

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

WACHOVIA BANK, N.A. successor by merger	:	
to MERIDIAN BANK	:	February Term, 2003
	:	
Plaintiff,	:	No. 04126
v.	:	
	:	Commerce Program
SHELDON ROSEN	:	
	:	Control No. 031344
Defendant.	:	

ORDER and MEMORANDUM

AND NOW, this 17th day of June 2004, upon consideration of the Motion for Summary Judgment of Defendant Sheldon Rosen (“Rosen”), all responses in opposition, the respective memoranda, all matters of record, and in accordance with the Memorandum Opinion being contemporaneously filed with this Order, it hereby is **ORDERED** and **DECREED** that said Motion is **DENIED**.

BY THE COURT:

GENE D. COHEN, J.

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MEMORANDUM OPINION

GENE D. COHEN, J.

Before the Court is the Motion for Summary Judgment of Defendant Sheldon Rosen (“Rosen”). For the reasons fully set forth below, Defendant’s Motion is **denied**.

DISCUSSION

The instant action arises out of a confessed judgment which was brought by Wachovia Bank (“Wachovia”) against Rosen. The judgment was entered on February 28, 2003 and opened by the Court’s Order of June 14, 2003. Defendant has since filed the instant motion for summary judgment, arguing that Wachovia’s claims against him are barred by the statute of limitations.

Under Pennsylvania law, the statute of limitations for breach of contract actions is four (4) years. 13 Pa.C.S.A. § 2725; 42 Pa.C.S.A. § 5525. For instruments signed under seal, the statute of limitations is twenty (20) years. 42 Pa.C.S.A. § 5529 (b)(1). At bar, Defendant argues that subsequent modifications to a Surety Agreement which was signed under seal transforms the twenty (20) year statute of limitations to a four (4) year statute of limitations because the modifications were not signed under seal. However, this argument misses the mark.

The law in Pennsylvania is clear: “a modification does not displace a prior valid contract;

rather, the new contract acts as a substitute for the original contract, but only to the extent it alters it.” Melat v. Melat, 411 Pa. Super. 647, 656, 602 A.2d 380, 385 (1992). “The original contract may be abrogated in part, with the residue remaining intact.” Id. Thus, the parts of the contract which were not specifically modified continue in full force and effect. Here, the original Surety Agreement was signed under seal. Def. Mtn. Exh. C. The Modification Agreements at issue clearly state that they were not to be deemed to constitute novations of the “Loan Documents,” a term which is specifically defined to include the Surety Agreement at issue. Def. Mtn., Exh. D at 2.C and § 6 and Exh. F at 2.C and § 7. The Modification Agreements further provide that: “[a]ll terms, covenants and conditions of the Loan Documents not modified by this Modification shall remain in full force and effect, and are hereby ratified, reaffirmed and confirmed...” Def. Mtn., Exh. D at § 7 and Exh. F at § 8(a). As such, the twenty (20) year statute of limitations applicable to instruments signed under seal applies in this instance.

“Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Pa.R.C.P. 1035.2; Horne v. Haladay, 1999 Pa. Super. 64, 728 A.2d 954 (1999). The moving party bears the burden of proving the nonexistence of any material fact. Id. At bar, Defendant has failed to satisfy this burden with respect to his assertions that Wachovia’s claims are time barred. Accordingly, his Motion is denied.

CONCLUSION

For the above-stated reasons, the Motion for Summary Judgment of Defendant Sheldon Rosen is **denied**.

The court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

GENE D. COHEN, J.