

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

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PENTAGON FEDERAL CREDIT UNION	:	June Term, 2018
Successor-in-Interest of	:	Case No. 03522
PROGRESSIVE CREDIT UNION	:	
	:	
<i>Plaintiff</i>	:	
	:	
<b>v.</b>	:	Commerce Program
	:	
PIERRE J. DIEUDONNE AND KARLIE CAB CO.	:	
	:	
<i>Defendants</i>	:	Control No. 20032266

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**ORDER**

AND NOW, this 19<sup>th</sup> day of November, 2020, upon consideration of the unopposed motion for summary judgment of plaintiff, and the evidence on the record, it is **ORDERED** that the motion is **GRANTED** and judgment is entered in favor of plaintiff and against defendants. The amount of accrued interest claimed by plaintiff in its motion for summary judgment is **REDUCED**, from \$18,231.94 to \$11,420.50.<sup>1</sup> The attorney's fees are stricken, and the amount of judgment is modified accordingly, as shown below.<sup>2</sup>

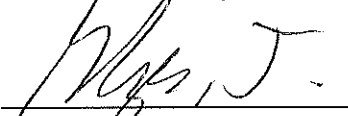
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<sup>1</sup> The issues presented by this motion are substantially similar to those presented in an unrelated case captioned Progressive Federal Credit Union v. Azonobi and Laobin, Inc., case No. 1708-01626 ("Azonobi"). In Azonobi, the court modified the amount of accrued interest, reduced the judgment, and explained its reasons in an Order-and-Opinion issued on November 12, 2020. Although the amounts of judgment in Azonobi and in this action are different, the legal issues and the reasons for reducing the accrued interest are the same; thus, to explain as speedily and inexpensively the reasons for reducing the accrued interest in this action, the court has attached hereto as Exhibit A its Order-and-Opinion issued under the Azonobi action.

<sup>2</sup> Although the issues before the court are substantially similar to those in Azonobi, one issue presented in the instant motion stands apart –namely, whether plaintiff's claim for attorney's fees is permissible. In the complaint, plaintiff claimed no attorney's fees whatsoever, whereas in its motion for summary judgment, it seeks such fees in the amount of \$7,133.50. The court reviewed the evidence on the

Principal	\$140,760.41
Interest	\$11,420.50
Late fees	\$1,107.27
Attorney's fees	\$0.00
Total	\$153,288.18

BY THE COURT,

  
 GLAZER, J.

record, including the Balloon Note, Guaranty, and Application for Loan Extension / Modification, respectively found at Exhibits A, B and C of the complaint. After a careful examination of those documents, the court found provisions for attorney's fees only in the Balloon Note and Guaranty, and only within the warrants-of-attorney thereof. The court could not find any provision for attorney's fees in the Application for Loan Extension / Modification. The law on the interpretation of contracts is settled:

[t]he interpretation of any contract is a question of law.... In interpreting a contract, the ultimate goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement. When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. Humberston v. Chevron U.S.A., Inc., 75 A.3d 504, 509–10 (Pa. Super. 2013).

In addition—

[t]he American Rule [embodied in 42 Pa. C.S.A. § 1726(a)(1)] states that a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties or some other established exception. Mosaica Acad. Charter Sch. v. Com. Dep't of Educ., 813 A.2d 813, 822 (Pa. 2002).

In this case, plaintiff has not pointed to any clear contractual or express statutory provision allowing it to claim attorney's fees, and the only provisions allowing such fees are relegated within the warrants-of-attorney. However, plaintiff did not confess any judgment, and upon a reading of the pertinent documents, this court finds that the attorney's fees might have been collected only pursuant to the entry of judgment by confession. Since plaintiff filed not an action-in-confession-of-judgment, but an action sounding in breach-of-contract, the attorney's fees are impermissible and are stricken.

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

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PENTAGON FEDERAL CREDIT UNION,  
successor in interest of  
PROGRESSIVE FEDERAL CREDIT UNION

*Plaintiff*

v.

NATHAN E. AZONOBİ and LAOBIN, INC.

*Defendants*

: August Term, 2017  
: Case No. 01626  
:  
:

: Commerce Program  
:  
:

: Control No. 20021773


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ORDER

AND NOW, this 12<sup>th</sup> day of November, 2020, upon consideration of the unopposed motion for summary judgment of plaintiff, and the evidence on the record, it is **ORDERED** that the motion is **GRANTED** and judgment is entered in favor of plaintiff and against defendants. The amount of accrued interest claimed by plaintiff in its motion for summary judgment is **REDUCED**, from \$24,042.93 to \$14,012.73, and the judgment amount is modified accordingly as follows:

Principal	\$168,275.90
Interest	\$14,012.73
Late fees	\$1,832.76
NSF	\$170.00
Total	\$184,271.39

BY THE COURT,

  
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GLAZER, J.

"A"

### OPINION

Plaintiff (hereinafter “Lender”), filed a complaint against corporate defendant Laobin, Inc. (“Borrower”), and individual defendant Nathan E. Azonobi (“Guarantor”). The complaint asserts two breach-of-contract-claims, against Borrower and against Guarantor, respectively. The complaint avers that Borrower and Guarantor defaulted on their obligations upon a secured promissory note (the “Note”) and a personal guaranty, as they failed to pay the amounts due at the maturity of the Note.<sup>1</sup> Under the complaint, Lender seeks to recover the following amounts:

Principal	\$168,275.90
Interest	\$5,997.33
Late fees	\$458.19
NSF	\$170.00
Legal fees	\$448.00
Total	\$175,329.42

On July 13, 2018, Borrower and Guarantor filed an answer with new matter to the complaint. In the answer, Borrower and Guarantor admit that they failed to make payment of principal and interest, but deny owing to Lender any other amounts claimed in the complaint.<sup>2</sup>

On November 11, 2019, this court issued a revised case management Order instructing the parties that “all discovery” in this action should be completed not later than February 3, 2020. Discovery has closed, and, from the docketed record, it is unclear whether the parties undertook any discovery.

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<sup>1</sup> Complaint, ¶¶ 3-4, 10, 13; Note, Exhibit A to the complaint; Guaranty, Exhibit B to the complaint. Although the Note contains a warrant-of-attorney to confess judgment against Borrower and Guarantor upon their commission of a default, Lender chose to sue them through this action-for-breach-of-contract instead of filing a confession-of-judgment.

<sup>2</sup> Answer with new matter, ¶ 13.

On July 13, 2020, Lender filed the instant motion for summary judgment. The motion offers the following revised calculation of the amounts sought by Lender, including an amount of accrued interest increased from \$5,997.33 to \$24,042.93:

Principal	\$168,275.90
Interest	\$24,042.93
Late Fees	\$1,832.76
NSF	\$170.00
Total	\$194,321.59

Finally, the motion asks this court to enter judgment in favor of Lender because it is undisputed that Borrower and Guarantor defaulted on the Note and admitted the breach thereof.<sup>3</sup>

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....

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<sup>3</sup> Motion for summary judgment, ¶¶ 19-28.

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>4</sup>

In this case, Borrower and Guarantor have admitted that they defaulted on their obligation under the Note and Guaranty, and have admitted that they owe the principal amount and interest accrued thereto, as claimed by Lender in the complaint. Thus, there is no dispute that Borrower and Guarantor owe a principal amount of \$168,275.90 and interest of \$5,997.33, for a total of \$174,273.23. However, Lender's motion for summary judgment seeks to recover a greater amount, \$194,321.59, which includes, *inter alia*, new accrued interest of \$24,042.93. The court turns its attention to this new figure.

The court is aware that Lender is contractually entitled to recover accruing interest of \$21.90 *per diem*, "from November 12, 2019."<sup>5</sup> Following this formula, the court multiplied the *per diem* value of \$21.90 by 366 days—that is, by the number of days between November 12, 2019 and the date of this Order, November 12, 2020. This multiplication yielded additional accrued interest of \$8,015.40. Adding this figure to the accrued interest originally claimed in the complaint, \$5,997.33, resulted in a total

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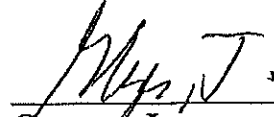
<sup>4</sup> *Grandelli v. Methodist Hosp.*, 777 A.2d 1138, 1143-44 (Pa. Super. 2001) (emphasis supplied).

<sup>5</sup> Motion for summary judgment, ¶¶ 16 and "Wherefore" clause.

amount of accrued interest equal to \$14,012.73, well below the \$24,042.93 which Lender seeks to recover under its motion for summary judgment. The amount of accrued interest is reduced accordingly.<sup>6</sup>

Finally, the court is aware that Borrower and Guarantor denied owing to Lender any amounts other than the principal and interest listed in the complaint. However, they have failed to file a response in opposition to the instant motion, and have failed to offer any substantial evidence in support of their defense; therefore, Lender is entitled to summary judgment in the amount described in the Order filed herewith.

BY THE COURT,

  
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GLAZER, J.

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<sup>6</sup> Braun v. Walmart Stores, Inc., 24 A.3d 875, 981-982 (Pa. Super. 2011) (holding that a mathematically incorrect judgment amount may be modified), *aff'd* 106 A.3d 656 (Pa. 2014).