

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

KELLY R. COLEMAN,)	
)	
Appellant,)	
)	
v.)	Case No. 2D09-1790
)	
688 SKATE PARK, INC., and JAY)	
TURNER,)	
)	
Appellees.)	
_____)	

Opinion filed July 21, 2010.

Appeal from the Circuit Court for
Pinellas County; Linda R. Allan, Judge.

Theo J. Karaphillis of Richards, Gilkey,
Fite, Slaughter, Patesi & Ward, P.A.,
Clearwater, for Appellant.

Karen E. Maller of Powell, Carney,
Maller, Ramsey & Grove, P.A., St.
Petersburg, for Appellees.

CRENSHAW, Judge.

Kelly R. Coleman appeals the trial court's final order dismissing his
complaint against Jay Turner. Coleman alleged in his complaint that Turner was
personally liable as the signatory of a commercial lease agreement between Coleman

and 688 Skate Park, Inc. Because the trial court erred in ignoring the plain meaning of the lease and dismissing Coleman's guaranty claim, we reverse.

The parties entered into a commercial lease agreement in January 2006. When the tenant, 688 Skate Park, Inc., allegedly failed to meet its rent obligations under the lease, Coleman brought an action against Turner claiming Turner was personally liable as signatory of the lease under a guaranty clause of paragraph 36(S) in the agreement. This portion of the lease agreement provides the following:

36. Miscellaneous Provisions

.....

S) If the Tenant is a coporation [sic], limited liability company or limited partnership, the undersigned officer, manager or representative of the Tenant hereby certifies and warrants that said Tenant is in good standing and authorized to do business in the state of Florida and the individual executing this Lease on behalf of said corporation, limited liability company or limited partnership, guarantees the obligations of Tenant hereunder.

(Emphasis added.) In the section of the lease agreement labeled "LESSEE/TENANT: 688 SKATE PARK, INC.," Turner signed his name "as its President," which is type-written below the signature line.

Turner filed a motion to dismiss with prejudice Coleman's complaint seeking relief against him individually. The trial court granted Turner's motion concluding that Turner was "not sufficiently set out as a party to the [lease] agreement in question so as to confer individual liability." A final order dismissing Coleman's complaint against Turner was entered, and this appeal followed.

"When ruling on a motion to dismiss for failure to state a cause of action, the trial court must accept the material allegations as true and is bound to a

consideration of the allegations found within the four corners of the complaint." Murphy v. Bay Colony Prop. Owners Ass'n, 12 So. 3d 924, 926 (Fla. 2d DCA 2009). We therefore review de novo the question of whether Coleman's complaint states a cause of action against Turner. See id. (stating "the question of whether a complaint states a cause of action is one of law and the standard of review is de novo"). Paragraph 36(S) of the parties' lease is incorporated into Coleman's complaint; the plain language of this paragraph explicitly provides that "the individual executing this Lease on behalf of said corporation . . . guarantees the obligations of Tenant hereunder." (Emphasis added.) The trial court, in its reliance on Onderko v. Advanced Auto Insurance, Inc., 477 So. 2d 1026 (Fla. 2d DCA 1985), ignored the plain meaning of the contract language when it concluded that Turner was "not sufficiently set out as a party to the agreement in question so as to confer individual liability." In Onderko, the trial court entered summary judgment in favor of the corporate officer, finding the officer could not be held personally liable. This court reversed based on the following language in paragraph 19 of the lease agreement:

19. If LESSEE is a corporation or a partnership, the person signing this Lease on behalf of such corporation or partnership hereby warrants that he has full authority from such corporation or partnership to sign this Lease and obligate the corporation or partnership hereunder and said person and the corporation or partnership shall be jointly and severally liable for all rent and any and all other amounts that may be due and owing to LESSOR under the terms of this Lease, including attorney's fees and costs.

Id. at 1027 (emphasis added). Here, the trial court distinguished the Onderko contract from the contract between Coleman and 688 Skate Park, Inc., because (1) the Onderko

contract used the "joint and several liability" language and (2) the Onderko contract contained an admonition clause "further clarifying that the person signing was indicating by his signature that he had read the entire agreement." However, Onderko does not require that a guaranty clause contain "joint and several liability" language or an admonition clause before personal liability attaches. In the context of a motion to dismiss, the plain language of each contract must be scrutinized along with the complaint to determine if sufficient ultimate facts are pleaded to state a claim for relief. The plain language of this contract satisfies this requirement and states a claim for relief against Turner in his individual capacity.

We therefore reverse and remand for further proceedings including the filing of any defenses.

CASANUEVA, C.J., and MORRIS, J., Concur.