IN THE COURT OF APPEALS OF IOWA

No. 2-492 / 91-1745

FILED
MAR 30 1993
CLERK SUPREME COURT

STATIONERS DISTRIBUTING,

Appellee,

vs.

REISINGER, INC. d/b/a ROBERTS BUSINESS ESSENTIALS, ROBERT J. REISINGER,

Defendants,

and

JOHN M. WARREN,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Defendant John Warren appeals from the district court's judgment for the plaintiff on Warren's personal guaranty on an account for plaintiff's merchandise sold to defendant Reisinger, Inc. **AFFIRMED.**

John M. Warren, Waterloo, pro se, for defendant-appellant.

Melvin H. Wolf, Waterloo, and Frederick G. White, Waterloo, for plaintiff-appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

The plaintiff, Stationers Distributing Company, sold merchandise to Reisinger, Inc. in the amount of $12,724.43. With accrued interest in the amount of $572.60, the total amount due was $13,297.03. Prior to the sale, John Warren executed a continuing guaranty guaranteeing payment of the account. A bank letter of credit had also been issued with an express expiration date. However, the guaranty did not specifically state that it was limited by the letter of credit.

Stationers commenced an action requesting judgment against Reisinger in the amount of $13,297.03 for the merchandise. Defendant Warren was joined in the action based on his personal guaranty of Reisinger's obligations.

A default judgment was entered against all defendants but was later set aside against the individual defendants including Warren. As an affirmative defense, the defendants alleged that the personal guaranty line of credit was fixed at $8000.

Stationers filed a motion for summary judgment. In an affidavit supporting his resistance to the motion for summary judgment, Warren claimed the guaranty was part of a combined transaction involving a bank letter of credit and the guaranty and the letter of credit were to expire on January 12, 1989, prior to the incurring of the present indebtedness.

In August 1991, the district court entered a summary judgment against the defendants finding the guaranty did not expire with the letter of credit. The court awarded Stationers $13,297.03 with interest and costs and attorney fees.

Defendant Warren filed a combined motion pursuant to Iowa Rule of Civil Procedure 179(b) asserting his affidavit raised a factual issue. The district court denied the combined motion. On the basis of a notice of garnishment and interrogatories, Warren paid the judgment. Warren appeals.

Scope of Review

Our scope of review is for correction of errors at law. Iowa R. App. P. 4.

Discussion

The defendants contend the district court erred in granting Stationers motion for summary judgment. Specifically, they claim the personal guaranty signed by Warren was limited by the bank letter of credit.

> Involved here is the basic purpose of summary judgment procedure. Every trial court has on its docket some pleaded claims and defenses which are actually without substance and exist only on paper. To obviate the labor and expense of trial to expose those empty vessels, summary judgment procedure was conceived. By proper motion, a party can compel his adversary to come forth with specific facts which constitute competent evidence showing a prima facie claim or defense. Paper cases and defenses can thus be weeded out to make

> way for litigation which does have something to it.
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> The language of our rule on summary judgments is very strong. Rule 237(e) Rules of Civil Procedure. Affidavits cannot merely be based on what someone has reported to affiant: "Supporting and opposing affidavits shall be made on personal knowledge". Conclusions and beliefs are insufficient: "shall set forth such facts as would be admissible in evidence". The person making the statements must know whereof he speaks: "shall show affirmatively that the affiant is competent to testify to the matters stated therein." When the motion itself is substantiated, the opposing party cannot simply rely upon his pleadings, for the pleadings are the very instruments that the procedure is designed to pierce: "an adverse party may not rest upon the mere allegations or denials of his pleading". Neither can the opposing party assert only generalities in resistance: "his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." (Emphasis added.)

Gruener v. City of Cedar Falls, 189 N.W.2d 577, 580 (Iowa 1971); accord Iowa Civil Rights Comm'n v. Massey-Ferguson, Inc., 207 N.W.2d 5, 8 (Iowa 1973).

We agree with the district court. The bank letter of credit in no way mentions or refers to the personal guaranty. Likewise, the personal guaranty neither refers to or mentions the bank letter of credit. No additional documents indicate the guaranty was to terminate with the letter of credit. To now allow the defendants to claim the personal guaranty was limited by the bank letter of credit would create havoc of the law regarding guaranty. This we are unwilling to do. We affirm the district court's grant of summary judgment.

AFFIRMED.