

IN THE COURT OF APPEALS OF IOWA

No. 2-549 / 11-1717
Filed August 8, 2012

FIRST AMERICAN BANK,
Plaintiff-Appellee,

vs.

**ENHANCED CUSTOM HOMES,
INC., JESSE D. HELMICK and
PARTIES IN POSSESSION,**
Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Enhanced Custom Homes, Inc. and Jesse Helmick appeal the district court's grant of summary judgment in favor of First American Bank. **AFFIRMED.**

Michael P. Holzworth, Des Moines, for appellants.

Lynn Wickham Hartman and Laura Seaton of Simmons, Perrine, Moyer & Bergman, P.L.C., Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

VOGEL, P.J.

Enhanced Custom Homes, Inc. (ECH) and Jesse Helmick appeal the district court's grant of summary judgment to First American Bank in a foreclosure action. Helmick claims the district court erred in finding him personally liable for the debt owed by ECH based on an "Unlimited Continuing Guaranty" Helmick signed in 2005. We affirm the district court's ruling.¹

On December 5, 2005, Helmick signed a document entitled "Unlimited Continuing Guaranty" promising to pay ECH's present and future debt to First American Bank. The guaranty provided Helmick's liability would be unlimited and include all present and future written agreements between First American Bank and ECH, whether executed for the same or different purpose, including, but not limited to, a loan for \$270,000, identified as loan number 7581.² ECH subsequently borrowed \$208,000 on December 7, 2006, which was identified as loan number 7405. The note document identified "Guaranty Dated 12/05/05" in its "Additional Terms" paragraph. This loan was also secured by a mortgage dated December 7, 2006, on property located in Ankeny, Iowa.

When ECH defaulted on loan number 7405, First American Bank sought to foreclose the mortgage and collect on the personal guaranty by filing a petition in the district court on March 10, 2011. First American Bank moved for summary judgment on May 31, 2011. Helmick resisted. The district court granted First American Bank's motion on August 16, 2011, finding,

¹ The record reveals that Jesse D. Helmick signed the notes and mortgage at issue in this case as "President" or "President/Secretary." The foreclosure petition alleges ECH was administratively dissolved on or about August 11, 2008.

² This loan had a maturity date of September 5, 2006.

A reading of Paragraph 2 of the personal guaranty contract in Loan #7581 clearly shows that Defendant Helmick's personal guaranty was being provided not only for the specific loan referred to in the guaranty (#7581) but for all "future written agreements between borrower and lender (whether executed for the same or different purposes than the foregoing)." The Court finds that the personal guaranty executed by Defendant Helmick on December 5, 2005, guaranteed payment of the note being sued upon by the Plaintiff.

We review the district court's ruling on summary judgment for correction of errors at law. *Freedom Fin. Bank v. Estate of Boesen*, 805 N.W.2d 802, 806 (Iowa 2011). At the district court, Helmick resisted First American Bank's motion for summary judgment on the grounds that his "Unlimited Continuing Guaranty" matured three months before the loan at issue in this case was executed and asserted the Guaranty only applied to the first loan, number 7581. This claim was correctly denied by the district court under the plain language of the Guaranty.

In this appeal, Helmick changes his argument to assert that the December 7, 2006 mortgage, executed with loan number 7405, somehow limited the Guaranty, such that the Guaranty did not cover the new loan. As this additional argument was not presented to nor decided by the district court, we find Helmick's new contention has been waived. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Even if we were to find error had been preserved, we find no merit to this new contention. We therefore affirm the district court's ruling granting summary judgment to First American Bank.

AFFIRMED.