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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-637**

Upper Lakes Foods, Inc.,
Respondent,

vs.

Bunker Hills Corporation
d/b/a Seasons at Bunker Hills, et al.,
Appellants.

**Filed December 14, 2010
Affirmed
Worke, Judge**

Anoka County District Court
File No. 02-CV-09-5593

Stephen J. Olson, Maki, Ledin, Bick & Olson, S.C., Superior, Wisconsin (for respondent)

Deno W. Berndt, Berndt Law Offices, PLLC, Minneapolis, Minnesota (for appellants)

Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellants challenge the district court's grant of summary judgment enforcing a personal guaranty. We affirm.

FACTS

Appellant Russell Weaver is the sole shareholder of appellant Bunker Hills Corporation, which owns and operates The Season's Restaurant. In 1989, Weaver signed an application for credit with respondent Upper Lakes Foods, Inc. The application contained a personal-guaranty provision: "The undersigned hereby personally guarant[ies] payment of any obligation of the above applicant." Weaver signed the credit application in his personal capacity with no designation or mention of Bunker Hills. Bunker Hills purchased products under the 1989 credit application for the duration of the parties' business relationship.

Bunker Hills eventually became delinquent on its payments due under the credit application. Consequently, Bunker Hills signed a promissory note in 2007 (2007 note) memorializing the outstanding debt in the sum of \$62,302.01. The 2007 note also provided a payment plan requiring the debt to be paid in full, plus newly accrued interest, by September 30, 2009. In the 2007 note, respondent also forgave \$32,157.35 due in accrued interest and offered Bunker Hills a 1% discount on all future deliveries paid cash-on-delivery. Unlike the credit application, the 2007 note was signed by Weaver in his capacity as a signatory of Bunker Hills. But there was no language in the 2007 note discharging Weaver from his personal obligation created by the credit application.

In December 2008, Bunker Hills began receiving deliveries from respondent that were invoiced to a second account separate from the primary account associated with the 2007 note. When Bunker Hills fell behind on its payment obligations on the 2007 note in

March 2009, respondent sought a personal guaranty from the Season's general manager¹ for the second account in order to continue allowing orders and deliveries. But Bunker Hills failed to make payments on both the 2007 note and the second account, and respondent ceased deliveries in June 2009. Bunker Hills owed \$43,750.91 on the second account when respondent ceased deliveries.

Respondent brought breach-of-contract claims against Bunker Hills, Weaver, and the general manager, and the district court granted summary judgment in favor of respondent. The district court concluded that Weaver indisputably signed a personal guaranty within the credit application, and held Bunker Hills and Weaver jointly and severally liable for outstanding amounts on the 2007 note and the second account. This appeal follows.

D E C I S I O N

When reviewing a grant of summary judgment, this court determines whether there are genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). This court views “the evidence in the light most favorable to the party

¹ The Season's general manager, appellant Joseph Knudson, and respondent negotiated a settlement dismissing Knudson's appeal in this matter.

against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). “We review de novo whether a genuine issue of material fact exists” and “whether the district court erred in its application of the law.” *Id.* at 77. This court may affirm summary judgment if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

“It is axiomatic that when a director or shareholder extends his or her personal obligation to cover a corporate debt, a guarant[y] contract is created.” *Baker v. Citizens State Bank of St. Louis Park*, 349 N.W.2d 552, 557-58 (Minn. 1984). Otherwise, “a guaranty is construed the same as any other contract, the intent of the parties being derived from the commonly accepted meaning of the words and clauses used, taken as a whole.” *Am. Tobacco Co. v. Chalfen*, 260 Minn. 79, 81, 108 N.W.2d 702, 704 (1961). A guaranty “is not to be unduly restricted by technical interpretation nor enlarged beyond the fair and natural import of its terms.” *Id.* Similarly, this court will also not “read a limitation into the guaranty that may have been intended but is neither expressly stated nor reasonably implied.” *Loving & Assocs., Inc. v. Carothers*, 619 N.W.2d 782, 787 (Minn. App. 2000), *review denied* (Minn. Feb. 13, 2001).

Appellants argue that Weaver’s personal guaranty under the credit application was discharged when Bunker Hills signed the 2007 note. As support, appellants cite to *Dewey v. Henry’s Drive-Ins of Minn., Inc.*, in which the supreme court stated that “[i]t is the general rule that a material alteration in the principal contract, made after execution of the guaranty contract and without consent of the guarantor, discharges the guarantor if the

alteration adversely affects the guarantor's interests." 301 Minn. 366, 370, 222 N.W.2d 553, 555 (1974). Appellants assert that the 2007 note modified the payment terms of the credit application, which constituted a material alteration in the principal contract effectively discharging Weaver from his personal obligation made under the credit application.

Appellants' argument is unavailing. First, *Dewey* requires that the second contract be made without the consent of the guarantor in order to release the guarantor from the original guaranty. *See id.* Weaver did not expressly consent to the 2007 note in his personal capacity; he signed as a representative of Bunker Hills. But implied consent is "[c]onsent inferred from one's conduct rather than from one's direct expression." *Black's Law Dictionary* 346 (9th ed. 2009). We conclude that Weaver impliedly consented to the 2007 note in his personal capacity; his personal consent may be inferred from his signing of the note as a representative of a company for which he is the sole shareholder of.

Second, *Dewey* also requires that the second contract adversely affect the guarantor in order for the personal guaranty to be discharged. 301 Minn. at 370, 222 N.W.2d at 555. Respondent forgave \$32,157.35 due in accrued interest under the 2007 note and offered Bunker Hills a 1% discount on all deliveries paid cash-on-delivery. Alleviating outstanding interest and allowing for discounted future deliveries *benefited* Weaver. Thus, regardless of whether the 2007 note materially altered the credit application, appellants fail to establish that the 2007 note was made without Weaver's consent and adversely impacted him. Accordingly, appellants cannot meet the

requirements of *Dewey* to discharge Weaver of his personal guaranty made under the credit application. The district court appropriately granted summary judgment in favor of respondent.

Affirmed.