

STATE OF MICHIGAN
COURT OF APPEALS

OTTO AMATANGELO, as assignee of MICHIGAN
NATIONAL BANK, a national banking association,

UNPUBLISHED
October 5, 1999

Plaintiff-Appellee,

v

No. 207036
Macomb Circuit Court
LC No. 95-000569 CK

ROGER SMIGIEL and JACQUELINE SMIGIEL,

Defendants-Appellants,

and

EDGE TECHNOLOGIES, INC.,

Defendant.

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendants appeal by right the circuit court's grant of summary disposition to plaintiff, Otto Amatangelo, who had guaranteed the Smigiel's repayment of a promissory note to Michigan National Bank (MNB). The Smigiels and others defaulted on the note. The sum awarded represented \$40,000 that MNB offset from two of Amatangelo's bank accounts based on his capacity as guarantor on the note, and another \$12,500 that Amatangelo paid to MNB. We affirm.

This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). On a motion under MCR 2.116(C)(10), we examine "the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial." *Id.* On appeal, as below, all reasonable inferences are resolved in the nonmoving party's favor. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 617-618; 537 NW2d 185 (1995).

The Smigiels, along with Joseph P. White and Roberta Boscaglia, executed a \$100,000 promissory note as individuals and co-obligors to secure a line of credit that provided working capital to

defendant Edge Technologies, Inc. (Edge), a company of which the four were officers and/or shareholders. The note was secured by a mortgage granted to MNB by White and Boscaglia, a guaranty by Edge, a security interest in the assets of Edge, and a guaranty by Amatangelo. Upon default, MNB garnished two of Amatangelo's bank accounts and instituted the instant action, obtaining a default judgment against White and Boscaglia. After MNB took steps to execute on the default judgment, White, Boscaglia, and Amatangelo entered into a settlement agreement with MNB whereby White and Boscaglia, collectively, paid MNB \$52,500 and Amatangelo paid another \$12,500. By the terms of that agreement, these sums did not satisfy the note, the mortgage, or Amatangelo's guaranty, but rather, purchased all of MNB's rights and interests in the note and the underlying transaction.

Subsequently, the trial court permitted White and Boscaglia to be dismissed from the case, and permitted Amatangelo to be substituted for MNB, as its assignee. Amatangelo moved for summary disposition, providing the documents relevant to establishing the Smigiels' obligation to pay the note. The Smigiels argued that the motion was not adequately supported by affidavits and further discovery was needed. The trial court denied the motion without prejudice.

When Amatangelo moved for summary disposition a second time, the Smigiels argued that the settlement with MNB satisfied any claim Amatangelo might have as MNB's assignee, and that if Amatangelo sought to assert his own right of subrogation, he should specifically plead it so that the Smigiels could advance any defenses they might have that were particular to Amatangelo. The trial court again denied summary disposition without prejudice, permitting Amatangelo to amend the complaint. Amatangelo amended the complaint and filed a third motion for summary disposition after the discovery cut-off date had passed, which the court granted in the amount of \$52,500 plus interest and costs.

The Smigiels now contend that the court erred by granting summary disposition to Amatangelo after erroneously permitting Amatangelo to amend the complaint because, as MNB's assignee, Amatangelo would have no greater claim than his assignor, and MNB had been fully paid. However, the settlement agreement with MNB provided that plaintiff paid for all of MNB's rights and interests in the promissory note and the loan agreement, including the right to enforce them against the Smigiels. These sums were not payments on the underlying obligation, but rather, were for purchase of all of MNB's rights and interests in the note and underlying transaction. Accordingly, plaintiff was a holder of the defaulted promissory note with full rights of enforcement against the Smigiels. MCL 440.3203;¹ MSA 19.3203; MCL 440.3301;² MSA 19.3301. Even if the \$40,000 previously offset from Amatangelo's bank accounts was determined to be payment on the debt, there would still have been owing an amount in excess of \$60,000.

Further, even if we were to accept the Smigiels argument regarding plaintiff's rights as assignee, the amendment added plaintiff's claim as guarantor. The court did not abuse its discretion in permitting the amendment. Under the UCC, as adopted in Michigan, the Smigiels would be termed "accommodated parties" and Amatangelo would be an "accommodation party" with respect to the guaranty of the note. MCL 440.3419(1); MSA 19.3419(1). "An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument." MCL 440.3419(5); MSA 19.3419(5). Accordingly, to whatever extent Amatangelo's

payments to MNB were deemed to have been payments on the note, he was entitled to be reimbursed by the Smigiels. The Smigiels have offered nothing to counter the evidence presented by Amatangelo that unequivocally established his right to payment, and having offered no other meritorious defense, the trial court did not err in granting summary disposition to Amatangelo and awarding a judgment for the amount he paid to MNB, plus interest and costs.

Affirmed.

/s/ Helene N. White

/s/ Harold Hood

/s/ Kathleen Jansen

¹ “An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.” MCL 440.3203(1); MSA 19.3203(1). “Transfer of an instrument . . . vests in the transferee any right of the transferor to enforce the instrument” MCL 440.3203(2); MSA 19.3203(2).

² “ Person entitled to enforce’ an instrument means (i) the holder of the instrument” MCL 440.3301; MSA 19.3301.