

Consider Legal Ramifications Of Personal Guarantees

By James V. Irving

Small-business owners and their employees sometimes carelessly endorse business documents without fully considering the possible ramifications of that action.

The case of *Cape Fear Publishing Co. v. Marie D. Phillips*, 2010 Va. Cir. LEXIS 42, decided in the Circuit Court of Henrico County in April, reminds us of the risk corporate signatories run if they fail to clearly indicate their limited authority.

By way of a written contract dated Nov. 26, 2006, California Closets (“California” or “the advertiser”) entered into an agreement to buy magazine advertising from Cape Fear. Marie D. Phillips, California’s marketing manager, signed the contract for her employer. After the space for the corporate signature, the contract closed with the following language: “I hereby personally guarantee the performance of the contract and payment of any obligation by the advertiser.” Apparently without giving it too much thought, Phillips, an employee making \$12 per hour, signed the guaranty “Marie D. Phillips, Marketing Manager.”

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When California defaulted on the contract, Cape Fear sued Phillips personally under the guaranty. Phillips denied liability and testified without contradiction that she was an hourly employee who had not been authorized to sign the contract without the approval of her employer.

Cape Fear took the position that Phillips was liable in accordance with the plain and unambiguous language of the guaranty. Phillips argued that the guaranty was unenforceable.

Judge Catherine C. Hammond first determined that the contract was not unambiguous, as Cape Fear had claimed, because Phillips had signed as the agent, or “Marketing Manager,” for California, and appended the same phrase to her signature on the guaranty. Then the court carefully reviewed agency law and the application of the Statute of Frauds before coming to its ruling.

Applying general agency law, the court noted that a disclosed agent is generally not individually liable under a contract unless the agency and the third party specifically agree otherwise. There was no evidence that they had.

The court also considered the principle that the plaintiff has the burden of demonstrating consideration to support a contract to pay for the debt of another. The consideration must be separate from that supporting the underlying contract. There was no evidence that Phillips had benefited individually from the contract—such as, for example, being required to extend her personal credit as a condition for keeping her job.

As a result, the court dismissed Cape Fear’s claim and entered a final judgment in favor of Phillips. One gets the sense from the opinion that Judge Hammond recognized a fundamental unfairness in this claim, but she ruled strictly on the law. And even though Phillips prevailed, her cost in both money and anguish were likely high. *Cape Fear* reinforces an often-repeated mantra: Read a document very carefully before you sign it.



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