

RECEIVED

JUL 15 2019

ROOM 521

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

---

BETHPAGE FEDERAL CREDIT UNION : December Term, 2017  
: Case No. 01530  
v. :  
: Commerce Program  
WILNER PIERRE and WIL & DONE CAB CO. : Control No. 19052515

---

DOCKETE

JUL 15 2019

N. ERICKSON  
DAY-FORWARD

ORDER

AND NOW, this day of 15<sup>th</sup> July, 2019, upon consideration of the motion for summary judgment of plaintiff and the response in opposition of defendant Wilner Pierre, it is **ORDERED** that the motion is **GRANTED** and **JUDGMENT IS ENTERED** in favor of plaintiff and against defendants Wilner Pierre and Wil & Done Cab Co. as to the breach-of-contract claims asserted by plaintiff in its complaint, in the amount of \$362,486.05 plus continuing interest calculated from May 16, 2019, in the *per diem* amount of \$34.87, plus attorney's fees and costs, if any.

**FURTHERMORE**, the motion for summary judgment is **GRANTED** in favor of plaintiff and against defendants Wilner Pierre and Wil & Done Cab Co. as to the claim of breach-of-contract asserted by defendants in their counterclaim, and that claim is **DISMISSED**.

BY THE COURT,

  
GLAZER, J.

Bethpage Federal Credit-WSSJP



17120153000052

## OPINION

The motion for summary judgment requires this court to determine whether any disputed issues of material fact exist which could be established by additional discovery. The court finds that no disputed issues of material fact exist, and the motion is granted.

## BACKGROUND

Plaintiff is Bethpage Federal Credit Union (“Lender”). Lender is the successor-in-interest to an entity named Montauk Credit Union (“Montauk”). Defendants are an individual, Wilner Pierre (“Borrower”), and his taxicab company, Wil & Done Cab Co. (“Guarantor”).

On March 28, 2014, Montauk loaned funds to Borrower who, jointly with Guarantor, executed a \$325,000 balloon note (the “Note”), in favor of Montauk. Pursuant to the Note, Borrower undertook the obligation to repay the loan, and Guarantor guaranteed Borrower’s obligation.<sup>1</sup> In addition, Guarantor entered into “Security Agreement” with Montauk.<sup>2</sup> Under the Security Agreement, Guarantor granted to Montauk an interest in the collateral, in this case, a taxicab medallion, No. P—1402. On March 12, 2016, Lender succeeded in the interests of Montauk by way of a business merger.

On December 12, 2017, Lender commenced the instant action against Borrower and Guarantor. In the complaint, Lender avers that Borrower and Guarantor defaulted under the Note by failing to make payments when due.<sup>3</sup> On June 7, 2018, Borrower and Guarantor filed an amended answer to the complaint of Lender: this amended answer included a new matter and three counterclaims asserting against Lender the claims of

---

<sup>1</sup> Balloon Note, Exhibit A to the complaint.

<sup>2</sup> Security Agreement, Exhibit B to the complaint.

<sup>3</sup> Complaint, ¶ 9.

fraud, negligent misrepresentation, and breach of contract.

On June 27, 2018, Lender filed preliminary objections to the three counterclaims of Borrower and Guarantor, and on December 20, 2018, this court sustained-in-part the preliminary objections and dismissed the counterclaims asserting fraud and negligent misrepresentation; the counterclaim asserting breach of contract was allowed to survive. On May 20, 2019, Lender filed the instant motion for summary judgment. This motion asks the court to grant summary judgment in favor of Lender for the failure of Borrower and Guarantor to raise any viable defenses against the claims asserted by Lender in its complaint. In addition, the motion asks this court to find that Borrower and Guarantor have failed to provide any evidence in support of their surviving breach-of-contract counterclaim; therefore, Lender asks this court to dismiss the surviving counterclaim. In response, Borrower and Guarantor filed a *pro se* answer to Lender's motion for summary judgment; the *pro se* answer is titled "*Answer and New Matter with New Matter Counterclaim.*"<sup>4</sup>

#### 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

---

<sup>4</sup> The court assumes that Borrower, an individual defendant, has *pro-se* filed the instant answer only on his behalf, not on behalf of his corporate Guarantor. The court makes this assumption because under Pennsylvania law, "a person who accepts the advantages of incorporation ... must also bear the burdens including the need to hire counsel to sue or defend in court." *Valacavage v. Excell*, 480 A.2d 281 (Pa. Super. 1984). In this case the Borrower, an individual defendant, may defend himself in this court; however, he may not personally defend Guarantor, a corporation, and must hire counsel, if at all, to defend that entity.

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.<sup>5</sup>

I. **Borrower and Guarantor have not come forward with any evidence as to any issues on which they bear the burden of proof.**

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.<sup>6</sup>

---

<sup>5</sup> Grandelli v. Methodist Hosp., 777 A.2d 1138, 1143–44 (Pa. Super. 2001).

<sup>6</sup> Gorski v. Smith, 2002 PA Super 334, ¶ 16, 812 A.2d 683, 692 (Pa. Super. 2002).

In the motion, Lender asserts that Borrower and Guarantor have failed to dispute the material facts –facts which Lender reiterates as follows: first, that both Borrower and Guarantor bound themselves to the obligations described in the Note, and Guarantor additionally granted to Lender a security interest in a taxicab medallion; and second, that Borrower and Guarantor subsequently defaulted on the Note and failed to cure their default.<sup>7</sup>

In the *pro-se* response to Lender’s motion for summary judgment, Borrower and Guarantor do not specifically deny these facts. Instead, they suggest that Lender engaged in improper conduct designed to steer “**consumers** into a loan ... that will mean more compensation for ... [Lender].”<sup>8</sup> In addition, Borrower and Guarantor suggest that Lender sought to receive excess compensation by offering its loans on the basis of “speculative inflated market values.”<sup>9</sup> In support of these suggestions, Borrower and Guarantor have attached as evidence a “Supervisory Letter” issued by a federal agency, the National Credit Union Administration (the “NCUA”). Through this letter, the NCUA warned any credit unions that “[w]hen economic conditions change, credit unions that engage in significant levels of liberal financing can suffer significant loan-to-value shortfalls,” and such credit unions “may be exposed to elevated risk requiring heightened due diligence, risk modeling, and mitigation strategies.”<sup>10</sup> In addition, the Advisory Letter informed that potential taxi-medallion borrowers could qualify for a

---

<sup>7</sup> Motion for summary judgment of Lender, ¶¶ 24-23.

<sup>8</sup> *Pro-se* answer in response to the motion for summary judgment. pp. 1-2 (un-numbered) (emphasis added). Under the terms of the Note and Security Agreement, Borrower and Guarantor agreed to repay funds of \$325,000, and granted to Lender an interest in the taxicab medallion. The language in both contracts clearly and unequivocally show that these were not “**consumer**” transactions but business transaction consummated on one side by a sophisticated businessman and his corporation, and by Montauk Credit Union on the other.

<sup>9</sup> *Id.*, pp. 2-3 (un-numbered).

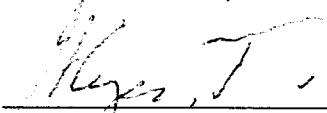
<sup>10</sup> Advisory Letter, attached to the *pro-se* answer to the motion for summary judgment of Lender, p. 5.

taxi-medallion loan if they showed an income-to-indebtedness ratio of \$1.25 to \$1.00.<sup>11</sup>

In this case however, a review of the *pro-se* answer, including the attached Advisory Letter, shows that Borrower and Guarantor have not presented any evidence capable of creating an issue of material of fact that could preclude this court from summary judgment. In addition, although Borrower and Guarantor suggest that Montauk or Lender breached their contractual duties by engaging in lax lending practices, they have not offered any evidence showing a causal connection between Lender's alleged breach and their loss, if any.<sup>12</sup> This failure is fatal to the counterclaim asserted by Borrower and Guarantor, and the claim thereof may not survive.

Based on the foregoing, and upon an examination of the record in the light most favorable to Borrower and Guarantor, this court concludes that there are no disputed issues of material fact, and no issues to be submitted to a fact-finder. For these reasons, the motion for summary judgment of Lender is granted and judgment is entered in favor of Lender and against Borrower and Guarantor. The counterclaim of Borrower and Guarantor, asserting breach-of-contract, is dismissed.

**BY THE COURT,**

A handwritten signature in dark ink, appearing to read "J. Glazer", is written over a horizontal line.

**GLAZER, J.**

---

<sup>11</sup> Id., 7 (Debt Service Ability).

<sup>12</sup> Logan v. Mirror Printing Co. of Altoona, Pa., 600 A.2d 225, 226 (Pa. Super. 1991).