THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2014-001733

Charleston County Case No. 2013-CP-10-5324

Tidelands Bank . .....Respondent,

v.

J.R. Gregory Ventures, LLC, Marilyn T. Schmitt
And The Meridian Owners Association, Inc., Defendants,

Of Whom J.R. Gregory Ventures, LLC and Marilyn T.
Schmitt are.....Appellants.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This case was commenced by Respondent filing its Lis Pendens, Summons and Complaint on September 11, 2013, seeking (1) a judgment of foreclosure (with deficiency) and money judgment against Appellant J. R. Gregory Ventures, LLC ("Ventures"), based on a default under a commercial note and mortgage and (2) a money judgment against Appellant Marilyn T. Schmitt ("Schmitt"), individually, under her personal guaranty of the subject commercial note. Appellants filed an Answer to the Complaint on November 15, 2013. Thereafter, pursuant to an Order of Reference filed on December 2, 2013, this case was referred to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, to direct entry of final judgment in this action under Rule 53 S.C. Rules Civ.Pro.

Appellants and Respondent each had the opportunity to engage in discovery. Respondent served its First Set of Interrogatories and Requests for Admissions on Appellants on December 30, 2013. (R. pp. 364-376). Appellants served their responses to Respondent's First Set of Requests for Admissions on January 27, 2014. Importantly, the Appellants and Respondent entered into a Consent Scheduling Order (entered on February 14, 2014) wherein the Appellants and Respondent agreed that all discovery would be complete on or before April 18, 2014. (R. p. 15 and p. 58, lines 18-24). The Consent Scheduling Order required that all discovery requests must be served in time for the response thereto to be served within this deadline. In accordance with the Consent Scheduling Order, the Respondent served its notice of

deposition on both Appellants on February 14, 2014[1]. (R. pp. 349-363). Appellants did not pursue discovery from Respondent either before or during the period for discovery under the Consent Scheduling Order.

On April 17, 2014, Respondent filed its Notice of Motion and Motion for Summary Judgment. Respondent submitted its Memorandum in Support of Summary Judgment on April 25, 2014. Appellants submitted their Memorandum in Opposition to Summary Judgment on April 25, 2014. Respondent's Motion for Summary Judgment was heard by Judge Scarborough on April 28, 2014. Judge Scarborough granted summary judgment in favor of Respondent against both Appellants. In the Order of Judgment entered on June 9, 2014, Judge Scarborough found that Ventures breached the terms of the subject commercial note and mortgage and that Schmitt was personally obligated to Respondent under the subject guaranty.

On June 17, 2014, Appellants filed their Notice of Motion and Motion to Reconsider and Alter and Amend the Order of Judgment entered on June 9, 2014. Judge Scarborough's Order denying Appellants' Motion to Reconsider and Alter and Amend the Judgment was filed July 15, 2014. The Appellants filed their Notice of Appeal on August 8, 2014, relating to the Order of Judgment entered on June 9, 2014[2].

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[1] The depositions of Appellants were originally noticed for March 19, 2014. In order to accommodate the Appellants within the discovery period, Respondent agreed on two separate occasions to reschedule the date of the depositions which occurred on April 2, 2014.

[2] Ventures did not appeal the ruling of Judge Scarborough granting summary judgment in favor of Respondent against Ventures. Even though Ventures is identified as an Appellant in this Appeal, the only issue which has been preserved for appeal relates to Schmitt's liability under the subject guaranty.

FACTS

Respondent is corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Mount Pleasant and doing business in Charleston County, South Carolina. Appellant Ventures is a limited liability company organized and existing under the laws of the State of South Carolina. (R. p. 22, ¶ 2 and p. 29, ¶ 2). Schmitt is the owner of Ventures and is its only member. (R. p. 119 and p. 220, lines 15-17). Schmitt formed Ventures so that she could buy and sell properties- flipping properties. (R. p. 120 and p. 219, lines 13-17 and p. 226, lines 9-12). Schmitt made all the decisions for Ventures and handled all the transactions including reviewing loan documents and preparing and filing the company taxes- "I am the entity". (R. p. 120 and p. 223, line 14 and p. 230, lines 10-14 and p. 236, lines 17-21).

On or about March 22, 2006, Ventures (as "Borrower"), executed and delivered to Respondent (as "Lender") a negotiable Note in the original principal amount of Two Hundred One Thousand Fifty and 00/100 ($201,050.00) Dollars, with interest thereon (the "Original Note"). (R. p. 7, ¶ 2 and p. 117 and p. 298, ¶ 1 and p. 324, ¶ 1). Thereafter, on July 10, 2007, Ventures executed and delivered to Respondent its renewal note in the original amount of $201,050.00 (the "Renewal Note #1"). (R. p. 7, ¶ 3 and p. 117 and p. 298, ¶ 2 and p. 324, ¶ 2). Thereafter on August 1, 2008, Ventures executed and delivered to Respondent its renewal note in the amount of $200,900.00 (the "Renewal Note #2"). (R. p. 7, ¶ 4 and pp. 117-118 and p. 298, ¶ 3 and p. 324, ¶ 3). Thereafter on September 24, 2012, Ventures

executed and delivered to Respondent its renewal note in the amount of $200,880.69 (the "Renewal Note #3") (the Original Note, the Renewal Note #1, the Renewal Note #2 and the Renewal Note #3 are hereinafter collectively referred to as the "Note"). (R. p. 8, ¶ 5 and p. 118 and p. 298, ¶ 4 and p. 324, ¶ 4). The Note was a commercial loan. (R. p. 10, ¶ 27). On March 22, 2006, to secure payment of the Note, Ventures executed and delivered to Respondent a mortgage (the "Mortgage"). (R. p. 8, ¶ 6 and p. 298, ¶ 6 and p. 324, ¶ 6).

On March 22, 2006, in order to further secure payment of the Note and as additional consideration and an inducement to the Respondent making the commercial loan to Ventures, Schmitt (as "Guarantor"), individually executed and delivered to Respondent her personal guaranty of payment (the "Guaranty") of the amount due under the Note. (R. p. 8, ¶ 7 and pp. 118-119 and pp. 327-328). The terms and conditions of the Guaranty clearly state as follows:

> For good and valuable consideration . . . and to induce Tidelands Bank (herein . . . called "Lender") . . . to make loans . . . to or for the account of J.R. Gregory Ventures, LLC (herein called "Borrower") . . . the Undersigned [Marilyn T. Schmitt] hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise of the debts, liabilities, and obligations described as follows: . . . the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the Loan [the Loan is identified as the Note] and any extensions, renewals or replacements. (R. p. 327).

Moreover, the prepared signature block on the Guaranty expressly references "Marilyn T. Schmitt" individually as the Undersigned. (R. p. 75, line 23 and p. 81, lines 8-9 and p. 327). There is no language in the Guaranty that even suggests that Ventures was to be the guarantor of its own debt under the Note to Respondent. (R.

pp. 327-328)

The facts are undisputed that Schmitt signed and initialed the Guaranty. (R. p. 8, ¶ 9 and p. 120 and p. 264, lines 1-6). However, instead of signing the Guaranty "Marilyn T. Schmitt" as presented in the signature block, Schmitt signed her name and then hand wrote comma "Member" next to her handwritten signature. (R. p. 71, lines 19-20). Schmitt agreed that the Guaranty relates to the Note and the loan transaction with the Respondent. (R. p. 120 and p. 264, lines 7-19). However, Schmitt admitted that even though she had a chance to read terms and conditions of the Guaranty, she "probably just skimmed it" because "most of these documents are so lengthy that I don't read every word." (R. p. 9, ¶ 10 and p. 121 and p. 265, line 25-p. 266, lines 1-8).

Schmitt is experienced in business and she handles the affairs of her multiple businesses and was of sound mind at the time of entering into the commercial loan transaction with Respondent. (R. p. 9, ¶ 11). Schmitt testified that in addition to this loan with Respondent, she caused Ventures to engage in other business deals and loan transactions. (R. p. 120 and p. 227, lines 15-19 and p. 228, lines 20-23). Moreover, Schmitt has formed and operated other companies which evidence her business experience and business acumen (Love Taylor Properties, LLC and Business Team Builders). (R. p. 120 and p. 232, lines 23-25 and p. 234, lines 1-4, and p. 238, lines 2-8 and p. 243, lines 4-10). Schmitt was of sound mind and knew what she was doing with respect to this loan transaction with Respondent. (R. p. 120 and p. 244, lines 23-25-p. 245, lines 1-4).

Ventures and Schmitt, individually, each accepted the terms and conditions of the commercial loan with Respondent and thereafter received, accepted, and used the proceeds of the Note and commercial loan for their own benefit. (R. p. 9, ¶ 12). The conditions of the Note, Mortgage, and Guaranty have been broken in that Ventures, as Borrower, and Schmitt individually, as Guarantor, failed to make the required payments under the commercial loan documents. (R. p. ¶ 13 and p. 10, ¶ 28 and p. 11, ¶ 36). Appellants owe Respondent the debt under the Note and Guaranty. (R. p. 9, ¶ 14 and p. 80, lines 14-25-p. 81, lines 1-24). Schmitt testified that Ventures failed to pay on the Note as required and is in default under the terms of the Note and Mortgage and owes the Respondent money. (R. p. 260, lines 22-25 and p. 261, lines 2-11). Moreover, Schmitt testified that she agrees and does not dispute the amount of the debt owing to Respondent as set forth in the Complaint[3]. (R. p. 262, lines 25-p. 263, lines 1-10).

[3] Counsel for Appellants even suggested at the April 28, 2014, hearing before Judge Scarborough that summary judgment against Ventures may be appropriate and that neither of the Appellants were challenging the amount of debt due and owing Respondent under the loan. (R. p. 78, lines 6-8 and p. 80, lines 9-13 and p. 81, lines 20-21).

ARGUMENT

I. SUMMARY JUDGMENT WAS PROPERLY GRANTED IN FAVOR OF RESPONDENT AGAINST APPELLANT MARILYN T. SCHMITT IN THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT CONCERNING SCHMITT'S PERSONAL LIABILITY UNDER THE SUBJECT GUARANTY.

A. Standard of Review.

"Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Turner v. Milliman, 392 S.C. 116, 122 (2011); see also Rule 56(c), S.C. Rules Civ. Pro. "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451, 455-56 (Ct. App. 2008). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220 (Ct. App. 2005). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, . . . the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. (citation omitted). Accordingly, summary judgment should be granted when it is clear that "further inquiry into the facts is not desirable to clarify application of the law." Cullum Mech. Constr. Co. v. South Carolina Baptist Hosp., 336 S.C. 423 (Ct. App. 1999).

B. Appellant Schmitt signed the Guaranty and she cannot avoid the effect of the Guaranty by her own unilateral mistake.

"As early as 1924, this Court recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it." Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 39 (1986) (citing J.B. Colt Co. v. Britt, 129 S.C. 226 (1924))[4]. "A person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." Wachovia Bank, N.A. v. Blackburn, 755 S.E.2d 437, 2014 S.C. Lexis 54 (2014); see also Regions Bank v. Schmauch, 354 S.C. 648, 663 (Ct. App. 2003)[5]. "Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents." Id.; see also Regions Bank at 663-64. "The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document." Id.; see also Regions Bank at 664; Citizens & S. Nat'l Bank

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[4] In Burwell, "Mr. Burwell testified that he was physically able to read, but in fact did not read the documents; **he merely looked over them**." Burwell at 38 (emphasis added). The court found that "clearly [Burwell] had a duty to read the loan guaranty documents before signing them. His failure to do so is inexplicable." Id. at 40.

[5] In Regions, the court found the loan documents were clear and there was a contract between [guarantor] and Regions Bank for [guarantor] to guarantee the loans. Regions Bank at 658. [Guarantor] insisted that while her signature may be on the guaranty agreement, she never intended to enter into an agreement for unlimited liability. Id. at 439. The court determined that the [guarantor] provided no legal authority for why her lack of understanding would provide a means to rescind an otherwise valid contract. Id. at 662. The court stated that "even if [the guarantor's] contention is assumed to be one of unilateral mistake, it is unavailing . . . unilateral mistake is not by itself grounds for rescinding the contract." Id. at 663. The court upheld summary judgment and concluded that the guarantor simply **"did not read the documents placed in front of her."** Id. (emphasis added). Moreover, the court refuted any attempt to classify the guarantor as ignorant and unwary. The facts revealed that the guarantor co-signed loans and operated a business and the court determined that the guarantor did not fall into this narrow exception; and therefore, guarantor cannot avoid the effect of the guaranty agreement by claiming she did not read it. Id. at 441.

of S.C. v. Lanford, 313 S.C. 540, 545 (1994). "This rule is subject to the exception that if the party is ignorant and unwary, his failure to read the document may be excused." Regions Bank at 664; see also Burwell, 288 S.C. at 40. "However, our court very strictly construes this exception." Id.; see also Burwell, 288 S.C. at 40.

The language contained in the Guaranty is clear and unambiguous. (R. p. 8, ¶ 8 and p. 11, ¶ 31 and p. 70, lines 13-14 and pp. 327-328). The language of the Guaranty expressly defines Ventures as the "Borrower" and Respondent as the "Lender". (R. p. 327). The "Undersigned" is identified throughout the Guaranty as the party guaranteeing the debt obligation between Ventures and Respondent. (R. p. 327). The prepared signature block at the bottom of the Guaranty expressly identifies "Marilyn T. Schmitt" individually as the Undersigned. (R. p. 11, ¶ 34 and p. 75, line 23 and p. 81, lines 8-9 and p. 327). The Guaranty specifically references the Note between Ventures and Respondent. (R. p. 327). Moreover, the purpose of Schmitt's personal Guaranty by the very language of the Guaranty itself was to induce Respondent into making the commercial loan (Note) to Ventures as Borrower. (R. p. 8, ¶ 7 and p. 11, ¶ 31).

The facts are undisputed that Schmitt signed and initialed the Guaranty. However, Schmitt admits that she failed to read all the terms and conditions of the Guaranty and assumed Ventures would be the guaranteeing the Note. (R. p. 9, ¶ 10 and p. 121 and p. 265, line 25-p. 266, lines 1-8 and p. 275, lines 19-25-p.276, lines 1-2). As in Burwell, Schmitt had a duty to read the terms and conditions of the Guaranty before signing the document. (R. p. 11, ¶ 33). As in the Wachovia Bank

ruling, by signing the Guaranty, Schmitt is charged with having read its contents. (R. p. 11, ¶ 33). The facts are clear that Schmitt is experienced in business and she handles all the affairs of her multiple businesses and was of sound mind at the time of entering into the loan transaction with Respondent and she does not fall into the narrow exception of being ignorant or unwary. (R. p. 9, ¶ 11 and p. 11, ¶ 35). There is no allegation or evidence of misrepresentation or fraud on the part of Respondent. (R. p. 74, lines 4-5). Schmitt simply failed to read all the terms and conditions of the Guaranty and cannot now avoid the effect of the Guaranty by her own unilateral mistake[6]. (R. p. 11, ¶ 34).

C. Appellant Schmitt entered into the Guaranty with Respondent in her individual capacity and not as representative of Appellant Ventures.

Schmitt cannot avoid personal liability under the Guaranty by claiming that she signed the Guaranty as a representative of Ventures when the clear terms, conditions and signature caption of the Guaranty expressly provide that Guarantor was entering into the Guaranty in her individual capacity and not as representative of the Ventures. (R. p. 11, ¶ 34).

In Rockwell International Corp. v. Riddick, the plaintiff moved for summary judgment on the ground there was no genuine dispute that defendant breached his obligations under the continuing guaranties and was liable to plaintiff. 633 F. Supp.

[6] This Court has not adopted the doctrine that a unilateral mistake--or mistake alone of the party seeking to avoid the contract—unaccompanied by fraud, imposition, undue influence, or like circumstances of oppression, is sufficient to avoid a contract. Alderman v. Bivin, 233 S.C. 545, 554 (1958). The court further stated "that the mere mistake of one party alone is not sufficient to avoid the contract." Id.

276, 279 (N.D. GA 1986). At the center of the dispute were four guaranties signed by defendant, Sam B. Riddick, as guarantor of certain indebtedness of a corporation known as Southeastern Wheels, Inc. Id. at 277. Riddick was the president of Southeastern Wheels, Inc., at the time he signed the guaranties and all four of the guaranties identified him as such following his signature. Id. The issue in this case was whether there was any genuine dispute that defendant signed the guaranties in his individual, rather than representative, capacity. The Court had no difficulty concluding that the guaranties were clearly and unambiguously signed by defendant in his individual capacity and that there was no genuine factual dispute on this issue[7]. Id. at 280. In so holding, the court rejected the position of defendant that the word "president" after defendant's signature created an ambiguity as to the capacity in which he signed. Id. "Since the language of the guaranties revealed a clear intent to bind defendant personally, the word "president" following his signature must be considered merely descriptive of him and not sufficient to render the guaranties

[7] The court in Rockwell determined that the "form and content of the guaranties manifest a clear intent to bind defendant personally rather than the company of which defendant was president at the time, Southeastern Wheels. Of foremost importance is the fact that the indebtedness which was being guaranteed was that of Southeastern Wheels; this alone strongly suggests that defendant signed in his individual capacity since, as another court has observed, '**for a corporation to guarantee its own debt would add nothing to its existing obligation and would be meaningless.**'" Id. at 280 (emphasis added); see also (R. p. 70, lines 15-22). However, the court in Rockwell went on to explain that its finding "does not rest on this one observation, however; there are other provisions of the guaranties which negate any suggestion that defendant signed in his representative capacity." Id. For instance, "throughout, the guaranties differentiate the 'guarantor' from Southeastern Wheels, the 'borrower', and never refer to Southeastern Wheels as the guarantor. They provide that the obligations of the 'guarantor' are independent of the obligations of Southeastern Wheels and that a separate action may be brought against the 'guarantor' regardless of whether an action is brought against Southeastern Wheels." Id. The court found that it "could not be clearer to this court that the subject guaranties evidence the intent to bind defendant as an individual guarantor." Id.

ambiguous." Id. The court stated that this ruling was consistent with Georgia's rule of descriptio personae. Id. at 281.

In Klutts Resort Realty, Inc. v. Down'Round Development Corp., the "Basic Contract" was signed by each of the five individual defendants in a corporate capacity. 268 S.C. 80, 87 (1977). "However, the Basic Contract also contained a promise of individual guaranty with respect to the promissory note." Id. "In such a case a contract signed by an individual as an officer has been held to be the contract of the officer where the contract contains a provision with respect to individual liability of the signing officer." Id. "**A director, officer, or other agent, signing a corporate contract containing a promise in the proper form for an individual, is not relieved from personal liability by the addition to his name of terms such as "director", "president" or the like**. Id. at 87-88 (emphasis added). "These terms are regarded merely as descriptio personae, that is, a term descriptive of the person rather than the relationship in which he signs the agreement." Id. at 88.

In American Management Corp. v. Dunlap, it was the position of the defendant that because he only intended to sign the guaranty as a corporate officer of SCIAC, he cannot be held personally or individually liable for the corporate obligations and debts of SCIAC. 784 F. Supp. 1245, 1251 (N.D. Miss 1992). The court found no merit to this contention[8]. Id. It was the opinion of the court that "the language of the

[8] The court in American Management found that "Dunlap's claim that he never intended for it to be a personal obligation is insufficient to create any issue of material fact." Id; see Smith v. Haywood Oil Company, Inc., 199 Ga. App. 562 (Ct. Appeals 1991) (appellant was obligating himself personally on the obligation, notwithstanding his testimony to the contrary). "**As an experienced businessman, Dunlap is expected to have read the agency agreement and personal guaranty that gives rise to his personal liability . . . even if he had not read the instrument, he would not be absolved of**

personal guaranty on the last page of the agency agreement manifested a clear intent to bind its signer personally." Id. at 1250. "Since there was nothing in the personal guaranty manifesting an intent not to bind Dunlap, individually, and the guaranty was worded so to bind him personally," the court concluded that there were no genuine issues of material fact and plaintiff was entitled to judgment as a matter of law; therefore, summary judgment was appropriately issued. Id.

In Dann v. Team Bank, "the thrust of Dann's appeal was that she was not liable in her individual capacity under the guaranty." 788 S.W.2d 182, 183 (Tx Ct. App. 1990). The court found that the subject guaranty" involved three parties: (1) the Bank, (2) Cetcon, and (3) Dann." Id. at 184. "A guaranty requires three parties because it creates a secondary obligation whereby the guarantor promises to answer for the debt of another." Id. The court found that "to treat Cetcon as the guarantor as well as the borrower would negate the purpose of the guaranty." Id. The court ruled that "Dann signed the guaranty in her individual capacity and that the designation of her corporate capacity was merely descriptio personae." Id. "In other words, the addition of the words "president, Cetcon Corporation" to Dann's signature was merely to identify Dann and was not intended to apply in a technical character." Id.

In addition to a number of other unambiguous provisions in the Guaranty, the terms of the Guaranty clearly differentiate between Ventures, as the "Borrower",

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personal liability." Id. at 1250-51(emphasis added). The court was of the opinion that the "insertion of SCIAC (rather than Sam Dunlap) in the blank space provided for naming the guarantor did not change the legal effect of the document as being Dunlap's signed personal guaranty. Placing liability in the corporation rather than Dunlap, individually, would defeat the obvious purpose of the personal guaranty." Id. at 1252.

Respondent, as the "Lender", and Schmitt, as the "Undersigned" or guarantor[9]. As in American Management, Schmitt was expected to have read the Guaranty that gave rise to her personal liability. The Guaranty was worded to bind Schmitt personally and there is nothing in the Guaranty manifesting an intent not to bind Schmitt personally. There is no language in the Guaranty even suggesting that Schmitt would be signing the Guaranty as a representative of Ventures. (R. p. 11, ¶ 34). In this case, Schmitt's addition of the word "Member" next to her handwritten signature was merely descriptio personae.

Based on the facts set forth hereinabove, Judge Scarborough determined that "the terms, conditions, and language of the Guaranty unambiguously provide that [Schmitt] was to be personally obligated to [Respondent] in consideration for the Commercial Loan [Note]." (R. p. 11, ¶ 31 emphasis added). Moreover, Judge Scarborough went on to rule that "[Schmitt] cannot avoid personal liability under the Guaranty by claiming that she signed the Guaranty as a representative of [Ventures] when the clear terms, conditions, and signature caption of the Guaranty expressly provide that [Schmitt] was entering into the Guaranty in her individual capacity and not as representative of [Ventures]." (R. p. 11, ¶ 34 emphasis added); see also (R. p. 75, lines 23-25) ("the bank's document says Marilyn T. Schmidt. And then she signed she signed it Marilyn T. Schmidt comma member."); (R. p. 81, lines 3-13) ("despite the fact that [Schmitt] signed and comma member she was not signing on behalf of

[9] A guaranty is a contract. See Transouth Fin. Corp. v. Cochran, 324 S.C. 290, 294 (Ct. App. 1996). The general rule in South Carolina . . . is that a guaranty of payment is an obligation separate and distinct from the original note. Id. at 295. "A guaranty of payment is an absolute or unconditional promise to pay a particular debt if it is not paid by the debtor at maturity." Citizens, 313 S.C. at 543.

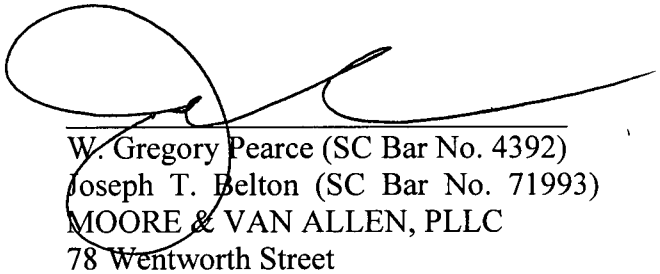
the entity at that time, but instead by the express language of the guarantee she was signing individually. That is the unconditional guarantee of the undersigned of the undersigned of the undersigned. The document was prepared for Marilyn T. Schmidt . . . [s]o I do find that she is personally liable." (emphasis added)). The reference in the April 28, 2014, record of hearing concerning the Supplemental Affidavit of Anthony Young[10] was immaterial to Judge Scarborough's finding that the terms, conditions, and language of the Guaranty are clear and unambiguous and therefore Schmitt is personally liable under the Guaranty. The June 9, 2014 Order and the April 28, 2014 Record of Hearing support the holding of Judge Scarborough that the language of the Guaranty itself demonstrates that Schmitt was entering into the Guaranty in her individual capacity and not as representative of Ventures. (R. pp. 7-14 and p. 70, lines 1-14 and p. 71, lines 19-20 and p. 72, lines 17-23 and p. 80, lines 19-20 and p. 81, lines 4-9). The reference to the Supplemental Affidavit was not used by Judge Scarborough to contradict, vary, or explain the terms of the Guaranty.

[10] The affidavit of Anthony Young was referenced during the hearing by counsel to corroborate the fact that Schmitt has entered into other commercial loan transactions and was an experienced business person. R. p. 73, lines 12-22).

CONCLUSION

For the foregoing reasons, Respondent Tidelands Bank, respectfully requests that this Court affirm the Order of the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, entered on June 9, 2014, granting summary judgment in favor of Respondent against Appellant Marilyn T. Schmitt pursuant to her obligations under the subject personal Guaranty.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

This is to certify that this Final Brief complies with Rule 211(b), SCACR.

January 21, 2015.

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