[Cite as *LB-RPR REO Holdings, L.L.C. v. Ranieri,* 2012-Ohio-2865.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

LB-RPR REO Holdings, LLC, Successor by Assignment to LB-RPR Notes Holdings, LLC,	:	
Plaintiff-Appellee,	:	No. 11AP-471
v.		(C.P.C. No. 09CVE 10 15698)
Michel C. Ranieri et al.,	:	(REGULAR CALENDAR)
Defendants-Appellants,	:	
Westerview Garden Apartments, LLC et al.,	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on June 26, 2012

Barnes & Thornburg LLP, Charles R. Dyas, Jr., and *Alan K. Mills*, Pro Hac Vice, for appellee LB-RPR REO Holdings, LLC.

Michel C. Ranieri, Stacey Ranieri, James A. Poniewaz, and *Carrie L. Poniewaz*, pro se.

APPEAL from the Franklin County Court of Common Pleas.

PER CURIAM.

{¶ 1} This is an appeal by defendants-appellants, Michel C. Ranieri, Stacey Ranieri, James A. Poniewaz, and Carrie L. Poniewaz, from a judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of plaintiff-appellee, LB-RPR REO Holdings, LLC ("REO Holdings").

{¶ 2} On July 10, 2007, Westerview Garden Apartments, LLC ("Westerview") executed and delivered to LaSalle Bank National Association ("LaSalle") a promissory

note in the amount of $4,520,000. In order to secure payment and performance of its obligations under the note, Westerview executed and delivered to LaSalle a mortgage, recorded in the Franklin County Recorder's Office on July 11, 2007, encumbering property located at 4800 Hall Road, Columbus. Westerview also executed and delivered to LaSalle an assignment of rents and leases. To further secure repayment of the loan, Michael Y. Sun executed an individual guaranty whereby he "irrevocably and unconditionally guaranteed payment and performance to LaSalle, and its successor and assignee." (Complaint at ¶ 15.)

{¶ 3} On February 29, 2008, Westerview executed and delivered to LaSalle an amended and restated promissory note (the "amended note") in the amount of $4,020,000. Also on February 29, 2008, Westerview assigned its rights to RT Investments, LLC ("RT Investments"), a Nevada limited liability company, through a "Reaffirmation, Consent to Transfer and Substitution of Indemnitor" agreement (hereafter "reaffirmation agreement"). James Teichman, the CEO and President of RT Investments, signed the reaffirmation agreement on behalf of RT Investments as "Purchaser." The "Seller" under the reaffirmation agreement, Rising Sun Properties, LLC, is a business owned by Sun (and which was the sole member of Westerview). To further secure the payment of the amended note, Timothy Bowles, Sarah Bowles, and each of the appellants (Michel C. Ranieri, Stacey Ranieri, James A. Poniewaz and Carrie L. Poniewaz) executed the reaffirmation agreement to replace Sun as "substitute indemnitor[s]."

{¶ 4} CMLT 2008-LSI Hall Road, LLC ("CMLT") subsequently became the holder of the amended note. On October 20, 2009, CMLT filed a complaint, naming as defendants Westerview, Sun, and various John Does, seeking a money judgment and foreclosure on the subject commercial property. In the complaint, CMLT alleged that Westerview was in default, as of April 1, 2009, by failing to make required monthly payments of interest-only in the amount of $16,320.27 on the amended note, and that Sun was liable under the terms of a guaranty. Also on that date, CMLT filed a motion for appointment of a receiver. On October 21, 2009, the trial court granted a temporary order appointing a receiver. Defendant Sun filed an answer on January 21, 2010.

{¶ 5} On February 12, 2010, CMLT filed a motion for leave to amend its complaint to join in the action each of the four appellants, as well as Timothy and Sarah

Bowles.[1] In the accompanying memorandum in support, CMLT argued that these individuals had been identified as guarantors to the loan documents. The amended complaint alleged breach of the reaffirmation agreement. On March 17, 2010, the trial court granted CMLT's motion for leave.

{¶ 6} On June 1, 2010, CMLT filed a motion for default judgment and a decree of foreclosure against Westerview. On June 17, 2010, appellants Stacey and Michel Ranieri filed an answer to CMLT's amended complaint. By order filed January 10, 2011, the trial court granted CMLT's motion for default judgment against Westerview, and entered a decree of foreclosure with respect to the subject property.

{¶ 7} On July 1, 2010, defendant Sun filed a motion for summary judgment, asserting that, under the terms of the reaffirmation agreement, the substitute guarantors agreed to be obligated and responsible for performance under the note, mortgage, guaranty, and other loan documents. By entry filed January 11, 2011, the trial court granted Sun's motion for summary judgment, thereby dismissing Sun from the action.

{¶ 8} On January 12, 2011, a notice of substitution of parties was filed with the trial court, substituting German American Capital Corporation ("GACC") for CMLT. By virtue of numerous assignments, REO Holdings became the holder of the amended note and loan documents, and on March 17, 2011, a second notice of substitution of parties was filed, whereby REO Holdings was substituted for GACC.

{¶ 9} On March 18, 2011, REO Holdings filed a motion for summary judgment against appellants. Appellants did not file a response to the summary judgment motion. On April 22, 2011, the trial court filed an order granting summary judgment in favor of REO Holdings.

{¶ 10} On appeal, appellants set forth the following single assignment of error for this court's review:

> The Court of Common Pleas of Franklin County, Ohio erred in giving summary judgment to LB-RPR Reo Holdings LLC for Money Judgment, Foreclosure of Commercial Mortgage and Breach of Guaranty against Stacey Ranieri, Michel C. Ranieri, James A. Poniewaz and Carrie L. Poniewaz.

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[1] By order filed on May 21, 2010, the trial court granted CMLT's motion to dismiss defendants Timothy and Sarah Bowles, without prejudice pursuant to Civ.R. 41(A).

{¶ 11} Pursuant to Civ.R. 56(C), summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact * * * 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." In reviewing a trial court's grant of summary judgment, an appellate court "stands in the shoes of the trial court and reviews all questions of law de novo." *Lynch v. Lilak*, 6th Dist. No. E-08-024, 2008-Ohio-5808, ¶ 9, citing *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

{¶ 12} Under their single assignment of error, appellants, pro se, raise several primary arguments. Appellants contend that, at the time they were asked to be signatories on the loan documents, they were assured by Teichman, the CEO and President of RT Investments, that the loan was nonrecourse, and that they would not be liable for any default on the part of RT Investments. Appellants further argue they were unaware of the individual guaranty signed by Sun, and that they did not have ample time to review the documents they signed.

{¶ 13} As noted under the facts, appellants did not respond to the motion for summary judgment filed by REO Holdings. Thus, none of appellants' arguments above were presented to the trial court, nor did appellants submit any evidentiary materials, such as affidavits, in support of their claims that they were unaware of the individual guaranty signed by Sun, or that Teichman assured them the loan was nonrecourse.

{¶ 14} The materials submitted in support of summary judgment by appellee included (1) a copy of a promissory note, dated July 10, 2007, listing Westerview as borrower, and LaSalle as lender, in the principal amount of $4,520,000 (exhibit A), (2) a copy of a "mortgage, security agreement and fixture filing" (exhibit B), (3) a copy of an "assignment of leases and rents," signed by Sun on behalf of Westerview and dated June 18, 2007 (exhibit C), (4) a copy of a "guaranty," executed on July 10, 2007, by Sun for the benefit of LaSalle (exhibit D), (5) an "amended and restated promissory note," dated February 29, 2008, listing as guarantors T. Scott Bowles, Sarah Bowles, Stacey Ranieri, Michel C. Ranieri, James A. Poniewaz and Carrie L. Poniewaz (exhibit F), and (6) a copy of the reaffirmation agreement, executed on February 29, 2008, containing the signatures of each of the appellants as "substitute indemnitor[s]." (exhibit G).

{¶ 15} The promissory note, dated July 10, 2007, contains an "Exculpation" clause, stating in part:

> Except as set forth below, neither Borrower nor any Guarantor shall be personally liable to pay the Principal Amount, or any other amount due, or to perform any obligation, under the Loan Documents, and Lender agrees to look solely to the Property and any other collateral heretofore, now or hereafter pledged by any party to secure the Loan; provided, however, in the event * * * (ii) the first full monthly payment on the Note is not paid when due * * * the limitation on recourse set forth in this *Paragraph 14* will be null and void and completely inapplicable, and this Note shall be with full recourse to Borrower.

(Emphasis sic.)

{¶ 16} On the same date the promissory note was executed (July 10, 2007), Sun signed and executed an individual "guaranty" on behalf of LaSalle and its successors and assigns. The guaranty states in relevant part:

> THIS GUARANTY ("Guaranty") is executed as of July 10, 2007 by MICHAEL Y. SUN ("Guarantor"), for the benefit of LASALLE BANK NATIONAL ASSOCIATION, * * * its successors and assigns ("Lender").
>
> A. Westerview Garden Apartments, LLC ("Borrower") is indebted to Lender with respect to a loan (the "Loan") pursuant to that certain Promissory Note * * * payable to the order of Lender in the original principal amount of Four Million Five Hundred Twenty Thousand and No/100 Dollars ($4,520,000.00).
>
> B. Lender is not willing to make the Loan, or otherwise extend credit, to Borrower unless Guarantor unconditionally guarantees payment and performance to Lender of the Guaranteed Obligations (defined below).
>
> * * *
>
> NOW, THEREFORE, as an inducement to Lender to make the Loan to Borrower, * * * the parties hereby agree as follows:
>
> * * *

> **1.1 Guaranty of Obligations.** Guarantor hereby irrevocably and unconditionally guarantees to Lender (and its successors and assigns), jointly and severally, the payment and performance of the Guaranteed Obligations as and when due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is jointly and severally liable for the Guaranteed Obligations as a primary obligor, and that each Guarantor shall fully perform, jointly and severally, each and every term and provision hereof.
>
> **1.2 Definition of Guaranteed Obligations.** As used herein, the term "Guaranteed Obligations" shall mean the unpaid balance of the Loan (as defined in the Note) in the event of (i) any fraud, willful misconduct or material misrepresentation by Borrower or any Guarantor in connection with the Loan, (ii) Borrower's failure to make the first full payment of principal and interest due under the Note.

(Emphasis sic.)

{¶ 17} On February 29, 2008, pursuant to the reaffirmation agreement, Westerview, as "borrower," and appellants, as "substitute indemnitor[s]" or "Assuming Obligors," "all requested that Lender [LaSalle] consent to the substitution of Substitute Indemnitor as indemnitor and guarantor under the Indemnity Agreement * * * and to the assumption by Substitute Indemnitor of all the obligations of Original Indemnitor [Sun] under the Indemnity Agreement." (Reaffirmation agreement at 3.) The reaffirmation agreement at 7-8, further states in part:

> **Assumption of Obligations by Substitute Indemnitor**. From and after the date of this Agreement, Substitute Indemnitor shall be obligated and responsible for the performance of each and all of the obligations and agreements of Original Indemnitor under the Loan and the Loan Documents, including, without limitation, the Indemnity Agreement * * *, and Substitute Indemnitor shall be liable and responsible for each and all of the liabilities of Original Indemnitor thereunder, as fully and completely as if Substitute Indemnitor had originally executed and delivered the Loan Documents as the "Indemnitor" or "Guarantor" thereunder, including, without limitation, all of those obligations, agreements and liabilities which would have, but

> for the provisions of this Agreement, been the obligations, agreements and liabilities of Original Indemnitor.

{¶ 18} The amended note, also dated February 29, 2008, listed each appellant as "Guarantor(s)." The amended note further provides in part:

> Principal and interest shall be paid to Lender as follows: (a) on the Initial Payment Date and on each Payment Date thereafter up to and including July 1, 2010, Borrower shall pay constant monthly payments of interest-only * * *; and (b) beginning August 1, 2010 and on each Payment Date thereafter, Borrower shall pay constant monthly payments of principal and interest in the amount of the P&I Payment Amount.

{¶ 19} In support of its motion for summary judgment, REO Holdings submitted the affidavit of Javier Callejas, an asset manager for REO Holdings. In the affidavit at ¶ 35, Callejas averred that, "[b]eginning April 1, 2009, Westerview failed to make the constant monthly payments of interest-only in the amount of Sixteen Thousand Three Hundred Twenty and 27/100 Dollars ($16,320.27) as provided under the Amended Note." Callejas further averred at ¶ 38 that appellants, "as Substitute Guarantors, have failed to satisfy their obligations under the Reaffirmation." Further, at ¶ 39 "[a]s a result of the Payment Defaults, LB-RPR Holdings declared the entire balance outstanding under the Loan Documents to be immediately due and owing."

{¶ 20} On appeal, appellants argue they were all assured by Teichman that they were signing a nonrecourse loan and that, as passive investors in RT Investments, they would not in any way be held liable for default on the part of RT Investments (the general partner to Westerview). Appellants note that paragraph 14 of the note contains nonrecourse language. Specifically, appellants cite to the "Exculpation" clause, quoted above, providing that neither borrower nor any guarantor shall be personally liable to pay the principal amount, and further providing that the lender "agrees to look solely to the Property and any other collateral heretofore, now or hereafter pledged by any party to secure the Loan." We note that the Exculpation clause also contains a "full recourse" provision, providing in part: "[I]n the event * * * (ii) the first full monthly payment on the Note is not paid when due * * * the limitation on recourse set forth in this *Paragraph 14*

will be null and void and completely inapplicable, and this Note shall be with full recourse to Borrower." (Emphasis sic.)

{¶ 21} As set forth under the facts, as further security for the loan, Sun executed an individual guaranty agreement. Pursuant to the terms of the guaranty, the guarantor "irrevocably and unconditionally guarantees to Lender (and its successors and assigns), jointly and severally, the payment and performance of the Guaranteed Obligations as and when due and payable, whether by lapse of time, by acceleration of maturity or otherwise." Further, "Guaranteed Obligations" were defined to include the unpaid balance of the loan in the event of "Borrower's failure to make the first full payment of principal and interest due under the Note."

{¶ 22} Section 1.3 of the guaranty states that the guaranty "is an irrevocable, absolute, continuing guaranty of payment and performance, is joint and several and is not a guaranty of collection." Section 1.5 provides in part: "If all or any part of the Guaranteed Obligations shall not be punctually paid when due, whether at Maturity * * * or earlier by acceleration or otherwise, Guarantor shall, immediately upon demand by Lender, * * * pay to Lender in lawful money of the United States of America the amount due on the Guaranteed Obligations." Under Section 1.7, the guarantor waived notice of "the occurrence of any breach by Borrower or default."

{¶ 23} Under Ohio law, "[a] guaranty is a contract through which one party guarantees payment for debts incurred by another person or entity." *Thayer v. Diver*, 6th Dist. No. L-07-1415, 2009-Ohio-2053, ¶ 77, citing *Nesco Sales & Rental v. Superior Elec. Co.*, 10th Dist. No. 06AP-435, 2007-Ohio-844, ¶ 10. In general, "Ohio courts construe guaranties, and releases thereof, 'in the same manner as they interpret other contracts.' " *Id.*, quoting *Nesco* at ¶ 12. Further, "[i]f a guaranty's terms are clear and unambiguous, a court may not construe it to have another meaning." *O'Brien v. Ravenswood Apts., Ltd.*, 169 Ohio App.3d 233, 2006-Ohio-5264, ¶ 23 (1st Dist.).

{¶ 24} If a guarantor agrees, "a guaranty contract can impose greater liability upon the guarantor than the note imposes upon the principal." *Resolution Trust Corp. v. Northpark Joint Venture,* 958 F.2d 1313, 1321 (5th Cir.1992) (despite nonrecourse provision in note, guarantors who executed personal unconditional guaranty, agreeing to pay all indebtedness on loan, were liable for unsatisfied indebtedness). *See also*

Provident Natl. Assurance Co. v. Sbrocca, 885 P.2d 152, 154 (Ariz.App.1994) (noting that courts "have uniformly held that the guarantor of a nonrecourse loan can have greater liability than the primary obligor because the guaranty itself imposes a separate liability"); *Fed. Deposit Ins. Corp. v. Univ. Anclote Inc.,* 764 F.2d 804, 806 (11th Cir.1985) (guarantor can be held liable for separate and independent promise to pay the full amount of debtor's nonrecourse obligation).

{¶ 25} In the instant case, under the terms of the reaffirmation agreement, appellants agreed to assume all of the obligations of Sun under the loan documents, including the guaranty/indemnity agreement executed by Sun in his individual capacity. As made clear by the language of the guaranty, the lender was "not willing to make the Loan" unless the guarantor "unconditionally" guaranteed payment and performance to the lender of the "Guaranteed Obligations." Section 1.2 of the guaranty, quoted above, defines "Guaranteed Obligations" to include the borrower's failure to make the first full payment of principal and interest due under the note. The amended note provided for borrower to make constant monthly payments of interest-only through July 1, 2010 and, beginning on August 1, 2010, the borrower was required to make constant monthly payments of principal and interest. The undisputed evidence indicates that, beginning April 1, 2009, Westerview "failed to make the constant monthly payments of interest-only" as provided under the amended note. (Callejas Affidavit, ¶ 35.) The facts also indicate that the debt has not been paid since the April 2009 default, and that the lender accelerated all amounts pursuant to the loan documents.

{¶ 26} The trial court, in reviewing all the documents before it on summary judgment, concluded that there were no genuine issues of material fact, and that REO Holdings was entitled to judgment as a matter of law against appellants. We find no error with that determination.

{¶ 27} As noted, appellants contend they were not made aware of the individual guaranty signed by Sun. That guaranty, however, was specifically referenced in the reaffirmation agreement signed by each of the appellants. Further, as appellants submitted no materials in response to the motion for summary judgment, the trial court was not presented with the argument (or submission of any Civ.R. 56(C) evidence) that appellants were not made aware of the unconditional guaranty executed by Sun.

Moreover, under Ohio law, a guarantor's "assertion that he did not understand the contract to be a personal guarantee carries little force." *Thyssenkrupp Materials NA, Inc. v. Baker,* No. 05-3356-CV-S-RED (W.D.Mo., Nov. 15, 2006), citing *Hook v. Hook*, 69 Ohio St.2d 234 (1982). *See also Amerisourcebergen Drug Corp. v. Hallmark Pharmacies, Inc.,* 10th Dist. No. 05AP-1250, 2006-Ohi0-2746, ¶ 14 (no genuine issue of material fact based upon guarantor's self-serving statements that she did not realize she signed personal guarantee and that was shocked when named in suit; guarantor's "unilateral mistake is not a compelling reason" to rewrite contract).

{¶ 28} Similarly, the trial court was also not presented with the assertion, made by appellants for the first time on appeal, that they did not have proper time to review the documents they were signing. Under Ohio law, however, "parties to contracts are presumed to have read and understood them and * * * a signatory is bound by a contract that he or she willingly signed." *Preferred Capital, Inc. v. Power Eng. Group, Inc.,* 112 Ohio St.3d 429, 432, 2007-Ohio-257. *See also S-S-C Co. v. Hobby Ctr., Inc.,* 6th Dist. No. L-92-049 (Dec. 4, 1992) (by asserting that she failed to read language of guaranty carefully before signing documents, appellant "is simply asserting unilateral mistake—not the intent of the parties—and cannot prevail on that argument"); *Natl. City Bank v. The Plechaty Cos.,* 104 Ohio App.3d 109, 116 (1995) (appellant "cannot escape liability because he failed to read the guarantee").

{¶ 29} Based upon this court's de novo review, we conclude that the trial court properly granted summary judgment in favor of REO Holdings. Accordingly, appellants' single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BROWN, P.J., BRYANT, and TYACK, JJ., concur.

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