

# EXHIBIT H



C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Yes, ma'am.

2 MS. SIMONS: Your Honor, Laura Simons.

3 THE COURT: I thought it was your motion, Mr. Moore.

4 MR. MOORE: This one is -- it's not my motion, Your  
5 Honor. I'm defending this one.

6 THE COURT: All right. Well, Ms. Simons.

7 MS. SIMONS: I'll with Clawson and Staubes, and I  
8 represent BB&T. This is an action to collect on a note of  
9 a personal guarantee.

10 In October of 2009, Graphic Express, LLC received a  
11 credit under a promissory note in the amount of \$82,000,  
12 and that note was personally guaranteed by the defendant,  
13 Mr. Gunter and Mr. Benenhaley (phonetic).

14 The defendants have failed to make their required  
15 payments, and as of November 2011, are in default in the  
16 amount of \$50,263.06.

17 BB&T filed suit in January of this year and  
18 defendants answered with just a couple of sentences just  
19 generally denying the allegations. They didn't raise any  
20 affirmative defenses.

21 THE COURT: At the time they were pro se, I'm  
22 guessing?

23 MS. SIMONS: No, sir.

24 THE COURT: All right.

25 MS. SIMONS: Mr. Moore filed an answer for them.

1           No affirmative defenses or counter-claims. After we  
2 filed a motion to compel discovery, they did submit the  
3 discovery responses. They were just very basic.

4           They indicate they have no documents to submit in  
5 support of their defense. So we filed a motion for a  
6 summary judgment. We don't think there is any genuine  
7 issue of material fact in this case.

8           As you know, we, with our complaint, offered evidence  
9 of the existence of the note, the personal guarantees of  
10 both defendants, and an affidavit of account showing their  
11 default.

12           Defendants, obviously, cannot rest on their mere  
13 allegations of a denial and must put forth a genuine issue  
14 of fact, and we don't believe they have. We're moving for  
15 summary judgment.

16           THE COURT: Thank you, ma'am.

17           Mr. Moore, I'll be happy to hear from you, sir.

18           MR. MOORE: Your Honor, I have somewhat of a  
19 logistical problem in that BB&T recently took the  
20 deposition of my client, which is what I would expect to  
21 rely upon in regard to why this motion for summary  
22 judgment should be denied.

23           If the Court would allow me to provide that  
24 deposition to you when it comes back, it's the sworn  
25 testimony of Mr. Gunter. It would basically explain why

1 we believe this debt really isn't owed.

2 If the Court will look at the promissory note, it  
3 actually is a promissory note and security agreement.  
4 What happened, basically, is that BB&T has come in and has  
5 seized various equipment as security, and they have  
6 disposed of that equipment and yet to provide anybody from  
7 our side with any accounting, nor any notice of sale, nor  
8 anything as required by the code.

9 As we understand the law that unless a secured debtor  
10 complies with the UCC in regard to notice of sale, it is  
11 presumed that a debtor has, in effect, taken the  
12 collateral back as satisfaction for the debt.

13 In this case, the depositions we have taken indicate  
14 that, in fact, BB&T has seized the equipment, seized the  
15 collateral. To our knowledge, has either disposed of it  
16 without telling us they were going to or simply kept it in  
17 satisfaction of the debt.

18 I'm waiting for that deposition to come back. It  
19 should be back to us any day, but if the Court would allow  
20 me to provide that to the Court, then I can submit the  
21 appropriate code sections, but I have been through this  
22 several times.

23 My understanding is that if, in fact, they have taken  
24 the property, not seized, disposed of it, that there  
25 basically is no debt; therefore, denial would be

1 appropriate.

2 Obviously, there aren't any documents we have because  
3 they haven't given us any telling us when they were going  
4 to sell it.

5 They have our equipment. They have had it for an  
6 extended period of time. There has been no sale, no  
7 notice of sale, no accounting in regard to sale, nor any  
8 indication as to what they've done with it.

9 Under those facts as we understand the law, the law  
10 would presume that the collateral has been taken in  
11 satisfaction of the debt, and it would be a question of  
12 fact then as to whether or not the debt is owed.

13 Thank you.

14 THE COURT: All right.

15 Yes, ma'am.

16 MS. SIMONS: Your Honor, Mr. Gunter's deposition was  
17 taken, but it was in a different case. These men actually  
18 had multiple loans and lines of credit with BB&T.

19 This is a totally separate and distinct loan from the  
20 one where his deposition was taken, and I may be  
21 misunderstanding the facts, but I don't believe that  
22 Graphic Express's inventory was seized.

23 MR. MOORE: No. It's correct. Graphic Express  
24 had -- Graphic Express was a screen printing company.  
25 What they took from us in regard to Graphic Express was

1 our equipment. They had the equipment is what was seized  
2 at Graphic Express.

3 You know, I'll be happy -- she is correct, the  
4 deposition was taken in another case, but that's basically  
5 where the -- what happened is was actually described to  
6 BB&T at length, as they know.

7 My understanding is the sworn testimony would be  
8 perfectly capable for review by the Court in opposition to  
9 the motion.

10 THE COURT: All right.

11 Anything further?

12 MS. SIMONS: Just that defense that he's raising  
13 today is the defense that he's raising in two separate  
14 cases. It has not been raised as a defense in this case.

15 Mr. Gunter did not testify, as much as I can  
16 recall -- and we have gotten the deposition transcript,  
17 but I didn't realize this was going to be an issue today  
18 -- did not testify that Graphic Express had any property  
19 which was seized.

20 THE COURT: All right. Thank you.

21 Anything further?

22 (There was no response).

23 Well, thank you both for your lively presentation.  
24 I'll consider the arguments heard here today and let you  
25 know my decision in the due course of time.

1 MR. MOORE: Thank you.

2 MS. SIMONS: Thank you, Your Honor.

3 THE COURT: Thank you both.

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5 (Whereupon, the proceedings were concluded.)

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