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DISTRICT IV

January 26, 2023

To:

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Royal Alliance Associates, Inc
10 Exchange Place, Ste. 1410
Jersey City, NJ 07302

Schmidt Boucher Investments & Insurance Group, Inc.
121 W. Cook St.
Portage, WI 53901

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

2022AP436 Summit Credit Union v. Schmidt Boucher Investments & Insurance Group, Inc. (L.C.# 2021CV113)

Before Blanchard, P.J., Fitzpatrick, and Graham, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jason Meitzner appeals the circuit court's order granting summary judgment in favor of Summit Credit Union resulting in a money judgment against Meitzner. Based upon our review of

the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).[1] We affirm.

The following facts are derived from the summary judgment materials and are not in dispute. In 2012, Meitzner, on behalf of Schmidt Boucher Investments & Insurance Co., Inc. (the "company"), applied for a business credit card from Summit. The application form was signed by Meitzner, and by Eric Boucher. At the time, Boucher was the sole shareholder of the company, and Meitzner held no ownership interest in it.

The application form contains several different sections and signature blocks. Most pertinent are the following sections.

One section of the application form is captioned "Principal/Owner/Member/Guarantor Information." Preprinted text in this section of the form states: "All owners of 10% or more, all partners, and all members must complete this section and must guaranty this credit." The form requested the signature and personal information of "Authorized Party #1" and, if applicable, "Authorized Party #2." Boucher is listed as Authorized Party #1, and he placed his signature on the signature line for Authorized Party #1. The application does not identify anyone as Authorized Party #2.

Another section of the application form is captioned "Cards to Issue." Preprinted text in this section of the form provides as follows, in parentheses: "(Cardholders that are not an Authorized Party shown above, bear no financial responsibility for repayment to Summit Credit

[1] All references to the Wisconsin Statutes are to the 2019-20 version.

Union[.])" Meitzner signed the application as a cardholder, and he supplied his personal information in that section of the form.

The final section of the application form is captioned "Guaranty." The text of this section provides:

> By signing below, each individual jointly, separately, and unconditionally guarantees payment of and agrees to pay creditor for all charges and balances on all accounts established by this application. Under this Guaranty, the liability of the Guarantor(s) is unlimited and the obligations of Guarantor are continuing, including any future credit limit increases.

Following the text are two signature blocks, and Meitzner's signature appears on the first.. Boucher did not sign this section of the application.

Based on this application, Summit opened an account, issued a credit card in Meitzner's name, and extended credit to the company pursuant to the terms of the account.

In 2016, Meitzner became the sole shareholder of the company. Then, in 2019, Meitzner executed and delivered to Summit an updated form about the business account card, in which he confirmed that he was now the company's sole shareholder. Thereafter, Meitzner requested several credit limit increases, ultimately amassing a $25,000 balance on the account. The company later defaulted by failing to make required payments and failing to cure its default.

Summit filed a complaint against the company and Boucher seeking a money judgment for the outstanding balance. Summit later stipulated to Boucher's dismissal, and the circuit court entered an order dismissing him with prejudice. Summit then filed an amended complaint against Meitzner and the company seeking a money judgment for the outstanding balance. Meitzner

timely answered the amended complaint, but the company failed to do so, and the circuit court entered a money judgment against it.

Summit then filed a motion for summary judgment against Meitzner regarding his liability for the balance as a guarantor. The circuit court determined that, by signing the application as a guarantor, Meitzner unambiguously guaranteed the payment of sums Summit extended to the company based on the application. The court then entered a money judgment against Meitzner.

On appeal, Meitzner's sole argument is that the circuit court erred in concluding that the application is unambiguous. He asserts that the application is ambiguous, and he asks us to remand to the circuit court for fact finding based on extrinsic evidence of the parties' intent.

When construing a contract, our goal "is to ascertain the true intention of the parties as expressed by the contractual language." ***State ex rel. Journal/Sentinel, Inc. v. Pleva***, 155 Wis. 2d 704, 711, 456 N.W.2d 359 (1990); *see also* ***Levy v. Levy***, 130 Wis. 2d 523, 535, 388 N.W.2d 170 (1986). We analyze a contract's clauses in context, as they are reasonably understood, even if the reasonable understanding of the contract terms is contrary to the parties' professed intent. *See* ***Chapman v. B.C. Ziegler & Co.***, 2013 WI App 127, ¶2, 351 Wis. 2d 123, 839 N.W.2d 425.

"[W]e … review de novo a circuit court's contract interpretation, including whether the contract is ambiguous." ***Chapman***, 351 Wis. 2d 123, ¶2. "A contract is ambiguous when its terms are reasonably susceptible to more than one interpretation." ***BV/B1, LLC v. InvestorsBank***, 2010 WI App 152, ¶19, 330 Wis. 2d 462, 792 N.W.2d 622; *see also* ***Town Bank v. City Real Est. Dev., LLC***, 2010 WI 134, ¶33, 330 Wis. 2d 340, 793 N.W.2d 476. Stated another way, "[a] contract is ambiguous '… (w)hen the language of a contract, considered as a whole, is reasonably or fairly susceptible to different constructions[.]'" ***Luterbach v. Mochon, Schutte, Hackworthy,***

Juerisson, Inc., 84 Wis. 2d 1, 5, 267 N.W.2d 13 (1978) (quoted source omitted; ellipses and parenthetical in original, quoted source). If the contract's language is unambiguous, "our attempt to determine the parties' intent ends with the four corners of the contract, without consideration of extrinsic evidence." ***Huml v. Vlazny***, 2006 WI 87, ¶52, 293 Wis. 2d 169, 716 N.W.2d 807.

The contract at issue in this case is the business credit card application executed by Meitzner and Boucher on the company's behalf. We begin by noting that it is undisputed that Meitzner signed the application as a personal guarantor. As discussed above, the guaranty to which Meitzner affixed his signature provides:

> By signing below, each individual jointly, separately, and unconditionally guarantees payment of and agrees to pay creditor for all charges and balances on all accounts established with this application. Under this Guaranty, the liability of Guarantor(s) is unlimited and the obligations of the Guarantor are continuing, including any future credit limit increases.

Meitzner does not argue that this language is fairly susceptible to more than one reasonable interpretation. He appears to concede that, when read in isolation, the guaranty is clear and unambiguous as to his unconditional liability for the balance on the credit card account created by the application. Meitzner nonetheless argues that the guaranty is ambiguous as to his liability for the company's debts when read alongside the rest of the application.

First, Meitzner argues that the signature block for the "Guaranty" section creates ambiguity as to whether he intended to guarantee repayment of the sums charged to the company's credit card. The signature block in the "Guaranty" section contemplates that it will be signed by "Applicant/Authorized Party #1, as Principal/Owner/Member and Individually as Personal Guarantor." Meitzner was not identified as an authorized party on the application and so, he asserts, his signature in the "Guaranty" section of the application was "a clear mistake."

On this topic, we observe that contract ambiguity is a distinct legal concept from the doctrine of mistake. *See, e.g.*, ***Erickson v. Gundersen***, 183 Wis. 2d 106, 118 n.3, 515 N.W.2d 293 (Ct. App. 1994). Although Meitzner asserts that his signature in the "Guaranty" section was a mistake, he has not cited any case law or developed any argument that the agreement should be reformed or rescinded on the basis of a unilateral or mutual mistake. *See* ***id.*** at 119-20. Instead, his sole argument in the circuit court and on appeal is that the application is ambiguous regarding his intent to guarantee payment of sums that Summit extended to the company.

We conclude that the signature block of the "Guaranty" section does not conflict with other terms in the application so as to create any ambiguity regarding the legal significance of Meitzner's execution of this express guarantee to repay the company's debts. Contrary to Meitzner's argument, his signature on that signature block does not appear to directly conflict with the application's terms. Although Meitzner did not sign as an authorized party in the "Principal/Owner/Member/Guarantor Information" section of the application, nothing in the application precludes an individual who is not identified as an owner and authorized party from guaranteeing payment.

Meitzner also argues that his signature in the "Guaranty" section of the agreement conflicts with contract language in the "Cards to Issue" section. As noted above, Meitzner signed the signature block in the "Cards to Issue" section, and contract language in that section specifies: "Cardholders [who] are not an Authorized Party shown above [in the "Principal/Owner/Member/Guarantor Information" section] bear no financial responsibility for repayment to Summit Credit Union[.]" Meitzner points out that Boucher is listed as the sole authorized party. He argues that "the Guaranty section and the [Cards to Issue] section are in direct conflict because an applicant in the cardholder section cannot both 'bear no financial responsibility' to Summit and

also 'unconditionally guarantee[] payment' to Summit." He asserts that, because he is not listed as an authorized party in the "Principal/Owner/Member/Guarantor Information" section of the application, and because the text in the "Cards to Issue" section unambiguously absolves cardholders of liability for the company's debts, there is an internal conflict between the sections that results in contextual ambiguity as to whether he guaranteed the debt.

We disagree with Meitzner that the language of the "Guaranty" and "Cards to Issue" sections are in conflict. By its terms, the application's various sections create multiple potentially overlapping but distinct relationships between Summit and the individuals who sign the application. By signing as a cardholder, Meitzner was authorizing the issuance of a business credit card in his name. According to the text of the "Cards to Issue" section, Meitzner did not agree to guarantee payment of the company's debts in his capacity as a cardholder. However, nothing in the "Cards to Issue" section, or any other language in the application, precludes a cardholder from assuming another distinct relationship with Summit, such as that of guarantor. And, for that reason, the two sections do not conflict so as to create any ambiguity.

Based on the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals