

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY YANG,
Appellant,
vs.
JASON YU,
Respondent.

No. 37610

FILED

JUN 18 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Schaub*
CHIEF DEPUTY CLERK

This is an appeal from a final judgment of the district court, entered following a bench trial conducted on remand from this court, in which the district court found appellant, Anthony Yang, personally liable on a \$125,000.00 promissory note.¹

FACTUAL BACKGROUND

On May 20, 1996, Yang executed a promissory note payable to respondent, Jason Yu, in the amount of \$125,000.00, pledging four aircraft owned by Yang's company, Canyon Flyers Aviation, Inc., d/b/a Paradise Airlines ("Paradise"), as collateral. Yang executed the note after Yu advanced \$125,000.00 to Paradise. The note provided for an interest rate of nine percent and was due in full on July 20, 1996. The borrower's signature line bears Yang's signature with his name typed below. Nothing in close proximity to Yang's signature identifies him as a representative of Paradise; however, Paradise is referenced earlier in the note.

Yu filed suit against Yang on the note and the district court entered summary judgment in Yu's favor. On appeal, we reversed and

¹See NRAP 3A(b)(1).

remanded the case to the district court to consider evidence as to whether the parties intended Yang to be personally liable on the note.²

At trial on remand, Yu testified as described immediately below.

Yu met Yang in October of 1995 and they became close friends. Yu was aware that Yang owned Paradise, a financially troubled enterprise. From March through May 1996, at Yang's request, Yu wrote various checks payable to Paradise totaling \$125,000.00. Yu provided the checks with no paperwork memorializing the payments to Paradise as loans. Yu later became concerned about repayment and, on the advice of his attorney, prepared a note in the face amount of \$125,000.00, listing several Paradise aircraft as collateral, which Yang eventually signed. Yu claims he typed Yang's name under the borrower's signature line, without mentioning Paradise or that Yang was signing only on behalf of Paradise, because Yang was personally obligated to repay these loans.

Yu also testified that he eventually received a minibus, appraised at \$10,000.00, in partial payment for these loans. Yu's attorney, Steven Mack, Esq., testified that, on several occasions during conversations regarding related matters, Yang acknowledged his personal obligation of the \$125,000.00 debt. The attorney also stated that he continually suggested that Yu should obtain written documentation of the loans.

Yang testified as spokesperson and part owner of Paradise. He confirmed that Paradise borrowed a total of \$125,000.00 from Yu, but

²See Yang v. Yu, Docket No. 30739 (Corrected Order of Remand, February 12, 1999).

that he had never personally seen three of the subject checks. He also testified that he did not deposit the three checks in Paradise's account, but rather believed Yu deposited them as capital to operate Paradise; that he never personally received any portion of the \$125,000.00; that he gave Yu permission to use Paradise's aircraft as a guarantee for the \$125,000.00 loan; and that he did not intend to personally sign the note, but intended to sign it on behalf of Paradise. Yang explained that he did not delineate his official capacity after his signature on the note because he did not have a functioning typewriter and Yu assured him that he would add a typewritten reference to Yang's official capacity. Yang also denied telling Yu that he would personally guarantee the loan, and explained his belief that the loan was a corporate obligation because Paradise was the payee on the checks. Yang further points to Yu's formal involvement in the management of Paradise; this, he claims, supports his position the loans constituted direct infusion of operating capital into the enterprise and were thus intended as corporate obligations.

Finally, Yang explained that he purchased a minibus for \$19,000.00, that he temporarily loaned it to Yu, and that Yu promised to pay Yang for it. Yang also stated that he allowed Yu to transfer the bus to Yu's name, so he would not be liable if Yu were to have an accident.

After hearing this testimony, in addition to testimony from several other witnesses, and considering the documentary evidence presented, the district court found that Yang intended to sign the note in his personal capacity. Yang appeals.

DISCUSSION

Substantial evidence

Yang first contends that the trial evidence was insufficient as a matter of law to support the district court's findings and judgment holding him personally liable on the note.

"This court has stated that findings of fact 'will not be disturbed on appeal if they are supported by substantial evidence.'"³ Further, "findings of fact 'shall not be set aside unless clearly erroneous.'"⁴ Additionally, this court does not sit as the determiner of issues of fact, "and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."⁵

We conclude that Yu presented substantial evidence, although somewhat contradicted, which supports the district court's findings that Yang was personally liable on the promissory note. First, from March through May 1996, Yu wrote various checks payable to Paradise totaling \$125,000.00 at Yang's request. Second, Yang executed the \$125,000.00 promissory note payable to Yu, which recites that certain Paradise aircraft were collateral for the loan, with no indication by Yang's signature that he signed in a representative capacity. Third, a memorandum executed by Yang and Yu acknowledges Yu's loan to Paradise of \$100,000.00, but does not indicate whether Yang or Paradise was to be responsible for

³Leonard v. Stoebling, 102 Nev. 543, 548, 728 P.2d 1358, 1361-62 (1986) (quoting Burroughs Corp. v. Century Steel, Inc., 99 Nev. 464, 470, 664 P.2d 354, 357 (1983)).

⁴Id. at 548, 728 P.2d 1362 (quoting Burroughs Corp., 99 Nev. at 470, 664 P.2d at 358); see also NRCP 52(a).

⁵NRCP 52(a).

repayment. Fourth, Yu presented evidence of express intent that Yang was to be personally liable on the note. Fifth, evidence supports the district court's conclusion that Yang transferred title to the minibus to Yu as partial payment for the loan.

Certainly, the district court could reject Yang's rather questionable explanation of the minibus transaction. The district court was also free to discount Yu's involvement in the business as evidence of intent to infuse capital into the failing enterprise without intent that Yang be personally responsible for the loans.

We therefore conclude that substantial evidence supports the district court's determination that Yang signed the note in his personal capacity.

Exclusion of evidence concerning the Paradise Airline bankruptcy

At the trial on remand, Yang attempted to offer into evidence a tape recording of a federal bankruptcy court creditor's meeting concerning Paradise to prove that Yu was a creditor of Paradise. From this, Yang hoped to develop the inference that Yang was not personally liable as a debtor on the subject obligation. Unfortunately, the district court bailiff apparently erased the tape. Thereafter, appellant attempted to introduce the testimony of Ms. Starr Leavitt to testify to the proceedings at the creditor's meeting. However, the district court rejected Yang's offer of proof concerning Ms. Leavitt's testimony. Yang claims that this ruling was erroneous and compels reversal. We disagree.

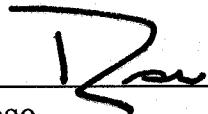
Errors concerning the admission or exclusion of evidence require reversal only where substantial rights of the aggrieved party are

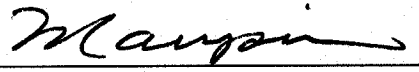
affected.⁶ We conclude that the exclusion of this evidence did not affect Yang's substantial rights. First, as noted, ample evidence heard by the district court supports its conclusion that the parties intended Yang to be personally liable on the note. Second, the excluded testimony only equivocally supported Yang's position that the parties did not intend that he be personally responsible on the obligation.

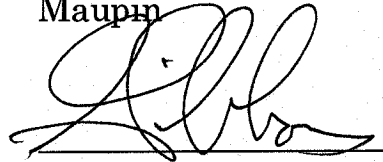
CONCLUSION

Substantial evidence supports the district court's findings and judgment that the parties intended that Yang be personally liable on the note in question below.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Edward S. Coleman
Deaner, Deaner, Scann, Malan & Larsen
Clark County Clerk

⁶See NRS 47.040.

⁷We have considered Yang's other assignments of error and conclude that they are without merit.