



Gregg Price (“Price”)—currently stands at \$3,250,647.05 in principal and \$2,788,590.20<sup>1</sup> in accrued interest, for a total of \$6,039,237.25.

2. The Law Office of B. Gregg Price has committed many events of default under the Promissory Note, and Virage—as permitted by the Promissory Note—declared the total outstanding principal and interest immediately due and payable. The Law Office of B. Gregg Price and Price have both refused to pay the balance.

3. Accordingly, this Court should grant Virage summary judgment against the Law Office of B. Gregg Price and against B. Gregg Price, individually.

**II.**  
**ISSUES PRESENTED**

4. This Motion for Summary Judgment presents the following issues for the Court’s determination as a matter of law:

- a. Is the Law Office of B. Gregg Price in default under the Promissory Note?
- b. Is B. Gregg Price individually liable under his Guaranty Agreement?

The answers to each of these questions is “yes.”

**III.**  
**SUMMARY JUDGMENT EVIDENCE**

5. This Motion for Summary Judgment is supported by the following evidence:

- Exhibit A: Declaration of Martin Shellist
- Exhibit B: Promissory Note
- Exhibit C: Acceleration Notice

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<sup>1</sup> This is the total accrued interest as of March 12, 2020.

**IV.**  
**BACKGROUND**

6. Virage provides litigation financing to law firms across the nation. (*See* Declaration of Martin Shellist, ¶3; Ex. A).

7. The Law Office of B. Gregg Price is a law firm located in Sulphur Springs, Texas. *Id.* at ¶4. Price is its sole owner and principal. *Id.*

8. On or about July 21, 2015, the Law Office of B. Gregg Price executed a promissory note for the principal sum of \$3,250,647.05 pursuant to a “LitCap Business Expense Note, Note No. 946.” *Id.* at ¶5. Under the terms of the Promissory Note, the Law Office of B. Gregg Price agreed to use the loan proceeds for the limited purpose of funding the prosecution of the Law Office of B. Gregg Price’s ongoing litigation cases. *Id.*; (*see also* Promissory Note, §1.1; Ex. B). The Law Office of B. Gregg Price agreed to repay the Promissory Note using attorney’s fees generated by its cases. (*See* Promissory Note, §2.3; Ex. B).

9. Price personally guaranteed the Law Office of B. Gregg Price’s obligations under the Promissory Note. *Id.* at p. 15.

10. Pursuant to §3.2(b) of the Promissory Note, the Law Office of B. Gregg Price was required to provide Virage with quarterly “case status” updates. *Id.* at §3.2(b). Despite Virage’s repeated requests, however, the Law Office of B. Gregg Price has refused to provide any case updates since July 1, 2019. (*See* Declaration of Martin Shellist; §7; Ex.

7). The Law Office of B. Gregg Price’s refusal to provide these quarterly case status

updates constitutes an “Event of Default” under §4.1 of the Promissory Note. (*See* Promissory Note, §1.1; Ex. B).

11. Additionally, the Law Office of B. Gregg Price has received settlements and/or favorable judgments in other cases that, under the Promissory Note, trigger the Law Office of B. Gregg Price’s obligation to pay a portion of the settlement or judgment (an amount equal to at least 50% of its earned attorney’s fees and 100% of reimbursed expenses in those cases) to Virage. (*See* Declaration of Martin Shellist, ¶8; Ex. A). The Law Office of B. Gregg Price, however, has repeatedly refused to make these required payments, thereby constituting another Event of Default under the Promissory Note. *Id.*

12. On February 13, 2020, and as permitted by the Promissory Note, Virage issued a Notice of Acceleration to the Law Office of B. Gregg Price declaring the balance of the Promissory Note and all accrued interest to be immediately due and payable. (*See* Acceleration Notice, Ex. C). The Notice of Acceleration also demanded that Price, as guarantor, satisfy the balance. *Id.* To date, Defendants have refused to satisfy the balance due under the Promissory Note.

13. As of March 12, 2020, the balance of the loan is \$3,250,647.05 in principal and \$2,788,590.20<sup>2</sup> in accrued interest, for a total of \$6,039,237.25.

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<sup>2</sup> Additional interest of \$1,914.77 accrues per day.

**V.**  
**ARGUMENT**

**A. Virage is Entitled to Judgment as a Matter of Law on its Breach of Contract Claim Against The Law Office of B. Gregg Price.**

14. There can be no question. The Law Office of B. Gregg Price has breached the Promissory Note.

15. The elements of a breach of contract claim are: “(1) a valid contract; (2) the plaintiff performed or tendered performance; (3) the defendant breached the contract; and (4) the plaintiff was damaged as a result of the breach.” *Brooks v. Excellence Mortgage, Ltd.*, 486 S.W.3d 29, 36 (Tex. App.—San Antonio 2015, pet. denied).

16. However, “[t]o prevail in a suit on a promissory note, a plaintiff need not prove all the elements of breach of contract.” *Dorsett v. Hispanic Housing and Educ. Corp.*, 389 S.W.3d 609, 613 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2012, no pet.). Instead, “[t]o recover on a promissory note, the plaintiff must prove: (1) the note in question; (2) the party sued signed the note; (3) the plaintiff is the owner or holder of the note, and (4) a certain balance is due and owing on the note.” *Comerica Bank v. Progressive Trade Enterprises, Inc.*, 544 S.W.3d 459, 463 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2018, no pet.); *see also Dernick*, 2018 WL 1604989, at \*6.

17. As shown below, Virage easily establishes each element of its breach-of-promissory-note claim against the Law Office of B. Gregg Price.

- (i) Virage has proven that the Law Office of B. Gregg Price executed the Promissory Note, and that Virage is the holder of that Promissory Note.

18. To prevail on its breach-of-promissory-note claim, Virage must first show the Law Office of B. Gregg Price executed the Promissory Note, and that Virage is the holder of the Promissory Note. *Comerica Bank v. Progressive Trade Enterprises, Inc.*, 544 S.W.3d at 463. “A true and correct copy of a note accompanied by sworn testimony proving ownership and possession of the instrument establishes a plaintiff’s status as the owner and holder of the note, absent controverting evidence.” *Id.* “Further, when one alleged to be the maker of a note does not deny the genuineness of his signature on the note, he is established as the maker of the note.” *Id.* at 463-64.

19. Here, Virage has attached the signed Promissory Note as Exhibit A to this Motion, which is signed by B. Gregg Price on behalf of the Law Office of B. Gregg Price. Also attached is sworn testimony from Virage’s principal, Martin Shellist, that (i) the Promissory Note is a true and correct copy of the original Promissory Note, and (ii) Virage is the owner and holder of the Promissory Note.

20. Accordingly, Virage has established the first three elements of its breach-of-promissory-note claim as a matter of law.

- (ii) Virage has proven that there is a balance of at least \$6,039,237.25 due and owing under the Promissory Note.

21. The final element that Virage must establish to prevail on its breach-of-promissory-note claim is that there is a certain balance due and owing on the Promissory Note. *Comerica Bank v. Progressive Trade Enterprises, Inc.*, 544 S.W.3d at 463. As shown below, the Promissory Note—because of the Law Office of B. Gregg Price’s

breach of the Promissory Note—has now matured, and the balance due and owing on the Promissory Note is \$6,039,237.25.

22. Among other things, and as further shown below, the Law Office of B. Gregg Price breached the Promissory Note by failing to pay the required amounts to Virage. The Law Office of B. Gregg Price’s breaches of the Promissory Note caused the Promissory Note to mature, meaning that the remaining principal of the Promissory Note, plus interest, is now due and owing.

23. The Promissory Note states that the “outstanding principal balance of this Note shall be finally due and payable in full on the Maturity Date (whether such Maturity Date occurs because of acceleration or otherwise)[.]” (See Promissory Note, §2.1; Ex. B). “Maturity Date” is defined to mean, in relevant part, the “date this Note is accelerated pursuant to Section 4.2[.]” *Id.* at Appendix 1. Section 4.2, in turn, states that

Upon the occurrence of an Event of Default, [Virage] shall have the immediate right . . . to declare the entire unpaid balance of the indebtedness evidenced by this Note (including the outstanding principal balance hereof, including all sums advanced or accrued hereunder, and all accrued and unpaid interest thereon) at once immediately due and payable[.]

*Id.* at §4.2.

24. “Events of Default” that trigger Virage’s right to accelerate the Promissory Note include:

- (a) The failure of the Law Office of B. Gregg Price “to pay and satisfy, in full and in the applicable method and manner required, any required payment of principal or interest or any other portion of the indebtedness evidenced by this Note, as and when the same shall become due and payable, whether at the stipulated due date thereof or any date fixed for payment,” and

- (b) “The occurrence of any other default, breach or event of default under this Note other than those described under Section 4.1(a).”

*Id.* at §4.1(a)-(b).

25. Here, the Law Office of B. Gregg Price committed an Event of Default under §4.1(b), because it breached its obligation to provide Virage quarterly status reports as required by §3.2(b) of the Promissory Note:

*Status Reports.* [Law Office of B. Gregg Price] or [Price] shall notify [Virage] and LitCap of the status of each Litigation Matter by providing to [Virage] a status report quarterly on or before the last day of the month following the end of each calendar quarter (such update to be made on or before the last day of April, July, October and January of each year). Each quarterly update will describe the current status of each Litigation Matter, the minimum amount in controversy in respect thereof, the anticipated date of any Recovery Event in connection therewith and any material developments arising after the date of the last quarterly update report. [Law Office of B. Gregg Price] or [Price] shall also promptly notify [Virage] of any change in the status of each Litigation Matter or Recovery Event.

*Id.* at §3.2(b).

26. Despite the Defendants’ obligation to provide quarterly status updates—an important tool that Virage uses to monitor whether its borrowers are properly paying funds recovered from their litigation cases—the Law Office of B. Gregg Price has refused to issue a quarterly status report since July 1, 2019, meaning that the Law Office of B. Gregg Price has breached §3.2(b) of the Promissory Note by failing to provide status reports for 3<sup>rd</sup> Quarter 2019 and 4<sup>th</sup> Quarter 2019. (*See* Declaration of Martin Shellist, ¶7; Ex. A).

27. Additionally, the Law Office of B. Gregg Price committed an Event of Default because it failed to make required payments pursuant to §4.1(a) and §2.3 of the



Promissory Note. Section 2.3 of the Promissory Note requires the Law Office of B. Gregg Price to pay to Virage “(i) Expenses included in such Recovery ..., and (ii) at least 50%” of [the Law Office of B. Gregg Price’s] interest in such Recovery”, which essentially means that the Law Office of B. Gregg Price must pay 100% of expenses reimbursed to the Law Office of B. Gregg Price and 50% of any attorney’s fees it received for specified cases to Virage. (See Promissory Note, §2.3; Ex. B).<sup>3</sup> However, the Law Office of B. Gregg Price admitted that it received a “Recovery” in over 40 “Litigation Matters” for which it failed to remit any payment to Virage. (See Declaration of Martin Shellist, ¶8; Ex. A).

28. Because the Law Office of B. Gregg Price committed multiple Events of Default, Virage—as permitted by §4.2 of the Promissory Note—issued a February 13, 2020 Notice of Acceleration declaring the total outstanding balance of the Promissory Note, including interest, to be immediately due and payable. (See Promissory Note, §4.2; Ex. B) (“Upon the occurrence of an Event of Default, [Virage] shall have the immediate right

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<sup>3</sup> More specifically, “Recovery” is defined to mean:

[W]ith respect to a Litigation Matter, any recovery of payment (whether in cash or other property) of any amount, nominal or otherwise, to or for the account of Borrower or his/her Client in such Litigation Matter arising from or in connection with any recovery, settlement, release or dismissal of, verdict, judgment or entry in connection with, or other disposition of, such Litigation Matter (other than amounts paid to Borrower pursuant to this Note or amounts paid or advanced by Borrower’s attorneys in connection with such Litigation Matter), whether such payment is made by any party to such Litigation Matter or by a third-party, an insurer or by any other person or entity, and notwithstanding the existence of any right to appeal or appeal of any such payment, and excludes Client’s share.

*Id.* at Appendix 1. “Litigation Matter” means any of the Law Office of B. Gregg Price’s cases which it listed on Appendix 2 of the Promissory Note.

. . . to declare the entire unpaid balance of the indebtedness . . . immediately due and payable[.]”); (*see also* Acceleration Notice, Ex. C).

29. To date, the Law Office of B. Gregg Price has failed to pay the outstanding balance of the Promissory Note, which currently stands at \$3,250,647.05 in principal and \$2,788,590.20<sup>4</sup> in accrued interest, for a total of \$6,039,237.25. Virage is entitled to summary judgment for this amount, plus attorney’s fees.

**B. Virage is Entitled to Judgment as a Matter of Law on its Breach of Guaranty Claim.**

30. Because the Law Office of B. Gregg Price failed to pay the outstanding principal and interest under the Promissory Note, the guarantor of the Promissory Note—Price—is also liable as a matter of law.

31. “To recover under a guaranty contract, a party must show proof of (1) the existence and ownership of the guaranty contract; (2) the terms of the underlying contract by the holder; (3) the occurrence of the conditions upon which liability is based; and (4) the failure or refusal to perform the promise by the guarantor.” *Comerica Bank*, 544 S.W.3d at 465.

- (i) Defendant Price individually and unconditionally guaranteed the Law Office of B. Gregg Price’s obligations under the Promissory Note.

32. Pursuant to page 15 of the Promissory Note, Price personally and unconditionally guaranteed the Law Office of B. Gregg Price’s obligations:

IN CONSIDERATION OF [VIRAGE] ENTERING INTO THIS NOTE, [PRICE]  
HEREBY UNCONDITIONALLY AGREES TO GUARANTEE THE

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<sup>4</sup> This is the total accrued interest as of March 12, 2020.

PAYMENT OBLIGATIONS OF [LAW OFFICE OF B. GREGG PRICE] UNDER THIS NOTE, AS DEFINED IN ARTICLE 2 OF THIS AGREEMENT, AND AGREES TO PAY [VIRAGE] PROMPTLY WHEN DUE THE FULL AMOUNT OF ALL INDEBTEDNESS DUE TO [VIRAGE] FROM [LAW OFFICE OF B. GREGG PRICE] AS AND WHEN SUCH IS DUE AND PAYABLE, AND HEREBY WAIVES PRESENTMENT, NOTICE OF DISHONOR OR PROTEST. THIS IS A GUARANTY OF PAYMENT AND NOT OF COLLECTION, AND IN CASE [THE LAW OFFICE OF B. GREGG PRICE] FAILS TO PAY ANY INDEBTEDNESS WHEN DUE, [PRICE] AGREES TO MAKE SUCH PAYMENT OR TO CAUSE SUCH PAYMENT TO BE MADE PUNCTUALLY AS AND WHEN THE SAME SHALL BECOME DUE AND PAYABLE ON THE MATURITY DATE, WHETHER SUCH MATURITY DATE OCCURS BY ACCELERATION OR OTHERWISE AND AS IF SUCH PAYMENT WERE MADE BY [LAW OFFICE OF B. GREGG PRICE]. [PRICE] WAIVES ANY AND ALL CLAIMS AND DEFENSES OF [PRICE] PERTAINING TO THE INDEBTEDNESS EXCEPT THE DEFENSE OF DISCHARGE BY PAYMENT IN FULL. THIS GUARANTY SHALL BE ENFORCEABLE BEFORE OR AFTER PROCEEDING AGAINST THE [LAW OFFICE OF B. GREGG PRICE], AND SHALL BE EFFECTIVE REGARDLESS OF THE SOLVENCY OF [LAW OFFICE OF B. GREGG PRICE] AT ANY TIME OR THE SUBSEQUENT REORGANIZATION OF [LAW OFFICE OF B. GREGG PRICE]. THIS GUARANTY WILL TAKE EFFECT UPON EXECUTION OF THIS NOTE AND WILL REMAIN IN FORCE UNTIL THE INDEBTEDNESS IS PAID IN FULL. THIS GUARANTEE MAY NOT BE TRANSFERRED OR ASSIGNED TO ANY OTHER PERSON OR ENTITY WITHOUT THE CONSENT OF [VIRAGE] IN [VIRAGE]'S SOLE DISCRETION. FURTHERMORE, [PRICE] WARRANTS, REPRESENTS, AND GUARANTEES THAT [PRICE] IS AN EQUITY MEMBER, EQUITY PARTNER, EQUITY SHAREHOLDER, AND/OR OWNER OF THE [LAW OFFICE OF B. GREGG PRICE], AND AS SUCH HAS THE AUTHORITY TO BIND THE [LAW OFFICE OF B. GREGG PRICE] TO THIS AGREEMENT.

*Id.*

(ii) Price refused to perform his obligations under his guaranty agreement.

33. On February 13, 2020, Virage issued a notice to Price demanding that he, as guarantor, pay the outstanding principal and interest of the Promissory Note. (*See* Acceleration Notice, Ex. C). To date, he has refused to do so. (*See* Declaration of Martin Shellist, ¶9; Ex. A).

34. Accordingly, Virage has established each element of its breach-of-guaranty claim against Price as a matter of law, and it is entitled to summary judgment against Price for the full amount of the principal and interest due under the Promissory Note.

**C. Virage is Entitled to its Attorney's Fees.**

35. Pursuant to §5.14(a)(i) of the Promissory Note and Chapter 38 of the Texas Civil Practice and Remedies Code, Virage is entitled to recovery of its attorney's fees in connection with any suit to enforce the Promissory Note or Guaranty Agreement.

36. Virage has incurred \$16,295.00 in reasonable and necessary attorney's fees in connection with the Defendants' breaches of the Promissory Note and Guaranty Agreement. (*See* Declaration of Ashish Mahendru, Ex. D). This Court should award Virage this amount as attorney's fees.

**VI.**  
**CONCLUSION**

37. Virage respectfully requests that the Court grant its Motion for Summary Judgment against Defendants, and award Virage:

- a. \$6,039,237.25 in damages against the Law Office of B. Gregg Price pursuant to Virage's breach-of-promissory-note claim;
- b. \$6,039,237.25 in damages against Price, individually, pursuant to Virage's breach-of-guaranty claim;
- c. \$16,295.00 in attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code §38.002 and pursuant to §5.14 of the Promissory Note; and
- d. Post-judgment interest rate at rate of 18% under Texas Finance Code 304.002.

- e. Grant Plaintiff any such other and further relief to which it is entitled to at law or in equity.

Date: March 12, 2020

Respectfully submitted,

**MAHENDRU, P.C.**



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**ATTORNEYS FOR PLAINTIFF**

Unofficial Copy Office of Marilyn Burges District Clerk

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via email on this the 12<sup>th</sup> day of March, 2020, addressed as follows:

Alan S. Gerger  
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Ashish Mahendru

Unofficial Copy Office of Marilyn Burges District Clerk