IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 25, 2015 Session

MLG ENTERPRISES, LLC v. RICHARD JOHNSON

Appeal from the Chancery Court for Williamson County
No. 35543 Timothy L. Easter, Chancellor

No. M2014-01205-COA-R3-CV – Filed July 9, 2015

W. NEAL MCBRAYER, J., dissenting.

Because I conclude that the clear intent of the Lease Agreement was to bind Mr. Johnson individually, I respectfully dissent. As the majority states, "[a] cardinal rule of contractual interpretation is to ascertain and give effect to the intent of the parties." *Allmand v. Pavletic*, 292 S.W.3d 618, 630 (Tenn. 2009). The parties' intent is determined through examination of the plain language of the contract as a whole. *84 Lumber Co. v. Smith*, 356 S.W.3d 380, 383 (Tenn. 2011). In conducting this analysis, the hidden, subjective intent of the parties is of no value because the unexpressed intent of one party is not binding on another party without notice. *Cone Oil Co. v. Green*, 669 S.W.2d 662, 664 (Tenn. Ct. App. 1983). Interpretation of the parties' intent is a matter of law subject to de novo review. *84 Lumber*, 356 S.W.3d at 383.

In this case, Mr. Johnson signed the Lease Agreement twice, once as "Richard Johnson (C.E.O.)" and a second time as "Richard Johnson for Mobile Masters Mfg. L.L.C." It is undisputed that Mr. Johnson's first signature was in his representative capacity. The issue before the Court is whether Mr. Johnson's second signature was also intended to be in his representative capacity or whether it obligated him personally. Based on the fact that Mr. Johnson signed "for Mobile Masters Mfg. L.L.C.," the trial court concluded—and the majority agrees—that Mr. Johnson is entitled to a presumption that his signature was executed in a representative capacity. *See Cone Oil Co.*, 669 S.W.2d at 664-65 (presumptive effect of corporate officer signing his name followed by his title, the word, "for," and the name of the corporation); *see also Creekside Partners v. Scott*, No. M2012-00623-COA-R3-CV, 2013 WL 139573, *3-4 (Tenn. Ct. App. Jan. 10, 2013). However, such a presumption "must yield where the language of the contract compels a different conclusion." *Creative Res. Mgmt., Inc. v. Soskin*, No. 01A01-9808-

CH-00016, 1998 WL 813420, at *1 (Tenn. Ct. App. Nov. 25, 1998).

Although a party is not usually personally bound when signing a contract in a representative capacity, they may be personally obliged where "the clear intent of the contract is to bind the representative." *84 Lumber*, 356 S.W.3d at 382-83. "Whether a person signing a contract intended to do so as an individual or as the representative of another should, where possible, be determined from the contract's language." *Bill Walker & Assocs., Inc. v. Parrish*, 770 S.W.2d 764, 770 (Tenn. Ct. App. 1989)

In the context of the contract as a whole, the second signature is clearly intended to bind Mr. Johnson individually. Paragraph 37 of the Lease Agreement, which appears on the signature page, is entitled "PERSONAL LIABILITY." The paragraph states, "[i]n consideration of Landlord entering into this lease with Tenant, Richard L. Johnson hereby agrees that he shall be personally liable for all of Tenant's obligations under this Lease and executes this Lease for this purpose." The signature line for the guarantor then states, "EXECUTED BY Richard L. Johnson," as opposed to "EXECUTED BY Tenant" as appears on the signature line for the tenant, Mobile Masters. The language and context convey the intent to obligate Mr. Johnson personally for the obligations under the lease.

In my view, the majority unnecessarily downplays the "PERSONAL LIABILITY" clause of the contract. Despite the fact that the clause appears as the sole paragraph on the signature page of the lease, the majority emphasizes that the clause is not indented, in all capital letters, in a different font from the rest of the agreement, or written in the first person. Such factors, drawn from the decisions in *84 Lumber* and *Creekside Partners*, are not prerequisites for guaranties. *See Creative Res. Mgmt.*, 1998 WL 813420, at *3 (a provision "not inconspicuous and hidden but rather in the same format as all of the other provisions of the contract" was sufficient to personally obligate the defendant.) The use of such devices is merely one indicator of an intent for one party to be personally bound to the contract.

Furthermore, to presume that Mr. Johnson's second signature was in a representative capacity, where it is undisputed that his first signature was in the same capacity, would be to presume that the second signature is a nullity. As this Court has noted, "[a] guaranty obligating only the corporation would not in any way add security to the obligation of the corporation, because the corporation was already fully obligated as principal." *Cone Oil Co.*, 669 S.W.2d at 664; *see also Wise N. Shore Props., LLC v. 3 Daughters Media, Inc.*, No. E2013-01953-COA-R3-CV, 2014 WL 2854258, at *3 (Tenn. Ct. App. June 23, 2014) (concluding that it would be illogical to hold that a second signature was in a representative capacity where it had already been signed in a representative capacity once—rendering the second signature of no purpose or effect); *Amber Brazilian Exp. Res., Inc. v. Crown Labs., Inc.*, No. E2011-01616-COA-R3-CV, 2012 WL 982969, at *3 (Tenn. Ct. App. Mar. 21, 2012) ("The [d]efendants, in effect, ask us to hold that the [p]laintiff intended for [the company] to guarantee its own debt. To

accept this argument would be to render the guaranty of no effect."). Such a result is problematic because "[a]ll provisions of a contract should be construed in harmony with each other so as to give effect to each provision." *Cummings Inc. v. Dorgan*, 320 S.W.3d 316, 333 (Tenn. Ct. App. 2009); *see also Kubota Tractor Corp. v. Fugate Implement Co.*, 1989 WL 57477, at *4 (Tenn. Ct. App. June 2, 1989) (rejecting the interpretation of a signature as representative where it would result in a nullity). Where a contract bears two signatures by the same individual, the first of which is undisputedly in a representative capacity, we should be hesitant to render the second a nullity merely because the party's signature is followed by the word "for" and the company name.

The Lease Agreement conveys a clear intention to obligate Mr. Johnson as well as Mobile Masters. Any presumption arising from use of the word "for" following Mr. Johnson's name was more than overcome by the language found in the Lease Agreement and the manner in which it was executed. As such, I would reverse the decision of the trial court and remand for further proceedings.

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W. NEAL McBRAYER, JUDGE