SUPERIOR COURT
OF THE
STATE OF DELAWARE

CHARLES E. BUTLER
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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June 28, 2016

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Re: ***Vaughn Hardin v. Shared Savings Bank, LLC***
C.A. No. N15C-04-205 CEB

Counsel:

This is a debt collection action, brought by Mr. Hardin to collect on a promissory note. Hardin loaned $100,000 to defendant Shared Savings Bank, LLC in 2010. The note was to mature five years from the date of the loan, in January 2015, and called for a rate of interest of 25% per annum "internal rate of return." According to the Complaint, Shared Savings Bank, the principal of which is a man named Henry V. Dupont, is in default.

This case was previously before the Court when Mr. Hardin obtained a judgment in default when Shared Savings Bank failed to answer the Complaint and Mr. Dupont was served personally with papers in aid of execution of the judgment.

That was the first time Mr. Dupont learned that Shared Savings Bank had been sued and a judgment had been entered. After obtaining counsel and filing the appropriate papers, the Court lifted the default judgment and Defendant thereupon filed an Answer with affirmative defenses.

There were concerns then, as there are now, as to whether Shared Savings Bank really had any defense to Hardin's claim. It was essentially conceded that Defendant had not paid back the loan. There was some dispute about exactly what is meant by the "internal rate of return" in the interest rate calculation, but we may fairly call that dispute "in the margins." Plaintiff called for the Court to enter judgment as to at least the principal amount (of $100,000) pursuant to 10 *Del. C.* § 3901(f). The Court demurred at the time, considering it the wiser course to let the defendant file its Answer, take some discovery and permit Plaintiff to return with his request with a fuller record.

Now that Defendant has responded to the Complaint, Plaintiff has returned the Court with a Motion for Judgment on the Pleadings. In considering a motion for judgment on the pleadings, the Court must accept all well-pled facts as true and must construe all reasonable inferences in favor of the non-moving party.[1] Such a

[1] *Christiana Care Health Initiatives v. Tri-State Imaging De Holdings, LLC*, 2014 WL 5167893, at *2 (Del. Super. Oct. 10, 2014).

motion may only be granted where the Court is satisfied that "no material issue of fact exists and the movant is entitled to judgment as a matter of law."[2]

Plaintiff is seeking judgment pursuant to Section 3901, which provides that in actions based on, *inter alia*, promissory notes: "the plaintiff may specifically require the defendant…to answer any or all allegations of the complaint by an affidavit setting forth the specific nature and character or any defense and the factual basis therefore."[3] The Code provision goes on to require that judgment be entered for so much of the debt alleged for which the defendant does not raise a defense.[4] Additionally, where a defendant seeks to open a judgment against it, security must be given "for the payment of such judgment . . . as the plaintiff may recover in such action."[5]

This code provision sits in a rather odd position, tucked in Title 10 as it is, among other provisions dealing mostly with court administration and jurisdiction. Perhaps that explains why most of the litigation over its terms is quite dated. Nonetheless, it is still good law and Plaintiff is entitled to its benefits if he is otherwise qualified.

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[2] *Id.*

[3] 10 *Del. C.* § 3901(a).

[4] 10 *Del. C.* §§ 3901(b).

[5] 10 *Del. C.* § 3901(f).

Here, Plaintiff has fulfilled the prerequisite to applicability of the statute by filing a copy of the promissory note upon which he sues.[6] When he opposed the Court's ultimate grant of relief from ~~Defendant's~~ the default judgment, he made this same request; so it cannot be a surprise to Defendant that Plaintiff would seek relief under this provision here.

Having determined that section 3901 applies, the central question now is whether Defendant's affidavit of defense fairly admits or denies relevant facts that nullify operation of the statute. Defendant did indeed file an affidavit, appended to its answer and affirmative defenses. The affidavit is of the "bare bones" variety, assuring us that "[t]here are defenses to the whole or part of this action, as set forth in the accompanying Answer and Affirmative Defenses"[7] and specifically denying that Defendant "owes more than a total of $25,000 of interest under the Note."[8]

Frankly, Defendant's affidavit strikes the Court as a somewhat tepid denial. The purpose of this code provision is to "cut to the chase" in suits on written notes wherein there is a default in payment: the plaintiff brings suit for prompt payment,

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[6] *See* 10 *Del. C.* § 3901(c).

[7] Aff. of Def. ¶ 3.

[8] Aff. of Def. ¶ 4.

not endless back and forth about numbers to the right of the decimal.[9]

Pursuant to 10 *Del. C.* § 3901(b), where the "defense is to a part only of the cause of action, judgment shall be entered for the plaintiff at the plaintiff's election for the sum acknowledged to be due." If we accept Defendant's shorthand affidavit response that, to find its defenses on the merits, the Court should refer to Defendant's Answer to the Complaint, its protestations remain ambiguous at best. In its Answer, Defendant admits that it "has not paid the principal amount of the Note, or any interest due and owing on the Note."[10]

Taken together, the Court understands that Defendant received the money, undertook the obligations of the note, failed to pay back any of the money, and disputes only so much of the interest calculations as exceed $25,000. Therefore, it seems self-evident that Defendant interposes no defense whatsoever to judgment pursuant to 10 *Del. C.* § 3901(b) in the amount of the $100,000 principal and $25,000 in interest.

Defendant's Response to Plaintiff's Motion, however, states: "The managing member of Defendant is without information to ascertain whether Defendant in

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[9] *Tri-Supply & Equip., Inc. v. Southside Utils.*, 2009 WL 2952812, at *2 (Del. Super. Sept. 11, 2009) ("The purpose of requiring an affidavit of defense is to provide for the quick resolution of actions on instruments where there is no defense."); *Hance Hardware Co. v. Howard*, 8 A.2d 26, 27 (Del. Super. 1939) (explaining that purpose of statute is to "prohibit delay in the determination of cases wherein there is no legal defense").

[10] Answer ¶ 10.

fact received the proceeds of a loan from Plaintiff, as alleged in Plaintiff's complaint."[11] In the Court's view, Defendant's contention is insufficient to withstand Plaintiff's Motion for Judgment on the Pleadings. The promissory note was signed by an individual purporting to be the CEO of defendant Shared Savings Bank, LLC. in the principal amount of $100,000. The note is attached to plaintiff's Complaint. If Defendant believed the note to be a forgery, or fraudulently procured, it needed to say so in its affidavit of defense.[12] Feigning ignorance in the face of Plaintiff's Motion for Judgment on the Pleadings is simply insufficient.[13]

Defendant has been consistent in its resistance to Plaintiff's calculation of interest, having raised the issue in its efforts to lift the default judgment and again in its resistance to the instant motion. The Court thinks in fairness that Defendant has raised a bona fide, litigable issue with respect to the meaning and intent of the parties with respect to the recitation and calculation of interest payable on the Note. The Court will therefore limit the judgment here to the uncontested amount of $100,000 in principal and $25,000 in uncontested interest. To the extent

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[11] Def. Resp. ¶ 1.

[12] *First Fed. Sav. & Loan Assoc. of Philadelphia v. Damnco*, 310 A.2d 880, 883 (Del. Super. 1973) ("The requirement that defendant state under oath that he believes he has a valid defense is an essential element required by statute for an affidavit of defense . . . . Nothing in the statute or current rules of this Court indicates an intention to depart from the strict requirements which have prevailed.").

[13] *See Melvin v. Conner*, 62 A. 264 (Del. Super. 1905) (An affidavit reciting that "there is nothing due and owing" is insufficient.).

Plaintiff believes he is entitled to interest or other fees in excess of the judgment rendered herewith, the Court will consider it upon further motion.

For the reasons stated herein, Plaintiff's Motion for Partial Judgment on the Pleadings is GRANTED and therefore, Plaintiff's Motion for Partial Judgment by Default and Motion for enforcement of the Security Requirement Set Forth in 10 *Del. C.* § 3901(f) are moot.

Charles E. Butler, Judge