2014 IL App (1st) 130275-U

FOURTH DIVISION
March 20, 2014

No. 1-13-0275

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DIKA-HOMEWOOD, L.L.C., Plaintiff-Appellant, v. HOMEWOOD SQUARE CLEANERS & TAN INC.; JOHN HTUN; U. KYAW AUNG; JEANNE YIN; MUANG MYO THANT; and MA THIDA WIN, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, Law Division. No. 09 L 15590 Honorable Ronald Bartkowitcz, Judge Presiding

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly held that under the plain language of the lease assignment agreement, the assignor and the personal guarantors of that assignment were liable only for damages that accrued up through the guarantee period defined in the assignment agreement.

¶ 2 The plaintiff, Dika-Homewood, L.L.C., owner of a commercial shopping center, filed a complaint against its former tenant, Homewood Square Cleaners & Tan Inc., and guarantors John Htun, U. Kyaw Aung, Jeanne Yin, Muang Myo Thant, and Ma Thida Win, for breach of lease

and guaranty. The suit sought damages for unpaid rent and other charges through August 1, 2011, when the lease expired. After the parties filed cross-motions for summary judgment, the circuit court granted the plaintiff's motion for summary judgement in part but limited the defendants' liability to rent and other charges through August 31, 2008, the period of time when the guarantee was in effect. Subsequently, the parties entered into an agreed to order to determine the specific amount of damages that accrued through August 31, 2008, and the court entered judgment in favor of the plaintiff and as against the defendants in that amount. The plaintiff now appeals contending that the circuit court erred when it limited the scope of liability for damages to only those charges that would have become due during the period of time the guarantee was in effect. The plaintiff asserts that because the default occurred during the effective period of the guarantee, it was entitled to all amounts due under the lease resulting from that default. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record before us contains the following undisputed facts and procedural history. The plaintiff, Dika-Homewood, L.L.C. (hereinafter Dika-Homewood) is an Illinois Limited Liability Company and the owner and landlord of the Homewood Square Shopping Center, including the premises located at 17715 South Halsted Street in Homewood, Illinois (hereinafter the leased premises). The defendant, Homewood Square Cleaners & Tan, Inc. (hereinafter HS Cleaners) was an Illinois Corporation and lessee of the leased premises.

¶ 5 On or about April 23, 2001, HS Cleaners entered into a written five year shopping center lease (hereinafter the lease) with BSG Homewood, L.L.C. (Hereinafter BSG). Pursuant to the

lease agreement, HS Cleaners leased the premises at 17715 South Halsted Street to BSG. The defendant, John Htun (hereinafter Htun), personally guaranteed, *inter alia*, the payment of all rents and other charges under the lease.[1] The lease was subsequently assigned from BSG to Dika-Homewood, making the plaintiff, Dika-Homewood, HS Cleaners' landlord.

¶ 6 In early 2006, HS Cleaners contacted Dika-Homewood about the possibility of a third party acquiring and taking over the dry cleaning business that HS Cleaners had been operating on the leased premises. As a result, on or about April 29, 2006, Dika-Homewood and HS Cleaners executed an assignment and assumption of lease agreement (hereinafter the assignment agreement). Pursuant to the assignment agreement, Dika-Homewood agreed to allow HS Cleaners to exercise its option to extend the term of the lease for an additional five years, through August 31, 2011, and HS Cleaners exercised its option. The assignment agreement further provided that HS Cleaners would assign their lease (including all of its rights, title and interest in the leased premises) to Julio M. Azamar (hereinafter Azamar),[2] who would operate the dry cleaning business on that premises going forward.

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[1]Under the Guarantee provision of the lease agreement, Htun personally guaranteed:

"(I) the payment to Landlord of all rents of any kind due to Landlord under the lease, (ii) the performance of all of the terms, conditions, and covenants to be performed by the tenant under the lease, and (iii) the payment to Landlord of all costs incurred by Landlord, including reasonable attorneys' fees, with respect to the enforcement of Tenant's obligations under the Lease or Guarantor's obligations under this guarantee."

[2]We note that Azamar is not a party to this appeal.

¶ 7 According to paragraph 3 of the assignment agreement, HS Cleaners and Htun, as the personal guarantor of the original lease, agreed that neither would

> "be released or discharged from any liability whatsoever under this lease and w[ould] remain liable with the same force and effect as if no assignment had been made for a period through the remaining term of the lease and for a period of two (2) years from the beginning of the renewal term, that guarantee period being September 1, 2006, to August 31, 2008."

Paragraph 3 further provided that "[a]t the end of the guarantee period" HS Cleaners, Htun and any "added guarantors" would be "released from all terms, covenants, conditions and obligations under the lease and guarantee."[3] At paragraph 6, the assignment agreement also provided for the ratification and reaffirmation of Htun's original guarantee.

¶ 8 The defendant Htun, and several members of his family, including the defendants Aung, Yin, Thant and Win also executed a two page "Additional Guaranty" document (hereinafter the additional guaranty) that was attached to and incorporated by reference in the assignment agreement. The defendant Htun signed the additional guaranty as "original guarantor" and the defendants Aung, Yin, Thant and Win signed it as "added guarantors." The two page additional guaranty contains identical limiting language that appears in the paragraph 3 of the assignment agreement, defining the guaranty period as being between September 1, 2006 to August 31, 2008.

¶ 9 In April 2007, Azamar began to fall behind on his monthly obligations to Dika-Homewood. On September 9, 2007, Dika-Homewood served HS Cleaners and Azamar with a

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landlord's five day notice demanding payment for unpaid rent and other charges through September 1, 2007. When payment was not received, Dika-Homewood filed a joint action in the circuit court for possession of the leased premises and damages against Azamar. See *Dika-Homewood, L.L.C., v. Homewood Square Cleaners & Tan, Inc., et al.*, Cook County Case No., 07 M1-724871. On November 6, 2007, an order for possession was entered against HS Cleaners and Azamar. The order for possession included a money judgment for rent and other charges due through November 2007. On November 30, 2007, Azamar turned in the keys to the leased premises to Dika-Homewood's managing agent. Dika-Homewood subsequently attempted to find a replacement tenant but was unsuccessful. Accordingly, no rent was paid on the leased premises or through August 31, 2011.

¶ 10 On December 22, 2009, Dika-Homewood filed the instant action against HS Cleaners for breach of the lease and against the defendants Htun, Aung, Win, Thant and Win for breach of their personal guarantees pursuant to the assignment agreement and the additional guaranty. The defendants collectively filed their answer and affirmative defenses, alleging, *inter alia*, that based upon the language of paragraph 3 of the assignment agreement they should only be liable, if at all, for any sums due and owing to the plaintiff from November 7, 2007 to August 31, 2008.

¶ 11 On November 2, 2010, Dika-Homewood filed a motion for summary judgment seeking judgment for rent and other charges through August 31, 2011, arguing that because the defendants defaulted during the guarantee period they were responsible for all lease obligations through the end of the lease term. In support of this proposition, Dika-Homewood cited to sections of the additional guarantee, which they asserted "described the broad nature of the

guarantee" and the intent of the parties that the defendants' "lease and guarnaty obligations would survive the assignment." The provision of the additional guaranty cited by Dika-Homewood states in pertinent part:

> "[T]he undersigned Added Guarantors hereby unconditionally guaranty as to the Landlord *** the full and prompt payment of Rent and Additional Rent, including, but not limited to, the Minimum Rent, common Area Charges, Insurance Payments, Real Estate Taxes, Utility Charges, and other sums and charges payable by the Tenant, his successor and assigns, under the Lease, and full performance and observance of all covenants, terms, conditions and agreements therein provided to be performed and observed by Tenant, [and/or] Assignee *** ; and the Added Guarantors hereby covenant and agree that if default shall at any time be made by the Tenant [and/or] Assignee, *** in the payment of any such Rent and Additional Rent, payable by the Tenant or Assignee under said Lease, or in performance and observance of all covenants, terms conditions and agreements, therein provided to be performed and observed by Tenant [and/or] Assignee *** the Added Guarantors will forthwith pay such Rent and Additional Rent to the Landlord*** and any arrearage therefore, and will forthwith faithfully perform and fulfill all such terms, covenants, conditions and provisions, and will forthwith pay the Landlord all damages that may arise in consequence of any default by the Tenant [and/or] the Assignee *** under the Lease and lease renewal, including, without limitation, all reasonable attorneys' fees incurred by the Landlord or caused by any default and by the enforcement of this Additional Guarantee."

Dika-Homewood further cited to the following portion of the additional guaranty:

> "This Additional Guaranty is an absolute, continuing and unconditional Guaranty of payment and performance. It shall be enforceable against the Guarantor and Added Guarantors *** without the necessity for any suit or proceedings on the Landlord's part of any kind or nature whatsoever against the Tenant [and/or] the Assignee *** and without the necessity of any notice of non-payment, non-performance, or non-observance or any notice of acceptance of this Guaranty or any other notice or demand to which the Guarantor or Added Guarantors might otherwise be entitled; and the Guarantor and Added Guarantors hereby expressly agree that the validity of this Guaranty and the obligations of the Guarantor and Added Guarantors hereunder shall in no way be terminated, or affected or impaired by reason of the assertion or the failure to assert by the Landlord *** against the Tenant, or the Tenant's or his successors and assigns, of any of the rights and remedies reserved by the Landlord pursuant to the provisions of the Lease or against any Guarantor and Added Guarantor of any of the rights and remedies reserved to the Landlord pursuant to the provisions of this Guaranty."

¶ 12 In support of their motion for summary judgment, Dika-Homewood provided several affidavits, including, *inter alia*: (1) affidavits by Dika-Homewood's managers Marshall N. Dickler and Richard Robey, detailing the logistical problems, and costs that Dika-Homewood incurred in attempting to release the premises since Azamar's default, and averring to the total monetary losses it suffered as a result of that default (totaling $176,303.96 in rent, common area maintenance, real estate taxes and late fees for the time period between December 1, 2007 to

October 18, 2010 and $45,078 in rent, common area maintenance, real estate taxes and late fees for the period between November 1, 2010, to August 31, 2011); and (2) an affidavit by Allen Joffee, the real estate listing agent who attempted to release the premises for Dika-Homewood averring to his attempts and failure to release the property.

¶ 13 In response to Dika-Homewood's motion for summary judgment, the defendants collectively filed a cross-motion for partial summary judgment arguing that pursuant to paragraph 3 of the assignment agreement, and identical language contained in the additional guaranty any damages owed by the defendants must be limited to sums accruing up to August 31, 2008.

¶ 14 On March 17, 2011, the circuit court entered an order granting in part Dika-Homewood's summary judgment as to the defendants' liability under the lease and assignment agreements, but limiting that liability for all of the defendants to "rent and other charges due under the lease through August 31, 2008." The court explicitly found that the defendants were "not liable for rent and charges after September 1, 2008." The court further granted Dika-Homewood until April 15, 2011, to file and submit to the defendants its calculation of the rent and other charges owed through August 31, 2008, and to file its fee petition.

¶ 15 On April 15, 2011, Dika-Homewood filed its petition for attorneys' fees and costs, attaching a supporting affidavit. The defendants responded by filing a motion to dismiss the petition.

¶ 16 After several continuances, on December 19, 2011, and over Dika-Homewood's objection, the circuit court, on its own motion, entered an order forcing the parties to go to

mediation. That order was vacated on February 24, 2012, upon Dika-Homewood's motion to reconsider and the case was set for discovery on the issue of attorneys' fees.

¶ 17 Several months later, on June 25, 2012, the circuit court awarded Dika-Homewood attorneys fees in the amount of $15,000. In its order awarding attorneys fees, the circuit court also mandated that the parties "submit agreement on [the remaining damages] calculations, or provide separate calculations for [the] court's consideration," and set the case for status on August 13, 2012.

¶ 18 After another continuance, on September 4, 2012, Dika-Homewood filed a memorandum in support of its damages (including unpaid rent, common area maintenance, real estate taxes, late fees, interest and attorneys' fees for the period between December 1, 2007 to August 31, 2008), asserting that they totaled $66,653.94.

¶ 19 On December 18, 2004, the circuit court entered an "Agreed Order" entering "judgment" in favor of Dika-Homewood and "against all the defendants in the amount of $62,005.10 plus costs." The judgment amount included: rent ($26,010), common area maintenance ($3,479.08), real estate taxes ($8,645.89), late fees ($450), and interest ($8,420.13)--all calculated through August 31, 2008, as well as court costs, and attorneys' fees ($15,000). The order explicitly denied Dika-Homewood's "request for supplementary attorneys' fees." The order further stated:

> "This Order determining damages is agreed to by the parties based on the Court's prior ruling of March 17, 2011, and the parties hereby reserve all rights of appeal, including but not limited to the March 17, 2011, Order."

Dika-Homewood now appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, Dika-Homewood challenges the circuit court's order partially granting its motion for summary judgment but limiting the defendants' liability to rent and charges through August 31, 2008. Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2–1005© (West 2010). "By filing cross-motions for summary judgment, the parties agree that no factual issues exist and this case turns solely on legal issues subject to *de novo* review." *Gaffney v. Board of Trustees of Orland Fire Protection Dist*., 2012 IL 110012, ¶ 73.

¶ 22 A. Jurisdiction

¶ 23 Before addressing the merits of Dika-Homewood's contentions, however, we must first address the defendants' assertion that we are without jurisdiction to address this appeal as it is an appeal from an agreed order entered on December 18, 2012. The defendants asserts, and we agree, that generally agreed orders are not subject to appeal or attack unless the order has resulted from "fraudulent misrepresentation, coercion, incompetence of the parties, gross disparity in the position or capacity of the parties, or newly discovered evidence" *In re Haber*, 99 Ill. App. 3d 306, 309 (1981); see also *McGrath v. Price*, 342 Ill. App. 3d 19, 31 (2003) ("Our law is clear that once an agreed order is entered, it is not appealable unless it was the result of fraud, coercion or inequities between the parties."); see also *Olsen v. Staniak*, 260 Ill. App. 3d 856, 861 (1994) ("an order entered by agreement of the parties is not subject to appellate review"); accord *Berymon v.*

Henderson, 135 Ill. App. 3d 858, 864 (1985).

¶ 24 Nevertheless, for the reasons that follow, we find that we have jurisdiction to address Dika-Homewood's contentions. Contrary to the defendants' assertion, in the present case, this appeal is taken not only from the trial court's December 18, 2012, agreed order, disposing of the calculation of Dika-Homewood's damages, but also from the court's prior, March 17, 2012, order granting judgment to Dika-Homewood on liability but limiting the scope of that liability to "rent and other charges through August 31, 2008." The notice of appeal itself explicitly states that the appeal is taken from "the Orders entered in this cause on March 17, 2011, granting Plaintiff's Motion for Partial Summary Judgment and the Order entered on December 18, 2012, entering final judgment."

¶ 25 It is well settled that in civil cases, absent certain enumerated exceptions a reviewing court has jurisdiction to review only those appeals taken from final judgments of the circuit court. See e.g., *In re J.R.*, 307 Ill. App. 3d 175, 178 (1999) ("Generally, to confer jurisdiction upon the appellate court in civil cases, the judgment or order appealed from must be final."); see also *Rice v. Burnley*, 230 Ill. App. 3d 987, 990 (1992) ("A judgment or order must be final for the appellate court to have jurisdiction over an appeal."); see also Ill. S. Ct. R. 301 (eff. Feb. 1, 1994.) ("[e]very final judgment of a circuit court in a civil case is appealable as of right."). A final order is one which " 'either terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate branch thereof.' " *Rice*, 230 Ill. App. 3d at 990; see also *Village of Bellwood v. American Nat. Bank and Trust Co. of Chicago*, 2011 IL App (1st) 093115, ¶ 14 ("An order is final if it 'terminates the

litigation between the parties on the merits or disposes of the rights of the parties either on the entire controversy or on a separate *** part of it.' [Citation.]. Further, an order is final when, if affirmed, the only thing remaining is to execute the judgment. [Citation.]"). Interlocutory orders that do not dispose of the entire proceeding may not be appealed without an express written finding by the trial court that "there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304 (eff. Feb. 26, 2010); see also *Rice*, 230 Ill. App. 3d at 990-91). Nevertheless, a subsequent appeal from a final judgment will permit review of all preceding nonfinal, interlocutory orders that produced that final judgment. See, *e.g.*, *Farmers Auto. Ins. Ass'n v. Wroblewski*, 382 Ill. App. 3d 688, 695 (2008); *Pekin Insurance Co. v. Pulte Home Corp.*, 344 Ill. App. 3d 64, 67-68 (2003); see also *In re Alicia Z.*, 336 Ill. App. 3d 476, 494 (2002) ("an appeal from a final judgment draws into issue all prior nonfinal orders that produced the final judgment").

¶ 26 In the present case, the record establishes, and the parties do not dispute, that the trial court's March 17, 2011, order granting partial summary judgment to Dika-Homewood on liability but limiting the scope of that liability to "rent and other charges through August 31, 2008" was an unappealable interlocutory order, since the amount of damages remained undecided. See *e.g.*, *Harold Butler Enterprises No. 622, Inc. v. Underwriters at Lloyds, London*, 100 Ill. App. 3d 681, 686 (1981) (A grant of summary judgment on the issue of liability alone is " 'interlocutory in character *** (when) there is a genuine issue (remaining as) to the amount of damages.' [Citation.]"); see also *Lindsey v. Chicago Park Dist.*, 134 Ill. App.3d 744, 745 (1985) (holding that trial court's partial summary judgment order declaring that the defendants in a wrongful

discharge suit were liable for terminating plaintiff without a hearing, but specifically reserving the issue of damages for later determination, was not a "final order" but rather an unappealable interlocutory order). The record further reveals that after its grant of partial summary judgment, the circuit court actively encouraged the parties to reach a settlement on the issue of Dika-Homewood's damages within the limited scope delineated in its March 17, 2011 order.[4] The parties eventually entered into such an agreed order on December 18, 2012, specifying the amount of damages, and the court entered final judgment.

¶ 27 Although the December 18, 2012, order was styled as an agreed order, as the defendants themselves concede, its language explicitly endeavored to protect the parties' right of appeal, particularly as to the March 17, 2011, interlocutory order, providing:

> "This Order determining damages is agreed to by the parties based on the court's prior ruling of March 17, 2011 and the parties hereby reserve all rights of appeal, including but not limited to the March 17, 2011 Order."

¶ 28 Since the record before us undisputedly establishes that the circuit court's nonfinal order on March 17, 2011 produced the court's final December 18, 2012, agreed order, and that the parties intended that the December 18, 2012, order, reserve their right of appeal, we find that the March 17, 2011, order is now properly before us as a preceding nonfinal order and subject to our review. *Farmers Auto. Ins. Ass'n*, 382 Ill. App. 3d at 695; *Pekin Insurance Co.*, 344 Ill. App. 3d at 67-68 ("An appeal from a final judgment draws into question all earlier nonfinal orders that

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[4]As noted above, in that vein, at one point in the proceedings the circuit court *sua sponte* ordered the parties to mediation.

produced the judgment."). We therefore address the merits of Dika-Homewood's contention challenging that order's finding regarding the scope of the defendants' liability.

¶ 29 B. Contract Interpretation

¶ 30 Turning to the merits, Dika-Homewood argues that the trial court incorrectly limited the scope of the defendants' liability to those rents and charges accruing up to the end of the guarantee period (on August 31, 2008). According to Dika-Homewood, the guarantee provision in the assignment agreement and the identical language in the additional guarantee did not limit the scope of the defendants' liability, but rather only the period of time during which the defendants could become liable if a default occurred. Dika-Homewood argues that because Azamar's default occurred in November 2007, prior to the expiration of the guarantee period (August 31, 2008), the defendants were liable for all damages resulting from that default, including rents and charges up through the end of their lease in August 2011.

¶ 31 The defendants on the other hand argue that the trial court correctly concluded that the identical guarantee provision language in the assignment agreement and the additional guarantee clearly and plainly limits the defendant's liability to any damages arising up to the end of the guarantee period (August 31, 2008). For the reasons that follow, we agree with the defendants.

¶ 32 In interpreting a contract, the principal objective is to determine and give effect to the intention of the parties at the time they entered into the contract. *Gallagher v. Lenard*, 226 Ill. 2d 208, 232 (2007); see also *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). In doing so, we first examine the language of the contract itself, and if that language is unambiguous, we give it its plan, ordinary and popular meaning. *Thompson*, 241 Ill. 2d at 442 (citing *Central Illinois Light*

Co. v. Home Insurance Co., 213 Ill.2d 141, 153 (2004)); see also *Western Illinois Oil Co. v. Thompson*, 26 Ill. 2d 287, 291 (1962) ("[A]n agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence."); *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill.2d 457, 462 (1999) (quoting 185 Ill. 2d at 462 (citing *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447 (1991) ("[i]f the language of the contract is facially unambiguous, then the contract is interpreted by the trial court as a matter of law without the use of parol evidence."). However, if the language of the contract is ambiguous, we may look to parol or extrinsic evidence to determine the parties' intent. *Thompson*, 241 Ill. 2d at 442; *Gallagher*, 226 Ill. 2d at 233; *Air Safety*, 185 Ill. 2d at 462-63 (citing *Whitlock*, 144 Ill. 2d at 447). Language in a contract is ambiguous if it is "susceptible to more than one meaning." *Thompson*, 241 Ill. 2d at 442. However, mere disagreement between the parties concerning a provision's meaning will not automatically render such language ambiguous. *Thompson*, 241 Ill. 2d at 443. Rather, instead of focusing on one clause or provision in isolation, we, as the reviewing court, must read the entire contract in context and construe it as a whole, viewing each provision in light of the other ones. See *Gallagher*, 226 Ill. 2d at 233; see also *Thompson*, 241 Ill. 2d at 441 ("The parties' intent is not determined by viewing a clause or provision in isolation, or in looking at detached portions of the contract."); see also *Shorr Paper Products, Inc. v. Aurora Elevator, Inc*., 198 Ill. App. 3d 9, 13 (1990) ("In interpreting a contract, it is presumed that all provisions were intended for a purpose, and conflicting provisions will be reconciled if possible so as to give effect to all of the contract's

provisions.").

¶ 33 In the present case, the plain language of the contract clearly limits the defendants' liability up through the guarantee period, *i.e.*, August 31, 2008. Both the assignment and the additional guarantee explicitly provide that:

> "notwithstanding the foregoing assignment, Assignor and Guarantor shall be released or discharged from any *liability* whatsoever under this Lease and will remain *liable* with the same force and effect as if no assignment had been made *for a period through the remaining term of the Lease and for a period of two (2) years* from the beginning of the renewal term, that guarantee period being September 1, 2006 to August 31, 2008. *** *At the end of the guarantee period, Assignor and Guarantor and Added Guarantors shall be released from all terms, covenants, conditions and obligations under the Lease and Guarantee."*

The language above explicitly limits the defendants' "liability" as extending through August 31, 2008. Although the assignment agreement does not define "liability," our supreme court has held that the term "liable" is a "concept [that] lies at the foundation of our civil and criminal jurisprudence, and simply contemplates an obligation," that obligation in a civil setting being "an obligation to pay damages." *Rogers v. Imeri*, 2013 IL 115860, ¶ 16; see also Black's Law Dictionary 997 (9th ed. 2009) (defining "liability" as "[t]he quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment"; defining "civil liability" as "[t]he state of being legally obligated for civil damages."). What is more, the last sentence of the aforementioned guarantee provision

explicitly discharges the defendants from any and all obligations (*i.e.*, damages incurred) after the end of the "guarantee period" (August 31, 2008). Accordingly, we find that the circuit court did not err in granting partial summary judgment to the plaintiff but limiting the defendants' liability to the rents and charges incurred up through August 31, 2008.

¶ 34 In coming to this conclusion we reject Dika-Homewood's assertion that when read in the context of the remainder of the additional guarantee it is clear that the guarantee period only limits the duration of the defendants' liability, and not the scope of that liability. The provision of the additional guaranty cited by Dika-Homewood states:

> "[T]he undersigned Added Guarantors hereby unconditionally guaranty as to the Landlord *** the full and prompt payment of Rent and Additional Rent, including, but not limited to, the Minimum Rent, common Area Charges, Insurance Payments, Real Estate Taxes, Utility Charges, and other sums and charges payable by the Tenant, his successor and assigns, under the Lease, and full performance and observance of all covenants, terms, conditions and agreements therein provided to be performed and observed by Tenant, [and/or] Assignee *** ; and the Added Guarantors hereby covenant and agree that if default shall at any time be made by the Tenant [and/or] Assignee, *** in the payment of any such Rent and Additional Rent, payable by the Tenant or Assignee under said Lease, or in performance and observance of all covenants, terms conditions and agreements, therein provided to be performed and observed by Tenant [and/or] Assignee *** the Added Guarantors will forthwith pay such Rent and Additional Rent to the Landlord*** and any arrearage therefore, and will forthwith faithfully perform and fulfill all such

> terms, covenants, conditions and provisions, and will forthwith pay the Landlord all damages that may arise in consequence of any default by the Tenant [and/or] the Assignee, their successors and assigns, under the Lease and lease renewal, including, without limitation, all reasonable attorneys' fees incurred by the Landlord or caused by any default and by the enforcement of this Additional Guarantee." (Emphasis added.)

Contrary Dika-Homewood's assertion the aforementioned language actually supports the conclusion that the parties intended that the defendants' damages be limited to any rents and charges accruing through the end of the "guarantee period." The language above specifically states that the defendants will be liable if "default shall *at any time* be made by the Tenant [and/or] Assignee." That statement makes clear that in detailing the guarantee period, the parties were not concerned with the timing of the default, but rather with the scope of the defendant's liability (*i.e.*, damages) regardless of when the default occurred.[5]

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[5]Even though not necessary to the disposition of our case, we also note that both in the assignment agreement and the additional guarantee, the parties crossed out in pen and initialed the following provision, immediately following the language defining the guarantee period as being between September 1, 2006 through August 31, 2008: "provided that during the entire lease period, Assignee has not committed the default under the lease." This language supports the contention that the parties negotiated away the possibility that the scope of the guarantee could be extended as now claimed by Dika-Homewood on appeal. Although on appeal Dika-Homewood asserts that we may not look to the aforementioned crossed-off portions of the contract to determine the intent of the parties as those crossed-off portions are inadmissible parol

¶ 35 For these same reasons we also reject Dika-Homewood's assertion that under section 10.1 of the lease, the defendants are liable for the entire sum of the lease through August 2011. Section 10.1 of the Lease states in pertinent part:

> "If the Landlord elects to terminate the Tenant's right to possession only, without terminating this Lease *** If Landlord does not re-let the Leased Premises, Tenant shall pay to landlord damages equal to the amount of the rent and other sums provided herein to be paid by Tenant for the remainder of the original term."

Contrary to Dika-Homewood's assertion, this section of lease is not an "acceleration clause" and cannot be read so as to nullify the limitation on the scope of the defendant' damages contemplated under the guarantee provision of the assignment agreement and the additional guarantee. Section 10.1 of the lease nowhere provides that the tenant shall become liable for the full remainder of the lease immediately upon the tenant's default or the landlord's inability to re-let the premises. Rather, the provision reaffirms that if the Landlord is unable to release the premises, the tenant's obligations shall be dictated by "damages equal to the amount of the rent and other sums provided herein." The guarantee provision of the assignment agreement therefore applies with equal force to this section of the lease.

¶ 36 III. CONCLUSION

¶ 37 For all of the aforementioned reasons, we affirm the judgment of the circuit court.

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evidence, we need not reach this determination, since we already find for the reasons articulated above that the language of the contract is clear and plainly defines the scope of the defendants' liability to damages accrued up to August 31, 2011.

¶ 38 Affirmed.