

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS DIVISION

CASE NO: 11-08592 CA 40

PONTE GADEA DUPONT, LLC, Derivatively
on behalf of DP PROPERTY HOLDING, LLC,
a Florida limited liability company

Plaintiff

v.

UC NORTH DEVELOPMENT, LLC, a Florida
limited liability company, DP PROPERTY
HOLDING, LLC, a Florida limited liability
company, EPIC WEST CONDO, LLC, a
Florida limited liability company, DUPONT
PROPERTY HOLDING, INC., a Florida
corporation, and CMC CONSTRUCTION,
INC., a Florida corporation,

Defendants.

THE ORIGINAL
FILED ON:
SEP 27 2011
IN THE OFFICE OF
CIRCUIT COURT DADE CO., FL

**MOTION FOR PROTECTIVE ORDER REGARDING DEPOSITIONS
SCHEDULED ON ROSH HASHANAH**

Defendant, DUPONT PROPERTY HOLDING, INC. ("Dupont"), by and through undersigned counsel and pursuant to Rules 1.280, Fla. R. Civ. P., hereby moves on the following grounds for entry of a protective order postponing depositions that Plaintiff PONTE GADEA DUPONT, LLC ("Ponte Gadea") has scheduled for Rosh Hashanah:

1. It should be beyond discussion that a deposition cannot proceed on an important religious holiday. No motion should be required to postpone a deposition scheduled on Rosh Hashanah. Unfortunately, notwithstanding our efforts to meet and confer, counsel for Plaintiff Ponte Gadea insists upon proceeding with a deposition on Rosh Hashanah, and has required the filing of this motion for protective order.

COFFEY BURLINGTON

OFFICE IN THE GROVE, PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133
T: 305.858.2900 F: 305.858.5261
Email: info@coffeyburlington.com www.coffeyburlington.com

2. Ponte Gadea previously noticed a deposition of third-party witnesses for Thursday, September 29, 2011.¹ Thursday is the Jewish Holiday of Rosh Hashanah, and has been designated a Court Holiday, with the Court closed for business.

3. Undersigned counsel, in-house counsel for Defendant Dupont, and Dupont's officers all observe Rosh Hashanah.

4. Accordingly, we promptly advised counsel for Ponte Gadea of the conflict. Follow up emails from Plaintiff's counsel last week indicated that they would accommodate the scheduling issue. Indeed, with nearly two months remaining before the hearing scheduled for November 14 and 15, 2011 on Ponte Gadea's preliminary injunction motion, there is obviously more than ample time to find an alternative date for this deposition.

5. Surprisingly, however, counsel for Ponte Gadea advised by email yesterday afternoon that they nevertheless intended to proceed with the deposition. Undersigned counsel emailed back, re-iterating that Thursday – in addition to being Rosh Hashanah – is also a Court Holiday. The email assured that we would work with Plaintiff's counsel on an alternative date, but advised again that the deposition should not proceed on the holiday.

6. Undersigned counsel also met and conferred with Kelly Melchiondo, Esq., one of Plaintiff's counsel in this case, by telephone yesterday afternoon. Ms. Melchiondo, however, advised that her partner, Eugene Stearns, insisted upon going forward with the deposition.

7. Accordingly, counsel has been forced to file this motion. Under these circumstances, attorneys' fees should be assessed against Ponte Gadea in connection with the filing of this motion.

WHEREFORE, Defendant respectfully requests entry of a protective order postponing a deposition that Ponte Gadea has set for Rosh Hashanah, assessing attorneys' fees against Ponte Gadea, and for such other and further relief the Court deems appropriate..

¹ The depositions are of a representative and records custodian of BB&T Bank. Copies of the notices are attached hereto as Exhibits "A" and "B."

CERTIFICATE OF GOOD FAITH CONFERENCE

As detailed above, prior to the filing of this motion for enlargement, pursuant to Complex Business Litigation Section Procedure 4.3, counsel for Dupont Property Holding, Inc., Kevin C. Kaplan, conferred with counsel for Plaintiff, Kelly R. Melchiondo, by telephone regarding the requested relief. Counsel have been unable to agree on the resolution of the issues.

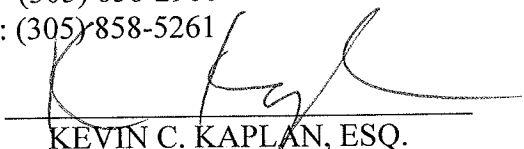
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via Fax, U.S. Mail and E-Mail this 27th day of September, 2011, to: **Eugene E. Stearns, Esq.**, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., Museum Tower, 150 W. Flagler Street, Suite 2200, Miami, Florida 33130; **Thomas K. Equels, Esq.**, Equels Law Firm, 2601 S. Bayshore Drive, Suite 600, Miami, Florida 33133; **Thomas Manick, Esq.**, Law Offices of Thomas Manick, P.A., 3059 Grand Avenue, Suite 300, Miami, Florida 33133; and **Clinton D. Flagg, Esq.**, The Law Offices of Clinton D. Flagg, P.A., Suite 112, Poinciana Professional Park, 2640 Golden Gate Parkway, Naples, Florida 34105.

Respectfully submitted,

COFFEY BURLINGTON
2699 S. Bayshore Drive, Penthouse
Miami, Florida 33133
Tel: (305) 858-2900
Fax: (305) 858-5261

By: _____


KEVIN C. KAPLAN, ESQ.
Florida Bar No. 9333848
GABRIEL GROISMAN, ESQ.
Florida Bar No. 25644

*Attorney for Defendant DuPont Property
Holding, Inc.*

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 11-08592 CA 40

PONTE GADEA DUPONT, LLC,
derivatively on behalf of DP
PROPERTY HOLDING, LLC,
a Florida limited liability company

Plaintiff

v.

UC NORTH DEVELOPMENT, LLC, a
Florida limited liability company,
DUPONT PROPERTY HOLDING, INC., a
Florida corporation, DP PROPERTY
HOLDING, LLC, a Florida limited liability
Company, EPIC WEST CONDO, LLC, a
Florida limited liability company, and CMC
CONSTRUCTION, INC., a Florida
corporation,

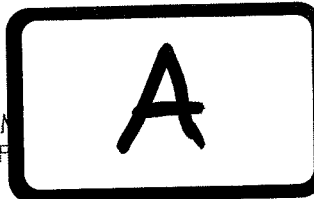
Defendants.

**RE-NOTICE OF TAKING VIDEOTAPED DEPOSITION
(reflecting a time change for the start of videotaped deposition)**

PLEASE TAKE NOTICE that the Plaintiff, Ponte Gadea Dupont, LLC, derivatively on behalf of DP Property Holding, LLC, pursuant to the Florida Rules of Civil Procedure, will take the deposition by oral examination for purposes of discovery and for use as evidence in this action, of:

Deponent:

EUGENE S. FONT (to provide testimony about the subjects listed on the attached Exhibit A)



PONTE GADEA DUPONT, LLC, v
DP PROPERTY HOLDING, LLC., et al.

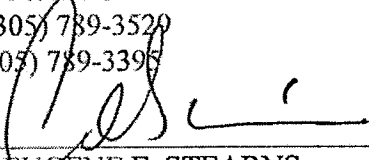
Date and Time: Thursday, September 29, 2011 at 9:00 a.m.
Location: Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 2200
Miami, Florida, 33130
Tel: (305) 789-3200

The deposition shall take place before an officer authorized to administer oaths by the laws of the State of Florida. The deposition will be recorded by stenographic means by Network Reporting and will be videotaped by Action Video, 4000 Hollywood Blvd. – Suite 145 S. Tower, Hollywood, Florida 33021. The oral examination will continue from hour to hour and from day to day until completed.

Respectfully Submitted,

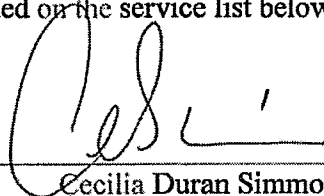
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
*Attorneys for Plaintiff Ponte Gadea Dupont, LLC,
derivatively on behalf of DP Property Holding, LLC*
Museum Tower
150 W. Flagler Street, Suite 2200
Miami, Florida 33130
Tel.: (305) 789-3520
Fax: (305) 789-3398

By: _____


EUGENE E. STEARNS
Florida Bar No. 014933
estearns@stearnsweaver.com
KELLY R. MELCHIONDO
Florida Bar No. 0582603
kmelchiondo@stearnsweaver.com
CECILIA DURAN SIMMONS
Florida Bar No. 0469726
csimmons@stearnsweaver.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served this
19th day of September, 2011, upon all counsel as provided on the service list below.



Cecilia Duran Simmons

Thomas K. Equels, Esq.
tequels@equelslaw.com
Equels Law Firm
2601 S. Bayshore Drive
Suite 600
Miami, Florida 33131
*Attorneys for DP Property Holding, LLC
and Epic West Condo, LLC*
Via U.S. Mail and E-Mail

Thomas Manick, Esq.
tm@manicklaw.com
Law Offices of Thomas Manick, P.A.
3059 Grand Avenue
Suite 300
Miami, Florida 33133
*Attorney for UC North Development, LLC
and CMC Construction, Inc.*
Via U.S. Mail and E-Mail

Robert Burlington, Esq.
rburlington@coffeyburlington.com
Kevin C. Kaplan, Esq.
kkaplan@coffeyburlington.com
Coffey Burlington
2699 S. Bayshore Drive
Penthouse
Miami, Florida 33133
Attorneys for Dupont Property Holding, Inc.
Via U.S. Mail and E-Mail

Clinton D. Flagg, Esq.
cflagg@flagg-law.com
The Law Offices of Clinton D. Flagg, P.A.
Suite 112, Poinciana Professional Park
2640 Golden Gate Parkway
Naples, Florida 34105
Attorney for CMC Construction, Inc.

EXHIBIT A

1. The Loan Agreement executed between BB&T and Leisure Property Investments, Inc., on October 30, 2006, as modified by a Commercial Loan Extension Agreement executed as of December 22, 2009 (the "First Extension") and a Commercial Loan Extension Agreement executed as of March 15, 2010 (the "Second Extension").
2. The Forbearance Agreement executed October 15, 2010 and which was effective as of April 27, 2010, among Leisure Property Investments, Inc., Ugo Colombo, Alfredo Lowenstein, DP Property Holding, LLC, and BB&T.
3. Communications between you and Diego Lowenstein, Alfredo Lowenstein, Bruce Lazar, or any representative of Dupont Property Holding, Inc. or Lionstone Group, Inc. relating to the Loan Agreement and/or the Forbearance Agreement.
4. Communications between you and Ugo Colombo, Art Murphy, Steve Mazin, Buddy Dowlen, or any representative of UC North, CMC Real Estate or CMC Construction relating to the Loan Agreement and/or the Forbearance Agreement.
5. Communications between you and DP Property Holding, LLC and/or any of its representatives relating to the Loan Agreement and/or the Forbearance Agreement.
6. Communications between you and Roberto Cibeira Moreira, Jaime Carro, Israel Alfonso, or any representative of Ponte Gadea Dupont, LLC, relating to the Loan Agreement and/or the Forbearance Agreement.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 11-08592 CA 40

PONTE GADEA DUPONT, LLC,
derivatively on behalf of DP
PROPERTY HOLDING, LLC,
a Florida limited liability company

Plaintiff

v.

UC NORTH DEVELOPMENT, LLC, a
Florida limited liability company,
DUPONT PROPERTY HOLDING, INC., a
Florida corporation, DP PROPERTY
HOLDING, LLC, a Florida limited liability
Company, EPIC WEST CONDO, LLC, a
Florida limited liability company, and CMC
CONSTRUCTION, INC., a Florida
corporation,

Defendants.

RE-NOTICE OF TAKING DEPOSITION DUCES TECUM

PLEASE TAKE NOTICE that the Plaintiff, Ponte Gadea Dupont, LLC, derivatively on behalf of DP Property Holding, LLC, pursuant to the Florida Rules of Civil Procedure, will take the deposition by oral examination for purposes of discovery and for use as evidence in this action, of:

Deponent: BRANCH BANKING AND TRUST COMPANY
(by and through the person with the most knowledge
of the documents listed in Exhibit "A")

#1198656 v1 39067-0003



PONTE GADEA DUPONT, LLC, v
DP PROPERTY HOLDING, LLC., et al.

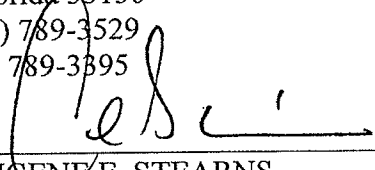
Date and Time: Thursday, September 29, 2011 at 1:00 p.m.
Location: Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 2200
Miami, Florida, 33130
Tel: (305) 789-3200

The deposition shall take place before an officer authorized to administer oaths by the laws of the State of Florida. The deposition will be recorded by stenographic means. The deponent is requested to bring the documents requested on the attached Exhibit "A." The oral examination will continue from hour to hour and from day to day until completed.

Respectfully Submitted,

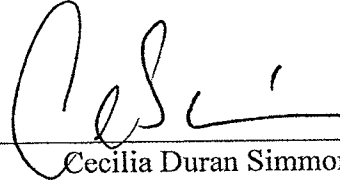
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
*Attorneys for Plaintiff Ponte Gadea Dupont, LLC,
derivatively on behalf of DP Property Holding, LLC*
Museum Tower
150 W. Flagler Street, Suite 2200
Miami, Florida 33130
Tel.: (305) 789-3529
Fax: (305) 789-3395

By: _____


EUGENE E. STEARNS
Florida Bar No. 014933
estearns@stearnsweaver.com
KELLY R. MELCHIONDO
Florida Bar No. 0582603
kmelchiondo@stearnsweaver.com
CECILIA DURAN SIMMONS
Florida Bar No. 0469726
csimmons@stearnsweaver.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served this
13th day of September, 2011, upon all counsel as provided on the service list below.



Cecilia Duran Simmons

Thomas K. Equels, Esq.
tequels@equelslaw.com
Equels Law Firm
2601 S. Bayshore Drive
Suite 600
Miami, Florida 33133
*Attorneys for DP Property Holding, LLC
and Epic West Condo, LLC
Via U.S. Mail and E-Mail*

Thomas Manick, Esq.
tm@manicklaw.com
Law Offices of Thomas Manick, P.A.
3059 Grand Avenue
Suite 300
Miami, Florida 33133
*Attorney for UC North Development, LLC
and CMC Construction, Inc.
Via U.S. Mail and E-Mail*

Robert Burlington, Esq.
rburlington@coffeyburlington.com
Kevin C. Kaplan, Esq.
kkaplan@coffeyburlington.com
Coffey Burlington
2699 S. Bayshore Drive
Penthouse
Miami, Florida 33133
*Attorneys for Dupont Property Holding, Inc.
Via U.S. Mail and E-Mail*

Clinton D. Flagg, Esq.
cflagg@flagg-law.com
The Law Offices of Clinton D. Flagg, P.A.
Suite 112, Poinciana Professional Park
2640 Golden Gate Parkway
Naples, Florida 34105
*Attorney for CMC Construction, Inc.
Via U.S. Mail and E-Mail*

**EXHIBIT A
DOCUMENTS TO BE PRODUCED**

1. All documents relating to the Loan Agreement executed between BB&T and Leisure Property Investments, Inc., on October 30, 2006, as modified by a Commercial Loan Extension Agreement executed as of December 22, 2009 (the "First Extension") and a Commercial Loan Extension Agreement executed as of March 15, 2010 (the "Second Extension").

2. All documents that refer, relate or pertain to the Loan Agreement, the First Extension and/or the Second Extension.

3. All documents relating to the Forbearance Agreement executed October 15, 2010 and which was effective as of April 27, 2010, among Leisure Property Investments, Inc., Ugo Colombo, Alfredo Lowenstein, DP Property Holding, LLC, and BB&T.

4. All documents that refer, relate or pertain to the Forbearance Agreement.

5. To the extent not sought above, all communications between you and Diego Lowenstein, Alfredo Lowenstein, Bruce Lazar, Steve Mazin, or any representative of Dupont Property Holding, Inc. or Lionstone Group, Inc. relating to the Loan Agreement, the First Extension, the Second Extension and/or the Forbearance Agreement.

6. All documents that refer, relate or pertain to your communications with Diego Lowenstein, Alfredo Lowenstein, Bruce Lazar, Steve Mazin, or any representative of Dupont Property Holding, Inc. or Lionstone Group, Inc. relating to the Loan Agreement, the First Extension, the Second Extension and/or the Forbearance Agreement.

7. To the extent not sought above, all communications between you and Ugo Colombo, Art Murphy, Buddy Dowlen, or any representative of UC North, CMC Real Estate or

CMC Construction relating to the Loan Agreement, the First Extension, the Second Extension and/or the Forbearance Agreement.

8. All documents that refer, relate or pertain to your communications with Ugo Colombo, Art Murphy, Buddy Dowlen, or any representative of UC North, CMC Real Estate or CMC Construction relating to the Loan Agreement, the First Extension, the Second Extension and/or the Forbearance Agreement.

9. To the extent not sought above, all communications between you and DP Property Holding, LLC and/or any of its representatives relating to the Loan Agreement, the First Extension, the Second Extension and/or the Forbearance Agreement.

10. All documents that refer, relate or pertain to your communications with DP Property Holding, LLC and/or any of its representatives relating to the Loan Agreement, the First Extension, the Second Extension and/or the Forbearance Agreement.

11. To the extent not sought above, all communications between you and Roberto Cibeira Moreira, Jaime Carro, Israel Alfonso, or any representative of Ponte Gadea Dupont, LLC, relating to the Loan Agreement, the First Extension, the Second Extension and/or the Forbearance Agreement.

12. All documents that refer, relate or pertain to your communications with Roberto Cibeira Moreira, Jaime Carro, Israel Alfonso, or any representative of Ponte Gadea Dupont, LLC, relating to the Loan Agreement, the First Extension, the Second Extension and/or the Forbearance Agreement.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 11-08592 CA 40

PONTE GADEA DUPONT, LLC,
derivatively on behalf of DP
PROPERTY HOLDING, LLC,
a Florida limited liability company

Plaintiff

v.

UC NORTH DEVELOPMENT, LLC, a
Florida limited liability company,
DUPONT PROPERTY HOLDING, INC., a
Florida corporation, DP PROPERTY
HOLDING, LLC, a Florida limited liability
Company, EPIC WEST CONDO, LLC, a
Florida limited liability company, and CMC
CONSTRUCTION, INC., a Florida
corporation,

Defendants.

**RE-NOTICE OF TAKING VIDEOTAPED DEPOSITION
(reflecting a time change for the start of videotaped deposition)**

PLEASE TAKE NOTICE that the Plaintiff, Ponte Gadea Dupont, LLC, derivatively on behalf of DP Property Holding, LLC, pursuant to the Florida Rules of Civil Procedure, will take the deposition by oral examination for purposes of discovery and for use as evidence in this action, of:

Deponent: EUGENE S. FONT (to provide testimony about the subjects listed on the attached Exhibit A)

PONTE GADEA DUPONT, LLC, v
DP PROPERTY HOLDING, LLC., et al.

Date and Time: Thursday, September 29, 2011 at 9:00 a.m.
Location: Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 2200
Miami, Florida, 33130
Tel: (305) 789-3200

The deposition shall take place before an officer authorized to administer oaths by the laws of the State of Florida. The deposition will be recorded by stenographic means by Network Reporting and will be videotaped by Action Video, 4000 Hollywood Blvd. – Suite 145 S. Tower, Hollywood, Florida 33021. The oral examination will continue from hour to hour and from day to day until completed.

Respectfully Submitted,

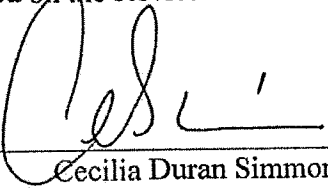
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
*Attorneys for Plaintiff Ponte Gadea Dupont, LLC,
derivatively on behalf of DP Property Holding, LLC*
Museum Tower
150 W. Flagler Street, Suite 2200
Miami, Florida 33130
Tel.: (305) 789-3529
Fax: (305) 789-3395

By: 

EUGENE E. STEARNS
Florida Bar No. 014933
estearns@stearnsweaver.com
KELLY R. MELCHIONDO
Florida Bar No. 0582603
kmelchiondo@stearnsweaver.com
CECILIA DURAN SIMMONS
Florida Bar No. 0469726
csimmons@stearnsweaver.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served this 19th day of September, 2011, upon all counsel as provided on the service list below.



Cecilia Duran Simmons

Thomas K. Equels, Esq.
tequels@equelslaw.com
Equels Law Firm
2601 S. Bayshore Drive
Suite 600
Miami, Florida 33131
*Attorneys for DP Property Holding, LLC
and Epic West Condo, LLC*
Via U.S. Mail and E-Mail

Thomas Manick, Esq.
tm@manicklaw.com
Law Offices of Thomas Manick, P.A.
3059 Grand Avenue
Suite 300
Miami, Florida 33133
*Attorney for UC North Development, LLC
and CMC Construction, Inc.*
Via U.S. Mail and E-Mail

Robert Burlington, Esq.
rburlington@coffeyburlington.com
Kevin C. Kaplan, Esq.
kkaplan@coffeyburlington.com
Coffey Burlington
2699 S. Bayshore Drive
Penthouse
Miami, Florida 33133
Attorneys for Dupont Property Holding, Inc.
Via U.S. Mail and E-Mail

Clinton D. Flagg, Esq.
cflagg@flagg-law.com
The Law Offices of Clinton D. Flagg, P.A.
Suite 112, Poinciana Professional Park
2640 Golden Gate Parkway
Naples, Florida 34105
Attorney for CMC Construction, Inc.

EXHIBIT A

1. The Loan Agreement executed between BB&T and Leisure Property Investments, Inc., on October 30, 2006, as modified by a Commercial Loan Extension Agreement executed as of December 22, 2009 (the "First Extension") and a Commercial Loan Extension Agreement executed as of March 15, 2010 (the "Second Extension").
2. The Forbearance Agreement executed October 15, 2010 and which was effective as of April 27, 2010, among Leisure Property Investments, Inc., Ugo Colombo, Alfredo Lowenstein, DP Property Holding, LLC, and BB&T.
3. Communications between you and Diego Lowenstein, Alfredo Lowenstein, Bruce Lazar, or any representative of Dupont Property Holding, Inc. or Lionstone Group, Inc. relating to the Loan Agreement and/or the Forbearance Agreement.
4. Communications between you and Ugo Colombo, Art Murphy, Steve Mazin, Buddy Dowlen, or any representative of UC North, CMC Real Estate or CMC Construction relating to the Loan Agreement and/or the Forbearance Agreement.
5. Communications between you and DP Property Holding, LLC and/or any of its representatives relating to the Loan Agreement and/or the Forbearance Agreement.
6. Communications between you and Roberto Cibeira Moreira, Jaime Carro, Israel Alfonso, or any representative of Ponte Gadea Dupont, LLC, relating to the Loan Agreement and/or the Forbearance Agreement.