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2015 IL App (3d) 0140345-U

Order filed April 10, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

ARCHER BANK,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	
)	
HOMER DEVELOPERS, LLC, ORLAND)	
OAK PARTNERSHIP,)	Appeal No. 3-14-0345
)	Circuit No. 12-CH-2455
Defendants)	
)	
(Thomas Booth and Joan Booth,)	
)	Honorable Thomas A. Thanas,
Defendants-Appellants).)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Archer did not release its claims against appellants by entering into a settlement agreement with co-obligors.
- ¶ 2 Appellants, Thomas and Joan Booth, guaranteed two notes executed by plaintiff, Archer Bank, to Homer Developers, LLC, and Orland Oak Partnership. Barry and Jane Booth also guaranteed the same notes. After Homer Developers and Orland Oak defaulted, Archer entered

into a settlement agreement with Barry and Jane Booth. The agreement contained a covenant not to sue, which turned into a general release provision when Archer received a judgment of foreclosure or entered into a settlement agreement with appellants. Archer filed a complaint against appellants for relief pursuant to the guaranty. Archer and appellants filed cross-motions for summary judgment. The trial court granted Archer's motion and denied appellants'.

¶ 3 Appellants appeal, arguing that the trial court erred by finding that the general release provision did not release Archer's claims against appellants. We affirm.

¶ 4 **BACKGROUND**

¶ 5 Archer, an Illinois state bank, is the successor-by-merger to Allegiance Community Bank. Homer Developers, an Illinois limited liability company, develops commercial real estate. Thomas Booth is the managing member of Homer Developers. Joan Booth is Thomas's wife. Orland Oak, an Illinois partnership, owns and operates a commercial development in Illinois. Thomas owns a two-third interest in Orland Oak.

¶ 6 Archer loaned Homer Developers \$8,650,000 in February 2008; a promissory note evidenced the loan. Thomas, Joan, Barry, and Jane Booth executed and delivered to Archer a guaranty of the note. Pursuant to the terms and conditions of the guaranty, Thomas, Joan, Barry, and Jane guaranteed payment jointly and severally of the Homer note. Archer loaned Orland Oak \$2,100,000 in June 2010 and executed a promissory note. Thomas, Joan, Barry, and Jane Booth, again, guaranteed payment jointly and severally of the Orland note.

¶ 7 The borrowers defaulted on the promissory notes. Archer attempted to settle with all the parties, but ultimately entered into a settlement agreement with only Barry and Jane Booth as guarantors. The opening line of the agreement stated: "This settlement agreement (the "Agreement") is *** by and among BARRY E. BOOTH, an individual ("Barry"), JANE

BOOTH, an individual ("Jane", and together with Barry, the "Booths") and ARCHER BANK, an Illinois state chartered bank (the "bank"), ***." The agreement subsequently defined "Other Guarantors" as Joan and Thomas Booth. The settlement agreement included a covenant not to sue, which turned into a general release upon the occurrence of stated events. The general release provision stated:

"Upon the occurrence of any of the following enumerated events, in addition and as a supplement to the Covenant Not to Sue above, which shall remain in full force and effect, the Bank shall be deemed, without further act, notice or deed to have knowingly and voluntarily, unconditionally and irrevocably, absolutely, finally and forever released, acquitted and discharged the Booths, and each of them, and their heirs, legal representatives, successors and assigns from any Claim relating in any manner whatsoever to this Agreement, Homer LLC, Orland Partnership, the Collateral Properties, Indebtedness, Loan Documents (including, without limitation, the Guaranties), Other Guarantors, Trust 1-1309, Trust 1-0957, Trust 74-3420, Trust 74-3569, 159th St. Property, and/or Enforcement Actions, that existed at any time on or prior to the execution of this Agreement, including relating or purportedly relating, in any manner whatsoever, to any facts, known or unknown, in existence on or at any time prior to the execution of this Agreement, with the exception of the Parties' obligations set forth herein:

(1) The execution of a settlement or similar agreement(s) between the Bank and Other Guarantors which fully settles all disputes between all of such parties;

(2) The sale, transfer or other disposition of the Collateral Properties the Outlot and the 159th St. Property by the Bank or its nominee, whether by agreement, foreclosure, or otherwise."

¶ 8 Archer filed a complaint against the appellants pursuant to the original guarantees. Ultimately, appellants and Archer filed cross-motions for summary judgment. Appellants argued that Archer released any claims against them by entering into a general release with Barry and Jane Booth. The trial court conducted two hearings on the motions before granting Archer's motion for summary judgment and denying appellants' motion. The court's order denying appellants' motion contained language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 9 ANALYSIS

¶ 10 Appellants argue that the court erred in denying their motion for summary judgment and granting Archer's motion. We apply a *de novo* standard of review when reviewing summary judgment rulings. *Fitzgibbon v. National Broadcasting Co.*, 314 Ill. App. 3d 52, 54 (2000). Where there are no genuine issues of material facts, a court may grant a motion for summary judgment. *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 129 (2003). A triable issue of facts exists where there is a dispute as to material facts or where the parties do not dispute material facts, but a reasonable person might draw different inferences from such facts. *In re Estate of Hoover*, 155 Ill. 2d 402, 411 (1993).

¶ 11 Appellants argue that the general release provision contained in the settlement agreement between Archer and Barry and Jane Booth released Archer's claims against appellants. Specifically, appellants argue that: (1) the release provision released Archer's claims against the principal obligors; (2) Archer failed to specifically reserve any claims against appellants; and (3) the language in the release provision is ambiguous as to whether Archer released its claims against appellants. Archer argues that the general release provision released only Archer's claims against Barry and Jane Booth. Appellants' arguments all turn on the interpretation of the language contained in the settlement agreement. We find that the language in the settlement agreement unambiguously shows that Archer intended to release only its claims against Barry and Jane Booth.

¶ 12 A release is considered a contract and governed by contract law. *Gillilan v. Trustees for Central States, Southeast & Southwest Areas Pension Fund*, 183 Ill. App. 3d 306, 312 (1989). Our goal in interpreting a contract is to give effect to the parties' intentions. *Richard W. McCarthy Trust Dated September 2, 2004 v. Illinois Casualty Co.*, 408 Ill. App. 3d 526, 535 (2011) (citing *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007)). We will determine the meaning and intentions of the parties from the face of the document. *Gillilan*, 183 Ill. App. 3d at 312. Where the contract is unambiguous, we must look to the written terms of the contract alone without reference to extrinsic evidence. *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007). We will consider the document as a whole as opposed to focusing on isolated portions of the document. *Richard W. McCarthy*, 408 Ill. App. 3d at 535 (citing *Gallagher* 226 Ill. 2d at 233). Where the release is clear and explicit, we must enforce the release as written. *Gillilan*, 183 Ill. App. 3d at 312.

¶ 13 We agree with appellants that the release of a borrower's obligations also releases the guarantor's obligation. *Marble Emporium, Inc. v. Vuksanovic*, 339 Ill. App. 3d 84 (2003). We also agree with the appellants that at common law, a release of one co-obligor released all obligors. *Porter v. Ford Motor Co.*, 96 Ill. 2d 190 (1983). However, our supreme court modified this rule to hold that an "unconditional release of one co-obligor releases all unless a contrary intent appears from the face of the instrument." *Porter*, 96 Ill. 2d at 195; see also *Parmelee v. Lawrence*, 44 Ill. 405, 410 (1867). For the reasons outlined below, we find that the document is clear that Archer did not release its claims against the borrowers or the appellants.

¶ 14 Here, it is clear from the settlement agreement that Archer released only Barry and Jane Booth from their guaranty obligations. The release provision stated: "Upon occurrence of any of the following enumerated events, *** the Bank [previously defined as Archer] shall be deemed *** to have knowingly and voluntarily, unconditionally and irrevocably, absolutely, finally and forever released, acquitted and discharged the Booths [previously defined as Barry and Jane Booth], and each of them ***." "The Booths," as used in the agreement, included neither appellants nor the borrowers. In fact, the document defined appellants as "Other Guarantors" and names the borrowers as "Homer LLC" and "Orland Partnership." Nowhere in the release provision does it state that Archer agreed to release "Other Guarantors" or the borrowers.

¶ 15 The release provision further provided that the covenant not to sue would turn into a general release upon the occurrence of one of the following two events: "(1) The execution of a settlement or similar agreement(s) between the Bank and the Other Guarantors which fully settles all disputes between all of such parties; (2) The sale, transfer or other disposition of the Collateral Properties the Outlot and the 159th St. Property by the Bank or its nominee, whether by agreements, foreclosure or otherwise." Appellants were not parties to the settlement

agreement. In fact, it is evident from the first event listed above that Archer had yet to settle with appellants. Elsewhere, the settlement agreement stated that Archer attempted to settle with appellants, but were unable to do so. Also, pursuant to the guaranty, appellants agreed to be held joint and severally liable for the notes. Thus, Archer had the choice either to sue all, some or one of the joint debtors for the full amount owed. *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 801 (2009) (citing *Coney v. J.L.G. Industries, Inc.*, 97 Ill. 2d 104, 199-20 (1983)).

¶ 16 Although not necessary, Archer included language in the document preserving its claims against appellants. The covenant not to sue stated: "this Covenant shall not apply to, constitute a release of or operate to discharge or otherwise affect: (i) any of the Indebtedness, obligations or liabilities owing to the Bank from Homer LLC, Orland Partnership or the Other Guarantors." Reading such language in conjunction with the rest of the documents, it is clear that Archer intended to preserve its claims against appellants and release only Barry and Jane Booth.

¶ 17 Lastly, appellants argue that the inclusion of the words "each of them" after the Booths makes it ambiguous as to which Booths the release applied. We disagree. We have already found that the document clearly releases Barry and Jane Booth and only Barry and Jane Booth. The inclusion of "each of them" after "the Booths" does not alter our finding. The agreement defined the Booths as Barry and Jane. The document does not support a finding that Archer added the words "each of them" to modify the definition of "the Booths" to include the appellants. The document unambiguously releases only Barry and Jane Booth.

¶ 18 Based on our finding that the release provision did not release Archer's claims against appellants, we need not address Archer's argument that appellants waived their right to raise defenses.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 21 Affirmed.