

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

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<b>URIEL TEDGI</b>	:	<b>JANUARY TERM, 2012</b>
	:	
<b>v.</b>	:	<b>NO. 2086</b>
	:	
<b>MOSHE ATTIAS</b>	:	<b>COMMERCE PROGRAM</b>
	:	
_____	:	<b>CONTROL NO. 1211158</b>

**ORDER**

**AND NOW**, this 21<sup>st</sup> day of December, 2012, upon consideration of the motion for summary judgment of plaintiff, Uriel Tedgi, and any response thereto, it is hereby

**ORDERED**

that the said motion is **GRANTED**. It is further

**ORDERED**

that judgment is entered in favor of plaintiff, Uriel Tedgi, and against defendant, Moshe Attias, in the amount of \$115,000.00, plus post judgment interest.

**BY THE COURT:**

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**GLAZER, J.**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
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**URIEL TEDGI**

**v.**

**MOSHE ATTIAS**

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**JANUARY TERM, 2012**

**NO. 2086**

**COMMERCE PROGRAM**

**CONTROL NO. 1211158**

**OPINION**

GLAZER, J.

December 21, 2012

Before the court is the motion for summary judgment of plaintiff, Uriel Tedgi. For the reasons set for the below, plaintiff's motion is granted.

**FACTS AND PROCEDURAL BACKGROUND**

Plaintiff commenced the present action on January 27, 2012 alleging: (1) breach of contract; (2) promissory estoppel; and (3) dissolution of the company. Defendant failed to answer or respond to the complaint and therefore default judgment was entered in favor of plaintiff. On or about April 12, 2012, the Court denied defendant's petition to open the default judgment. Defendant then filed a motion for reconsideration on or about April 23, 2012 which the court granted by Order dated May 9, 2012. On or about May 17, 2012, plaintiff filed an amended complaint. Subsequently, defendant filed preliminary objections to the amended complaint, which the Court overruled on August 29, 2012. On November 9, 2012, plaintiff withdrew their claims for promissory estoppel and dissolution of the company. Plaintiff now brings a motion for summary judgment on the remaining count, breach of contract.

At the beginning of August 2011, plaintiff and defendant formed Marion Court, LLC. Marion Court, LLC then purchased 5824-30 and 5840-50 North 13<sup>th</sup> Street in Philadelphia, Pennsylvania (the “Property”) for \$250,000.00. Plaintiff and defendant agreed to split the cost of the Property. Initially, both parties contributed \$10,000.00 toward the security deposit. Plaintiff then loaned defendant half of the remaining purchase price.

To secure the loan, defendant executed a loan agreement titled “Confession of Judgment.” Pursuant to the loan agreement, defendant owed plaintiff \$115,000.00. Defendant agreed to repay the money borrowed from plaintiff within sixty (60) days of August 12, 2011. Plaintiff further asserts that he loaned the defendant another \$2,108.59 for the prepaid taxes on the property. Defendant did not repay the plaintiff. Defendant admitted in his deposition that he, “owe[s] \$117,000.00 and I never said I don’t owe him money. I always said I owe the money...” Id. at Tab C, p. 21. However, defendant alleges that plaintiff told him, “[w]hen you get the money just give me the \$117,000.00 and we done.” See plaintiff’s motion for summary judgment, Tab C, p. 28. Defendant further alleges that the loan agreement was not meant to stand alone and therefore there are still material issues of fact to be decided. Additionally, defendant asserts that plaintiff also breached the loan agreement.

## **DISCUSSION**

Once the relevant pleadings have closed, any party may move for summary judgment. Pa. R.C.P 1035.2. “Pennsylvania law provides that summary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law.” Rausch v. Mike-Meyer, 783 A.2d 815, 821 (Pa. Super. 2001). Further, granting summary judgment is appropriate when the evidentiary record shows the material facts are undisputed. McCarthy v. Dan Lepore & Sons

Co., Inc., 724 A.2d 938, 940 (Pa. Super. 1998). The trial court must view the record in the light most favorable to the non-moving party. Rausch, 783 A.2d at 821. Rule 1035.3 of the Pennsylvania Rules of Civil Procedure provides:

The adverse party may not rest upon the mere allegations or denials of pleadings but must file a response within thirty days after service of the motion identifying:

- (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or
- (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

In Pennsylvania, three elements are necessary to properly plead a cause of action for breach of contract: “(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract, and (3) resultant damages.” CoreStates Bank, Nat’l Assn v. Cutillo, 723 A.2d 1053, 1058 (Pa. Super. 1999). Further, a written agreement may be modified by subsequent written or oral agreement and this modification may be shown by writing, words, or conduct. Pellegrene v. Luther, 403 Pa. 212 (1961). The oral contract which modifies a prior written contract must be proved by evidence which is clear, precise and convincing. Herr Estate, 400 Pa. 90, 161 A.2d 32 (1960).

Plaintiff has established and satisfied all elements for a breach of contract claim. Plaintiff entered into a contract with defendant to loan him \$115,000.00 as shown in the loan agreement. Further, defendant admits that he did not repay the plaintiff the money owed. In the loan agreement, defendant promised to pay back the plaintiff within sixty (60) days of August 12, 2011. Therefore, there was a breach duty imposed by the contract. Furthermore, because defendant did not pay the plaintiff back, there were resultant damages.

Defendant argues that the outstanding issues of material fact render summary judgment inappropriate. Defendant further asserts that when plaintiff said, “[w]hen you get the money just give me the \$117,000 and we done,” this modified the contract. See plaintiff’s motion for summary judgment, Tab C, p 28. However, defendant has not supplied any evidence besides this limited self-serving testimony to support this oral modification. Further, plaintiff’s intent to enforce the contract is evident from the filing of the current action in January 2012. Moreover, defendant admits that the reason he has not repaid the loan is because he does not “think it is smart to give Uriel the money,” and not because there had been a modification. See plaintiff’s motion for summary judgment, Tab C, 59.

Additionally, defendant argues that plaintiff also breached the contract. However, defendant does not reference any evidence to support the allegation.

### **CONCLUSION**

Based on the foregoing, summary judgment is granted in favor of plaintiff, Uriel Tedgi, and against defendant, Moshe Attias, for the sole count, breach of contract, of the amended complaint in the amount of 115,000.00<sup>1</sup>, plus post-judgment interest.

**BY THE COURT:**

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**GLAZER, J.**

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<sup>1</sup> Damages were determined pursuant to the express terms of the loan agreement.