SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4220-19

SANTANDER BANK, N.A., f/k/a SOVEREIGN BANK, N.A.,

Plaintiff-Respondent,

v.

WELCO INTERNATIONAL LLC,

Defendant,

and

SASIKALA LAKSHMANAN,

Defendant-Appellant.

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Submitted February 7, 2022 – Decided December 9, 2022

Before Judges Accurso and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-2394-16.

Peter S. Kollory, attorney for appellant.

Saldutti Law Group, attorneys for respondent (Thomas B. O'Connell and Michael J. Hagner, of counsel and on the brief).

The opinion of the court was delivered by

ACCURSO, J.A.D.

Following defaults for non-payment, plaintiff Santander Bank, N.A. filed suit in June 2016 against defendant Welco International LLC on two commercial notes, one for $100,000 made in December 2013 and the other for $55,000 made in April 2014, both secured by the company's inventory, accounts receivable and other assets. Plaintiff also sued Welco's sole member, defendant Sasikala Lakshmanan, on her personal guaranties of both obligations. Defendants did not answer, and the bank entered default.

The parties thereafter entered into a stipulation of settlement in February 2017, whereby defendants acknowledged they were indebted to the bank in the sum of $79,894.59 on the first loan and $33,488.22 on the second inclusive of principal, interest, late fees, attorneys' fees and costs for a total of $113,382.81. The parties agreed defendants would pay a compromised settlement amount of $106,710.49, consisting of the principal balance of both loans, in fifty-three monthly payments of $2,013.40, $1,407.02 on the first loan and $606.38 on the second. Defendants were not represented by counsel.

Defendants subsequently defaulted on the settlement agreement and the bank moved in March 2019 to reinstate and enter final judgment by default out-of-time based on defendants' violation of the stipulation of settlement. The motion was supported by the certification of Alan M. Fern, a vice president of the bank, who averred on personal knowledge that there remained a principal balance due on the $100,000 note of $19,698.30 and a principal balance due on the $55,000 note of $8,503.00 as of January 24, 2019, which combined with interest and late fees totaled $37,669.08. The court granted the motion in April 2019, entering judgment for the bank in the sum of $35,562.38 plus costs and attorneys' fees of $2,809.25 as requested in the form of order.[1] The bank entered the judgment on the civil judgment and order docket and a writ of execution issued in May 2019.

Two months later, defendant Lakshmanan moved to vacate the default judgment. In her certification in support of the motion, Lakshmanan referenced the compromised settlement amount of $106,710.49 in the stipulation of settlement, certifying she had "not paid more than $30,000" since that time. Pointing the court to Fern's certification in the bank's

[1] The bank's counsel submitted an affidavit of services for $2,809.25. There is no explanation in the record for the $2,106.70 discrepancy between the affidavit of the amount due and the sum requested in the form of judgment.

application for default judgment averring that only $37,669.08 remained due on both loans, Lakshmanan noted "[i]f the first settlement amount balance of January 2017 is correct, our balance should have been around $76,000.00 but it shows only as $37,669.08. A discrepancy of about $40,000.00 by their own accounting filed in the court." Lakshmanan complained she "continuously receive[d] three different bills from Santander with three accounts with different balances," and could not get information from the bank about the loans as she was repeatedly told by her local branch it had no account under her name or identification number.

While defendant's motion was pending, plaintiff moved to amend the judgment, supported by another certification of Fern in which he averred on personal knowledge that there remained due on the $100,000 loan a principal balance of $58,280.67 and on the $55,000 loan a principal balance of $24,269.16, which combined with interest and late fees totaled $95,520.91.[2] While the interest due on both loans remained unchanged from his earlier certification and the late fees increased by slightly over $500, Fern offered no explanation for why the principal due on the loans had increased from

[2] Fern's math was off. Adding the figures in his certification yields $92,520.91, not $95,520.91, a difference of $3,000.

$28,201.30 in January 2019 to $82,549.83 in August 2019, an increase of $54,348.53. The court granted Lakshmanan's motion to vacate the default and apparently denied plaintiff's motion to amend its judgment, although no order is in the record.

Lakshmanan filed an answer in September 2019 on behalf of herself, but not Welco, which had been dissolved some months earlier, another event of default under the loan documents. Plaintiff moved for summary judgment two months later supported by a third certification from Fern averring the bank was owed $95,520.91 on the two loans, consistent with his second certification filed three months before. Lakshmanan opposed the motion, claiming she was promised an unsecured loan, did not understand the multiple documents she signed without counsel and disputed the amount due, relying both on recent statements she had received from plaintiff Santander and the discrepancies between Fern's first and second certifications. She further claimed discovery was not complete, as the bank had yet to respond to her interrogatories and notice to produce documents.

Relying on the loan documents Lakshmanan signed, her acknowledgment of having received the funds and not having repaid the entire sum owing, the judge entered summary judgment on liability, leaving plaintiff

to its proofs of the amount due. The judge deferred a ruling on Lakshmanan's motion for reconsideration, and the parties proceeded to a proof hearing at which Fern was the only witness.

Relying on payoff statements for each loan generated by the bank's software system, Fern testified there was a total due as of May 8, 2020 of $93,527.51, $66,524.61 on the $100,000 loan and $27,002.90 on the $55,000 loan, including interest and late fees, adjusting for late fees and correcting the $3,000 math error in the certification he signed six months earlier. On cross-examination, Lakshmanan's counsel confronted Fern with his first certification submitted in support of the motion to reinstate and enter default judgment claiming the bank was only owed $37,669.08, based on a total outstanding principal of $28,201.30, with his testimony at the hearing that the bank was owed $93,527.51, based on principal of $82,549.83, a difference of $54,348.53. Fern acknowledged the discrepancy but did not explain it, saying only that he "would have to redo numbers here to try to give the answer to that question."

After hearing the testimony and reviewing the exhibits submitted in evidence, the court denied defendant's motion for reconsideration of the partial summary judgment on liability and entered final judgment on the outstanding

loan balance of $93,527.51, along with contractual costs and attorneys' fees of $23,451.91 for a total judgment of $116,979.42. The judge found Fern a credible witness, accepting bank counsel's explanation that the first certification Fern submitted was the result of a "scrivener error" and that his testimony and the exhibits admitted in evidence at the proof hearing established the amount due and owing on Lakshmanan's guaranty. The judge also made findings on the fee application, pronouncing both the hourly rate and the time expended fair and reasonable in view of the extent of the litigation.

Lakshmanan appeals, raising seven issues for our consideration:

> ARGUMENT 1: THE CAMDEN COUNTY COURT HAD NO JURISDICTION TO RENDER SUMMARY JUDGMENT IN THIS CASE.
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> ARGUMENT 2: THE VENUE OF CAMDEN WAS NOT PROPER AS THE DEFENDANT IS FROM MIDDLESEX COUNTY.
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> ARGUMENT 3: THE TRIAL COURT DID NOT PROPERLY REVIEW THE MATERIAL AND GENUINE ISSUES OF FACT IN GRANTING PLAINTIFF SUMMARY JUDGMENT.
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> ARGUMENT 4: PLAINTIFF VIOLATED THE FEDERAL LAW OF UNFAIR TRADE PRACTICES ACT BY LEGAL OR EQUITABLE FRAUD AND DECEPTION.

ARGUMENT 5: THE TRIAL COURT'S OMISSION TO APPLY PRINCIPLES OF CONTRACT TO THE GUARANTY WAS IN ERROR.

ARGUMENT 6: THE SECURITY AGREEMENT BETWEEN PLAINTIFF AND DEFENDANT LACKING MUTUAL ASSENT WAS INVALID AND UNENFORCEABLE.

ARGUMENT 7: THE OTHER DEFENSES RAISED BY DEFENDANT IN THE ANSWER SHOULD HAVE ENSUED DISCOVERY PRECLUDING SUMMARY JUDGMENT FOR PLAINTIFF.

Having reviewed the record, we are unpersuaded by those arguments, none of which requires extended discussion in a written opinion. See R. 2:11-3(e)(1)(E).

Taking the issues in the order defendant presented them, there is no question but that the trial court had jurisdiction to hear and render judgment in this case. Plaintiff is a national bank chartered under federal law, so it is no surprise the promissory notes Lakshmanan signed on behalf of Welco provide they "will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Jersey without regard to its conflicts of law provisions." The court's response to defense counsel's assertion that Federal Rule of Civil Procedure 60(b) governed Lakshmanan's motion for reconsideration — that it was "loath to crack the

federal rule book and try to apply it to a state court case," as it was not its "jurisdiction" — was simply an accurate statement that the federal rules do not apply in state court and not a renunciation of jurisdiction to hear plaintiff's state law claims.

Leaving aside that defendant only raised the issue of venue in response to plaintiff's motion for summary judgment, well beyond the ten-day period provided by Rule 4:3-3(b) for such challenges, resulting in the objection being waived under the Rule, venue was proper in Camden County under Rule 4:3-2(a)(3) and (b), as Santander does business in the county through its branch banks.

We reject defendant's claim that the trial court ignored material facts in dispute in granting plaintiff partial summary judgment on liability as defendant admitted in response to the motion that Welco borrowed the money reflected in the loan documents and had failed to pay all of it back. Further, defendant entered into a stipulation of settlement on behalf of herself and Welco admitting those facts, as well as that the bank was still owed $113,382.81 as of February 2017.

In exchange for the benefit of a compromised settlement amount of $106,710.49, Lakshmanan represented and warranted defendants had "no

further charges, claims, counterclaims, or defenses against plaintiff," and no "right to set-off of any nature, or to the extent that such charge, claim, counterclaim, or defense or right of set-off" might have existed, "knowingly, intentionally, voluntarily, and irrevocably waived" it as of the execution of the stipulation of settlement. Moreover, Lakshmanan in that same document released the bank, its corporate officers, directors, attorneys and all corporate affiliates of all claims "including those of which defendants [were] not aware and those not mentioned in [the] Agreement. . . . up to, through, and including the execution of [the] Stipulation of Settlement." Given the motion record, no genuine factual dispute precluded partial summary judgment on liability. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 532 (1995) ("The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986))).

Leaving aside Lakshmanan's waiver of all claims against the bank in the stipulation of settlement, the federal law she claims the bank violated, the Federal Trade Commission Credit Practices Rule, 16 C.F.R. § 444.3 "Unfair or deceptive cosigner practices," plainly applies only to "the extension of credit

to consumers in or affecting commerce," not commercial borrowers such as Welco. The regulation has no applicability to this matter. The same is true of defendant's claim the bank violated the Fair Debt Collection Practices Act.

We also reject defendant's claim that the trial court failed to apply contract principles in interpreting the guaranty, which she claimed she did not understand and never intended to enter into, and erred in enforcing the security agreement in the absence of mutual assent. Again, leaving aside the stipulation of settlement in which Lakshmanan released all claims against the bank in exchange for a reduced loan balance, the contract principle the court applied was that extrinsic "evidence is adducible only for the purpose of interpreting the writing — not for the purpose of modifying or enlarging or curtailing its terms, but to aid in determining the meaning of what has been said." Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 269 (2006) (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)).

The guaranty defendant signed clearly and unequivocally stated that Lakshmanan as guarantor "absolutely and unconditionally guarantees full and punctual payment and satisfaction of the indebtedness of Borrower to Lender . . . . Guarantor will make any payments to Lender . . . on demand . . . . Under this Guaranty, Guarantor's liability is unlimited and Guarantor's obligations are

continuing." Just above her signature, the guaranty provided in capital letters in bold type that

> **EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER.**

Lakshmanan's contention that she did not understand the documents she signed and never intended to personally guarantee the loans plaintiff made to Welco is simply insufficient to negate the plainly worded agreements she voluntarily entered into. See Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 92 (App. Div. 2001) (noting the construction of contract language is generally a question of law unless its meaning is unclear and turns on conflicting testimony). We thus find no merit in her contract claims. The equitable relief of recission she seeks "is not available merely because enforcement of the contract causes hardship to one of the parties." Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 223 (2005). As our Supreme Court has often reminded, "[c]ourts cannot make contracts for parties. They can only enforce the contracts which the parties

themselves have made." McMahon v. City of Newark, 195 N.J. 526, 545 (2008) (quoting Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960)).

Finally, our review of the record convinces us defendant's remaining arguments, that the various defenses she raised in her answer required discovery thus precluding the entry of partial summary judgment on liability, are without sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E). The issue for the proof hearing, which defendant was permitted to explore at length, was the $54,348.53 difference in the principal balance between Fern's first and second certifications.

The bank maintained Fern's first certification reflecting a principal balance due of only $28,201.30 as of January 2019, $78,509.19 less than the $106,710.49 in principal the parties agreed was owing two years before, was a "scrivener error" not reflective of the true balance due and owing the bank when made. Bank counsel argued when the issue first arose that the error was as a result of statements issued by the bank after the loans were called and the balances accelerated, presumably the same type of statements Lakshmanan claimed she received, which appeared to have no relation to the loan balance actually due and owing. Lakshmanan herself certified she'd "not paid more

than $30,000" to the bank after having entered into the stipulation of settlement.

Based on the agreed balance in the stipulation of settlement, Lakshmanan's certification she had paid no more than an estimated $30,000 on the loans thereafter, Fern's testimony based on the bank's payoff documents entered into evidence at the proof hearing and defendant's failure to produce any evidence regarding her payments, we find no error in the trial court's acceptance of the bank's calculation that there remained a principal balance due of $82,549.83 — $24.160.66 less than that the parties agreed was owing in the stipulation of settlement. As the judge's findings are "supported by adequate, substantial, credible evidence" in the record, they "are binding on appeal," Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)), and require our affirmance of this judgment.

Affirmed.