

68428-1

68428-1

No. 68428-1-I

COURT OF APPEALS, DIVISION I OF THE STATE OF WASHINGTON

SEATTLE SHRIMP & SEAFOOD COMPANY, INC., a Washington corporation,

APPELLANT,

v.

STILNO, INC. d/b/a SAMISH ISLAND SEAFOOD, a Washington corporation, and ROBERT
E. STILNOVICH AND JANE DOE STILNOVICH, a marital community,

RESPONDENTS.

APPELLANT'S BRIEF

Jordan M. Hecker, WSBA #14374
Lindsey Truscott, WSBA #35610
Attorneys for Appellant
HECKER WAKEFIELD & FEILBERG, P.S.
321 First Avenue West
Seattle, WA 98119
(206) 447-1900

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
JAN 10 2003

ORIGINAL

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>ASSIGNMENT OF ERRORS</u>	3
III.	<u>ISSUES PERTAINING TO ASSIGNMENT OF ERRORS</u>	4
IV.	<u>STATEMENT OF THE CASE</u>	4
	A. Pre-Litigation Facts Regarding The Parties’ Relationship	4
	B. Procedural Facts Regarding The Litigation	7
V.	<u>ARGUMENT</u>	12
	A. Introduction/Standard of Review	12
	B. There Is No Genuine Issue Of Material Fact That Stilnovich Executed A Personal Guarantee For Credit Extended To Samish By Seattle Shrimp	13
	1. <u>The Guarantee Was Not Intended For Fox Business Systems</u>	13
	2. <u>The Guarantee Was Not Intended For Euler</u>	18
	3. <u>Stilnovich Knew He Was Executing A Personal Guarantee</u>	20
VI.	<u>CONCLUSION</u>	23

TABLE OF AUTHORITIES

I. CASES

<i>Frisino v. Seattle School Dist. No. 1</i> , 160 Wn.App. 765, 249 P.3d 1044 (2011).....	12
<i>Lynott v. National Union Fire Ins. Co.</i> , 123 Wn.2d 678, 871 P.2d 146 (1994).....	14
<i>Martinez v. Miller Industries</i> , 94 Wn. App. 935, 974 P.2d 1261 (1999).....	14
<i>National Bank of Washington v. Equity Investors</i> , 81 Wn.2d 886, 506 P.2d 20 (1973).....	21
<i>Perry v. Continental Ins. Co.</i> , 178 Wn. 24, 33 P.2d 661 (1934).....	21
<i>Reynolds vs. Farmers Insurance Company of Washington</i> , 90 Wn. App. 880, 960 P.2d 432 (1998).....	14,15
<i>State v. Farmers Union Grain Co.</i> , 80 Wn. App. 287, 908 P.2d 386 (1996).....	14
<i>Tanner Electric Cooperative v. Puget Sound Power & Light Co.</i> , 128 Wn.2d 656, 911 P.2d 1301 (1996).....	12

APPENDIX

Appendix 1: Order On Defendant's Summary Judgment Motion
For Dismissal of Defendants Robert Stilnovich and
Debbie Nygren

I. INTRODUCTION

This appeal arises from the trial court's erroneous decision to dismiss Plaintiff/Appellant Seattle Shrimp & Seafood Company's (hereinafter "Seattle Shrimp") lawsuit against Defendants/Respondants Robert E. Stilnovich and Jane Doe Stilnovich (hereinafter "Stilnovich"). Simultaneously, the trial court also erred by denying Seattle Shrimp's Motion for Summary Judgment against Stilnovich. It should be noted at the outset that Judgment was obtained in favor of Seattle Shrimp against Defendant Stilno, Inc. d/b/a Samish Island Seafood (hereinafter "Samish"), a company owned by Stilnovich, and the issue of liability against Samish is not part of this appeal.

Generally speaking, the dispute arose when Stilnovich and Samish failed to pay for seafood they purchased from Seattle Shrimp. Once the litigation started, the parties began to battle about the amount owed and whether Stilnovich was personally liable for Samish's debts. The liability for Stilnovich stems from a personal guarantee that he signed for purchases made by Samish from Seattle Shrimp. CP 40.

The issue of the amount owed was resolved when Stilnovich was unable to produce any evidence that Samish had been double-billed for

seafood purchases. Indeed, Stilnovich apparently made the claim without any proof.

With the dispute over the amount owed resolved, the focus of the litigation centered on Stilnovich's personal liability. Stilnovich's personal liability became an issue because the actual personal guarantee document signed by Stilnovich identifies the creditor as "Fox Business Systems," instead of "Seattle Shrimp." CP 40. The error opened the door for Stilnovich to create a string of fabrications regarding the creditor that was to be ultimately benefitted by the personal guarantee.

Stilnovich originally misrepresented that the personal guarantee covered credit extended by Fox Business Systems. Stilnovich later contradicted himself by admitting that Seattle Shrimp, not Fox Business Systems, had extended Samish credit. Stilnovich also claimed that he did not intend to sign a personal guarantee in the first place. Predictably, that claim was contradicted by Stilnovich's own testimony and the four corners of the personal guarantee.

Finally, Stilnovich claimed that the personal guarantee was intended to benefit Euler, Seattle Shrimp's insurance company. Apparently, the trial court believed Stilnovich's final fabrication and dismissed him from the lawsuit. Somehow, over the course of months and

three hearings, the trial court lost track of the myriad of contradictory positions taken by Stilnovich.

In this appeal, Seattle Shrimp will establish that the trial court erred in dismissing Stilnovich from the case. As a matter of law and as all parties recognized, Euler merely provided insurance for Seattle Shrimp's accounts and did not provide credit to its customers. It simply does not make sense that Seattle Shrimp's insurance company would extend credit to Seattle Shrimp's customers. Thus, there is no genuine issue of material fact that the trial court erred by dismissing Stilnovich and failing to enter judgment against him in the amount of \$150,000.00, plus pre-judgment interest, for debts owed by Samish.

II. ASSIGNMENT OF ERRORS

1. The trial court erred by denying Seattle Shrimp's Motion for Summary Judgment against Stilnovich. *See* Appendix 1 & CP 389-392.

2. The trial court erred by granting Stilnovich's Motion for Summary Judgment/Motion to Dismiss. *See* Appendix 1 & CP 389-392.

3. The trial court erred by determining that Seattle Shrimp had not procured a personal guarantee from Stilnovich for credit extended to

and debts owed by Samish to Seattle Shrimp. *See* Appendix 1 & CP 389-392.

4. The trial court erred by ordering that Seattle Shrimp's claims against Stilnovich be dismissed with prejudice. *See* Appendix 1 & CP 389-392.

III. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

1. Whether, as a matter of law, Stilnovich is personally liable for Samish's debts to Seattle Shrimp when he executed a personal guarantee to cover credit extended to Samish and all parties were aware that a scrivener's error inadvertently named Fox Business Systems as the creditor, instead of Seattle Shrimp.

2. Whether the trial court erred by dismissing Seattle Shrimp's breach of contract and unjust enrichment causes of action against Stilnovich for debts owed by Samish to Seattle Shrimp pursuant to Stilnovich's personal guarantee.

IV. STATEMENT OF THE CASE

A. Pre-Litigation Facts Regarding The Parties' Relationship.

Seattle Shrimp is a seafood supplier that sells its products to companies throughout the country. CP 31-32. It is noteworthy that the seafood trade by nature involves sales of high volumes of product which

are often valued in six digit figures. CP 31-32. Thus, it is customary in the industry for a seller such as Seattle Shrimp to carefully vet the credit worthiness of each potential customer. CP 31-32. It is also customary to put safety nets in place to insure that Seattle Shrimp is paid for the products it ships to its customers. Indeed, Seattle Shrimp utilizes Euler, its insurance company, to protect against losses by non-paying customers. In short, non-payment by a customer has the potential of crippling Seattle Shrimp's business operations. CP 31-32.

On or about March 21, 2007, Seattle Shrimp agreed to extend credit to Samish for seafood purchases. CP 32 & 38. After Samish's credit was approved, it became apparent that Stilnovich, Samish's President, would need to execute a personal guarantee for additional credit to cover Samish's purchases. CP 255-256 (Deposition of Danny Whitted, Oct. 4, 2011, 38:22-39:7). Samish's business with Seattle Shrimp would not be insured by Euler (Seattle Shrimp's insurance company), and therefore the additional protection of a personal guarantee was necessary. CP 252 (Whitted Dep. 35:6-11), CP 256 (Whitted Dep. 36:1-4) & CP 256 (Whitted Dep. 39:1-7). Accordingly, Stilnovich executed an Individual Personal Guarantee (hereinafter "Guarantee") for \$150,000.00. CP 40, CP 252 (Whitted Dep. 35:6-11) & CP 255 (Whitted Dep. 38:22-39:7).

The Guarantee states in part:

I hereby agree to bind myself to pay you on demand any sum which may become due to you by the company whenever the company shall fail to pay the same. **It is understood that this guarantee shall be a continuing and irrevocable guarantee and indemnity for such indebtedness of the company.** I do hereby waive notice of default, non-payment and notice hereof and consent to any modification of renewal of credit agreement hereby guarantee.

CP 40 (emphasis added).

Stilnovich modified the Guarantee by inserting “\$150,000.00 Credit App To FoodMaxx & Cash & Carry Accounts Only.” CP 40. Stilnovich also initialed the change. CP 40.

On or about September 21, 2010, the parties entered into a Letter Agreement (hereinafter the “Letter Agreement”) regarding the extension of credit by Seattle Shrimp. In part, the Letter Agreement obligated Samish to pay all invoices within 42 days from the invoice date. CP 32 & 42.

The Letter Agreement also specifically states “[t]his letter agreement is to supplement prior arrangements between Seattle Shrimp and Samish. All other terms remain unchanged.” CP 42. In other words, the prior Application for Credit and the Guarantee were still effective.

From November through December of 2010, Samish purchased seafood product from Seattle Shrimp valued at \$270,950.00. CP 33-65. Stilnovich verbally approved the sales on behalf of Samish. CP 33-36. The product was shipped and invoiced by Seattle Shrimp. CP 33-65.

Pursuant to the terms of the Letter Agreement, payment for the shipped product was due from Samish within 42 days from the invoice for each purchase. CP 42. Seattle Shrimp never received payment from Samish for the products purchased. CP 31-65. Consequently, Seattle Shrimp commenced a lawsuit against Samish and Stilnovich to collect the money owed. CP 1-4.

B. Procedural Facts Regarding The Litigation.

Although the argument section will set out the substantive arguments, it is important to highlight the various “twist and turns” Stilnovich’s position took during the course of the multiple Summary Judgment hearings and discovery. Soon after filing the lawsuit and before the parties conducted discovery, Seattle Shrimp brought a Motion for Summary Judgment. CP 19-20. Seattle Shrimp sought judgment against both Samish and Stilnovich, jointly and severally, in the amount of \$270,950.00, plus finance charges and pre-judgment interest for the amounts owed. CP 21-30. Also, Seattle Shrimp sought a personal

judgment against Stilnovich for \$150,000.00, the amount for which he was liable pursuant to the Guarantee. CP 21-30 & CP 40.

In response, Stilnovich and Samish claimed that Samish had been double-billed by Seattle Shrimp, that the Guarantee was unenforceable/inapplicable and brought a Cross-Motion for dismissal. CP 67-79. Again, Stilnovich argued that the Guarantee was intended to benefit Fox Business Systems, the company named in the document, and not Seattle Shrimp. CP 73-74, CP 83-84 & CP 40. Unfortunately again, the mere scrivener's error of naming Fox Business Systems in the Guarantee allowed Stilnovich the opportunity to fabricate ways to avoid liability.

The trial court first heard oral argument on May 6, 2011. However, the issues were not resolved at that time because the trial court, *sua sponte*, raised the issue of mutual/unilateral mistake as it related to the Guarantee form. CP 313-314. The trial court also required additional discovery regarding Samish and Stilnovich's claim that they were double-billed by Seattle Shrimp. CP 314.

After the parties conducted discovery, it became apparent that Stilnovich and Samish's double-billing claim was unsupported. Indeed, the claim was dropped and the trial court entered Judgment against Samish

for \$319,487.23, at the second hearing on August 5, 2011. CP 147-148 & 195-198.

However, the personal liability issue was not resolved at the second hearing. The parties' motions regarding Stilnovich's personal liability were denied without prejudice. CP 195-198. The trial court wanted the parties to take the deposition of Danny Whitted, the primary contact of Stilnovich at Seattle Shrimp. CP 339. The deposition was to establish the information Stilnovich was given regarding the identity of the creditor providing the Guarantee (i.e. was it Fox Business Systems or Seattle Shrimp?). CP 339 & CP 376-378.

As Stilnovich's contact at Seattle Shrimp, Mr. Whitted would presumably provide testimony regarding this information. CP 280 (Deposition of Robert Stilnovich, Nov. 16, 2011, 14:16-19) & CP 339. Ultimately, the parties needed to determine whether Mr. Whitted would confirm that Stilnovich believed Fox Business Systems was the creditor.

During Mr. Whitted's deposition, it became clear that his testimony did not further Stilnovich's position. Mr. Whitted did not recognize his own declaration when presented with a copy of it at his deposition; he also failed to recognize the substance of the declaration.

CP 238-239 (Whitted Dep. 21:22-22:8). Accordingly, the parties took the deposition of Stilnovich. CP 324.

After taking the depositions of Mr. Whitted and Stilnovich, the parties again submitted supplemental briefing to the trial court regarding whether the Guarantee was provided to secure payment of Samish's debts to Seattle Shrimp. CP 199-206 & 313-320. Significantly, both Mr. Whitted and Stilnovich confirmed that they knew Fox Business Systems was not a creditor involved in the transaction. CP 327-329 (Stilnovich Dep. 33:25-34:10 & 35:7-16) & CP 336 (Whitted Dep. 18:12-18). Significantly, their deposition testimony directly contradicted Stilnovich's declaration testimony. Indeed, in Paragraph 6 of his Declaration, Stilnovich stated:

[Samish] and [Seattle Shrimp] began entering into such contracts in 2007. In 2008, during one such contract period, I received documents via facsimile from Fox Business Systems, a company in Kansas. [Seattle Shrimp] explained to me that it was not big enough to offer their own credit and so they worked with a third party company to provide credit on behalf of customers....

CP 83-84.

Also, when Stilnovich was asked directly in his deposition if anyone at Seattle Shrimp ever told him that Seattle Shrimp was too small to provide credit, and therefore worked through third party creditors,

Stilnovich answered “no,” again contradicting Paragraph 6 of his Declaration. Specifically, Stilnovich testified:

Q: Did Whitted ever tell you Seattle Shrimp was not big enough to provide credit?

A: No.

CP 301 (Stilnovich Dep. 35:22-24).

Q: To your knowledge did anybody – did Seattle Shrimp use any third parties to provide credit at any time?

A: I have no idea.

Q: Certainly, no third party ever provided you credit for Seattle Shrimp’s benefit, right?

A: Not that I know of.

Q: And nobody at Seattle Shrimp ever told you that they utilized a third party to provide credit, did they?

A: No.

CP 303 (Stilnovich Dep. 37:5-13).

Recognizing that his claim had been disproved, Stilnovich concocted a new claim that Euler, Seattle Shrimp’s insurance company, was the intended beneficiary of the Guarantee. CP 200-201 & 204. As noted, the trial court apparently believed Stilnovich’s claim regarding Euler and granted Stilnovich’s motion to dismiss him personally from the lawsuit.¹ CP 388 & 389-392. Significantly, the evidence does not establish that Euler was a creditor or the intended beneficiary of the

¹ The third and final hearing was held on February 3, 2012. CP 388.

Guarantee. Accordingly, Seattle Shrimp brought this appeal regarding the trial court's erroneous decision to dismiss Stilnovich from the lawsuit.

V. ARGUMENT

A. **Introduction/Standard of Review.**

Motions for summary judgment are reviewed de novo. *Frisino v. Seattle School Dist. No. 1*, 160 Wn.App. 765, 776, 249 P.3d 1044 (2011) (citation omitted). The appellate court engages in the same analysis as the trial court. *Tanner Electric Cooperative v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 668, 911 P.2d 1301 (1996) (citations omitted). A trial court grants summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Id.*

It bears repeating that this appeal only concerns the issue of whether Stilnovich is personally liable for Samish's debts. There is no dispute that money is owed or the amount that is owed; Seattle Shrimp received a judgment against Stilnovich's company, Samish, for \$319,487.23. CP 195-198. Accordingly, the arguments below will focus on whether judgment can be had against Stilnovich pursuant to the Guarantee. CP 40.

Ultimately, the center of the dispute involves the mistaken omission of Seattle Shrimp from the Guarantee signed by Stilnovich. The inadvertent error allowed Stilnovich to claim first that Fox Business Systems, and later Euler, was the intended beneficiary of the Guarantee.

Contrary to Stilnovich's claims and as discussed in Section B below, there is no genuine issue of material fact that both parties were aware that Seattle Shrimp was the creditor. Accordingly, as a matter of law, the scrivener's error or unilateral mistake made in the Guarantee does not relieve Stilnovich of his personal obligation to Seattle Shrimp.

Furthermore, there is no genuine issue of material fact that Stilnovich intended to execute a personal guarantee for Seattle Shrimp. Stilnovich's testimony and the four corners of the Guarantee establish that Stilnovich knew he was executing a personal guarantee.

B. There Is No Genuine Issue Of Material Fact That Stilnovich Executed A Personal Guarantee For Credit Extended To Samish By Seattle Shrimp.

1. The Guarantee Was Not Intended For Fox Business Systems.

As noted, Stilnovich's first claim was that the Guarantee was executed for Fox Business Systems. However, any reliance the trial court placed on Stilnovich's subjective intent that the Guarantee applied to Fox

Business Systems (or Euler) was in error. Indeed, in doing so, the trial court violated the basic principles of contract interpretation.

When interpreting a contract, the trial court determines the intent of the parties to a contract. *Martinez v. Miller Industries*, 94 Wn. App. 935, 942, 974 P.2d 1261 (1999) (citation omitted). Extrinsic evidence is admissible as to the parties' intent. *State v. Farmers Union Grain Co.*, 80 Wn. App. 287, 292, 908 P.2d 386 (1996) (citation omitted). Also, the objectively manifested mutual intent of the parties controls; the subjective intent of the parties is irrelevant. *Lynott v. National Union Fire Ins. Co.*, 123 Wn.2d 678, 684, 871 P.2d 146 (1994).

Here, the objectively manifested mutual intent of the parties establishes that Stilnovich executed a personal guarantee for Samish's debts to Seattle Shrimp. In short, the fact that the Guarantee did not explicitly mention "Seattle Shrimp," but instead called out "Fox Business Systems" in error does not impact the mutual intent of the parties. The situation is nothing more than a scrivener's error.

"It is well settled that a court in equity may reform a contract to correct a scrivener's error." *Reynolds vs. Farmers Insurance Company of Washington*, 90 Wn. App. 880, 885, 960 P.2d 432 (1998) (citation omitted). "A scrivener's error occurs when the intention of the parties is

identical at the time of the transaction, but the written agreement errs in expressing that intention.” *Id.*

Here again, the identical intention of the parties was for Stilnovich to execute a personal guarantee for the credit extended to Samish by Seattle Shrimp. Accordingly, if any remedy is required, it is merely that the Court should edit the Guarantee to reflect Seattle Shrimp as the creditor, instead of Fox Business Systems.

Indeed, Stilnovich was not mistaken as to the creditor involved in the transactions. Stilnovich testified that no other company but Seattle Shrimp provided Samish with credit:

Q: To your knowledge did anybody – did Seattle Shrimp use any third parties to provide credit at any time?

A: I have no idea.

Q: Certainly, no third party ever provided you credit for Seattle Shrimp’s benefit, right?

A: Not that I know of.

Q: And nobody at Seattle Shrimp ever told you that they utilized a third party to provide credit, did they?

A: No.

CP 303 (Stilnovich Dep. 37:5-13).

Q: ...To your understanding, when it came to credit matters, did anybody but Seattle Shrimp provide Stilno Inc., with credit?

A: Not that I know of.

CP 305 (Stilnovich Dep. 39:3-6).

Also, Stilnovich was not mistaken that the Guarantee came from Seattle Shrimp. Specifically, Stilnovich testified that the Guarantee came from Seattle Shrimp, not Fox Business Systems:

- Q: Where did you get this document from?
A: Off my fax machine.
Q: From whom?
A: I have no idea. I assumed it was sent by Danny.
Q: Do you see where it identifies Fox Business Systems right there?
A: Yes.
Q: Who's Fox Business System?
A: I have no idea.
Q: **Did you think it came from Fox Business Systems?**
A: **No...**
Q: Do you see the top of Exhibit 2? Or excuse me, Exhibit 3, I apologize. You see where there's a facsimile transmission that shows it's from Seattle Shrimp?
A: Yes.
Q: Do you see any indication that it came from Fox Business?
A: Only because it says Fox Business Systems on it.
Q: **Okay. But you don't think the fax came from Fox Business Systems, right?**
A: **No.**

CP 327-329 (Stilnovich Dep. 33:25-34:10; 35:7-16) (emphasis added).

Likewise, Mr. Whitted confirmed that Seattle Shrimp provided credit to Samish and that the Guarantee came from Seattle Shrimp. Again, it is undisputed that Mr. Whitted handled the Samish/Stilnovich account for Seattle Shrimp. CP 280 (Stilnovich Dep. 14:16-19). In fact, he and

Stilnovich are friends, and Stilnovich is currently acting as a broker for Mr. Whitted. CP 246 (Whitted Dep. 29:1-3) & CP 248 (Whitted Dep. 31:5-10).

When Mr. Whitted was asked about the creditor involved in the transaction, he testified as follows:

Q: Okay. But ultimately, Seattle Shrimp was the creditor; correct?

A: That's – yes.

CP 337 (Whitted Dep. 36:22-24).

Furthermore, when Mr. Whitted was asked about whether the Guarantee came from Fox Business Systems, he testified that it came from Seattle Shrimp:

Q: Did Mr. – to your knowledge, did Mr. Stilnovich get this from Fox Business Systems?

A: I have no knowledge of that.

Q: To your knowledge who –

A: To my knowledge – to my knowledge, it came from within the interior of the company. That's all I know. Seattle Shrimp. That's all I know.

CP 336 (Whitted Dep. 18:12-18).

Again, as noted in Section VI(B), Stilnovich's deposition testimony contradicted his declaration testimony that the personal guarantee was executed for Fox Business Systems. Thus, Stilnovich is apparently willing to say anything to avoid liability.

2. The Guarantee Was Not Intended For Euler.

As noted, during the second and last round of supplemental briefing, Stilnovich created a new claim that the personal guarantee was executed for Euler, Seattle Shrimp's insurance company, and not Fox Business Systems. CP 200-201 & 204. Apparently, the trial court believed Stilnovich's new claim and dismissed Stilnovich from the lawsuit. CP 389-392. However again, the conclusion reached by the trial court is unsupported.

Mr. Whitted testified that he never told Stilnovich that Euler was providing credit or the personal guarantee. Again, he also testified that Seattle Shrimp was the creditor. Specifically, Mr. Whitted testified:

- Q: All you knew is [Guarantee] had something to do with the extension of credit so he would get his fish; right?
A: That was discussed, yes.
Q: And what was the name of the company that was going to provide the credit; do you know?
A: No, I – (witness shook head negatively.)
Q: So you didn't explain to him who was going to provide the credit, did you?
A: No. Euler is – all I know is we used Euler to protect the business.
Q: Protect the business, but you didn't tell him, 'Euler provides the credit; right?
A: No.

CP 250-251 (Whitted Dep. 33:19-34:6).

A: I never – I probably would never talk credit. I just said that Euler needs it probably so it could be insured at a higher level. That's –

Q: So that Euler could provide better insurance; right?

A: Correct.

Q: Okay. But, ultimately, Seattle Shrimp was the creditor; right?

A: That's – yes.

CP 253 (Whitted Dep. 36:17-24).

Q: ... Who provided the credit, though?

A: Who provided the credit?

Q: Yes.

A: Seattle Shrimp would provide the credit.

Q: So Seattle Shrimp provides the credit up to a limit that they would be insured by Euler; correct?

A: Correct.

CP 252 (Whitted Dep. 35:5-11).

Significantly, Stilnovich's testimony supported Mr. Whitted's testimony concerning Seattle Shrimp's status as the creditor. Again, Stilnovich testified that Seattle Shrimp provided the credit. CP 303 (Stilnovich Dep. 37:5-13) & CP 305 (Stilnovich Dep. 39:3-6). Significantly, Stilnovich also testified that Euler was not providing credit:

Q: Was it your understanding that Euler was going to provide you any credit?

A: Not that I know of.

CP 296 (Stilnovich Dep. 30:14-16).

Moreover, Stilnovich offered only a vague explanation of why an insurance company was somehow requesting that he sign a personal guarantee. Specifically, Stilnovich testified as follows:

- Q: At some point in time you were asked to sign an additional document, weren't you?
- A: Yes...
- Q: Who did you speak with about the document?
- A: Danny.
- B: Did you speak with anybody else about the document?
- A: No.
- Q: Do you know who Euler is? E U L –
- A: Sure.
- Q: Who is Euler?
- A: They're an insurance company. If I deal with a new company, I'll have to send in my particulars – bank information and stuff – so that the company can be insured to take care of – you know, in case something happens.
- Q: And what is insured in particular, do you know?
- A: No.

CP 295-296 (Stilnovich Dep. 29:8-10, 29:17-25 & 30:1-4).

3. Stilnovich Knew He Was Executing A Personal Guarantee.

As noted, Stilnovich claimed that he did not know he was signing a personal guarantee to hold him personally liable for Samish's debts. However, Stilnovich's claim is without merit.

Generally, when a party signs a contract, he will not be permitted to claim that he was ignorant of its contents. *Perry v. Continental Ins. Co.*, 178 Wn. 2d, 28, 33 P.2d 661 (1934) (citation omitted). “One cannot, in the absence of fraud, deceit or coercion be heard to repudiate his own signature voluntarily and knowingly fixed to an instrument whose contents he was in law bound to understand...[t]he whole panoply of contract law rests on the principle that one is bound by the contract which he voluntarily and knowingly signs.” See *National Bank of Washington v. Equity Investors*, 81 Wn.2d 886, 912, 506 P.2d 20 (1973).

Here, Stilnovich not only signed the Guarantee, but extensively modified it upon signing. CP 40. Significantly, Stilnovich failed to draw any attention to the “Individual Personal Guarantee” language contained in the document by striking it out or making some other kind of notation. CP 40. Ultimately, Stilnovich reviewed and modified the document, but apparently left in the portion about the “Individual Personal Guarantee” because it accurately reflected the obligation.

Indeed, when asked about his written modifications to the Guarantee at his deposition, Stilnovich testified:

Q: Please turn to Exhibit No. 3. Whose writing is that at the bottom where a \$150,000 credit add to FoodMaxx and Cash & Carry accounts only?

A: Mine.
Q: And is that your initials right below that?
A: Yes.
Q: So you didn't have any trouble making an addition to this document, correct?
A: No.
Q: Okay. That's not correct, or no, you didn't have any trouble making any additions?
A: That's correct.
Q: Okay. You see the second paragraph there, where you did a cross out where it says "N/A"? Up, up top, closer to up top, you see where it says N/A, and there was a cross—
A: Um-hmm.
Q: --business credit, and you see it said N/A there?
A: Um-hmm.
Q: That's a yes?
A: Yes.
Q: And is that your – that's your cross out and you did the N/A right?
A: Yes.
Q: Okay. So you see now the language in big bold, individual personal guarantee?
A: Yes.
Q: Why didn't you cross that out if you weren't individually personally guaranteeing this document?
A: I don't recall...

CP 331-332 (Stilnovich Dep. 40:12-41:15).

Accordingly, pursuant to Stilnovich's own testimony, Stilnovich carefully read and did not hesitate to modify the Guarantee, but when he saw the large bolded language "Individual Personal Guarantee," he did not cross it out. Thus, there is no genuine issue of material fact that Stilnovich

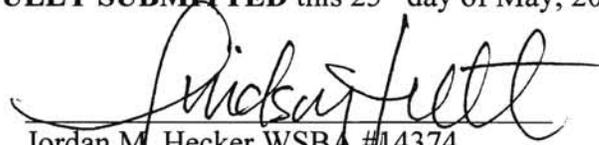
knew he was executing a personal guarantee holding him personally liable for Samish's debts.

VI. CONCLUSION

For the foregoing reasons, the Court should reverse the trial court's decision to grant Stilnovich's Motion for Summary Judgment/Motion to Dismiss. The Court should grant Seattle Shrimp's Motion for Summary Judgment against Stilnovich and award judgment of \$150,000.00, plus pre-judgment interest, to Seattle Shrimp.

Or, in the alternative, the Court should reverse the trial court's decision to grant Stilnovich's Motion for Summary Judgment/Motion to Dismiss, affirm the denial of Seattle Shrimp's Motion for Summary Judgment against Stilnovich, and issue instructions that there are genuine issues of material fact regarding Stilnovich's personal liability and this matter should proceed to trial.

RESPECTFULLY SUBMITTED this 25th day of May, 2012.



Jordan M. Hecker WSBA #14374

Lindsey Fruscott WSBA #35610

Attorneys for Appellant

HECKER WAKEFIELD & FEILBERG, P.S.

321 First Avenue West

Seattle, WA 98119

(206) 447-1900

APPENDIX 1

FILED
KING COUNTY, WASHINGTON

FEB 13 2012

SUPERIOR COURT
GARY POVICK
DEPUTY

Hon. Michael Hayden
Hearing Date: February 3, 2012
Hearing Time: 10:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

SEATTLE SHRIMP & SEAFOOD COMPANY,
INC., a Washington Corporation,

Plaintiff,

vs.

STILNO, INC., a Washington
corporation d/b/a Samish Island
Seafood, and ROBERT E. STILNOVICH and
DEBBIE NYGREN, husband and wife and
their marital community,

Defendants.

NO. 11-2-04350-9 SEA

ORDER ON DEFENDANT'S
SUMMARY JUDGMENT
MOTION FOR DISMISSAL
OF DEFENDANTS ROBERT
STILNOVICH AND
DEBBIE NYGREN

(Clerk's action required)

THIS MATTER having come on regularly for hearing before the undersigned judge of the above-entitled Court on Defendants' Motion To Dismiss Robert Stilnovich and Debbie Nygren, husband and wife and their marital community, with prejudice and without costs, the Court having reviewed the file, heard oral argument from counsel for Plaintiff and Defendants on May 6, 2011, August 5, 2011 and February 3, 2012, and considered the following supporting documents submitted by Plaintiff and Defendants:

1. SSSC's Motion for Summary Judgment;
2. Declaration of Tab Goto with attached exhibits;
3. Defendants' Response to Plaintiffs' Motion for Summary Judgment and Cross

ORDER GRANTING DISMISSAL OF
ROBERT STILNOVICH AND
DEBBIE NYGREN- 1

MENDOZA LAW CENTER, PLLC
Post Office Box 66890
Burien, WA 98166
(206) 244-1641 (ph)
(206) 244-1643 (fx)
www.mendozalaw.com

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 4. Motion to Dismiss Robert Stilnovich and Debbie Nygren with Prejudice;
- 5. Declaration of Robert Stilnovich with attached exhibits;
- 6. Declaration of Danny W. Whitted;
- 7. SSSC's Response/Reply to Defendants' Motion for Cross-Summary Judgment and Response to Defendants' Motion for Summary Judgment;
- 8. Declaration of Jordan M. Hecker in Support of SSSC's Response/Reply to Defendants' Motion for Cross-Summary Judgment and Response to Defendants' Motion for Summary Judgment with attached exhibit;
- 9. Supplemental Declaration of Tab Goto;
- 10. Defendants' Reply to Plaintiff's Response;
- 11. SSSC's Supplemental Brief Regarding Mistake;
- 12. Declaration of Tab Goto In Support of SSSC's Supplemental Brief Regarding Mistake;
- 13. Defendants' Supplemental Brief in Support of Defendants' Motion for Dismissal of Parties;
- 14. SSSC's Response to Defendants' Supplemental Brief in Support of Defendants' Motion for Dismissal of Parties;
- 15. Defendants' Response to Plaintiff's Supplemental Brief in Support of Motion for Summary Judgment;
- 16. Plaintiff's Reply to Defendants' Response to Plaintiff's Supplemental Brief in Support of Motion for Summary Judgment;
- 17. Declaration of Jordan M. Hecker with attached exhibit;
- 18. Defendants' Reply to SSSC's Response to Defendants' Supplemental Brief in Support of Defendants' Motion for Dismissal of Parties;
- 19. Declaration of Maya Mendoza-Exstrom in Support of Defendants' Reply to Plaintiffs' Response;
- 20. Plaintiff's Supplemental Brief regarding Stilnovich's Personal Guarantee;
- 21. Declaration of Jordan M. Hecker in Support of Plaintiff's Supplemental Guarantee with attached exhibits;
- 22. Defendants' Supplemental Brief in Support of Defendants' Motion for Dismissal of Parties;
- 23. Declaration of Maya Mendoza-Exstrom with attached exhibits comprised of the Depositions Upon Oral Examination of Danny W. Whitted and Robert Stilnovich;
- 24. Declaration of Debbie Nygren;
- 25. Defendants' Response to Plaintiff's Supplemental Brief regarding Stilnovich's Personal Guarantee;
- 26. Plaintiff's Response to Defendants' Supplemental Brief in Support of Defendants' Motion for Dismissal of Parties,
- 27. Declaration of Jordan M. Hecker with attached exhibits; and
- 28. Plaintiff's Reply to Defendants' Response to Plaintiff's Supplemental Brief regarding Stilnovich's Personal Guarantee.

/

/

/

1
2 Now, therefore,

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

4 Defendants' Motion to Dismiss Robert Stilnovich and Debbie Nygren, husband and wife
5 and their marital community, is granted and they are hereby dismissed from the case with
6 prejudice and without costs;

7 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:**

8 SSSC's Motion for Summary Judgment against Robert Stilnovich and Debbie Nygren,
9 husband and wife and their marital community, is denied; and

10 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:**

11 All of Plaintiff's claims having been fully adjudicated, Plaintiff having been awarded
12 judgment against Defendant Stilno, Inc., remaining defendants Robert Stilnovich and Debbie
13 Nygren, husband and wife and their marital community having been dismissed from the case,
14 and Defendants having asserted no affirmative claims for relief against Plaintiff, this case is
15 concluded and shall be removed from the trial calendar.

16 **DONE IN OPEN COURT** this 8 day of February, 2012.

17
18 
19 _____
Honorable Michael Hayden, Judge
King County Superior Court

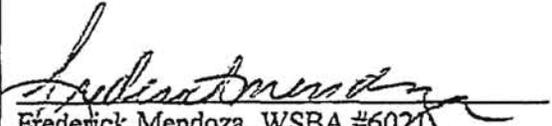
20 /
21 /
22 /
23 (continued on next page)

24 **PRESENTED BY:**
25

ORDER GRANTING DISMISSAL OF
ROBERT STILNOVICH AND
DEBBIE NYGREN- 3

MENDOZA LAW CENTER, PLLC
Post Office Box 66890
Burien, WA 98166
(206) 244-1641 (ph)
(206) 244-1643 (fx)
www.mendozalaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


Frederick Mendoza, WSBA #6021
Maya R. Mendoza-Exstrom, WSBA #39333
MENDOZA LAW CENTER, PLLC
Attorneys for Defendants

APPROVED AS TO FORM, NOTICE OF PRESENTATION WAIVED:


Jordan M. Hecker, WSBA #14374
HECKER WAKEFIELD & FEILBERG, P.S.
Attorney for Plaintiff

ORDER GRANTING DISMISSAL OF
ROBERT STILNOVICH AND
DEBBIE NYGREN- 4

MENDOZA LAW CENTER, PLLC
Post Office Box 66890
Burien, WA 98166
(206) 244-1641 (ph)
(206) 244-1643 (fx)
www.mendozalc.com