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No. 3--10--0441

Order filed April 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

GRAINCO FS, INC., an)	Appeal from the Circuit Court
Illinois Corporation,)	of the 13th Judicial Circuit,
)	La Salle County, Illinois,
Plaintiff-Appellant,)	
)	
v.)	No. 09--L--34
)	
JAMES NOVAK & NOVAK PAVING,)	
INC.,)	Honorable
)	Eugene P. Daugherty,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

Held: Where defendant debtor signed a promissory note as the owner of a corporation and the terms of the note did not mention defendant individually, debtor was not personally liable for the amount owed.

Plaintiff, Grainco FS, Inc. (Grainco), filed a breach of contract claim against defendants, James Novak and Novak Paving, Inc., for failure to make payments on a promissory note. The trial court dismissed James Novak, individually, and entered judgment

against the corporation. Grainco appeals, and we affirm.

On April 18, 2007, Novak executed a promissory note to Grainco which required the payment of \$61,065.16 over a 12-month period. The first paragraph of the note read:

"As of the above date, JAMES NOVAK, OWNER - NOVAK PAVING, INC., hereafter referred to as (Undersigned), do promise to pay to the order of GRAINCO FS, Inc., the sum of: FIFTY SEVEN THOUSAND EIGHT HUNDRED EIGHTY-TWO AND 18/100 Dollars, (\$57,882.18), for principle [sic] value received and amortized interest calculated at 10% annum *** for twelve (12) consecutive months, until the loan is paid in full."

Novak signed the note on the signature line as "James Novak." Directly below the signature line, it stated:

"Undersigned: JAMES NOVAK, Owner
NOVAK PAVING, INC.
46 Stonehill Road - Unit E
Oswego, IL 60543"

Defendants made a payment on September 17, 2007, in the amount of \$2,500, another payment on October 24, 2007, in the amount of \$2,500, and a third payment of \$1,000 on March 24, 2008. No other payments were made.

Grainco filed a breach of contract claim against Novak and Novak Paving, Inc., alleging that Novak failed to make payments on

the note and that he was personally liable for the debt. In the alternative, Grainco argued that Novak Paving, Inc. was liable based on Novak's signature as the company's owner. In response, Novak denied personal liability. Novak Paving, Inc. admitted that it was indebted to Grainco but disputed the amount it owed.

Grainco moved for summary judgment, claiming that Novak was individually liable on the contract. The trial court found that the language of the promissory note unambiguously described Novak Paving, Inc. as the liable party and that Novak's signature did not reflect personal liability. The court dismissed the cause against Novak, and the parties entered an agreed judgment against Novak Paving, Inc. in the amount of \$67,331.50, plus attorney fees.

ANALYSIS

Grainco contends that summary judgment should have been granted against Novak, individually, because he unambiguously signed the note as "James Novak" in his personal capacity.

Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits on file, when taken together in the light most favorable to the nonmovant, show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *State Farm Insurance Co. v. American Service Insurance Co.*, 332 Ill. App. 3d 31 (2002). The function of a reviewing court on appeal from a grant of summary judgment is limited to determining whether the trial court

correctly concluded that no genuine issue of material fact was raised and, if none was raised, whether judgment as a matter of law was correctly entered. *State Farm Insurance Co.*, 332 Ill. App. 3d at 36.

When construing a contract, the court's primary objective is to give effect to the intent of the parties at the time of contracting. *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384 (1993). To ascertain the intent of the parties and the meaning of their agreement, the court construes the contract as a whole, with due regard to the risk undertaken and the subject matter of the entire contract. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90 (1992). Clear and unambiguous contractual language must be given its plain and ordinary meaning. *Wallis v. Country Mutual Insurance Co.*, 309 Ill. App. 3d 566 (2000). If the words used in the contract are unambiguous, the contract must be enforced as written. *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105 (1993). On appeal, rulings as a matter of law and the unambiguous interpretation of a contract are given a *de novo* review. *Outboard Marine Corp.*, 154 Ill. 2d at 102.

When an agent signs a document and indicates his corporate affiliation next to his signature, then, absent evidence of contrary intent in the document, the agent is not personally bound. In assessing liability, the court should examine the entire

contract. *Central Illinois Public Services Co. v. Molinarolo*, 223 Ill. App. 3d 471 (1992). If the represented party is identified in the body of the contract and the signature indicates that the representative is signing the document on behalf of the represented party, the representative is not personally liable. *Central Illinois Public Services Co.*, 223 Ill. App. 3d at 475; cf. *84 Lumber Co. v. Denni Construction Co.*, 212 Ill. App. 3d 441 (1991) (officer who signs his name, without more, is individually liable).

Here, Novak executed a one-page note agreeing to pay Grainco \$57,882.18, plus interest. The body of the promissary note listed the "undersigned" as "James Novak - owner, Novak Paving, Inc." Novak signed the document on the signature line and agreed to pay the debt as "James Novak - owner; Novak Paving, Inc." Novak's signature above the line designating him as the owner of Novak Paving, Inc. unambiguously indicates that Novak was signing the note as the representative of the company, not in his personal capacity.

Grainco argues that *84 Lumber Co. v. Denni Construction Co.*, 212 Ill. App. 3d 441 (1991), controls this case. In that case, two corporate officers signed a credit application that contained the following provision: "Applicant agrees that he will be personally responsible and liable for the cost of any material charged to his account." *84 Lumber*, 212 Ill. App. 3d at 444. Here, the facts are different. The instrument contains more than Novak's signature.

The body of the promissory note identifies Novak as the owner of Novak Paving, Inc. In addition, the note makes no mention of individual liability. Thus, Novak is not personally bound.

The language of the promissory note and the form of Novak's signature show unambiguously that the signature was made on behalf of the corporation; it must be enforced as written. See *Resolution Trust Corp.*, 248 Ill. App. 3d at 111-12. The trial court correctly determined, as a matter of law, that Novak was not personally liable. We affirm the trial court's decision to dismiss Novak individually.

CONCLUSION

The judgment of the circuit court of La Salle County is affirmed.

Affirmed.