**IN THE COURT OF APPEALS OF IOWA**

No. 9-655 / 09-0194
Filed September 2, 2009

**BUILDERS KITCHEN AND SUPPLY CO.,**
Plaintiff-Appellee,

**vs.**

**FRANK MOYER,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge.

Frank Moyer appeals from the district court's order granting summary judgment to Builders Kitchen and Supply Co. and holding Moyer personally liable as a guarantor. **AFFIRMED.**

David Wetsch and Timothy Van Vliet, Des Moines, for appellant.

Louis Hockenberg, West Des Moines, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MANSFIELD, J.**

This case presents the question whether a company's application for credit, which includes a clause that the signer "personally guarantee[s]" payment, can be used to hold the signer personally liable for the company's debts even though the signer included his corporate title when signing the form. We agree with the district court's ruling that the signer is personally liable under these circumstances, and therefore affirm its grant of summary judgment.

**I. Background Facts and Proceedings.**

The relevant facts are undisputed. On July 17, 1998, Builders Kitchen & Supply Co. (Builders) presented its form "Application for Credit" to Frank Moyer, President of Crystal Creek Development Company (Crystal Creek).

The application form consisted of two pages. The first page had Builders' name, address, and phone number printed and centered at the top. Beneath that appeared the title, "Application for Credit." The form then included blanks where the name and address of the business requesting credit could be filled in. Additional blanks were provided for the names, addresses, and phone numbers of the business's "owners, officers, or partners," the names, addresses, and phone numbers of the business's "trade references," and the bank and checking account number for the business. The form also requested the "Type of Business" to be checked as either "Individual," "Partnership," or "Corporation."

The second page was titled "Terms of Sale" and provided:

> The information provided is true to the best of my knowledge. I/we hereby authorize Builders Kitchen & Supply Co. to investigate my credit record and references.
>
> All accounts are due in full the 10th of the month following purchase. I/we agree to pay a finance charge on our account that

> is 30 days past due. The finance charge is computed at a periodic rate of 1 ½ % per month or an annual percentage rate of 18%.
>
> In consideration of extension of credit by Builders Kitchen & Supply Co., I hereby personally guarantee to pay on demand any and all sums due that my/our company shall fail to pay.
>
> If account becomes more than 5 days past due, a prelien notice will be sent.

Spaces for two signatures followed this text.

On the first page, Moyer filled in "Crystal Creek Development" as the name of the business. He also provided Crystal Creek's address. However, Moyer did not complete any other parts of the form. In particular, Moyer did not indicate whether Crystal Creek was a proprietorship, a partnership, or a corporation. Crystal Creek is, in fact, an Iowa corporation.

On the second page, Moyer signed the form once as "Frank Moyer. Pres." That was the only signature on the two-page agreement.

Pursuant to this agreement, during 2008, Builders provided and installed kitchen cabinets and countertops in eight separate properties for Crystal Creek. However, Crystal Creek failed to pay the sums owed to Builders. On October 31, 2008, Builders filed suit naming Crystal Creek and Frank Moyer, personally, as defendants.

Builders moved for summary judgment against both defendants. Crystal Creek did not dispute its liability. Moyer, however, resisted summary judgment, asserting he was not personally liable. He maintained that the credit application was signed only in his capacity as a representative of Crystal Creek, not in his individual capacity.

On January 16, 2009, the district court granted summary judgment in favor of Builders and against both Crystal Creek and Moyer. As Crystal Creek did not

contest liability, the only issue was whether Moyer was personally liable. The district court found the contract was not ambiguous and thus, extrinsic evidence was not relevant to its interpretation. The court further found:

> The agreement clearly states that Moyer personally guarantees any money his company fails to pay. If the court were to accept Moyer's argument that he signed only in his capacity as president of [Crystal Creek], it would negate the language in the agreement.

Consequently, the district court entered summary judgment against Moyer as well. Moyer appeals.

**II. Analysis.**

We review a district court's grant of summary judgment for correction of errors at law. Iowa R. App. P. 6.907 (2009). Summary judgment shall be granted when the entire record demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kragnes v. City of Des Moines*, 714 N.W.2d 632, 637 (Iowa 2006). The moving party bears the burden to establish there is no genuine issue of material fact, and the facts must be viewed in the light most favorable to the moving party. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000).

The district court found the agreement in question was unambiguous. Furthermore, both parties take the position that the agreement is unambiguous. They just disagree as to what it says. "[T]he construction of an unambiguous written agreement is ordinarily a question of law for a court . . . ." *Daggett v. Nebraska-Eastern Express, Inc*., 107 N.W.2d 102, 108 (Iowa 1961).

Even if the "Application for Credit" were ambiguous, we believe the issue before us would be for the court to decide. In the present case, there is no helpful extrinsic evidence to consider. Each party submitted its own affidavit as to what it subjectively "intended" back in 1998. However, neither party relies on any facts and circumstances to aid in interpreting the contract, apart from the document itself.

When the parties disagree as to the meaning of contractual terms and there is no extrinsic evidence, the construction and interpretation of the contract are questions of law for the court. *Swainston v. Am. Family Mut. Ins. Co.*, ___ N.W.2d ___, ___ (Iowa 2009); *see* Restatement (Second) Contracts § 212, at 125 (1981) (stating that if there is no extrinsic evidence, "a question of interpretation of an integrated agreement is to be determined as a question of law").

Against this backdrop, we review the district court's decision that the contract imposed personal liability on Moyer. Generally, when an agent or corporate officer contracts with a third party on behalf of a corporation, the agent or corporate officer has no liability. *See Kuehl v. Freeman Bros. Agency, Inc.*, 521 N.W.2d 714, 720 (Iowa 1994) ("[I]f the name of the principal and the relation of agency be stated in the writing, and the agent is authorized to make the contract or obligation, the principal alone is bound, unless the intention is clearly expressed to bind the agent personally."). However, personal liability is imposed if the parties expressly agree the agent or corporate officer shall be personally liable. *Id.*; *see also* 6 Mathew G. Dore, Iowa Practice Series, Business Organizations § 29:17, at 173 (2008) ("[A] corporate representative may be held

personally liable on a corporate contract if he signs it in other than a representative capacity."); Restatement (Third) Agency § 6.01, at 3 (2006) ("When an agent acting with actual or apparent authority makes a contract on behalf of a disclosed principal . . . the agent is not a party to the contract unless the agent and third party agree otherwise.").

We turn to the language of the contract to determine whether the parties intended to impose personal liability on Moyer. The relevant term provides, "In consideration of extension of credit by Builders Kitchen & Supply Co., I hereby personally guarantee to pay on demand any and all sums due that my/our company shall fail to pay." This term clearly states that Moyer agrees to be personally liable if Crystal Creek fails to pay. Moyer argues that because he included the designation of president following his name, he cannot be personally liable. We disagree. Where a contract term imposes personal liability, one is not relieved of this liability simply by including a designation following his or her signature. *See Moody v. Schloss & Kahn, Inc.*, 600 So.2d 1045, 1046-47 (Ala. Civ. App. 1992) (holding that where a contract contained a personal guarantee provision, a defendant was personally liable where he signed the contract and included the designation of president following his signature); *Beck v. Haines Terminal & Highway Co.*, 843 P.2d 1229, 1231 (Alaska 1992) (same).

Moyer argues that this case is different because one signature is being asked to fulfill two roles. Moyer must have signed the agreement in a representative capacity on behalf of Crystal Creek. After all, it was Crystal Creek's credit application. How, Moyer wonders, can the same signature also be deemed to have been made in his individual capacity? Moyer notes that in

*Kessel v. Murray*, 196 N.W. 591 (Iowa 1924), the defendant signed a personal guarantee as "Director, Iowa Oil & Gas Co.," and was found personally liable, but there was a separate signature elsewhere in the document binding the corporation.

However, *Robert C. Malt & Co. v. Carpet World Distributors, Inc.*, 763 So.2d 508, 510-11 (Fla. Dist. Ct. App. 2000), cited by the district court, presents the same fact pattern as this case. There, the individual defendant signed a lease (once). The signature included the full name of the corporation, including the words "Inc.," and his title and role with that corporation. Nevertheless, the appellate court held the individual defendant was personally liable on the personal guarantee clause in the contract. As the court explained:

> Susco appears to have signed a writing containing a guaranty provision. Although Susco's signature appears to be in his representative capacity only, that single signature, when considered with the language of paragraph nine, is sufficient to enforce the guaranty provision against him in his personal capacity.

*Robert C. Malt & Co.*, 763 So.2d at 510. We agree with that reasoning. In this case the "Application for Credit" expressly bound Moyer in both his representative and his individual capacities. Moyer does not claim he failed to see the personal guarantee language, which was in close proximity to his signature, or that he was told to disregard it.

Furthermore, as the district court stated, "If the court were to accept Moyer's argument that he signed only in his capacity as president of Crystal Creek Development Co., it would negate this language in the agreement." *See Kerndt v. Rolling Hills Nat'l Bank*, 558 N.W.2d 410, 416 (Iowa 1997) (stating an interpretation that gives a reasonable meaning to all terms is preferred to one

that renders a term superfluous or of no effect); *see also Robert C. Malt & Co.*, 763 So.2d at 510-11 ("It would nullify the specific language of paragraph nine to conclude that the Plaintiff could not, as a matter of law, enforce the obligations of paragraph nine against Susco in his personal capacity.").

The recent Restatement (Third) of Agency (2006) also approves this result. In section 6.01, the drafters provided the following illustration based on *Robert C. Malt*:

> 14. A, the president of P Corporation, executes a lease on behalf of P Corporation as lessee with T as lessor. The body of the agreement states that "in the event the net worth of P Corporation is reduced in excess of ten percent, it is agreed that A shall guarantee P Corporation's obligations hereunder to the extent of the shortfall." The lease is signed "P Corporation, by A, President." A is individually liable as a guarantor to the extent of the shortfall. Although A's signature indicates that A signs in a representative capacity only, limiting the effect of A's signature would nullify the effect of the language in the body of the lease stating that A individually guarantees P Corporation's net worth.

*See* Restatement (Third) of Agency § 6.01 illust. 14, at 14, 27 (2006).

Finally, the present case is, if anything, an easier case for personal liability than *Robert C. Malt*. The "Application for Credit," on its face, does not even indicate Crystal Creek was a corporation. Moyer now seeks to assert a corporate shield for an entity whose corporate-ness he did not disclose on the "Application for Credit" back in 1998.

For the foregoing reasons, we affirm the well-reasoned judgment of district court.

**AFFIRMED.**