

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

FILED  
2002 SEP 27 A 10: 01

BLUE SEAL FEEDS, INC.,  
Plaintiff

v.

E.T. & H.K. IDE, INC., and  
ROBERT IDE,  
Defendants

SUPERIOR COURT  
WASHINGTON COUNTY  
Washington Superior Court  
Docket No. S 148-3-02 Wncv

MEMORANDUM OF DECISION

**Plaintiff's Motion for Summary Judgment, filed April 12, 2002**  
**Defendant Robert Ide's Motion for Summary Judgment, filed April 30, 2002**

This matter is before the Court on both of the above-referenced Motions for Summary Judgment. Plaintiff is represented by James C. Foley, Esq. Defendant Robert Ide is represented by Paul S. Gillies, Esq. Final judgment has been entered against Defendant E.T. & H.K. Ide, Inc. by stipulated Final Judgment entered May 3, 2002.

Plaintiff seeks summary judgment against the individual Defendant Robert Ide on the grounds that he executed a general guaranty in which he personally guaranteed payment of the promissory note which is the subject of this collection suit. Plaintiff claims there are no disputes of fact. Defendant Ide does not dispute that he executed the guaranty. He alleges, however, that seven days prior to his signature of the guaranty, the President of Blue Seal Feeds, Inc. promised him, as an incentive for signing the guaranty, that Blue Seal Feeds, Inc. would not look to him for payment unless the assets of E.T. & H.K. Ide, Inc. were exhausted. He further alleges that the assets of E.T. & H.K. Ide, Inc. are not exhausted, and that Blue Seal Feeds, Inc. therefore cannot collect against him.

In *Capital Impact Corporation v. Munro*, 162 Vt. 6 (1992), the Court held that where a lender represented to a mortgagor that it would seek other alternatives for satisfaction of mortgage payments before foreclosing the mortgage, the lender could nonetheless foreclose when the written guaranty did not include such a promise because there was no evidence of fraud in the inducement. The decision turned on whether or not the evidence supported the trial court's decision that there was no evidence upon which to conclude that the lender's promise was made with the intention not to perform it.

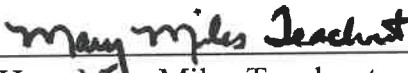
Similarly, the issue in this case is one of fact. Defendant Mr. Ide is entitled to the benefit of all reasonable doubts and inferences that can be made from the facts when the court is considering a motion for summary judgment. He has stated that he was induced to sign the guaranty based on the promise of the President of Blue Seal Feeds, Inc. The undisputed facts just as easily support an inference that Blue Seal Feeds, Inc. did not intend to honor its promise to Mr. Ide as an inference that it did intend to do so. The determination must be made by the factfinder. The court cannot conclude that undisputed facts compel a conclusion that there was no fraud in the inducement, nor that Defendant cannot show the elements of an apparent estoppel defense. Defendant Mr. Ide has made a sufficient showing that there is a need for a hearing to determine the facts upon which legal conclusions can be based. Therefore, Plaintiff's Motion for Summary Judgment must be denied.

Mr. Ide has moved for summary judgment against E.T. & H.K. Ide, Inc. on his cross claim, which appears to be based on a theory of indemnity. There are no disputes of fact that the obligation is properly one of Defendant E.T. & H.K. Ide, Inc., and that if Mr. Ide is required as guarantor to pay Plaintiff, he is entitled to seek indemnification from E.T. & H.K. Ide, Inc. Therefore, summary judgment is granted in favor of Mr. Ide against E.T. & H.K. Ide, Inc. as to liability, but it will only have effect in the event that Mr. Ide is determined to be liable to Blue Seal Feeds, Inc. To the extent that Defendant suggests that any liability should be passed directly on to E.T. & H.K. Ide, Inc. with no possibility of resulting in a judgment against him, the motion is denied; otherwise the guaranty, if valid, would have no meaning. No liability has yet been established against Mr. Ide; if it is, the fact that he has a valid indemnification claim against E.T. & H.K. Ide, Inc. does not relieve him of direct responsibility to the Plaintiff. Therefore, his motion to have any possible liability result only in a judgment against the corporation is denied.

### ORDER

For the foregoing reasons,  
The Plaintiff's Motion for Summary Judgment is *denied*; and  
Defendant Robert Ide's Motion for Summary Judgment is *granted* as to liability for indemnification, otherwise denied.

Dated at Montpelier, Vermont, this 27th day of September, 2002.

  
Hon. Mary Miles Teachout  
Superior Court Judge