreed that the Court should treat the instant Motion to Strike by Carrollton as targeting Count I of the Third Amended Complaint instead of the Second Amended Complaint, as Count I of the Third Amended Complaint is largely the same as the sole count of American's Second Amended Complaint. With regard to the pending Motion for Summary Judgment, the parties agreed that it should be treated as targeting Count I of American's Third Amended Complaint.

With respect to the remaining Counts of the Third Amended Complaint, Carrollton said it would file a Motion to Strike and/or Motion to Dismiss, and agreed to do so by the close of business on Friday, August 22, 2014. American agreed to file its Opposition thereto by the close of business on August 29, 2014.

A ten-day jury trial is scheduled to commence on September 15, 2014.

Carrollton's Motion to Strike Count I of Third Amended Complaint

Maryland Rule 2 – 341 permits the filing of an amended pleading without leave of court "... no later than 30 days before a scheduled trial date." Within 15 days thereafter, parties objecting to the amendment may file a motion to strike setting forth reasons why the court should not allow the amendment. Rule 2-341(a). Here, Carrollton says that it will be prejudiced by the amendment because, among other things, same will necessitate a postponement of the September 15, 2014 trial to enable Carrollton to conduct additional discovery, including, potentially, the designation of additional expert witnesses, and prepare another motion for summary judgment thereafter.

Whether to strike an amendment is a matter committed to the court's sound discretion. Amendment should be freely and liberally allowed so long as the operative factual pattern remains essentially the same, and no new cause of action is stated invoking different legal

principles." *Hartford Acc. and Indem. Co. v. Scarlet Harbor Associates Ltd Partnership,* 109 Md. App. 217, 248 (1996.) Justice does not permit untimely amendments, amendments that would prejudice the parties, amendments that would cause undue delay, or futile amendments. *See RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 674, (2010).

With Count I of its Third Amended Complaint, American claims that Carrollton breached the Participation Agreement not only with its 2013 sale of the Property to Michael but also in Carrollton's 2008 failure to timely notify American of the Thrift Manor default, Carrollton's 2010 recommendation that the Property be transferred to Mulberry Street LLC in lieu of foreclosure due to a "secret effort" to protect Carrollton's fourth lien position, and Carrollton's representation that its fourth lien was released with the transfer of the Property to Mulberry Street, LLC. See American's Third Amended Complaint at Paragraphs 33-34.

By comparison, American's Amended Complaint[1] contained no such allegations. With respect to the deed in lieu of foreclosure, American merely stated that, following default on the Largo Metro loans (referred to in the Amended Complaint as Washington Management and Largo Metro Development), a settlement agreement was reached by which the Property was conveyed to Mulberry Street, LLC, Carrollton's wholly-owned subsidiary, and further, that American would retain its participation percentage in any disposition of the Property through Mulberry Street. See Amended Complaint at Paragraphs 10 and 11. In the transfer to Mulberry, there was no mention of any breach by Carrollton, whether by way of failure to disclose the Thrift Manor default, Carrollton's fourth lien position, or its motivation for recommending acceptance of a deed in lieu of foreclosure.

[1] Same is the relevant predecessor given the parties' agreement that the instant motion targets Count I of the Third Amended Complaint, not the Second Amended Complaint.

To justify its amendment, American contends (or admits) that the allegations related to Mulberry Street are not "new." American says that because Carrollton has been aware since July 30, 2013 of American's statement that Carrollton's transfer of the Property to Mulberry Street, rather than an entity owned by all of the participants, was improper, Carrollton should be neither surprised nor prejudiced by the instant amendment. See American's Response to Carrollton's Motion to Strike Second Amended Complaint and In Support of Filing of Third Amended Complaint at Pages 2-4. At the August 14, 2014 settlement/pre-trial hearing, American even indicated a willingness to delay the current trial date in order to accommodate Carrollton's need for more discovery.

Although American relies on *Hartford Acc. & Indem. Co. v. Scarlett Harbor Associates Ltd. P'ship*, American's proposed amendment does not merely restate a factual allegation that appears elsewhere in the existing complaint. Here, the Amended Complaint mentioned, but took no issue with, Carrollton's transfer of the Property to Mulberry Street. Even though American's Scheduling Hearing Statement, Identification of Experts, and interrogatory answers did take issue with Mulberry Street and Carrollton's choice of entity for the Property in 2010, and even if Carrollton was somehow required to rely on these statements in attempting to discern the nature of American's actual claims, these statements did not include Carrollton's failure to disclose the Thrift Manor default, its acquisition of a fourth lien position in the Property in 2008 and 2009, its release thereof, or Carrollton's motivations.

Ultimately, and having considered all of American's arguments to the contrary, the Court is persuaded that allowing Count I of American's Third Amended Complaint to go forward at this time would unduly prejudice Carrollton, who was entitled to rely on the allegations in the Amended Complaint in conducting discovery, preparing a dispositive motion, and preparing for trial. This latest Amendment would necessitate more discovery and trial preparation beyond

September 15, 2014, already the second trial date. That American knew about Carrollton's handling of the Thrift Manor default, its fourth lien, and the transfer to Mulberry Street since at least 2010, but did not sue on them until now, merely adds to Carrollton's prejudice.

Under these circumstances, the allegations represented by American's Second Amended Complaint, to the extent that they are carried over to Count I of American's Third Amended Complaint, will be stricken, and the Court will move to consider Carrollton's Motion for Summary Judgment as against the remaining allegations in Count I of American's Third Amended Complaint.

Carrollton's Motion for Summary Judgment

Summary Judgment Standards

Under Maryland Rule 2–501, upon the filing of a motion for summary judgment, the Court "... shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." The Court must review the record in a light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the evidence against the moving party. *Tyler v. City of College Park,* 415 Md. 475, 498-99 (2010). Disputed facts are "material" only if they "... somehow affect the outcome of the case." *King v. Bankerd,* 303 Md. 98, 111 (1985). Thus, "[f]acts that do not pertain to the core questions involved are not 'material' and, consequently, are insufficient to avert a proper motion for summary judgment." *Warner v. German,* 100 Md. App. 512, 517 (1994). "When the moving party has provided the court with sufficient grounds for summary judgment, the opposing party must demonstrate that there is a genuine dispute of material fact by presenting facts that would be admissible in evidence." *Gross v. Sussex, Inc.,* 332 Md. 247, 255 (1993).

With regard to what remains of Count I in American's Third Amended Complaint, there is no material dispute regarding the identity of the operative agreement, and neither party claims that its provisions are ambiguous. Instead, the dispute focuses on what the Participation Agreement expressly or impliedly required of Carrollton in managing the sale to Michael.

American claims, in essence, that the Participation Agreement required Carrollton to maximize the price at which it disposed of the Property or maximize the value of the assets American received in liquidation. American says that the Property could have been sold in bulk for $9,000,000, or, if subdivided, for $20,000,000. See American's Third Amended Complaint at Paragraph 22.[2] With Carrollton's sale to Michael for $3,000,000, American says, Carrollton deprived American of an opportunity to own a valuable property interest, an opportunity that some of the other participants now enjoy.

To achieve the above sales prices, according to American, Carrollton was contractually required to take a number of steps prior to disposing of the Property. These steps, says American, included complying with Federal Reserve Guidance regarding OREO property,[3] engaging professionals to assist with the approval of a revised site plan for the Property, obtaining such approval, retaining a commercial broker to maximize the Property's sales price, and avoiding a deal with a developer that allowed that developer to recoup substantial and unnecessary future benefits such as consulting and marketing fees and residual profits. Also among American's expectations was that Carrollton would structure a deal that would satisfy

[2] Both figures far exceed the $4,675,055.21 loan balance outstanding when the Largo Metro loans matured.
[3] On August 14, 2014, at a settlement/pre-trial hearing, and then by follow-up letter of August 15, 2014, and in further opposition to Carrollton's Motion for Summary Judgment, American provided the Court with a copy of the Federal Reserve Guidance to which it referred. A copy was placed in the Court file. The Court declined to consider this "Guidance." Even if it had, however, same would not have warranted a different result on the instant motion for summary judgment, for the reasons stated herein.

American's regulators. Carrollton failed to take these steps, American says, and as a result it was damaged.

``To prevail in an action for breach of contract, a plaintiff must prove that the defendant owed the plaintiff a contractual obligation and that the defendant breached that obligation." *Taylor v. Nationsbank*, 365 Md. 166, 175 (2001). It is axiomatic that a plaintiff cannot prevail in an action or breach of contract if the defendant did not have a contractual obligation to do what the plaintiff alleges the defendant should have done. The plaintiff must "allege with certainty and definiteness *facts* showing a contractual obligation." *RCC Ne., LCC v. BAA Md., Inc.*, 413 Md. 638, 655 (2010), *quoting Continental Masonry Co., Inc. v. Vendel Constr. Co., Inc.*, 279 Md. 476, 480 (1977).

On its face, the Participation Agreement required none of the specific steps above, and about which American complains. American admits as much when it says that that the Participation Agreement's only "guidance" regarding the sale of collateral are the good-faith and consultation requirements at Paragraph 8. See Plaintiff's Response to Defendant's Motion for Summary Judgment at Page 8 and Footnote 9.

Instead, American says that the implied duty of good faith and fair dealing in the Participation Agreement required Carrollton to take the steps outlined above. Under Maryland law, however, the implied duty of good faith and fair dealing is "of very narrow scope" and "simply prohibits one party to a contract from acting in such a manner as to prevent the other party from performing his obligations under the contract." *Dupont Heights Ltd. P'ship v. Riggs Nat'l Bank of Wash., D.C.*, 949 F. Supp. 383, 389 (D.Md. 1996); *Polek v. J.P. Morgan Chase Bank, N.A.*, 242 Md. 333, 362 (2012). The covenant does not "interpose new obligations" that are not otherwise required by the contract. *Blondell v. Littlepage*, 413 Md. 96, 113-14 (2010); *Parker v. Columbia Bank*, 91 Md.App. 346 (1992).

In *Parker*, the borrowers of a construction loan claimed that their lender breached the implied duty of good faith and fair dealing "'by advancing the builder funds for work not done, failing to disclose to the [borrowers] the true financial condition of the project and by actively misleading' the [borrowers] as to its condition." None of those requirements were spelled out in the governing loan agreement. The court concluded that " . . because [the lender] had no contractual obligation to do any of the things that the borrowers alleged it should have done," the implied duty of good faith and fair dealing could not compel it to do those things independently. Id at 367.

Here, as in *Parker*, Carrollton had no explicit contractual obligation to take the steps about which American now complains when Carrollton sold the Property. As a consequence, the implied duty of good faith and fair dealing cannot be read to require them either.

7-Eleven, Inc. v. McEvoy, 300 F.Supp.2d 352 (2004), the case on which American places particular reliance, does not suggest otherwise. In *7-Eleven, Inc.*, the franchise agreement explicitly required the franchisor to repaint and repair the exterior, repair floor covering, exterior walls, roof, foundation, and parking lot, and maintain structural soundness of the store, all when the franchisor "deemed necessary." To the franchisor's argument that the agreement granted it wide discretion to determine if and when it would repair or renovate on its stores, the Court looked to Maryland's implied duty of good faith and fair dealing to conclude that the parties intended for the franchisor's discretion to be used reasonably, as opposed to arbitrarily and capriciously. *Id.* at 360-61. Here, unlike the franchise agreement, the Participation Agreement contained none of the specifics upon which American relies.

Beyond the implied duty argument, American next says that it never advised Carrollton definitively that it would participate in the Largo Crescents project and that Carrollton's decision to move forward with the sale to Michael without demanding that all participants have an equal

opportunity to join the Largo Crescents project amounted to contractually-inappropriate discrimination against American. No particular contractual provision is cited to support this argument, however, and, as above, the Court cannot imply such an obligation where none is expressed. Thus, even if the evidence shows that American did not agree to participate in the Largo Crescents project in the end, and that Carrollton proceeded with the sale in the face of American's objection, this fact does not alter the outcome of this dispute. Carrollton had no contractual obligation to insure that American could so participate.

In this case, the undisputed evidence shows that Carrollton repeatedly consulted with the Participants about an appropriate course of action. That no one was willing to pay more than $3,000,000 for the Property "as is" is similarly beyond dispute. The implied covenant of good faith and fair dealing did not require Carrollton to sell the Property for a particular price or take any of the steps that American contends Carrollton should have taken in order to try to chase a higher price. As a consequence, American is bound by Carrollton's decision to sell, even though American disagreed with it.

American's remaining arguments in opposition to summary judgment are similarly unavailing. American's claim of breach in Carrollton's transfer of the Property to Mulberry Street will be stricken from Count I of American's Third Amended Complaint and need not be addressed on the merits here. Nor need the Court reach American's argument regarding the Participation Agreement's exculpatory clause, American having failed to show a breach of contract by Carrollton.

In sum, and having considered the entire record herein, the Court must conclude, as above, that the absence of a contractual obligation requiring Carrollton to do what American claims should have been done prior to the sale to Michael is dispositive of American's claim in

what remains of Count I of American's Third Amended Complaint. Accordingly, Carrollton's Motion for Summary Judgment in this regard will be granted.

Wherefore, it is this 19th day of August, 2014, by the Circuit Court for Montgomery County, hereby

ORDERED, that Defendant's Motion to Strike Plaintiff's Second Amended Complaint (filed August 6, 2014 and subsequently deemed to apply to Count I of Plaintiff's Third Amended Complaint) be and is hereby GRANTED; and it is further

ORDERED, that Defendant's Motion for Summary Judgment, (filed on June 5, 2014 and subsequently deemed to apply to Count I of Plaintiff's Third Amended Complaint) be and is hereby GRANTED.

Anne K. Albright
Judge, Circuit Court for Montgomery County, Maryland

ENTERED
AUG 21 2014
Clerk of the Circuit Court
Montgomery County, Md.