

EXHIBIT

B

RECEIVED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2016-CP-10-1022

OCT 17 2016

SC Court of Appeals

ROBIN S. FORMAN, as Personal )  
Representative of the ESTATE OF )  
BURTON J. APAT, )

Plaintiff, )

vs. )

NATIONAL DENTAL SYSTEMS, )  
LLC, d/b/a DENTAL SMART, )

Defendant. )

ORDER GRANTING PLAINTIFF'S  
PARTIAL SUMMARY JUDGMENT

BY \_\_\_\_\_

JULIE E. HANSTRONG  
CLERK OF COURT

2016 AUG 29 AM 8:59

FILED

**THIS MATTER** came before me for hearing on August 3, 2016 upon plaintiff's motion for summary judgment filed on June 10, 2016.

*gan*

Plaintiff, Robin Forman, as Personal Representative of the Estate of Burton J. Apat ("Apat"), sought summary judgment on the claims raised in the Complaint. The Complaint asserts two separate causes of action. The First Cause of Action alleges Defendant, National Dental Systems, LLC d/b/a Dental Smart ("Dental Smart") breached the covenant in the Loan Agreement requiring it to repay a loan made by Burton Apat to Dental Smart. The Second Cause of Action alleges Dental Smart breached a separate and independent covenant in the Loan Agreement requiring it to pay for construction work performed by Complete Building Corporation ("CBC") on Dental Smart premises.

In response to the motion for summary judgment, Dental Smart contended there was a genuine issue of material fact as to whether interest continued to accrue at the rate of \$15,000 per month following default on the Loan Agreement, as

claimed in the First Cause of Action. I conclude a genuine issue of material fact exists as to this issue. Therefore, Plaintiff's motion for summary judgment is denied as to the claim raised in the First Cause of Action.

As to the Second Cause of Action, in its response to Plaintiff's motion for summary judgment, Dental Smart did not dispute, by way of the submission of admissible evidence, that it owed CBC the sum of \$56,654.12 as alleged in plaintiff's motion and supported by an affidavit. "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. The nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Bennett v. Inv'rs Title Ins. Co.*, 370 S.C. 578, 587-89, 635 S.E.2d 649, 654 (Ct. App. 2006) (internal citations omitted). At this juncture, all which remains is for the Court to construe the language of the Loan Agreement. Where a motion for summary judgment presents a question as to the construction of a written contract, if the language employed by the agreement is plain and unambiguous, the question is one of law. *First-Citizens Bank Trust Co. v. Conway Nat'l Bank*, 282 S.C. 303, 305, 317 S.E.2d 776, 777 (Ct.App.1984). "In such a case, summary judgment is proper and a trial unnecessary where the intention of the parties as to the legal effect of the contract may be gathered from the four corners of the instrument itself." *HK New Plan Exch. Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 23, 649 S.E.2d 181, 183-84 (Ct. App. 2007). I conclude, as a matter of law, Dental Smart's obligation to pay CBC for work performed on its facilities was a separate and independent covenant from Dental Smart's promise to repay the loan. Dental Smart breached the covenant to

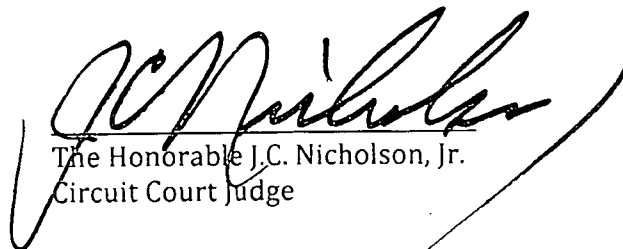
gm

pay CBC for worked performed on its premises. No genuine issue of material fact exists as to the breach of the CBC covenant, or as to the amount owed CBC. Accordingly, I conclude partial summary judgment in favor of Apat against Dental Smart in the sum of \$56,654.12, which is the amount owed by Dental Smart to CBC under the Second Cause of Action, should be entered. Therefore, it is

**ORDERED, ADJUDGED AND DECREED** that Plaintiff, Robin S. Forman, as Personal Representative of the Estate of Burton J. Apat be and hereby is granted summary judgment as to the claim raised in the Second Cause of Action and partial summary judgment is hereby entered against National Dental Systems, LLC d/b/a Dental Smart in the sum of \$56,654.12, which is the sum owed by said Defendant to Complete Building Corporation; and, it is

**ORDERED, ADJUGED AND DECREED** that summary judgment is denied as to the claims raised in the First Cause of Action by Plaintiff Robin S. Forman, as Personal Representative of the Estate of Burton J. Apat against National Dental Systems, LLC d/b/a Dental Smart and this case shall proceed as to that claim.

**AND IT IS SO ORDERED.**

  
The Honorable J.C. Nicholson, Jr.  
Circuit Court Judge

Charleston, South Carolina  
August 17, 2016

STATE OF SOUTH CAROLINA  
 COUNTY OF CHARLESTON  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-1022

RECEIVED

OCT 17 2016

SC Court of Appeals

Robin S. Forman, as Personal Representative of the  
 Estate of Burton J. Apat  
 PLAINTIFF(S)

National Dental Systems, LLC d/b/a Dental  
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

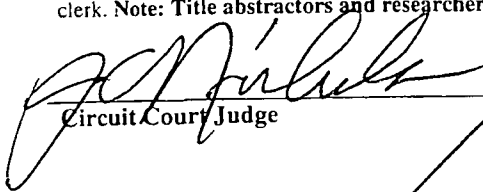
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Complete Building Corporation	National Dental Systems, LLC	\$56,654.12

If applicable, describe the property, including tax map information and address, referenced in the order:  
 N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
 Circuit Court Judge

2117  
 Judge Code

8/17/16  
 Date