[Cite as *Wells Fargo Bank, N.A. v. WSW Franchising, Inc.*, 2009-Ohio-3845.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Wells Fargo Bank, NA,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-26 (C.P.C. No. 08 CVH 4 6015)
WSW Franchising, Inc. et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees,	:	
(Darryl Warner,	:	
Defendant-Appellant).	:	

D E C I S I O N

Rendered on August 4, 2009

Barren & Merry Co., L.P.A., Thomas R. Merry, Beth M. Miller and *Uma P. Setty*, for appellee Wells Fargo Bank, NA.

Allen, Kuehnle, Stovall & Neuman LLP, Thomas R. Allen and *Lisa L. Norris*, for appellant Darryl Warner.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} This appeal arises from an action to collect a debt. Plaintiff-appellee, Wells Fargo Bank, NA ("Wells Fargo"), sued defendant-appellant, Darryl Warner, and defendant WSW Franchising, Inc. dba TravelPlex Intl Not, Inc. and TravelPlex ("WSW Franchising"), to collect the principal sum of approximately $22,000 plus accrued interest owed on a MasterCard BusinessCard. In 1996, Warner had executed a BusinessCard Agreement

with Wells Fargo to obtain a MasterCard in the name of TravelPlex. TravelPlex is a registered trade name of defendant WSW Franchising, Inc. Warner is the president of WSW Franchising, and Warner signed the agreement as "Darryl Warner President."

{¶2} Wells Fargo filed a four count complaint. Count one was against WSW Franchising on the MasterCard BusinessCard Acceptance Certificate and Customer Agreement for failure to make payment; count two was against Warner on his alleged individual guaranty of the BusinessCard Agreement; count three was against WSW Franchising for unjust enrichment; and count four was against WSW Franchising for money had and received.

{¶3} The parties filed cross motions for summary judgment. Wells Fargo argued that it had established all the elements of counts one through four of the complaint and that it was entitled to summary judgment based on the pleadings, an affidavit, and documents.

{¶4} Warner based his summary judgment motion on the argument that WSW Franchising was not a party to the BusinessCard Agreement and therefore, could not be held liable. Warner further argued that he could not be personally liable as a guarantor since he signed the BusinessCard Agreement in his representative capacity as president of TravelPlex. Warner stated that TravelPlex was now a defunct company.

{¶5} The trial court rendered its decision on December 11, 2008, granting in part Wells Fargo's motion for summary judgment and granting in part WSW Franchising and Darryl Warner's motion for summary judgment. The trial court reasoned that WSW Franchising's name never appeared on the BusinessCard Agreement, and therefore there existed no indication in the BusinessCard Agreement that it was entered into on

behalf of WSW Franchising. The only business names that appeared on the BusinessCard Agreement were those of TravelPlex and TravelPlex Intl Not, Inc. The trial court found that no such corporation existed using either of those names. TravelPlex was merely a registered trade name of WSW Franchising. The trial court then ruled that WSW Franchising was not liable for the debt owed to Wells Fargo.

{¶6} As noted above, Warner had argued that he signed the BusinessCard Agreement on behalf of TravelPlex. The trial court found that there was nothing in the body of the BusinessCard Agreement to indicate that TravelPlex was a corporation or an entity separate from Warner. Since Warner could not sign as president of a trade name, the trial court concluded that the designation of "President" next to Warner's signature was meaningless. Consequently, the trial court held that Warner signed the credit card in his personal capacity and, as such, was liable, not as a guarantor, but rather personally liable for the money owed.

{¶7} The trial court's decision and judgment entry disposed of all claims, and Warner appealed assigning as error the following:

> 1. The trial court erred when it found that Appellant Darryl Warner was not signing in his representative capacity as President of Travel Plex, the registered trade name of WSW Franchising, Inc.
>
> 2. The trial court erred when it found the word "President" next to Appellant Darryl Warner's signature meaningless when the undisputed facts are that Appellant Darryl Warner is the President of WSW Franchising, Inc. dba Travel Plex.
>
> 3. The trial court erred when it did not address the applicable law of the case where parties disputed if the applicable law should be either California or Ohio.

{¶8} As the trial court made clear, it is undisputed that the BusinessCard Agreement was signed by Warner in some capacity; money was advanced by Wells Fargo under the terms of the BusinessCard Agreement; and, the money has not been repaid. With these facts in mind, we review the summary judgment de novo as required by law. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588; *Midwest Specialties, Inc. v. Firestone Tire & Rubber Co.* (1988), 42 Ohio App.3d 6, 8. We stand in the shoes of the trial court and conduct an independent review of the record. As such, we must affirm the trial court's judgment if any of the grounds raised by the movants before the trial court are found to support it, even if the trial court failed to consider those grounds. See *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶9} Civ.R. 56(C) states that summary judgment shall be rendered forthwith if:

> * * * [T]he pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * *

{¶10} Accordingly, summary judgment is appropriate only where: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party. *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, 629, citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 65-66. "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record * * * which demonstrate

the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. Once the moving party meets its initial burden, the nonmovant must then produce competent evidence showing that there is a genuine issue for trial. Id. Summary judgment is a procedural device to terminate litigation, so it must be awarded cautiously with any doubts resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356, 358-59.

{¶11} Warner's first two assignments of error revolve around the legal effect of the word "President" after his signature. After careful review of the agreement itself, we find these arguments to be largely misplaced. Under the express terms of the BusinessCard Agreement, Warner agreed to unconditionally and individually guarantee the debt of the company. This is true even if Warner signed in a representative capacity as president of WSW Franchising or TravelPlex. To the extent that we are able to read the nearly illegible copy in the record, the relevant language of the agreement reads as follows:

> I accept your offer of a Wells Fargo MasterCard BusinessCard. I understand that if approved, I will receive a MasterCard BusinessCard. I authorize Wells Fargo Bank, N.A. ("Bank") to obtain consumer and/or business reports from credit reporting agencies for the purpose of establishing credit. **By signing below, the signer(s) agrees on behalf of the company named above to the terms and conditions of the Customer Agreement that will be sent and in their individual capacities jointly and severally unconditionally guarantee and promise to pay upon demand to Bank, all indebtedness of the company named above at any time owing under the MasterCard BusinessCard. The signer(s) waives any right to require Bank to proceed against the company**, and authorizes Bank, without notice, demand or consent of any kind to renew, alter, compromise, extend, accelerate, or otherwise change any of the terms or increase the amount of the company's MasterCard BusinessCard line of credit and agrees to pay attorneys' fees and all other costs and

> expenses which may be incurred in the enforcement of this guaranty. A facsimile of this agreement shall be deemed an original and evidence of acceptance of its terms. **If company is a corporation or partnership, all owners must sign and include their corporate title**.

(Emphasis added.)

{¶12} Directly under this paragraph, Warner signed his name in the space marked "Owner Signature." He wrote "President" in the space marked "Title," and he dated the document "5-25-96" in the space for "Date." This comports with the last sentence of the agreement that required all owners of a corporation to sign and include their titles.

{¶13} Under Ohio law, "[a]n officer of a corporation is not personally liable on contracts for which his corporate principal is liable, unless he intentionally or inadvertently binds himself as an individual." *J.D.S. Properties v. Walsh*, 8th Dist. No. 91733, 2009-Ohio-367, ¶18. By signing and including his corporate title of president as instructed, Warner was acting on behalf of a legal entity (WSW Franchising, Inc.) using a trade name (TravelPlex) to pay the indebtedness of the company. *Plain Dealer Publishing Co. v.* Worrell, 178 Ohio App.3d 485, 2008-Ohio-4846, ¶17. Warner also agreed to personally and unconditionally guarantee the indebtedness without requiring Wells Fargo to proceed against his corporation. In other words, the clear and unambiguous language of the BusinessCard Agreement bound Warner to answer for the full amount of the debt owing to Wells Fargo. Delving into Warner's belief that neither WSW Franchising nor he was liable for the debt is unnecessary. The language is clear and unambiguous, and there is no need to go beyond the terms in order to find ambiguity where it does not exist. *AmerisourceBergen Drug Corp. v. Hallmark Pharmacies, Inc.*, 10th Dist. No. 05AP-1250, 2006-Ohio-2746, ¶13.

{¶14} The result is the same under California law. The designation dba or "doing business as" simply indicates that a person or a corporation is operating under a fictitious business name. *Pinkerton's Inc. v. The Superior Court of Orange County* (1996), 49 Cal.App.4th, 1342, 1348. Doing business under another name does not create an entity distinct from the person or corporation operating the business. Id. Doing business under a trade name does not create a legal entity separate from the corporation but is merely descriptive of the corporation. Id. at 1348-49.

{¶15} A guaranty must be interpreted consistent with the expressed intent of the parties under an objective standard. *Advanced Sleep Products v. Soep* (C.A.9, 1993), 8 F.3d 25, citing *Home Fed. Sav. & Loan Assn. v. Ramos* (1991), 229 Cal.App.3d 1609, 1613. Thus, given the undisputed facts before us, we must decide whether it is objectively reasonable to conclude that the parties intended to create a personal guaranty. Given the unambiguous language of the BusinessCard Agreement, our conclusion is the same as under Ohio law. Warner signed on behalf of WSW Franchising dba TravelPlex and for himself as an individual guarantor.

{¶16} Based on the foregoing, we overrule Warner's three assignments of error. The judgment in favor of Wells Fargo is affirmed, on the grounds stated in this decision.

Judgment affirmed.

BRYANT and SADLER, JJ., concur.

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