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5/10/2017 3:25 PM
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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

RXAR COMPANY, LLC,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	**NO. 16-590-BC**
	)	
PRICE WALKER, JR., M.D., P.C.,	)	
and PRICE WALKER, JR., M.D.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER: (1) GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND (2) SETTING FILING AND BRIEFING SCHEDULE ON RECOVERY OF ATTORNEYS FEES

This lawsuit was filed by an LLC who was assigned and holds a debt for pharmaceutical products and medical supplies supplied to the Defendant P.C. on credit on an open account. The Plaintiff seeks entry of summary judgment against the Defendants jointly and severally in the amount of $166,909.76,[1] and following entry of summary judgment, to recover attorney's fees and expenses. The Plaintiff asserts that the Defendant P.C. is liable under a credit agreement attached to the Complaint as Exhibit C, and the terms and conditions which accompanied each invoice, attached as Exhibit B to the Complaint.

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[1]The spreadsheet attached to the May 5, 2017 Declaration of David Price calculates damages as $107,354.42 + late charges of $60,732.89 for a total of $168,087.31. The recovery sought in the motion for summary judgment, filed January 6, 2017, however, is $166,909.76 due to a "calculation error in Exhibit A to the Affidavit of David Price" which "has been resolved in Defendants' favor." *Declaration of David Price*, May 5, 2017, at last page of spreadsheet.

The Plaintiff asserts that the Individual Defendant is liable based upon a guaranty contained in Exhibit C attached to the Complaint.

The Defendants' opposition to the motion for summary judgment is twofold.

1. There are genuine issues of material fact as to the amount owed. The Defendant asserts through the affidavit of Defendant Price Walker, Jr., M.D. that the P.C. has not been credited for payments totaling $90,000.00.

2. As to the guaranty, there is an ambiguity because it contains a blank line, not filled in or completed, concerning the commencement date of the guaranty:

> PERSONAL GUARANTY: In order to induce Metro to accept this application and otherwise sell to and/or extend credit to Applicant hereunder. the undersigned proprietor(s), partner(s), and/or officer(s) of the applicant hereby agree to personally guaranty and assume all of the obligations responsibilities for any and all debts that the applicant shall incur including costs of collection. interest, attorney's fees and court costs in connection with the applicant's purchases from Metro commencing on __________ until such time as Metro acknowledges in writing, the termination of said personal responsibility.

* * *

Signature __/s/ Price Walker, Jr. M.D.__ Date __1/24/12__

Title ____________CEO____________, and
Individually as a guarantor

Print Name __Price Walker Jr. M.D.__________

The Defendants' argument is that the blank creates an ambiguity as to the intent of the signer, Dr. Walker, and the lender, Plaintiff, whether the capacity caption "Individually as a guarantor" under Dr. Walker's signature is applicable "in light of the fact that no date was given for the personal guaranty to commence." *Defendants' Response to Plaintiff's Motion for Summary Judgment*, April 24, 2017, at 5-6. The Defendants assert that "taking this agreement by its plain language, Dr. Walker signed as CEO, and individually as guarantor, but did not have any intention for said personal guaranty to become effective, as it never commenced." *Id.* at 6.

After considering the law, the record and argument of Counsel, it is ORDERED that the Plaintiff's Motion for Summary Judgment is granted.

It is further ORDERED that pursuant to Davidson County Local Rule § 5.05, by May 26, 2017, Plaintiff's Counsel shall file its application along with a supporting affidavit to recover attorney's fees. Opposition shall be filed by June 9, 2017. A reply, if any, shall be filed by June 16, 2017. Thereafter the Court shall rule on the papers on an award of attorney's fees.

The undisputed facts, law and analysis on which this decision is based are as follows.

The standard the Court has applied in ruling on Plaintiff's motion was provided by the Tennessee Supreme Court in *Rye v Women's Care Center of Memphis, MPLLC*, 477 S.W.3d

235 (Tenn. 2015). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* at 250. The moving party may satisfy its initial burden of production and shift the burden of production to the nonmoving party by demonstrating that the nonmoving party's evidence is insufficient as a matter of law at the summary judgment stage to establish the nonmoving party's claim or defense. *Id.* at 264. When the party seeking summary judgment makes a properly supported motion under Rule 56, the non-moving party may not rest upon the allegations or denials of its pleading, but rather must set forth specific facts at the summary judgment stage showing there is a genuine issue of material fact for trial. *Id.* at 265. When ascertaining whether a genuine dispute of material fact exists in a particular case, the court must determine (1) whether the facts at issue are material according to the substantive law and (2) whether the dispute over those facts is genuine, or "such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 251 (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1985)).

Applying this standard to the first defense asserted in opposition to summary judgment, the Court finds that there is no genuine issue of material fact with respect to the amount owed. In response to statement of undisputed material fact 11, the Defendants dispute the total of $166,909.76 because Dr. Walker attests in his affidavit that the P.C. was

not given credit for $90,000.00 in checks attached to the opposition to the summary judgment.

The May 5, 2017 Declaration of David Price, however, establishes without dispute that the $90,000.00 was credited. Attached as Exhibit 1 to the Declaration is a spreadsheet. That spreadsheet correlates with the checks attached to the affidavit of the Defendant and establishes that the Defendant was credited with the check payments attached to his summary judgment opposition. Accordingly, this ground for denying summary judgment is dismissed.

With respect to the opposition to the summary judgment on the grounds that the contract is ambiguous, the Court has applied the following law.

> *Edwards v. Urosite Partners*, No. M2016-011610-COA-R3-CV, at *7 (Tenn. Ct. App. Mar. 30, 2017).
>
> "A cardinal rule of contractual interpretation is to ascertain and give effect to the intent of the parties." *Allmand,* 292 S.W.3d at 630; *see also West,* 459 S.W.3d at 41-42; *Allstate Ins. Co.,* 195 S.W.3d at 611. The parties' intent is determined by considering the "plain meaning of the words" used in the contract. *Allmand,* 292 S.W.3d at 630; *Allstate Ins. Co.,* 195 S.W.3d at 611. If the words used are clear, unambiguous, and not susceptible to more than one reasonable interpretation, courts are to rely on the literal language used in the contract to determine the parties' intent. *Allmand,* 292 S.W.3d at 630; *Allstate Ins. Co.,* 195 S.W.3d at 611; *see also Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc.,* 78 S.W.3d 885, 889-90 (Tenn. 2002) (explaining parties' intent is based on usual, natural, and ordinary meaning of words used in contract). A court will not look beyond the four corners of the document to determine the parties' intent when the contract is unambiguous. *Williams v. Larry Stoves and Lincoln Mercury, Inc.,* No. M2014-00004-COA-R3-CV, 2014 WL 5308634, at *4 (Tenn. Ct. App. Oct. 15, 2014); *West,* 459 S.W.3d at 42. A contract is not ambiguous if its meaning is clear and it is not subject to more than one interpretation. *Allstate Ins. Co.,* 195 S.W.3d at 611.

S. M. Williamson & Co. v. Ragsdale, 170 Tenn. 439, 95 S.W.2d 922, 924 (1936):

> While the contract of guaranty is not dated, the bill alleges that it was executed on the same date as were the notes and deed of trust, and even in the absence of such an allegation the presumption would be that it was so executed. 1 Brandt on Suretyship and Guaranty (3d Ed. 1905) § 23, p. 64, note 89; *Gilman v. Lewis,* 15 Me. 452.

Wilson v. Kellwood Co., 817 S.W.2d 313, 318 (Tenn. Ct. App. 1991):

> It has been held that guarantors are not favored under our law. *W.R. Grace & Co. v. Taylor,* 55 Tenn. App. 227, 398 S.W.2d 81 (1965). A guarantor in a commercial transaction is to be held to the full extent of his engagements, and the rule in construing such an instrument is that the words of the guaranty are to be taken as strongly against the guarantor as the sense will admit. *Farmers–Peoples Bank v. Clemmer,* 519 S.W.2d 801 (Tenn.1975).

Upon applying this law, the Court concludes that the Individual Defendant, Dr. Walker, is liable on the guaranty. First, the Defendant's affidavit establishes in paragraphs 9 and 10 that there was no discussion between the parties about the content of the credit application. Accordingly, it would not provide further evidence concerning the objective intent of the parties to take discovery or convene a trial. The evidence concerning the guaranty, then, is the document itself.

The content of the document is that the Individual Defendant signed it and his signature is contained on the signature line with a date next to it. Just below the signature is the word "Title" with a blank that is filled in with "CEO, and" and then under that is the

phrase "Individually as a guarantor." In addition to this text, there is, as quoted above, the personal guaranty which contains a blank concerning date of commencement of the guaranty. As quoted above, the text provides that in order to induce the Plaintiff to accept the credit application and to extend credit to the Defendant P.C., the undersigned Individual Defendant agreed to "personally guaranty and assume all of the obligations responsibilities and for any and all debts that the applicant shall incur including costs of collection, interest, attorney's fees and court costs in connection with the applicant's purchases from Metro commencing on _______________ until such time as Metro acknowledges in writing, the termination of said personal responsibility." With respect to this text, the Court concludes that there is but one reasonable meaning.

It is apparent from the text, particularly the wording that the guaranty was the inducement to extension of the credit, that a personal guaranty was required from the Individual Defendant and, therefore, that a personal guaranty was entered into. Building upon the fact that a guaranty was entered into, the only reasonable meaning, taking into account that a specific date was not provided in the blank, is that the guaranty commenced on the date it was signed by the Individual Defendant as a guarantor and was in effect upon the first purchase by the P.C. of product from the Plaintiff. There is no evidence of record that any other date would apply to the blank, and it is not reasonable that because no specific date was filled in, no guaranty was entered into. The one reasonable meaning is that the

guaranty went into effect when it was signed and was in effect when the first purchase was made by the P.C. from the Plaintiff.

Based upon the record, the Court concludes that there is no ambiguity and that the Individual Defendant, Dr. Walker, guaranteed the repayment of the indebtedness.

/s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc by U.S. Mail, email, or efiling as applicable to:
Kenneth M. Bryant
J. Patrick Warfield
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John R. Manson
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