

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE FLORENCE COUNTY COURT OF COMMON PLEAS

2015-CP-21-02153
(Appellate Case No. 2017-001814)

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SC Court of Appeals

CRJ Trust Company, LLC, Appellant

v.

S&S Sterling Properties, LLC and Shakil Kahn, Respondents.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENTS IN REPLY

The Appellant, pursuant to the provisions of Rule 208 (a) (3), SCACR, replies to the Respondents' initial brief as follows:

- I. The Respondents do not address, or even mention, the language in the promissory note specifically holding Kahn personally liable as a member of the LLC.

The Respondents' argument I is essentially just a concise (about 2 pages) reference to South Carolina Code Section 36-3-402. This argument basically asserts the simple, but incorrect, proposition that since the phrase "Managing Member" was at the foot of the signature line of the promissory note that Kahn was, by force of that statute, absolved of personal liability on the promissory note. The promissory note (attached to complaint and incorporated by reference therein (R.pp. 8-12) specifically provides at page 5 (R.p. 12): "If Borrower or any other Obligor is a partnership and/or limited liability company, then all general partners or members thereof shall be liable jointly and severally, for all obligations under this note" Nowhere at all do the Respondents address, respond to, or even mention, the actual language of the promissory note upon which the Appellant seeks to hold him personally liable. The Respondents concede that Kahn was the managing member of the LLC. Accordingly, the very language of the promissory note makes him personally liable. Likewise, in its initial brief the Appellant made specific reference to Section 36-1-302(a) which permits parties to contract out of the provisions of Section 36-3-402, which is the statutory provision upon which the Respondents rely to disclaim personal liability for Kahn. Again, that specific code section is not addressed, discussed or even mentioned by the Respondents. In other words, the Respondents elected to ignore the arguments presented by the Appellant and rely instead only upon the alleged impact of Section 36-3-402. That reliance was error for the reasons stated herein and in the initial brief of the Appellant.

II. The pleadings show that Kahn was liable on the promissory note.

Not surprisingly, the Respondents also do not address the fact that the pleadings actually admit that Kahn was personally liable. The Respondent's argument II is a mere three sentences, which concludes "There is nothing in the complaint to show that Kahn consented to be bound by the note" That argument, which also is admittedly direct, nevertheless neglects to address any of the following facts about the pleadings:

- (1) The promissory note that was attached to the complaint and incorporated by reference therein states: "If Borrower or any other Obligor is a partnership and/or limited liability company, then all general partners or members thereof shall be liable jointly and severally, for all obligations under this note" (R.p. 12).
- (2) The complaint at paragraph 5 (R.p. 6) alleges that the Defendant Kahn was personally liable based upon the language of the promissory note attached to the complaint.
- (3) The pleading response (his answer, paragraph 4) (R.p. 15) of the Defendant Kahn to this allegation of personal liability was only as follows: "The Defendant would admit so much of the allegations of Paragraph 5 of the Complaint." Nothing more was stated and nothing at all was denied in that paragraph of his answer.
- (4) There was no affirmative defense avoiding liability asserted by Kahn.

Based upon the actual pleadings, there simply is no support for the Kahn's argument that he was entitled to judgment on the pleadings. The Respondents focus only on what they perceive as a denial by Kahn that he played any personal role in the execution of the promissory note.

In reply, the Appellant notes the following. Kahn signed the promissory note as the managing member of the LLC. The language of the promissory note states that he is liable as a member of the LLC. At paragraph 5 of the complaint it alleges: "further that promissory note

was personally guaranteed by the Defendant Shakil Kahn as a member of the Defendant LLC per the terms of that promissory note.” (R.p. 6) The answer of Kahn at paragraph 4 (R.p. 15) does not only not deny his personal liability, but rather actually admits the allegations of paragraph 5 of the complaint as to his personal liability on the promissory note. At a minimum, a plain reading comparison of the pleadings precludes the granting to Kahn of judgment on the pleadings. The trial judge was in error to hold otherwise.


Basically, the Respondent Kahn asserts that his signature as “managing member” does not bind him personally, which is contrary to the express terms of the promissory note itself. He completely fails to address the impact of Section 36-1-302(a), which permitted the parties to agree to hold him personal liable as a member of the LLC without any additional signature, or repetitive signature line, being necessary or required. There simply are no reported appellate decisions as to either Section 36-1-302(a), or Section 36-3-402, and certainly no case explaining the relationship and interplay between those two UCC sections in a situation like the present appeal. Thus, the Court is left to resolve this matter using common sense, standard methods of construction, and the actual language of the promissory note in question, which does not require or even imply the need for a second or additional signature. Perhaps the Respondents’ argument would make more sense, and be more compelling, if the Appellant was seeking to hold personally liable a member of the LLC not involved at all in the execution of the promissory note. In that case, this argument would make better sense, perhaps. In case at bar, however, that argument fails because Kahn himself executed the promissory note for the LLC. The trial judge was manifestly in error to grant him judgment on the pleadings on these facts, and upon these pleadings.

CONCLUSION

For the reasons stated above, or as previously made in the appellant's final brief or to be made at oral argument, the Appellant requests that this Court reverse the order of the trial judge dismissing the Defendant Shakil Kahn from this lawsuit.

Respectfully submitted,

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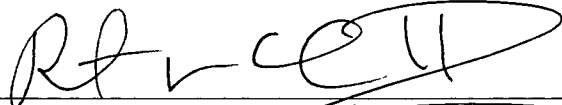
ATTORNEY FOR THE APPELLANT

February 20, 2018

CERTIFICATE

The undersigned attorney for the Appellant certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

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