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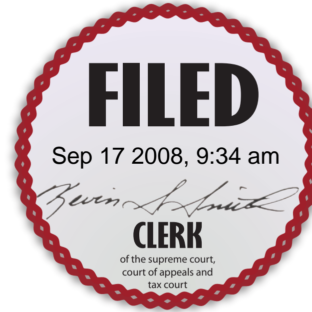

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IN THE
COURT OF APPEALS OF INDIANA

ERNST VON HAHMANN, JR. and ROBERT HELD,

Appellants-Plaintiffs,

vs.

ESTATE OF STUART A. HANSEN, Deceased, and DAVID P. JONES,

Appellees-Defendants.

No. 49A02-0801-CV-8

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles J. Deiter, Judge
Cause No. 49D08-0603-PL-9423

September 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Ernst Von Hahmann, Jr. and Robert Held appeal from the trial court's entry of summary judgment in favor of the Estate of Stuart A. Hansen ("the Estate") and David P. Jones, Sr. Von Hahmann and Held sued Hansen and Jones to recover on various promissory notes, which Hansen and Jones claimed were only the corporate obligation of Rotation Products Corporation ("RPC"). Von Hahmann and Held present four issues for our review, which we consolidate and restate as whether the trial court erred when it found that there are no genuine issues of material fact and that the Estate and Jones are entitled to summary judgment that they are not liable on the notes.

We reverse and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

RPC manufactured and remanufactured bearings before it was sold in 2005 bankruptcy proceedings. Hansen and Jones were majority shareholders of RPC, and Von Hahmann and Held were minority shareholders of RPC. On different occasions between 2003 and 2005, all four men made loans to RPC in exchange for promissory notes drafted by Hansen and Jones, who also signed the notes as "CEO" and "President," respectively.

The first note issued to Von Hahmann on January 31, 2003, was for $70,000. The second note issued to Von Hahmann, in 2004, was for $80,113.87, which included the principal amount of the first promissory note plus the accrued interest. Also in 2004, two promissory notes were issued to Held totaling $150,000. And two promissory notes were issued to Hansen and Jones in exchange for their checks made payable to RPC.

Each of the promissory notes states the interest rate and the due date. The promissory notes also include the following language: the "undersigned (jointly and severally) promise(s) to pay . . . ." Appellants' App. at 143. Hansen signed the notes with the notation of "C.E.O," and Jones signed with the notation of "PRESIDENT." Id. The notes also indicate, above the signature line, that they were "[s]igned and delivered at ROTATION PRODUCTS CORPORATION 2849 N. CATHERWOOD AVE." Id. The promissory notes do not otherwise contain any reference to RPC.

After RPC filed for bankruptcy, Von Hahmann and Held filed proofs of claim in the bankruptcy court based on the promissory notes. They received $45,210.65 and $84,649.48, respectively, as a result of those claims. Von Hahmann and Held then initiated the instant action by filing a complaint for damages alleging that the Estate and Jones are personally liable on the notes. The Estate and Jones filed a Joint Motion for Summary Judgment, which the trial court granted. The trial court found that given their claims against RPC in bankruptcy, Von Hahmann and Held were judicially estopped from asserting "that [RPC] was not the maker of the notes" and that Hansen and Jones had "signed the notes only in their representative capacit[ies] as officers of [RPC.]" Appellants' App. at 11. After the trial court denied Von Hahmann and Held's Motion to Correct Error, this appeal ensued.

DISCUSSION AND DECISION

When reviewing summary judgment, this court views the same matters and issues that were before the trial court and follows the same process. Estate of Taylor ex rel. Taylor v. Muncie Med. Investors, L.P., 727 N.E.2d 466, 469 (Ind. Ct. App. 2000), trans.

denied. We construe all facts and reasonable inferences to be drawn from those facts in favor of the non-moving party. Jesse v. Am. Cmty. Mut. Ins. Co., 725 N.E.2d 420, 423 (Ind. Ct. App. 2000), trans. denied. Summary judgment is appropriate when the designated evidence demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C).

Von Hahmann and Held contend that the trial court erred when it entered summary judgment in favor of the Estate and Jones. In particular, Von Hahmann and Held maintain that the promissory notes are ambiguous, which creates a question of fact precluding summary judgment. We must agree.

Initially, we address the Estate and Jones' contention that, as a matter of law, the respective notations below their signatures on the notes, "CEO" and "President," prove that they signed only as representatives of RPC. Indiana Code Section 26-1-3.1-402[1] provides in relevant part that if a representative signs the name of the representative to an instrument, and the represented person is not identified in the instrument, then "the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument." Here, the only reference to RPC in each of the notes is found in the address indicating where the note was signed and delivered. That reference is insufficient as a matter of law to identify

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[1] Under the common law,

> where a note is signed by an individual maker, with such words as 'Trustee,' [or] 'President,' . . . immediately following the name, such words are, . . . [absent] an apparent intention in the body of the instrument to bind the corporation alone, considered as merely descriptive of the person of the maker; and the note is held to be the obligation of the person so signing it.

Prescott v. Hixon, 22 Ind. App. 139, 53 N.E. 391, 393 (1899). The common law rule has been superseded by the negotiable instruments provisions of the UCC.

RPC as the represented person.[2] Accordingly, under the UCC, the Estate and Jones must prove that the parties intended that only RPC would be liable on the notes.[3] Considering the designated evidence, which we discuss below, that issue cannot be resolved on summary judgment.

A written instrument is ambiguous when "reasonably intelligent persons would honestly differ as to the meaning of [the] terms." McCord v. McCord, 852 N.E.2d 35, 43 (Ind. Ct. App. 2006) (citing Schmidt v. Schmidt, 812 N.E.2d 1074, 1080 (Ind. Ct. App. 2004)). Parol evidence is admissible to explain the ambiguous terms. Id. Here, each of the promissory notes at issue includes the following language: the "undersigned (jointly and severally) promise(s) to pay . . . ." Appellants' App. at 143. That language indicates that if more than one person or entity is an "undersigned," they are jointly and severally liable. If, as the Estate and Jones contend, RPC is solely liable under the notes, then the "jointly and severally" language is inappropriate. It appears that the notes were created from a form that contemplates either one or more than one signatory, which creates an ambiguity that can only be resolved by parol evidence.

The evidence designated by the parties on summary judgment includes: the Written Consent of the RPC Board of Directors stating that RPC desired to obtain the loan from Von Hahmann and that the "Corporation shall pay and satisfy the conditions of the debt instrument as agreed to by Mr. Von Hahmann Jr. and the officers of the

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[2] In addition, Section 3-403(3) of the UCC, which Indiana has not adopted, provides: "Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity." Here, Hansen and Jones included their respective offices in their signatures, but did not identify RPC in the signature lines.

[3] The dissent does not address the effect of this UCC provision here.

Corporation," Appellants' App. at 145; identical promissory notes issued to Von Hahmann, Held, Hansen, and Jones in exchange for checks made out to RPC; Von Hahmann and Held's proofs of claim in RPC's bankruptcy proceeding; a document on RPC letterhead that tracked the interest due on the $70,000 loan; and the bankruptcy court's awards in favor of Von Hahmann and Held in the amounts of $45,210.65 and $84,649.48, respectively.

In addition, during depositions taken in the instant case, Von Hahmann and Held each testified that their loans were made to RPC. Von Hahmann testified that he "received two [promissory] notes from the corporation . . . ." Appellants' App. at 103-104. And Held testified that he loaned $150,000 to RPC. But, in the same depositions, Von Hahmann and Held also testified that Hansen and Jones "personally guaranteed" repayment of the loans. Specifically, Von Hahmann testified that "[Hansen] had already told me that [he and Jones] were personally guaranteeing [the loans]. And remember, we had been in business for [fifteen] years, and I had no reason to doubt what he told me at that time." Appellants' App. at 294. And Held testified that "[Jones] acknowledged the fact that [Hansen and Jones] would personally guarantee [the loans]." Appellants' App. at 314.

It is undisputed that the notes were a corporate obligation of RPC. The triable issue is whether the notes were also the individual obligations of Hansen and Jones. See, e.g., Trenton Trust Co. v. Klausman, 296 A.2d 275 (Pa. Sup. Ct. 1972) (holding, in case involving similar signature line issue, that ambiguity warranted admission of evidence to determine parties' intent). The weight of parol evidence is not a proper consideration on

summary judgment. Instead, we must construe all facts and reasonable inferences in favor of the non-moving party. Jesse, 725 N.E.2d at 423. Given the ambiguity in the form of the notes, Von Hahmann and Held's deposition testimony to the effect that Hansen and Jones "personally guaranteed" repayment of the loans, and the Estate and Jones' burden of proof under Indiana Code Section 26-1-3.1-402(b)(2)(B) to show the parties' intent, we hold that summary judgment is inappropriate.[4] Hansen and Jones are not entitled to a judgment as a matter of law.[5]

Reversed and remanded for further proceedings.

DARDEN, J., concurs.

BROWN, J., dissents with separate opinion.

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[4] It is not clear from this testimony whether Von Hahmann and Held meant that Hansen and Jones were principals with RPC or guarantors of RPC's debt, such that RPC was the principal and Hansen and Jones were the sureties. As we have stated:

> Where a party places his signature on a note solely for the benefit of another party, and without receiving any direct benefit himself, he is an accommodation party. . . . An accommodation party is considered a surety. Yin v. Soc'y Nat'l Bank Ind., 665 N.E.2d 58, 64 (Ind. Ct. App. 1996), trans. denied. Generally, a "surety," when that term refers to a person, is "a person who is liable for the payment of a debt or performance of a duty of another person." Bailey v. Holliday, 806 N.E.2d 6, 10 n.1 (Ind. Ct. App. 2004) (emphasis removed). As such, although "[a]n accommodation party may sign the instrument as a maker, drawer, acceptor, or endorser and . . . is obliged to pay the instrument in the capacity in which the accommodation party signs," I.C. § 26-1-3.1-419(b), that liability is only relevant in the event of a default by the accommodated party, see I.C. § 26-1-3.1-419(e). In such event, the accommodation party's suretyship status allows him to seek reimbursement from the accommodated party. Id. As a party with recourse against another party, the accommodation party's suretyship status is equivalent to that of a secondary obligor. See U.C.C. § 3-103(a)(17) (2003).

Irish v. Woods, 864 N.E.2d 1117, 1120 (Ind. Ct. App. 2007) (footnote omitted). But for purposes of this appeal, where Von Hahmann and Held need only show that a question of material fact exists, we need not determine this issue.

[5] The Estate and Jones also allege that Von Hahmann and Held are judicially estopped from alleging that the Estate and Jones are personally liable under the notes by the claims submitted to the bankruptcy court. But our review of the bankruptcy court proceedings does not indicate that Von Hahmann and Held excluded the possibility of Hansen and Jones' joint and several liability with RPC under the notes. As such, we reject that contention.

IN THE
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ERNST VON HAHMANN, JR., and ROBERT HELD,	)	
Appellants-Plaintiffs,	)	
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Appellees-Defendants.	)	

BROWN, Judge, dissenting

I respectfully dissent from the majority's conclusion that the trial court erred by granting summary judgment to Hansen and Jones. I conclude that the promissory notes were a corporate obligation and that the promissory notes do not constitute personal guaranties of the corporate obligation. Consequently, I would affirm the trial court's grant of summary judgment.

The promissory notes provide, in relevant part, that "the undersigned (jointly and severally) promise(s) to pay to the order of [Von Hahmann and Held]" certain amounts of money with interest. Appellant's Appendix at 58, 210. The promissory notes were "[s]igned and delivered at ROTATION PRODUCTS CORPORATION 2849

CATHERWOOD AVE . . . ." Id. Under Hansen's signature, the notation "C.E.O." occurs, and under Jones's signature, the notation "PRESIDENT" occurs. Id.

On one hand, Von Hahmann and Held concede that they loaned the money to RPC and that RPC was obligated to repay the obligations under the promissory notes. In fact, they filed claims in the RPC bankruptcy and received a portion of the money owed under the promissory notes. On the other hand, Von Hahmann and Held argue that Hansen and Jones signed the promissory notes in their personal capacity rather than as representatives of RPC and are personally liable on the debts. I find these two arguments inconsistent. Either Hansen and Jones signed the promissory notes in their representative capacity or in their individual capacity, not both.

I conclude that the language unambiguously indicates that Hansen and Jones signed the promissory notes in their representative capacities. Moreover, given Von Hahmann and Held's prior representations to the bankruptcy court that the promissory notes were a corporate obligation, I agree with the trial court that judicial estoppel precludes Von Hahmann and Held from now contending that the promissory notes were signed by Hansen and Jones in their individual capacities. See, e.g., Meridian Ins. Co. v. Zepeda, 734 N.E.2d 1126, 1133 (Ind. Ct. App. 2000) ("Judicial estoppel 'prevents a party from asserting a position in a legal proceeding inconsistent with one previously asserted.'"), trans. denied; Clark v. Crowe, 778 N.E.2d 835, 841 (Ind. Ct. App. 2002) (holding that judicial estoppel prevented a party from complaining of error in the settlement process given his earlier agreement).

Von Hahmann and Held also seem to be, in effect, arguing that Hansen and Jones personally guaranteed the corporation's performance on the promissory notes. A guaranty is defined as "a promise to answer for the debt, default, or miscarriage of another person." S-Mart, Inc. v. Sweetwater Coffee Co., Ltd., 744 N.E.2d 580, 585 (Ind. Ct. App. 2001) (quoting 38 AM.JUR.2D Guaranty § 1 (1999)), trans. denied. A guaranty "is an agreement collateral to the debt itself" and represents a "conditional promise" whereby the guarantor promises to pay only if the principal debtor fails to pay. Id. "Generally, the nature and extent of a guarantor's liability depends upon the terms of his contract, and a guarantor cannot be made liable beyond the terms of the guaranty." Boonville Convalescent Ctr., Inc. v. Cloverleaf Healthcare Serv., Inc., 790 N.E.2d 549, 557 (Ind. Ct. App. 2003), reh'g granted on other grounds by 798 N.E.2d 248 (Ind. Ct. App. 2003), trans. denied. A guarantor's liability will not be extended by implication beyond the terms of his or her contract. S-Mart, 744 N.E.2d at 586. "A guarantor is a favorite in the law and is not bound beyond the strict terms of the engagement." Id.

I find no indication in the promissory notes of a personal guaranty of the corporate debt of RPC. Rather, the promissory notes contain only language agreeing to repay the obligations with a certain interest and concerning the waiver of certain rights. See Appellant's Appendix at 58, 210. At no point in the promissory notes do Hansen or Jones promise to answer for the debt of RPC. As a result, I conclude that the promissory notes cannot constitute personal guaranties by Hansen or Jones.

For these reasons, I would affirm the trial court's grant of summary judgment to Hansen and Jones.