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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SOLEIMAN ISRAEL NAIM,

Plaintiff and Respondent,

v.

HOMAYOUN NAMVAR,

Defendant and Appellant.

B234088

(Los Angeles County Super. Ct.
No. BC400561)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kevin C. Brazile, Judge. Affirmed.

Law Office of David Alan Cooper and David Alan Cooper for Defendant and Appellant.

Hill, Farrer & Burrill, Neil D. Martin and William A. Meyers for Plaintiff and Respondent.

In this breach of guaranty action, defendant and appellant Homayoun Namvar appeals from a judgment after a court trial awarded \$1,437,260 in principal and accrued interest, plus attorney fees and costs, in favor of plaintiff and respondent Soleiman Israel Naim. Namvar contends substantial evidence does not support the finding of consideration for the guaranty. We affirm.

PROCEDURAL BACKGROUND

On October 23, 2008, Naim filed a complaint against Namvar for breach of guaranty to recover \$1.4 million together with interest of eight percent per year. Naim alleged that, on June 26, 2008, he loaned Namco Capital Group, Inc., \$1.5 million, and Namco executed a promissory note pursuant to which Namco promised to pay monthly interest at the rate eight percent per year and repay the outstanding principal balance upon 30 days' notice. To secure Namco's obligation, Namvar and Ezri Namvar,¹ Namco's owner, each executed a written personal guaranty of timely payment in full of all sums due from Namco to Naim. On August 15, 2008, Naim demanded payment of all sums due under the promissory note, but Namco failed to comply, and Namvar failed to honor his guaranty.²

In his answer, Namvar asserted the affirmative defense of failure of consideration.

After a court trial, the trial court gave judgment to Naim in the principal amount of \$1,198,777 and interest in the amount of \$238,483.

¹ Namvar and Ezri Namvar are brothers.

² The complaint also included causes of action against Namco and Ezri Namvar for breach of the promissory note and related claims, and against Ezri Namvar for breach of guaranty. The causes of action against Namco and Ezri Namvar were stayed when an involuntary bankruptcy petition was filed against Namco in December 2008.

STATEMENT OF FACTS³

Naim and Alex Hakakian were old friends. On October 25, 2006, Naim made an unsecured loan of \$850,000 to Namco, because Hakakian told Naim that Namco was a good investment. Naim received interest payments.

In June 2008, at Hakakian's suggestion, Naim loaned Namco an additional \$650,000, because Ezri Namvar was in financial trouble. Ezri Namvar and his brothers "were all consumed with raising capital for Ezri to save him from bankruptcy[,] [¶] [Namvar] took the position that he would do anything to try to avoid [Ezri] going to bankruptcy[.]"⁴ Naim wanted his entire \$1.5 million loan to be secured. Naim had Hakakian negotiate the loan and get the same terms Hakakian had gotten for Hakakian's brothers who recently loaned money to Namco: a security interest from Enzi Namvar in real or other property; and personal guaranties from Namvar and Ezri Namvar. Hakakian told Namvar and Ezri Namvar on numerous occasions that Naim would not lend the additional money without Namvar's personal guaranty. Namvar assured Hakakian he would give a guaranty. In more than one discussion, Namvar and Ezri Namvar told Hakakian they would do the exact same deal with Naim as they did with Hakakian's brothers.

The first loan was cancelled, Namco gave Naim a promissory note for the entire \$1.5 million loan amount, and Namvar and Ezri Namvar each signed a guaranty for the loan, as follows. On Friday, June 27, 2008, Naim gave Hakakian a check for \$650,000 payable to Namco, and Hakakian gave the check to Namco. Naim left town for vacation

³ "As is customary, we recite the facts in the light most favorable to the [trier's] findings." (*Carter v. Escondido Union High School Dist.* (2007) 148 Cal.App.4th 922, 926.)

⁴ Namvar also tried to protect his brother from criminal prosecution. In October 2008, Namvar agreed to surrender his ownership interest in real estate and execute a personal guaranty of repayment of a \$3.5 million refundable deposit paid to Ezri Namvar, in order, Namvar believed, to save Enzi Namvar from criminal prosecution and prison.

on Sunday, June 29, 2008. Hakakian received the promissory note, with signatures on the guaranty signature lines, either on June 27 or Monday, June 30. Hakakian did not remember whether Ezri Namvar and Namvar both signed on the guaranty signature lines on June 27 or whether Ezri Namvar signed at Namco on June 27, and Namvar signed at Namco on June 30, but, by June 30, the transaction was consummated and Hakakian received the promissory note with fully executed guaranties by Namvar and Ezri Namvar.⁵ Hakakian testified that Naim would not have loaned money to Namco without the note guaranties, because “that was the term that was agreed between I [Hakakian], Tony [Namvar], and Ezri.” Just as he caused Naim to give Namco the loan money prior to receiving the promissory note and security, Hakakian caused Hakakian’s brothers to fund their loan to Namco before receiving any documents.

Some interest and principal was paid on the promissory note. On August 13, 2008, Naim made an unsuccessful written demand for repayment of the full amount. Naim foreclosed on the property and settled with Namco’s trustee in bankruptcy for roughly \$400,000.

Namvar’s company, Pentaco Management, filed a \$10 million claim against Namco in bankruptcy court. Pentaco was a member of 10 to 15 limited liability companies to whom Namco owed money. Namvar signed guaranties of five to eight Namco’s obligations.

⁵ The promissory note was dated June 26, 2008. Namco promised to pay to Naim the principal sum of \$1.5 million with eight percent per year interest on 30 days’ advance notice. Namco pledged as collateral 80 percent of a \$2 million note and financial deed of trust executed by Namco in favor of Namco Financial, Inc. Below the signature of Ezri Namvar, who executed the promissory note on behalf of Namco, is the statement, “This Note is personally guaranteed by: Ezri Namvar [and] Homayoun Namvar.” Each man signed on his respective signature line. The note was prepared by Namco.

DISCUSSION

Namvar contends substantial evidence does not support the finding of consideration for his guaranty of Namco's obligation to Naim. We disagree with the contention.

Standard of Review

A "trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious." (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712, fns. omitted.) "We must accept as true all evidence and all reasonable inferences from the evidence tending to establish the correctness of the trial court's findings and decision, resolving every conflict in favor of the judgment." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

Trial Court's Findings

The trial court found that on June 30, 2008, Namvar signed a written guaranty agreement that had been prepared on June 26, 2008, for a \$1.5 million loan from Naim to Namco, obligating Namvar to repay the \$1.5 million loan in the event of a default by Namco. Namvar was out of the country from June 20 to the morning of June 27, 2008. Naim funded the loan on June 27, 2008, and then left for vacation. Namco signed the promissory note on June 27, 2008. Naim did not personally negotiate any of the terms of the loan. Hakakian was not Naim's agent, but he negotiated the loan on Naim's behalf. Hakakian did not negotiate directly with Namvar; rather, he negotiated with Ezri Namvar. Thus, Namvar did not make an oral guarantee or an oral agreement with Naim or Hakakian to act as surety. However, Hakakian told Namvar and Ezri Namvar that Naim wanted a guaranty in order to make the loan. Before he "personally guaranteed in writing

the timely payment of all sums due under the promissory note,” Namvar knew Naim wanted a guaranty in order to make the loan. Namvar’s guaranty “was an integral part” of Naim lending Namco the money. “[T]he tender of the loan funds . . . and the signing of the guarantor agreement, either on the day of or within a few days of delivering the loan funds to Namco, constitute a single transaction that is supported by adequate consideration.” Accordingly, pursuant to Civil code, section 2792,⁶ no other consideration needed to exist for the guaranty.

Applicable Law

Civil Code section 1550 provides: “It is essential to the existence of a contract that there should be: [¶] . . . [¶] 4. A sufficient cause or consideration.”

Civil Code section 1605 provides: “Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.”

“A guaranty of an antecedent debt of another must be supported by a consideration distinct from the original obligation (Civ. Code, § 2792) Where . . . the making and delivery of the note, the transfer of the consideration from lender to borrower and the guaranty constituted one transaction, the consideration of the one promise supports the other and the guaranty is valid, even though the guaranty was not signed coincidentally with the signing of the note and the passing of the funds to the borrower.” (*Pacific States Sav. & Loan Co. v. Stowell* (1935) 7 Cal.App.2d 280, 281; see also *Howland v. Aitch*

⁶ Civil Code section 2792 provides: “Where a suretyship obligation is entered into at the same time with the original obligation, or with the acceptance of the latter by the creditor, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.”

(1869) 38 Cal. 133, 135 [a loan or other thing of value for which a promissory note is given is consideration supporting the promise of the guarantor of the promissory note, if the guaranty and the note are part of the same transaction].) The guaranty need not be made contemporaneously with the note or contract on which the guaranty is endorsed. (*Howland v. Aitch, supra*, at p. 136.) “[Where] both the promise of the vendee and that of the guarantor constituted the consideration for the sale and delivery of the goods, . . . the two promises and the sale and delivery of the goods constituted one entire transaction. It is a matter of no moment at what time, relative to each other, the contracts may have been made and delivered, and the consideration may have passed, if they together constituted one transaction; though it may be important, in ascertaining whether, in fact, they are branches of one transaction. Here it is found, as we understand the finding, that the sale and delivery of the [goods] and the making and delivery of the note and guaranty constituted one transaction. The consideration of the one promise, therefore, supports the other. The note and the guaranty, on the one side, and the sale and delivery of the [goods] on the other, constitute, respectively, considerations for each other; and the guaranty is valid, though the consideration is not therein expressed.” (*Ibid.*)

Substantial Evidence of Consideration for Namvar’s Guaranty

Substantial evidence supports the trial court’s finding Namvar’s guaranty, the promissory note, and the loan were part of the same transaction, such that the consideration for the promissory note was the consideration for the guaranty. Viewed in the light most favorable to the judgment, the evidence established that Namvar and Ezri Namvar knew Naim required their guaranties for the loan. Namvar and Ezri Namvar understood that Namco’s deal terms with Naim was to be the same as Namco’s deal terms with Hakakian’s brothers, which included guaranties by Namvar and Ezri Namvar. Both Namvar and Ezri Namvar signed their respective guaranties. Naim prepared his loan disbursement check on June 27 and then left the country. Hakakian handled the transaction for Naim, who did not deal directly with Namvar or Namco. Ezri Namvar

signed his guaranty on June 27, the day he signed the promissory note on Namco's behalf and Hakakian delivered Naim's check to Namco. Namvar did not sign the guaranty until June 29, because he was out of the country and did not return to the office until June 29. The guaranties were prepared by Namco as endorsements on the promissory note. This is substantial evidence the loan, the obligation to repay the loan, and the guaranty were all part of the same transaction, with all parties understanding the loan as the consideration for both the promissory note and for the guaranty. Accordingly, under Civil Code section 2792, no other consideration needed to be shown, and substantial evidence supports the finding Namvar's guaranty was supported by consideration.

Because we uphold the judgment on the foregoing grounds, we need not discuss Namvar's remaining contentions regarding the presumption of consideration found in Civil Code section 1615.

CONCLUSION

The judgment is affirmed. Costs on appeal are awarded to Soleiman Israel Naim.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.