Affirmed and Memorandum Opinion filed August 18, 2022.

In The

Fourteenth Court of Appeals

NO. 14-21-00577-CV

CHRISTOPHER BRAN, Appellant

V.

ROD DE LLANO FAMILY PARTNERSHIP, L.P., Appellee

On Appeal from the 334th District Court
Harris County, Texas
Trial Court Cause No. 2020-76986

M E M O R A N D U M O P I N I O N

Appellant Christopher Bran challenges the trial court's summary judgment holding Bran liable for breach of a personal guaranty he signed. In a single issue, Bran argues that the payee failed to conclusively prove it owned the guaranty (and the promissory note it guaranteed) or the damages allegedly owed under the guaranty. We conclude that the payee conclusively proved its entitlement to judgment as a matter of law, and we affirm.

Background

On August 10, 2018, 219 Marshall Members, LLC (the "LLC") executed a promissory note in favor of the Rod De Llano Family Partnership, L.P. (the "Partnership"). The note was for $525,000, with a maturity date of December 1, 2018. Bran signed the note in his capacity as managing member of the LLC and also signed a personal guaranty. The parties later modified the note, when the remaining balance was $485,000, and extended the maturity date to October 1, 2019.

The LLC defaulted on the note, and the Partnership accelerated the debt and demanded payment. In December 2019, the parties entered into a forbearance agreement, pursuant to which the LLC and Bran asked that the Partnership refrain for a limited time from exercising its remedies arising as a result of the existing default, and the Partnership agreed. The LLC again defaulted. The Partnership sent notice of default and demand to Bran as guarantor; Bran failed to pay.

The Partnership filed suit against Bran, asserting a claim for breach of the guaranty. The Partnership alleged that Bran owed the unpaid principal and default interest. The Partnership moved for traditional summary judgment, arguing that it was entitled to recover on the note as a matter of law and that it was entitled to damages and attorney's fees. Bran responded and contended that the Partnership failed to establish its right to prosecute the lawsuit, specifically its ownership of the guaranty or underlying note. Bran also argued that the Partnership's calculation of interest owed was conclusory.

The trial court granted the Partnership's motion, ordered that the Partnership recover from Bran $687,714.95, which includes $485,000 in unpaid principal,

$25,000 in forbearance fees, $9,700[1] in pre-default interest, and $168,014.95 in post-default interest. Bran appeals.

Standard of Review

A plaintiff who moves for traditional summary judgment has the burden to conclusively prove all elements of its claim as a matter of law. *See* Tex. R. Civ. P. 166a(c); *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979). If the plaintiff satisfies its burden, the burden shifts to the defendant to preclude summary judgment by presenting evidence that raises a genuine issue of material fact. *Westland Oil Dev. Corp. v. Gulf Oil Corp.*, 637 S.W.2d 903, 907 (Tex. 1982). We review a summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005).

Analysis

In a single issue, Bran argues that the Partnership failed to conclusively prove: (a) ownership of the note and guaranty; and (b) the amount due under the note.

A. Ownership of the Note and Guaranty

To recover on a promissory note, the plaintiff must prove: (1) the note in question; (2) the defendant signed the note; (3) the plaintiff is the owner or holder of the note, and (4) a certain balance is due and owing on the note. *Dorsett v. Hispanic Hous. & Educ. Corp.*, 389 S.W.3d 609, 613 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Similarly, to recover under a guaranty contract, a party must prove: (1) the existence and ownership of the guaranty contract; (2) the terms of the underlying contract by the holder; (3) the occurrence of the conditions upon which liability is based; and (4) the failure or refusal to perform the promise by the

[1] The trial court's judgment contains a scrivener's error, stating "$9,7700.00."

guarantor. *Wasserberg v. Flooring Servs. of Tex., LLC*, 376 S.W.3d 202, 205 (Tex. App.—Houston [14th Dist.] 2012, no pet.).

In the first part of his issue, Bran challenges only the element of ownership and argues that the Partnership failed to conclusively prove that it is the present owner of the note and guaranty. Essentially, Bran contends that the fact that the Partnership owned the note and guaranty at one time (at the time of execution) does not conclusively prove that the Partnership remains the owner (at the time of suit).

The existence and ownership of a note may be established by proof that the plaintiff is the named payee, that plaintiff had possession of the note and produced it in court, and that the court admitted it into evidence; the same is true in proving ownership of a guaranty. *See Escalante v. Luckie*, 77 S.W.3d 410, 416 (Tex. App.—Eastland 2002, pet. denied) (citing *Schubiger v. First Newport Realty Invs.*, 601 S.W.2d 218, 222 (Tex. App.—Dallas 1980, writ ref'd n.r.e.)); *see also Chahadeh v. Jacinto Med. Grp., P.A.*, 519 S.W.3d 242, 249 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

Here, the Partnership submitted the affidavit of Rod De Llano in support of its summary judgment motion. De Llano testified that: he is the president and sole member of De Llano, LLC, which is the general partner of the Partnership; he was personally involved in the events giving rise to this lawsuit and therefore has personal knowledge regarding the subject matter of his affidavit; the Partnership and Bran executed the note on August 10, 2018; Bran signed a personal guaranty, guaranteeing the obligations of the LLC under the note; and the copy of the note and guaranty were true and exact copies of the original records. The attached note and guaranty identify the Partnership as the lender, the LLC as the borrower, and Bran as the guarantor. This evidence conclusively establishes the existence of the

note and guaranty and the Partnership's ownership of both. *See, e.g.*, *Escalante*, 77 S.W.3d at 416.

Bran cites *Reliance Capital, Inc. v. G.R. Hmaidan, Inc.*, No. 14-05-00061-CV, 2006 WL 1389539, at *4 (Tex. App.—Houston [14th Dist.] May 18, 2006, no pet.) (mem. op.), in support of his argument that the Partnership failed to prove its *present* ownership of the note and guaranty. *Reliance Capital* is distinguishable, however, because in that case the notes were transferred from the original payee to a third party. *Id.* at *1. Here, the Partnership is the original payee and did not assign or otherwise transfer the note.

B. Calculation of Interest

In the second part of his issue, Bran argues that the Partnership failed to conclusively prove the amount owed under the guaranty.

In his affidavit, De Llano set forth the unpaid principal ($485,000), unpaid forbearance fees ($25,000), and unpaid interest prior to default ($9,700). De Llano also proved up the existence and ownership of the note, which included terms regarding post-default interest. De Llano averred that post-default interest began to accrue on November 1, 2019, and that Bran was entitled to $34,850 in offsets.

De Llano's affidavit is competent evidence reflecting the balance due on the note and guaranty. *See Am. 10-Minute Oil Change, Inc. v. Metro. Nat'l Bank-Farmers Branch*, 783 S.W.2d 598, 600-01 (Tex. App.—Dallas 1989, no writ) (an uncontroverted affidavit, made on personal knowledge by a bank officer, that identifies the note and guaranty and recites the principal and interest due, is not conclusory and is sufficient to support a summary judgment). A lender is not required to "file detailed proof [of] the calculations reflecting the balance due on a note; an affidavit by a bank employee which sets forth the total balance due on a

note is sufficient to sustain an award of summary judgment." *Energico Prod., Inc. v. Frost Nat'l Bank*, No. 02-11-00148-CV, 2012 WL 254093, at *5 (Tex. App.—Fort Worth Jan. 26, 2012, pet. denied) (mem. op.); *see also Cha v. Branch Banking & Tr. Co.*, No. 05-14-00926-CV, 2015 WL 5013700, at *3 (Tex. App.—Dallas Aug. 25, 2015, pet. denied) (lender was not required to file detailed proof of the calculations reflecting the balance due on the note.).

Bran does not contest any of these numbers, nor did he in the trial court. In the trial court, Bran argued only that De Llano did not provide a calculation "as to how he arrive[d] at the interest which is allegedly owed," which we have just said is unnecessary. On appeal, Bran contends more specifically that the Partnership's interest calculation "incorrectly assumed that the amount owed on the Guaranty would include $112,550.84 in legal fees."[2]

De Llano averred that the Partnership sustained $791,116.03 in damages through July 31, 2021, which consisted of:

- $485,000 in principal;
- $25,000 in unpaid forbearance fees;
- $9,700.00 in unpaid interest prior to default over two months;
- $112,550.84 in legal fees for services rendered in protecting the Partnership's position on the subject note; and
- $158,865.19 in interest through July 31, 2021 at the default rate of 18%.

De Llano also stated that the default interest would continue at a rate of 18%, or $338.88, per day after July 31, 2021.

[2] According to De Llano, the Partnership incurred attorney's fees "relating to these issues of default and modification," as well as fees incurred "to defend [the Partnership's] position to retain a security interest in the property . . . [and] on this note."

Although the Partnership certainly requested its attorney's fees as damages, the trial court declined to award the Partnership any attorney's fees, and those fees were not included as recoverable damages in the final judgment.[3] Bran speculates that the trial court necessarily included attorney's fees as part of the default interest calculation, because the court's award of interest ($168,014.95) is the sum of the interest sought by the Partnership ($158,865.19) plus the amount of $338.88 per diem interest from July 31, 2021 until entry of judgment on August 27, 2021. In other words, according to Bran, the trial court failed to make the "necessary downward adjustment [in the interest calculation] for the denial of attorney's fees." We are unpersuaded by Bran's argument.

As stated above, De Llano's affidavit included information regarding the base amount due, the date on which interest calculations began, and certain offsets or credits to which Bran was entitled—none of which Bran challenges or disputes. The note conclusively proved the applicable interest rate. Per the terms of the note, the annual interest rate on matured, unpaid amounts was the "[m]aximum amount allowable by law."[4] Texas law "authorizes a maximum lawful rate of 18 percent per annum to be applied to a written contract." *Saad v. Valdez*, No. 14-15-00845-CV, 2017 WL 1181241, at *17 (Tex. App.—Houston [14th Dist.] Mar. 30, 2017, judgm't vacated, op. not withdrawn) (mem. op.) (citing, *inter alia*, *All Seasons Window & Door Mfg., Inc. v. Red Dot Corp.*, 181 S.W.3d 490, 498 (Tex. App.—Texarkana 2005, no pet.) (concluding that language "maximum rate

[3] The docket sheet includes an entry: "granted a partial summary judgment in favor of plaintiff as to following damages: principal, forbearance fee, and interest at 18%, attorneys fees not awarded . . . ." This is consistent with the language in the final signed judgment.

[4] Bran contends that "the trial court's interest award also failed to credit the record evidence that shows a different figure for the interest due on the note." Bran does not specify what he believes the "different figure" is or should be, nor does he direct us to any portion of the record including a purportedly different figure. Nor does Bran ask us to reform the judgment to reflect a different amount of interest owed. We conclude that Bran's contention lacks merit.

permitted by law" was sufficient to support application of 18% ceiling rate under Finance Code section 303.009)); *see also Kenneth D. Eichner, P.C. v. Jester*, No. 01-17-00118-CV, 2017 WL 4638295, at *2 (Tex. App.—Houston [1st Dist.] Oct. 17, 2017, no pet.) (mem. op.) (same).

The trial court therefore had all the necessary information before it to calculate the amount of interest owed. *E.g.*, *Mandarino v. Sherwood Lane Invs., LLC*, No. 01-15-00192-CV, 2016 WL 4034568, at *5 (Tex. App.—Houston [1st Dist.] July 26, 2016, no pet.) (mem. op.) ("However, even if the trial court refused to consider either of the accountant's affidavits as proper summary-judgment evidence, it would have been able to reach the same mathematical conclusions in rendering its judgment from the principal amount, maturity date, and interest rate stated unambiguously in the note."). Based on the Partnership's uncontroverted evidence, and our own independent interest calculation, we conclude that the judgment reflects interest calculated at the rate of eighteen percent, that it credits Bran's post-default payments, and that it does not include any amount for attorney's fees. Thus, there is more than a scintilla of probative evidence supporting the judgment amount and there is no record support for Bran's argument that the judgment amount, including the interest calculation, includes $112,550.84 in legal fees. The default interest calculation is not error for the reason Bran asserts.[5]

We overrule Bran's sole issue on appeal.

[5] The Partnership argues in response that the calculation of default interest in the judgment is approximately $8,500 too low, based on an interest calculation that compounds interest annually before judgment. It appears that the default interest amount in the judgment ($168,014.95) was computed as simple interest. Regardless whether default interest in this case is appropriately calculated as simple or compounded, we can say with certainty that the interest in the judgment is not based on any amount for legal fees, which the court did not award. Moreover, the Partnership did not file a notice of appeal and has not requested that we reform the judgment, so we leave the judgment undisturbed in this regard.

Conclusion

We affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Chief Justice Christopher and Justices Wise and Jewell.