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Order on Renewed Motion for Summary Judgment (AVALON HOLDINGS)

Melvin K. Westmoreland Superior Court of Fullton County

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IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF GEORGIA

AVALON HOLDINGS, LLC, DARRYL)	FILED IN OFFICE
B. MOORE, LAVERIA A. KNOWLES,)	
and ALICE J. EKBERG,	MAR 1 9 2012
Plaintiffs,)	DEPUTY CLERK SUPERIOR COURT FULTON COUNTY, GA
v.)	Civil Action File No.
)	2009-CV-176138
REGAL PLAZA FUNDING, LLC,	
AMERIS BANK, and WILLIAM P.	
MOSS, III, as Substitute Trustee Under)	
Deed of Trust Date January 8, 2008,	
Defendants.)	

ORDER ON DEFENDANT AMERIS BANK'S RENEWED MOTION FOR SUMMARY JUDGMENT

On March 7, 2012, counsel appeared before the Court to present oral arguments on Defendant Ameris Bank's Renewed Motion for Summary Judgment. Upon consideration of the motion, the briefs submitted on the motion, the argument of the parties and the record of the case, the Court hereby **DENIES** the motion.

The Court finds that the defenses available under <u>D'Oench</u>, <u>Duhme & Co. v. Federal</u>

<u>Deposit Insurance Corp.</u>, 315 U.S. 447 (1942) and 12 U.S.C. § 1823(e) are not applicable to

Ameris Bank because the loan agreement at issue is not a secret agreement that this authority

was designed to address. <u>See Riverside Park Realty Co. v. FDIC</u>, 465 F. Supp. 305, 313 (M.D.

Tenn. 1978). With respect to Ameris Bank's claim for Waste, the Court declines to extend this

cause of action to secured creditors without clear Georgia authority on this subject. Moreover,

the Court finds an issue of fact with regard to whether the deterioration of the property was

directly caused by Plaintiffs' failures. As to Ameris Bank's claim for Conversion of Rents, the

Court finds a fact issue regarding whether Defendant has a contractual right to rent. Finally, the Court declines to reconsider its prior ruling set forth in the Order entered May 24, 2011.

SO ORDERED this 16th day of March, 2012.

MELVIN K. WESTMORELAND, SENIOR JUDGE

Superior Court of Fulton County

Atlanta Judicial Circuit

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