IN THE DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA
THIRD DISTRICT

EDUARDO GOMEZ, ET AL.,

Appellants/Defendants,

vs. DCA CASE NO.: 3D22-1494

L.T. CASE NO.: 19-009661-CA-01

CVPORT SERVICES, LLC,

Appellee/Plaintiff.
_____/

APPELLEE, CVPORT SERVICES, LLC'S MOTION TO DISMISS APPEAL

Appellee, CVPORT SERVICES, LLC (**"CVPORT"**), by and through the undersigned counsel, hereby files its Motion to Dismiss appeal, and in support thereof states as follows:

STATEMENT OF FACTS

1. On August 13th, 2022 CVPort obtained an *Amended Order Granting Partial Motion for Summary Judgment and Summary Judgment as to Count I* (**"Amended Summary Judgment"**), against EDUARDO GOMEZ (**"GOMEZ"**) in the amount of $307,000.00 in principal, plus $28,206.54 in interest accrued through maturity of the Note, plus post-maturity pre-judgment interest in the sum of $148,954.99 through July 29th, 2022, for a total of $484,161.53 as of July 29th, 2023 in the trial court case, *CVPort*

Services, LLC v. Eduardo Gomez, et al., Case No. 2019-009661-CA-01 in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida.

2. On August 29th, 2022 Appellants, GD CONSTRUCTION, LLC (**"GD")** and GOMEZ (collectively referred to as **"Appellants"**) filed their *Notice of Appeal*, thereby appealing the following orders issued by the trial court: *Order Granting Plaintiff's Partial Motion for Summary Judgment and Summary Judgment as to Count I* dated July 29th, 2022; *Amended Order Granting Plaintiff's Partial Motion for Summary Judgment and Summary Judgment as to Count I* dated August 13, 2022; *Order on Defendants' Motion to Dismiss* dated October 19th, 2020; and *Order Denying Gomez's and G.D.'s Motion to Dismiss* dated November 18th, 2020. A copy of the Notice of Appeal is attached hereto as **Exhibit "A."**

SUMMARY OF THE ARGUMENT

The appeal should be dismissed because Appellants have failed to timely file their initial brief pursuant to Fla. R. App. 9.110(f).

ARGUMENT

A. Appellants Failed to Timely File Initial Brief Pursuant to Fla. R. App. 9.110(f)

The instant appeal should be dismissed because Appellants failed to timely file an initial brief pursuant to Fla. R. App. 9.110(f).

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Rule 9.110(f) states in pertinent part:

> The appellant's initial brief shall be served within 70 days of filing the notice.

Appellants filed their Notice of Appeal in the trial court on August 29th, 2022. Appellants had seventy (70) days from the filing of their Notice of Appeal to timely file the initial brief, through November 7th, 2022. No motion or other order tolling the time schedule of the proceedings has been filed. As of yet, Appellants have failed and/or refused to file their initial brief. "It is well established that an appeal may be dismissed for failure to file an initial brief." *I Creatives, Inc. v. Premier Printing Solutions, Inc.*, 163 So.3d 606 (Fla. 3d DCA 2015) (citing Fla. R. App. P. 9.41; *see also Fla. Capital Mgmt., LLC v. Town of Palm Beach*, 114 So.3d 389 (Fla. 4th DCA 2013). Accordingly, the instant appeal should be dismissed due to Appellants' failure to timely file their initial brief.

CONCLUSION

For all of the foregoing reasons, the instant appeal must be dismissed.

WHEREFORE, Appellee, CVPort Services, LLC respectfully requests that this Honorable Court enter an Order (i) Granting this Motion; (ii) dismissing the instant appeal; and (iii) awarding CVPort such other and further relief that this Honorable Court deems fair and reasonable.

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Dated: November 15th, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 2022, a true and correct copy of the foregoing was e-filed using the Court's e-Portal system and has been furnished via electronic mail upon:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing has been computer generated in 14-point Arial and complies with the requirements of Rule 9.045.

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EXHIBIT A

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CVPORT SERVICES, LLC,

Plaintiff,

v.

EDUARDO GOMEZ, an individual, G.D. CONSTRUCTION, LLC, a Florida Limited Liability Company, and EDEX MIAMI, LLC, a Florida limited liability company,

Defendants.
_____/

CASE NO.: 2019-009661-CA-01

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendants, EDUARDO GOMEZ and GD CONSTRUCTION, LLC, appeal to the Third District Court of Appeal the attached Orders of this Court rendered on August 13, 2022 (Amended Order Granting Plaintiff's Partial Motion for Summary Judgment and Summary Judgment as to Count I), July 29, 2022 and upon denial of Defendants' Motions to Dismiss, entered and November 18, 2020 (Order Denying Defendants Gomez and GD's Motion to Dismiss) and October 19, 2020 (Order on Defendants' Motion to Dismiss).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 2022, a true and correct copy of the foregoing has been furnished by electronic service to: Raul Morales, Esq., (rmorales@mmlawfl.com; brodriguez@mmlawfl.com; csalem@mmlawfl.com; abousalis@mmlawfl.com; msabates@mmlawfl.com; and aalvarez@mmlawfl.com) of *Martinez Morales*, 2600 S. Douglas Road, Suite 305, Coral Gables, FL 33134, *Counsel for the Plaintiff*, and Michael G. Nearing, Esq., (mnearing@nearingfirm.com and service@neringfirm.com) of *Michael G. Nearing, P.A.,* and Josef

Mysorewala, Esq., (josefm@lawjmm.com) of *Law Office of Josef M. Mysorewala, PLLC,* 2000 S. Dixie Hwy, Suite 112, Miami, FL 33133, *Counsel for Co-Defendant,* Edex Miami, LLC.

Respectfully submitted,

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2019-009661-CA-01
SECTION: CA06
JUDGE: Charles Johnson

CV PORT SERVICES, LLC

Plaintiff(s)

vs.

EDUARDO GOMEZ et al

Defendant(s)

_____/

ORDER GRANTING PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT AND SUMMARY JUDGMENT AS TO COUNT I

THIS CAUSE came before the Court on June 17th, 2022 via Zoom on Plaintiff, CVPort Services, LLC (**"CVPort"**) *Motion for Partial Summary Judgment* (**"Motion"**) filed on December 23rd, 2021 [D.E. #250], and the Court, having heard the argument of counsel, having reviewed the Motion and the response and reply thereto, and being fully advised in the premises, hereby enters Final Summary Judgment as to Count I of Plaintiff CVPort's Amended Complaint because there are no genuine issues of material fact, for the reasons set forth herein and in the record.

A. **FINDINGS OF FACT**

The Court hereby finds that the following facts are undisputed:

1. Pegso Construction, LLC (**"Pegso"**), a non-party to this case, is a Florida limited liability company formed on April 22, 2016 by its three members, CVPort, the lender in this case, Defendant G.D. Construction LLC (**"G.D."**), and Defendant Edex Miami, LLC (**"Edex"**) [1], the co-lender in this case. The *Operating Agreement of Pegso Construction, LLC* (**"Operating Agreement"**) was submitted to this Court for review as summary judgment

evidence.

2. As testified by all parties at their depositions, the initial goal of CVPort, G.D., and Edex was to operate Pegso as a joint venture, as a general contractor, and to bid on and enter into contracts to work on public construction projects. Edex's, CVPort's corporate representative's, and G.D.'s and Defendant Eduardo Gomez's (**"Gomez"**) (Gomez was deposed both as an individual and as the corporate representative of G.D.) deposition transcripts have been submitted to the Court as summary judgment evidence.

3. Gomez, however, is neither a member of Pegso nor a party to the Operating Agreement, individually.

4. Rather, Gomez owns and controls G.D. G.D. is a general contracting construction company owned by Gomez (99% ownership interest) and his wife (1% ownership interest).

5. As of the date of execution of the Operating Agreement, CVPort owned 50% of Pegso.

6. The Operating Agreement provides, in section 11.11, that CVPort and EDEX were to contribute $200,000.00 to Pegso pursuant to a contract entitled *Contribution Agreement*. The Contribution Agreement referred to in section 11.11 of the Operating Agreement was provided to the Court for consideration as summary judgment evidence. This first Contribution Agreement was dated May 23rd, 2016.

7. However, the parties testified at deposition that as time passed, CVPort, G.D., and EDEX renegotiated and decided to change their relationship. Edex and CVPort agreed to fund G.D., for G.D. to undertake construction projects in its name alone, until such time as Pegso would be able to bid on construction projects on its own.

8. As testified by Gomez and G.D. at deposition, a CPA retained by Gomez and G.D. recommended and advised that EDEX and CVPort lend funds to G.D., in exchange for a promissory note by Gomez as borrower**.**

9. Gomez himself proposed this plan to Edex and CVPort via email on May 3rd, 2019, which email was submitted to the Court as summary judgment evidence. As testified by Gomez, the deal was structured this way so that G.D. could show a cash asset in its account in order to obtain a construction bond, without showing a corresponding debt. G.D. also testified at deposition that once it obtained the construction bond, it could then bid on certain projects requiring a bond, and work with Pegso on these projects until Pegso qualified on its own. G.D. bid on projects using the bond procured by the funds provided by CVPort.

10. The goal was that once the parties started operating as Pegso, Gomez would repay the loans from Edex and CVPort, and at that point Edex and CVPort would have the funds to contribute to Pegso, if they wished to do so.

11. Accordingly, the parties then ***terminated*** the Contribution Agreement referred to in the Pegso Operating Agreement as of May 31, 2016. The termination was memorialized in the *Termination Agreement,* a copy of which was submitted to the Court as summary judgment evidence, signed by CVPort, Edex, and G.D.

12. The Termination Agreement specifically states that it is the result of "renegotiations and changes in circumstances," and that the parties – CVPort, Edex, and G.D. – "agree to terminate their obligations under the Contribution Agreement effective immediately." There was to be "no further obligation to any Party thereto."

13. After terminating the Contribution Agreement, in August of 2016, with an effective date of May 31st, 2016, Gomez, as borrower, signed the *Promissory Note* (**"Note"**) at issue in this action, in favor of CVPort and Edex as lenders. The Note has been submitted to the Court as summary judgment evidence, and was attached as an exhibit to the Amended Complaint.

14. The Note states in the opening paragraph that Gomez promised to pay CVPort and Edex a total of $200,000.00 under the Note. However, Paragraph IX of the Note allows each lender, collectively or individually, to lend additional monies to Gomez.

15. As testified by CVPort at deposition, CVPort disbursed a total of $307,000.00 to G.D. Construction ("G.D.") following execution of the Note, in three installments. The installments, as evidenced by Gomez's deposition testimony, CVPort's deposition testimony, G.D.'s bank account statements, and CVPort's wire receipts, were as follows:
    a. On June 9th, 2016, CVPort disbursed $133,000.00 to G.D.'s bank account ending in -3406, at the instruction of Gomez;
    b. On February 10th, 2017, CVPort disbursed $134,000.00 to G.D.'s bank account ending in -3406, at the instruction of Gomez;
    c. On December 22nd, 2017, CVPort disbursed $40,000.00 to G.D.'s bank account, at the instruction of Gomez. The funds were deposited in G.D.'s bank account by Tampalas Holdings Limited on CVPort's behalf.
16. The funds were disbursed to G.D. at the instruction of Gomez, the borrower under the Note. Gomez and Edex testified at deposition that CVPort's money was disbursed into G.D.'s bank account because G.D. needed the money in this manner to obtain a bond.
17. Initially, Edex was a co-lender under the Note. Edex itself disbursed funds pursuant to the Note to G.D. and/or Gomez. However, Edex has not joined this action as a plaintiff, and is not seeking any relief against G.D. and Gomez or to enforce the Note because it is not owed any money under the Note.
18. The face of the Note states that all monies loaned under the Note are to be repaid, by Gomez, with interest, on or before January 1st, 2018.
19. Gomez has admitted in his responses to interrogatories and at deposition that no payments whatsoever have been made to CVPort towards the amount owed on the Note. Moreover, Gomez has not raised payment as a defense to this action.
20. On February 5th, 2018 – after all the above funds were disbursed by CVPort, and after the

Note reached maturity – Gomez sent three proposed "Contribution Agreements" to CVPort and Edex (**"Subsequent Contribution Agreements"**) via email. This email and the proposed Subsequent Contribution Agreements were submitted to the Court as summary judgment evidence.

21. As testified by the parties at deposition and demonstrated by the Subsequent Contribution Agreements, there was one proposed Subsequent Contribution Agreement to correspond with each disbursement of funds by CVPort and Edex: one dated June 1st, 2016, the second dated January 2nd, 2018, and the third dated February 10th, 2017. Gomez and G.D. have both testified that the effect of these Subsequent Contribution Agreements, if signed, was to convert funds disbursed under the Note to equity in a joint venture, as stated in the Note.

22. Edex testified at deposition that it signed the Subsequent Contribution Agreements and converted the funds it loaned to Gomez into equity in Pegso. G.D. and Gomez testified that they were aware Edex signed the Subsequent Contribution Agreements and converted its loan funds to equity in a joint venture.

23. The three Subsequent Contribution Agreements all have Edex's and G.D.'s signature on them; however, as acknowledged by Gomez and Edex at deposition and as testified by CVPort at deposition, CVPort never signed any of the proposed Subsequent Contribution Agreements.

24. The Subsequent Contribution Agreements do not refer to the Note or to Gomez in any way. The Subsequent Contribution Agreements do not, on their face, terminate the Note, or release Gomez from his obligations under the Note. Nor is Gomez a party to either the first Contribution Agreement executed in connection with the Operating Agreement, or the Subsequent Contribution Agreements. Therefore, there was no conversion of CVPort's loan funds to equity in a joint venture.

25. G.D. and Gomez have not provided any documentation showing that CVPort converted the

Note funds into equity in a joint venture, and they and Edex admitted at deposition that there is no such documentation.

26. Further, the 2017, 2018, 2019, and 2020 tax returns for Pegso – the **only** joint venture and/or entity which Edex, Gomez, or G.D. allege exists among or between any of them throughout all the pleadings filed by them – reflect that each member had ***$0 in their capital accounts***. The tax returns reflect ***no*** capital contributions by any member of Pegso. These tax returns were also provided to the Court as summary judgment evidence.

B. **CONCLUSIONS OF LAW**

i. ***Legal Standard on a Motion for Summary Judgment***

27. Summary judgment must be entered if "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." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). "Material facts" are those "that might affect the outcome of the suit under the governing law." *Id.* at 248. A "genuine dispute" about a material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

ii. ***CVPort has Satisfied all Elements of Breach of Promissory Note***

28. Count I of CVPort's Amended Complaint raises a cause of action for breach of promissory note against Gomez. Generally, the elements of a breach of contract action are: (1) a valid contract; (2) a material breach; and (3) damages." *People's Tr. Ins. Co. v. Valentin*, 305 So. 3d 324, 326 (Fla. 3d DCA 2020).

29. In this case, the contract which was breached is a promissory note. *Reese v. Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211, 1216 (11th Cir. 2012) ("A promissory note is a

contract evidencing a debt and specifying terms under which one party will pay money to another."). A promissory note, however, is a negotiable instrument. A "negotiable instrument" is

> "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
>
> (a)Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
>
> (b)Is payable on demand or at a definite time; and
>
> (c)Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money . . ."

§ 673.1041(1), Fla. Stat.

30. On its face, the Note is a promise by Gomez to pay Edex and CVPort. The Note states in the introductory paragraph that "GOMEZ . . . promises to pay to the order of CVPORT . . . and EDEX" the sum of $200,000.00.[2] This promise to pay is unconditional, as the Note requires no other act on the part of Gomez. Therefore, the Note clearly falls within the definition of negotiable instrument; and, because it is a "promise" (as opposed to an order), it is a "note." § 673.1041(5). Accordingly, the Note is a valid, enforceable negotiable instrument.

31. Pursuant to Fla Stat. § 673.3011, the "holder" of a negotiable instrument is entitled to enforce the instrument. § 673.3011, Fla. Stat. ("The term "person entitled to enforce" an instrument means: (1)The ***holder*** of the instrument . . .").

32. A "holder" of a negotiable instrument is any of the following:

a. "The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
b. The person in possession of a negotiable tangible document of title if the goods are

deliverable either to bearer or to the order of the person in possession; or

c. The person in control of a negotiable electronic document of title."

§ 671.201(21), Fla. Stat.

33. There is no dispute that CVPort is in possession of the original, electronically signed Note, which was transmitted by Gomez to CVPort and Edex via email. There is also no dispute that the Note is payable to CVPort. Thus, CVPort is a "holder" of the Note, as holder is defined above, and entitled to enforce the Note.

34. Moreover,

> "[t]he ***issuer of a note*** or cashier's check or other draft drawn on the drawer ***is obliged to pay the instrument***:
>
> (1)According to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or
>
> (2)If the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in ss. 673.1151 and 673.4071.
>
> The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under s. 673.4151."

§ 673.4121, Fla. Stat. (emphasis added).

35. There is no dispute that Gomez issued the Note to CVPort and Edex. "Issue" means "the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person." § 673.1051(1). Gomez has admitted, and all parties testified at deposition, that he signed the Note, that he is the borrower under the Note, and that Edex and CVPort are the lenders under the Note. Gomez

delivered the Note, after electronically signing it, to Edex and CVPort via email.

36. Thus, as the "issuer" of the Note, Gomez is obliged to pay the instrument according to its terms. § 673.4121, Fla. Stat.

37. Summary judgment for breach of promissory note is proper where the undisputed evidence shows that plaintiff is the payee on a promissory note, defendant is the maker/issuer, and that money remains unpaid on the note. *See Agritrade, L.P. v. Quercia*, 253 So. 3d 28, 32 (Fla. 3d DCA 2017).

38. Gomez and G.D. admitted at deposition that a total of $307,000.00 was deposited by CVPort into a bank account owned by G.D. The Note, on its face, is payable at a definite time because it is payable in full by January 1st, 2018.[3] Gomez admitted that no payments were made towards the Note. Thus, the Note became due and enforceable on January 1st, 2018.

39. Considering all of the above undisputed facts and provisions of law, there is no genuine issue of material fact that the Note is, on its face, a valid promissory note enforceable by CVPort against Gomez. There is no dispute that CVPort is the payee on the Note, Gomez, is the maker/issuer, and $307,000.00 remains unpaid on the note. Gomez clearly breached the Note's requirement that it be paid, in full, on or before January 1st, 2018, causing damages in the sum of $307,000.00 in principal, to CVPort (thus satisfying the elements of a breach of contract action). Therefore, summary judgment on this count in CVPort's favor is appropriate, unless there is an affirmative defense which prevents enforcement of the Note. *See Agritrade, L.P. v. Quercia*, 253 So. 3d 28, 32 (Fla. 3d DCA 2017). As will be discussed in further detail below, all of G.D. and Gomez's applicable affirmative defenses[4] have been thoroughly refuted and do not prevent the entry of summary judgment in CVPort's favor on Count I.

iii. ***First and Fourteenth Affirmative Defenses***

40. The primary defense issue in this case, as argued by G.D. and Gomez in opposition to the Motion, is whether CVPort can enforce the Note alone, without Edex's joinder as a plaintiff in this lawsuit. There is no other challenge to the Note's enforceability or validity. After reviewing the plain and unambiguous terms of the note, the testimony presented by G.D., Gomez, and Edex, the documents submitted as summary judgment evidence, and the statutory authority on this subject, the Court finds that CVPort can enforce the Note without Edex's consent or participation, because Edex is no longer a lender under the Note.

41. In response to the Motion, and as their First Affirmative Defense, G.D. and Gomez have argued that because Edex was a co-lender under the Note, that CVPort cannot enforce the Note alone pursuant to Fla. Stat. § 673.1101(4). Fla. Stat. § 673.1101(4) states that "[i]f an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively." Following this same logic, in their Fourteenth Affirmative Defense, Gomez and G.D. argue that CVPort alone does not have standing to bring this action.

42. G.D. and Gomez have taken the position that the Note is payable to Edex and CVPort **not** alternatively, and thus can only be enforced by the two of them together. Accordingly, Gomez and G.D. contend that since Edex is not seeking to enforce the Note, CVPort cannot enforce the Note by itself.

43. G.D. and Gomez argue that the use of the word "and" in the introductory paragraph to the Note, which states that "Gomez . . . promises to pay to the order of CVPort . . . **and** Edex . . . the sum" lent under the Note, means that the Note is payable to CVPort **and** Edex, not in the alternative.

44. However, the Court must interpret this contract – the Note – in a manner that does not render any provision of the contract meaningless, and to give effect to all of its provisions. *Herian v. Se. Bank, N.A.*, 564 So. 2d 213, 214 (Fla. 4th DCA 1990) ("An interpretation of a contract which gives a reasonable, lawful and effective meaning to ***all*** of the terms is preferred to an interpretation which leaves a ***part*** unreasonable, unlawful or ***of no effect***.") (emphasis added); *Murley v. Wiedamann,* 25 So. 3d 27, 29 (Fla. 2d DCA 2009) ("In construing the language of a contract, courts are to be mindful that 'the goal is to arrive at a reasonable interpretation of the text of the entire agreement to accomplish its stated meaning and purpose."); *Inter-Active Servs., Inc. v. Heathrow Master Ass'n, Inc.*, 721 So. 2d 433, 435 (Fla. 5th DCA 1998) ("Where the contract is susceptible to an interpretation that gives effect to ***all*** of its provisions, ***the court should select that interpretation over an alternative interpretation that relies on negation of some of the contractual provisions***.").

45. Moreover, specific provisions of a contract control over general conditions. *Pardes v. Pardes,* 335 So. 3d 1241, 1251 (Fla. 3d DCA 2001) ("[U]nder contract law, the more specific contractual provision controls over the general provision").

46. Reading the Note in its entirety, it is not ambiguous. The "and" in between the names of the lenders is a general provision in this limited, specific factual context, when read against subsection 1.A. of the Note, which states "***unless converted to equity in a future venture as provided for in Paragraph 8 below.***"

47. Paragraph 8 of the Note, entitled "Conversion to Equity," states that "Each Lender has the option to convert the Loan Amount to equity . . . to be agreed upon by the Parties hereto."

48. The undisputed facts show that Edex actually exercised that option under the Note, and that Gomez and G.D. accepted Edex's conversion of the money it lent to equity in a venture with Gomez and G.D. All three parties – Edex, Gomez, and G.D. – testified at deposition that Edex exercised the option to convert its loan funds to equity in a venture with Gomez and

G.D. The deposition testimonies have been filed with the Court and submitted as summary judgment evidence.

49. Edex, Gomez, and G.D. testified at deposition that Edex exercised its option to convert its loan funds to equity in a future venture with Gomez and G.D. by signing a series of "Contribution Agreements," one for each disbursement of funds that Edex made to G.D. pursuant to the Note.

50. The undisputed facts show that Edex converted its loan funds to equity in a future venture with Gomez and G.D., pursuant to Paragraphs 1.A and 8 of the Note and that Gomez and G.D. accepted Edex's change of the Note funds to equity.

51. Once Edex converted its loan funds to equity in a future venture, ***CVPort was the only lender left on the Note***. Accordingly, Gomez and G.D. waived the co-lender enforcement requirement imposed by Fla. Stat. § 673.1101(4) as a defense.

52. Because Gomez and Edex waived the co-lender enforcement requirement by their actions, CVPort can enforce the Note alone, as it is the only lender remaining to enforce the Note.

53. Other than Gomez's contention that the Note is not enforceable by CVPort alone, there is no other dispute as to the enforceability or validity of the Note.

54. For these reasons, the First and Fourteenth Affirmative Defenses fail and are refuted.

iv. ***Second, Third, Fifth, and Sixth Affirmative Defenses***

55. Another issue in this case by the Defendants is whether CVPort also converted its loan funds to equity in a joint venture, thus completely discharging the Note and any obligations thereunder. A review of the undisputed facts shows that CVPort never took any act to convert its loan funds to equity.

56. Gomez and G.D. state as their Second, Third, Fifth, and Sixth Affirmative Defenses that

CVPort also converted its loan funds to equity. As mentioned above regarding the First and Fourteenth Affirmative Defenses, it is undisputed that Edex converted the funds it loaned to Gomez under the Note into equity in a joint venture by signing the Subsequent Contribution Agreements.

57. However, the undisputed facts show that CVPort did ***not*** sign the Contribution Agreements. CVPort's signature lines on the Contribution Agreements, which have all been submitted as summary judgment evidence, are blank.

58. In addition, Edex and Gomez both testified at deposition that CVPort did not sign these Subsequent Contribution Agreements and did not take any affirmative action to convert the money it lent under the Note to equity.

59. Gomez, G.D., and Edex have presented no documentation or other evidence that would support the conclusion that CVPort converted its loan funds to equity in a joint venture.

60. Accordingly, there are no facts in the record which support the conclusion that CVPort converted the money it lent to Gomez under the Note to equity, the undisputed facts support an opposite conclusion, and these affirmative defenses fail.

v. ***Fourth and Seventh Affirmative Defenses***

61. Gomez and G.D. have also contended that CVPort did not actually fulfill the terms of the Note, because it disbursed funds to G.D. rather than Gomez. This issue is raised by Gomez's and G.D.'s Fourth and Seventh Affirmative Defenses, which claim that CVPort did not disburse any money to Gomez under the Note.

62. However, as mentioned above, it is undisputed that CVPort disbursed $307,000.00 to G.D. at Gomez's direction and instruction.

63. Moreover, it is immaterial whether the loan funds were disbursed directly to Gomez as

borrower or to another person. *Falk v. Salario*, 108 Fla. 135 (1933) (It is "not necessary to the validity of the note that the consideration benefited the maker if it benefited others not parties to the note, or was a detriment to the payee."); *see also Bennett v. Senn,* 106 Fla. 446 (1932) ("it was not necessary for the consideration to pass directly to such promisors."); *Real Estate World Fla. Commercial, Inc. v. Piemat, Inc.*, 920 So. 2d 704, 706 (Fla. 4th DCA 2006) ("***It is not necessary that a benefit should accrue to the person making the promise.*** It is sufficient that ***something of value flows from the person to whom it is made***, or that he suffers ***some prejudice or inconvenience*** and that the promise is the inducement to the transaction.") (quoting *Lake Sarasota, Inc. v. Pan Am. Sur. Co.*, 140 So. 2d 139, 142 (Fla. 2d DCA 1962)) (emphasis added); *Dorman v. Publix-Saenger-Sparks Theatres*, 135 Fla. 284 (1938).

64. Accordingly, these affirmative defenses have no merit.

vi. ***Fifth Affirmative Defense***

65. As their Fifth Affirmative Defense, Gomez and G.D. claim that Gomez was induced into signing the Note in order to effectuate a capital contribution in a joint venture, in a manner that allowed the joint venture to obtain a bond for projects.

66. However, the undisputed facts and record evidence, particularly the May 3rd, 2019 email attached to the Amended Complaint as Exhibit D and submitted as summary judgment evidence, show that it was Gomez himself who requested that CVPort transfer money to him as a loan, pursuant to a promissory note. Thus, there is no basis for Gomez to claim that he was induced into signing the Note.

vii. ***Sixth, Ninth, Tenth, Eleventh, Fifteenth, and Sixteenth Affirmative Defenses***

67. Another issue raised by G.D. and Gomez is whether the loan funds and the dispute between

G.D. and Gomez are governed by Pegso's Operating Agreement, in order to either require compliance with certain provisions therein, or to look to the Operating Agreement for guidance in interpreting the Note. The undisputed facts show no link between the Operating Agreement and the Note.

68. In their Sixth, Ninth, Tenth, Eleventh, Fifteenth, and Sixteenth Affirmative Defenses, G.D. and Gomez claim that the funds lent by CVPort to Gomez under the Note and this dispute are governed by the Pegso's Operating Agreement. These affirmative defenses allege a variety of defenses based on the Operating Agreement, including the contention that this dispute should be arbitrated, that Pegso is an indispensable party to this lawsuit, that the Note funds were capital contributions to Pegso, that mediation was required by the Operating Agreement as a condition precedent to instituting this litigation, etc.

69. However, the Note is unambiguous on its face that CVPort lent money to **Gomez**, **not** to Pegso. Pegso Construction LLC is referenced nowhere on the Note, nor is its Operating Agreement incorporated into the Note. Moreover, Gomez is not a party to the Pegso Operating Agreement, and the Operating Agreement does not reference or incorporate the Note. There are no facts which support these affirmative defenses.

70. Further, to specifically address any argument that this dispute should have been brought in arbitration pursuant to the Operating Agreement's arbitration provision, the Note itself contains a venue provision in Section XI which states otherwise. The Note's venue provision specifically mandates that "venue for any dispute shall lie in the State or Federal courts situated in Miami-Dade County, Florida." Accordingly, arbitration is not appropriate.

71. In addition, this particular matter, of whether this dispute should be arbitrated, has already been ruled on by this Court twice before. On both occasions, this Court denied G.D.'s and Gomez's requests that this action be sent to arbitration. On May 22, 2019, Gomez, G.D., and Edex filed their *Emergency Motion to Compel Arbitration and Stay Litigation Pending*

Arbitration (**"First Motion to Arbitrate"**), requesting that the Court compel the parties to arbitrate the instant dispute pursuant to Pegso's Operating Agreement. This Court denied the First Motion to Arbitrate on May 28, 2019. The First Motion to Arbitrate and the order denying same are part of the record in this case and were submitted to the Court as summary judgment evidence.

72. Later, on June 7, 2019, Gomez and G.D. filed a Motion to Stay simultaneously with a *Notice of Appeal of a Non-Final Order*, appealing this Court's May 28, 2019 Order denying the First Motion to Arbitrate. Thereafter, Defendants voluntarily dismissed their appeal of the Non-Final Order. The Motion to Stay, Notice of Appeal, and dismissal of the appeal are part of the record in this case and were submitted as summary judgment evidence.

73. Later, undeterred by the Court's ruling on the First Motion to Arbitrate and despite their dismissal of the appeal of the order denying same, on January 7, 2020, Gomez and G.D. Construction filed a *Motion for Sanctions for Fraud on the Court and Motion to Consolidate and Compel Arbitration* (**"Second Motion to Arbitrate**), again asking the Court to compel the parties to arbitrate this dispute pursuant to the Pegso Operating Agreement.

74. On March 2nd, 2020, the Court denied the Second Motion to Arbitrate and denied the Defendants' request that this case be sent to arbitration pursuant to the Pegso Operating Agreement. A copy of the Second Motion to Arbitrate and the Order denying same are part of the record in this case and submitted as summary judgment evidence.

75. Accordingly, this Court has already ruled twice before that arbitration of this case is not appropriate, and now again rules that this case is properly brought before a court of law, and not in arbitration.

viii. ***Eighth and Ninth Affirmative Defense***

76. Gomez's and G.D.'s Eighth Affirmative Defense argues that CVPort's claim is limited to the

$200,000.00 referenced in the opening paragraph of the Note. The Note states in the opening paragraph that Gomez promised to pay CVPort and Edex a total of $200,000.00 under the Note .

77. However, Paragraph IX of the Note allows each lender, collectively or individually, to lend additional monies to Gomez.

78. In addition, it is undisputed that CVPort lent Gomez a total of $307,000.00 under the Note.

79. Accordingly, there is no basis for limiting CVPort's damages.

ix. ***Ninth Affirmative Defense***

80. In addition to claiming that the Note was provided to two (2) lenders and that reference to the Pegso Operating Agreement is required to interpret the Note, this Affirmative Defense argues that the Note is ambiguous as to how much each lender contributed.

81. However, it is undisputed that CVPort lent Gomez a total of $307,000.00 under the Note, and that the clear terms of the Note permitted the lenders to loan Gomez more than the $200,000.00 described in the Note's opening paragraph. Accordingly, any ambiguity has been resolved, and CVPort may recover the full $307,000.00 it lent to Gomez.

x. ***Twelfth, Thirteenth, Sixteenth, Eighteenth, Nineteenth, and Twentieth, Affirmative Defenses***

82. The remainder of G.D. and Gomez's affirmative defenses – the Twelfth, Thirteenth, Sixteenth, Eighteenth, Nineteenth, and Twentieth Affirmative Defenses, are directed towards other Counts in the Complaint and not Count I for breach of promissory Note. Accordingly, these affirmative defenses are irrelevant to and have no bearing on the Court's disposition of Count I.

xi. ***Summary Judgment is Merited as a Matter of Law***

83. There is no challenge to the validity or enforceability of the Note other than G.D.'s and Gomez's argument that CVPort cannot enforce the Note alone. As discussed above, the Court concludes that CVPort may enforce the Note alone, as it is the only remaining lender under the Note, and any co-lender enforcement requirement has been waived.

84. It is undisputed that Gomez has not repaid any of the $307,000.00 disbursed to G.D. pursuant to the Note. Gomez and G.D. testified at deposition that no money has been repaid, and admitted same in their responses to interrogatories. Again, payment has not been raised as a defense to this action

85. The Court therefore finds as a matter of law that that Gomez was contractually obligated by the Note to repay the $307,000.00 owed to CVPort on or before January 1st, 2018, and that Gomez failed to do so. There is no issue of fact as to this matter.

86. The Court further finds that the Affirmative Defenses raised by Gomez and G.D. which apply to Count I (specifically, Affirmative Defenses Nos. 1-11, 14, 15, and 17) have been refuted as pointed out in the Motion, this Partial Summary Judgment, and by the record.

87. Consequently, because there are no genuine issues of material fact with respect to the facts giving rise to the breach of promissory note claim set forth in Count I of CVPort's Amended Complaint, summary judgment is warranted as to Count I as a matter of law.

In consideration of the above findings of fact and conclusions of law, it is hereby **ORDERED and ADJUDGED** that

A. The Motion is hereby GRANTED.

B. A Summary Final Judgment is hereby entered in favor of Plaintiff CVPort Services, LLC, whose address is 611 San Antonio Ave., Coral Gables, FL 33134, and against Defendant

Eduardo Gomez, whose address is 121 Crandon Blvd., Apartment 148, Key Biscayne, FL 33146, in the sum of $307,000.00 plus pre-judgment interest in the sum of (reserved)_____, for a total of $ (reserved)_____, FOR WHICH LET EXECUTION NOW ISSUE. Said total shall accrue post-judgment interest at the prevailing statutory rate.

C. The Court reserves jurisdiction to determine the entitlement to and amount of attorneys' fees and taxable costs incurred in connection with this action.

DONE and ORDERED in Chambers at Miami-Dade County, Florida, this ____ day of July, 2022.

---

[1] No relief has been sought in this action against Edex.

[2] As discussed later in this Order, Section IX of the Note permits Edex and CVPort to loan additional funds under the Note.

[3] (1)A promise or order is "payable on demand" if it:

> (a)States that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder; or
>
> (b)Does not state any time of payment.
>
> (2)A promise or order is ***"payable at a definite time"*** if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of prepayment, acceleration, extension at the option of the holder, or extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.
>
> § 673.1081, Fla. Stat. (emphasis added).

[4] Although Count I is raised against Gomez only, on December 7th, 2020 Gomez and G.D. filed a joint *Answer and Affirmative Defenses to Plaintiff's Amended Complaint*, wherein both Defendants raise affirmative defenses to all Counts of the Complaint, without distinguishing between Defendants.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 29th day of July, 2022.

2019-009661-CA-01 07-29-2022 3:18 PM
Hon. Charles Johnson

CIRCUIT COURT JUDGE
Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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Physically Served:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2019-009661-CA-01
SECTION: CA06
JUDGE: Charles Johnson

CV PORT SERVICES, LLC

Plaintiff(s)

vs.

EDUARDO GOMEZ et al

Defendant(s)

_____/

AMENDED ORDER GRANTING PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT AND SUMMARY JUDGMENT AS TO COUNT I

THIS CAUSE came before the Court on June 17th, 2022 via Zoom on Plaintiff, CVPort Services, LLC (**"CVPort"**) *Motion for Partial Summary Judgment* (**"Motion"**) filed on December 23rd, 2021 [D.E. #250], and the Court, having heard the argument of counsel, having reviewed the Motion and the response and reply thereto, and being fully advised in the premises, hereby enters Final Summary Judgment as to Count I of Plaintiff CVPort's Amended Complaint because there are no genuine issues of material fact, for the reasons set forth herein and in the record.

A. **FINDINGS OF FACT**

The Court hereby finds that the following facts are undisputed:

1. Pegso Construction, LLC (**"Pegso"**), a non-party to this case, is a Florida limited liability company formed on April 22, 2016 by its three members, CVPort, the lender in this case, Defendant G.D. Construction LLC (**"G.D."**), and Defendant Edex Miami, LLC (**"Edex"**) [1], the co-lender in this case. The *Operating Agreement of Pegso Construction, LLC* (**"Operating Agreement"**) was submitted to this Court for review as summary judgment

evidence.

2. As testified by all parties at their depositions, the initial goal of CVPort, G.D., and Edex was to operate Pegso as a joint venture, as a general contractor, and to bid on and enter into contracts to work on public construction projects. Edex's, CVPort's corporate representative's, and G.D.'s and Defendant Eduardo Gomez's (**"Gomez"**) (Gomez was deposed both as an individual and as the corporate representative of G.D.) deposition transcripts have been submitted to the Court as summary judgment evidence.

3. Gomez, however, is neither a member of Pegso nor a party to the Operating Agreement, individually.

4. Rather, Gomez owns and controls G.D. G.D. is a general contracting construction company owned by Gomez (99% ownership interest) and his wife (1% ownership interest).

5. As of the date of execution of the Operating Agreement, CVPort owned 50% of Pegso.

6. The Operating Agreement provides, in section 11.11, that CVPort and EDEX were to contribute $200,000.00 to Pegso pursuant to a contract entitled *Contribution Agreement*. The Contribution Agreement referred to in section 11.11 of the Operating Agreement was provided to the Court for consideration as summary judgment evidence. This first Contribution Agreement was dated May 23rd, 2016.

7. However, the parties testified at deposition that as time passed, CVPort, G.D., and EDEX renegotiated and decided to change their relationship. Edex and CVPort agreed to fund G.D., for G.D. to undertake construction projects in its name alone, until such time as Pegso would be able to bid on construction projects on its own.

8. As testified by Gomez and G.D. at deposition, a CPA retained by Gomez and G.D. recommended and advised that EDEX and CVPort lend funds to G.D., in exchange for a promissory note by Gomez as borrower**.**

9. Gomez himself proposed this plan to Edex and CVPort via email on May 3rd, 2019, which email was submitted to the Court as summary judgment evidence. As testified by Gomez, the deal was structured this way so that G.D. could show a cash asset in its account in order to obtain a construction bond, without showing a corresponding debt. G.D. also testified at deposition that once it obtained the construction bond, it could then bid on certain projects requiring a bond, and work with Pegso on these projects until Pegso qualified on its own. G.D. bid on projects using the bond procured by the funds provided by CVPort.

10. The goal was that once the parties started operating as Pegso, Gomez would repay the loans from Edex and CVPort, and at that point Edex and CVPort would have the funds to contribute to Pegso, if they wished to do so.

11. Accordingly, the parties then ***terminated*** the Contribution Agreement referred to in the Pegso Operating Agreement as of May 31, 2016. The termination was memorialized in the *Termination Agreement,* a copy of which was submitted to the Court as summary judgment evidence, signed by CVPort, Edex, and G.D.

12. The Termination Agreement specifically states that it is the result of "renegotiations and changes in circumstances," and that the parties – CVPort, Edex, and G.D. – "agree to terminate their obligations under the Contribution Agreement effective immediately." There was to be "no further obligation to any Party thereto."

13. After terminating the Contribution Agreement, in August of 2016, with an effective date of May 31st, 2016, Gomez, as borrower, signed the *Promissory Note* (**"Note"**) at issue in this action, in favor of CVPort and Edex as lenders. The Note has been submitted to the Court as summary judgment evidence, and was attached as an exhibit to the Amended Complaint.

14. The Note states in the opening paragraph that Gomez promised to pay CVPort and Edex a total of $200,000.00 under the Note. However, Paragraph IX of the Note allows each lender, collectively or individually, to lend additional monies to Gomez.

15. As testified by CVPort at deposition, CVPort disbursed a total of $307,000.00 to G.D. Construction ("G.D.") following execution of the Note, in three installments. The installments, as evidenced by Gomez's deposition testimony, CVPort's deposition testimony, G.D.'s bank account statements, and CVPort's wire receipts, were as follows:
    a. On June 9th, 2016, CVPort disbursed $133,000.00 to G.D.'s bank account ending in -3406, at the instruction of Gomez;
    b. On February 10th, 2017, CVPort disbursed $134,000.00 to G.D.'s bank account ending in -3406, at the instruction of Gomez;
    c. On December 22nd, 2017, CVPort disbursed $40,000.00 to G.D.'s bank account, at the instruction of Gomez. The funds were deposited in G.D.'s bank account by Tampalas Holdings Limited on CVPort's behalf.
16. The funds were disbursed to G.D. at the instruction of Gomez, the borrower under the Note. Gomez and Edex testified at deposition that CVPort's money was disbursed into G.D.'s bank account because G.D. needed the money in this manner to obtain a bond.
17. Initially, Edex was a co-lender under the Note. Edex itself disbursed funds pursuant to the Note to G.D. and/or Gomez. However, Edex has not joined this action as a plaintiff, and is not seeking any relief against G.D. and Gomez or to enforce the Note because it is not owed any money under the Note.
18. The face of the Note states that all monies loaned under the Note are to be repaid, by Gomez, with interest, on or before January 1st, 2018.
19. Gomez has admitted in his responses to interrogatories and at deposition that no payments whatsoever have been made to CVPort towards the amount owed on the Note. Moreover, Gomez has not raised payment as a defense to this action.
20. On February 5th, 2018 – after all the above funds were disbursed by CVPort, and after the

Note reached maturity – Gomez sent three proposed "Contribution Agreements" to CVPort and Edex (**"Subsequent Contribution Agreements"**) via email. This email and the proposed Subsequent Contribution Agreements were submitted to the Court as summary judgment evidence.

21. As testified by the parties at deposition and demonstrated by the Subsequent Contribution Agreements, there was one proposed Subsequent Contribution Agreement to correspond with each disbursement of funds by CVPort and Edex: one dated June 1st, 2016, the second dated January 2nd, 2018, and the third dated February 10th, 2017. Gomez and G.D. have both testified that the effect of these Subsequent Contribution Agreements, if signed, was to convert funds disbursed under the Note to equity in a joint venture, as stated in the Note.

22. Edex testified at deposition that it signed the Subsequent Contribution Agreements and converted the funds it loaned to Gomez into equity in Pegso. G.D. and Gomez testified that they were aware Edex signed the Subsequent Contribution Agreements and converted its loan funds to equity in a joint venture.

23. The three Subsequent Contribution Agreements all have Edex's and G.D.'s signature on them; however, as acknowledged by Gomez and Edex at deposition and as testified by CVPort at deposition, CVPort never signed any of the proposed Subsequent Contribution Agreements.

24. The Subsequent Contribution Agreements do not refer to the Note or to Gomez in any way. The Subsequent Contribution Agreements do not, on their face, terminate the Note, or release Gomez from his obligations under the Note. Nor is Gomez a party to either the first Contribution Agreement executed in connection with the Operating Agreement, or the Subsequent Contribution Agreements. Therefore, there was no conversion of CVPort's loan funds to equity in a joint venture.

25. G.D. and Gomez have not provided any documentation showing that CVPort converted the

Note funds into equity in a joint venture, and they and Edex admitted at deposition that there is no such documentation.

26. Further, the 2017, 2018, 2019, and 2020 tax returns for Pegso – the **only** joint venture and/or entity which Edex, Gomez, or G.D. allege exists among or between any of them throughout all the pleadings filed by them – reflect that each member had ***$0 in their capital accounts***. The tax returns reflect ***no*** capital contributions by any member of Pegso. These tax returns were also provided to the Court as summary judgment evidence.

B. **CONCLUSIONS OF LAW**

i. ***Legal Standard on a Motion for Summary Judgment***

27. Summary judgment must be entered if "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." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). "Material facts" are those "that might affect the outcome of the suit under the governing law." *Id.* at 248. A "genuine dispute" about a material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

ii. ***CVPort has Satisfied all Elements of Breach of Promissory Note***

28. Count I of CVPort's Amended Complaint raises a cause of action for breach of promissory note against Gomez. Generally, the elements of a breach of contract action are: (1) a valid contract; (2) a material breach; and (3) damages." *People's Tr. Ins. Co. v. Valentin*, 305 So. 3d 324, 326 (Fla. 3d DCA 2020).

29. In this case, the contract which was breached is a promissory note. *Reese v. Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211, 1216 (11th Cir. 2012) ("A promissory note is a

contract evidencing a debt and specifying terms under which one party will pay money to another."). A promissory note, however, is a negotiable instrument. A "negotiable instrument" is

> "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
>
> (a)Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
>
> (b)Is payable on demand or at a definite time; and
>
> (c)Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money . . ."

§ 673.1041(1), Fla. Stat.

30. On its face, the Note is a promise by Gomez to pay Edex and CVPort. The Note states in the introductory paragraph that "GOMEZ . . . promises to pay to the order of CVPORT . . . and EDEX" the sum of $200,000.00.[2] This promise to pay is unconditional, as the Note requires no other act on the part of Gomez. Therefore, the Note clearly falls within the definition of negotiable instrument; and, because it is a "promise" (as opposed to an order), it is a "note." § 673.1041(5). Accordingly, the Note is a valid, enforceable negotiable instrument.

31. Pursuant to Fla Stat. § 673.3011, the "holder" of a negotiable instrument is entitled to enforce the instrument. § 673.3011, Fla. Stat. ("The term "person entitled to enforce" an instrument means: (1)The ***holder*** of the instrument . . .").

32. A "holder" of a negotiable instrument is any of the following:

a. "The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
b. The person in possession of a negotiable tangible document of title if the goods are

deliverable either to bearer or to the order of the person in possession; or

c. The person in control of a negotiable electronic document of title."

§ 671.201(21), Fla. Stat.

33. There is no dispute that CVPort is in possession of the original, electronically signed Note, which was transmitted by Gomez to CVPort and Edex via email. There is also no dispute that the Note is payable to CVPort. Thus, CVPort is a "holder" of the Note, as holder is defined above, and entitled to enforce the Note.

34. Moreover,

> "[t]he ***issuer of a note*** or cashier's check or other draft drawn on the drawer ***is obliged to pay the instrument***:
>
> (1)According to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or
>
> (2)If the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in ss. 673.1151 and 673.4071.
>
> The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under s. 673.4151."

§ 673.4121, Fla. Stat. (emphasis added).

35. There is no dispute that Gomez issued the Note to CVPort and Edex. "Issue" means "the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person." § 673.1051(1). Gomez has admitted, and all parties testified at deposition, that he signed the Note, that he is the borrower under the Note, and that Edex and CVPort are the lenders under the Note. Gomez

delivered the Note, after electronically signing it, to Edex and CVPort via email.

36. Thus, as the "issuer" of the Note, Gomez is obliged to pay the instrument according to its terms. § 673.4121, Fla. Stat.

37. Summary judgment for breach of promissory note is proper where the undisputed evidence shows that plaintiff is the payee on a promissory note, defendant is the maker/issuer, and that money remains unpaid on the note. *See Agritrade, L.P. v. Quercia*, 253 So. 3d 28, 32 (Fla. 3d DCA 2017).

38. Gomez and G.D. admitted at deposition that a total of $307,000.00 was deposited by CVPort into a bank account owned by G.D. The Note, on its face, is payable at a definite time because it is payable in full by January 1st, 2018.[3] Gomez admitted that no payments were made towards the Note. Thus, the Note became due and enforceable on January 1st, 2018.

39. Considering all of the above undisputed facts and provisions of law, there is no genuine issue of material fact that the Note is, on its face, a valid promissory note enforceable by CVPort against Gomez. There is no dispute that CVPort is the payee on the Note, Gomez, is the maker/issuer, and $307,000.00 remains unpaid on the note. Gomez clearly breached the Note's requirement that it be paid, in full, on or before January 1st, 2018, causing damages in the sum of $307,000.00 in principal, to CVPort (thus satisfying the elements of a breach of contract action). Therefore, summary judgment on this count in CVPort's favor is appropriate, unless there is an affirmative defense which prevents enforcement of the Note. *See Agritrade, L.P. v. Quercia*, 253 So. 3d 28, 32 (Fla. 3d DCA 2017). As will be discussed in further detail below, all of G.D. and Gomez's applicable affirmative defenses[4] have been thoroughly refuted and do not prevent the entry of summary judgment in CVPort's favor on Count I.

iii. ***First and Fourteenth Affirmative Defenses***

40. The primary defense issue in this case, as argued by G.D. and Gomez in opposition to the Motion, is whether CVPort can enforce the Note alone, without Edex's joinder as a plaintiff in this lawsuit. There is no other challenge to the Note's enforceability or validity. After reviewing the plain and unambiguous terms of the note, the testimony presented by G.D., Gomez, and Edex, the documents submitted as summary judgment evidence, and the statutory authority on this subject, the Court finds that CVPort can enforce the Note without Edex's consent or participation, because Edex is no longer a lender under the Note.

41. In response to the Motion, and as their First Affirmative Defense, G.D. and Gomez have argued that because Edex was a co-lender under the Note, that CVPort cannot enforce the Note alone pursuant to Fla. Stat. § 673.1101(4). Fla. Stat. § 673.1101(4) states that "[i]f an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively." Following this same logic, in their Fourteenth Affirmative Defense, Gomez and G.D. argue that CVPort alone does not have standing to bring this action.

42. G.D. and Gomez have taken the position that the Note is payable to Edex and CVPort **not** alternatively, and thus can only be enforced by the two of them together. Accordingly, Gomez and G.D. contend that since Edex is not seeking to enforce the Note, CVPort cannot enforce the Note by itself.

43. G.D. and Gomez argue that the use of the word "and" in the introductory paragraph to the Note, which states that "Gomez . . . promises to pay to the order of CVPort . . . **and** Edex . . . the sum" lent under the Note, means that the Note is payable to CVPort **and** Edex, not in the alternative.

44. However, the Court must interpret this contract – the Note – in a manner that does not render any provision of the contract meaningless, and to give effect to all of its provisions. *Herian v. Se. Bank, N.A.*, 564 So. 2d 213, 214 (Fla. 4th DCA 1990) ("An interpretation of a contract which gives a reasonable, lawful and effective meaning to ***all*** of the terms is preferred to an interpretation which leaves a ***part*** unreasonable, unlawful or ***of no effect***.") (emphasis added); *Murley v. Wiedamann,* 25 So. 3d 27, 29 (Fla. 2d DCA 2009) ("In construing the language of a contract, courts are to be mindful that 'the goal is to arrive at a reasonable interpretation of the text of the entire agreement to accomplish its stated meaning and purpose."); *Inter-Active Servs., Inc. v. Heathrow Master Ass'n, Inc.*, 721 So. 2d 433, 435 (Fla. 5th DCA 1998) ("Where the contract is susceptible to an interpretation that gives effect to ***all*** of its provisions, ***the court should select that interpretation over an alternative interpretation that relies on negation of some of the contractual provisions***.").

45. Moreover, specific provisions of a contract control over general conditions. *Pardes v. Pardes,* 335 So. 3d 1241, 1251 (Fla. 3d DCA 2001) ("[U]nder contract law, the more specific contractual provision controls over the general provision").

46. Reading the Note in its entirety, it is not ambiguous. The "and" in between the names of the lenders is a general provision in this limited, specific factual context, when read against subsection 1.A. of the Note, which states "***unless converted to equity in a future venture as provided for in Paragraph 8 below.***"

47. Paragraph 8 of the Note, entitled "Conversion to Equity," states that "Each Lender has the option to convert the Loan Amount to equity . . . to be agreed upon by the Parties hereto."

48. The undisputed facts show that Edex actually exercised that option under the Note, and that Gomez and G.D. accepted Edex's conversion of the money it lent to equity in a venture with Gomez and G.D. All three parties – Edex, Gomez, and G.D. – testified at deposition that Edex exercised the option to convert its loan funds to equity in a venture with Gomez and

G.D. The deposition testimonies have been filed with the Court and submitted as summary judgment evidence.

49. Edex, Gomez, and G.D. testified at deposition that Edex exercised its option to convert its loan funds to equity in a future venture with Gomez and G.D. by signing a series of "Contribution Agreements," one for each disbursement of funds that Edex made to G.D. pursuant to the Note.

50. The undisputed facts show that Edex converted its loan funds to equity in a future venture with Gomez and G.D., pursuant to Paragraphs 1.A and 8 of the Note and that Gomez and G.D. accepted Edex's change of the Note funds to equity.

51. Once Edex converted its loan funds to equity in a future venture, ***CVPort was the only lender left on the Note***. Accordingly, Gomez and G.D. waived the co-lender enforcement requirement imposed by Fla. Stat. § 673.1101(4) as a defense.

52. Because Gomez and Edex waived the co-lender enforcement requirement by their actions, CVPort can enforce the Note alone, as it is the only lender remaining to enforce the Note.

53. Other than Gomez's contention that the Note is not enforceable by CVPort alone, there is no other dispute as to the enforceability or validity of the Note.

54. For these reasons, the First and Fourteenth Affirmative Defenses fail and are refuted.

iv. ***Second, Third, Fifth, and Sixth Affirmative Defenses***

55. Another issue in this case by the Defendants is whether CVPort also converted its loan funds to equity in a joint venture, thus completely discharging the Note and any obligations thereunder. A review of the undisputed facts shows that CVPort never took any act to convert its loan funds to equity.

56. Gomez and G.D. state as their Second, Third, Fifth, and Sixth Affirmative Defenses that

CVPort also converted its loan funds to equity. As mentioned above regarding the First and Fourteenth Affirmative Defenses, it is undisputed that Edex converted the funds it loaned to Gomez under the Note into equity in a joint venture by signing the Subsequent Contribution Agreements.

57. However, the undisputed facts show that CVPort did ***not*** sign the Contribution Agreements. CVPort's signature lines on the Contribution Agreements, which have all been submitted as summary judgment evidence, are blank.

58. In addition, Edex and Gomez both testified at deposition that CVPort did not sign these Subsequent Contribution Agreements and did not take any affirmative action to convert the money it lent under the Note to equity.

59. Gomez, G.D., and Edex have presented no documentation or other evidence that would support the conclusion that CVPort converted its loan funds to equity in a joint venture.

60. Accordingly, there are no facts in the record which support the conclusion that CVPort converted the money it lent to Gomez under the Note to equity, the undisputed facts support an opposite conclusion, and these affirmative defenses fail.

v. ***Fourth and Seventh Affirmative Defenses***

61. Gomez and G.D. have also contended that CVPort did not actually fulfill the terms of the Note, because it disbursed funds to G.D. rather than Gomez. This issue is raised by Gomez's and G.D.'s Fourth and Seventh Affirmative Defenses, which claim that CVPort did not disburse any money to Gomez under the Note.

62. However, as mentioned above, it is undisputed that CVPort disbursed $307,000.00 to G.D. at Gomez's direction and instruction.

63. Moreover, it is immaterial whether the loan funds were disbursed directly to Gomez as

borrower or to another person. *Falk v. Salario*, 108 Fla. 135 (1933) (It is "not necessary to the validity of the note that the consideration benefited the maker if it benefited others not parties to the note, or was a detriment to the payee."); *see also Bennett v. Senn,* 106 Fla. 446 (1932) ("it was not necessary for the consideration to pass directly to such promisors."); *Real Estate World Fla. Commercial, Inc. v. Piemat, Inc.*, 920 So. 2d 704, 706 (Fla. 4th DCA 2006) ("***It is not necessary that a benefit should accrue to the person making the promise.*** It is sufficient that ***something of value flows from the person to whom it is made***, or that he suffers ***some prejudice or inconvenience*** and that the promise is the inducement to the transaction.") (quoting *Lake Sarasota, Inc. v. Pan Am. Sur. Co.*, 140 So. 2d 139, 142 (Fla. 2d DCA 1962)) (emphasis added); *Dorman v. Publix-Saenger-Sparks Theatres*, 135 Fla. 284 (1938).

64. Accordingly, these affirmative defenses have no merit.

vi. ***Fifth Affirmative Defense***

65. As their Fifth Affirmative Defense, Gomez and G.D. claim that Gomez was induced into signing the Note in order to effectuate a capital contribution in a joint venture, in a manner that allowed the joint venture to obtain a bond for projects.

66. However, the undisputed facts and record evidence, particularly the May 3rd, 2019 email attached to the Amended Complaint as Exhibit D and submitted as summary judgment evidence, show that it was Gomez himself who requested that CVPort transfer money to him as a loan, pursuant to a promissory note. Thus, there is no basis for Gomez to claim that he was induced into signing the Note.

vii. ***Sixth, Ninth, Tenth, Eleventh, Fifteenth, and Sixteenth Affirmative Defenses***

67. Another issue raised by G.D. and Gomez is whether the loan funds and the dispute between

G.D. and Gomez are governed by Pegso's Operating Agreement, in order to either require compliance with certain provisions therein, or to look to the Operating Agreement for guidance in interpreting the Note. The undisputed facts show no link between the Operating Agreement and the Note.

68. In their Sixth, Ninth, Tenth, Eleventh, Fifteenth, and Sixteenth Affirmative Defenses, G.D. and Gomez claim that the funds lent by CVPort to Gomez under the Note and this dispute are governed by the Pegso's Operating Agreement. These affirmative defenses allege a variety of defenses based on the Operating Agreement, including the contention that this dispute should be arbitrated, that Pegso is an indispensable party to this lawsuit, that the Note funds were capital contributions to Pegso, that mediation was required by the Operating Agreement as a condition precedent to instituting this litigation, etc.

69. However, the Note is unambiguous on its face that CVPort lent money to **Gomez**, **not** to Pegso. Pegso Construction LLC is referenced nowhere on the Note, nor is its Operating Agreement incorporated into the Note. Moreover, Gomez is not a party to the Pegso Operating Agreement, and the Operating Agreement does not reference or incorporate the Note. There are no facts which support these affirmative defenses.

70. Further, to specifically address any argument that this dispute should have been brought in arbitration pursuant to the Operating Agreement's arbitration provision, the Note itself contains a venue provision in Section XI which states otherwise. The Note's venue provision specifically mandates that "venue for any dispute shall lie in the State or Federal courts situated in Miami-Dade County, Florida." Accordingly, arbitration is not appropriate.

71. In addition, this particular matter, of whether this dispute should be arbitrated, has already been ruled on by this Court twice before. On both occasions, this Court denied G.D.'s and Gomez's requests that this action be sent to arbitration. On May 22, 2019, Gomez, G.D., and Edex filed their *Emergency Motion to Compel Arbitration and Stay Litigation Pending*

Arbitration (**"First Motion to Arbitrate"**), requesting that the Court compel the parties to arbitrate the instant dispute pursuant to Pegso's Operating Agreement. This Court denied the First Motion to Arbitrate on May 28, 2019. The First Motion to Arbitrate and the order denying same are part of the record in this case and were submitted to the Court as summary judgment evidence.

72. Later, on June 7, 2019, Gomez and G.D. filed a Motion to Stay simultaneously with a *Notice of Appeal of a Non-Final Order*, appealing this Court's May 28, 2019 Order denying the First Motion to Arbitrate. Thereafter, Defendants voluntarily dismissed their appeal of the Non-Final Order. The Motion to Stay, Notice of Appeal, and dismissal of the appeal are part of the record in this case and were submitted as summary judgment evidence.

73. Later, undeterred by the Court's ruling on the First Motion to Arbitrate and despite their dismissal of the appeal of the order denying same, on January 7, 2020, Gomez and G.D. Construction filed a *Motion for Sanctions for Fraud on the Court and Motion to Consolidate and Compel Arbitration* (**"Second Motion to Arbitrate**), again asking the Court to compel the parties to arbitrate this dispute pursuant to the Pegso Operating Agreement.

74. On March 2nd, 2020, the Court denied the Second Motion to Arbitrate and denied the Defendants' request that this case be sent to arbitration pursuant to the Pegso Operating Agreement. A copy of the Second Motion to Arbitrate and the Order denying same are part of the record in this case and submitted as summary judgment evidence.

75. Accordingly, this Court has already ruled twice before that arbitration of this case is not appropriate, and now again rules that this case is properly brought before a court of law, and not in arbitration.

viii. ***Eighth and Ninth Affirmative Defense***

76. Gomez's and G.D.'s Eighth Affirmative Defense argues that CVPort's claim is limited to the

$200,000.00 referenced in the opening paragraph of the Note. The Note states in the opening paragraph that Gomez promised to pay CVPort and Edex a total of $200,000.00 under the Note .

77. However, Paragraph IX of the Note allows each lender, collectively or individually, to lend additional monies to Gomez.

78. In addition, it is undisputed that CVPort lent Gomez a total of $307,000.00 under the Note.

79. Accordingly, there is no basis for limiting CVPort's damages.

ix. ***Ninth Affirmative Defense***

80. In addition to claiming that the Note was provided to two (2) lenders and that reference to the Pegso Operating Agreement is required to interpret the Note, this Affirmative Defense argues that the Note is ambiguous as to how much each lender contributed.

81. However, it is undisputed that CVPort lent Gomez a total of $307,000.00 under the Note, and that the clear terms of the Note permitted the lenders to loan Gomez more than the $200,000.00 described in the Note's opening paragraph. Accordingly, any ambiguity has been resolved, and CVPort may recover the full $307,000.00 it lent to Gomez.

x. ***Twelfth, Thirteenth, Sixteenth, Eighteenth, Nineteenth, and Twentieth, Affirmative Defenses***

82. The remainder of G.D. and Gomez's affirmative defenses – the Twelfth, Thirteenth, Sixteenth, Eighteenth, Nineteenth, and Twentieth Affirmative Defenses, are directed towards other Counts in the Complaint and not Count I for breach of promissory Note. Accordingly, these affirmative defenses are irrelevant to and have no bearing on the Court's disposition of Count I.

xi. ***Summary Judgment is Merited as a Matter of Law***

83. There is no challenge to the validity or enforceability of the Note other than G.D.'s and Gomez's argument that CVPort cannot enforce the Note alone. As discussed above, the Court concludes that CVPort may enforce the Note alone, as it is the only remaining lender under the Note, and any co-lender enforcement requirement has been waived.

84. It is undisputed that Gomez has not repaid any of the $307,000.00 disbursed to G.D. pursuant to the Note. Gomez and G.D. testified at deposition that no money has been repaid, and admitted same in their responses to interrogatories. Again, payment has not been raised as a defense to this action

85. The Court therefore finds as a matter of law that that Gomez was contractually obligated by the Note to repay the $307,000.00 owed to CVPort on or before January 1st, 2018, and that Gomez failed to do so. There is no issue of fact as to this matter.

86. The Court further finds that the Affirmative Defenses raised by Gomez and G.D. which apply to Count I (specifically, Affirmative Defenses Nos. 1-11, 14, 15, and 17) have been refuted as pointed out in the Motion, this Partial Summary Judgment, and by the record.

87. Consequently, because there are no genuine issues of material fact with respect to the facts giving rise to the breach of promissory note claim set forth in Count I of CVPort's Amended Complaint, summary judgment is warranted as to Count I as a matter of law.

In consideration of the above findings of fact and conclusions of law, it is hereby **ORDERED and ADJUDGED** that

A. The Motion is hereby GRANTED.

B. A Summary Final Judgment is hereby entered in favor of Plaintiff CVPort Services, LLC, whose address is 611 San Antonio Ave., Coral Gables, FL 33134, and against Defendant

Eduardo Gomez, whose address is 121 Crandon Blvd., Apartment 148, Key Biscayne, FL 33146, in the sum of $307,000.00 in principal, plus $28,206.54 in interest accrued through maturity of the Note, plus post-maturity pre-judgment interest in the sum of $148,954.99 through July 29th, 2022, for a total of $484,161.53 as of July 29th, 2022, FOR WHICH LET EXECUTION NOW ISSUE. Said total shall accrue post-judgment interest at the prevailing statutory rate.

C. The Court reserves jurisdiction to determine the entitlement to and amount of attorneys' fees and taxable costs incurred in connection with this action.

---

[1] No relief has been sought in this action against Edex.

[2] As discussed later in this Order, Section IX of the Note permits Edex and CVPort to loan additional funds under the Note.

[3] (1)A promise or order is "payable on demand" if it:

> (a)States that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder; or
>
> (b)Does not state any time of payment.
>
> (2)A promise or order is ***"payable at a definite time"*** if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of prepayment, acceleration, extension at the option of the holder, or extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.
>
> § 673.1081, Fla. Stat. (emphasis added).

[4] Although Count I is raised against Gomez only, on December 7th, 2020 Gomez and G.D. filed a joint *Answer and Affirmative Defenses to Plaintiff's Amended Complaint*, wherein both Defendants raise affirmative defenses to all Counts of the Complaint, without distinguishing between Defendants.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 13th day of August, 2022.

2019-009661-CA-01 08-13-2022 12:20 PM
Hon. Charles Johnson

CIRCUIT COURT JUDGE
Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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Physically Served:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2019-009661-CA-01
SECTION: CA06
JUDGE: Abby Cynamon

CV PORT SERVICES, LLC
Plaintiff(s)

vs.

EDUARDO GOMEZ et al
Defendant(s)
_____/

ORDER ON DEFENDANTS' MOTIONS TO DISMISS

THIS MATTER came before the Court on Defendant Eduardo Gomez's (**"Gomez"**) and G.D. Construction LLC's (**"G.D."**) *Motion to Dismiss Counts I, III, IV, V, VI, VII, VIII, IX, and X of Plaintiff's Amended Complaint for Failure to State a Claim Upon Which Relief Can Be Granted*, and on Defendant EDEX MIAMI, LLC'S (**"EDEX"**) *Motion to Dismiss* (collectively referred to as the "**Motions to Dismiss"**), and the Court having reviewed the file, having heard argument of counsel, and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. The Motions to Dismiss are DENIED as to Count I of the Amended Complaint.
2. The Court defers ruling on the Motions to Dismiss as to the balance of the Counts contained in the Amended Complaint. The parties shall schedule a hearing on the remaining issues in the Motions to Dismiss for another date.
3. Defendants' Answer to Count I will not be due until after the Court rules on the Motions to Dismiss as to the balance of the Counts in the Amended Complaint.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 19th day of October, 2020.

2019-009661-CA-01 10-19-2020 4:42 PM

Hon. Abby Cynamon

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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Physically Served:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2019-009661-CA-01
SECTION: CA06
JUDGE: Abby Cynamon

CV PORT SERVICES, LLC
Plaintiff(s)

vs.

EDUARDO GOMEZ et al
Defendant(s)
_____/

ORDER DENYING DEFENDANTS GOMEZ'S AND G.D.'S MOTION TO DISMISS

THIS MATTER came before the Court on November 16th, 2020, as a continuation of the October 8th, 2020 hearing, on Defendant Eduardo Gomez's (**"Gomez"**) and G.D. Construction LLC's (**"G.D."**) *Motion to Dismiss Counts I, III, IV, V, VI, VII, VIII, IX, and X of Plaintiff's Amended Complaint for Failure to State a Claim Upon Which Relief Can Be Granted* (**"Motion to Dismiss"**), and the Court having reviewed the file, having heard argument of counsel, and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. This Court previously denied the Motion to Dismiss as to Count I of the Amended Complaint in the October 19th, 2020 *Order on Defendants' Motions to Dismiss*.
2. The Motion to Dismiss is also denied as to the balance of the Counts contained in the Amended Complaint. Accordingly, the Motion to Dismiss has now been denied in its entirety.
3. Defendants Gomez and G.D. shall file their Answers to the Amended Complaint by

December 7th, 2020.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 18th day of November, 2020.

2019-009661-CA-01 11-18-2020 7:06 A

2019-009661-CA-01 11-18-2020 7:06 AM

Hon. Abby Cynamon

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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