

STATE OF SOUTH DAKOTA
 COUNTY OF SHANNON

Fall River County, SD
 FILED
 IN THE CIRCUIT COURT SEVENTH JUDICIAL CIRCUIT

MAY 18 2012

Carol E. Foster, Clerk
 Deputy

NATIVE AMERICAN BANK NATIONAL ASSOCIATION

Plaintiff,

v.

CANGLESKA, INC.,

Defendant.

NO. 56-CIV-10-19

**ORDER GRANTING
 PLAINTIFF'S MOTION
 FOR SUMMARY JUDGMENT and
 DIRECTING ENTRY OF JUDGMENT**

Native American Bank, National Association (the "Plaintiff") moves for summary judgment. Defendant opposes the Motion but filed no responsive brief. Having considered the briefs and evidence submitted, the Court enters the following decision.

Factual Background

From November 22, 2006 through August 31, 2007, Plaintiff advanced One Million Dollars (\$1,000,000.00) to the Defendant for construction of a women's shelter. Defendant accepted the loan proceeds, built its shelter, and then defaulted on the parties' agreements. On November 5, 2009, after numerous notices of delinquency were sent to the Defendant, Plaintiff issued a final demand letter, but Defendant still refused to repay the loan or make satisfactory payment arrangements. As of the date of the filing of the

Complaint, Defendant owes Plaintiff a principal balance of \$970,492.00 and \$224,394.02 in interest.

SUMMARY JUDGMENT STANDARD

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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." SDCL § 15-6-56(c). The use of summary judgment should be employed only where it is perfectly clear that no issue of fact is involved. The South Dakota Supreme Court has consistently stated:

Summary judgment is authorized "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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." We will affirm only when there are no genuine issues of material fact and the legal questions have been correctly decided. All reasonable inferences drawn from the facts must be viewed in favor of the non-moving party. The burden is on the moving party to clearly show an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law.

Hayes v. N. Hills General Hosp., 1999 SD 28, ¶ 12, 590 N.W.2d 243, 247 (*quoting* SDCL 15-6-56(c)). Thus, the South Dakota courts have held that, not only does summary judgment require there be no material facts at issue, but also that there be no genuine issue on the inferences to be drawn from those facts. The burden of proof is on the movant to show clearly that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. See Wilson, United States Steel Corp. However, in Jerauld County v. Huron Regional Medical Center, Inc., 2004 S.D. 8, ¶ 25, 676 N.W.2d 145, the Court stated: "While the burden of persuasion rests with the moving party to establish that there are no genuine issues of materials fact, 'the nonmoving party

must present specific facts showing that genuine, material issue for trial exists.” (citing Spenner v. City of Sioux Falls, 1998 S.D. 56, ¶ 7, 580 N.W.2d 606).

DISCUSSION

To prevail on a Motion for Summary Judgment, Plaintiff must show that (1) Defendant signed a promissory note; (2) that the loan proceeds were distributed; and (3) that the note is in default. Once Plaintiff has produced sufficient evidence to satisfy its summary judgment burden, the burden then shifts to the Defendant to set forth specific facts showing that there is a genuine issue for trial.

Defendant has provided no evidence to counter Plaintiff's argument that the parties' executed a promissory note. The evidence presented clearly demonstrates that on October 6, 2005, Defendant's Board of Directors authorized George Twiss and Karen Artichoker to sign documents to effectuate a loan from the Plaintiff. After much negotiation, the Defendants executed a Commercial Loan Agreement on October 10, 2006, a Commercial Debt Modification Agreement on October 10, 2006, a Commercial Security Agreement on October 10, 2006, and a Commercial Promissory Note for the amount of One Million Dollars (\$1,000,000.00) on October 10, 2006. All loan documents were executed by Defendant's authorized signatories, George Twiss and Karen Artichoker. Accordingly, Plaintiff has conclusively established that a promissory note was executed.

Additionally, the Defendant has provided to evidence to refute Plaintiff's allegations that the loan proceeds were distributed. Indeed, the evidence demonstrated that payments were made by the Plaintiff to Defendant's primary contractor upon a written request from the Defendant, a representative from the United States Department

of Agriculture, the engineer/architect, and the primary contractor. Further, in discovery Defendant admitted that the loan had been received and was expended for the purpose of building a shelter for battered women on the reservation.

Finally, Plaintiff provided an overwhelming amount of evidence demonstrating that the Defendant has failed to repay its contractual obligations. Notices of delinquencies were sent by the Plaintiff to the Defendant on April 14, 2008, July 30, 2008, December 18, 2008, January 12, 2009, April 8, 2009, and April 16, 2009. On July 29, 2009, Defendant sent a memorandum to Plaintiff acknowledging the delinquency and informing the Plaintiff that they would not be able to make the payment until August 15, 2009. To date, no such payment has been made. Accordingly, Plaintiff has proven the third element necessary to prevail on its Motion for Summary Judgment.

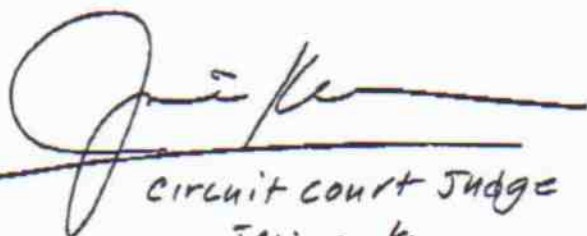
CONCLUSION

In the context of this summary judgment motion, the Defendant has failed to raise any disputed material issue of fact sufficient to withstand Plaintiff's summary judgment motion. Based upon the foregoing, IT IS ORDERED that Plaintiff's Motion for Summary Judgment is granted. IT IS FURTHER ORDERED directing the Clerk of Court to enter judgment against the Defendant in the amount of One Million One Hundred Ninety-Four Thousand Eight Hundred and Eighty-Six Dollars and Two Cents (\$1,194,886.02).

IT IS SO ORDERED.

Dated this 7 day of May, 2012.

*Attorney
Clyde*



circuit court Judge
Janine Kern