

FILED
SUPERIOR COURT
OF GUAM
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IN THE SUPERIOR COURT OF GUAM

TIMOTHY J SAN NICOLAS,) CIVIL CASE NO. CV1127-17
)
)
PLAINTIFF,)
)
v.) DECISION AND ORDER DENYING
) PLAINTIFF'S MOTION FOR SUMMARY
JEFFREY CHARFAUROS,) JUDGMENT
)
)
DEFENDANT.)

INTRODUCTION

This matter came before the Honorable Maria T. Cenzone on March 26, 2018 for a hearing on Plaintiff Timothy J. San Nicolas' ("Plaintiff") Motion for Summary Judgment on Breach of Promissory Claim. Plaintiff appeared through counsel of record Attorney Joseph Razzano. Defendant Jeffrey Charfauros ("Defendant") was not present at the hearing and appears *pro se*. Having reviewed the record and the relevant law, the Court orally DENIED Plaintiff's Motion for Summary Judgment. The Court now issues this Decision and Order to memorialize its ruling.

BACKGROUND

This matter arises out of an alleged breach of promissory note by Defendant. Plaintiff submitted a copy of the initial note signed and notarized on December 28, 2015. According to the note, Defendant promised to pay Plaintiff a principal amount of twenty-five thousand dollars (\$25,000) and interest of four thousand and five hundred dollars (\$4,500), with a sum of twenty-nine thousand and five hundred dollars (\$29,500) on June 28, 2016. *See* Promissory Note (Nov. 7, 2017) (hereinafter "First Note"). Defendant filed an Answer on December 4, 2017 admitting that he signed "some note," but denying that the Note attached is a full, complete, and accurate reproduction of the whole Note. Answer, p. 1 (Dec. 4, 2017).

1 On December 13, 2017, Plaintiff filed the instant Motion for Summary Judgment and a
2 Declaration of Plaintiff in Support of the Motion for Summary Judgment. Plaintiff also attached
3 another Promissory Note (hereinafter "Second Note"), similar to the one filed with the
4 complaint, however, now includes handwritten additions signed and dated after December 28,
5 2015. Defendant did not file an opposition or response to Plaintiff's Motion for Summary
6 Judgment and has never appeared before this Court during any of the proceedings.

7 LAW

8 Although there is no opposition filed to Plaintiff's current motion, the court must still
9 "consider the merits of the motion before it." *Quitugua v. Flores*, 2004 Guam 19 ¶ 27. "The
10 failure to write an opposition to a motion, the filing of a notice of non-opposition to a motion, or
11 the disregard of untimely filed papers, does not require the court to automatically grant the
12 motion and is not dispositive of the motion itself." *Id.* at ¶ 28.

13 Plaintiff has moved for summary judgment pursuant to Rule 56 of the Guam Rules of
14 Civil Procedure ("GRCP"). In determining a motion for summary judgment, "the court must
15 draw inferences and view the evidence in a light most favorable to the non-moving party." *See*
16 *Bank of Guam v. Flores*, 2004 Guam 25 ¶ 7. If a movant "can demonstrate that there are no
17 genuine issues of material fact, the non-movant cannot merely rely on allegations contained in
18 the [pleadings] ..., but must produce at least some significant probative evidence tending to
19 support the [pleadings]...." *Id.* Thus, this court's "ultimate inquiry is to determine whether the
20 'specific fact' set forth by the nonmoving party, coupled with undisputed background or
21 contextual facts, are such that a rational or reasonable jury might return a verdict in its favor
22 based on that evidence." *Id.* (citations omitted).

23 The court may grant summary judgment pursuant to Rule 56 of the GRCP when the
24 record demonstrates that there is no genuine issue as to any material fact and that the moving
25 party is entitled to a judgment as a matter of law. *Id.* ¶ 8. "A material fact is one that is relevant
26 to an element of a claim or defense and whose existence might affect the outcome of the suit.
27 Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment."
28

1 *Id.* (citations omitted). The “mere existence of *some* alleged factual dispute between the parties
2 will not defeat an otherwise properly supported motion for summary judgment; the requirement
3 is that there be no *genuine* issue of material fact.” *Id.* (emphasis in original). A genuine issue is
4 found “if there is ‘sufficient evidence’ which establishes a factual dispute requiring resolution by
5 a fact-finder.” *Id.* Summary judgment is appropriate if the contract or the contract provision in
6 question is unambiguous. *Id.* at ¶ 18.

7 In *Hemlani v. Hemlani*, the Supreme Court of Guam opined, “In order to recover in an
8 action stemming from a promissory note, ‘the holder or payee [must] establish that (1) there is a
9 note; (2) he is the legal owner and holder of the note; (3) the defendant is the maker of the note;
10 and (4) a certain balance is due and owing on the note.’” 2015 Guam 16, ¶ 14 (quoting
11 *Blankenship*, 899 S.W.2d at 238; *see also Resolution Trust Corp. v. Starkey*, 41 F.3d 1018, 1023
12 (5th Cir.1995)).

13 DISCUSSION

14 There is no dispute that Plaintiff has established the first three elements. In fact,
15 Defendant has conceded these issues through his answer by recognizing the note, that Plaintiff is
16 the holder and that he is the maker.

17 The pivotal issue for this Court is whether a certain balance is owed on the note.
18 Specifically, because the Second Note changes the principal amount from \$25,000 to \$30,000
19 and obligates an interest of an additional \$750 per month. Additionally, there are several
20 inconsistencies in the Second Note. Line 1 has “\$35,000” handwritten above “principal amount”
21 while Line 2(a) provides, “As of June 30, 2016, the balance is \$30,000...” Further, on the same
22 line, interest is identified to accrue at “\$1,000 per month,” while line 2(c) provides, “every
23 month after Nov. 30, 2016 shall be charged \$750.” It also appears that after every handwritten
24 addition in the Second Note, Plaintiff’s alleged initial and/or signature is provided (at least four
25 times), while Defendant’s alleged initial only appears once. Therefore, the Court finds the two
26 different filings create a material issue. It would be improper for the Court to grant summary
27 judgment where the contract itself contradicts the balance due/owed on the note.
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1 CONCLUSION

2 For the reasons stated above, the Court hereby DENIES Plaintiff's Motion for Summary
3 Judgment.

4 A Scheduling Conference is scheduled for May 16, 2018 at 3:30 p.m.

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6 SO ORDERED this MAY 04 2018, *nunc pro tunc* March 26, 2018.

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HONORABLE MARIA T. CENZON
11 JUDGE, SUPERIOR COURT OF GUAM

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23 SERVICE VIA COURT FAX
24 I acknowledge that a copy of the
original has been placed in the
court box.
25 oville
26 5/17/18 sm
27 J. Martinez
28 Deputy Clerk of Court