

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RIDGEWAY OFFICE CENTRE, LLC,

Plaintiffs,

v

Case No. 15-147537-CB
Hon. Wendy Potts

PRESTIGE MEDICAL BILLING
SERVICES, INC., and REVAN FRANCIS,

Defendants/Third Party Plaintiffs,

v

CANDICE KAYAL,

Third Party Defendant.

OPINION AND ORDER RE: DEFENDANTS/THIRD PARTY PLAINTIFFS'
MOTION FOR RECONSIDERATION

At a session of Court
Held in Pontiac, Michigan
On

AUG 05 2016

The matter is before the Court on Defendants/Third Party Plaintiffs Prestige Medical Billing Services, Inc. and Revan Francis' Motion for Reconsideration. On July 13, 2016, after oral argument, this Court issued an Order granting Plaintiff Ridgeway Office Centre's Motion for Summary Disposition. Defendants now request the Court grant their motion for reconsideration. The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

MCR 2.119(F) governs Motions for Rehearing or Reconsideration. The decision whether to grant or deny reconsideration is discretionary. MCR 2.119(F)(3); *Charbeneau v Wayne*

County General Hosp, 158 Mich App 730, 733 (1987). MCR 2.119(F)(3) provides, in relevant part:

[A] motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Prestige and Francis first assert that the Court committed palpable error in not finding that an order from the district court bars the instant action. This Court held that res judicata does not bar Plaintiff's claims because "a district court judgment is res judicata on the issue of who has the right to possess the premises, because that question is actually litigated in the district court. Thus, where, as in this case, no claim for damages is asserted in the district court, the district court judgment is conclusive only on the question of who has a right to possess the premises." *1300 LaFayette East Coop., Inc. v Savoy*, 284 Mich App 522, 530; 773 NW2d 57 (2009) (internal citations omitted). There was no claim for damages asserted in the district court, and the judgment is only conclusive on the right of possession of the leased premises. *Id.*

Prestige and Francis also assert that this Court committed palpable error in finding that Francis signed a guaranty. The Guaranty signed by Francis stated ". . . the undersigned jointly and severally, hereby unconditionally guaranty to Landlord, Landlord's successors and assigns, the full performance and observance of all the covenants, conditions and agreements therein provided to be performed and observed by Tenant, including the 'Rules and Regulations', as therein provided, without requiring any notice of non-payment, non-performance or non-observance, or proof, notice or demand whereby to change the undersigned therefor, all of which

the undersigned hereby expressly waive and expressly agree that the validity of this agreement and the obligation of the guarantor hereunder shall in no wise be terminated, affected or impaired by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the within Lease. . . .” The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties. *City of Grosse Pointe Park v Michigan Municipal Liability and Property Pool*, 473 Mich 188, 197; 702 NW2d 106 (2005), quoting *McIntosh v Groomes*, 227 Mich 215, 218; 198 NW 954 (1924). Where the contract language is unambiguous, the Court should effectuate the intent of the parties by applying the plain and ordinary meaning of the contract’s terms. *City of Grosse Pointe Park*, 473 Mich at 197-198. The language of the guaranty is unambiguous and clearly states that the Francis guaranteed to Prestige the full performance and observance of all the covenants, conditions, and agreements in the lease.

Prestige and Francis also assert that the guaranty in the instant matter is similar to the guaranty in *Bandit Industries, Inc. v Hobbs Inten., Inc.* 463 Mich 504; 620 NW2d 531 (2001). The alleged guaranty in *Bandit Industries, Inc., supra* was a fax sent by a president of a corporation wherein he provided an assurance of payment. The facts in the instant matter are distinguishable from *Bandit Industries, Inc., supra* because Francis signed an actual Guaranty that stated the terms to which she was agreeing. The Guaranty that Plaintiff attached to its motion for summary disposition was an unambiguous expression of Francis’ acceptance of responsibility under the lease. *Id.*

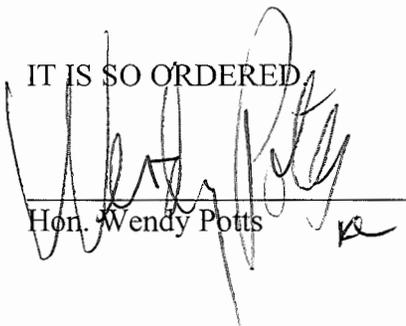
Finally, Prestige and Francis argue that the Court committed palpable error when the Court did not find that Plaintiff failed to provide notice to Francis that Plaintiff was claiming continuing damages and relying on the guaranty. Plaintiff Ridgeway’s motion for summary

disposition was filed pursuant to MCR 2.116(C)(10). Under (C)(10), “In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.” *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). Defendants’ response to the motion contained mere statements, without factual support, that Francis did not receive notice that Plaintiff was intending to rely on the guaranty. Defendants’ response was unsupported by affidavits, deposition testimony, admissions, or other documentary evidence. *Quinto, supra*.

Accordingly, the Court finds that Prestige and Francis’ motion for reconsideration merely presents the same issues that were already ruled on by this Court. Defendants’ have failed to demonstrate a palpable error and show that a different disposition of the motion must result from correction of the error. For all of the reasons stated, Defendants/Third Party Plaintiffs’ motion for reconsideration is denied.

Dated:

AUG 05 2016

IT IS SO ORDERED

Hon. Wendy Potts