

Affirmed and Opinion Filed September 9, 2026



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-25-00897-CV

**GLENDONTODD CAPITAL LLC AND TODD FURNISS, Appellants
V.
DOUGLAS A. SMITH, Appellee**

**On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-25-04239**

MEMORANDUM OPINION

Before Justices Goldstein, Breedlove, and Clinton
Opinion by Justice Goldstein

Appellants glendonTodd Capital, LLC, (glendonTodd) and Todd Furniss (Furniss) appeal the trial court's traditional summary judgment in favor of Douglas A. Smith awarding Smith \$1,755,009.67 representing the unpaid principal amount of the underlying promissory note. In three issues, glendonTodd and Furniss argue the trial court abused its discretion by refusing to deny or continue Smith's summary judgment motion, erred in denying glendonTodd's and Furniss' usury counterclaims, and erred in finding that Smith established all elements of his claims on the note and guaranty and granting summary judgment. We affirm the trial court's judgment.

BACKGROUND

In March 2025, Smith filed his original petition against glendonTodd alleging the following factual background relative to the claim on the Note:

On September 22, 2023, [Smith] provided a credit facility to [glendonTodd] in the original principal amount of up to \$1,500,000.00 (the “Loan”) which is evidenced by a Secured Promissory Note dated September 22, 2023, executed by [glendonTodd], and payable to the order of [Smith] in the original principal amount of \$1,500,000.00 (the “Initial Note”). A true and correct copy of the Initial Note is attached hereto as Exhibit “A”.

The Initial Note was modified and amended pursuant to the terms of First Amendment to the Secured Promissory Note by and between Douglas A. Smith and glendonTodd Capital LLC Dated September 22, 2023, executed by [glendonTodd] and [Smith] and dated effective as of June 18, 2024 (the “First Amendment”). Pursuant to the First Amendment, the original principal amount of the Loan was increased to \$2,000,000.00, and the maturity date was extended until September 23, 2024.

The Initial Note as modified by the First Amendment was further modified and amended pursuant to the terms of Second Amendment to the Secured Promissory Note between Douglas A. Smith and glendonTodd Capital LLC Dated September 22, 2023, executed by [glendonTodd] and [Smith] and dated effective as of October 1, 2024 (the “Second Amendment”). Pursuant to the Second Amendment, the principal amount of the Loan was further increased to \$2,250,000.00, and the maturity date was extended until December 31, 2024.

The Initial Note as modified by the First Amendment and the Second Amendment matured pursuant to its terms on December 31, 2024, at which time all outstanding principal and accrued but unpaid interest became immediately due and payable. On January 21, 2025, [Smith] provided [glendonTodd] with a notice pursuant to Texas Finance Code § 305.103 dated January 21, 2021 (sic), reforming the Initial Note as modified by the First Amendment and the Second Amendment to change the interest accruing on the outstanding principal amount of the Initial Note from the date of issuance until October 1, 2024 to 1.50% per month simple interest calculated on the basis of 365-day year and

to change the interest accruing on the outstanding principal amount from and after October 1, 2024 until the December 31, 2024 maturity date to 1.0% simple interest calculated on the basis of 365-day year (the “Cure Notice”). The Initial Note as modified by the First Amendment, the Second Amendment and the Cure Notice is referred to herein as the “Note”.

All of the indebtedness and obligations of [glendonTodd] under the Note are secured by assets of [glendonTodd] including all Investment Property, Receivables, Documents, Inventory, Equipment and other Collateral more particularly described in the Security Agreement dated September 22, 2023, executed by [glendonTodd], as Debtor, and by [Smith], as Secured Party.

All of the indebtedness and obligations of [glendonTodd] under the Note are absolutely and unconditionally guaranteed by Furniss pursuant to the terms of Guaranty dated September 22, 2023, executed by Furniss (the “Guaranty”). A true and correct copy of the Guaranty is attached hereto as Exhibit “B”.

A Default (as the term is defined in the Note) occurred on December 31, 2024, when [glendonTodd] and Furniss failed to pay the amounts due and owing under the Note at maturity. The Note has remained unpaid and in Default since it matured.

By letter dated March 11, 2025, [Smith], by and through his attorneys, Winstead PC, provided formal notice of the Default to [glendonTodd], and by copy of that letter, to Furniss, as guarantor, and therein, [Smith] made demand upon [glendonTodd] and Furniss to immediately pay [Smith] all the amounts due under the Note, and in any event, to pay such amounts within five (5) days from the date of the letter. Despite such notice and demand, [glendonTodd] and Furniss failed and refused to pay the amounts due under the Note within the five (5) day period following March 11, 2025, and [glendonTodd] and Furniss continue to fail and refuse to pay to [Smith] the amounts due and owing to [Smith] under the Note.

[Smith] is the payee named in the Note, the owner and holder of the Note and the owner of and obligee under the Guaranty.

After allowing all just and lawful offsets, payments and credits, there remains due and owing under the Note as of March 10, 2025, the unpaid principal amount of \$1,755,009.67 plus accrued but unpaid interest in

the amount of \$217,748.14, with interest continuing to accrue on the outstanding principal balance from and after March 10, 2025, at the current per diem rate of \$849.20.

On the basis of these facts, Smith asserted against glendonTodd a claim for all of the amounts due under the Note, together with pre- and post-judgment interest. Smith's original petition included a claim on the Guaranty, wherein Smith alleged Furniss was jointly and severally liable for all unpaid amounts due and owing under the Note, and Smith asserted a claim for all such amounts from Furniss.

In April 2025, glendonTodd and Furniss filed their general denial, affirmative defenses, and counterclaim. Among other things, they asserted the affirmative defense of usury. Specifically, they claimed the following:

Usury: Plaintiff contracted for, charged, and attempted to collect interest in excess of the maximum allowed by Texas law. Specifically, Plaintiff initially charged interest at a rate of 3% per month (36% per annum) and demanded as additional interest the conveyance of certain equity interests in a real estate limited partnership (the "Sylvan Interests") with an objective market value of approximately \$225,000 per 1% interest. These equity conveyances constitute additional consideration for the use of money and must be included in the effective interest rate calculation under Chapter 305 of the Texas Finance Code. The combined interest rate for the loan totaled approximately 80% per annum. The total consideration for the loan exceeds the maximum lawful interest rate, rendering the Note usurious.

As part of their factual background glendonTodd and Furniss alleged that the "Sylvan conveyances were not optional equity investments or profit participations tied to the subject collateral but instead constituted bargained-for consideration for the use of money." When "factored together with the high interest rate," they argued, the total interest for the loan was approximately 80%, well over the usury cap under

Texas Finance Code sections 302.001 and 305.001. GlendonTodd and Furniss notified Smith of the usury, and Smith attempted to “cure” the alleged violation by “issuing a unilateral ‘Cure Notice’ dated January 21, 2025, retroactively reducing the rate to 18% per annum.” However, this “so-called cure did not reflect an actual agreement between the parties and failed to account for the Sylvan Interests’ value.” GlendonTodd and Furniss claimed that, because they gave notice of the usury and no valid cure had occurred, they were entitled to recovery of all interest paid; the greater of three times the amount of usurious interest contracted for, charged, or received; and attorney’s fees as permitted by Texas Finance Code sections 305.003-.005.

In May 2025, Smith filed his original answer to glendonTodd and Furniss’ counterclaim. Among other things, the answer asserted that (a) Furniss, as guarantor, lacked standing to assert usury as a claim or defense; (b) any potential usury was affirmatively cured under Texas Finance Code section 305.103 by its January 21, 2021 Cure Notice; (c) the loan at issue was a qualified commercial loan as defined in Texas Finance Code section 306.001(9); and (d) any right to acquire equity interests was excluded from interest by Texas Finance Code section 306.101(b).

In June 2025, Smith filed a motion for traditional summary judgment. As to Furniss, the motion asserted Smith was entitled to summary judgment against Furniss for the amounts due and owing under the Note because Furniss was a Guarantor of the Note, and Furniss lacked standing to assert usury as a claim or

defense because Texas usury statutes provide liability to an “obligor,” but a guarantor is not “an obligor” under the Texas usury statutes. As a result, assuming for the sake of argument that “there was any uncured usury or usury arising out of the assignments of the Sylvan interests,” Smith asserted he was “entitled to a judgment against Furniss for all the amounts due and owing under the Note because under Texas law, Furniss, as a guarantor, cannot assert usury as either an affirmative defense or as a claim.”

As to glendonTodd, Smith asserted he was entitled to a judgment against glendonTodd for the amounts due under the Note because glendonTodd was the borrower on the Note, Smith was the owner and holder of the Note, and the summary judgment evidence established a specific balance due and owing under the Note. Smith argued that the Note was made for a business purpose and was therefore a commercial loan as defined by finance code section 306.001(5); moreover, because the loan was for an amount in excess of \$500,000, the loan was a qualified commercial loan as defined by finance code section 306.001(9)(A)(i)(b). For a commercial loan, a creditor was allowed to charge interest at a rate of 18% per annum and potentially as high as 28% under finance code sections 303.009(a) and (k) and section 306.002(a). Under finance code section 305.001(a-1), a creditor who contracts or receives interest greater than the amount authorized is liable for certain penalty payments; however, Smith argued that section 305.103 provides that “a creditor is not liable to an obligor for a violation if the creditor corrects the violation

by taking any necessary action and making any necessary adjustments within 60 days following discovering the violation or within 60 days of a notice provided by the obligor as required by section 305.006(c) & (d).” Smith described the effect of his “cure notice” as follows:

In the Cure Notice, Smith reformed the Initial Note and the First Amendment to change the rate from 3% per month or 36% per annum to 1.5% per month or 18% per annum from origination until October 1, 2024, and to 1% per month or 12% per annum from October 1, 2024 through the December 31, 2024 maturity, and 18% per annum thereafter. In addition, Smith recalculated the interest accrual using those rates and applied all payments made accordingly as reflected in the ledger included with the Cure Notice. Based on the Cure Notice, Smith has cured any arguable violation, and there is no violation entitling Defendants to any offset against the amounts claimed by Smith or any recovery from Smith.

In addition to curing the interest rate, Smith argued that any interest in Sylvan was not “interest” under the express provision of finance code section 306.101(c). Smith first characterized Sylvan as an “affiliate” of glendonTodd under finance code section 306.001(2). Next, Smith described the effect of his right to purchase interests in Sylvan as follows:

Texas Finance Code § 306.101 provides that parties to a qualified commercial loan may contract for an amount that does not exceed the applicable rate ceiling and may contract for “an option or right to purchase capital stock or other equity securities of an obligor or of an affiliate of an obligor” Tex. Fin. Code § 306.101(a) & (b)(3). The agreements by Borrower in each of the Initial Note, the First Amendment, and the Second Amendment to sell to Smith the interests in Sylvan through Borrower’s wholly-owned subsidiary Jefe Plover Interests, Ltd. are agreements for a right to purchase equity securities of an affiliate of an obligor, and therefore, the interests in Sylvan sold by Borrower to Smith and assigned by Jefe Plover Interests, Ltd. to Smith are not interest, are not included in the amount of interest

contracted, charged or received, and the value of those interests is irrelevant. Tex. Fin. Code § 306.001(b)(3) & (c).

Smith acknowledged glendonTodd's contention that the interests sold and assigned to Smith were "consideration for the use of money" but maintained that, for qualified commercial loans such as the loan at issue, each agreement to sell the Sylvan interests to Smith was "not interest" under finance code section 306.101(c).

In July 2025, glendonTodd and Furniss filed their joint response to Smith's motion for summary judgment. The response asserted the note carried a stated interest rate of 36% that "alone exceeds Texas's usury cap," and the equity transfer of "a 4.075% equity interest in a limited partnership" was "not an option, not part of a negotiated investment made apart from the loan, and not tied to the performance of the asset." Instead, the response asserted that the equity transfer was "simply extra consideration for the use of the loan proceeds which, under Texas law, makes the equity transfer interest." The response alleged Smith's actions taken to cure the note's interest rate were ineffective "because, among other reasons, it ignored the value of the transferred equity." As additional reasons why the trial court should deny Smith's motion for summary judgment, the response alleged the following:

First, the Note charges interest far above the legal limit, both in cash and in-kind via the forced equity transfer. Smith's attempted cure is ineffective because it does not account for the value of the required conveyance of 4.075% of the limited-partnership interests in Sylvan Interests, LLC ("Sylvan"). **Second**, Guarantor has standing to assert usury because the Guaranty expressly incorporates the usurious interest found in the Note. **Finally**, there are genuine disputes of material fact regarding the balance due under the Note and Guaranty, the total consideration received by Smith for the loan, the nature and value of

the Sylvan equity, and the facts and circumstances surrounding the equity transfers.

Specifically regarding the “Sylvan conveyance,” the response described the conveyance as “a forced conveyance which constituted bargained-for consideration for the use of the loan proceeds” which constituted “interest” counting toward the usury cap under finance code section 301.002(a)(4). The response claimed that, “when factored together with the high interest rate,” the total interest for the loan was 80%, well over the applicable usury cap.

As to Smith’s attempt to “cure” the interest rate, the response complained that Smith’s “Correction Letter” purporting to “reduce the rate of interest to at or below 18% per annum” did not “reflect an actual agreement between the parties” and “failed to account for the Sylvan assignment’s value.”

Regarding Furniss’ standing to assert a usury claim, the response argued that, if the guaranty agreement contains the usurious provision, the guarantor may assert a usury defense, citing *Bair Chase Prop. Co., LLC v. S & K Dev. Co., Inc.*, 260 S.W.3d 133 (Tex. App.—Austin 2008, pet. denied). The response quoted the following language in the Guaranty:

The debts and fees evidenced by that certain Secured Promissory Note dated September 22, 2023, in the original principal amount of up to \$1,500,000, executed by the Borrower and payable to the order of Lender (the “Note”), plus (i) **all interest thereunder**, and (ii) all penalties, expenses, attorney’s fees, and other collection costs as provided in the Note or that certain Security Agreement (the “Security”) executed by Borrower in favor of Lender as of Agreement September 22, 2023 (collectively, the “Collection Costs”).

The response asserted that the inclusion of “all interest thereunder” “expressly incorporates into the Guaranty the usurious interest rate and obligations of the Note, which include both the 36% annual interest and the conveyance of equity in Sylvan—a form of consideration that qualifies as ‘interest’ under Texas Finance Code section 301.002(a)(4).” Therefore, the response asserted that Furniss was not asserting a usury counterclaim based upon the Note, “but on the usurious obligation incorporated directly into the Guaranty.”

On July 9, 2025, the trial court granted Smith’s motion for summary judgment. The summary judgment awarded Smith, from and against glendonTodd and Furniss jointly and severally, \$1,755,009.67, representing the unpaid principal amount due under the note at issue and \$289,986.62, representing accrued but unpaid interest. This appeal followed.

ANALYSIS

A. First Issue: Premature Summary Judgment

In their first issue, glendonTodd and Furniss complain the trial court abused its discretion by refusing to deny or continue Smith’s summary judgment motion as premature. Specifically, glendonTodd and Furniss summarize their first issue as follows:

Smith immediately sought abatement of his own lawsuit based on an alleged need for proper notice and an opportunity to cure. While Appellants honored that process and refrained from discovery, Smith immediately pushed for summary judgment and a public sale. Appellants then filed an affidavit in support of a motion to continue the

summary-judgment hearing that satisfied Rule 166a(g) by identifying specific, material discovery needed to fairly resolve the motion. The trial court abused its discretion in denying a continuance on that record.

The record contains Smith's affidavit in support of his motion for summary judgment in which Smith asserts that the Note as modified by the first and second amendments matured on December 31, 2024. GlendonTodd did not pay any amounts payable under the note. In January 2025, Smith engaged legal counsel to assist in collecting on the Note and, at the same time, Smith became aware that "the 3.0% per month stated rate in both the Initial Note and First Amendment potentially exceeded the applicable lawful rate." In a January 15, 2025, email to Smith, Furniss asserted that the note was usurious. With the assistance of counsel, Smith sent glendonTodd and Furniss a "Cure Notice" on January 21, 2025, reforming the initial Note, the first amendment, and the second amendment so that "interest would accrue on the principal amount (i) from September 22, 2023 until October 1, 2024 at 1.5% per month simple interest calculated on the basis of a 365-day year, (ii) from October 1, 2024 until maturity on December 31, 2024 at a 1.0% per month simple interest calculated on the basis of a 360-day year, and (iii) from and after the December 31, 2024 maturity at the highest lawful rate." On March 18, 2025, Smith filed suit against glendonTodd and Furniss to collect the amounts due and owing on the Note as reformed by the January 21, 2025 Cure Notice. In his brief, Smith describes the circumstances surrounding the plea in abatement as follows:

Smith's counsel, unaware of the January 15, 2025 email sent by Furniss to Smith, contacted counsel for Appellants regarding their opposition

to a plea in abatement based on Appellants' failure to provide the written notice and opportunity to cure required by Texas Finance Code § 305.006. Appellants agreed not to oppose a plea in abatement and to provide written notice of the alleged usury violation, and Appellants did so with a letter dated May 27, 2025. On May 5, 2025, Appellee filed Plaintiff and Counter-Defendant Douglas Smith's Unopposed Plea in Abatement of Defendants and Counter-Plaintiffs glendonTodd Capital, LLC's and Todd Furniss' Counterclaim (the "Plea in Abatement").

Smith points out that the court did not enter an order on the plea in abatement, and "none of the parties treated the case as abated."

Smith's motion for summary judgment was filed on June 2, 2025, and glendonTodd and Furniss' response was filed on July 2, 2025. Between the filing of Smith's motion and the filing of their response, glendonTodd and Furniss did not serve any discovery or request a continuance. Nevertheless, in their response, glendonTodd and Furniss argued that they had not had "adequate time and have been prevented from conducting discovery of Smith's communications regarding the transfer of the Sylvan interest, hiring an underwriter or appraiser to calculate the value of the Sylvan interest conveyed to Smith, and retaining an accountant to accurately calculate and verify the amount owed on the Note."

In Furniss' declaration in support of the response to Smith's motion for summary judgment, Furniss stated the following:

Because of Mr. Smith's Plea of Abatement and other delay tactics, I have not had adequate time and have been prevented from conducting discovery. Material discovery in this case includes, but is not limited to, Mr. Smith's communications regarding the required transfer of the Sylvan interest, hiring an underwriter or appraiser to calculate the value of the Sylvan interest, retaining an accountant to accurately calculate and verify the amount, if any, owed on the Note, and the facts and

circumstances surrounding the equity transfer and its proper characterization as consideration for the loan. This discovery is material because the communications will conclusively demonstrate that the Sylvan conveyance was not a right to purchase but a condition on the loan, the value of the Sylvan interest will determine the percentage of usury interest on the loan, and the calculation of the amount owed plus the value of the Sylvan interest will determine the amount owed to Mr. Smith, if any, before any statutory offsets or penalties.

We review a trial court's decision whether to grant a party additional time for discovery before a summary judgment hearing for an abuse of discretion. *Tenneco, Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 647 (Tex. 1996); *Cooper v. Circle Ten Council Boy Scouts of Am.*, 254 S.W.3d 689, 696 (Tex. App.—Dallas 2008, no pet.). A party contending that he has not had an adequate opportunity for discovery before a summary judgment hearing must file either an affidavit explaining his need for additional discovery or a verified motion for continuance. *Tenneco*, 925 S.W.2d at 647; *see* TEX. R. CIV. P. 166a(g), 251, 252. The affidavit must describe the evidence sought, explain its materiality, and set forth facts showing the due diligence used to obtain the evidence prior to the hearing. *Cooper*, 254 S.W.3d at 696. In considering whether the trial court abused its discretion, we consider such factors as the length of time the case had been on file before the hearing, the materiality of the discovery sought, whether the party seeking the continuance exercised due diligence in obtaining the discovery, and what the party expects to prove. *Id.*

As discussed later in this opinion, further discovery would not have impacted resolution of the issue of the proper characterization of the Sylvan interest. *See id.* Moreover, the record shows that, despite Furniss' statements about the need for more

discovery, Furniss and glendonTodd did not request a continuance. *See id.* Under these circumstances, we conclude the trial court did not abuse its discretion by refusing to deny or continue Smith’s summary judgment motion as premature. *See id.* We overrule glendonTodd and Furniss’ first issue.

B. Second and Third Issues: Dismissal of Usury Counterclaims and Amount Due

In their second issue, glendonTodd and Furniss argue their usury counterclaims should not have been dismissed. In making this argument, they assert first that the Sylvan interest qualified as “interest.” They then argue that the Correction Letter did not cure the usury and, even with the reduced cash interest rate, “total compensation still exceeded the legal maximum.” Finally, they assert that Furniss has standing because, as they argued in the trial court, the Guaranty obligated Furniss for the Note’s debt plus “all interest thereunder,” giving Furniss standing to assert usury. Alternatively, they argue that, at a minimum, fact issues precluded summary judgment, including “whether the Sylvan transfer was an option/right to purchase or a compelled conveyance; the fair market value of the Sylvan equity interest; whether the \$300 fee was nominal or simply a document fee; and the correct payoff amount after accounting for usury penalties and offsets.”

These issues are interrelated with the issues raised in glendonTodd and Furniss’ third issue in which they assert that the trial court erred in finding that Smith established all elements of his claims on the Note and Guaranty and granting

summary judgment. In this third issue, they complain specifically that Smith failed to establish the amount owed, if any. Finally, they assert that the amount due under the Note is not “certain,” and a genuine dispute of material fact exists as to the balance on the Note.” Because of the interrelated issues involved in glendonTodd and Furniss’ second and third issues, we address them together.

We begin by addressing glendonTodd and Furniss’ challenges to the Note and Guaranty generally. We review the trial court’s order granting summary judgment de novo. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex.2010). We apply well-known standards in our review of traditional summary judgment motions. *See Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). With respect to a traditional motion for summary judgment, the movant has the burden to demonstrate that no genuine issue of material fact exists and it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Nixon*, 690 S.W.2d at 548–49. We credit evidence favorable to the nonmovant if reasonable jurors could, and we disregard evidence contrary to the nonmovant unless reasonable jurors could not. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009).

To prevail on its motion for summary judgment to enforce the promissory note, Smith was required to prove that (1) the Note exists, (2) Smith is the legal owner and holder of the Note, (3) glendonTodd is the maker of the Note, and (4) a certain balance is due and owing on the Note. *Affordable Motor Co. v. LNA, LLC*, 351 S.W.3d 515, 520 (Tex. App.—Dallas 2011, pet. denied). Courts do not usually

require the movant to file detailed proof reflecting the calculations of the balance due on a note in order to support a motion for summary judgment. *KOKB Med. Props., LLC v. DTC Partners, LLC-Series I*, No. 05-22-00403-CV, 2023 WL 5215255, at *9 (Tex. App.—Dallas Aug. 15, 2023, no pet.). An affidavit, based on personal knowledge, identifying an attached copy of the actual note as being true and correct, the amount of the principal and interest owing on the date of default, and the interest rate accruing on the date of default is generally considered sufficient proof of the amount owing on a note or other unambiguous instrument to support summary judgment. *Ringer v. Bobby D. Assocs. Ohio Gen. P’ship*, No. 05-01-00004-CV, 2002 WL 15898, at *3 (Tex. App.—Dallas Jan. 8, 2002, pet. denied); *Stucki v. Noble*, 963 S.W.2d 776, 782 (Tex. App.—San Antonio 1998, pet. denied) (citing, e.g., *Cockrell v. Republic Mortgage Ins. Co.*, 817 S.W.2d 106, 112 (Tex. App.—Dallas 1991, no writ)).

Here, Smith’s affidavit stated that all the statements made therein were based on his personal knowledge and were true and correct, and a “true and correct copy of the Initial Note” was attached to the affidavit. Also attached to the affidavit were copies of the Note, the First Amendment to the Note, the Second Amendment to the Note, assignments of partnership interests in Sylvan to Smith, the Guaranty, the Correction Letter, and the glendonTodd “Capital Loan Ledger.” The affidavit stated the amount of the principal and interest owing on the Note and the interest accruing

on the Note at a per diem rate. Thus, Smith's evidence raised a rebuttable presumption of the amount due. *See Ringer*, 2002 WL 15898, at *3.

We conclude that Smith established the four elements as a matter of law. The first element was satisfied because Smith attached a copy of the Note to the summary judgment motion, along with Smith's affidavit in which he attests to the authenticity of the Note. *See Wheeler v. Sec. State Bank, N.A.*, 159 S.W.3d 754, 757 (Tex. App.—Texarkana 2005, no pet.) (“A photocopy of a promissory note, attached to an affidavit in which the affiant swears that the photocopy is a true and correct copy of the original note, is proper summary judgment proof which establishes the existence of the note.”). The second element was satisfied because the Note identifies Smith as the Lender. The third element was satisfied because the Note states that glendonTodd is the Debtor. Because Smith's affidavit states that a certain balance is due and owing on the Note and, because Smith was not required to file detailed proof of the calculations reflecting the balance due on the Note, the fourth element was satisfied. *See Cha v. Branch Banking & Trust Co.*, No. 05-14-00926-CV, 2015 WL 5013700, at *4 (Tex. App.—Dallas Aug. 25, 2015, pet. denied) (mem. op.) (uncontroverted affidavit made on personal knowledge of bank officer that identifies note and guaranty and recites principal and interest due is sufficient to support summary judgment).

We further conclude that Smith satisfied his summary judgment burden as to the amounts owed under the Note. *See, e.g., Fritz v. Inter Nat'l Bank*, No. 13-01—

00851–CV, 2003 WL 22025867, at *4 (Tex. App.—Corpus Christi Aug. 29, 2003, no pet.) (mem. op.) (“The uncontroverted summary judgment evidence shows that the Bank owns the Note, that [appellant] made the Note, and that the Note is in default. On that basis, we conclude that, as a matter of law, the Bank is entitled to recover from [appellant] the principal and interest due on the Note[.]”). As a result, the burden shifted to glendonTodd and Furniss to raise a fact issue in order to defeat summary judgment.

GlendonTodd and Furniss did not file a verified denial below in accordance with Texas Rule of Civil Procedure 93(7) denying the execution of the Note. As a result, they did not raise a fact issue in the trial court concerning the terms of payment of the Note. *See* TEX. R. CIV. P. 93(7) (in the absence of a verified plea denying the execution of any instrument in writing “the instrument shall be received into evidence as fully proved”); *see also Rockwall Commons Assocs., Ltd. v. MRC Mortg. Grantor Trust I*, 331 S.W.3d 500, 506–07 (Tex. App.—El Paso 2010, no pet.) (because appellants failed to file verified denials as to written instruments they conclusively admitted validity of instruments and waived evidentiary objections). Accordingly, we overrule glendonTodd and Furniss’ arguments that Smith failed to establish the amounts due under the Note and that the amount owed under the Note was not “certain.” Thus, we conclude Smith met his summary judgment burden as to the amount owed under the Note. *See Fritz*, 2003 WL 22025867, at *4.

“To obtain summary judgment on a guaranty agreement, a party must conclusively prove: (1) the existence and ownership of the guaranty contract, (2) the performance of the terms of the contract by plaintiff, (3) the occurrence of the condition on which liability is based, and (4) guarantor’s failure or refusal to perform the promise.” *Hasty v. Keller HCP Partners, L.P.*, 260 S.W.3d 666, 669 (Tex. App.—Dallas 2008, no pet.) (quoting *Corona v. Pilgrim’s Pride Corp.*, 245 S.W.3d 75, 80 (Tex. App.—Texarkana 2008, pet. denied)).

Smith’s motion for summary judgment alleged: 1) the Guaranty was made by Furniss on September 22, 2023, as reflected in the copy of the Guaranty attached to the motion; 2) the Guaranty listed Furniss as Guarantor, glendonTodd as Borrower, and Smith as Lender; 3) glendonTodd and Furniss failed to pay the amounts due and owing under the Note at maturity or to pay any amount at all on the December 31, 2024, maturity date; 4) in a letter dated March 11, 2025, Smith made demand upon glendonTodd and Furniss to pay the amounts due under the Note; and 5) despite such notice and demand, glendonTodd and Furniss failed to pay.

Again, we note glendonTodd and Furniss did not file a verified denial; therefore, the Guaranty was received into evidence as fully proved. *See* TEX. R. CIV. P. 93(7); *Rockwall Commons Assocs., Ltd.*, 331 S.W.3d at 506–07. We therefore conclude that Smith met his summary judgment burden as to the amount owed under the Guaranty. *See Fritz*, 2003 WL 22025867, at *4.

We next turn to the issue of whether the Sylvan interest constituted “interest” under the Note for purposes of glendonTodd and Furniss’ usury claims. Specifically, we consider whether the Sylvan interest constituted “interest.” With respect to the Sylvan interest, the Note provided:

In addition to the interest and charges set forth above, Debtor also agrees to sell a one and a half percent interest (1.5%) in Sylvan Interests, LP, a limited partnership in which Debtor, through its wholly-owned subsidiary Jefe Plover Interests, Ltd., has an interest for the amount of one hundred dollars (\$100.00). This interest is subject to the approval of the general partner of Sylvan LP, which approval has been obtained, and the Parties will cooperate to complete any documentation required by Sylvan LP to effect such transfer.

The First and Second Amendments to the Note both extended the maturity date of the Note. Both the First and Second Amendments also contained a provision nearly identical to the Note’s provision regarding the Sylvan interest under which glendonTodd agreed to sell an interest in Sylvan and provided further that “[t]his sale has been approved by the general partner of Sylvan LP, and the Parties will cooperate to complete any documentation required by Sylvan LP to effect such transfer.” On September 22, 2023, and June 18, 2024, Jefe Plover Interests assigned interests in Sylvan to Smith. Importantly, the Assignment provided, in pertinent part, that “[Jefe Plover] desires to assign to [Smith]” a percentage of Sylvan and “[Smith] desires to accept such Assigned Interest.”

Under finance code section 306.101(b), the parties to a qualified commercial loan agreement may contract for, among other things, “an option or right to purchase capital stock or other equity securities of an obligor or of an affiliate of an obligor.”

TEX. FIN. CODE § 306.101(b)(3). A charge under section 306.101(b)(3) is not interest. *Id.* § 306.101(c). A “qualified commercial loan” is defined as “a commercial loan in which one or more persons as part of the same transaction lends, advances, borrows, or receives, or is obligated to lend or advance or entitled to borrow or receive, money or credit with an aggregate value of:” “ (b) \$250,000 or more if the commercial loan is not secured by real property.” *Id.* § 306.001(9)(A)(i)(b). Included in this definition is “a renewal or extension of a commercial loan described by Subparagraph (i), regardless of the principal amount of the loan at the time of the renewal or extension.” *Id.* § 306.001(9)(A)(ii).

Here, the Note and its amendments extending the maturity date of the Note, with a principal amount of \$2,250,000 at maturity, constituted a qualified commercial loan according to section 306.001(9)(A)(i)(b), and the First and Second Amendments were included within that definition. *See id.* § 306.001(9)(A)(i)(b), (ii). The disputed issue in the trial court and on appeal is: (a) whether the Note and the amendments provided for an “an option or right to purchase” an interest in Sylvan that would not be characterized as “interest” under finance code sections 306.101(b)(3) and 306.101(c); or (b) whether, as glendonTodd and Furniss assert, the Note and the amendments created a non-discretionary obligation to purchase interests in Sylvan on the part of Smith.¹

¹ We note that, at oral argument, glendonTodd’s counsel represented that this language created a binding contract to purchase an interest in Sylvan on Smith’s part.

GlendonTodd and Furniss argue that, at the very least, the interpretation of this statutory language created a fact issue precluding summary judgment. When a statute is not ambiguous on its face, it is inappropriate to use extrinsic aids to construe the unambiguous statutory language, *Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830, 838 (Tex. 2018), and ““we adopt the interpretation supported by its plain language unless such an interpretation would lead to absurd results.”” *In re Panchakarla*, 602 S.W.3d 536, 540 (Tex. 2020) (orig. proceeding) (per curiam) (quoting *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011)).

We thus interpret finance code section 306.101(b)(3) as referring to “an option or right to purchase” as the plain language of that phrase indicates. *See id.* We find nothing in this record or in any authority or in the plain meaning of “an option or right to purchase” to include an “obligation” to purchase. The Note and its amendments did not contain language indicating that Smith was obligated to purchase an interest in Sylvan. The Note provided, in relevant part, that glendonTodd agreed to sell an interest in Sylvan for the amount of one hundred dollars paid by Smith. Thus, the provision at issue expressed glendonTodd’s agreement to sell an interest in Sylvan upon Smith’s payment of one hundred dollars, and subject to Sylvan’s approval of that sale. From the plain language of this provision, there was no obligation on Smith’s part to purchase an interest in Sylvan and no agreement concerning when or if Smith would undertake such a purchase.

Thus, we conclude as a matter of law that the provisions at issue provided Smith with “an option or right to purchase” an interest in Sylvan. *See Nixon*, 690 S.W.2d at 548–49. In reaching this conclusion, we note that the actual assignments provided that “[Jefe Plover] desires to assign to [Smith]” a percentage of Sylvan and “[Smith] desires to accept such Assigned Interest.” We read this language as a memorialization of Smith’s decision to exercise his option to purchase an interest in Sylvan from Jefe Plover, a party desirous of assigning the interest to Smith but unable to do so until Smith exercised the option. We disagree with glendonTodd that the purchased Sylvan interest constituted interest for purposes of usurious interest as such an interpretation is contrary to the plain meaning of the cited finance code provisions.

As to glendonTodd and Furniss’ arguments that fact questions existed regarding the fair market value of the Sylvan interests or the nature of certain fees surrounding the exercise of Smith’s option to purchase, including the \$100 purchase fee, we find nothing in the plain meaning of the finance code or in the record to indicate that these matters were relevant to the application of section 306.101(b)(3) to Smith’s exercise of his option to purchase an interest in Sylvan. Accordingly, we do not address these issues further.

We next consider whether Smith effectively cured the potentially usurious interest provisions in the Note by means of the cure letter. The Initial Note contained the following provisions related to principal and interest:

FOR VALUE RECEIVED, the undersigned, glendonTodd Capital LLC, a Texas limited liability company (“Debtor”), hereby promises to pay to the order of Douglas A. Smith, a resident of Dallas, Texas (“Lender”) the principal sum of up to One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (which may be advanced by Lender to Debtor as requested from time to time on Schedule A attached hereto), with interest on the unpaid balance thereof from the date hereof until maturity at the rate of three percent (3%) per month calculated on a 360 day year, both principal and interest payable as hereinafter provided in lawful money of the United States of America at such place and in such manner as from time to time may be designated by the holder of this Secured Promissory Note (this “Note”).

The Note specifically addresses the parties’ intent to remain in strict compliance with usury law as follows:

It is the intent of the payee of this Note and the undersigned in the execution of this Note and all other instruments now or hereafter securing this Note to contract in strict compliance with applicable usury law. In furtherance thereof, the said payee and the undersigned stipulate and agree that none of the terms and provisions contained in this Note, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; that neither the undersigned nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of this Note shall ever be obligated or required to pay interest on this Note at a rate in excess of the maximum interest that may be lawfully charged under applicable law; and that the provisions of this paragraph shall control over all other provisions of this Note and any other instruments now or hereafter executed in connection herewith which may be in apparent conflict herewith. The holder of this Note expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of this Note is accelerated. If the maturity of this Note shall be accelerated for any reason or if the principal of this Note is paid prior to the end of the term of this Note, and as a result thereof the interest received for the actual period of existence of the loan evidenced by this Note exceeds the applicable maximum lawful rate, the holder of this Note shall, at its option, either refund to the undersigned the amount of such excess or credit the amount of such

excess against the principal balance of this Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that the said payee or any other holder of this Note shall contract for, charge or receive any amount or amounts and/or any other thing of value which are determined to constitute interest which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, an amount equal to interest in excess of the lawful rate shall, upon such determination, at the option of the holder of this Note, be either immediately returned to the undersigned or credited against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Note the undersigned acknowledges that it believes the loan evidenced by this Note to be non-usurious under applicable law and agrees that if, at any time, the undersigned should have reason to believe that such loan is in fact usurious, it will give the holder of this Note notice of such condition and the undersigned agrees that said holder shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this Note shall mean the laws of the State of Texas or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

In a January 15, 2025, email to Smith, Furniss asserted that the Note was usurious:

Usury in the state of Texas refers to charging interest rates that exceed the maximum allowed by law. In most cases, including the one with your loan, Doug, the maximum amount allowed by law would be 18%. The definition of usury includes various fees that are considered "interest" for the purpose of calculating the total interest rate on a loan, including origination fees, service charges, handling expenses, late fees, profit sharing arrangements and other payments. In other words, this calculation would include the value of the Sylvan interest transferred.

Texas law takes a broad view of what constitutes interest. Any compensation for the use, forbearance, or detention of money may be considered interest.

The interest by itself, excluding the origination and other fees reflected in the Sylvan interest transfers that have paid exceeds 36% for an overcollateralized loan even further collateralized because it was subject to my personal guarantee.

Additionally, you charged a 1.5% interest in the Sylvan real estate as an origination fee, 1% in the Sylvan real estate as the first extension fee, 1.575% in the Sylvan real estate as the second extension fee and wanted to charge interest and another 1.575%. The sum of the percentage interest in the Sylvan real estate transferred to you under this loan 4.075% at this time.

Adding to the humiliation because it was subject to Richard's personal approval, this became patently egregious and predatory when your demand in the last instance was with the full understanding that I sold 2 percentage points in Sylvan for a value of \$225,00 [sic] each thus placing a conservative value of the Sylvan component, alone, at \$916,875 on a loan with face amount of up to \$2.25 million, of which you elected not to advance the last \$100,000. So, the current balance, before any adjustments, is approximately \$2.15 million.

The value of the interest charged was over 36% PLUS the amount of the Sylvan interest transferred of 4.075% valued at \$916,875 on a loan with face amount of up to \$2.25 million means that the interest rate you were charging exceeds 79%.

On January 21, 2025, Smith sent the cure notice that provided the following:

Pursuant to Section 305.103 of the Texas Finance Code, Lender hereby notifies Borrower of the corrective action being taken to cure any potential or alleged usury violation with respect to the Note.

In order to cure any potential usury violation, Lender agrees that the interest on the principal amount reflected in the Note, (a) from the date of issuance until October 1, 2024 shall be 1.50% per month simple interest, calculated on the basis of a 365-day year, and (b) from October 1, 2024 until maturity on December 31, 2024, shall be 1.00% per month simple interest, calculated on the basis of a 360-day year. Per the terms of the Note, upon the occurrence of the Maturity Date on December 31, 2024 and continuing thereafter until payment in full, the Note shall bear interest at the highest rate for which the Borrower may legally contract under applicable law.

It is the intention of Lender that this letter, without any further action by Lender or Borrower, including Borrower's countersignature hereto, constitute an amendment to the Note, and this letter shall supersede and replace any and all prior demands made, whether written or oral for repayment under the Note.

For your convenience, a ledger, through December 31, 2024, showing the application of payments made against the Note, and the remaining principal balance and accrued interest is attached hereto as Schedule 1. Please review and confirm by your signature below that you are in agreement with these calculations.

GlendonTodd and Furniss concede in their brief that the cure letter reduced the interest rate to the non-usurious rate of 18% per annum; however, as they asserted in their response to Smith's motion for summary judgment, they argue that the cure letter was ineffective because it "ignores the equity transfer." GlendonTodd and Furniss do not dispute that Smith had 60 days to cure any violation of usury law under finance code section 305.103. Moreover, because there was no fact issue regarding the characterization of the Sylvan interests as "not interest," there was no "equity transfer" to consider in assessing the amount of interest charged by the Note following the cure letter. Under these circumstances, we conclude Smith was entitled to summary judgment on the issue of whether potentially usurious interest was included in the Initial Note. *See Nixon*, 690 S.W.2d at 548–49.

Because we conclude the Sylvan interests did not constitute "interest," and Smith effectively cured any potentially usurious interest provisions contained in the Initial Note, there was no usury to form the basis of glendonTodd's or Furniss' usury claims with respect to the Note or the Note's terms as incorporated into the Guaranty.

Thus, in the absence of usury, we need not address whether Furniss had standing as a Guarantor to assert a usury claim. We overrule glendonTodd and Furniss' second and third issues.

We affirm the trial court's judgment.

/Bonnie Goldstein/

BONNIE LEE GOLDSTEIN
JUSTICE