STATE OF MICHIGAN

COURT OF APPEALS

ROBERT G. RESNICK and KAREN A. RESNICK,

Plaintiffs/Counter-Defendants/
Appellants,

v

METRO PLASTICS II, INC., and NAJIB HAKIM,

Defendants/Counter-Plaintiffs/
Appellees.

UNPUBLISHED
October 15, 1996

No. 179998
LC No. 94-471146

Before: Wahls, P.J., and Young and H.A. Beach,* JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition to defendants in this contracts case. We reverse as to defendant Najib Hakim (Najib). As to defendant Metro Plastics II, Inc. (Metro Plastics), we affirm the decision to grant summary disposition, but remand for further proceedings.

On July 8, 1992, Metro Plastics executed a promissory note through Sabah Hakim (Sabah) by which it borrowed $30,000 from plaintiffs. Sabah was the sole shareholder of Metro Plastics. Najib, Sabah's brother, signed a document that was titled "Guaranty" which was attached to the promissory note. On February 23, 1994, plaintiffs filed their complaint against defendants to recover $22,128.61, plus interest, due under the promissory note and guaranty.

On July 20, 1994, plaintiffs moved for summary disposition pursuant to MCR 2.116(C)(10). Instead of granting plaintiffs' motion, the trial court instead granted summary disposition to defendants pursuant to MCR 2.116(I). By the time plaintiffs moved for summary disposition, Metro Plastics had been dissolved, and Sabah Hakim had filed for personal bankruptcy. Accordingly, the trial court reasoned that the case could not go forward against Metro Plastics. In addition, the trial court granted

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* Circuit judge, sitting on the Court of Appeals by assignment.

summary disposition to Najib because it held that it was unambiguous that Najib had signed the guaranty as a witness and not as a guarantor.

Plaintiffs argue that the trial court erred in granting summary disposition to Najib. We agree. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except with regard to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment or partial summary judgment as a matter of law. *Mich Mutual Ins Co v Dowell*, 204 Mich App 81, 85; 514 NW2d 185 (1994). The trial court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence presented. *Id.* Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Id.*

If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the trial court may render judgment in favor of the opposing party pursuant to MCR 2.116(I)(2). *Id.*, pp 85-86. If the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render such a judgment without delay. *Id.*, p 86. On appeal, an order granting summary disposition is reviewed de novo. *Id.*

The initial question of whether contract language is ambiguous is a question of law. *Port Huron Educ Ass'n v Port Huron Sch Dist*, 452 Mich 309, 323; ___ NW2d ___ (1996). If the contract language is clear and unambiguous, its meaning is a question of law. *Id.* Where the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *Id.* The primary rule in construing a contract is to ascertain the intent of the parties. *In re Loose*, 201 Mich App 361, 367; 505 NW2d 922 (1993).

Here, the trial court granted summary disposition to Najib pursuant to MCR 2.116(I). The court held that the contract language of the July 8, 1992, guaranty is unambiguous and that Najib did not sign as a guarantor but as a witness. We disagree and hold that the contract language is susceptible to multiple meanings.

The signatures of Najib, Sabah, and Nivin Hakim are found at the very bottom of the guaranty. Sabah and Nivin Hakim's signatures are directly beneath the phrase, "WITNESSED BY." Najib's signature is to the right of those two signatures, but still below the phrase, "WITNESSED BY."

In granting summary disposition to Najib, the trial court relied in part on language in the guaranty which is handwritten after the typed language but before the signatures. This language reads:

> This Guaranty is limited to the obligation of the second party [Metro Plastics] to first party [plaintiffs] for a loan of $30,000 (Thirty Thousand) plus interest as evidenced by Note of second party dated July 8, 1992.

The trial court reasoned that this language shows an intention not to hold Najib accountable as a guarantor.

However, this language can also be construed in another way. Earlier in the guaranty, the document states that, "the undersigned do hereby jointly and severally unconditionally guarantee unto FIRST PARTY . . . the prompt and full payment of *all notes* and of *all indebtedness* now and hereafter owing and to become due from SECOND PARTY to FIRST PARTY. . . ." [Italics added.] When read in conjunction with this provision, the handwritten clause can be construed as limiting Najib's guaranty only to the $30,000 loan executed on July 8, 1992, rather than all other debts which Metro Plastics owed to plaintiffs. This interpretation is reasonable given the prior dealings between Metro Plastics and plaintiffs. Accordingly, the trial court erred as a matter of law in holding that the document is unambiguous.

The trial court also relied on an "Agreement" drafted on August 24, 1993, by plaintiffs' counsel which set forth several business agreements between the parties. Although this agreement indicates that plaintiffs and Metro Plastics entered into a "Guaranty dated April 8, 1991, by Sam [Sabah] and Viv," the guaranty at issue here was executed on July 8, 1992, not April 8, 1991. A second reference in the agreement to a "guaranty by SAM and Vivian G. Hakim" does not include a date. In any case, the agreement states that this second guaranty is "enforceable in accordance with the terms . . . [of] the guaranty." Because the July 8, 1992, guaranty is ambiguous as to whether Najib signed as a guarantor or as a witness, this August 24, 1993, agreement does nothing to clarify the issue. Because the interpretation of the July 8, 1992, guaranty was for the trier of fact to determine, the trial court erred in granting summary disposition to Najib. *Port Huron*, *supra*, p 323; *Dowell*, pp 85-86.

Plaintiffs also argue that the trial court erred in granting Metro Plastics summary disposition pursuant to MCR 2.116(I). We disagree. Although it is true that Metro Plastics never disputed the existence of the promissory note, that was irrelevant to the trial court's decision. The trial court relied on the undisputed fact that Sabah had filed for personal bankruptcy by the time that the trial court granted summary disposition to defendants. It was also undisputed that Sabah was the sole shareholder of Metro Plastics. The trial court ruled that plaintiffs' attorney needed a bankruptcy stay in order to go forward with their claim against Metro Plastics. The filing of a bankruptcy petition operates as an automatic stay of proceedings against the bankruptcy petitioner. 11 USC 362(a). Nonetheless, it is unclear whether a bankruptcy petition by an individual operates as a stay against proceedings against the corporate entity of which the bankruptcy petitioner is the sole shareholder. Plaintiffs have failed to cite any authority in support of their argument. A party may not leave it to this Court to search for authority to sustain or reject the party's position. *American Transmissions, Inc v Atty Gen*, 216 Mich App 119, 121; ___ NW2d ___ (1996). Accordingly, this issue was abandoned. *Terzano v Wayne Co*, 216 Mich App 522, 533; ___ NW2d ___ (1996).

Finally, plaintiffs argue that the trial court's order granting summary disposition was entered in violation of MCR 2.602(B)(3)(c). We agree. Defendants filed their proposed order on September 29, 1994. Plaintiffs filed their objections to the proposed order the next day. If objections are filed to a proposed order, "the party who filed the proposed judgment or order must notice the judgment or order for settlement before the court within 7 days after receiving notice of the objections." MCR 2.602(B)(3)(c). Here, defendants failed to notice the order for settlement after plaintiffs' objections were filed. Nevertheless, the trial court entered defendants' proposed order on October 10, 1994.

Accordingly, we vacate the entry of judgment and remand the case with instructions to notice the order for settlement. *Id.*

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

/s/ Myron H. Wahls
/s/ Robert P. Young, Jr.
/s/ Harry A. Beach