

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2022 CA 1281**

**CANNATA'S SUPERMARKET, INC.**

**VERSUS**

**KEVIN GROS OFFSHORE, L.L.C. AND KEVIN GROS**

*Judgment Rendered:* **JUN 02 2023**

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**Appealed from the  
32nd Judicial District Court  
In and for the Parish of Terrebonne  
State of Louisiana  
Case No. 181948, Division D**

**The Honorable David W. Arceneaux, Judge Presiding**

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**BEFORE: THERIOT, CHUTZ, AND HESTER, JJ.**

*mt*  
*CHH*  
*J*

## **THERIOT, J.**

In this suit on open account, the plaintiff appeals from a trial court judgment dismissing its claims against an individual defendant on an alleged personal guaranty. For the reasons set forth herein, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On January 31, 2018, Cannata's Supermarket, Inc. ("Cannata's"), a locally owned grocery store chain, filed the instant suit on open account against Kevin Gros Offshore, L.L.C. ("KGO"), a vessel operating company that crews and operates vessels to service offshore oil and gas platforms, and its member-manager, Kevin Gros. Cannata's alleged that KGO owed \$64,714.78 on the open account and that Mr. Gros was personally responsible for the debt as a result of his execution of a personal guaranty in conjunction with KGO's application for credit. Cannata's sought judgment for the amount due on the open account, \$64,714.78, along with legal interest and reasonable attorney fees and costs.<sup>1</sup>

Cannata's attached a number of exhibits to its original and amending petitions, including: KGO's "New Account Credit Application," which included the document that Cannata's alleges was a personal guaranty executed by Mr. Gros; Cannata's account statement showing the amount owed by KGO; invoices dated between September 2005 and January 2006 for purchases made by KGO from AMS, which Cannata's alleges were paid in full by KGO; and Cannata's account statement for KGO, listing the unpaid invoices at issue in this suit, with dates beginning August 1, 2016, totaling \$64,714.78.

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<sup>1</sup> Cannata's later amended its petition to allege that although it utilized the trade name "Affiliated Marine Supply" ("AMS") to supply groceries, goods, and services to vessels, Cannata's was the legal entity providing the groceries, goods, and services. Cannata's further alleged that KGO and Mr. Gros were aware of the connection between Cannata's and AMS. Mr. Gros disputed that he was aware of the connection between Cannata's, with whom he had applied for credit on behalf of KGO, and AMS. Although there was a considerable amount of testimony and evidence at trial on this issue, the trial court rejected the assertion that KGO and Mr. Gros were unaware of the connection between the companies or that Cannata's credit application applied to purchases KGO made from AMS. Since this issue is not relevant to the issues raised in Cannata's appeal, this testimony and evidence is not discussed herein.

Cannata's credit application, which consisted of four pages printed on "Cannata's Family Market" letterhead, was filled out by hand and signed on the third and fourth pages by Mr. Gros.<sup>2</sup> The first two pages of the credit application were filled out with KGO's information, including contact information, organization type, owner's name and contact information, bank account information, purchasing procedures, tax exempt status, and credit references. At the bottom of the second page, the application states, "Cannata's terms for credit are net 30 days;" however, there is no signature line on either of the first two pages of the credit application. The third page of the credit application is a blank credit reference request form containing an authorization, which is signed by Mr. Gros, for the release of KGO's credit information to Cannata's. The fourth page of the credit application is the alleged personal guaranty. The fourth page contains the following language, followed by Mr. Gros's signature on a line simply labeled "signature," with no indication of the capacity in which it is signed:

***CORPORATIONS MUST COMPLETE THE FOLLOWING FORM***

***PERSONAL ENDORSEMENT***

*And now comes Kevin A. Gros,  
Resident of Lafourche Parish, State of Louisiana,  
Hereby declares that the [sic] guarantees the performance of all terms  
and conditions for the herein above described agreement, payments  
and other conditions of the agreement.*

Cannata's filed a motion for summary judgment, which was denied, and the matter proceeded to bench trial on May 24, 2022.

Former KGO employee, Armojen "Buddy" Cantrelle, Jr., testified at trial that during his employment from April 2003 to March 2017, he was responsible for ensuring that the boats serviced by KGO<sup>3</sup> had necessary supplies. Mr. Cantrelle testified that he did not make the decisions about which vendors to use

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<sup>2</sup> At trial, Mr. Gros could not say for certain whether the handwriting on the credit application was his, although he testified that some of it looked like his handwriting. However, he admitted that the signature on the alleged personal guaranty was his.

<sup>3</sup> Mr. Cantrelle testified that some, but not all, of the boats serviced by KGO were owned by Mr. Gros.

for these supplies; rather, this instruction came from Mr. Gros. He testified that KGO initially began purchasing supplies from AMS in 2005 after he and Mr. Gros met with a Cannata's sales representative, Lois Broussard. Mr. Cantrelle testified that at some time after the meeting with Ms. Broussard, he was given authority by Mr. Gros to purchase supplies from AMS. After purchasing supplies from AMS in 2005 and 2006, KGO did not do business with AMS for "an extended period of time." In 2016, KGO began ordering supplies from AMS again. Although Mr. Cantrelle testified that Mr. Gros always made the decisions about which vendors to use, on cross examination, he admitted that he could not say with certainty that Mr. Gros was the individual who made the decision to begin ordering from AMS again in 2016. He explained that KGO was struggling financially in 2016 and had retained a management company, BlackBriar & Associates, in an attempt to turn the company around. Mr. Cantrelle acknowledged that by 2016, a BlackBriar employee named Joe Danko had taken over management of the business and "was really calling the shots with regard to which vendor to pay, and how to pay them[,] and how much to pay." For this reason, Mr. Cantrelle could not say for certain whether it was Mr. Gros's or Mr. Danko's decision to begin purchasing from AMS again in 2016.

Cannata's outside sales representative, Lois Broussard, testified at trial that before extending credit to a new customer, Cannata's requires the customer to complete a credit application, including a personal guaranty. She explained that the document titled "Personal Endorsement" on the fourth page of the credit application was a personal guaranty so that "if the company is unable to fulfill their obligation[,] then whomever [sic] signs this personal guarantee assumes that responsibility." Although Ms. Broussard testified as to her familiarity with Cannata's requirement of a personal guaranty in order to extend credit to corporate entities, she testified that after she met with a potential new customer, it was the

“corporate office” that would handle sending the company a credit application to fill out and return if they chose to do so. She did not testify as to whether she ever discussed the credit application with Mr. Gros or explained Cannata’s requirement that he execute a personal guaranty for the company’s debt. Approximately one month after Ms. Broussard’s meeting with Mr. Cantrelle and Mr. Gros, Cannata’s received KGO’s completed credit application, including Mr. Gros’s signature on the alleged personal guaranty, by fax. After Cannata’s approved KGO’s credit application, KGO ordered supplies from AMS on credit in 2005 and 2006. She testified that when KGO began ordering from AMS again in 2016, Cannata’s did not require a new credit application from KGO because KGO’s account was in good standing at the time they stopped purchasing from AMS in 2006. Cannata’s simply “reactivated” KGO’s account in 2016, and KGO began ordering supplies from AMS on credit again. Ms. Broussard did not testify as to whether or not she explained the reactivation of the old account to anyone at KGO.

Cannata’s comptroller, Thomas Philip Hue, also testified that Cannata’s requires a personal guaranty before extending credit to corporate entities. He explained that Cannata’s deals with a lot of marine companies, and since the marine business has been up and down, Cannata’s requires a personal guaranty so that the owners “will have a little more stake in the game so we’ll have a little more assurance that they will pay their debt.” Mr. Hue testified that when he receives a request to send a credit application to a customer, his office sends the application to the customer, and if the customer completes and returns the application, he will “review it, check their credit references, check out the bank information to see if there is personal guarantees involved . . . [a]nd if all of the credit references come back favorable we’ll go to Mr. Cannata who would approve it or disapprove it depending on the circumstances.” Mr. Hue did not testify as to whether he ever spoke to Mr. Gros, informed him of Cannata’s requirement of a

personal guaranty before extending credit to corporate entities, or explained that the fourth page of the credit application was to be signed in his individual capacity and not on behalf of the corporate entity. Mr. Hue testified that after his office sent the credit application to KGO in 2005, Cannata's received a completed credit application from the company, including a signed personal guaranty from Mr. Gros. According to Mr. Hue's testimony, Cannata's decision to extend credit to KGO was based on the execution of the personal guaranty by Mr. Gros. Mr. Hue further testified that Cannata's did not require Mr. Gros to execute a new personal guaranty in 2016 when the KGO account was reactivated because it continued to rely on Mr. Gros's 2005 personal guaranty; however, he did not testify as to whether he discussed the reactivation of KGO's old account or Cannata's continued reliance on Mr. Gros's 2005 personal guaranty with anyone at KGO.

Kevin Gros testified that he does not dispute that KGO owes Cannata's \$64,714.78 on open account; he only disputes the claim that he agreed to personally guaranty KGO's debt. Mr. Gros testified that KGO is an operating company that contracts with vessel owners to supply things such as crews, fuel, and groceries to the vessels. KGO advances the funds for the crew and supply costs; however, Mr. Gros explained that the vessel owner is the one ultimately responsible for the costs. Mr. Gros admitted that he made the initial decision to do business with Cannata's in 2005. Mr. Gros confirmed that the signature on the fourth page of the Cannata's credit application (the alleged personal guaranty) was his signature, but he testified that he may not have read the document prior to signing it.<sup>4</sup> When asked what he believed was meant by the heading "Personal Endorsement" on that page, Mr. Gros explained, "Well, it means I endorsed the check and that I would endorse [KGO] and see that they paid the bill. That would

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<sup>4</sup> At trial, when Mr. Gros was shown a copy of the alleged personal guaranty and asked whether he had reviewed the document prior to signing it, he replied, "Probably not because I can't even read what's on there." Although Mr. Gros did not explain what he meant by this statement, we note that the copy of the alleged personal guaranty contained in the record of this matter is difficult to read due to the size and style of the font used.

be my endorsement signing the check.” On further questioning, Mr. Gros clarified that his understanding of the “Personal Endorsement” was that he agreed to sign (endorse) KGO’s company checks in his capacity as manager in order to pay Cannata’s invoices. He denied that he ever intended to make a personal guaranty or put his own assets on the line in the event KGO did not pay the invoices. He further testified that he never would have agreed to sign a personal guaranty for debt incurred for the benefit of vessels he did not own.<sup>5</sup> Mr. Gros testified that when KGO began purchasing from AMS again in 2016, BlackBriar had been retained to try to keep the company afloat, and Mr. Danko was making all management decisions for KGO, including the decision to begin purchasing supplies from AMS again and decisions about which vendors and invoices would get paid and which would not. Mr. Gros admitted that he had never revoked the alleged personal guaranty he signed in 2005, but testified that he was never informed by anyone with Cannata’s that the document was still in effect when KGO began purchasing supplies from AMS again in 2016. He further testified that he was no longer receiving a paycheck from KGO in 2016 and would not have agreed to sign a new personal guaranty at that time if he had been asked to do so.

Following the conclusion of the trial, the trial court rendered judgment in favor of Cannata’s and against KGO in the amount of \$64,714.78 in principal, together with attorney fees in an amount equal to fifteen percent of the principal, taxable costs of court, and judicial interest from judicial demand until paid. Regarding Cannata’s claims against Mr. Gros on the personal guaranty, the trial court rendered judgment in favor of Mr. Gros, dismissing Cannata’s claims against him with prejudice. Cannata’s appealed.

On appeal, Cannata’s argues that the trial court erred in finding that the personal guarantee was ambiguous and that it was not valid and enforceable. In

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<sup>5</sup> Mr. Gros testified that KGO did not actually own any vessels, although at one time he had an ownership interest in two or three of the vessels operated by KGO.

the alternative, Cannata's argues that the court erred in determining the intent of the parties.

## DISCUSSION

KGO did not appeal the judgment against it on open account. This appeal strictly concerns the existence of a valid personal guaranty by Mr. Gros for KGO's debt.

A "guaranty" is a collateral promise or undertaking to pay a debt owing by a third person in the case the latter does not pay. *R.G. Claitor's Realty v. Rigell*, 2006-1629, p. 5 (La.App. 1 Cir. 5/4/07), 961 So.2d 469, 472-73. A contract of guaranty is equivalent to a contract of suretyship, and the terms "guaranty" and "suretyship" may be used interchangeably. *Wooley v. Lucksinger*, 2006-1140, p. 6 (La.App. 1 Cir. 12/30/08), 7 So.3d 660, 664, citing La. R.S. 10:1-201(b)(39) (defining "Surety" as including a guarantor or other secondary obligor). The provisions of the Louisiana Civil Code governing the contract of suretyship<sup>6</sup> must be examined in testing whether there is a guaranty. *Id.*

Suretyship is an accessory contract by which a person binds himself to a creditor to fulfill the obligation of another upon the failure of the latter to do so. La. C.C. arts. 3035; *Wooley*, 2006-1140 at p. 9, 7 So.3d at 665. Suretyship must be express and in writing. La. C.C. art. 3038. Suretyship is established upon receipt by the creditor of the writing evidencing the surety's obligation. La. C.C. art. 3039. The creditor's acceptance is presumed, and no notice of acceptance is required. *Id.* Suretyship cannot be presumed; an agreement to become a surety must be expressed clearly and must be construed within the limits intended by the parties to the agreement. *Regions Bank v. Louisiana Pipe & Steel Fabricators, LLC*, 2011-0839, p. 4 (La.App. 1 Cir. 12/21/11), 80 So.3d 1209, 1212; *Wooley*, 2006-1140 at p. 7, 7 So.3d at 664. Contracts of guaranty or suretyship are subject

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<sup>6</sup> See La. C.C. art. 3035, *et seq.*



to the same rules of interpretation as contracts in general. *Regions Bank*, 2011-0839 at p. 4, 80 So.3d at 1212.

Contracts have the effect of law on the parties and must be performed in good faith. La. C.C. art. 1983. Interpretation of a contract is the determination of the common intent of the parties. La. C.C. art. 2045. The intent is to be determined by the words of the contract when they are clear, explicit, and lead to no absurd consequences. See La. C.C. art. 2046. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the intent of the parties, and the contract is interpreted by the court as a matter of law. La. C.C. art. 2046.

Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole. La. C.C. art. 2050. When a contract is clear and unambiguous, the meaning and intent of the parties to the written contract must be sought within the four corners of the instrument and cannot be explained or contradicted by parol or other extrinsic evidence. La. C.C. art. 1848; *Hampton v. Hampton, Inc.*, 97-1779, p. 6 (La.App. 1 Cir. 6/29/98), 713 So.2d 1185, 1189.

When the terms of a written contract are susceptible to more than one interpretation, or there is uncertainty or ambiguity as to its provisions, or the intent of the parties cannot be ascertained from the language employed, parol evidence is admissible to clarify the ambiguity or show the intention of the parties. *Hampton*, 97-1779 at p. 6, 713 So.2d at 1189. An ambiguous provision must be interpreted in light of the nature of the contract, equity, usages, the conduct of the parties before and after the formation of the contract, and of other contracts of a like nature between the same parties. La. C.C. art. 2053. In case of doubt that cannot be otherwise resolved, any ambiguity in a contract is to be construed against the party who furnished the text. La. C.C. art. 2056. Where the ambiguity arises from

a lack of a necessary explanation that one party should have given, or from negligence or fault of one party, the contract must be interpreted in a manner favorable to the other party. La. C.C. art. 2057.

The determination of whether a contract is clear or ambiguous is a question of law subject to de novo review on appeal. *See John M. Floyd & Associates, Inc. v. Ascension Credit Union*, 2021-0560, pp. 8-9 (La.App. 1 Cir. 12/22/21), 340 So.3d 259, 267. However, where factual findings are pertinent to the interpretation of a contract, those factual findings are not to be disturbed unless manifest error is shown. *Hampton*, 97-1779 at p. 7, 713 So.2d at 1190.

After considering all of the evidence, the trial court found that the alleged personal guaranty was not clear and unambiguous and that the evidence was insufficient to prove the existence of a contract of suretyship. In particular, the trial court found the following language on the fourth page of the credit application (the alleged personal guaranty) to be unclear: “Kevin Gros . . . Hereby declares that the [sic] guarantees the performance of all terms and conditions for the herein above described agreement, payments and other conditions of the agreement.” The trial court noted that it was apparent that this provision contained a typographical error; however, it was unclear exactly what language was intended. Additionally, the trial court found that the reference to “the herein above described agreement” was confusing because no agreement was described and the credit application did not contain any terms or conditions that could be construed as an agreement. The trial court also found that the heading at the top of the page, “**CORPORATIONS MUST COMPLETE THE FOLLOWING FORM,**” was ambiguous because it implied that the person completing and signing the form was doing so on behalf of the corporation.

After a de novo review of the evidence, we agree with the trial court’s conclusion that the credit application, including the fourth page containing the

alleged personal guaranty, is not clear and unambiguous. The statement at the top of the fourth page indicating that “corporations” must complete that page creates ambiguity as to whether the document is to be executed by a corporate representative on behalf of the corporation or individually. Further, the reference to the “herein above described agreement” (when no agreement is described “herein above”) makes it unclear what performance is being guaranteed by the person signing the document. Cannata’s argues that the “herein above described agreement” is obviously a reference to the credit application, of which the personal guaranty is a part. However, no part of the credit application is labeled an “agreement,” and the only portion of the credit application that appears to contain an “agreement” is the signed authorization for release of credit information on the blank credit reference form. This document states, “I Kevin A. Gros, of Kevin Gros Offshore, LLC, authorize the release of the credit information contained herein and agree to abide by the terms as stated. Please release this information to: Cannata’s Family Market.” Although the second page of the credit application states “Cannata’s terms for credit are net 30 days,” this portion of the credit application does not contain a signature line. Finally, the inclusion of an apparent typographical error (“that the [sic] guarantees the performance . . .”) in the body of this document compounds the confusion over whether the corporate representative signing the document is guaranteeing performance of some agreement by the company or personally.

As we have concluded that the document alleged to constitute the personal guaranty is susceptible to more than one interpretation, or there is uncertainty or ambiguity as to its provisions, or the intent of the parties cannot be ascertained from the language employed, parol evidence is admissible to clarify the ambiguity or show the intention of the parties. See Hampton, 97-1779 at p. 6, 713 So.2d at 1189. After a thorough review of the testimony and evidence presented as to the

intent of the parties to the contract, and especially in light of the fact that an agreement to become a surety must be expressed clearly and that any ambiguity in a contract is to be construed against the party who furnished the text, we cannot say that Cannata's has proven the existence of an express written suretyship agreement or personal guaranty by Mr. Gros for KGO's debt. See La. C.C. art. 2056; *Regions Bank v. Louisiana Pipe & Steel Fabricators, LLC*, 2011-0839 at p. 4, 80 So.3d at 1212. Cannata's assignments of error lack merit.

### **CONCLUSION**

For the reasons set forth herein, the trial court judgment dismissing the claims against defendant Kevin A. Gros is affirmed. Costs of this appeal are assessed to plaintiff, Cannata's Supermarket, Inc.

**AFFIRMED.**