UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Case No. 9:12-bk-17138-FMD
Chapter 11

Michael L. Shults and
Betheny Elam-Shults,

Debtors.
_____/

David Haas, Trustee for the Carole C. Haas Trust Dated 5/20/94,

Plaintiff,

vs. Adv. Pro. No. 9:13-ap-204-FMD

Michael L. Shults; Betheny Elam-Shults;
Cotton Strip Airport Association, LLC;
Cotton Strip Development, LLC;
Sanibel Captiva Community Bank;
Ronald D. Elam, Sr.; Mavis F. Elam;
Unknown Tenant #1; Unknown Tenant #2;
Cecil Conley; and Naomi Conley,

Defendants.
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S AMENDED COMPLAINT

THIS PROCEEDING came on for hearing on June 14, 2013, of the Plaintiff's Motion for Summary Judgment on Count I of Plaintiffs' Amended Complaint (Doc. No. 9) (the "Motion"). The Court, having heard argument of counsel and having reviewed the Motion, the parties' memoranda, the pleadings, the affidavits and depositions submitted by counsel, the applicable law submitted to the Court, finds that no genuine dispute of any material fact precludes the entry of summary judgment, and, for the reasons stated orally and recorded in open Court that shall constitute the decision of the Court, grants the Motion and rules that the Plaintiff is entitled to Summary Judgment on Count I of the Amended Complaint.

Procedural Background

1. In 2011, David Haas, Trustee for the Carole C. Haas Trust Dated 5/20/94 ("Haas"), filed a complaint for reformation and foreclosure of a mortgage on real property owned by the Debtors, Michael L. Shults and Bethany Elam-Shults ("Shults") in the Circuit Court of the Twentieth Judicial Circuit in and for Hendry County, Florida (Case No. 11-455-CA) (the "State Court Action"). On April 5, 2012, Haas filed his Fifth Amended Complaint seeking the reformation and foreclosure of the mortgage.

2. On November 11, 2012, Shults filed a petition for relief under Chapter 11 of the United States Bankruptcy Code.

3. On March 8, 2013, Haas commenced this adversary proceeding by filing his *Complaint to Determine Validity, Priority, and Extent of Lien of David Haas, as Trustee for the Carole C. Haas Trust Dated 5/20/94 pursuant to Rule 7001(2) of the Federal Rules of Bankruptcy Procedure*. (Doc. No. 1.)

4. As part of this Court's March 27, 2013 *Agreed Order on Stay Relief* (Main Case, Doc. No. 71), Haas and Shults agreed, and this Court ordered, that all stipulations and agreements, including but not limited to all stipulations as to the introduction of evidence, exhibits and agreed facts in the State Court Action, shall be applicable in this adversary proceeding.[1]

Findings of Fact

The Court's ruling is based on the following findings of fact:

5. Haas holds a note (the "Note") and mortgage (the "Mortgage") on the Shults' homestead property located in Hendry County, Florida, as more particularly described in Haas' Proof of Claim (Claim No. 8) and Haas' Motion for Relief from Stay Regarding Real Property (Main Case, Doc. No. 29) (the "Real Property").

6. As part of the State Court Action, Haas sought to reform the legal description in the mortgage and to foreclose the mortgage on the Real Property.

7. Haas' predecessor trustee, Carol Haas (for the sake of simplicity, also referred to herein as "Haas"), as seller, and Shults, as buyer, entered into a written purchase agreement on March 20, 1998, for the purchase and sale of the Real Property, consisting of approximately 50 acres (the "Purchase Agreement").

[1] The Court was provided the State Court Action Amended Pre-Trial Conference Order dated October 1, 2012, and Stipulated List of Exhibits for Trial on Plaintiff's Reformation Claim. (Doc. No. 9, Ex. 2; Doc. No. 26.)

8. The Real Property includes a five-acre parcel of land that houses a hangar. This five-acre parcel of land is referred to in the Purchase Agreement as the "hangar" or "hangar parcel" (the "Hanger Parcel").

9. The Purchase Agreement consists of three documents, all executed on March 20, 1998: a pre-printed form contract, an "Addendum to Contract" (the "Addendum"), and a "Lease with Option to Purchase" (the "Option Agreement").

10. The Purchase Agreement is a fully integrated contract. Not only are all terms of the transaction reduced to a writing that was contemporaneously signed by each of the parties, but paragraph V of the form contract also expressly provides that:

> No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

11. Under the Purchase Agreement, Shults agreed to pay $900,000.00 for the 50 acres, including the Hangar Parcel.

12. The Addendum contains the following provision:

> Seller [Haas] to take back a purchase money mortgage with the following terms:
>
> a. Total principal of $810,000.00.
> b. Annual interest at eight (8%) percent.
> c. Thirty (30) year amortization.
> d. Annual interest and principal payments.
> e. Buyer [Shults] shall have a Three year partial and a Ten year final balloon.
> f. Seller to release from mortgage subsequential sales at 110% of per acre purchase price.
> g. Seller not to grant releases on "airstrip" or "hangar" without buyers agreement not to sell until remaining mortgage is paid in full."

The Addendum further provides: "Seller to convey 'hangar' to Buyer via recorded lease option."

13. In order to facilitate the sale of the Hangar Parcel to Shults, Haas purchased the Hangar Parcel from Virginia Jones on February 23, 1998. The agreed upon purchase price was $162,000.00, a portion of which was paid in cash and the balance paid with a promissory note in the amount of $122,000.00 secured by a mortgage on the Hangar Parcel. This mortgage was recorded in the Official Records of Hendry County.[2]

14. The warranty deed from Ms. Jones to Haas was recorded on March 3, 1998, in O.R. Book 564, Page 228 of the official records for Hendry County. The warranty deed from Ms. Jones incorporated the following legal description of the Hangar Parcel:

> *All that lot, piece of parcel of land, situate, lying and being in the County of Hendry, State of Florida, more particularly described as follows:*
>
> *West 175' to the East 365' of the West 3/4 (said 3/4 by linear measurement) of Gov. Lot 1, Section 29, Township 43 South, Range 28 East.*
>
> *West 175' of the East 682.77' of Gov. Lot 3, Section 20, Township 43 South, Range 28 East, lying Southerly of Central and Southern Flood Control District Canal C-43, together with ingress and egress easement as described in O.R. Book 366, Page 401, Public Records of Hendry County, Florida, together with an easement for access over and across the following:*
>
> *The West 25 feet of the East 215 feet of the West 1/2 of the East 1/2 of the Southeast 1/4 of the Northeast 1/4 of said Section 29, lying North of the North right of way of State Road 80.*[3]

15. On March 20, 1998, Shults closed on the sale under the Purchase Agreement and received a warranty deed for the 45 acres of the Real Property, exclusive of the Hangar Parcel (the "45-Acre Warranty Deed").[4] The 45-Acre Warranty Deed was recorded in O.R. Book 565, Page 409 and was later corrected and re-recorded in O.R. Book 569, Page 1753 of the official records for Hendry County.[5] The Hangar Parcel was

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[2] Doc. No. 9-3, para. 6, Exh. D.

[3] Doc. No. 26-2.

[4] As identified in the deed, the seller was Carole C. Haas as trustee for both the Carole A. Haas Trust Dated 5/20/94 and Gilbert J. Haas Trust Dated 5/20/94.

[5] The purpose of the corrected 45-Acre Warranty Deed was to include an omitted reservation and easement. (Affidavit of Carole C. Haas, Doc. No. 9-3, para. 8.)

expressly excluded from the 45-Acre Warranty Deed, which described the property being conveyed as:

> *LESS the West 175 feet to the East 365 feet of the West 3/4 (said 3/4 by Linear Measurement) of Gov. Lot 1, Section 29, Township 43 South, Range 28 East*
>
> *AND LESS*
>
> *West 175 feet of the East 682.77 feet of Gov. Lot 3, Section 20, Township 43 South, Range 28 East, lying Southerly of Central and Southern Flood Control District Canal C-43, containing a computed area of 48.1 Acres of Land.*

16. At the March 20, 1998 closing, Shults delivered the Note, in the amount of $693,081.50 to Haas,[6] which was secured by the Mortgage on the 45 acres conveyed in the 45-Acre Warranty Deed.[7] The Mortgage was originally recorded on March 27, 1998, in O.R. Book 565, Page 411 but was later corrected and re-recorded on June 16, 1998 in O.R. Book 569, Page 1756 of the official records for Hendry County.[8]

17. Under the Option Agreement, Shults received a three-year option to purchase the Hangar Parcel from Haas. The Option Agreement stated that the purchase price of the Hangar Parcel would be equal to the current "pay-off" of Ms. Jones' mortgage on the Hangar Parcel. Additionally, the Option Agreement provided that when the option was exercised, the Hangar Parcel would be made subject to Haas' existing mortgage on the other 45 acres. Specifically, paragraph 13 of the Option Agreement contains the following language:

> Lessee [Shults] may elect during the lease term, at a price of the current existing "pay-off," on the date the Lessee elects to purchase, of the first mortgage between Jones and Haas on the subject parcel. The total amount to be paid will be applied to the principal of the existing mortgage between Shults and Haas on the contiguous property. *At such time, this subject property will become part of the said first mortgage*. (emphasis supplied.)

18. The Option Agreement was recorded on March 27, 1998, in O.R. Book 565, Page 405 of the official records for Hendry County. It incorporated the following legal description of the Hangar Parcel:

> *West 175 feet to the East 365 feet of the West 3/4 (said 3/4 by Linear Measurement) of Gov. Lot 1, Section 29, Township 43 South, Range 28 East*
>
> *AND*
>
> *West 175 feet of the East 682.77 feet of Gov. Lot 3, Section 20, Township 43 South, Range 28 East, lying Southerly of Central and Southern Flood Control District Canal C-43, containing a computed area of 5.5 Acres of Land.*

19. At the March 20, 1998 closing, the parties also executed a HUD-1 that expressly referenced and included the Option Agreement and specified $116,918.50 as the purchase price for the option on the Hangar Parcel.

20. On December 2, 1998, Shults exercised their right under the Option Agreement to purchase the Hangar Parcel.

21. At the time Shults exercised their option, the Hangar Parcel was encumbered by the mortgage in favor of Ms. Jones, which had an outstanding balance of $121,954.68.

22. At the December 2, 1998 closing of the Hangar Parcel, Shults tendered $121,954.68 to Haas to satisfy Ms. Jones' mortgage on the Hangar Parcel, and Haas delivered a warranty deed to Shults for the Hangar Parcel, which was recorded in O.R. Book 577, Page 1842 of the official records for Hendry County (the "HP Warranty Deed"). The HP Warranty Deed contained the following legal description of the property being conveyed:

> *All that lot, piece of parcel of land, situate, lying and being in the County of Hendry, State of Florida, more particularly described as follows:*
>
> *West 175' to the East 365' of the West 3/4 (said 3/4 by linear measurement) of Gov. Lot 1, Section 29, Township 43 South, Range 28 East.*
>
> *West 175' of the East 682.77' of Gov. Lot 3, Section 20, Township 43 South, Range 28*

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[6] Doc. No. 9-3, Exh. F, p. 33.

[7] Doc. No. 9-3, Exh. F, p. 29.

[8] The Mortgage was also corrected to include an omitted reservation and easement. (Affidavit of Carole C. Haas, Doc. No. 9-3, para. 7.)

East, lying Southerly of Central and Southern Flood Control District Canal C-43, together with ingress and egress easement as described in O.R. Book 366, Page 401, Public Records of Hendry County, Florida, together with an easement for access over and across the following:

The West 25 feet of the East 215 feet of the West 1/2 of the East 1/2 of the Southeast 1/4 of the Northeast 1/4 of said Section 29, lying North of the North right of way of State Road 80.

23. At the December 2, 1998 closing, Haas and Shults executed a document entitled "Mortgage Modification Agreement and Lease Option Exercise" (the "Mortgage Modification").[9] The Mortgage Modification was recorded on December 17, 1998, in O.R. Book 577, Page 1848 of the official records for Hendry County.

24. Exhibit A to the Mortgage Modification set forth the legal description for the property that was the subject of the Mortgage Modification. However, Exhibit A to the Mortgage Modification is identical to the Exhibit A attached to the March 20, 1998 corrective 45-Acre Warranty Deed recorded on June 16, 1998, in O.R. Book 569, Page 1756 of the official records for Hendry County.

25. In other words, the legal description set forth in Exhibit A to the Mortgage Modification, rather than describing the property conveyed in the HP Warranty Deed (i.e., the Hangar Parcel), specifically *excluded* the Hangar Parcel. That legal description reads as follows:

LESS the West 175 feet to the East 365 feet of the West 3/4 (said 3/4 by Linear Measurement) of Gov. Lot 1, Section 29, Township 43 South, Range 28 East

AND LESS

West 175 feet of the East 682.77 feet of Gov. Lot 3, Section 20, Township 43 South, Range 28 East, lying Southerly of Central and Southern Flood Control District Canal C-43, containing a computed area of 48.1 Acres of Land.

[9] Doc. No. 9-3, Exh. K.

26. The Mortgage Modification states:

. . .

WITNESSETH, that said MORTGAGEE is the owner and holder of that certain Mortgage executed by the MORTGAGOR(S) to secure the original principal amount of 693,081.50, dated 3/27/98 and recorded in O.R. Book 565, Page 411 and re-recorded 6/18/98 in O.R. Book 569, Page 1756 of the Public Records of Hendry County, Florida, AND Lease Option in the original amount of 116,918.50 (810,000.00) as recorded in O.R. Book 565, Page 405, Public Records of Hendry County, Florida, in which the Mortgagor(s) did pledge and encumber to Mortgagee the land situate, lying and being in Hendry County, Florida, to-wit: SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

WHEREAS, THE MORTGAGEE and MORTGAGOR(S) desire to modify the Mortgage Deed incorporated therein; and

NOW, THEREFORE, in consideration of the actual premises herein, the MORTGAGEE [sic] and MORTGAGOR(S) stipulate, covenant and agree as follows:

. . .

2. *Mortgagee agrees to modify said Mortgage [the Mortgage as identified earlier in the Mortgage Modification] by this Mortgage Modification Agreement and Exercise of the Lease Option* and acknowledges receipt of principal reduction of $121,954.68, leaving a principal balance of 688,048.32. The payment of interest based on the original amount of 693,081.50 Purchase Money First Mortgage and Lease Option 116,918.50 from 3/20/98 to 12/2/98 - 45,805.32 and payment of interest on remaining balance 688,045.32 from 12/2/98 to 3/20/99 – 16,284.48; total interest payment of 62,092.80 shall be payable at the first annual installment date, 3/20/99.

. . . (emphasis supplied.)

27. At the closing on December 2, 1998, Shults also executed a mortgage in favor of Cecil and Naomi Conley (the "Conleys") in the amount of $150,000.00, which was recorded on December 17, 1998, in O.R. Book 577, Page 1844 of the official records for Hendry County (the "Conley Mortgage"). The Conley

Mortgage contained the following legal description of the Hangar Parcel:

> *All that lot, piece of parcel of land, situate, lying and being in the County of Hendry, State of Florida, more particularly described as follows:*
>
> *West 175' to the East 365' of the West 3/4 (said 3/4 by linear measurement) of Gov. Lot 1, Section 29, Township 43 South, Range 28 East.*
>
> *West 175' of the East 682.77' of Gov. Lot 3, Section 20, Township 43 South, Range 28 East, lying Southerly of Central and Southern Flood Control District Canal C-43, together with ingress and egress easement as described in O.R. Book 366, Page 401, Public Records of Hendry County, Florida, together with an easement for access over and across the following:*
>
> *The West 25 feet of the East 215 feet of the West 1/2 of the East 1/2 of the Southeast 1/4 of the Northeast 1/4 of said Section 29, lying North of the North right of way of State Road 80.*

In other words, the Conley Mortgage encumbered the Hanger Parcel.

28. At the time the Mortgage Modification was executed and recorded, Haas did not realize that the legal description on the Exhibit A attached to the Mortgage Modification did not modify the Mortgage to include the Hangar Parcel and that a modification of the Mortgage to include the Hangar Parcel had not been effected. Haas did not discover the error until 2011, when Shults defaulted on their repayment obligations under the Note and Haas began the process of foreclosing on the Mortgage. At that time, Haas also discovered that the Conley Mortgage encumbered the Hangar Parcel.

29. Haas did not knowingly delay in asserting a claim for reformation, and Shults were not materially prejudiced by any willful delay by Haas in asserting the claim for reformation.

Conclusions of Law

The Court's ruling is based on the following conclusions of law:

30. Federal Rule of Civil Procedure 56(a), incorporated by Fed. R. Bankr. P. 7056, states that summary judgment shall be granted if the moving party shows that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law.

31. The party moving for summary judgment has the burden of meeting this standard.[10] After the moving party has met its burden, the burden shifts to the non-moving party to establish through record evidence that a fact is genuinely disputed.[11]

32. More than twenty (20) days have expired from the filing of the Complaint in this adversary proceeding.

33. The equitable remedy of reformation is properly invoked and applied in this case because the Purchase Agreement, which includes a fully executed and recorded Option Agreement, leaves absolutely no doubt that the parties intended the Hanger Parcel to be subject to and encumbered by a first mortgage in favor of Haas when Shults exercised their option to purchase the Hangar Parcel in December 1998. Such a conclusion does not require the parsing of words; rather, it is clear from the plain language agreed upon by the parties in a fully integrated writing.

34. The Option Agreement states in material part that "[t]he total amount paid will be applied to the principal of the existing mortgage between Shults and Haas on the contiguous property. At such time, this subject property will become part of the said first mortgage."

35. Consistent with this provision, the Addendum to the Purchase Agreement contained the following term: "Seller not to grant releases on 'airstrip' or 'hangar' without buyers (sic) agreement not to sell until remaining mortgage is paid in full." There would be no need for Haas to grant Shults a release from a mortgage if the mortgage was not intended to include and encumber the Hangar Parcel. Because the Mortgage Modification that was executed and recorded did not effectuate the parties' agreement by including the Hangar Parcel in the description of the encumbered real property, equity should reform the Mortgage Modification to include the Hangar Parcel.

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[10] *Anderson v. Liberty Lobby. Inc.*, 477 U.S. 242, 248 (1986); *Matsushita Electric Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

[11] Fed. R. Civ. P. 56(c).

36. Where an agreement has been entered into, but an effectuating instrument in its written form does not express the parties' true intent, equity has jurisdiction to reform the written instrument so as to conform to the agreement of the parties.[12] "Notably, in reforming a written instrument, an equity court in no way alters the agreement of the parties. Instead, the reformation only corrects the defective written instrument so that it accurately reflects the true terms of the agreement actually reached."[13]

37. Where the mistake in the effectuating instrument is the product of the parties' mutual mistake, courts should reform the instrument to accurately reflect the parties' agreement.[14] A mistake is mutual for the purpose of reformation when the parties agree to one thing and then, by scrivener's error or inadvertence, express something different in the written instrument.[15]

38. The Purchase Agreement, including the Option Agreement, constitutes a fully integrated contract between the parties, and the terms of the parties' agreement cannot be varied by parol evidence.[16]

39. While courts are without power to make or rewrite contracts for the parties, they do have the power to interpret them.[17] It is well established that the parties' intent governs contract construction and interpretation.[18] Additionally, where two or more documents are executed by the same parties at the same time, in the course of the same transaction, and concern the same subject matter, they should be read and construed together.[19] Longstanding rules of contract interpretation dictate that the words and phrases in the contract should be given their common and ordinary meanings.[20] If the language of a contract is susceptible of two constructions, the contract should not be interpreted in a manner that would make it inequitable, unnatural, or leave one party at the mercy of the other.[21] A reasonable interpretation of a contract is preferred to an unreasonable one.[22]

40. Having found that the Purchase Agreement is a fully integrated written contract, the Court looks to the Purchase Agreement, and in particular the Option Agreement, to determine whether the Mortgage Modification effectuated the parties' intentions as they were clearly set forth in the Purchase Agreement. The interpretation of the Purchase Agreement and Option Agreement presents a question of law rather than fact.[23]

41. Because the Court finds that the Purchase Agreement is a fully integrated contract, the Court does not—and cannot—consider extrinsic or parol evidence that contradicts or varies the terms of the Purchase Agreement. Instead, the Court simply corrects the defective written instrument, in this case the Mortgage Modification, so that it accurately reflects the true terms of the agreement actually reached.[24]

42. The Option Agreement's language requiring the Hangar Parcel to be included in the property encumbered by the Mortgage is clear and unambiguous. The Hangar Parcel was to be added to the encumbered property when Shults exercised their option to purchase that parcel. Given these facts, the Court cannot consider evidence that attempts to vary or contradict the terms of the Purchase Agreement.

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[12] *See Providence Square Ass'n, Inc. v. Biancardi*, 507 So. 2d 1366 (Fla. 1987); *DR Lakes Inc. v. Brandsmart U.S.A. of West Palm Beach*, 819 So. 2d 971 (Fla. 4th DCA 2002); *Smith v. Royal Automotive Group, Inc.*, 675 So. 2d 144 (Fla. 5th DCA 1996).

[13] *See Providence Square Ass'n, Inc.*, 507 So. 2d at 1369-1370; *see also Federal Ins. Co. v. Donovan Industries, Inc.*, 75 So. 3d 812, 815 (Fla. 2d DCA 2011); *Ayers v. Thompson*, 536 So. 2d 1151, 1154 (Fla. 1st DCA 1988).

[14] *Kolski v. Kolski*, 731 So. 2d 169, 173 (Fla. 3d DCA 1999).

[15] *See Providence Square Ass'n, Inc.*, 507 So. 2d at 1372; *Federal Ins. Co. v. Donovan Industries, Inc.*, 75 So. 3d at 815; *BrandsMart U.S.A. of West Palm Beach, Inc. v. DR Lakes, Inc.*, 901 So. 2d 1004 (Fla. 4th DCA 2005); *Circle Mortg. Corp. v. Kline*, 645 So. 2d 75 (Fla. 4th DCA 1994).

[16] *See Smith Engineering & Const. Co. v. U. S. Fidelity & Guaranty Co.*, 199 So. 2d 302, 304-305 (Fla. 1st DCA. 1967); *see also Stock Fraud Prevention, Inc. v. Stock News Info, LLC*, 2012 WL 664381, at *8 (S.D. Fla. Feb. 28, 2012).

[17] *See Haenal v. U.S. Fidelity & Guar. Co.*, 88 So. 2d 888, 890 (Fla. 1956).

[18] *Whitley v. Royal Trails Prop. Owners' Ass'n*, 910 So. 2d 381, 383 (Fla. 5th DCA 2005); *Royal Oak Landing Homeowner's Ass'n, Inc. v. Pelletier*, 620 So. 2d 786, 788 (Fla. 4th DCA 1993).

[19] *International Ship Repair & Marine Services, Inc. v. General Portland, Inc.*, 469 So. 2d 817, 818 (Fla. 2d DCA 1985).

[20] *Murley v. Wiedamann*, 25 So. 3d 27, 29 (Fla. 2d DCA 2009).

[21] *Huntington on the Green Condo. v. Lemon Tree I–Condo.*, 874 So. 2d 1, 5 (Fla. 5th DCA 2004).

[22] *James v. Gulf Life Ins. Co.*, 66 So. 2d 62, 63–64 (Fla. 1953); *Travelers Indem. Co. v. Milgen Dev., Inc.*, 297 So. 2d 845 (Fla. 3d DCA 1974).

[23] *Port-A-Weld, Inc. v. Padula & Wadsworth Constr., Inc.*, 984 So. 2d 564, 568 (Fla. 4th DCA 2008).

[24] *See Providence Square Ass'n, Inc.*, 507 So.2d at 1370; *Ayers v. Thompson*, 536 So. 2d at 1154-55.

43. The plain language of the Purchase Agreement, which expressly includes the Option Agreement, clearly indicates that the Hangar Parcel was inadvertently excluded from the Mortgage Modification due to mistake or oversight. Reinforcing this conclusion is the fact that the Mortgage Modification, which was recorded in conjunction with the delivery of the HP Warranty Deed to Shults, did not in any way modify the Mortgage. The only effect of the Mortgage Modification was to memorialize the principal reduction under the promissory note. The only logical and plausible explanation for the creation, execution and recordation of the Mortgage Modification is that Shults and Haas intended the Mortgage Modification to modify the Mortgage so as to include the Hangar Parcel as encumbered property. It follows that because the Mortgage Modification did not actually modify the Mortgage, there must have been some error in the incorporated legal description of the mortgaged property. There is simply no credible reason for recording a mortgage modification agreement that does nothing to modify the mortgage purportedly being modified.

44. Shults alleged as their second affirmative defense that Haas' cause of action is barred by Fla. Stat. § 95.11. The Court notes that this section is titled "Limitations other than for the recovery of real property," and it is the Court's conclusion that Fla. Stat. § 95.11 is not controlling and does not time bar Haas' reformation claim.

45. Shults also alleged by way of affirmative defense that Haas' reformation claim is barred by the equitable doctrine of laches. Laches "requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense."[25] Laches is an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party. It is an equitable defense, and its applicability depends upon the circumstances and equities of each case.

46. The Court finds no evidence that Haas knew that the legal description incorporated in the Mortgage Modification contained an error and did not effectuate the parties' intent as set forth in the Purchase Agreement. Nor does the Court find any discernible evidence that Shults were prejudiced by any failure on the part of Haas to assert the claim for reformation to correct the error. The error in the legal description was only discovered after Shults defaulted on their repayment obligations. Moreover, the Court concludes that the equities do not lie with the Shults, who suffered no extraordinary and significant prejudice, but rather with Haas, whom Shults failed to repay.

47. Finally, the Court finds that Shults' other affirmative defenses are either legally insufficient or not supported by the record evidence in this case.

48. Thus, on the record before this Court, the entry of summary judgment on Haas' reformation claim is appropriate and fully justified. The Court finds that there is no genuine dispute of material fact precluding this result. Accordingly, the Motion is granted. Because Count I of the Amended Complaint is the only claim at issue in this adversary proceeding, Haas is now entitled to final judgment.

Accordingly, it is

ORDERED:

1. Plaintiff's Motion for Summary Judgment on Count I of the Amended Complaint is GRANTED.

2. Plaintiff is directed to submit a proposed Final Judgment for the Court's consideration and approval.

DONE and **ORDERED** in Chambers at Tampa, Florida, on August 13, 2013.

__/s/_____
Caryl E. Delano
United States Bankruptcy Judge

Plaintiff's counsel, Alberto F. Gomez, Jr., is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

[25] *Costello v. United States*, 365 U.S. 265, 282 (1961); *Van Meter v. Kelsey*, 91 So. 2d 327 (Fla. 1956).