STATE OF MICHIGAN

COURT OF APPEALS

GREYHOUND FINANCIAL CORP.,

Plaintiff-Appellant,

v

ANN D. DiDONATO and ESTATE OF WILLIAM B. DiDONATO, Deceased,

Defendants-Appellees,

and

BLAISE DiDONATO, ROSEMARY DiDONATO, FAST FOOD MANAGEMENT, INC., FIRST OF AMERICA LIVINGSTON, and HED, INC.,

Defendants.

UNPUBLISHED
July 11, 1997

No. 192662
Livingston Circuit Court
LC No. 94-013796-NZ

Before: Reilly, P.J., and Wahls and N.O. Holowka*, JJ.

PER CURIAM.

Plaintiff appeals as of right from summary disposition granted in favor of defendants Ann DiDonato and the Estate of William DiDonato in this action on a loan guaranty.[1] We affirm.

Blaise and Rosemary DiDonato operated a Hardee's restaurant through their corporation, Fast Food Management, Inc. Their corporation owned the business, and Blaise's parents, Ann and William DiDonato, owned the underlying real property. Fast Food Management obtained a loan from Greyhound's predecessor, Bell Atlantic TriCon Leasing Corp (TriCon). In conjunction with the loan, Ann and William signed a loan guaranty and pledged a second mortgage to TriCon on the property.

The restaurant went out of business, and Greyhound, as the successor mortgagee, foreclosed on the mortgage. The real property was sold for $800,000. The proceeds were used to pay the first

* Circuit judge, sitting on the Court of Appeals by assignment.

mortgage indebtedness, closing costs, and several years of back taxes. About $51,000 was left to be applied to Greyhound's loan, which was far less than the outstanding indebtedness.

Greyhound brought this suit against Ann DiDonato and the Estate of William DiDonato, as well as other defendants not involved in this appeal. Its amended complaint claimed that the back taxes should have been paid by Ann and William pursuant to the mortgage. Consequently, plaintiff argued, Ann and William owed Greyhound for the back taxes which had been deducted from the proceeds of the sale. The back taxes were more than $117,000. Plaintiff sought only the back taxes, and did not seek any other deficiency against Ann and William.

Ann and William argued that their liability *in the guaranty* was limited to the proceeds from the sale of the property, thereby precluding any sort of deficiency judgment against them. Greyhound argued that it was contemplated *in the mortgage* that the defendants would continue to pay the taxes on the property and that their failure to do so constituted an additional breach for which a cumulative remedy would be appropriate. The circuit court concluded that, whether the guaranty's term was read in isolation or in harmony with the mortgage, the result was the same and liability would be limited to the proceeds from the sale of the property. Summary disposition was granted in favor of the appellees. It is from that ruling that plaintiff appeals.

The question on appeal is whether the transaction is controlled by the narrow language of the guaranty or by the broader language of the mortgage. Consistent with precedent, we hold that the case is controlled by the narrow language of the guaranty.

> The relevant contractual provisions are as follows. The guaranty stated:
> 9. Cumulative Remedies. All of TriCon's rights, remedies and recourse under the Loan Documents or any financial accommodations or this Guaranty, are separate and cumulative and may be pursued separately, successively or concurrently, are non-exclusive and the exercise of any one or more of them, shall in no way limit or prejudice any other legal or equitable right, remedy or recourse to which TriCon may be entitled.
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> * * *
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> 16. Limited Recourse. This Guaranty is delivered to evidence the obligation secured by a second mortgage ("Mortgage") on the real property of Guarantors located at Grand Road and Van Riper at I-96, Fowlerville, Michigan (the "Property") and TriCon's recovery under the Guaranty shall be limited to the proceeds realized by TriCon from the sale or other disposition of the Property pursuant to the Mortgage.

The mortgage provided for the payment of taxes:

> 3. Property Taxes and Charges.
>
> Mortgagor shall pay, prior to delinquency, all real estate taxes and personal property taxes, assessments, levies, utility and sewer charges, and any and all taxes and

> other charges, imposed upon or assessed against Mortgagor or the Mortgaged Property or upon the rents, income and profits of use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents.

In *Union Trust C. v Detroit Motor Co*, 117 Mich 631; 76 NW 112 (1898), the Supreme Court was faced with a similar question. Guarantors on bonds were sued when the debtor (Detroit Motor Company) failed to timely pay interest on the bonds, and the bondholder invoked the mortgage clause allowing acceleration of the obligation to pay the principal. The mortgage provided that when default on interest payments exceeded thirty days, but before the bonds' principal mature, the principal "shall . . . become and be due and payable immediately". The bank argued that the guarantors were liable for the full amount of the underlying debt, including principal and interest, under the terms of Detroit Motor's mortgage which secured the bonds. The guarantors responded that they were liable only for accrued interest after the date of default and before the bonds matured, because their guaranty expressly provided that they would secure the payment of the bonds and interest due in accordance with the terms specified in the bonds.

The Supreme Court rejected the argument that the various loan documents were to be construed together:

> The complaint invokes the rule that where several instruments are made at the same time, between parties, they should be construed together. This rule is too well established to require citation of authorities; but does it necessarily determine the question here involved? We think not. The contract of a surety or guarantor is not to be extended beyond its express terms. *Johnston v Township of Kimball*, 39 Mich 187 (33 Am Rep 372) [1878]; *Bishop v Freeman*, 42 Mich 533 [4 NW 290 (1880)]; *Black's Appeal*, 83 Mich 513 [47 NW 342 (1890)]; *Grasser & Brand Brewing Co v Rogers*, 112 Mich 112 [70 NW 445 (1897)]. The undertaking of the guarantors in this case was that the bonds, and each of them, and the interest thereon, should be paid in accordance with the terms thereof, and in terms they guaranteed the payment thereof "at the time and times specified in the bonds, and in each of them." It would be an enlargement of this undertaking to treat it as an engagement to guarantee the payment of these bonds at any other or different times. [117 Mich at 635.]

The proposition cited in *Union Trust* has never been disturbed. Plaintiff has asked us to construe the various documents in this case together and in harmony to impose the liability for taxes against the appellees, but we believe doing so would contradict the clear dictate of the Supreme Court. The guaranty is the controlling document, and the circuit court did not err by limiting appellees' liability to the proceeds from the sale of the property as expressly provided in the guaranty.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Myron H. Wahls
/s/ Nick O. Holowka

[1] The remaining defendants are not involved in this appeal. Blaise and Rosemary DiDonato, and their corporation, reached a consent judgment below. Defendants First of America and HED, Inc., were named as defendants because they had potential liens against the property. Their interests are not involved here.