FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CEDAR FALLS TRUST & SAVINGS BANK,

Plaintiff-Appellant,

vs.

BIG COUNTRY, INC., et al,

Defendant-Appellee.

Filed January 30, 1981

0-366
2-64627

Appeal from Black Hawk District Court - T. H. Nelson, Judge.

Plaintiff appeals damages portion of the judgment against defendants on a guaranty agreement securing a loan. -MODIFIED AND AFFIRMED.

Harold B. Strever, Jr., of Reed, Merner, Sabbath, Strever, Oppold & Hansen, Cedar Falls, for plaintiff-appellant.

William S. Smith, of Smith & Kennedy, Waterloo, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff, Cedar Falls Trust & Savings Bank, appeals the damages portion of the judgment against defendants John E. Bordeaux and Cecil H. Miller on a guaranty agreement securing a loan to defendant Big Country, Inc. We modify the damages portion of the judgment below and affirm as modified.

On July 22, 1977, Bordeaux and Miller entered into a guaranty agreement with plaintiff in which they each became jointly and severally liable to pay plaintiff up to $20,000 in case of Big Country's default on a $200,000 loan made to Big Country by plaintiff. The guaranty agreement signed by Bordeaux and Miller provided in part:

> It is agreed by the Bank and each individual guarantor that all corporate payments on the total loan of $200,000.00 shall be applied in such manner that if [sic] note is in default each individual guarantor shall not be liable for more than ten percent (10%) of the outstanding balance that is due to be paid. . . .

Big Country defaulted and made no payments on the loan. Other individual guarantors, not parties in this action, voluntarily contacted plaintiff and, pursuant to their guaranty agreements, satisfied their obligations and reduced the total indebtedness incurred by Big Country by $180,000. When Bordeaux and Miller failed to satisfy their obligations, plaintiff brought this action to enforce the guaranty agreement. The trial court found Bordeaux and Miller each liable to plaintiff for $2000 plus interest. Plaintiff appeals the damages portion of the judgment only.

Our scope of review is limited to the correction of errors at law. Iowa R. App. P.4.

The trial court read the guaranty agreement as providing that Miller and Bordeaux are each liable for 10% of the outstanding debt no matter what the circumstances. Consequently, since there remains a $20,000 debt, the trial court found that Miller and Bordeaux are each liable for 10% of that amount or $2000. The guaranty agreement clearly provides that Bordeaux and Miller are each liable to plaintiff for up to $20,000 of the indebtedness not paid off by Big Country. A court will not resort to rules of construction where the intent of the parties is expressed in clear and unambiguous language. Allen v. Highway Equipment Co., 239 N.W.2d 135, 139 (Iowa 1976). Furthermore, the language from the agreement quoted above provides that in case of corporate payments on the debt, that is, payments made by Big Country, Bordeaux and Miller each would be liable to plaintiff for no more than 10% of the figure reached by

subtracting payments made by Big Country to plaintiff from the total $200,000 debt. But while the guaranty agreement provided for a reduction in Bordeaux and Miller's liability on the guaranty agreement in case of Big Country's making payments to plaintiff on the loan, it did not provide for a reduction in their liability in case of other guarantors' reduction of Big Country's debt. Since Big Country made no payments to plaintiff on the total debt, neither Bordeaux nor Miller all enjoys any reduction in his original $20,000 liability.

We therefore vacate the trial court's damages decision. We hold that John E. Bordeaux and Cecil H. Miller are jointly and severally liable to plaintiff in the amount of $20,000 plus interest thereon accruing at the rate of nine per cent per annum from November 23, 1979.

Costs assessed against defendants.

MODIFIED AND AFFIRMED.