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Order and Judgment on Plaintiff's Motion
(Hamilton State Bank)

Melvin K. Westmoreland
Fulton County Superior Court, Judge

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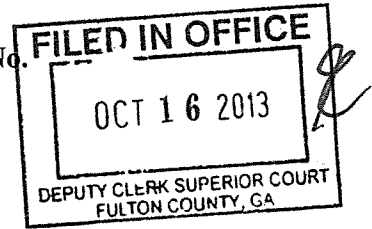
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY

HAMILTON STATE BANK,)
)
Plaintiff,)
)
v.)
)
CALLAWAY PARK, LLC, HAYES)
DEVELOPMENT CORPORATION,)
JONATHAN W. BEEN AND JOHN)
RANDY HAYES,)
)
Defendants.)

Civil Action File No. 2012CV220625



ORDER AND JUDGMENT ON PLAINTIFF’S MOTION

This matter is before the Court on Plaintiff Hamilton State Bank’s (“Plaintiff”) Motion for Summary Judgment Against Defendants Callaway Park, LLC, Hayes Development Corporation, John Randy Hayes, and Jonathan W. Been (collectively, the “Defendants”). Upon consideration of the unopposed motion, the brief in support and the record of the case, this Court hereby **GRANTS** summary judgment on Count I and Count II of Plaintiff’s Verified Complaint for Money Damages. Judgment is hereby entered in favor of Plaintiff Hamilton State Bank and against Defendants Callaway Park, LLC, Hayes Development Corporation, John Randy Hayes, and Jonathan W. Been, jointly and severally, in the amount of \$3,605,949.62 in liquidated damages. This Court also awards Plaintiff Hamilton State Bank attorneys’ fees against Defendants Callaway Park, LLC, Hayes Development Corporation, John Randy Hayes, and Jonathan W. Been, jointly and severally, in the amount of \$77,087.57.

A court should grant a motion for summary judgment pursuant to O.C.G.A. Section 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrant summary judgment as a matter of law. Lau’s Corp., Inc. v. Haskins, 261 Ga. 491,491 (1991). “Because there is no such thing as a default summary judgment, [Defendants’] failure to timely respond to the motion does not automatically entitle the [Plaintiff] to summary judgment in [its] favor.” Rapps v. Cooke, 234 Ga. App. 131, 131-32

(1998). However, by failing to submit a timely response to Plaintiff's motion for summary judgment, Defendant waived its right to present evidence in opposition to the motion. *Id.* Therefore, so long as Plaintiff presents evidence sufficient to make a *prima facie* case, it will be awarded summary judgment as a matter of law.

"A plaintiff seeking to enforce a promissory note establishes a *prima facie* case by producing the note and showing that it was executed." Fielbon Dev. v. Colony Bank of Houston, 290 Ga. App. 847, 850 (2008). When in possession of a valid promissory note, a creditor has a *prima facie* right to repayment unless the debtor can establish a valid defense. City of Bremen, et al. v. Regions Bank, et al., 274 Ga. 733, 739 (2002). It is undisputed the Promissory Note and guaranty agreements were properly executed, Plaintiff owns and holds the Promissory Note and guaranty agreements, and the Promissory Note is in default. Accordingly, the Court finds Plaintiff has established a *prima facie* case for recovery on the Promissory Note and guaranty agreements to which Defendants have failed to proffer a valid defense.

As such, Plaintiff's motion is **GRANTED** and Judgment is hereby entered in favor of Plaintiff Hamilton State Bank and against Defendants Callaway Park, LLC, Hayes Development Corporation, John Randy Hayes, and Jonathan W. Been, jointly and severally, in the amount of \$3,605,949.62 in liquidated damages.

This Court further finds Plaintiff is entitled to receive attorneys' fees from Defendants under O.C.G.A. Section 13-1-11 and Plaintiff is awarded \$77,087.57 in attorneys' fees against Defendants Callaway Park, LLC, Hayes Development Corporation, John Randy Hayes, and Jonathan W. Been, jointly and severally. In so ruling, the Court is relying on the briefs, affidavits, deposition testimonies and other evidence submitted to the Court.

[Signature on Following Page]

SO ORDERED AND ADJUDGED this 16th day of October, 2013.


MELVIN K. WESTMORELAND, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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