

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 8, 2003

Cornelia G. Clark
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. 02-2403
STATE OF WISCONSIN**

Cir. Ct. No. 01-SC-618

**IN COURT OF APPEALS
DISTRICT IV**

CO-OP CREDIT UNION,

PLAINTIFF-RESPONDENT,

v.

JOEL R. BEMENT AND ROSEMARY BEMENT,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment and an order of the circuit court for Jackson County: ROBERT W. RADCLIFFE, Judge. *Affirmed.*

¶1 LUNDSTEN, J.¹ Joel and Rosemary Bement appeal a judgment of the circuit court in favor of Co-op Credit Union. They also appeal an order denying their motion for reconsideration. Co-op sought to enforce a guaranty

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

holding the Bements personally liable for the Bements' business's credit card debt. The Bements argue that they are not personally liable because they did not understand that the guaranty covered credit card debt and because Co-op obtained the guaranty under inequitable circumstances. In addition, the Bements argue that Co-op illegally withdrew funds from Rosemary Bement's individual bank account because she did not sign the most recent guaranty and because Co-op did not provide her with written notice prior to withdrawing her funds, as required by WIS. STAT. § 425.105(1). We disagree with all of the Bements' arguments and affirm.

Background

¶2 The Bements operated a truck and auto dealership named Joel Bement Truck and Auto, Inc., from 1988 to 2001. On September 21, 1990, Bement Truck and Auto borrowed approximately \$81,000 from Co-op. Contemporaneously, and as a requirement for obtaining the loan, the Bements signed a guaranty titled "CONTINUING GUARANTY (Unlimited)." By signing the guaranty, the Bements agreed to "jointly and severally guarantee payment of ... all loans, drafts, overdrafts, checks, notes, and all other debts, obligations and liabilities of every kind and description, whether of the same or a different nature, arising out of credit previously granted, credit contemporaneously granted or credit granted in the future by [Co-op]" The guaranty contained a revocation clause, which stated: "This is a continuing guaranty and shall remain in full force and effect until [Co-op] receives written notice of its revocation signed by the [Bements] or actual notice of the death of the [Bements]."

¶3 Also on September 21, 1990, Joel Bement applied for a credit card on behalf of Bement Truck and Auto, which was later approved.

¶4 On August 11, 1993, Rosemary Bement signed a “share draft agreement,” granting Co-op a security interest in Rosemary Bement’s bank account “to secure all obligations owing by [Rosemary Bement] to the credit union, now or in the future.” Rosemary Bement’s bank account is her individual property.

¶5 On March 20, 1996, Bement Truck and Auto borrowed approximately \$50,000, and Joel Bement signed another guaranty on that date containing language substantially similar to the 1990 guaranty. Rosemary Bement did not sign the 1996 guaranty. Both loans taken out by Bement Truck and Auto were eventually paid in full.

¶6 In 2001, Bement Truck and Auto filed for Chapter 11 bankruptcy. Also in 2001, an insurance check made out to Bement Truck and Auto in the amount of \$1,219.50 was credited to Bement Truck and Auto’s account; however, the check was returned by the issuing bank and Co-op withdrew \$1,219.50 plus a \$5 fee from Rosemary Bement’s individual bank account to cover the check, pursuant to the share draft agreement.

¶7 As of October 31, 2001, Bement Truck and Auto owed Co-op \$3,264.99 on the credit card. Co-op sued the Bements in small claims court to recover the \$3,264.99. The Bements counter-sued Co-op to recover the \$1,224.50 withdrawn from Rosemary Bement’s individual bank account. At trial, Joel Bement testified that he had experience with financing and loan agreements in the course of his business, but did not read the guaranties he signed with Co-op. The parties stipulated that the Bements never communicated in writing to Co-op that they wanted to revoke the guaranty.

¶8 The trial court entered a judgment in favor of Co-op. The Bements moved for reconsideration, which the trial court denied.

Discussion

¶9 The Bements contend that, under the theory of mutual mistake, they are not personally liable for Bement Truck and Auto's debts. The Bements argue that if one party enters an agreement under a mistaken belief and the other party acts in a fraudulent or inequitable manner, the contract should be reformed, citing *Hennig v. Ahearn*, 230 Wis. 2d 149, 601 N.W.2d 14 (Ct. App. 1999). In this case, the Bements argue that they mistakenly believed that the guaranties only applied to the loans taken out in conjunction with the guaranties and expired when those loans were paid off, and thus did not apply to the credit card debt. The Bements contend that Co-op acted inequitably by failing to inform them of the "unlimited character and duration of the guaranties." We disagree.

¶10 The Bements cite no authority for the proposition that a bank's failure to explain the nature and ramifications of a guaranty is "inequitable conduct," or that such explanation is even required. The plain language of the guaranty explained that the guaranty covered "all loans, drafts, overdrafts, checks, notes, and all other debts, obligations and liabilities of every kind and description" until revocation. The Bements did not testify that Co-op provided misinformation or in any way misrepresented the terms of the guaranties.

¶11 Alternatively, the Bements argue that the 1996 guaranty, because it was signed after the 1990 guaranty, revoked the 1990 guaranty. Consequently, according to the Bements, Rosemary Bement is not personally liable because she did not sign the 1996 guaranty. Therefore, the Bements contend, Co-op did not have the authority to withdraw funds from Rosemary Bement's individual bank account.

¶12 However, the 1990 guaranty was never revoked. The Bements stipulated that they did not send written notice to Co-op, as required by the guaranty's revocation clause. Moreover, although Joel Bement signed another guaranty in 1996, nothing in the language of the 1996 guaranty revoked the 1990 guaranty.

¶13 The Bements also argue that Co-op improperly withdrew funds from Rosemary Bement's individual bank account because Co-op did not provide proper notice before withdrawing funds from her account, as required by WIS. STAT. § 425.105(1).² However, Co-op correctly notes that this transaction does not meet the definition of "consumer credit transaction" as defined by WIS. STAT. § 421.301(10).³ Withdrawing funds to cover a returned check is not a credit transaction requiring either installment payments or finance charges. We conclude

² WISCONSIN STAT. § 425.105(1) provides:

A merchant may not accelerate the maturity of a consumer credit transaction, commence any action except as provided in s. 425.205(6), or demand or take possession of collateral or goods subject to a consumer lease other than by accepting a voluntary surrender thereof (s. 425.204), unless the merchant believes the customer to be in default (s. 425.103), and then only upon the expiration of 15 days after a notice is given pursuant to s. 425.104 if the customer has the right to cure under this section.

³ WISCONSIN STAT. § 421.301(10) provides:

"Consumer credit transaction" means a consumer transaction between a merchant and a customer in which real or personal property, services or money is acquired on credit and the customer's obligation is payable in installments or for which credit a finance charge is or may be imposed, whether such transaction is pursuant to an open-end credit plan or is a transaction involving other than open-end credit. The term includes consumer credit sales, consumer loans, consumer leases and transactions pursuant to open-end credit plans.

that the Bements were personally liable for Bement Truck and Auto's debts and, thus, Co-op had the authority to withdraw funds from Rosemary Bement's individual bank account pursuant to the share draft agreement.

By the Court.—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

