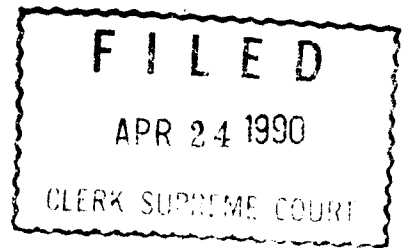


IN THE COURT OF APPEALS OF IOWA

No. 0-90 / 89-691



CITY SUPPLY CORPORATION,

Appellee,

vs.

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TOM R. TORSTENSON,

Appellant.

Appeal from the Iowa District Court for Polk County,
Jack D. Levin, Judge.

Appellant appeals from a district court order
determining that he had personally guaranteed a corporate
debt and entering judgment against him for \$12,917.

AFFIRMED.

Richard M. LaJeunesse of Dreher, Wilson, Simpson,
Jensen, Sellers, Butters, Adams & Kaiser, P.C., Des Moines,
for appellant.

John P. Dollar of Bowers, Wilson & Dollar, Des Moines,
for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

HAYDEN, J.

City Supply is a plumbing wholesale company. Tom Torstenson was an officer and shareholder in the corporation known as Ankeny-Des Moines Plumbing, Inc. (Ankeny-Des Moines). For several years prior to 1984, City Supply had done business with Ankeny-Des Moines, which included transactions involving extensions of credit by City Supply to Ankeny-Des Moines.

In February of 1984, City Supply became aware of possible changes in the ownership of Ankeny-Des Moines. The credit manager of City Supply mailed a "Credit Application" to Ankeny-Des Moines. Torstenson signed the document and stated he was vice president of Ankeny-Des Moines.

In 1985-1986, Ankeny-Des Moines began having financial difficulties. It eventually defaulted on its line of credit, owing City Supply \$12,917. Ankeny-Des Moines went out of business in December 1987, and was liquidated by its bank creditor.

City Supply brought this action against Torstenson, claiming he had personally guaranteed any corporate debt by his signature on the credit application. The district court agreed and entered judgment against Torstenson. Torstenson has filed this appeal. We affirm.

Torstenson enumerates three issues as error in this appeal. He argues Iowa law does not impose personal

liability on an agent authorized to sign for the principal when it is clearly indicated he is acting as agent for the named principal. He further asserts he cannot be contractually bound for the obligation because there was no meeting of the minds and the ambiguous language of the contract should be construed against the drafter-City Supply.

Our scope of review is on errors assigned. Iowa R. App. P. 4.

Torstenson argues only the principal is liable for debts incurred if an agent signs by and with the authority of the principal. We do not agree.

Our review of the record reveals the instrument Torstenson signed is clear. It appears as follows:

INDIVIDUAL PERSONAL GUARANTEE

In consideration for credit, applicant does individually guarantee prompt payment of all amounts now due and incurred in conjunction with this account. I do hereby waive notice of default, non-payment, and notice thereof and consent to any modification of the credit, agreement hereby guaranteed.

Signature of Applicant _____ as

(Owner, president)

In Preferred Investment Co. v. Westbrook, 174 N.W.2d 391, 395 (Iowa 1970), the supreme court held a note containing the words "personal guarantee" with no conditions precedent to liability were an unconditional guarantee of payment making the guarantor primarily liable on the debtor's default.

We conclude the instrument is not ambiguous. The heading clearly specifies the guarantee is an individual personal one.

Torstenson testified he did not read the document prior to signing it. He signed it in the course of signing other papers. This is no justification for avoiding liability. "If a party is able to read and has the opportunity to do so, his negligence in failing to read the instrument will estop him from claiming that the instrument is not not binding." Preston v. Howell, 219 Iowa 230, 236, 257 N.W. 415, 418 (Iowa 1936).

The trial court was correct in ordering judgment against Torstenson in the amount of \$12,917.

AFFIRMED.