

BETWEEN JAMES ROBINSON

Appellant

AND TANNERS TIMBERWORLD LIMITED

Respondent

Coram Hardie Boys J
 Gault J
 Sir Gordon Bisson

Hearing 16 May 1991

Counsel Sarah Reeves for Appellant
 T N Wilson for Respondent

Judgment 16 May 1991

JUDGMENT OF THE COURT DELIVERED BY HARDIE BOYS J

Mr Robinson appeals against summary judgment given against him by Master Hansen on 18 October 1990. The respondent had sued him on what it alleged was his personal guarantee of the trading account of Robinson Fox Builders Limited, now in liquidation. Mr Robinson was one of the two directors and shareholders of that company.

In 1988, when the respondent was known as Tasman Building Supplies Limited, a Mr McCann, its general manager, approached Mr Robinson with a view to obtaining his company's custom. On Mr Robinson agreeing to do business with the respondent, Mr McCann asked him to fill out a

printed form. Mr Robinson did so. The form is headed "Credit Application". As completed, it shows Robinson Fox Builders Limited as the applicant. Beneath that, where there are printed three descriptions, "partnership", "private business" and "limited company", the appropriate one to be ticked, Mr Robinson has ticked both "partnership" and "limited company". There then follow particulars of the company's address, the names and addresses of its shareholders, and particulars of its solicitors, bankers and possible referees. Below these are five printed paragraphs headed "Terms of trade", which provide for such matters as the due dates for payment, the availability of discounts, interest on overdues, and so on. These refer variously to "the purchaser" and "the customer", the third person being used throughout. At the foot of the form, in a separate paragraph and in heavier type, the following words are printed:

" I agree to the above conditions and terms of trade and do hereby personally guarantee to pay the due payment of any moneys due. "

Beneath this paragraph are two lines. The first has printed on it the word "Signed", and in the space alongside that word Mr Robinson has signed his own signature, without more, and he has filled in the date "7.4.88". His signature is in fact immediately below the word "guarantee" in the printed line above it and he has partly written over the top of that word. On the second line are printed the

words "Witnessed by Tasman Building Supplies Limited".

There is no signature in the space that follows, but it has not been suggested that that fact has any significance.

In his affidavit in opposition to the summary judgment application Mr Robinson stated that in discussion with Mr McCann there was no mention of a personal guarantee or of the fact that one was included in the application form. He stated:

" In signing the credit application I was signing on behalf of Robinson Fox Builders and had no knowledge of, or intention to enter into a personal guarantee. My belief at that time, was that I was confirming the terms of contract orally agreed between myself and McCann on behalf of the Plaintiff. "

Mr McCann's evidence was that he could not remember mentioning a personal guarantee.

Over the next year Mr Robinson's company was a good customer, ordering substantial quantities of materials from the respondent. However, due to default by its own debtors, it was ultimately unable to pay its debt to the respondent, which finally amounted to \$78,481.90. The respondent therefore looked to Mr Robinson, on the basis that by his signature to the form he had given his personal guarantee of his company's debt. Mr Robinson deposed that when he was advised of the respondent's claim he telephoned Mr McCann who told him that he, McCann, had not at the time realised that there was a personal guarantee on the form. Mr McCann

in his evidence said that he remembered a discussion about the guarantee, but nothing more.

In answer to the respondent's claim Mr Robinson raised six grounds of defence, of which five were argued before the Master. They were not all pursued on this appeal, and understandably so. In this Court Ms Reeves' submission, which she advanced firmly and fully, was that properly construed the words at the foot of the form and Mr Robinson's signature to them were no more than an acceptance by him on behalf of the company of the terms of trade, and a promise by him on behalf of the company to pay what was due by it. She submitted that this is the construction that must follow from a consideration of the document as a whole, which is of course necessary: for by not differentiating between the applicant and the signatory the document created an ambiguity as to the capacity in which the signatory signed, and consequently the nature of the promise he made; and that ambiguity, by reference to such extrinsic evidence as is properly available, and by application of the contra proferentem principle, is to be resolved against the respondent.

There are two other meanings to which the words in question are susceptible. The first, which Mr Wilson submitted is the correct meaning, is that they are in their entirety a personal guarantee by the signatory. As Mr Wilson pointed out, if an application form such as this

is filled out by a person duly authorised by the applicant, and the applicant then incurs credit, the applicant's signature to the form is not a prerequisite to its liability in accordance with the terms of trade set out. And so the words "I agree to the above conditions and terms of trade" are to be read as an acknowledgment by the signatory of what it is that, by the words that follow, he personally guarantees.

The second possible meaning is that the signatory signs in a dual role: first on behalf of the applicant he accepts the terms and conditions; and secondly on his own behalf he guarantees the applicant's debt. For present purposes it matters not which of these two meanings is correct for both require acceptance of the view that the signatory has given his personal guarantee.

It is elementary that this document is to be construed objectively. The parties' intention is to be gathered from the words used, given their ordinary meaning. Subsequent declarations of the parties as to what they intended or understood are not admissible. There are occasions in which the circumstances in which a contract is entered into may be an aid to its construction, but Ms Reeves accepted that this is not one. Here, the circumstances described in evidence really amount to no more than evidence of intention. And the fact that the respondent has discarded this form of application for

another more skilfully drawn is also immaterial. This form is to be construed on its own.

We think that on their plain and ordinary meaning the words in issue here are a personal guarantee by the signatory. We see no ambiguity such as to bring the contra proferentem rule into play. The words, "I ... do hereby personally guarantee" are in themselves plain and unambiguous. And for either of the reasons already mentioned, that meaning is not detracted from by the words of agreement that precede them. Further, we see considerable significance in the change from the third person to the first person. As already mentioned the terms of trade refer in the third person to "the purchaser" and "the customer": clearly the applicant. But then there is the change in the final paragraph, emphasised by the heavier type, to the first person: "I agree ... and personally guarantee".

Finally, the alternative construction contended for by Ms Reeves would have the applicant, even if a limited liability company, in the first person personally guaranteeing its own debt. In a business document such as this, in which it is not uncommon for there to be a personal guarantee for the debts of a private company, that would be a completely unrealistic result.

This may be one of those unfortunate cases where a person signing a document has not appreciated what it is

that he has committed himself to. But the law has always recognised that for the sake of certainty in contractual dealings people must in general be bound by what they have signed. There are particular circumstances in which that is not so, but it is not suggested any apply here.

The appeal is therefore dismissed. The appellant is legally aided, with a nominal contribution. In these circumstances we make no order as to costs.

A handwritten signature in dark ink, appearing to be 'R. Cox' or similar, written in a cursive style.

Solicitors

Shieff Angland Dew, Auckland, for appellant
Rennie Cox Garlick & Sparling, Auckland, for respondent