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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2773-21**

NATALE CHILDREN, LLC,

Plaintiff-Appellant,

v.

CROWN BANK, A New Jersey
State Bank,

Defendant-Respondent.

Argued May 1, 2023 — Decided May 10, 2023

Before Judges Whipple and Mawla.

On appeal from the Superior Court of New Jersey,
Chancery Division, Union County, Docket No.
C-000073-21.

Tennant D. Magee, Sr., argued the cause for appellant.

Mark A. Roney argued the cause for respondent (Hill
Wallack, LLP, attorneys; Michael Kahme and Mark A.
Roney, of counsel and on the brief).

PER CURIAM

Plaintiff Natale Children, LLC, appeals from an April 1, 2022 order granting defendant Crown Bank, a New Jersey State Bank, summary judgment and denying plaintiff's motion for summary judgment. We affirm.

On June 24, 2008, Joseph D. Natale and seven other individuals signed a loan agreement and a note with defendant for \$3,100,000. The same day, JDN Properties, IV, LLC, an entity solely managed by Natale, entered a guaranty agreement with defendant and a guaranty mortgage security agreement mortgaging a property it owned in Cranford in an amount "not to exceed \$420,000" as security for the \$3,100,000 loan. The guaranty prohibited JDN from selling, transferring, conveying, or disposing of any assets.

On August 2, 2010, JDN transferred the property to plaintiff, defaulting on the guaranty. In 2013, defendant sued Natale, the seven investors, and JDN in the Law Division and obtained a judgment for \$3,245,957.22, representing the amount due on the loan.

In 2021, plaintiff filed a complaint in the Chancery Division and a summary judgment motion seeking a declaratory judgment that it owed defendant no more than \$420,000 to discharge the guaranty mortgage because the guaranty stated it was in an amount not to exceed \$420,000. Defendant answered the complaint and filed a cross-motion for summary judgment, arguing

it could charge interest under the guaranty, and sought a judgment for more than \$1 million, representing the \$420,000 plus interest as of the date of default. Defendant also sought attorney's fees pursuant to guaranty.

Following an initial round of motion practice, discovery, and a second round of motions for summary judgment, the motion judge entered the April 1, 2022 order granting defendant judgment for \$1,041,395.64, representing the \$420,000 due under the guaranty plus per diem interest through the date of the order. The judge also granted defendant's request for attorney's fees.

The judge rejected plaintiff's argument the guaranty mortgage was limited to \$420,000 and no interest could attach to it. He noted provisions in the guaranty mortgage, which stated that upon default defendant could foreclose on "the [m]ortgaged [p]roperty, or take such other action at law or in equity for the enforcement of [the m]ortgage[,]" including proceeding to final judgment on the unpaid balance of the \$420,000 "with interest at the highest applicable default rate set forth in the [l]oan [a]greement" Therefore, JDN's transfer of the property constituted a default, which triggered the accrual of interest as of the default date.

On appeal, plaintiff argues the court misinterpreted the guaranty and should have granted it summary judgment limiting the judgment to an amount

not to exceed \$420,000. Alternatively, plaintiff contends there are conflicting interpretations of the guaranty, which the court could not resolve on summary judgment. Even if the trial court correctly interpreted the agreement to include interest, the default interest rate was no greater than three percent. It also contends the court should not have awarded attorney's fees because the guaranty limits attorney's fees to costs arising out of a foreclosure and defendant's fees were incurred defending a declaratory action rather than prosecuting a foreclosure.

We review summary judgment motions de novo, using the same standard employed by the trial court. Hinton v. Meyers, 416 N.J. Super. 141, 146 (App. Div. 2010) (citing Turner v. Wong, 363 N.J. Super. 186, 198-99 (App. Div. 2003)). Rule 4:46-2 provides that a court should grant summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file," along with any affidavits, show there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Whether a genuine issue of material fact exists "requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v.

Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Likewise, the interpretation of a contract is a question of law, and our review is de novo. Kieffer v. Best Buy, 205 N.J. 213, 222 (2011).

"[I]f the contract into which the parties have entered is clear, then it must be enforced as written." Serico v. Rothberg, 234 N.J. 168, 178 (2018) (alteration in original) (quoting In re Cnty. of Atl., 230 N.J. 237, 254-55 (2017)). Further, "writings forming part of the same transaction are interpreted together." Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997) (quoting Barco Urb. Renewal Corp. v. Hous. Auth. of Atlantic City, 674 F.2d 1001, 1009 (3d Cir. 1982)).

The same rules that govern the construction of contracts govern the interpretation of a guaranty. Ctr. 48 Ltd. P'ship v. May Dep't Stores Co., 355 N.J. Super. 390, 405 (App. Div. 2002). "[T]he language of a guaranty agreement must be interpreted against the bank who prepared the form, and at whose insistence the language was included." Housatonic Bank & Tr. Co. v. Fleming, 234 N.J. Super. 79, 82 (App. Div. 1989) (citing Josefowicz v. Porter, 32 N.J. Super. 585, 590 (App. Div. 1954)). Guarantees should be strictly construed so as not to hold the guarantor bound beyond the strict terms of its guaranty, and

its obligation may not be extended by implication. Ctr. 48 Ltd. P'ship, 355 N.J. Super. at 405.

It is undisputed plaintiff defaulted. The central issue is whether default entitled defendant to recover a judgment greater than the amount of the guaranty and attorney's fees. The documents comprising the transaction are instructive.

The loan agreement between the borrowers and defendant defined the "loan documents" to include the note, guaranty, and the guaranty mortgage. The loan agreement stated JDN's guaranty was "limited to the foreclosure upon the real property subject to the lien of the [m]ortgage . . . in an amount not to exceed . . . \$420,000" In the event of a default, "[t]he unpaid principal balance of the . . . [l]oan shall bear interest . . . at the fixed rate of . . . 9.5%" Furthermore, "[a]ll rights and remedies granted [to defendant] . . . under the [l]oan [d]ocuments, or otherwise available at law or in equity, shall be deemed concurrent and cumulative" Also, "[t]he [n]ote, the other [l]oan [d]ocuments, all related agreements, and this [a]greement shall be construed as integrated and complementary of each other, and as augmenting and not restricting [defendant's] rights and remedies."

The note the borrowers executed with defendant stated:

If an [e]vent of [d]efault occurs and is continuing under the [l]oan [a]greement, the unpaid principal balance . . .

along with all accrued and unpaid interest and unpaid [e]xpenses shall become . . . immediately due and payable as provided in the [l]oan [a]greement. The obligations evidenced by this . . . [n]ote are secured by the [c]ollateral.

In addition to stating it was in an amount not to exceed \$420,000, the guaranty stated: "The [g]uarantor shall also pay or reimburse [defendant] on demand for all reasonable costs and expenses, including without limitation, reasonable attorneys' fees and costs, incurred by [defendant] at any time to enforce, protect, preserve, or defend [defendant's] rights hereunder and with respect to any property securing this [g]uaranty" Defendant's remedies were "limited to foreclosure upon the real property subject to the lien of the [g]uaranty [m]ortgage in an amount not to exceed . . . \$420,000 . . . pursuant to the terms and conditions of the [l]oan [d]ocuments"

The guaranty mortgage noted it was part of the conditions for defendant to loan the borrowers the \$3,100,000. Paragraph fifteen of the guaranty mortgage contained a "Right to Remedy Defaults" provision. Paragraph 15(c) stated in the event of a default: "All . . . sums, as well as costs, advanced by [defendant] pursuant to this [m]ortgage shall be due immediately . . . and such sums, as well as costs, shall bear interest at the highest applicable default rate under the [l]oan [a]greement from the date of payment by [defendant] until the

date of repayment to [defendant]." The guaranty mortgage also contained a remedies provision, including paragraph 17(b)(i), which permitted defendant to institute a foreclosure on the property,

or take such other action at law or in equity for the enforcement of this [m]ortgage and realization on the mortgage security or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the [o]bligations, with interest at the highest applicable default rate set forth in the [l]oan [a]greement, together with all other sums due by [JDN] in accordance with the provisions of this [m]ortgage and the other [l]oan [d]ocuments, including . . . all costs of suit, together with interest at such rate on any judgment obtained by [defendant]

Paragraph eighteen of the guaranty mortgage stated the parties' rights and remedies were cumulative and concurrent. Paragraph 18(e) stated: "For payment of the [o]bligations secured hereby [defendant] may resort to any other security therefore held by [defendant] in such order and manner as [defendant] may elect."

Pursuant to our de novo review, we conclude summary judgment was properly granted to defendant. The loan documents do not foreclose defendant from interest on the \$420,000. The guaranty mortgage expressly permits interest and sets it at the rate in the loan agreement. Defendant never received the benefit of the guaranty because JDN transferred the property to plaintiff. Given the

failure to honor the guaranty, we fail to see how defendant is not entitled to interest on the guaranty amount in law and in equity.

Likewise, we reject plaintiff's assertion the trial court could not award defendant attorney's fees. The guaranty expressly permits defendant to recover attorney's fees as a form of cost and expense for enforcement of the \$420,000 security.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION