

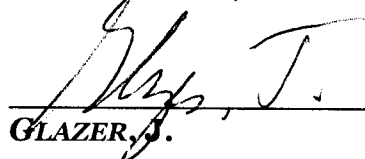
**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

BETHPAGE FEDERAL CREDIT UNION	:	January Term, 2017
	:	Case No. 01103
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
MOMODU KAMARA and KOMBOYA TRANS., INC.	:	
	:	
<i>Defendants</i>	:	Control No. 19052521

ORDER

AND NOW, this day of 22nd July, 2019, upon consideration of the un-rebutted motion for summary judgment of plaintiff, it is **ORDERED** that the motion is **GRANTED** and **JUDGMENT IS ENTERED** in favor of plaintiff and against defendants Momodu Kamara and Komboya Trans, Inc., in the amount of \$349,604.20 plus continuing interest calculated from May 16, 2019, in the *per diem* amount of \$36.66, plus attorney's fees and costs, if any.

BY THE COURT,



GLAZER, J.

DOCKETED

JUL 22 2019

R. POSTELL
COMMERCE PROGRAM

Bethpage Federal Credit-WSJDM



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OPINION

The instant action commenced on January 6, 2017 as plaintiff, Bethpage Federal Credit Union (hereinafter, “Lender”), filed a complaint against individual defendant Momodu Kamara (the “Borrower”), and corporate defendant Komboya Trans., Inc. (the “Guarantor”). In the complaint, Lender asserts claims of breach-of-contract respectively against Borrower and Guarantor. Specifically, Lender alleges that Borrower and Guarantor defaulted on a document titled “Balloon Note.”¹ The Balloon Note had been executed by Borrower in his dual capacities –as the individual borrower of a loan in the amount of \$303,000.00, and as the owner/president of Guarantor.

On January 22, 2018, judgment by default was entered against Borrower and Guarantor; however, on March 9, 2018, Lender stipulated that the judgment be opened and this court gave its approval and the judgment was opened.

On October 4, 2018, Guarantor filed an answer with new matter and counterclaim to the complaint. The counterclaim asserted three claims against Lender: fraud, negligent misrepresentation, and breach of the covenant of good faith and fair dealing. Upon the preliminary objections filed by Lender, this court dismissed the counterclaims of fraud and negligent misrepresentations, but allowed the counterclaim of breach of the covenant of good faith and fair dealing to survive.

The instant motion asks this court to enter judgment in favor of Lender on its two claims asserting breach of contract, and to dismiss the surviving counterclaim asserting breach of the implied covenant of good faith and fair dealing. Borrower and Guarantor have not filed any responses opposing this motion.

¹ Exhibit A to the complaint.

DISCUSSION

The standards for summary judgment are well settled:

[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law—

- (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
- (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury....

A proper grant of summary judgment depends upon an evidentiary record that either—

- (1) shows the material facts are undisputed or
- (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense and, therefore, there is no issue to be submitted to the jury....

Where a motion for summary judgment is based upon insufficient evidence of facts, the adverse party must come forward with evidence essential to preserve the cause of action.... If the non-moving party fails to come forward with sufficient evidence to establish or contest a material issue to the case, the moving party is entitled to judgment as a matter of law. The non-moving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party. As with all summary judgment cases, the court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party

as to the existence of a triable issue.²

In the counterclaim, Guarantor asserts that Lender breached the implied covenant of good faith and fair dealing by employing “unsound and abusive lending practices” and “by its manipulation of [taxicab] medallion prices.”³ Lender challenges these assertions by noting that Guarantor has provided no evidence showing that Lender engaged in unsound and abusive lending practices, or that it manipulated the prices of any taxicab medallions.⁴

Under Pennsylvania law, “a breach of the covenant of good faith [and fair dealing] is nothing more than a breach of contract claim.”⁵ Stated differently, a “breach of the implied covenant of good faith and fair dealing is subsumed in a breach of contract claim.”⁶ In addition, to successfully maintain a cause of action for breach of contract requires that the plaintiff establish: (1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages.⁷ Finally, “to recover for damages pursuant to a breach of contract, the plaintiff must show a causal connection between the breach and the loss.”⁸

In this case, Guarantor has offered no evidence of any unsound and abusive lending practices as allegedly employed by Lender, and no evidence that Lender manipulated the price of any taxicab medallions. Moreover, the absence of evidence of any breach precludes the possibility of a connection between such a breach and any loss

² Grandelli v. Methodist Hosp., 777 A.2d 1138, 1143–44 (Pa. Super. 2001).

³ Answer with new matter and counterclaim, ¶¶ 51-53.

⁴ Motion for summary judgment, ¶ 47.

⁵ JHE, Inc. v. Se. Pennsylvania Transp. Auth., (Pa. Com. Pl. May 17, 2002).

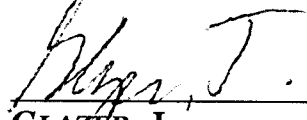
⁶ LSI Title Agency, Inc. v. Evaluation Servs., Inc., 951 A.2d 384, 392 (Pa. Super. 2008) (explaining JHE, Inc. v. Se. Pennsylvania Transp. Auth., *supra*).

⁷ Gorski v. Smith, 2002 PA Super 334, ¶ 16, 812 A.2d 683, 692 (Pa. Super. 2002).

⁸ Logan v. Mirror Printing Co. of Altoona, Pa., 600 A.2d 225, 226 (Pa. Super. 1991).

suffered by Guarantor. In conclusion Borrower and Guarantor have failed as the non-moving parties to adduce any evidence to contest the case of Lender, and have failed to produce any evidence in support of their surviving counterclaim. For these reasons, the motion for summary judgment of Lender on its two breach-of-contract claims is granted, and judgment is entered in its favor and against Borrower and Guarantor. The counterclaim of breach of the implied covenant of good faith and fair dealing is dismissed.

BY THE COURT,



GLAZER, J.