

No. 1-13-1256

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DOOR PROPERTIES, LLC, WILDWOOD,)	Appeal from the
LLC, and CAROL SERRANI ANDERSON,)	Circuit Court
)	of Cook County.
)	
Plaintiffs-Appellees,)	
)	
v.)	No. 10 L 12931
)	
AYAD M. NAHLAWI,)	
)	
Defendant-Appellant.)	Honorable
)	Raymond W. Mitchell,
)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.*
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* The Illinois Limited Liability Company Act did not shield defendant from liability under the personal guaranty he executed. Defendant failed to furnish a sufficient record of the trial proceedings in order to reverse the trial court's judgment regarding his breach of a personal guaranty. Similarly, the record is insufficient to support defendant's challenge to the trial court's award of attorney fees and costs.

¶ 2 Defendant Ayad M. Nahlawi was a member and manager of Foodworks, LLC (Foodworks), a limited liability company that owned a restaurant known as The Grand Station in

* This case was recently reassigned to Justice Ellis.

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Arlington Heights, Illinois. In conjunction with the operation of the restaurant, Foodworks borrowed money from plaintiffs Door Properties, LLC (Door Properties), Wildwood, LLC (Wildwood), and Carol Serrani Anderson (collectively, plaintiffs). Defendant also executed a guaranty securing plaintiffs' loans to Foodworks. After Foodworks defaulted on the debt owed to plaintiffs, they sought to collect from defendant pursuant to the guaranty.

¶ 3 After a bench trial, the trial court ruled in favor of plaintiffs and awarded plaintiffs attorney fees and costs. Defendant appeals, raising four issues for our review. First, defendant contends that under the Illinois Limited Liability Company Act (805 ILCS 180/1 *et seq.* (West 2008)) (the Act), he could not be held liable for the debts of Foodworks. Second, defendant asserts that the personal guaranty he executed was not supported by consideration and was thus unenforceable. Third, defendant contends that plaintiffs failed to prove how much money Foodworks owed to any of them. Fourth, defendant asserts that plaintiffs failed to prove that the attorney fees and costs they sought were reasonable. We conclude that the Act does not shield defendant from liability because he executed the guaranty as a personal obligation, not an obligation of Foodworks. Our ability to resolve defendant's final three arguments is hindered by defendant's failure to furnish a complete record on appeal. As we lack transcripts of most of the trial proceedings and the hearing on plaintiffs' petition for attorney fees and costs, we must conclude that the record supports the trial court's findings regarding those matters. Moreover, the limited information that can be gleaned from the record regarding those issues supports the trial court's judgment. We affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5 On April 18, 2009, Foodworks and plaintiffs entered into a loan agreement. According to the agreement, in the summer of 2007, plaintiffs had loaned Foodworks money for the planning,

construction, and operation of The Grand Station. The agreement stated that plaintiffs and Foodworks "desire[d] to modify the payment terms of the existing financial arrangements and to extend the maturity dates thereof," and that, "[a]s a condition of doing so, [plaintiffs] require[d] that [Foodworks] restate its obligations in accordance with the terms of this Loan Agreement and the Loan Documents referenced herein." The "Loan Documents" referred to in the agreement included three promissory notes that Foodworks executed in favor of each plaintiff, as well as a guaranty. According to the promissory notes, Foodworks owed plaintiffs \$726,000, plus interest. The guaranty provided that defendant was liable for that debt in the event that Foodworks defaulted. It also stated that plaintiffs were not required to try to collect the debt from Foodworks first; they could pursue defendant first upon default. Defendant also agreed to pay all costs and expenses related to collecting the debt, "including reasonable attorney[] fees and court costs."

¶ 6 Plaintiffs Door Properties and Wildwood were both owned by Mark Anderson and members of his family. Anderson was also a member of Foodworks along with defendant. Plaintiff Carol Serrani Anderson was Mark Anderson's wife.

¶ 7 On November 12, 2010, plaintiffs filed a verified complaint for breach of guaranty against defendant. According to the complaint, on December 8, 2009, plaintiffs notified defendant that Foodworks had defaulted and demanded payment. Plaintiffs asserted that defendant did not pay Foodworks's debt.

¶ 8 The case proceeded to a bench trial on August 27, 2012. The record does not contain a transcript or bystander's report of the first day of trial. On that day of trial, Mark Anderson testified as plaintiffs' primary witness. On the second day of trial, September 20, 2012, plaintiffs sought to introduce evidence of the amounts Foodworks owed under each promissory note via summaries of those debts. Plaintiffs attempted to lay a foundation for those summaries through

Anderson's testimony. The transcript of Anderson's testimony from the second day of trial only relates to the summaries plaintiffs had prepared.

¶ 9 Plaintiffs also called defendant to testify on the second day of trial. Defendant acknowledged signing the promissory notes on Foodworks's behalf and signing the personal guaranty. Defendant agreed that the promissory notes were "memorializations of money that had previously been loaned" to Foodworks. Defendant also conceded that Foodworks owed plaintiffs money under the promissory notes, but he did not know how much. Defendant contended that Foodworks had made some payments to plaintiffs.

¶ 10 After plaintiffs rested, defendant made a motion for directed finding, asserting that the Act shielded defendant from personal liability as he was a member and manager of Foodworks. The trial court reserved ruling on the motion for directed finding and defendant indicated that he had no evidence to present.

¶ 11 On October 17, 2012, the trial court entered a written order granting judgment in plaintiffs' favor. The court's order denied defendant's motion for a directed finding, stating that "nothing in the Act prohibits a member from being held personally liable for *personal* obligations." (Emphasis in original.) The court noted that "Anderson testified *** that [defendant] executed the promissory notes on behalf of Foodworks and that [defendant] also executed a personal guaranty." The court further found that "Anderson credibly testified that the loan monies were given to Foodworks in conformance with the agreement," and that he "credibly testified that Foodworks did not repay the loans *** and that, after demand, [defendant] refused to pay in accordance with the personal guaranty." The court concluded that "the parties had a valid guaranty contract, that Plaintiff[s] performed [their] obligations under the contract, and that [defendant] breached the guaranty causing damage to Plaintiff[s]."

¶ 12 Turning to the amount of damages defendant owed, the trial court ruled that the summaries of the outstanding debts were inadmissible because plaintiffs did not lay a proper foundation for their admission as business records. The court recognized that defendant "testified that Foodworks had made certain payments on the loans," but that "the testimony clearly established that it did not pay down any of the principal." Because any other damages were "too speculative," the trial court limited plaintiffs' recovery to the principal amounts due under the notes: \$726,000. The court also found that plaintiffs were entitled to reasonable attorney fees and costs pursuant to the guaranty.

¶ 13 On October 26, 2012, plaintiffs filed a petition for attorney fees and costs. The petition included a table of showing the work performed, hours worked, and rate for each attorney that worked on plaintiffs' behalf. An affidavit from one of the attorneys attested that he reviewed the table and that it accurately reflected the work performed. The attorney further attested that the rates and hours reflected in the table represented the normal hourly rates his firm charged plaintiffs and that, "[b]ased upon [his] experience as an attorney in cases similar to this one, the legal fees and costs incurred *** in this matter are both reasonable and necessary." In total, plaintiffs sought \$24,000 in attorney fees and \$928.24 in costs.

¶ 14 On November 12, 2012, defendant filed a response to plaintiffs' petition for attorney fees and costs. Defendant acknowledged that the data provided by plaintiffs' counsel showed "the services rendered, by whom, the amount of time allegedly incurred and the hourly rates charged." But defendant claimed that this information alone did not satisfy plaintiffs' burden of proving that their attorneys' fees were reasonable. Defendant also argued that plaintiffs' request for costs exceeded the "court costs" provided for by the guaranty.

¶ 15 On November 16, 2012, the trial court ruled on plaintiffs' petition for attorney fees and costs in a written order. The court noted that plaintiffs' request for attorney fees was supported by an affidavit from plaintiffs' counsel and "several pages of exhibits that itemize the work performed, the amount of time spent on such work and the amount charged." The court also noted that defendant did not "point to any specific provision of [plaintiffs'] petition that he believes to be unreasonable nor does he otherwise demonstrate that the amounts sought are duplicative, excessive, or unwarranted." The court concluded, "After reviewing and scrutinizing [plaintiffs'] petition, it is clear that in light of the relevant considerations, the attorney fees sought are reasonable." With respect to plaintiffs' request for costs, the court concluded that plaintiffs "failed to demonstrate that the costs supposedly incurred for mailing and copying ***, clerking services, computerized research and travel [were] reasonable." The court awarded plaintiffs costs only for its filings and attaining service of process. In total, the court awarded plaintiffs \$24,000 in attorney fees and \$506.50 in costs. The record does not contain any transcripts of the hearing on plaintiffs' petition for attorney fees and costs.

¶ 16 Defendant filed a motion to reconsider the trial court's judgment. The trial court denied that motion and defendant appeals.

¶ 17

II. ANALYSIS

¶ 18 As an initial matter, we must point out that defendant's brief does not contain an appendix in compliance with Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005). Specifically, defendant has failed to include "a complete table of contents, with page references, of the record on appeal." *Id.* Because his brief does not comply with Rule 342(a), we may, in our discretion, dismiss defendant's appeal. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57. We choose not to do so, as the record on appeal is brief and defendant cited to the relevant portions

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of the record in his brief. However, we admonish defendant that "[s]upreme court rules are not advisory suggestions, but rules to be followed." *Id.* We now turn to the substance of defendant's appeal.

¶ 19 *A. Limited Liability*

¶ 20 Defendant first contends that the Act insulated him from liability. Defendant contends that, as a manager of Foodworks, a limited liability company, he could not be held liable for Foodworks's debt. We disagree, as the personal guaranty at issue was not Foodworks's obligation; it was defendant's personal obligation.

¶ 21 Defendant's argument requires us to construe the protections afforded to him by the Act. This is a question of statutory interpretation, to which we apply *de novo* review. *In re Marriage of Kates*, 198 Ill. 2d 156, 163 (2001). When interpreting statutes, our goal is "to ascertain and give effect to the true intent of the legislature." *Id.* " ' The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning' " *Id.* at 163 (quoting *Paris v. Feder*, 179 Ill. 2d 173, 177 (1997)). When the plain language is unambiguous, we do not resort to other aids in interpreting the statute. *Kates*, 198 Ill. 2d at 163.

¶ 22 Section 10-10 of the Act provides that a member or manager of a limited liability company (LLC) "is not personally liable for a debt, obligation, or liability of the [LLC] *solely by reason of being or acting as a member or manager.*" (Emphasis added.) 805 ILCS 180/10-10(a) (West 2008). But this is not a situation where defendant is being held liable for Foodworks's debt solely because defendant is an officer of the company. In fact, defendant's status as a member and manager of Foodworks is irrelevant. He is liable for Foodworks's debt for one reason only—because he signed a personal guaranty for its debt. The Act was not intended to shield guarantors from responsibility simply because they *also* happen to be members or managers of the LLC.

¶ 23 Here, it is plain that, in executing the guaranty, defendant intended to make himself personally liable for Foodworks's debt. The loan agreement and three promissory notes each listed the borrower as "Foodworks Metro LLC." By contrast, the guaranty stated that it was being executed between plaintiffs and "Ayad M. Nahlawi." Defendant signed the loan agreements and three promissory notes on Foodworks's behalf, with the following designation below his signature: "Ayad M. Nahlawi, Manager." By contrast, the guaranty did not indicate that defendant was signing on Foodworks's behalf, and the name below his signature simply read, "Ayad M. Nahlawi." The guaranty defined "Guarantor," as defendant, not Foodworks. The guaranty expressly provided that plaintiffs could seek to recover the debt directly from defendant, without first seeking to collect the debt from Foodworks. The only reasonable interpretation of these provisions is that defendant, acting in a capacity separate from his role as Foodworks's manager and member, undertook the obligation to secure the debt that Foodworks had incurred. Consequently, the guaranty was not a "debt, obligation, or liability" of Foodworks, and the Act does not shield defendant from liability.

¶ 24 Because the four corners of the guaranty clearly demonstrate that defendant bound himself, any extrinsic evidence that defendant intended to sign the guaranty on Foodworks's behalf was inadmissible. *Carollo v. Irwin*, 2011 IL App (1st) 102765, ¶ 50. In any event, the absence of a transcript or bystander's report of the first day of trial would compel us to conclude that the trial court did not hear any evidence suggesting that defendant intended the guaranty to be an obligation of Foodworks. *Foutch*, 99 Ill. 2d at 392. We affirm the trial court's finding that defendant was not exempt from liability under the Act.

¶ 25 *B. Lack of Consideration for the Guaranty Contract*

¶ 26 Defendant next challenges the validity of the guaranty. A guaranty contract is construed according to the principles that govern contracts generally. *McLean County Bank v. Brokaw*, 119 Ill. 2d 405, 412 (1988). Just like any other contract, a guaranty generally must be supported by consideration. *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1029 (2007). When a guaranty is executed after the guaranteed debt has been incurred, new consideration must be given to support it. *Id.*

¶ 27 In this case, defendant alleges that he received no new consideration in exchange for his execution of the personal guaranty; that it was simply a new obligation defendant incurred regarding the original \$726,000 plaintiffs had loaned to Foodworks. In support of this contention, defendant cites Mark Anderson's trial testimony that the guaranty existed "simply 'to remind' Foodworks *** and [defendant] of the previous loans and their obligations."

¶ 28 Defendant's argument must fail because it relies upon trial testimony that he did not provide to this court. The appellant bears the burden of presenting a sufficiently complete record on appeal. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001); see also Ill. S. Ct. R. 323 (eff. Dec. 13, 2005) (requiring the appellant to provide the appellate court with a report of proceedings or bystander's report of the trial court proceedings). "Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding." *Webster*, 195 Ill. 2d at 432. In the absence of such report or record, we must presume "that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* Defendant, as the appellant in this matter, bore this burden.

¶ 29 As defendant recognizes, the first day of trial "was consumed with the testimony *** of Mark Anderson." Yet defendant has not provided this court with a transcript or bystander's report of the first day of the trial. The transcript of the second day of trial, which defendant has provided us, does contain some testimony from Anderson, but that testimony only related to plaintiffs' attempt to lay the foundation for various documents. Anderson's testimony on the second day of trial did not relate to the formation of the guaranty. In the absence of a transcript, we cannot ascertain whether the trial court was presented with evidence that there was consideration for the guaranty. We construe this absence against defendant, and presume that such evidence was presented to the trial court. *Foutch*, 99 Ill. 2d at 392.

¶ 30 Regardless, we find that the language of the loan documents themselves indicated that the guaranty was supported by sufficient consideration. In the loan agreement, which by its terms incorporated the guaranty, the parties stated that they "desire[d] to modify the payment terms of the existing financial arrangements and to extend the maturity dates thereof." Thus, the limited information in the record shows that plaintiffs agreed to extend the due date for the outstanding loans in exchange for defendant's personal guaranty of those loans. See *McCracken v. Olson Companies, Inc.*, 149 Ill. App. 3d 104, 113 (1986) (a creditor's agreement to extend the due date of a payment on a debt is sufficient consideration to obtain a guarantee of payment from a third person). Defendant has failed to show that the trial court erred in finding that the guaranty was valid and enforceable.

¶ 31 *C. Proof of Outstanding Debt*

¶ 32 Defendant next asserts that the evidence at trial was insufficient to establish the amount of money he owed under the guaranty. Defendant notes that the trial court excluded plaintiffs'

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exhibits that purportedly reflected the amount due under the loans, and contends that no other evidence established how much he owed under the guaranty.

¶ 33 Again, the fundamental flaw with defendant's argument is that he contests the sufficiency of evidence introduced at a proceeding that we cannot review. We have no transcript of the first day of trial, where it appears a majority of plaintiffs' evidence was adduced. We must construe this absence against defendant. *Foutch*, 99 Ill. 2d at 392. The trial court found that the evidence was undisputed that Foodworks had not paid down any of the principal on any of the notes. Accordingly, the trial court's \$726,000 judgment reflected the principal amount of the notes. Without a transcript or bystander's report of the full trial, we cannot ascertain whether those findings were supported by the evidence or not. We presume that the trial court's findings had a sufficient basis in fact and law. *Id.*

¶ 34 We recognize that, as shown in the transcripts of the second day of trial, defendant testified that Foodworks had repaid some of the debt. Yet, according to the trial court's order, Mark Anderson testified that no payments had been made and that the evidence was undisputed that the principal of all three loans remained unpaid. Without a transcript of the first day of trial, we cannot say whether the trial court's finding was incorrect. We must presume that the evidence supported the trial court's finding that no principal was repaid. *Foutch*, 99 Ill. 2d at 392.

¶ 35 In any event, defendant conceded that he did not know how much money Foodworks had paid back. "A payor asserting payment as a defense to recovery on a promissory note has the burden of establishing by a preponderance of the evidence that the note was paid." *In re Marriage of Hagshenas*, 234 Ill. App. 3d 178, 199 (1992). We would be hard-pressed to find that defendant's vague reference to payments satisfied that burden. Therefore, we reject defendant's claim that plaintiffs presented insufficient evidence to show the amount of the outstanding debt.

¶ 36

D. Attorney Fees and Costs

¶ 37 Defendant next challenges the trial court's award of attorney fees and costs. Defendant argues that, while plaintiffs submitted information showing how much their attorneys worked and their rates, plaintiffs failed to present evidence showing that the work or rates was reasonable. Similarly, defendant contends that the costs awarded to plaintiffs exceed the "court costs" provided for in the guaranty.

¶ 38 Once again, defendant alleges that the trial court erred during a proceeding for which we have no transcript or report. We have no way of knowing what—if any—evidence or arguments were presented to the court at the hearing on plaintiffs' petition for attorney fees and costs. Critically, a trial court's decision to award attorney fees and costs is reviewed for an abuse of discretion. *Harris Trust and Savings Bank v. American National Bank and Trust Co. of Chicago*, 230 Ill. App. 3d 591, 595-96 (1992). We cannot apply this deferential standard without knowing what evidence the trial court heard or considered. We must construe this absence against defendant. *Foutch*, 99 Ill. 2d at 392.

¶ 39 Leaving aside the paucity of the record, we find that plaintiffs submitted sufficient data to the trial court. When seeking attorney fees pursuant to a contractual provision, the party "must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged." *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 984 (1987). The trial court, using this information, must then determine whether those fees are reasonable, in light of several factors. *Id.* In this case, plaintiffs presented the trial court with this information in a detailed table. The trial court's written order indicates that it carefully reviewed the records plaintiff submitted and concluded that the fees were reasonable. Defendant does not explain what additional evidence plaintiffs should have presented to show that their attorney fees

and costs were reasonable. From our review of the same documents, we cannot say that the trial court's conclusion was an abuse of discretion. See *Taylor v. County of Cook*, 2011 IL App (1st) 093095, ¶ 23 ("A circuit court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.)).

¶ 40 Furthermore, defendant's argument that the costs awarded to plaintiffs exceed the "court costs" provided in the guaranty is refuted by the record. The trial court only awarded plaintiffs costs related to its filings and service of process, not costs for out-of-court actions. This limitation on the award comports with the contract's grant of "court costs" to plaintiffs. Based upon the limited information in the record, we cannot say that the trial court's award of attorney fees and costs was an abuse of discretion.

¶ 41

III. CONCLUSION

¶ 42 For the reasons stated, we affirm the judgment of the trial court. We conclude that the guaranty was a personal obligation of defendant, not an obligation of Foodworks from which defendant would be shielded from liability. Because defendant has failed to furnish a transcript or bystander's report of the first day of trial, we cannot ascertain the sufficiency of the evidence related to the formation of the contract or the outstanding debt owed by Foodworks. Likewise, we cannot ascertain whether the trial court's award of attorney fees and costs was an abuse of discretion. Moreover, the limited evidence in the record before use suggests that the trial court did not err in finding that there was a valid contract, that Foodworks had not paid any of the principal of the outstanding debts, or that the attorney fees and costs were reasonable.

¶ 43 Affirmed.