

No. 1-14-1974

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WIRTZ BEVERAGES ILLINOIS, LLC)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
AMY M. TERI,)	
)	
Defendant-Appellant.)	No. 13 M1 162017
)	
and)	
)	
CODCAT, INC.)	Honorable
)	Andrea M. Buford,
Defendant.)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* Motion to dismiss creditor's action against guarantor properly denied; guarantor's transfer of shares to new shareholders did not discharge her obligations under the guaranty.

¶ 2 This appeal arises out of a small claims complaint filed by plaintiff Wirtz Beverages Illinois against defendants Codcat, Inc., and Amy Teri. In January 2014, plaintiff obtained a

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judgment against defendant Codcat for \$1,429.66 plus costs. Following the denial of defendant Teri's motion to dismiss and a bench trial, the court entered judgment against her for \$1,429.66 plus costs in June 2014. Defendant Teri appeals *pro se* from that judgment, contending that the court erred in denying her motion to dismiss. For the reasons that follow, we affirm.

¶ 3 Prior to addressing the merits of this appeal, we note that no appellee's brief has been filed. Thus, we consider the issues raised on appeal on defendant Teri's brief, alone. See *In re Marriage of Earlywine*, 2013 IL 114779, ¶ 13. We note additionally that the record includes neither a transcript of the trial or any of the proceedings leading up to trial. Neither does the record include an appropriate substitute of the proceedings below. (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)) As appellant, defendant Teri is obligated to provide this court with a sufficiently complete record of the trial court proceedings to support her claims of error. In particular, an issue relating to a court's factual findings and basis for its legal conclusions cannot be reviewed absent a report or similar record of the proceeding. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009) In the absence of the same, we presume that the court's orders conformed to the law and had a sufficient factual basis. *Id.* Small claims are not exempt from application of these principles. *Landau & Associates, P.C. v. Kennedy*, 262 Ill. App. 3d 89, 92 (1994).

¶ 4 Nevertheless, our review here is not precluded by the absence of transcripts; the record contains that which is necessary to dispose of the issues raised under the applicable standard of review. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill.App.3d 645, 655 (2007). Defendant Teri contends that the trial court erred in denying her motion to dismiss, a

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matter which we review *de novo* on the pleadings and other filings in the trial court.¹ *Schloss v. Jumper*, 2014 IL App (4th) 121086, ¶¶ 15, 20.

¶ 5 Here, plaintiff sued defendants for breach of a contract related to the sale of merchandise to defendant Codcat, with defendant Teri as guarantor for Codcat. The complaint alleged that Codcat did not pay for such merchandise delivered by plaintiff on various dates in 2013.

Attached to the complaint was the February 2003 guaranty signed by defendant Teri. The guaranty expressly provides that Teri "unconditionally guarantee(s) the full payment and prompt payment when due of any and all indebtedness which may at any time and from time to time be incurred by [Codcat] for merchandise sold and delivered" and that "this guaranty shall be continuing, absolute, and unconditional, and shall remain in full force and effect until written notice of its discontinuance shall be actually received [by a named entity at a specified address] as agent for the companies guaranteed hereunder, and also until any and all indebtedness existing before receipt of such notice shall be fully paid."

¶ 6 Plaintiff obtained a default judgment against Codcat. Subsequently, on January 22, 2014, Teri filed a motion to dismiss, in which she alleged that she sold her shares in Codcat and resigned as its president in September 2012, before the alleged unpaid bills were incurred. An additional motion, filed on that same date by Teri, sought to strike the court's award of attorneys fees, noting that the guaranty did not obligate her to pay either "attorneys fees or interest accrued." In its response to the motion to dismiss, plaintiff demanded strict proof of Teri's share sale and resignation and averred that plaintiff did not receive written notice of discontinuance as

¹ Teri's motion to dismiss is generic; it cites to neither section 2-615 nor 2-619 of the Code of Civil Procedure. (735 ILCS 5/2-615, 5/2-619) (West 2012). We presume, based upon its substance, that it was brought pursuant to section 2-619. In any case, our standard of review under either section 2-615 or 2-619 is *de novo*. *Nepal v. Murphy*, 316 Ill. App. 3d 581, 583 (2000).

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provided in the guaranty. On March, 20, 2014, the date set for the hearing on the motion to dismiss, the court set the case for trial on June 4, 2014 and also granted Teri's motion to strike attorneys fees of \$350, as to Teri alone. Following trial on the scheduled date, the court entered the judgment against Teri and this appeal followed.

¶ 7 A guarantor's liability is determined from the guaranty contract, which is interpreted under general principles of contract construction. *Bank of America National Trust and Savings Ass'n v. Schulson*, 305 Ill. App. 3d 941, 945 (1999). An unambiguous contract must be enforced as written. *Id.* The matter interposed by Teri – that she sold her Codcat shares and resigned as an officer of Codcat before the debts were allegedly incurred by Codcat – was insufficient under the clear terms of the guaranty to discharge her obligations under the terms of the guaranty. Plaintiff averred that it did not receive the written notice from Teri that *would* discontinue the guaranty, and the record does not include evidence from Teri that she tendered such written notice, nor does she so contend in her brief. Teri argues that the new shareholders are her successors in interest in Codcat and thus the proper guarantors for Codcat. However, the guaranty provides that "[t]his guaranty shall be binding upon the undersigned, jointly and severally, *and* upon heirs, legal representatives, successors, and assigns of the undersigned, and each of them." (Emphasis added.) That the new shareholders are Teri's successors or assigns did not terminate her guaranty as she supposes, neither did her transfer of stock to the new shareholders require that plaintiff have a new personal guaranty signed by them.

¶ 8 Accordingly, the judgment of the circuit court is affirmed.

¶ 9 Affirmed.