

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LEWIS LUMBER PRODUCTS, INC.,	:	NO. 11 – 00,120
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DONALD DEAN & SONS, INC. and	:	
JEFFREY M. DEAN and SUSAN E. DEAN,	:	
Defendants	:	Motion for Partial Summary Judgment

OPINION AND ORDER

Before the court is Plaintiff's motion for partial summary judgment, filed March 5, 2012. Argument on the motion was heard May 1, 2012.

Plaintiff brought this action for breach of contract and unjust enrichment after Defendant Donald Dean & Sons, Inc. failed to pay for materials purchased from Plaintiff. Defendant Donald Dean & Sons, Inc. filed for bankruptcy and Plaintiffs now seek to impose liability on Defendants Jeffrey and Susan Dean personally. While Defendants¹ admit the corporation failed to pay for materials, they deny personal liability.

In the instant motion for partial summary judgment, Plaintiffs seek a judgment against Defendants personally on the basis of a letter written from Defendants to Plaintiff's Business Director, which provides as follows:

June 28, 2010

Lewis Lumber Products, Inc.
Kelly Hill, Business Director
PO Box 356
30 S Main ST
Picture Rocks PA 17762

Re: Past Due Balance/Promissory Note

Dear Ms. Hill:

¹ For convenience's sake, from here on the court will refer to Defendants Donald and Susan Dean as "Defendants".

It was a pleasure finally meeting you and visiting with you last week. I agree with your e-mail that we can definitely create and develop a solid relationship between Lewis Lumber Products, Inc. and Donald Dean and Sons Inc. I also wanted to thank you for agreeing to find a solution to the cash problem and monies owed to Lewis Lumber Products, Inc. Within a few months or sooner when we finalize new financing, we will have this issue resolved.

As we discussed, both Jeffrey and I have no problem with personally guaranteeing the amount owed to LLP from DD&S. As discussed, we would like to continue to purchase material from LLP by paying for the material prior to delivery via wire transfer. In addition, DD&S will issue a wire transfer each week, regardless of a purchase, for some amount up to \$3000. This will be applied to our account balance caused from overdrafts.

We guarantee that this balance will be paid in full by October 15th 2010. If for some reason this has not occurred that (sic) LLP can expect payment in full by Jeffrey M. Dean, President and Susan E Dean, GM/CEO/Sec.

Sincerely,

s/Jeffrey M. Dean
President

s/Susan E. Dean
CEO/GM/Sec

The court believes this letter does indeed impose personal liability on Defendants as they indicate they “have no problem with personally guaranteeing the amount owed”, and if the balance is not paid in full, Plaintiff can expect payment in full “by Jeffrey M. Dean, President and Susan E. Dean, GM/CEO/Sec.”.

Defendants argue nevertheless that (1) the promise to pay fails for lack of consideration, (2) personal liability cannot be imposed because Defendants noted their representative capacities following their signatures, and (3) personal liability cannot be imposed as the letter is not a formal surety/guaranty agreement. None of these arguments has merit. First, the letter does evidence consideration inasmuch as by “agreeing to find a solution”, Plaintiff has agreed to refrain from bringing suit,² and furthermore, Plaintiff has offered to continue to do business with Defendants in spite of the outstanding debt. Second, merely noting one’s representative capacity when signing a document is not enough to negate personal liability if the writing

² See Eastern Wood Products Co. v. Metz, 89 A.2d 327 (Pa. 1952).

evidences an intent to assume such liability.³ Finally, with respect to the lack of formality, a letter is a sufficient writing on which to find the existence of a contract; a formal instrument is not required.⁴ Therefore, the court will enter the following:

ORDER

AND NOW, this 9th day of May 2012, for the foregoing reasons, Plaintiff's motion for partial summary judgment against Defendants Jeffrey M. Dean and Susan E. Dean is hereby GRANTED. Trial shall be limited to the issue of damages only.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Tiffany Shoemaker, Esq.
Lucille Marsh, Esq., 220 Penn Avenue, Suite 200, Scranton, PA 18503
Gary Weber, Esq.
Hon. Dudley Anderson

³ See Viso v. Werner, 369 A.2d 1185 (Pa. 1977).

⁴ See Hartley Silk Manufacturing Co. v. Berg, 48 Pa. Super. 419 (1911).