FILED
United States Court of Appeals
Tenth Circuit

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ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant/
Cross-Appellee,

v.

FEDERAL HOME CORPORATION,
LOUIS DALLAFIOR, and ANN DALLAFIOR,

Defendants-Appellees/
Cross-Appellants,

and

CHESTER W. BARTLETT, et al.,

Defendants.

Nos. 87-2191
& 87-2227
(D.C. No. 84-A-1752)
(D. Colorado)

ORDER AND JUDGMENT*

Before LOGAN, SETH and TACHA, Circuit Judges.

In 1980, the Federal Home Corporation (Federal), a builder of modular housing, applied for a $300,000 loan from the Economic Development Administration of the United States Commerce Department (EDA). Louis and Ann Dallafior (defendants), who were stockholders in Federal, executed a personal guaranty to secure part of the loan; the guaranty expressly limited defendants' liability to $78,000. See Brief of Appellant at 33 (Pl. exh. 2).

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Later, in the course of EDA's reprocessing of the loan application as a result of a different guarantor's withdrawal, defendants executed a deed of trust covering seven parcels of land as security for the loan. The document did not reference the earlier guaranty nor did it expressly limit defendants' liability to $78,000. See id. at 36-38 (Pl. exh. 4). The promissory note, executed by Federal the same day defendants signed the deed of trust, stated that it was secured by "a mortgage on land and buildings, liens on accounts receivable, inventories, machinery, equipment, furniture, and fixtures. Personal guarantees by Grant W. Dissette, Dorris Dissette, Louis Dallafior, Ann Dallafior." Id. at 30 (Pl. exh. 1). Federal subsequently defaulted on its note and EDA now attempts to execute on defendants' deed of trust and personal guaranty.

The issues on appeal are whether defendants' liability to the EDA is limited to the $78,000 stated in their personal guaranty or extends to the whole value of the property set out in the deed of trust plus the amount of the personal guaranty, if necessary to pay off the loan to Federal, and whether EDA is estopped to foreclose on defendants' home.[1] The district court concluded by implication that the various documents were ambiguous as to

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[1] EDA originally raised two other issues in its brief. At oral argument, it conceded that defendants are entitled to a credit of $35,721.28 against their liability, that amount being the difference between the amount paid by EDA at the trustee's sale of a certain tract of defendants' pledged property and the property's value, and that rents received by EDA after it took possession of defendants' pledged properties should be credited against defendants' liability to EDA.

defendants' total liability, and held that their liability was limited to $78,000.

Whether a contract is ambiguous is a question of law, but once a contract correctly is found to be ambiguous, the district court's interpretation, aided by the testimony it heard, is subject to a clearly erroneous standard of review. See Teton Exploration Drilling, Inc. v. Bokum Resources Corp., 818 F.2d 1521, 1526 (10th Cir. 1987); Amoco Prod. Co. v. Western Slope Gas Co., 754 F.2d 303, 308-09 (10th Cir. 1985).

We agree that, read together, the contracts are ambiguous. EDA admits that "[p]romissory notes, deeds of trust and guaranties are commonly executed in conjunction with each other and should be construed as a single transaction." Brief of Appellant at 12. Taking the guaranty, note, and deed of trust together creates an ambiguity whether defendants' liability is limited to $78,000, as expressly stated in the guaranty, or adds the full value of the property set out for the deed of trust to the total of the personal guaranty, as EDA contends. In such a case, the district court's determination as to the documents' meaning must be upheld unless clearly erroneous.

EDA points to evidence that it would not have reprocessed and granted the loan if defendants had not executed the deed of trust. See II R. 118-20. Yet, the language in the note, quoted above, explicitly references only defendants' personal guaranty. The Amendment to Loan Agreement, executed several days before defendants signed the deed of trust, did make reference to the deed, see Reply Brief of Appellants, app. at 8, but that document was not signed or acknowledged by defendants. In addition, at the time the deed of trust was executed, no party made any effort to disclaim or void the personal guaranty, or state that the earlier, explicit limit on defendants' liability was no longer in effect. The testimony upon which EDA relies, that defendants were required to pledge their property before EDA would make the loan, see II R. 54-55, does not necessarily imply that the pledge negated or rescinded defendants' earlier, express limitation on their liability. The land simply could have secured the $78,000 that was guaranteed. Indeed, one of the defendants testified that at the time he signed the deed of trust, he understood his liability still was limited to $78,000. II R. 71-72. Thus, we cannot say that the district court's interpretation of the guaranty and deed of trust, limiting defendants' total liability to EDA under those documents to $78,000, was clearly erroneous.

Defendants' argument that EDA is estopped to foreclose on their home is without merit. Even if a government agency may be estopped by representations of its employees, the district court found that neither EDA nor its agents ever told defendants it would not foreclose on their home. VI R. 11-12. Defendants point only to inapposite statements of an EDA agent in their attempt to convince us that the district court's finding was clearly erroneous. We hold, however, that the district court acted within its equitable discretion in ordering that defendants' home be the last of the pledged properties sold.

The district court's ruling--that defendants' liability is limited to $78,000 and should be offset by $35,721.28 as a net equity credit on one tract of property, by rental income received by EDA, and by $2,500 as the value of certain other property, permitting execution on the Dallafiors' home only as a last resort--is AFFIRMED.

Entered for the Court

James K. Logan
Circuit Judge