STATE OF MICHIGAN

COURT OF APPEALS

JZQ, INC., ZUHER QONJA, and JAMAL QONJA,

Plaintiffs-Appellants,

v

MAMOON KARIM,

Defendant/Cross-Plaintiff-Appellee,

and

MK & AD, INC., and ALAA DEKHOO,

Defendants/Cross-Defendants,

and

SECURITY FINANCIAL SERVICES, INC., and GREAT AMERICA LEASING CORP.,

Defendants.

UNPUBLISHED
May 27, 2004

No. 244538
Wayne Circuit Court
LC No. 01-105611-CH

Before: Wilder, P.J., and Hoekstra and Kelly, JJ.

PER CURIAM.

In this action to enforce promissory notes and personal guaranties, plaintiffs appeal as of right from the order entering judgment against defendant Mamoon Karim in the amount of $38,151.63, as well as attorney fees in the amount of $10,777.70. We affirm.

This case arises from a contract for the sale of a business. On June 13, 1997, JZQ, Inc. (JZQ), entered into a purchase agreement with MK & AD, Inc. (MK & AD), to sell its business (which sold liquor, beer, wine, and groceries) as well as the fixtures, equipment, and licenses associated with the business and the building and land upon which the business was located. In return for the business assets, MD & AK agreed to pay $80,000 in cash at closing, and execute a promissory note for $45,000. Regarding the real estate, MD & AK agreed to pay JZQ $120,000 at closing, and execute a land contract in the amount of $45,000. Significantly, the purchase

agreement also included a personal guaranty provision, which stated that "the Purchaser's shareholders [Karim and defendant Alaa Dekhoo] shall personally guaranty the payment of the Promissory Note and the Land Contract."

Although the purchase agreement was entered into in June 1997, the transaction did not close until December 11, 1997. At closing, MK & AD executed a promissory note in favor of JZQ in the amount of $45,000 for the business assets and a land contract in the amount of $45,000 for the real estate. At the same time, Karim and Dekhoo in their individual capacities executed a personal guaranty in favor of JZQ.

Subsequently, on February 1, 1998, MK & AD executed an additional promissory note for $60,000.00 in favor of defendants Zuher and Jamal Qonja individually. This promissory note provides, in relevant part, that:

> For Value Received, the undersigned, MK & AD, Inc., a Michigan corporation, promises to pay to the order of Zuher Qonja and Jamal Qonja . . . the principal sum of Sixty Thousand ($60,000.00) Dollars, without interest. The principal balance shall be due and payable three (3) years from the date hereof.

The promissory note does not delineate the "Value Received." Apparently, Karim and Dekhoo also signed a personal guaranty for this additional note that provided for "prompt payment of the above promissory note, including principal and interest at maturity." This guaranty is not dated.[1] Moreover, just as with the promissory note, the guaranty does not indicate what value was received by MK & AD. It is undisputed that MK & AD defaulted on both promissory notes and the land contract, and that Karim and Dekhoo similarly defaulted on both guaranties. Plaintiffs filed this suit for, among other things, enforcement of these promissory notes, personal guaranties, and the land contract.

On appeal, JZQ argues that the trial court erred in ruling that, as a matter of law, the guaranty signed at the December 11, 1997, closing obligated Karim personally for amounts owed by MK & AD on the promissory note only. JZQ asserts that the plain language of the guaranty also makes Karim liable for any amounts owed by MK & AD under the land contract also. We disagree.

Resolution of this issue requires this Court to interpret the contractual provisions at issue. Although a guaranty contract "is a special kind of contract," *Bandit Industries, Inc, v Hobbs Int'l, Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001), general rules of contract construction apply in interpreting guaranty contracts, *First Nat Bank of Ypsilanti v Redford Chevrolet Co*, 270 Mich 116, 121; 258 NW 221 (1935). The primary goal of contract interpretation is to honor the intent of the parties. *Rasheed v Chrysler Corp*, 445 Mich 109, 127, n 28; 517 NW2d 19 (1994); *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich

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[1] Because the parties appear to agree that this personal guaranty relates to the February 1, 1998 promissory note, we will refer to the guaranty as the "February 1, 1998 guaranty" for purposes of this appeal.

App 486, 491; 579 NW2d 411 (1998). If the contract language is clear and unambiguous, then its meaning is a question of law for the court to decide. *Id.* "'As a general rule, where terms having a definite legal meaning are used in a written contract, the parties to the contract are presumed to have intended such terms to have their proper legal meaning, absent a contrary intention appearing in the instrument.'" *Conagra, Inc, v Farmers State Bank,* 237 Mich App 109, 132; 602 NW2d 390 (1999), citing *Nationwide Mut Fire Ins Co v Detroit Edison Co,* 95 Mich App 62, 64; 289 NW2d 879 (1980), and 17A Am Jur 2d, Contracts, § 362, pp 384-385.

In this case, there is no question that MK & AD, in purchasing the business and real estate, issued a promissory note for the business assets and a land contract for the real estate in favor of JZQ, and that Karim and Dekhoo individually signed a personal guaranty that provides in relevant part:

> In consideration of certain agreements, credits and other transactions entered into, extended or made to MK&AD, [sic] INC., a Michigan Corporation, hereinafter called the "Debtor", the undersigned hereby guarantees to JZQ, Inc.[,] a Michigan Corporation, hereinafter known as "Creditor", its successors or assigns, the full and prompt payment of Debtor's obligation to Creditor now owing, and all liabilities which the Debtor has incurred, or is under, or may incur or be under to the Creditor arising from certain advances made by the Creditor, which advances are evidenced by a Promissory Note and Security Agreement of even date hereof in the sum of FORTY-FIVE THOUSAND and 00/100 ($45,000.00) DOLLARS.

The question presented is the scope of the guaranty. Although the purchase agreement contemplated that "The Purchaser's shareholders shall personally guaranty the payment of the Promissory Note *and the Land Contract*" (emphasis supplied), the guaranty itself provides otherwise. The plain language of the guaranty provides that its signers could be held liable for "all liabilities which [MK & AD] has incurred, or is under, or may incur or be under to [JZQ] arising from certain advances made by [JZQ]." According to the guaranty, the advances at issue are "evidenced by a Promissory Note and Security Agreement of even date hereof in the sum of FORTY-FIVE THOUSAND and 00/100 ($45,000.00) DOLLARS." The guaranty is silent on the issue of the land contract. Our Supreme Court, noting that "a guaranty contract—like a surety contract—is a special kind of contract," has observed:

> The undertaking of a surety is to receive a strict interpretation. The surety has a right to stand on the very terms of the contract. To the extent and in the manner and under the circumstances pointed out in his obligation, the surety is bound, and no further. The liability of a surety is not to be extended by implication beyond the terms of his contract. A surety cannot be held beyond the precise terms of his agreement. As said by Chancellor Kent, "The claim against a surety is *strictissimi juris.*" [*Bandit, Inc, supra* at 511-512, quoting *Ann Arbor v Massachusetts Bonding and Ins Co,* 282 Mich 378, 380; 276 NW 486 (1937) (internal citations omitted).]

Here, the precise terms of the guaranty contract define the liability as any debt owing on the promissory note and is silent regarding the land contract. Consequently, we agree with the trial court's ruling that Karim is not personally liable on the debt owed under the land contract.

Next, the Qonjas take issue with the trial court's ruling that Karim could not be held liable under the February 1, 1998, promissory note and personal guaranty. The trial court ruled that the Qonjas had not created even a prima facie case that consideration supported these documents because they failed to provide any admissible evidence that consideration was offered. The trial court acknowledged that the purchase price for the business and the real estate were established by the purchase agreement, as well as the December 11, 1997, promissory note and the December 11, 1997, land contract, and there was nothing to suggest that there was consideration for the February 1, 1998, promissory note other than the Qonjas' mere assertions. In a motion for reconsideration in the trial court and now on appeal, the Qonjas do not challenge the trial court's ruling regarding the absence of any admissible evidence to show that the February 1, 1998, promissory note was supported by consideration. Rather, they argue that the note was a modification of an earlier agreement and, therefore, evidence of consideration is not required under MCL 566.1. We disagree. The applicability of a statute is a question of law that we review de novo. *Adams Outdoor Advertising, Inc v City of Holland*, 463 Mich 675, 681; 625 NW2d 377 (2001).

MCL 566.1 provides:

> An agreement hereafter made to change or modify, or to discharge in whole or in part, any contract, obligation, or lease, or any mortgage or other security interest in personal or real property, shall not be invalid because of the absence of consideration: Provided, That the agreement changing, modifying, or discharging such contract, obligation, lease, mortgage or security interest shall not be valid or binding unless it shall be in writing and signed by the party against whom it is sought to enforce the change, modification, or discharge.

By its plain language, MCL 566.1 applies to changes or modifications of already existing contracts. The Qonjas maintain that the February 1, 1998 promissory note is a written modification of their prior existing agreement with defendants to pay an additional $60,000 for the business assets that is not reflected in the parties' purchase agreement. In its comprehensive and well-reasoned opinion, the trial court concludes that evidence of a verbal agreement to pay an additional $60,000 for the business assets is inadmissible because it contradicts the written contracts for the sale of the business assets, which "are complete, clear and unambiguous, especially with respect to the price to be paid." The Qonjas do not challenge this ruling. We fully agree with and adopt the reasoning of the trial court concerning the admissibility of verbal evidence of an agreement to pay an additional $60,000 for the business, and without any evidence of a prior agreement, MCL 566.1 is inapplicable.

Further, even if the unwritten portion of the purchase agreement were admissible, we nonetheless would find that MCL 566.1 is inapplicable because the February 1, 1998 promissory note does not modify or change the parties' agreement. The essence of the agreement, according to the affidavit of Zuher Qonja, was that defendants would pay an additional sum of $60,000 not reflected in the purchase agreement. In effect, the note merely reduces that agreement to writing and indicates that the Qonjas will forbear collection for a period of three years. Thus, the February 1, 1998, promissory note merely represents a term of the original agreement not set forth in writing, rather than a modification. Further, forbearing from collection is not a change or modification of the essential nature of the agreement.

Finally, we note that defendants object to the trial court relying on the affidavit of Karim to provide evidence in support of his opposition to the entry of summary disposition on the $60,000 promissory note of February 1, 1998 because Karim refused to answer questions regarding the note at his deposition. However, the trial court in its opinion agreed with defendant and explicitly stated that "this court cannot consider the statement made in Karim's affidavit concerning a lack of consideration."

In light of our conclusions, JZQ's argument that the trial court abused its discretion in denying its motion for reconsideration is without merit.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly