STATE OF MICHIGAN

COURT OF APPEALS

BRENNER OIL COMPANY,

Plaintiff-Appellant,

v

WILLIAM O. CRANK,

Defendant-Appellee.

UNPUBLISHED
May 27, 2004

No. 243572
Crawford Circuit Court
LC No. 01-005580-CK

Before: Whitbeck, C.J., and Griffin and Borrello, JJ.

PER CURIAM.

Plaintiff and defendant had a history of doing business with one another in the gasoline industry. Plaintiff supplied defendant's company (Scalehouse Truck Stop, Inc.), a retail gasoline and diesel truck stop, with wholesale motor fuel. Plaintiff and defendant usually did business on "an open account basis" whereby defendant paid plaintiff within ten days after the date of delivery. However, in 1994, defendant got behind and plaintiff required of the defendant to execute of two documents. Plaintiff sent both documents to defendant at the same time. The first document was a promissory note that defendant signed on behalf of his company. The second document was a personal guaranty, which plaintiff demanded that defendant sign along with the promissory note. Both the promissory note and guaranty provided for collection of past, present, and future debts. Defendant executed both documents and paid off the promissory note on February 16, 1995, as evidenced by plaintiff stamping the document "paid in full." Sometime in 1997, defendant's business sought bankruptcy protection, and the company's debt to plaintiff was dismissed in bankruptcy court.

Plaintiff sued, contending that defendant is liable for the debt predicated on his personal guaranty. Defendant contends that because the promissory note and the guaranty were presented and signed in tandem, they went "hand in hand," and as such, payment of the promissory note also discharged the guaranty. Defendant also claims fraud in the inducement, namely that defendant never agreed to be personally liable for debts beyond the promissory note. The trial court dismissed defendant's claim of fraudulent inducement but held that because the promissory note and guaranty went "hand in hand," discharge of the note also terminated the guarantee. Consequently, the trial court dismissed plaintiff's cause of action, and plaintiff appeals to this court. We reverse the decision of the trial court and remand this matter to the trial court for further proceedings consistent with this opinion.

Because a guaranty is a type of contract, it should be interpreted according to contract principles. *Morris & Co v Lucker*, 158 Mich 518, 520; 123 NW 21 (1909). "The proper construction and interpretation of [a] contract is a question of law"; therefore, we review the findings of the trial court de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

"In construing a contract of guaranty[,] the intention of the parties should govern. Where the language of the writing is not ambiguous the construction is a question of law for the court, on a consideration of the entire instrument." *Griffin Mfg Co v Mitshkun*, 233 Mich 640, 642; 207 NW 814 (1926). The parties' intentions regarding the instrument in this case are quite clear. The guaranty secures the future indebtedness of defendant. The guaranty states that the "undersigned" agrees to "unconditionally guarantee to [plaintiff] . . . all existing and future indebtedness . . . of the Debtor." The guaranty also incorporates a list of defenses into the document to preserve possible future action against this indebtedness, one of which provides, "no single or partial exercise by [plaintiff] of any right or remedy shall preclude other or further exercise thereof or the exercise of any right or remedy." The terms of the contract are unambiguous, and it is clear from the document's face that the parties' intentions were that defendant to guarantee any and all future indebtedness of his business.

Defendant cites *West Madison Investment Co v Fileccia*, 58 Mich App 100, 106; 226 NW2d 857 (1975), for the proposition that "separate instruments executed at about the same time, in relation to the same matter and between the same parties and made as elements of one transaction may be examined together and construed as one instrument." *Id*. citing *Nogaj v Nogaj*, 352 Mich 223, 231; 89 NW2d 513 (1958). Defendant's emphasis on *West Madison* is misplaced. In that case, this Court was merely reciting the proposition that to infer intent, the Court *may* consider the fact that documents were executed at the same time. However, in this case, there is no need to determine intent because there is no ambiguity in the guarantee which would give rise to judicial investigation of the parties' intent. Therefore, *West Madison* is inapplicable to this case.

We also note that defendant signed the promissory note in his representative capacity as president of his business, while he signed the personal guaranty in his individual capacity. "Generally, the law treats a corporation and its shareholders as separate entities, even where one person owns all of the corporation's stock." *Kline v Kline*, 104 Mich App 700, 702-703; 305 NW2d 297 (1981). The exception to this general rule occurs when a court must pierce the corporate veil and find the shareholder liable for a corporate liability "to avoid fraud or injustice." *Id.* However, there has been no evidence of fraud or injustice presented in this case, and so the general rule of treating a shareholder and its corporation as different legal entities applies. Therefore, the business's obligation on the promissory note must be treated separately from defendant's obligation on the personal guaranty. This in turn means that the discharge of the promissory note on which the business was liable in no way affected the personal guaranty signed by defendant, regardless that they were signed contemporaneously.

Nor do we find that defendant is exonerated from this debt predicated on the bankruptcy proceedings involving defendant's company because the proceedings did not cover defendant's personal debts and financial obligations. In *Michigan Nat'l Bank v Laskowski*, 228 Mich App 710, 712; 580 NW2d 8 (1998), we stated that "the discharge of a debtor in bankruptcy does not

discharge the obligations of the guarantors." Therefore, when the bankruptcy court discharged the business's liabilities to plaintiff, it in no way affected defendant's personal obligation.

Defendant also reasserts the defense of fraud in the inducement as an alternative ground for affirming the trial court. Defendant argues that plaintiff's discussions with defendant, which solely concerned defendant's outstanding indebtedness, created a material misrepresentation. Because of this misrepresentation, defendant claims, he was fraudulently induced into signing a guaranty, the alleged true purpose of which was to guaranty all future indebtedness.

A cross-appeal is "not necessary to urge an alternative ground for affirmance, even if the alternative ground was considered and rejected by the lower court or tribunal." *Vandenberg v Vandenberg*, 253 Mich App 658, 663; 660 NW2d 341 (2002). In this case, defendant raised the defense of fraud in the inducement at the trial level. In his reply brief, he first responded to plaintiff's argument regarding the enforceability of the guaranty. Defendant then readdressed the issue of fraud in the inducement and reasserted it as an alternate ground for affirmance, even though the trial court previously struck it down. His action brings this issue properly before this Court. *Vandenberg*, *supra* at 663.

Because defendant is not barred from raising the defense of fraud in the inducement by MCR 7.207, we review the issue for clear error. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Id.* And findings of law by a trial court following a bench trial should be reviewed de novo. *Id.*

Generally, "actionable fraud must be predicated on a statement relating to a past or existing fact." *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). Fraud in the inducement is a recognizable claim of action in Michigan. "Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon." *Id.* A finding of fraud in the inducement would render the contract on which it was based voidable "at the option of the defrauded party." *Id.* at 640.

Here, the instrument itself clearly states that the document was to guarantee future indebtedness. "Michigan law presumes that one who signs a written agreement knows the nature of the instrument so executed and understands its contents." *Watts v Polaczyk*, 242 Mich App 600, 604; 619 NW2d 714 (2000). It is a general rule of law that absent an ambiguity, we will confine our analysis to the four corners of the document in question. Here, the document clearly indicates that defendant was assuming a personal liability. Despite defendant's assertions to the contrary, defendant has failed to present sufficient evidence to show that the trial court's ruling striking the defense of fraud in the inducement was clearly erroneous.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello