

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CITIBANK, N.A.,

Index No.

Plaintiff,

-against-

AFFIDAVIT

STEVEN H. DAVIS,

Defendant.

-----x

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

GIACOMO PROVENZANO, being duly sworn, deposes and says:

1. I am a director of Citibank, N.A. ("Citibank), and I am familiar with the relevant facts and circumstances herein. I make this affidavit in support of the motion for summary judgment in lieu of complaint made by Citibank, which is a national banking association organized and existing under and by virtue of the laws of the United States.

2. This action is brought to recover the sum of \$399,551.45 from defendant Steven H. Davis, with accrued and accruing interest, plus costs, expenses and attorney's fees. This action is based upon an instrument for the payment of money only, to wit: a Term Note, dated July 17, 2012 ("Note") in the original principal amount of \$360,000.00. A copy of the Note is annexed hereto as Exhibit 1. That Note was for good value received by defendant, specifically, a loan, and was given to evidence the defendant's loan repayment obligation.

The Defendant's Default

3. By its terms, the Note requires annual principal reduction payments of \$72,000 commencing June 30, 2013 through June 30, 2017. The Note also bears interest at an annual rate 1.5% over Citibank's Base Rate as that is defined in the Note.

4. Defendant did not pay the \$72,000 principal installment due June 30, 2013 at that time or thereafter, and has not paid any of the other annual installments required by the Note. He is also past due on his interest payment obligation. Each of those failures to pay is an event of default in accordance with section 13 (a) of the Note.

5. When the Note was made, defendant was affiliated with the law firm of Dewey LeBoeuf, but he no longer is. Pursuant to Section 13 (c) of the Note, ceasing to be employed by Dewey LeBoeuf is also an event of default.

6. The defendant's defaults entitle Citibank to declare the Note immediately due and payable. See Section 14 of the Note entitled "Consequences of Default". On November 12, 2015, Citibank, through its attorney, gave notice to the defendant of his default and declared the Note to be immediately due and payable ("Default and Acceleration Notice"). Copies of that letter and of the notice that accompanied it are attached hereto collectively as Exhibit 2.

Principal and Interest Due on the Note

7. The unpaid principal due and owing is \$360,000. By the Note terms (Section 3), the non-default interest rate is the Base Rate, as that term is defined in the Note, plus 1.5%. Citibank's Base Rate was 3.25% from 2008 until December 17, 2015 when it rose to 3.50%. Therefore the non-default interest rate was 4.75% (3.25% + 1.5%), which calculates to a daily rate of \$46.84932, through November 10, 2015 (the last day before Citibank began applying the default interest rate).

8. Section 3 of the Note also provides that failure to pay the Note when due results in a default interest rate of an additional 4% over the over the non-default interest rate. Citibank commenced applying the default interest rate as of November 11, 2015. Thus, starting

November 11, 2015 the default rate became 8.75% (4.75% + 4%) which calculates to a daily rate of \$86.30137. Starting December 17, 2015, the Base Rate rose to 3.50%, which would have made the non-default rate 5.00% (3.50% + 1.5%). However, because Citibank had started charging the default rate as of November 11, 2015, on December 17, 2015 the effective interest rate on this credit (which by then was the default rate) became, and remains, 9.00% (5.00% + 4%), which calculates to a daily rate of \$88.76712.

9. There is currently due and owing to the plaintiff on the Note, exclusive of attorney's fees, the following amounts, as of the anticipated return date of this motion (applying the current rates until then):

<u>PRINCIPAL</u>	<u>ACCRUED INTEREST</u> (02/28/14 - 11/10/15)	<u>DEFAULT INTEREST</u> (11/11/15 - 12/16/15)	<u>DEFAULT INTEREST</u> (12/17/15 - 03/09/16)
\$360,000	\$29,093.42	\$3,106.85	\$7,351.18 ¹

Total: \$399,551.45

Default interest on the Note is accruing at a daily rate of \$88.52459.

Collection and Enforcement Costs

10. By the terms of the Note (Section 20), the defendant is liable to plaintiff for costs and expenses in connection with the collection or enforcement of his obligations under the Note, including but not limited to reasonable attorney's fees. It is respectfully requested that the issue of those costs and expenses be severed and subject to submission of one or more affidavits in

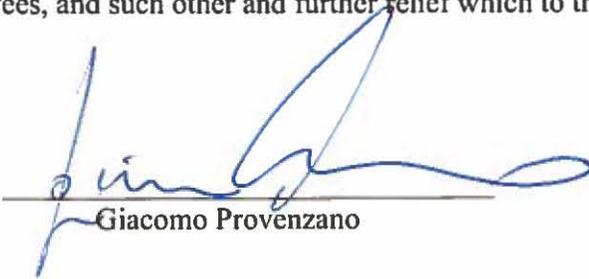
¹ Because 2016 is a leap year with 366 days instead of 365 days, the per diem calculations for 2015 and 2016 are slightly different even though they are calculated using the same principal and the same interest rate. Thus, for 2015 (starting December 17, 2015), the per diem default rate is \$88.76712 and for 2016, the per diem default rate is \$88.52459.

proof thereof at a later, more appropriate time when the extent of those costs and expenses has become better known.

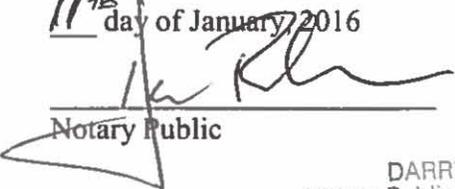
Conclusion

11. There is no defense to this action. No previous application for the relief prayed for has been made.

12. Therefore, it is respectfully requested that this Court grant summary judgment in favor of the plaintiff and against the defendant for the sums demanded herein, together with interest, costs, disbursements and attorney's fees, and such other and further relief which to this Court may seem just and proper.


Giacomo Provenzano

Sworn to before me this
11th day of January, 2016


Notary Public

DARREN RUBEN
Notary Public, State of New York
No. 01RU5065889
Qualified in Nassau County
Commission Expires 9/16/2018