

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	
CBL & ASSOCIATES PROPERTIES INC.)	Case No. 20-35226
<i>et al.,</i>)	
)	Chapter 11
Debtors.)	
<hr style="border: 0.5px solid black;"/>		
)	
CBL & ASSOCIATES MANAGEMENT)	
INC. <i>et al.,</i>)	
)	
Plaintiffs,)	
)	
v.)	Adversary No. 21-03939
)	
D'IBERVILLE PROMENADE LLC,)	
)	
Defendant.)	

DEFENDANT'S ANSWER

Defendant D'Iberville Promenade LLC answers as follows to Plaintiffs' Verified Adversary Proceeding Complaint and Objection to Proofs of Claim.

1. At numbered-paragraph 1, Defendant admits that the Plaintiffs are debtors in bankruptcy, but denies that Defendant filed Proofs of Claim "against all of the CBL Plaintiffs in the Bankruptcy Case." Rather, Defendant filed Proofs of Claim against CBL & Associates Management Inc., CBL Holdings I Inc., and CBL & Associates Limited Partnership. Defendant admits that it is a party to a Non-Recourse Promissory Note dated December 15, 2011, but denies the balance of the allegations.
2. At numbered-paragraph 2, Defendant admits the allegations.
3. At numbered-paragraph 3, Defendant admits the allegations.

4. At numbered-paragraph 4, Defendant admits the allegations.

5. At numbered-paragraph 5, Defendant admits the allegations.

6. At numbered-paragraph 6, Defendant admits the allegations.

7. At numbered-paragraph 7, Defendant is not required to admit or deny a conclusion of law.

8. At numbered-paragraph 8, Defendant is not required to admit or deny a conclusion of law.

9. At numbered-paragraph 9, Defendant is not required to admit or deny a conclusion of law.

10. At numbered-paragraph 10, Defendant admits the allegations.

11. At numbered-paragraph 11, Defendant admits the allegations.

12. At numbered-paragraph 12, Defendant admits that, pursuant to Exhibit B to the Limited Liability Company Agreement, CBL-D'Iberville LLC owns an 85% membership interest and D'Iberville Promenade LLC owns a 15% membership interest.

13. At numbered-paragraph 13, Defendant admits that the principal asset of The Promenade D'Iberville LLC is commercial real estate located in Harrison County, Mississippi, and that the Company was formed for the purpose of developing and operating a retail shopping center in D'Iberville, Mississippi, named "The Promenade at D'Iberville."

14. At numbered-paragraph 14, Defendant admits that it is a party (as "Maker") to a Non-Recourse Promissory Note dated December 15, 2011, in the principal amount of \$1,100,000.00 wherein CBL & Associates Management Inc. is "Payee."

15. At numbered-paragraph 15, Defendant admits the allegations.

16. At numbered-paragraph 16, Defendant admits that it is a party (as "Maker") to a Non-

Recourse Promissory Note dated December 15, 2011, in the principal amount of \$1,100,000.00 wherein CBL & Associates Management Inc. is “Payee.”

17. At numbered-paragraph 17, Defendant admits that the Non-Recourse Promissory Note at numbered-paragraph 1 therein provides that “From the date of this Note until the Note is paid in full, interest shall accrue at the LIBOR Daily Floating Rate plus 250 basis points (2.50%) per annum (the “Interest Rate”) on the outstanding balance of the Loan Amount.”

18. At numbered-paragraph 18, Defendant admits that the Non-Recourse Promissory Note at numbered-paragraph 1 therein provides that “The entire unpaid principal amount hereof, together with all accrued and unpaid interest, shall be due, if not sooner paid, on December 15, 2016 (the “Maturity Date”).”

19. At numbered-paragraph 19, Defendant admits that the Non-Recourse Promissory Note at numbered-paragraph 2 therein provides that “The occurrence of any of the following events shall be deemed an “Event of Default” under this Note: (i) the failure to make punctual payment of any sum(s) due from and required to be paid by Maker within five (5) days of when due, or declared to be due, under this Note, (ii) the occurrence of an Event of Default under that certain Pledge and Security Agreement of even date herewith between Payee and Maker (the “Pledge Agreement”), or (iii) the filing by or against Maker of any proceeding in bankruptcy, reorganization, debt adjustment, or receivership, or an assignment by Maker for the benefit of creditors.”

20. At numbered-paragraph 20, Defendant admits that it is a party to a Pledge and Security Agreement dated December 15, 2011.

21. At numbered-paragraph 21, Defendant admits that the Pledge and Security Agreement at numbered-paragraph 1 therein provides that “Pledgor hereby pledges to Secured

Party, and grants to Secured Party, a first priority security interest in the Ownership Interest, and all dividends, distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Ownership Interest.”

22. At numbered-paragraph 22, Defendant admits that the Pledge and Security Agreement at numbered-paragraph 1 therein provides that “Pledgor hereby pledges to Secured Party, and grants to Secured Party, a first priority security interest in the Ownership Interest, and all dividends, distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Ownership Interest.”

23. At numbered-paragraph 23, Defendant admits that the members of The Promenade D’Iberville LLC executed a written resolution consenting to the pledge of their ownership interests to CBL & Associates Management Inc. in accordance with the Pledge and Security Agreement dated December 15, 2011.

24. At numbered-paragraph 24, Defendant admits that the Pledge and Security Agreement at numbered-paragraph 5(a) therein provides that “The occurrence of any of the following events shall be deemed an “Event of Default” under this Agreement: (i) any of the warranties and representations set forth herein shall be false or misleading in any material respect, (ii) Pledgor fails to perform or comply with any of the covenants set forth herein in any material respect, or (iii) the occurrence of an Event of Default under Note.”

25. At numbered-paragraph 25, Defendant admits that the Pledge and Security Agreement at numbered-paragraph 5(b) therein provides that “Upon the occurrence of an Event of Default and during the continuation of such default, and concurrently with written notice to

Pledgor, Secured Party may effect one or more of the following remedies against the Ownership Interest: (i) collect and receive all cash distributions, interest, principal and other distributions made thereon, and/or (ii) sell in one or more sales after ten (10) days' notice of the time and place of any public sale or of the time at which a private sale is to take place (which notice Pledgor agrees is commercially reasonable) the whole or any part of the Ownership Interest, and/or (iii) otherwise act with respect to the Ownership Interest as though Secured Party was the outright owner thereof." Defendant denies the balance of the allegations.

26. At numbered paragraph 26, Defendant denies the allegations and contends that such allegations are the subject of a Verified Answer and Counterclaim filed in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi.

27. At numbered-paragraph 27, Defendant admits the allegations.

28. At numbered-paragraph 28, Defendant admits that the Non-Recourse Promissory Note provides at numbered-paragraph 3 therein that "All reasonable costs and expenses of collection may be added to the principal balance due under this Note and be receivable therewith, including reasonable attorneys' fees and costs if this Note is placed in the hands of an attorney for collection or if collected through probate, bankruptcy, or other judicial or nonjudicial proceedings. Such attorneys' fees shall include, but not be limited to, the reasonable fees and costs incurred in all matters of collection and enforcement, construction, protection, and interpretation before and after suit, trial, proceedings and appeals, as well as appearance in and connected with any bankruptcy proceedings or creditors' reorganization or arrangement proceedings." Defendant denies the balance of the allegations.

29. At numbered-paragraph 29, Defendant denies the allegations.

30. At numbered-paragraph 30, Defendant admits the allegations.

31. At numbered-paragraph 31, Defendant denies the allegations and contends that such allegations are the subject of a Verified Answer and Counterclaim filed in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi.

32. At numbered-paragraph 32, Defendant admits that it initiated the lawsuit styled *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi, and that the Verified Complaint in that case speaks for itself.

33. At numbered-paragraph 33, Defendant admits that CBL-D'Iberville Member LLC and CBL & Associates Management Inc. filed a Verified Answer and Counterclaim in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi, and that the Verified Answer and Counterclaim speaks for itself.

34. At numbered-paragraph 34, Defendant admits the allegations.

35. At numbered-paragraph 35, Defendant admits the allegations.

36. At numbered-paragraph 36, Defendant admits the allegations.

37. At numbered-paragraph 37, Defendant admits the allegations.

38. At numbered-paragraph 38, Defendant denies the allegations.

39. At numbered-paragraph 39, Defendant admits the allegations.

40. At numbered-paragraph 40, Defendant admits that the Proofs of Claim arise from

claims asserted in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi, but denies that such Proofs of Claim are “identical to and co-extensive with” claims asserted in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi.

41. At numbered-paragraph 41, Defendant admits the allegations.

42. At numbered-paragraph 42, Defendant is not required to admit or deny a conclusion of law.

43. At numbered-paragraph 43, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations.

44. At numbered-paragraph 44, Defendant admits that the principal balance on the Non-Recourse Promissory Note dated December 15, 2011, is \$1,100,000.00, but denies the balance of the allegations.

45. At numbered-paragraph 45, Defendant denies the allegations.

46. At numbered-paragraph 46, Defendant is not required to admit or deny allegations in a pleading to which no response is required.

47. At numbered-paragraph 47, Defendant denies the allegations and contends that such allegations are the subject of a Verified Answer and Counterclaim filed in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi.

48. At numbered-paragraph 48, Defendant denies the allegations and contends that

such allegations are the subject of a Verified Answer and Counterclaim in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi.

49. At numbered-paragraph 49, Defendant denies the allegations and contends that such allegations are the subject of a Verified Answer and Counterclaim in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi.

50. At numbered-paragraph 50, Defendant is not required to admit or deny allegations in a pleading to which no response is required.

51. At numbered-paragraph 51, Defendant denies the allegations, and contends that the terms of the Non-Recourse Promissory Note speak for themselves.

52. At numbered-paragraph 52, Defendant denies the allegations.

53. At numbered-paragraph 53, Defendant denies the allegations.

54. At numbered-paragraph 54, Defendant denies the allegations.

55. At numbered-paragraph 55, Defendant is not required to admit or deny allegations in a pleading to which no response is required.

56. At numbered-paragraph 56, Defendant denies the allegations and contends that the terms of the Non-Recourse Promissory Note speak for themselves.

57. At numbered-paragraph 57, Defendant denies the allegations and contends that such allegations are the subject of litigation in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery

Court, Second Judicial District, Harrison County, Mississippi.

58. At numbered-paragraph 58, Defendant denies the allegations and contends that such allegations are the subject of litigation in *D'Iberville Promenade LLC v. CBL-D'Iberville Member LLC and CBL & Associates Management Inc.*, Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi.

59. At numbered-paragraph 59, Defendant denies the allegations.

60. At numbered-paragraph 60, Defendant admits the allegations.

61. At numbered-paragraph 61, Defendant denies the allegations.

62. At numbered-paragraph 62, Defendant denies the allegations.

63. At numbered-paragraph 63, Defendant is not required to admit or deny allegations in a pleading to which no response is required.

64. At numbered-paragraph 64, Defendant denies the allegations, and contends that the terms of the Non-Recourse Promissory Note speak for themselves.

65. At numbered-paragraph 65, Defendant denies the allegations, and contends that the terms of the Non-Recourse Promissory Note speak for themselves.

66. At numbered-paragraph 66, Defendant denies the allegations, and contends that the terms of the Non-Recourse Promissory Note speak for themselves.

67. At numbered-paragraph 67, Defendant admits the allegations.

68. At numbered-paragraph 68, Defendant denies the allegations.

69. At numbered-paragraph 69, Defendant is not required to admit or deny allegations in a pleading to which no response is required.

70. At numbered-paragraph 70, Defendant denies the allegations and contends that such allegations are the subject of litigation in *D'Iberville Promenade LLC v. CBL-D'Iberville*

Member LLC and CBL & Associates Management Inc., Civil Action No. 16-949, Chancery Court, Second Judicial District, Harrison County, Mississippi.

71. At numbered-paragraph 71, Defendant denies the allegations.

72. At numbered-paragraph 72, Defendant is not required to admit or deny allegations in a pleading to which no response is required.

73. At numbered-paragraph 73, Defendant denies the allegations.

74. At numbered-paragraph 74, Defendant denies the allegations, and contends that the Proof of Claim substantially conforms to the appropriate Official Form, is supported by documentation, and constitutes prima facie evidence of the validity and amount of the unsecured claim.

75. At numbered-paragraph 75, Defendant denies the allegations, and contends that CBL-D'Iberville Member LLC is substantially owned by Plaintiff CBL & Associates Limited Partnership, of which Plaintiff CBL Holdings I Inc. is the general partner, and that such ownership interest is property of the bankruptcy estate, thus serving as a valid basis for the filing of a Proof of Claim.

76. At numbered-paragraph 76, Defendant denies the allegations.

77. At numbered-paragraph 77, Defendant denies the allegations.

78. At numbered-paragraph 78, Defendant denies the allegations.

79. At numbered-paragraph 79, Defendant denies the allegations.

80. At numbered-paragraph 80, Defendant denies the allegations.

81. At numbered-paragraph 81, Defendant denies the allegations.

82. At numbered-paragraph 82, Defendant denies the allegations.

83. At numbered-paragraph 83, Defendant denies the allegations.

84. At numbered-paragraph 84, Defendant denies the allegations.

85. At numbered-paragraph 85, Defendant is not required to admit or deny allegations in a pleading to which no response is required.

86. At numbered-paragraph 86, Defendant denies the allegations.

87. At numbered-paragraph 87, Defendant denies the allegations, and contends that the Proof of Claim substantially conforms to the appropriate Official Form, is supported by documentation, and constitutes prima facie evidence of the validity and amount of the unsecured claim.

88. At numbered-paragraph 88, Defendant denies the allegations.

89. At numbered-paragraph 89, Defendant denies the allegations.

90. At numbered-paragraph 90, Defendant denies the allegations.

91. At numbered-paragraph 91, Defendant denies the allegations.

92. At numbered-paragraph 92, Defendant denies the allegations.

93. At numbered-paragraph 93, Defendant denies the allegations.

94. At numbered-paragraph 94, Defendant denies the allegations.

95. At numbered-paragraph 95, Defendant denies the allegations.

96. At numbered-paragraph 96, Defendant is not required to admit or deny allegations in a pleading to which no response is required.

97. At numbered-paragraph 97, Defendant denies the allegations.

98. At numbered-paragraph 98, Defendant denies the allegations, and contends that the Proof of Claim substantially conforms to the appropriate Official Form, is supported by documentation, and constitutes prima facie evidence of the validity and amount of the unsecured claim.

99. At numbered-paragraph 99, Defendant denies the allegations, and contends that CBL-D'Iberville Member LLC is substantially owned by Plaintiff CBL & Associates Limited Partnership, of which Plaintiff CBL Holdings I Inc. is the general partner, and that such ownership interest is property of the bankruptcy estate, thus serving as a valid basis for the filing of a Proof of Claim.

100. At numbered-paragraph 100, Defendant denies the allegations.

101. At numbered-paragraph 101, Defendant denies the allegations.

102. At numbered-paragraph 102, Defendant denies the allegations.

103. At numbered-paragraph 103, Defendant denies the allegations.

104. At numbered-paragraph 104, Defendant denies the allegations.

105. At numbered-paragraph 105, Defendant denies the allegations.

106. At numbered-paragraph 106, Defendant denies the allegations.

107. At numbered-paragraph 107, Defendant denies the allegations.

108. At numbered-paragraph 108, Defendant denies the allegations.

Prayer

Defendant D'Iberville Promenade LLC prays that Plaintiffs' objections to the Proofs of Claim be overruled, and that Plaintiffs take nothing by their claims and causes of action.

Respectfully submitted,

/s/ K. B. Battaglini

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Attorneys for D'Iberville Promenade LLC

Certificate of Service

This will confirm that on December 21, 2021, the foregoing document was electronically filed with the clerk of court for the U.S. Bankruptcy Court, Southern District of Texas, using the CM/ECF system, and that service upon the attorneys for plaintiffs was sent via email addressed as follows:

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