

2012 IL App (1st) 110384-U

SIXTH DIVISION  
October 19, 2012

No. 1-11-0384

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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BATTAGLIA DISTRIBUTING CORPORATION, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 2008 L 4017
J.D.'S FLIPPIN PIES, INC., Doing Business as Papa	)	
Saverio's of Lake In The Hills, and RHONDA	)	
CHENAULT,	)	
	)	Honorable
Defendants	)	Robert Lopez Cepero,
	)	Judge Presiding.
(David Rosati, Donald Fortis, Jr., and Anthony Rosati,	)	
	)	
Defendants-Appellants).	)	

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JUSTICE HALL delivered the judgment of the court.

Justices Hoffman and Rochford concurred in the judgment.

**ORDER**

¶ 1 Held: Trial court's finding that the defendants intended to personally guarantee the amounts owed to the plaintiff for supplies furnished to one of their franchised restaurants was not against the manifest weight of the evidence.

¶ 2 Following a bench trial, judgment in the amount \$155,091.69 was entered in favor of plaintiff Battaglia Distributing Corporation, Inc. and against defendants David Rosati, Donald Fortin, Jr., and Anthony Rosati (collectively the Rosati defendants).<sup>1</sup> The Rosati defendants appeal, contending that: (1) the trial court erred as a matter of law when it held that they had guaranteed the debts of J.D.'s Flippin Pies, Inc., and (2) the trial court's determination that there was a meeting of the minds as to the terms of personal guarantees signed by the Rosati defendants was against the manifest weight of the evidence. For the reasons set forth below, we affirm the judgment of the trial court.

¶ 3 **BACKGROUND**

¶ 4 The Rosati family owns and franchises pizza restaurants and did business with plaintiff Battaglia, a food vendor, for many years. Franchisees of the Rosati family pizza restaurants were instructed to purchase their food products from plaintiff Battaglia.

¶ 5 The Rosati defendants decided to open their own chain of restaurants called "Papa Saverio's." In 1998, defendant Fortin opened Papa Saverio's of Lake in the Hills (Papa Saverio's LITH). The Rosati defendants formed Papa Saverio's Development Company for the purpose of opening other Papa Saverio's locations. Under their business plan, they would own 51% of a new restaurant while the remaining 49% would be owned by the individual in charge of the day-to-day operations at that restaurant. By early 2000, Papa Saverio's restaurants had been opened

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<sup>1</sup>David and Anthony Rosati are brothers; Donald Fortin is their brother-in-law.

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in several locations. Sometime in 2000, the Rosati defendants signed personal guarantees for payment to plaintiff Battaglia for supplies ordered by some of their restaurants. In 2004, the Rosati defendants formed Vive Bene Enterprises, Inc. in order to franchise the Papa Saverio's restaurants.

¶ 6 In 2005, defendant Fortin sold Papa Saverio's LITH to Tom and Arlene Simuneks. The Simuneks entered into a franchise agreement with Vive Bene and formed Dough D Dough, Inc. to operate the restaurant. In January 2007, the Simuneks sold Papa Saverio's LITH to Rhonda Chenault. Ms. Chenault signed a franchise agreement with Vive Bene and formed J.D.Flippin Pies, Inc. to operate the restaurant.

¶ 7 Between 1998-2008, plaintiff Battaglia supplied food products to the Papa Saverio's LITH location. In 2008, the Rosati and the Papa Saverio's restaurants stopped using plaintiff Battaglia as a vendor. Plaintiff Battaglia demanded payment from Ms. Chenault and J.D.Flippin Pies for the overdue balance owed for food deliveries and eventually filed suit against them. Plaintiff Battaglia's first amended complaint added the Rosati defendants, alleging that in February 2000, they signed personal guarantees for Papa Saverio's LITH.

¶ 8 Prior to trial, Ms. Chenault filed for bankruptcy and was dismissed as a defendant. By agreement, a judgment was entered against J.D.'s Flippin Pies in the amount of \$104,037.35.

The case proceeded against the Rosati defendants. A summary of the pertinent testimony follows below.

¶ 9 BENCH TRIAL

¶ 10 David Mackowiak, credit manager for plaintiff Battaglia, testified as follows. In order for

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a customer to order supplies on credit, plaintiff Battaglia required the customer to fill out a form, consisting of an application for credit on the front and a personal guarantee on the back (the credit/guarantee form). The person responsible for payment signed the guarantee. The signing of the personal guarantee portion had to be witnessed by a Battaglia employee, or it was void.

¶ 11 At the request of Frederick Battaglia, vice -president of plaintiff Battaglia, on February 10, 2000, Mr. Mackowiak prepared eight to ten credit/guarantee forms for the Rosati defendants to sign in order to start their new business venture with plaintiff Battaglia. He filled out the form with the name, address, phone number for each Papa Saverio's being opened at that time: each form was in triplicate, one for each Rosati defendant to sign. One of the credit/guarantee forms he filled out was for Papa Saverio's LITH. Other than the name, address and telephone number information, the rest of the credit/guarantee form was left blank. At the meeting on February 14, 2000, Mr. Mackowiak filled out the personal guarantees with the information given to him by the Rosati defendants. Mr. Mackowiak did not witness the defendants Rosati signing the personal guarantees. When the forms were returned to him, their signatures had been witnessed by other Battaglia employees.

¶ 12 Mr. Mackowiak explained that in order to cancel an account, the account must be paid off in full and show a zero balance. The credit/guarantee would be cancelled, and the word "cancelled" would be written on the form and a new account number would be assigned to the account. Upon request, the credit/guarantee form would be returned to the signer. Mr. Mackowiak identified cancelled credit/guarantee forms for the Papa Saverio's restaurants in Streamwood and Schaumburg. All of the forms were dated February 10, 2000, and the personal

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guarantee on the forms were signed by the Rosati defendants. Upon cancellation, the credit/guarantee forms were returned to the Rosati defendants. They never requested the return of their personal guarantees for Papa Saverio's LITH location.

¶ 13 Mr. Mackowiak testified that in 2007, plaintiff Battaglia was informed that Ms. Chenault was the new manager at Papa Saverio's LITH. She submitted an application for credit with plaintiff Battaglia, and she signed the personal guarantee. Mr. Mackowiak explained that as a new operator, Ms. Chenault would not initially be entitled to credit. The credit terms were extended to her because the Rosati defendants were longstanding customers of plaintiff Battaglia. In addition, plaintiff Battaglia had the personal guarantees of the Rosati defendants for the Papa Saverio's LITH, even though the guarantees were given seven years before Ms. Chenault took over the restaurant.

¶ 14 Mr. Mackowiak acknowledged that the demand for payment letter was sent to Ms. Chenault based on her personal guarantee and that no demand letters were sent to the Rosati defendants although they signed personal guarantees for Papa Saverio's LITH. He further acknowledged that, while the front page of Ms. Chenault's credit/guarantee form was filled in with credit information and signed by her, the front page of the forms signed by the Rosati defendants for Papa Saverio's LITH were blank, except for the name and address of the restaurant.

¶ 15 Frederick Battaglia, vice-president of plaintiff Battaglia, testified as follows. Mr. Battaglia explained that a new customer was required to pay cash on delivery. In order to accept anything but cash, such as a check, a credit application had to be completed. If credit was to be

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extended, a personal guarantee was required.

¶ 16 In 1998, Mr. Battaglia entered into discussions with the Rosati defendants to supply their new chain of restaurants. The Rosati defendants requested that plaintiff Battaglia extend credit to the restaurants. It was agreed that in exchange for credit terms, the Rosati defendants would give plaintiff Battaglia personal guarantees for the restaurant locations they wished plaintiff Battaglia to supply. According to Mr. Battaglia, the Rosati defendants wanted plaintiff Battaglia to supply all of the restaurant locations, which at the time numbered between five and ten.

¶ 17 On February 14, 2000, Mr. Battaglia met with the Rosati defendants at the Battaglia warehouse/offices. In preparation for the meeting, he had given Mr. Mackowiak a list of restaurants to be opened; he had received the list from one of the Rosati defendants. At the time of the meeting, each credit/guarantee form listed the restaurant location but no other information. The credit information and the signature request on the front of the forms did not need to be completed because the Rosati defendants' credit had already been approved.

¶ 18 Mr. Battaglia explained that once a restaurant got established, the Rosati defendants would bring in another individual and would inform Mr. Mackowiak that they wanted the personal guarantees cancelled. Upon payment in full of the account, Leonard Nolan, a Battaglia employee, would cancel the credit/guarantee form and return the document to the Rosati defendants. Plaintiff Battaglia would then set up new payment terms for the delivery of supplies to that location. If a restaurant had a new owner and the personal guarantees were not cancelled, the existing credit terms would continue. However, if the personal guarantees were cancelled, a new credit-extension determination would be made.

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¶ 19 Mr. Battaglia maintained that the purpose of the February 14, 2000, meeting was to have the Rosati defendants sign the personal guarantees, not the credit portion of the form. He acknowledged that the personal guarantee portion of the form did not specify the Papa Saverio's LITH location. According to Mr. Battaglia, the Rosati defendants made it clear that they were the owners of the Papa Saverio's restaurants.

¶ 20 Mr. Battaglia maintained that he did not know who Ms. Chenault was, and he was not familiar with J.D.'s Flippin Pies. However, he acknowledged that at the top of her application for credit he had written a note to Mr. Mackowiak about extended-credit terms. Mr. Battaglia did not recall discussing extended-credit terms with Mr. Mackowiak or anyone at J.D.'s Flippin Pies. He acknowledged that he never told the Rosati defendants that they had personally guaranteed J.D.'s Flippin Pies' debts. Mr. Battaglia explained that the fact Ms. Chenault had filled out the credit portion of the credit/guarantee form on behalf of J.D.'s Flippin Pies and signed the personal guarantee did not affect the guarantees the Rosati defendants had given for the Papa Saverio's LITH location.

¶ 21 Leonard Kaplan, employed as an outside sales representative for plaintiff Battaglia, testified as follows. On February 14, 2000, he attended a meeting with the Rosati defendants, who were planning to open several Papa Saverio's locations. The Rosati defendants wanted credit extended to those locations and were at the meeting to sign the personal guarantees. Mr. Kaplan attended the meeting only to witness the Rosati defendants' signatures on the personal guarantees. He identified his signature as a witness to the personal guarantees signed by the Rosati defendants for the Papa Saverio's LITH. At the time the personal guarantees were signed,

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the front side of the form was blank except for the account number, the name "Papa Saverio's," and the restaurant's address in Lake in the Hills.

¶ 22 Mr. Kaplan testified that the credit information was important but acknowledged that the front side of the credit/guarantee form for the Papa Saverio's LITH was blank when the Rosati defendants signed the personal guarantee. The forms were signed in blank so that plaintiff Battaglia would not need to locate the Rosati defendants each time a new restaurant opened. Mr. Kaplan acknowledged that he filled out the credit information for Papa Saverio's LITH after February 2000.

¶ 23 Mr. Kaplan was aware that defendant Fortin had sold the Papa Saverio's LITH location, but he did not know the name of the buyer. He denied ever hearing of the Simuneks or Dough D Dough. However, he acknowledged that his handwriting appeared on Dough D Dough checks to plaintiff Battaglia. Mr. Kaplan knew that J.D.'s Flippin Pies purchased the Papa Saverio's LITH location. Since Ms. Chenault was a new owner, Mr. Kaplan had her fill out a credit/guarantee form.

¶ 24 Mr. Kaplan explained that once plaintiff Battaglia was notified that an account was being paid in full, the billing would revert to the new owner. It was Mr. Kaplan's job to go to the restaurant, match the amount of the payoff check to the account balance and then mark the credit/guarantee form as cancelled. Mr. Kaplan recalled that Ms. Chenault had been placed on a cash-only basis with plaintiff Battaglia, with an additional \$200 toward past-due amounts. He never advised the Rosati defendants about the change of credit terms for the Papa Saverio's LITH. While accounts would be paid in full from time to time, Mr. Kaplan explained that the



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owner's credit application would be returned only if there was a new owner.

¶ 25 Steven Wittorp, employed as sales manger for plaintiff Battaglia, testified as follows. On February 14, 2000, he was present at a meeting at the Battaglia offices and witnessed the Rosati defendants sign the personal guarantees for Papa Saverio's LITH. In addition to those forms, each Rosati defendant signed personal guarantees for other Papa Saverio's locations.

¶ 26 According to Mr. Wittorp the personal guarantees for the Papa Saverio's LITH were signed either on February 10 or 14, 2000; he was fairly certain it was February 14th. The fact that defendant Anthony Rosati's personal guarantee was dated February 10, 2000, was probably due to the fact that the meeting was originally scheduled for the 10th. According to Mr. Wittorp, at the time of the meeting, there were three Papa Saverio's restaurants open: Papa Saverio's LITH, Glen Ellyn, and Elgin. Mr. Wittorp acknowledged that the personal guarantee portion of the form did not reference Papa Saverio's LITH.

¶ 27 Arlene Simunek testified as follows. She and her husband, Thomas, purchased Papa Saverio's LITH from defendant Fortin in 2005. They also signed a franchise agreement with Vive Bene and incorporated Dough D Dough to operate their Papa Saverio's franchise. In order to do business with plaintiff Battaglia, the Simuneks were required to complete the credit/guarantee form. None of the Rosati defendants ever agreed to guarantee the debts owed by Dough D Dough to plaintiff Battaglia.

¶ 28 The only person from plaintiff Battaglia Mrs. Simunek had business-related dealings with was Mr. Kaplan. She paid Mr. Kaplan for supplies from plaintiff Battaglia with checks written on Dough D Dough's account. In 2007, the Simuneks entered into an asset sale and purchase

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agreement, under which Dough D Dough sold Papa Saverio's LITH to Ms. Chenault and J.D.'s Flippin Pies.

¶ 29 Mrs. Simunek acknowledged that she filled out the credit portion of the form but neither she nor her husband signed the front of the form. She further acknowledged that Mr. Simunek filled out the personal guarantee for credit to be extended to Papa Saverio's LITH and listing himself as president. Ms. Simunek witnessed her husband's signature on the guarantee. She could not state for sure that plaintiff Battaglia received the credit/guarantee form because it was sent to the business broker, not to plaintiff Battaglia. However, the Simuneks did business on a credit basis with plaintiff Battaglia while they owned Papa Saverio's LITH.

¶ 30 Rhonda Chenault testified as follows. Ms. Chenault purchased Papa Saverio's LITH from the Simuneks. Other than the franchise agreement with Vive Bene, she had no agreements with the Rosati defendants. She was not aware of any payment guarantees by the Rosati defendants for the Papa Saverio's LITH. Checks to plaintiff Battaglia were written on the J.D.'s Flippin Pies account. Joe Fiore, an employee of Vive Bene, came by once a month to check on the restaurant. She never discussed with Mr. Fiore credit terms or the amounts she owed to plaintiff Battaglia.

¶ 31 Ms. Chenault stated she was unaware that the number on her account with plaintiff Battaglia was the same as that of the previous owner. She acknowledged that, prior to her purchase of Papa Saverio's LITH, she was experiencing problems with her credit. Ms. Chenault never discussed credit terms with Mr. Mackowiak. When she purchased the business, Ms. Chenault filled out the credit/guarantee form and was given credit terms by plaintiff Battaglia.

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¶ 32 David Rosati was a principal in Papa Saverio's and the Rosati restaurants. He had been affiliated with Papa Saverio's restaurants since 1998 or 1999. Defendant Fortin had opened Papa Saverio's LITH in 1997; the witness had no ownership interest in that location. The first restaurants he had interests in were in Schaumburg, Streamwood and Elgin. These were operated as 51/49% partnerships; 51% was owned by the Rosati defendants and 49% was owned by the operating partner. The witness maintained that he never personally guaranteed the debts of any of the restaurants in which he did not have an ownership interest. The Rosati defendants had the 49% owners sign the credit/guarantee forms for these locations

¶ 33 According to defendant David Rosati, Mr. Battaglia wanted credit applications signed for four of the 51/49% restaurants that were experiencing financial difficulties. The Rosati defendants agreed to guarantee payments owed to plaintiff Battaglia by these four restaurants because they had ownership interests in them. Papa Saverio's LITH location was not one of the four restaurants.

¶ 34 Defendant David Rosati agreed that these personal guarantees were signed in 2000 but maintained the signing took place later in the year than February and was at one of the restaurant locations, not at the Battaglia offices. Mr. Nolan met the Rosati defendants and had them sign the credit/guarantee forms in blank. He told them he would fill out the pertinent information when he returned to his office. The witness was never told that Papa Saverio's LITH was one of the restaurants for which he was signing a personal guarantee. He agreed that it was his signature on the personal guarantee for Papa Saverio's LITH and that Mr. Kaplan witnessed his signature. He did not look at the front of the credit/guarantee form before he signed it.

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¶ 35 Donald Fortin, Jr., testified as follows. He became the owner of the Papa Saverio's LITH in 1998. He signed the credit portion but not the personal guarantee portion of the credit/guarantee form. In 2000, the Rosati defendants discussed signing personal guarantees for the 51/49% restaurants in Streamwood and Schaumburg that were struggling financially. Papa Saverio's LITH was not having financial problems. The Rosati defendants met Mr. Kaplan at the Golf Road, Schaumburg location where they signed about six personal guarantees. The forms were blank; nothing filled in on them.

¶ 36 Defendant Fortin testified that he never agreed to personally guarantee Papa Saverio's LITH. He never saw any of the credit/guarantee forms with the restaurant location information filled in on them and denied signing any documents at the Battaglia offices. In 2005, he sold the Papa Saverio's LITH to the Simuneks. He never agreed to guarantee the Simuneks' or Ms. Chenault's debts to plaintiff Battaglia.

¶ 37 Defendant Fortin identified his signature on the February 14, 2000, credit/guarantee form for Papa Saverio's LITH, but he did not recall where it was signed. He acknowledged reading the form before he signed it but then stated that he did not "recall this document." He then maintained that the form was blank. Defendant Fortin did not recall reading the credit/guarantee form for one of the two Papa Saverio's Schaumburg restaurants before he signed it. But he then acknowledged that the location information was filled in on the forms for the Streamwood and the two Schaumburg restaurants when he signed them. Defendant Fortin acknowledged that while he had testified that the credit/guarantee forms were signed in the parking lot of the Golf Road, Schaumburg location, he had also testified that he did not know where the forms were

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signed.

¶ 38 Defendant Anthony Rosati testified as follows. After the Papa Saverio's LITH location was opened in 1998, the Rosati defendants opened up more locations; by February 2000, 5 or 6 restaurants had been opened. The witness had ownership interests in all the restaurants open at that time except for Papa Saverio's LITH; he never had an ownership interest in that location. Defendant Fortin owned the Papa Saverio's LITH until 2005, when he sold it to the Simuneks. The Simuneks entered into a franchise agreement with Vive Bene. The witness never guaranteed the debts of any franchise location.

¶ 39 Defendant Anthony Rosati maintained that he was never contacted by anyone from plaintiff Battaglia about amounts the Simuneks owed. When the Rosati defendants ceased doing business with plaintiff Battaglia, he received several calls from plaintiff Battaglia regarding Ms. Chenault. In the last call, he was told that the Rosati defendants owed the money due from the Papa Saverio's LITH. The witness never received any default notices with respect to Ms. Chenault or J.D.'s Flippin Pies. He denied that he ever guaranteed the debts of Ms. Chenault or J.D.'s Flippin Pies.

¶ 40 Defendant Anthony Rosati testified that sometime in 2000, he was contacted by Mr. Mackowiak or Mr. Kaplan requesting that the Rosati defendants sign personal guarantees for some of the struggling restaurants, even though the 49% owners had already signed guarantees. Mr. Kaplan brought the credit/guarantee forms out to the Golf Road restaurant. The witness signed the form where Mr. Kaplan directed him to sign; the forms were blank when he signed them. The witness identified his signature on the personal guarantee for the Papa Saverio's LITH

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location but maintained that there had been nothing on the form referencing that location or he would not have signed it.

¶ 41 Joseph Fiore, employed by Vive Bene as director of operations, testified as follows. Mr. Fiore's duties included training the new franchisees and overseeing quality control for the restaurants. He was familiar with the J.D.'s Flippin franchise and knew Ms. Chenault. Mr. Fiore did not discuss plaintiff Battaglia's credit terms with Ms. Chenault or anyone at J.D.'s Flippin Pies as that was not part of his duties.

¶ 42 Mr. Fiore acknowledged that Mr. Mackowiak called him about an overdue payment from Papa Saverio's LITH. Mr. Mackowiak asked him to call Ms. Chenault to see if she could make a payment. Mr. Fiore was unsure why Mr. Mackowiak asked him to make the call; he guessed it was because he had a close relationship with the franchisees. Mr. Fiore never told Mr. Mackowiak to continue deliveries to the Papa Saverio's LITH because Vive Bene would pay for it.

¶ 43 Mr. Fiore contacted Ms. Chenault and told her that she needed to make a payment, or plaintiff Battaglia would not make any more deliveries to Papa Saverio's LITH. He agreed that it would be a concern to Vive Bene if a supplier threatened to cut off a franchisee.

¶ 44 In granting judgment to plaintiff Battaglia, the trial court found that the parties were sophisticated business people and as such, aware of the rights and obligations under the guarantees. The court found that plaintiff Battaglia's account of the facts surrounding the signing of the personal guarantees by the Rosati defendants was more credible than the account put forth by the Rosati defendants. The court based its credibility finding "primarily from the consistent

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testimony Plaintiff[s] employees in contrast to the inconsistent (and somewhat incredible) testimony among several of the Defendants' witnesses." As a result, the court found that "there was a meeting of the minds and a mutual intent that the parties be bound by the properly executed personal guarantees."

¶ 45 The court further found that the personal guarantees were "wholly distinguishable" from the credit applications," and therefore controlled the obligations of the parties. Under the terms of the personal guarantees and the actions of the parties, the subsequent sales and purchases of the Papa Saverio's LITH location were not intended to extinguish the guarantees. Finally, the court found that plaintiff Battaglia "justifiably relied on the guarantees which served as a type of 'collateral' for the credit advanced by plaintiff for the benefit of the Defendant(s) and/or to each of the owner/operators of the restaurant in question."

¶ 46 The trial court entered a final judgment in the amount of \$155,091.69 in favor of plaintiff Battaglia and against the Rosati defendants. This appeal followed.

¶ 47 ANALYSIS

¶ 48 I. Personal Guarantee of J.D.'s Flippin Pies Debt to Plaintiff Battaglia

¶ 49 The Rosati defendants contend that the trial court erred when it held that they had guaranteed the payment of the debts owned by J.D.'s Flippin Pies to plaintiff Battaglia. The trial court did not find that the Rosati defendants guaranteed the debts of J.D.'s Flippin Pies to plaintiff Battaglia. The court found that the personal guarantees signed by the Rosati defendants survived the transfers of ownership of Papa Saverio's LITH, not that they had personally guaranteed a particular owner's debts to plaintiff Battaglia. Since the Rosati defendants' claim of

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error is contradicted by the record, it has no merit.

¶ 50 II. Manifest Weight of the Evidence

¶ 51 The Rosati defendants contend that the trial court's finding that there was a meeting of the minds and mutual intent as to the execution of the personal guarantees was against the manifest weight of the evidence.

¶ 52 A. *Standard of Review*

¶ 53 A reviewing court will not set aside a judgment following a bench trial unless the judgment is against the manifest weight of the evidence. *Brynwood Co. v. Schweisberger*, 393 Ill. App. 3d 339, 351 (2009). For a judgment to be against the manifest weight of the evidence, the opposite conclusion must be clearly evident, or it must be unreasonable, arbitrary or not based on the evidence presented. *Brynwood Co.*, 393 Ill. App. 3d at 351. We will reverse the trial court's decision only where the appealing party presents evidence that is strong and convincing enough to overcome, completely, the evidence and presumptions existing in the opposing party's favor. *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 599 (2000).

¶ 54 In a bench trial, the court is the trier of fact and as such "is in a superior position to the reviewing court to observe the conduct of the witnesses while testifying, to determine their credibility, and to weigh and determine the preponderance of the evidence." *People v. A Parcel of Property Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 510 (2005). As a reviewing court, we may not overturn a judgment merely because we disagree with it, or, as the trier of fact, we might have come to a different conclusion. *A Parcel of*



*Property Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d at 510.

¶ 55

B. Discussion

¶ 56 The Rosati defendants contend plaintiff Battaglia failed to prove that there was a meeting of the minds over the terms of the personal guarantee, an essential element of a guarantee contract. See *Williams Nationalease, Ltd. v. Motter*, 271 Ill. App. 3d 594, 596-97 (1995). They argue that the evidence at trial failed to establish that they intended to guarantee payment of Papa Saverio's LITH debts to plaintiff Battaglia.

¶ 57 In support of their argument, the Rosati defendants rely on the following evidence: (1) plaintiff Battaglia requested that they sign personal guaranties for the restaurants they had an interest in under the 51/49% plan; they had no interest in Papa Saverio's LITH; (2) Mr. Kaplan had them sign blank credit/guarantee forms; and (3) Papa Saverio's LITH was not one of the new restaurants; it had been in business for two years and had been ordering and paying for products from plaintiff Battaglia.

¶ 58 The Rosati defendants further maintain that plaintiff Battaglia witnesses' testimony did not contradict that of the Rosati defendants. They point out that all of plaintiff Battaglia's witnesses testified that there was no discussion or mention of Papa Saverio's LITH prior to the signing of the personal guaranties. They point to Mr. Mackowiak's testimony that the Rosati defendants never agreed to guarantee all of the Papa Saverio's locations and to Mr. Kaplan's testimony that the credit/guarantee forms were signed in blank. Finally, the Rosati defendants argue that because there was no reference to Papa Saverio's LITH in the terms of the personal guaranty, there could be no meeting of the minds that Papa Saverio's LITH was one of the

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restaurants whose debts to plaintiff Battaglia they personally guaranteed to pay.

¶ 59 Whether there was a meeting of the minds and the mutual intent as to inclusion of Papa Saverio's LITH in the Rosati defendants' personal guarantees turned on the circumstances surrounding the signing of the personal guarantees. As the Rosati defendants acknowledge, the evidence on that issue was conflicting. As our summary of the trial evidence clearly demonstrates, the parties presented completely different descriptions of the location, the date, who was present and the purpose for which the guarantees were signed.

¶ 60 The parties also presented conflicting evidence as to the state of the credit/guarantee form at the time the personal guarantees were signed. With regard to the Papa Saverio's LITH credit/guarantee form, defendant David Rosati maintained that the form was blank but admitted that he did not look at the front side of the form. Defendant Fortin testified that he did not "recall" the credit/guarantee document. Later, he testified that the form was blank when he signed at the Papa Saverio's on Golf Road in Schaumburg. Defendant Anthony Rosati testified that he signed a number of personal guaranties. He did not recall if there was anything written on the forms, but then stated he remembered them as being blank.

¶ 61 Plaintiff Battaglia's witnesses testified that the front side of the credit/guaranty form was blank except for the location information pertaining to the restaurants for which the Rosati defendants were signing personal guaranties. Mr. Mackowiak testified that he was instructed by Mr. Battaglia to prepare the forms in preparation for the Rosati defendants' new business venture. He listed on each form the location information for the restaurants for which the Rosati defendants were signing personal guaranties. Mr. Battaglia testified that one of the Rosati

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defendants furnished the list of restaurants they were going to personally guarantee.

¶ 62 In this case, the trial court found the testimony presented by the Rosati defendants as to the signing of the personal guaranties less credible than testimony presented by plaintiff Battaglia as to the signing of the personal guaranties. The Rosati defendants point to Mr. Kaplan's testimony that the credit/guaranty forms were blank when the Rosati defendants signed them and that he completed the Papa Saverio's LITH form at a later date. However, considered in its entirety, Mr. Kaplan's testimony was that the credit information portion of the form was left blank, but the restaurant location was filled in on the form.

¶ 63 The Rosati defendants argue that the fact they did not read the whole credit/guaranty form should not be considered against them because they were only shown the back side of the form. Their reliance on *Mount Zion State Bank & Trust v. Weaver*, 226 Ill. App. 3d 783 (1992), is misplaced. In that case, the defendant was shown only the last page of a contract, which he signed based on assurances that he would not be liable on the contract. He then signed a guaranty for the performance of the contract, without reading it. The reviewing court found that the guaranty was not enforceable due to the misrepresentation concerning the contract. However, the court also observed that if the signing of the guaranty had not involved the contract, it would have found the guaranty enforceable. Even though the defendant had been told he had no liability under the guaranty, the defendant had full access to the guaranty and ordinarily would not be permitted to rely upon such representations made to him as to the legal effect of the document. *Weaver*, 226 Ill. App. 3d at 787.

¶ 64 Here the Rosati defendants clearly had the opportunity to read both sides of the

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credit/guaranty document form. In this case, their failure to do so does not preclude the enforcement of the personal guaranty. Their argument that they signed the credit/guaranty forms in blank because they relied on Mr. Kaplan's representations that he would fill in the proper information later was clearly rejected as the trial court accepted the testimony of plaintiff Battaglia's witnesses that the restaurant locations were filled in at the time the Rosati defendants signed the personal guaranties. Finally, the Rosati defendants' assertion that they did not read the front page is inconsistent with their insistence that the front page and/or the whole form was blank when they signed it.

¶ 65 The result in this case turned on the credibility of the witnesses, a matter for determination by the trial court, not this court. The evidence presented to us by the Rosati defendants was neither strong nor convincing enough to overcome the evidence presented by plaintiff Battaglia. There was more than sufficient evidence to support the trial court's determination that the Rosati defendants intended to personally guarantee Papa Saverio's LITH debts to the plaintiff Battaglia. Therefore, the trial court's judgment was not against the manifest weight of the evidence.

¶ 66 Finally, pursuant to terms of the personal guarantees, plaintiff Battaglia contends that it is entitled to an award of the reasonable attorney fees and costs it incurred in this appeal. We agree. This cause is remanded to the trial court to allow plaintiff Battaglia to file a petition for appellate attorney fees and costs and for an evidentiary hearing on the petition. See *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 953 (2004).

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¶ 67

CONCLUSION

¶ 68 The judgment of the circuit court is affirmed, and the cause is remanded.

¶ 69 Affirmed and remanded with directions.