COURT OF APPEALS
DECISION
DATED AND RELEASED

DECEMBER 27, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1927-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

BANK ONE, GREEN BAY,

Plaintiff-Respondent,

v.

D&J PARTNERSHIP and DANIEL R. ANGOTTI, JR.,

Defendants,

MICHAEL J. STEPHANI and JANICE M. STEPHANI,

Defendants-Third Party Plaintiffs-Appellants,

v.

DARLENE ANGOTTI,

Third Party Defendant.

APPEAL from a judgment of the circuit court for Brown County: N. PATRICK CROOKS, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Michael and Janice Stephani appeal a summary judgment awarding Bank One, Green Bay, $189,255.80 on a debt incurred by D&J Partnership and guaranteed by the Stephanis.[1] The judgment foreclosed a lien on a certificate of deposit pledged by the Stephanis. They argue that the Partnership's inventory, livestock, was the primary collateral for the loan and, because the bank failed to perfect its security interest in the livestock, the bank should lose its right to recover from the guarantors. We reject this argument and affirm the judgment.

Michael Stephani and Daniel Angotti formed D&J Partnership whose purpose was acquiring, owning and selling cattle. The Partnership received two loans totaling approximately $163,000 from Bank One. Payment on the first $150,000 loan was due on demand. On the same date that loan was made, the Stephanis executed and delivered to the bank an unlimited continuing guarantee of all "debts, obligations and liabilities of every kind and description, whether of the same or a different nature, arising out of a credit previously granted, credit contemporaneously granted or credit granted in the future" by Bank One to the Partnership. The Stephanis also executed and delivered to the bank a collateral pledge agreement in which they pledged as collateral on the loans made by Bank One to the Partnership "all Lender deposit accounts, certificates of deposit, repurchase agreements and money market instruments ... up to a maximum market value amount of $150,000."

Four years later, the Partnership borrowed an additional $13,073.68 from Bank One. Payment on this note was due June 1, 1995. On June 2, 1995, the bank demanded payment in full on both notes. When the Partnership failed to repay the loan, the bank brought this action to recover on the notes and foreclose on the collateral.

The bank was not required to perfect its security interest in the livestock before seeking recovery from the guarantors because the various notes, guarantees and collateral pledge agreements do not contain that

[1] This is an expedited appeal under RULE 809.17, STATS.

provision. Under the terms of these contracts, when the Partnership failed to pay the amounts due within the time specified, the bank was entitled to bring this action against Michael Stephani as a partner and against Michael and Janice as guarantors.

The Stephanis argue that summary judgment was not appropriate because there are outstanding issues of material fact regarding the parties' intentions. They argue that it was their understanding that the bank was obligated to perfect its security interest in the livestock and seek payment on the Partnership debt from the Stephanis only if the proceeds from the sale of the livestock failed to satisfy the Partnership debts. We disagree.

Michael Stephani's affidavit states that "the understanding between Mr. Frost, on behalf of Bank One, and D&J was that Bank One loans would be paid with the proceeds from the sale of D&J cattle." When the parties to a contract embody their agreement in writing and intend the writing to be the final expression of their agreement, the terms of the writing may not be varied or contradicted by parol evidence. ***In re Spring Valley Meats, Inc.,*** 94 Wis.2d 600, 607, 288 N.W.2d 852, 855 (1980). The unlimited continuing guarantee signed at the time of the original loan specifically allowed the bank to "fail to perfect its security interest or realize upon any security or collateral." This provision is unambiguous and may not be contradicted by parol evidence. Even if other writings are considered, none of the written agreements or other writings embody Stephani's statement regarding the bank's understanding. As the trial court noted, Frost's letters indicate the bank's interest in the Partnership cattle, but it cannot be interpreted to indicate that the bank agreed to seek payment from the sale of the Partnership cattle before seeking payment from the Stephanis. The Stephanis' unilateral, undocumented expectations are immaterial in the face of unambiguous written agreements. Because the issues of fact raised in the Stephanis' affidavits are not material, the trial court properly granted summary judgment. *See* ***Hilkert v. Zimmer,*** 90 Wis.2d 340, 342, 280 N.W.2d 116, 117 (1979).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.