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DISTRICT II

October 16, 2013

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You are hereby notified that the Court has entered the following opinion and order:

2013AP202 Community Bank CBD v. Partners on Main Street, LLC
(L.C. # 2012CV934)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Frank May, Jr. appeals from a circuit court judgment holding him liable on his guaranty of debt incurred by Partners on Main Street, LLC and dismissing his counterclaim for reformation of his guaranty. Based upon our review of the briefs and record, we conclude at

conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12).[1] We affirm the circuit court.

The circuit court granted summary judgment to Community Bank CBD. We review the circuit court's grant of summary judgment de novo, and we apply the same methodology employed by the circuit court. ***Brownelli v. McCaughtry***, 182 Wis. 2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994). "We independently examine the record to determine whether any genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law." ***Streff v. Town of Delafield***, 190 Wis. 2d 348, 353, 526 N.W.2d 822 (Ct. App. 1994).

In granting summary judgment, the circuit court concluded that the following facts were not disputed. May was a member of Partners in May 2007 when Partners entered into a $1.7 million promissory note and mortgage with the bank. As part of that transaction, May and the other Partners' members executed documents titled "Continuing Guaranty (Unlimited)." In May 2008, Partners renewed the 2007 note and increased its debt to $1.76 million. Partners also provided another mortgage to the bank. In 2011 and 2012, Partners made three additional notes relating to the amounts first borrowed in May 2007.

In June 2012, after one of the guarantors of the Partners' note died, the bank declared a default and commenced foreclosure proceedings. The bank also sought to collect on May's guaranty of the full amount of Partners' debt.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

In his affidavit in opposition to the bank's summary judgment motion, May averred that he had no reason to believe in May 2007 that he would be required to guaranty more than one-third of Partners' debt to the bank, no one told him he would have to sign an unlimited guaranty, he signed the stack of documents presented at the 2007 loan closing "without reading any documents in detail,"[2] and the May 2008 note documents did not include a continuing guaranty. May also sought reformation of his guaranty to conform to his belief that his liability was limited to one-third of Partners' debt.

The circuit court held May was liable on his guaranty and denied his reformation claim. The court observed that "sign[ing] stuff he should not have" without reading the documents was not a defense.

May appeals, arguing that factual issues should have precluded summary judgment on his guaranty, and his guaranty should have been reformed. May cites his affidavit as a source of these factual disputes.

We agree with the circuit court that summary judgment on May's guaranty was appropriate. According to his affidavit, May's understanding that he would bear only his proportional share of Partners' liability to the bank seems to have arisen from his interactions with fellow members of Partners, not from any representations made by the bank. In fact, the bank's May 17, 2007 commitment letter stated, as a term, a "Guaranty: personal and unlimited guaranties of … May." May signed the letter and accepted its terms. At the loan closing, May

[2] Although not mentioned by the circuit court, the summary judgment record indicates that May is a lawyer in Illinois.

signed a "Continuing Guaranty (Unlimited)." The May 1, 2008 commitment letter from the bank contained the same guaranty provision, and May signed and accepted the terms. There is no indication that the bank ever contemplated anything other than an unlimited, continuing guaranty from May.

While it is correct that May did not sign a new guaranty for the May 2008 note, such a document was unnecessary. The May 2007 guaranty, which May signed but did not read in detail, stated that May guaranteed "the past, present and future Obligations" of Partners. In light of this provision, a subsequent guaranty was not required.

We also agree with the circuit court that a trial was not necessary on May's claim that the guaranty should be reformed to conform with his understanding of the extent of his guaranty. "Reformation of a written instrument is appropriate when the instrument fails to express the intent of the parties, either because of the mutual mistake of the parties, or because of the mistake of one party coupled with fraud or inequitable conduct of the other." ***Hennig v. Ahearn***, 230 Wis. 2d 149, 174, 601 N.W.2d 14 (Ct. App. 1999).

The documents evidencing Partners' debt establish the bank's intent to have an unlimited, continuing guaranty from May. May's summary judgment submissions did not establish that the parties were mutually mistaken about the terms of May's guaranty. To avoid summary judgment on his reformation claim, May had to establish a factual dispute regarding his mistake and fraud or inequitable conduct by the bank.

May does not direct us to any document in the summary judgment record that indicates that he was misled or defrauded by the bank. May's only record citation is to his own affidavit. In that affidavit, he alleges that at the closing, the loan officer told him that the stack of

documents were "standard bank documents" and "a bank formality." May does not allege any representation by the bank relating to the terms of his guaranty.[3] Most importantly, all of the executed documents contradict May's contention regarding the extent of his guaranty. Even a cursory examination of the documents would have revealed that by those documents, May agreed to an unlimited, continuing guaranty of Partners' debt. *See* ***id.*** at 177. Reformation was not warranted.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

[3] May argues that Partners' 2005 loan experience with another bank, First Banking Center, was relevant to his reformation counterclaim against Community Bank. We disagree.