

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

CANDELARIO VARGAS : BK No. 07-10157
Debtor : Chapter 7
NORMAN PETTIGREW and :
RUTH PETTIGREW :
Plaintiffs :
v. : A.P. No. 07-1042
CANDELARIO VARGAS and :
PHOENIX FINANCIAL CORPORATION :
Defendants :
- - - - -x

ORDER GRANTING SUMMARY JUDGMENT

APPEARANCES:

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BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

Heard on the Plaintiffs' (Pettigrews') objection to Defendant Phoenix Financial Corporation's ("Phoenix") Motion for Partial Summary Judgment. Upon consideration of the oral arguments, the briefs, and the authorities cited,¹the Court agrees with, adopts, and incorporates by reference herein the arguments advanced by Phoenix, and **GRANTS** its Motion for Summary Judgment.

The Pettigrews do not address the substantive legal issues presented by Phoenix, but instead argue that the Motion should be denied for alleged procedural reasons. In addition, they fail to address, in any way, Phoenix's legal argument, i.e., the problem with trying to rescind their subordination agreement with Phoenix, where there is no claim that Phoenix did anything wrong. To the contrary, the allegation is that the fraud was committed by others, namely, the Debtor and one Jaime Aguayo. Instead, the Plaintiffs, on technical grounds, argue that a list of undisputed facts contained in the Joint Pre-Trial Order ("JPTO") "are not admissions," because the JPTO is merely a "strategy document." In addition to being irrelevant, that is an absolutely incorrect description of the nature and purpose of a JPTO. As a matter of professional responsibility, as well as by local rule, the JPTO is designed to "facilitate and expedite the hearing of a contested matter," and RI Bankr. Form O provides that a JPTO shall include "facts which are admitted and require no proof." See RI LBR 9014-1(d). Further, astute readers should take away from here the caveat that any party filing a JPTO as a "strategy document" for the purpose of improving one's

¹ Or *not* cited, as is the case with the Plaintiffs.

position by posturing, can expect to be on the receiving end of a Rule 11 order to show cause why sanctions should not be imposed.

As for their choice of law argument, Plaintiffs offer no authority to support the contention that Massachusetts law is the appropriate choice in this case, and Plaintiffs' counsel conceded that he did not know what difference there would be by applying Rhode Island law versus Massachusetts law. Phoenix points out and represents that the Plaintiffs' choice of law argument is neither relevant nor substantively correct, since the result would be the same under either Rhode Island or Massachusetts law. On the present record, the Plaintiffs' argument and presentation of both of the foregoing issues could itself amount to a frivolous litigation tactic.

Because Phoenix's argument is correct as to the law and the agreed facts, Summary Judgment as to Phoenix Financial Corporation is **GRANTED**.

So Ordered.

Dated at Providence, Rhode Island, this 20th day of July, 2009.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 7/20/09