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

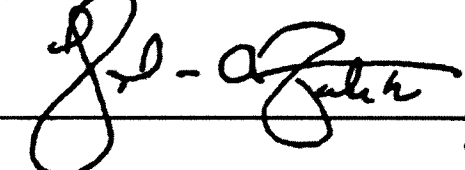
NUMODA CORPORATION,	:	APRIL TERM, 2021
	:	
Plaintiff,	:	NO. 02531
	:	
v.	:	COMMERCE PROGRAM
	:	
JOHN BORIS,	:	Control Nos.: 22081139, 22082760
	:	
Defendant.	:	

ORDER

AND NOW, this 6th day of January, 2023, upon consideration of the parties' cross-Motions for Summary Judgment, the responses thereto, and all other matters of record, and for the reasons set forth in the attached Opinion, it is **ORDERED** as follows:

1. Defendant's Motion for Summary Judgment is **GRANTED**;
2. **JUDGMENT** is **ENTERED** in favor of defendant on plaintiff's claims; and
3. Plaintiff's Motion for Summary Judgment is **DISMISSED** as **MOOT**.

BY THE COURT:


J.

DOCKETED

JAN - 6 2023

R. POSTELL
COMMERCE PROGRAM

210402531-Numoda Corporation Vs Boris



21040253100082

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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NUMODA CORPORATION,	:	APRIL TERM, 2021
	:	
Plaintiff,	:	NO. 02531
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	:	
JOHN BORIS,	:	Control Nos.: 22081139, 22082760
	:	
Defendant.	:	

OPINION

On April 27, 2021, plaintiff Numoda Corporation (“Numoda”) filed this action asserting a single count for breach of contract against defendant John Boris (“Mr. Boris”). Numoda claims, and Mr. Boris does not dispute, that Mr. Boris failed to pay certain sums allegedly due under: 1) a “Revolving Promissory Demand Note and Agreement,” which states it is effective January 1, 2008, but which was apparently executed by the parties at a later date;¹ and 2) a “Revolving Promissory Note and Agreement,” which also purports to be effective January 1, 2008, but which was apparently executed by the parties at an even later date (collectively, the “Agreements”).² The Agreements contain the following relevant terms:

Borrower [Mr. Boris] promises to pay to the order of Lender [Numoda] . . . such sums as may be advanced and outstanding from time to time, with interest on the unpaid principal balance[.]

* * *

Borrower may borrow, repay and reborrow, and, upon the request of the Borrower, Lender may advance and readvance money under this Agreement from time to time until this Agreement is terminated by the Lender[.]

* * *

¹ Amended Complaint, Ex. A.

² *Id.*, Ex. B.

All loan amounts under this Agreement shall be due and payable within 20 business days, upon written notice of demand by the Lender to the Borrower.³ Interest shall be due and payable in [sic] no less frequently than consecutive quarterly payments of accrued interest only commencing on April 1, 2008, and continuing on the first day of each quarter until fully paid. In any event, all principal and accrued interest⁴ shall be due and payable upon demand.

* * *

If a Default occurs under this Agreement, Lender may at any time thereafter . . . [i]mmediately demand payment of principal and accrued interest[,] whereupon this Agreement and the accelerated Obligations shall be immediately due and payable[.]

* * *

No waivers, amendments or modifications of this Agreement shall be valid unless in writing and signed by an officer of Lender.

* * *

Lender's interests in and rights under this Agreement are freely assignable, in whole or in part, by Lender. . . . This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania.

* * *

This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

* * *

[Signatures of Numoda and Mr. Boris]

Page 3 of 3 Confidential⁵

³ In the second Agreement, this sentence continues with the following phrase "after the sale of all or substantially all of the assets of the Lender and distribution to Borrower, of Borrower's ownership interest in Lender." Amended Complaint, Ex. B, p. 1. For purposes of the court's analysis, the additional phrase in the second Agreement is irrelevant because Numoda claims it made its demand after Mr. Boris defaulted in payment of interest, which default is governed by a separate paragraph of the Agreement. *See* Plaintiff's Response to Motion for Summary Judgment, ¶ 25.

⁴ In the second Agreement, the words "all principal and" are omitted so that only "all accrued interest shall be due and payable on demand." Amended Complaint, Ex. B, p. 1. For purposes of the court's analysis, this omission is irrelevant because Numoda claims it made its demand after Mr. Boris defaulted in payment of interest, which default is governed by a separate paragraph of the Agreement. *See* Plaintiff's Response to Motion for Summary Judgment, ¶ 25.

⁵ Amended Complaint, Exs. A and B, pp. 1-3.

A copy of each Agreement is attached to the Amended Complaint as an exhibit. Each such exhibit also includes a purported statement of “Loans and Advances.”⁶ Numoda claims the statements represent the amounts it advanced to Mr. Boris under each loan Agreement and any credits received from Mr. Boris.⁷ The statement accompanying the first Agreement purports to show all Loans and Advances as of December 31, 2009.⁸ The statement accompanying the second Agreement purports to show all loans and advances as of March 25, 2015.⁹ Mr. Boris does not admit that the alleged statements were included as part of the Agreements.¹⁰

Numoda made demand upon Mr. Boris on April 10, 2015, directing him to pay on or before May 8, 2015, a total of \$464,602.95 in principal and accrued interest under the Agreements.¹¹ Mr. Boris admits he has not done so.¹² Instead, he asserts in his Motion for Summary Judgment that Numoda is time barred from seeking any such amounts now.¹³

Generally, in Pennsylvania, the Statute of Limitations for a claim for breach of contract is four years.¹⁴ Since Numoda made demand upon Mr. Boris as of May 8, 2015, at the latest, the

⁶ Amended Complaint, Exs. A and B, p. 4. Both such alleged statements purport to be “Page 1” and do not claim to be “Page 4” of any document. However, they are each the fourth page of their respective exhibits to the Amended Complaint, so the court cites to them as such.

⁷ *Id.*, ¶¶ 12, 21.

⁸ *Id.*, Ex. A, p. 4.

⁹ *Id.*, Ex. B, p. 4.

¹⁰ *See* Answer, ¶¶ 12, 21; Defendant’s Motion for Summary Judgment, Ex. B, pp. 29:5-9; 31:3-9.

¹¹ Amended Complaint, Ex. C.

¹² *See* Answer, ¶ 28 (“It is admitted only that Boris has not transmitted funds in conjunction with any promissory note. It is denied that Boris was or is obligated to do so.”)

¹³ *See also id.*, New Matter ¶ 1.

¹⁴ *See* 42 Pa. C. S. § 5525(7), (8) (“[T]he following actions and proceedings must be commenced within four years: . . . (7) An action upon a negotiable or nonnegotiable bond, note or other similar

four-year Statute ran on May 8, 2019, approximately 23 months before Numoda filed this action.

However, under the Uniform Commercial Code (“UCC”),

if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand.¹⁵

A “note” is a specific form of “negotiable instrument” under the UCC.¹⁶ The parties agree that the Agreements in this action would constitute “notes” for purposes of the UCC Statute of Limitations only if they meet the UCC’s requirements for a “negotiable instrument.” A document is a “negotiable instrument” if it:

1. [Constitutes] an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order[;]
2. [I]s payable to bearer or to order at the time it is issued or first comes into possession of a holder;
3. [I]s payable on demand or at a definite time; and
4. [D]oes not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money[.]¹⁷

The Agreements here are “unconditional,” they are “payable to the order of” Numoda, and “payable on demand,” and they do “not state any other undertaking or instruction,” so all of those requirements are satisfied. However, the Agreements do not constitute a promise or order “to pay a fixed amount of money.” Instead, the Agreements contemplate that:

instrument in writing. Where such an instrument is payable upon demand, the time within which an action on it must be commenced shall be computed from the later of either demand or any payment of principal of or interest on the instrument. (8) An action upon a contract, obligation or liability founded upon a writing not specified in paragraph (7), under seal or otherwise, except an action subject to another limitation specified in this subchapter.”)

¹⁵ 13 Pa. C.S. § 3118(b).

¹⁶ *Id.* § 3104(e).

¹⁷ *Id.* § 3104(a).

[Mr. Boris] may borrow, repay and reborrow, and, upon the request of [Mr. Boris], [Numoda] may advance and readvance money under this Agreement from time to time until this Agreement is terminated by [Numoda.]¹⁸

The specific amounts that Numoda now claims are due from Mr. Boris are set forth on separate statements that are not incorporated by any reference in the Agreements themselves, and which do not even continue the pagination of the Agreements. At best, the statements attached to the Agreements create a question of fact as to how much may be due in “Advances” under the Agreements.¹⁹ The statements do not satisfy the sum certain requirements for a negotiable instrument because they do not “enhance the marketability of [the Agreements] and allow bankers, brokers, and the general public to trade [those Agreements] in confidence.”²⁰

Since the Agreements are not negotiable instruments under the UCC, they are not subject to the UCC’s six-year Statute of Limitation. Instead, they are governed by Pennsylvania’s 4-year Statute of Limitation. Since Numoda’s present claims based upon those Agreements were filed more than 4 years after demand was made upon Mr. Boris, they are time barred.

¹⁸ Amended Complaint, Exs. A and B, p. 1.

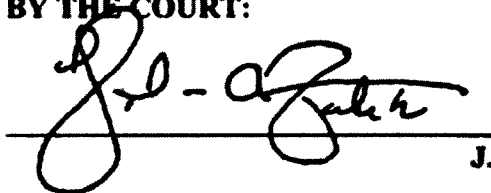
¹⁹ The statement accompanying the first Agreement has Mr. Boris’s initials “JB” written on it. Amended Complaint, Ex. A, p. 4. However, those initials alone do not establish that the statement is incorporated into and made a part of, nor that is a valid amendment or modification of, the Agreement. *See id.*, p. 2 (“No waivers, amendments or modifications of this Agreement shall be valid unless in writing and signed by an officer of Lender [Numoda].”).

²⁰ *See Manor Bldg. Corp. v. Manor Complex Assocs., Ltd.*, 435 Pa. Super. 246, 252–53, 645 A.2d 843, 846 (1994) (“A negotiable instrument is an instrument capable of transfer by endorsement or delivery. Negotiability provides a means of passing on to the transferee the rights of the holder, including the right to sue in his or her own name, and the right to take free of equities as against the assignor/payee. The purpose of the Commercial Code is to enhance the marketability of negotiable instruments and to allow bankers, brokers, and the general public to trade in confidence. As a matter of sound economic policy, the Commercial Code encourages the free transfer and negotiability of commercial paper to stimulate financial interdependence.”)

CONCLUSION

For all the foregoing reasons, Mr. Boris's Motion for Summary Judgment is granted, and judgment is entered in Mr. Boris's favor on Numoda's claims for breach of the Agreements.

BY THE COURT:



A handwritten signature, likely "J. L. Zuber", is written over a horizontal line. The signature is in cursive and includes a large initial "J" and a final "h".

J.