

Circuit Court for Harford County
Case No.: 12-C-14-003328

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1348

September Term, 2017

TRADE RIVER USA, INC.

v.

LUMENTEC, INC., et al.

Berger,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: April 3, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Harford County, the trial court found Lumentec, Inc. (“Lumentec”), liable for breach of contract for failing to make payments owed to appellant, Trade River USA, Inc. (“Trade River”), under a credit agreement. The trial court found appellee, David Simpson, not individually liable under a personal guaranty related to the credit agreement. Trade River appealed from the judgment entered in favor of Simpson as to the personal guaranty. Trade River presents three issues for our review, which we have consolidated and rephrased as follows:

1. Did the circuit court err in concluding that Simpson’s guaranty failed to constitute an enforceable agreement and granting summary judgment in favor of Simpson?¹
2. Did the circuit court err in failing to award post-guaranty damages to Trade River in the amount of \$40,734.32?

For the reasons stated below, we conclude that the circuit court erred in entering judgment in favor of Simpson and, therefore, reverse the judgment of the circuit court and enter judgment in favor of Trade River.

¹ The issues presented, as framed by Trade River, are:

1. Whether the Trial Court erred as a matter of law by failing to follow Maryland Law regarding the objective interpretation of contracts and interpret the guaranty to include all debts of Lumentec owed under the contract[.]
2. Whether The Trial Court erred as a matter of law and/or under a clearly erroneous standard by failing to award judgment in favor of the Appellant and against the Appellee in the amount of \$75,592.28[.]
3. Alternatively, whether the Trial Court erred under a clearly erroneous standard by failing to award Appellant Post Guaranty Damages in the amount of \$40,734.32[.]

BACKGROUND

In 2013, Lumentec, a lighting fixture supplier, required financing to purchase and import products for resale. Trade River, a financial services company, operated “STEPS,” an “integrated online global trade clearing process and execution system,” which provided its borrowers with access to lines of credit. On December 1, 2013, Lumentec entered into a STEPS line of credit agreement with Trade River (the “Agreement”). The Agreement did not provide for a specific credit limit, rather, it provided that the credit limit “may vary from time to time,” and stated that Trade River would notify Lumentec of its credit limit “as soon as practicable.”

In January 2014, Trade River extended \$40,000 in credit to Lumentec. Shortly thereafter, Trade River increased the line of credit to \$100,000, based on assurances that guarantees would be forthcoming. In February 2014, based on assurances from Lumentec that it had experienced an “increasing volume of orders” and was vastly improving its financial position, Trade River agreed to further increase Lumentec’s credit limit to \$150,000.

In April or May 2014, Trade River stated that it had to have a guarantee and assignment in order to continue the line of credit. On May 30, 2014, Simpson executed a Guaranty of Lumentec’s obligations under the Agreement. The Guaranty provided that it was given by Simpson “in conjunction with [Trade River’s] agreement to keep open and available to [Lumentec] ... the \$150,000 credit limit available ... pursuant to the terms of that certain STEPS Buyer’s Agreement entered into by and between [Trade River] and [Lumentec] on December 1, 2013 (the “Contract”).” The Guaranty further provided:

1. [Simpson] hereby guarantees in all respects the due and proper performance of [Lumentec’s] obligations under the Contract ... [.]
2. In the event of [Lumentec’s] failure to carry out, observe or perform all [or] any of the said obligations, duties[,] undertakings, covenants and conditions under the Contract ... [Simpson] will be liable for and shall indemnify [Trade River] against all losses, damages, costs and expenses, whatsoever which [Trade River] may incur by reason or in consequence of any such failure.

On June 26, 2014, Lumentec defaulted on the line of credit, failing to pay Invoice No. 6004 in the amount of \$34,857.96, which was due on that day. Lumentec remained in default, failing to pay Invoice No. 6763, due on August 7, 2014, in the amount of \$19,649.15, and Invoice No. 7129, due on October 25, 2014, in the amount of \$21,085.17. The latter two invoices reflected transactions that occurred after the Guaranty was executed.

On October 27, 2014, Trade River filed a complaint in circuit court against Lumentec and Simpson, alleging breach of contract for failing to make payments under the Agreement and Guaranty, respectively, in the amount of \$75,592.28.² Lumentec and Simpson answered the complaint, denying liability and asserting multiple equitable defenses.

At trial, Layla Anderson Hollender, President and CEO of Trade River, testified that, following Lumentec’s assurances in February 2014 that they had experienced an increase in volume and had “more shipments that required funding,” Trade River increased Lumentec’s credit to \$150,000. According to Ms. Hollender, Lumentec never provided

² On May 30, 2014, Simpson also executed an Assignment Agreement. Trade River did not allege liability under the Assignment Agreement.

proof of its financial progress. Trade River conditioned its agreement to keep Lumentec's \$150,000 credit limit open upon the execution of a guaranty and an assignment agreement. Ms. Hollender testified that on August 7, 2014, she advised Lumentec that Trade River would not extend further credit to Lumentec until Lumentec paid its two outstanding invoices: Invoice No. 6004 in the amount of \$34,857.96 and Invoice No. 6763 in the amount of \$19,649.15, due on August 7, 2014.

Simpson testified that he had previous experience executing personal guarantys; he had executed twenty-five guarantys prior to the Guaranty with Trade River. With respect to Simpson's understanding of personal guarantys, he testified as follows:

[DEFENSE COUNSEL]: In your experience as a person executing personal guarant[ys] ... [w]hat debt does the personal [g]uaranty guarantee, if you will ... ?

SIMPSON: It covers usually from the date you sign it like - - first, it doesn't do what this did. It doesn't go backwards and cover personal debt.

Simpson further testified that his understanding of the Guaranty was that it would allow Lumentec "to get \$150,000.00 or up to \$150,000.00 of credit for what we needed to do."

At the conclusion of trial, the court issued its ruling, finding that Lumentec was liable to Trade River for the outstanding balance of \$75,592.28 owed to Trade River under the Agreement. It entered judgment accordingly. With respect to the claim against Simpson, the court concluded that the Guaranty was unenforceable, and ruled that Simpson was not liable for Lumentec's debts to Trade River:

Well, the way the Guaranty is worded, Mr. Simpson was guaranteeing debt up to \$150,000.00. He had no idea what the debt was on May the 30th, 2013.

That’s the way that I understand the testimony. So, on the date that he signed this Guaranty, in his mind he wasn’t guaranteeing something that was already owed, he was guaranteeing future debt. That’s the way that I understood him.

There is really no meeting of the minds as far as the debt is concerned. Nobody ever explained the STEPS program to him. In all of my years of practice and on the bench, I have never seen anything like this STEPS Program. I can see where people would be confused.

The STEPS Program doesn’t set forth \$150,000.00. I don’t know where that number came from. It just says I’ll advance credit; maybe up, maybe down. It is not very specific.

I’ll enter judgment in favor of the Plaintiff against LumenTec incorporated in the amount of \$75,592.28, the amount claimed. However, I’m not going to enter judgment against Mr. Simpson. Judgment in Defendant’s favor on that issue.

On August 11, 2017, Trade River noted an appeal. Lumentec did not cross-appeal from the judgment entered against it on the breach of contract claim.

DISCUSSION

Trade River argues that the circuit court erred in granting judgment in Simpson’s favor because the Guaranty was enforceable and its unambiguous language obligated Simpson to pay the prior and future debts of Lumentec. Trade River argues that because Simpson failed to demonstrate any ambiguity in the Guaranty, it was erroneous for the circuit court to consider Simpson’s subjective intent in executing the Guaranty.

Simpson responds that the trial court correctly found that the material terms of the Guaranty were too vague and indefinite to prove mutual assent between Trade River and Simpson, and therefore, the Guaranty did not constitute an enforceable contract. Simpson argues that the Guaranty did not set forth a specific credit limit, nor did it address what

would happen “in the event that [Trade River] failed to keep the STEPS credit amount of \$150,000 open and available to Lumentec.” Simpson also argues that the STEPS program was a “unique product,” pointing out that the trial judge commented he had never previously encountered that type of product.

When an action is tried without a jury, we review the case on both the law and evidence and accept the trial court’s findings of fact unless clearly erroneous. Md. Rule 8-131(c). We accord no deference, however, to the trial court’s “determinations of legal questions” and “conclusions of law based upon findings of fact.” *Elderkin v. Carroll*, 403 Md. 343, 353 (2008) (citations and quotation marks omitted). ““The interpretation of a written contract is ordinarily a question of law for the court and, therefore, is subject to *de novo* review by an appellate court.”” *Grimes v. Gouldmann*, 232 Md. App. 230, 235 (2017) (quoting *Wells v. Chevy Chase Bank, F.S.B.*, 363 Md. 232, 250 (2001)).

“A guaranty is a form of commercial obligation in which the guarantor promises to perform if his principal does not.” *Middlebrook Tech, LLC v. Moore*, 157 Md. App. 40, 59 (2004) (citing *Mercy Med. Ctr., Inc. v. United Healthcare of the Mid-Atl., Inc.*, 149 Md. App. 336, 361 (2003)). In effect, “the guarantor insures the ability or solvency of the principal.” *Mercy Med. Ctr.*, 149 Md. App. at 358 (citation omitted). Because a guaranty is a form of contract, it is subject to the principles of contract interpretation under Maryland law. *See id.* *See also, Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985).

Maryland courts adhere to the ““objective approach to contract interpretation, according to which, unless a contract’s language is ambiguous, we give effect to that language as written without concern for the subjective intent of the parties at the time of

formation.” *Frederick Classical Charter Sch., Inc. v. Frederick Cty. Bd. of Educ.*, 454 Md. 330, 414-15 (2017) (quoting *Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 86 (2010)), *reconsideration denied* (August 24, 2017). This objective approach requires that we “restrict our inquiry to the four corners of the agreement and ascribe to the contract’s language its customary, ordinary, and accepted meaning.” *Id.* (citation and quotation marks omitted). “[T]he primary source for determining the intention of the parties is the language of the contract itself.” *County Com’rs for Carroll County v. Forty West Builders, Inc.*, 178 Md. App. 328, 376 (2008) (internal quotation marks and citation omitted).

An enforceable contract “must express with definiteness and certainty the nature and extent of the parties’ obligations.” *Id.* at 377 (citation omitted). The contract language must “clearly inform the parties to it of what they may be called upon by its terms to do, but also must be sufficiently clear and definite in order that the courts, which may be required to enforce it, may be able to know the purpose and intention of the parties.” *Id.* at 378-79 (quoting *Robinson v. Gardiner*, 196 Md. 213, 217 (1950)). We have recognized that “[v]agueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement have often been held to prevent the creation of an enforceable contract.” *Id.* at 378 (citing Joseph M. Perillo, 1 CORBIN ON CONTRACTS § 4.1, at 525 (rev. ed.1993)).

In his brief, Simpson argued that the material terms of the Guaranty were too vague and indefinite to be enforceable. Specifically, Simpson argued that the Guaranty did not specify the total sum of credit available to Lumentec, nor did it address what would happen “in the event that [Trade River] failed to keep the STEPS credit amount of \$150,000 open

and available to Lumentec.” At oral argument, Simpson also argued that the Guaranty was legally ambiguous.

Indeed, a contract may be invalid if it omits an essential term or is too vague or uncertain with respect to that term. *Forty West Builders, Inc.*, 178 Md. App. at 378 (citations omitted). Here, the essential terms of the contract were present and were clear and unambiguous. In the preamble, the Guaranty provided that Trade River would “keep open and available” credit to Lumentec up to \$150,000. The phrase “open and available” has to be read in the context of the terms of the Agreement, which was expressly referenced in the Guaranty. The phrase “open and available,” is not vague or indefinite. The line of credit was “open and available” according to the terms of the Agreement. Lumentec did not fulfill its obligations under the Agreement. In exchange for the \$150,000 of available credit, Simpson agreed to guaranty “in all respects” Lumentec’s obligations under the Agreement and to be personally liable if Lumentec failed to fulfill *any* of those obligations, including payment.

The language of the Guaranty made clear that Simpson accepted all liability for Lumentec’s debts and obligations to Trade River, without regard to whether those debts were incurred before or after the execution of the Guaranty. Because the Guaranty was clear and unambiguous, it was error for the circuit court to consider extrinsic evidence that Simpson believed that he was guaranteeing future debt only. “[T]he true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.” *Spacesaver Sys., Inc. v. Adam*, 440 Md. 1, 8 (2014) (quoting *Gen. Motors Acceptance Corp.*, 303 Md. at 261).

When the language of an agreement is clear and unambiguous, the terms of the agreement “will not give away to what the parties thought that the agreement meant or intended it to mean.” *Id.* There is “no room for construction” of a plain and unambiguous contract, “and a court must presume that the parties meant what they expressed.” *Id.*

The Guaranty was enforceable and its language was clear. Accordingly, we conclude that the circuit court erred by entering judgment in favor of Simpson. We shall reverse and enter judgment in favor of Trade River and against Simpson in the amount of \$75,592.28.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY ENTERED IN
FAVOR OF DAVID SIMPSON REVERSED.
JUDGMENT ENTERED IN FAVOR OF
TRADE RIVER USA, INC. AND AGAINST
DAVID SIMPSON IN THE AMOUNT OF
\$75,592.28.
COSTS TO BE PAID BY APPELLEE,
DAVID SIMPSON.**