[Cite as *Kingston Residence of Perrysburg v. Borgelt*, 2009-Ohio-3212.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

Kingston Residence of Perrysburg	Court of Appeals No. WD-08-066
Appellant	Trial Court No. 2007 CV 1037
v.	
Geoff Borgelt, et al.	**DECISION AND JUDGMENT**
Appellee	Decided: June 30, 2009

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Joseph P. Clarke, for appellant.

David W. Doerner, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas that granted summary judgment in favor of appellee and dismissed appellant's complaint for breach of contract. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth two assignments of error:

{¶ 3} "I. The trial court erred as a genuine issue of material facts exists as defendant/appellee is personally liable under the contract.

{¶ 4} "II. The trial court erred in granting summary judgment in favor of appellee by relying on improper 'evidentiary material.'"

{¶ 5} The undisputed facts relevant to the issues raised on appeal are as follows. In December 2004, appellee Geoff Borgelt became attorney-in-fact for his elderly parents, Karl and Marilyn Borgelt. On February 7, 2005, appellee signed a lease agreement with appellant Kingston Residence so that his parents could reside there. Borgelt signed the lease in his own name, over the words "Signature of Resident/or Resident's Sponsor." Other than his signature and printed name, Borgelt added only his address and the date. Borgelt's parents eventually were evicted from Kingston, owing $20,453.44 in rent. On December 20, 2007, Kingston filed suit against Borgelt and his mother, Marilyn Borgelt, for breach of contract. Kingston alleged that Borgelt had signed the lease agreement in an individual capacity, making him liable for his parents' rent deficiency. On March 14, 2008, Borgelt filed an answer and a motion for summary judgment. Kingston did not respond to Borgelt's motion. On August 18, 2008, the trial court granted Borgelt's motion for summary judgment and dismissed the complaint. In so doing, the trial court found that Borgelt signed the lease and residency agreement in a representative capacity and was not personally liable for any debt arising from the agreement. Kingston filed a timely appeal from that judgment.

{¶ 6} Kingston's two assignments of error will be addressed together, as both assert that the trial court erred by granting summary judgment. Kingston essentially argues that a genuine issue of material facts exists as to whether Borgelt is personally liable under the lease agreement.

{¶ 7} We note at the outset that an appellate court reviews a trial court's granting of summary judgment de novo, applying the same standard used by the trial court. *Lorain Natl. Bank v. Saratoga Apts*. (1989), 61 Ohio App.3d 127, 129; *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 1996-Ohio-336. Summary judgment will be granted when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 8} Kingston asserts that by signing only his own name to the lease agreement and failing to indicate his representative capacity on the document, Borgelt expressed his intent to guarantee satisfaction of his parents' financial obligation.

{¶ 9} As a preliminary matter, we note that appellant did not attach a copy of the lease agreement to its complaint as required by Civ.R. 10(D)(1); nor did appellee respond by filing a motion for a more definite statement as permitted by Civ.R. 12(E). We mention this because the only copy of the lease agreement before the trial court was in the form of an exhibit incorporated into another document attached to appellee's motion for summary judgment. Appellant argues that the attachments to appellee's motion

should not have been considered by the trial court because they did not constitute appropriate evidence pursuant to Civ.R. 56(E), since there was no affidavit certifying them as true copies of the original documents.

{¶ 10} In the case before us, as noted above, appellant did not respond to appellee's motion for summary judgment; needless to say, appellant therefore did not object in the trial court to the admissibility of the evidence it now challenges. Where the opposing party fails to object to the admissibility of evidence pursuant to Civ.R. 56, the court may, but need not, consider such evidence when it determines whether summary judgment is appropriate. *Walls v. City of Toledo*, 6th Dist. No. L-07-1324, 2008-Ohio-4274, ¶ 28, citing *Bowmer v. Dettelbach* (1996), 109 Ohio App. 3d 680, 684. The trial court therefore was permitted to, in its discretion, either consider or disregard the evidence attached to appellee's motion for summary judgment. Id.

{¶ 11} This said, we now turn to the "evidence" considered by the trial court: the lease agreement. Appellant asserts that Borgelt failed to indicate, within the four corners of the document, that he did not intend to be held liable for his parents' rent obligation. It does not escape this court's notice that appellant's argument on appeal is based entirely on the language of the lease agreement, *which it failed to attach to its complaint*, and which it now argues should not have been considered by the trial court.

{¶ 12} As explained above, appellee placed his signature on the lease agreement above the pre-printed words "Signature of Resident/ or Resident's Sponsor." Nowhere in the agreement is the term "sponsor" defined or discussed. Appellant asserts that

appellee's failure to sign his parents' names, along with his failure to indicate his representative capacity, created personal liability on the contract.

{¶ 13} The lease agreement states in its first paragraph that it is "entered into this 2/7 [sic] day of February 2005 by Kingston Residence ("Kingston") and Earl Borgelt ("Resident") and Marilyn Borgelt ("Second Resident") * * *." There is no language in the agreement making anyone other than a resident responsible for the rent. The trial court found that appellee signed the lease and residency agreement in a representative capacity and that he therefore was not personally liable for any debt arising out of the agreement.

{¶ 14} The goal of contract construction is to effectuate the intent of the parties. *State ex rel. Petro v. R.J. Reynolds Tobacco Co.*, 152 Ohio App.3d 345, 2003-Ohio-154, ¶ 37. While no mandatory specific words are required to form a contract of guaranty, the words selected must unequivocally create a guaranty. See, generally, 3 Ohio Jurisprudence 3d, Guaranty and Suretyship, Section 25.

{¶ 15} This court has addressed this issue before, in *S-S-C Company v. Hobby Center, Inc*. (Dec. 4, 1992), 6th Dist. No. L-92-049. In *Hobby Center*, the appellant signed a contract which contained the words "guarantor" and "guarantee" numerous times throughout the agreement. The contract identified the guarantor as the appellant, and the signature line identified the signer of the agreement as "guarantor." Id. at 3. This court held that the contract clearly established a personal guaranty of performance by the signer.

{¶ 16} In *Sherwin Williams Co. v. Chem-Fab, Inc*., 6th Dist. No. L-05-1375, 2006-Ohio-3864, Sherwin Williams Co. sought to hold the owner of Chem-Fab, Inc. liable on Chem-Fab's unpaid debt. The owner contended that he signed the loan document in dispute on behalf of Chem-Fab, whereas Sherwin Williams contended that he signed it as a personal guarantor. This court affirmed the trial court's finding that there was no reference to the owner individually as a guarantor and no clear indicia that a personal guaranty was intended and that he therefore was not personally liable for the company's debt.

{¶ 17} Similarly, in the case before us, there is no indication in the lease agreement that appellant intended appellee to be personally liable for his parents' rent obligations and no indication that appellee intended to accept that responsibility. Appellee signed the agreement over the word "sponsor," but nowhere in the agreement is it indicated that the "sponsor" is a responsible party.

{¶ 18} Based on the foregoing, this court finds that there remains no genuine issue of material fact and, accordingly, the trial court did not err by reviewing the language of the lease agreement and granting appellee's motion for summary judgment. Appellant's first and second assignments of error are not well-taken.

{¶ 19} On consideration whereof, substantial justice was done the party complaining and the judgment of the Wood County Court of Common Pleas is affirmed. Costs are assessed to appellant pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE