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ATTORNEYS FOR APPELLANT:

JAMES A. KNAUER
RYAN B. BOWERS
Kroger, Gardis & Regas, L.L.P.
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

KURT A. WEBBER
Carmel, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IBAD U. ANSARI,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 55A01-1012-CC-641
	)	
HOME BANK S B,	)	
	)	
Appellee.	)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable Jane Spencer Craney, Judge
Cause No. 55D03-0810-CC-454

August 25, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Ibad U. Ansari ("Ansari") appeals the trial court's entry of summary judgment in favor of Home Bank S B ("the Bank"). Ansari argues that a genuine issue of material fact, i.e. whether he is an accommodation party, and therefore entitled to raise special defenses against the Bank, precludes the entry of summary judgment. Concluding that the Bank is entitled to judgment as a matter of law,[1] we affirm.

Facts and Procedural History

On October 27, 2008, the Bank filed a complaint against Ansari and Syed Ali ("Ali") alleging that they had defaulted on two promissory notes. The principal amounts of the loans were $50,100 and $100,100. The Bank alleged that Ansari and Ali were jointly and severally liable under the terms of the promissory notes. Ansari and Ali were listed as the "borrowers" on the promissory notes and both signed the notes under the following statement: "I agree to the terms of this note[.]" Appellant's App. pp. 56, 61. The notes defined the term "I" to "include[] Borrower above, jointly and severally." Id. The notes also included the following provision:

> OBLIGATIONS INDEPENDENT. I understand that my obligation to pay this loan is independent of the obligation of any other person who has agreed to pay it. [The Bank] may, without notice, release me or any of us, give up any right [the Bank] may have against any of us, extend new credit to any of us, or renew or change this note one or more times and for any term, and I will still be obligated to pay this loan. [The Bank] may, without notice, fail to perfect [the Bank's] security interest in, impair, or release any security and I will still be obligated to pay this loan.

Id. at 57, 62.

[1] We do not address other issues related to Ansari's claim that he is an accommodation party because we conclude that he is not an accommodation party as a matter of law.

Ali did not file an answer to the Bank's complaint. Ansari filed a timely answer in which he admitted that he executed the two promissory notes. Ansari also admitted that he and Ali defaulted in the payment of principal and interest due on both promissory notes. Id. at 18-20.

On April 14, 2009, the Bank filed a motion for summary judgment seeking a judgment against Ali and Ansari, jointly and severally. In response, Ansari argued that he was an accommodation party because he did not receive any consideration or direct benefit from his execution of the promissory notes at issue. Id. at 48. And as an accommodation party, Ansari argued that he was entitled to raise the defense of impairment of collateral, that the Bank was required to liquidate the accommodated party's (i.e. Ali's) collateral before his own collateral is liquidated, and that he was entitled to be discharged due to the Bank's delay in failing to protect its interest in Ali's collateral. Id. at 50-53. The only evidentiary support for his argument that he is an accommodation party was Ansari's affidavit, which was attached to his response to the Bank's motion.

The trial court entered summary judgment in favor of the Bank on December 10, 2010. Specifically, the court entered judgment against Ali and Ansari, jointly and severally, on the first promissory note in the amount of $58,720.95, and on the second promissory note in the amount of $117,319.23. Ansari now appeals. Additional facts will be provided as necessary.

Standard of Review

We review the grant or denial of summary judgment de novo. Tri–Etch, Inc. v. Cincinnati Ins. Co., 909 N.E.2d 997, 1001 (Ind. 2009), reh'g denied. In so doing, we stand in the same position as the trial court and must determine whether the designated evidence shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); Dreaded, Inc. v. St. Paul Guardian Ins. Co., 904 N.E.2d 1267, 1269-70 (Ind. 2009). In making this determination, we construe the evidence in a light most favorable to the non-moving party and resolve all doubts as to the existence of a genuine factual issue against the moving party. N. Ind. Pub. Serv. Co. v. Bloom, 847 N.E.2d 175, 180 (Ind. 2006).

Discussion and Decision

Ansari argues that the trial court erred when it granted the Bank's motion for summary judgment because there exists a genuine issue of material fact, i.e. whether he is an accommodation party. And if he is an accommodation party, Ansari asserts that he is entitled to special defenses, which if proven, would discharge his liability on the two promissory notes.

A party who places his signature on a promissory note solely for the benefit of another party, without receiving any direct benefit himself, is an accommodation party. Irish v. Woods, 864 N.E.2d 1117, 1120 (Ind. Ct. App. 2007). An accommodation party is considered a surety, which is a person "'who is liable for the payment of a debt or performance of a duty of another person.'" Id. at 1121 (quoting Bailey v. Holliday, 806 N.E.2d 6, 10 n. 1 (Ind. Ct. App. 2004)). Therefore, "[a]n accommodation party may sign

the instrument as a maker, drawer, acceptor, or endorser and . . . is obliged to pay the instrument in the capacity in which the accommodation party signs." Ind. Code § 26-1-3.1-419(b). But that liability is only relevant in the event of a default by the accommodated party. See I.C. § 26-1-3.1-419(e). "In such event, the accommodation party's suretyship status allows him to seek reimbursement from the accommodated party. As a party with recourse against another party, the accommodation party's suretyship status is equivalent to that of a secondary obligor." Irish, 864 N.E.2d at 1121 (citations omitted).

The "suretyship status of an accommodation party may give him special defenses unavailable to the general run of parties on the instrument." Yin v. Society Nat'l Bank Ind., 665 N.E.2d 58, 63-64 (Ind. Ct. App. 1996) (quoting White v. Household Finance Corp., 158 Ind. App. 394, 302 N.E.2d 828, 832 (1973)), trans. denied.

> "Guarantors and sureties are exonerated if the creditor by any act, done without their consent, alters the obligation of the principal in any respect or impairs or suspends the remedy for its enforcement." Farmers [Loan & Trst Co. v. Letsinger], 652 N.E.2d [63,] 66 [Ind. 1995] (quoting Weed Sewing Machine Co. v. Winchel, 107 Ind. 260, 7 N.E. 881 (1886)); see also 2 White & Summers, supra, § 16-10 at 106 ("The law has traditionally held that conduct by the creditor which increases the surety's risk discharges the surety or reduces the surety's obligation pro rata."). Moreover, when the principal and obligee cause a material alteration of the underlying obligation without the consent of the guarantor, the guarantor is discharged from further liability.

Id. at 64.

"Generally, whether a co-maker is an accommodation party is a question of fact." Id. at 63. But, in this case, Ansari was listed as and signed the promissory notes as a "borrower." Further, Ali and Ansari signed the promissory notes under the following

statement: "I agree to the terms of this note[.]" Appellant's App. pp. 56, 61. The notes defined the term "I" to "include[] Borrower above, jointly and severally." Id. The promissory notes also provide: "I understand that my obligation to pay this loan is independent of the obligation of any other person who has agreed to pay it." Appellant's App. pp. 57, 62.

Because Ansari's self-serving claim that he signed the promissory note as an accommodation party runs contrary to the plain language of the promissory notes, his statement is inadmissible under the parol evidence rule. "The parol evidence rule bars the admission of evidence of oral representations that contradicts a written contract." America's Directories Incorporated, Inc. v. Stellhorn One Hour Photo, Inc., 833 N.E.2d 1059, 1066 (Ind. Ct. App. 2005), trans. denied; see also Evan v. Poe & Assocs, Inc., 873 N.E.2d 92, 101 (Ind. Ct. App. 2007) (stating "[t]he parol evidence rules provides that extrinsic evidence is inadmissible to add to, vary, or explain the terms of a written instrument if the terms of the instrument are clear and unambiguous") (citation omitted).

The only reasonable conclusion to be drawn from the properly considered designated evidence is that both Ansari and Ali are principal borrowers on the promissory notes.[2] See Irish, 864 N.E.2d at 1120 (noting that Irish was designated in the promissory note as a "borrower" and Irish promised to pay the principal amount "jointly and severally" with the L.L.C., his co-borrower, and therefore, Irish was a "principal obligor

[2] Whether Ansari is an accommodation party (or secondary obligor) from the perspective of Ali, and thus has recourse against Ali, is a factual issue not presented in this appeal. See Irish, 864 N.E.2d at 1121 ("Here, Irish occupies two legal positions. He is a principal obligor vis-à-vis Old National, but he is a secondary obilgor vis-à-vis the L.L.C.")

in his relationship to" Old National Bank under the promissory note). Ansari signed the promissory note as a borrower, without any limiting language indicating that he was an accommodation party or guarantor, and promised to pay the principal amount "jointly and severally" with Ali. For all of these reasons, we conclude that the trial court properly entered summary judgment in favor of Home Bank.

Affirmed.

BAKER, J., and VAIDIK, J., concur.