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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

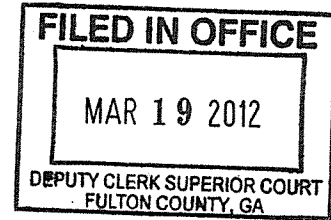
AVALON HOLDINGS, LLC, DARRYL)
B. MOORE, LAVERIA A. KNOWLES,)
and ALICE J. EKBERG,)

Plaintiffs,)

v.)

REGAL PLAZA FUNDING, LLC,)
AMERIS BANK, and WILLIAM P.)
MOSS, III, as Substitute Trustee Under)
Deed of Trust Date January 8, 2008,)

Defendants.)



Civil Action File No.
2009-CV-176138

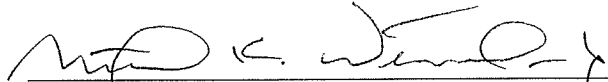
ORDER ON DEFENDANT AMERIS BANK’S RENEWED MOTION FOR SUMMARY JUDGMENT

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 D’Oench, Duhme & Co. v. Federal Deposit Insurance Corp., 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. See Riverside Park Realty Co. v. FDIC, 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

Copies sent electronically to:

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