

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

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RE: ***Community Bank Delaware v. Far East Capital, Inc.***  
C.A. No. S11L-03-022 RFS

*Plaintiff's Motion for Summary Judgment. Denied.*  
*Defendant's Motion to Dismiss. Granted without Prejudice.*

Submitted: May 18, 2011  
Decided: July 6, 2011

Dear Counsel:

Plaintiff Community Bank Delaware has filed a motion for summary judgment seeking to foreclose on two recorded commercial mortgages and a recorded commercial line of credit mortgage. Defendant Far East Capital, Inc. has filed a motion for summary judgment or, in the alternative, a motion to dismiss because the Defendant's corporate

seal is not affixed to any of the instruments. The record shows that this assertion is accurate, rendering each contract an equitable mortgage, over which the Court of Chancery has exclusive jurisdiction.<sup>1</sup>

Although the absence of the corporate seal on a commercial mortgage is a technical defect that precludes enforcement at law, this technicality does not render the mortgages invalid or unenforceable in the Court of Chancery.<sup>2</sup> The *sine qua non* of a mortgage is not form, but the parties' intention to secure a debt by a pledge of real property. The form of a mortgage is determinative only of the court in which the mortgage may be enforced.<sup>3</sup>

Pursuant to 10 *Del. C.* § 1902, the Complaint is dismissed without prejudice for lack of subject matter jurisdiction. Plaintiff may file an election to transfer in the Court of Chancery within 60 days of this Order becoming final.

Defendant's motion to dismiss is **GRANTED** without prejudice.

**IT IS SO ORDERED.**

Very truly yours,

Richard F. Stokes

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<sup>1</sup>*Handler Construction, Inc. v. Corestates Bank, N.A.*, 633 A.2d 356, 363 (Del. 1993).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

Original to Prothonotary