

DOCKETED

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R. POSTELL
COMMERCE PROGRAM

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

BETHPAGE FEDERAL CREDIT UNION

Plaintiff

v.

ABRAHAM BHATTI and TAJ SONS, CORP.

Defendant

: March Term, 2017
: Case No. 01592
:
:
: Commerce Program
:
:
: Control No. 20032181

ORDER

AND NOW, this 10th day of November, 2020, upon consideration of the motion for summary judgment of plaintiff, the response in opposition of defendants, and the respective *memoranda-of-law*, it is **ORDERED** that the motion is **GRANTED** in its entirety and summary judgment is entered in favor of plaintiff and against defendants on the claim asserted by plaintiff in its complaint, and on the surviving counterclaim asserted by defendants in their answer, new matter, and counterclaim. The surviving counterclaim is thus **DISMISSED**.

BY THE COURT,


GLAZER, J.

Bethpage Federal Credit-ORDRF



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OPINION

The instant action commenced on March 16, 2017, as plaintiff, Bethpage Federal Credit Union (hereinafter, “Lender”), filed a complaint against individual defendant Abraham Bhatti (the “Borrower”), and corporate defendant Taj Sons, Corp. (the “Guarantor”). In the complaint, Lender asserts claims of breach-of-contract respectively against Borrower and Guarantor. Specifically, Lender avers that Borrower and Guarantor defaulted on a document titled “Balloon Note.”¹ The Balloon Note had been executed by Borrower in his twin capacities, as the individual borrower of a “Loan” in the amount of \$150,000.00, and as the owner/president of Guarantor.² Borrower and Guarantor also executed a “Security Agreement,” whereby they provided collateral to the Loan, in the form of a taxicab medallion, No. P—1042.³

On June 29, 2018, Borrower and Guarantor filed an answer with new matter and counterclaims to the complaint. The counterclaims 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.

On March 16, 2020, Lender filed a motion for summary judgment. This motion asks this court to enter judgment in favor of Lender on its two breach-of-contract claims, and to dismiss the surviving counterclaim asserting breach of the implied covenant of good faith and fair dealing. The motion has been fully briefed.

¹ Complaint, ¶ 5; Balloon Note, Exhibit A to the complaint

² Balloon Note, Exhibit A to the complaint.

³ Security Agreement, Exhibit B 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.⁴

⁴ Grandelli v. Methodist Hosp., 777 A.2d 1138, 1143-44 (Pa. Super. 2001) (emphasis supplied).

In the counterclaim, Borrower and Guarantor assert that Lender breached the implied covenant of good faith and fair dealing by employing “unsound and abusive lending practices” and by misrepresenting not only that the Balloon Note could be re-financed indefinitely, but also that any delinquency by Borrower and Guarantor would be written-off.⁵ In addition, Borrower and Guarantor assert that the underlying Loan was not made for commercial purposes, but for Borrower’s personal use.⁶

Lender challenges these assertions by noting that Borrower and Guarantor have provided no evidence in support of the allegations contained in their counterclaim, nor any evidence to defeat Lender’ motion for summary judgment.⁷

Under Pennsylvania law, “a breach of the covenant of good faith [and fair dealing] is nothing more than a breach of contract claim.”⁸ Stated differently, a “breach of the implied covenant of good faith and fair dealing is subsumed in a breach of contract claim.”⁹ 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.¹⁰

Finally, “to recover for damages pursuant to a breach of contract, the plaintiff must show a causal connection between the breach and the loss.”¹¹

⁵ Answer with new matter and counterclaim, ¶¶ 40, 57, 62.

⁶ *Id.*, ¶ 41.

⁷ Motion for summary judgment, ¶¶ 40-42, 46.

⁸ *JHE, Inc. v. SE Pennsylvania Transp. Auth.*, (Pa. Com Pl. May 17, 2001).

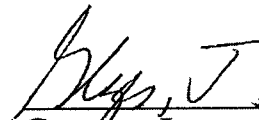
⁹ *LSI Title Agency, Inc. v. Evaluation Servs., Inc.*, 951 A.2d 384, 391 (Pa. Super. 2008) (explaining *JHE, Inc. v. SE Pennsylvania Transp. Auth.*, *supra*).

¹⁰ *Gorski v. Smith*, 812 A.2d 683, 692 (Pa. Super. 2002).

¹¹ *Logan v. Mirror Printing Co. of Altoona, Pa.*, 600 A.2d 225 2 26 (Pa. Super. 1991).

In this case, Guarantor has offered no evidence showing that Lender engaged in unsound and abusive lending practices, no evidence that the underlying Loan to Borrower was disbursed for his personal use, and no evidence to rebut the two breach-of-contract claims asserted by Lender in its complaint. 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 is granted: judgment is entered in favor of Lender and against Borrower and Guarantor. The surviving counterclaim of breach of the implied covenant of good faith and fair dealing is dismissed.

BY THE COURT,



GLAZER, J.