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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

REKHA HEMLANI,
Plaintiff-Appellee,

v.

KISHORE HEMLANI,
Defendant-Appellant.

Supreme Court Case No.: CVA14-018
Superior Court Case No.: CV1980-10

OPINION

Cite as: 2015 Guam 16

Appeal from the Superior Court of Guam
Argued and submitted on October 31, 2014
Hagåtña, Guam

Appearing for Defendant-Appellant:

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice;
KATHERINE A. MARAMAN, Associate Justice.

TORRES, C.J.:

[1] This case centers on a promissory note signed by Defendant-Appellant Kishore Hemlani (“Kishore”) in favor of Plaintiff-Appellee Rekha Hemlani (“Rekha”) and Moti Hemlani.¹ Kishore appeals the three separate decision and orders (1) denying his cross-motion for summary judgment, (2) granting Rekha’s motion for reconsideration and entering summary judgment in her favor, and (3) denying his motion for relief from the amended judgment and to stay enforcement thereof. Kishore claims that the trial court erred in granting summary judgment in favor of Rekha by failing to consider evidence which created a dispute of material fact and by improperly concluding that Rekha’s declaration sufficiently satisfied her *prima facie* burden for recovery. Kishore further argues that the court impermissibly refused to allow withdrawal of admissions attributed to him for failure to timely respond to Rekha’s requests for admissions. Finally, Kishore asserts that the trial court did not have jurisdiction to resolve the parties’ dispute, as their agreement was void due to Rekha’s failure to possess a required business license at any time prior to bringing this suit, including the time the note was executed. For the reasons stated herein, we affirm in part, reverse in part, and remand for proceedings not inconsistent with this opinion.

¹ The copy of the note that is part of the record on appeal is not entirely clear as to the name of the second payee and appears to say MotiHo. However, subsequent pleadings and evidence presented by the parties suggest that the second payee was in fact Moti Hemlani, the late husband of Rekha. *See* Appellee’s Br. at 7 (Oct. 3, 2014); Record on Appeal (“RA”), tab 8 (Def. Kishore Hemlani Decl., Jan. 13, 2011); RA, tab 98, Ex. 3 (Check, Feb. 26, 2010).

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This case arises from an action to recover money due upon a promissory note. According to the note, Rekha and Moti extended a loan of \$270,000.00 to Kishore, who executed the promissory note in their favor. Rekha initiated the present action for breach of contract and recovery on the note based on Kishore's alleged failure to pay the debt when it became due and following her unsuccessful attempts to secure payment. Kishore answered and, while conceding that his name and signature appeared on the promissory note, denied owing any debt to Rekha under the instrument and argued that the loan agreement was void because Rekha lacked the proper business license to enter into such an agreement.

[3] During the discovery period, Kishore failed to timely respond to Rekha's interrogatories, request for production, and request for admissions. After the discovery period closed, both parties moved for summary judgment. Months later, well after discovery closed, Kishore served his responses to Rekha's discovery requests.

[4] The Superior Court thereafter issued a Decision and Order denying the parties' cross-motions for summary judgment. Rekha's motion was denied on the basis that the note had not been submitted in an admissible form to be evaluated as evidence supporting summary judgment. The decision also rejected Kishore's argument that the agreement was void, finding that the loan in this case did not constitute a regulated consumer loan and thus did not require a business license.

[5] Thereafter, Rekha brought a Motion for Reconsideration or Relief from the trial court's Decision and Order denying her Motion for Summary Judgment, arguing that the court had overlooked her October 6, 2011 declaration "authenticating" the unpaid promissory note. In opposition to this motion, Kishore submitted his own affidavit attesting, for the first time in the

litigation, that Rekha was no longer the holder of the note, having returned it to him and discharged the debt in exchange for another note (valued at \$45,000.00) and payment of \$100,000.00. Kishore attached both the check and new promissory note to his affidavit, neither of which were signed by Rekha. In her reply, Rekha objected, claiming that this argument constituted an affirmative defense which Kishore had waived by failing to raise it in his answer. In addition, she supplied additional declarations from herself and her daughter disputing the assertions in Kishore's affidavit. The court reconsidered its decision and granted summary judgment in favor of Rekha, finding that the note was properly authenticated and entitled her to recovery. Judgment was entered on October 31, 2013. Based on Kishore's motion to reconsider the award of post-judgment interest and compounded interest, which was unopposed by Rekha, an amended judgment was entered.

[6] Kishore timely moved for relief from the amended judgment and to stay enforcement thereof under Guam Rules of Civil Procedure ("GRCP") Rule 60(b). He argued that the court had ignored evidence which created a dispute of material fact regarding whether or not Rekha remained the holder of the note. In response, Rekha again asserted that the evidence introduced in Kishore's opposition to reconsideration merely supported a waived affirmative defense that could not be considered. She also reiterated her argument that Kishore had already admitted she was the holder of the note by failing to respond to her earlier requests for admissions. Kishore replied that admissions could not be used to "trump a sham lawsuit" perpetrated by Rekha to seek recovery on a note she did not hold. He also characterized several pages of his opposition to Rekha's motion for summary judgment as a GRCP 36(b) motion to withdraw admissions. The trial court denied Kishore's motion, finding "[t]he basis for [Kishore's] motions is an affirmative defense not pleaded in [his] Answer, which is only supported by evidence that was not properly

brought forward during discovery. To grant the motions would greatly prejudice [Rekha]” Record on Appeal (“RA”), tab 142 at 4 (Dec. & Order, May 15, 2014).

[7] Kishore timely filed a notice of appeal challenging the Superior Court’s decisions and orders (1) denying his cross-motion for summary judgment, (2) granting Rekha’s motion for reconsideration and entering summary judgment in her favor, and (3) denying his motion for relief from the amended judgment and to stay enforcement thereof.

II. JURISDICTION

[8] This court has jurisdiction over appeals from final judgment of the Superior Court pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-296 (2014)), and 7 GCA §§ 3107(b) and 3108(a) (2005). This is an appeal of a final judgment issued by the Superior Court on May 15, 2014.

III. STANDARD OF REVIEW

[9] We review a trial court’s decision granting a motion for summary judgment *de novo*. *Taitano v. Lujan*, 2005 Guam 26 ¶ 11; *Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 8. Whether being the holder of the promissory note is an essential element of Rekha’s action is considered a question of law, which is reviewed *de novo*. *People v. Rios*, 2008 Guam 22 ¶ 8 (holding that questions of law are reviewed *de novo*); *see also FFP Mktg. Co. v. Long Lane Master Trust IV*, 169 S.W.3d 402, 407 (Tex. App. 2005) (determining whether UCC applies to allow holder recovery on a negotiable instrument was a question of law). A trial court’s denial of a GRCP 60(b) motion for relief is reviewed for abuse of discretion. *Parkland Dev., Inc. v. Anderson*, 2000 Guam 8 ¶ 5.

[10] The Superior Court’s denial of a motion to withdraw admissions under GRCP 36 is subject to an abuse of discretion review on appeal. *See Conlon v. United States*, 474 F.3d 616,

621 (9th Cir. 2007) (applying abuse of discretion review to denial of a motion to withdraw admissions under analogous federal rule); *999 v. C.I.T. Corp.*, 776 F.2d 866, 869 (9th Cir. 1985).

[11] The trial court's determination regarding Rekha's possession of a business license and interpretation of applicable licensing requirements for the parties' agreement present mixed questions of law and fact subject to *de novo* review. See *Att'y Gen. of Guam v. Gutierrez*, 2011 Guam 10 ¶ 18 (citing *Town House Dep't Stores, Inc. v. Ahn*, 2000 Guam 29 ¶ 6); see also *People v. Aromin*, 2014 Guam 3 ¶ 11 ("Issues of statutory interpretation are subject to *de novo* review.").

IV. ANALYSIS

A. Whether the Trial Court Erred in Granting Summary Judgment in Favor of Rekha on her Claims for Breach of Contract and Recovery on a Promissory Note

[12] Summary judgment is appropriate "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 a judgment as a matter of law." Guam R. Civ. P. 56(c); see also *Bank of Guam v. Flores*, 2004 Guam 25 ¶ 8; *Gayle v. Hemlani*, 2000 Guam 25 ¶ 20. A genuine issue exists where there is "'sufficient evidence' which establishes a factual dispute requiring resolution by a fact-finder." *Gayle*, 2000 Guam 25 ¶ 20 (citing *Iizuka Corp. v. Kawasho Int'l, Inc.*, 1997 Guam 10 ¶ 7). However, the dispute must involve a "material fact." *Id.* "A 'material' fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit . . . Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." *Id.* (omission in original) (quoting *Iizuka Corp.*, 1997 Guam 10 ¶ 7).

[13] In deciding motions for summary judgment, a court "must view the evidence and draw inferences in the light most favorable to the non-movant." *Id.* ¶ 21 (citing *Iizuka Corp.*, 1997

Guam 10 ¶ 8). If, however, there are no genuine issues of material fact, the non-movant may not simply rely on allegations in the complaint, but must provide some significant probative evidence supporting the complaint. *Id.*

1. UCC action for recovery under a promissory note

[14] Kishore claims that granting summary judgment in favor of Rekha was improper regardless of whether his affidavit and exhibits were considered. Specifically, he alleges that, based on the elements required for recovery on a promissory note, Rekha's evidence for summary judgment is deficient on its face, since her sworn declaration does not include a statement that "[plaintiff] is the sole owner and holder of the notes, and they have never been assigned, transferred, pledged, or delivered to another." Appellant's Br. at 7 (Sept. 2, 2014) (alteration in original) (citing *Blankenship v. Robins*, 899 S.W.2d 236, 238 (Tex. App. 1994)). "Promissory notes are negotiable instruments which are governed . . . by Article 3 of the Uniform Commercial Code ('UCC')." *DCM Ltd. P'ship v. Wang*, 555 F. Supp. 2d 808, 813 (E.D. Mich. 2008). In order to recover in an action stemming from a promissory note, "the holder or payee [must] establish that (1) there is a note; (2) he is the legal owner and holder of the note; (3) the defendant is the maker of the note; and (4) a certain balance is due and owing on the note." *Blankenship*, 899 S.W.2d at 238; *see also Resolution Trust Corp. v. Starkey*, 41 F.3d 1018, 1023 (5th Cir. 1995). Both parties identified this as the appropriate standard during summary judgment proceedings. *See* Appellant's Br. at 6-7; RA, tab 36 at 4 (Pl.'s Mot. Summ. J., Oct. 6, 2011).

[15] Factors one and three are undisputed. Both parties have provided documentation of the existence of a promissory note. RA, tab 34, Ex. A (Promissory Note, Dec. 1, 2009); RA, tab 98, Ex. 1 (Promissory Note, Dec. 1, 2009). Further, statements from both Rekha and Kishore

established that Kishore is the maker of the note. RA, tab 34 at 1 (Rekha Hemlani Decl., Oct. 6, 2011); RA, tab 50 at 1 (Kishore Hemlani Aff., Oct. 31, 2011). However, the parties disagree regarding whether Rekha is in fact the holder of the promissory note and retains the right to bring suit on it. Rekha asserts that Kishore executed the promissory note in her favor and continues to owe her both the principal and accrued interest under the note. RA, tab 34 at 1-2 (Rekha Hemlani Decl.). Kishore claims that his obligation to Rekha was terminated upon return of the note to him in exchange for a different promissory note and his payment of a lesser sum. RA, tab 98 at 1-2 (Aff. Supp. Opp'n Mot. Recons., Dec. 17, 2012).

[16] Under an action to recover money due upon a promissory note, it is clear that a plaintiff must establish that he or she is the owner and holder of the note at the time the suit is brought. *Blankenship*, 899 S.W.2d at 238; *see also Dage v. Deutsche Bank Nat'l Trust Co.*, 95 So. 3d 1021, 1023 (Fla. Dist. Ct. App. 2012) (“[T]he plaintiff must own or hold the note at the time of filing suit.”); *BAC Funding Consortium Inc. ISAOA/ATIMA v. Jean-Jacques*, 28 So. 3d 936, 939 (Fla. Dist. Ct. App. 2010) (holding that plaintiff “was required to establish, through admissible evidence, that it held the note . . . before it would be entitled to summary judgment”). Indeed, this court has previously acknowledged the note-holder obligation in analyzing summary judgment on a promissory note, though we declined to apply the standard in that case due to an ambiguity of contract terms. *See Wasson v. Berg*, 2007 Guam 16 ¶ 18. However, as the Texas appeals court explained in *Blankenship*:

A photocopy of the promissory note, attached to an affidavit in which the affiant swears that the photocopy is a true and correct copy of the original note, is proper summary judgment proof which establishes the existence of the note. The payee establishes ownership of the note when he attests in an affidavit that he is the owner of the note, attaches a sworn “true and correct” copy of the original note to his affidavit, the note shows on its face that it was issued to him, and there is no

summary judgment proof showing that the note has ever been pledged, assigned, transferred, or conveyed.

899 S.W.2d at 238 (citations omitted).

[17] Consequently, sworn testimony claiming ownership of the note, confirmed by a true and correct copy of said note, is sufficient for summary judgment unless evidence exists in the record that the note has been pledged, assigned, transferred, or conveyed. *See id.* A plaintiff does not have an affirmative duty to disprove the existence of such evidence, nor must his or her sworn testimony include a statement that the note has never been assigned, transferred, or conveyed absent evidence that it had been. *See id.*

[18] Rekha's declaration in support of her motion for summary judgment avers that the promissory note was executed by Kishore in her favor and that Kishore failed to make payments on the promissory note. RA, tab 34 at 1-2 (Rekha Hemlani Decl.). Rekha's declaration does not contain the requisite information to demonstrate her status as the owner or holder of the note because she does not specifically attest to her ownership or current possession of the note. Rekha's declaration does proclaim that the note was executed in her favor and that Kishore continued to owe her the principal and accrued interest. *Id.* at 1. Further, the copy of the note, which Rekha attests is true and correct, identifies her and/or Moti Hemlani as the payees. RA, tab 34, Ex. A (Promissory Note). Where, as here, an instrument is payable to the order of two or more persons in the alternative, it may be "negotiated, discharged or enforced by *any* of them who has possession of [the instrument.]" 13 GCA § 3116(a) (2005) (emphasis added). Thus, the information provided in Rekha's declaration is insufficient to establish that she is entitled to enforce the note because she has not declared she is the owner or holder of the note and fails to make a *prima facie* case for recovery. *See Booker v. Sarasota, Inc.*, 707 So. 2d 886, 889 (Fla.

Dist. Ct. App. 1998) (holding that the trial court, when considering a motion for summary judgment in an action on a promissory note, was not permitted to simply assume that the plaintiff was the holder of the note in the absence of record evidence of such).

2. Common law breach of contract

[19] Despite the lack of evidence that she remains the holder of the note, Rekha argues that the Superior Court properly granted summary judgment on her alternate breach of contract theory. Appellee's Br. at 27 (Oct. 3, 2014) (citing RA, tab 112 (Dec. & Order, Oct. 31, 2013)). Guam law provides the trial court with jurisdiction to enforce contracts created through execution of a written instrument. *See* 18 GCA § 86107 (2005). To establish a breach of contract, a plaintiff must prove (1) the existence of the contract, (2) the plaintiff's performance or excuse for nonperformance, (3) the defendant's breach, and (4) resulting damages to the plaintiff. *Boland, Inc. v. Rolf C. Hagen (USA) Corp.*, 685 F. Supp. 2d 1094, 1101 (E.D. Cal. 2010); *Red Roof Franchising, LLC v. AA Hospitality Northshore, LLC*, 877 F. Supp. 2d 140, 149 (D.N.J. 2012), *aff'd sub nom.*, *Red Roof Franchising, LLC v. Patel*, 564 F. App'x 685 (3d Cir. 2014); *Int'l Gateway Exch., LLC v. W. Union Fin. Servs., Inc.*, 333 F. Supp. 2d 131, 141 (S.D.N.Y. 2004); *Nat'l Fitness Ctr., Inc. v. Atlanta Fitness, Inc.*, 902 F. Supp. 2d 1098, 1105 (E.D. Tenn. 2012). Under a breach of contract theory, Rekha is not required to show that she remains the physical holder of the note, so long as she establishes: (1) the existence of a valid contract, (2) her performance under the contract, (3) defendant's breach, and (4) resulting damages.

[20] With regard to this claim, the evidence presented by Rekha undoubtedly establishes a sufficient *prima facie* case for breach of contract. The promissory note itself provides written documentation of the existence of a contract in which Kishore, in exchange for the collected value of \$270,000.00, was to pay Rekha back the principal plus 1.334% interest per month by a

definitive time. RA, tab 34, Ex. A (Promissory Note); RA, tab 98, Ex. 1 (Promissory Note). In addition, the terms of the note indicate, and Kishore does not dispute, that Rekha performed her duty under the agreement by providing Kishore with the principal amount. RA, tab 34, Ex. A (Promissory Note); RA, tab 98, Ex. 1 (Promissory Note). Finally, Rekha confirms in her declaration that the sum owed under the note has not been paid to her, establishing both a breach of the terms by Kishore and damage to her. RA, tab 34 (Rekha Hemlani Decl.). This court must therefore analyze whether there remains a dispute of material facts with regard to this claim.

[21] In response to the evidence presented by Rekha, Kishore submitted both testimonial and documentary evidence indicating that he is the holder of the note, which was returned to him in exchange for a different note now paid in full. In response to Rekha's sworn declaration, Kishore submitted a document he alleged to be the original note along with another promissory note and a check in the amount \$100,000.00 written to Rekha. RA, tab 98, Ex. 1 (Promissory Note); RA, tab 98, Ex. 2 (Promissory Note, Mar. 10, 2010); RA, tab 98, Ex. 3 (Check, Feb. 26, 2010). This check states as its description "LOAN PAID IN FULL MOTI HEMLANI AND REKHA HEMLANI ON PROMISSORY NOTE." RA, tab 98, Ex. 3 (Check). The trial court declined to consider this evidence, which Kishore presented in his opposition to Rekha's motion for reconsideration. Its decision was predicated on the court's characterization of such evidence as merely supporting an affirmative defense of accord and satisfaction which Kishore had waived by failing to assert it in his first pleading. RA, tab 142 at 4 (Dec. & Order).

[22] Kishore argues that, even if he waived his right to assert an affirmative defense, the court should have considered his exhibits as evidence of surrender and discharge of the note. Appellant's Br. at 8. According to him, such discharge creates a factual dispute regarding essential elements of Rekha's claim for recovery. *Id.*

[23] The court properly found that Guam law requires an affirmative defense to be pleaded in a party's answer. Guam. R. Civ. P. 8(c). Failure to bring a defense at that time results in waiver and precludes a party from asserting it at a later point. *Davignon v. Clemmey*, 322 F.3d 1, 15-17 (1st Cir. 2003); *Harris v. Sec'y, U.S. Dep't of Veterans Affairs*, 126 F.3d 339, 341 (D.C. Cir. 1997); *Magana v. Northern Mariana Islands*, 107 F.3d 1436, 1446 (9th Cir. 1997). Accord and satisfaction is an agreement between parties to settle a bona fide contract dispute in which one party waives the right to sue in exchange for consideration less than the total amount owed under the contract. *See Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 712 (9th Cir. 1990); *Barinaga v. JP Morgan Chase & Co.*, 749 F. Supp. 2d 1164, 1175 (D. Or. 2010). By contrast, discharge involves the transfer of a note or other instrument back to the party to be discharged, cancelling their obligation on the note. 13 GCA § 3605(1)(b) (2005). Unlike accord and satisfaction, discharge does not require a dispute or the exchange of any consideration and may be executed simply by surrender or destruction of the note coupled with an intent to discharge. *See* 13 GCA § 3605; *see also Lancaster v. Zufle*, 932 F. Supp. 109, 112 (S.D.N.Y. 1996).

[24] Notwithstanding these differences, several jurisdictions examining this issue have found both discharge and accord and satisfaction to be affirmative defenses, rather than direct oppositions to an element for recovery. *See Hubbard Realty Co. v. First Nat'l Bank of Pikeville*, 704 F.2d 733, 736 (4th Cir. 1983) (on the issue of discharge "the burden of proof was upon . . . [the] debtor to show as a matter of affirmative defense that the intention was to discharge the conceded original obligation"); *S.E.C. v. Sands*, 902 F. Supp. 1149, 1167 (C.D. Cal. 1995), *aff'd sub nom.*, *S.E.C. v. First Pac. Bancorp*, 142 F.3d 1186 (9th Cir. 1998) (accord and satisfaction is an affirmative defense that must be pleaded in the answer); *Winkel v. Erpelding*, 526 N.W.2d

316, 318 (Iowa 1995) (discharge is “raised as an affirmative defense by a debtor who then bears the burden of proving the assertion.”); *Columbia Sav. v. Zelinger*, 794 P.2d 231, 234 (Colo. 1990).

[25] As explained above, possession of a note is not a required element for recovery under breach of contract. *Boland*, 685 F. Supp. 2d at 1101; *Sananap v. Cyfred, Ltd.*, 2009 Guam 13 ¶ 57. Kishore’s evidence regarding return of the note in exchange for a lower sum than that owed under the agreement remains relevant only as an affirmative defense. However, Kishore waived his right to present this defense to the breach of contract claim by failing to plead it in his original answer or seeking to amend his answer at any time. *See* Guam. R. Civ. P. 8(c); *Harris*, 126 F.3d at 341; *Magana*, 107 F.3d at 1446. As such, he may not use evidence supporting his waived affirmative defense to create a dispute of material fact sufficient to defeat summary judgment on the breach of contract claim.

[26] However, this analysis does not end our inquiry. Notwithstanding the independent general jurisdiction of the Superior Court over the breach of contract claim presented by Rekha, this court must now resolve whether the existence of a UCC remedy for recovery under a promissory note precludes the exercise of a common law breach of contract claim.

3. UCC preemption of common law contract theory

[27] UCC § 1-103 allows the continued application of all supplemental bodies of law unless they are displaced by the UCC. 13 GCA § 1103 (2005). Thus, it may be possible in some instances for a common law claim to be applied in an area addressed by the UCC. *See Valley Bank of Ronan v. Hughes*, 147 P.3d 185, 191-92 (Mont. 2006) (holding that common law actions are permissible where the UCC does not provide a means of relief (citing *First Ga. Bank v. Webster*, 308 S.E.2d 579, 581 (Ga. Ct. App. 1983))). However, a common law claim is

precluded where the UCC “provide[s] a comprehensive remedy for parties to a transaction” *N.J. Bank v. Bradford, Inc.*, 690 F.2d 339, 346 (3d Cir. 1982). This occurs when the UCC remedy would be thwarted or rendered meaningless by use of the common law claim. *Id.* As such, “parallel Code and common law claims may be maintained except in circumstances where (1) the Code provides a comprehensive remedial scheme, and (2) reliance on the common law would undermine the purposes of the Code.” *Bucci v. Wachovia Bank*, 591 F. Supp. 2d 773, 779 (E.D. Pa. 2008).

[28] Whether suit under a breach of contract theory constitutes an action precluded by the UCC is subject to a split of authority. As pointed out by Rekha, United States District Courts in several jurisdictions which have enacted the UCC nonetheless allowed action for recovery on a note to proceed under a breach of contract theory, albeit in unpublished decisions. *See, e.g., CSX Transp., Inc. v. Emjay Envtl. Recycling, Ltd.*, No. 12-CV-1865 JS AKT, 2014 WL 4175798, at *6-7 (E.D.N.Y. Aug. 20, 2014); *Branch Banking & Trust Co. v. Howard*, No. CIV.A. 12-0175-WS-N, 2013 WL 951652, at *4 (S.D. Ala. Mar. 8, 2013); *D & R’s Aspen Ret. Plan, LLC v. DeGraff*, No. 09-CV-01963-LTB-CBS, 2010 WL 4024013, at *3 (D. Colo. Oct. 12, 2010). The rationale for these decisions appear to be that, under the UCC, “[a] promissory note is a form of contract; therefore, it must be construed under general contract principles.” *Bockman v. WCH, L.L.C.*, 943 So. 2d 789, 795 (Ala. 2006) (citing 11 Am. Jur. 2d *Bills and Notes* § 2 (1997); William D. Hawkland & Lary Lawrence, UCC Series § 3–119, Official Comment (1994)).

[29] Notwithstanding these allowances, however, the jurisdictions which have directly addressed the relationship between UCC Article 3 and traditional contract law have ruled that the UCC precludes recovery under a promissory note through common law breach of contract. For example, Ohio courts have held that “[a]lthough a plaintiff is generally able to plead alternative

legal theories, the . . . UCC provides the exclusive remedy to enforce negotiable instruments.” *DRFP, LLC v. Republica Bolivariana de Venezuela*, 945 F. Supp. 2d 890, 912 (S.D. Ohio 2013); *see also Dice v. White Family Cos.*, 878 N.E.2d 1105, 1111 (Ohio Ct. App. 2007) (“[T]he UCC provides the exclusive remedy where the dispute is governed by its statutory provisions. Common law causes of action may not be raised to circumvent the UCC’s rights, claims, and defenses where the statute applies.”). This sentiment regarding enforcing promissory notes has been echoed by courts in Texas, Michigan, and Minnesota. *See AMX Enters., Inc. v. Bank One, N.A.*, 196 S.W.3d 202, 207 (Tex. App. 2006) (“[T]he UCC preempts common law causes of action that supplant the provisions of the UCC in a suit to recover losses involving negotiable instruments.”); *Crawford v. JP Morgan Chase Bank, NA*, No. 08-CV-12634, 2009 WL 1913415, at *6 (E.D. Mich. 2009), *aff’d*, 425 F. App’x 445 (6th Cir. 2011) (“Because the UCC as adopted in Michigan provides a comprehensive remedial scheme . . . and because reliance on the common law would undermine the purposes of the code, the UCC preempts common law claims for breach of contract”); *Bradley v. First Nat’l Bank of Walker, N.A.*, 711 N.W.2d 121, 127-28 (Minn. Ct. App. 2006) (holding that UCC Article 3 preempts common law contract claims). Finally, Connecticut and Illinois courts have held that, when evaluating an action involving a negotiable instrument, the statute of limitations is governed by the UCC, rather than the limitations period for a breach of contract claim. *See Florian v. Lenge*, 880 A.2d 985, 991-93 (Conn. App. Ct. 2005); *Newell v. Newell*, 942 N.E.2d 776, 780 (Ill. App. Ct. 2011) (“[Plaintiff’s] allegations of common law breach of contract do not insulate his cause of action from the applicable UCC statute of limitations.”).

[30] The argument in favor of preclusion is further supported by this court’s decision in *Yanfag v. Cyfred, Ltd.*, 2009 Guam 16. *Yanfag* draws a clear distinction between negotiable and

non-negotiable instruments. 2009 Guam 16 ¶ 26. As this court held, the UCC would control “if the Promissory Note were a negotiable instrument,” *id.* ¶ 26, while “[i]f the promissory note is non-negotiable, then the common law of contracts . . . would apply,” *id.* ¶ 26 n.4; *see also* 13 GCA § 3102(1)(e) (2005). To constitute a negotiable instrument, a writing must: “(a) [b]e signed by the maker or drawer; and (b) [c]ontain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer . . . ; and (c) [b]e payable on demand or at a definite time; and (d) [b]e payable to order or to bearer.” 13 GCA § 3104(1) (2005). Here, the promissory note is undoubtedly a negotiable instrument, properly analyzed under the UCC, as the writing is signed by Kishore, contains an unconditional promise to pay \$270,000.00 plus 1.334% monthly accrued interest “to the order of” Rekha or Moti Hemlani “on or before November 30th 2010.” RA, tab 34, Ex. A (Promissory Note).

[31] Given the standard articulated in *Yanfag* as well as the persuasive authority of the jurisdictions which have directly addressed the relationship between UCC Article 3 and traditional contract law, we hold that, where a dispute centers on the enforcement of a note, the UCC precludes recovery under a promissory note through a common law breach of contract theory.² Accordingly, the trial court erred in granting summary judgment in Rekha’s favor on her breach of contract theory.

² In addressing the relationship between contract law and negotiable instruments, this court has previously found that “holding a promissory note does not insulate one from other claims arising from a larger contract for which the note is merely consideration.” *Sananap*, 2009 Guam 13 ¶ 57. Further, the *Sananap* decision stated that analysis under the law of contracts was appropriate despite “[t]he negotiable or unconditional nature of the . . . promissory notes.” *Id.* However, in that case, the promissory note was not itself the contract to be enforced. Rather, the case involved a larger conditional sale agreement in which the failure to satisfy the condition of providing certain infrastructure led to a default of a note, which had served as consideration for the larger agreement. *Id.* ¶¶ 4-5, 45-51. In such situations, the application of ordinary contract remedies would remain available. By contrast, UCC preclusion applies when, as here, “[p]laintiff’s breach of contract claim is based on the

B. Whether the Trial Court Erred in Refusing to Address Kishore's Request for Relief from Court-Deemed Admissions

[32] Kishore next argues that the trial court committed reversible error by failing to allow him to withdraw deemed admissions regarding whether Rekha remained the holder of the note. Appellant's Br. at 9-13. He contends that Rekha's alleged misrepresentation regarding her possession of the note warranted reversal under GRCP 60(b)(3) and allowed him to withdraw admissions pursuant to GRCP 36(b). *Id.* at 9-11. Rekha responds that Kishore never properly moved to withdraw his admissions under Rule 36(b), arguing that merely including this argument in an opposition to summary judgment was not procedurally sufficient under the GRCP. Appellee's Br. at 41-42 (citing GRCP 36(b); Guam Super. Ct. CVR 7.1(f); *Layton v. Int'l Ass'n of Machinists & Aero. Workers*, 285 F. App'x 340, 341 (9th Cir. 2008)). However, resolution of this dispute is not necessary on appeal.

[33] As a general appellate principle, a court will not address issues unnecessary to the resolution of the case before it. *See SST Global Tech., LLC v. Chapman*, 270 F. Supp. 2d 444, 457 (S.D.N.Y. 2003) (declining to address an argument because it "is not necessary to [the] resolution of the . . . claim"); *In re Byker*, 64 B.R. 640, 642 (Bankr. N.D. Iowa 1986) ("Since the resolution of that issue is not necessary to the decision in this case, this Court declines to make any pronouncement on that issue."); *Kosmyna v. Botsford Cmty. Hosp.*, 607 N.W.2d 134, 138 (Mich. Ct. App. 1999) ("This Court may decline to address issues not necessary to the resolution of the case at hand."). We have, on multiple occasions, applied this principle in refusing to address superfluous issues where a case has been reversed and remanded for further proceedings on other grounds. *See Gutierrez v. Guam Power Auth.*, 2013 Guam 1 ¶ 64 (citing *Cepeda v.*

Gov't of Guam, 2005 Guam 11 ¶ 51); *People v. Flores*, 2009 Guam 22 ¶ 85. This court has already determined above, *see* section IV.A.1, that Rekha did not present sufficient evidence to state a *prima facie* case for summary judgment. As such, the case is to be remanded to the trial court for further proceedings and to address the parties' remaining disputes. Accordingly, we need not reach the merits of whether Kishore has properly moved to withdraw deemed admissions or whether such withdrawal is warranted in the present case.

[34] In addition, because the trial court has not actually addressed this issue at the summary judgment stage, we are reluctant to address it in the first instance on appeal. *See Univ. of Guam v. Civil Serv. Comm'n*, 2002 Guam 4 ¶ 20 (declining to address an argument raised by the appellant for the first time on appeal); *B.M. Co. v. Avery*, 2001 Guam 27 ¶ 33, *supplemented*, 2002 Guam 19; *Guam Bar Ethics Comm. v. Maquera*, 2001 Guam 20 ¶ 39. As this dispute is being remanded, it is prudent to decline further examination until the Superior Court has had the opportunity for initial evaluation of the admissions issue. *See Gonzales v. Garcia*, 552 P.2d 468, 469-70 (N.M. 1976) (trial court's function is to determine applicable law and findings of fact); *Bivins v. State ex rel. Okla. Mem'l Hosp.*, 917 P.2d 456, 464 (Okla. 1996) (holding that a trial court's function in every case is to make first instance determinations of disputed law or fact issues).

C. Whether Rekha's Claim Should be Dismissed as Void under Applicable Business License Requirements for Regulated Consumer Loans and Commercial Lending

[35] Kishore further argues that the trial court should have dismissed Rekha's claims as void and unenforceable for failure to properly obtain a business license. Appellant's Br. at 15. There are two separate licensing requirements applicable to this case under Guam law. The first is the requirement that a license be obtained in order to make regulated loans. 14 GCA § 3502 (2005).

This statute is modeled after a similar provision of the Uniform Consumer Credit Code (“UCCC”). 14 GCA § 1101 (2005). This licensing requirement was initially raised by Kishore as a counterclaim and was the statute the Superior Court analyzed in detail in the decision and order denying Kishore’s motion for summary judgment. RA, tab 48 at 2-5 (Ans. & Countercl. & Jury Demand, Oct. 31, 2011); RA, tab 85 at 3-19 (Dec. & Order, Aug. 1, 2012). However, Guam law also contains a general business license law requiring all persons engaged in business activities in Guam to obtain a business license from the Department of Revenue and Taxation. 11 GCA § 70130 (2005). Guam law also precludes an individual who conducts business without a license from asserting claims in the Superior Court. 11 GCA § 70131(b), (d) (2005). Kishore referenced this licensing provision as an affirmative defense in his Answer and Opposition to Plaintiff’s Motion for Summary Judgment. RA, tab 48 (Ans. & Countercl. & Jury Demand); RA, tab 76 at 11-12 (Def.’s Opp’n Mot. Summ. J., Apr. 12, 2012). Kishore argues that the requirements of both provisions must be applied together and that doing so would justify a departure from the case law of other UCCC jurisdictions upon which the Superior Court relied.

1. License requirements as jurisdictional

[36] We first address whether or not Kishore properly characterizes Guam’s statutory licensing requirements as jurisdictional. Kishore argues that a party’s failure to obtain a required business license divests the court of subject matter jurisdiction, since a suit to enforce obligations made without a license is barred. Appellant’s Br. at 13-15. However, while Guam law does require the possession of a business license to enforce or recover under a contract, this obligation is not properly described as a jurisdictional element.

[37] This court has previously held that, unless a statute explicitly identifies a requirement as jurisdictional, failure of a party to comply does not itself divest the court of subject matter

jurisdiction. See *Core Tech Int'l Corp. v. Hanil Eng'g & Constr. Co.*, 2010 Guam 13 ¶¶ 37-39; *Castino v. G.C. Corp.*, 2010 Guam 3 ¶ 19; see also *Arbaugh v. Y. & H. Corp.*, 546 U.S. 500, 504 (2006). Neither one of the relevant statutory requirements indicates that it creates a jurisdictional element. See 14 GCA § 5201(5) (2005); 11 GCA § 70131(b)-(e). Further, because the Business License Law in Title 11 allows the court to stay a proceeding until a license is acquired, see 11 GCA § 70131(d), it cannot impose a limitation on subject matter jurisdiction, which requires dismissal outright. *John G. & Marie Stella Kennedy Mem'l Found. v. Mauro*, 21 F.3d 667, 674 (5th Cir. 1994) (“Unless a . . . court possesses subject matter jurisdiction over a dispute, . . . any order it makes (other than an order of dismissal or remand) is void.” (citing *Shirley v. Maxicare Tex., Inc.*, 921 F.2d 565, 568 (5th Cir. 1991))). Thus, the licensing requirements do not implicate subject matter jurisdiction and should instead be evaluated as timely asserted affirmative defenses to recovery under the agreement contained in a promissory note.

2. Regulated loan license requirement

[38] The first relevant licensing law is found in Title 14 of the Guam Code. This law requires individuals who wish to make regulated loans to obtain a specific license for that purpose. 14 GCA § 3502. A regulated loan is defined as a consumer loan made pursuant to a revolving loan account; or any other consumer loan in which the loan finance charge exceeds the rate of 10% per year calculated on the unpaid balances of the principal according to the United States rule. 14 GCA §§ 3201, 3501 (2005). A consumer loan is a loan “(a) made by a person engaged in the business of making loans; (b) in which the debtor is a person other than an organization; and (c) in which the debt is incurred primarily for a personal, family, household or agricultural purpose.” 14 GCA § 3104(1) (2005). With regard to the enforcement of loan agreements made without a required license, the Guam UCCC provides that:

If the creditor has violated the provisions of this Title applying to authority to make regulated loans (§ 3502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal or of the loan finance charge, he has a right to recover the payment from the person violating this Title or from a transferee of that person's rights to whom debt is then owing.

14 GCA § 5201(5).

[39] By contrast, non-consumer loans are considered unregulated loans and do not require a license for enforcement in court even if such loans have a finance charge exceeding 10% per year. *See* 14 GCA §§ 3104, 3605 (2005). In this case, the explicit terms of the note place the annual interest charge at an amount higher than 10%. RA, tab 34, Ex. A (Promissory Note); RA, tab 98, Ex. 1 (Promissory Note).³ Thus, in assessing whether a license was required to bring suit, the lower court correctly identified the relevant question under this provision as whether the loan executed between Rekha and Kishore constituted a consumer loan. RA, tab 85 at 3 (Dec. & Order).

[40] In evaluating this question, the Superior Court properly looked to the persuasive authority of other jurisdictions that have also adopted statutes mirroring the UCCC. *Id.* at 8-9; *see also Gibbs v. Holmes*, 2001 Guam 11 ¶ 15 (“[T]o the extent that [a state’s] . . . statutes contain provisions that are either identical or substantially similar to Guam’s statutes, we find [that state’s] law to be persuasive.”); *Underwood v. Guam Election Comm’n*, 2006 Guam 19 ¶ 13; *Guam Fed’n of Teachers ex rel. Rector v. Perez*, 2005 Guam 25 ¶ 23. The decisions analyzed by the court revealed that interpretations of a “person engaged in the business of making loans” under the UCCC definition of consumer loan were quite narrow. Several jurisdictions found that loans made by a person whose primary occupation was anything other than extending credit were

³ Multiplying the 1.334% interest per month by the twelve-month period of the note yields an annual charge of 16.008%.

not consumer loans requiring a license, regardless of the loan finance charge. *See Brown v. Fenner*, 757 P.2d 184, 184-85 (Colo. App. 1988); *Barnes v. Helfenbein*, 548 P.2d 1014, 1018 (Okla. 1976); *Bekins Bar V Ranch v. Huth*, 664 P.2d 455, 460-61 (Utah 1983). Further, the lower court relied on case law from Oklahoma and Maine which held that, for purposes of defining a consumer loan under a UCCC statute, a person engages in the business of making loans only if they make more than 5 loans in a single year or more than 25 loans cumulatively. RA, tab 85 at 12-14 (Dec. & Order); *see also Bunch v. Terpenning*, 229 P.3d 574, 578-79 (Okla. Civ. App. 2009); *St. Jean v. Racal Mortg.*, 952 F. Supp. 22, 26 (D. Me. 1997), *vacated and remanded on other grounds*, 155 F.3d 6 (1st Cir. 1998). This standard is based on a similar definition of consumer credit loans from federal regulations and appears consistent with the rationale adopted in the few UCCC jurisdictions which have addressed this issue. *See* 12 C.F.R. § 226.2(a)(17)(v); *Wertz v. Asset Acceptance, LLC*, 5 N.E.3d 1175, 1185 (Ind. Ct. App. 2014); Gary D. Spivey, Annotation, *Regulation of Consumer Loans under Uniform Consumer Credit Code*, 73 A.L.R. 6th 425 (2012).

[41] Under this interpretation, it is evident that Rekha was not engaged in the business of making loans. The record is unclear as to whether Rekha was herself involved in extending the loans attributed to Moti Hemlani, as Rekha's name appears on only two promissory notes including the one disputed in the present case. RA, tab 85 at 11-12 (Dec. & Order); RA, tab 77, Ex. 1A at 1-17 (Def.'s Exs. to Opp'n Mot. Summ. J., Apr. 12, 2012). However, even assuming *arguendo* that she was, Kishore has presented evidence of only 21 total loans. Appellant's Br. at 17 (citing RA, tab 77, Ex. 1A at 1-17 (Def.'s Exs. to Opp'n Mot. Summ. J.)). This number falls short of the 25 generally required to constitute engagement in the business of providing loans. *Bunch*, 229 P.3d at 578-79; *Wertz*, 5 N.E.3d at 1185. Further, there is no evidence that Rekha

has provided more than five loans within a single year. *See* RA, tab 77, Ex. 1A at 1-17 (Def.'s Exs. to Opp'n Mot. Summ. J.). Thus, under the UCCC analysis adopted by other jurisdictions, Rekha's actions do not constitute regulated consumer loans which require a license, and she is free to enforce her promissory note through litigation.

[42] Kishore argues that the definition of “[e]ngaging in, transacting, conducting, continuing, doing or carrying on a business” found in 11 GCA § 70103(e) is broader than that used by other jurisdictions interpreting their UCCC statutes and that this definition should be used in interpreting the definition of “consumer loan” found in 14 GCA § 3104. Appellant's Br. at 16-17. This argument is unconvincing. By its own terms, the definitions in 11 GCA § 70103 are applicable only for purposes of that title, including the Business License Law in 11 GCA Division 3, and are entirely separate from the requirements under the Guam's Uniform Consumer Credit Code. *See* 11 GCA § 70103. It would be improper to apply those definitions to an entirely different statute, particularly when they contravene specific interpretations of similarly-worded UCCC provisions in other jurisdictions. *See Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 16 (“Guam courts have considered courts of other states interpreting statutes similar to laws of Guam to be persuasive authority.”); *Perez*, 2005 Guam 25 ¶ 23. Although Rekha may be required to prove compliance with both of Guam's separate licensing laws, determination of her obligations under 14 GCA § 3501 is most appropriately based on other interpretations of consumer loans specific to the Uniform Consumer Credit Code. Accordingly, this court upholds the trial court's finding that the loan made from Rekha to Kishore was not a regulated consumer loan, and Rekha may seek recovery without a license under this provision.

3. Business license requirement

[43] In addition to the license requirement for regulated loans, commercial activities are also subject to the general Business License Law found in 11 GCA, Chapter 70. “It is the policy of the government of Guam that all persons engaging in, transacting, conducting, continuing, doing, or carrying on a business have business licenses.” 11 GCA § 70130. Under Division 3, “[e]ngaging in, transacting, conducting, continuing, doing or carrying on a business” is defined as:

a regular employment which occupies the time, labor, or attention of the person on a continuing basis although one (1) act may be sufficient if circumstances show a purpose to continue, and it need not be the sole or full-time employment of the person, but may be on a part-time or periodic basis.

11 GCA § 70103(e). In addition, this provision specifically requires that “[e]very person engaging in or carrying on the business in Guam of lending money with or without security . . . shall be required annually to obtain a commercial license.” 11 GCA § 72103 (2005). Thus, unlike the analysis under Guam’s UCCC statute, this definition of engaging in business appears broad enough to encompass Rekha’s loan activities. Consequently, the court must determine when a license was required and, if the requirement had not been complied with, what effect such failure would have on Rekha’s ability to seek judicial enforcement of her promissory note.

[44] Unlike the effect of the UCCC provision, multiple cases from this court have concluded that failure to obtain a business license under this provision does not render a contract void *per se* or relieve a party of their obligations under such an agreement. *Arashi & Co. v. Nakashima Enters., Inc.*, 2005 Guam 21 ¶ 30; *Guam Tai-Pan Dev. & Constr., Inc. v. Yigo Alta Estates, Inc.*, 2002 Guam 20 ¶¶ 9-15. These cases held that failure to obtain a license at the time a transaction occurred precludes a party from using the courts to enforce their contract. *Arashi*, 2005 Guam

21 ¶ 30; *Guam Tai-Pan*, 2002 Guam 20 ¶¶ 11-12. However, those portions of the cited opinions were based on explicit language in the statute which has since been abandoned and replaced.

[45] Prior to its revision, the business license law explicitly stated that “[n]o person engaged in commercial activity without a business license may use the courts to enforce, directly or indirectly, any obligation, lien, or contract *incurred during the period of such commercial activity without a business license.*” 11 GCA § 70130(d) (1994) (emphasis added); *Arashi*, 2005 Guam 21 n.5;⁴ *see also Guam Tai-Pan*, 2002 Guam 20 ¶ 11. However, in 2004 the Guam Legislature enacted Guam Public Law 27-57. The specified intent of the Legislature in passing this law was to ensure “viability as an attractive investment destination” by removing “any uncertainty in the business climate caused by the imposition of inconsistent statutes governing . . . license requirements for doing business on Guam.” Guam Pub. L. 27-57:1 (Dec. 6, 2003). Further, the law sought to remove “avoidable disruptions in existing contractual relationships.” *Id.* In order to accomplish these goals, the modified legislation appears to have removed the existing bar on judicial enforcement of obligations incurred during the period of commercial activity without a license. *See* 11 GCA § 70130 (2005). To replace this result, the Legislature added the following provisions:

(b) Any person engaging in, transacting, conducting, continuing, doing, or carrying on a business on Guam without a business license . . . may not maintain a proceeding in any Court on Guam *until it obtains a business license.* . . .

. . . .

(d) A Court may stay a proceeding commenced by a person, its successor, or assignee until it determines whether the person, or that person's successor, or assignee requires a business license If it so determines, the Court may further *stay the proceeding until the person, or that person's successor, or assignee obtains the business license*

⁴ Though *Arashi* was decided in 2005, after the statute had been modified, the facts of that case warranted use of the law’s previous iteration. *See Arashi*, 2005 Guam 21 n.5.

(e) Notwithstanding the provisions of this Section, the failure of a person to obtain a business license . . . *does not impair the validity of its corporate acts* or prevent it from defending any proceeding in Guam.

11 GCA § 70131(b)-(e) (2005) (emphases added).

[46] It is clear from the language of the revised statute that the question of whether Rekha possessed a business license at the time of the note's execution is of no consequence to her right to maintain a suit in Superior Court. So long as she possesses a valid business license while maintaining the claim, the trial court may adjudicate the dispute regardless of when such license was acquired. *Id.* Further, regardless of whether Rekha possesses the proper business license under this division, Kishore is not entitled to have the action dismissed or the contract voided. Section 70131(e) demonstrates that agreements entered into by a party without a business license remain valid and instructs the court to merely stay enforcement proceedings until such time as the party comes into compliance with the licensing requirements. However, while the court correctly found that Kishore was not entitled to have the claim dismissed, whether or not Rekha could herself seek summary judgment depends upon her possession of a business license at the time she sought judgment.

[47] The record establishes that Rekha obtained a business license from the Guam Department of Revenue and Taxation on January 26, 2011. RA, tab 12 (Rekha Hemlani Decl., Feb. 7, 2011); RA, tab 49 (Artemio Ilagan Decl., Oct. 31, 2011); RA, tab 35, Ex. F at 4 (Business License, Jan. 26, 2011). This license was renewed on June 29, 2011, and remained valid at the time she moved for summary judgment. RA, tab 77, Ex. 4 (John Q. Carlos Statement of Decl., Apr. 12, 2012); RA, tab 36 (Pl.'s Mot. & Mem. Summ. J.). Kishore argued on appeal that this license does not satisfy the licensing requirements with regard to their agreement, since the \$270,000.00 loan far exceeded Rekha's assertion in her license application that she would provide loans of

\$50,000.00. Appellant's Br. at 15-16. We find this argument unpersuasive. While correspondence from Rekha's attorney to the Department of Revenue and Taxation does reference her plan to offer loans in that amount, it is clear from the language that this is merely an estimation of anticipated business, not a limitation on the scope of her commercial activities. RA, tab 49, Ex. D (Letter from Fredrick J. Horecky to John P. Camacho, Dep't of Revenue & Taxation Re: Appl. of Rekha Hemlani for License for Money Lending, Jan. 26, 2011). In fact, Rekha's actual license contains no such limitation as to the amount she is allowed to loan in the course of her business. RA, tab 35, Ex. F at 4 (Business License, Jan. 26, 2011). Thus, the value of Rekha's loan to Kishore does not affect the validity or applicability of her business license.

[48] In arguing for dismissal, Kishore also claims that Rekha's 2011 license may not be used to satisfy the requirements of 11 GCA § 70130 since it was obtained after litigation was initiated. Even if true, this argument is irrelevant to the question of whether summary judgment was properly sought. If Rekha had indeed failed to obtain a valid license prior to commencement of this suit, the remedy would have been to stay the action until she obtained a license. 11 GCA § 70131(d) (2005). However, such a remedy is now moot, as Rekha has already complied with the statute's requirements by obtaining a business license on January 26, 2011, prior to moving for summary judgment. RA, tab 12 (Rekha Hemlani Decl.); RA, tab 49 (Artemio Ilagan Decl.); RA, tab 35, Ex. F at 4 (Business License). Thus, the agreement itself is valid and enforceable since Rekha possessed a license at the time the motion was made. *See* 11 GCA § 70131(b).

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V. CONCLUSION

[49] We reverse the trial court’s grant of summary judgment in favor of Rekha because she did not establish she was the owner or holder of the note and did not make a *prima facie* case for recovery. We affirm the trial court’s denial of Kishore’s motion for summary judgment based on his argument that the parties’ agreement was void under Guam’s business licencing laws. We decline to address whether the trial court abused its discretion in not evaluating Kishore’s request to withdraw deemed admissions because resolution of this issue is not necessary at this time.

[50] Accordingly, we **REVERSE** in part, **AFFIRM** in part, and **REMAND** for proceedings not inconsistent with this opinion.

Original Signed : **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Associate Justice

Original Signed : **Katherine A. Maraman**
By

KATHERINE A. MARAMAN
Associate Justice

Original Signed : **Robert J. Torres**
By

ROBERT J. TORRES
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam

APR 20 2015

By: **IMELDA R. DUENAS**
Assistant Clerk of Court
Supreme Court of Guam