

STATE OF MICHIGAN
COURT OF APPEALS

HERBERT J. STRATHER,

Plaintiff-Appellant,

v

DETROIT DISCOUNT DISTRIBUTORS, INC.,

Defendant,

and

SHARON ROBINSON and HENRY
FAMBROUGH,

Defendants-Appellees.

UNPUBLISHED

March 17, 2005

No. 252086

Wayne Circuit Court

LC No. 02-225907-CK

Before: Meter, P.J., and Bandstra and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying his motion for summary disposition and granting summary disposition in favor of defendants Sharon Robinson and Henry Fambrough ("defendants"). We affirm.

Plaintiff and Detroit Discount Distributors, Inc. (DDD), were co-obligors on a \$100,000 promissory note in order to secure a \$100,000 letter of credit for DDD to enable it to enter into a distribution agreement with Sysco Food Services. Defendants Sharon Robinson and Henry Fambrough, who were officers and shareholders of DDD, signed separate guaranty agreements whereby they agreed to guaranty payment of the indebtedness of plaintiff and DDD to Comerica Bank. Sysco eventually terminated the distribution agreement with DDD due to DDD's non-payment and received payment on the letter of credit from Comerica Bank in the amount of \$96,811.63. Plaintiff, in turn, repaid the debt to Comerica Bank under the promissory note. Plaintiff then commenced this action, seeking reimbursement from both DDD and defendants Robinson and Fambrough. Plaintiff obtained a default judgment against DDD in the amount of the repaid debt, but also sought judgment from defendants Robinson and Fambrough under their

guaranty agreements.¹ The parties filed cross-motions for summary disposition on the issue of defendants' liability. The trial court granted defendants' motion and denied plaintiff's motion. This appeal followed.

This Court reviews the trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although the parties' motions were brought under both MCR 2.116(C)(8) and (C)(10), because the trial court considered evidence beyond the pleading when deciding the motion, MCR 2.116(C)(10) is the applicable subrule. A motion under MCR 2.116(C)(10) tests the factual support for a claim. The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc.*, 464 Mich 322, 332; 628 NW2d 33 (2001).

Plaintiff argues that he was an "accommodation party" to the promissory note instrument and, as such, is entitled to seek reimbursement for his payment of the debt from defendants Robinson and Fambrough under their guaranty agreements. Although defendants dispute plaintiff's status as an accommodation party, they agree, as they did below, that plaintiff may be deemed an accommodation party within the meaning of MCL 440.3419(1) for purposes of deciding their motion for summary disposition.²

MCL 440.3419(1) provides:

If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

Further, under MCL 440.3419(5), because plaintiff paid the debt to Comerica Bank, plaintiff was entitled to reimbursement from the accommodated party. MCL 440.3419(5) provides:

An accommodation party [plaintiff in the instant case] who pays the instrument is entitled to reimbursement from the accommodated party [DDD] and is entitled to enforce the instrument against the accommodated party. An

¹ DDD is deemed "uncollectible" by plaintiff.

² On appeal, plaintiff challenges the validity of James Robinson's affidavit, which was submitted by defendants. The affidavit is significant only to the issue whether plaintiff properly may be considered an "accommodation party." Because defendants agreed that plaintiff should be treated as an accommodation party for purposes of their motion, and the trial court agreed to treat plaintiff as an accommodation party, the validity of the affidavit is not material to this appeal.

accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

Here, however, only DDD was an “accommodated party.”³ Because defendants were not “a party to the instrument,” i.e., the promissory note, they cannot be deemed an “accommodated party” under MCL 440.3419(1). Therefore, MCL 440.3419(5) does not entitle plaintiff to seek reimbursement for the debt from defendants.

The “rationale” of allowing an accommodation party, such as plaintiff, to have recourse against the accommodated party is that the accommodation party “is a surety and accommodated party is a principal, and if the surety is forced to pay the instrument, then the surety has a right of recourse against the principal.” 12 Am Jur 2d, Bills and Notes, § 483, p 71 (citations omitted). That rationale does not apply to plaintiff’s attempt to seek reimbursement from the individual defendants, who, as guarantors, were also acting as sureties and accommodation parties. 12 Am Jur 2d, Bills and Notes, § 487, § 489, pp 77-78. “The liability of a surety is limited by the scope of the liability of its principal and the precise terms of the surety agreement.” *Will H Hall & Son, Inc v Ace Masonry Const, Inc*, 260 Mich App 222, 229; 677 NW2d 51 (2003) (citation omitted). Under the terms of the guaranty agreements, defendants’ sole promise was to pay the debt to Comerica Bank in the event that the “borrowers,” plaintiff and DDD, did not. As the trial court properly concluded, defendants’ liability as guarantors ended when plaintiff paid the debt.

Plaintiff argues that, as an accommodation party, he is entitled to seek recourse through any other securities that were pledged as collateral. 12 Am Jur 2d, Bills and Notes, § 483, p 72. But collateral is defined by statute as “the property subject to a security interest or agricultural lien.” MCL 440.9102(1). In this case, plaintiff pledged various stocks as security for the loan. Although the guaranty agreements may be characterized as “collateral promises” to repay the debt if plaintiff and DDD did not, 12 Am Jur 2d, Bills and Notes, §§ 487-488, pp 76-77, plaintiff cites no authority in support of his position that they, in themselves, may be considered collateral, nor do they fit the definition of collateral in MCL 440.9102(1).

For these reasons, the trial court properly denied plaintiff’s motion for summary disposition and properly granted summary disposition to defendants.

Affirmed.

/s/ Patrick M. Meter
/s/ Richard A. Bandstra
/s/ Stephen L. Borrello

³ As previously indicated, plaintiff was awarded a default judgment against DDD.