

STATE OF SOUTH CAROLINA
YORK COUNTY

IN THE COURT OF COMMON PLEAS

C/A No.: 2014-CP-46-1390

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OCT 07 2015

SC Court of Appeals

ORDER

MARY JUDITH O'DELL BURNS,)
)
 Plaintiff,)
 v.)
)
 GEORGE D. DOVE,)
)
 Defendant,)
 v.)
)
 LAUREL A. BURNS,)
 f/k/a LAUREL BURNS DOVE,)
)
 Third Party Defendant.)

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 2015 JUL 27 AM 9:14
 DAVID R. ANDERSON
 CLERK OF COURT
 YORK COUNTY, SC

This matter came before me on July 8, 2015 upon Plaintiff, Mary Judith O'Dell Burns' ("Plaintiff"), Motion for Summary Judgment. Representing the parties at the hearing were Ted F. Mitchell for Plaintiff and Matthew R. Niemiec for Defendant, George D. Dove ("Defendant Dove"). (*Pro Se* Third-Party Defendant, Laurel A. Burns ("Defendant Burns"), also was in attendance.) After reviewing the exhibits, depositions, and affidavits presented, as well as arguments of counsel, and after full consideration of the evidence submitted by the parties, the Plaintiff is entitled to judgment as a matter of law and, accordingly, I make the following findings of fact and conclusions of law:

Findings of Fact

1. In July of 2009, Plaintiff provided Defendant Dove and Defendant Burns with a loan in the original amount of seventy-five thousand dollars (\$75,000.00), as evidenced by a Promissory Note (the "Promissory Note").

2. Pursuant to the terms of the Promissory Note, which provides for joint and several liability between the defendants, Defendant Dove and Defendant Burns borrowed the original

Handwritten signature/initials

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sum of \$75,000.00 with simple interest accruing on the principal at the rate of 2.75% per annum. Further, the parties agreed that payments of interest only would be due monthly in the amount of \$170.00 per month beginning on August 1, 2009, and that said monthly payments would equal Plaintiff's monthly rent for staying with Defendant Dove and Defendant Burns at 9 Willingham Court, Charleston, South Carolina (the "Property").

3. The parties agreed that the Promissory Note (including all unpaid principal and interest, if any) would be paid in full at the earlier of either: (1) eight years after execution of the Promissory Note or, (2) the date that Plaintiff no longer lived with Defendant Dove and Defendant Burns at the Property.

4. Pursuant to an agreement with Defendant Dove, Plaintiff was allowed to stay longer at the Property than previously agreed, and Plaintiff agreed to give Defendant Dove a "credit" of \$600.00 toward the balance due. Other than this credit, neither Defendant Dove nor Defendant Burns has made any payments on the Promissory Note.

5. After crediting Defendant Dove for the amounts paid through Plaintiff's rent payments or credits for staying at the Property, there remains due and owing to Plaintiff the amount of \$77,806.61 as of June 22, 2015.

Conclusions of Law

Based on the findings of fact herein, I make the following conclusions of law.

6. The terms and conditions of the Promissory Note are unambiguous, and the intention of the parties as to the meaning of the Promissory Note can be gathered from the four corners of said instrument.

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7. No reasonable inference can be drawn from the plain and indisputable facts that exist other than that Defendant Dove breached the Promissory Note, which is the subject matter of this litigation.


8. Based on Defendant Dove's breach of the Promissory Note, Plaintiff is entitled to damages from Defendant Dove as follows: Principal of \$75,000, plus interest through June 22, 2015 of \$3,512.82, minus a "rent credit" of \$706.21 in favor of Defendant Dove for a total owed to Plaintiff of \$77,806.61.

NOW, THEREFORE, BASED UPON THE FOREGOING, IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff, Mary Judith O'Dell Burns', Motion for Summary Judgment is granted and that judgment will be entered in her favor and against Defendant, George D. Dove, as follows:

1. Plaintiff is granted judgment against Defendant, George D. Dove, for breach of contract in the total sum of \$77,806.61;
2. Defendant, George D. Dove, shall reimburse Plaintiff for her reasonable attorneys' fees pursuant to N.C.G.S. §6-21.2 in the amount of \$ 13,909.00 PAA, as well as Plaintiff's legal expenses in the amount of \$ 919.86 AMK;
3. Plaintiff's claim for unjust enrichment is dismissed with prejudice; and
4. Defendant, George D. Dove's, counterclaims are dismissed with prejudice.

AND IT IS SO ORDERED.

July 22, 2015
York, South Carolina



S. Jackson Kimball
Special Circuit Court Judge
York County

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STATE OF SOUTH CAROLINA
YORK COUNTY

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IN THE COURT OF COMMON PLEAS

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Case No.: 2014-CP-46-1390

MARY JUDITH O'DELL BURNS,

Plaintiff,

v.

GEORGE D. DOVE,

Defendant,

v.

LAUREL A. BURNS,
f/k/a LAUREL BURNS DOVE,

Third Party Defendant.

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

**ORDER CONFIRMING ORDER
GRANTING SUMMARY JUDGMENT
AND AMENDING THE SAME**

This matter came before me on September 1, 2015, upon Defendant George D. Dove's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCF. Representing the parties at the hearing were Ted F. Mitchell for Plaintiff, Mary Judith O'Dell Burns ("Plaintiff"), and Oana D. Johnson for Defendant, George D. Dove ("Defendant Dove"). After reviewing the memorandums presented by the parties and considering arguments of counsel, I find and conclude as follows.

At the July 8, 2015, hearing on Plaintiff's Motion for Summary Judgment, the issue of whether Plaintiff fraudulently induced Defendant Dove into executing the Promissory Note was argued and addressed from the bench, but that issue not specifically discussed in the prior order for summary judgment. Defendant Dove sought to establish that he was induced to sign the note based on Plaintiff's assurances that she would not seek to collect the debt from him. At the prior hearing, Defendant Dove's counsel acknowledged that the defense of fraud and/or fraud in the inducement had not been affirmatively or specifically alleged in the Answer or elsewhere. Further, no motion to amend was made to add the defense. As such, the defense was not considered. While Defendant Dove did make an oral motion at the hearing on this Rule 59(e) motion to amend his Answer after the fact to include an affirmative defense of fraudulent inducement, that motion was denied as untimely.

In any event, the defense could not be sustained as a matter of law. Such an assertion of

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fact directly contradicts the terms of the promissory note. Further, in signing the note as written as a co-maker, he had no right to rely on any assertion that collection would be made from Laurel, and not from him.

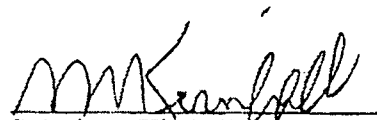
Defendant Dove now seeks additional time for discovery to support his claims. Principally, he relies on a writing, which he says is a representation by Plaintiff that she had no intention of collecting from him on the note. Defendant Dove had ample time to complete discovery in this case, including taking Third-Party Defendant Laurel Burn's deposition. He also had ample time prior to the July 8 hearing to present this particular writing through relevant affidavits and exhibits in opposition Plaintiff's Motion for Summary Judgment. However, at the July 8 hearing, he did not submit any such evidence.

Further, Defendant Dove may not now introduce new evidence in support of his Rule 59(e) motion. Also, he may not raise new issues that were not raised at the hearing on Plaintiff's Motion for Summary Judgment, or that could have been raised in opposition to the motion.

Therefore, based on the discussion herein, it is ordered that Defendant Dove's Motion to Alter or Amend Judgment be denied. It is further ordered that Plaintiff's Motion for Summary Judgment be confirmed. It is further ordered that Defendant Dove's oral motion to amend his Answer to include an affirmative defense of fraudulent inducement be denied.

AND IT IS SO ORDERED.

September 8, 2015


S. Jackson Kimball
Special Circuit Court Judge
York County

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