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

MAILY LAI,

Plaintiff,

v.

NAVY CHHENG,

Defendant.

: AUGUST TERM 2022
:
: No. 02549
:
: COMMERCE PROGRAM
:
:
:

DOCKETED

APR 11 2025

R. POSTELL
COMMERCE PROGRAM

ORDER

AND NOW, this 11th day of April 2025, as set forth in the accompanying Findings of Fact and Conclusions of Law entered today, it is **ORDERED** judgment is entered in favor of plaintiff Lai and against defendant Chheng for breach of contract in the amount of \$689,267.84 (\$523,919 contractual damages including principal and a 10 percent collection fee) plus interest at the annual rate of 12 percent accruing daily since August 22, 2022 (\$165,348.84 through 4/11/25).

BY THE COURT:

Abbe F. R.

ABBE F. FLETMAN, J.

WSFFP-Lai Vs Chheng [RCP]



22080254900102

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

MAILY LAI,	:	AUGUST TERM 2022
	:	
Plaintiff,	:	No. 02549
	:	
v.	:	COMMERCE PROGRAM
	:	
NAVY CHHENG,	:	
Defendant.	:	
	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a breach of contract case brought by plaintiff Maily Lai to collect unpaid debts owed by defendant Navy Chheng. The Court presided over a bench trial on the matter in November 2024. For the reasons discussed below, the Court finds for plaintiff Lai and against defendant Chheng on in the amount of \$689,267.84 (\$523,919 contractual damages including principal and a 10 percent collection fee) plus interest at the annual rate of 12 percent accruing daily since August 22, 2022 (\$165,348.84 through 4/11/25).

FINDINGS OF FACT

A. The Parties

1. Plaintiff Maily Lai is an individual who resides in Philadelphia. Trial Transcript (“Tr.”), Maily Lai testimony (“Lai”) at 32:10-21.
2. Throughout her career, she has assisted her mother and husband running family restaurants. *Id.* at 33:1-11.
3. Ms. Lai met defendant Navy Chheng through Ms. Lai’s parents. *Id.* at 33:17-19.
4. Ms. Chheng had recently immigrated from Cambodia and Ms. Lai’s father encouraged her to help Ms. Chheng. *Id.* at 33:19-23. As Ms. Lai explained: “[M]y dad said she is

from the same hometown. And she called my dad brother . . . [in] our culture we are supposed to help each other out, and I help her to buy a business. . . .” *Id.* at 33:22-34:1.

5. Ms. Lai’s assistance took the form of introducing Ms. Chheng to a business broker and lending her money to buy the deli he identified. *Id.* at 34:3-6,18-23.

B. The Loans

6. Ms. Lai initially loaned Ms. Chheng \$80,000 in cash for the purchase of the deli. *Id.* at 34:18-35:5. The loan was documented with a form promissory note signed by Ms. Chheng with a confession of judgment provision and a 10 percent collection charge. P-1 (Promissory Note for \$80,000 dated November 10, 2009 (“Note 1”)).

7. Each time Ms. Lai lent money to Ms. Chheng, the parties executed a promissory note. Note 1; P-2 (Promissory Note for \$100,000 dated March 13, 2011 (“Note 2”)); P-3 (Promissory Note for \$150,000 dated July 12, 2016 (“Note 3”)); P-4 (Promissory Note for \$100,000 dated September 2, 2016 (“Note 4”)); P-5 (Promissory Note for \$30,000 dated December 19, 2016 (“Note 5”)); P-6 (Promissory Note for \$40,000 dated July 15, 2017 (“Note 6”)); Tr., Lai at 40:4-6.

8. Ms. Lai and Ms. Chheng ultimately entered into nine promissory notes but only Notes 1-6 are at issue in this case because Ms. Chheng paid off the other three notes. Tr., Lai at 81:23-82:5.

9. Notes 1-6 are identical short forms requiring Ms. Chheng to pay the stated amounts “with interest.” P-1 - P-6 (Notes 1-6).

10. Notes 1-6 also provide that Ms. Lai could confess judgment against Ms. Chheng with “10 percent collecting fees.” *Id.*

11. The letters “L.S.,” standing for locus sigili were printed on each Note. *Id.*

12. Ms. Chheng signed Note 1 with just her first name as both borrower and witness. P-1. She signed Note 2 with just her first name as witness and with her first and last names as borrower. P-2. She signed Notes 3, 5 and 6 with only her first name as borrower. P-3, P-5, P-6. She signed Note 4 under Ms. Lai's printed name as witness. P-4. Tr., Lai at 59:1-8.

13. Ms. Lai and her husband, Ting Chen, delivered each loan to Ms. Chheng in cash and in person. Tr. 11/24/25, Chen at 165:7-10, 168:19-21, 171:13-18, 172:24-173:11, 174:5-8.

C. Ms. Chheng's Loan Repayments

14. Ms. Lai kept a handwritten log in which she recorded all payments Ms. Chheng made on the Notes. P-9 (Payment Log); Tr. 11/24/25, Lai at 36:13-21.

15. Initially, Ms. Chheng paid Ms. Lai only interest on the Notes and promised to pay Ms. Lai the principal once she made money from her store. Tr., Lai at 37:10-23, 39:5-20, 43:19-44:3, 44:23-45:1, 51:15-17; 61:8-11, 70:7-11; P-9 (Payment Log).

16. Ms. Chheng delivered most payments in-person to Ms. Lai and her husband. Tr., Lai at 37:10-23; Tr., Chen at 167:24-168:11, 170:1-8, 174:9-16.

17. Ms. Chheng's son, Cheatham, made some payments after June 2017. Tr., Lai at 48:1-18; Tr., Chen at 174:9-16; P-10 (Signed Payment Log).

18. Between October 2010 and June 2017, Ms. Chheng paid Ms. Lai \$208,900 in interest payments. Tr., Lai at 73:2-74:5; P-9 (Payment Log).

D. Problems between Ms. Lai and Ms. Chheng

19. Ms. Lai's and Ms. Chheng's relationship began to falter around April 2017 after Ms. Chheng insisted that she made a payment in April and Ms. Lai maintained the payment was for March 2017. Tr., Lai at 47:4-14; P-9 (Payment Log).

20. As a result of that dispute, Ms. Lai started a new payment log and required Ms. Chheng to sign after each payment entry to verify the amount, date of payment and month to which the payment was allocated. Tr., Lai at 47:4-14; P-9 (Payment Log); P-10 (Signed Payment Log).

21. In October 2018, after complaints from Ms. Chheng, Ms. Lai stopped charging Ms. Chheng interest and began applying all her payments to the \$700,000 principal she owed. Tr., Lai at 49:13-50:2, 51:18-19; P-10 (Signed Payment Log) at 3.x

22. After each payment beginning December 17, 2018, Ms. Lai required Ms. Chheng to write down the remaining balance in her payment log because she did not “trust [Ms. Chheng] anymore” and wanted to remind Ms. Chheng of the remaining balance. P-10 (Signed Payment Log at 3; Tr., Lai at 53:11-21.

23. Ms. Lai’s last payment on the Notes was logged on July 13, 2022. P-10 (Signed Payment Log) at 5; Tr., Lai at 53:22-25.

24. At the time, the log stated that Ms. Chheng owed Ms. Lai \$476,290. P-10 (Signed Payment Log).

25. Ms. Lai contacted John J. McCreesh, III, a lawyer who had previously represented her, to collect the \$476,290 from Ms. Lai. Tr., Lai at 53:22-25.

26. On July 20, 2022, Mr. McCreesh sent a letter to Ms. Lai suggesting that she and Ms. Chheng meet at his office to speak about the matter on July 26, 2022. P-7 (Letter from John J. McCreesh, III, to Chheng).

27. Ms. Chheng neither attended the meeting nor made any further payments to Ms. Lai. Tr., Lai at 54:20-24.

E. The Ung Veng Kong Defense

28. At trial, Ms. Chheng testified that Ms. Lai did not lend her any money and that the Notes were between Ms. Lai and a Texas businessman named Ung Veng Kong. Tr., Chheng at 118:20-23, 121:12-14, 124:7-16, 125:5-9, 126:14-20, 127:18-25, 129:4-11, 131:6-10, 133:20-134:1, 137:1-7, 151:7-22.

29. Ms. Chheng testified that Mr. Kong was present and received the cash loaned under each of the Notes and that she was merely a witness. Tr., Chheng at 118:20-23, 124: 7-9, 126:14-20, 127:18-25, 129:4-125:1, 133:20-23.

30. She stated that she does not speak English and merely followed Ms. Lai's instructions when she signed the Notes. Tr. 11/24/25, Chheng at 121:1-11.

31. She further testified that Mr. Kong made monthly payments to Mr. Lai that she delivered. *Id.* at 128:19-22, 130:19-25, 136:4-9.

32. According to Ms. Chheng, Mr. Kong lives in Richardson, Texas. *Id.* at 150: 10-17. Ms. Chheng testified that, each month, Mr. Kong would drive interest payments from Richardson to Philadelphia and give them to Ms. Chheng to give to Ms. Lai.¹ *Id.* at 151:15-152:4. She testified that, although Mr. Kong was present each time he received the loans from Ms. Lai, he was unwilling to be present when payments to Ms. Lai were made because "he did not trust the person." *Id.* at 150:18-152:4.

¹ The Court takes judicial notice that Richardson, Texas, is more than 1,400 miles from Philadelphia and, without traffic, it would take more than 22 hours to drive from Richardson to Philadelphia. See https://www.google.es/maps/dir/Philadelphia,+Pennsylvania/Richardson,+TX/@36.2838468,-91.2371767,6z/data=!3m1!4b1!4m13!4m12!1m5!1m1!1s0x89c6b7d8d4b54beb:0x89f514d88c3e58c1!2m2!1d-75.1652215!2d39.9525839!1m5!1m1!1s0x864c1ee979bea767:0x2cdb29c046270495!2m2!1d-96.7298519!2d32.9483335?entry=ttu&g_ep=EgoyMDI1MDQwMi4xIKXMDSOASAFQAw%3D%3D

F. Corroborating Witnesses

33. Ms. Lai presented two corroborating witnesses at trial.

34. Lisa Tran, Ms. Chheng's long-time friend, testified that she called Ms. Chheng to encourage her to pay Ms. Lai after hearing others at her Temple talk about the loan. Tr., Tran at 99:20-100:9. Ms. Tran further testified that Ms. Chheng told her she was not paying back the loan because, due to COVID-19, her business was not doing well and she lacked the money to pay. *Id.* at 99:13-100:9.

35. Kim Mu, Ms. Chheng's long-time friend and the owner of a religious item store where Ms. Chheng is a customer, testified that on more than one occasion, Ms. Chheng visited her store and told her that "[t]he reason [Ms. Chheng] could buy [her] business is that Ms. Lai len[t] her money." Tr., Mu at 105:15-19.

G. Procedural History

36. Ms. Lai initiated this matter by a confession of judgment filed on August 22, 2022. Confession of Judgment, Trial Court Docket ("Dkt.") at 8/22/22.

37. She seeks to recover \$476,290, the total unpaid balance of Notes 1-6, a 10 percent collection fee of \$47,629, and 12 percent interest under the Notes. Pl. Bench Memorandum, Dkt. at 1/7/25 at 10.

38. Ms. Chheng filed a petition to open or strike the judgment on September 26, 2022. Petition to Open/Strike Confessed Judgment, Dkt. at 9/26/22 (Control Number 22094233).

39. The judgment was opened on May 8, 2023. Dkt. at 5/8/23.

40. Ms. Chheng filed an answer to the complaint on May 12, 2023, denying all the material allegations. Answer, Dkt. at 5/12/23.

41. Before trial, Ms. Lai filed a motion in limine to preclude Ms. Chheng from presenting any argument, evidence, or testimony at trial supporting the defense that Ms. Chheng did not understand the terms of the notes because she did not speak English. Mtn. in Lim., Dkt. at 11/5/24 (Control No. 24110909).

42. The Court denied the motion based on defense counsel's representation that he did not intend to rely on Ms. Chheng's inability to understand English as a defense. Order, Dkt. at 11/21/24 (Control No. 24110909).

43. The Court held a one-day bench trial on November 25, 2024.

CONCLUSIONS OF LAW

A. The Notes Are Not Barred Under the Statute of Limitations

44. Ms. Chheng claims that the Notes are subject to a four-year statute of limitations and are consequently unenforceable. Defendant's Trial Memorandum, Dkt. at 1/6/25 at 2.

45. Under Pennsylvania law, however, the statute of limitations for a written instrument executed under seal is 20 years. 42 Pa.C.S.A. § 5529(b)(1) (West, Westlaw through 2025 Act 2); *Beneficial Consumer Discount v. Dailey*, 644 A.2d 789, 789 (Pa. Super. 1994).

46. A written instrument is presumed to be executed under seal if the initials "L.S.," or the words "locus sigili," appear on the instrument. *Beneficial Consumer Discount*, 644 A.2d at 790 (*quoting Loraw v. Nissley*, 27 A. 242, 242 (Pa. 1893)) ("[A]ny flourish or mark, however irregular or inconsiderable, will be a good seal, if so intended; and a fortiori, the same result must be produced by writing the word 'seal,' or the letters 'L.S.,'"); *Driscoll v. Arena*, 213 A.3d 253, 258 (Pa. Super. 2019).

47. This is because the presence of these initials or words connotes an intent of the parties to execute a note under seal. *Beneficial Consumer Discount*, 644 A.2d at 791 ("The

[borrower] [was] under no duty to accept the seal, and had every opportunity to inquire about its significance, and signed the agreement freely.”)

48. The only way to rebut the presumption might be if the written instrument was signed “a considerable distance from the pre-printed seal.” *Beneficial Consumer Discount*, 644 A.2d at 791.

49. Pennsylvania courts, however, have never applied this rebuttal. *See id.* (“[e]ven this would be a ‘special ground’ . . . we doubt that the Supreme Court would recognize”)

50. In this case, each note contains the designation “L.S.” P-1 – P-6 (Notes 1-6).

51. Ms. Chheng signed her name on all the notes. P-1 - P-6 (Notes 1-6).

52. None of Ms. Chheng’s signatures are a “considerable distance” from “L.S.” *See Beneficial Consumer Discount*, 644 A.2d at 791.

53. Because the Notes were executed under seal, the 20-year statute of limitation applies, and this action is not time-barred. 42 Pa.C.S.A. § 5529(b)(1) (West, Westlaw through 2025 Act 2).

B. Ms. Chheng Owes Ms. Lai Under the Notes

54. Pennsylvania courts apply a breach of contract standard to analyze whether a plaintiff can recover an unpaid debt under a promissory note. *See e.g. Neducsin v. Caplan*, 121 A.3d 498 (Pa. Super. 2015) (affirming an order that analyzed a confession of judgment action for a promissory note under a breach of contract theory).

55. To recover under a breach of contract theory, a plaintiff must demonstrate the “existence of a contract, including its essential terms, breach of a duty imposed by the contract, and resultant damages.” *Discover Bank v. Booker*, 259 A.3d 493, 495-96 (Pa. Super. 2021).

56. In this case, the Notes are enforceable contracts.

57. The evidence demonstrates that Ms. Chheng borrowed and accepted money from Ms. Lai.² Tr., Lai at 35:3-24, 38:16-21, 40:7-15; Tr., Tran at 99:13-100:9; Tr., Mu at 105:7-11.

58. The Court finds Ms. Chheng's contention that she was not a party to the loans and did not borrow money from Ms. Lai entirely incredible.³ Tr., 195:11-14. Indeed, it would require the Court to believe that a man who did not appear at trial and who lives more than 22 hours from Philadelphia drove back and forth to obtain cash from Ms. Lai in person and then drove monthly cash payments as small as \$800 to Ms. Chheng but declined to give the payments to Ms. Lai in person. P-9 (Payment Log); P-10 (Signed Payment Log). This scenario makes no sense, particularly since the Court found Ms. Chheng's testimony incredible while finding the testimony of Ms. Lai, Mr. Chen, Ms. Tran and Ms. Mu credible.

² Ms. Chheng also argued that the Notes do not bind her because she was induced to sign them by fraudulent misrepresentation. Defendant's Trial Memorandum, Dkt. at 1/6/25 at 5. This argument is meritless. A party claiming fraudulent misrepresentation must demonstrate, by "clear and convincing evidence" that there was "(1) a representation; (2) which [was] material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) resulting injury proximately caused by the reliance." *Bennett v. Bennett*, 168 A.3d 238, 247 (Pa. Super. 2017). Ms. Chheng presented no evidence at trial demonstrating that Ms. Lai made a false statement to induce Ms. Chheng to sign the Notes. She never identified what false statement Ms. Lai allegedly made, nor presented any evidence establishing any of the other elements of fraudulent misrepresentation.

³ Ms. Chheng also argues that the Notes do not bind her because she was a witness and not a party to all the loans. The Court rejects this argument. In this case, there was clear offer, acceptance, and consideration or mutual meeting of the minds. *See Jenkins v. Cnty. of Schuylkill*, 658 A.2d 380, 383 (Pa. Super. 1995). Ms. Chheng signed five of the six Notes as the borrower. *See* Notes 1-3 and 5-6. The Court finds credible the testimony of Ms. Lai and the corroborating testimony from her husband, Ms. Tran, and Ms. Mu that Ms. Chheng borrowed from Ms. Lai under the Notes to buy and operate a deli business, and that Ms. Chheng made multiple payments under the Notes until she stopped making payments in July 2022. The fact that Ms. Chheng signed one note, Note, 4, on only the witness line does not render that note, nor the other notes unenforceable.

59. Ms. Chheng breached her obligation under the Notes when she stopped making payments under them. P-9 (Payment Log); P-10 (Signed Payment Log); Tr., Tran at 99:13-100:9; Tr., Mu at 105:7-11.

60. Ms. Lai experienced damages because she is still owed \$476,290 in principal plus the 10 percent collection fee under the Notes. P-10 (Signed Payment Log) at 3-5; Tr., Lai at 53:22-25.

61. Thus, this Court awards \$523,919 to plaintiff Maily Lai, which represents the balance due and the 10 percent collection fee contained in the Notes. P-1 - P-6 (Notes 1-6).

C. 12 Percent Interest Should Be Applied to the Notes

62. Ms. Lai argues that Ms. Chheng should pay 12 percent interest on the loan. Pl. Bench Memorandum, Dkt. at 1/7/25.

63. While the Notes do not specify the percentage of interest to apply, a court may impose a reasonable term based on the parties' course of dealing. *Matthews v. Unisource Worldwide, Inc.*, 748 A.2d 219, 222, 2000 (Pa. Super. 2000) (“... the course of the parties' performance under a contract is always relevant in interpreting that contract”).

64. Course of performance is the “sequence of conduct between the parties to a particular transaction that exists if (1) the agreement of the parties . . . involves repeated occasions for performance by a party; and (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.” 13 Pa. Stat. and Cons. Stat. Ann. § 1303(a) (West, Westlaw through 2025 Act 2).⁴

⁴ The Uniform Commercial Code governs the Notes in this case. This is because the Notes are an “unconditional promise or order to pay a fixed amount of money.” 13 Pa. Stat. and Cons. Stat. Ann. § 3104 (West, Westlaw through 2025 Act 2).

65. Course of dealing is a “sequence of conduct concerning previous transactions . . . that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.” 13 Pa. Stat. and Cons. Stat. Ann. § 1303(b) (West, Westlaw through 2025 Act 2).

66. The parties’ course of performance and course of dealing demonstrates that 12 percent interest should be applied.

67. All of Ms. Chheng’s payments before October 8, 2018, reflect 12 percent interest payments on the Notes. Tr., Lai at 37:10-23, 39:5-19, 43:19-44:3, 44:23-45:1, 51:15-1761:10-11, 70:7-11; P-9 (Payment Log).

68. Ms. Chheng never objected to the interest payments until October 8, 2018, when the parties agreed that all future payments would go towards the principal amount loaned. Tr., Lai at 49:13-50:2, 51:18-19; P-10 (Signed Payment Log) at 3.⁵

69. The continuous 12 percent interest payments represent the course of performance and course of dealing between the parties.

70. Thus, the Court concludes that the proper interest payment that should be applied to the Notes is 12 percent.

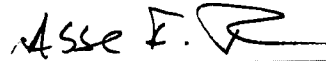
CONCLUSION

71. For all the foregoing reasons, the Court finds for plaintiff Maily Lai and against defendant Navy Chheng on Maily Lai’s breach of contract claims in the amount of \$689,267.84

⁵ Ms. Lai and Ms. Chheng’s oral agreement did not modify the Notes such that no interest is due. Parties may modify a contract only if there is “legally sufficient consideration, or a substitute therefor, and [if it] meets the requirements for contract formation.” *Shedden v. Anadarko E. & P. Co., L.P.*, 136 A.3d 485, 490 (Pa. 2016) (citing *Kreutzer v. Monterey Cty. Herald Co.*, 747 A.2d 358, 362 (Pa. 2000)). In this case, there is no evidence of any consideration or consideration substitute passing from Ms. Chheng to Ms. Lai to support such a modification.

(\$523,919 contractual damages comprising principal plus the 10 percent contractual collection fee) plus interest at the annual rate of 12 percent accruing daily since August 22, 2022 (\$165,348.84 through 4/11/25).

BY THE COURT:



ABBE F. FLETMAN, J.