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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1944**

Minnwest Bank Metro,
Respondent,

vs.

1010 Park Ave, LLC, et al.,
Defendants,

Glenda L. Key,
Appellant.

**Filed June 27, 2011
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-09-8506

Stacy A. Woods, Patrick C. Summers, Patrick B. Steinhoff, Mackall, Crouse & Moore,
PLC, Minneapolis, Minnesota (for respondent)

Scott A. Johnson, Todd M. Johnson, Johnson Law Group LLP, Minnetonka, Minnesota
(for appellant)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant argues that the district court erred in its interpretation of a guaranty agreement and that under the unambiguous language of that agreement, she is not personally liable for a 2005 loan taken out by defendant 1010 Park Avenue, LLC (Park Avenue). Because we conclude that the district court did not err, we affirm.

FACTS

Appellant Glenda L. Key is the owner of Park Avenue, a limited liability company organized in Minnesota.¹ In July 2003, Park Avenue purchased real property for investment purposes and requested a loan from respondent Minnwest Bank Metro (Minnwest). Park Avenue signed a promissory note and mortgage in the amount of \$2.5 million. At the closing, Minnwest required Key, as the owner of the LLC, to sign a commercial guaranty of the loan made to Park Avenue. Minnwest drafted the guaranty, and Key signed it without modification.

The guaranty states in relevant part:

The Indebtedness guaranteed by this Guaranty includes any and all of Borrower's indebtedness to Lender and is used in the most comprehensive sense and means and includes any and all of Borrower's liabilities, obligations and debts to Lender, now existing or hereinafter incurred or created, including, without limitation, all loans, advances, interest, costs, debts, overdraft indebtedness, credit card indebtedness, lease obligations, other obligations, and

¹ We note that Key acted both individually and on behalf of Park Avenue at various points during the transactions in this case. Therefore, actions taken by Key on behalf of the LLC will be described as having been done by Park Avenue.

liabilities of Borrower, or any of them, and any present or future judgments against Borrower, or any of them

This Guaranty . . . will continue in full force until all Indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. . . . This Guaranty will continue to bind Guarantor for all Indebtedness incurred by Borrower or committed by Lender prior to receipt of Guarantor's written notice of revocation, including any extensions, renewals, substitutions or modifications of Indebtedness. . . . This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the guaranteed Indebtedness remains unpaid and even though the Indebtedness guaranteed may from time to time be zero dollars (\$0.00).

In 2004, Park Avenue contracted to sell the 2003 property, and the sale closed on December 3, 2004. With the proceeds of the sale, Park Avenue was able to fully repay its loan to Minnwest. Following the sale, Minnwest sent Park Avenue a copy of the 2003 promissory note stamped "PAID" and also provided Park Avenue with copies of the Assignment of Rents and Mortgage, each stamped "PAID."

With the proceeds from the sale, Park Avenue began looking for a new investment property. In January 2005, Park Avenue entered into a purchase agreement for a parcel of land located on Daniels Street in Long Lake. Park Avenue entered into discussions with Minnwest about financing. Neither party explicitly discussed the applicability of the 2003 guaranty to a new loan, and Minnwest did not ask Key to sign a new guaranty agreement. Park Avenue signed a promissory note and mortgage to secure the loan from

Minnwest in the amount of \$1,118,900, and Park Avenue closed on the Daniels property in February 2005.

Because Park Avenue defaulted on the note, Minnwest filed a foreclosure action in April 2009. A sheriff's sale of the Daniels property occurred on December 18, 2009, and the district court entered a deficiency judgment against Park Avenue in the amount of \$343,069.43 in January 2010. The district court held a bench trial to resolve the issue of Key's personal liability for the 2005 loan.

In its subsequent order, the district court found that 2003 guaranty's express terms "provide[d] that it would remain in force for any 'indebtedness' until the Guaranty was revoked," and that the "indebtedness" referred to included "any debt between Park Avenue and Minnwest, without limitation to any . . . time period." The district court therefore concluded that the "Guaranty is unambiguous that it is continuing and unlimited, and not terminated by payment of the 2003 loan." The district court further found that Key never provided written notice of revocation of the guaranty and, therefore, she is personally liable for Park Avenue's 2005 loan with Minnwest. The district court entered judgment against Key in the amount of \$352,284.93.² This appeal follows.

D E C I S I O N

In an appeal from a bench trial, we give the district court's factual findings great deference and do not set them aside unless clearly erroneous, but we are not bound by and need not give deference to the district court's decision on a purely legal issue. *Porch*

² This amount includes receivership expenses incurred by Minnwest.

v. Gen. Motors Acceptance Corp., 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002).

Key contends that the unambiguous language of the guaranty provides for two methods of termination: full satisfaction of the indebtedness owed to Minnwest or written notice of revocation. Under this interpretation, Key contends that her obligations under the guaranty terminated when Park Avenue fully satisfied its 2003 loan obligation to Minnwest. Minnwest argues that the guaranty unambiguously provides for only one method of termination—written revocation.

The issue of whether a contract is ambiguous presents a question of law, which we review de novo. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008). Contract language is ambiguous if it is “reasonably susceptible to more than one interpretation.” *Brookfield Trade Ctr. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). A contract’s unambiguous language “must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh.” *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 347 (Minn. 2003) (quotation omitted).

The guaranty expressly defines the “Indebtedness guaranteed by this Guaranty” as “includ[ing] any and all . . . debts to Lender, now existing or hereinafter incurred or created.” With this definition in mind, we analyze the guaranty’s language, which clearly states that the guaranty will continue in full force and effect until “all Indebtedness incurred . . . before receipt by [Minnwest] of any notice of revocation,” is fully satisfied. Appellant reads this language as disjunctive, creating two methods of termination. We disagree.

The clear and unambiguous language of this guaranty requires Key to send notice of revocation *and* requires Park Avenue to fully satisfy any debts it incurred prior to Minnwest's receipt of Key's revocation before the obligations under the guaranty are terminated. Both conditions must be met before the guaranty ceases to be effective.

Furthermore, the terms of the guaranty provide that it "will continue to bind [Key] for all Indebtedness incurred by [Park Avenue] . . . prior to receipt of [Key]'s written notice of revocation," and continues to be "binding upon [Key] . . . even though the Indebtedness guaranteed may from time to time be zero dollars." This language regarding the duration of this guaranty is unambiguous. To accept Key's interpretation of the guaranty language would render these provisions superfluous.

After giving effect to all of the guaranty's language, as we are required to do, we conclude that the guaranty unambiguously requires both a written revocation *and* payment of the incurred indebtedness. The district court did not err in its conclusion that because Key failed to provide written notice of revocation, she remains personally liable for Park Avenue's 2005 loan with Minnwest.

Affirmed.