

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN COMMERCE BANK,
Plaintiff-Appellant,

UNPUBLISHED
November 10, 2011

v

PALMS INVESTMENTS, L.L.C.,
Defendant,

No. 299168
Wayne Circuit Court
LC No. 10-003240-CK

and

DURaid DAOUd, a/k/a DAVID DAOUd,
HADIR ALTON, DORAIT ALTON and ATHEER
YALDO,

Defendants-Appellees.

Before: WHITBECK, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants.¹ Because defendants' liability as guarantors was extinguished when the obligor's liability was relieved pursuant to a property sale in satisfaction of its debt, we affirm.

We review de novo a trial court's decision granting a motion for summary disposition. *Hines v Volkswagen of Am, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). It appears that the trial court granted summary disposition under MCR 2.116(C)(10) because it relied on documentary evidence outside the pleadings. When reviewing a motion for summary disposition under subrule (C)(10), we consider the pleadings, affidavits, and documentary evidence in a light most favorable to the nonmoving party. *Id.* "Summary disposition is appropriate if there is no

¹ Because Palms Investments, L.L.C., is not a proper party to this case, "defendants" refers to defendants Duraid Daoud, a/k/a David Daoud, Hadir Alton, Dorait Alton, and Atheer Yaldo only.

genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007).

Plaintiff first argues that a guarantor’s liability is not extinguished when a debt is discharged in bankruptcy. Here, plaintiff’s obligor, Palms Investments, L.L.C., defaulted on its debt to plaintiff and filed a petition for bankruptcy. During the pendency of the bankruptcy proceeding, Palms’s bankruptcy trustee moved the bankruptcy court to approve the sale of Palms’s property securing its debt to Detroit Commerce Bank (“DCB”), plaintiff’s predecessor in interest, conditioned on DCB waiving any deficiency between the sale amount and outstanding debt. Although the bankruptcy court approved the sale, its order was silent regarding defendants’ liability as guarantors of the debt.

The discharge of a debt in bankruptcy has no effect on the liability of codebtors, sureties or guarantors. *Michigan Nat’l Bank v Laskowski*, 228 Mich App 710, 712-713; 580 NW2d 8 (1998). “A discharge in bankruptcy arises by operation of federal law and not by the consent of the obligor’s creditors.” *Id.* at 713. Because the bankruptcy court can affect only those relationships between debtors and their creditors, it cannot affect the obligations of guarantors. *Id.* at 712-713. Defendants accurately note, however, that the sale of Palms’s property to DCB was not a discharge in bankruptcy. Rather, the bankruptcy court granted the trustee’s motion to sell the property pursuant to an agreement reached between the trustee and DCB. In other words, the bankruptcy court approved and permitted the sale of property owned by the debtor—Palms—to one of the debtor’s creditors—DCB, but it did not order Palms’s debt to DCB discharged pursuant to bankruptcy law. The discharge of Palms’s debt was accomplished through a private contract *authorized*, rather than ordered, by the bankruptcy court. A guarantor is liable to a creditor only to the extent that the principal debtor is liable. *Wallace Hardware Co, Inc v Abrams*, 223 F3d 382, 401 (CA 6, 2000).

Further, it is irrelevant that the bankruptcy court’s order was silent with respect to defendants. DCB agreed to discharge Palms’s debt by purchasing property from Palms and waiving any deficiency between the purchase price and outstanding debt. As such, Palms no longer owed any debt to DCB. The guaranty agreement signed by defendants and DCB specified that the guaranty would endure until “all the indebtedness incurred . . . shall have been fully and finally paid and satisfied[.]” Because Palms’s indebtedness was satisfied by the purchase and waiver, the guaranty expired by its own terms.

Plaintiff next argues that the language of the guaranty itself specified that Palms’s liability may be waived with no effect on the guarantor’s liability. To analyze this argument, we look to the terms of the guaranty agreement. The goal of contract interpretation “is to determine and enforce the parties’ intent on the basis of the plain language of the contract itself.” *St Clair Med, PC v Borgiel*, 270 Mich App 260, 264; 715 NW2d 914 (2006). “This Court examines contractual language and gives the words their plain and ordinary meanings.” *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007).

Plaintiff fails to identify the specific waiver language in the guaranty agreement that supports its position. Moreover, we are unable to identify any language in the agreement’s list of waivers that would permit plaintiff to pursue a claim of deficiency against any party—obligor or guarantor—after the debt has been satisfied. Accordingly, plaintiff’s argument lacks merit.

Affirmed. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ William C. Whitbeck
/s/ Christopher M. Murray
/s/ Pat M. Donofrio