Affirmed and Opinion filed March 9, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00438-CV

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PAUL and ELIZABETH ALCANTAR, Appellants

V.

WINDSOR-ORANGE COUNTY CREDIT UNION, Appellee

On Appeal from the County and Probate Court
Galveston County, Texas
Trial Court Cause No. 44,052

O P I N I O N

Paul and Elizabeth Alcantar appeal the summary judgment entered in favor of Windsor-Orange County Credit Union in a suit to collect on two notes. We affirm.

Background

Paul Alcantar executed a Loanliner Application Credit Agreement (the "Credit Agreement"). Subsequently, he signed a Loanliner Advance Request Voucher and Security Agreement (the "First Advance Voucher") to purchase a 1993 Honda Accord automobile. The car served as security for this

advance. A year later, Paul Alcantar signed a second Loanliner Advance Request Voucher and Security Agreement (the "Second Advance Voucher") for a personal loan. Elizabeth Alcantar signed as guarantor. The parties dispute whether this advance was secured.

After the Alcantars defaulted on the Second Advance Voucher, the Credit Union, on the basis of a future advance clause, brought suit on both notes for a monetary judgment and sought foreclosure on the car in satisfaction of the judgment. The trial court granted the Credit Union's summary judgment. The Alcantars assert the trial court erred in granting the Credit Union's summary judgment.

Standard of Review

To prevail on a motion for summary judgment, the defendant must establish that no material fact issue exists and it is entitled to judgment as a matter of law. *See Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 222 (Tex. 1999). Once the defendant establishes that no genuine issue of material fact exists regarding an element of the plaintiff's claim, the plaintiff must present competent summary judgment proof raising a fact issue on that element. *See Guest v. Cochran*, 993 S.W.2d 397, 401 (Tex. App.–Houston [14th Dist.] 1999, no pet.). In conducting this review, we take as true all evidence favorable to the nonmovant, and we make all reasonable inferences in the nonmovant's favor. *See KPMG Peat Marwick v. Harrison County Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999).

Future Advance Clause

The Alcantars generally claim cross collateralization clauses or future advance clauses are unconscionable. To the contrary, Texas law specifically provides for future advance clauses. Section 9.204(c) of the Uniform Commercial Code states:

> (c) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment . . .

TEX. BUS. & COM. CODE ANN. § 9.204(c) (Vernon 1991). Commentary to § 9.204 further explains:

> 5. Under subsection (3) collateral may secure future as well as present advances when the security agreement so provides. . . . In line with the policy of this Article toward after-

> acquired property interests this subsection validates the future advance interest, provided only that the obligation be covered by the security agreement.

TEX. BUS. & COM. CODE ANN. § 9.204 cmt. 5 (Vernon 1991). This is consistent with decisions from Texas courts holding that a future indebtedness clause applies only to those debts which are within the reasonable contemplation of the parties at the time the loan is executed. *See, e.g., Wood v. Parker Square State Bank*, 400 S.W.2d 898, 901 (Tex. 1966); *Moss v. Hipp*, 387 S.W.2d 656, 658 (Tex. 1965); *Western Auto Supply Co. v. Brazosport Bank of Texas*, 840 S.W.2d 157, 159 (Tex. App.–Houston [1st Dist.] 1992, no writ); *Bank of Woodson v. Hibbitts*, 626 S.W.2d 133, 134 (Tex. App.–Eastland 1981, writ ref'd n.r.e.); *Vaughan v. Crown Plumbling & Sewer Serv., Inc.*, 523 S.W.2d 72, 76 (Tex. Civ. App.–Houston [1st Dist.] 1975, writ ref'ed n.r.e.).

The Alcantars further claim the loan documents here do not support cross collateralization. The Credit Agreement contains the following future advance clause:

> SECURITY INTEREST . . . Property given as security under this Plan or for any other loan may secure all amounts you owe the credit union now or in the future.

The First Advance Voucher further states with respect to the security interest:

> WHAT THE SECURITY INTEREST COVERS – The security secures the advance and any extensions, renewals or refinancings of the advance. It also secures any other advances you have now or receive in the future under the LOANLINER Credit Agreement and any other amounts you owe the credit union for any reason now or in the future. If the property description is marked with two stars (**), or the property is household goods as defined by the Credit Practice Rule, the property will secure only the advance and not the other amounts you owe.

The blank in which the Honda Accord is listed is not marked with stars.

The Loanliner documents here clearly and unambiguously state that any property given as security will also cover any additional advances. Therefore, consistent with Texas law, that the Honda Accord being given as security for any later loans was well within the reasonable of the parties and was covered by the security agreement. *See, e.g., Wood*, 400 S.W.2d at 901 (observing future indebtedness applies to those debts which were within the reasonable contemplation of the parties at the time the loan was

executed); TEX. BUS. & COM. CODE ANN. § 9.204 cmt. 5 (providing that future advance clauses are valid when the obligation is covered by the security agreement).

The Alcantars also contend it was never intended that the car secure the Second Advance Voucher, but rather it was an unsecured loan. The law presumes that a written agreement correctly embodies the parties' intentions, and is an accurate expression of the agreement the parties reached in prior oral negotiations. *See Estes v. Republic Nat'l Bank*, 462 S.W.2d 273, 275 (Tex. 1970). Unless ambiguous, the contract represents the intentions of the parties. *See City of Pinehurst v. Spooner Addition Water Co.*, 432 S.W.2d 515, 518 (Tex. 1968). Intent is determined from objective factors, not subjective understandings. *See id.* The Loanliner documents are unambiguous. Therefore, parol evidence is not admissible to vary the terms of the Loanliner documents. *See Estes*, 462 S.W.2d at 276; *see also Kimbell Foods, Inc. v. Republic Nat'l Bank*, 557 F.2d 491, 496 (5th Cir. 1977), *aff'd*, 440 U.S. 715 (1979) (finding parol evidence rule precluded testimony regarding subjective intent of the parties with respect to scope of unambiguous future advance clause).

The Alcantars further claim the acceleration as to the car note was ineffective because that note was never in default. An Alabama federal district court has rejected a similar argument in a case involving nearly identical Loanliner documents. *See In re Kennemer*, 143 B.R. 275 (N.D. Ala. 1992). That court found that the debtor had executed three credit advances under a "single open end line of credit," and pursuant to the unambiguous terms of the credit agreement, the debtor, although current on one loan, was properly declared in default on all three agreements. *See id.* at 280.

The default provision of the Credit Agreement states:

> DEFAULT – You will be in default if you do not make a payment of the amount required when it is due. . . . When you are in default the credit union can demand immediate payment of the entire unpaid balance under this Plan without giving you advance notice.

The Alcantars are bound by the terms of the future advance and default clauses. Having defaulted on the Second Advance Voucher, the Credit Union had the right under the Loanliner documents to declare Paul Alcantar in default on the car note.

The Alcantars further assert the Credit Union, by accelerating the car note when it was current, was charging unearned interest in violation of Texas usury law. This argument is without merit. As discussed above, the Credit Union properly accelerated both notes pursuant to the future advance and default clause contained in the Credit Agreement.

Fraud in the Inducement

Next, the Alcantars claim fraud in the inducement to avoid the effects of the future advance clause. The elements of fraud are: (1) a material misrepresentation, (2) that was false, (3) that was either known to be false when made or without knowledge of the truth, (4) that was intended to be acted upon, (5) that was relied upon, and (6) that caused injury. *See Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41, 47 (Tex. 1998).

They claim that the loan officer at the Credit Union did not want them to see the future advance clause. In his affidavit attached to the response to the motion for summary judgment, Paul Alcantar states:

> At no time did I knowingly sign any document which gave the Plaintiffs [sic] a continuing interest in the 1993 [Honda Accord] for all loans or transactions. When the Plaintiff's Loan Officer . . . presented papers to me for signature, he would always hold the documents by his thumb and forefinger of one hand, place them before me, and with the index finger of the other hand, point to the line where I was expected to sign.

The Alcantars have failed to allege the first element of fraud, i.e., an affirmative misrepresentation. Therefore, the Alacantars have failed to raise a fact issue with respect to their defense of fraudulent inducement.

Moreover, the parties have an obligation to protect themselves by reading a contract before signing it. *See G-W-L, Inc. v. Robichaux,* 643 S.W.2d 392, 393 (Tex. 1982), *overruled on other grounds, Melody Home Mfg. Co. v. Barnes*, 741 S.W.2d 349 (Tex. 1987); *Thigpen v. Locke*, 363 S.W.2d 247, 253 (Tex. 1962). In the absence of fraud, a party's failure to read an instrument before signing it is not a ground for avoiding it. *See Estes*, 462 S.W.2d at 276; *First City Mortgage Co. v. Gillis*, 694 S.W.2d 144, 147 (Tex. App.–Houston [14th Dist.] 1985, writ ref'd n.r.e.). One who signs the contract without knowledge of its contents is presumed to have consented to its terms and is charged

with knowledge of its legal consequences. *See Gillis*, 694 S.W.2d at 147. Here, in the absence of any fraud on the part of the Credit Union, the Alcantars cannot avoid the terms of the Credit Agreement and Advance Vouchers if they failed to read them prior to executing them.

Summary Judgment Evidence

Finally, the Alcantars argue the affidavit of Alan Grover, an employee of the Credit Union, submitted in support of the Credit Union's summary judgment is conclusory and, therefore, will not support summary judgment. Specifically, the Alcantars object to following statements in Grover's affidavit:

> To secure repayment of the above described indebtedness, Defendant PAUL ALCANTAR executed the Security Agreement, a sworn true and correct copy of which is attached to this Affidavit, granting to WINDSOR-ORANGE COUNTY CREDIT UNION a security interest in the collateral described in the Security Agreement.
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> * * *
>
> (1) there is due and owing by both Defendants, PAUL ALCANTAR and ELIZABETH ALCANTAR, jointly and severally, the sum of $3,094.44, together with prejudgment interest at the rate of 15% per annum from December 21, 1995, in the amount of $686.45 as of June 11, 1997, for a total sum of $3,780.89.
>
> (2) there is due and owing by Defendant PAUL ALCANTAR, individually, the sum of $10,160.38, together with prejudgment interest at the rate of 7.9% per annum from November 4, 1996, in the amount of $494.21 as of June 11, 1997, for a total sum of $10,654.59.

To collect on a promissory note as a matter of law, the holder or payee need only establish: (1) there is a note; (2) it is the legal owner and holder of the note; (3) the defendant is the maker of the note; and (4) a certain balance is due and owing on the note. *See Blankenship v. Robins*, 899 S.W.2d 236, 238 (Tex. App.–Houston [14th Dist.] 1994, no writ); *Jones v. Resolution Trust Corp.*, 828 S.W.2d 821, 823 (Tex. App.–Fort Worth 1992, writ denied). Grover's affidavit recites the following facts: the affidavit is made on his personal knowledge; the credit agreement, the advances, security agreement, and guaranty agreement are identified; and the principal balances due and interest rate are stated. Statements such as these are not conclusory, but instead are competent summary judgment evidence. *See 8920*

Corp. v. Alief Alamo Bank, 722 S.W.2d 718, 720 (Tex. App.–Houston [14th Dist.] 1986, writ ref'd n.r.e.). Nor is a statement in a supporting affidavit that the maker of a note has not made payments conclusory. *See Blankenship*, 899 S.W.2d at 238; *Sparks v. Cameron Employees Credit Union*, 678 S.W.2d 600, 603 (Tex. App.–Houston [14th Dist] 1984, no writ); *Ecurie Cerveza Racing Team, Inc. v. Texas Commerce Bank-Southeast*, 633 S.W.2d 574, 575 (Tex. App.–Houston [14th Dist.] 1982, no writ).

We conclude the trial court did not err in granting the Credit Union's motion for summary judgment. Accordingly, the judgment of the trial court is affirmed.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed March 9, 2000.

Panel consists of Justices Amidei, Edelman and Wittig.

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