

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Milford Professional Plaza, L.L.C.,	:	
	:	C.A. No. 07-05-0052
Plaintiff,	:	
	:	
v.	:	
	:	
Cheryl Harris-Chin and	:	
Kenneth Chin,	:	
	:	
Defendants.	:	

Decision on Plaintiff's Motion for Summary Judgment

Oral Argument: March 26, 2008

Final Submission: April 16, 2008

Date of Decision: April 28, 2008

Plaintiff's Motion for Summary Judgment is granted.

Patrick Scanlon, Esquire, 200 N.E. Front Street, Suite 101, Milford, Delaware 19963,
Attorney for Plaintiff.

Eric C. Howard, Esquire, Wilson, Halbrook & Bayard, 107 W. Market Street, Post Office
Box 690, Georgetown, Delaware 19947, Attorney for Defendants.

Trader, J.

In this civil action, the plaintiff, Milford Professional Plaza, L.L.C., has filed a motion for a summary judgment against the defendants, Dr. Cheryl Harris-Chin (Dr. Chin) and Kenneth Chin. Since there is no genuine issue of any material fact, I hold that the plaintiff is entitled to summary judgment as a matter of law.

The relevant facts are as follows: on June 2, 2005, the plaintiff leased a suite of offices to Dr. Chin for the purpose of the practice of pediatric medicine. The term of the lease began on October 1, 2005, for an annual rental of \$40,824.00, payable in monthly installments of \$3,402.00. Because Dr. Chin needed to obtain financing to renovate the leased premises, she did not occupy the premises immediately. Dr. Chin defaulted on her payments under the lease and on or about December 2006, the plaintiff filed a petition for summary possession of the property with the Justice of the Peace Court 16. On December 21, 2006, the Justice of the Peace Court awarded judgment by default for possession of the premises and the default judgment was consented to by Dr. Chin. On January 27, 2007, the defendants, Dr. Cheryl Harris-Chin and Kenneth Chin, signed a mortgage on their house in Magnolia, Delaware for the balance due the plaintiff in the amount of \$32,576.96. Additionally, they signed a promissory note to the plaintiff for the same amount.

The plaintiff filed a civil action in this Court for the balance due on the promissory note and the defendants filed an answer to the complaint with an affidavit of defense. The plaintiff has filed a motion for summary judgment together with an affidavit asserting that there is no genuine issue of material fact. *See Court of Common Pleas Civil Rule 56.*

Summary judgment will be rendered in any cause if the record shows there is no genuine issue as to any material fact. *Matas v. Green*, 171 A.2d 916, 918 (Del. Super. Ct. 1961). In considering the motion for summary judgment, the facts must be considered in light most favorable to the non-moving party. *Pullman, Inc. v. Phoenix Steel Corp.*, 304 A.2d 334, 335 (Del. Super. Ct. 1973).

The moving party has the initial burden to demonstrate that there is no issue of material fact. *Moore v. Sizemore*, 405 A.2d 679, 681 (Del. 1979). If the moving party meets this initial burden, the burden is then upon the resisting party to produce proper evidentiary material to demonstrate the existence of a dispute of a material fact. *Phillips v. Delaware Power & Light Co.*, 216 A.2d 281, 285 (Del. 1966).

The defendant, in her affidavit, asserts that the “Promissory Note is invalid for lack of consideration in that it represents an obligation for alleged unpaid rent and I did not occupy the premises during the period in question and had been told that I was not obligated for such rent until I began occupying the premises.” (Dr. Chin Aff. ¶11.) The defendants, in their response to plaintiff’s motion for summary judgment, also raise the defense of failure of consideration. I conclude that a promise to forbear to sue is valid consideration whether the suit would have been successful or not. *Hensel v. U.S. Electrics., Corp.* 262 A.2d 648, 650 (Del. 1970).

When Dr. Chin consented to the entry of a default judgment for summary possession of the premises, she conceded that there was a sum due under the terms of the lease. Defense counsel also conceded at oral argument that there was a sum of back rent due under the lease, but not the amount claimed by the creditor. Although there may have been a bona fide dispute as to the amount of unpaid rent, when the defendants

signed a promissory note, the old debt was discharged and there was a new agreement between the parties. In return for both defendants signing the promissory note, the plaintiff did not evict Dr. Chin from the rental property or file an action for the unpaid rent.

The new contract between the parties constitutes an accord and satisfaction. The elements necessary for a common law accord and satisfaction are: (1) that a bona fide dispute existed as to the amount owed that was based on mutual good faith; (2) that the debtor tendered an amount to the creditor with the intent that payment would be in total satisfaction of the debt; and (3) that the creditor agreed to accept the payment in full satisfaction of the debt. *Acierno v. Worthy Brothers Pipeline Corp.*, 693 A.2d 1066, 1068 (Del. 1997). In the case before me, the debtors tendered a promissory note in full satisfaction of the debt. The creditor on the other hand, by accepting the promissory note, discharged the prior obligation and agreed not to evict Dr. Chin from the premises.

When the creditor accepts payment in full, in a different medium of payment, which might benefit the creditor more than the payment contemplated by the lease, the Court will not inquire into the adequacy of the consideration, but will hold that the debt was discharged. 1 AM. JUR. 2d *Accord and Satisfaction* §33. Therefore, the giving of an unsecured note by the debtor and its acceptance by the creditor can constitute an accord and satisfaction. 1 AM. JUR. 2d *Accord and Satisfaction* §38. The promissory note furnishes the creditor with a relatively easy cause of action to prove as compared with the trouble and expense of a civil action for breach of the lease agreement. The debtors are allowed to remain in the demised premises even though there is a default by the debtor on the lease agreement. A discontinuance of a civil action in return for a promissory note is

a valid consideration. *See Hensel*, 262 A.2d at 650. Although accord and satisfaction is normally a question of fact, there is no genuine issue of material fact in this case and the plaintiff is entitled to summary judgment as a matter of law.

The defendant also contends, in her affidavit, that the note was signed under duress. I disagree. I note that this defense is not argued in defendants' response to plaintiff's motion for summary judgment or set forth as a defense in the pleadings. The plaintiff is entitled to file a petition for summary possession of the property and a civil action for unpaid rent. A mere filing of such actions does not in anyway constitute duress.

At oral argument, both parties argued as to whether the promissory note was a sealed instrument. Under Delaware law, in order for the instrument to be under seal the contract must contain language in the body of the contract that the contract is under seal, a recital fixing the seal, and extrinsic evidence showing the parties' intent to include a seal. *Aronow Roofing Co. v. Gilbane Building Co.*, 902 F.2d 1127, 1129 (3d Cir. 1990). President Judge Vaughn in *Milford Fertilizer Co. v. Hopkins*, 807 A.2d 580, 582 (Del. Super. Ct. 2002) held that the presence of the word "seal" to the right of the defendant's signature, and the recital in the testimonium clause that the promissory note was being signed under seal were clearly sufficient to indicate that the contract was under seal. In this case, there is no contract under seal because the promissory note lacks the two-fold requirement set forth in *Milford Fertilizer Co.*

Irrespective of the fact that the promissory note is not an instrument under seal, the defendants have not asserted any valid defense to this civil action on the promissory

note. Since there is no genuine issue of material fact, the plaintiff is entitled to a judgment as a matter of law.

Accordingly, judgment is entered in behalf of the plaintiff, Milford Professional Plaza, L.L.C., and against the defendants, Dr. Cheryl Harris-Chin and Kenneth Chin, for the sum of \$32,576.96, plus pre-judgment interest at the rate of 8% per annum, post-judgment interest at the same rate, reasonable attorney's fees, and costs incurred in collection, plus costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge