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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

US BANK NATIONAL ASSOCIATION,

Plaintiff and Respondent,

v.

ANTHONY CESARE, as Trustee, etc. et
al.,

Defendants and Appellants.

E052204

(Super.Ct.No. RIC10009557)

OPINION

APPEAL from the Superior Court of Riverside County. Mark E. Johnson, Judge.

Affirmed in part; reversed in part with directions.

William L. Conti for Defendants and Appellants.

Barry, Gardner & Kincannon, Jeffrey B. Gardner, and Laura J. Petrie for Plaintiff
and Respondent.

I. INTRODUCTION

Plaintiff and respondent US Bank National Association (US Bank) sued Rico Retail, LP (Rico Retail), Ron Hirji,¹ and defendants and appellants Anthony Cesare as Trustee of the Solomon Trust dated 3/19/98 (Solomon Trust)² and Ivano Stamegna for foreclosure of a deed of trust; and sued Hirji, Cesare, and Stamegna for breach of guaranty. Defendants appeal the trial court's orders granting US Bank's applications for a right to attach order and order for issuance of a writ of attachment against their property. Defendants contend the trial court erred by (1) concluding US Bank had established the probable validity of its claim because the guaranties on which it sued were sham and void, and (2) failing to order US Bank to post a bond as a condition of issuing the writ.

We conclude the trial court erred in failing to require US Bank to post a bond. We find no other error.

II. FACTS AND PROCEDURAL BACKGROUND

Given the procedural posture of this case, our statement of facts is taken primarily from the allegations of the complaint and the documents and declarations submitted in support of and in opposition to the applications for right to attach order and order for issuance of a writ of attachment.

¹ As of the time of the orders that are the subject of this appeal, service had not been effected on Hirji, and he is not a party to this appeal.

² References to Cesare hereafter will be to Anthony Cesare as trustee of the Solomon Trust unless the context indicates otherwise.

A. Parties

Rico Enterprises, Inc. (Rico Enterprises) is the sole general partner of Rico Retail, a limited liability partnership. Hirji is the president and Stamegna the vice-president of Rico Enterprises. The limited partners of Rico Retail are (1) the Solomon Trust, of which Cesare is trustee; (2) Carnegie Holdings, LLC (Carnegie), of which Hirji is the manager; and (3) Fidelity Family Holdings, LP (Fidelity), of which Stamegna is the general partner. US Bank is the “successor in interest to the FDIC as Receiver for PFF” Bank & Trust (PFF).

B. The Loan, Partnership Authorization, and Guaranties

In August 2006, PFF loaned Rico Retail \$900,000 to refinance a previously existing loan, which had been entered into for the purpose of constructing a commercial center on property Rico Retail owned in Hemet. In exchange for the loan, Rico Retail executed a promissory note to PFF in the amount of \$900,000 and a deed of trust on the property. Hirji and Stamegna, as president and vice-president of Rico Enterprises, respectively, signed the note.

In connection with the loan, PFF required the limited partners of Rico Retail to execute a document entitled “Partnership Authorization,” the terms of which are set forth at length in the discussion below. In addition, Stamegna, as an individual; Hirji, as an individual; and Cesare, as trustee of the Solomon Trust, each executed a guaranty of the loan.

PFF distributed the entire \$900,000 to Rico Retail. Ultimately, Rico Retail defaulted on the loan. In November 2008, the FDIC, as receiver, took over the loan. Subsequently, US Bank purchased the loan, as well as all rights, title, and interest thereto. In January 2010, US Bank sent letters to Stamegna, Hirji, and the Solomon Trust reminding them they had guaranteed the loan, stating that the loan was in default, demanding payment of the outstanding balance, and providing notice of intent to “immediately commence exercising its rights and remedies” if payment was not made within 10 days.

C. The Lawsuit

On July 2, 2010, US Bank filed a verified first amended complaint (the complaint) against Rico Retail; Hirji, Cesare, and Stamegna. The complaint alleged causes of action for judicial foreclosure of a deed of trust against all defendants and for breach of guaranties against Hirji, Cesare, and Stamegna. US Bank alleged that Hirji, Stamegna, and the Solomon Trust (the guarantors) were guarantors of the loan; that each had guaranteed repayment of Rico Retail’s debt to PFF; and that Rico Retail and the guarantors were in default. US Bank alleged it had the right to foreclose on the property, and that costs and expenses related to the loan continued to accrue. US Bank alleged that the guaranties provided for it to be reimbursed for the costs and expenses incurred in resolving the default.

D. US Bank's Applications

On July 20, 2010, US Bank filed applications for right to attach orders and orders for issuance of writs of attachment against the property of the Solomon Trust, Cesare as trustee of the Solomon Trust, Hirji, and Stamegna. US Bank provided the declaration of Gregory Hahn, a former vice-president of PFF and currently a vice-president of US Bank. Hahn declared that Rico Retail was in default on its loan from PFF and the guarantors had failed to pay any amount owing on the promissory note. Hahn declared that the attachment orders were being sought for the purpose of “recovery upon the breach of guarantee claims”

In opposition to the applications, defendants argued their guaranties were unenforceable. They contended they were primary obligors under the promissory note and deed of trust because in the Partnership Authorization they had become jointly and severally liable for Rico Retail's obligations. Following a hearing, the trial court concluded that US Bank had established the probable validity of its claim and ordered that US Bank had the right to attach the property of Stamegna and Cesare in the amount of \$1,072,455.80.

III. DISCUSSION

Defendants contend the trial court erred in concluding that US Bank had established the probable validity of its claim because the guaranties on which it sued were a sham and void.

A. Standards of Review

We review the trial court's implied findings that US Bank established the probable validity of its claims in its applications for right to attach orders under the substantial evidence standard. (*Lorber Industries v. Turbulence, Inc.* (1985) 175 Cal.App.3d 532, 535.) However, we interpret the parties' contracts de novo. (*Global Packaging, Inc. v. Superior Court* (2011) 196 Cal.App.4th 1623, 1628.) Whether a contract is ambiguous is also a question of law which we determine de novo. (E.g., *Galardi Group Franchise & Leasing, LLC v. City of El Cajon* (2011) 196 Cal.App.4th 280, 287.)

B. Showing Required for Right to Attach Order

For a trial court to issue a right to attach order, it must find, among other things, that "[t]he plaintiff has established the probable validity of the claim upon which the attachment is based." (Code Civ. Proc., § 485.220, subd. (a)(2).) In other words, the trial court must find that "it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim." (*Lorber Industries v. Turbulence, Inc.*, *supra*, 175 Cal.App.3d at p. 535.)

C. Antideficiency Statutes and Sham Guaranties

"In California, a creditor secured by a trust deed on real property must rely on the security before enforcing the underlying debt. ([Code Civ. Proc.], §§ 580a, 725a, 726.) Even if the security is insufficient, the antideficiency statutes ([Code Civ. Proc.], § 580a, 580b, 580d) may limit or bar a judgment against the debtor for a deficiency. [Citation.]" (*Bank of America v. Graves* (1996) 51 Cal.App.4th 607, 611 [Fourth Dist., Div. Two].) However, "the protections afforded to debtors under the antideficiency legislation do not

directly protect guarantors from liability for deficiency judgments. [Citation.]

Accordingly, if a guarantor expressly waives the protections of the antideficiency laws, a lender may recover the deficiency judgment against the guarantor even though the antideficiency laws would bar the lender from collecting that same deficiency from the primary obligor. [Citation.] [¶] However, to collect a deficiency from a guarantor, he must be a true guarantor and not merely the principal debtor under a different name. The protections afforded debtors under the antideficiency laws cannot be subverted by artifice [citation], and a substantial body of law has developed to protect the principal debtor against personal liability in cases in which the principal debtor purports to take on additional liability as a guarantor. Under these circumstances, the courts have concluded the guaranty adds nothing to the primary obligation. [Citation.]” (*Cadle Co. II v. Harvey* (2000) 83 Cal.App.4th 927, 932.)

A “guarantor is one who promises to answer for the debt, default, or miscarriage of another” (Civ. Code, § 2787.) A guaranty is a sham guaranty when the guarantors are also the primary obligors on the loan. (*River Bank America v. Diller* (1995) 38 Cal.App.4th 1400, 1420.) “It is a factual question whether a person is a true guarantor or a principal obligor in guarantor’s guise. [Citation.]” (*Id.* at p. 1422.) “[I]f the guarantor is actually the principal obligor, he is entitled to the unwaivable protection of the antideficiency statutes . . . which prohibit[] a deficiency judgment after nonjudicial foreclosure of real property under a power of sale [Citations.]” (*Id.* at p. 1420.)

D. Cesare and Stamegna Did Not Become Primary Obligors Under the Partnership Authorization

Cesare and Stamegna’s principal argument is that in the Partnership Authorization, they assumed joint and several liability for the loan to Rico Retail; thus, their subsequent guaranties were a sham because one may not guarantee one’s own debt. US Bank counters that the Partnership Authorization created no such liability. In other words, if defendants did not in fact assume joint and several liability in the partnership agreement, the subsequent guaranties were not sham. As noted above, we examine the meaning of the Partnership Authorization de novo. (*Global Packaging, Inc. v. Superior Court, supra*, 196 Cal.App.4th at p. 1628.)

1. Provisions of the Partnership Authorization

The opening paragraph of the Partnership Authorization states, “IN CONSIDERATION OF the existing or proposed lending or banking relationship between RICO RETAIL, LP, A CALIFORNIA PARTNERSHIP (‘the Partnership’) and PFF Bank & Trust (‘Lender’), the persons signing below jointly and severally and on behalf of the Partnership represent and certify to Lender that:” A series of representations about the partnership’s existence and good standing follows. The third paragraph, entitled “AUTHORIZATIONS ADOPTED,” states: “At a meeting of the partners of the Partnership, duly called and held, or by other duly authorized action in lieu of a meeting, the agreements and authorizations set forth in this Authorization were adopted.”

The fourth paragraph headed “PARTNER,” states: “The following named entity is a partner of RICO RETAIL, LP, A CALIFORNIA PARTNERSHIP:” Rico Enterprises is identified as the general partner in the following line. The fifth paragraph, entitled “ACTIONS AUTHORIZED,” lists the actions the authorized entity, Rico Enterprises, may enter into on behalf of Rico Retail. The sixth paragraph represents that Rico Retail does not do business under any assumed names.

The seventh paragraph, headed “JOINT AND SEVERAL LIABILITY,” states: “Each partner agrees to be jointly and severally liable for all of the Partnership’s present and future obligations to Lender.” The eighth paragraph concerns notices to the lender. The ninth paragraph, headed “CERTIFICATION CONCERNING PARTNERS AND AUTHORIZATIONS,” states: “The partner named above is duly elected, appointed, or employed by or for the Partnership, as the case may be, and occupies the position set opposite its respective name. This Authorization now stands of record on the books of the Partnership, is in full force and effect, and has not been modified or revoked in any manner whatsoever.” The tenth paragraph concerns continuing validity of authorizations.

The closing paragraph states: “IN TESTIMONY WHEREOF, we have hereunto set our hand. [¶] We each have read all the provisions of this Authorization, and we each jointly and severally and on behalf of the Partnership certify that all statements and representations made in this Authorization are true and correct.” In the following section headed, “CERTIFIED AND ATTESTED BY:” Cesare signed the document on behalf of the Solomon Trust, identified as a limited partner, and Stamegna signed the document on behalf of Fidelity, also identified as a limited partner. Immediately below that section

was the following note: “If the partner signing this Authorization is designated by the foregoing document as one of the partners authorized to act on the Partnership’s behalf, it is advisable to have this Authorization signed by at least one non-authorized partner of the Partnership.”

2. *Effect of Partnership Authorization*

In arguing that the Partnership Authorization created joint and several liability on their parts for Rico Retail’s debt, defendants rely on the seventh paragraph, in which “[e]ach partner” agreed to be jointly and severally liable for Rico Retail’s obligations, and on the fact that they signed the Partnership Authorization on behalf of the Solomon Trust and Fidelity, who were identified as limited partners.

The term “partner” is defined in the fourth paragraph to mean only Rico Enterprises, the general partner, and US Bank contends that definition applied to the seventh paragraph as well. However, as the above-quoted language shows, the Partnership Authorization uses the words “partner” and “partners” in several places, and the meanings of the words vary with the context. Taking all the provisions of the Partnership Authorization together, we conclude the document is ambiguous as to whether it imposes joint and several liability on Cesare and Stamegna for the loan to Rico Retail.

In determining the meaning of a contract, “the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.” (Civ. Code, § 1654; *Schram Construction, Inc. v. Regents of University of California* (2010) 187 Cal.App.4th 1040, 1060, fn. 14.) US Bank’s predecessor in interest drafted the

document, and the contract must therefore be interpreted most strongly against US Bank. In other words, if US Bank had attempted to enforce liability for Rico Retail's loan against Cesare and Stamegna under the Partnership Authorization, we would have been required to rule against US Bank. We conclude the Partnership Authorization did not create liability on defendants' parts, and we therefore reject their arguments that their separately executed guaranties were sham. US Bank has sued to enforce those guaranties, and we conclude they have established the probable likelihood of success on their claims.

E. Bond

Defendants contend the trial court erred in failing to order US Bank to post a bond and request this court to remand the matter to the trial court with instructions that US Bank must post a bond in the statutory minimum of \$10,000 as a condition to the issuance of a writ of attachment. US Bank concedes error and asserts the appropriate amount for a bond is \$10,000.

Code of Civil Procedure section 489.210 provides, "Before issuance of a writ of attachment . . . the plaintiff shall file an undertaking to pay the defendant any amount the defendant may recover for any wrongful attachment by the plaintiff in the action." Based on that statute, we agree that the trial court erred by failing to order US Bank to post a bond. We will direct the trial court to order US Bank to file an undertaking, in an amount the trial court determines to be appropriate under the statutory guidelines. (Code Civ. Proc., § 489.220.)

IV. DISPOSITION

The trial court is directed to enter an order requiring US Bank to file an undertaking in an amount the trial court deems appropriate. (Code Civ. Proc., §§ 489.210, 489.220.) In all other respect, the judgment is affirmed. Respondent is awarded its costs on appeal.

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HOLLENHORST

J.

I concur:

RAMIREZ

P.J.

[*US Bank National Association v. Anthony Cesare, as Trustee, etc.*, E046531]

MILLER, J., concurring.

I agree with my colleagues' reasoning and conclusion as it relates to the obligation of plaintiff and respondent US Bank National Association (US Bank) to post a bond. In regard to the writ of attachment issue, I concur with the disposition reached by my colleagues but respectfully disagree with their analysis.

A. MAJORITY OPINION

The majority provides the following reasoning for affirming the writ of attachment ruling: the Partnership Authorization¹ is ambiguous, and therefore should be construed against US Bank, but since US Bank is not relying on the Partnership Authorization to create liability, any argument relating to the Partnership Authorization is essentially meaningless, so the appeal of defendants and appellants Anthony Cesare as Trustee of the Solomon Trust, and Stamegna (collectively, "defendants"), fails. I disagree with this reasoning because defendants relied on the Partnership Authorization as their defense, and thus, the document is important even if US Bank is not relying upon it. (See Code Civ. Proc., § 484.060 [opposing a writ of attachment]; see also *Loeb & Loeb v. Beverly*

¹ On or about August 24, 2006, PFF Bank & Trust Bank (PFF) loaned Rico Retail, LP (Rico Retail) \$900,000 to refinance an existing loan, which had been entered into for the purpose of constructing a retail center on a property in Hemet. In exchange for the loan, Rico Retail executed a promissory note to PFF in the amount of \$900,000, as well as a deed of trust on the property. The promissory note was signed by (1) Ron Hirji, as president of Rico Enterprises, Inc. (the sole partner of Rico Retail); and (2) Ivano Stamegna (Stamegna), as vice president of Rico Enterprises, Inc. In connection with the loan, Rico Retail created a Partnership Authorization agreement (the Partnership Authorization).

Glen Music, Inc. (1985) 166 Cal.App.3d 1110, 1120 [a court must consider whether a defendant has raised a successful defense]; see also *Blastrac, N.A. v. Concrete Solutions & Supply* (C.D. Cal. 2010) 678 F.Supp.2d 1001, 1005 [“plaintiff must also show that the defenses raised are ‘less than fifty percent likely to succeed.’”].)

For example, in defendants’ opposition to US Bank’s application for a writ of attachment, defendants argued the writ should not issue because the Partnership Authorization, which was one of the documents in the loan package, caused the guarantees to be shams, and therefore the guarantees were void. If my colleagues believe the Partnership Authorization is ambiguous, and therefore must be construed against US Bank, then it seems the result should be that defendants prevail because they presented a successful defense—they showed US Bank failed to establish the probable validity of its claim, and therefore, the writs of attachment should not have issued. In sum, I respectfully cannot agree with my colleagues’ analysis that since US Bank is not relying on the Partnership Authorization, the document and any argument related to the document are of no importance; the document is critical to defendants’ case. Nevertheless, I would reach the same disposition for different reasons.

B. PROBABILITY OF PREVAILING

1. *CONTENTION*

Defendants contend the trial court erred by finding US Bank had established a probability of prevailing on its claims because the guaranties were shams. I disagree.

2. LAW: WRITS OF ATTACHMENT

“Attachment is a prejudgment remedy which requires a court to make a preliminary determination of the merits of a dispute. It allows a creditor who has applied for an attachment following the statutory guidelines and established a prima facie claim to have a debtor’s assets seized and held until final adjudication at trial. [Citations.]” (*Lorber Industries v. Turbulence, Inc.* (1985) 175 Cal.App.3d 532, 535 (*Lorber*).

A trial court “shall issue a right to attach order, which shall state the amount to be secured by the attachment, and order a writ of attachment to be issued upon the filing of an undertaking . . . if it finds all of the following: [¶] (1) The claim upon which the attachment is based is one upon which an attachment may be issued. [¶] (2) The plaintiff has established the probable validity of the claim upon which the attachment is based. [¶] (3) The attachment is not sought for a purpose other than the recovery upon the claim upon which the attachment is based. [¶] (4) The affidavit accompanying the application shows that the property sought to be attached, or the portion thereof to be specified in the writ, is not exempt from attachment. [¶] (5) The plaintiff will suffer great or irreparable injury . . . if issuance of the order is delayed until the matter can be heard on notice. [¶] (6) The amount to be secured by the attachment is greater than zero.” (Code Civ. Proc., § 485.220, subd. (a).)

In regard to the “probable validity” factor, the question that must be answered is whether “it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim.” (*Lorber, supra*, 175 Cal.App.3d at p. 535.)

3. LAW: SHAM GUARANTIES

A “guarantor is one who promises to answer for the debt, default, or miscarriage of another.” (Civ. Code, § 2787.) A guaranty is a “sham guaranty” when the guarantors are also the primary obligors on the loan. (*River Bank America v. Diller* (1995) 38 Cal.App.4th 1400, 1420.) The mere fact that the names of the primary obligor and the guarantor are different is not dispositive, because the guarantor could be the primary obligor under a different name. “[I]f the guarantor is actually the principal obligor, [then] he is entitled to the unwaivable protection of the antideficiency statutes, . . . which prohibit[] a deficiency judgment after nonjudicial foreclosure of real property under a power of sale.”² (*Ibid.*)

“It is a factual question whether a person is a true guarantor or a principal obligor in guarantor’s guise. [Citation.]” (*River Bank America v. Diller, supra*, 38 Cal.App.4th at p. 1422.) The relevant inquiry “is whether the purported debtor is anything other than an *instrumentality* used by the individuals who guaranteed the debtor’s obligation, and whether such instrumentality actually removed the individuals from their status and obligations as debtors. [Citation.] Put another way, are the supposed guarantors nothing more than the principal obligors under another name? [Citation.]” (*Id.* at pp. 1422-1423.)

² Antideficiency laws have been applied to construction loans. (*Torrey Pines Bank v. Hoffman* (1991) 231 Cal.App.3d 308, 318.)

4. *LAW: LIMITED PARTNERSHIPS*

“The form of business association known as a ‘limited partnership’ was not recognized at common law and is strictly a creature of statute. [Citations.] It can generally be described as a type of partnership comprised of one or more general partners who manage the business and who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in the profits, but who take no part in running the business and incur no liability with respect to partnership obligations beyond their capital contribution. [Citations.]” (*Evans v. Galardi* (1976) 16 Cal.3d 300, 305-306.) The key factors of being a limited partner are “(1) limitation of liability of the limited partner to his investment, in return for which (2) the limited partner relinquishes all right of business management.” (*Kazanjian v. Rancho Estates Ltd.* (1991) 235 Cal.App.3d 1621, 1629.)

“Like a shareholder in a corporation, ‘[t]he limited partner is, primarily, an investor, who contributes capital and thereby acquires the right to share in the business profits [Citation.]’” (*Sacramento Sun Creek Apartments, LLC v. Cambridge Advantage Properties II, L.P.* (2010) 187 Cal.App.4th 1, 13.) “[A] limited partnership is viewed as an entity separate and apart from the limited partners for purposes of suing and being sued.’ [Citation.]” (*Ibid.*)

5. *STANDARD OF REVIEW*

I apply the substantial evidence standard when reviewing the trial court’s finding that US Bank established the probable validity of its claims. (*Lorber, supra*, 175 Cal.App.3d at p. 535.) In reviewing the sufficiency of the evidence on appeal, all

conflicts must be resolved in favor of the trial court's ruling, and all legitimate and reasonable inferences must be indulged to uphold the ruling, if possible. This court's power begins and ends with the determination as to whether there is any substantial evidence to support the trial court's finding. This court does not have the power to weigh the evidence, to consider the credibility of witnesses, or to resolve conflicts in the evidence. (*Canadian Commercial Bank v. Ascher Findley Co.* (1991) 229 Cal.App.3d 1139, 1157.)

6. *SOLOMON TRUST*

The first part of my analysis on this issue will concern the Solomon Trust; after completing that analysis I will address the matter as it relates to Stamegna. The Solomon Trust is a limited partner in Rico Retail. The Solomon Trust contributed \$1,000 to Rico Retail. The PFF promissory note and deed of trust were signed by Rico Retail. In connection with the PFF loan, the Rico Retail partners executed a Partnership Authorization, in which they agreed to be "jointly and severally liable for all of the Partnership's present and future obligations to Lender [PFF]." The Solomon Trust was one of the parties that signed the Partnership Authorization. The Partnership Authorization identified the Solomon Trust as a limited partner.

It is unclear from the Partnership Authorization whether the limited partners' liability for the PFF debt is meant to be limited to their contribution to the partnership; or whether it is meant to turn the limited partners into general partners for purposes of the PFF debt, and therefore cause the limited partners to be liable for the entire PFF debt, which would vastly exceed the Solomon Trust's \$1,000 contribution to the partnership.

For example, it is unclear if Solomon Trust's liability for Rico Retail's debt would be the \$1,000 contribution as a limited partner, or whether Solomon Trust became a general partner for purposes of this transaction.

Civil Code section 1432 provides, "Except as provided in Section 877 of the Code of Civil Procedure, a party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him." Given this law, joint and several liability does not necessarily equate with responsibility for an *entire* debt. Thus, in light of Civil Code section 1432 and the law related to restricting limited partners' liabilities for partnership debts, the limited partners in Rico Retail have a strong argument for limiting their liability to the amount of their original investments in the Rico Retail partnership, e.g., the Solomon Trust would be liable for only \$1,000 of the over \$1,000,000 owed by Rico Retail, because the Partnership Authorization does not specifically express that the limited partners will be considered to be general partners for purposes of the PFF debt, or that they will be jointly and severally liable for the PFF debt beyond the amount originally contributed to the Rico Retail partnership. Without such specific terms, it is unclear what exact amount of liability the limited partners have undertaken for the PFF debt. Put differently, "jointly and severally liable" does not necessarily translate into being liable for the complete amount owed on the PFF debt, when limited partnership laws and joint debt laws are taken into account.

In Solomon Trust's guaranty, it guaranteed "full and punctual payment and satisfaction of the indebtedness of Borrower [Rico Retail] to Lender [PFF], and the

performance and discharge of all Borrower's obligations under the Note and Related Documents." Solomon Trust promised that it would "make any payments to Lender [PFF] . . . , on demand . . . and will otherwise perform Borrower's obligations under the Note and Related Documents." Thus, Solomon Trust guaranteed the *entire* loan amount.

When viewing the evidence in this light, Solomon Trust's guaranty is not a sham, because it is answering for the debt of another. Put differently, if Solomon Trust is only responsible for \$1,000 of the debt, then the remaining debt, of nearly \$1,000,000, belongs to another, and Solomon Trust has guaranteed that other party's or parties' portion of the debt. (Civ. Code, § 2787.)

I find further support for this interpretation of the evidence in a portion of the guaranty that reads, "Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; . . . (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor"

The foregoing representations can be interpreted as Solomon Trust representing that the guaranty did not conflict with the Partnership Authorization, and that the Partnership Authorization would not limit the terms of the guaranty. If those representations were accurate, then that lends credence to the interpretation that the Partnership Authorization was only creating a \$1,000 liability on the part of Solomon Trust, as opposed to a million dollar liability on the part of Solomon Trust, because if

Solomon Trust were obligated to pay the entire amount of the PFF loan as a primary obligor, then the guaranty is limited and the Partnership Authorization conflicts with the provisions of the guaranty.

In sum, substantial evidence supports the trial court's finding that US Bank has established the probable validity of its claim, because the guaranty may be valid, i.e., it may not be a sham guaranty.

Defendants argue that Solomon Trust "has already agreed to be liable to the lender as if it were the borrower for 'all present and future obligations' of RICO. . . . There can be no dispute that the written guarant[y] adds nothing to the liability of Solomon Trust as it is already primarily responsible for the debt and the guaranty is in fact a 'mere sham.'"

Contrary to defendants' position, as set forth *ante*, Solomon Trust's Partnership Authorization agreement to be jointly and severally liable for the obligations of Rico Retail does not specify whether that responsibility extends only to the responsibility of a limited partner, or whether it extends the responsibility of a general partner. Without such details, the Partnership Authorization is open to interpretation. Thus, the evidence can be interpreted as the guaranty adding significant liability to Solomon Trust, because the guaranty could result in nearly \$1,000,000 of liability, while the Partnership Authorization and loan documents could result in only \$1,000 of liability. In sum, I am not persuaded "the written guarant[y] adds nothing to the liability of Solomon Trust."

7. *STAMEGNA*

Stamegna is a general partner in Fidelity Family Holdings, L.P. (Fidelity). Fidelity is a limited partner within Rico Retail. Stamegna is also the vice president of

Rico Enterprises, Inc. Rico Enterprises, Inc. is the general partner of Rico Retail. I discuss Stamegna's limited partner status, and then his corporate general partner status.

As the general partner of Fidelity, a Rico Retail limited partner, the evidence involving Stamegna is the same as that of the Solomon Trust. Fidelity contributed \$1,000 to the Rico Retail limited partnership. It is unclear from the Partnership Authorization whether Fidelity's liability extends only to that of a limited partner, i.e., it is capped at \$1,000, or whether it extends to that of a general partner, i.e., it could reach \$1,000,000. Since the Partnership Authorization is unclear, the guaranty executed by Stamegna could be interpreted as placing a much larger liability on Stamegna than the loan documents and Partnership Authorization. Thus, Stamegna would have guaranteed the debt of another. Since the evidence can be interpreted in a light favorable to the trial court's ruling, I must follow that interpretation—that the guaranty places a much larger liability on Stamegna—and thus conclude that substantial evidence supports the trial court's ruling to the extent it relates to Stamegna's role in Fidelity, i.e., his limited partner status.

Now I address Stamegna's role as vice president of the corporation that is the general partner within Rico Retail. “Directors and officers are not personally liable on contracts signed by them for them and on behalf of the corporation unless they purport to bind themselves individually” (*Michaelis v. Benavides* (1998) 61 Cal.App.4th 681, 684.) Stamegna signed the Partnership Authorization as “Ivano Stamegna, Vice President of RICO ENTERPRISES, INC., A CALIFORNIA CORPORATION.” It appears from the signature line that Stamegna only intended to bind Rico Enterprises, Inc., not himself, since he signed on behalf of the corporation. Stamegna signed the

guaranty as an individual. Thus, there is substantial evidence that the guaranty Stamegna signed is not a sham, because Stamegna may not be principally obligated, as an individual, for the full amount of the PFF loan.

In sum, when looking at the evidence in the light most favorable to the trial court's ruling, there is substantial evidence the guaranties are not shams, because the guaranties created a liability vastly greater than the liabilities Stamegna and the Solomon Trust could face by virtue of the Partnership Authorization, e.g., \$1,000,000 liability versus \$1,000 liability. Therefore, Solomon Trust and Stamegna guaranteed the debt of another.

Defendants contend Stamegna executed the Partnership Authorization as the general partner of Fidelity, and general partners are personally liable for the financial obligations of a limited partnership. Therefore, defendants reason, Stamegna is "personally liable for 'all present and future obligations' of RICO." As set forth *ante*, the flaw in this argument is that Stamegna is a general partner in Fidelity, but *not* Rico Retail. Fidelity is only a *limited partner* within Rico Retail. Thus, while Stamegna may be responsible for Fidelity's financial liabilities, he arguably only has \$1,000 of liability in regard to Rico Retail's debts. As a result of this limited partner status, there is substantial evidence the guaranty executed by Stamegna is not a sham.

8. *CONCLUSION*

In sum, I would affirm the trial court's writ of attachment ruling, but for different reasons than the majority.

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MILLER