Judge Eaton

STATE OF VERMONT
WINDSOR COUNTY, SS

Thomas L. Reynolds Plaintiff v. Daryl Snader Dale W. Snader Darlene Snader Defendant	SUPERIOR COURT Docket No. 679-10-07 Wrcv

DECISION ON MOTION FOR SUMMARY JUDGMENT

Plaintiff filed for summary judgment on November 14, 2008. Defendants Dale and Darlene Snader oppose the summary judgment. Daryl Snader does not oppose the summary judgment as to liability, but contests the amount of damages.

Undisputed Facts

Dale and Darlene Snader are the father and mother of Daryl Snader. Daryl borrowed $160,000 from the Plaintiff on February 11, 2003. Dale signed as guarantor of the accompanying promissory note at that time. In 2005, Dale and Darlene Snader guaranteed the note (Dale for the second time, Darlene for the first). The note was in default at the time of the "second" guarantee.

Daryl admits he is in default on the note. He disputes the amounts due under the note, alleging he should be given credits for payments either in cash or other valuable consideration. Dale and Darlene oppose the summary judgment alleging a lack of consideration for their guarantees and alleged changes to the note following execution, which they contend create disputed issues of material fact.

There are disputed issues of material fact concerning the amounts due under the terms of the promissory note. However, there are no material facts in dispute on the issue of liability.

Daryl does not dispute his liability under the note. He does not dispute that he is in default under the terms of the note.

Dale and Darlene allege a failure of consideration for their execution of the "second" guarantee. The "first" guarantee signed by Dale was made at the time monies were provided to his son and the advancement of monies to his son provides consideration for Dale's guarantee.

At the time Dale and Darlene made the subsequent guarantee in 2005, it is not disputed the note was in default. They do not dispute their signatures on the guarantee. They allege changes to the note made after their guarantee or at least without their knowledge or consent. However, examination of the alleged changes shows they did not alter the terms of the note. The note, as pre-printed, called for an annual interest rate of 11%. A handwritten addition calculated the interest rate at .92% per month and is singed "OK TLR." 11% per annum, calculated on a monthly basis is .92%. The handwritten change, calculating the interest on a monthly rather than an annual basis is not a material change in the terms of the note, in fact, it is not a change at all.

Secondly, the note as pre-printed contained a default interest rate of 4% over the rate. The rate set forth in the note was 11%. A handwritten addition states "=15% til default is cured. OK TLR." In addition the term "that is in effect at the time of default is over struck. Here again, this handwritten change is not actually a change in the terms of the note, it merely restates in a different manner of calculation what originally existed. The note before overstrikes and additions provided for an interest rate in the event of default of 4% above the rate in effect at the time of default. The rate under the note was 11%. A rate 4% above that rate would be 15%, exactly what was added by the handwriting.

Conclusions of Law

Summary judgment is appropriate when a party, on the basis of undisputed material facts, is entitled to judgment as a matter of law. *State v Delaney*, 157 Vt. 247 (1991). The benefit of all doubt and reasonable inferences is to be given to the non-movant. *Pierce v. Riggs*, 149 Vt. 136 (1987).

Here, Defendant Daryl Snader does not dispute his liability or his default under the terms of the note. Summary judgment on the issue of liability must be granted to Plaintiff on the claims against Daryl.

It is undisputed that the note was in default at the time the "second" guarantee was executed. It is also undisputed that Plaintiff was forbearing from collecting on a note which was in default at that time. Such forbearance constitutes adequate consideration for the guarantees of Daryl's parents. *Bergeron v. Reynolds*, 176 Vt. 78 (2003).

The changes made to the note, regardless of when made, affect only the manner in which the interest rate is stated. The changes do not affect the interest rate itself. In short, the changes, regardless of when made and by whom, do not affect the existence or terms of the debt obligation. Consequently, Dale and Darlene's dispute concerning the handwritten alterations of the note are not disputes as to any material fact. Where the determinative facts are uncontested, summary judgment is appropriate. *Kelly v. Town of Barnard*, 155 Vt. 296 (1990).

There exists genuine disputes as to the amounts owed under the note and consequently under the guarantee(s). Summary judgment on damages is not being sought in the instant motion and would be inappropriate for summary judgment given the existence of disputed material facts on those issues. *State Environmental Board v. Chickering*, 155 Vt. 308 (1990).

ORDER

Summary judgment is **GRANTED** for the Plaintiff on liability against Daryl Snader as borrower under the promissory note and against Dale and Darlene Snader as guarantors of the promissory note.

The jury shall determine the amount owed to Plaintiff by Daryl Snader in light of his default and by his parents in consequence of their guarantee of his debt obligation.

Dated at Woodstock this 2nd day of February, 2009.

Harold E. Eaton, Jr.
Superior Court Judge

FILED

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WINDSOR COUNTY CLERK