STATE OF MICHIGAN

COURT OF APPEALS

PAUL MARCUZ,

Plaintiff-Appellee,

v

STEVEN PREMIERE PROPERTIES & DEVELOPMENT, L.L.C., ANTONIO GIANNANDREA, and MARIO GIANNANDREA,

Defendants,

and

STEVEN BRANOFF,

Defendant-Appellant.

UNPUBLISHED
October 9, 2012

No. 305733
Oakland Circuit Court
LC No. 2009-103593-CZ

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Defendant Steven Branoff appeals by right the trial court's order of judgment,[1] entered following a bench trial, which found that Branoff had personally guaranteed $85,000 of a $170,000 loan from Marcuz to Premiere Properties and Development, L.L.C. (Premiere). For the reasons set forth below, we affirm.

I. BASIC FACTS

According to Marcuz's complaint, in the spring of 2007, he was solicited by Premiere to invest in a construction development project in Utah, specifically, the construction of luxury homes. Marcuz alleged that on March 14, 2007, he loaned Premiere $85,000. On April 3, 2007, Marcuz loaned Premiere an additional $85,000; the terms of the April 3, 2007 loan were memorialized in a promissory note. The promissory note indicated that Premiere was to pay the

[1] Branoff is the only defendant who has participated in this litigation on appeal.

balance of the note, plus interest, to Marcuz by October 3, 2007. The promissory note was signed by Branoff twice: once as a "member" of Premiere, and once "individually." The note was also signed by defendants Mario and Antonio Giannandrea "individually." Marcuz's complaint alleged that, as of September 3, 2009, "[d]efendants have made no payment on the principle on said loan, said loan is in default and the principle [sic] on said loan is currently due and owing."

On July 27, 2011, the trial court held a bench trial, at which only Marcuz and Branoff testified. Prior to trial, plaintiff's counsel indicated that Mario and Antonio Giannandrea had been dismissed from the suit. Branoff testified that he was the sole incorporator of Premiere Properties, and that he signed the note twice. Branoff explained that it was his understanding that he and Antonio and Mario Giannandrea were going to "be a part of the finalized company," although he could not produce any documentation indicating that the Giannandreas had any interest in Premiere. Branoff believed that the Giannandreas had signed the note because "we were showing the members of the – who were going to be the finalized members of the company." Branoff testified that he had never met Marcuz at any time, was not involved in drafting the promissory note, and that intermediaries were responsible for soliciting the loan. The parties stipulated that $60,027.40 was paid back on the total debt of $170,000.00. However, when questioned by plaintiff's counsel, Branoff admitted that the $60,027.40 was interest only, and not principal.

The trial court agreed with Marcuz and found in his favor:

> Okay, based upon the testimony and the proofs, the exhibits, the court is going to grant a judgment as to Premiere Properties in the amount of $170,000.00. I guess by making that decision, I'm indicating that the $60,000.00 that was paid was interest, not principle [sic] and the court is also finding that -- you know, promissory notes are not like arcane documents. I mean, everybody's seen them, everybody uses them and they have a pretty standard form and this one says, Stephen Branoff, title, member and he signs under Premiere Properties. That's easy to understand. He's a member of Premiere Properties and that's how he's signing it. But then below that, there's 3 more names and these don't say member after them, they say, individually. That's pretty clear indication an individual, meaning personal, guarantee. It seems very clear to me. So the court is finding . . . a judgment of against Mr. Branoff in the amount of $85,000.

II. ANALYSIS

"We review a trial court's findings of fact in a bench trial for clear error and its conclusions of law de novo."[2] Branoff signed the promissory note twice, once as a "member" of

[2] *Chelsea Inv Group LLC v Chelsea*, 288 Mich App 239, 250; 792 NW2d 781 (2010).

Premiere, and once "individually." He now argues that he is not liable for the debt owing on the promissory note because he never intended to sign in an individual capacity. We disagree.

> Parol evidence is admissible to show the intent of the parties to a negotiable instrument, where one signs in a manner that makes it doubtful whether he or she signs individually or in a representative capacity. Accordingly, parol evidence is admissible to show that the individual or individuals have executed a bill or note as officers of the corporation and that the intention of all concerned was that it should bind the corporation and not the individuals.[3]

Here, the trial court heard parol evidence at the bench trial. At the bench trial, Branoff testified that he did not believe that he was signing individually. However, the trial court apparently did not find Branoff's testimony credible, as it found that Branoff's signature "individually" was sufficient evidence of his intent to personally guarantee the loan, and "[s]pecial deference is given to the trial court's findings when they are based on the credibility of the witnesses."[4]

Further, the trial court's conclusion is consistent with Michigan law. In *Livonia Building Materials Co v Harrison Construction Co*,[5] a corporate officer signed a promissory note once, and left a separate line for him to sign individually "completely blank."[6] This Court held that because the officer left the "individual" line blank, it was clear that the officer did not intend to guarantee the loan personally.[7] By analogy, when Branoff signed the promissory note first as a "member" of Premiere and second "individually," he manifested his intent to personally guarantee the note. Simply put, it would have been redundant for Branoff to sign the promissory note a second time if he did not intend that his second signature have some legal effect different from his first signature. Branoff argues that *Livonia Building* is distinguishable from the facts of this case because, in *Livonia Building*, "the trial court relied upon the signatory's testimony as to why he signed the document and concluded that it was not a personal guaranty, and the Appellate Court [sic] upheld this ruling," whereas here "Branoff testified that he was not signing for personal liability and there is nothing in the body of the note to suggest otherwise." We disagree. As the *Livonia Building* Court noted in reaching its conclusion, "where individual responsibility is demanded the nearly universal practice is that the officer signs twice-once as an officer and again as an individual."[8]

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[3] 6 Mich Civ Jur Corporations § 376, citing *Simon v Tropp*, 252 Mich 559, 233 NW 415 (1930), and *Lexington State Bank v Rose City Creamery Co*., 207 Mich 81, 173 NW 481 (1919).

[4] *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010).

[5] 276 Mich App 514, 522-524; 742 NW2d 140 (2007).

[6] *Id*. at 524.

[7] *Id*.

[8] *Id*. at 523, quoting *Salzman Sign Co v Beck*, 10 NY2d 63, 67; 176 NE2d 74; 217 NYS2d 55 (1961).

Moreover the trial court's finding that Branoff intended to personally guarantee the loan is a factual finding, which, as noted, this Court reviews for clear error.[9] Clear error occurs only when this Court, after reviewing the entire record, is left with a "definite and firm conviction that a mistake has been committed. . . ."[10] Here, as explained, the trial court's decision was consistent with Michigan law and was logical. Accordingly, we cannot conclude that the trial court committed clear error when it determined that Branoff intended to personally guarantee the loan.

Branoff next argues that the trial court erred when it determined that the approximately $60,000 that Premiere had paid back to Marcuz was interest and not principal. Specifically, Branoff argues:

> The trial court found that "the $60,000 that was paid was interest, not principal," and therefore the Judgment against . . . Branoff was for the amount of the Note, $85,000. . . . It is undisputed that Premiere . . . made payments to . . . Marcuz on a monthly basis . . . until February 2002, in the total amount of $60,027.40. The Note states interest only payments until October 3, 2007. The trial court should have applied payments to principal.

Again, we disagree. The promissory note indicates that interest shall be paid from the date the promissory note was signed "until paid in full." Accordingly, interest would continue to accrue until the balance of the principal was paid. Moreover, Branoff indicated at trial that the $60,027.40 which had already been paid on the loan was interest, not principal. Accordingly, we are not left with a "definite and firm conviction"[11] that the trial court erred when it determined that the approximately $60,000 which had already been paid to Marcuz was interest, not principal.

Affirmed.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro

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[9] *Chelsea Inv Group LLC*, 288 Mich App at 250.

[10] *Hollis v Zabowski*, 101 Mich App 456, 458; 300 NW2d 597 (1980).

[11] *Hollis* 101 Mich App at 458.