

IN THE COURT OF APPEALS OF IOWA

No. 2-208 / 11-1500
Filed April 25, 2012

GREAT SOUTHERN BANK,
Plaintiff-Appellee,

vs.

**RIVERADIO, L.L.C., WILLIAM E.
BILLINGS, and SUSAN L. NAIL,**
Defendants,

and

WILLIAM S. GRABER,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, James D. Scott,
Judge.

William Graber appeals a district court's order granting summary judgment
to Great Southern Bank and ordering him to pay debts incurred by Riveradio.

AFFIRMED.

John D. Mayne and Zachary S. Hindman of Bikakis, Mayne, Arneson,
Hindman & Hisey, Sioux City, for appellant.

Ian A. McConeghey of Corbett, Anderson, Corbett, Vellinga & Irvin, L.L.P.,
Sioux City, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

William Graber appeals a district court's order granting summary judgment to Great Southern Bank and ordering him to pay debts incurred by Riveradio, L.L.C. Because the terms of the continuing guaranty signed by Graber are unambiguous, Graber remained liable as a guarantor of a promissory note executed by Riveradio, although limited to an amount of \$137,298. Moreover, the district court did not err in declining to consider extrinsic evidence. We therefore affirm.

I. Background Facts and Proceedings

From June 2007 to March 2008, William Graber was chief executive officer of Riveradio, L.L.C. Riveradio was in the business of purchasing high-definition radios from manufacturers in China and selling them for profit. To have inventory shipped from China, it was necessary for Riveradio to obtain a letter of credit and a guaranty.¹ When Riveradio needed an international letter of credit for approximately \$137,000, Graber agreed to sign a guaranty for this letter of credit for a ten percent fee. On September 5, 2007, Graber executed a commercial guaranty (Guaranty) for Riveradio, as borrower, and Vantus Bank, as lender. The extent of this Guaranty is at issue in this appeal. The international letter of credit guaranteed by Graber appears to be satisfied.

Critical to this appeal is a promissory note (Note) in the amount of \$100,000, also executed between Riveradio and Vantus Bank on September 5, 2007. The Note was signed by Riveradio's Treasurer, Susan Nail.

¹ Two doctors had previously executed international letters of credit to assist Riveradio in acquiring its inventory. The doctors were paid ten percent for their guarantees; these were later released.

On July 8, 2010, Great Southern Bank filed a petition alleging the Note was past due and payable in full, in the amount of \$78,154.61 plus interest.² The petition named as defendants Riveradio, L.L.C. (now defunct), Graber, and others.³ Trial was scheduled for July 19, 2011. On May 20, 2011, Great Southern Bank filed a motion for summary judgment, alleging the Guaranty executed by Graber made him liable for Riveradio's debt on the Note. Graber resisted and on June 3, 2011, also filed a motion for summary judgment. Great Southern Bank resisted Graber's motion.

On August 19, 2011, the district court granted Great Southern Bank's motion for summary judgment and overruled Graber's motion. Judgment was entered against Graber in the amount of \$78,154.61, plus interest. Graber appeals.

II. Standard of Review

Our review of a district court's ruling on a motion for summary judgment is for errors at law. Iowa R. App. P. 6.907. "Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Koepfel v. Speirs*, 808 N.W.2d 177, 179 (Iowa 2011). The facts in the record are viewed in the light most favorable to the nonmoving party. *Id.*

² The Note was assigned to Great Southern Bank by the Federal Deposit Insurance Corporation, as receiver of Vantus Bank.

³ Those named were: William E. Billings, Susan L. Nail, William L. Graber, and Mary L. Graber. On August 4, 2010, William and Mary Graber filed a motion to dismiss, citing lack of jurisdiction and insufficient contacts with the State of Iowa. On December 21, 2010, the district court overruled the motion as to William Graber and granted it as to Mary Graber. Billings and Nail filed an application to the court to stay further proceedings, as they each filed a petition in bankruptcy in the Northern District of Iowa on January 7, 2011. The district court stayed proceedings as to Billings and Nail.

III. Interpretation of the Guaranty

Graber argues the district court erred in granting Great Southern Bank's motion for summary judgment because the Guaranty is ambiguous.⁴ A guaranty is a contract by one party to another party for the fulfillment of the promise of a third party. *City of Davenport v. Shewry Corp.*, 674 N.W.2d 79, 86 (Iowa 2004). The rules applicable to the interpretation and construction of contracts are also applicable to guaranties. *Andrew v. Austin*, 213 Iowa 963, 967, 232 N.W. 79, 81 (1930) ("The same rule is to be applied in the construction of contracts of guaranty as other contracts."). Contract interpretation "is a process for determining the meaning of words in a contract," whereas construction "is a process of determining the legal effect of such words." *Fausel v. JRJ Enters., Inc.*, 603 N.W.2d 612, 618 (Iowa 1999). On appeal, Graber challenges the district court's interpretation of the Guaranty.

"Generally, contracts are interpreted based on the language within the four corners of the document." *Clinton Physical Therapy Servs. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 615 (Iowa 2006). "It is a fundamental and well-settled rule that when a contract is not ambiguous, we must simply interpret it as written." *Smidt v. Porter*, 695 N.W.2d 9, 21 (Iowa 2005); *see also Petty v. Faith Bible Christian Outreach Ctr., Inc.*, 584 N.W.2d 303, 306 (Iowa 1998) ("Unless [a] contract is ambiguous, the court determines the parties' intent from the language of the contract. Consequently, where the intent of the parties is expressed in clear and unambiguous language, we enforce the contract as written."). A

⁴ Great Southern Bank questions whether error has been preserved as to the issue of ambiguity. Upon our review of the record, we conclude this issue has been preserved and therefore address it on appeal.

contract is to be interpreted as a whole. *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991).

Our supreme court has articulated,

Interpretation involves a two-step process. First, from the words chosen, a court must determine “what meanings are reasonably possible.” In so doing, the court determines whether a disputed term is ambiguous. A term is not ambiguous merely because the parties disagree about its meaning. A term is ambiguous if, “after all the pertinent rules of interpretation have been considered,” “a genuine uncertainty exists concerning which of two reasonable interpretations is proper.”

Rick v. Sprague, 706 N.W.2d 717, 723 (Iowa 2005) (quoting *Walsh v. Nelson*, 622 N.W.2d 499, 503 (Iowa 2001)). “Once the court identifies ambiguity, it then must choose among possible meanings.” *Id.* “If extrinsic evidence is necessary to resolve the *meaning of ambiguous language*, a question of interpretation arises which is reserved for the trier of fact.” *Id.* (emphasis added). Determining the meaning of any ambiguous language is to be resolved only “in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealings between the parties.” *Id.*

Under this guidance, our first task is to determine whether the language of the Guaranty is ambiguous. See *id.* Graber argues the following language contained in the Guaranty is ambiguous:

GUARANTOR’S SHARE OF THE INDEBTEDNESS. The words “Guarantor’s Share of the Indebtedness” as used in this Guaranty mean an amount not to exceed One Hundred Thirty-seven Thousand Two Hundred Ninety-eight & 00/100 Dollars (\$137,298.00) of all the principal amount, interest thereon to the extent not prohibited by law, and all collection costs, expenses and attorneys’ fees whether or not there is a lawsuit, and if there is a lawsuit, any fees and costs for trial and appeals.

Graber argues “this provision limited his exposure to the international letter of credit, which undisputedly was paid.” Great Southern Bank argues that “to accept Graber’s interpretation, a reader would have to ignore the provisions which state that Graber agrees to perform Riveradio’s obligations under the \$100,000 Promissory Note.”⁵

For purposes of our analysis, we first acknowledge the Guaranty defines “Note” as follows:

Note. The word “Note” means the promissory note dated September 5, 2007, in the original principal amount of \$100,000 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Recognizing that the Note referenced throughout the Guaranty is the Note executed September 5, 2007, we turn to the opening language of the Guaranty.

The first paragraph of the Guaranty states:

CONTINUING GUARANTY OF PAYMENT AND PERFORMANCE. For good and valuable consideration, *Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of Guarantor’s Share of the Indebtedness to Lender, and the performance and discharge of all Borrower’s obligations under the Note and the Related Documents.* This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender’s remedies against anyone else obligated to pay the indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim,

⁵ In his reply brief, Graber contends Great Southern Bank never raised this issue to the district court. However, Great Southern Bank’s “Statement and Memorandum in Support of its Motion for Summary Judgment” begins by describing the promissory note and then states, “[T]he Guaranty of Riveradio debt which was signed by Mr. Graber clearly states that it relates to any and all obligations of Riveradio. The second paragraph of the Guaranty defines ‘Indebtedness.’ This definition painstakingly makes clear that it guarantees *all* indebtedness of Riveradio.” We conclude error was preserved.

and will otherwise perform Borrower's obligations under the Note and Related Documents. Under this Guaranty, Guarantor's obligations are continuing.

(Emphasis added.)

Also of importance in interpreting the Guaranty is the closing provision, just above the signature lines, which states, "THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER THAT . . . THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED 'DURATION OF GUARANTY.'"

The "Duration of Guaranty" provision states:

DURATION OF GUARANTY. This Guaranty . . . will continue in full force until all the indebtedness incurred or contracted before receipt by Lender of any notice or of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to new indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new indebtedness" does not include the indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. For this purpose and without limitation, "new indebtedness" does not include all or part of the indebtedness that is: incurred by Borrower prior to revocation; incurred under a commitment that became binding before revocation; any renewals, extensions, substitutions, and modifications of the indebtedness. . . . It is anticipated that fluctuations may occur in the aggregate amount of the indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of indebtedness, even to zero dollars (\$0.00), shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long

as any of the Guarantor's Share of the Indebtedness remains unpaid and even though the Guarantor's Share of the Indebtedness may from time to time be zero dollars (\$0.00).

The language used is clear that the Guaranty was a continuing guaranty, not just for the amount secured in the letter of credit. "A continuing guaranty contemplates a future course of dealing during an indefinite period" and "is ordinarily effective until revoked by the guarantor." *Bankers Trust Co. v. Woltz*, 326 N.W.2d 274, 227 (Iowa 1982). By contrast, a restrictive guaranty is "limited to a single transaction or to a limited number of specific transactions." *Mareh Sheet Metal Works v. N. R. G., Ltd.*, 304 N.W.2d 436, 440 (Iowa 1981). Under the "Duration of Guaranty" provision, the indebtedness guaranteed by Graber remained until it was paid in full. This broad language regarding Graber's share of the indebtedness included the September 5 Note. As the Note was not paid in full, Graber remained liable for any indebtedness unpaid under the Note.

Applying the first step of the contract interpretation analysis, the district court determined:

Graber's guaranty is unambiguous when read as a whole rather than in isolated words or phrases. It explicitly states that it is a continuing guaranty for the guarantor's share of the indebtedness of the borrower "NOW EXISTING OR HEREAFTER ARISING OR ACQUIRED ON A CONTINUING BASIS." . . . The guaranty did not limit Graber's liability to the international letter of credit. It unambiguously held him liable for all the borrower's debts until Graber would revoke his guaranty.

Based on our reading of the contract, we agree with the district court that there is no ambiguity regarding the fact that Graber could be held responsible for payment on the Note. As the district court recognized, the "Guarantor's Share of the Indebtedness" provision "never states that the Guarantor's share is limited to

the international letter of credit or to any particular note.” For this reason, the district court did not err in determining that the Guaranty was unambiguous and that Graber remained liable as a Guarantor of the Note, limited to an amount of \$137,298.⁶ Moreover, as the district court determined the contract was unambiguous, it did not need to proceed to the second step of the contract interpretation analysis. See *Rick*, 706 N.W.2d at 723–24 (completing only step one of the contract interpretation analysis where the court determined the words of a confession of judgment—which is interpreted like a contract—were not ambiguous); see also 17A Am. Jur. 2d *Contracts* § 330 (2004) (“Where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids, and it must be enforced as written.”).

IV. Extrinsic Evidence

Graber’s assertion that the district court erred in declining to consider his proffered extrinsic evidence is without merit. Because the language of the contract was unambiguous, the district court did not need to engage in an analysis where it chose among possible meanings, using extrinsic evidence as necessary. See *Rick*, 706 N.W.2d at 723 (explaining the two-step process utilized in contract interpretation). We therefore affirm.

AFFIRMED.

⁶ Because we find the contract was unambiguous, we do not address Graber’s claim that the district court erred in denying his motion for summary judgment.