

STATE OF MICHIGAN  
COURT OF APPEALS

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SCP POOL CORPORATION,  
  
Plaintiff-Appellee,

UNPUBLISHED  
April 2, 2009

v

WATER RANGERS, INC. and WALTER  
POTOCZNY,

No. 284063  
Oakland Circuit Court  
LC No. 2006-077890-CK

Defendants-Appellants.

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Before: Wilder, P.J., and Meter and Servitto, JJ.

MEMORANDUM.

Defendants appeal as of right the circuit court's order entering judgment for plaintiff in the amount of \$47,736.18 after a bench trial. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is a supplier of pool equipment. Defendant Water Rangers installs pools; defendant Potoczny is the president of Water Rangers. The parties entered into a written agreement, signed in 2002, and referred to by the parties as the "COD Application." The agreement included a discount by plaintiff "to customers with approved credit" who purchased pool supplies from it. Past due accounts, however, were given no discount. The terms of the COD Application also provided for attorney fees and court costs to be added in cases of default and included a "Guarantee Agreement" under which Potoczny personally and unconditionally guaranteed payment for pool supplies delivered by plaintiff. The document was purportedly signed twice by Potoczny, but he acknowledges only the signature following the terms of sale; he asserts that he did not sign the Guarantee Agreement. When the account was not paid in full, plaintiff sued to collect the amount owed and related costs. Defendants concede that they owed approximately \$12,000 on the account.

After a two-day bench trial, the circuit court found that Potoczny agreed to personally guarantee the account, that the COD Application was valid, that defendants were jointly and severally liable to plaintiff, and that the total amount of the judgment, including collection costs, was \$47,736.18.

We review the trial court's findings of fact in a bench trial under the clearly erroneous standard. MCR 2.613(C); *Carrier Creek Drain Drainage Dist v Land One, LLC*, 269 Mich App

324, 329; 712 NW2d 168 (2005). Findings of fact are deemed clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* at 329-330.

The circuit court did not clearly err in finding that Potoczny signed both parts of the COD Application. The only fact on which defendants rely is Potoczny's assertion that the signature under the guarantee is not his. The signing of the COD Application occurred years earlier, however, and Potoczny could not remember the circumstances of the signing, i.e., whether it occurred at his place of business or that of plaintiff. Potoczny provides no argument that he would not have agreed to the guarantee. The testimony and circumstances of the signing do not leave us with "a definite and firm conviction that a mistake has been made." *Id.*

Nor did the circuit court err in finding the contract was valid. Its own terms plainly permit plaintiff to revoke the discount, if one was ever given, if plaintiff decides an account no longer has sufficient credit approval. Where contractual language is unambiguous, courts must interpret and enforce the contract as written. *Phillips v Homer (In re Smith Trust)*, 480 Mich 19, 24; 745 NW2d 754 (2008).

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter  
/s/ Deborah A. Servitto