NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 26-11169
Non-Argument Calendar

ACCESS POINT FINANCIAL, LLC,

Plaintiff-Counter Defendant-Appellee,

versus

CHARLES EVERHARDT,

Defendant-Counter Claimant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:23-cv-04215-TRJ

Before NEWSOM, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Charles Everhardt appeals the district court's grant of Access Point Financial, LLC's ("Access Point") motion for summary judgment. Specifically, he argues that the district court erred by holding that a full recourse event, as defined in his guaranty agreement with Access Point, triggered his personal liability for a debt owed to Access Point. After careful consideration of the record, we affirm.

I. FACTUAL AND PROCEDURAL HISTORY

In October 2021, Access Point loaned $56,330,000 to LW Houston VIII, LLC ("Houston Borrower"), LW Austin VI, LLC, and LW Dallas XIV, LLC (collectively, the "Borrowers"), for their properties in Houston, Austin, and Dallas, Texas, respectively. The terms of the loan were memorialized in a loan agreement ("Loan Agreement"). At that time, Lockwood Asset Hotel II, LLC, was the sole member of Lockwood AP Parent, LLC, which in turn was the sole member of each of the Borrowers. Everhardt was the manager for both Lockwood entities, and thus, the manager for the Borrowers.

Everhardt also served as the "Guarantor" for the loan and executed a separate agreement (the "Guaranty") with Access Point memorializing, among other obligations, Everhardt's personal liability for the entire amount the Borrowers owed to Access Point (the "Guaranteed Obligation"), including the $56,330,000 borrowed, if certain enumerated "full recourse" events occurred. The Guaranty describes these events in its full recourse provision, which states, in relevant part:

> (c) <u>Full Recourse Events</u>. … "[A]ll of the Guaranteed Obligations shall be fully recourse to Guarantor and

> Guarantor shall be personally liable therefor in the event of:
>
> > (i) any Transfer which is not a Permitted Transfer; provided that any Transfer which is not a Permitted Transfer solely by virtue of a Person to fail [sic] to give notice to Lender as required shall not be a [sic] considered a full recourse event[];
> >
> > …
> >
> > (iv) any Loan Party or Affiliated Manager files a voluntary petition under the bankruptcy code or any other federal or state bankruptcy or insolvency law.

Dkt. No. 58-6 at 5.[1]

On September 16, 2022, Everhardt, executed a written consent agreement that removed himself, and appointed DDI Equities,

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[1] The defined terms in the Guaranty draw their meaning from the definitions provided in the Loan Agreement. "Transfer" is defined as "any merger, division, or consolidation or the change, removal, resignation or addition of a managing member or non-member manager[.]" "Permitted Transfer" is defined as "any Transfers permitted or consented to by [Access Point] in accordance with the terms hereof." "Loan Party" means "each Borrower and Guarantor, separately and collectively." And "Affiliated Manager" means "any Manager that is owned, directly or indirectly, or Controls, is Controlled by, or is under Common Control with Borrower, Parent, AP Parent, or any Affiliate of Borrower or Parent or AP Parent."

Inc. ("DDI"), as the Borrowers' manager. Access Point's consent to DDI's appointment was requested, but never received.

After becoming aware of the Borrowers' financial troubles, Access Point notified Everhardt and the Borrowers of the Borrowers' default on the loan and stated its intent to foreclose the Houston and Dallas properties on September 5, 2023, if the default was not cured.[2] The day before the foreclosure sale, Houston Borrower transferred 100% of its membership interests to 3 Big MMM, LLC ("3 Big MMM"), an entity controlled by Ted Doukas, without Access Point's consent. That same day, and under new management, Houston Borrower filed a voluntary Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Florida.[3]

The Borrowers failed to cure the default and Access Point proceeded with the foreclosure sales. On September 5, 2023, Access Point sold the Dallas Property for a credit bid of $10,000,000. After the bankruptcy court dismissed Houston Borrower's petition as a skeletal petition, Access Point sold the Houston property for a credit bid of $7,846,000. Despite the foreclosure sales, the Borrowers still owed Access Point about $3 million, plus interest.

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[2] The property in Austin was sold in 2022 for $30,739,480.22 and that value was used to pay down the debt the Borrowers owed to Access Point.

[3] *See In re: LW Houston VIII, L.L.C.*, No. 23-bk-17136-PDR, Dkt. No. 1 (Bankr. S.D.Fla. Sept. 4, 2023).

On September 18, 2023, Access Point sued Everhardt alleging that three full recourse events independently triggered his personal liability for what the Borrowers still owed. First, Access Point alleged that Houston Borrower voluntarily filed a Chapter 11 bankruptcy petition. Second, Access Point alleged that the change from Everhardt to DDI as the Borrowers' manager was not a Permitted Transfer. And third, Access Point alleged that the transfer of Houston Borrowers' membership interests to 3 Big MMM was not a Permitted Transfer.

After the close of discovery, Access Point filed a motion for summary judgment pressing two of the three full recourse events alleged in its pleadings: Houston Borrower's voluntary petition under the bankruptcy code and the transfer from Everhardt to DDI as the Borrowers' manager.

The district court agreed and granted the motion for summary judgment. As to the voluntary petition, the district court observed that the parties did not dispute that Houston Borrower filed a voluntary petition and even if 3 Big MMM was not authorized to file the petition, the district court held that Everhardt, pursuant to the Guaranty, waived his defenses to any attempt by Access Point to collect on the debt owed. And as to the transfer, the district court held that Access Point never consented to the change in management and, thus, the Transfer was not a Permitted Transfer. After finding that these two full recourse events independently triggered Everhardt's personal liability, the district court calculated that he owed $3,954,244.04 as of the date of the order.

Everhardt filed this timely appeal.

II. STANDARD OF REVIEW

We review a district court's grant of summary judgment de novo and draw all reasonable inferences in the light most favorable to the non-moving party. *Bowen v. Manheim Remarketing, Inc.*, 882 F.3d 1358, 1362 (11th Cir. 2018). Summary judgment on a claim is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine issue of material fact exists when 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Bowen*, 882 F.3d at 1362 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

III. ANALYSIS

On appeal, Everhardt argues that the district court erred by holding that there was a full recourse event when Houston Borrower filed a voluntary bankruptcy petition or when management was transferred to DDI. In its answer brief, Access Point argues that the district court did not err on those grounds and that alternatively, we can affirm the district court's holding on the basis that the transfer to 3 Big MMM was also a full recourse event. We begin with the bankruptcy filing.

The Guaranty designates Georgia law in its choice of law provision and the parties do not dispute that Georgia law applies to our interpretation of the Guaranty. Under Georgia law, the words of a contract "generally bear their usual and common signification; but technical words, words of art, or words used in a particular trade or business will be construed, generally, to be used in reference to this peculiar meaning." O.C.G.A. § 13-2-2(2). Moreover, "contracts of guarant[y] should be construed strongly against the guarantor, and 'if the construction is doubtful, that which goes most strongly against the party undertaking the obligation is generally to be preferred.'" *Ameris Bank v. Alliance Inv. & Mgmt Co., LLC*, 321 Ga. App. 228, 234 (Ga. Ct. App. 2013) (quoting *Town Center Assoc. v. Workman*, 227 Ga. App. 55, 58(1) (Ga. Ct. App. 1997)) (alterations in original); O.C.G.A. § 13-2-2(5).

The Guaranty states that Everhardt is liable for the debt the Borrowers owed to Access Point if a full recourse event occurs, such as when a Borrower files a voluntary petition under the bankruptcy code. It is undisputed that Houston Borrower filed a voluntary petition and sought the assistance of the bankruptcy court. *See* Fed. R. Bankr. P. 1002 ("A bankruptcy case is commenced by filing a petition with the clerk."). We thus conclude that when Houston Borrower filed its voluntary petition, that full recourse event triggered Everhardt's personal liability for the debt the Borrowers owed to Access Point.

Everhardt argues, however, that 3 Big MMM was not authorized to file the petition, and thus, Houston Borrower did not "file" a voluntary petition within the meaning of the Guaranty. But the Guaranty does not require an "authorized" filing or "successful" petition. The parties to the Guaranty could have included such language, but did not, and "we may not rewrite the parties' contract, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties." *Geico Marine Ins. Co. v. Shackleford*, 945 F.3d 1135, 1143 (11th Cir. 2019) (citation modified). Again, neither party disputes that Houston Borrower filed a Chapter 11 bankruptcy petition, and to the extent the parties' competing interpretations of the full recourse provision suggests that the language is ambiguous or that the language in the provision could lead to unintended consequences, Georgia law requires us to "construe[] the language strongly against the guarantor." *See Ameris Bank*, 321 Ga. App. at 234; O.C.G.A. § 13-2-2(5).

Because we conclude that Everhardt's personal liability was triggered after the bankruptcy petition was filed, we do not address whether the transfers to DDI and 3 Big MMM were also full recourse events.

IV. CONCLUSION

For the reasons discussed above, we affirm the district court's grant of Access Point's motion for summary judgment.

AFFIRMED.