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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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BEHROUZ and JACKELIN AFRAMIAN	)	Appeal from the Circuit Court
FAMILY TRUST DATED JULY 1, 1999,	)	of Stephenson County.
as beneficiary of Chicago Title Company,	)	
Trustee,	)	
	)	
Plaintiff-Appellant,	)	
v.	)	No. 13-CH-25
	)	
FREEPORT RENAISSANCE, LLC,	)	
E AND E MORTGAGE BANKERS	)	
CORPORATION, JOSEF SARSHAR,	)	
DALIA SARSHAR, FREEPORT	)	
INDUSTRIAL ROOFING, INC.,	)	
RESTORX OF NORTHERN ILLINOIS,	)	
PCH USA 26, LLC, MARC MIRBOD,	)	
FARIBA ATIGHEHCHI,	)	
SHAHRAM ELYASZADEH, Unknown	)	
Owners and Non-record Claimants,	)	
	)	
Defendants	)	Honorable
	)	Glenn R. Schorsch,
(Fariba Atighehchi, Defendant-Appellee).	)	Judge, Presiding

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Burke and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in granting summary judgment in the defendant's favor because the guarantee agreement at issue was ambiguous and there were genuine issues of material fact.

¶ 2 The plaintiff, Behrouz and Jackelin Aframian Family Trust, dated July 1, 1999, filed this suit to enforce an alleged personal guarantee on a loan, executed by the three members of one of the defendants, Freeport Renaissance, LLC. The trial court entered summary judgment in favor of one of the members of Freeport Renaissance, Fariba Atighehchi, finding that the guarantee at issue in this case was a corporate guarantee and was not a personal guarantee from Atighehchi. The plaintiff appeals from that order. We reverse and remand for additional proceedings.

¶ 3 **BACKGROUND**

¶ 4 Prior to 2010, 110 FM, LLC, purchased real property located at 1201-1287 West Galena Avenue in Freeport, commonly known as the Freeport Lincoln Mall. 110 FM was equally owned by the defendants, Marc Mirbod and Atighehchi. Atighehchi was a licensed real estate agent in California. Thereafter, Freeport Renaissance, a Nevada limited liability company, purchased the property from 110 FM, with a cash contribution from the defendant, Shahram Elyaszadeh, through his wholly owned company, PCH USA 26, LLC (PCH), a California limited liability company. As a result of the purchase, Freeport Renaissance was owned 50% by PCH, 25% by Mirbod, and 25% by Atighehchi. PCH was the manager of Freeport Renaissance. Atighehchi was responsible for the leasing at the property. At the time of these transactions, all the members of Freeport Renaissance lived in California.

¶ 5 In 2010, Elyaszadeh approached the plaintiff to obtain a loan. Elyaszadeh had procured loans from the plaintiff in the past. In previous loans, Elyaszadeh had signed personal guaranties in favor of the plaintiff. Elyaszadeh, through another company owned by him, E&E Mortgage Bankers, LLC, had his employee, Allen Santos, prepare the loan documents. Santos prepared four loan documents: a promissory note, a security agreement, a deed of trust, and a guarantee (hereinafter “Guaranty”).

¶ 6 The Guaranty defined guarantor in the introductory paragraph as “Freeport Renaissance LLC, \*\*\* (collectively, the ‘Guarantor’).” The Guaranty also defined borrower in its recitals as Freeport Renaissance. The Guaranty indicated that the plaintiff was considering making a loan to borrower, that the guarantor desired that the plaintiff extend the loan, and that the guarantor was executing the guarantee to induce the plaintiff to extend the loan to the borrower. In paragraph 7 of the Guaranty, any notice to the guarantor was to be sent to Freeport Renaissance at its business address. Paragraph 19a of the Guaranty provided that “[i]f more than one person has signed this Guaranty, it shall be the joint and several obligation of all such persons.” Paragraph 19b, indicated that “the term ‘Guarantor’ shall be deemed to refer to any one or both of the parties constituting Guarantor.” Paragraph 21 provided that:

“Each individual whose signature appears below represents and warrants to the other party that such individual has the full power, authority and legal right to execute the Guaranty for himself or herself (and/or for any legal entity on behalf of which he or she signs) and to perform all obligations on his, her or its part under this Guaranty.”

The Guaranty was signed by Elyaszadeh, as manager of PCH, and by Mirbod and Atighehchi as “individuals.” The Guaranty was drafted in California and was signed by Elyaszadeh and Atighehchi in California, and provided that it was subject to California law. The record indicates that Mirbod was in New York when he signed the loan documents.

¶ 7 The promissory note, dated November 1, 2010, reflected a \$600,000 loan that was to mature within one year. The maker was defined as Freeport Renaissance. The note was signed by Elyaszadeh, as manager of PCH, and by Mirbod and Atighehchi as “individuals.” The security agreement, dated November 1, 2010, defined guarantor and borrower as Freeport Renaissance. It further provided that “Borrower and Guarantor are sometimes individually and/or collectively referred to herein as ‘Debtor’.” In paragraph 7a, it stated that the debtor was

“in the case of Guarantor, an individual whose residence is in Los Angeles.” The security agreement was signed by Elyaszadeh, as manager of PCH, and by Mirbod and Atighehchi as “individuals.” The deed of trust, which transferred the deed for the Freeport Lincoln Mall to a trustee (Chicago Title Company) and named the plaintiff as beneficiary, was signed by Elyaszadeh as manager of PCH and as a member of Freeport Renaissance. Mirbod and Atighehchi both signed the deed of trust as members of Freeport Renaissance.

¶ 8 The documents were sent to the plaintiff on October 28, 2010. Prior to funding the loan, the plaintiff responded via email that it needed personal guarantee agreements from all the members of Freeport Renaissance. This response was sent to Elyaszadeh and copied to Santos. Santos responded as follows: “Please be advised that the provided Guaranty Agreement is a ‘Blanket’ personal guarantee with all three members guaranteeing the loan.” Nonetheless, the plaintiff required that Elyaszadeh sign a personal guarantee as an “individual.” Thus, an additional guarantee agreement was drafted and signed by Elyaszadeh as an individual. The Elyaszadeh guarantee defined the guarantor as Elyaszadeh, individually. Additionally, as requested by the plaintiff, an addendum to the promissory note was drafted and signed by Elyaszadeh as the managing member of Freeport Renaissance.

¶ 9 On November 18, 2010, the loan was funded. The defendants defaulted on the note by failing to pay all amounts due before the maturity date.

¶ 10 On February 13, 2013, the plaintiff filed a verified six-count complaint against Freeport Renaissance, PCH, Mirbod, Atighehchi and Elyaszadeh. In addition, the plaintiff also named, as defendants, others that had interests or liens on the mortgaged property, specifically, E&E Mortgage Bankers (based on a mortgage and security agreement, debt and security interest subordination agreement, and an assignment of mortgage), Josef and Dalia Sarshar (based on an assignment of mortgage), Freeport Industrial Roofing, Inc. (based on a contractor’s lien), and

Restorx of Northern Illinois (based on an existing judgment against Freeport Renaissance). On October 29, 2013, the plaintiff filed an amended complaint to correct the legal description of the subject property. In its complaint the plaintiff sought foreclosure of the mortgage (count I) against all the defendants other than Elyaszadeh; collection on the personal guaranties from PCH, Mirbod, Atighehchi, and Elyaszadeh (counts II through V, respectively); and foreclosure on the security agreement against Freeport Renaissance, PCH, Mirbod and Atighehchi (count VI).

¶ 11 On February 5, 2015, the plaintiff filed a motion for summary judgment. On May 18, 2015, a judgment of foreclosure was entered. The trial court found that the total amount due to the plaintiff was in excess of \$2.4 million plus interest, costs, and attorney fees. The trial court entered a personal deficiency judgment against Freeport Renaissance and PCH, in an amount to be determined at the time of the confirmation of sale. The trial court also entered summary judgment on count I against the Sarshar defendants. A default judgment was entered on counts I, II, and VI against Freeport Renaissance, PCH, Freeport Industrial Roofing, Restorx of Northern Illinois, E&E Mortgage Bankers Corporation, and unknown owners and non-record claimants. Per the agreement of the parties, count VI was dismissed against Mirbod and Atighehchi. Elyaszadeh, Mirbod, and Atighehchi were reserved the right to challenge the judgment as it applied to them. Mirbod later settled out of court and count III was dismissed. Accordingly, count IV against Atighehchi and count V against Elyaszadeh remained pending on the motion for summary judgment and hearing was continued on those counts.

¶ 12 In an August 4, 2016, discovery deposition, Elyaszadeh stated that he was a licensed real estate broker in California. He was the owner and sole shareholder of a company named E&E Mortgage Bankers, which provided financing for real estate transactions. His wife was the sole member and manager of Sunrise Financial, LLC. With respect to the loan from the plaintiff to

Freeport Renaissance, Sunrise Financial was paid a \$30,000 loan origination fee and Mortgage Bankers was compensated \$1500 for preparation of the loan documents. Mortgage Bankers' employee, Allen Santos, prepared all the loan documents. Elyaszadeh stated that he discussed the terms of the loan with the other members of Freeport Renaissance and they all agreed to the terms.

¶ 13 In a February 17, 2017, discovery deposition, Santos stated that his supervisor at Mortgage Bankers was Elyaszadeh and everything Santos did, including drafting documents, was reviewed by Elyaszadeh. Santos further stated that, with regard to the Freeport Renaissance loan from the plaintiff, his understanding was that he was supposed to draft documents such that all three members of Freeport Renaissance personally guaranteed the loan.

¶ 14 In a September 29, 2016, discovery deposition, Atighehchi stated that she had known Elyaszadeh for about 35 years because he was her father's friend. Elyaszadeh, Mirbod and she were all members of Freeport Renaissance. At some point, Freeport Renaissance had to borrow money to pay taxes and other bills. At that time, Elyaszadeh was managing Freeport Renaissance. Elyaszadeh negotiated the loan from the plaintiff. She had never met or talked to the plaintiff and never asked Elyaszadeh about the terms of the loan. Atighehchi acknowledged that she had agreed to get a loan from the plaintiff for Freeport Renaissance. She did not read the entire note before she signed it—she just looked at the first and last pages. She did not know who drafted the note. She acknowledged that she signed the deed of trust the same day as the note. She did not know who drafted it and did not review the document before she signed it. She acknowledged that she signed the deed of trust as a member of Freeport Renaissance. She also acknowledged that she signed the Guaranty in her individual capacity but stated that she believed the guarantor was Freeport Renaissance. She believed that the term “an individual”

next to her signature referred to the fact that she was an individual member of Freeport Renaissance. She stated that she never would have personally guaranteed the note.

¶ 15 In a July 18, 2016, video deposition, Behrouz Aframian testified that, prior to the loan at issue in this case, he had negotiated two other loans with Elyaszadeh. Both of those loans were personally guaranteed by Elyaszadeh even though Elyaszadeh was not the borrower. Elyaszadeh did all the legal work and paperwork on the two previous loans and received points from the borrower. Aframian did not remember if he paid Elyaszadeh for those services. Relative to the loan related to Freeport Renaissance, Elyaszadeh told him that the note would be personally guaranteed by all three members of Freeport Renaissance. His understanding was that this would be a personal loan to the three members of Freeport Renaissance. He did not believe that he was loaning money to Freeport Renaissance. Aframian testified that when he received the loan documents, he did not review them. He relied on Elyaszadeh's personal representations and believed he was receiving a personal guarantee.

¶ 16 On June 27, 2017, the plaintiff filed a brief in support of its motion for summary judgment as to counts IV and V, seeking judgment on the personal guaranties of Atighehchi and Elyaszadeh respectively. On July 3, 2017, Atighehchi filed a cross motion for summary judgment on count IV. A hearing was held on the motions on October 4, 2017. A transcript of the hearing is not included in the record on appeal.

¶ 17 On January 22, 2018, the trial court presented its decision in court. The trial court found that the additional guarantee signed by Elyaszadeh as an individual and naming him as the guarantor was specific and unambiguous. The trial court granted the plaintiff's motion for summary judgment against Elyaszadeh on count V. With respect to Atighehchi, the trial court found that the Guaranty was "sloppy." The trial court acknowledged that the plaintiff wanted a personal guarantee from all three members of Freeport Renaissance, but found that it did not get

it. The trial court noted that Santos' email stated that the guarantee was a "blanket personal guaranty with all three members." The trial court found that the term "members" was used to guarantee the loan and it applied to Freeport Renaissance, not the members individually. The trial court further found that the term "individual" next to Atighehchi's signature on the Guaranty did not control the capacity in which the document was signed. The trial court noted that the Guaranty listed Freeport Renaissance as the guarantor and that Atighehchi was not listed anywhere in the document as an individual. Further, the document referred only to a singular guarantor, and did not use the plural "guarantors." The trial court thus granted summary judgment on count IV in favor of Atighehchi and stated, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), that there was no just reason for delaying enforcement or appeal of its order. The plaintiff filed a timely notice of appeal.

¶ 18

#### ANALYSIS

¶ 19 On appeal, the plaintiff argues that the trial court erred in granting summary judgment in favor of Atighehchi on count IV. The plaintiff argues that the Guaranty is ambiguous and interpreting it to find that Freeport Renaissance was guaranteeing its own debt is an absurd result. Further, the plaintiff argues that the uncontested extrinsic evidence supports a conclusion that the parties intended that Atighehchi would be personally liable on the Guaranty.

¶ 20 At the outset, we note that the parties both agree that California law should govern this case. Illinois courts generally apply the law that the parties understood would govern the case. *Hall v. Sprint Spectrum L.P.*, 376 Ill. App. 3d 822, 826 (2007). Paragraph 10 of the Guaranty states that the Guaranty "shall be construed in accordance with and be governed by the laws of the State of California." Although we apply California substantive law, we follow Illinois procedural law. *Boersma v. Amoco Oil Co.*, 276 Ill. App. 3d 638, 645 (1995).



¶ 21 Summary judgment is proper when the pleadings, depositions, and affidavits on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Kleinschmidt, Inc. v. County of Cook*, 287 Ill. App. 3d 312, 315-16 (1997). The purpose of summary judgment is not to try a question of fact, but to determine whether any genuine issue of fact exists to be tried. *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). In determining this, the court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Here, though the parties' cross-motions for summary judgment were a mutual concession that there is no genuine issue of material fact, we are not bound by that concession and may find the matter unsuitable for summary judgment regardless. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. "Summary judgment is a drastic remedy and should be allowed only when the right of the moving party is clear and free from doubt." *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291 (2000). We apply a *de novo* standard of review to a trial court's ruling granting or denying a motion for summary judgment. *Pace Communications Services Corp. v. Express Products, Inc.*, 2014 IL App (2d) 131058, ¶ 15.

¶ 22 Under California law, the fundamental goal of contract interpretation is to give effect to the mutual intent of the parties. *Bank of the West v. Superior Court*, 833 P.2d 545, 552 (Cal. 1992). Intent is to be inferred from the written provisions of the contract (*State of California v. Continental Insurance Co.*, 281 P.3d 1000, 1004 (Cal. 2012)) and if the contractual language is clear and explicit, and does not involve an absurdity, it governs (Cal. Civ. Code § 1638). The language in a contract must be construed in the context of the instrument as a whole and in the circumstances of the case. *Bank of the West*, 833 P.2d at 552. A court's paramount consideration in construing a contract is the parties' objective intent, as evidenced by the plain language of the contract, rather than the subjective intent of one of the parties. *Founding*

*Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.*, 135 Cal. Rptr. 2d 505, 514 (Cal. Ct. App. 2003). Any ambiguity in a contract should be construed against the drafter. *Cathay Bank v. Lee*, 18 Cal. Rptr. 2d 420, 424 (Cal. Ct. App. 1993).

¶ 23 If the meaning of the contract language is in dispute, the trial court may provisionally consider extrinsic evidence to determine the parties' intent only where it is relevant to prove a meaning to which the language is reasonably susceptible. *Pacific Gas & Electric Company v. G.W. Thomas Drayage & Rigging Company, Inc.*, 442 P.2d 641, 644 (Cal. 1968). If the court determines that the language is reasonably susceptible to more than one interpretation, the contract is ambiguous and the court must determine what construction is to be placed on the ambiguous language by applying the standard rules of interpretation. *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 132 Cal. Rptr. 2d 151, 158 (Cal. Ct. App. 2003). The extrinsic evidence is then admitted to aid in interpreting the contract. *Wolf v. Superior Court*, 8 Cal. Rptr. 3d 649, 656 (Cal. Ct. App. 2004). If the extrinsic evidence is contradictory, a question of fact is presented which precludes summary judgment. *Id.*

¶ 24 In the present case, the trial court erred in granting summary judgment in favor of Atighehchi because the Guaranty is ambiguous and the extrinsic evidence raises genuine issues of material fact. First, the Guaranty is ambiguous on its face. While the Guaranty defines the guarantor as "Freeport Renaissance LLC," the signature block contains no reference to Freeport Renaissance. Elyaszadeh signed as the manager of PCH and Mirbod and Atighehchi each signed as "an individual." Thus, none of the signatures aligned with the named Guarantor. Further, paragraph 19b of the Guaranty states that "the term 'Guarantor' shall be deemed to refer to any one or both of the parties constituting Guarantor." This implies that there are two parties that are guarantors. Further, paragraph 9 indicates that the Guaranty would be binding upon "the executors, administrators, personal representatives, legatees, heirs, successors and permitted

assigns of Guarantor.” This language indicates that the Guaranty is a personal guaranty, which is at odds with Freeport Renaissance being a corporate guarantor.

¶ 25 Additionally, a provisional examination of the extrinsic evidence also reveals some ambiguity. The guarantor is defined in the Guaranty as Freeport Renaissance, LLC. However, the Guaranty was executed along with other instruments including a note, a deed of trust and a security agreement. The security agreement named the guarantor as Freeport Renaissance but defined the guarantor as “an individual whose residence is in Los Angeles County.” Further, it was seemingly absurd for the parties to execute a guaranty with Freeport Renaissance as the guarantor since Freeport Renaissance was also the borrower on the promissory note. Generally, a guarantor is a separate third party, not the borrower. Finally, Atighehchi signed the deed of trust as a member of Freeport Renaissance and if the parties intended for the Guaranty to be a corporate guaranty, they could have signed it the same way.

¶ 26 We thus turn to the extrinsic evidence to interpret the contract. If the extrinsic evidence were not conflicting, summary judgment would be proper. *Id.* However, the extrinsic evidence is conflicting and there are genuine questions of material fact which preclude the entry of summary judgment for either party. While Atighehchi argues that the parties’ intent was that the Guaranty serve a corporate guaranty, the depositions of Santos and Aframian indicate that the parties intended that it be a personal guarantee from all three members of Freeport Renaissance. Further, while ambiguities in a contract should normally be construed against the drafter, it is unclear whether Mortgage Bankers and Santos were drafting the documents on behalf of the plaintiff, as in previous loan transactions, or whether they were drafting the loan documents on behalf of Freeport Renaissance and its members. If Santos and Mortgage Bankers were drafting the documents on behalf of Freeport Renaissance, there is a question as to whether Santos was acting on behalf of Atighehchi. In her deposition, Atighehchi stated that she did not authorize

Santos to act on her behalf, but the record also indicates that she acquiesced in allowing Elyaszadeh to obtain the loan from the plaintiff on behalf of Freeport Renaissance and to determine the terms of the loan. Because the Guaranty is ambiguous and there are genuine questions of material fact, the trial court erred in granting summary judgment in favor of Atighehchi.

¶ 27 In so ruling, we note that Atighehchi relies on *Sebastian International, Inc. v. Peck*, 240 Cal. Rptr. 911 (Cal. Ct. App. 1987), and *Home Federal Savings & Loan Association v. Ramos*, 284 Cal. Rptr. 1 (Cal. Ct. App. 1991), for the proposition that signing her name as “an individual” was not determinative of her legal capacity and did not create an ambiguity.

¶ 28 In *Sebastian*, the defendant, Kenneth Peck, was the vice-president of a company that subleased office space from the plaintiff, Sebastian International (Sebastian). *Sebastian*, 240 Cal. Rptr. at 911. Peck had executed a personal guarantee of the lease but, on the signature line where he signed, he was identified as “Kenneth Peck, Vice President.” *Id.* When the company defaulted on the lease, Sebastian brought suit to enforce the personal guarantee of the lease. *Id.* at 912. The trial court granted Sebastian’s motion for summary judgment, finding Peck liable on the personal guarantee. *Id.*

¶ 29 Peck appealed, arguing that he had signed the guarantee only on behalf of the lessee corporation. The reviewing court affirmed the trial court’s decision. The reviewing court noted that the body of the guarantee document referred only to Peck in his individual capacity and contained “no reference to Peck’s relationship to [the lessee] as a corporate officer or to his signing the guaranty pursuant to such a relationship.” *Id.* at 913-14. The reviewing court further stated:

“By its terms, the contract expressly describes a personal obligation and thus raised no question as to Peck’s individual liability. The words “Vice President” added to the

signature line are merely descriptive and as a matter of law under the principle of *descriptio personae* do not alter his obligation. Moreover, the guaranty would be rendered a nullity if Peck had signed only in his corporate capacity since the corporation was already bound under the terms of the sublease.” *Id.* at 914.

¶ 30 In *Ramos*, the question was also whether a guarantee signed by the defendant, Ronald Ramos, bound Ramos personally or the corporation for whom he was the president. *Ramos*, 284 Cal. Rptr. at 2. The corporation had issued a promissory note along with a guarantee. *Id.* The language of the guarantee unambiguously indicated that Ramos was personally guaranteeing the note. When Ramos signed the guarantee, he also put the abbreviation “Pres.” after his signature. *Id.* The signature and corporate designation on the guarantee matched that found on the promissory note, which Ramos had executed on behalf of the corporation. *Id.* When a dispute arose about whether the guarantee personally bound Ramos, the reviewing court compared the case to *Sebastian*, and stated that “to interpret the document as a guaranty by the corporate principal is objectively unreasonable because the [corporation was] already liable without the guaranty.” *Id.* at 3.

¶ 31 The holdings in *Sebastian* and *Ramos* do not require us to find that the Guaranty is not ambiguous. The *Ramos* court stated that there was no blanket rule that a signatory’s notation of his or her representative status can never raise an issue as to a guarantor’s identity. *Ramos*, 284 Cal. Rptr. at 3. Further, those cases addressed only the scenario where a supposed guarantor attempted to evade personal liability by adding a representation of corporate capacity after his signature. In this case, Atighehchi indicated that she was signing as an individual, not as a representative of Freeport Renaissance. Moreover, in both *Sebastian* and *Ramos*, the courts noted that it would be objectively unreasonable to construe a guarantee as binding a corporation when the corporation was already bound under the terms of a related promissory note. *Ramos*,

284 Cal. Rptr. at 3; *Sebastian*, 240 Cal. Rptr. at 914. Under the Guaranty in this case, it would seem objectively unreasonable to have Freeport Renaissance guarantee the note as the company was already directly liable on the note. Accordingly, as the Guaranty at issue is ambiguous and the extrinsic evidence is conflicting, summary judgment in this case is improper. *Wolf*, 8 Cal. Rptr. 3d at 656.

¶ 32

#### CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Stephenson County is reversed and the cause is remanded for additional proceedings.

¶ 34 Reversed and remanded.