

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-000810-MR

HOWARD T. SOSBY, SR.

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT  
HONORABLE JEAN CHENAULT LOGUE, JUDGE  
ACTION NO. 07-CI-00625

WINCHESTER 96 TRUCK STOP

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KELLER AND LAMBERT, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

LAMBERT, JUDGE: Howard T. Sosby Sr. appeals from a judgment of the Clark Circuit Court finding him jointly and severally liable for a contract debt. For the reasons herein, we affirm the judgment of the Clark Circuit Court.

Appellant Howard T. Sosby Sr. (Sosby) and Sosby Leasing, Inc. were in the trucking business and purchased quantities of diesel fuel from Appellee,

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<sup>1</sup> Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Winchester 96 Truck Stop, Inc (hereinafter Appellee). Sosby purchased fuel from Appellee on a revolving credit basis, and on May 28, 2002, signed a contract with Appellee which was styled “Winchester 96 Truck Stop, Inc. Corporation Commercial Credit Application.” At the bottom of the contract was an area called “credit agreement” which, in pertinent part, reads as follows:

Agreement made this 28 day of May 2002, between Sosby Leasing, Inc., Debtor and Winchester 96 Truck Stop, Inc., Creditor, in consideration of the mutual promises set forth in this agreement, debtor and creditor agree: Debtor agrees to repay all obligations which it owes or is liable to creditor for advances on fuel and repair purchases to the Creditor in full on the first and fifteenth day of each month. Debtor agrees both in their corporate and individual capacities to all promises under this agreement.

On the credit application, the signature line for “Debtor” was left blank; however the line immediately beneath the “Debtor” line bore Sosby’s signature. Below Sosby’s name, Sosby wrote “Pres: Sosby Leasing, Inc.”

As time passed, Sosby failed to pay for the fuel purchased, and despite repeated efforts to collect the money, Sosby refused payment to Appellee. On September 30, 2007, Appellee filed suit against Sosby Leasing in Clark Circuit Court, claiming Sosby owed Appellee \$64,031.23. On April 11, 2008, Appellee filed a motion to amend the complaint, adding Sosby as a party defendant in his individual capacity. That motion was granted, and the amended complaint was filed.

Following a bench trial, the trial court rendered its opinion in favor of Appellee holding Sosby jointly and severally liable for the full amount complained

of, including interest and penalties, in the sum of \$93,560.40. The trial court found that an ambiguity existed in the signature portion of the credit application because the signature line reserved for the debtor's signature was left blank. Thus, the trial court was permitted to consider parol evidence to ascertain the parties' actual intent in entering the contract at issue. The trial court held that the parties wanted to bind both the corporate defendant, Sosby Leasing, and Sosby individually. Sosby now appeals.

Our standard of review of findings of fact made by the trial court after a bench trial is whether they are clearly erroneous. Kentucky Rules of Civil Procedure (CR) 52.01. The trial court's conclusions of law, reached after making its findings, are subject to an independent *de novo* appellate review. *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky. App. 2005).

Sosby argues that the lower court erred by holding him personally liable for the debt of his corporation. In support of this argument, Sosby contends that the lower court incorrectly found that an ambiguity existed in the credit agreement and therefore improperly relied on *Simpson v. Heath & Co.*, 580 S.W.2d 505 (Ky. App. 1979), for the proposition that a court may examine parol evidence where an ambiguity regarding the capacity of the signatory exists.

In Kentucky, the Courts have established that "the primary object of contract construction is to effectuate the intentions of the parties." *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 384 (Ky. App. 2002). In applying this basic tenet, the Kentucky Supreme Court has stated that "Any contract or agreement

must be construed as a whole, giving effect to all parts and every word in it if possible.” *City of Louisa v. Newland*, 705 S.W.2d 916, 919 (Ky. 1986).

In the instant case, the contract executed by Sosby and Appellee was a one-page document that specifically provided that the “Debtor agrees both in their corporate and individual capacities to all promises under the agreement.” To this extent, we believe the contract clearly bound Sosby in both his individual and corporate capacities. However, the trial court held that the manner in which Sosby signed the contract created an ambiguity, and thus parol evidence was admissible to determine the intent of the parties. We agree with the trial court that Sosby leaving the “Debtor” signature line blank but signing his name underneath as “Pres: Sosby Leasing, Inc.” created an ambiguity that otherwise was not present in the credit agreement. Accordingly, it was not error for the trial court to examine parol evidence of the parties’ intent.

In examining that parol evidence, the trial court heard testimony of Appellee’s manager. He testified that in discussions he held with Sosby, Appellee, and Appellee’s employees, it was made clear by Appellee to Sosby that Appellee would only extend credit to Sosby or his corporation if there was both a personal and a corporate guarantee of the debt. Knowing this, Sosby signed the agreement. During the bench trial, Sosby testified that he simply did not remember this discussion.

Appellee argues that whether Sosby intended to be bound personally at the time of the execution of the agreement is a question of fact. We agree. *See*

*Simpson, supra.* As the trier of fact, the trial court was in the best position to judge the credibility of the witnesses and to weigh the evidence. The fact that the credit agreement specifically says that the debtor intends to be personally liable for the debts of the corporation lends credence to Appellee's argument that they made it very clear to Sosby that he would be personally responsible for any unpaid debt. Given the evidence in the record, the trial court's factual findings are clearly supported by substantial evidence, and are not erroneous.

The trial court's holding that the signature portion of the credit agreement was ambiguous is correct as a matter of law. Further, the trial court's findings of facts based on this ambiguity are supported by the evidence in the record. Accordingly, discerning no reversible error, we affirm the March 29, 2010, judgment of the Clark Circuit Court.

ALL CONCUR

BRIEF FOR APPELLANT:

M. Alex Rowady  
Winchester, Kentucky

BRIEF FOR APPELLEE:

Charles E. Johnson  
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