

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE FLORENCE COUNTY COURT OF COMMON PLEAS

2015-CP-21—2153

(Appellate Case No. 2017-001-1814)

CRJ Trust Company, LLCAppellant

v..

S&S Sterling Properties, LLC and Shakil KahnRespondents

BRIEF OF RESPONDENTS

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL JUDGE CORRECTLY DISMISSED THE RESPONDENT SHAKIL KAHN FROM THIS ACTION BECAUSE THE COMPLAINT ESTABLISHED THAT KAHN SIGNED THE NOTE IN A REPRESENTATIVE CAPACITY
- II. THE TRIAL JUDGE CORRECTLY DISMISSED THE DEFENDANT KAHN FROM THE ACTION BECAUSE THE PLEADING FAILED TO DEMONSTRATE THAT KAHN CONSENTED TO THE TERMS OF THE NOTE IN HIS PERSONAL CAPACITY.

STATEMENT OF THE CASE

This is an action by the Appellant CRJ Trust Company, LLC, upon a promissory note for \$140,000.00 dated July 1, 2007, given by Respondent S&S Sterling Properties, LLC, (Sterling or LLC and signed by Respondent Kahn as managing member of that LLC . The Complaint was originally filed against both Defendants in Lexington County on February 23, 2015, but venue was later transferred to Florence County by consent. Respondents answered the Complaint. Respondent Khan moved for judgment on the pleadings per Rule 12(c), SCRPC, which was granted by the trial judge. (RoA p.1). The Appellant's motion to reconsider was denied, leading to the present appeal. Motion for reconsideration filed April 4, 2017 and Order denying the same dated August 7, 2017.

STATEMENT OF FACTS

Appellant brought suit against Respondents on a promissory Note. That promissory note, which was attached to the Complaint as an exhibit, was signed by Kahn as managing partner of the LLC. In his answer Kahn denied the allegation that he executed the note. (RoA p.15)

ARGUMENT

QUESTION ONE I. THE TRIAL JUDGE CORRECTLY DISMISSED THE RESPONDENT SHAKIL KAHN FROM THIS ACTION BECAUSE THE COMPLAINT ESTABLISHED THAT KAHN SIGNED THE NOTE IN A REPRESENTATIVE CAPACITY

This is a suit on a note. The note is incorporated into the complaint. This lawsuit is governed by the South Carolina Uniform Commercial Code and by Chapter 3 of Title 36 of the South Carolina Code. This is the Uniform Commercial Code as adopted by South Carolina. The note meets the definition of Negotiable Instrument contained in Section 36-3-104¹.

the undersigned ("Borrower") promises to pay to the order of CRJ TRUST COMPANY, LLC , ... at the office of the Lender ... (\$140,000.00) ... together with interest ... Said principal and interest shall be payable... in the amounts specified below... all principal, together with any accrued and unpaid interest, hereunder shall be payable on June 1, 2014.

¹ SECTION 36-3-104. Negotiable instrument.

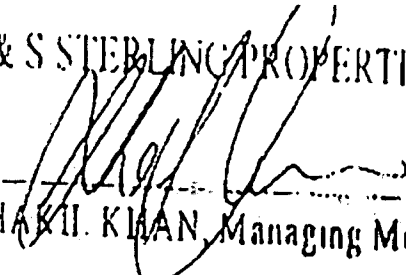
(a) Except as provided in Subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

The note contains one signature, that of S&S STERLING PROPERTIES, LLC and appears as follows:

S & S STERLING PROPERTIES, LLC
BY 
SHAKTI KHAN, Managing Member

It is clear that Mr. Kahn signed this as representative of S&S. Section 36-3-402 provides that a representative signs on behalf of a represented person, the representative is not liable on the instrument².

It is unambiguously clear from the Complaint that Mr. Kahn signed this negotiable instrument as representative of S&S Sterling, LLC and under South Carolina Law only S&S is liable on the note. The Trial Court correctly applied the law and dismissed Kahn from the suit.

² SECTION 36-3-402. Signature by representative.

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

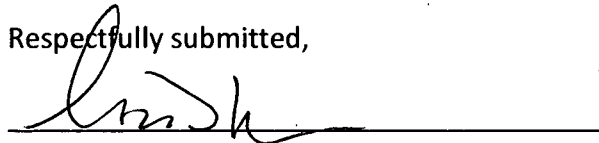
QUESTION II: THE TRIAL JUDGE CORRECTLY DISMISSED THE DEFENDANT KAHN FROM THE ACTION BECAUSE THE PLEADING FAILED TO DEMONSTRATE THAT KAHN CONSENTED TO THE TERMS OF THE NOTE IN HIS PERSONAL CAPACITY.

Appellant argues that the note provides that the signature of Kahn as Managing Partner of the LLC bind Kahn personally based on the terms of the note. In his Answer Kahn admitted that S&S executed the note and denied the allegation that he executed the note. (RoA p. 15) As the trial judge correctly pointed out the signature of Kahn on the note is unambiguously in his representative capacity. There is nothing in the complaint to show that Kahn consented to be bound by the note and without his consent he is not bound by the note.

CONCLUSION

The Trial Judge correctly applied the law in dismissing Kahn because Kahn only signed in his representative capacity as managing partner of S&S.

Respectfully submitted,



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February 22, 2018

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RULE 211 CERTIFICATE

I certify the Brief of Respondent complies with Rule 211 (b) SCACR



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