

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Letitia H. Verdin

2012-CP-23-05740

Mac Papers, Inc., Plaintiff.....Appellant/Respondent

v.

Genesis Press, Inc., Lawrence I. Kudeviz, Barry Zisook, and Lewis Levin,  
Defendants

Of whom Lawrence I. Kudeviz is .....Respondent/Appellant.

---

**FINAL RESPONDENT'S BRIEF OF APPELLANT / RESPONDENT**

---

RECEIVED

OCT 25 2017

SC Court of Appeals

Townes B. Johnson III (SC Bar# 75412)  
TOWNES B. JOHNSON III  
PO BOX 9246  
GREENVILLE, SC 29603  
PH: (864) 757-4899

Attorneys for Appellant/Respondent

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....II

STATEMENT OF ISSUES ON APPEAL ..... 1

STATEMENT OF THE CASE..... 2

STATEMENT OF FACTS ..... 2

ARGUMENT..... 3

    I. THE TRIAL COURT PROPERLY FOUND THAT KUDEVIZ HAD NOT  
    TERMINATED HIS PERSONAL GIARANTY..... 3

    II. THE TRIAL COURT PROPERLY DETERMINED THAT MAC PAPERS WAS NOT  
    EQUITABLY ESTOPPED FROM PURSUING ITS CLAIMS..... 4

    III. THE TRIAL COURT PROPERLY DETERMINED THAT MAC PAPERS HAD NOT  
    WAIVED ITS CONTRACTUAL NOTICE RIGHTS..... 5

    IV. AFFIRMANCE ON ANY GROUND APPEARING IN RECORD..... 5

CONCLUSION..... 6

**TABLE OF AUTHORITIES**

**CASES**

*Marriott Corporation v. Dasta Construction Company*, 26 F. 3d 1057 (11<sup>th</sup> Cir. 1994).....4

**STATEMENT OF ISSUES ON APPEAL**

- I. THE CIRCUIT COURT WAS CORRECT IN FINDING THAT THE GUARANTY WAS NOT TERMINATED
  
- II. THE CIRCUIT COURT WAS CORRECT IN FINDING THAT THE EQUITABLE DOCTRINES OF EQUITABLE ESTOPPEL AND WAIVER DID NOT PRECLUDE THE ENFORCEMENT OF THE GUARANTY

## STATEMENT OF THE CASE

Appellant/Respondent Mac Papers, Inc. ("Mac Papers") incorporates its Statement of the Case from its Appellant's Brief as if restated herein verbatim.

## STATEMENT OF FACTS

Mac Papers incorporates its Statement of Facts from its Initial Appellant's Brief as if restated herein verbatim. In addition, Mac Papers would state that:

1) Mac Papers' Craig Boortz told Lawrence I. Kudeviz ("Kudeviz") that he did not have authority for Mac Papers related to Kudeviz's personal guarantees and Kudeviz needed to contact Mac Papers' Tonja Van Zandt at Mac Papers' headquarters regarding same. [R. 144, ln. 10-18];

2) Mac Papers' Craig Boortz thought when Kudeviz was asking about his "personal note" Kudeviz was referring to Kudeviz's personal guaranty of his note, not of the account. [R. 146, ln. 2 - 16];

3) Similarly, Kudeviz did not even know what he was asking about when we asked about his "personal note", testifying:

Q Okay. So your personal note was - could have been a personal guaranty on the note, could have been a personal guaranty on the account?

A Right. Well, again, I didn't know the differentiation between the two of them. [R. 229, ln. 20 - 24];

4) Kudeviz agreed he was in control of how much credit orders Genesis Press, Inc. placed to Mac Papers. [R. 244, ln. 13 - 17];

5) Despite Kudeviz testifying that "[t]here's no way I will ever accept another personal guaranty, period, after I paid everything off" and "I mean, I wouldn't even take out another credit

card ... I swore I would never take any other kind of guaranty", after being confronted with his credit report showing Kudeviz opened at least six (6) personal obligations after he "paid everything off", he capitulated and testified "[a]fter 2010, I took out a couple of personal obligations. The answer is yes." [R. 220, ln. 2 – R. 227, ln. 18].

**ARGUMENT**

**I. THE TRIAL COURT PROPERLY FOUND THAT KUDEVIZ HAD NOT TERMINATED HIS PERSONAL GIARANTY**

Mac Papers incorporates the arguments from the Trial Court's January 8, 2016 Order as if restated herein verbatim. [R. 9]

Kudeviz argues that the manifest purpose of the notice requirement in the personal guaranty was to ensure that Mac Papers had actual notice and actual knowledge of a guarantor terminating their personal guaranty. Despite Kudeviz's contention, the clear manifest purpose of the notice requirement in the personal guaranty was to ensure that Mac Papers' headquarters in Jacksonville, Florida, where credit decisions are made, had actual notice and actual knowledge of a guarantor terminating their personal guaranty; not regional sales offices with limited credit authority. [R. 139, ln. 22 – R. 140, ln. 19]. In the matter at hand, Mac Papers' headquarters had neither notice nor knowledge of Kudeviz's intent to terminate his personal guaranty; specifically because Kudeviz failed to provide agreed upon notice to terminate the guaranty. [R. 93, ln. 3 – R. 94, ln. 8].

Kudeviz further argues that since "actual knowledge" is a valid substitute for compliance with statutory notice provisions as a prerequisite for making a claim against a governmental entity, it would be inconsistent to hold that "actual knowledge" is not a substitute for compliance with a contractual notice provision. Assuming, *arguendo*, that Mac Papers had "actual knowledge", which Mac Papers disputes, Mac Papers would assert that Florida law often requires strict

compliance with notice contractual provisions. *See e.g. Marriott Corporation v. Dasta Construction Company*, 26 F. 3d 1057 (11<sup>th</sup> Cir. 1994) (*holding that the general contractor's oral communications for extensions of time to the contract was not sufficient to constitute the contractually required written request for an extension of time.*) In the matter at hand, the evidence is undisputed that Kudeviz failed to comply with the termination language of the personal guaranty.

For the foregoing reasons, the Trial Court properly found that Kudeviz had not terminated his personal guaranty and the Court should affirm same.

## **II. THE TRIAL COURT PROPERLY DETERMINED THAT MAC PAPERS WAS NOT EQUITABLY ESTOPPED FROM PURSUING ITS CLAIMS**

Mac Papers incorporates the arguments from the Trial Court's January 8, 2016 Order as if restated herein verbatim. [R. 9]

In addition to failing to meet the elements to establish an equitable estoppel defense, Kudeviz's violation of several equitable maxims; specifically, "Equity aids the vigilant, not those who slumber on their rights" and "He who seeks equity must do equity". As discussed above, it is indisputable that Kudeviz had the contractual right to send a termination of his personal guaranty pursuant to the terms therein, but he instead slumbered on his rights failed himself if it indeed was his intent to terminate the personal guaranty, which Mac Papers disputes. Further, in the matter at hand, Kudeviz has not done equity by: 1) ordering Four Hundred Thousand Dollars (\$400,000.00) worth of materials from Mac Papers with complete disregard for repaying them; 2) misrepresenting to the Court his aversion to personal liabilities until faced with his credit report; and 3) if it indeed was his intent to terminate his personal guaranty, which Mac Papers disputes, deceitfully informing a sales person in whom he knew did not have authority instead of the credit manager as directed and required.

As stated above, in the matter at hand, neither Mac Papers' Craig Boortz nor Kudeviz had a clear understanding of what Kudeviz meant when he asked about his "personal note" and for that reason alone, none of the three elements of equitable estoppel can be met. Regardless, even if the "personal note" language unequivocally meant Kudeviz's personal guaranty there was no conduct by Mac Papers which amounts to a false representation because Kudeviz knew that he needed to be in touch with Mac Papers' Tonja Van Zandt regarding any release and he simply chose not to.

For the foregoing reasons, the Trial Court properly determined that Mac Papers was not equitable estopped from pursuing its claims and the Court should affirm same.

### **III. THE TRIAL COURT PROPERLY DETERMINED THAT MAC PAPERS HAD NOT WAIVED ITS CONTRACTUAL NOTICE RIGHTS**

Mac Papers incorporates the arguments from the Trial Court's January 8, 2016 Order and from Section II, above, as if restated herein verbatim. [R. 9]

As stated above, no one at Mac Papers' headquarters had any actual knowledge of Kudeviz's alleged intent to terminate his personal guaranty. Accordingly, no one at Mac Papers' headquarters could have voluntarily relinquished any right.

For the foregoing reasons, the Trial Court properly determined that Mac Papers had not waived its contractual notice rights and the Court should affirm same.

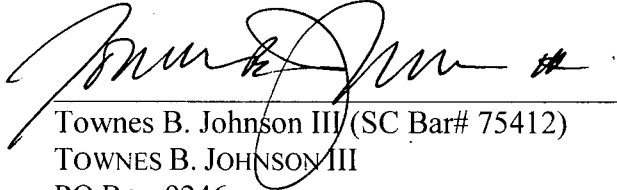
### **IV. AFFIRMANCE ON ANY GROUND APPEARING IN RECORD**

Mac Papers expressly asks that the Court affirm the Trial Court's January 8, 2016 Order as it relates to Kudeviz's issues on appeal upon any grounds appearing in the Record on Appeal pursuant to Rule 220(c).

**CONCLUSION**

For the foregoing reasons, Mac Papers respectfully asks this Court to affirm the Trial Court's findings that Kudeviz's personal guaranty was not terminated and the doctrines of equitable estoppel and waiver do not bar Mac Papers' claims.

Respectfully submitted,



Townes B. Johnson III (SC Bar# 75412)

TOWNES B. JOHNSON III

PO BOX 9246

GREENVILLE, SC 29603

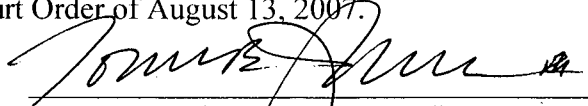
PH: (864) 757-4899

Attorneys for Appellant/Respondent

October 25, 2017  
Greenville, SC

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant/Respondent complies with Rule 211(b) SCACR and the Supreme Court Order of August 13, 2007.



Townes B. Johnson III (SC Bar# 75412)

TOWNES B. JOHNSON III

PO Box 9246

GREENVILLE, SC 29603

PH: (864) 757-4899

**RECEIVED**

OCT 25 2017

SC Court of Appeals