

IN THE SUPREME COURT OF THE STATE OF DELAWARE

J. SIMPSON DEAN, JR.,	§
	§
Plaintiff Below,	§
Appellant,	§ No. 288, 2000
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
DVI FINANCIAL SERVICES,	§ for New Castle County
INC.,	§ C.A. No. 97C-11-141
	§
Defendant Below,	§
Appellee.	§

Submitted: November 28, 2000

Decided: December 18, 2000

Before WALSH, HOLLAND, and STEELE, Justices.

O R D E R

This 14th day of December 2000, upon consideration of the briefs of the parties, it appears that:

(1) This is an appeal from the grant of summary judgment by the Superior Court in an action to recover certain payments under a letter of guaranty. The appellant, J. Simpson Dean, Jr. (“Dean”), contends that the Superior Court erred in granting summary judgment in favor of the appellee, DVI Financial Services, Inc. (“DVI”), and in denying Dean’s motion for summary judgment because the underlying obligation was barred under the Statute of Frauds. 6 *Del. C.* §2714(a).

Dean also asserts that the Superior Court decision was procedurally deficient and not in compliance with this Court's remand directing the entry of judgment consistent with the Superior Court's earlier bench ruling. DVI counters that this Court lacks jurisdiction over this appeal in view of Dean's failure to file his appeal within thirty days of the Superior Court's bench ruling.

(2) While this matter has become procedurally muddled, primarily because of the need for a successor judge to supplement the record upon remand following the retirement of the Superior Court judge who made the bench ruling, we are satisfied that the written order of the Superior Court upon remand, which implicitly adopted the earlier bench ruling, is reviewable as a final order of the Superior Court.

(3) Turning to the merits of the appeal, we review the Superior Court decision under a *de novo* standard to determine whether the trial court correctly formulated or applied legal precepts. *See Zirn v. VLI Corp.*, Del. Supr., 681 A.2d 1050, 1055 (1996). We conclude that, given the background of the financial and guaranty arrangements between Medlab and Dean on the one hand and DVI and its predecessor lenders on the other, the underlying transaction constituted a lease by Medlab with lease payments guaranteed by Dean's letter of credit. Dean's

obligation did not require compliance with the Statute of Frauds and his liability arose upon the undisputed default of Medlab. Dean's legal obligation is clear and the record supports the Superior Court determination that he was aware of the extent of his obligation to DVI. Accordingly, DVI was entitled to summary judgment as a matter of law.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh

Justice