Cite as 2011 Ark. App. 728

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-461

	Opinion Delivered November 30, 2011
CHARLES E. WELSH APPELLANT V. MID-SOUTH BULK SERVICES, INC. APPELLEE	APPEAL FROM THE IZARD COUNTY CIRCUIT COURT [NO. CIV-2010-58-4] HONORABLE TIM WEAVER, JUDGE AFFIRMED

ROBIN F. WYNNE, Judge

Appellant Charles Welsh appeals from the order of the circuit court denying his motion for summary judgment and granting judgment in favor of appellee Mid-South Bulk Services, Inc. (Mid-South). We affirm.

Mid-South is a corporation that provides a variety of services, including the processing of common products and the leasing of rail cars for transporting bulk materials. In 2004, Mid-South and Jomico, LLC (Jomico) were engaged in a business relationship in which Mid-South contracted with Jomico for carbon-processing services. As was Mid-South's custom when dealing with corporations like Jomico, Mid-South obtained a personal guaranty from Charles Welsh—who was, at that time, the sole owner of Jomico—on July 12, 2004. The document guaranteed the payment of "each and every claim which [Mid-South] may have against [Jomico]" and was to "remain in force until revoked" by Mr. Welsh. At the time appellant

executed the guaranty, Mid-South and Jomico had no other business agreement besides the carbon-processing contract.

In 2006, Jomico began leasing rail cars from Mid-South for the transport of coal and petroleum coke. However, between March 2009 and December 2009, Jomico failed to pay rent and other charges due under the contract, for a total debt of $75,554.08. Mid-South filed this lawsuit against Mr. Welsh in April 2010, seeking recovery of Jomico's debt pursuant to Mr. Welsh's personal guaranty. Mr. Welsh moved for summary judgment, arguing that the 2004 guaranty was inapplicable to the 2006 contract for rail-car leasing. Mr. Welsh also argued that the 2004 guaranty lacked adequate consideration and that it was an unenforceable adhesion contract.

Mr. Welsh argued his motion for summary judgment before the circuit court at a hearing held on December 20, 2010. After hearing arguments from both sides, the court denied summary judgment. The court then heard testimony and took evidence on the merits of the complaint. Mr. Welsh stipulated to the amount of damages. The court found in favor of Mid-South and awarded a judgment of $75,554 and attorneys' fees of $2100.[1] Mr. Welsh then filed this appeal.

Although an order denying a motion for summary judgment is an interlocutory order and is not generally appealable, review of interlocutory orders is allowed in conjunction with the appeal of a final judgment. *Zulpo v. Farm Bureau Mut. Ins. Co. of Ark.*, 98 Ark. App. 320,

[1]We note what appears to be a procedural irregularity, in that counsel for Mid-South, the plaintiff, moved for "directed verdict" at the close of evidence. However, the motion was essentially a mere request to find in Mid-South's favor, which the court did.

323, 255 S.W.3d 494, 497; *see also Smith v. Farm Bureau Mut. Ins. Co. of Ark.*, 88 Ark. App. 22, 31, 194 S.W.3d 212, 219 (2004). The standard of review for an order denying a motion for summary judgment is whether the trial court abused its discretion in denying the motion. *Karnes v. Trumbo*, 28 Ark. App. 34, 40–41, 770 S.W.2d 199, 202 (1989); *Ozarks Unlimited Res. Co-op., Inc. v. Daniels*, 333 Ark. 214, 221, 969 S.W.2d 169, 172 (1998); *Shelter Mut. Ins. Co. v. Williams*, 69 Ark. App. 35, 38–39, 9 S.W.3d 545, 548 (2000). The standard of review for a judgment award in a bench trial is whether the circuit court's findings were clearly erroneous or clearly against the preponderance of the evidence, giving due deference to the superior position of the circuit court to determine the credibility of witnesses and the weight to be given to their testimony. *DC Xpress, L.L.C. v. Briggs*, 2009 Ark. App. 651, at 4, 343 S.W.3d 603, 606.

For his appeal, Mr. Welsh argues that the personal guaranty he executed in 2004 did not apply to the rail-car lease because that contract did not exist at the time he signed the guaranty, and he did not intend for the guaranty to extend beyond the carbon-processing contract. He contends that the 2004 guaranty was materially altered by the 2006 lease and that the plain meaning of the guaranty's language limited it to the carbon-processing agreement with Mid-South. A personal guaranty must be strictly construed, and the guarantor's liability is not to be extended by implication beyond the expressed terms of the agreement or its plain intent. *Morrilton Sec. Bank v. Kelemen*, 70 Ark. App. 246, 247–48, 16 S.W.3d 567, 568 (2000). Any material alteration of the obligation assumed, if made without consent, discharges the guarantor. *Id.* at 248, 16 S.W.3d at 568.

Mr. Welsh's arguments present questions of fact, and we hold that the denial of his summary-judgment motion was not an abuse of discretion. Furthermore, his arguments are unpersuasive because the plain language of the guaranty does not limit his liability to any specific transaction or agreement. Rather, the guaranty states that it applies to "each and every claim" that Mid-South may have against Jomico. Mid-South and Jomico entered into a business relationship sometime prior to the execution of the guaranty, and initially, that relationship was based solely on the carbon-processing contract. However, the corporations later expanded their business dealings to include the rail-car lease. There is nothing in the plain language of the guaranty to indicate that it was not intended to extend to all business dealings between Mid-South and Jomico.

Furthermore, Mr. Welsh has pointed to no material alteration of the guaranty itself. Because the guaranty was not limited to any particular transaction, the later contract for the leasing of rail cars did not change Mr. Welsh's obligation to pay Jomico's debts to Mid-South. Although Mr. Welsh argues that, at the time he executed the guaranty, he did not anticipate the leasing of rail cars from Mid-South, he could have avoided liability for the lease-related debts by revoking the guaranty. He did not do so.

Mr. Welsh also argues that the personal guaranty lacked consideration with respect to the 2006 rail-car lease, stating that "there is no evidence in the record . . . that the promise of continued business was the consideration for the guaranty." However, the record contains the affidavit of Mid-South's president, Jon Knight, which states that obtaining such guaranties is Mid-South's custom and that Mid-South would not have continued doing business with

Jomico without a personal guaranty by one of its officers. A contract of guaranty may be supported by sufficient consideration as long as there is a benefit to a principal debtor or guarantor, or a detriment to the guarantee. *Marsh v. Nat'l Bank of Commerce of El Dorado*, 37 Ark. App. 41, 48, 822 S.W.2d 404, 408 (1992). As a result of the guaranty, Mr. Welsh, as an officer of Jomico, received the benefit of ongoing business with Mid-South. We hold that this was sufficient consideration to support the guaranty.

Finally, Mr. Welsh argues that the personal guaranty was void and unenforceable because it was an unconscionable adhesion contract. *See* Ark. Code Ann. § 4-2-302(1) (Repl. 2001). Although Mr. Welsh made this argument below in his answer and motion for summary judgment, he offered no proof to the circuit court that the guaranty was unconscionable. Mr. Welsh's mere conclusory allegations that the guaranty was unconscionable were insufficient for the court to find it void and unenforceable.

For these reasons, we hold that the circuit court did not abuse its discretion in denying Mr. Welsh's motion for summary judgment, nor did it clearly err in granting judgment in favor of Mid-South.

Affirmed.

ABRAMSON and BROWN, JJ., agree.