

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 5, 2008**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

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

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

**Appeal No. 2007AP1023**

**Cir. Ct. No. 2006CV1690**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**JOHNSON BANK,**

**PLAINTIFF-RESPONDENT,**

**v.**

**VILLAGE OF BROWN DEER AND COMMUNITY DEVELOPMENT AUTHORITY  
OF THE VILLAGE OF BROWN DEER,**

**DEFENDANTS-THIRD-PARTY  
PLAINTIFFS-APPELLANTS,**

**v.**

**BROWN DEER COUNTRY FOOD STORES, INC., C/O REGISTERED AGENT,  
DAVE WOJCIECHOWSKI, WILLIAM KOBERSTEIN, US MANAGEMENT  
SERVICES, INC., NEVAC, INC. AND RONALD W. GIGUERE, SR.,**

**THIRD-PARTY DEFENDANTS.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JOHN J. DiMOTTO, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 FINE, J. The Village of Brown Deer and the Community Development Authority of the Village of Brown Deer appeal a judgment holding valid and enforceable a guarantee they executed to secure a loan Johnson Bank made to Brown Deer Country Food Stores, Inc. The Village and the Community Development Authority claim that the circuit court erred because they contend that the guarantee was subject to an unrealized condition precedent. We affirm.

I.

¶2 In March of 2005, Johnson Bank loaned \$200,000 to Country Foods for the latter to start a business in the Village. The Village guaranteed the loan. As material, the guarantee-agreement provided that the collateral for the loan would be Country Foods's equipment and fixtures:

WHEREAS, Brown Deer has resolved to provide said Loan Guarantee, under specified terms and conditions, in order to promote the development of the Property;

NOW, THEREFORE, in consideration of the following promises and mutual obligations of the parties hereto, each of them does hereby covenant and agree with the others, as follows:

....

3. The collateral for the loan will not be less than a first lien upon \$900,000 of equipment and fixtures (the "Fixtures") owned by Brown Deer Country Food Stores, Inc. and utilized in the operation of the grocery store at the Property. The Fixtures are more fully described on Exhibit A attached hereto and incorporated herein by reference.

Exhibit A described specified items of Country Foods's equipment and fixtures.

¶3 In September of 2005, Country Foods defaulted on the loan. The Bank served a notice of default on the Village and demanded payment. After several unsuccessful attempts to be paid, the Bank sued to enforce the loan guarantee. In their operative answer, the Village claimed an affirmative defense of, as phrased by them, the “[f]ailure of a condition precedent. The plaintiff failed to provide collateral in an agreed sum of \$900,000.”

¶4 The circuit court concluded on cross-motions for summary judgment that the unambiguous language in paragraph three of the agreement did not create a condition precedent to the Village's liability as guarantor.

## II.

¶5 We review *de novo* a circuit court's grant of summary judgment. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315–317, 401 N.W.2d 816, 820–821 (1987). Summary judgment must be granted when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law. WIS. STAT. RULE 802.08(2). The interpretation of a contract also presents a question of law that we review *de novo*. *Woodward Commc'ns, Inc. v. Shockley Commc'ns Corp.*, 2001 WI App 30, ¶9, 240 Wis. 2d 492, 498, 622 N.W.2d 756, 759; *see also Dewitt Ross & Stevens, S.C. v. Galaxy Gaming & Racing Ltd. P'ship*, 2004 WI 92, ¶44, 273 Wis. 2d 577, 597, 682 N.W.2d 839, 849 (“A guaranty is a contract.”). “If the terms of the contract are plain and unambiguous, it is the court's duty to construe the contract according to its plain meaning even though a party may have construed it differently.” *Woodward Commc'ns*, 2001 WI App 30, ¶9, 240 Wis. 2d at 498, 622 N.W.2d at 759–760.

¶6 The dispositive issue is whether paragraph three creates a condition precedent to the Village’s liability as a guarantor. The parties do not dispute that the language in paragraph three is clear. As we have seen, it provides:

The collateral for the loan will not be less than a first lien upon \$900,000 of equipment and fixtures (the “Fixtures”) owned by Brown Deer Country Food Stores, Inc. and utilized in the operation of the grocery store at the Property. The Fixtures are more fully described on Exhibit A attached hereto and incorporated herein by reference.

When broken down into its constituent parts, this paragraph provides that the Bank was entitled to: (1) “not less than a first lien,” (2) on “\$900,000 of equipment and fixtures,” that are (3) described in Exhibit A. Thus, if the equipment and fixtures listed in Exhibit A were worth more than \$900,000, the Bank was entitled to a first lien on the equipment and fixtures that were worth \$900,000. If, however, as was the case here, the equipment and fixtures were worth less than \$900,000, the Bank was entitled to a lien on all of them. Contrary to the Village’s contention, the agreement does not require the Bank to first assure that the collateral was worth \$900,000.

*By the Court.*—Judgment affirmed.

Publication in the official reports is not recommended.

