IN THE COURT OF APPEALS OF IOWA

No. 6-166 / 05-1042
Filed April 26, 2006

FARMERS COOPERATIVE ASSOCIATION and ROEMERMAN FEED & GRAIN, INC.,
Plaintiffs-Appellees/Cross-Appellants,

vs.

BILL COOPER,
Defendant-Appellant/Cross-Appellee,

SOUTHERN TIER PORK, L.C., JOSEPH PYLE and TIM SPURGIN,
Defendants.

BILL COOPER,
Cross-Claimant-Appellant/Cross-Appellee,

vs.

JOSEPH PYLE,
Defendant to Cross-Claim-Appellee/Cross-Appellant,

TIM SPURGIN,
Defendant to Cross-Claim-Appellee.

BILL COOPER,
Third-Party Plaintiff-Appellant,

vs.

REX DAVIS,
Third-Party Defendant-Appellee.

Appeal from the Iowa District Court for Monroe County, Annette J. Scieszinski, Judge.

Bill Cooper appeals from the adverse judgment in plaintiffs' suit on his guaranty of Southern Tier Pork's debt. **AFFIRMED**

Robert Benton of Stuyvesant & Benton, Carlisle, for appellant Cooper.

Paul Zingg of Kiple, Denefe, Beaver, Gardner & Zingg, L.L.P., Ottumwa, for appellees/cross-appellants Farmers Cooperative Association and Roemerman Feed & Grain.

John Pabst of Pabst Law Firm, Albia, for appellee/cross-appellant Pyle.

John Martin, Bloomfield, for appellee Davis.

Kevin Maughan, Albia, for defendant Southern Tier Pork, L.C.

Tim Spurgin, Albia, defendant, pro se.

Heard by Sackett, C.J., and Huitink and Miller, JJ.

SACKETT, C.J.

This is an appeal from the district court ruling in a suit by a feed dealer against a hog production company for unpaid feed bills. Defendant-appellant, Bill Cooper, one of four members of the hog production company, contends the court erred (1) in finding he executed a written guaranty that was lost, (2) in finding there was no oral agreement between the principals to guarantee the debt, (3) in ruling he was not entitled to contribution from the other three members, and (4) in not requiring contribution from the other members under an unjust enrichment theory. We affirm.

BACKGROUND FACTS AND PROCEEDINGS

In 1997 four Iowa hog farmers formed defendant Southern Tier Pork, L.C., (STP) a limited liability company. Initial cash contributions from the four members were as follows: Bill Cooper, $40,000, Joseph Pyle, $20,000, Tim Spurgin, $50,000, and Rex Davis, $40,000. The operating agreement allocated profits and losses in the same percentage as the original cash contributions: Cooper, 26.67%, Pyle, 13.33%, Spurgin, 33.33%, and Davis, 26.67%. The company also received a $100,000 loan from Hubbard Feed for startup money. STP purchased feed on credit from plaintiff Roemerman Feed & Grain, Inc. (Roemerman).

By early 2000, STP's outstanding feed bill had grown to over $100,000. Roemerman's manager, Bruce Klyn, met with STP's members and notified them he was switching STP to a cash basis for feed until its outstanding bill was reduced below $100,000. By restructuring the operation to eliminate the finishing segment and through cash contributions of the members, the feed bill was

reduced to about $75,000. Roemerman returned STP to a credit basis for feed purchases. The outstanding balance again began to grow. Later in 2000, Roemerman received a credit charge back of nearly $120,000 for STP's unpaid credit card bills for feed. Klyn called another meeting with the four members of STP in late 2000.

Klyn informed the members that the only way for STP to be on a credit basis for feed purchases was for the four members to execute written personal guaranty of STP's debt. The members already had executed written guaranties to Hubbard Feed for the startup financing and to a local bank to finance hog purchases. Klyn obtained a guaranty form from a local bank, had it completed by his secretary, and gave the original and four copies to Spurgin to obtain signatures. After the four signed the original, Spurgin returned it to Roemerman's Albia office. After Spurgin obtained the signatures on the guaranty, Klyn put STP back on a credit basis.

STP continued to struggle financially. By mid-2003 Roemerman stopped selling feed to STP. The company closed down its operations. Farmers Cooperative Association (FCA) and Roemerman filed suit against STP and its four members in late 2003 to collect outstanding bills.[1] As creditors sought to collect, Davis contributed $65,000 on his guaranty of STP's obligation to Hubbard Feed. Following negotiations, Pyle and Spurgin confessed judgment to Roemerman for $10,000 and $105,000 respectively. Cooper filed a cross petition against Davis and cross claims against Pyle and Spurgin. Motions for

[1] Plaintiff Farmers Cooperative Association owns plaintiff Roemerman Feed & Grain.

summary judgment by Pyle and Cooper claiming Roemerman could not produce any written guaranty were denied.

At the beginning of trial, the plaintiffs acknowledged the prior dismissal of their claims against Davis and the confessions of judgment obtained from Pyle and Spurgin. Plaintiff FCA's claim against STP was dismissed at the beginning of trial, upon acknowledgement of satisfaction of its claim. Roemerman proceeded against STP on its outstanding bill and against Cooper on his guaranty. Cooper sought contribution or indemnification from the other members for any liability and also sought an equitable settling up of STP's accounts among its members.

Roemerman was unable to produce the signed copy of the written guaranty executed by the members. Cooper had an unsigned copy of a guaranty agreement in his business records. Spurgin also had an unsigned copy of the same guaranty. Pyle admitted signing a form guaranty from Roemerman. The evidence from the members and Klyn concerning the written guaranty and Cooper's claim of an oral guaranty agreement between the members varied. The district court found, in relevant part:

> Klyn . . . obtained advice and a form to accomplish the personal guaranties; his secretary then adapted that pre-printed form. The document featured all four farmers' names and was customized with inserts that made it obvious that each would be pledging responsibility for up to $150,000 of STP feed debt. Roemerman gave Spurgin the original to be signed by all, and four copies—one for each member to keep—with instructions to deliver the signed original to the Albia store. Spurgin acted in accordance with the instructions, and as a result, Klyn shifted STP's account from "cash" back to "credit."
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> Over the course of STP's operation, Pyle, Spurgin, Davis, and Cooper contributed differing amounts of capital, furnished uneven cash infusions, and bore disproportionate burdens in kind.

As creditors started closing in on collection, Davis personally anteed up $65,000 pursuant to his personal guaranty, to settle STP's $100,000 obligation to Hubbard. Two STP members confessed negotiated judgments to Roemerman: Pyle's confession to pay $10,000 was accepted on September 29, 2004, and Spurgin's payment of $105,000 was accepted on April 5, 2005, the day trial started. Roemerman is not pursuing judgment against Davis, Pyle, or Spurgin, rather, the collection focus at trial is on Cooper's guaranty.

Cooper, in turn, demands atonement from his fellow STP entrepreneurs. A financial reconciliation of the members' accounts within STP has been left unattended, and Cooper would like to force an equitable settlement among his business associates now. The collection litigation has been fueled by the circumstance of Roemerman's loss of the guaranty contract, and Cooper's consequent challenge to its existence.

The existence of Cooper's written guaranty of STP feed debt is clear. All credible circumstantial evidence points to Spurgin's timely delivery of the document carrying Cooper's signature, to Roemerman. And, it is well established that none of the farmers ever refused to furnish a written guaranty demanded by any STP creditor. No one ever objected to a creditor's guaranty terms. No one ever proposed any alternative form or language, or altered the language. And no one ever revoked an STP guaranty. Indeed, Klyn's insistence on personal liability for the STP account was non-negotiable. Each, Pyle, Spurgin, and Davis, admit at trial that he signed the guaranty Roemerman produced. Cooper, while contesting that he signed it, does now concede that he maintained a copy in his business records.

It is noteworthy that it was only as consideration of the written guaranty that Roemerman accorded STP—and Cooper as a participant—the benefit flowing from it: credit purchases of feed. Cooper's cagey denial of the guaranty in the course of this litigation was likely born of strategy once it became apparent that Roemerman could not locate the original. In a balanced review of this trial record, Cooper's testimonial parsing of facts and circumstances to undercut existence of his guaranty, does not merit weight.

. . . .

In addition to challenging the existence of his guaranty, Cooper argues for application of broader terms than those scripted in the written document. To do so he alleges that there was a preceding oral agreement that affords him a right to seek contribution from his associates. The reliable trial evidence does not demonstrate the existence of any oral guaranty of STP debt. Although Pyle, Spurgin, Davis and Cooper did orally communicate that they would accede to Klyn's ultimatum and each would sign a personal guaranty, it was the written security that was pursued and

> that they resolved to provide—not an oral commitment to stand personally liable. In the historic course of their individual and collective dealings with other creditors, they had before engaged in written guaranties—but are not shown to have attempted any such oral pledge. Consistently, none was attempted or intended here, either.

The district court came to the following conclusions concerning a guaranty and contribution between members of STP:

> Clear, satisfactory, and convincing evidence establishes that Pyle, Spurgin, Davis, and Cooper each signed a personal guaranty in 2000, and the original document was delivered to Roemerman in exchange for a reinstatement of credit so the members' company could continue feeding its livestock. Despite Roemerman's loss of the original, the guaranty exists as a contract and is legally enforceable. Its terms are those that are recited in Plaintiff's Exhibit 1/Cooper Exhibit A. The guaranty does not accord Cooper a right of contribution from his fellow STP members, any form of indemnification, or any other equitable recovery.
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> Under the unique circumstances here, there is no cause to warrant relief under Cooper's Cross Petition and Cross Claims. Common law remedies of contribution and indemnity are equitable, and are widely applied to prevent injustice. *State ex rel. Department of Human Services v. Unisys Corporation*, 637 N.W.2d 142, 149 (Iowa 2001). These principles, along with the related remedy of subrogation, are employed to correct or prevent unjust enrichment; they are part of a broad theory of restitution, and do not necessarily turn on any underlying wrongful conduct. *Id.* at 149-50.
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> One fundamental aspect of a claim based upon unjust enrichment requires that the parties to the contribution/indemnity claim are obligated to a third party. *Id.* Here, to merit contribution Cooper must show that Pyle, Spurgin, and Davis have a legally recognizable obligation to Roemerman, a "common liability." The common liability rule exists because the right of contribution applies only where the situations of the parties are equal; "equality among [parties] whose situations are not equal is not equitable." *Id.* at 153. At the time of this trial, the circumstances of Pyle, Spurgin, and Davis are not the same as those of Cooper. The guarantors Cooper pursues in his cross litigation have already resolved their liabilities to Roemerman, and are no longer subject to any legally recognizable obligation.
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> The equitable purpose to be served by contribution is also absent from the peculiar circumstances of this dispute. The doctrine of contribution "is founded on the principle that 'when the parties stand in *aequali jure*, the law requires equality . . . and one

> of them shall not be obliged to bear a common burden in ease of the rest.'" *Id*. at 152 (citing 18 C.J.S*. Contribution*, Sec. 3, p.5 (1990) (emphasis added). Here, however, Pyle, Spurgin, and Davis do not personally realize any change in financial position as a result of Roemerman's enforcement of Cooper's guaranty. Although the numbers of STP's balance sheet may be affected by a successful collection against Cooper, that eventuality is not proven to confer any financial benefit to the others, in either role as members of an insolvent who are shielded from personal liability for company debts, or as released guarantors.
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> Cooper might argue that the settlements Pyle, Spurgin, and Davis struck with Roemerman were at his expense, because the balance of the feed bill remains higher than the 26.67 percent "fair share" he advocates for himself. Such an argument assumes facts not proven in this record: that the acts of the parties in tending to their debt obligations were equally timely, genuine, and effective and that the prospect of successful collection as against each guarantor was sound. Also, at the time claims against Davis, Pyle, and Spurgin were settled, and until judgment is ultimately rendered on the trial record, it was unknown whether Cooper would be subjected to guaranty enforcement. On this record, it cannot be said that the deals negotiated by the other guarantors bestowed them with benefit at Cooper's expense.
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> In a strictly equitable analysis, even if Cooper had been able to prove that Pyle, Spurgin, and Davis have experienced, or might reap in the future, some personal benefit from Roemerman's collection against Cooper, the result is not unjust. Cooper, as an independent businessman contracted to pay Roemerman "absolutely and unconditionally" and without recourse against his associates. *See id.* at 155 (party seeking restitution, who has independent obligation to third person, cannot maintain action for unjust enrichment against one incidentally benefited by performance of the obligation). It also does not go unnoticed that Cooper's personal actions over time likely exacerbated the charges that are the basis for the judgment he faces.

The district court ordered STP to pay Roemerman the sum of $197,644.65 plus interest and court costs. The court also entered judgment against Cooper on his written guaranty of STP's debts in the amount of $150,000 plus attorney fees of $25,934.81 plus interest and court costs. Cooper appeals. Roemerman and Pyle cross appeal.

CLAIMS ON APPEAL

Appellant Cooper raises four claims on appeal. Concerning a guaranty, he contends (1) substantial evidence does not support a finding there was a signed written guaranty that was lost, and (2) substantial evidence supports a finding there was an oral guaranty agreement between the four members of STP. Concerning contribution, he contends (1) the court should have ordered contribution from the other three members, and (2) the other members were unjustly enriched by not having to contribute. Cross-appellant Pyle contends the court erred in not finding Cooper's admissions that he did not make an oral or written guaranty were binding on Cooper's claims against Pyle for contribution. Cross-appellant Roemerman does not list any issue on cross appeal or make any argument in support of an issue on cross appeal.

SCOPE AND STANDARDS OF REVIEW

Our review of a law action is for errors at law. Iowa R. App. P. 6.4. In a case tried at law, the fact findings of the district court are binding on us if supported by substantial evidence. *Harms v. City of Sibley*, 702 N.W.2d 91, 96 (Iowa 2005). "Evidence is substantial if reasonable minds would accept it as adequate to reach the same findings." *Henning v. Sec. Bank*, 564 N.W.2d 398, 399 (Iowa 1997). We view the evidence in the light most favorable to upholding the district court's judgment. *EnviroGas, L.P. v. Cedar Rapids/Linn County Solid Waste Agency*, 641 N.W.2d 776, 780 (Iowa 2002). Generally, we will hear a case on appeal in the same manner as it was tried in district court. *Johnson v. Kaster*, 637 N.W.2d 174, 177 (Iowa 2001). Because Cooper's claims concerning

contribution were tried as equitable claims, our review is de novo. Iowa R. App. P. 6.4; *Kaster*, 637 N.W.2d at 177.

ANALYSIS

A. Written Guaranty. Cooper first contends the district court erred in finding there was a written guaranty that was lost. The record is clear that a guaranty form was prepared by Roemerman and delivered to STP. It is undisputed that Roemerman does not have a guaranty form signed by the members of STP. Once that fact was known, Cooper moved for summary judgment based on the absence of any guaranty by him. The district court denied that motion.

During discovery, an unsigned copy of a guaranty form was discovered in Cooper's business records along with other guaranties he executed. The district court, after reviewing the evidence, found this guaranty was executed by all the members of STP, it was delivered to Roemerman, and subsequently was lost. Cooper points in his brief to various inconsistencies in the interrogatories, depositions, and testimony of the other members of STP as support for his claim he did not execute the guaranty and it was not delivered to Roemerman. He asserts, and we agree, the evidence concerning a lost document must be "clear, satisfactory, and convincing." *See In re Marriage of Webb*, 426 N.W.2d 402, 404 (Iowa 1988) ("The former existence, execution, loss and contents of the document, however, must be demonstrated by clear, satisfactory and convincing evidence."). Unlike the circumstances in *Webb*, however, we are not faced with the complete absence of the document. Cooper and Spurgin kept an unsigned copy of a guaranty in their files. The district court found these were copies of the

document that Cooper signed. The terms of the guaranty the district court found Cooper signed are spelled out in those duplicate copies of a guaranty. As to the execution and the delivery of the document to Roemerman, the court found:

> The various members' accounts of signing and the location of the signings have been carefully studied and do not mirror one another. The assertions by Pyle, Spurgin, and Davis—although divergent in some respects and differing over the course of this litigation record—are properly accorded credibility and do establish that they signed the guaranty, and that each of them believed at the time, and since then, that Cooper signed the document as well.

It also made a finding that "Cooper's testimonial parsing of facts and circumstances to undercut existence of his guaranty, does not merit weight." The district court, as fact finder, weighs the evidence and determines the credibility of witnesses. *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988).

We, like the district court have reviewed the record, with attention given to the various inconsistencies or discrepancies Cooper highlights in his brief. In our review on appeal, we do not invade the province of the fact finder in determining credibility or weighing the evidence. *See id.* Spurgin testified he sent the original guaranty to Cooper, it was returned with Cooper's signature, and he delivered it to Roemerman's Albia store. Davis testified all four members signed the guaranty. Pyle testified all four members knew they had to sign in order to be able to buy feed from Roemerman. Cooper testified he assumed the members would have signed the required guaranty. Roemerman returned STP to a credit basis after STP's members signed the guaranty. We conclude clear and convincing evidence supports the district court's finding Cooper signed the guaranty.

We must also determine whether clear and convincing evidence supports the court's finding the signed guaranty was delivered to Roemerman. Spurgin said he delivered the original signed guaranty to Roemerman's Albia store. Klyn testified that to the best of his knowledge, Spurgin delivered the signed guaranty to the Roemerman's Albia office, but he never saw it. We conclude clear and convincing evidence supports the district court's finding the signed guaranty was delivered to Roemerman.

B. Oral guaranty. Cooper next contends the four members of STP orally agreed to guarantee STP's account with Roemerman. He argues the discussion included cross-collateralization, but did not include waivers or guaranty limits. He asserts that "no evidence appears in the record that any of the members denied they orally agreed to be responsible for the STP debt to Roemerman by executing a personal guaranty." The district court found:

> The reliable trial evidence does not demonstrate the existence of any oral guaranty of STP debt. Although Pyle, Spurgin, Davis and Cooper did orally communicate that they would accede to Klyn's ultimatum and each would sign a personal guaranty, it was the written security that was pursued and that they resolved to provide—not an oral commitment to stand personally liable.

From our review of the testimony of the members and the relevant depositions, we conclude substantial evidence supports the finding of the district court.

C. Contribution/unjust enrichment. *Scope of review.* We note first the parties disagree what scope of review applies. Our review on appeal depends on the manner in which the district court tried the case. *See Johnson v. Kaster*, 637 N.W.2d 147, 177 (Iowa 2001). Roemerman asserts our review is for errors at law because the lawsuit was a law action, not an equitable action. Cooper contends contribution rests on equitable principles and the district court expressly

tried his claim as an equitable action. Concerning Cooper's equitable defenses, the court stated, "the Court's going to try this in equity today, and that's just a function of making sure that all of the evidence that may pertain to the equitable claims gets admitted." From our review of the transcript, it is clear the court did not rule on objections, but received the evidence subject to the objection. Because the court tried the contribution claims in equity, our review is de novo. Iowa R. App. P. 6.4.

Merits. Cooper contends the district court erred in ruling he was not entitled to contribution from the other members and that the other members were unjustly enriched by not having to contribute. "The doctrine of contribution rests on principles of equity and natural justice." *Mailliard v. Heffernen*, 418 N.W.2d 85, 86 (Iowa Ct. App. 1987) (citing 18 Am. Jur. 2d *Contribution* § 1, at 8-9 (1985)). "It arises from the equitable consideration that *persons subject to a common duty or debt* should contribute equally to the discharge of the duty or debt." *Id.* (Emphasis added). Contribution, like indemnification and subrogation, has its roots in prevention of unjust enrichment. *See State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 149 (Iowa 2001); 1 Dan B. Dobbs, *The Law of Remedies* § 4.3(4), at 604-05, 607-08 (2d ed.1993). "One fundamental aspect of the claim for unjust enrichment involving third parties, such as contribution and other related theories, requires that the two parties to the claim be obligated to the third party." *Unisys Corp.*, 637 N.W.2d at 150. A claim for contribution requires the injured third party to have a legally recognizable remedy against "both the party seeking contribution and the party from whom contribution is sought" *Shonka v. Campbell*, 260 Iowa 1178, 1182, 152 N.W.2d 242, 245

(1967). A defendant in an unjust enrichment claim is not enriched by the plaintiff's payment to a third party to whom the defendant has no legal obligation. *See Unisys Corp*., 637 N.W.2d at 150; *see also Oregon Laborers-Employers Health & Welfare Trust Fund v. Phillip Morris Inc.*, 185 F.3d 957, 968 (9th Cir.1999).

Before trial in this case, Davis contributed $65,000 on his guaranty of STP's obligation to Hubbard Feed. Plaintiffs dismissed him from the suit. Plaintiffs negotiated settlements with Pyle and Spurgin, who confessed judgment to Roemerman for $10,000 and $105,000 respectively. At the beginning of trial, the plaintiffs acknowledged the prior dismissal of their claims against Davis and the confessions of judgment obtained from Pyle and Spurgin. At that point, Davis, Pyle, and Spurgin no longer had any legal obligation to the plaintiffs because of their guaranty of STP's debts.

The district court concluded:

> Here, to merit contribution Cooper must show that Pyle, Spurgin, and Davis have a legally recognizable obligation to Roemerman, a "common liability." The common liability rule exists because the right of contribution applies only where the situations of the parties are equal; equality among [parties] whose situations are not equal is not equitable. At the time of this trial, the circumstances of Pyle, Spurgin, and Davis are not the same as those of Cooper. The guarantors Cooper pursues in his cross litigation have already resolved their liabilities to Roemerman, and are no longer subject to any legally recognizable obligation.

(Citations and internal quotation marks omitted). Without the "fundamental aspect" of a common obligation to Roemerman, Cooper has no claim for contribution against Davis, Spurgin, and Pyle. Even if the common obligation to Roemerman remained, so that Cooper arguably would have a common law claim for contribution, the express language of the written guaranty waived that claim.

Cooper still argues the other members were unjustly enriched by not having to pay their fair share of their guaranty of STP's debt. The district court carefully analyzed this claim and concluded:

> . . . Pyle, Spurgin, and Davis do not personally realize any change in financial position as a result of Roemerman's enforcement of Cooper's guaranty. Although the numbers of STP's balance sheet may be affected by a successful collection against Cooper, that eventuality is not proven to confer any financial benefit to the others, in either role as members of an insolvent who are shielded from personal liability for company debts, or as released guarantors.
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> Cooper might argue that the settlements Pyle, Spurgin, and Davis struck with Roemerman were at his expense, because the balance of the feed bill remains higher than the 26.67 percent "fair share" he advocates for himself. Such an argument assumes facts not proven in this record: that the acts of the parties in tending to their debt obligations were equally timely, genuine, and effective and that the prospect of successful collection as against each guarantor was sound. Also, at the time claims against Davis, Pyle, and Spurgin were settled, and until judgment is ultimately rendered on the trial record, it was unknown whether Cooper would be subjected to guaranty enforcement. On this record, it cannot be said that the deals negotiated by the other guarantors bestowed them with benefit at Cooper's expense.
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> In a strictly equitable analysis, even if Cooper had been able to prove that Pyle, Spurgin, and Davis have experienced, or might reap in the future, some personal benefit from Roemerman's collection against Cooper, the result is not unjust. Cooper, as an independent businessman contracted to pay Roemerman "absolutely and unconditionally" and without recourse against his associates.

We find Cooper has not demonstrated the other members were unjustly enriched by not having to participate financially in the judgment against him on his guaranty of STP's debt. Pyle, Spurgin, and Davis all personally paid a portion of STP's debts. They all are shielded from liability as members of the limited liability company. They have been released from their obligations as guarantors. They do not benefit because Cooper must pay on his guaranty. They would not

suffer loss if Cooper did not have to pay anything. We find no basis for a claim of unjust enrichment.

D. Pyle's cross appeal. Pyle raises an alternative claim on cross appeal in the event we should reverse the district court's decision. Pyle claims Cooper's answers to his request for admissions should bar any claim for contribution or indemnification "since Cooper admitted that between Cooper and Pyle that no written or oral guaranty existed." Having affirmed the decision of the district court, we need not address this alternative claim.

AFFIRMED.