IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41554

MICRON SEMICONDUCTOR PRODUCTS, INC.,	)	**2014 Unpublished Opinion No. 599**
Plaintiff-Respondent,	)	**Filed: June 26, 2014**
v.	)	**Stephen W. Kenyon, Clerk**
GREGORY I. GOLDMAN,	)	**THIS IS AN UNPUBLISHED OPINION AND SHALL NOT BE CITED AS AUTHORITY**
Defendant-Appellant.	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Summary judgment, affirmed.

Gregory I. Goldman, Weston, Massachusetts, pro se appellant.

Moffatt, Thomas, Barrett, Rock & Fields, Chartered; C. Clayton Gill, Boise, for respondent.

PERRY, Judge Pro Tem

Gregory I. Goldman appeals from the district court's summary judgment order in favor of Micron Semiconductor Products, Inc. ("Micron").

I.
FACTUAL AND PROCEDURAL HISTORY

Goldman purchased SMT of America ("SMT"), a customer of Micron, in 2005 and owned the company until its liquidation in 2012. Because SMT was in default of its payment terms with Micron for product that Micron had previously sold and shipped to SMT, Micron required Goldman, who was represented by legal counsel, to execute a personal guaranty in the amount of $1 million in 2006. This was part of a restructure of credit and payment terms by which Micron was willing to sell future product to SMT. Micron also agreed to sell some product to SMT on a consignment basis.

Subsequent to the signing of the personal guaranty, Micron continued to sell product to SMT over the next several years and supplied product to SMT on consignment terms. After SMT failed to pay for product worth over $2 million, Micron unsuccessfully demanded payment for the debt. Micron filed a complaint against Goldman to recover on the guaranty in 2012. Micron then filed a motion for summary judgment which the district court granted.

Goldman timely appeals. He asserts that the personal guaranty should not be enforced, that the guaranty was not supported by consideration, and that it is ambiguous and unconscionable.

II.
ANALYSIS

A. Personal Guaranty

We first note that summary judgment under Idaho Rule of Civil Procedure 56(c) is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, we exercise free review in determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986). When assessing a motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. Furthermore, the trial court must draw all reasonable inferences in favor of the party resisting the motion. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991); *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct. App. 1994).

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Eliopulos v. Knox*, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct. App. 1992). The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking. *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000). Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further

depositions, discovery responses, or affidavits, that there is indeed a genuine issue for trial or to offer a valid justification for the failure to do so under I.R.C.P. 56(f). *Sanders*, 125 Idaho at 874, 876 P.2d at 156.

The United States Supreme Court, in interpreting Federal Rule of Civil Procedure 56(c), which is identical in all relevant aspects to I.R.C.P. 56(c), stated:

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (citations omitted). The language and reasoning of *Celotex* has been adopted in Idaho. *Dunnick*, 126 Idaho at 312, 882 P.2d at 479.

Goldman asserts the guaranty was not supported by consideration. "A guaranty is deemed to be supported by consideration if a benefit to the principal debtor, or detriment to the creditor, is shown." *Bank of Idaho v. Colley*, 103 Idaho 320, 326, 647 P.2d 776, 782 (Ct. App. 1982). In this case, the guaranty explicitly provides that the guaranty is "to induce Micron . . . from time to time to extend credit to, or otherwise become the creditor of SMT." This Court has held that "[t]he extension of credit to a debtor is deemed sufficient consideration." *Gulf Chem. Employees Fed. Credit Union v. Williams*, 107 Idaho 890, 894, 693 P.2d 1092, 1096 (Ct. App. 1984).

Goldman also claims that through their negotiations and course of practice, Micron was obligated to sell a larger amount of product to SMT on particular financial terms after the guaranty was signed and that it failed to do so. However, the guaranty includes an integration clause that states, "The whole of this guaranty is herein set forth, and there is no verbal or other written agreement, and no understanding or custom affecting the terms hereof." Further, Micron was unwilling to sell future product to SMT without the personal guaranty; therefore, Goldman had the choice of both signing the guaranty and continuing to purchase product from Micron or not incurring any personal obligation to Micron and not purchasing additional product from Micron. Only when Goldman signed the guaranty was Micron obligated to sell future product to

SMT. Micron also agreed to forbear on collecting the debt owed by SMT, which it did for several years. Idaho case law provides that a party's agreement to forbear from suing on a matured contract right is sufficient consideration. *E. Idaho Prod. Credit Ass'n v. Placerton, Inc.*, 100 Idaho 863, 867, 606 P.2d 967, 971 (1980). For these reasons, the district court did not err in finding that there was valuable consideration given by Micron for the guaranty.

Goldman states as an issue on appeal that Micron's obligation "from time to time to extend credit to" SMT is an ambiguous term and therefore the court erred in granting summary judgment. There must be at least two different reasonable interpretations of the term or it must be nonsensical for a contract term to be ambiguous. *Swanson v. Beco Const. Co., Inc.*, 145 Idaho 59, 62, 175 P.3d 748, 751 (2007). The record here shows that Micron agreed to revise SMT's payment terms in exchange for the guaranty. Under the revised payment terms, SMT was to pay an amount exceeding the purchase price for new product ordered, the excess of which was used to pay down debt owed to Micron. This provided SMT additional time to pay off the debt without paying interest on the debt while still purchasing future product from Micron. These facts are not in dispute and Goldman has not shown any ambiguity in these terms. Therefore, the district court correctly held that the agreement between the parties was not ambiguous.

Goldman failed to raise the argument that the language of the personal guaranty is unconscionable in the proceedings below. Generally, issues not raised below may not be considered for the first time on appeal. *Sanchez v. Arave*, 120 Idaho 321, 322, 815 P.2d 1061, 1062 (1991). Therefore, we will not address Goldman's assertion further.

B. Attorney Fees

Micron requests attorney fees and costs be awarded pursuant to Idaho Code § 12-120(3) and Idaho Appellate Rules 40 and 41. That statute mandates an award of attorney fees to the prevailing party in an action to recover on a guaranty. Accordingly, Micron is awarded attorney fees and costs on appeal.

III.
CONCLUSION

The district court did not err in finding the personal guaranty is supported by consideration and is not ambiguous. Therefore, the district court's summary judgment order is affirmed and Micron is awarded costs, including reasonable attorney fees, on appeal.

Judge LANSING and Judge MELANSON **CONCUR.**