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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

LEGACY PROPERTY INVESTMENTS, VI LTD.
Plaintiff

FREDERICK L. ETHERIDGE
Defendant

Case No: CV-18-892732

Judge: CASSANDRA COLLIER-WILLIAMS

JOURNAL ENTRY

96 DISP.OTHER - FINAL

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED 08/06/2018, IS GRANTED. FINAL OPINION AND ORDER IS SIGNED AND ORDERED RECORDED. ORDER ATTACHED. OSJ. FINAL.

SO ORDERED.

COURT COST ASSESSED TO THE DEFENDANT(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

OSJ
Judge Signature

Date

FILED

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CLERK OF COURTS
CUYAHOGA COUNTY

without limitation payments [of] principal, interest, costs, or other amounts payable or due thereunder.

Evest defaulted on the Note by failing to make payments due from November, 2016 through March, 2017. On April 26, 2017, a separate judgment was entered against Evest for its breach of the Note, and a certificate of judgment against Evest was entered that same day. Plaintiff filed its Complaint in this matter on February 8, 2018 alleging one count for breach of guaranty and demanding judgment for monetary damages in an amount of at least \$404,284.04 with interest at the default rate, reasonable attorneys' fees, costs and expenses and any other relief deemed proper by the Court. Defendant filed his answer on April 11, 2018 setting forth denials of the allegations in the Complaint with numerous affirmative defenses.

Plaintiff filed the instant Motion on August 6, 2018. Pursuant to Cuyahoga County Common Pleas Court Local Rule 11(I)(1), "a party opposing a Motion for Summary Judgment made pursuant to civil rule 56 may file a brief in opposition with accompanying evidentiary materials (as permitted by civil rule 56(C)) "within thirty (30) days of service of the motion." Defendant has not filed a brief in opposition.

Applicable Law and Analysis

Summary Judgment is a procedural device engineered to expeditiously and economically dispose of legal claims with no factual foundation. *Celotex Corp. v. Catrett*, 477 U.S. 317. Underpinning this device is the belief that litigation should promptly be terminated where no issues remain to be tried. *Norris v. Ohio Standard Oil Co.*, 70 Ohio St.2d 1. Rule 56(C) of the Ohio Rules of Civil Procedure governs summary judgment motions and provides in pertinent part:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

In construing Civil Rule 56(C), the Supreme Court of Ohio has stated summary judgment may be granted when “(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St. 2d 317.

“The burden of showing no genuine issue as to any material fact exists falls upon the moving party in requesting summary judgment.” *Harless v. Willis Day Warehousing Co.*, 54 Ohio St. 2d 64. The party seeking summary judgment “bears the initial burden of informing the trial court of the basis of the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact on the essential element(s) of the non-moving party’s claims.” *Dresher v. Burt*, 75 Ohio St. 3d 280. If the moving party satisfies this initial burden, a non-moving party must set forth specific facts showing there exists a genuine issue of material fact for trial. *Id.* If the non-moving party fails to prove the existence of an element essential to that party’s case, there can be no genuine issue as to any material fact and all other facts are rendered immaterial. *Celotex, supra.*

Under Ohio law, “[a] guaranty is a contract through which one party guarantees payment for debts incurred by another person or entity.” *WM Capital Partners, LLC v. Beaver*, 2015-Ohio-2772. “An absolute guaranty is one which is not dependent upon any condition or

contingency other than the default of the debtor.” *Medina Supply Co. v. Dig It Founds., LTD*, 2002-Ohio-1500.

A contract is breached when “a party demonstrates the existence of a binding contract or agreement; the nonbreaching party performed its contractual obligations; the other party failed to fulfill its contractual obligations without legal excuse; and the nonbreaching party suffered damages as result of the breach.” *Lawrence v. Lorain Cty. Community College*, 127 Ohio App.3d 546, 549, 713 N.E.2D 478 (9th Dist. 1998). “Any failure to perform a contractual duty which has arisen constitutes a breach.” *Coughlin v. Acock Assocs. Architects, LLC*, 2011-Ohio-3212, ¶ 38. “Money damages awarded in a breach of contract action are designed to place the aggrieved party in the same position it would have been in had the contract not been violated.” *Kott Ents. V. Brady*, 2004-Ohio-7160, ¶ 73.

The Note and Guaranty were agreed upon by the parties in this matter. Defendant has failed to pay amounts owed to Plaintiff under the terms of the Note and Guaranty. Evest defaulted under the Note by failing to meet its obligations and Defendant breached the Guaranty by failing to fulfill Evest’s obligations under the Note.

Plaintiff suffered damages as a result of Defendant’s breach of the Guaranty in the amount owed by Evest plus any further attorneys’ fees and collection costs related to this action. On April 26, 2017 judgment was entered on behalf of Plaintiff against Evest in the amount of \$404,284.04 with interest at the rate of seven percent (7%) per annum from that date, \$1,250.00 for attorneys’ fees, costs associated with bringing the action together with post-judgment interest at the statutory rate of four percent on the attorneys’ fees and costs. As of July 31, 2018, Legacy has incurred an additional \$9,409.95 in attorneys’ fees and costs related to this action.

Conclusion

Plaintiff's Motion for Summary Judgment is hereby GRANTED. Judgment is hereby entered in favor of Plaintiff Legacy Property Investments VI, Ltd. and against Defendant Frederick L. Etheridge in the amount of \$404,284.04, together with interest at the rate of seven percent (7%) per annum from April 26, 2017, plus attorneys' fees and costs in the amount of \$10,659.95 together with interest at the rate of 4 percent (4%) per annum from the date of judgment. Final.

IT IS SO ORDERED.


JUDGE CASSANDRA COLLIER-WILLIAMS