STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
CALFRAN PROPERTIES, A SOUTH CAROLINA LIMITED PARTNERSHIP, PLAINTIFF, vs. THOMAS D. CALCOTE, DEFENDANT,	)	CASE NO.: 2024-CP-10-02016

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This is a collection matter involving a $600,000.00 promissory note ("Note") from Thomas D. Calcote ("Maker" or "Defendant") to Calfran Properties, a South Carolina Limited Partnership ("Holder" or "Plaintiff"). The case came before me on January 14, 2026, upon Plaintiff's renewed motion for summary judgment. The Plaintiff's initial motion was denied; Defendant was permitted to amend his Answer and participate in discovery. Discovery has now been completed. Accordingly, the motion is ripe for disposition.

Based upon the pleadings, depositions, affidavits, memoranda and accompanying exhibits, as well as the arguments of counsel, the Court finds that the Defendant has failed to make payments required under the terms of the Note, there is no evidence in the record to support the Defendant's affirmative defenses alleged in Defendant's Amended Answer, and there is no genuine issue of material fact precluding summary judgment in favor of Plaintiff.

The Defendant has made a number of partial payments, has never made the May 2024 payment and has failed to make fifteen (15) monthly payments from November 2024 through January 2026, totaling Sixty-Three Thousand Seven Hundred Fifty Dollars and 00/100

($63,750.00). The Plaintiff has accelerated the Note due to Defendant's failure to pay sums due under its terms.

Based upon the record before me, and for the reasons set forth below, the Plaintiff's motion is hereby GRANTED. The Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Plaintiff is a limited partnership. Dr. Clarence E. Calcote and his wife, Frances Calcote are limited partners, and Dr. Calcote is the general partner. The Defendant, Thomas D. Calcote, is their son. Dr. Calcote is 96 years of age, and his wife is in her mid-nineties. She is incapacitated with advanced dementia. Dr. Calcote is a retired orthodontist who has been a real estate investor over the years.

The Defendant is a real estate developer with a finance degree from Clemson University and a Master's degree in real estate and finance from Georgia State University. His professional designations include Certified Commercial Investment Member (CCIM) and Senior Certified Leasing Specialist (CLS). Dr. Calcote and Defendant have participated in real estate investments together over the years.

On March 26, 2014, the Plaintiff loaned the Defendant the sum of Six Hundred Thousand and 00/100 Dollars ($600,000.00) with interest thereon at the rate of Eight and one-half percent (8.5%) per annum, as evidenced by the subject Note. The Defendant promised to repay the loan upon the following terms:

> FOR VALUE RECEIVED, the Maker promises to pay to the order of the Holder . . . the sum of Six Hundred Thousand Dollars ($600,000.00), together with interest thereon at the rate of Eight and one-half percent (8.5%), per annum. The principal and interest shall be paid as follows:
>
> Monthly payments of $4,250.00 to be auto deposited in Holder's bank account on or before the fifth (5^{th}) day of each month, with any outstanding balance due in one

> lump sum payment due no later than the fifth (5th) day of the one-hundred eightieth month after the date hereof.
>
> • • •
>
> AND THE MAKER HEREBY AGREES that if at any time any portion of the principal or interest shall be past due and unpaid, the whole amount evidenced by this Promissory Note shall, at the option of the Holder, become immediately due.
>
> AND THE MAKER FURTHER AGREES hereby that if any part of the money due herein shall not be paid when due, or if this Promissory Note be placed in the hands of an attorney for collection, or if this debt or any part thereof, is collected by an attorney or legal proceedings of any kind, a reasonable attorneys' fee, besides all costs and expenses incident to such collection shall be added to the amount due on this Promissory Note, and be collectible as a part thereof.
>
> Demand, presentment, protest, or other requirements of notice or acts of diligence are waived by all parties hereto.

Although the Note does not expressly state that it is an interest-only Note with a balloon payment due at the end of its term, simple math establishes that to be true:

> $600,000.00 X .085 (8.5%) = $51,000 interest to be paid per year.
>
> $51,000 ÷ 12 = $4,250.00 interest to be paid per month.

If the Defendant had made each and every $4,250.00 payment in a timely manner, he would have made no payment toward reduction of the principal balance after making 179 payments. The Defendant made the required payments for a number of years until he failed to make the January 2021 payment. He then began paying only $4,000.00 each month for many months. The Plaintiff, through its General Partner, Dr. Calcote, contacted the Defendant and the Defendant's property manager, Drew Burris, orally and in writing seeking to get a reconciliation of the missed and deficient payments. In May 2022, the Defendant made a payment of $20,000.00 which brought the account current and reconciled the arrearages.

Beginning shortly thereafter, the Defendant resumed writing $4,000.00 checks each month. In February 2023 and March 2023, the Plaintiff and Drew Burris corresponded regarding

outstanding balances. By email dated February 16, 2023 to Drew Burris, Dr. Calcote forwarded his calculations regarding accrued arrearages seeking to get the account reconciled. That email begins as follows: "May I request your attention to this matter again?" Mr. Burris advised he had acquired control over the account; that he would investigate and that he would see that the Plaintiff was paid what was due.

The Defendant continued sending $4,000.00 checks and on February 7, 2024, the estate planning attorney for Dr. Calcote wrote to Defendant requesting that the account be brought current. In mid-April 2024, the Defendant met with Dr. Calcote for lunch. He gave the Plaintiff an unsigned $4,000.00 check dated May 1, 2024, and stated that this would be the last check the Plaintiff would receive for the foreseeable future. In support of his Memorandum in Opposition to Plaintiff's Summary Judgment Motion, the Defendant submitted Dr. Calcote's deposition testimony describing the meeting:

Q: Okay. Prior to what you alleged to be the default on the loan in this case, would you say that you had a good relationship with Thomas?

A: I had a what?

Q: That you had a good relationship with Thomas?

A: Let's go back to the alleged default.

Q: Yes, sir.

A: You said alleged default.

Q: That's what you alleged in your complaint.

A: He sat in the Country Club Yacht Club and told me to my face, I am going to default on this $600,000 loan. He slapped a folder down that has an unsigned check in it, says, this is the last dollar you're going to get from me on that loan. That's an alleged default?

Q: I'm just asking you.

A: What is the question?

Q: So let's go back to what you just said about this. You have described a meeting, I believe you said at Carolina Yacht Club?

A: Yes.

Q: That meeting was with Thomas?

A: Yes.

Q: Who else was at that meeting?

A: Nobody.

Q. Okay.

A: It was a short meeting. He invited me for lunch. He loaded my salad plate, put it down, and then presented me the folder and the default statement and left.

Clarence E. Calcote dep. 53:11-54:17, Oct. 23, 2025.

The Defendant presented no evidence to refute this description of his conduct during the lunch meeting where he delivered an unsigned check to his father. In fact, the Defendant presented the above quoted testimony to the Court. The Defendant was served with the Summons and Complaint in this case two (2) days later.

In his deposition, the Defendant admitted that the $4,250.00 payment is all interest, that he had made no payments since October 2024, that the Plaintiff had been "hounding" or "pestering" him and his property manager Drew Burris, and that the Plaintiff contacted him and Mr. Burris in 2022, 2023, and 2024 seeking to bring the Note current.

Although the Defendant has stated that some unknown and unspecified amount of the payments he actually made constitute principal, he presented no evidence to support that position, nor can he. The plain language of the Note and simple math establishes that the $4,250.00 payments consist of interest payments only. The Defendant has on two (2) occasions filed sworn

affidavits which falsely state that he has made payments totaling approximately $561,000. The bank records themselves and the unchallenged calculations submitted by Plaintiff's forensic accountant establish that he has paid only $528,500, as of October 2024, and he has made no payments since. In fact, had he made all the required payments through October 2024, he would have only paid a total of $539,750 – not $561,000, as Defendant has sworn.

The Defendant has raised a number of affirmative defenses in his Amended Answer, including the following:

1. "Plaintiff's action should be dismissed based upon the doctrines of release, waiver, and/or estoppel." (DEFENDANT'S THIRD DEFENSE)

2. "Plaintiff's action should be dismissed based on the running of the applicable statute of limitations and/or laches." (DEFENDANT'S FOURTH DEFENSE)

3. "Plaintiff's action should be dismissed based on permission, consent, license and/or condonation." (DEFENDANT'S FIFTH DEFENSE)

As a threshold matter, the Defendant's conduct toward the Plaintiff and this Court are relevant to establish whether he has acted equitably such that he would be entitled to the Court's protection in equity. The Court makes the following findings, not for the purpose of judging or establishing credibility, but rather to establish that the Defendant comes to the Court with unclean hands.

In opposition to the Plaintiff's initial summary judgment motion, the Defendant submitted his affidavit filed October 29, 2024. In that affidavit, the Defendant falsely swore that:

1) The payments on the Note were made through an autodraft with Synovus Bank. The truth is that the payments were made on a Synovus account by handwritten checks signed by the Defendant himself, including the $4,000.00 short payments.

2) The reduced payments were not the result of any cause, request or instruction by him and was instead a bank or third-party error. Again, the truth is that the Defendant signed every Synovus check for $4,000.00.

3) He had paid approximately $561,000 toward satisfaction of the Note. The truth is that Defendant's own bank records show that as of that date, he had paid only $528,500, and Defendant has made no more payments since that date.

4) Plaintiff accepted reduced monthly payments beginning in July 2022 and did not complain or otherwise inform Defendant of the reduction in payment until just before or at the time of the Complaint. The truth is that the Plaintiff "hounded" or "pestered" Defendant and his property manager regarding the reduced payments in 2022, 2023 and 2024, as admitted by Defendant in his deposition.

Further, the Defendant's conduct in delivering to Dr. Calcote an unsigned check for the May 2024 payment, stating he was defaulting on the Note and walking out of the lunch meeting the Defendant had invited his father to attend is anything but equitable. The Court also notes that the Defendant was ordered in September 2025 to fully respond to Plaintiff's discovery requests, but the Defendant has admitted he has "not lifted a finger," "flat out," in connection with documents Plaintiff requested.

I find that the Defendants comes to Court with unclean hands, and that he has made false statements under oath to the Court and made no meaningful effort to comply with the Court's discovery order in this case.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In ruling on a motion for summary judgment, the Court must view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. *Byrd v. City of Hartsville*, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Rife v. Hitachi Const. Machinery Co. Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim but must clearly establish by the record the absence of a triable issue of fact. After the moving party has met this initial burden, the opposing party must, under Rule 56(e), SCRCP, "do more than simply show that there is some metaphysical doubt as to the material facts" and "must come forward with 'specific facts showing that there is a *genuine issue for trial.*'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986)) (emphasis in original).

With respect to an issue upon which the non-moving party bears the burden of proof, the moving party may discharge this initial responsibility by pointing out to the Court the absence of evidence to support the non-moving party's case. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568. The non-moving party must show a genuine issue as to any material fact, as set forth in Rule 56(c), requiring the non-moving party show a "reasonable inference" be drawn from the evidence. *Kitchen Planners*, 440 S.C. at 461, 892 S.E.2d at 300. In *Kitchen Planners*, our Supreme Court

clarified that the "scintilla" rule which had been applied in a number of cases was an incorrect analysis of Rule 56 SCRCP. *Id.* at 463, 892 S.E.2d at 301. Therefore, if there is no genuine issue as to any material fact, then summary judgment must be granted.

CONCLUSIONS OF LAW

A Promissory Note is a binding contract that "is an unconditional obligation, sufficient itself to support a cause of action." *Ray v. S.C. National Bank*, 281 S.C. 170, 174-175, 314 S.E.2d 359, 361 (Ct. App. 1984). The interpretation of an unambiguous written contract is a matter of law, not a matter of fact, and therefore is an evaluation to be made by the court and not the finder of fact. *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001). When "an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found in the agreement, and give effect to it." *Southern Atlantic Financial Services, Inc. v. Middleton*, 349 S.C. 77, 562 S.E.2d 482 (Ct. App. 2002). Where "the language of a contract is clear, explicit and unambiguous, the language of the contract alone determines that contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning." *ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011).

A defendant alleging affirmative defenses has the burden of proving them. *Ross v. Paddy*, 340 S.C. 428, 582 S.E.2d 612 (Ct. App. 2000). When seeking to assert affirmative defenses in equity, a defendant must come to court with clean hands. *Emery v. Smith*, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004). "He who seeks equity must do equity." I*ngram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) (quoting *Norton v. Matthews*, 249 S.C. 71, 80, 152 S.E.2d 680, 684 (1967)) (internal quotations omitted).

In the Defendant's Amended Answer, he pleads several affirmative defenses. The Defendant now appears to have abandoned a number of his affirmative defenses and admitted in his deposition that he has no evidence to establish the affirmative defenses of release, statute of limitations, or laches. Notwithstanding the Court's finding that the Defendant has come to this Court with unclean hands, there exists no genuine issue of material fact as to Defendant's remaining affirmative defenses nor evidence in the record to support them.

Waiver

For a valid waiver, a party must voluntarily and intentionally abandon or relinquish a known right. *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992). Waiver can also "be implied from circumstances indicating an intent to waive," such as by "[a]cts that are inconsistent with the continued assertion of a right." *Provident Life and Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994). The burden of proof for establishing waiver lies with the party asserting the waiver and is a question of fact for the finder of fact to determine. *Parker v. Parker*, 313 S.C. 482, 443 S.E.2d 388 (1994); *see also SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla*, 415 S.C. 72, 781 S.E.2d 115 (Ct. App. 2015). Importantly, waiver "in all cases should be limited to saving harmless or making whole the party in whose favor they arise and should not . . . be made the instruments of gain or profit." *Janasik*, 317 S.C. at 345, 415 S.E.2d at 388.

Although he contends that the Plaintiff has waived the right to accelerate the Note by accepting partial payments, the Defendant's own testimony reflects that the Plaintiff never voluntarily abandoned or relinquished the right to full payment, he testified that he paid $20,000 in May 2022 to reconcile the account, and that his father orally and in writing was asking that the account be brought current during 2022, 2023 and 2024. There is likewise no evidence to establish

that the Plaintiff waived Defendant's failure to make the May 2024 payment or the fifteen payments from November 2024 through January 2026, nor any evidence to establish that the terms of the Note have been modified by conduct of the parties such that would negate Plaintiff's ability to accelerate the Note for Defendant's failure to make the required payments.

Estoppel

The burden of proof is upon the party who asserts an estoppel. *Provident Life and Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 929 (Ct. App. 1994). As the party asserting equitable estoppel, the Defendant must present evidence that the Plaintiff, by words or actions, falsely represented or concealed material facts, causing the Defendant to change his position to his prejudice or injury. Prejudice is an essential element of equitable estoppel. With regard to the party estopped, the elements of equitable estoppel are: 1) conduct amounting to a false representation or concealment of material facts, 2) the intention or expectation that such conduct shall be acted upon by the other party, and 3) actual or constructive knowledge of the real facts. *Rushing v. McKinney*, 370 S.C. 280, 633 S.E.2d 917 (Ct. App. 2006).

When given the opportunity during his deposition to testify in support of his estoppel defense, the Defendant offered no such testimony:

Q. How about estoppel? Why do you claim that Dr. Calcote or Calfran is - -

A. I have no clue what that means.

Q. You don't - - you have no testimony to offer that - - in that regard?

A. No, I do not.

Thomas D. Calcote Dep. at 139:21-140:10, Oct. 22, 2025. The Defendant has otherwise presented no evidence to establish that the Plaintiff made any false representation to him or concealed any

materials facts from him, that Defendant changed his position replying upon any such representation, or that he was prejudiced as a result.

Consent

In his Amended Answer, Defendant pleads the affirmative defenses of consent, license, and condonation. In South Carolina, license and condonation are legal concepts typically reserved for matters involving property and divorce, respectively. Consent as an affirmative defense in the context of contract law is rarely used as a standalone defense; instead, it is often merged into other, similar affirmative defenses such as waiver and estoppel. *See Mathis v. Brown & Brown of South Carolina, Inc.*, 389 S.C. 299, 698 S.E.2d 773 (2010) (finding that the doctrine of estoppel applied in an action alleging a party impliedly consented to a change in compensation). *Black's Law Dictionary* defines "consent" as "agreement, approval, or permission as to some act or purpose, esp. given voluntarily by a competent person." *Consent*, *Black's Law Dictionary* (12th ed. 2024).

To the extent that it may constitute a separate and distinct legal concept available for Defendant as an affirmative defense here, Defendant has provided no evidence showing that Plaintiff agreed, approved, or granted Defendant permission to make short payments or to cease making any payments at all. In fact, the evidence in the record shows that Plaintiff made clear his dissatisfaction with Defendant's short payments and missed payments on the Note, and there is no evidence Plaintiff agreed to allow Defendant to stop making payments entirely after October 2024.

CONCLUSION

The subject Note is unambiguous. It clearly and unequivocally by its terms establishes that the $600,000 loan is to bear interest of Eight and ½ percent (8.5%) per annum, that the $4,250.00 monthly payment over the course of twelve (12) months constitutes payment of interest only and that the entire balance of principal and interest is due on the 180th month, a term of 15 years. It

clearly states that if any portion of the principal and interest shall be past due and unpaid, the whole amount evidenced by the Note shall, at the option of the Plaintiff become immediately due. The Defendant has failed to make payments required under the terms of the Note, and there is no evidence to support any of Defendant's affirmative defenses. The Defendant has defaulted on the Note; the Note has been accelerated, and the Plaintiff is entitled to enforce the provisions of the Note.

For the reasons set forth above, the Plaintiff's motion is hereby GRANTED, and it is hereby ORDERED as follows:

1) Judgment is awarded against Defendant for all sums due and owing under the terms of the Note, totaling $677,398.94 as of January 31, 2026. This figure includes the $600,000 balance remaining on the principal, $66,500 in missed and short payments, and interest accruing daily in the amount of $139.73 from November 15, 2025, to January 31, 2026 (78 days), all as established by the unchallenged calculations submitted by Plaintiff's forensic accountant on November 14, 2025 with Plaintiff's Memorandum in Support of its Motion for Summary Judgment.
2) The Clerk of Court shall enroll judgment against the Defendant forthwith in the amount of $677,398.94 in favor of Plaintiff.
3) The Plaintiff is also entitled to reasonable attorney's fees, costs, and expenses incident to collection under the Note's terms. Plaintiff's counsel shall submit a Petition for attorney's fees, costs and expenses on or before the 10th date after the date of this Order.

IT IS SO ORDERED!

_____

Mikell R. Scarborough
Master-in-Equity
Charleston County

Dated: _____

Charleston Common Pleas

Case Caption: Calfran Properties VS Thomas D Calcote

Case Number: 2024CP1002016

Type: Order/Summary Judgment

So Ordered

s/Mikell R. Scarborough 3062