[Cite as *Co. Wrench, Ltd. v. Moran*, 2016-Ohio-5739.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COMPANY WRENCH, LTD	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff - Appellant	:	Hon. W. Scott Gwin, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
RICHARD MORAN, et al.,	:	Case No. 16-CA-7
	:	
Defendants - Appellees	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Fairfield County Court of Common Pleas, Case No. 2014 CV 00766
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	August 31, 2016

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
JUSTIN D. OWEN 4805 Scooby Lane Carroll, Ohio 43112	THOMAS G. HAREN GREGORY D. SEELEY Seeley, Savidge, Ebert & Gourash Co., LPA 26600 Detroit Road, Suite 300 Westlake, Ohio 44145

Baldwin, J.

{¶1} Plaintiff-appellant Company Wrench, Ltd. appeals from the February 1, 2016 Opinion and Entry of the Fairfield County Court of Common Pleas granting the Motion for Summary Judgment filed by defendant-appellee Richard Moran while denying its Motion for Partial Summary Judgment.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellee Richard Moran is the 100% owner of American Environmental Technologies, Inc. which holds a 50% interest in America Environmental Technologies, Inc.-Harco, LLC. ("AET-Harco"). AET-Harco contracted for demolition work to be performed at the site of the old Tappan Building in Mansfield, Ohio and then subcontracted the demolition work to American Environmental Solutions, Inc. The President of American Environmental Solutions, Inc. is Stacey Dioneff.

{¶3} On or about April 24, 2014, American Environmental Solutions, Inc. submitted a Credit Application to appellant Company Wrench, Ltd. Appellee Richard Moran signed the Credit Application as "RM Authorized Agent" and on the space for the applicant's title again write the words "Authorized Agent."

{¶4} Directly below appellee's signature appears a paragraph captioned "Personal Guaranty (Required for applicants not incorporated)." The paragraph states, in relevant part, as follows:

> In consideration of your extending credit to the applicant, the undersigned jointly, severally, and personally do hereby agree to pay for all goods and/or services sold to applicant, and in the event of default by applicant, you shall be entitled to look to us for payment

without prior demand or notice and without first having attempted to collect from applicant…

{¶5} Appellee Richard Moran completed the signature line under the Personal Guaranty as "American Environmental Solutions, Inc. RHM Authorized Agent."

{¶6} The next day, on April 25, 2014, a Rental Agreement was entered into between appellant Company Wrench Ltd. and American Environmental Solutions, Inc. Pursuant to the terms of the agreement, appellant agreed to rent specified demolition equipment to American Environmental Solutions, Inc. Stacy Dioneff, as President of American Environmental Solutions, Inc. signed the agreement.

{¶7} Subsequently, on November 5, 2014, appellant filed a complaint against American Environmental Solutions, Inc. and appellee Richard Moran. Appellant, in its complaint, alleged that American Environmental Solutions, Inc. had breached the terms of the Rental Agreement by failing to fulfil its payment obligations. Appellant sought to hold appellee Richard Moran personally liable under the "Personal Guaranty." Appellee, on December 15, 2014, filed an answer, cross-claim and third-party complaint against Stacy Dioneff, the President of American Environmental Solutions. As memorialized in an Order filed on the same day, the trial court granted appellee's motion to add Stacy Dioneff as a third-party defendant.

{¶8} On March 2, 2015, appellee filed a Motion for Judgment by Default against American Environmental Solutions, Inc. The trial court, pursuant to a Judgment Entry filed on March 4, 2015, granted the motion.

{¶9} Subsequently, on December 16, 2015, appellee filed a Motion for Summary Judgment, arguing that he was not personally liable under the Personal Guaranty. On the

same date, appellant filed a Motion for Partial Summary Judgment on the issue of appellee's liability under the Personal Guaranty.

{¶10} The trial court, pursuant to an Opinion and Entry filed on February 1, 2016, granted appellee's Motion for Summary Judgment while denying appellant's Motion for Partial Summary Judgment. The trial court found that appellee was not liable under the Personal Guaranty and dismissed the claims against him.

{¶11} Appellant, on February 22, 2016, filed a Motion for an Entry Awarding Damages against American Environmental Solutions, Inc. Via an Order filed on the same day, the trial court granted such motion and granted judgment in favor of appellant and against American Environmental Solutions, Inc. A Final Entry was filed by the trial court on February 25, 2016.

{¶12} Appellant now raises the following assignments of error on appeal:

{¶13} THE TRIAL COURT ERRED BY GRANTING MR. MORAN SUMMARY JUDGMENT AND RULING THAT HE SIGNED THE PERSONAL GUARANTY AS AN AGENT OF AES.

{¶14} THE TRIAL COURT ERRED BY DENYING COMPANY WRENCH'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF MR. MORAN'S PERSONAL LIABILITY UNDER THE PERSONAL GUARANTY.

I, II

{¶15} Appellant, in its first summary judgment, argues that the trial court erred in granting appellee's Motion for Summary Judgment. In its second assignment of error, appellant contends that the trial court erred in denying its Motion for Partial Summary Judgment. We disagree.

{¶16} Both assignments of error relate to summary judgment. Civil Rule 56(C) states, in pertinent part, as follows:

> Summary judgment shall be rendered forthwith if the 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 of material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that 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, that party being entitled to have the evidence or stipulation construed mostly strongly in the party's favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

{¶17} A trial court should not enter a summary judgment if it appears a material fact is genuinely disputed, nor if, construing the allegations most favorably towards the non-moving party, reasonable minds could draw different conclusions from the undisputed facts. *Hounshell v. Am. States Ins. Co.,* 67 Ohio St.2d 427, 424 N.E.2d 311 (1981). When reviewing a trial court's decision to grant summary judgment, an appellate

court applies the same standard used by the trial court. *Smiddy v. The Wedding Party, Inc.,* 30 Ohio St.3d 35, 36, 506 N.E.2d 212 (1987). This means we review the matter de novo. *Doe v. Shaffer,* 90 Ohio St.3d 388, 2000–Ohio–186, 738 N.E.2d 1243.

{¶18} The party moving for summary judgment bears the initial burden of informing the trial court of the basis of the motion and identifying the portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the non-moving party's claim. *Drescher v. Burt,* 75 Ohio St.3d 280, 1996–Ohio–107, 662 N.E.2d 264. Once the moving party meets its initial burden, the burden shifts to the nonmoving party to set forth specific facts demonstrating a genuine issue of material fact does exist. *Id.* The non-moving party may not rest upon the allegations and denials in the pleadings, but instead must submit some evidentiary materials showing a genuine dispute over material facts. *Henkle v. Henkle,* 75 Ohio App.3d 732, 600 N.E.2d 791 (12th Dist.1991).

{¶19} Appellant, in its first assignment of error, argues that the trial court erred in granting appellee's Motion for Summary Judgment and finding that appellee signed the Personal Guaranty as an agent of American Environmental Solutions, Inc. and was not personally liable. In its second assignment of error, it argues that the trial court erred in denying its Motion for Partial Summary Judgment on the issue of appellees' liability under the Personal Guaranty. The issue is thus whether or not appellee was personally liable under the Personal Guaranty or whether, as found by the trial court, he signed as an agent of American Environmental Solutions, Inc.

{¶20} "A corporation, being an artificial person, can act only through agents." *Lamar Advantage GP Co. v. Patel,* 12th Dist. Warren No. CA2011–10–105, 2012–Ohio–

3319, ¶ 18, quoting *James G. Smith & Assoc., Inc. v. Everett,* 1 Ohio App.3d 118, 120, 439 N.E.2d 932 (10th Dist.1981). When a person conducts business on behalf of a corporation, he is acting as an agent for the corporation and therefore will not incur individual liability for the corporation's obligations. *Lamar* at ¶ 18. However, the agent may still incur personal liability for the debts of the corporation unless the agent "so conduct[s] himself in dealing on behalf of the corporation with third persons that those persons are aware that he is an agent of the corporation and it is the corporation (principal) with which they are dealing, not the agent individually." *Id.*

{¶21} Similarly, "if a corporate officer executes an agreement in a way that indicates personal liability, then that officer is personally liable regardless of his intention." *Spicer v. James,* 21 Ohio App.3d 222, 223, 487 N.E.2d 353 (2nd Dist.1985). Whether an officer or agent is personally liable under the contract depends upon "the form of the promise and the form of the signature." *Id.* "The typical format to avoid individual liability is 'company name, individual's signature, individual's position.' "*The Big H, Inc. v. Watson,* 1st Dist. No. C–050424, 2006–Ohio–4031, ¶ 7 (Citations omitted).

{¶22} As previously stated by this Court:

> The signature itself represents a clear indication that the signator is acting as an agent if[:] (1) the name of the principal is disclosed, (2) the signature is preceded by words of agency such as 'by' or 'per' or 'on behalf of,' and (3) the signature is followed by the title which represents the capacity in which the signator is executing the document, e.g., 'Pres.' or 'V.P.' or 'Agent.'

{¶23} *Hursh Builders Supply Co., Inc. v. Clendenin,* 5th Dist. Stark No. 2002CA00166, 2002–Ohio–4671, ¶ 21. This Court, in *Hursh*, further stated in paragraph 27 that "In order to not be personally liable on the guaranty, appellant had to disclose his agency status, i.e. "President," and indicate the name of his principal, i.e. "Amesburry Homes, Inc." In *George Ballas Leasing v. State Sec. Serv., Inc*., 6th Dist No. L-91-069, 1991 WL 280135 (Dec. 31, 1991), the alleged guarantor signed the guaranty as "Donald Johnson, President". The court held that Johnson had satisfied the formality required to show his intention to be only a signatory as agent of another and was not personally liable.

{¶24} We note that "where an agent signs a negotiable instrument by affixing thereto his own signature, without adding the name of the principal for whom he acts, the agent so signing is himself personally bound on such instrument." *West Shell Commercial, Inc. v. NWS, L.L.C.,* 12th Dist. Butler No. CA2006–06–154, 2007-Ohio-460, ¶ 6, quoting *Aungst v. Creque,* 72 Ohio St. 551, 553, 74 N.E. 1073 (1905).

{¶25} In the case sub judice, appellee signed the Personal Guaranty as "American Environmental Solutions, Inc." followed by his initials and the title "Authorized Agent." We concur with the trial court that appellee "clearly indicated his agency status as well as the name of the principal he was representing." We concur with the trial court that for such reason, appellee was not personally liable. Moreover, appellee, in the affidavit attached to his brief in opposition to appellant's Motion for Partial Summary Judgment, stated that he was not an owner, officer or member of American Environmental Solutions but that, with respect to the work performed at the Tappan Building project, he acted as American Environmental Solutions' agent on occasions by signing documents on its behalf when

Stacy Dineoff, its President, was not available. In paragraph 8 of his affidavit, appellee stated as follows: "When I executed the Company Wrench Credit Application on behalf of AES [American Environmental Solutions], I never intended to incur or guaranty any debts in my personal capacity. In fact, I made it clear when I executed the document that I was only acting in my capacity as an Authorized Agent of AES." Jason Templeton, appellant's Vice President, admitted during his deposition that appellee "signed his name at all times" as the Authorized Agent of American Environmental Solutions. Deposition of Jason Templeton at 37.

{¶26} Appellant, in its brief, argues that if appellee signed the Personal Guaranty in a representative capacity, then American Environmental Solutions would be personally guaranteeing its own obligations under the Rental Agreement and that this is nonsensical. However, appellant drafted the subject documents and, as noted by the trial court, "has only itself to blame for extending credit on the basis on such an illogical promise."

{¶27} Based on the foregoing, we find that the trial court did not err in granting appellee's Motion for Summary Judgment and in denying appellant's Motion for Partial Summary Judgment.

{¶28} Appellant's two assignments of error are, therefore, overruled.

{¶29} Accordingly, the judgment of the Fairfield County Court of Common Pleas is affirmed.

By: Baldwin, J.

Farmer, P.J. and

Gwin, J. concur.