

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STARLION ELECTRONICS
DISTRIBUTION, L.L.C.,

:

Plaintiff-Appellee,

:

No. 112133

v.

:

ZORAN MEDICAL, L.L.C., ET AL.,

:

Defendants-Appellants.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: August 17, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-21-948527

Appearances:

Ogletree, Deakins, Nash, Smoak & Stewart P.C. and
Komlavi Atsou, *for appellee.*

Triscaro & Associates, Ltd., and Joseph J. Triscaro, *for
appellants.*

EILEEN T. GALLAGHER, P.J.:

{¶ 1} Defendants-appellants, Zoran Medical L.L.C. (“Zoran”) and Yin Lin (“Lin”) (collectively “appellants”), appeal an order granting summary judgment in favor of plaintiff-appellee, Starlion Electronics Distribution, L.L.C. (“Starlion”) on

its claim against Lin as a personal guarantor of Zoran's obligations under a settlement agreement between the parties. Appellants claim the following error:

1. The trial court erred in granting plaintiff's motion for summary judgment.

{¶ 2} We find that Lin is liable as a personal guarantor and affirm the trial court's judgment.

I. Facts and Procedural History

{¶ 3} In October 2020, Starlion and Zoran entered into an agreement for the sale of medical nitrile gloves. Pursuant to the agreement, Starlion paid Zoran \$410,746.35 to buy the gloves, but Zoran failed to deliver the gloves because of its supplier's failure to produce them. Zoran alleges that its supplier, Gab Abeckaser ("Abeckaser"), committed fraud and theft and never had any intention of producing the product. And because Zoran paid the supplier for the gloves, it was unable to refund the money to Starlion. Zoran and Starlion subsequently entered into a settlement agreement to settle Starlion's claim against Zoran for breach of contract.

{¶ 4} Under the terms of the settlement agreement, Zoran agreed to refund the \$410,746.35 Starlion paid for the gloves according to a payment schedule attached to the agreement as exhibit A. The settlement agreement also included the following guaranty provision:

PERSONAL GUARANTEE: The representative for the Seller, Yin Lin, personally and individually guarantees unconditionally full and prompt payment of past, present and future obligations under this Agreement for the Applicant and any successor in interest, corporate or non-corporate, in the Applicant's business.

{¶ 5} The parties signed the agreement on the last page of the agreement. Lin signed the agreement “for Zoran Medical L.L.C.” Below her signature, there is language stating that Lin signed in her capacity as “partner” of Zoran.

{¶ 6} Zoran made the first payment, in the amount of \$25,000, in accordance with the payment schedule provided in the settlement agreement. However, Zoran failed to make the remaining payments. As a result, Starlion filed a complaint against Zoran and Lin, asserting claims for breach of the settlement agreement, breach of the personal guaranty provision, unjust enrichment, and attorney fees.

{¶ 7} Starlion filed a motion for summary judgment, arguing it was entitled to damages and attorney fees as a result of appellants’ breach of the parties’ settlement agreement. Appellants opposed the motion arguing (1) Starlion’s claims are barred under the legal doctrines of impossibility and frustration of purpose, (2) Lin has no personal liability under the terms of the settlement agreement, (3) any claims against Lin personally are barred due to lack of consideration, and (4) any claims against Lin personally are barred under the doctrine of unconscionability.

{¶ 8} The trial court granted Starlion’s motion for summary judgment in part. The trial court found that Zoran and Lin were jointly and severally liable to Starlion for breach of the settlement agreement and entered judgment in Starlion’s favor in the amount of \$385,746.35. The trial court denied Starlion’s claim for attorney fees. Appellants now appeal the trial court’s judgment.

II. Law and Analysis

A. Standard of Review

{¶ 9} Appellate review of summary judgments is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Pursuant to Civ.R. 56(C), summary judgment is appropriate when (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, the party being entitled to have the evidence construed most strongly in his or her favor. *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679, 653 N.E.2d 1196 (1995), paragraph three of the syllabus; *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 696 N.E.2d 201 (1998).

{¶ 10} The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996). Once the moving party satisfies its burden, the nonmoving party “may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Civ.R. 56(E); *Mootispaw v. Eckstein*, 76 Ohio St.3d 383, 385, 667 N.E.2d 1197 (1996).

B. Personal Liability

{¶ 11} In the sole assignment of error, appellants argue the trial court erred in granting summary judgment in favor of Starlion on its claims against appellants,

including its claim against Lin as personal guarantor. In support of this argument, appellants first contend the trial court erred in finding that Lin has individual liability under the settlement agreement. They assert that because she signed the agreement in her capacity as a partner for Zoran and did not sign in a personal capacity, there was no basis on which the trial court could find her personally liable. They cite *George Ballas Leasing, Inc. v. State Sec. Serv., Inc.*, 6th Dist. Lucas C.P. No. L-91-069, 1991 Oho App. LEXIS 6346 (Dec. 31, 1991), in support of their argument.

{¶ 12} In *George Ballas Leasing*, the Sixth District Court of Appeals was asked to determine whether a written guaranty executed by an individual who affixed his corporate title to his signature expressed an unambiguous intention to bind the corporation of which he was an agent rather to bind himself individually. The alleged guarantor signed the guaranty as “Donald Johnson, President” and by doing so, the court held that he had satisfied the formality required to show his intention to be only a signatory as agent of another and was not personally liable. *Id.* at * 7-8.

{¶ 13} However, in *George Ballas Leasing*, the court explained that “[w]hether a corporate officer has effectively indicated that his signature is not indicative of his individual obligation depends upon the form of the promise and the form of the signature.” *Id.* at *5, citing *Spicer v. James*, 21 Ohio App.3d 222, 487 N.E.2d 353 (2d Dist.1985). The personal guaranty at issue in *George Ballas Leasing* did not identify the personal guarantor by name. Rather, the guaranty referred to

the guarantor as “the undersigned” and provided blank lines for the name of the guarantor to be printed or typed therein. *Id.* at * 3. The court found that the subject agreement did not express an intent to hold the president personally liable.

{¶ 14} By contrast, the personal guaranty in the parties’ settlement agreement identifies Lin as the personal guarantor. As previously stated, the personal guaranty is set forth as a provision within the settlement agreement that states:

PERSONAL GUARANTEE: The representative for the Seller, Yin Lin, personally and individually guarantees unconditionally full and prompt payment of past, present and future obligations due under this Agreement * * *.

Thus, the personal guaranty at issue in this case is distinguishable from the one at issue in *George Ballas Leasing*.

{¶ 15} A guaranty is a promise by one person to pay the debts of another. *Kauffman Family Trust v. Keehan*, 8th Dist. Cuyahoga No. 99423, 2013-Ohio-2707, ¶ 8, citing *Valspar Corp. v. Nguyen*, 5th Dist. Delaware No. 11 CAE 12 0116, 2012-Ohio-2710, ¶ 15. Ordinarily, an officer of a corporation is not personally liable on contracts for which his corporate principal is liable. *J.D.S. Props. v. Walsh*, 8th Dist. Cuyahoga No. 91733, 2009-Ohio-367, ¶ 13. “However, 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* at 223. *See also J.D.S. Props.* at ¶ 13.

{¶ 16} Courts construe guaranties in the same manner as contracts. *Kauffman Family Trust* at ¶ 8, citing *G.F. Business Equip., Inc. v. Liston*, 7 Ohio

App.3d 223, 224, 454 N.E.2d 1358 (10th Dist.1982). In interpreting contracts, the court's role is "to give effect to the intent of the parties to the agreement." *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 11, citing *Hamilton Ins. Servs., Inc. v. Nationwide Ins. Cos.*, 86 Ohio St.3d 270, 273, 714 N.E.2d 898 (1999). Where the contract terms are clear and unambiguous, we may determine the parties' rights and obligations from the plain language of the contract. *Aultman Hosp. Assn. v. Community Mut. Ins. Co.*, 46 Ohio St.3d 51, 53, 544 N.E.2d 920 (1989). The interpretation of a written contract is a matter of law. *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, 801 N.E.2d 452, ¶ 9.

{¶ 17} Appellants argue the trial court should not have held Lin personally liable because her official title of partner followed her signature and thus indicated that she signed the settlement agreement solely in her official capacity. However, courts have held corporate officers personally liable on guaranties even though their corporate titles were affixed to their signatures if the contract clearly evidenced an intent to bind the corporate officer individually. *See, e.g., Wells Fargo Bank, N.A. v. WSW Franchising, Inc.*, 10th Dist. Franklin No. 09AP-26, 2009-Ohio-3845; *Baltes Commercial Realty v. Harrison*, 2d Dist. Montgomery No. 23177, 2009-Ohio-5868; *City Wide Supply, Inc. v. Professional Air, Inc.*, 10th Dist. Franklin No. 99AP-1152, 2000 Ohio App.LEXIS 3064 (July 11, 2000); *S-S-C Co. v. Hobby Ctr., Inc.*, 6th Dist. Lucas No. L-92-049, 1992 Ohio App. LEXIS 6059 (Dec. 4, 1992). Although these cases are distinguishable from the instant case in various respects, the courts in each of these cases applied general rules of contract construction and

concluded, based on the plain and unambiguous terms of each of the contracts, that the parties intended to bind the corporate officer in his or her individual capacity.

{¶ 18} Lin’s signature indicates that she signed the settlement agreement in her capacity as a “partner” of Zoran. However, the plain and unambiguous language of the contract evidences a clear intent to hold Lin individually liable on the personal guaranty. The contract plainly states: “The representative for the Seller, Yin Lin, personally and individually guarantees unconditionally full and prompt payment of past, present and future obligations due under this agreement[.]” To conclude that the title “partner” on the signature line precludes a finding of individual liability for the personal guaranty would invalidate a clear and unambiguous term of the parties’ contract. The terms of the contract are clear, and the fact that Lin signed the agreement as a “partner” does not render the personal guaranty ambiguous. Therefore, the plain language of the contract provides individual liability for the personal guaranty.

C. Consideration

{¶ 19} Appellants nevertheless contend that any claim against Lin personally is barred due to lack of consideration for the personal guaranty. They contend the personal guaranty lacked consideration because it was not essential to the agreement since the settlement agreement was between Zoran and Starlion and Lin was not a party to it. They cite *FPC Fin. v. Wood*, 12th Dist. Madison No. CA2—6-02-005, 2007-Ohio-1098, in support of their argument.

{¶ 20} In *FPC Fin.*, the Twelfth District held that a personal guaranty, executed on behalf of the commercial debtor, was unenforceable due to lack of consideration. In reaching this conclusion, the court noted that trial testimony demonstrated that the guaranty was optional and that the agreement would have been made and the credit would have been extended regardless of whether a personal guaranty was submitted. *Id.* at ¶ 21, 41, 43. Moreover, the manager who signed the personal guaranty did not own any interest in the company and, therefore, received no benefit in exchange for the personal guaranty. *Id.* at ¶ 45. Whether the personal guarantor held an ownership interest in the debtor company was a significant factor in determining whether there was consideration. *Id.* at ¶ 41-46.

{¶ 21} To be enforceable, a contract must consist of an offer, an acceptance, and consideration. *FPC Fin.* at ¶ 11; *Kauffman Family Trust*, 8th Dist. Cuyahoga No. 99423, 2013-Ohio-2707, at ¶ 8. Consideration is the promise of one party to do something he or she is not obligated to do in exchange for another party's promise to do something in exchange. *Raasch v. NCR Corp.*, 254 F.Supp.2d 847 (S.D. Ohio 2003); *Mooney v. Green*, 4 Ohio App.3d 175, 446 N.E.2d 1135 (12th Dist.1982) (consideration may be either a detriment to the promisee or a benefit to the promisor). To constitute consideration, the benefit or detriment must be "bargained for." *Carlisle v. T & R Excavating, Inc.*, 123 Ohio App.3d 277, 283, 704 N.E.2d 39 (9th Dist.1997).

{¶ 22} This court has held that consideration that supports the underlying agreement is generally sufficient to bind the guarantor. *Kauffman Family Trust* at ¶ 9, citing *McInnis v. Spin Cycle-Euclid, L.L.C.*, 8th Dist. Cuyahoga No. 91905, 2009-Ohio-2370, ¶ 16. In *McInnis*, this court explained that, although the guarantor receives no direct pecuniary benefit for his or her undertaking, there is consideration to bind the guarantor because by extending credit to the principal, the principal is able to obtain a loan and the guarantor receives benefit from the loan to the principal. *McInnis* at ¶ 16, citing *Neininger v. State*, 50 Ohio St. 394, 400-401, 34 N.E. 633 (1893). The guarantor in *McInnis* was the managing member of the debtor company and, therefore, owned an interest in it and received an indirect benefit from the agreement. *Id.* at ¶ 13.

{¶ 23} Zoran and Starlion entered into the settlement agreement in order to settle Starlion's breach-of-contract claim against Zoran. Starlion agreed to settle its claim against Zoran in exchange for a refund of money it previously paid and for Lin's promise to repay the money owed to Starlion if Zoran failed to do so. The settlement agreement was intended to avoid litigation and the costs associated with litigation such that the parties could continue "their ongoing commercial relationship[.]" (Settlement agreement p.1.) Lin testified at deposition that she is the sole owner of Zoran. (Lin depo. at 6.) Therefore, she benefitted, albeit indirectly, from the settlement of Starlion's claim against her company by avoiding litigation and maintaining the parties' commercial relationship. Unlike the guarantor in *FPC Fin.*, who owned no interest in the company and received no benefit in exchange for

the guaranty, Lin is the sole owner of Zoran and, therefore, benefitted from the settlement agreement. Therefore, there was consideration for the personal guaranty.

D. Unconscionability

{¶ 24} Appellants also argue that any claim against Lin is barred because the agreement is both substantively and procedurally unconscionable.

{¶ 25} “Substantive unconscionability pertains to the contract itself, without any consideration of the individual contracting parties, and requires a determination of whether the contract terms are commercially reasonable in the context of the transaction involved.” *Wallace v. Ganley Auto Group*, 8th Dist. Cuyahoga No. 95081, 2011-Ohio-2909, ¶ 21. For example, when a contractual term is “so one-sided as to oppress or unfairly surprise” a party, the contractual term is said to be substantively unconscionable. *DeVito v. Autos Direct Online, Inc.*, 8th Dist. Cuyahoga No. 100831, 2015-Ohio-3336, ¶ 17, citing *Neubrandner v. Dean Witter Reynolds, Inc.*, 81 Ohio App.3d 308, 311-312, 610 N.E.2d 1089 (9th Dist.1992). Substantive unconscionability goes to the unfairness or unreasonableness of the contractual terms. *Id.*, citing *Featherstone v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 159 Ohio App.3d 27, 2004-Ohio-5953, 822 N.E.2d 841, ¶ 13 (9th Dist.).

{¶ 26} Procedural unconscionability concerns the circumstances surrounding each of the parties to the contract, and it occurs when one party has such superior bargaining power that the other party lacks a “meaningful choice” to

enter into the contract. *DeVito* at ¶ 19, citing *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, ¶ 33. In determining whether a contract is procedurally unconscionable, courts consider factors related to the relative bargaining power of each party, “such as age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, and whether alterations in the printed terms were possible.” *Collins v. Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (2d Dist.1993), quoting *Johnson v. Mobil Oil Corp.*, 415 F.Supp. 264 (E.D. Mich.1976). No single factor alone determines whether a contract is procedurally unconscionable; the court must consider the totality of the circumstances. *Hayes v. Oakridge Home*, 122 Ohio St.3d 63, 2009-Ohio-2054, 908 N.E.2d 408, ¶ 29.

{¶ 27} The party claiming unconscionability of an agreement bears the burden of proving that the agreement is both substantively and procedurally unconscionable. *Taylor Bldg.* at ¶ 33. The determination of whether a written agreement is unconscionable is an issue of law. *Id.* at ¶ 34.

{¶ 28} Appellants contend the guaranty provision in the settlement agreement is substantively and procedurally unconscionable because (1) Lin was not a party to the settlement agreement, and (2) she “did not understand the gravity of some of the alleged terms set forth therein.” (Appellants’ brief p. 7.) However, whether Lin was a party of the settlement agreement is irrelevant to appellants’ unconscionability argument because her status as a nonparty has no bearing on

either the terms of the contract (substantive unconscionability) or the relative bargaining power of the parties (procedural unconscionability).

{¶ 29} Appellants' claim that Lin did not understand the gravity of some of the alleged terms arguably relates to procedural unconscionability, but there is no evidence to support this claim. To the contrary, the evidence shows that Lin, the sole owner of Zoran, entered into the settlement agreement to settle Starlion's breach-of-contract claim against Zoran. The fact that Lin, on behalf of Zoran, entered into the initial sales agreement for the sale of nitrile gloves indicates she had roughly equal bargaining power. Indeed, Lin had an ongoing business relationship with Starlion. Moreover, as previously stated, the terms of the settlement agreement, and the personal guaranty in particular, were written in plain English. They were clear and unambiguous, were written in regular font, and the personal guaranty appeared on the first page of the parties' two-page agreement. Therefore, Lin knew or should have known that she could be held personally liable for Zoran's obligations under the agreement. Therefore, neither the settlement agreement as a whole nor the personal guaranty in particular are unconscionable.

E. Impossibility and Frustration of Purpose

{¶ 30} Finally, appellants assert that Starlion's claims against them are barred by the doctrines of impossibility and frustration of purpose. Appellants contend the settlement agreement, with the guaranty provision therein, should not be enforced because Zoran was unable to perform in accordance with the underlying

contract because the third-party supplier, Abeckaser, stole the funds from appellants.

{¶ 31} “Impossibility of performance is an affirmative defense to a breach of contract claim. Impossibility of performance occurs where, *after* the contract is entered into, an unforeseen event arises rendering impossible the performance of one of the contracting parties.” (Emphasis added.) *Assn. of Cleveland Fire Fighters, Local 93 of the Intl. Assn. of Fire Fighters v. Cleveland*, 8th Dist. Cuyahoga No. 94361, 2010-Ohio-5597, ¶ 13, quoting *Skilton v. Perry Local School Dist. Bd. of Edn.*, 11th Dist. Lake No. 2001-L-140, 2002-Ohio-6702, ¶ 26.

{¶ 32} The frustration-of-purpose doctrine is similar to the defense of impossibility of performance and holds that

“[w]here, after a contract is made, a party’s principal purpose is substantially frustrated without his fault by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary.”

Cafaro-Peachcreek Joint Venture Partnership v. Spanggard, 11th Dist. Trumbull No. 2022-T-0004, 2022-Ohio-4468, ¶ 31, quoting 68 Restatement of the Law 2d, Contracts, Section 265, at 334 (1981). However, the frustration-of-purpose doctrine is not widely accepted in Ohio and has not been adopted by the Ohio Supreme Court. *Id.*, citing *Wroblesky v. Hughley*, 2021-Ohio-1063, 169 N.E.3d 709 (11th Dist.).

{¶ 33} Appellants contend the purpose of the underlying contract was substantially frustrated and rendered it impossible to perform as a result of the

Abeckaser's alleged theft of the money Starlion paid to purchase the gloves.

However, the settlement agreement states, in relevant part:

WHEREAS, by agreement on or about September 18, 2020, Purchaser ordered Medical Nitrile Gloves "Ordered Goods" from Seller;

WHEREAS, Purchaser paid to Seller (the "Order Amount") for the purchase of the Ordered Goods;

WHEREAS, Seller is no longer in possession of the funds paid to Seller by Purchaser for the purchase of the Ordered Goods due to difficulties with a downstream supplier of the Ordered Goods;

WHEREAS, Seller has been unable to deliver the Ordered Goods to Purchaser * * *.

(Settlement agreement p. 1.) Shadi Abdelwahab ("Abdelwahab"), president of Starlion, averred in an affidavit submitted in support of Starlion's motion for summary judgment that:

3. On October 20, 2020, Starlion and Zoran Medical, L.L.C. ("Zoran") entered into a Purchase and Sale Agreement covering medical nitrile gloves.

4. Pursuant to the Purchase and Sale Agreement, Starlion paid \$410,746.35 to Zoran Medical toward the purchase price of the medical nitrile gloves. However, Zoran failed to deliver any medical nitrile gloves to Starlion. As a result, on or around December 14, 2020, Zoran and Starlion entered into the out-of-court Settlement Agreement ("Settlement Agreement"). * * *

Appellants did not provide any evidence to refute Abdelwahab's sworn statements.

Therefore, the undisputed evidence establishes that the settlement agreement was executed *after* the alleged theft by Abeckaser. Moreover, the purpose of the settlement agreement was to establish refund payments to Starlion since Zoran could no longer fulfill its obligations as a result of Abeckaser's alleged theft.

Therefore, Abeckaser's alleged theft is not relevant to the performance of the terms of the settlement agreement and cannot provide the basis for a finding of impossibility.

F. Conclusion

{¶ 34} Lin agreed to personally guarantee Zoran's obligations under the parties' settlement agreement. The settlement agreement is supported by consideration, is not unconscionable, and is not barred by the doctrines of impossibility or frustration of purpose. Therefore, the trial court properly granted summary judgment in favor of Starlion on its breach-of-contract and personal-guaranty claims, and the sole assignment of error is overruled.

{¶ 35} Judgment affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., and
MICHAEL JOHN RYAN, J., CONCUR