

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILTON and ELAINE GOODSTEIN, et al. : CIVIL ACTION
: :
v. : :
: :
STEVEN L. ETTENGER : NO. 06-0317

ORDER - MEMORANDUM

AND NOW, this 7th day of December, 2006, upon plaintiffs' motion, summary judgment is hereby entered in favor of plaintiffs and against defendant on the breach of contract claim contained in Count I of plaintiffs' complaint, in an amount to be determined on an assessment of damages. Fed. R. Civ. P. 56(e).¹

This is a breach of contract action.² Beginning in October 2002 and continuing through 2003, plaintiffs³ lent defendant a total of \$492,283.30 - \$325,920.63 from plaintiffs Elaine Goodstein and the Elaine Goodstein Revocable Trust, and \$143,362.67 from plaintiffs Milton

¹ By order dated October 30, 2006, a ruling on plaintiffs' motion was deferred, and defendant granted until November 3, 2006 "to file affidavits or other materials identifying 'specific facts showing that there is a genuine issue for trial.'" Defendant made no submission.

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56(e) (emphasis added).

² The complaint also includes claims for fraud and misrepresentation (Count II), violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. (Count III), and quantum meruit/unjust enrichment).

³ Plaintiffs are Milton and Elaine Goodstein, individually, Milton Goodstein as trustee for the Milton Goodstein Revocable Trust, and Elaine Goodstein as trustee for the Elaine Goodstein Revocable Trust.

Goodstein and the Milton Goodstein Revocable Trust, and \$23,000 from the individual plaintiffs jointly. Affidavit of Elaine Goodstein, ¶ 4; affidavit of Milton Goodstein, ¶ 4. The terms of the loans are set forth in written loan agreements signed by defendant. Exhibit “B” to affidavit of Milton Goodstein; Exhibit “B” to affidavit of Elaine Goodstein. Defendant made payments of interest until early 2004, when his checks to plaintiff were returned marked “insufficient funds.” Affidavit of Milton Goodstein, ¶ 10 and affidavit of Elaine Goodstein, ¶ 10; Exhibit “C” to both affidavits (handwritten log of checks received by Milton Goodstein from defendant). On February 21, 2005, plaintiffs wrote to defendant, demanding repayment of \$500,000. Exhibit “E” to affidavits of Milton and Elaine Goodstein. Defendant told plaintiffs that their money has been “lost” and he could not repay it. Affidavit of Milton Goodstein, ¶ 14; Affidavit of Elaine Goodstein, ¶ 10.

Rule 56(e) and Celotex Corp v. Catret, 477 U.S. 317, 324 (1986) require a party having the burden of proof at trial in response to a properly supported summary judgment motion to “go beyond the pleadings and by . . . affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” Otherwise, the motion, if self-supported, will be granted. Here, plaintiffs’ motion is well supported. The undisputed facts establish, as a matter of law, that defendant is in breach of his loan agreements with plaintiffs. Accordingly, judgment must be entered in favor of plaintiff on Count I of their complaint.

BY THE COURT:

/s/ Edmund V. Ludwig
Edmund V. Ludwig, J.