IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

KEESHA RYNKOWSKI and SABRINA ALBERTS,	)	
Defendants-Below, Appellants,	)	
v.	)	C.A. No. 2001-10-628
LLOYD SEAL,	)	
Plaintiff-Below, Appellee.	)	

Submitted: December 9, 2002
Decided: January 9, 2003

Jane W. Evans, Esquire
Legal Services Corporation
Of Delaware
100 W. 10th Street, Suite 203
Wilmington, DE 19801
Attorney for Defendants-Below,
Appellants

Michael P. Morton, Esquire
Michael P. Morton, P.A.
1203 North Orange Street
Wilmington, DE 19801
Attorney for Plaintiff-Below
Appellee

DECISION AFTER TRIAL

In this breach of contract action, Lloyd Seal (hereinafter "Seal"), seeks to recover past due rent in the amount of $4,320.00 pursuant to a lease agreement. This dispute arises from a lease document where Seal leased a rental unit to Keesha Rynkowski (hereinafter "Rynkowski") as tenant and Sabrina Alberts (hereinafter "Alberts") signed as a "co-signer," but did not reside in the

unit as a tenant. Seal alleges that Rynkowski breached the lease agreement by failing to pay the required rent, and Alberts is liable for the total amount due as co-signor. Alberts denies liability on the ground that the lease agreement is silent regarding her responsibility to pay rent and she only signed as a credit reference.

FACTS

The facts at trial indicate Rynkowski leased an apartment from Seal for a term of one year, commencing on November 1, 1997 and ending on October 31, 1998, at an annual rent of $6,540.00. The lease provides, that the end of the one-year term, in the absence of any timely termination notice from either party, the lease shall continue on a month-to-month basis. There was no notice and the lease term continued.

Alberts testified Keesha Rynkowski asked her to sign the lease as a credit reference since she had a good work history. Alberts stated she signed the lease as a "cosigner" under the impression that the lease agreement was between Rynkowski and Seal only, and that she would not incur any liability. The lease is silent with regard to the co-signer's responsibility and/or duties. There was no testimony that either Seal or Rynkowski affirmatively or expressly informed Alberts of her potential liability as co-signer on the lease.

Seal testified that Alberts was aware of her liability regarding the lease because at the time Alberts signed, she submitted her pay stubs,[1] and had a close relationship with Rynknowski.

After the lease was signed, there were two subsequent modifications regarding pets and snow removal. The modifications were initialed only by Seal and Rynkowski.[2] Additionally, Seal provided Rynkowski with a copy of the Delaware Landlord Tenant Code, but did not provide a copy to Alberts.

Seal testified that during the rental period, Rynkowski did not always pay the rent in timely manner and on occasion would make partial payments. However, the rent was mostly current until 1999. Between January 1, 2000 and March 1, 2001, Seal allowed Rynkowski to remit several late and/or partial rent payments without penalty. But after March 2000, it became clear to Seal that Rynkowski could not further afford the rent, and thereafter she fell into the arrears, and eventually accumulated a delinquent balance of $4,330.00.[3] On March 5, 2001, Seal sent Rynkowski a letter demanding payment of the outstanding rental amount within five days or he would begin eviction proceedings. Rynkowski did not respond to the letter, and did not pay the outstanding delinquent rent.

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1 Plaintiff's Exhibit 3.
2 See page 3 of the agreement, *supra*, note 5.
3 Plaintiff's Exhibit 5.

Thereafter, Seal sent Alberts a demand letter on May 5, 2001[4] notifying her, for the first time, of the unpaid delinquent rent. He also indicated his inability to communicate with Rynkowski, and his reluctance to bring court action. He further inquired about the whereabouts of Rynkowski and requested Albert's assistance in contacting Rynkowski. After receiving the demand letter, Alberts testified that she provided Seal with information regarding the whereabouts of Rynkowski. However, with this new information, Seals testified he was still able to contact Rynkowski, and therefore, unable to obtain rent payment. Seal testified that following his demand letter to Alberts, he telephoned her to request payment of Rynkowski's delinquent rent because she was the co-signer on the lease. However, Alberts denied responsibility and refused to pay. On June 15, 2001, Seal re-rented the apartment to new tenant(s) and now seeks payment for the delinquent rent.

ANALYSIS

Seal relies upon the lease agreement executed on or about November 1, 1997 where Alberts' signature appears as a co-signer. It is Seal's position that by signing as such, Alberts is liable for the delinquent rent. Seal argues that this relationship is to be analyzed in the context of any other commercial contracts, such that the term "cosigner" signifies a surety or guarantor relationship between the person who signs as the co-signer and the principal person who is to be held liable. Seal argues that the designation of "cosigner" on the lease, even without

[4] Plaintiff's Exhibit 2.

anything more, is sufficient to give Alberts notice of her potential liability under the lease. Therefore, he reasons that Alberts must have been aware that she incurred some liability by signing the lease.

Alberts argues that the mere designation of "cosigner" is insufficient notice of potential liability on the lease since the lease is otherwise silent regarding her responsibilities and/or duties. Alberts relies upon *Woodcock v. Udell*, Del. Super. 97 A.2d 878 (1953). In relying upon this case, she argues that any extrinsic evidence outside of the lease agreement is inadmissible because the agreement comes within the statute of frauds. Therefore, she reasons the mere designation of "cosigner", on an otherwise silent contract regarding potential liability of co-signer, is not sufficient to create and impose liability on her as co-signer.

The issue of a co-signer's liability on a lease agreement, which is not outlined in the document, has not been addressed in this jurisdiction. The Delaware Residential Landlord-Tenant Code, 25 Del. C § 5101, et seq., is silent with respect to responsibilities and/or duties of a lease co-signer. Nor is there any Delaware case law on point. Thus, it seems that if there is to be any liability, it turns on the analysis of the cosigner relationship on the lease agreement. Seals argues that such analysis should be done in the context such that like that of a "co-obligor" or "co-promisor" on a contract, which is analogous to that of a suretyship in the commercial lending field. *Little Switzerland, Inc. v. Destination Retail Holdings Corporation*, 1999 WL 223496 (D. Del. 1999) (mem.) (using the terms "co-signors" and "co-obligors" interchangeably). *W.T. Rawleigh Co. v.*

Warrington, Del. Super. 1999 A.666 (1938) (interpreting a "surety" as a "co-obligor" or a "co-promisor"). William L. Norton, III & Roger G. Jones, Norton Creditors' Rights Handbook § 5:20. (defining "cosigner" as a natural person who renders himself liable for the obligation of another person without compensation, if that person's signature is requested as a condition to granting credit or as a condition for forbearance on collection of an obligation that is in default).

The Delaware Superior Court defines "suretyship" as "an undertaking to answer for the debt, default or miscarriage of another, by which the surety becomes bound as the principal or original debtor is bound." *W.T. Rawleigh Co.*, 1999 A.2d at 667-668. Suretyship generally refers to "a co-obligor or co-promisor in a joint or several obligation, along with the principal debtor, and is, therefore, bound with [the principal debtor] by the same instrument, executed at the same time, and on the same consideration." *Id*. at 668. Under the Restatement Third of Suretyship & Guaranty § 15(d), "if the parties to a contract identify one party as a "cosigner", the party so identified is a secondary obligor who is subject to a secondary obligation pursuant to which the secondary obligor is jointly and severally liable with the principal obligor to perform the obligation set forth in that contract."

By the foregoing analysis, it is conceivable that Plaintiff intended to create a surety relationship between him and Alberts by requesting her co-signing the lease as a condition precedent to renting the apartment to Rynkowski, and that had Seal communicated his intention clearly to Alberts, he could have recovered

against her on the contract. Beside a mere designation of "consigner" appearing on the signature line, of the last page of the lease agreement, there is no language in Plaintiff's three-page, seventeen-paragraph agreement pertaining responsibilities and/or obligations of a co-signer with respect to the debt co-signed.[5] Additionally, there is no evidence that Alberts received any consideration for signing, and the record indicates they did not sign at the same time. Because this lack of notice as cosigner liabilities, Alberts could be under the reasonable impression, regardless of whether it was naïve or incorrect, that she was only signing on as a credit reference without any legal consequences or financial obligations in the event of a default by Rynkowski. To conclude otherwise would require speculation regarding the provisions of the agreement.

Therefore, I am of the opinion that to hold Alberts liable on a contract that failed to provide her notice of her obligations, responsibilities, and potential liabilities as a cosigner would be in violation of the fundamental principle of fairness and notice.

For the foregoing reasons, judgment is entered in favor of Alberts. Each party will bear their own cost.

SO ORDERED this 9th day of January 2003

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Alex J. Smalls
Chief Judge

Rynkowski-OP1703

[5] *Supra*, note 6.