IN THE COURT OF APPEALS OF IOWA

No. 8-816 / 07-1547
Filed January 22, 2009

RABO AGSERVICES, INC., As Servicer for AG ACCEPTANCE CORPORATION,
Plaintiff-Appellee,

vs.

DALLAS COLLINS FARM PARTNERSHIP, NORMAN COLLINS a/k/a DALLAS COLLINS, COLLYE COLLINS, MARC GREENBERG,
Defendants,

ARIEH SZIGETI,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

Arieh Szigeti appeals from a district court ruling entering judgment against him based on his guaranty of a loan. **AFFIRMED AND REMANDED.**

David A. Roth of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant.

James F. Kalkhoff and Carolyn A. Rafferty of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, and Gary N. Jones of Truax & Jones, Cedar Falls, for appellee.

Heard by Eisenhauer, P.J., Doyle, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

DOYLE, J.

Arieh Szigeti appeals from a district court ruling entering judgment against him based on his guaranty of a loan. We affirm the judgment of the district court and remand for the limited purpose of determining attorney fees on appeal.

I. Background Facts and Proceedings.

Arieh Szigeti is a successful Colorado businessman. He had multiple business interests, including real estate developments in several states and an international freight airline service. He is the brother-in-law of Marc Greenberg. Greenberg owned Farmers Harvest, a company that marketed produce. Greenberg was acquainted with Norman (Dallas) Collins, who had a potato-growing operation in Texas. In 2002 Szigeti, Greenberg, and Collins entered into an agreement to construct a cold-storage facility in Texas and engage in potato farming.[1]

On March 4, 2002, Szigeti, Greenberg, Collins, and his wife, Collye Collins, each signed a "Master Promissory Note" for $500,000 with Ag Services of America, Inc. (now known as Rabo AgServices, Inc.)[2] as a partner and as an individual. Szigeti, Greenberg, Collins, and Collye also each separately signed a document titled "Unlimited Guaranty" on March 4, 2002, which lists Dallas Collins

[1] Greenberg testified he and Szigeti were partners with Collins in a potato-growing operation. Scott Steveson, account manager for Rabo AgServices, testified he understood the company was lending money to a partnership comprised of Greenberg, Collins, and Szigeti. Certain documents creating a partnership were submitted into evidence, but Szigeti testified he did not sign these documents and did not agree to enter into a partnership with Greenberg and Collins. Szigeti testified he participated merely as an investor in the cold-storage facility.

[2] Rabo AgServices, Inc. (f/k/a Ag Services of America, Inc.) is the servicer for its wholly owned subsidiary, Ag Acceptance Corporation. It sells nationwide agriculture loans and is based out of Cedar Falls, Iowa.

Farm Partnership as the debtor. The $500,000 loan of March 4, 2002, was paid in full on October 31, 2002.

In the meantime, Collins arranged to borrow another $500,000 from Rabo AgServices for the 2003 crop year. Collins signed a new "Master Promissory Note" on October 2, 2002, for $500,000, which was due on January 31, 2004. Also, a new "Unlimited Guaranty" dated October 2, 2002, was signed. These documents show a signature by Szigeti, but Szigeti testified he did not sign any documents other than the March 2002 promissory note and guaranty. There was evidence Collins had signed Szigeti's name to the October 2002 documents.[3]

After the October 2002 promissory note went into default, Rabo AgServices filed an action against Dallas Collins Farm Partnership, Collins, Collye, Greenberg, and Szigeti seeking to collect the amount due under the note.[4] The district court determined Collins, Greenberg, and Szigeti entered into a partnership on February 26, 2002. The court found that

> [i]t is not credible to the Court that after signing the miscellaneous documents for the original loan, Szigeti believed when the original loan was paid off that he had no further legal responsibility for the ongoing financial obligations of the farming partnership. Even when confronted with the fact that the loan was delinquent, Szigeti never denied the existence of the partnership, or that he was not responsible under the underlying Promissory Note and Guaranty.

The court concluded Rabo AgServices was "entitled to recover under the 'Master Promissory Note' and 'Unlimited Guaranty' executed on October 2, 2002," and

[3] Tom Schofield, a special asset manager for Rabo AgServices, testified Collins told him he signed Szigeti's name to the October 2002 documents with Szigeti's permission. Also, Greenberg testified Collins told him at a later date that he had signed Szigeti's name to the documents. Collins did not testify at the trial.

[4] Collins and his wife, Collye, subsequently filed for a Chapter 7 bankruptcy. Greenberg was dismissed with prejudice from the lawsuit.

that Szigeti was personally liable based on his Unlimited Guaranty for the outstanding promissory note. The court entered judgment against Szigeti for $480,560.21 in principal and $182,179.03 in interest, totaling $662,739.24. Szigeti was also ordered to pay $9393 in attorney fees.

Szigeti appeals the decision of the district court and raises the following issues:

I. THE DISTRICT COURT ERRED IN FINDING ARIEH SZIGETI IS RESPONSIBLE FOR THE DEBT AS A PARTNER.
II. THE TRIAL COURT ERRED IN FINDING SZIGETI'S ORIGINAL OBLIGATIONS WERE EXTENDED TO THE SECOND LOAN.

II. Scope and Standards of Review.

We review the district court's decision on an action to enforce a guaranty for the correction of errors at law. *Beal Bank v. Siems*, 670 N.W.2d 119, 125 (Iowa 2003). We are not bound by the court's legal conclusions. *Id.* We are bound, however, by the court's factual findings if they are supported by substantial evidence. *Id.* A finding is supported by substantial evidence if it may reasonably be inferred from the evidence. *C. Mac Chambers Co. v. Iowa Tae Kwon Do Acad., Inc.*, 412 N.W.2d 593, 596 (Iowa 1987). The evidence must be viewed in the light most favorable to sustaining the district court's judgment. *Id.* We will not weigh the evidence or the credibility of the witnesses. *Hamilton v. Wosepka*, 261 Iowa 299, 304, 154 N.W.2d 164, 166 (1967).

III. Discussion.

We choose to first address Szigeti's claim that the district court erred in finding his "original obligations" under the March 4, 2002 guaranty extended to

the October 2, 2002 promissory note. He argues the court erred in so finding because his obligations under the March 4, 2002 guaranty "terminated when the [March 4,] 2002 loan was paid in full." We do not agree.

A guaranty is a contract by one party to another party for the fulfillment of the promise of a third party. *See City of Davenport v. Shewry Corp.*, 674 N.W.2d 79, 86 (Iowa 2004). The extent of a guarantor's obligation must be determined from the parties' written contract. *See Bankers Trust Co. v. Woltz*, 326 N.W.2d 274, 276 (Iowa 1982). Accordingly, the rules concerning the interpretation and construction of contracts are applicable to guaranties. *Andrew v. Austin*, 213 Iowa 963, 967, 232 N.W. 79, 81 (1930) ("The same rule is to be applied in the construction of contracts of guaranty as other contracts.").

We construe guaranty contracts according to the intention of the parties as ascertained by the language used in the contract and the circumstances of the guaranty. *Williams v. Clark*, 417 N.W.2d 247, 251 (Iowa Ct. App. 1987). Extrinsic evidence may be considered only to show what the parties meant by the language of the guaranty. *Wellman Sav. Bank v. Adams*, 454 N.W.2d 852, 856 (Iowa 1990). Extrinsic evidence is not admissible to show what the parties meant to say, or to vary the terms of the guaranty. *Bankers Trust*, 326 N.W.2d at 276.

The March 2002 "Unlimited Guaranty" provided:

> In consideration of the foregoing financial accommodations heretofore or hereinafter at any time made or granted to Debtor by Ag Services and other good and valuable consideration, Guarantors agree as follows:
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> 1. Guarantors jointly and severally unconditionally guarantee to Ag Services, its successors and assigns, the full and

> prompt payment when due, whether by acceleration or otherwise, and at all times thereafter, of any and all indebtedness, liabilities or obligations of Debtor to Ag Services, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent or *now or hereafter existing, or due or to become due* (all such indebtedness, liabilities and obligations being hereinafter collectively called the "Liabilities"), and Guarantors further agree to pay all costs and expenses (including attorneys' fees and legal expenses) paid or incurred by Ag Services in endeavoring to collect the Liabilities, or any part thereof, and in enforcing this guaranty.
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> 2. *This guaranty is not limited to any particular period of time but shall continue until the Liabilities have been paid in full* and all of the terms, covenants and conditions of the obligations of Debtor to Ag Services have been fully and completely performed by Debtor or otherwise discharged by Ag Services, and Guarantor shall not be released of any obligation or liability hereunder so long as there is any claim of Ag Services against Debtor arising out of the Liabilities which has not been settled or discharged in full.
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> 3. This guaranty shall be construed as an *absolute and continuing guaranty* of payment without regard to the regularity, validity or enforceability of the Liabilities hereby guaranteed and this guaranty shall be both supplemental and additional to any other guaranty or guaranties, indemnity or indemnities which shall be furnished to Ag Services to secure the Liabilities by Guarantors or by any other person or persons.
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> . . . .
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> 11. The whole of this guaranty is herein set forth, and there is no verbal or other written agreement, and no understanding or custom affecting the terms hereof. *This guaranty may be revoked by Guarantors only upon actual receipt by Ag Services of at least thirty (30) days prior written notice of such revocation* sent by registered mail, but such revocation shall not affect or release the liability of the Guarantors for the then existing Liabilities, or any renewals thereof, theretofore or thereafter made . . . .

(Emphasis added.)

In general, payment of the debt "by the principal discharges the guarantor and terminates the obligation." *Decorah State Bank v. Zidlicky*, 426 N.W.2d 388, 390 (Iowa 1988). The parties may, however, agree to a "continuing guaranty," which is ordinarily effective until revoked by the guarantor. *Bankers Trust*, 326 N.W.2d at 277. A continuing guaranty "'contemplates a future course of dealing

during an indefinite period, or it is intended to cover a series of transactions or a succession of credits.'" *Id.* (quoting 38 Am. Jur. 2d *Guaranty* § 23, at 1023 (1968)); *see also Wellman Sav. Bank*, 454 N.W.2d at 857 (finding guarantor was liable for her son's multiple debts to the bank under a continuing guaranty agreement). A restricted guaranty, on the other hand, is limited to a single transaction or to a limited number of specific transactions. *Maresh Sheet Metal Works v. N.R.G., Ltd.*, 304 N.W.2d 436, 440 (Iowa 1981) (stating there are two types of guaranties—restrictive and continuing).

We conclude the language of the March 2002 guaranty did not create a restrictive guaranty. The guaranty is not tied to the March 2002 promissory note in any way, and there is no language in the guaranty limiting it to a single transaction. *See id.*; *see also Union Story Trust & Sav. Bank v. Sayer*, 332 N.W.2d 316, 319 (Iowa 1983) (noting a guaranty did not relate to a specific loan transaction, and was a continuing guaranty).

We reject Szigeti's argument that the March 4, 2002 guaranty "expressed within the document a limit upon liability of the guarantor." In support of his argument, Szigeti relies on paragraph two of the guaranty and asserts the "Unlimited guaranty signed by Mr. Szigeti on March 4, 2002 stated '. . . shall continue until the Liabilities have been paid in full.'" Based upon that provision, he contends his obligations under the March 4, 2002 guaranty were discharged when the March 4, 2002 loan was paid in full.

Szigeti's argument is based on an incomplete quote from the guaranty. The full provision he is referring to pertinently provides: "*This guaranty is not*

limited to any particular period of time but shall continue until the Liabilities have been paid in full . . . ." (Emphasis added.) His argument also ignores that the definition of "Liabilities" in paragraph one includes "any and all indebtedness, liabilities or obligations of Debtor to Ag Services, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent or *now or hereafter existing, or due or to become due* . . . ." (Emphasis added.)

There are no "magic words" to create a continuing guaranty. *Bankers Trust*, 326 N.W.2d at 277. Instead, we look to the terms of the guaranty in question. *Peoples Bank & Trust Co. v. Lala*, 392 N.W.2d 179, 182 (Iowa Ct. App. 1986). As indicated above, the March 2002 guaranty specifies it will apply to debts between Dallas Collins Farm Partnership and Rabo AgServices "heretofore or hereafter" made and those "now or hereafter existing." The guaranty is "not limited to any particular period of time" but continues until the debtor's liabilities are paid in full. Furthermore, the guaranty provides that it will remain in effect until Rabo AgServices receives written notice of revocation. The guaranty additionally states it "shall be construed as an absolute and continuing guaranty of payment." Based on these provisions, we conclude the guaranty clearly and unambiguously created a continuing guaranty because it "contemplates a future course of dealing over an indefinite period." *See Bankers Trust*, 326 N.W.2d at 277 (finding a continuing guaranty when it was "evident from the language of the agreement that the parties contemplated a future course of dealing which could result in additional transactions" between the parties).

A continuing guaranty secures future debts. *Peoples Bank & Trust*, 392 N.W.2d at 182. Indeed, it is "intended to cover a series of transactions or a succession of credits." *Bankers Trust*, 326 N.W.2d at 277 (quoting 38 Am. Jur. 2d *Guaranty* § 23, at 1023 (1968)). Thus, Szigeti is liable under the March 2002 guaranty for the debt created in October 2002 between Dallas Collins Farm Partnership and Rabo AgServices.[5]

We note Szigeti's liability under the March 2002 guaranty is unaffected by whether or not he was a partner with Collins and Greenberg at the time he signed the guaranty, or whether or not he signed the October 2002 documents. Therefore, we need not and do not address these issues.

IV. Appellate Attorney Fees.

Rabo AgServices requests an award of appellate attorney fees pursuant to the March 4, 2002 promissory note and guaranty whereby Szigeti agreed "to pay all costs and expenses (including attorneys' fees and legal expenses) paid or incurred by Ag Services in endeavoring to collect the Liabilities, or any part thereof, and in enforcing this guaranty." Iowa Code section 625.22 authorizes

[5] We note the district court's decision could be read as finding that Szigeti was liable for the October 2002 loan based upon the guaranty signed in October 2002. However, neither party construes the court's decision in that manner or raises such an argument on appeal. *Hyler v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996) ("[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal."). Furthermore, because we are reviewing this case for correction of errors at law, "[i]n case of doubt or ambiguity" we must construe the court's findings to "uphold, rather than defeat, the judgment." *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988) (stating the district court's findings must be "broadly and liberally" construed in an action at law); *see also Rank v. Kuhn*, 236 Iowa 854, 856, 20 N.W.2d 72, 74 (1945) ("[I]n construing a decree the intent of the court must be determined from all parts of the instrument and effect given to that which is clearly implied as well as to that which is expressed."). We therefore conclude "[u]nder the facts here, taken in the light most consistent with the judgment," *R.E.T. Corp. v. Frank Paxton Co.*, 329 N.W.2d 416, 421 (Iowa 1983), the district court did not err in finding Szigeti was liable for the debt created in October 2002.

payment of attorney fees when a judgment is recovered on a written contract containing an agreement to pay for attorney fees. We find no language in section 625.22 or the parties' March 4, 2002 promissory note and guaranty that precludes an award of appellate attorney fees. *See Bankers Trust*, 326 N.W.2d at 278. However, we prefer that the district court determine the reasonable amount of attorney fees Rabo AgServices should be awarded on appeal. *Id.*; *see also Lehigh Clay Products, Ltd. v. Iowa Dep't of Transp.*, 545 N.W.2d 526, 528 n.2 (Iowa 1996) (stating the issue of appellate attorney fees is "frequently determined in the first instance in the district court because of the necessity for making a record"). We therefore remand to the district court for the limited purpose of an evidentiary hearing on and the fixing of appellate attorney fees.

V. Conclusion.

We conclude the March 4, 2002 guaranty was a continuing guaranty whereby Szigeti agreed to guarantee Dallas Collins Farms Partnership's payment of "any and all indebtedness, liabilities or obligations" to Rabo AgServices "howsoever created, arising or evidenced . . . now or hereafter existing, or due to become due." Thus, the district court did not err in finding Szigeti was liable for the debt created in October 2002 between Dallas Collins Farms Partnership and Rabo AgServices. We therefore affirm the judgment of the district court and remand for the limited purpose of determining attorney fees on appeal.

AFFIRMED AND REMANDED.