

IN THE CIRCUIT COURT OF HOT SPRING COUNTY, ARKANSAS
_____ DIVISION

JOSEPH G. BEARD and
SHERRY BEARD

v.

Case No. CV-2008-93-2

BRIAN JOHNSON and
HOLLY JOHNSON

DEFENDANTS

FILED SUE JONES
CIRCUIT CLERK
2008 APR -4 AM 10:25
HOT SPRING COUNTY, ARK.
BY MB D.C.

COMPLAINT

Plaintiffs Joseph G. Beard and Sherry Beard, for their complaint against the defendants, state:

1. Plaintiffs are citizens and residents of McLennan County, Texas.
2. Defendants are citizens and residents of Hot Spring County, Arkansas

JURISDICTION AND VENUE

3. This court has subject-matter jurisdiction pursuant to Ark. Code Ann. § 16-13-201.
4. Venue is proper pursuant to Ark. Code Ann. § 16-55-213.

FACTUAL ALLEGATIONS

5. From July 17, 2007 through August 7, 2007, plaintiffs advanced the following sums to the defendants or to creditors of the defendants:

- Check Number 4994, dated July 17, 2007 in the amount of \$800;
- Check Number 5041, dated August 6, 2007, in the amount of \$9,168.26;
- Check Number 5042, dated August 7, 2007, in the amount of \$5,087.08;
- Check Number 5044, dated August 7, 2007, in the amount of \$8,615.06;
- Check Number 5045, dated August 2, 2007, in the amount of \$5,332.24; and
- Check Number 5046, dated August 2, 2007, in the amount of \$3,000.

6. The sums advanced by the plaintiffs to the defendants were not gifts, and the defendants agreed to repay the sums advanced by the plaintiffs. See Exhibit 1, Affidavit of Joseph G. Beard.

COUNT I—OPEN ACCOUNT

7. Plaintiffs restate and realleges each and every allegation contained in the preceding paragraphs.

8. Plaintiffs have made demand for the payment of all sums advanced to the defendants and to the creditors of the defendants, but the defendants have ignored plaintiffs' demand.

9. There is now owed to plaintiffs \$32,204.64 on the open account.

10. Pursuant to Ark. Code Ann. §16-22-308, plaintiffs are entitled to an award of their costs and attorney's fees.

COUNT II—BREACH OF CONTRACT

11. Plaintiffs restate and realleges each and every allegation contained in the preceding paragraphs.

12. The parties agreed to memorialize the loans in the form of a promissory note (the "Note"), including all amounts except the first check in the amount of \$800. The defendants are identified as the "Maker" under the Note and plaintiff Joseph G. Beard is identified as the "Payee" under the Note. A true and correct copy of the Note is attached hereto as Exhibit 2.

13. Holly Johnson has signed the Note, but Brian Johnson has refused to sign the Note.

14. The loan evidenced by the Note and the loan to the defendants in the amount of \$800 were for the use and benefit of both Brian Johnson and Holly Johnson.

15. Brian Johnson and Holly Johnson agreed to repay the loan evidenced by the Note, and they agreed to repay loan to the defendants in the amount of \$800.

16. The defendants have not repaid any amount of the loans to the plaintiffs, and the defendants are in default.

17. Plaintiffs have exercised their rights to declare the entire loan immediately due and payable. The current principal amount due is \$32,204.64, and interest continues to accrue on the principal amount at the rate of 8% per annum under the Note, or the applicable statutory rate.

18. Plaintiffs are entitled to their attorneys' fees and costs as provided in the Note and pursuant to Ark. Code Ann. §16-22-308.

WHEREFORE, plaintiffs party for judgment against defendants, awarding damages in an amount to be proven at trial, and their costs and attorneys' fees, and for all other proper relief.

WILLIAMS & ANDERSON PLC
111 Center Street, 22nd Floor
Little Rock, Arkansas 72201
Telephone: (501) 372-0800
Facsimile: (501) 372-6453

By: 

Jess Askew III (# 86005)
Clayborne S. Stone (# 2003102)

Attorneys for plaintiffs

IN THE CIRCUIT COURT OF HOT SPRING COUNTY, ARKANSAS
_____ DIVISION

JOSEPH G. BEARD and
SHERRY BEARD

PLAINTIFFS

v.

Case No. _____

BRIAN and
HOLLY JOHNSON

DEFENDANTS

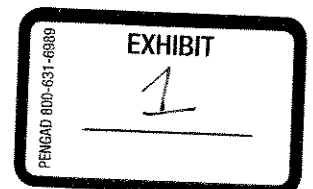
AFFIDAVIT

Plaintiff Joseph G. Beard, for his affidavit:

1. My name is Joseph G. Beard. I have personal knowledge of the facts set forth in this affidavit.
2. Plaintiffs have advanced money to the defendants or to creditors of the defendants in the amounts set forth in the complaint.
5. These advances were provided upon an open account.
7. Defendants have failed to repay plaintiffs for these advances.
8. Plaintiffs made demand upon defendants for the payment of all past due amounts, but such demands have been ignored.
9. There is now owed to plaintiffs \$32,204.64.
10. Plaintiffs are entitled to an award of their costs and attorneys' fees.



Joseph G. Beard



Subscribed and sworn to before me a Notary Public this 31ST day of March, 2008.

RHONDA BAIRD

Notary Public

My commission expires:

2/17/2011



PROMISSORY NOTE

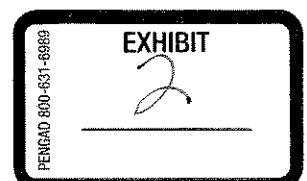
\$31,202.64

Dallas, Texas

August 1, 2007

FOR VALUE RECEIVED, Brian & Holly Johnson (hereinafter referred to as "Maker") promises to pay to the order of Joseph G. Beard (hereinafter together with all subsequent holders hereof referred to as "Payee"), the principal sum of THIRTY ONE THOUSAND TWO HUNDRED TWO AND 64/100 DOLLARS (\$31,202.64) together with interest thereon at the rate provided below. The principal of and interest on this Note shall be due and payable in lawful money of the United States of America, at the offices of Payee in Dallas, Texas, or at such other place as the holder hereof may from time to time designate by written notice to Maker.

1. **Interest.** This Note shall bear interest on the unpaid principal balance hereof from day to day remaining from the date hereof until maturity at a rate per annum equal to 8%.
2. **Default Interest.** All past due principal and interest of this Note, whether due as a result of acceleration of maturity or otherwise shall bear interest at the Maximum Rate from the date of maturity until paid or if no such rate is designated under applicable law then at an annual rate equal to eighteen percent (18%).
3. **Payment of Note.** This note is to be paid monthly at an amount of \$500.00. First installment is due February 1, 2008. Note will be due and payable on July 31, 2010.
4. **Prepayment.** Maker may prepay this Note, in whole or in part at any timely or from time to time, without penalty premium or notice. All amounts so prepaid shall be applied first to accrued and unpaid interest then due hereon, and thereafter to the outstanding principal balance of this Note in direct order of maturity.
5. **Security.** This Note is unsecured.
6. **Default; Enforcement.** The entire unpaid principal balance of, and all accrued interest on, this Note shall immediately become due and payable, without further notice or demand, at the option of the holder hereof upon the occurrence of anyone or more of the following events of default ("Events of Default"):



- (a) Failure by Maker to make prompt payment of any installment of interest hereon as and when same becomes due and payable in accordance with the terms hereof and said failure shall continue for five (5) days after receipt of written notice of said failure from the holder hereof;
- (b) The death liquidation termination or dissolution of Maker or any other party liable for the payment hereof, whether as endorser, guarantor, surety or otherwise;
- (c) The bankruptcy or insolvency of, the assignment for the benefit of creditors by, or the appointment of a receiver for any property of any party liable for the payment of this Note, whether as maker, endorser, guarantor, surety or otherwise; or
- (d) Default in the payment of any other indebtedness due Payee or default in the performance of any other obligation to Payee by the Maker or any other party liable for the payment hereof, whether as endorser, guarantor, surety or otherwise.

In the event any one or more of the Events of Default specified above shall have occurred, the holder of this Note may, at its option, declare the entire unpaid principal balance of, and accrued and unpaid interest on, this Note to be immediately due and payable without notice or demand, foreclose all liens and security interests securing the payment of this Note, or any part thereof, and pursue any and all other remedies to which Payee may be entitled, at law or in equity.

The failure of Payee to exercise any of the foregoing options upon the occurrence of an Event of Default shall not constitute a waiver of Payee's right to exercise the same or any other option of Payee at that time or at any subsequent time with respect to such uncured default or any other Event of Default. The acceptance by a holder of this Note of any payment hereon which is less than the payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the rights of the holder hereof to exercise the foregoing option or any other option granted to the holder hereof in this Note or in any other instrument securing, governing or evidencing the loan evidenced hereby, at that time or at any subsequent time, or nullify any prior exercise of any such option.

7. Cumulative Rights. No failure or delay on the part of the holder of this Note in the exercise of any power or right under this Note, or under any other instrument securing the payment of this Note or executed pursuant hereto shall operate as a waiver thereof, nor shall a single or partial exercise of any other power or right preclude other or further exercise thereof or the exercise of any other power or right. Enforcement by the holder of this Note of any security for the payment hereof shall not constitute any election by it of remedies so as to preclude the exercise of any other remedy available to it and Maker shall remain liable for all amounts remaining unpaid with respect to the principal of and interest accrued on this Note, after any application of proceeds of any such enforcement of security.

8. Waiver. Except as otherwise expressly provided herein, Maker and any and all sureties, endorsers and guarantors of this Note, as well as all parties to become liable on this Note, jointly and severally, (a) waive demand, presentment for payment, notice of intent to accelerate, notice of acceleration, notice of non-payment or dishonor, grace, protest, notice of protest, all other notices, and any and all diligence or delay in collection or the filing of suit hereon or enforcing any of the security here for, (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable here for, (c) agree that Payee shall not be required to first institute suit or exhaust its remedies against Maker or others liable or to become liable hereon or to enforce its rights against them or any security securing the indebtedness evidenced by this Note, and (d) consent to any and all extensions (whether before or after the maturity hereof) for any period, renewals or postponements of time of payment of this Note or any other indulgences with respect hereto, without notice thereof to any of them. The holder hereof shall similarly have the right to deal in any way, at any time, with one or more of the foregoing parties without notice to any other party or parties, and to grant any such party any extensions of time for payment of any of said indebtedness, or to grant any other indulgences or forbearances whatsoever, without notice to any other party and without in any way affecting the personal liability of any party hereunder.

9. Notices. All notices or demands required or permitted hereunder shall be in writing, and shall be deemed to be delivered, (i) upon receipt, if hand delivered, or (ii) whether actually received or not, upon the deposit of both the original and the copy, as provided below, in a regularly maintained official depository for the United States mail located in the continental United States, and sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Payee:

Joseph G. Beard
c/o Westdale Asset Management, Ltd.
3300 Commerce Street
Dallas, TX 75226

If to Maker:

Brian & Holly Johnson

Either Maker or Payee may change its respective address or addressee by giving notice of such change to the other party in the manner provided herein. For the purpose of changing such addresses or addressees only, unless and until such written notice is actually received, the last address and addressee specified for each party shall be deemed to continue in effect for all purposes.

10. Governing Law and Venue. This Note shall be construed according to and governed by the laws of the State of Texas; provided, however, that nothing herein shall limit or impair any right which Payee has under applicable laws of the United States of America to charge a rate of interest on sums evidenced by this Note at a rate which exceeds the maximum rate of interest allowed under the laws of the State of Texas. The obligations of Maker under this Note are performable in Dallas County, Texas.

11. Headings. The paragraph headings of the sections of this Note are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Note.

12. Limitation of Interest. All agreements between Maker and Payee, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of the maturity of the unpaid principal balance hereof or otherwise, shall the amount contracted for, charged, received, paid or agreed to be paid to the holder hereof for the use, forbearance or detention of the money to be loaned hereunder or otherwise or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to the indebtedness evidenced by this Note exceed the maximum amount permissible under applicable law. In this connection, it is expressly stipulated and agreed that it is the intent of Payee and Maker in the execution and delivery of this Note to contract in strict compliance with applicable usury laws. If, from any circumstance whatsoever, fulfillment of any provision hereof or any other agreement shall, at the time fulfillment of such provision be due, involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then inso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the maximum lawful rate, any amount equal to any excessive interest shall (a) be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest or (b) if such excess interest exceeds the unpaid principal balance of this Note, such excess shall be refunded to Maker. All sums contracted for, charged or received hereunder for the use, forbearance or detention of the indebtedness evidenced hereby shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of this Note until payment in full so that the rate of interest on account of such indebtedness is uniform throughout the term hereof. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Maker and the holder hereof.

13. Successors and Assigns. All of the covenants, stipulations, promises and agreements contained in this Note by or on behalf of Maker shall bind Maker's heirs, personal representatives, successors and assigns, whether so expressed or not..

14. Collection Costs. If this Note is collected by legal proceeding or through a probate or bankruptcy court, or is placed in the hands of an attorney for collection after default (whether or not suit is filed), Maker agrees to pay all costs of collection and/or suit, including but not limited to reasonable attorneys' fees incurred by Payee.

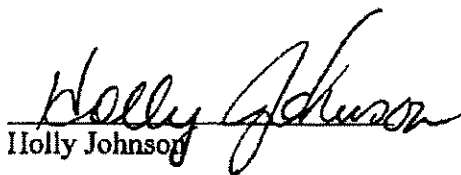
15. Unenforceability. The invalidity, or unenforceability in particular circumstances, of any provision of this Note shall not extend beyond such provision or such circumstances, and no other provision of this Note shall be affected thereby.

16. Payment Dates. If any payment of principal and/or interest on this Note shall become due on a Saturday, Sunday or any other legal holiday, such payment shall be paid on the next succeeding business day, and such extension of time shall in such event be included in computing the amount of interest payable in connection with such payment.

17. Late Charge. Should any payment required under this Note be not paid within fifteen (15) days after the same becomes due and payable, it is recognized by Maker that the holder of this Note will incur extra expenses for handling delinquent payments, the exact amount of such extra expenses being impossible to ascertain, but that a charge of four percent (4%) of the amount of the delinquent payment would be a fair approximation of the expenses so incurred by the holder. Therefore, Maker, shall, in such event without further notice and without prejudice to the right of the holder of this Note to collect any other amounts provided to be paid hereunder or under any security for this Note or to declare a default, pay to the holder as of the holder's sole monetary recovery to cover such expenses incurred in handling delinquent payments, a "late charge" of four percent (4%) of the amount of such delinquent payment.

IN WITNESS WHEREOF, the Maker has duly executed this Note as of the day and year first above written.

Brian Johnson


Holly Johnson

