

**IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA**

SCOTT J. GUSH,

Appellant,

v.

CASE NO.: CVA1 08-57

Lower Court Case No.: 1997-CC-6931

**S & K PORTFOLIOS, INC.,
As assignee of United Financial Group, Inc.,**

Appellees.

An appeal from the County Court,
for Orange County,
Nancy L. Clark, Judge.

John P. Marinelli, Esquire,
for Appellant.

Edward A. Kerben, Esquire,
For Appellees.

Before SMITH, TURNER, and EVANS, JJ.

PER CURIAM.

FINAL ORDER AND OPINION REVERSING TRIAL COURT

Appellee S&K Portfolios, Inc. (S&K Portfolios), as assignee of United Financial Group, Inc. (UFG), filed suit against Appellant Scott Gush (Gush) for breach of contract and failure to make payments on a promissory note. Gush timely appealed the trial court's order denying his motion to compel satisfaction of judgment, entered on August 5, 2008, and order denying motion for rehearing, entered on August 28, 2008. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(B). BankAtlantic v. Berliner, 912 So. 2d 1260 (Fla. 4th

DCA 2005). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

UFG filed suit against Lagus Manufacturing, Inc., a dissolved Florida corporation, Gush, as surviving director of Lagus Manufacturing, Inc., and Jose Lamanna (Lamanna), as surviving director of Lagus Manufacturing, for failure to pay the installment payment due on a promissory note on February 16, 1997. UFG sought to hold Gush and Lamanna liable for the full amount owed pursuant to a personal guaranty executed by each of them. On September 15, 1997, the trial court entered final judgments against both Gush and Lamanna, individually and as surviving directors of Lagus Manufacturing, Inc., for the sum of \$13,326.06.

Following UFG's motion for writ of garnishment, the trial court entered a writ of garnishment in the amount of \$13,326.06 to First Union National Bank of Florida (First Union), as garnishee. First Union filed an answer stating that at the time of service of the writ, it was indebted to Gush in the amount of \$669.62 and to Lamanna in the amount of \$811.64, so it retained the sum of \$1,481.26 in accordance with Chapter 77, Florida Statutes. On January 6, 1998, the trial court entered a final judgment of garnishment stating that UFG was entitled to recover \$1,481.26 from First Union.

A continuing writ of garnishment against salary or wages was entered against Lamanna and noticed to The Anspach Effort, Inc., as garnishee, on March 16, 1998. On or about January 24, 2008, UFG executed an assignment of judgment stating that since the entry of the final judgment on September 15, 1997, UFG had not received anything from Gush and UFG was assigning all rights to collect the judgment to S&K Portfolios. Thereafter, S&K Portfolios filed a motion for continuing writ of garnishment against salary or wages against Gush and the trial court entered a continuing writ directed toward M. VB Industries, Inc., as garnishee.

On March 11, 2008, Gush filed a verified claim of exemption, request for hearing, and objection to writ of garnishment, asserting that he provides more than one-half of the support for his three minor children, he has not agreed to have his wages garnished, and as head of household, he is exempt from garnishment. Gush also filed a motion to compel S&K Portfolios to issue a satisfaction of final judgment arguing that S&K Portfolios and UFG either by fraud, deceit, or intentional misrepresentation, misled the trial court by attempting to collect double on the same debt by obtaining two separate final judgments for the same amount in the same cause. Attached to the motion was a copy of a satisfaction of final judgment, dated May 27, 2004, acknowledging full payment and satisfaction of the final judgment by Lamanna. It appears from the record that the satisfaction of final judgment was amended on or about February 8, 2008, to state that the final judgment rendered against Lamanna, solely and individually, was satisfied.

On August 5, 2008, the trial court entered an order denying Gush's motion to compel satisfaction and an order granting Gush's claim of exemption to garnishment. The trial court later entered an order denying Gush's motion for rehearing on August 28, 2008.

This appeal followed.

Where a trial court's decision rests on a pure matter of law that can be evaluated equally as well by the appellate and trial courts, the standard of review is de novo. Racetrac Petroleum, Inc. v. Delco Oil, Inc., 721 So. 2d 376 (Fla. 5th DCA 1998); Gowni v. Makar, 940 So. 2d 1226, 1229 (Fla. 5th DCA 2006). Interpretation of a contract is a question of law, and an appellate court may reach a construction contrary to that of the trial court. Whitley v. Royal Trails Property Owners' Ass'n, Inc., 910 So. 2d 381, 383 (Fla. 5th DCA 2005).

Gush's only argument is that the trial court erred in denying his motion to compel the issuance of a satisfaction of the final judgment against him because there was only one corporate

debt for which Gush and Lamanna were jointly and severally liable. Accordingly, Gush asserts that the satisfaction of final judgment for Lamanna recorded on June 16, 2004, operated as a release and satisfaction of the final judgment rendered against Gush. S&K Portfolios did not file an answer brief.

When two or more documents are executed by the same parties at or near the same time, in the course of the same transaction, and concern the same subject matter, they will be read and construed together. Whitley, 910 So. 2d at 383. Here, Gush, Lamanna, and UFG executed a security agreement, a promissory note, and two personal guaranties on November 27, 1995. (R. at 111-116.) The personal guaranties specifically state that “we, the undersigned (and each of us if more than one) agree to be . . . jointly, severally, and directly liable to you [S&K Portfolios, as assignee of UFG] for the due performance of all such Security Obligations.” (R. at 115-116.) Therefore, when read and construed together, Gush and Lamanna agreed to be jointly, severally, and directly liable for any and all payments due under the promissory note.

Where judgments have been rendered against two parties who are jointly and severally liable on an obligation, a full satisfaction of one of the judgments operates to release and satisfy the judgment rendered against the other party. Leo Jay Rosen Associates, Inc. v. Schultz, 148 So. 2d 293, 295 (Fla. 3d DCA 1963). In Schultz, like in the instant case, the judgment creditor entered a full and complete satisfaction as to one of the two respondents who were jointly and severally liable for breach of contract. Id. at 294. The second respondent moved to dissolve the garnishment and set aside the final judgment contending that satisfaction of the other judgment had satisfied and released the judgment rendered against him. Id. The judgment creditor then moved to amend the satisfaction of judgment to state that it had been given in connection with a compromise and not for full payment of the judgment, and had not been intended as a full

satisfaction. Id. at 295. The trial court granted the motion to set aside and denied the motion to amend or alter the satisfaction. The Third District Court of Appeal affirmed the trial court's orders. Id.

Based on the foregoing, this Court finds that the trial court erred in allowing S&K Portfolios to amend its satisfaction of judgment against Lamanna and in denying Gush's motion to compel satisfaction of judgment. The full satisfaction of judgment previously entered against Lamanna operated as a full release of judgment against Gush because they were jointly and severally liable for the promissory note obligation pursuant to the personal guaranties.

Therefore, it is hereby **ORDERED AND ADJUDGED** that the trial court's Order Denying Defendant's Motion to Compel Satisfaction of Judgment is **REVERSED** and this case is **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this
__21__ day of __August_____, 2009.

_____/s/_____
THOMAS B. SMITH
Circuit Court Judge

_____/s/_____
THOMAS W. TURNER
Circuit Court Judge

_____/s/_____
ROBERT M. EVANS
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail or hand delivery to **John P. Marinelli, Esquire**, 1615 Forum Place, Suite 500-B, West Palm Beach, Florida 33401, **Edward A. Kerben, Esquire**, 725 N. Magnolia Avenue, Orlando, Florida 32803, and **Cesery L. Bullard, Esquire**, Post Office Box 2767, Orlando, Florida 32802 on this 21 day of August , 2009.

_____/s/_____
Judicial Assistant