

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO**

DCC OPERATING, INC.,
Plaintiff,

Civil No. 01-2524 (HL)

v.

LUIS RIVERA SIACA, et al,
Defendants.

OPINION AND ORDER

Before the Court is a motion for summary judgment by Plaintiff DCC Operating, Inc. Defendant Luis Rivera Siaca ("Rivera")¹ has also filed a motion for summary judgment. DCC is the general partner of Development Capital Ventures ("DCV"), a Delaware limited partnership. Rivera is a Puerto Rico resident and the chairman and chief executive officer of Coachman, Inc. and its affiliates. Coachman is a Delaware corporation doing business in Puerto Rico. This case arises out of a series of transactions involving DCV, Rivera, and Coachman. DCC brings a number of claims under Delaware fiduciary and contract law against Rivera. This Court has jurisdiction based on diversity of the parties.²

The Court briefly details the transactions at issue. DCV provides venture capital to small businesses. On February 24, 2000, it entered into a "Subordination and Standby Agreement" with Rivera and Coachman.³ In connection with this agreement, Coachman

¹ Rivera's wife and their conjugal partnership are also named defendants. In the interest of conciseness, the Court will refer only to Rivera.

² 28 U.S.C.A. § 1332 (West 1993 & Supp. 2002).

³ Docket no. 20, exhibit 2.

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delivered a “Convertible Subordinated Demand Note” to DCV.⁴ Pursuant to these agreements DCV agreed to lend Coachman two million dollars, which was to be used to create a Coachman subsidiary organized to acquire and manufacture sweaters.⁵ The amount of the loan was subsequently increased to 2.5 million dollars.⁶ At the time, Rivera was also lending money to Coachman and its affiliates. As part of the agreements, Rivera agreed to make the amount Coachman owed to him subordinate to Coachman’s debt to DCV. The question of exactly which of Coachman’s debts to Rivera were to be subordinated is at the core of this dispute. Accordingly, the Court quotes the relevant portions of the Subordination and Standby Agreement:

1. Definitions.

* * * * *

a. “**Senior Debt**” shall mean all principal, interest, fees, costs, enforcement expenses (including legal fees and disbursements), collateral protection expenses and other reimbursement or indemnity obligations created or evidenced by the [Convertible Subordinated Demand Note]

b. “**Subordinated Debt**” shall mean, all principal, interest, fees, costs, enforcement expenses (including legal fees and disbursements), collateral protection expenses and other reimbursement and indemnity obligations that [Rivera] has loaned to [Coachman] or any of its affiliates.

2. General. The Subordinated Debt shall be and hereby is subordinated and the payment thereof is deferred until the earlier of (i) the full and final payment in cash of the Senior Debt, whether now or hereafter incurred or owed by [Coachman], or (ii) the conversion of the [Convertible Subordinated Demand] Note pursuant to Section 7 of the Note. Notwithstanding the immediately preceding sentence, [Coachman] shall be permitted to pay, and [Rivera] shall be permitted to receive, any regularly scheduled payment of interest on the Subordinated Debt so long as at the time of such payment, or

⁴ Docket no. 20, exhibit 3.

⁵ Docket no. 20, exhibit 1.

⁶ Docket no. 30, exhibit A, ¶ 10.

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after giving effect thereto, no Event of Default has occurred and is continuing under the Note or would occur after giving effect thereto. . . .⁷

Prior to the execution of these agreements, on January 5, 2000, Rivera loaned Coachman four million dollars.⁸ Subsequent to the signing, he made a series of loans to Coachman and its subsidiaries totaling 16.6 million dollars. Between February 24, 2000, and October 18, 2001, Coachman and its subsidiaries repaid Rivera 7.3 million dollars.⁹ Meanwhile, Coachman went into default on its loan to DCV on February 24, 2001.¹⁰

DCC alleges that DCV was entitled to priority over Rivera in receiving loan payments and that therefore the payments by Coachman to Rivera violated the subordination agreement. Rivera argues that the subordination agreement only applied to the money he lent to Coachman prior to February 24, 2000; that the funds he received from Coachman were payments on the loans he made after February 24, 2000; and that therefore these payments were not subject to the subordination agreement. For the reasons set forth below, the Court grants DCC's motion and denies Rivera's motion on this question of interpretation.

DISCUSSION

Summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." *See Fed. R.*

⁷ Docket no. 20, exhibit 2.

⁸ Docket no. 30, exhibit A, ¶ 5.

⁹ Docket no. 30, exhibit A, ¶ 19 & exhibit A-4, at 9.

¹⁰ Docket no. 20, exhibit 1, ¶ 7.

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Civ. P. 56(c). The party moving for summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once the moving party has satisfied this requirement, the nonmoving party has the burden of presenting any facts that demonstrate a genuine issue for trial. Fed. R. Civ. P. 56(e); *LeBlanc v. Great Amer. Ins.*, 6 F.3d 836, 841 (1st Cir. 1993). The nonmovant must do more than show “some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). An issue is genuine when, based on the evidence, a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252, 106 S.Ct. at 2512.

Both the subordination agreement and the demand note say that their terms should be construed in accordance with Delaware law. Furthermore, the parties rely on jurisprudence from that state in making their arguments. In ruling on this matter, the Court will do the same. In Delaware, the interpretation of the language of a contract is a question of law.¹¹ A court’s analysis should focus on the parties’ intent.¹² If the language of the

¹¹ *Cincinnati SMSA Ltd. Partnership v. Cincinnati Bell Cellular Syst.*, 708 A.2d 989, 992 n.4 (Del. 1998); *E.I. du Pont de Nemours and Co. v. Admiral Ins. Co.*, 711 A.2d 45, 56 (Del. Super. Ct. 1995).

¹² *Ohio, Penn. and W.Va. Coal Co. v. PanEnergy Corp.*, 120 F.3d 607, 610 (6th Cir. 1997) (Citing Delaware case law); *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 822 (Del. 1992).

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contract is clear, it will be the sole source for determining intent.¹³ The court should give these terms their plain meaning.¹⁴

In the present case, the subordination agreement refers to Rivera's subordinated debt as that money which Rivera "has loaned" to Coachman. Rivera argues that the phrase "has loaned" was meant to refer only to the monies he had lent to Coachman prior to the signing of the February 24, 2000, agreements. The problem with this argument is that the definition of subordinated debt does not contain a phrase that imposes a temporal cut-off. There is nothing in the definition that states the subordinated debt is limited to funds that Rivera loaned to Coachman "up to this date" or "as of the date of the execution of this agreement." The Court finds this omission to undermine Rivera's position.

Moreover, the definition of subordinated debt makes no specific reference to the four million dollar loan that Rivera made to Coachman on January 5, 2000. If the subordination agreement was indeed intended to apply only to loans Rivera made to Coachman before February 24, 2000, it would have been a simple matter to include language specifying the date and amount of the loans to be subordinated. For example, the agreement would merely have to say "the four million dollar loan made by Rivera to Coachman on January 5, 2000, is hereby subordinated to Coachman's debt to DCV." No such language is included. This omission further undermines Rivera's argument.

The Court finds to be persuasive the following language present in the subordination agreement:

¹³ *City Investing Co. Liquidating Trust v. Continental Casualty Co.*, 624 A.2d 1191, 1198 (Del. 1993).

¹⁴ *Du Pont*, 711 A.2d at 57.

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7. Subordination. The Senior Debt and the Note and *any and all other* documents and instruments evidencing or creating the Senior Debt and all guaranties, mortgages, security agreements, pledges and other collateral guarantying or securing the Senior Debt or any part thereof shall be senior to the Subordinated Debt *irrespective of the time* of the execution, delivery or issuance of any thereof.¹⁵

Moreover, the Convertible Subordinated Demand Note, which was signed in conjunction with the subordination agreement, defines the subordination agreement as “the agreement . . . by Mr. Luis Rivera to subordinate and defer repayment of the principal of *any loan* by him to [Coachman]” or its affiliates “until this Note is converted or repaid.”¹⁶ Rivera was also a signatory to this demand note. Thus, the language both of the subordination agreement and of the demand note clearly indicate that it was the intention of the parties that all of Rivera’s loans to Coachman and its affiliates would be subordinated to DCV’s loan to Coachman. The language of the agreements does not support a reading that only Rivera’s loans made prior to February 24, 2000, would be subordinated.

Accordingly, the Court grants DCC’s motion for summary judgment and finds that the repayments that Rivera received from Coachman were in violation of the subordination agreement.¹⁷ In its motion, DCC also seeks the entry of judgment against Rivera in the amount of \$2,496,236.15 in principal and \$428,463.52 in interest. The Court limits the scope of the present ruling to the dispute regarding the interpretation of the contracts. The Court leaves the issue of the precise amount of liability to the parties to be resolved either at the pretrial and settlement conference or by stipulation. If the parties are unable to

¹⁵ Docket no. 20, exhibit 2, at 4.

¹⁶ Docket no. 20, exhibit 3, at 2.

¹⁷ For the same reasons that the Court grants DCC’s motion, the Court denies Rivera’s cross motion for summary judgment.

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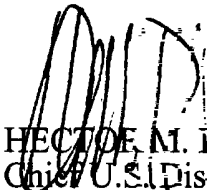
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resolve this remaining issue without the Court's intervention, the Court will proceed to address DCC's request on this matter.

WHEREFORE, the Court grants in part DCC's motion for summary judgment (docket no. 20) and denies Rivera's motion for summary judgment (docket no. 30).

IT IS SO ORDERED.

San Juan, Puerto Rico, December 16, 2002.



HECTOR M. LAFFITTE
Chief U.S. District Judge.