

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

THE DELAWARE )  
ECONOMIC DEVELOPMENT )  
AUTHORITY, )

Plaintiff, )

v. )

ACTIVAIR, INC. and BAMDAD )  
BAHAR, )

Defendants.

C.A. No. N13C-11-260 CLS

Submitted: August 18, 2016  
Decided: November 30, 2016

On Plaintiff's, The Delaware Economic Development Authority,  
Motion for Summary Judgment.

**DENIED.**

**ORDER**

Edward K. Black, Esquire, Deputy Attorney General, Wilmington, Delaware,  
Attorney for Plaintiff Delaware Economic Development Authority.

Gerry Gray, Esquire, Wilmington, Delaware, Attorney for Defendants and  
Counter-Planitiffs, Activair, Inc. and Bamdad Bahar.

**SCOTT, J.**

## **Background**

Plaintiff, the Delaware Economic Development Authority (hereinafter “DEDA”) is an instrumentality of the State of Delaware. The Defendant, Activair, Inc. (hereinafter “Activair”) is a Delaware Corporation. On November, 22, 2013 DEDA filed a Complaint with this Court seeking money damages against Defendants Activair and Bamdad Bahar (hereinafter “Mr. Bahar”). The Complaint alleges that Activair defaulted on three promissory notes dated June 20, 2011. DEDA alleges that the combined original principal amount of the notes totals to \$1,675,000.00 with 4.25% interest per annum. DEDA further contends that Mr. Bahar is the guarantor of payment of one of the three promissory notes with a principal amount of \$300,000.00 executed on June 9, 2011. DEDA pled that as of May 29, 2013 Activair owes \$1,697,593.34 plus interest, and Mr. Bahar is jointly and severally indebted to Activair in the amount of \$300,000.00 plus interest.

Defendants admit that Mr. Bahar is the guarantor of the \$300,000.00 note executed on June 9, 2011. However, Defendants contend that DEDA failed to apply \$150,000.00 in proceeds from the sale of Activair’s property, which was personally guaranteed by Mr. Bahar, to the obligation of Activair. Defendants also allege that Mr. Bahar incurred expenses of approximately \$28,000.00 to rent and maintain the premises after DEDA sold Activair’s assets.

### **Standard of Review**

The Court may grant 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 summary judgment as a matter of law.”<sup>1</sup> The moving party bears the initial burden of showing that no material issues of fact are present.<sup>2</sup> Once such a showing is made, the burden shifts to the non-moving party to demonstrate that there are material issues of fact in dispute.<sup>3</sup> In considering a motion for summary judgment, the Court must view the record in a light most favorable to the non-moving party.<sup>4</sup> The Court will not grant summary judgment if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law.<sup>5</sup>

### **Discussion**

Viewing the evidence in a light most favorable to Defendants, DEDA’s Motion for Summary Judgment is denied. Although this Court finds that DEDA is entitled to \$1, 697,593.34 plus interest at the rate reflected in the notes from May 29, 2013 until judgment is entered, there is still a question of fact as to whether any

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<sup>1</sup> Super. Ct. Civ. R. 56(c); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

<sup>2</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>3</sup> *Id.* at 681.

<sup>4</sup> *Burkhart*, 602 A.2d at 59.

<sup>5</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962); *Phillip-Postle v. BJ Prods., Inc.*, 2006 WL 1720073, at \*1 (Del. Super. Ct. Apr. 26, 2006).

offsets on this amount exist. These alleged offsets include the \$150,000.00 Defendants claim DEDA benefited from after Activair's property was sold. Similarly, there is a genuine dispute of fact as to whether any offsets apply to Mr. Bahar. Defendants admit in their Answer that Mr. Bahar is the guarantor of payment of one of the notes with an original principal amount of \$300,000.00 executed on June 9, 2011. However, Mr. Bahar contends that \$150,000.00 from the Activair sale, and \$28,000.00 Mr. Bahar claims he paid to rent and maintain the Activair premises after the sale, should offset the \$300,000.00 plus interest owed under the promissory note. A genuine issue of material fact exists as to whether Defendants are entitled to offsets on the promissory notes.

For the foregoing reasons, Plaintiff Delaware Economic Development Authority's Motion for Summary Judgment is **DENIED**.

**IT IS SO ORDERED.**

*/s/ Calvin L. Scott*  
**Judge Calvin L. Scott, Jr.**