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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

J. C. Nicholson, Circuit Court Judge

Appellate Case No. 2016-002130

RECEIVED
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SC Court of Appeals

ROBIN S. FORMAN, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF BURTON J. APAT, Respondent,

v.

NATIONAL DENTAL SYSTEMS, LLC, D/B/A DENTALSMART Appellant.

RECORD ON APPEAL

Mark A. Mason, Esquire
Salah H. Hibri, Esquire
THE MASON LAW FIRM, P.A.
Tidewatch Centre on Shem Creek
465 W. Coleman Boulevard, Suite 302
Mount Pleasant, S.C. 29464

Attorneys for the Respondent

ROBIN S. FORMAN, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF BURTON J. APAT

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Attorneys for the Appellant

NATIONAL DENTAL SYSTEMS, LLC, D/B/A
DENTALSMART

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

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.)
_____)

COMPLAINT

FILED
2016 MAR 2 AM 11:32
CLERK OF DISTRICT COURT
BY

Plaintiff, complaining of the Defendant named herein, would respectfully allege and show unto the court as follows:

1. Plaintiff, Robin S. Forman, is the duly appointed Personal Representative of the Estate of Burton J. Apat ("Apat") having been so appointed by the Surrogate's Court of the State of New York, Nassau County, in Case 2015-387102, and she brings this action in her representative capacity on behalf of the Estate of Burton J. Apat.

2. Defendant, National Dental Systems, LLC (hereinafter referred to as "NDS") is a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business being in Charleston County, South Carolina. NDS does business as Dental Smart.

3. This court has jurisdiction over the parties and the subject-matter of this action.

4. Venue is proper in this court.

5. On or about January 5, 2013, Apat and NDS entered into the "Loan Agreement," a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

6. The said "Loan Agreement" was drafted by NDS.

7. Subsequent to the execution of the "Loan Agreement" the loan was provided and funded by Apat to NDS.

8. The principal amount of the said loan was One Hundred Thousand and No/100 (\$100,000.00) Dollars.

9. The "Loan Agreement" provides a "default occurs if the debt is not fully re-paid within sixty (60) days after the loan is provided / funded."

10. The "Loan Agreement" provides that the interest rate is \$15,000 per month.

11. The "Loan Agreement" provides that "If the loan is not repaid in 30 days, the interest is doubled to \$30,000."

12. The "Loan Agreement" provides that "Interest shall accrue in 30 day increments."

13. NDS made two (2) interest payments of \$15,000 each, then made no further payments of principal or interest.

14. NDS failed to fully repay the loan within sixty (60) days after the loan was provided / funded and as such defaulted on the "Loan Agreement."

15. Thereafter, Apat demanded that the loan be repaid, which demands were not met.

16. As an additional term of the "Loan Agreement" NDS agreed that "Upon the first disbursement under the Realty Link LOI and subsequent agreement, the CBC (referring to Complete Building Corporation) payments shall be made in full in two (2) equal payments with the second payment within 60 days."

17. NDS breached its agreement to pay Complete Building Corporation.

18. The loan embodied in the "Loan Agreement" was a bridge loan made for a commercial or business purpose.

FOR A FIRST CAUSE OF ACTION

(Breach of Loan Agreement)

19. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

20. The principal amount of the loan was One Hundred Thousand and No/100 (\$100,000.00) Dollars.

21. The "Loan Agreement" provides that the interest rate is \$15,000 per month.

22. The "Loan Agreement" provides that "If the loan is not repaid in 30 days, the interest is doubled to \$30,000."

23. The "Loan Agreement" provides that "Interest shall accrue in 30 day increments."

24. NDS made two (2) interest payments of \$15,000 each, then made no further payments of principal or interest.

25. NDS failed to repay the loan in full within sixty (60) days after the loan was provided / funded and as such defaulted on the "Loan Agreement."

26. That as of February 5, 2016, there is due and owing by NDS to Apat under the terms of the "Loan Agreement" the following amounts: (a) One Hundred Thousand and No/100 (\$100,000.00) Dollars as principal; and (b) Thirty-five (35) months of interest at a rate of Fifteen Thousand and No/100 (\$15,000.00) per month, for total accrued interest of Five Hundred Twenty-five Thousand and No/100 (\$525,000.00) Dollars, thereby making the total amount of principal and interest due and owing as of February 5, 2016, Six Hundred Twenty-five Thousand and No/100 (\$625,000.00) Dollars.

FOR A SECOND CAUSE OF ACTION

(Breach of CBC Provision of Loan Agreement)

27. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

28. As an additional term of the "Loan Agreement" NDS agreed that "Upon the first disbursement under the Realty Link LOI and subsequent agreement, the CBC (referring to Complete Building Corporation) payments shall be made in full in two (2) equal payments with the second payment within 60 days."

29. The CBC debt to which the "Loan Agreement" refers is a debt from NDS to Complete Building Corporation pertaining to construction work done by Complete Building Corporation for NDS at 3834 Highway 17 South, North Myrtle Beach, South Carolina. The debt relative to said construction work is in the sum of Ninety-Three Thousand Three Hundred Eighty-Four and 92/100 (\$93,384.92), together with pre-judgment interest from December 27, 2012 and attorney's fees.

30. NDS breached its agreement to pay Complete Building Corporation.

FOR A THIRD CAUSE OF ACTION

(Declaratory Judgment and Injunction as to Apat's Security Interest in NDS)

31. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

32. The "Loan Agreement" provides that if there is a default by NDS, as security for repayment of the loan, Apat's security increases from a 3% security interest in NDS to a 6% (no liability/equity only position) security interest in NDS.

33. Plaintiff is informed and believes that this court should issue a declaratory judgment that Apat holds a 6% no liability/equity only position in NDS to secure repayment of the obligations under the "Loan Agreement" as alleged in the First and Second Causes of Action.

WHEREFORE, Apat prays for judgment against NDS as follows:

(A) As to the First Cause of Action for a judgment in favor of Apat against NDS in the sum of Six Hundred Twenty-five Thousand and No/100 (\$625,000.00) Dollars, plus interest accruing at the rate of \$15,000 per month from February 5, 2016 until the debt is paid in full; and

(B) As to the Second Cause of Action for a judgment in favor of Apat against NDS in the sum of Ninety-Three Thousand Three Hundred Eighty-Four and 92/100 (\$93,384.92), together with pre-judgment interest from December 27, 2012 and attorney's fees, or an order that NDS comply with the "Loan Agreement" by paying said amount directly to Complete Building Corporation; and

- (C) As to the Third Cause of Action for a declaratory judgment that Apat , holds a 6% no liability/equity only position in NDS to secure repayment of the obligations under the "Loan Agreement" as alleged in the First and Second Causes of Action; and
- (D) For such other and further relief as this court may deem just and proper.

Respectfully submitted,

~~THE MASON LAW FIRM, P.A.~~

BY: 

MARK A. MASON

SALAH H. HIBRI

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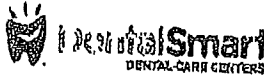
E-mail: mark@masonlawfirm.com

salah@masonlawfirm.com

Attorneys for the Plaintiff

Mount Pleasant, South Carolina
March 2, 2016

EXHIBIT "A"



January 5, 2013

To: Mr. Burton Apat
Mr. Victor Apat

Loan Agreement

Lender: Mr. Burton Apat

Borrower: National Dental Systems, LLC

Amount: \$100,000

Term: 90 Days

Interest: \$15,000

Security: Assigned 3% Interest in National Dental Systems, LLC (NDS) - with no liability exposure to DS Equity, LLC or DIG, LLC or any related parties of NDS

Upon the first disbursement under the Realty Link LOI and subsequent agreement, this loan shall be re-paid in full. Partial payment shall be considered a default.

If the loan is not repaid in 30 Days, the interest is doubled to \$30,000.

If there is a default, the 3% interest in NDS becomes 6% (no liability/equity only position)

A default occurs if the debt is not fully re-paid within sixty (60) days after the loan is provided / funded

Upon the first disbursement under the Realty Link LOI and subsequent agreement, the EAC payments shall be made in full in two (2) equal payments with the second payment within 60 days.

The first month's interest payment of \$15,000.00 shall be paid upon closing/disbursement of the loan.

Interest shall accrue in 30 day increments.

Upon repayment of the loan, a full release will be issued to NDS and any assigned ownership interest in NDS will revert back to NDS.

For National Dental Systems, LLC
D/Adm. Founder
Brian Schlotter, President & CEO

For lender
Burton Apat

2020 Savannah Highway Charleston, SC 2941407

p. 843.735.6727 f. 843.735.6717 DentalSmartUs.com

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

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

Case No. 2016-CP-10-1022

Plaintiff,

**ANSWER OF DEFENDANT
(Jury Trial Demanded)**

vs.

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

Defendant.

FILED
2016 APR -1 PM 2:16
CLERK OF COURT
SOUTH CAROLINA

Defendant, National Dental Systems, LLC, d/b/a Dental Smart, ("Defendant"), by and through its undersigned counsel, answers the Complaint of Plaintiff, Robin S. Forman, as Personal Representative of the Estate of Burton J. Apat, ("Plaintiff") as follows:

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.
2. The Defendant is without sufficient information to either admit or deny the allegations of paragraph 1 of the Complaint, and therefore, denies the same.
3. The Defendant admits the allegations contained in paragraphs 2, 3, 4 and 5
4. The allegations contained in paragraph 6 are denied by Defendant.
5. Answering the allegations of paragraphs 7 and 8, Defendant admits receiving One Hundred Thousand and 00/100 (\$100,000.00) Dollars in loan proceeds. Defendant has insufficient information to either admit or deny the remaining allegations and, therefore, denies the same.

6. Answering the allegations contained in paragraphs 9, 10, 11 and 12, Defendant alleges that the document speaks for itself and, therefore, no response is required. Defendant further alleges that as to any terms of the document that are contradictory or ambiguous, the intent of such terms must be determined by a jury. To the extent any additional response to the allegations is required, the allegations are denied.

7. Answering the allegations contained in paragraphs 13, 14 and 15, Defendant admits that the loan has not been fully re-paid and a further inquiry is required to determine the appropriate balance due. To the extent any additional response to the allegations is required, the allegations are denied.

8. Answering the allegations contained in paragraph 16, Defendant alleges that the document speaks for itself and, therefore, no response is required. To the extent a response is required, the allegations are denied.

9. Answering the allegations contained in paragraphs 17 and 18, Defendant admits the loan was for a business purpose, has not been fully repaid and a further inquiry is required to determine the appropriate balance. To the extent a further response is required, the allegations are denied.

FOR A DEFENSE TO THE FIRST CAUSE OF ACTION

10. Answering the allegations contained in paragraph 19, Defendant re-alleges the responses in paragraphs 1 through 9 as set forth above.

11. Answering the allegations contained in 20, 21, 22, 23, 24 and 25, Defendant re-alleges its responses to paragraphs 8, 10, 11, 12, 13 and 14 above, said paragraphs containing identical allegations.

12. The allegations contained in paragraph 26 are denied by Defendant.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

13. Answering the allegations contained in paragraph 27, Defendant re-alleges the responses in paragraphs 1-12 as set forth above.

14. Answering the allegations contained in paragraph 28, Defendant re-alleges its response to paragraph 11 above, said paragraph containing identical allegations.

15. Defendant denies the allegations contained in paragraphs 29 and 30.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

16. Answering the allegations contained in paragraph 31, Defendant re-alleges the responses in paragraphs 1-15 as set forth above.

17. Answering the allegations contained in paragraph 32, Defendant alleges that the document speaks for itself to the extent a further response is required, the allegations are denied.

18. Defendant denies the allegations of paragraph 33.

FOR A SECOND DEFENSE

19. Plaintiff's claims are barred by the applicable statutes of limitation.

FOR A THIRD DEFENSE

20. Plaintiff has failed to join Complete Building Corporation, an indispensable and proper party. Thus, any claims related to damages claimed on account of Complete Building Corporation should be dismissed.

FOR A FOURTH DEFENSE

21. Complete Building Corporation failed to complete its contracts with Plaintiff and, thus, any claims related to contracts with Complete Building Corporation should be dismissed.

FOR A FIFTH DEFENSE

22. Complete Building Corporation failed to perfect and protect its claims relating to payment of a construction contract. Thus, all such claims should be dismissed.

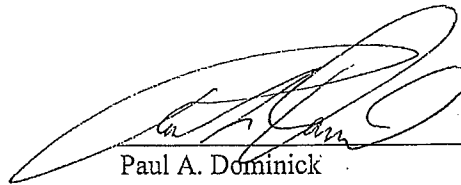
FOR A SIXTH DEFENSE

23. Defendant is entitled to a set off for all payments made relating to the "loan agreement" and work performed by Complete Building Corporation.

FOR A SEVENTH DEFENSE

24. Plaintiff and Complete Building Corporation have failed to mitigate their alleged damages.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendant prays for an order dismissing the Complaint with prejudice and for such other and further relief as this Court may deem just and proper.



Paul A. Dominick
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

ATTORNEYS FOR DEFENDANT
NATIONAL DENTAL SYSTEMS, LLC
d/b/a DENTALSMTART

April , 2016

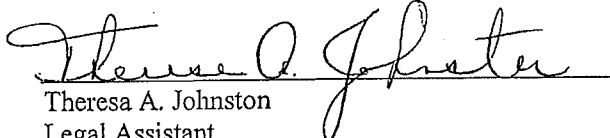
Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ANSWER OF DEFENDANT has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 1st day of April 2016.

Mark A Mason
Salah H. Hibri
The Mason Law Firm, P.A.
Tidewatch Centre on Shem Creek
465 W. Coleman Boulevard, Suite 302
Mount Pleasant, SC 29464

FILED
2016 APR - 1 PM 2:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



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P.O. Box 486
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Telephone: 843.577.9440

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

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.)
_____)

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT
AND TO CONDUCT DAMAGES HEARING**

FILED
2016 JUN 10 AM 9:15
CLERK OF COURT
BY _____

TO: THE DEFENDANT NATIONAL DENTAL SYSTEMS, LLC, d/b/a DENTAL SMART, and its attorney PAUL A. DOMINICK, ESQUIRE OF NEXSEN PRUET, LLC:

PLEASE TAKE NOTICE that on the tenth (10th) day after service hereof, or as soon thereafter as Plaintiff can be heard, Plaintiff, Robin S. Forman, as Personal Representative of the Estate of Burton J. Apat, will move before the Presiding Judge of the Court of Common Pleas for the Ninth Judicial Circuit at the Charleston County Court House located at 100 Broad Street, Charleston South Carolina, in a court room to be assigned, pursuant to S.C.R.C.P. Rule 56, for summary judgment as to all claims raised in the Complaint, or alternatively, for partial summary judgment, on the ground that there exists no genuine issue of material fact and as a matter of law Plaintiff is entitled to judgment on the Loan Agreement sued upon against Defendant, National Dental Systems, LLC d/b/a Dental Smart, according to its terms, in the sum of Six Hundred Twenty-five Thousand and No/100 (\$625,000.00) Dollars, plus interest accruing at the rate of \$15,000 per month until the debt is paid

in full. as to the Loan Agreement repayment obligation to Burton J. Apat and Fifty-Six Thousand Six Hundred Fifty Four and 12/100 Dollars (\$56,654.12) as to the Loan Agreement payment obligation to Complete Building Corporation.

In Defendant's Answer at Paragraph 5 Defendant admits to execution of the Loan Agreement and receipt of the loan proceeds. At Paragraph 7 of its Answer Defendant admits that a debt is owing to Complete Building Corporation, but it asserts "inquiry is required to determine the appropriate balance due." Therefore, in the event the Court concludes there exists a genuine issue of material fact as to the amount of the debt to Complete Building Corporation, the Court should conduct a damages hearing pursuant to S.C.R.C.P. Rule 55.

This motion will be based upon the pleadings, as well as the supporting affidavit and exhibits attached hereto and served herewith.

Respectfully submitted,

THE MASON LAW FIRM, P.A.

BY: 

MARK A. MASON

SALAH H. HIBRI

Tidewatch Centre on Shem Creek
465 W. Coleman Boulevard, Suite 302
Mount Pleasant, S.C. 29464
Telephone: (843) 884-1444
Facsimile: (843) 884-3595
E-mail: mark@masonlawfirm.com
salah@masonlawfirm.com

Attorneys for the Plaintiff

Mount Pleasant, South Carolina
June 9, 2016

RULE 11 CERTIFICATION

I hereby certify that consultation with opposing counsel relative to this dispositive motion is not required by S.C.R.C.P. 11.

BY: 
SALAH H. HIBRI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the pleading or paper to which this certificate is affixed was served upon the party(ies) to this action by hand, or by depositing a copy of the same in the U.S. Mail, first class postage pre-paid and addressed to the proper attorney(s) of record for such other party(ies) on this, the 9th day of June, 2016, in Mount Pleasant, South Carolina.

THE MASON LAW FIRM, P.A.

BY: 

BY _____

JULIE A. HARRINGTON
CLERK OF COURT

2016 JUN 10 AM 8:45

FILED

EXHIBIT "A"



January 5, 2013

To: Mr. Burton Apat
Mr. Victor Apat

Loan Agreement

Lender: Mr. Burton Apat

Borrower: National Dental Systems, LLC

Amount: \$100,000

Term: 30 Days

Interest: \$15,000

Security: Assigned 3% Interest in National Dental Systems, LLC (NDS) - with no liability exposure to OS Equity, LLC or DSG, LLC or any related parties of NDS

Upon the first disbursement under the Healthy Link LOI and subsequent agreement, this loan shall be repaid in full. Partial payment shall be considered a default.

If the loan is not repaid in 30 Days, the interest is doubled to \$30,000.

If there is a default, the 3% interest in NDS becomes 6% (no liability/equity only position)

A default occurs if the debt is not fully re-paid within sixty (60) days after the loan is provided / funded

Upon the first disbursement under the Healthy Link LOI and subsequent agreement, the CSC payments shall be made in full in two (2) equal payments with the second payment within 60 days.

The first month's interest payment of \$15,000.00 shall be paid upon closing/disbursement of the loan.

Interest shall accrue in 90 day increments.

Upon repayment of the loan, a full release will be issued to NDS and any assigned ownership interest in NDS will revert back to NDS.

For National Dental Systems, LLC

Brian Schlotter, President & CEO

For Lender

Burton Apat

2020 Savannah Highway Charleston, SC 2941407

p. 843.735.6727 f. 843.735.6717 DentalSmartUs.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

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.)

AFFIDAVIT OF VICTOR APAT

2016 JUN 10 AM 8:45
JULIE COLEMAN
CLERK OF COURT
BY _____

PERSONALLY APPEARED before me, Victor Apat, who after being duly sworn, states, under penalty of perjury, as follows:

1. I am over the age of eighteen (18) years and am competent to give this affidavit.
It is based upon my personal knowledge of the facts set forth herein.
2. Plaintiff, Robin S. Forman, is the duly appointed Personal Representative of the Estate of Burton J. Apat ("Apat") having been so appointed by the Surrogate's Court of the State of New York, Nassau County, in Case 2015-387102.
3. Defendant, National Dental Systems, LLC (hereinafter referred to as "NDS") is a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business being in Charleston County, South Carolina. NDS does business as Dental Smart.
4. On or about January 5, 2013, Apat and NDS entered into the "Loan Agreement," a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. I was personally involved in the negotiation of the terms of the said

Loan Agreement. I am personally familiar with the actions and/or inactions of NDS relative to the said Loan Agreement.

5. The said "Loan Agreement" was drafted by NDS.
6. Subsequent to the execution of the "Loan Agreement" the loan was provided and funded by Apat to NDS.
7. The principal amount of the said loan was One Hundred Thousand and No/100 (\$100,000.00) Dollars.
8. The "Loan Agreement" provides a "default occurs if the debt is not fully re-paid within sixty (60) days after the loan is provided / funded."
9. The "Loan Agreement" provides that the interest rate is \$15,000 per month.
10. The "Loan Agreement" provides that "If the loan is not repaid in 30 days, the interest is doubled to \$30,000."
11. The "Loan Agreement" provides that "Interest shall accrue in 30 day increments."
12. NDS made two (2) interest payments of \$15,000 each, then made no further payments of principal or interest.
13. NDS failed to fully repay the loan within sixty (60) days after the loan was provided / funded and as such defaulted on the "Loan Agreement."
14. Thereafter, on behalf of Burton J. Apat, I demanded that the loan be repaid, which demands were not met.
15. As an additional term of the "Loan Agreement" NDS agreed that "Upon the first disbursement under the Realty Link LOI and subsequent agreement, the CBC

(referring to Complete Building Corporation) payments shall be made in full in two (2) equal payments with the second payment within 60 days."

16. NDS breached its agreement to pay Complete Building Corporation in full.
17. The loan embodied in the "Loan Agreement" was a bridge loan made for a commercial or business purpose.
18. The principal amount of the loan was One Hundred Thousand and No/100 (\$100,000.00) Dollars.
19. The "Loan Agreement" provides that the interest rate is \$15,000 per month.
20. The "Loan Agreement" provides that "If the loan is not repaid in 30 days, the interest is doubled to \$30,000."
21. The "Loan Agreement" provides that "Interest shall accrue in 30 day increments."
22. NDS made two (2) interest payments of \$15,000 each, then made no further payments of principal or interest.
23. NDS failed to repay the loan in full within sixty (60) days after the loan was provided / funded and as such defaulted on the "Loan Agreement."
24. That as of February 5, 2016, there is due and owing by NDS to Apat under the terms of the "Loan Agreement" the following amounts: (a) One Hundred Thousand and No/100 (\$100,000.00) Dollars as principal; and (b) Thirty-five (35) months of interest at a rate of Fifteen Thousand and No/100 (\$15,000.00) per month, for total accrued interest of Five Hundred Twenty-five Thousand and No/100 (\$525,000.00) Dollars, thereby making the total amount of principal and

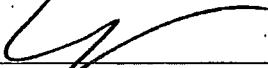
interest due and owing as of February 5, 2016, Six Hundred Twenty-five Thousand and No/100 (\$625,000.00) Dollars.

25. As an additional term of the "Loan Agreement" NDS agreed that "Upon the first disbursement under the Realty Link LOI and subsequent agreement, the CBC (referring to Complete Building Corporation) payments shall be made in full in two (2) equal payments with the second payment within 60 days."
26. The CBC debt to which the "Loan Agreement" refers is a debt from NDS to Complete Building Corporation pertaining to construction work done by Complete Building Corporation for NDS at 3834 Highway 17 South, North Myrtle Beach, South Carolina. The debt relative to said construction work is in the sum of Fifty-Six Thousand Six Hundred Fifty Four and 12/100 Dollars (\$56,654.12), together with pre-judgment interest from December 27, 2012 and attorney's fees.
27. NDS breached its agreement to pay Complete Building Corporation.
28. The "Loan Agreement" provides that if there is a default by NDS, as security for repayment of the loan, Apat's security increases from a 3% security interest in NDS to a 6% (no liability/equity only position) security interest in NDS.
29. I am informed and believe Plaintiff is entitled to a judgment against NDS as to the loan repayment obligation contained in the Loan Agreement in the sum of Six Hundred Twenty-five Thousand and No/100 (\$625,000.00) Dollars, plus interest accruing at the rate of \$15,000 per month from February 5, 2016 until the debt is paid in full.

30. I am informed and believe Plaintiff is entitled to a judgment against NDS in the sum of Fifty-Six Thousand Six Hundred Fifty Four and 12/100 Dollars (\$56,654.12), together with pre-judgment interest from December 27, 2012 and attorney's fees, or an order that NDS comply with the "Loan Agreement" by paying said amount directly to Complete Building Corporation as to the payment obligation to Complete Building Corporation.

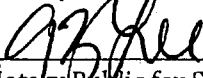
31. I am informed and believe that Plaintiff is entitled to a declaratory judgment that Apat holds a 6% no liability/equity only position in NDS to secure repayment of the obligations under the "Loan Agreement."

FURTHER DEPONENT SAYETH NOT!

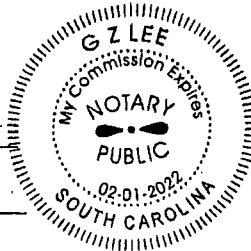


Victor Apat

SWORN TO BEFORE me
This 9 day of May, 2016.



Notary Public for South Carolina
My Commission Expires: 2-1-22



CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

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

Case No. 2016-CP-10-1022

Plaintiff,

**DEFENDANT'S BRIEF IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

vs.

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

Defendant.

FILED
2016 AUG - 1 PM 2:23
JULIE J. ANDERSON
CLERK OF COURT
BY _____

STATEMENT OF FACTS

National Dental Systems, LLC, ("Defendant"), a limited liability company doing business as DentalSmart, entered into an agreement for a business loan ("Loan Agreement") on or about January 5, 2013, with Burton J. Apat ("Plaintiff"). (Schleifer Aff. 4; Apat Aff. 4). Brian Schleifer, who was President and CEO of DentalSmart at the time of negotiation and execution of the Loan Agreement, and the Plaintiff were the only parties to participate in the negotiation of the terms of the Loan Agreement. (Schleifer Aff. 6). Subsequent to the execution of the loan, the Defendant received \$100,000 in loan proceeds. (Schleifer Aff. 7). The terms of the note included a total amount of interest of \$15,000, which doubled to \$30,000 should the loan remain unpaid by the Defendant after 30 days. (Schleifer Aff. 6; Apat Aff.). The Loan Agreement contained no other provisions specifying a certain amount or rate of interest, as neither party intended for any additional interest to accrue beyond what was expressly contained in the provisions of the Loan Agreement. (Schleifer Aff. 9-10; see also Schleifer Aff. Ex. A). The Defendant made two payments of interest, the initial \$15,000 payment and a second payment of \$15,000 upon the loan

remaining unpaid after 30 days, but made no repayments of the loan proceeds. (Schleifer Aff. 10). It was the intent of the parties, as described in the Loan Agreement, that the receipt of a 6% no-liability, equity-only interest in National Dental Systems, LLC, was to be the sole remedy available to the Plaintiff should the Defendant default in payment of the Loan Agreement. (Schleifer Aff. 11). The Defendant tendered the 6% no-liability, equity-only interest in National Dental Systems, LLC, to Apat, who refused the agreed upon interest. (Schleifer Aff. 12).

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009). Even where evidentiary facts are not in dispute, summary judgment should still be denied if the conclusions or inferences drawn from those facts are disputed. Baugus v. Wessinger, 303 S.C. 412, 415, 401 S.E.2d 169, 171 (1991).

In cases where the applicable burden of proof is the preponderance of evidence, the non-moving party need only provide “a mere scintilla of evidence” to withstand a motion for summary judgment. Hancock, 381 S.C. at 329–30, 673 S.E.2d at 802. In determining whether a genuine issue of material fact exists, “the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.” Koester v. Carolina-Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). “Summary judgment can only be granted in those cases where plain, palpable and indisputable facts exist on which reasonable minds cannot differ.” Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230

S.E.2d 447 (1976).

Summary judgment should not be granted where an issue as to the construction of a written contract exists and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the document. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). Gilliland v. Elmwood Prop., 301 S.C. 295, 299, 391 S.E.2d 577, 579 (1990). While generally the construction of a written contract is a question of law, if a contract is ambiguous, the determination of the parties' intent is a question of fact that must be decided by a factfinder. S.C. Dept. of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001); Soil Remediation Co. v. Nu-Way Env'tl., Inc., 325 S.C. 231, 234, 482 S.E.2d 554, 555 (1997).

ARGUMENT

I. Plaintiff is not entitled to summary judgment because the written contract is ambiguous as to the parties' intent as to the amount of interest to be paid after default.

Plaintiff should be denied summary judgment because there is a clear dispute the amount of interest that the parties intended to accrue upon default. The language of a contract is ambiguous when the terms of the contract could reasonably yield more than one interpretation. Pee Dee Stores 381 S.C. at 242, 672 S.E.2d at 803 (citing S.C. Dept. of Natural Res., 345 S.C. at 623, 550 S.E.2d at 30. "The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe." Id. (citing Hann v. Carolina Cas. Inc. Co., 252 S.C. 518, 524, 167 S.E.2d 420, 422 (1969)).

In determining what the interest rate should be after default has occurred, South Carolina courts have held on multiple occasions that "[i]t is always a question of intention, to be derived from the terms of the contract itself, whether the parties agreed that the specified interest should

continue to run after it fell due.” 47 C.J.S. Interest & Usury § 97 (2016) (citing Berry v. Caldwell, 121 S.C. 418, 114 S.E. 405 (1922)); see also Smith v. Smith, 33 S.C. 210, 11 S.E. 761, 763 (1890) (stating that whether or not such an agreement existed for the debt to bear interest after maturity at a rate higher than the legal interest rate “must depend upon the intention of the parties, and it becomes simply a matter of construction”). Ultimately, if the parties have agreed to an amount higher than what the statute specifies, “the agreement of the parties controls.” Turner Coleman, Inc. v. Ohio Construction & Engineering, Inc., 272 S.C. 289, 292, 251 S.E.2d 738, 740 (1979). (citing Bowen v. Barksdale, 33 S.C. 142, 11 S.E. 640 (1890); Reid v. Stevens, 38 S.C. 519, 17 S.E. 358 (1893)). However, if the agreement is silent about the interest rate for default, the debt shall draw interest at the legal interest rate. See Wilson v. Wilson, 292 S.C. 362, 372, 356 S.E.2d 422, 428 (1987) (“A person who is otherwise obligated to pay interest on an obligation is bound to pay at the legal rate.”) (internal citations omitted); see also Latta v. Phillips, No. 2012-UP-036, 2012 WL 10829708 at *1 (Jan. 25, 2012) (“South Carolina’s courts have held that the interest rate for default when the contract is silent about default shall be the statutory legal interest rate.”) (internal citations omitted).

In Turner Coleman, the disputed promissory note required the principal amount be paid within 90 days, and contained a specific provision stating that “if not paid at maturity, [the note shall] bear interest thereafter at the rate of 12 per cent per annum.” 272 S.C. at 291, 251 S.E.2d at 740. Although the party in default attempted to argue that South Carolina law reduced the interest rate after maturity to the legal rate, the Court pointed out the longstanding precedent that “parties are at liberty to contract, within legal limits, relative to the interest to be paid on an obligation, including the rate of interest to be charged after maturity.” Id. at 292, 251 S.E.2d at 740. Ultimately, the Supreme Court held that the language in the promissory note indicated an

express agreement for interest to continue to accrue at 12% annually. Id.

The Plaintiff the case at hand contends that the interest continues to accrue after default at a rate of \$15,000 per month. (Apat Aff. 24). Similar to the promissory note in Turner Coleman, the Loan Agreement between the Defendant and the Plaintiff contains a provision increasing the amount of interest to be paid if the loan is not repaid within a certain amount of time. The Loan Agreement at hand reads: "If the loan is not repaid in 30 Days, the interest is doubled to \$30,000." (Schleifer Aff. Ex. A). Nonetheless, there is an important distinction between the terms of the presently disputed Loan Agreement and those found in the promissory note in Turner Coleman. In Turner Coleman, by using language such as "thereafter" and "per annum," the note clearly shows that the parties intended for the interest to continue at an annual rate past the 90-day term. While the Loan Agreement presently disputed indicates that the amount of interest will double after 30 days, and thus will accrue a second payment of \$15,000 of interest if unpaid at that point, nowhere does the Loan Agreement state that the \$15,000 is to continue to accrue monthly. In fact, a specified rate of interest is completely absent from the Loan Agreement, and instead it only discusses interest as a total amount. Not once does "per month" or any similar language follow either the \$15,000 or the \$30,000 amounts named.

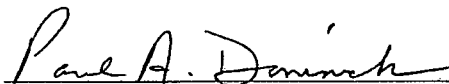
Furthermore, the mention of the interest doubling after 30 days is arguably irrelevant to what happens after default, as default is defined as occurring after 60 days, not 30 days. According to the Loan Agreement, "[a] default occurs if the debt is not fully repaid within sixty (60) days after the loan is provided." (Schleifer Aff. Ex. A). However, the Loan Agreement is entirely silent as to the amount of interest to accrue following this default. Regardless, the highest amount of interest that could be legally be charged according to South Carolina Law is the statutory rate of interest, which is currently 8.75%, not the exorbitant and unreasonable

amount of interest asserted by the Plaintiff.¹ See S.C. Code Ann. § 34-31-20(A) (2016).

The silence on the matter of interest after default makes it impossible to clearly discern the intent of the parties' from the terms of the document itself. As such, the Loan Agreement is ambiguous, and pursuant to South Carolina law, the intent of the parties becomes a question of fact that must be determined by a trier of fact.

CONCLUSION

Clearly, the provisions of the contract lead to multiple interpretations. The Loan Agreement is clearly silent on the matter of interest payments beyond the total amount of \$15,000 and the fact that it should doubt after 30 days if the Loan Agreement remains unpaid days. Conversely, the Plaintiff has drawn a very different conclusion, claiming that the \$15,000 of interest continued to accrue monthly after default, despite the lack of any mention of this within the Loan Agreement itself. (Apat Aff. 24). Consequently, the intent of the parties cannot be clearly interpreted from the Loan Agreement, rendering the contract ambiguous and creating a genuine issue as to a material fact. It follows, the Plaintiff's motion for summary judgment should be denied.



Paul A. Dominick
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
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843.577.9440

July 25, 2016

Charleston, South Carolina

Attorneys for Defendant

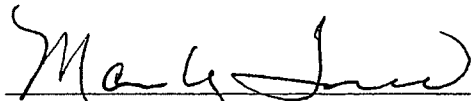
¹ According to the Plaintiff's calculations, the interest allegedly accrued at an excessive and unconscionable rate of 180% per annum.

2016-CP-10-1022

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this day 29th of July, 2016.

Mark A. Mason
Salah H. Hibri
The Mason Law Firm, P.A.
Tidewatch Centre on Shem Creek
465 W. Coleman Blvd., Suite 302
Mount Pleasant, SC 29464
mark@masonlawfirm.com
salah@masonlawfirm.com



NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, SC 29401

FILED
2016 AUG -1 PM 2:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2016-CP-10-1022

**AFFIDAVIT OF
BRIAN SCHLEIFER**

FILED
2016 AUG -2 PM 3:07
JULIE J. ARMSTRONG
CLERK OF COURT


PERSONALLY APPEARED before me, Brian Schleifer, who after being duly sworn, states, under penalty of perjury, as follows:

1. I am over the age of eighteen (18) and am competent to give this affidavit. It is based upon my personal knowledge of the facts set forth herein.
2. Plaintiff, Robin S. Forman, is the duly appointed Personal Representative of the Estate of Burton J. Apat.
3. Defendant, National Dental Systems, LLC, d/b/a DentalSmart, (hereinafter, "DentalSmart"), is a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business being in Charleston, Count, South Carolina.
4. I am currently the President and CEO of DentalSmart and was so at the time of negotiation and execution of the Loan Agreement (hereinafter, "Note") between DentalSmart and Burton Apat.
5. On or about January 5, 2013, DentalSmart and Burton Apat entered into the Note, a copy

- of which is attached hereto and incorporated by reference as Exhibit A.
6. On behalf of DentalSmart, I personally negotiated the terms of the Note with Burton Apat. Although I acted as the scrivener, the note itself was jointly drafted by Burton Apat and myself. No other parties were involved in negotiating of the terms of the Note.
 7. The principal amount of the Note was One Hundred Thousand and 00/100 Dollars (\$100,000.00).
 8. The Note included a total interest in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00), which could be doubled to Thirty Thousand and 00/100 Dollars (\$30,000.00) if not repaid within thirty (30) days.
 9. During negotiations of the terms of the Note, it was the intent of the parties that Fifteen Thousand and 00/100 Dollars (\$15,000.00), or Thirty Thousand and 00/100 Dollars (\$30,000.00) if not repaid within thirty (30) days, would be the total and only amount of interest to accrue on the loan.
 10. DentalSmart made two (2) interest payments of Fifteen Thousand and 00/100 Dollars (\$15,000.00) each, but failed to make any repayment of the loan proceeds. Following the terms of the Note, and as described above, no additional payments of interest are due.
 11. It was the intent of the parties that if DentalSmart defaulted in the payment of the Note as described above, the sole remedy available to Burton Apat was to be the receipt of a six (6%) percent no-liability, equity-only interest in National Dental Systems, LLC.
 12. Following default, DentalSmart tendered the six (6%) percent no-liability, equity-only interest in National Dental Systems, LLC, as described above, to Burton Apat. However, Burton Apat refused this remedy agreed upon expressly
 13. The express terms of the note fully support the intent of the parties as described above.

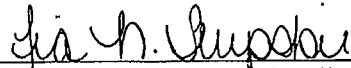
14. To the extent the court finds any terms of the Note be contradictory or ambiguous, the intent of such terms must be determined by a jury.

FURTHER DEPONENT SAYETH NOT!



Brian Schleifer

SWORN TO BEFORE me
This 29th day of July, 2016.



Notary Public of South Carolina
My Commission Expires: 05/06/2020

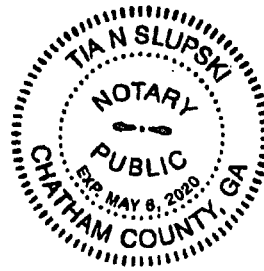


Exhibit A

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NO. 2016-CP-10-1022

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

National Dental Systems, LLC d/b/a Dental Smart
 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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; 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, TRIBUNAL, 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

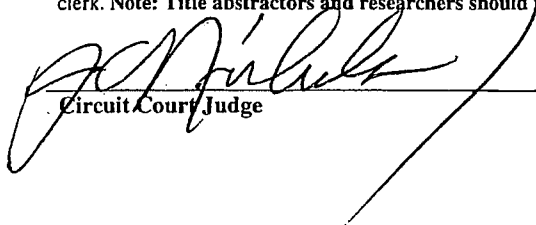
This order ends does not end the case.

Additional Information for the Clerk : _____

FILED
 2016 AUG 29 AM 8:59
 JULIE ARISTONS
 CLERK OF COURT

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

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 A. ARMSTRONG
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.

gen

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

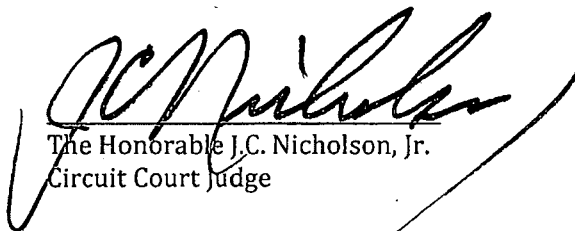
gm

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
FOR THE NINTH JUDICIAL CIRCUIT

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

Case No. 2016-CP-10-1022

Plaintiff,

**DEFENDANT'S MOTION FOR
RECONSIDERATION**

vs.

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

Defendant.

FILED
2016 SEP - 8 AM 11:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant, National Dental Systems, LLC, d/b/a Dental Smart, pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, respectfully requests this Court to reconsider its Order granting Plaintiff Partial Summary Judgment (the "Order") dated August 17, 2016, and filed with the Office of the Charleston County Clerk of Court on August 29, 2016.¹ The Order is not factually supported by the record before this Court. Additionally, the Order is not supported by the law. The Circuit Court should have denied the Motion for Summary Judgment of the Plaintiff, Robin S. Forman, as Personal Representative of the Estate of Burton J. Apat, on all the claims asserted against Defendant.

Defendant bases its Rules 52(b) and 59(e), SCRCivP, motions on the following grounds:

This Court improperly concluded that Defendant did not dispute, by way of

¹ A copy of this Court's Order is attached hereto as **Exhibit "A"** and incorporated herein by reference. Defendant's counsel has received a Notice of Judgment and a copy of the filed and executed order on September 6, 2016.

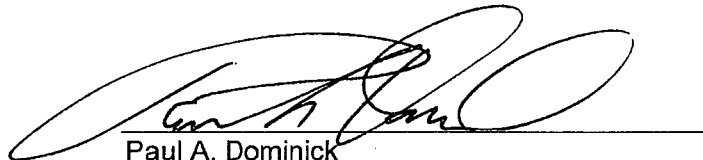
the submission of admissible evidence, that it owed CBC the sum of \$56,654.12. The Affidavit of Brian Schleifer, President and Chief Executive Officer of Defendant, who personally negotiated the terms of the Loan Agreement ("Note") at issue, stated as follows:

"It was the intent of the parties that if DentalSmart defaulted in the payment of the Note..., the sole remedy available to Burton Apat was to be the receipt of a six (6%) percent no-liability, equity only interest in National Dental Systems, LLC. "

Schleifer Affidavit at paragraph 11.

The Affidavit of Mr. Schleifer establishes that the intent of the parties was that the sole remedy for default in re-payment of the note was the ownership interest in National Dental Systems, LLC. At a minimum, this supports that the terms of the note are ambiguous, and a jury should decide the intent of the parties. Thus, partial summary judgment on this issue was inappropriate.

In conclusion, Defendant respectfully requests, this Circuit Court reverse its prior order granting Plaintiff partial summary judgment.



Paul A. Dominick
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205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

September 7, 2016

Charleston, South Carolina

Attorneys for Defendant

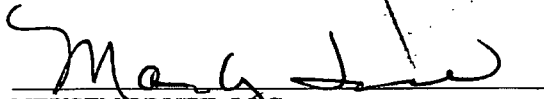
2016 CP-10-1022

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this day 7th of September, 2016.

Mark A. Mason
Salah H. Hibri
The Mason Law Firm, P.A.
Tidewatch Centre on Shem Creek
465 W. Coleman Blvd., Suite 302
Mount Pleasant, SC 29464
mark@masonlawfirm.com
salah@masonlawfirm.com

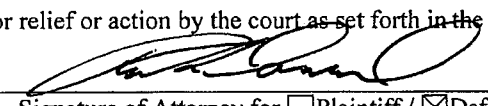
FILED
2016 SEP -8 AM 11:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, SC 29401

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
 ROBIN S. FORMAN, as Personal Representative of)
 the ESTATE OF BURTON J. APAT,)
 Plaintiff,)
 v.)
)
 NATIONAL DENTAL SYSTEMS, LLC, d/b/a)
 DENTAL SMART,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2016-CP-10-1022
 MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET

Plaintiff's Attorney: Mark A. Mason Address: Tidewatch Centre on Shem Creek 465 W. Coleman Blvd., Suite 302, Mt. Pleasant, SC 29464 phone: 843.884.1444 e-mail: mark@masonlawfirm.com other:	Defendant's Attorney: Paul A. Dominick, Bar No. Address: P.O. Box 486, Charleston, SC 29402 phone: 843.577.9440 fax: 843.414.8203 e-mail: pdominick@nexsenpruet.com other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Reconsideration Estimated Time Needed: 15 mins Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	9/7/16 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID – AMOUNT: <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: _____	

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-1022

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

National Dental Systems, LLC d/b/a Dental Smart

PLAINTIFF(S)

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

2016 SEP 19 AM 11:23
 FILED
 JUDGE K. REICHERT
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR 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: Defendant's Motion to Reconsider filed on September 7, 2016 is respectfully denied without a rehearing.

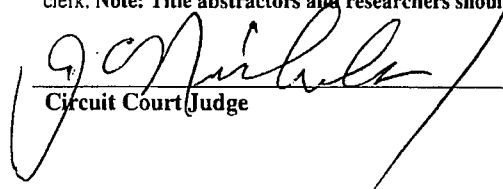
ORDER INFORMATION

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)
N/A		\$
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

 9/19/16
 Date

State of South Carolina) In Common Pleas Court
County of Charleston) Ninth Judicial Circuit

Robin S. Forman,) Transcript of Record
as Personal Representative) 2016-CP-10-1022
of the Estate of Burton J.)
Apat,)
) Plaintiff,)
) V.)
National Dental Systems, LLC)
d/b/a Dental Smart,)

) Defendant.)

August 3, 2016

Charleston, South Carolina

B E F O R E:

The Honorable J. C. Nicholson, Jr., Presiding Judge

A P P E A R A N C E S:

Mark A. Mason, Esquire
Attorney for the Plaintiff

Paul A. Dominick, Esquire
Attorney for the Defendant

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

Plaintiff's Motion for Summary Judgement.....3
Certificate of Reporter.....18

NO EXHIBITS WERE MARKED

1 following default. It's our position that the note says
2 that interest shall accrue in 30-day increments. It's
3 also their position, as I understand it, that Mr. Apat
4 had to accept as his sole remedy an assigned security
5 interest in National Dental Systems which clearly from
6 the terms of the note was just the security because it
7 has to be returned to National Dental Systems upon
8 repayment of the note.

9 We don't believe it's necessary to consider any
10 extrinsic evidence beyond what's in the note, that it's a
11 construction question which is a question of law.

12 THE COURT: So the only dispute is how the interest
13 accrues?

14 MR. MASON: Exactly, you've got to decide. In our
15 position, it continued to roll at 15,000 a month. Under
16 theirs, at the point of default it became the legal rate
17 of interest on a sum certain.

18 There is one other point, Your Honor, that is also
19 undisputed. The loan agreement contained another
20 covenant in it and that covenant was that the National
21 Dental Systems paid money it owed to Complete Building
22 Corporation for some work that they had done improving
23 National Dental Systems facilities, and it's undisputed
24 that the amount of that debt is 56,654.12, so that would
25 be added to the note.

1 And I would point out, Your Honor, that in the
2 filings that National Dental Systems made in response to
3 our motion for summary judgment they don't dispute that
4 debt or the amount of it or anything like that. So under
5 our position what's owed is 100-K, plus the months of the
6 rolling interest.

7 This was a bridge loan, Your Honor, so it was
8 expected to be paid within two months and because they
9 didn't repay it they found themselves in a situation on a
10 note that they drafted where this interest --

11 THE COURT: Is the note your Exhibit A to your
12 complaint?

13 MR. MASON: Yes, Your Honor.

14 THE COURT: Okay. All right. Give me a chance to
15 just look at the note real quick.

16 (PAUSE.)

17 THE COURT: Glad to hear you, Mr. Dominick.

18 MR. DOMINICK: Yes, sir. Thank you, Your Honor.
19 May it please the Court. Your Honor, the interpretation
20 of the plaintiff of this note is inconsistent with not
21 only the terms of the note but also we provided the Court
22 with an affidavit for Mr. Brian Schleifer, who was the
23 president of National Dental Systems who was involved in
24 the negotiation of the note with Mr. Burton Apat, who is
25 now deceased, and he in his affidavit talks about what

1 the intent was of this note.

2 The plaintiff's interpretation of this note they've
3 got -- you've seen it. It's a one-page bullet point
4 document where they are asking for almost \$800,000
5 interest at 180 percent per annum where that's not
6 provided for by the terms of the note.

7 The summary judgment is not appropriate in this
8 case, Your Honor, because of numerous factual disputes,
9 beginning with the fact that my client in his affidavit
10 says that he was not the drafter of this note. It was
11 negotiated between the two parties. He was the scrivener
12 for the note but it was a joint drafting.

13 THE COURT: Well, what is your interpretation?

14 MR. DOMICK: My interpretation of the note, Your
15 Honor, and the most importantly is that upon the default,
16 and this is in Mr. Schleifer's affidavit, paragraph 11 --

17 THE COURT: I don't care about his affidavit. What
18 is your interpretation of the note? The note is going to
19 speak for itself, irregardless of what the intent was.

20 MR. DOMINICK: Right. Notes speak for themselves
21 unless they're ambiguous.

22 THE COURT: I understand.

23 MR. DOMINICK: My interpretation of this note is --

24 THE COURT: You think it's ambiguous? Tell me
25 where the ambiguity is.

1 MR. DOMICK: All right, sir. I think the terms of
2 the note -- let me make myself clear. I think the terms
3 of the note are inconsistent with the position they are
4 taking. We haven't made a cross-motion for summary
5 judgment on the terms so at this point we are just
6 defending their motion for summary judgment.

7 If you look at the note, the top of the note sets
8 forth it's a 100,000-dollar loan for 30 days with \$15,000
9 interest. What they are relying on is the portion to say
10 that \$15,000 would accrue every month forever and ever.

11 THE COURT: It says the interest shall accrue in
12 30-day increments.

13 MR. DOMINICK: Right. That's correct, Your Honor.

14 THE COURT: Is that what you're talking about?

15 MR. DOMINICK: That's right but --

16 THE COURT: What's your interpretation of that?

17 MR. DOMINICK: Well, we've cited the case in our
18 opposition brief, Your Honor, under South Carolina law
19 where they would say -- it should say under their
20 interpretation, it should say interest shall accrue at
21 \$15,000 a month every 30 days for -- you know, it should
22 be more specific.

23 Where it's not specific South Carolina law says the
24 interest would accrue at the legal rate of interest.
25 They haven't said that it would accrue at \$15,000 a

1 month. Their interpretation is inconsistent.

2 THE COURT: The problem is it says interest is
3 15,000.

4 MR. DOMINICK: Well, it's inconsistent, Your Honor.
5 If that was the case then why would they have a provision
6 in the document that says there's another 15,000 due if
7 it's not paid within 60 days? That would be unnecessary
8 if it was 15,000 a month forever.

9 Also, I think the important issue in this, Your
10 Honor, as far as the document is concerned my client, the
11 intent of the document is that the security that was put
12 up --

13 THE COURT: Well, what do you think your client
14 owes? What's your interpretation?

15 MR. DOMINICK: I think my client owes six percent
16 of his interest in National Dental Systems because three
17 percent of the interest was set up as a security for the
18 note but further down it goes that if it's not paid the
19 three percent shall -- if there's a default the three
20 percent in National Dental Systems becomes six percent.

21 My client says that it was always understood that
22 if this was not repaid that his client would receive six
23 percent of the interest in National Dental Systems that
24 was tendered to him and --

25 THE COURT: What about the third sentence down, If

1 the loan is not repaid in 30 days the interest is doubled
2 at 30,000? Then down further it says, Upon the first
3 disbursement the length -- I guess that's -- I can't
4 hardly read it, in subsequent agreement the CBC payments
5 shall be made in full, two equal payments, and the second
6 payment within 60 days.

7 MR. DOMINICK: It's not clear.

8 THE COURT: Well, I'm sorry. I was reading the
9 wrong one. It says if the loan is not paid in 30 days
10 interest doubles to 30,000. A default occurs if the debt
11 is not fully repaid within 60 days, and up here it says
12 the note is due in 30 days. Is it due in 30 days or 60
13 days?

14 MR. DOMINICK: It's inconsistent. It's due -- the
15 note was due in 30 days at \$15,000 interest. Then it
16 says, well, if it's not repaid in 30 days the interest is
17 doubled to 30,000. One interpretation is that that would
18 be the total amount of interest.

19 THE COURT: And the other interpretation it
20 doubled.

21 MR. DOMINICK: But they are not asserting an
22 interpretation that it's doubled to 30 --

23 THE COURT: Then you got a clause in here that says
24 it's not in default for 60 days and earlier it says the
25 note is due in 30 days.

1 MR. DOMINICK: That's correct.

2 THE COURT: But if it's due in 30 days how is it in
3 default in 60 days?

4 MR. DOMINICK: That's a great question.

5 THE COURT: The whole note doesn't make a whole lot
6 of sense.

7 MR. DOMINICK: It doesn't make a lot of sense, Your
8 Honor. That's why summary judgment isn't appropriate in
9 this case. And, again, my client says that the sole
10 remedy was supposed to be the six percent interest in
11 National Dental Systems and I think this could be
12 interpreted consistent certainly with his affidavit that
13 that was the sole remedy for default.

14 I think the interest shall accrue at 30-day
15 increments; I think the reason that was put in there,
16 Your Honor, that if there was a payment within 45 days
17 that there would be a pro rata payment based on 30-day
18 increments of payment, not that they would continue
19 forever at \$15,000 a month.

20 That should have been -- if that was the intent
21 that should have been stated in the document. It wasn't.
22 That can't be, you know, 180 percent forever. It would
23 have been better off just confessing judgment as soon as
24 there was a default to kick in the judgment rate. So it
25 just doesn't -- the whole note does not make sense the

1 way they are asserting the intent and it's contradictory
2 to our affidavit and summary judgment is not appropriate
3 in this case, Your Honor.

4 I think we need to take depositions of Mr. Apat,
5 the one who is alive, obviously, to see what his
6 interpretation of the note is; are there other documents
7 that talk about what the intent was, were there e-mails,
8 were there other documents that may give us more insight
9 into the intent other than the contradictory affidavits.

10 When you've got contradictory affidavits saying
11 what the intent is and you've got these bullet points on
12 a one-page document that they assert requires 180 percent
13 annum interest I think you have a situation where summary
14 judgment is not appropriate in any circumstance.

15 THE COURT: Mr. Mason?

16 MR. MASON: Yeah, Your Honor. The important point
17 is they paid the \$30,000. So they paid -- in other
18 words, we've got to have a genuine issue of material
19 fact. So there was no issue about when they defaulted or
20 didn't default. They got to the point of 60 days. They
21 paid the first two months interest. That's when they
22 defaulted. So it's not a genuine issue of material fact,
23 they claim they didn't know whether they defaulted after
24 30 or 60, that's water under the bridge.

25 So in my view they've got to create an issue that's

1 material to where we are right now. And where we are
2 right now is when they got beyond the 60 days they didn't
3 pay, and if you look at the sequencing of the way the
4 note is it calls the interest at 15, and then says that
5 if it isn't paid with 30 days the interest is doubled to
6 30, which means that they are construing it as 15,000 a
7 month. Then just before you get to the end of the
8 document it clarified that it doesn't just stop. It
9 shall continue to accrue in 30-day increments.

10 The argument about the security is -- it's clearly
11 security. It's not a sole remedy because upon repayment
12 of the loan, and whatever amount ends up being due when
13 they repay it, they don't specify, then the full lease
14 will be issued and the security will revert back to NDS.
15 So how is that a sole remedy if they have the right upon
16 repayment to receive the assigned security interest back?
17 So we think it's very clear. We don't think that this --

18 THE COURT: I won't go along that it's very clear
19 but I understand your argument.

20 MR. MASON: Thank you, Your Honor.

21 THE COURT: Okay? It's about as clear as mud but
22 that's neither here nor there.

23 MR. MASON: And we think that --

24 THE COURT: Let me say this. Okay? Having looked
25 at the note it's the Court's opinion that the note has

1 some ambiguity therefore I think summary judgment is
2 inappropriate because the ambiguity in the note. Y'all
3 are just going to have to hash out what the ambiguity is.

4 MR. MASON: Your Honor, there is no dispute as to
5 the 56,000. We would ask for partial summary judgment on
6 that part. There were two covenants in the note. One
7 they would pay for the construction work and the other
8 that they would repay the loan.

9 They didn't file anything in opposition whatsoever
10 and, you know, we would ask for partial summary judgment
11 on that covenant because what's going to happen is when
12 they kick this can down the road they are going to gut
13 this company of money like they are in the process of
14 doing and if we don't at least have -- if we don't at
15 least have the judgment for the part that's undisputed we
16 are going to be in a terrible position 18 months from now
17 when now a jury -- by virtue of your ruling a jury is
18 going to decide what all this meant. So we would just
19 ask for that because they haven't responded to that part
20 of the motion, Your Honor.

21 MR. DOMINICK: Yes, sir. We have responded because
22 we said the sole remedy is the six percent interest in
23 the company which we've tendered and they rejected. So
24 that is -- we did respond to that. There's no question
25 that there was a loan.

1 THE COURT: Well, what do you think they owe?

2 MR. DOMINICK: My client?

3 THE COURT: Yes, sir.

4 MR. DOMINICK: I think they owe six percent of
5 their company is what they agreed is that, look, if we
6 can't pay this back we'll give you six percent of our
7 company.

8 THE COURT: You don't think a reasonable
9 interpretation is they were supposed to pay \$15,000 a
10 month until they paid and that's the interest?

11 MR. DOMINICK: No, sir, I don't.

12 THE COURT: I mean, I know that's outrageous
13 interest but that's beside the point.

14 MR. DOMINICK: Well, no, sir, because if that was
15 the case, number one, when they put at the top
16 interest --

17 THE COURT: What about the 56,000 Mr. Mason is
18 talking about?

19 MR. DOMINICK: They owe \$56,000 but the sole remedy
20 is six percent of the interest in National Dental
21 Systems. That was the deal and that's what our affidavit
22 says. If you read this document, which I agree is
23 totally unclear, the security was --

24 THE COURT: Well, Mr. Mason's position, that
25 doesn't mean they own it. That was a security and I

1 guess once they get a judgment they could move to sell
2 that interest --

3 MR. DOMINICK: Well, that was --

4 THE COURT: -- just a security. I assume that's
5 what Mr. Mason --

6 MR. MASON: Just like a having a mortgage on a
7 house, Your Honor, you don't --

8 THE COURT: I mean, your position, that's the
9 security.

10 MR. MASON: A hundred percent. That's what it
11 says. The document says --

12 MR. DOMINICK: No.

13 MR. MASON: -- as security.

14 THE COURT: And the only thing a security is going
15 to do if you get your judgment you're going to have to
16 sell the interest of the business.

17 MR. MASON: Right, and it reverts back to --

18 THE COURT: Or foreclosure on it.

19 MR. MASON: It reverts back to them when they repay
20 the loan, so it clearly is security.

21 MR. DOMINICK: Look at the note, Your Honor. The
22 note at the top says security is an assigned three
23 percent interest. That's the security. It doesn't say
24 anything else about security. Then you go down below and
25 it says, oh, if there's a default you get six percent.

1 It doesn't say --

2 THE COURT: Who drew that mess?

3 MR. DOMINICK: Who drew this?

4 THE COURT: Yeah.

5 MR. DOMINICK: They did together. The plaintiff
6 and the defendant drew this document together and my
7 client wrote it down on this letterhead.

8 THE COURT: I guess they are going to have live
9 with the consequences of drawing a document not knowing
10 what they were doing, but that's neither here nor there.

11 MR. DOMICK: I say, yeah, the consequences are we
12 are in court fighting about it and both sides are paying
13 their lawyers. That's the consequence of not getting
14 lawyers.

15 THE COURT: Tell me a little bit more about this
16 56,000 or partial.

17 MR. MASON: What happens is this dental company
18 builds these facilities that they then lease to dentists
19 to do dental work by Complete Building Corporation, which
20 is owned by Victor Apat. They were unable to pay Victor
21 Apat so he got his uncle to loan them this short-term
22 loan so their company could survive while he did this
23 work on their facilities that they've now opened and they
24 are now utilizing.

25 And so there were two covenants in the note. One

1 was you are going to pay uncle back and uncle is going to
2 have a six percent security interest that when you pay
3 him he'll give back to you. And the second covenant was
4 you are going to pay for this work that Complete Building
5 Corporation did, and it's undisputed that they did the
6 work, that the amount owed is the \$56,654.10, and so
7 that's what we are asking for a judgment on.

8 The fight which it seems like you are saying that
9 you think there's some ambiguity in the note, that's a
10 separate covenant altogether. It doesn't have anything
11 to do with the agreement to pay for the work because -- I
12 mean it's --

13 THE COURT: Thank you. All right, Mr. Mason. I'll
14 give you that partial. Give me a proposed order. Okay?

15 MR. MASON: Thank you, Your Honor.

16 THE COURT: Thank y'all very much.

17 (WHEREUPON, the hearing was concluded.)

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24

25

1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 3rd day of August
9 2016.

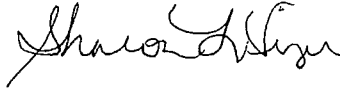
10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

13

December 29, 2016

14



15

SHARON L. VIZER

16

CIRCUIT COURT REPORTER

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

J. C. Nicholson, Circuit Court Judge

Appellate Case No. 2016-002130

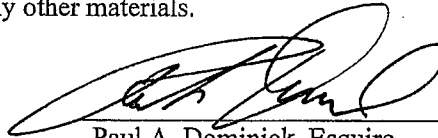
ROBIN S. FORMAN, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF BURTON J. APAT, Respondent,

v.

NATIONAL DENTAL SYSTEMS, LLC, D/B/A DENTALSMTARTAppellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this **Record on Appeal** contains all materials proposed to be included by either party and not any other materials.



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JUL 17 2017
SC Court of Appeals

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