

**IN THE ASSOCIATE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DOUG GALANT)	
	Plaintiff,)	
v.)	Case No: 1416-CV19084
)	
EDUCATION FUNDING GROUP,)	Division 29
LLC, et al.)	
)	
Defendants.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

On the 19th day of August, 2015, this matter came before the Court for bench trial on Counts I and II of Plaintiff’s Petition. Plaintiff appeared in person and through counsel, Vincent F. O’Flaherty. Defendants appeared in person and through counsel, Telisa L. Hoskins. Plaintiff submitted his case in chief and rested. Defendants submitted their case in chief and rested.

Having considered the evidence, the Court is now prepared to enter its judgment on Counts I and II for breach of promissory notes contained in the Petition. The Court makes the following findings of fact and conclusions of law on Counts I and II. Any finding of fact more properly denominated a conclusion of law, or vice versa, shall be considered so without further order of the Court.

FINDINGS OF FACT

Based on the testimony and evidence presented by the parties, the Court finds the following facts:

1. On or before July 6, 2012, Defendants Education Funding Group (represented by Major Hammett), Heather Koenig, Lisa Hammett, Bob Watkins, and Mark Koenig signed ten promissory notes dated July 6, 2012, although all of the parties did not sign every note.

2. These ten notes were to be offered to individuals or business entities at a golf tournament which was held as a fundraiser for Education Funding Group on July 6, 2012, and they were to be filled in with the name and address of the person accepting the note at that time.

3. Seven of the notes were accepted and filled in at the tournament, but three of the notes were left blank.

4. In late September or early October of 2012, Plaintiff and Defendant Major Hammett met to discuss a loan from Plaintiff to defendant Education Funding Group, LLC, in the total amount of \$65,000.

5. During that meeting, Plaintiff and Defendant Major Hammett reviewed and discussed the three remaining promissory notes dated July 6, 2012.

6. The First Promissory Note was in the amount of \$25,000 and was to be repaid with quarterly interest payments of \$1,000 and a final payment of \$25,000 on January 6, 2013, although the parties testified that they actually intended the final payment to be due on July 6, 2013. (Plaintiff's Ex. 1).

7. The Second Promissory Note was in the amount of \$25,000 and was to be repaid with quarterly interest payments of \$1,000 and a final payment of \$25,000 on January 6, 2013, although the parties testified that they actually intended the final payment to be due on July 6, 2013. (Plaintiff's Ex. 2).

8. The Third Promissory Note was in the amount of \$15,000 and was to be repaid with quarterly interest payments of \$563 and a final payment of \$15,000 on July 6, 2013. (Plaintiff's Ex. 3).

9. In the event of default, all three promissory notes provided for interest on the unpaid balance of the loan at the rate of thirty (30) percent. (Plaintiff's Ex. 1-3).

10. All three promissory notes permitted the holder to recover reasonable attorneys' fees and all other costs of collection in event of a lawsuit following default. (Plaintiff's Ex. 1-3).

11. These three promissory notes were signed by Major Hammett for Education Funding Group, LLC, and were also signed by Dr. Bob Watkins, Dr. Lisa Hammett, and Heather Koenig. In addition, the first note was also signed by Major Hammett and Mark Koenig. (Plaintiff's Ex. 1-3).

12. During their meeting, Plaintiff expressed concern to Defendant Major Hammett about the lack of collateral for the loan, and they discussed using a judgment that Major Hammett had against another person as collateral for Plaintiff's investment.

13. Major Hammett drafted a Fourth Promissory Note, dated October 3, 2012, which included any proceeds Major Hammett collected from his lawsuit in Case No. 1116-CV02032 as collateral for the loan. (Plaintiff's Ex. 4).

14. The Fourth Promissory Note also contained language stating that, "the parties agree that collateral for note dated October 3, 2012 in the amount of \$65,000 will be **personal guarantees of each individual person signed on attached note** and on behalf of EFG. . . ." (Plaintiff's Ex. 4, emphasis added).

15. The Fourth Promissory Note also contained the promise by Defendant Education Funding Group, LLC to repay Plaintiff the sum of \$65,000 with interest in the following amounts:

- a) \$2,600 on October 6, 2012;
- b) \$2,600 on January 6, 2013;
- c) \$2,600 on April 6, 2013; and
- d) \$67,600 on July 6, 2013. (Plaintiff's Ex. 4).

16. In the event of default, the Fourth Promissory Note provided for interest on the unpaid balance of the loan from July 6, 2013 until paid in full at the rate of thirty percent (30%) per annum. (Plaintiff's Ex.4).

17. The Fourth Promissory Note permitted the holder to recover reasonable attorneys' fees and all other costs of collection in event of a lawsuit following default. (Plaintiff's Ex. 4).

18. Defendant Major Hammett drafted the Fourth Promissory Note, signed it individually and as a representative of Education Funding Group, and delivered the Fourth Promissory Note to Plaintiff.

19. Although Defendant Major Hammett made several interest payments to Plaintiff, the principal amount of \$65,000 and interest at the rate of thirty percent (30%) from the date of April 14, 2014 to the present remains unpaid.

CONCLUSIONS OF LAW

A. Liability of Defendant Education Funding Group, LLC

1. Defendant Education Funding Group, LLC admits to and does not contest its liability on the Fourth Promissory Note for the \$65,000 principal plus interest at the rate of thirty percent.

B. Liability of Defendant Major Hammett

2. Defendant Major Hammett admits to and does not contest his liability on the Fourth Promissory Note for the \$65,000 principal. Although he argues that the interest rate of thirty percent was a usurious rate, he paid that rate from the time of default until April 14, 2014.

C. Liability of Defendant Heather Koenig

3. Mark Koenig and Heather Koenig have filed for bankruptcy and as a result, the proceedings against Defendant Heather Koenig have been stayed.

D. Liability of Defendants Lisa Hammett and Bob Watkins

4. Defendants Lisa Hammett and Bob Watkins deny liability on the First, Second and Third Promissory Notes that are the subject of Count I of the Petition. They contend that they only intended that the three notes would be offered at the golf tournament on July 6, 2012. They argue that Defendant Major Hammett had no authority to offer those three notes to anyone after the golf tournament was over, including to the Plaintiff. In addition, it is their position that they were not individually responsible for repaying the notes because they did not negotiate the terms, they were not present when the notes were accepted, and they were never asked for payment. Finally, they argue that the first three promissory notes were actually rejected by the Plaintiff, and they were released from liability by the Fourth Promissory Note.

5. In opposition, Plaintiff argues that the defendants signed the notes individually as a promise to repay the loans. Plaintiff further contends that the Fourth Promissory Note did not release the Defendants from their payment obligations under the first three Promissory Notes.

6. At trial, Bob Watkins testified that he signed the notes because he knew EFG was trying to raise money from investors, and he thought it might help to have more names on the notes. Lisa Hammett testified that she signed the notes because there would be a better chance of getting people to buy them if there were more signatures on them. This testimony indicates that both Defendants understood that additional personal guarantees would help to assure potential investors that the notes were backed by adequate collateral. Both Defendants testified that they never expected to repay the loans and in fact, they did not know anything about what happened

to the notes after they signed them. The Court finds this testimony not to be credible. Both Bob Watkins and Lisa Hammett were closely involved with EFG, and they testified that they knew the promissory notes were being offered in exchange for loans to EFG. Although the Court believes that the parties expected EFG to repay the loans, the Defendants who signed the notes in their individual capacity knew or should have known that they were signing a promise to repay the loans.

7. Under Missouri law, “it is presumed that a written contract embodies the entire agreement of the parties, and this is particularly so where it is a promissory note which is in dispute.” *Simpson v. Simpson*, 295 S.W.3d 199, 204 (Mo.App. W.D. 2009) (quoting *Pac. Carlton Dev. Corp. v. Barber*, 95 S.W.3d 159, 165 (Mo.App. W.D. 2003)). “The guiding principle of contract interpretation under Missouri law is that a court will seek to ascertain the intent of the parties and to give effect to that intent.” *Triarch Industries, Inc. v. Crabtree*, 158 S.W.3d 772, 776 (Mo. banc 2005). An unambiguous contract will be enforced according to its terms. *See id.* A disagreement as to the meaning or construction of a contract does not make that contract ambiguous. *See Lacey v. State Bd. of Registration For The Healing Arts*, 131 S.W.3d 831, 839 (Mo.App. W.D. 2004). “An ambiguity arises when there is duplicity, indistinctness, or uncertainty in the meaning of the words used in the contract.” *Id.* (quoting *Rodriguez v. Gen. Accident Ins. Co. of Am.*, 808 S.W.2d 379, 382 (Mo. banc 1991)). “The test for ambiguity is whether the disputed language is reasonably susceptible of more than one meaning when the words are given their plain meaning as understood by an average person. *Id.* (quoting *Daniels Express & Transfer Co. v. GMI Corp.*, 897 S.W.2d 90, 92 (Mo.App. E.D. 1995)).

8. Here, the Court finds that the promissory notes are unambiguous when all four notes are considered together. The first three promissory notes, which were signed by the individual defendants, were filled in with the Plaintiff's name and delivered to him at some point, because he had them in his possession. The plain and unambiguous language of the Fourth Promissory Note does not expressly state that the First, Second, and Third Promissory Notes were paid or released. The Fourth Promissory Note also does not contain language releasing defendants Bob Watkins or Lisa Hammett from their obligation to repay the Plaintiff. Instead, the Fourth Promissory Note contains language that, "collateral for note dated October 3, 2012 in the amount of \$65,000 will be personal guarantees of each individual person signed on attached note . . .". (Plaintiff's Ex. 4). Unfortunately, no note was attached to the Fourth Promissory Note when it was offered into evidence. However, "[a]mbiguity depends on context. Contract language is not interpreted in a vacuum, but by reference to the contract as a whole." *Lacey*, 131 S.W.3d at 838 (quoting *Purcell Tire & Rubber Co. v. Executive Beechcraft, Inc.*, 59 S.W.3d 505, 510 (Mo. banc 2001)). "Writings made a part of the contract by annexation or reference are to be considered in determining whether or not it is ambiguous." *Lacey*, 131 S.W.3d at 839 (quoting *J.E. Hathman, Inc. v. Sigma Alpha Epsilon Club*, 491 S.W.2d 261, 264 (Mo. banc 1973)).

9. Here, the parties testified that the only promissory notes that may exist between these parties are the first three notes, dated July 6, 2012, and the Fourth Promissory Note, dated October 3, 2012. Defendants Bob Watkins and Lisa Hammett signed all three of the notes dated July 6, 2012. None of the defendants' signatures indicated that they were signing as employees, representatives, or agents of Education Funding Group. Instead, they signed their names as individuals. Although Defendants Bob Watkins and Lisa Hammett testified that they did not

intend to be individually liable, nothing in the plain and ordinary language of the promissory notes themselves indicates anything other than personal liability. Moreover, the Fourth Promissory Note clearly states that the collateral for the note “will be *personal guarantees of each individual person* signed on attached note.” (Plaintiff’s Ex. 4, emphasis added). The Court concludes that the only reasonable interpretation of that language is that at least one of the first three notes was attached to the Fourth Promissory Note and was incorporated into that note by reference. This interpretation makes sense given the context of the negotiations between the parties. Both Major Hammett and Plaintiff testified that Plaintiff was uncomfortable with the lack of collateral for the loan. Adding the Fourth Promissory Note to the personal guarantees contained in the first three notes gave effect to the intent of the parties to add *more* collateral, rather than replacing the existing personal guarantees with the collateral of the judgment.

10. Finally, the Fourth Promissory Note was drafted by Defendants Education Funding Group and Major Hammett. Had the Defendants intended the Fourth Promissory Note to constitute a release or payment in full of the First, Second and Third Promissory Notes, Defendants could easily have included such language when they drafted the Fourth Promissory Note. Instead, they included language referring to an attached note, which could only be one of the first three notes. The plain language indicates that the parties intended to incorporate the personal guarantees found in least one of the first three notes into the Fourth Promissory Note. Even if there was an ambiguity in the promissory notes, an ambiguous contract is construed against the drafter. *Triarch Industries, Inc. v. Crabtree*, 158 S.W.3d 772, 776 (Mo. banc 2005). Therefore, Defendants Lisa Hammett and Bob Watkins have individual personal liability for the unpaid \$65,000 principal and the interest under the Fourth Promissory Note, because the Court

concludes that their personal guarantees found in the First, Second and Third Promissory Notes were incorporated into the Fourth Promissory Note by reference.

E. Interest Rate

11. All four promissory notes contain a contract interest rate of 30% per annum on the unpaid balance due in the event of default. (Plaintiff's Ex. 1-4). Default has occurred, and Plaintiff requests as part of his Judgment herein an award of prejudgment interest at the rate of 30% on the unpaid balance. Defendants have objected to this interest rate, contending that the rate is usurious and unconscionable under Missouri law.

12. Section 408.035, R.S.Mo., governs the claim of interest in this case. The 30% interest rate is permissible under Missouri law because all four promissory notes represented loans to Defendant Education Funding Group, which is a limited liability company. *See* Mo. Rev. Stat. § 408.035(1). Further, all four promissory notes represented business loans of more than five thousand dollars in that Defendant Education Funding Group was engaged in the business of arranging and managing fundraising campaigns for school districts. *See* Mo. Rev. Stat. § 408.035(2). Therefore, the Court concludes that the 30% interest rate is permissible under Missouri law.

F. Attorney's Fees

13. All four promissory notes contain an agreement by the Defendants to pay all costs of collection, including a reasonable attorney's fee, upon default. (Plaintiff's Ex. 1-4). The Defendants argued that this language was unenforceable because it did not impose a reciprocal obligation on the Plaintiff. The Court does not find this argument to be persuasive, because the plain language of the contract embodies the agreement of the parties, and it must be enforced

according to its terms. *See Triarch Industries, Inc. v. Crabtree*, 158 S.W.3d 772, 776 (Mo. banc 2005).

14. Defendants also argue that the attorney's fees sought in this case are not reasonable given the relative simplicity of the case and the length of the trial. However, the Court has reviewed the billing statements provided by Plaintiff's attorney, Vincent O'Flaherty, and finds that the attorney's fee request is reasonable. The case involved a bankruptcy filing that required a stay as to one of the Defendants, as well as a summary judgment motion that required briefing and oral argument. Given the number of parties involved and the issues raised in this case, the Court finds that the attorney's fees request is reasonable.

JUDGMENT

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Court finds in favor of the Plaintiff and against the Defendants Education Funding Group, LLC, Lisa Hammett and Bob Watkins on Count I of the Petition.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court finds in favor of the Plaintiff and against the Defendants Education Funding Group, LLC and Major Hammett on Count II of the Petition.

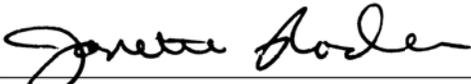
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff be awarded the following monies from Defendants Education Funding Group, LLC, Major Hammett, Lisa Hammett and Bob Watkins, jointly and severally: (1) principal amount of \$65,000; (2) prejudgment interest from the period of April 14, 2014 to August 19, 2015 at the contract rate in the promissory notes of 30% which totals \$26,282.64 (492 days at a per diem rate of \$53.42); (3) reasonable attorney's fees in the amount of \$9,180.42; and (4) post judgment interest on this judgment at the contract rate of 30% plus costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court has stayed all proceedings against Defendant Heather Koenig due to her pending bankruptcy and this Judgment is not directed or entered against her.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to Supreme Court Rule 74.01(b), the Court finds and determines there is no just reason for delay as to the Judgment on Counts I and II. This Judgment is final and subject to an immediate appeal should any party so desire.

IT IS SO ORDERED.

September 18, 2015
Date



HONORABLE JANETTE K. RODECAP

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2015, copies of the foregoing were duly sent via e-Filing or certified mail to:

Vincent O'Flaherty, Attorney for Plaintiff
Telisa Hoskins, Attorney for Defendants



April Ellison, Judicial Administrative Assistant