

2014 IL App (2d) 130376-U
No. 2-13-0376
Order filed March 7, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

BAYTREE NATIONAL BANK & TRUST COMPANY,)	Appeal from the Circuit Court of Lake County.
)	
Plaintiff-Counter-Defendant-Appellee,)	
)	
v.)	2009-L-0633
)	
RANDOLPH MILES,)	
)	
Defendant-Counter-Plaintiff-Appellant)	
)	Honorable
(Exceed Properties, Inc. and Charles Miles,)	Michael B. Betar
Defendants).)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Burke concurred in the judgment.
Justice Schostok specially concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's judgment in favor of plaintiff and against defendant on a guaranty was affirmed where consideration for the guaranty was proved by competent evidence and defendant's argument that there was no bargained-for contract was forfeited.
- ¶ 2 Defendant, Randolph Miles, appeals from an order of the circuit court of Lake County finding in favor of plaintiff, Baytree National Bank & Trust Company, following a bench trial.

Plaintiff sued to recover the principal balance and interest due, plus attorney fees and costs, in connection with a guaranty of a loan to defendant's son and a company with which defendant's son was associated. For the reasons that follow, we affirm the trial court's judgment.

¶ 3

I. BACKGROUND

¶ 4 On November 10, 2006, Charles Miles, individually and as president of Exceed Properties, Inc. (Exceed), executed a promissory note in favor of plaintiff in the amount of \$1,750,000, which loan was secured by a mortgage on two parcels of property in Lindenhurst, Illinois. Thereafter, plaintiff extended the maturity date of the note on two occasions. On June 23, 2008, Charles and Exceed executed a second promissory note in the amount of \$1,973,250 representing the original loan of \$1,750,000 plus an additional loan of \$223,250. Charles and Exceed defaulted, and plaintiff obtained a judgment against them in the amount of \$1,982,333.48.

¶ 5 In count II of its amended complaint, plaintiff sought recovery from defendant on a guaranty that he allegedly executed on June 23, 2008. The first paragraph of the guaranty provided:

“For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the indebtedness of Borrower, or any one or more of them, to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents.”

Under the guaranty, Charles and Exceed were the “Borrower,” and plaintiff was the “Lender.” The “Note” included all of the borrower's promissory notes, loan agreements, and mortgages. “Related documents” included all promissory notes, loan agreements, and mortgages “whether now or hereafter existing” that were executed in connection with the indebtedness. The guaranty

specifically referenced the June 23, 2008, loan by number. The guaranty contained a consideration clause, as follows:

“Guarantor acknowledges that he is the father of the sole shareholder of the Borrower. The Guarantor acknowledges and agrees that the relationship between the Guarantor and the principal of the Borrower is just and adequate consideration for the obligations of the Guarantor under the terms of this Guaranty, the receipt and sufficiency of which are hereby acknowledged by the Guarantor.”

The Guaranty also contained an integration clause as well as the following waiver clause:

“Guarantor also waives any and all rights or defenses *** given to guarantors at law or in equity other than actual payment and performance of the indebtedness.”

¶ 6 Defendant pleaded three affirmative defenses: (1) defendant received no consideration for the guaranty; (2) defendant did not deliver the guaranty to plaintiff or to any lender; and (3) defendant did not appear before a notary and acknowledge his signature on the guaranty. Subsequent to filing his answer and affirmative defenses, defendant obtained leave to file a counterclaim alleging that plaintiff violated the Notary Public Act. The counterclaim is not at issue in this appeal.

¶ 7 Prior to trial, defendant filed a motion *in limine* to bar plaintiff from introducing parol evidence on the issue of consideration. The trial court orally ruled on the motion as follows:

“Well, the motion to bar [parol] evidence is granted, but it, as a general concept, but I’m, and I’m not holding off on, I’m ruling on the motion [*in limine*] because there’s a recent case that said I can’t do that. I have to decide the motion [*in limine*] now which I’m doing. I agree [parol] evidence should not be admitted as a basic precept of law. But I don’t know exactly which documents are being sought to be omitted until we get into

trial. *** We'll discuss it as it comes up.”

¶ 8 The following evidence was adduced at trial. Pamela Drysdale testified that she was employed by plaintiff as an assistant vice-president construction lender in 2006. She testified that plaintiff loaned Charles and Exceed \$1,750,000 on November 10, 2006. When the note came due, plaintiff renewed it twice. When the note again came due, Charles needed additional funds for an interest reserve and taxes. According to Drysdale, plaintiff did not want to loan Charles more money, and either Drysdale or Charles raised the subject of obtaining defendant's guaranty. Drysdale testified that she had telephone conversations with defendant, who was himself an experienced banker, regarding the guaranty, after which defendant sent her his financial information. Drysdale testified that she asked defendant to come to the bank to sign the guaranty, but defendant suggested that they meet at a McDonald's in Oakbrook, Illinois, which was more convenient for defendant. Drysdale testified that she met with defendant at McDonald's and explained to defendant that the purpose of the guaranty was to make him responsible for the loan. According to Drysdale, defendant said that he understood and that he had been in banking “for years.” In response to questions by the court, Drysdale testified that the meeting occurred around lunch time, and she said that defendant signed the guaranty “right in front of [her.]” According to Drysdale, she then returned to the bank with the signed guaranty, which she asked her assistant to notarize. Drysdale testified that her own notary commission had expired. During cross-examination, the court again questioned Drysdale. In response to the court's questions, Drysdale testified that she had telephone conversations with defendant a couple days before the meeting at McDonald's during which she explained to defendant that Charles and Exceed's note for \$1,750,000 was up for renewal and that plaintiff was willing to increase the amount of the loan so that Charles could pay his taxes. Defense counsel established

that Drysdale had gone over the terms of the guaranty with defendant in advance of the McDonald's meeting. According to Drysdale, she met with Charles at the bank on June 23, 2008, and he signed the note for \$1,973,250. Although plaintiff's attorney never established through Drysdale the date that she met defendant at McDonald's, it is inferable from questions defense counsel asked and Drysdale's answers that the meeting also occurred on June 23, 2008.

¶ 9 Martina Dehn testified that she was employed by plaintiff as an assistant vice-president processing loans and that she was familiar with Exceed's loan history and the fact that plaintiff required a guarantor for the June 23, 2008, loan. Dehn testified that she prepared the documents for Drysdale to obtain signatures on the note and the guaranty, "so that we could fund the loan." According to Dehn, Drysdale left the bank with an unsigned guaranty and the guaranty was returned to the bank with defendant's signature. Dehn testified that she was going through the file when she noticed that the guaranty was not notarized. She testified that she compared the signature on the guaranty with the signature on a personal financial statement defendant had provided to plaintiff in order to verify defendant's signature on the guaranty. Dehn then notarized the guaranty. On cross-examination, Dehn testified that she did not see defendant sign the personal financial statement or the guaranty. According to Dehn, plaintiff would not fund the loan to Charles and Exceed until it obtained defendant's signature on the guaranty.

¶ 10 Kim Smith, plaintiff's vice-president in credit operations, testified that the outstanding balance on the June 23, 2008, loan to Charles and Exceed was \$978,346.32. She testified that the legal fees of the prior firm representing the bank in the instant matter were \$15,027.71.

¶ 11 Defendant testified that he had a graduate degree in banking from the University of Oklahoma. His 25 years of experience in banking started when he worked for his family-owned bank. He then became president and chairman of the bank. He was familiar with documents

such as the guaranty at issue in the instant case. According to defendant, the first time he saw the guaranty at issue was at his deposition in plaintiff's attorney's office. Defendant testified that Charles had asked him to discuss a guaranty with plaintiff but he never spoke with plaintiff about it. When asked if his signature was on the guaranty, defendant responded, "It is a very good replica of my signature." Defendant stated, "I did not sign this document." Defendant denied meeting with Drysdale at the Oakbrook McDonald's restaurant, and he denied ever seeing her before she testified at trial. Defendant testified that he supplied his tax returns and a personal financial statement to plaintiff because plaintiff asked for them in connection with a loan to Charles. Charles told defendant that plaintiff was asking for defendant's participation. Defendant testified that plaintiff never talked to him about a guaranty, "not once." According to defendant, he told Charles that he would not guarantee the whole loan but would consider giving a limited guaranty covering only the "new money." Despite his willingness to do that, he never did it. Defendant said that, in his experience, a multi-million-dollar loan transaction never occurred, or never would occur, at a McDonald's restaurant. Defendant also stated that, in his experience, such a transaction would never be notarized after the fact.

¶ 12 Drysdale testified twice in plaintiff's case-in-chief. Her second appearance on the witness stand occurred after plaintiff presented defendant as an adverse witness for cross-examination, and plaintiff called her the second time to "rebut" defendant's testimony. According to Drysdale, she faxed the guaranty to defendant prior to the meeting at McDonald's, although she did not recall how far in advance of the meeting she did that. The court asked Drysdale why the meeting occurred at McDonald's rather than at the bank. She testified that she wanted defendant to come into the bank to sign the guaranty, but defendant lived so far away that he asked if they could meet partway. According to Drysdale, "I did it out of consideration for him."

¶ 13 Plaintiff rested. Defendant rested without presenting any witnesses. The trial court denied plaintiff's motion for a directed finding and took the matter under advisement. On March 22, 2013, the trial court entered judgment in favor of plaintiff and against defendant on count II of the amended complaint in the amount of \$978,346.32; found against defendant on his affirmative defenses; granted plaintiff fees and costs (which were proved up after trial) in the amount of \$70,401.90; and granted judgment in favor of plaintiff and against defendant on defendant's counterclaim. Defendant filed a timely appeal.

¶ 14 II. ANALYSIS

¶ 15 Defendant essentially makes two arguments: there was no legal consideration for the guaranty, and there was no "bargained-for" contract.

¶ 16 A. Consideration

¶ 17 Defendant first contends that the guaranty, on its face, recites consideration that is insufficient under Illinois law. Generally, a guaranty, like any other contract, must be supported by consideration. *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1028 (2007). Defendant argues that this issue presents a question of law so that our review is *de novo*. Plaintiff maintains that, because we are reviewing the trial court's judgment following a bench trial, our review is under the manifest-weight-of-the-evidence standard. We agree with defendant. In *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761 (2007), this court applied the *de novo* standard for reviewing the question of whether a postmarital agreement was invalid for lack of consideration, even though the appeal was from a judgment following a bench trial. *Tabassum*, 377 Ill. App. 3d at 770. We said that whether a contract contains consideration is a question of law. *Tabassum*, 377 Ill. App. 3d at 770. Here, defendant posits that the guaranty does not contain consideration because it recites only that the guaranty

was given “for good and valuable consideration,” and because the paragraph labeled “consideration” recites that the consideration for the guaranty was the familial relationship between defendant and Charles. On the first point, defendant relies on *First National Bank of Red Bud v. Chapman*, 51 Ill. App. 3d 738 (1977). According to defendant, the words “for value received” are insufficient to recite consideration. However, that was not what *Chapman* held. In *Chapman*, the court said that the words “for value received” did not establish consideration, because the evidence bearing on the question disclosed that there was no value received. *Chapman*, 51 Ill. App. 3d at 741. As to the second point, defendant is correct that a promise founded on past and future love and affection is not enforceable. *Lesnik v. Estate of Lesnik*, 82 Ill. App. 3d 1102, 1107 (1980). However, defendant ignores that the guaranty also references the contemporaneous loan to Charles and Exceed. Typically, the consideration supporting the underlying obligation will also support the guaranty, and no separate consideration flowing to the guarantor is necessary. *Tower*, 371 Ill. App. 3d at 1028. Consequently, we reject defendant’s argument that the guaranty lacked consideration.

¶ 18 Defendant next argues that the trial court erred in admitting parol evidence on the issue of consideration, because (1) the consideration contained in the guaranty relating to defendant and Charles’ familial relationship was contractual in nature and not a mere recital, and (2) the guaranty contract was integrated. Defendant’s position that this issue is reviewed *de novo* is based on his disingenuous reading of *River’s Edge Homeowners’ Ass’n. v. City of Naperville*, 353 Ill. App. 3d 874, 880 (2004), where the court reviewed easement documents, not the trial court’s admission of parol evidence, *de novo*. This court reviews the trial court’s decision concerning the admissibility of parol evidence for abuse of discretion. *CFC Investment, L.L.C. v. McLean*, 387 Ill. App. 3d 520, 526 (2008).

¶ 19 We must first determine what defendant means by “parol evidence.” Under Illinois law, the parol evidence rule generally excludes evidence of prior agreements or contemporaneous oral agreements that vary or contradict the terms of the written contract. *IFC Credit Corp. v. Burton Industries, Inc.*, 536 F.3d 610, 614 (7th Cir. 2008). Here, defendant’s written motion to bar “parol evidence” did not detail what documents or testimony he believed were subject to exclusion. However, in his argument before the trial court, defendant asserted that any evidence of the loan to Charles and Exceed was parol evidence. Defendant’s position is based on a misunderstanding of the parol evidence rule. The parol evidence rule bars prior or contemporaneous *oral* statements and also excludes the admission of prior *written* statements, but the rule does not exclude *contemporaneous written* documents from being admitted. *McDonald’s Corp. v. Butler Co.*, 158 Ill. App. 3d 902, 909 (1987). Furthermore, where different instruments are executed together as part of one transaction, they are to be read together and construed as constituting a single instrument. *Butler*, 158 Ill. App. 3d at 909. Here, plaintiff transacted the loan to Charles and Exceed on the same day that it obtained defendant’s guaranty, which referred to the loan by number. The instruments do not have to be executed simultaneously; if they are executed at different times as part of the same transaction, they will be construed together. *IFC*, 536 F.3d at 614. Even where a contract is integrated, the parol evidence rule does not bar contemporaneous written documents from being admitted. *IFC*, 536 F.3d at 614. In the present case, plaintiff would not have made the loan to Charles and Exceed without defendant’s guaranty. Dehn testified that she prepared the documents for Drysdale, who left the bank and then returned with the signed guaranty. Drysdale testified that she transacted the loan to Charles and Exceed on June 23, 2008. The guaranty is dated June 23, 2008, indicating that both transactions occurred on the same date. Consequently, the instruments were

part of the same transaction, and the contemporaneous written evidence of the loan to Charles and Exceed was admissible.

¶ 20 Defendant next argues that the trial court violated its order *in limine* barring parol evidence when it questioned witnesses about the circumstances leading up to and surrounding the signing of the guaranty. First, the trial court's ruling on the motion *in limine* was not as clear as defendant represents. The trial court, hearing defendant's argument, initially stated that it was too early to tell whether the motion should be granted, because the court did not know "what document we're talking about." At that point, plaintiff's counsel was under the impression that the court was denying the motion. In response to plaintiff's counsel's statement "so the motion [*in limine*] is denied," the court said, "Well, the motion to bar [parol] evidence is granted, but it, as a general concept." The court then reiterated that it did not know exactly which documents were sought to be excluded and ruled that "when [defense counsel] makes his objection, we'll argue about it." Any alleged violation of a motion *in limine* will warrant a new trial only where the order is specific, the violation is clear, and the appellant suffered prejudice. *Bakes v. St. Alexius Medical Center*, 2011 IL App (1st) 101646, ¶ 39. Here, the order was less than specific. While the trial court stated that it was granting the motion, it did so only in concept and as a "basic precept." In actuality, it reserved making specific rulings until the evidence was offered and defendant objected. Second, even assuming that the court unequivocally granted the motion *in limine*, there was no violation of the order. The trial court's questions to Drysdale and defendant regarding statements made prior to the execution of the guaranty did not vary or contradict the terms of the guaranty, because the guaranty itself referenced the loan to Charles and Exceed. (See *Asset Recovery Contracting, LLC v. Walsh Construction Co. of Illinois*, 2012 IL App (1st) 101226, ¶ 67 (parol evidence rule generally precludes evidence of understandings

not reflected in the contract, reached before or at the time of its execution, *that would vary or modify its terms*). Moreover, as we noted above, the written evidence of the loan to Charles and Exceed was properly admitted.

¶ 21 Because defendant's arguments regarding consideration fail on their merits, we will not discuss plaintiff's contentions that defendant contractually waived all defenses and that defendant admitted consideration in his pleadings.

¶ 22 B. Bargained-For Contract

¶ 23 Defendant asserts that, assuming parol evidence was properly considered, plaintiff failed "to demonstrate a bargain contract for guaranty with defendant." Defendant maintains that "no offer was made, no acceptance was made[,] and no agreement was demonstrated." Even if we could understand defendant's argument, we would deem it forfeited. Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), requires that an appellant's brief contain his contentions and the reasons therefor, accompanied by citations of authorities and pages of the record. *Elder v. Bryant*, 324 Ill. App. 3d 526, 533 (2001). Allegations of trial court error that are raised without supporting authority are deficient and warrant a finding of forfeiture. *Elder*, 324 Ill. App. 3d at 533. Here, the only case defendant cites is in support of his statement of the standard of review. The remainder of defendant's eight-page argument lacks any citation to authority. Accordingly, we find the argument forfeited.

¶ 24 III. CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 26 Affirmed.

¶ 27 JUSTICE SCHOSTOK, specially concurring:

¶ 28 Looking at the totality of the evidence in this case, the unmistakable impression that one

is left with is that the defendant signed the guaranty. Based on that conclusion, it necessarily means that the defendant wasted the resources of the trial court in having it sift through his baseless argument that he did not sign it. Our courts are more than overburdened with enough work already. The defendant's conduct was therefore reprehensible because it delayed the court's ability to consider other cases that involved more legitimate disputes.