[Cite as *Willoughby Supply Co., Inc. v. Inghram*, 2015-Ohio-952.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

WILLOUGHBY SUPPLY COMPANY., INC.,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
	:	**CASE NO. 2014-L-055**
- vs -	:	
ROBERT INGHRAM, et al.,	:	
Defendant-Appellant.		

Civil Appeal from the Lake County Court of Common Pleas, Case No. 13 CV 000934.

Judgment: Affirmed.

David S. Brown, Weltman, Weinberg & Reis Co., L.P.A., 323 West Lakeside Avenue, Suite 200, Cleveland, OH 44113 (For Plaintiff-Appellee).

Thomas R. Houlihan and *Jack Morrison, Jr.,* Amer Cunningham Co., L.P.A., 1100 Key Building, 159 South Main Street, Akron, OH 44308 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Robert Inghram appeals from the judgment entry of the Lake County Court of Common Pleas, finding him liable on an oral personal guarantee for the debts of his defunct business, Assurance Exteriors, Inc., to Willoughby Supply Company, Inc. Fundamentally, Mr. Inghram contends the trial court misapplied the "leading object rule," an exception to the Statute of Frauds. Finding no error, we affirm.

{¶2} May 1, 2013, Willoughby Supply filed a complaint against Assurance Exteriors and Mr. Inghram in the trial court, alleging breach of contract and personal guarantee. Mr. Inghram answered May 30, 2013, denying the complaint. Assurance Exteriors had, evidently, gone out of business in 2012; it filed no answer, and the trial court entered default judgment against it July 1, 2013.

{¶3} The matter came on for bench trial on the issue of the personal guarantee February 28, 2014. May 5, 2014, the trial court filed its judgment entry, finding in favor of Willoughby Supply in the amount of $60,098.49, together with interest at 18% per year on the principal balance of $59,366.57 from April 25, 2013, plus costs. This appeal timely ensued.

{¶4} Testifying at trial were Mr. Inghram and John Holzhauser. Mr. Inghram was president and sole shareholder in Assurance Exteriors. He employed Tom Cutura to run the office. Mr. Holtzhauser is an accountant, and chief financial officer for Willoughby Supply. June 20, 2011, Assurance Exterior submitted a credit application to Willoughby Supply. Mr. Inghram signed the application in the name of the company. Beneath the signature line for the company representative on the application is a personal guarantee, warning the application would not be accepted unless this was also signed. Mr. Inghram denied the signature beneath the personal guarantee was his. Considerable evidence was introduced indicating this signature was actually that of his office assistant, Mr. Cutura. In its judgment entry, the trial court concluded the signature on the personal guarantee was not that of Mr. Inghram.

{¶5} Mr. Holtzhauser testified he received the credit application June 23, 2011, and called Mr. Inghram the next morning. Mr. Holtzhauser testified this is his normal

procedure when approving credit applications. The phone number listed on the application was Mr. Inghram's cell phone number. Mr. Inghram's cell phone records indicate he received a call on his cell phone from Willoughby Supply at the time stated by Mr. Holtzhauser. Mr. Holtzhauser testified he asked the person answering the phone whether he was Robert Inghram, and received an affirmative response. He also asked that person Mr. Inghram's Social Security number, which was submitted as part of the application, and received a correct response. He finally asked whether the person answering had signed the personal guarantee, and received an affirmative response. The credit application was approved.

{¶6} Mr. Holtzhauser admitted he could not actually recollect the phone call, since he receives hundreds of credit applications each year. He testified on the basis of a form he fills out during each phone call, recording the responses given to his questions. This form was admitted without objection as an exhibit at trial.

{¶7} Mr. Inghram denied ever receiving the phone call from Mr. Holtzhauser, and further testified he would never sign a personal guarantee of his company's debts. He admitted other people rarely have access to his cell phone.

{¶8} The trial court found Mr. Holtzhauser's testimony credible, but not that of Mr. Inghram's. On this basis, it found an oral contract of personal guarantee by Mr. Inghram of Assurance Exterior's debts to Willoughby Supply. It then applied the "leading object rule" to find the personal guarantee enforceable. The leading object rule provides that oral contracts by third parties guaranteeing another's debt are not within the Statute of Frauds, if the guarantor's principal purpose is to benefit his or her own

business or pecuniary interests. *Wilson Floors Co. v. Scioto Park, Ltd.*, 54 Ohio St.2d 451, syllabus (1978).

{¶9} On appeal, Mr. Inghram assigns two errors. The first is, "The trial court erred in determining that Robert Inghram made an oral agreement to answer for the debts of Assurance Exteriors, Inc." Under this assignment of error, there is one issue for review: "The trial court erred as a matter of law in holding that an oral agreement to guarantee the debt of Assurance Exteriors was formed between Willoughby Supply and Inghram."

{¶10} "The elements of a contract include the following: an offer, an acceptance, contractual capacity, consideration (the bargained-for legal benefit or detriment), a manifestation of mutual assent, and legality of object and of consideration. *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, * * *, ¶16. See also *Helle v. Landmark, Inc.* (1984), 15 Ohio App.3d 1, * * *. A party asserting a contract must prove by a preponderance of the evidence the existence of the elements of the contract. *Cooper & Pachell v. Haslage* (2001), 142 Ohio App.3d 704, 707, * * *." (Parallel citations omitted.) *Willey v. Blackstone*, 180 Ohio App.3d 303, 2008-Ohio-7035, ¶55 (5th Dist.)

{¶11} "The case at bar involves an oral contract. The terms of an oral contract must be established by oral testimony and their determination is a question for the trier of fact. *Boone Coleman Constr. v. Spencer* (June 23, 1993), Scioto App. No. 92-CA-2076, 1993 Ohio App. LEXIS 3273, unreported. See, also, *Murray v. Brown-Graves Co.* (App.1922), 1 Ohio Law Abs. 167. In a bench trial, the trial court, as the trier of fact, must resolve any evidentiary conflict surrounding disputed provisions of an oral contract. See *Geriatric Nursing Care v. Eastgate Health Care Center, Inc.* (July 12,

1993), Clermont App. No. CA93-03-022, 1993 Ohio App. LEXIS 3487, unreported. The trial court's judgment regarding such will not be disturbed on appeal when supported by competent, credible evidence. *Id.*" *Zink v. Harp*, 12th Dist. Warren No. CA93-02-009, 1993 Ohio App. LEXIS 4808, *3-4 (Oct. 4, 1993).

{¶12} Mr. Inghram argues the record in this case is devoid of evidence supporting several elements necessary to establish a contract. He notes his own denial he ever received the phone call from Mr. Holtzhauser, and the fact Mr. Holtzhauser did not recollect making the call. Consequently, he denies there was either offer, or acceptance, of the personal guarantee, or any evidence of mutual assent.

{¶13} We respectfully disagree. The doctrine of ratification applies. "To prove ratification of a contract, the proponent must show that the principal engaged in conduct, with full knowledge of the facts, which manifests his intention to ratify the unauthorized transaction." *Park View Fed. Savings Bank v. Willo Tree Dev., Inc.*, 11th Dist. Geauga No. 2000-G-2309, 2001 Ohio App. LEXIS 5430, *11. The trial court, sitting as finder of fact, found Mr. Inghram's denial of receiving the phone call, not credible. The trial court found credible Mr. Holtzhauser's testimony, supported by Mr. Inghram's own phone records, that the call was placed, and that Mr. Inghram assured Mr. Holtzhauser he had signed the personal guarantee. Thus, even if the actual signature was Mr. Cutura's, Mr. Inghram ratified the personal guarantee. The trial court's determination that Mr. Inghram and Willoughby Supply entered an oral contract, including offer, acceptance, and mutual assent, is supported by a preponderance of competent, credible evidence.

{¶14} The first assignment of error lacks merit.

{¶15} Mr. Inghram's second assignment of error is, "The trial court erred in applying the 'leading object rule' as an exception to the statute of frauds in holding appellant Robert Inghram liable for the debts of Assurance Exteriors." Mr. Inghram argues his promise to guarantee the debts of his company is unenforceable under that portion of the Statute of Frauds embodied at R.C. 1335.05, which provides, in pertinent part:

{¶16} "No action shall be brought whereby to charge the defendant, upon a special promise, to answer for the debt, default, or miscarriage of another person; * * * or upon a contract or sale of lands, tenements, or hereditaments, or interest in or concerning them, or upon an agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized."

{¶17} In *Builder Appliance Supply, Inc. v. Hughes*, 13 Ohio App.3d 207, 209 (10th Dist.1983), the court noted:

{¶18} "The statute's commendable purpose is:

{¶19} "'(* * *) to secure the highest and most satisfactory species of evidence (*i.e.*, a writing,) in cases where parties, without apparent benefit to themselves, enter into stipulations of suretyship; and where there would be great temptation, on the part of creditors, in danger of losing their debts by the insolvency of their debtors, to support suits by means of false evidence, by coloring conversations and exaggerating words of

commendation or expressions of encouragement into positive contracts. (* * *)' *Crawford v. Edison* (1887), 45 Ohio St. 239, 245."

{¶20} However, as the court noted in *America's Floor Source, LLC v. Joshua Homes*, 191 Ohio App.3d 493, 2010-Ohio-6296, ¶20 (10th Dist.):

{¶21} "Ohio case law has recognized situations in which R.C. 1335.05 will not be enforced. In *Wilson Floors Co. v. Sciota Park, Ltd.* (1978), 54 Ohio St.2d 451, * * *, the Supreme Court of Ohio held in the syllabus that '(w)hen the leading object of the promisor in (sic) not to answer for another's debt but to subserve some pecuniary or business purpose of his own involving a benefit to himself, his promise is not within the statute of frauds, although the original debtor may remain liable.' See also *Crawford v. Edison* (1887), 45 Ohio St. 239, * * *, syllabus; see also *American Wholesale Corp. v. Mauldin* (S.C. 1924), 128 S.C. 241, * * *." (Parallel citations omitted.)

{¶22} The determination of whether an oral promise to answer for another's debt exists, and is outside the Statute of Frauds, is a question of fact. *Mentor Lumber & Supply Co. v. Victor*, 11th Dist. Lake No. 89-L-14-103, 1990 Ohio App. LEXIS 5980, *8-9 (Dec. 31, 1990).

{¶23} In this case, the trial court determined the leading object rule applied, since Mr. Inghram was the president and sole owner of Assurance Exteriors, and required steady supplies of materials from Willoughby Supply to continue his business of renovating structures. Consequently, the trial court concluded Mr. Inghram's guarantee of Assurance Exterior's debts benefitted his own business purposes.

{¶24} Mr. Inghram advances two issues for review under his second assignment of error. The first is, "There must be a personal benefit to the promisor, beyond an increase in value of stock, to apply the leading object rule to a business owner's alleged promise to pay the debt of a company." Mr. Inghram argues that the oral promise of a stockholder (such as himself) to pay the debts of a corporation (like Assurance Exteriors), remains within the Statute of Frauds. As authority, he cites principally to 3 *Williston on Contracts*, Section 481A (3d Ed.1960); *Mentor Lumber & Supply*, *supra*; and *Trans-Gear, Inc. v. Lichtenberger*, 128 Ohio App.3d 504 (11th Dist.1998).

{¶25} We respectfully find these authorities distinguishable.

{¶26} 3 *Williston*, Section 481A at 477 states:

{¶27} "[M]any courts make a distinction in cases where the promisor owns all, or substantially all, of the stock in the corporation, and is transacting his business in its name for his personal convenience. Under such circumstances, these courts hold, his oral promise to pay the debt of the corporation is based on a sufficient consideration running to him personally as to make the promise original and hence to take it out of the statute."

{¶28} The treatise goes on to note that some jurisdictions view the separation between the stockholder and the corporation as absolute, and apply the Statute of Frauds. We think the view that a stockholder who owns all, or substantially all, of a corporation's stock may be held liable on an oral guarantee of the corporation's debts makes greater sense, and tends to support the statute's ultimate purpose of preventing fraud, as the learned trial court noted itself.

{¶29} In *Mentor Lumber & Supply*, *supra*, appellant helped his son's failing home construction business by cosigning loans and loaning money. *Id.* at *1-2. His loans were secured by two model homes. *Id.* at *2. Appellant orally agreed to guarantee his son's debts with appellee supply company. *Id.* Eventually, the son and his wife absconded from Ohio, and the supply company filed an action against appellant on the guarantee. *Id.* at *3-4. The trial court found liability based on the leading object exception. *Id.*

{¶30} On appeal, this court reversed. *Mentor Lumber & Supply Co.*, *supra*, at *14. This court found the security in one of the model homes which had not yet sold likely enough to satisfy a substantial portion of any debt owed to the supply company. *See, e.g., id.* at *11. It further noted that appellant's continued participation in the affairs of his son's company was largely at the behest of the supply company, and that the supply company actually had a greater interest in selling any remaining houses under construction than the father. *Id.* at *12. Altogether, this court concluded father's pecuniary interest as represented by the guarantee was "too attenuated" to remove the protection of the Statute of Frauds. *Id.* at *10-11.

{¶31} In this case, as sole owner of Assurance Exteriors, Mr. Inghram clearly benefited by being able to purchase materials on credit from Willoughby Supply.

{¶32} In *Trans-Gear*, *supra*, appellant was the former part owner of a trucking company. *Id.* at 507. Following his retirement and divestment of all his interests in the trucking company, he continued to work for it as a dispatcher. *Id.* One of the independent truckers contracted with the trucking company developed transmission problems with his vehicle. *Id.* Appellant called Trans-Gear, a company repairing trucks,

"'to get his man back on the road.'" *Id.* The trial court determined that appellant had personally guaranteed to pay for the repairs, applying the leading object exception to the Statute of Frauds. *Id.* at 507-508.

{¶33} On appeal, this court reversed. *Id.* at 513. It was admitted that appellant had previously paid for the repair of the vehicle of the trucker in question, and that Trans-Gear had extended appellant credit to repair his own trucks. *Id.* at 508. However, this court noted that appellant received absolutely no personal benefit, pecuniary or otherwise, by making any guarantee to Trans-Gear. *Id.* at 512. All of the benefits flowed to the trucker and the trucking company. *Id.* Consequently this court found the leading object rule did not apply. *Id.* at 512-513.

{¶34} The first issue lacks merit.

{¶35} For his second issue under this assignment of error, Mr. Inghram states: "The leading object rule only applies when the promisor makes a promise which induces the promissee to provide a new benefit to the promisor." Mr. Inghram argues the leading object rule only applies to situations where a new benefit, beyond that subject of the principal contract, is provided in response to the promise to guarantee a debt. As support, he points to the fact the leading object rule most frequently is applied in construction cases, wherein the promisor guarantees a third party's debt in order to obtain completion of a project by the promissee.

{¶36} We respectfully disagree that the leading object rule is so limited. Quite simply, the rule applies when the promisor obtains a personal business or pecuniary benefit by making the promise.

{¶37} The second issue lacks merit, as does the second assignment of error.

{¶38} The judgment of the Lake County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J., concurs,

TIMOTHY P. CANNON, P.J., concurs in judgment only with a Concurring Opinion.

TIMOTHY P. CANNON, P.J., concurring in judgment only.

{¶39} Although I concur with the judgment of the majority to affirm the trial court's ruling, I respectfully disagree with the majority's analysis.

{¶40} The trial court found that an oral contract was formed between the parties and that the "leading object rule" excuses lack of compliance with R.C. 1335.05, Ohio's statute of frauds. The majority agrees with this analysis. However, I agree with the alternative analysis presented by Willoughby Supply in its brief on appeal: a written contract was formed between the parties, and Mr. Inghram is now estopped from raising the statute of frauds as a defense.

{¶41} The trial court found that Mr. Inghram "confirmed with Holtzhauser that he signed the personal guaranty" and that any testimony to the contrary was not credible. We must defer to the trial court's findings of fact on review. *Rzeszotarski v. Sanborn*, 11th Dist. Geauga No. 95-G-1906, 1996 Ohio App. LEXIS 2372, *16 (June 7, 1996), citing *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Based on this finding, therefore, the agreement complies with the statute of frauds because it is "in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized." R.C. 1335.05. In other words, Mr. Inghram did not

make an oral promise of personal liability; rather, he confirmed that the written promise was made by him.

{¶42} "Since the general purpose of the statute [of frauds] is to prevent and not to perpetrate fraud, courts will not permit the statute to be used as a shield to protect fraud." *Gathagan v. Firestone Tire & Rubber Co.*, 23 Ohio App.3d 16, 17 (9th Dist.1985). One doctrine used to prevent such an outcome is equitable estoppel. *Id*. at 17-18. "Under the doctrine of equitable estoppel, relief is precluded where one party induces another to believe certain facts are true and the other party changes his position in reasonable reliance to his detriment on those facts." *Currier v. Penn-Ohio Logistics*, 186 Ohio App.3d 249, 2010-Ohio-195, ¶33 (11th Dist).

{¶43} By orally confirming that he signed the personal guaranty, Mr. Inghram induced Willoughby Supply to believe the signature was authorized. In reasonable reliance on this oral confirmation, and to its detriment, Willoughby Supply extended credit to Mr. Inghram. As a result, Mr. Inghram is now estopped from raising an argument that the signature was not authorized as a defense to his contractual liability.

{¶44} For this reason, I concur in judgment only with the opinion of the majority.