[Cite as *Beatley v. Izzo*, 2009-Ohio-3245.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Jack K. Beatley,	:	
Plaintiff-Appellant,	:	
		No. 09AP-50
v.	:	(M .C. No. 2007 CVG 036056)
Angela Izzo et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on June 30, 2009

Kevin E. Humphreys, for appellant.

Craig I. Smith, pro se, and *Craig I. Smith*, for appellee James A. Haun.

APPEAL from the Franklin County Municipal Court.

KLATT, J.

{¶1} Plaintiff-appellant, Jack K. Beatley, appeals from a judgment of the Franklin County Municipal Court granting summary judgment in favor of defendants-appellees, James A. Haun and Craig I. Smith, and dismissing them from this case. For the following reasons, we affirm that judgment.

{¶2} In early 2005, appellant entered into a lease agreement with a number of tenants to rent a house near The Ohio State University campus from September 16, 2005 until August 22, 2006 ("2005 lease"). The tenants included James Haun's daughter and

Craig Smith's two daughters. The lease allowed appellant to require each tenant to have a guarantor for performance of all obligations and terms under the lease.

{¶3} The appellees each signed a separate document, entitled "Guarantor's/Co-signer's Approval." Pursuant to this agreement, the appellees guaranteed their daughters' performance of their lease obligations. Specifically, the appellees each:

> approve[d] and agree[d] to guarantee payment of the rent due for the full period of the lease or any damages to said apartment, including any extensions or renewals of the lease term by the Tenant of the Lease, increases in the rental amount or substitutions or deletions of different tenant(s) and fulfillment of all other terms and conditions of said lease agreement.

{¶4} In late 2005, appellant entered into a second lease to rent the same house for the next year, from September 18, 2006 until August 25, 2007 ("2006 lease"). A number of tenants who signed the 2005 lease also signed the 2006 lease, including appellees' daughters. However, there were also new tenants. The rent specified in the 2006 lease was $75 more per month than the rent set forth in the 2005 lease. The appellees did not sign another "Guarantor's/Co-signer's Approval" form in connection with the 2006 lease.

{¶5} On August 6, 2007, appellant filed a complaint for forcible entry and detainer against the tenants of the house, alleging that they were delinquent in their rent payments required by the 2006 lease. He sought immediate possession of the premises as well as monetary damages.[1] Appellant named appellees as defendants in the action

[1] Appellant dismissed his claim for possession of the premises shortly after he filed his complaint. He proceeded with his claim for monetary damages.

as co-signers to the lease. Both appellees filed answers to the complaint in which they each denied being a co-signer or guarantor of the 2006 lease.

{¶6} Subsequently, appellees filed a motion for summary judgment in which they argued that they were not guarantors of the 2006 lease. Although appellees guaranteed their respective daughters' obligations under the 2005 lease, appellees argued that the 2005 lease was not renewed or extended. Rather, the 2005 lease expired by its own terms. Appellees contended that the 2006 lease was a new lease between different parties with different material terms. Therefore, appellees asserted they had no obligations in connection with the 2006 lease.

{¶7} In response, appellant argued that the terms of the "Guarantor's/Co-signer's Approval" form created a continuing or unlimited guaranty. He also argued that the 2006 lease entered into by appellees' daughters renewed or extended their 2005 lease term and, therefore, constituted an "extension or renewal of the lease term."

{¶8} The trial court granted summary judgment in favor of appellees. The trial court agreed that the appellees' status as guarantors ended with the expiration of the 2005 lease. The trial court also agreed that the 2006 lease was a new lease and not an extension or renewal of the 2005 lease. Therefore, appellees' guarantee did not apply to the 2006 lease.

{¶9} Appellant appeals and assigns the following error:

> THE TRIAL COURT ERRED WHEN IT ENTERED PARTIAL SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS JAMES HAUN AND CRAIG SMITH AND DISMISSED THEM AS PARTIES TO THE ACTION.

{¶10} Appellant contends in his sole assignment of error that the trial court erred in granting appellees' motion for summary judgment. Appellate review of summary

judgment motions is de novo. *Andersen v. Highland House Co.,* 93 Ohio St.3d 547, 548, 2001-Ohio-1607. " 'When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court.' " *Abrams v. Worthington,* 169 Ohio App.3d 94, 2006-Ohio-5516, ¶11, quoting *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103. Civ.R. 56(C) provides that a trial court must grant summary judgment when the moving party demonstrates that: (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. *Gilbert v. Summit Cty.,* 104 Ohio St.3d 660, 2004-Ohio-7108, ¶6.

{¶11} In this case, there are no disputed issues of fact. The disputed legal question is straightforward: Are appellees guarantors of the 2006 lease?

{¶12} A guaranty is a " 'promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another who is liable in the first instance.' " *Nesco Sales & Rental* v. *Superior Electric Co.*, 10th Dist. No. 06AP-435, 2007-Ohio-844, ¶10, quoting Black's Law Dictionary (8th Ed.2004) 724. " 'A guarantor, by definition, is one who promises to be responsible for the debt, duty or performance owed by another person.' " Id., quoting *SDI/Columbus Equities L.P. v. Scranton* (July 13, 1993), 10th Dist. No. 93AP-247.

{¶13} Appellant first claims that the "Guarantor's/Co-signer's Approval" form appellees signed in connection with the 2005 lease created a continuing or unlimited guaranty. We disagree.

{¶14} An unlimited guaranty is one that is unlimited both as to time and amount, while a continuing guaranty is not limited in time or to a particular or specific transaction, but is operative until revoked. *Merchants' Natl. Bank v. Cole* (1910), 83 Ohio St. 50, 58. It is presumed that the parties did not intend a continuing guaranty, unless the language of the agreement permits of no other construction. *United Excavating Co. v. Hartford Accident & Indemnity Co.* (July 6, 1978), 7th Dist. No. 78 CA 19; see also *Yearling Properties, Inc. v. Tedder* (1988), 53 Ohio App.3d 52, 54-55 (continuing guaranty may be created only where lessor clearly states continuing nature of guarantor's obligation). A guaranty will not be construed as continuing indefinitely unless the intention of the parties is so clearly manifested as not to admit a reasonable doubt. *Security Dollar Bank v. J.C. Holding Corp., Inc.* (Sept. 8, 1995), 11th Dist. No. 94-T-5115 (noting that circumstances did not indicate clear intention that guaranty was to be continuing). Thus, if guaranty language is equally capable of being construed as a continuing guaranty or a limited guaranty, the construction which construes it to be limited will be adopted. *Cole*.

{¶15} The "Guarantor's/Co-signer's Approval" form signed by appellees does not clearly manifest an intent to create a continuing or unlimited guaranty. The form states that the appellees guarantee the payment of rent and any damage to the apartment for the full term of the lease and "any extensions or renewals of the lease term by the Tenant of the Lease * * *." Thus, the time frame for the guaranty is limited by its own terms. The plain language of the "Guarantor's/Co-signer's Approval" form reveals an intent that the guaranty only remain in effect for the period of the lease or for any renewals or extensions of that lease term. Such language does not create a continuing or unlimited guaranty. *Cole*.

{¶16} Appellant next contends that appellees are guarantors of the 2006 lease because that lease is not a new lease, but an extension or renewal of the 2005 lease term. We disagree.

{¶17} Although it relates to the same property, the 2006 lease was not a renewal or extension of the 2005 lease term. The 2006 lease did not reference the 2005 lease. Nothing in the 2006 lease indicated it was intended to be an extension or renewal of the 2005 lease. In addition, paragraph 18 of the 2005 lease stated that unless a tenant executed a "new lease," the tenant would be considered a holdover tenant on a month-to-month tenancy at a significantly increased rent. Appellant has not alleged that appellees' daughters were holdover tenants, thereby implicitly admitting that they executed a "new lease." We also note that the 2006 lease included a rent increase and four new tenants who were not parties to the 2005 lease. Cf. *Samsel Rope & Marine Supply Co. v. Burgess*, 8th Dist. No. 88030, 2007-Ohio-822, ¶19-22 (new lease was not extension or renewal of original lease, thereby terminating defendant's guaranty of original lease). We agree with the trial court that the 2006 lease was a new lease, and not an extension or renewal of the 2005 lease term. Therefore, appellant had no claim against appellees under the express terms of the "Guarantor's/Co-signer's Approval" form.

{¶18} Accordingly, the trial court did not err by granting appellees' motion for summary judgment. We overrule appellant's sole assignment of error and affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.