

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

CITIZENS BANK)
)
)
 Plaintiff)
)
 v.)
)
 LACHHMAN DASS GUPTA)
 MANJULA GUPTA)
)
 Defendants.)

C.A. No.02J-05-068
Del. Supr. No. 459, 2003

Submitted: July 23, 2004
Decided: August 26, 2004

Joseph S. Naylor, Esq., Pepper Hamilton, LLP, Wilmington, Delaware for
Plaintiff.

Lachhman Dass Gupta, *pro se*

RIDGELY, Justice*

* Sitting by special designation pursuant to Delaware Constitution Article IV, Section 13(2).

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This Report is submitted to the Delaware Supreme Court pursuant to Rule 19(c).

I. Background

On May 10, 2002 Citizens Bank as successor to Mellon Bank (DE) National Association commenced this Rule 58.1 proceeding against Lachhman Dass Gupta and Manjula Gupta as personal guarantors of a loan to Gupta Associates, Inc. The Guptas requested an evidentiary hearing through counsel and it was held on September 5 and 8, 2003. Two issues were raised at the time of the hearing. The first was whether the Guptas effectively waived their rights to notice and a hearing prior to entry of judgment. The second was whether the personal guarantees of the Guptas had been effectively withdrawn prior to the actual lending of any money. This Court concluded that the evidence established a knowing and voluntary waiver of the Guptas' right to notice and trial prior to entry of judgment, that the Guptas provided valid personal guarantees for the line of credit to the corporation, and that the personal guarantees were material to the making of the loan. This Court also found that while the Guptas sent notice to Mellon Bank of their withdrawal of these personal guarantees, the letter was not actually received. Mr. Gupta paid the loan closing fee two days after the letter of revocation without discussion of any revocation of the personal guarantees with the loan officer. Judgment was entered in favor of Citizens Bank.

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The Guptas appealed the entry of judgment against them and the Supreme Court affirmed. The Guptas then sought reargument, contending that a “newly discovered” document indicated the “Corporation is liable for debt.” On July 7, 2004 the matter was remanded to this Court “to allow it to consider in the first instance the authenticity of the document preferred by the Guptas and determine what effect, if any, the document might have on the Superior Court’s entry of judgment by confession.”¹ Pursuant to the remand, a hearing was held on August 23, 2004.

II. THE AUTHENTICITY OF THE DOCUMENT

The “newly discovered” document is the original Guarantee and Suretyship Agreement With Power to Confess Judgment dated February 4, 2000. This document was produced by Citizens Bank in Pittsburgh, Pennsylvania upon the request of Mr. Gupta. It is identical to the photocopy of the Guarantee and Suretyship Agreement introduced at the September 2003 hearing (Plaintiff’s Exhibit E), with the exception that on the original the Gupta Associates, Inc. corporate seal is visible next to the individual signatures of Lachhman Dass Gupta and Manjula Gupta. The parties have stipulated to the authenticity of the document which is now part of the record as Plaintiff’s Exhibit P. The Court accepts this stipulation and finds Plaintiff’s Exhibit P to be authentic.

¹ *Gupta v. Citizens Bank*, Del. Supr., No. 459, 2003, ORDER, Holland, J. (July 7, 2004).

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**III. THE EFFECT OF PLAINTIFF' S
EXHIBIT P ON THE ENTRY OF JUDGMENT IN THIS CASE**

Plaintiff' s Exhibit P does not alter the findings of material fact which have been made in this case. Both Plaintiff' s Exhibits E and P clearly indicated that the Guaranty and Suretyship Agreement is a continuing personal guarantee of the full and timely payment of the loan to Gupta Associates, Inc. The Guptas signed the document as individual guarantors and in fact interpreted the document that way as shown by their effort to revoke it through correspondence to Mellon Bank on February 7, 2000. In that letter Mr. Gupta wrote that “ [t]he documents do not indicated [sic] an unsecured loan as it has our personal guarantee.” In that letter Mr. Gupta also wrote, “ [w]e are withdrawing our guarantee...”

Nor does the placement of the corporate seal on the Guaranty and Suretyship Agreement alter the legal significance of the Guptas' personal guarantees. It is clear from the entire document that they gave their personal guarantees on the loan to Gupta Associates, Inc. The mere presence of a corporate seal on the document does not change what the parties intended.

IV. CONCLUSION

This Court concludes that although the “ newly discovered” document is authentic, it has no effect on the entry of judgment in this case.

The Prothonotary shall transmit forthwith this report and the record to the

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Clerk of the Supreme Court of Delaware.

IT IS SO ORDERED.

/s/ Henry duPont Ridgely

Justice

oc: Prothonotary
xc: Order Distribution