

STATE OF MICHIGAN
COURT OF APPEALS

FARM CREDIT SERVICES,

Plaintiff-Appellant,

v

RICHARD RUGGLES, JOANNE D. RUGGLES,
PHILIP RUGGLES, and LORRAINE RUGGLES,

Defendants-Appellees,

and

ESTATE OF WILLIAM N. RUGGLES and
BARBARA J. RUGGLES,

Defendants.

Before: Holbrook, Jr., P.J., and Zahra and J.W. Fitzgerald,* JJ.

PER CURIAM.

In 1991, defendants-appellees Richard Ruggles, Joanne D. Ruggles, Philip Ruggles, and Lorraine Ruggles (hereafter defendants) agreed to guaranty loans plaintiff made to William Ned ("Ned") Ruggles and his wife, Barbara Ruggles. Plaintiff appeals as of right from a bench trial judgment relieving defendants of liability on this loan. We reverse and remand.

Plaintiff loaned \$80,000 to Ned and Barbara Ruggles in 1991. The loan was guaranteed by defendants. When the loan was not paid by the September 1, 1994, due date, plaintiff extended the due date to February 1, 1995, but re-executed the loan in Ned's name only. Ned Ruggles died on December 2, 1994, and no payments had been made on the new loan when it matured on February 1, 1995. Plaintiff eventually filed a collection action against Ned Ruggles' estate, Barbara Ruggles, and defendant guarantors. The trial court granted Barbara Ruggles' motion for involuntary dismissal on grounds that she had not signed the revised loan and, therefore, was released from liability. On

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

plaintiff's motion, Ned Ruggles' estate was dismissed without prejudice. Counsel noted that a corresponding claim had been filed in the probate court, that the claim had not been disputed within the statutory time allowed, and, therefore, as a matter of law, the debt was deemed a valid debt of Ned Ruggles at the time of his death, making it unnecessary to maintain concurrent actions. The trial court ultimately held that the remaining defendants, as guarantors, were not liable on the debt owed to plaintiff.

Defendants raised two defenses in the lower court. First, defendants claimed that plaintiff's substitution of one obligor for two constituted a material alteration of the loan terms, effectively terminating their liability. Second, defendants claimed that they could not be held liable because they were guarantors of a loan for Ned and Barbara Ruggles, both of whom had been dismissed from the circuit court case. The trial court agreed on both grounds, and this appeal ensued. We review de novo as a matter of law the construction of a clear, unambiguous contract. *Auto Club Ins Ass'n v Lozanis*, 215 Mich App 415, 418-419; 546 NW2d 648 (1996). When contract language is clear, the intent of the parties will be ascertained according to its plain sense and meaning. *Amtower v William C Roney & Co (On Remand)*, 232 Mich App 226, 234; 590 NW2d 580 (1998).

Plaintiff argues that the trial court erred in determining that the rewritten loan, which did not require Barbara Ruggles' signature, constituted a material modification to the loan terms terminating defendants' liability. Plaintiff argues that any modifications it made to the loan agreement were authorized by defendants' guaranty agreements executed in 1991. We agree.

As a general rule, a change in the identity of an obligor is a material alteration that may increase the risk to a guarantor and will therefore serve to release the guarantor from his or her obligation. *Farmers' Cooperative Creamery Co v Huhn*, 241 Mich 23, 27; 216 NW 370 (1927); *Reichert v State Savings Bank of Royal Oak*, 261 Mich 227, 229; 246 NW 95 (1933). However, this general rule does not apply where the guarantor consents to such a change. *Id.* "It is a well-established rule that '[a] variation of the principal's contract which under the terms of the original agreement should have been anticipated as a possibility will not discharge the surety.'" *In re Bluestone Estate*, 121 Mich App 659, 667; 329 NW2d 446 (1982), quoting 10 Williston on Contracts (3d ed), § 1242, p 774.

Here, the guaranty agreement provided for unconditional and continuing liability on the part of the guarantors. Paragraph 4 provided:

This Guaranty is absolute, unconditional, and shall continue until all obligations of Borrower(s) to the Creditor are paid in full. The Creditor may extend any kind of credit to Borrower(s) in any amount and upon any terms without affecting this Guaranty. The Creditor is free to make any arrangements with the Borrower(s) or with any other persons, or regarding any property held or assigned as security for the debts and liabilities of the Borrower(s), without affecting this Guaranty.

The agreement encompassed all "present and future debts and liabilities" (§ 3), and expressly provided that plaintiff was not obligated to notify defendants of additional loans, changes in the amount of indebtedness, changes in loan terms, defaults, or any release executed by plaintiff (§ 6).

More particularly, ¶5 provided that the guarantors “shall continue to be liable to the Creditor under this Agreement *notwithstanding the occurrence of events which may affect the liability of Guarantor(s),*” and then provided a non-exhaustive list of such events. At least four of the events listed in ¶ 5, whether considered separately or in tandem, are applicable to this matter, establishing defendants’ continuing liability. Paragraph 5(c) provided that liability shall continue notwithstanding “[r]enewal or change in the terms of any document which pertains to the debts and liabilities of the Borrower(s) to the Creditor.” The plain import of this provision allowed plaintiff to change the terms of any document pertaining to the loan agreement, including extending the due date, reducing the interest rate, or releasing a borrower from liability, all of which occurred here. In addition, defendants’ liability continued, notwithstanding plaintiff’s release of Barbara Ruggles from liability, given the clear language of ¶ 5(e), “[r]elease, settlement, or compromise by the creditor of any debts and liabilities of the Borrower(s),” ¶5(f), “[u]nenforceability of any debts and liabilities of the Borrower(s),” and, ¶5(i), “[r]elease by the Creditor of anyone responsible for the debts and liabilities of the Borrower(s).”

In sum, reading the contract as a whole, we conclude that the parties acknowledged that certain events could occur that might otherwise affect the guarantors’ liability, but that the guaranty was continuing and unconditional. Accordingly, the trial court’s determination that defendants were released from liability under the rewritten loan was an erroneous interpretation of the unambiguous terms of the contract.

We next turn to the trial court’s determination that dismissal of Ned Ruggles’ estate from this case relieved defendants from liability on the underlying loan. The trial court cited *Ackron Contracting v Oakland Co*, 108 Mich App 767, 776; 310 NW2d 874 (1981), for its conclusion that, because the liability of the guarantors could not be greater than the liability of the obligors, and because both obligors had been dismissed from the suit, defendants could not be held liable for the debt. In *Ackron*, this Court noted that the surety could only be held liable if the principal was liable on the underlying claim, and that the principal’s liability in that case depended on whether it had breached its contract with the defendant. *Id.* Because the existence of a breach had not yet been determined, the lower court judgment against the surety was reversed and the case was remanded for an immediate trial on the breach issue. *Id.* at 776. Here, the trial court made a correct general statement of the law; that is, that the guarantors’ liability could not be greater than the obligors’ liability, *id.* at 773, but erred in concluding that dismissal of Ned Ruggles’ estate from this action necessarily meant that the estate was without liability.

The guaranty agreement provided that the death of an obligor did not release the guarantors from liability (¶ 5(a)). Defendants’ contention that plaintiff “stipulated that the Estate did not have any liability in this case” is inaccurate. Voluntary dismissal of the estate from the circuit court case did not constitute a determination of non-liability, given that the estate had conceded its liability for the debt in the pending probate court case.¹ Defendants have not provided this Court with any authority indicating that plaintiff is required to pursue collection against a borrower within the same collection action brought against the guarantors. Further, as noted previously, the guaranty agreement provided for continuing liability, notwithstanding “[u]nenforceability of any debts and liabilities of the Borrower(s).”

Accordingly, the trial court erred in holding that dismissal of the estate from this case warranted dismissing the guarantors.

We reverse and remand for a determination of the amount of damages for which defendants shall be held liable. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra

/s/ John W. Fitzgerald

¹ In this matter, the estate admitted the following in its answers to plaintiff's request to admit:

Deceased admits it is liable for the debt which is the subject of this lawsuit.

* * *

[T]he Estate is liable to the Plaintiff in the Probate Court on the Proof of Claim it filed. .
. . [T]here is already a binding admission and liability in Probate Court in respect to the
Estates' liability to the Plaintiff.