

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

MANUFACTURERS & TRADERS)
TRUST COMPANY, As Successor-)
By-Merger to WILMINGTON TRUST)
COMPANY,)

Plaintiff,)

v.)

C.A. No. N12C-08-294 JAP

JON R. HARRIS, ALLAN HARRIS)
GARY E. HARRIS and MARK S.)
HARRIS,)

Defendants.)

GARY E. HARRIS and MARK S.)
HARRIS,)

Third-Party Plaintiffs,)

v.)

THOMAS ST. CLAIR and)
MARIGOLD HOLDINGS, L.L.C., a)
Delaware company,)

Third-Party Defendants.)

MEMORANDUM OPINION

Appearances:

David A. White, Esquire
McCarter & English, LLP
405 N. King Street, 8th Floor
Wilmington, Delaware 19801

David B. Anthony, Esquire
Berger Harris, LLC
1201 N. Orange Street
One Commerce Center, 3rd Floor
Wilmington, Delaware 19801

JOHN A. PARKINS, JR., JUDGE

This action arises out of a loan agreement in which the debtor, Marigold Holdings L.L.C. (“Marigold”) executed a Promissory Note in exchange for a loan from the Wilmington Trust Company (“Wilmington Trust”). Defendants are four of the five guarantors of that Promissory Note. The fifth guarantor is third-party defendant Thomas St. Clair. Marigold defaulted on the loan, after which Manufacturers & Traders Trust Company (successor-in-interest to Wilmington Trust) released Marigold and St. Clair from their obligations in exchange for a substantial partial payment of the amount claimed due. After the bank settled with Marigold, it filed the present action against the remaining guarantors seeking the unpaid balance alleged to be due under the Guaranty. The Defendants filed a counterclaim against the bank as well as a third-party complaint against Marigold and St. Clair. The central issue presently before the court is Defendants’ argument that the bank’s release of Marigold constitutes a complete satisfaction of the underlying debt and, therefore, they owe no further obligation to the bank. The court disagrees.

FACTS

The matter is currently before the court on cross-motions for judgment on the pleadings. The following facts are gleaned from the allegations in the Complaint and the pertinent documents surrounding the loan transaction.

Thomas St. Clair and Jon Harris formed Marigold Holdings L.L.C. in 2004 to construct a new building which was to be used for a furniture business. In October 2004, Marigold executed a Promissory Note in the

amount of \$1,096,000 in exchange for a loan from Wilmington Trust. The mortgage secured the Marigold Promissory Note. Defendants Jon R. Harris, Mark S. Harris, Gary E. Harris, and Allan Harris executed commercial guarantees securing the Note. Thomas St. Clair also executed a personal guaranty on the Note.

Shortly after construction of the new building, Marigold realized it lacked sufficient funds for the project. Negotiations with Wilmington Trust ensued and Marigold borrowed an additional \$135,000 from the bank. A second lien was placed on the property and Thomas St. Clair executed a second guaranty. The remaining guarantors on the first Note (the Defendants) did not execute a separate guaranty of the second Note.¹ The bank argues that language in the Defendants' Guaranty of the first Note also makes them guarantors of the second Note. Defendants deny this. For present purposes, however, the court need not decide whether Defendants are also guarantors of the second Note.

In January 2011, Defendant Jon Harris transferred his interest in Marigold to Thomas St. Clair, making St. Clair the sole owner of Marigold. Two months later, Marigold defaulted on both the first and second Notes. The bank entered into negotiations with Mr. St. Clair and ultimately agreed to release Marigold and St. Clair in exchange for \$1,050,000. According to Defendants, they were not even aware of the default, much less given an opportunity to participate in the post-default negotiations between St. Clair and the bank.

¹ The bank contends that the guaranty executed by Defendants in connection with the first Note applies to the second Note which was executed later. The court need not decide that issue now.

The bank claims that Defendants owe it more than \$249,000 in unpaid principal, interest, and assorted fees and costs.

STANDARD OF REVIEW

Pursuant to Superior Court Civil Rule 12(c), a party may move for judgment on the pleadings “[a]fter the pleadings are closed but within such time as not to delay the trial.”² When deciding a Rule 12(c) motion, “the nonmoving party is entitled to the benefit of any inferences that may fairly be drawn from its pleading.”³ The Court will grant the motion when “no material issues of fact exist and the movant is entitled to judgment as a matter of law.”⁴

ANALYSIS

The court must decide whether the bank’s release of Marigold and St. Clair relieves Defendants of any liability under the 2004 Note and Guarantees. The issue comes to the fore within the framework of Defendants’ affirmative defense of accord and satisfaction.⁵ To establish that defense, the Defendants must show: “(1) that a bona fide dispute existed as to the amount owed that was based on mutual good faith; (2) that the debtor tendered an amount to the

² Super. Ct. Civ. R. 12(c).

³ *Gonzalez v. Apartment Communities Corp.*, 2006 WL 2905724, at *1 (Del. Super.).

⁴ *Id.*

⁵ Defendants contend they have the authority to assert this defense as it is one defense that was not waived in the Guaranty Agreement:

GUARANTOR’S WAIVERS . . . Guarantor also waives any and all rights or defenses arising by reason of . . . (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower’s liability from any cause whatsoever, other than payment in full legal tender, of the indebtedness . . . or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the indebtedness.

creditor with the intent that payment would be in total satisfaction of the debt and (3) that the creditor agreed to accept the payment in full satisfaction of the debt.”⁶

Although the court has considerable doubt whether there was a bona fide dispute over the amount due, it will not reach that issue because the present matter can be resolved on the basis of Defendants’ failure to satisfy the second and third elements of accord and satisfaction. Defendants refer the court to a common law principle that a guarantor has all the defenses available to the obligor, and if the obligor is released the guarantors are necessarily released also. Their argument fails because it is contrary to the plain terms of the contractual arrangement between the bank and Defendants.

A. The agreements between the parties are controlling

Defendants refer the court to a handful of cases for the proposition that a guarantor has all of the defenses available to the obligor. But none of those cases purport to alter the rule that the rights of the obligee are determined by the contractual arrangements between the guarantor and the obligee. The following summarizes the pertinent part of all the authorities cited by Defendants:

- In *Diaz v. Bell MicroProducts-Future Tech, Inc.*,⁷ the court wrote:
“Generally, a guarantor steps into the shoes of the original debtor and has all the same obligations and defenses of the original

⁶ *Aciermo v. Worthy Bros. Pipeline Corp.*, 693 A.2d 1066, 1068-69 (Del. 1997).

⁷ 43 So.3d 138 (Fla. App. 2010)(cited at Defendants’ Motion para. 8).

debtor. However, ultimately, a guarantor's liability is governed by the terms used in the contract.”

- In *Lincoln v. Hershberger*,⁸ the court relied upon the Sixth Circuit’s opinion in *Mazur v. Young*,⁹ which Defendants’ likewise cite in their brief. But *Mazur* reinforced the rule that a guarantor’s rights and duties are defined by its agreement with the obligee:

If we simply applied the general rule to the facts of this case, we could reach no other conclusion than that reached by the district court: Mazur's choice to pursue forfeiture and discharge the buyer, EBIS, also discharged the Youngs as guarantors. **We cannot, however, simply apply the general rule. Instead, we must first consider whether the guaranty contract altered the default relationship of the parties.**¹⁰

- In *Phoenix Acquisition v. Campcore, Inc.*,¹¹ the New York Court of Appeals reiterated the rule that “[t]he contractual language fixes the boundaries of the legal obligation of the guarantor.”
- Finally, in *Bessette v. Weitz*,¹² the court was not confronted with pertinent contractual language. The court found authoritative, however, the Restatement (Third) of Sureties which endorses the idea that the contracts between the parties is controlling here.

Section 39 of the Restatement provides in pertinent part:

To the extent that the obligee releases the principal obligor from its duties pursuant to the underlying obligation:

⁸ 725 N.W.2d 787 (Neb. 2007).

⁹ 507 F.3d 1013 (6th Cir. 2007).

¹⁰ *Id.* at 1019 (emphasis added).

¹¹ 612 N.E.2d. 1219 (NY 1993).

¹² 811 A.2d 812 (Md. 2002).

(b) the secondary obligor is discharged from any unperformed duties pursuant to the secondary obligation **unless:**

- (i) the terms of the release effect a preservation of the secondary obligor's recourse [or]
- (ii) the language or circumstances of the release otherwise show the obligee's intent to retain its claim against the secondary obligor[.]

B. The agreements permit the bank to proceed against Defendants

Neither party disputes the Guaranty Agreement constitutes a contractual agreement between Plaintiff and Defendants. When interpreting a contract, the court gives deference to the intentions of the parties “as reflected in the four corners of the document.”¹³ In making a determination of the parties’ intentions, the court considers the document as a whole.¹⁴ The terms of a contract control “so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language.”¹⁵ The contract’s ambiguous terms require the court to review the parties’ intentions, while unambiguous terms will be given their ordinary meaning.¹⁶

Although all of the core transactional documents are important,¹⁷ perhaps the most significant is the Guaranty. Pursuant to the Guaranty Agreement,

¹³ *GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 779 (Del. 2012).

¹⁴ *Id.*

¹⁵ *Id.* at 780.

¹⁶ *Id.*

¹⁷ In *Galantino v. Buffone*, 46 A.3d 1076, 80 (Del. 2012) the Supreme Court held that certain documents must be considered together when determining whether a mortgage is a purchase money mortgage. The court wrote “neither the parol evidence rule nor its underlying policy should preclude a court from considering the core transactional documents.” As in *Galantino*, it is necessary and proper to look at more than one document to determine Defendants’ rights and allegations. As stated in the text, however, the most important of these documents is the Guaranty itself.

Defendants agreed to pay Marigold's debt under the Note if Marigold failed to do so. The pertinent language of the Guaranty Agreement reads:

INDEBTEDNESS GUARANTEED. The indebtedness guaranteed by this Guaranty includes any and all of Borrower's indebtedness to Lender and is used in the most comprehensive sense and means *and includes any and all of Borrower's liabilities, obligations and debts to Lender, now existing or hereinafter incurred or created*, including without limitation, all loans, advances, interest, costs, debts, overdraft indebtedness, credit card indebtedness, lease obligations, other obligations, and liabilities of Borrower, or any of them, and any present or future judgments against Borrower, or any of them, and whether any such indebtedness is voluntarily or involuntarily incurred, due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined; whether Borrower may be liable individually or jointly with others, or primarily or secondarily, or as guarantor or surety; whether recovery on the indebtedness may be or may become barred or unenforceable against Borrower for any reason whatsoever; and whether the indebtedness arises from transactions which may be voidable on account of infancy, insanity, ultra vires, or otherwise.

The Guaranty also provides that Defendant's guaranty remains in effect until **all** of Marigold's indebtedness to the Bank has been satisfied:

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or Borrower, *and will continue in full force **until all indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied** and all of Guarantor's other obligations under this Guaranty shall have been performed in full. . . .*¹⁸

¹⁸ (emphasis added).

It necessarily follows that the Guaranty remains in effect even after a partial payment of the amount owed.¹⁹

The Release itself unequivocally provides that the bank intended to preserve its claims against Defendants. The recitals in that Release contain the following:

The financing has matured and the Lender and the St. Clair Parties wish to resolve the St. Clair Parties' liabilities to the Lender ***while allowing the Lender to pursue its remedies against other guarantors.***

The St. Clair Parties have requested that upon payment to Lender of \$1,050,000 by one or more of the St. Clair Parties, that Lender immediately satisfy its two mortgages on the Delmar Property and release its remaining claims or collateral against the St. Clair Parties related to its loans to the St. Clair parties *without prejudice to the Lender's right to pursue payment from certain other guarantors.*

The terms of the Release accomplish this:

No provision of this Agreement is intended to nor shall it be considered to have released, excused or terminated the continuing liability to Lender of Jon H. Harris, Gary E. Harris, Mark S. Harris or Allan Harris (the "Harris Parties") from any liabilities for the financing or any other debt due to Lender from the Harris Parties.

Thus, Defendants' argument fails, as a matter of law, to establish the second element of accord and satisfaction—the amount tendered by the debtor was intended to be in total satisfaction of the debt. The language of the Release discussed in the preceding paragraph could not be clearer: Marigold and

¹⁹ This provision might suggest at first glance that because Marigold's debt has been "satisfied" insofar as Marigold is concerned by the terms of the release, the DURATION OF GUARANTY provision is inapplicable. But satisfaction is only one of several events which must occur in order to terminate Defendants' obligation under this provision. This paragraph of the Agreement also requires that the indebtedness be "fully . . . paid." It is undisputed that this has not occurred here.

St. Clair never intended that the payment was to be in total satisfaction of the debt; rather, they expressly agreed that the bank preserved its claims against Defendants.

Defendants fail as a matter of law to establish the third element—the creditor intended the payment to be full satisfaction of the debt—for similar reasons. The parties to the Release expressly stated that the bank was preserving its remedies against Defendants. This necessarily means that the bank was not accepting the payment as full satisfaction of the debt.

Because these were separate obligations, one being the contract between Marigold and Plaintiff and the other being between Defendants and Plaintiff, Marigold's satisfaction of its own obligations does not automatically transfer to the obligations of Defendants. The parties' intent is evident in the Release language in that Marigold's obligations were expressly dismissed without prejudice to Plaintiff's ability to pursue claims against other guarantors. Therefore, Defendants also fail to satisfy the third element of accord and satisfaction.

Defendants claim Plaintiff accepted Marigold's payment with the intent to release Marigold and Mr. St. Clair from all remaining obligations. Defendants assert the release of Marigold and Mr. St. Clair operates to release the guarantors of the debt obligations which were the subject of the Release.

Plaintiff argues the language in the Release demonstrates Plaintiff's clear intent to preserve any and all claims against other guarantors. The objective of

a guaranty is to insure the creditor is paid if the primary obligor cannot pay the debt.²⁰ This purpose sheds light on the intent of Plaintiff in the present action.

At oral argument, Defendants relied upon *Mazur v. Young*,²¹ for the proposition that a guarantor is absolved of liability if “some act or omission on the part of the creditor discharges the principal debtor of the principal obligations by a rule of law, even if the principal obligation has not been paid.” Defendants further emphasized that a party must expressly reserve its rights against other liable parties when it releases the primary obligor. Plaintiff notes these sections do not explicitly “reserve” the right to file a claim against guarantors, but the Plaintiff’s intent to preserve claims against the Defendants is clear. According to Plaintiff, basic contract principles dictate that the terms of the Guaranty Agreement bind the Defendants. Accordingly, Plaintiff contends the Defendants waived any limits on their liability when they entered the Guaranty Agreement and assumed any obligations contained within the Agreement. Such obligations include payment of Marigold’s indebtedness to Plaintiff until such debt is fully satisfied.

The intent of the Plaintiff to preserve its rights against the Defendants regardless of the status of Marigold is clear. Defendants, who are sophisticated parties, willingly entered into this agreement. Therefore, they must be bound

²⁰ *Ajax Rubber Co. v. Gam*, 151 A. 831 (1924).

²¹ 507 F.3d at 1018 (citing 38 Am.Jur.2d *Guaranty* § 96; *Wilson Leasing Co. v. Seaway Pharmacal Corp.*, 53 Mich.App. 359, 220 N.W.2d 83, 88-89 (1974) (“Any material alteration of a principal debt or obligation operates to completely discharge any guaranty of that debt or obligation, unless the guarantor consented to the alteration.” (citations omitted))). Thus, as a general rule, a judgment for possession after forfeiture releases a guarantor from liability.

by its terms. As a result, Defendants fail to meet the third element of accord and satisfaction.

CONCLUSION

For the foregoing reasons, Defendant's Motion for Judgment on the Pleadings is hereby **DENIED**. Plaintiff's Motion for Judgment on the Pleadings is **GRANTED**.

IT IS SO ORDERED.

Dated: July 19, 2013

John A. Parkins, Jr.
Superior Court Judge

oc: Prothonotary