IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

AAA KARTAK GLASS, INC., d/b/a AAA KARTAK GLASS & CLOSET, INC., a Washington corporation,	)	No. 67953-8-I
Respondent,	)	DIVISION ONE
v.	)	UNPUBLISHED OPINION
5 TH & OLYMPIC, LLC, a Washington Limited Liability Company, d/b/a SHILSHOLE BAY II, LLC; FIRST & LEE CORPORATION; SHILSHOLE BAY II, LLC; JOSEPH J. SACOTTE and JANE DOE SACOTTE; husband and wife; and HARTFORD INSURANCE COMPANY, a corporation,	)	FILED: January 28, 2013
Appellants.	)	

Grosse, J. — A guaranty is assignable and an assignment of a guaranteed debt transfers to the assignee the assignor's rights against the guarantor. However, the debt must be owed to the assignor before the guarantor can be held liable. Here, the debt is owed to someone other than the assignor. Although the guarantor is not liable for the debt, the debt is still owed by the original debtor.

On May 29, 2008, Joseph Sacotte, completed a credit application and personal guarantee for 5th & Olympic, LLC (Olympic) with AAA Kartak Storefront & Glazing (Storefront). The document provided that Joseph Sacotte "personally guarantee[d] payment on all charges incurred by the above firm and its agents."

Olympic is owned by Joel Lavin and Joseph Sacotte. In 2009, AAA Kartak Glass, Inc. d/b/a AAA Kartak Glass & Closet, Inc. (Kartak) sold and delivered building

materials and merchandise to Olympic. Joel Lavin signed the purchase orders agreeing to pay 1.5 percent per month interest on all past due balances. On March 5, 2010, Storefront assigned the credit application guarantee to Kartak. Olympic failed to pay and in May 2010, Kartak filed suit claiming $18,763.83 plus interest. In July 2010, Olympic paid $10,486.83, leaving a balance owing of $8,277.00 plus interest, costs, and attorney fees. On February 11, 2011, the trial court entered a partial summary judgment order finding Olympic, Sacotte, and Hartford Fire Insurance Company (Hartford) liable to Kartak subject to a determination of the principal amount owing. In a subsequent summary judgment motion, Kartak produced evidence substantiating Olympic's debt. On November 1, 2011, the trial court entered final judgment against Olympic, Sacotte, and Hartford for the following:

- the principal sum of $8,277.00
- interest in the sum of $2,855.57 (18 percent interest commencing 2/10/10 to 11/06/11)
- taxable costs in the sum of $360.00
- reasonable attorney fees in the amount of $4,650.00

The judgment was subject to a 12 percent interest per annum from the date of the judgment.[1] Olympic appeals.

As a threshold matter, Kartak argues, without any citation to authority, that this appeal is not timely because Olympic failed to appeal from the order granting partial summary judgment finding it liable subject to a determination of amounts owing. Absent a proper certification of finality, "an order which adjudicates fewer than all claims or the rights and liabilities of fewer than all parties is subject to revision at any

[1] Kartak was also granted judgment against Hartford in the sum of $6,000.00. Hartford does not appeal the judgment.

time before entry of final judgment as to all claims and the rights and liabilities of all parties."[2] While the order did contain the required phrase to make it a final order, it is well settled that the "no just reason for delay" language alone, without an affirmative showing in the record that there is danger of hardship or injustice that would be alleviated by an immediate appeal, is insufficient to transform a normally interlocutory partial summary judgment order into a final and appealable judgment.[3] Thus, the language in the partial summary judgment stating that there was no just reason for delay was pro forma and ineffective in creating a final appealable order.

Olympic argues that it owes no money to Storefront and that therefore the guarantee is inoperable. We agree. "'An assignee steps into the shoes of the assignor, and has all of the rights of the assignor.'"[4] Here, there are no shoes to step into. Storefront, as the assignor, has no claim against Olympic and thus Kartak, as the assignee, has no claim against them.

Olympic, however, is still liable to Kartak for the goods and services provided by Kartak. Kartak proved the damages owed and the court properly awarded the damages, 18 percent interest and costs. The trial court's judgment against Sacotte under the credit application is reversed. Because the trial court awarded attorney fees pursuant to the credit application, those fees are reversed as to both parties.

Olympic seeks attorney fees and costs in both the trial court and on appeal.

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[2] Washburn v. Beatt Equip. Co., 120 Wn.2d 246, 300, 840 P.2d 860 (1992) (citing Fox v. Sunmaster Prods. Inc., 115 Wn.2d 498, 504, 798 P.2d 808 (1990)).
[3] Washburn, 120 Wn.2d at 300.
[4] Mutual of Enumclaw Ins. Co. v. USF Ins. Co., 164 Wn.2d 411, 424, 191 P.3d 866 (2008) (quoting Estate of Jordan v. Hartford Accident & Indem. Co., 120 Wn.2d 490, 495, 844 P.2d 403 (1993)).

Reasonable attorney fees are recoverable by the prevailing party if allowed by statute, rule, or contract.[5] The credit application provides for attorney fees in a collection action. Sacotte is entitled to attorney fees because he prevails as to his individual liability. However, because Olympic is still liable for the debt to Kartak, it does not prevail and is not entitled to attorney fees.

Affirmed in part and reversed in part.

Grosse, J.

WE CONCUR:

Dwyer, J.

Spearman, A.C.J.

[5] Atlas Supply, Inc. v. Realm, Inc., 170 Wn. App. 234, 287 P.3d 606 (2012).