

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

GRAFTON, SS.

Docket No. 18-CV-359

American Dawn, Inc.

v.

Dennis Kim

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

On October 19, 2018, the plaintiff, American Dawn, Inc. (“American Dawn”), brought suit against the defendant, Dennis Kim (“Kim”), alleging that Kim personally guaranteed an extension of credit or a loan from American Dawn to Sterling’s Services, LLC (“Sterling”), on which Sterling defaulted. The case is before the court on the parties’ cross-motions for summary judgment. The parties agree that the facts of the case are straightforward and undisputed.

On May 5, 2011, Sterling executed a credit application, whereby it sought credit from American Dawn. Kim, a principal of Sterling, signed the Credit Application on behalf of Sterling. Kim’s single signature was affixed on the single-page application below the last section entitled “Personal Guarantee.” That section provides:

The obligation of the Guarantor is a primary and unconditional obligation. This obligation shall be enforceable before or after proceeding against the buyer or against any security held by American Dawn, Inc. shall be effective regardless of the solvency or insolvency of the buyer at any time, the extension or modification of the indebtedness of the Buyer by agreement with American Dawn, Inc. Products or by Operation of law, or the subsequent incorporation, reorganization, merger or consolidation of the buyer or any other change in the composition, nature, personnel, or location of the Buyer. The Buyer authorizes American Dawn, Inc. to procure an investigative credit report or execute credit searches, as it deems necessary by [illegible] or the Fair Credit Act (Public Law 91-508) Init:

(Pl.’s Mot. Summ. J., 8.) There is only one signature line on the application, which appeared below the above-quoted paragraph. Kim did not designate in what capacity he was signing the application. Later, Sterling defaulted on its obligation, and American Dawn recovered judgment

Clerk's Notice of Decision
Document Sent to Parties

on 05/14/2019

This is a Service Document For Case: 215-2018-CV-00359
Grafton Superior Court
5/14/2019 12:28 PM

against Sterling in the amount of \$40,341.40. (*Id.* at 5.) When Sterling failed to pay the judgment due, American Dawn sued Kim personally for payment of Sterling's debt. American Dawn contends that it is entitled to summary judgment because the undisputed facts demonstrate that Kim personally guaranteed Sterling's debt. Kim, on the other hand, asserts that he is entitled to summary judgment because the undisputed facts show that there was no meeting of the minds as to whether Kim was personally guaranteeing Sterling's debt and that the terms in the credit application are insufficient to establish that Kim personally guaranteed Sterling's debt.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." RSA 491:8-a, III. The moving party has the burden of proving both elements. *Concord Grp. Ins. Co. v. Sleeper*, 135 N.H. 67, 69 (1991). The party opposing summary judgment, however, "has the burden of contradicting the [moving party's] affidavits." *Arsenault v. Willis*, 117 N.H. 980, 983 (1977). A "material" issue of fact is one that "affects the outcome of the litigation." *Weeks v. Co-Operative Ins. Cos.*, 149 N.H. 174, 176 (2003) (citation omitted). To demonstrate a genuine dispute regarding a material fact, the non-moving party "may not rest upon mere allegations or denials of his pleadings, but his response, by affidavits or by reference to depositions, answers to interrogatories, or admissions, must set forth specific facts showing that there is a genuine issue for trial." RSA 491:8-a, IV.

When considering the evidence, the court must draw all inferences "in the light most favorable to the non-moving party." *Sintros v. Hamon*, 148 N.H. 478, 480 (2002). The court may not "weigh the contents of the parties' affidavits and resolve factual issues," but must simply determine "whether a reasonable basis exists to dispute the facts claimed in the moving party's affidavit at trial." *Iannelli v. Burger King Corp.*, 145 N.H. 190, 193 (2000) (citations omitted).

American Dawn's Motion for Summary Judgment

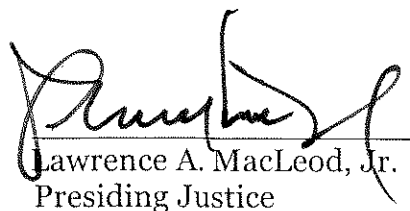
American Dawn contends that the undisputed material facts demonstrate that Sterling defaulted on its payment obligations, which Kim personally guaranteed, and that, therefore, the court must order Kim to pay Sterling's outstanding debt. Kim agrees that Sterling defaulted on its payment obligations, but he denies personally guaranteeing American Dawn's extension of credit to Sterling. American Dawn filed a single-paragraph motion for summary judgment along with attachments. With its motion, American Dawn attached an affidavit from Carlette Ward (the affidavit contains no information about Ward), a ledger card for Sterling, a stipulation between American Dawn and Sterling, a writ of execution for debts owed by Sterling to American Dawn, and part of a credit application for Sterling. The fact that Sterling owes money to American Dawn is undisputed. The sole issue before the court is whether American Dawn has established that Kim personally guaranteed payment of Sterling's debt. The court rules that American Dawn has not. The undisputed material facts demonstrate that Sterling filled out a credit application with American Dawn, which Kim signed on behalf of the company.

American Dawn contends that Kim's single signature on the credit application created a personal guarantee for any debt accrued by Sterling. The credit application merely has the company's name, address, tax identification number, and type of business. There is no information regarding the credit limit requested and no personal information requested or pertaining to Kim. In fact, there are no material terms within the credit application for Sterling that would bind Kim personally. For these reasons, the court rules that American Dawn has not demonstrated that the undisputed material facts entitle it to judgment as a matter of law. Accordingly, American Dawn's motion for summary judgment is DENIED.

Kim's Motion for Summary Judgment

Kim contends that the undisputed material facts show that he did not personally guarantee the loan. The court agrees. As discussed above, the credit application submitted by American Dawn is insufficient to show that Kim personally guaranteed Sterling's debt. Along with the absence of any material terms, the credit application also lacks a separate signature line or even a clear distinction between the signature of the company and the signature of any guarantor. Construing all reasonable inferences in American Dawn's favor, the court rules that Kim signed the credit application on behalf of the company and not as a guarantor. In fact, the credit application is clearly for Sterling, not for Kim in his individual capacity. The credit application is completely devoid of any of Kim's personal information, such as his address, phone number, income, assets, liabilities, or social security number. The extent of Kim's involvement on the face of the application appears limited to signing the document authorizing a credit review for Sterling. Furthermore, although the paragraph heading above the signature line is titled personal guarantee, the terms of the paragraph are ambiguous. For instance, the paragraph uses the terms "Buyer" and "Guarantor" without defining either. Although a reasonable person could guess as to whom or what these terms are intended to define, the use of these terms and the paragraph as a whole do not demonstrate that by signing the application Kim intended to personally guarantee without limitation Sterling's future unknown debt. For the foregoing reasons and the reasons set forth in Kim's motion for summary judgment, the court rules that the undisputed material facts demonstrate that Kim is entitled to judgment as a matter of law. Accordingly, Kim's motion for summary judgment is GRANTED.

SO ORDERED, this 9th day of May 2019.


Lawrence A. MacLeod, Jr.
Presiding Justice