SECOND DIVISION
AUGUST 28, 2012

No. 1-11-0991

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CONNIE BROBST and CHARLES BROBST, Plaintiffs-Appellants, v. JOHNSON REALTY GROUP, LTD., LANDHAUS CONSTRUCTION COMPANY, LTD., and RODNEY JOHNSON, Individually, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 09 L 9018 Honorable Brigid Mary McGrath, Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Quinn and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in dismissing counts II and III of the plaintiffs' original complaint, and amended complaint, and did not err in dismissing count IV of the plaintiffs' amended complaint and second amended complaint because the plaintiffs failed to state a claim against the defendant individually.

¶ 2 This appeal arises from a March 10, 2010 order that dismissed plaintiffs-appellants Connie Brobst and Charles Brobst's (the Brobsts) complaint as to defendant-appellee Rodney Johnson (Rodney); an August 26, 2010 order that dismissed with prejudice counts II and III of the amended

complaint as to Rodney, and dismissed without prejudice count IV of the amended complaint as to Rodney; and a March 4, 2011 order that dismissed count IV of the second amended complaint. On appeal, the Brobsts argue that: (1) the trial court erred in dismissing count II of their original complaint and amended complaint, which alleged breach of personal guaranty against Rodney; (2) the trial court erred in dismissing count III of their original complaint and amended complaint, which alleged an account stated against Rodney; (3) the trial court erred in dismissing count IV of their amended complaint, which alleged promissory estoppel against Rodney; and (4) the trial court erred in dismissing count IV of their second amended complaint which alleged promissory estoppel and equitable estoppel against Rodney. For the following reasons, we affirm the ruling of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 In March 2005, the Brobsts entered into an investment agreement with defendants Johnson Realty Group, LTD. (Johnson Realty) and Landhaus Construction Company, LTD. (Landhaus) for the development of a project at 741 E. Sunnyside Avenue, Libertyville, Illinois. The Brobsts invested $40,000 in the project, which was also financed by a $644,000 mortgage loan from Edens Bank. The project was expected to sell for an amount in the range of $900,000. The investment agreement stipulated that all funds received from the sale or refinancing of the project would first be applied to the repayment of the mortgage. After repayment of the mortgage, the Brobsts had first priority and claim against all remaining funds for repayment of their investment with interest at the rate of 10 percent per annum. If the sale of the project did not occur within one year of the execution of the investment agreement, either Johnson Realty and Landhaus could elect to repay the Brobsts

or the Brobsts had the right to demand payment at any time thereafter. The investment agreement was signed by Rodney as president of Johnson Realty, Eric Johnson as president of Landhaus, and the Brobsts.

¶ 5 On June 30, 2008, counsel for the Brobsts, Robert Minetz (Minetz), sent a letter to Rodney demanding repayment of the Brobsts' investment plus 10 percent interest. On July 11, 2008, Eric Johnson sent a letter to Charles Brobst apologizing for his lack of communication. Eric Johnson's letter stated that the Brobsts would be repaid in six months, or in the alternative, the parties could set up a payment plan to repay the Brobsts over time. Subsequently, Minetz sent letters to Rodney on September 16, 2008, January 13, 2009, January 29, 2009, and April 1, 2009. The letters stated that Rodney told Minetz that the Brobsts would be repaid from a project that was being refinanced. The letters also repeatedly asked when the Brobsts could expect to receive their money.

¶ 6 On July 31, 2009, the Brobsts filed a three-count complaint in the circuit court of Cook County alleging: (I) breach of contract against Johnson Realty and Landhaus; (II) breach of personal guaranty against Rodney; and (III) an account stated against Johnson Realty, Landhaus, and Rodney individually. On November 20, 2009, Rodney filed a motion to dismiss the Brobsts' complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2008)), for failure to state a cause of action against him. On March 10, 2010, the trial court dismissed the complaint as to Rodney only. On April 7, 2010, the Brobsts filed a four-count amended complaint alleging: (I) breach of contract against Johnson Realty and Landhaus; (II) breach of personal guaranty against Rodney; (III) an account stated against Johnson Realty, Landaus, and Rodney individually; and (IV) promissory estoppel against Rodney. On May 3, 2010, Rodney filed

a motion to dismiss the Brobsts' amended complaint pursuant to section 2-615 of the Code for failure to state a cause of action against him. On August 26, 2010, the trial court dismissed with prejudice counts II and III of the amended complaint. The trial court dismissed without prejudice count IV of the amended complaint.

¶ 7 On September 23, 2010, the Brobsts filed a four-count second amended complaint alleging: (I) breach of contract against Johnson Realty and Landhaus: (II) breach of personal guaranty against Rodney; (III) an account stated against Johnson Realty, Landhaus, and Rodney individually; and (IV) promissory estoppel and equitable estoppel against Rodney.[1] On October 20, 2010, the Brobsts filed a motion for summary judgment as to count I of the second amended complaint, and requested language and a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Jan. 1, 2006). On October 22, 2010, Rodney filed a motion to dismiss the Brobsts' second amended complaint. On March 4, 2011, the trial court granted the Brobsts' motion for summary judgment on count I of the second amended complaint for breach of contract against Johnson Realty and Landhaus. The trial court awarded the Brobsts $40,000 plus $23,715.07 in interest. The trial court denied the Brobsts' request for language and a finding pursuant to Rule 304(a). Also on March 4, 2011, the trial court dismissed count IV of the second amended complaint. On April 1, 2011, the Brobsts filed a timely notice of appeal.

[1]Although the trial court dismissed counts II and III of the amended complaint with prejudice, the Brobsts re-alleged these counts in the second amended complaint solely to preserve consideration of the counts on appeal.

¶ 8 ANALYSIS

¶ 9 We first examine the Brobsts' argument that the trial court erred in dismissing count II of their original complaint and amended complaint for breach of personal guaranty. A reviewing court uses the *de novo* standard of review when considering a motion to dismiss pursuant to section 2-615 of the Code. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361, 919 N.E.2d 926, 931-32 (2009). The Brobsts argue that in their complaints, they sufficiently alleged that Rodney personally guaranteed to repay them, thus, the counts for breach of personal guaranty should not have been dismissed. In response, Rodney argues that he was never personally a party to the investment agreement; at all times he was acting in his capacity as a corporate officer for Johnson Realty; and that he never promised to be personally liable to the Brobsts.

¶ 10 It is well settled in Illinois that a corporation is a legal entity that is separate and distinct from its shareholders, officers, and directors who generally are not liable for the corporation's debts. *Apollo Real Estate Investment Fund, IV, L.P. v. Gellber*, 398 Ill. App. 3d 773, 777, 935 N.E.2d 949, 961 (2009). "One of the primary purposes of doing business as a corporation is to insulate stockholders from unlimited liability for corporate activity." *Id*., 935 N.E.2d at 961-62. Generally, limited liability will exist even if the corporation only has a single shareholder. *Id*. "[W]hen an agent signs a document and indicates next to his signature his corporate affiliation, then, absent evidence of contrary intent in the document, the agent is not personally bound." *Carollo v. Irwin*, 2011 IL App (1st) 102765, ¶ 51, 959 N.E.2d 77, 91. Directors and officers of corporations are not liable for debts contracted in the name of the corporation unless they are expressly made liable by statute or contract on their own behalf. *Id*., 959 N.E.2d at 92. "A guarantee is an agreement by one or more parties to

answer to another for the debt or obligation of a third party." *Fuller Family Holdings, LLC v. Northern Trust Co.*, 371 Ill. App. 3d 605, 620, 863 N.E.2d 743, 758 (2007). In interpreting the terms and conditions of a guarantee, general rules of contract construction apply. *Id*.

¶ 11 In the instant case, the investment agreement clearly states that the agreement is between Johnson Realty, Landhaus, and the Brobsts. The investment agreement does not mention personal liability of Rodney or Eric Johnson. Rodney signed the investment agreement on behalf of Johnson Realty and wrote "Pres." next to his signature. Eric Johnson signed the investment agreement on behalf of Landhaus. Clearly, the investment agreement was executed in the names of the corporations, Johnson Realty and Landhaus. Therefore, the obligation to repay the Brobsts for their investment belongs only to the corporations and not the individual officers who signed the agreement.

¶ 12 The Brobsts argue that the letters from Minetz to Rodney, and the letter from Eric Johnson to Charles Brobst, establish that Rodney personally guaranteed that he would repay the Brobsts' investment.[2] The letters from Minetz to Rodney repeatedly asked when the Brobsts could expect to be repaid for their investment. The letters also indicated that Minetz spoke with Rodney on multiple occasions, and Rodney told Minetz that the Brobsts would be repaid from the funds of a project that was being refinanced at the time. The letter from Eric Johnson to Charles Brobst stated in pertinent

[2]In their complaints, the Brobsts allege that on July 8, 2008, August 6, 2008, August 25, 2008, January 15, 2009, and March 13, 2009, Rodney advised Minetz that the Brobsts would be repaid in full, plus interest. The Brobsts claim that these statements are confirmed by the contents of the letters from Minetz to Rodney. There is nothing else in the record that supports these allegations.

part:

> "Now I want to assure you that you will receive all your money and interest up to the last day. We have never failed to repay a debt and you won't be any different.
>
> The bottom line with the house you invested in is we lost over 150k and are in the recovery mode. We will be able to pay you back in about 6 months or if you would rather we could set up a payment plan to pay you back over time.***
>
> I would prefer that you and I be able to communicate but if you would rather have your lawyer talk to Rodney that is your choice."

¶ 13 Rodney argues persuasively that none of these documents show an intent to personally guarantee that the Brobsts' investment would be repaid. As previously discussed, the investment agreement was executed on behalf of Johnson Realty and Landhaus. Rodney points out that the letters from Minetz to Rodney are addressed to Rodney at the office of Johnson Realty rather than his personal address. The only written correspondence from either of the developers came from Eric Johnson, not Rodney. Moreover, there is nothing in the letters from Minetz, or the letter from Eric Johnson, that supports the argument that Rodney promised to be personally liable for the debts or obligations of Johnson Realty and Landhaus. See *Kutzler v. Booth*, 27 Ill. App. 3d 768, 327 N.E.2d 63 (1975) (trial court erred in denying directed verdict in favor of individual defendants where president and vice president of a corporation orally promised to repay investor for his share of the

corporation but never agreed to pay individually). Therefore, we hold that the trial court did not err in dismissing count II of the Brobsts' original complaint and amended complaint for breach of personal guaranty.

¶ 14 Next, the Brobsts argue that the trial court erred in dismissing count III of their original complaint and amended complaint for an account stated. The Brobsts argue that because Rodney never objected to any of the letters sent by Minetz and never disputed the amount owed to the Brobsts, there is an account stated between Rodney and the Brobsts. "An account stated is an agreement between parties who previously engaged in transactions that the account representing those transactions is true and the balance stated is correct, together with a promise for the payment of balance." *Dreyer Medical Clinic, S.C. v. Corral*, 227 Ill. App. 3d 221, 226, 591 N.E.2d 111, 114 (1992). Assuming there is an original indebtedness, an account rendered that is not objected to within a reasonable time is regarded as correct. *Motive Parts Company of America, Inc. v. Robinson*, 53 Ill. App. 3d 935, 941, 369 N.E.2d 119, 124 (1977). Whether an account stated exists is to be resolved by the trier of fact. *Dreyer*, 227 Ill. App. 3d at 226, 591 N.E.2d at 114. However, an account stated cannot create original liability. *Id.* It merely determines the amount of debt where liability previously existed. *Id*. "[A]n account stated is merely a form of proving damages for the breach of a promise to pay a contract." *Id*. If a party is unable to provide *prima facie* proof of an agreement, it is precluded from recovering against an opposing party by claiming an account stated. *D.S.A Finance Corp. v. County of Cook*, 345 Ill. App. 3d 554, 560, 801 N.E.2d 1075, 1080 (2003).

¶ 15 The Brobsts' account stated argument fails for similar reasons as their personal guaranty argument. The Investment agreement was executed between Johnson Realty, Landhaus, and the

Brobsts. In order to claim an account stated, the Brobsts must be able to allege that Rodney was personally liable for repaying their investment before the account stated was established. The Brobsts are unable to show any proof of an agreement with Rodney individually. The Brobsts cannot claim an account stated against Rodney in order to create original liability. Because the Brobsts cannot claim that Rodney is personally liable for repaying their investment, a claim of account stated against Rodney must fail. Therefore, we hold that the trial court did not err in dismissing count III of the Brobsts' original complaint and amended complaint which pled an account stated.

¶ 16 We next examine the Brobsts' argument that the trial court erred in dismissing count IV of their amended complaint and second amended complaint for promissory estoppel. The Brobsts claim that the letters from Minetz, and the letter from Eric Johnson, amounted to promises from Rodney on which they relied in deciding to forgo filing suit until July 31, 2009. "To establish a claim based on promissory estoppel, plaintiff must allege and prove that (1) defendants made an unambiguous promise to plaintiff, (2) plaintiff relied on such promise, (3) plaintiff's reliance was expected and foreseeable by defendants, and (4) plaintiff relied on the promise to its detriment." *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. App. 3d 281, 309-10, 565 N.E.2d 990, 1004 (1990). In support of their argument, the Brobsts cite cases that hold that a party is allowed to plead both breach of contract and promissory estoppel claims in the same complaint. They then, without further explanation or enlargement of the argument, list multiple cases that discuss the pleading sufficiency of promissory estoppel claims. These cases do not directly address the issue of whether a corporate officer's statements trigger individual liability based on the theory of promissory estoppel. In fact, one of the cases cited by the Brobsts suggests that promises made by agents or

officers of a corporation are promises of the corporation itself and not the officers individually. See *Derby Meadows Utility Co., Inc. v. Inter-Continental Real Estate*, 202 Ill. App. 3d 345, 359-60, 559 N.E.2d 986, 994 (1990) (discussing the negotiations between the plaintiff and defendant's officers and agents). Clearly, this does not support their argument.

¶ 17 We have already determined that, based on the execution of the investment agreement, the obligation to repay the Brobsts' investment belonged to Johnson Realty and Landhaus. Thus, in order to recover against Rodney on a claim of promissory estoppel, the Brobsts must be able to claim that Rodney *individually* made an unambiguous promise to repay their investment. We have also determined that nothing in the letters from Minetz, or the letter from Eric Johnson, provides any indication that Rodney agreed to be personally liable for the debts of Johnson Realty and Landhaus. Likewise, nothing in any of the letters in question suggests that Rodney was acting individually and outside his capacity as a corporate officer of Johnson Realty. The Brobsts do not allege any additional facts that infer that Rodney individually made an unambiguous promise to the Brobsts. Because the Brobsts failed to properly allege an essential element of the promissory estoppel claim, the trial court did not err in dismissing count IV of their amended complaint and second amended complaint.

¶ 18 Finally, we examine the Brobsts' argument that the trial court erred in dismissing count IV of their second amended complaint for equitable estoppel. Equitable estoppel requires that the party claiming estoppel demonstrate that: (1) the other person misrepresented or concealed material facts; (2) the other person knew at the time he made the representations that they were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when

they were acted upon; (4) the other person intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel reasonably relied upon the representations in good faith to his detriment; and (6) the party claiming estoppel would be prejudiced by his reliance on the representations if the other person is permitted to deny the truth thereof. *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313-14, 751 N.E.2d 1150, 1157 (2001). The Brobsts alleged all six of these elements in their second amended complaint, however, these allegations are based on the letters from Minetz to Rodney, the letter from Eric Johnson to Charles Brobst, and the correspondence between Minetz and Rodney. Because the obligation to repay the Brobsts belonged to Johnson Realty and Landhaus, the Brobsts must be able to allege that Rodney misrepresented or concealed material facts outside of his capacity as a corporate officer of Johnson Realty in order to state a claim against Rodney individually for equitable estoppel. The Brobsts have not presented any facts that suggest that Rodney acted individually in any of the communications on the record. Thus, they are unable to claim that Rodney individually misrepresented or concealed material facts. Accordingly, their claim for equitable estoppel against Rodney fails. The trial court did not err in dismissing count IV of their second amended complaint for equitable estoppel.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.