

UNOFFICIAL COPY

Doc#: 1605556212 Fee: \$56.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/24/2016 10:34 AM Pg: 1 of 5

Prepared by and after recording return to:
Statman, Harris & Eyrich, LLC
30 S. Wacker Dr., Ste. 2200
Chicago, IL 60606

The above space left blank for Recorder's Stamp

Please record the attached Order in relation to the following:

Borrower(s): Rene C. Castrejon and Margarita Castrejon

Mortgage Doc No.: 0619949079

Mortgage Recording Date: 07/18/2006

LEGAL DESCRIPTION

PARCEL 1:

LOT 36 IN BLOCK 2 IN HULL'S SUBDIVISION OF BLOCK 7 (EXCEPT THE NORTH 122 FEET OF THE EAST 123 FEET THEREOF) IN BRAND'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Index No.: 13-26-220-012-0000

Property Address: 2929 N. Spaulding Ave., Chicago, IL 60618

PARCEL 2:

LOT 25 IN BLOCK 23 IN WALKER'S SUBDIVISION OF BLOCKS 1 TO 31 INCLUSIVE OF W.B. WALKER'S ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 4, 1897 AS DOCUMENT NO. 2547655, IN COOK COUNTY, ILLINOIS.

Property Index No.: 13-14-323-035-0000

Property Address: 4100 N. Lawndale Ave., Chicago, IL 60618

UNOFFICIAL COPYIN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Fifth Third Bank,)	
)	
Plaintiff,)	No. 2015 L 002930
)	
v.)	Commercial Calendar T
)	
ONAC, Inc. d/b/a Cano Auto Electric,)	Judge John C. Griffin
Rene Cesar Castrejon, and Leopoldo)	
G. Lopez,)	
)	
Defendants.)	
)	

OPINION

This cause is before the Court on Plaintiff's Fifth Third Bank ("Fifth Third" or "Plaintiff") Motion for Summary Judgment against Defendants ONAC, Inc. d/b/a Cano Auto Electric ("ONAC") and Rene Cesar Castrejon ("Castrejon") (collectively "Defendants") pursuant to section 735 ILCS 5/2-1005.

I. BACKGROUND

The following is a brief summary of the allegations contained in the Complaint. On March 27, 2006, ONAC executed a Promissory Note ("Note") and Security Agreement in favor of Fifth Third and Castrejon executed an Unconditional Guaranty ("Guaranty") in favor of Fifth Third. Fifth Third's Complaint alleges breach of contract and replevin against ONAC and breach of guaranty against Castrejon.

II. STANDARD OF REVIEW

"Summary judgement should be granted only where the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the nonmovant, show that there is no genuine issue as to any material fact and that the movant is entitled to judgement as a matter of law." *Safeway Ins. Co. v. Hister*, 304 Ill. App. 3d 687, 690 (1st Dist. 1999); 735 ILCS 5/2-1005(c). A genuine issue of material fact exists when the material facts are disputed or when reasonable persons might draw different inferences from the undisputed facts. *Adams v. N. Ill. Gas Co.*, 211 Ill. 2d 32, 43 (Ill. 2004). When reviewing a summary judgment motion, the court must view all evidence in the light most favorable to the non-moving party. *Williams*, 316 Ill. App. at 684. Even though summary judgment

UNOFFICIAL COPY

1522930

is considered a "drastic measure," it is also "an appropriate tool to employ in the expeditious disposition of a lawsuit in which 'the right of the moving party is clear and free from doubt.'" *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001). The burden of making a prima facie showing that there are no genuine issues of material fact is on the moving party. *Williams v. Covenant Med. Ctr.*, 316 Ill. App. 3d 682, 689 (4th Dist. 2000). To survive a motion for summary judgment, the nonmoving party must then present a factual basis to preclude summary judgment. *Robidoux v. Oliphant*, 201 Ill.2d 324, 335-36 (2002).

"Mere denials of fact in pleadings, however, do not create a genuine issue which will preclude the entry of a summary judgment." *O'Brien Co. v. Highland Lake Constr. Co.*, 9 Ill. App. 3d 408, 412 (1st Dist. 1972). "Even though a complaint and answer may purport to raise issues of material fact, if such issues are not further supported by evidentiary facts through affidavits or such, summary judgment is proper." *Palston v. Casanova*, 129 Ill. App. 3d 1050, 1059 (1st Dist. 1984). "If a party moving for summary judgment supplies facts which, if left uncontradicted, would entitle the party to a judgment as a matter of law, the opposing party cannot rely on its pleadings alone to raise issues of material fact." *Safeway Ins. Co. v. Hister*, 304 Ill. App. 3d 687, 691 (1st Dist. 1999). "When facts within an affidavit are not contradicted by counteraffidavit, they must be taken as true notwithstanding the existence of contrary unsupported allegations in the adverse party's pleadings." *Ligenza v. Round Lake Beach*, 133 Ill. App. 3d 286, 293 (2d Dist. 1985).

III. DISCUSSION

The Court reviewed Fifth Third's motion for summary judgment and the exhibits attached thereto. Defendants did not file a response or any objections to Fifth Third's motion. To support its motion for summary judgment, Fifth Third filed a Prove Up Affidavit, which was executed by Steve Palmer, a Vice President of Fifth Third Bank. The defendants did not file a counter-affidavit to Fifth Third's Affidavit. Therefore, the facts contained within the Fifth Third's Affidavit are taken as true.

After reviewing the foregoing and after applying the motion for summary judgment standards, the Court finds that summary judgment in Fifth Third's favor is appropriate because Fifth Third has met its burden by showing that there is no genuine issue of material fact, and the defendants have not presented a factual basis to preclude summary judgment. Specifically, the record, including the motion for summary judgment and supporting documents attached thereto and Fifth Third's Prove-Up Affidavit "show that that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c); *Safeway Ins. Co. v. Hister*, 304 Ill. App. 3d 687, 691 (1st Dist. 1999).

UNOFFICIAL COPY

1522930

Attorney's Fees and Costs

In Count V, Attorney Fees against All Defendants, of Fifth Third's Complaint, Fifth Third alleges that "Defendants are obligated to pay Plaintiffs' attorney fees pursuant to the Note and Guaranties." Specifically, in Section 6(B), the Note states as follows:

"Without notice and without Borrower's consent, Lender may: B. Incur expenses to collect amounts due under this Note, enforce the terms of this Note or any other Loan Document, and preserve or dispose of the Collateral. Among other things, the expenses may include payments for property taxes, prior liens, insurance, appraisals, environmental remediation costs, and reasonable attorney's fees and costs. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance."

The Guaranty states as follows: **"ENFORCEMENT EXPENSES. Guarantor promises to pay all expenses Lender incurs to enforce this Guarantee, including, but not limited to, attorney's fees and costs."**

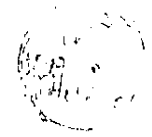
Fifth Third's motion for summary judgment states that it has incurred attorneys' fees of \$8,435.50 and court costs and disbursements in the amount of \$1,256.56 that have been paid in this action through August 31, 2015. In addition, the Prove Up Affidavit of Fifth Third states as follows with respect to attorneys' fees and court costs: "Fifth Third has incurred attorneys' fees of \$8,435.50 and court costs and disbursements in the amount of \$1,256.56 that have been paid in this action through August 31, 2015." The defendants did not file any objections to Fifth Third's motion for summary judgment, and the defendants also did not file a counter-affidavit. Therefore, the Court grants plaintiff's request for attorneys' fees and costs in the amount \$8,435.50 in attorneys' fees and \$1,256.56 in court costs.

UNOFFICIAL COPY

1522930



IV. ORDER



For the reasons stated, it is hereby **ORDERED**:

(1) Plaintiff's, Fifth Third Bank, Motion for Summary Judgment against ONAC, Inc. d/b/a Cano Auto Electric and Rene Cesar Castrejon is **GRANTED**;

(2) Judgment is entered in favor of the plaintiff, Fifth Third Bank, and against the Defendants ONAC, Inc. d/b/a Cano Auto Electric and Rene Cesar Castrejon in the following amount:

4280
8301
4286

- a. Principal amount: \$103,302.15
- b. Interest to March 10, 2015: \$1,619.65
- c. Late Fees: \$1,587.83
- d. Attorney Fees: \$8,435.50
- e. Court Costs: \$1,256.56
- f. **TOTAL: \$116,201.69**

(3) Under Illinois Supreme Court Rule 304(a), this is a final and appealable order as to Defendants' ONAC, Inc. d/b/a Cano Auto Electric and Rene Cesar Castrejon and this Court finds that there is no just reason for delaying either enforcement or appeal or both:

9208

(4) This case is set for status as to the remaining Defendant Leopoldo G. Lopez on December 15, 2015 at 9:30am in Courtroom 2303 without further notice.

6315
Kett

ENTERED
[Handwritten Signature]

ENTERED
 JUDGE JOHN C. GRIFFIN-1981
 DEC - 3 2015
 DOROTHY BROWN
 CLERK OF THE CIRCUIT COURT
 OF COOK COUNTY, IL
 DEPUTY CLERK

Judge John C. Griffin, No. 1981

I hereby certify that the document to which this certification is affixed is a true copy.
 Date DEC 29 2015
 Dorothy Brown
 Clerk of the Circuit Court
 of Cook County, IL

