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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0033

Brooklyn Park Hotel Properties, LLC,
Appellant,

vs.

Percy Pooniwala,
Respondent,

Ashok Shetty, et al.,
Respondents.

Filed May 29, 2018
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CV-11-15340

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Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

REILLY, Judge

Appellant challenges the district court's award of summary judgment for respondents, claiming the court erred when it determined appellant was not the true party in interest to respondents' personal guaranties. Because we determine appellant has no claim to the personal guaranties and respondent is entitled to summary judgment as a matter of law, we affirm.

FACTS

In 2003, appellant Brooklyn Park Hotel Properties, LLC, renovated a hotel property it had recently purchased in Brooklyn Park (Hotel). The Brooklyn Park Economic Development Authority (the Authority) entered into a series of agreements with appellant to assist the renovations, including an agreement to issue a Tax Increment Financing Note (TIF Note) (collectively the TIF Agreement). Appellant was to receive semiannual payments from the TIF Note until the year 2031 as reimbursement for past property taxes paid. In return, appellant promised to make improvements to the Hotel and meet certain standards in maintaining and operating the Hotel. Appellant obtained a loan from US Bank for $1.6 million (US Bank Loan) to fund the renovations. With the consent of the Authority, appellant assigned its rights under the TIF Agreement to US Bank to secure the US Bank Loan. Under the assignment, the Authority was to make all TIF Note payments directly to US Bank until the US Bank loan was paid in full.

In subsequent years, the Hotel was not profitable and had a number of maintenance issues. In 2009, appellant listed the Hotel for sale. After months of negotiations and several amended purchase agreements, appellant and Grand Rios Investments, LLC (Buyer), entered into an agreement for the sale of the Hotel (Hotel Purchase Agreement) and transfer of the TIF Agreement (TIF Purchase Agreement) and the US Bank Loan (US Bank Agreement) to Buyer (collectively, the Agreements). Respondents Pooniwala, Shetty, and Maripally were listed as Partners of the Buyer. Appellant sold the Hotel to Buyer for $5.5 million on October 9, 2009.

Respondents personally guaranteed the payment and performance of Buyer's obligations under the TIF Purchase Agreement and the US Bank Loan. In the event of default, respondents agreed to individual liability of $150,000 and a collective liability of $450,000. The guaranties stated that, as long as the US Bank loan remained unpaid, any amount paid by respondents pursuant to their guaranties would be paid directly to US Bank. The guaranties would only be released if the outstanding balance of the purchase price for the TIF Purchase Agreement was equal to or less than $1,150,000, and no default had occurred.

Shortly after the sale, Buyer discovered a number of issues with the Hotel. The Agreements went into default. The Hotel became inoperable,[1] and Buyer conveyed the Hotel to a creditor to satisfy an obligation unrelated to this appeal. In January 2012, US Bank sent a letter to respondents demanding payment under their personal guaranties. Respondents did not make payments to US Bank, and US Bank did not bring any further collection actions against them.

[1] The roof collapsed in 2011 and the Hotel went out of business.

Appellant commenced this action seeking payment from respondents on their guaranties. Appellant moved for summary judgment, arguing that respondents owed it the full amount of their guaranties plus 10% interest from the date the action was commenced. Respondents argued that appellant is not the real party in interest and has not suffered any damages. The district court granted summary judgment for respondents, finding that appellant was not the real party in interest, and dismissed appellant's claims with prejudice.

This appeal followed.

D E C I S I O N

I. Respondents are entitled to judgment as a matter of law because appellant did not have a claim for relief with respect to respondents' personal guaranties.

On appeal from summary judgment, this court reviews the record to determine whether there is any genuine issue of material fact and whether the district court erred as a matter of law. *Dahlin v. Kroening*, 796 N.W.2d 503, 504-05 (Minn. 2011). When reviewing questions of law, we give no deference to the district court. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003). The interpretation of an unambiguous contract is a question of law. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011). When the language of the contract is clear and unambiguous, we enforce the agreement of the parties as expressed in the contract. *K & R Holdings, LLC v. Auto-Owners Ins.*, 907 N.W.2d 658, 661 (Minn. App. 2018) (quotation and citation omitted).

Although the parties framed and analyzed the legal issue as whether appellant is a real party in interest, we characterize the issue as whether appellant has a contractual right to recover under the guaranties. The terms of the relevant contracts are clear and undisputed. Under the TIF Purchase Agreement, appellant sold "all of [its] rights under the TIF Agreement" to Buyer. In return, Buyer agreed to pay $1.75 million for the TIF Agreement in a series of installments, and buyer agreed to perform all of appellant's obligations under the TIF Agreement, which included repaying the US Bank Loan. The parties agreed that, should Buyer default on the TIF Purchase Agreement, the remaining balance of the purchase price would immediately become due and payable to appellant. Furthermore, in the US Bank Agreement, the parties agreed that US Bank was "granted and currently holds a perfected first lien security interest in the TIF Note and the [TIF Agreement] and all proceeds therefrom to secure the Loan and . . . any right or interest of the Buyer . . . in the TIF Note . . . [or] proceeds thereof is subject and subordinate to the Bank's rights therein and under this Agreement."

Respondents each signed a personal guaranty guarantying the Buyer's obligations to appellant under the Agreements. Each personal guaranty further provided that:

> . . . [W]hile any Liabilities . . . remain unpaid under the [US Bank Loan], any amounts paid hereunder are paid directly to [US Bank] in accordance with the [Agreements], the total liability of Guarantor . . . shall be limited to $150,000, and provided, further, so long as no default . . . has occurred under [the Agreements] Guarantor's liability hereunder shall be automatically terminated and extinguished at such time as the unpaid balance of the Purchase Price under the TIF Note Sale Agreement is reduced to $1,150,000.

The Agreements contemplated that the TIF Note payments would continue to be received and applied to the US Bank Loan, so long as the Buyer operated the Hotel in accordance with the TIF Agreement. Once the US Bank Loan was paid in full, any excess

TIF Note payments were to be paid to appellant. However, it is undisputed that the Buyer did not operate the Hotel in accordance with the TIF Agreement, the US Bank Loan has not been paid in full, and the TIF Note payments ended.[2]

Viewing the Agreements as a whole, the personal guaranties were designed to ensure the US Bank Loan was paid in full. Appellant could recover under the personal guaranties only if the US Bank Loan was paid in full. The record reflects that the US Bank Loan has an unpaid balance of $1,374,941.72. Therefore, any amount recoverable under the personal guaranties would be paid to US Bank, not appellant.

In summary, because the US Bank Loan has not been paid in full, appellant is not entitled to recover under the guaranties, and respondents are entitled to summary judgment as a matter of law.

Affirmed.

[2] Appellant cannot recover under a theory of a "continuing interest" in the TIF Agreement or the TIF Note, because appellant assigned all of its rights in the TIF Agreement to the Buyer in the TIF Purchase Agreement. Likewise, appellant does not gain the right to sue under the guaranties simply because US Bank's right to sue respondents expired.