

STATE OF MICHIGAN
COURT OF APPEALS

ANTONIO F. GOQUIOLAY and GRACE
GOQUIOLAY,

UNPUBLISHED
October 28, 2003

Plaintiffs-Appellees,

V

No. 240884
Oakland Circuit Court
LC No. 00-026378-CH

COLIN'S COLLECTION, INC., SERG'S
PRODUCTS, INC., AMERICAN SOFT
COMMODITIES, INC., BETTER
COMMODITIES INTERNATIONAL, f/k/a
BETTER COMMODITIES TRADING, INC.,
ESTATE OF SERGIO GOQUIOLAY and
NUALSRI V. GOQUIOLAY,

Defendants-Appellants.

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

PER CURIAM.

Defendants appeal as of right from a circuit court order granting plaintiffs' motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs own several parcels of property in Oakland County. The properties were formerly an asset of the Antonio F. Goquiolay revocable trust. While they were held by the trust, Antonio Goquiolay and his son, Sergio Goquiolay, executed affidavits of claim of interest (the liens) giving Colin's Collection an interest in the properties until a debt was repaid. The liens refer to "a certain debt owed by the Trust to" Colin's Collection. However, it is undisputed that the trust was not indebted to Colin's Collection or any of the other defendants. Rather, Antonio Goquiolay was indebted to Sergio and Nualsri Goquiolay and the commodities companies, who assigned those debts to Colin's Collection.

Plaintiffs contended that the reference to a "debt owed by the Trust" meant that the trust must have guaranteed payment of Antonio Goquiolay's debts and because that guaranty was not in writing as required by the statute of frauds, the liens were unenforceable. The trial court agreed and granted judgment for plaintiffs. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

A special promise to answer for the debt of another person, otherwise known as a guaranty of a debt, is void unless the promise or a note or memorandum of it is in writing and signed with an authorized signature by the party to be charged. MCL 566.132(1)(b). If one person makes a direct promise to another person to pay for goods or services to be rendered to a third person in the future, that is an original promise to pay and is not subject to the statute of frauds. *Schier, Deneweth & Parfitt, PC v Bennett*, 206 Mich App 281, 282; 520 NW2d 705 (1994). If, however, a debt has been incurred and is owed by one person to another, a third person's promise to pay the debt is collateral and must be in writing unless the original debtor is discharged. *Perkins v Hershey*, 77 Mich 504, 514; 43 NW 1021 (1889). The writing need not be complete in itself; it need only have substantial probative value in establishing the existence of the agreement and extrinsic evidence may be used to supplement, but not contradict, its terms. *Opdyke Investment Co v Norris Grain Co*, 413 Mich 354, 367-368; 320 NW2d 836 (1982). It must, however, contain all the essential terms of a contract, 11 Mich Civ Jur, Frauds, Statute of, § 112, p 117, identify the debt at issue, 37 CJS, Frauds, Statute of, § 116, p 422, and clearly and unambiguously reflect an intention to assume responsibility for the debt. *Bandit Indus, Inc v Hobbs Int'l, Inc (After Remand)*, 463 Mich 504, 514; 620 NW2d 531 (2001).

In this case, there is no separate document in which the trust agrees to pay the debts incurred by Antonio Goquiolay. The liens themselves establish only the existence of a debt owed by the trust to Colin's Collection. They do not identify the debt at issue or clearly state that the trust agreed to assume responsibility for payment of Antonio Goquiolay's debts to the other defendants. Therefore, if the arrangement constituted an actual guaranty by the trust, enforcement of the obligation would be prohibited by the statute of frauds.

However, the record is not sufficient to establish that the trust actually guaranteed Antonio Goquiolay's debts. As noted above, where a third person assumes responsibility for the debt of one person to another and the debtor is relieved of further obligation, the agreement is not within the statute of frauds. *Mulcrone v American Lumber Co*, 55 Mich 622, 626; 22 NW 67 (1885). The fact that the liens identify a debt owed by the trust rather than a guaranty by the trust is an indication that Antonio Goquiolay may have been discharged. It is also possible that the reference to a debt owed by the trust is a scrivener's error and the liens were intended only as collateral for Antonio Goquiolay's debts rather than a guaranty of his obligations by the trust. Because the circumstances under which the "debt owed by the Trust" was created have not been established, it is not clear that the trust actually guaranteed Antonio Goquiolay's debts. Therefore, the trial court erred in granting plaintiffs' motion.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello