COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
ACTION NO. 17-02646-C

Notice sent
2/14/2018
T. M. L.
H. F.,PC.
R. E. G.
T. S. V.
M. C.
J. R.

SANTANDER BANK, N.A.
Plaintiff

v.

SANTILLI ENTERPRISES, INC., d/b/a VILLAGE SUBARU,
R. SANTILLI AUTOMOTIVE GROUP, INC.,
& RONALD S. SANTILLI
Defendants

(sc)

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIM AND FOR JUDGMENT ON THE PLEADINGS AS TO COUNT I OF THE COMPLAINT

Plaintiff Santander Bank N.A. ("Santander" or "Plaintiff") brings this action seeking to recover in excess of $5 million allegedly due to it under a demand promissory note. The note, which provided financing to obtain vehicles for a car dealership, was executed by Santilli Enterprises, Inc. ("Santilli Enterprises"), and guaranteed by R. Santilli Automotive Group ("Santilli Automotive") and Ronald S. Santilli ("Santilli") (collectively, "Defendants"). Defendants, in turn, allege that, during its attempt to collect under the note, Plaintiff breached the contract, breached the implied covenant of good faith and fair dealing, and violated G.L. c. 93A, §§ 2 and 11. Presented for decision is Plaintiff's Motion to Dismiss the Counterclaims and for Judgment on the Pleadings as to Count I of its Complaint, wherein Plaintiff seeks to recover under the note and the guaranty. Following a hearing and for the reasons which follow, Plaintiff's

Motion to Dismiss the Counterclaims and for Judgment on the Pleadings as to Count I of its Complaint is **ALLOWED**.

FACTUAL BACKGROUND

The Court accepts as true all factual allegations in Defendants' counterclaims.[1]

I. The Parties' Financing Agreements

Santilli and his family operate Santilli Enterprises d/b/a Village Subaru, a new and used car dealership in Acton (the "dealership"). The dealership has obtained business financing through Santander for approximately five years. As part of its financing relationship, Santilli executed three documents on behalf of some or all Defendants on or about July 28, 2015.[2]

First, Santilli Enterprises, through Santilli as its President, executed a Floor Plan Demand Note (the "Demand Note") in favor of Santander in the principal amount of $10,000,000. The Demand Note provides: "**SANTILLI ENTERPRISES** ... promises to pay to the order of **SANTANDER BANK** ..., **ON DEMAND**, at the Bank, the sum of [$10 million or a lesser amount advanced and remaining outstanding under the Note], with interest ...." Verified Compl., Ex. A at 1 (emphasis in original).

Second, Santander and Santilli, individually and as President of Santilli Enterprises and Santilli Automotive, executed a Dealer Demand Loan and Security Agreement, which agreement

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[1] Plaintiff has moved to strike Santilli's affidavit that was filed alongside Defendants' opposition to the motion. The Court shall **DENY AS MOOT** Plaintiff's Motion to Strike Affidavit because, even considering the information therein, Defendants' counterclaims must be dismissed and judgment must enter in favor of Plaintiff on Count I of its Complaint.

[2] All three documents are attached to Santander's Verified Complaint and are referenced in Defendants' Answer and Counterclaim. The Court may consider these documents without converting the motion to dismiss to a motion for summary judgment. See Mass. R. Civ. P. 10(c); Marram v. Kobrick Offshore Fund, Ltd., 442 Mass. 43, 45 n.4 (2004).

was later amended on February 9, 2017 (collectively, the "Loan Agreement"). The Loan Agreement granted Santander a security interest in all assets of Santilli Enterprises. See Verified Compl., Ex. B § 6.

Under the terms of the Loan Agreement, Santander advanced money to Santilli Enterprises for the purpose of acquiring new and used motor vehicles. The Loan Agreement provided that, upon any sale or disposition of a Santander-financed vehicle, "[Santilli Enterprises] shall on the date of such sale or disposition account to [Santander] for the proceeds of such sale and shall deliver to and pay to the Bank the then unpaid principal balance of the Loan applicable to such motor vehicle...."

Third, Santilli and Santilli Automotive executed a Guaranty (the "Guaranty"), through which they guaranteed all obligations of Santilli Enterprises to Santander.

II. Santilli Enterprises' Late Payments Under the Loan Agreement

During the week of July 3, 2017, Dan Coyne, Santilli Enterprises' long-time Controller, was out of work due to an unknown illness that was subsequently diagnosed as Acute Leukemia. As a result, Coyne has been unable to work since that time. Coyne's responsibilities as the Controller included overseeing the accounting functions for the dealership and handling all of its financial transactions, including the repayment of loans to Santander under the Loan Agreement. During the week of Coyne's diagnosis, no one was covering the back office of the dealership; for one member of Coyne's staff had left the organization in June of 2017, and the only other back office employee was on vacation.

In the midst of these events, in July of 2017, Santander conducted a floor check inspection of all Santilli vehicles financed by Santander. Through that inspection, Santander learned that

Santilli Enterprises had not accounted to or paid Santander following the sale of some of those vehicles, as provided for in the Loan Agreement. Defendants admit that, for a brief period of time due to Coyne's illness and absence from work, "the dealership took more time to deliver to [Santander] the sale proceeds for certain vehicles than required under the Loan Agreement." Santilli and other members of his family thereupon met with Santander Vice President John Bowen to discuss the situation at the dealership, and to reassure the lender that the dealership would promptly pay all of its obligations.

III. Santander's Demands After Santilli Enterprises' Late Payments

On July 19, 2017, Santander sent Santilli Enterprises formal notice of the sales that it deemed "out of trust," meaning those sales that were in default of Santilli Enterprises' obligations under the Loan Agreement (the "July 19 Default Letter"). In that notice, Santander asserted that the dealership had sold 17 vehicles and then failed to repay Santander in a timely manner for the loans used to purchase those vehicles. Santander made a demand for the immediate repayment of the outstanding loans on the subject vehicles. Santander also identified 15 additional vehicle loans that would become due by the end of July, 2017. Santander indicated that it would not demand immediate repayment of those loans, and would permit payment in accordance with the loans' existing due dates, if Santilli Enterprises agreed to: (1) make a deposit of $400,000 of additional working capital into the dealership's operating account by September 17, 2017; (2) execute a Subordination Agreement that would subordinate the debt of the dealership's used car lender to the debt of Santander; (3) pay for and submit to audits and inspections of the dealership at an increased frequency; and (4) accept a 1% increase in the interest rate on the Demand Note. Santilli Enterprises would not agree to these additional terms and, instead, worked

quickly to pay all of the overdue amounts to Santander.

On July 26, 2017, Santander gave Defendants formal notice of default based on the out of trust sales (the "July 26 Default Letter"). In that letter, Santander advised Defendants that it was unilaterally increasing the interest rate on its Demand Note by 8%, to approximately 11%. This increased rate cost the dealership "tens of thousands of dollars per month in additional interest charges."

On or about August 1, 2017, Santander placed an auditor at the dealership, the purpose of which was to confirm the dealership's compliance with the parties' agreements. Since that time, the auditor has not identified a single instance in which the dealership failed to make the required payments to Santander on a timely basis. On August 1, 2017, Santilli also made a $600,000 contribution to the dealership for working capital purposes.

On August 2, 2017, Santander sent a letter to Santilli and Santilli Enterprises. In that letter, Santander demanded immediate repayment of the full amount due under the Demand Note, which Santander alleged to be nearly $5.7 million. By that time, the dealership had made all overdue payments to Santander and was no longer "out of trust."

At or about the same time, Santander demanded the return and grounding of the dealership's entire fleet of 28 loaner and demonstrator vehicles. Santilli Enterprises was required to maintain the fleet of loaner vehicles for its customers as part of a contract with its franchisor, Subaru of New England and, therefore, this demand rendered Santilli Enterprises in default of its franchise agreement.

Subaru of New England issued a letter terminating Santilli Enterprises' franchise agreement due to Santander's cancellation of the dealership's financing and its other above-

described actions. However, Subaru of New England withdrew its termination notice after Santilli Enterprises entered into a new financing agreement with another bank on or about August 11, 2017. This agreement provided financing for the future purchase of new vehicles.

Nevertheless, Santander continued to assert its right to full repayment under the Demand Note, and insisted that the dealership: (1) provide Santander with control of all the titles and keys to the dealership's vehicles; (2) change the locks to the office in which the titles are maintained, using an "independent locksmith"; and (3) make all payments under the floor plan by certified check. Defendants refused.

On August 18, 2017, Santander filed suit against Defendants, seeking payment of the entire balance of the Demand Note and certain injunctive relief as well. The hearing on Plaintiff's preliminary injunction has not been held, having been continued at the parties' request. On September 12, 2017, Defendants filed their answer and counterclaims. Santander now moves to dismiss Defendants' counterclaims pursuant to Rule 12(b)(6), and seeks the entry of judgment in its favor on Count I of the Verified Complaint.

DISCUSSION

I. Defendants' Counterclaims

A. Legal Standard

In considering a motion brought under Mass. R. Civ. P. 12(b)(6), the Court "accept[s] as true the allegations in the [counterclaim] and draw[s] every reasonable inference in favor of the plaintiff [in counterclaim]." Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011). To survive a motion to dismiss, the complaint (or, in this case, counterclaim) must set forth "factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief."

Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007)) (internal quotations omitted). Detailed factual allegations are not required; but a "plaintiff's obligation to provide the grounds of entitle[ment] to relief requires more than labels and conclusions .... Factual allegations must be enough to raise a right to relief above the speculative level ... [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact) ...." Id. (quoting Twombly, 550 U.S. at 555) (internal quotations omitted) (alterations in original).

B. Analysis

Defendants assert claims against Plaintiff for breach of contract, breach of the implied covenant of good faith and fair dealing, and unfair and deceptive business or trade practices in violation of G.L. c. 93A. Each claim is premised on the contention that Plaintiff breached their contract in the wake of Santilli Enterprises' late loan payments, and that their actions seeking (inter alia) repayment under the Demand Note were undertaken in bad faith. For the reasons which follow, Defendants' counterclaims must be dismissed.

1. Breach of Contract

Defendants first allege that Plaintiff breached the Loan Agreement by demanding payment in full under the Demand Note, estimated at roughly $5.7 million, on August 2, 2017. The crux of Defendants' argument is that Plaintiff's demand under the Demand Note was commercially unreasonable and asserted in bad faith. Defendants cannot prevail on this claim, because they have failed to allege an actionable breach on the part of Plaintiff.

Generally, Santander, as the holder of a Demand Note, "may determine to collect the balance due for any reason, good or bad. Good faith is not a condition of a holder's decision to

collect the amount due on a demand note." Shawmut Bank, N.A. v. Miller, 415 Mass. 482, 485 (1993). In some instances, however, a demand note "when read in conjunction with other provisions in the note or other loan documents, might in fact be payable on demand only if the maker defaults on an obligation stated in the loan documents." Id. at 486-87. Here, even if Santander's unfettered right to make a demand for payment were somehow limited by the language of the parties' other agreements, Santander was in all events permitted to make its demand in light of Santilli Enterprises' acknowledged default under the Loan Agreement.

The Demand Note specifically provides that a default under the Loan Agreement also constitutes a default under the Demand Note. See Verified Compl., Ex. A at 3-4 (defining "Event of Default" under the Demand Note to include an "Event of Default" under the Loan Agreement). A default under the Loan Agreement, in turn, includes "[t]he failure by [Santilli Enterprises] to pay the principal, interest or any other amount due under this Agreement or any other Obligation owing to [Santander] when due or upon demand (time being of the essence)." Verified Compl., Ex. B § 11(a). Defendants concede that "the dealership took more time to deliver to [Santander] the sale proceeds for certain vehicles than required under the Loan Agreement." Such conduct constitutes a default under the Loan Agreement and, by extension, under the Demand Note. See id. § 4(b) (providing the timing by which Santilli Enterprises must make payment to Santander upon the sale or disposition of a vehicle financed under the Loan Agreement).

Under the express terms of the Demand Note, Santander was entitled to make a demand in light of Santilli Enterprises' default, even if (as occurred) Santilli Enterprises later made all overdue payments. See Verified Compl, Ex. A at 4 (on or after default, at the option of Santander, the whole amount of indebtedness under the Note, including principal and interest,

may "immediately become due and payable without presentment, further demand, protest, notice of protest, or other notice of dishonor of any kind, all of which are hereby expressly waived by the Dealer"). To the extent Defendants appear to argue that satisfaction of the overdue payments somehow "cured" their default, they have pointed to no cure provision in the parties' agreements that would permit such a conclusion. Thus, Defendants have failed to allege a breach of contract by Santander based on this conduct. See G.L. c. 106, § 3-412 (maker of note is required to pay the note according to its terms).

Finally, the Court observes that Santander's other complained-of conduct was expressly contemplated by the Demand Note and the Loan Agreement. Specifically, Santander was authorized to increase the interests rates on the borrower's unpaid balances by 8% in the event of a default, which it did as noticed in the July 26 Default Letter. See Verified Compl., Ex. B § 13. Santander was likewise authorized to require the return of the fleet of loan and demonstrator vehicles, and to take control of the titles and tags of the vehicles that it financed and/or otherwise secure those vehicles. See id. § 12 (providing for Santander's possession and assembly of collateral in the event of default). Santander thus had a contract-based right to proceed in this manner, as it possessed a security interest in these assets.

In sum, Defendants' counterclaim appears to argue that Plaintiff breached the parties' contract by failing to negotiate more sympathetically and with less aggressiveness after Santilli Enterprises' default. While the circumstances surrounding this default may have been unfortunate, they furnish no basis for a legally cognizable breach of contract claim. See, e.g., DeMarco v. DeMarco, 89 Mass. App. Ct. 618, 624 (2016) ("In the absence of fraud, coercion, or countervailing equities, a signatory to an agreement is bound by its terms."). Defendants'

counterclaim for breach of contract, therefore, will be **DISMISSED**.

2. Breach of the Implied Covenant of Good Faith and Fair Dealing

Defendants next allege, based on the same conduct, that Plaintiff breached the implied covenant of good faith and fair dealing. Defendants, however, have failed to state a viable claim for the following reasons.

A covenant of good faith and fair dealing is implied in every contract.[3] See Anthony's Pier Four, Inc. v. HBC Assocs., 411 Mass. 451, 471 (1991). "[T]he purpose of the implied covenant is to ensure that neither party interferes with the ability of the other to enjoy the fruits of the contract, ... and that, when performing the obligations of the contract, the parties remain faithful to the intended and agreed expectations of the contract." Eigerman v. Putnam Investments, Inc., 450 Mass. 281, 287 (2007) (internal citation and quotations omitted). "A breach occurs when one party violates the reasonable expectations of the other." Id. at 287-88. For instance, "a party breaches the covenant ... when the party exceeds its contractual discretion or uses its discretionary power in a pretextual manner." S.M. v. M.P., 91 Mass. App. Ct. 775, 784 (2017). "In determining whether a party violated the implied covenant of good faith and fair dealing, we look to the party's manner of performance." T.W. Nickerson, Inc. v. Fleet Nat. Bank, 456 Mass. 562, 570 (2010). "The lack of good faith can be inferred from the totality of the circumstances." Id.

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[3] The covenant, however, has been held not to apply to promissory notes that are written as demand notes. See Shawmut Bank, N.A., 415 Mass. at 485. The Court shall nonetheless consider the Defendants' allegations supporting this claim, as there exists some uncertainty about whether and when the covenant applies to a demand note that is related to a contract. See Garofalo v. Feloni, 89 Mass. App. Ct. 1136, 2016 WL 4159684, at *1 n.4 (Mass. App. Ct. 2016) (unpublished) (declining to decide the issue).

Defendants' good faith and fair dealing claim can only source to Santander's alleged breach of contract. See Eigerman, 450 Mass. at 289 ("[T]he implied covenant of good faith and fair dealing cannot create rights and duties that are not already present in the contractual relationship."); Ayash v. Dana-Farber Cancer Inst., 443 Mass. 367, 385 (2005) ("The scope of the covenant is only as broad as the contract that governs the particular relationship."). In the case at bar, the Court has found the Defendants' allegations insufficient to suggest that Santander committed such a breach. To the extent Defendants rely on Santander's exercise of its express rights under the parties' agreements, there is no allegation that Santander acted in a pretextual manner to secure a right or benefit not envisioned by the contracts themselves. Rather, Defendants allege only that Santander acted opportunistically and in its own self-interest in the wake of Santilli Enterprises' default. Such contractually permitted business practices, sharp-elbowed though they may be, will not give rise to a breach of the implied covenant of good faith and fair dealing. See FAMM Steel, Inc. v. Sovereign Bank, 571 F.3d 93, 101 (1st Cir. 2009) (no breach of the covenant when borrower was in default and parties engaged in negotiations that never yielded a forbearance agreement); Lohnes v. Level 3 Commc'ns, Inc., 272 F.3d 49, 62 (1st Cir. 2001) (in the absence of an agreement to undertake specific acts, lender has no general obligation to take affirmative steps that benefit the borrower); F.D.I.C. v. LeBlanc, 85 F.3d 815, 822 (1st Cir. 1996) (lender did not breach the covenant by engaging in hard-nosed dealings after borrower was in default); Blue Hills Office Park LLC v. J.P. Morgan Chase Bank, 477 F. Supp. 2d 366, 376 (D. Mass. 2007) (covenant not violated when lender refused to meet or cooperate with borrower after borrower was in default). Defendants' implied covenant counterclaim, therefore, will be **DISMISSED**.

3. Mass. G.L. Chapter 93A

Finally, Defendants allege that Plaintiff engaged in unfair and deceptive business practices by attempting to "extract additional concessions" from Defendants, presumably via the July 19 Default Letter, when it demanded repayment of the Demand Note with an 8% increase in the interest rate, and when it alleged in its Verified Complaint that Defendants were "out of trust" despite the fact that they had repaid all overdue amounts on the subject vehicle loans by that time. Defendants have failed to allege a plausible claim for unfair or deceptive acts or practices on the part of Santander.

In order to state a claim for violation of Section 11 of Chapter 93A, Defendants must demonstrate that Santander engaged in "unfair or deceptive acts or practices in the conduct of any trade or commerce," G.L. c. 93A, § 2, and that they suffered a "loss of money or property, real or personal," G.L. c. 93A, § 11. "[B]usinesses seeking relief under Section 11 are held to a stricter standard than consumers in terms of what constitutes unfair or deceptive conduct." Giuffrida v. High Country Inv'r, Inc., 73 Mass. App. Ct. 225, 238 (2008) (quoting Chapter 93A Rights & Remedies § 2.5, at 2–67 (Mass. Cont. Legal Educ. 2d ed. 2007)). "Although whether a particular set of acts, in their factual setting, is unfair or deceptive is a question of fact ... the boundaries of what may qualify for consideration as a c. 93A violation is a question of law." Milliken & Co. v. Duro Textiles, LLC, 451 Mass. 547, 563 (2008) (quoting Schwanbeck v. Federal–Mogul Corp., 31 Mass. App. Ct. 390, 414 (1991)).

Defendants have not sufficiently alleged a breach of contract on Santander's part and, therefore, to the extent Defendants' Chapter 93A claim is wholly derivative of that claim, it also must fail. See, e.g., Park Drive Towing, Inc. v. City Of Revere, 442 Mass. 80, 85-86 (2004).

Further, Defendants' Chapter 93A claim as pleaded does no more than cast as an unfair and deceptive practice Santander's enforcement of its bargained-for rights under the parties' agreements and its refusal to negotiate less onerous terms with Defendants after their default. Such a claim cannot lie. To be sure, the parties negotiated a contract that invested Santander with a severe set of remedies in the event of a default by Santilli Enterprises; but Santander cannot be subject to a Chapter 93A claim when it did no more than what the parties' contract explicitly allows. See Cabot Corp. v. AVX Corp., 448 Mass. 629, 639 (2007) (quoting 28 S. Williston, Contracts § 71.7 at 450 (4th ed. 2003)) ("Hard bargaining is not unlawful; it is 'not only acceptable, but indeed, desirable, in our economic system, and should not be discouraged by the courts.'"); Buster v. George W. Moore, Inc., 438 Mass. 635, 650-51 (2003) (no c. 93A violation where "plaintiffs' business vulnerabilities were ... clearly the result of their own conduct ... [and because] ... the market is a rough and tumble place where a competitor's lack of courtesy, generosity, or respect is neither uncommon nor in itself unlawful"); cf. Levings v. Forbes & Wallace, Inc., 8 Mass. App. Ct. 498, 504 (1979) ("objectionable conduct [under c. 93A] must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce"). Santander's alleged conduct cannot qualify as a violation of Chapter 93A as a matter of law. See Aggregate Industries-Northeast Region, Inc. v. Hugo Key and Sons, Inc., 90 Mass. App. Ct. 146, 152 (2016) ("Ordinary contract disputes, or the failure to negotiate a settlement in lieu of litigation, ... typically fall outside of the reach of the statute."); Samia Companies LLC v. MRI Software LLC, 898 F. Supp. 2d 326, 345 (D. Mass. 2012) (quoting Zabin v. Picciotto, 73 Mass. App .Ct. 141, 169 (2008)) (*breaching* party's conduct only a c. 93A violation if it exceeds level of mere self-interest and rises to the level of commercial extortion in

that it is intended to secure *unbargained*-for benefits to the detriment of the other party). Defendants' counterclaim under Chapter 93A, therefore, will be **DISMISSED**.[4]

II. Count I of the Plaintiff's Verified Complaint

Santander also seeks judgment on the pleadings on Count I of its Verified Complaint. Accepting all allegations pleaded by Defendants as true, there are no material facts in dispute with respect to Count I, and Santander is entitled to judgment on the pleadings. See Clarke v. Metro. Dist. Comm'n, 11 Mass. App. Ct. 955, 955 (1981).

In Count I of its Verified Complaint, Santander requests that the Court enter judgment against Defendants in the amount of all sums due on the Demand Note and Guaranty, plus interests, costs and attorney's fees. Defendants forthrightly admit to making untimely payments to Santander under the terms of the parties' Loan Agreement. As discussed ante, such late payments constituted a default under the Demand Note, and permitted Santander to make a call for the entire outstanding balance of the Demand Note plus interest. See supra.

Defendants have raised no affirmative defenses that would bar the entry of judgment in favor of Santander on this claim. Defendants allege as their First Affirmative Defense that their obligations under the Demand Note will likely be satisfied as of the time of this decision. The Court, however, cannot rely on mere speculation as to this point; and, even if all owed repayments were made, that would still not afford the bank all of the relief to which it is contractually due. As their Second Affirmative Defense, Defendants raise the doctrine of unclean hands. This defense

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[4] It may well be that the milk of human kindness curdled in the veins of this bank, and that a more sympathetic corporate citizen would not have been so unforgiving of its borrower's lapse in the difficult circumstances that confronted it. But the Court's task in the precincts of Rule 12 is to determine what legal claims may proceed to trial, not to pass judgment on who will pass through the gates of heaven.

is inapplicable, however, because Defendants have not sufficiently alleged inequitable behavior or bad faith on Plaintiff's part in seeking the payments to which it is entitled under the Demand Note. See Murphy v. Wachovia Bank of Delaware, N.A., 88 Mass. App. Ct. 9, 15 (2015). See also Saggese v. Kelley, 445 Mass. 434, 444 (2005) (doctrine of unclean hands is equitable principle that generally has no application to breach of contract claims). As their Third Affirmative Defense, Defendants argue that they cured their default by making all overdue payments. However, inasmuch as Defendants have pointed to no provision in the parties' agreements that provides for such a cure, this defense fails as a matter of law. Finally, Defendants argue they should be excused from performance under the Loan Agreement due to Santander's own breach of the Agreement. As discussed in detail above, however, Defendants have failed to allege a breach on Plaintiff's part.

Plaintiff is entitled to judgment on Count I, as the pleadings reflect no material dispute of fact as to Plaintiff's right to seek repayment under the Demand Note. The parties are invited to submit documentation establishing the full amount due under the Demand Note and, if necessary, the Court will set this matter for a hearing on the assessment of damages as to Count I of Plaintiff's Verified Complaint.

CONCLUSION AND ORDER

For the foregoing reasons, Plaintiff's Motion to Dismiss the Counterclaim and for Judgment on the Pleadings as to Count I of its Complaint is **ALLOWED**. Defendants' Counterclaim is hereby **DISMISSED** in its entirety. Plaintiff is additionally entitled to judgment on Count I of its Verified Complaint. The parties shall submit documentation establishing the full amount due under the Demand Note. If required, the Court shall set this matter for a hearing on

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the assessment of damages as to Count I of the Verified Complaint.

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SO ORDERED.

Robert B. Gordon
Justice of the Superior Court

Dated: February 13, 2018