



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5496 • TDD: 703-352-4139

PENNEY S. AZCARATE, CHIEF JUDGE
RANDY I. BELLOWS
ROBERT J. SMITH
BRETT A. KASSABIAN
MICHAEL F. DEVINE
JOHN M. TRAN
GRACE BURKE CARROLL
STEPHEN C. SHANNON
THOMAS P. MANN
RICHARD E. GARDINER
DAVID BERNHARD
DAVID A. OBLON
DONTAÉ L. BUGG
TANIA M. L. SAYLOR
CHRISTIE A. LEARY

JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

J. HOWE BROWN
F. BRUCE BACH
M. LANGHORNE KEITH
ARTHUR B. VIAREGG
KATHLEEN H. MACKAY
ROBERT W. WOOLDRIDGE, JR.
MICHAEL P. McWEENY
GAYLORD L. FINCH, JR.
STANLEY P. KLEIN
LESLIE M. ALDEN
MARCUS D. WILLIAMS
JONATHAN C. THACHER
CHARLES J. MAXFIELD
DENNIS J. SMITH
LORRAINE NORDLUND
DAVID S. SCHELL
JAN L. BRODIE
BRUCE D. WHITE
RETIRED JUDGES

March 11, 2022

Mariam W. Tadros, Esquire
REES BROOME, PC
1900 Gallows Road, Suite 700
Tysons Corner, VA 22182
mtadros@reesbroome.com
Counsel for Plaintiff

James T. Bacon, Esquire
MAHDAVI, BACON, HALFHILL &
YOUNG, PLLC
11350 Random Hills Road, Suite 700
Fairfax, VA 22030
jbacon@abhylaw.com
Counsel for Defendants

Re: *Pillar Investment, LLC v. QDEF 16 LLC, et al.*
Case No. CL-2020-20807

Dear Counsel:

The question before the Court is whether a person who signs a promissory note naming himself a personal guarantor is personally liable on the note if he purportedly signed only on behalf of a limited liability company (“LLC”).¹ The Court holds a borrower’s single signature on a promissory note constitutes both a signature in his representative capacity for an LLC and in his individual capacity if he intended the dual purpose when signing.

¹ This matter came to trial March 7, 2022. The Court issued an oral ruling from the bench, which it now revises and extends by this Opinion Letter.

OPINION LETTER

As an alternative holding, the Court finds that, in the present case, the signer lacked authority to sign on behalf of the LLC and, therefore, the signer is liable on the note without regard to the personal guarantee.

I. FACTUAL OVERVIEW: A POORLY DRAFTED PROMISSORY NOTE.

Plaintiff Pillar Investment, LLC (“Lender”) loaned \$200,000 to Defendant QDEF 16 LLC² (“Borrower”) via a promissory note. (Pl. Ex. 1.) Defendant Bin Hao (“Hao”) signed the contract as follows:

Maker: QDEF 16 LLC
By: /s/Hao bin Date: 09/03/2018
Name: Bin Hao
Title: Managing Member

Despite listing himself on the promissory note as “Managing Member” of Borrower, Mr. Hao testified at trial, and repeatedly stated in his discovery, that he is not a member of Borrower. (See, e.g., Pl. Ex. 13, 11; Pl. Ex. 5, 2; Tr. Test.) Instead, a third-party LLC, Qidian, LLC, is the only member and manager of Borrower. (Pl. Ex. 13, 11.)³

Almost immediately above Mr. Hao’s signature is a personal guarantee paragraph, reading:

Bin Hao (“Guarantor”) hereby personally guarantees payment of the above Promissory Note dated September 4, 2018, between **QDEF 16 LLC (“Maker”)** and **Pillar Investment LLC (“Holder”)**. **Guarantor** agrees that the **Holder** may proceed against **Guarantor** directly and independently of the borrower, and that the cessation of the liability of the **Maker** for any reason other than full payment, or any extension, renewal, forbearance, change of rate of interest, or acceptance,

² The contract erroneously names as Lender “Juniper Holdings LLC” and not “Pillar Investment, LLC.” However, the parties treated this as a typographical error. Bin Hao, who signed the promissory note, recycled a note template he received from his lawyer and, clearly, neglected to change the name of Lender. The parties do not dispute that Lender is Pillar Investment, LLC.

³ From the bench, the Court announced a finding of fact that Bin Hao was the Managing Member of Borrower QDEF, 16 LLC. In making this ruling the Court highlighted Mr. Hao’s assertion of this on the promissory note he signed in this case. However, on reflection, the evidence is overwhelming that he is not a member of Borrower. He testified at trial that he was not a member—another LLC, Qidian LLC, is the only member of Borrower. He testified in his deposition that he was not a member. (Pl. Ex. 13, 11.) He asserted the same on his response to interrogatories. (Pl. Ex. 5, 2.) Lender does not really dispute this. His assertion on the promissory note to the contrary is best understood as sloppy contract drafting. The contract has other facially incorrect information on it. For example, the promissory note lists “Juniper Holdings LLC” as the borrower instead of “Pillar Investment, LLC.” Neither party in this case asserts that Juniper is the real borrower. Also, Lender signed the contract as “Pillar Investments LLC” instead of “Pillar Investment LLC.” Both are clearly mutual mistakes which puts into context Mr. Hao’s mistake in wrongly asserting his QDEF 16 LLC membership. His contract assertion is simply another mistake in this poorly drafted promissory note. The Court finds Mr. Hao is not a member of QDEF 16 LLC.

release, or substitution of security, or any impairment or suspension of the **Holder's** remedies or rights against the **Maker**, shall not in any way affect the liability of the **Guarantor**." (Emphasis in original).

Borrower paid some interest on the loan. However, Borrower did not repay all due interest and did not repay any of the principal. Lender brought this lawsuit against Borrower and Mr. Hao, personally, to collect the principal plus interest.

Borrower concedes it breached the contract by not repaying the loan pursuant to the promissory note. However, Mr. Hao argues he cannot be personally liable under his personal guarantee because he did not sign the promissory note in his individual capacity, only in his representative capacity as an agent for Borrower. Mr. Hao also argues he is protected from personal liability by the statute of frauds, the lack of consideration supporting the guarantee, and a subsequent modification of the promissory note.

II. ANALYSIS.

Generally, one who signs a negotiable instrument on behalf of another in a representative capacity is not liable on the instrument. VA. CODE ANN. § 8.3A-402(b)(1) ("If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument."). However, when an agent purports to make a contract in a representative capacity but lacks power to do so, he may be personally liable on the contract under an implied warranty of authority. RESTATEMENT (THIRD) OF AGENCY § 6:10 (Am. L. Inst. 2022).⁴

Thus, the effect of a signature, and the authorization to represent a party, is a matter of fact for the Court to determine. In adjudicating this, the Court considers that "[a] signature may be made . . . by the use of any name . . . or by a word, mark, or symbol executed or adopted by a person with a present intention to authenticate a writing." VA. CODE ANN. § 8.3A-401(b). And, an "[u]nauthorized signature" means a signature made without actual, implied, or apparent authority." VA. CODE ANN. § 8.1A-201(41).

One may sign a promissory note once, but in two separate capacities. *JTH Tax, Inc. v. Citone*, 2010 WL 11566056 (E.D. Va. 2010) (a single signature by a party constituted his agreement in both his personal and in his representative capacity).

Bin Hao is personally liable on the promissory note for two reasons. First, he signed the note granting a personal guarantee with the then-present intention of being personally liable on it. Second, Mr. Hao's incorrect assertion on the promissory note that he was the managing member of Borrower means that he is liable on the note as an unauthorized agent. Because of these holdings, Mr. Hao's other objections are moot.

⁴ The Court looks beyond the Uniform Commercial Code to ordinary Virginia statutory and common law whenever such law is not displaced by a particular provision of the UCC. VA. CODE ANN. § 8.1A-103(b).

A. Bin Hao had a Then-Present Intention of Being Personally Liable on the Promissory Note.

When Bin Hao signed the promissory note, he did so with the then-present intent to personally guarantee it as an individual. It is hard to deny this—his signature is a few inches below his guarantee with his own name as guarantor in bold print. However, he argues that the guarantee is unenforceable on the technicality that he signed in his representative capacity on behalf of Borrower and not in his personal capacity.

The Court cannot find Bin Hao unambiguously signed the promissory note in only a representative capacity. VA. CODE ANN. § 8.3A-402(b)(1). Rather, applying Virginia Code § 8.3A-401(b), the Court finds as fact that Mr. Hao signed with the intention of authenticating the promissory note and, in his personal capacity, personally guaranteeing the debt. *Kellam v. Berkshire-Hudson Capital XL, L.L.C.*, 2006 WL 2403417, *6 (E.D. Va. Aug. 18, 2006) (a signer’s intent is a matter of judicial factfinding). *JTH Tax*, which the Court finds persuasive, illustrates how one may sign once in two different capacities. 2010 WL 11566056 at *4. In that case, Defendant Joseph Citone signed a franchise agreement involving his company Citone, Inc. *Id.* In the agreement, “Citone, Inc” was listed as the franchisee and Mr. Citone personally signed under “Signators/Guarantors.” Under his signature, in a space for “Title,” he wrote “President.” *Id.* at *1. As in the present case, Mr. Citone tried to deny personal liability on the franchise agreement on the basis that he only signed in his representative capacity and not in his personal capacity. *Id.* at *2. The *JTH Tax* court rejected this argument holding “[p]ersonal liability may still be imposed . . . where the contract contains language indicating personal liability or the assumption of personal obligations, despite a signature preceded by a corporate name and the word ‘by’ and followed by discriptio personae.” *Id.* at *4 (citations omitted; ellipses in original). The promissory note at issue in the present case clearly has Mr. Hao’s personal guarantee and his assumption of a guarantor’s duties.

Bin Hao tries to distinguish *JTH Tax* on the basis that the contract there expressly stated that signatories were doing so in their individual capacity. In the present case, there was no such signatory preamble. Unfortunately for Mr. Hao, the Court cannot see a principled difference. The personal guarantee paragraph naming Mr. Hao as Guarantor is just a couple inches above his signature. It is above the “IN WITNESS WHEREOF” sentence, but it is the functional equivalent of the *JTH Tax* endorsement. In both cases, there was one signature. In both cases, the signer purportedly signed in a representative capacity. And, in both cases, the contract expressed personal liability for the signer as an individual. Just as Mr. Citone could not escape his personal guarantee, nor can Mr. Hao.

B. Bin Hao is Liable as an Unauthorized Agent.

Even if the promissory note did not have the personal guarantee clause in it, Bin Hao is personally liable on the note. Mr. Hao inaccurately executed the note as “Managing Member” of Borrower. However, as he repeatedly emphasized at trial, he was not a member. The Court believes him. This begs the question: in what capacity did he sign? There was no credible

evidence offered that Borrower authorized him to sign in a representative capacity, and his signature constitutes an “unauthorized signature” under Virginia Code § 8.1A-201(41). He asserted, and the evidence supported, the fact that he was the chief executive officer of third-party LLC, Qidian LLC. Supporting his testimony, he wrote Lender on the effective date of the promissory note, on Qidian letterhead: “This is to inform you that on 09/04/2018 we have received your \$200,000 bridge loan investment to the Metronomic Place Project (QD-MIA-023).” He signed the letter with “CEO Qidian LLC” printed under his signature. (Pl. Ex. 2.) There was no evidence Borrower, QDEF 16 LLC, authorized Mr. Hao to represent it. Thus, his unauthorized signature was a signature in his personal capacity. *See* RESTATEMENT (THIRD) OF AGENCY § 6:10 (Am. L. Inst. 2022).

Bin Hao purported to make a contract in his representative capacity but lacked the power to do so. Applying the principle set forth by the Restatement of Agency, Mr. Hao is personally liable on the contract.

C. The Statute of Frauds and the Alleged Inadequate Consideration for the Guarantee are Inapplicable to Bin Hao’s Personal Liability.

Based on his theory that he never signed the promissory note in his personal capacity, Bin Hao argues that the statute of frauds and the lack of consideration for his guarantee protects him from liability.

Based on this Court’s finding that he signed in his personal capacity for two different reasons, the statute of frauds is inapplicable. The promissory note clearly sets forth the terms of the loan in writing in satisfaction of the statute of frauds.

Similarly, the Court finds adequate consideration for the extension of the loan. In exchange for his promise to personally guarantee the loan, Lender extended \$200,000 to Borrower. Mr. Hao argues that he was a gratuitous guarantor who had no benefit by his guarantee. However, when a lender extends a loan only on condition that a third-party guarantees repayment, the loan is the consideration. *Moore Lumber Corp. v. Walker*, 110 Va. 775, 779 (1910). The Court finds as fact that Lender would not have extended the loan to Borrower but for Mr. Hao’s personal guarantee. Therefore, consideration is adequate.

Bin Hao’s final argument in opposition to his personal liability is that a contract modification released him from his pre-modification guarantee. However, Mr. Hao misreads the promissory note. There was no modification of the contract. Instead, the note internally increased the interest rate depending on when repayment occurs. There was no new condition affecting Mr. Hao that was absent from the contract he signed. Thus, he is bound by the note.

Re: Pillar Investment, LLC v. QDEF 16 LLC, et. al.
Case No. CL-2020-20807
March 11, 2022
Page 6 of 6

III. CONCLUSION.

Bin Hao is personally liable on the promissory note and judgment will issue against him because of the repayment breach. An appropriate Order is attached.

Kind regards,



David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure

OPINION LETTER

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PILLAR INVESTMENT, LLC,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	CL-2020-20807
)	
QDEF 16 LLC, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

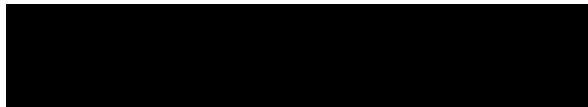
ORDER

THIS MATTER came before the Court March 7, 2022, for a bench trial. And, for reasons set forth in the accompanying Opinion Letter dated March 11, 2022, which is incorporated into this Order by reference, it is

ADJUDGED Plaintiff Pillar Investment, LLC, is entitled to judgement on Counts 1 and 2 of the Complaint; and

ORDERED that judgment is granted in favor of Pillar Investment, LLC against Defendant QDEF 16 LLC and Defendant Bin Hao, jointly and severally, in the principal amount of \$200,000 together with prejudgment interest in the amount of \$102,542.48. The Court also awards post-judgement interest which shall accrue at the rate of 16% per annum.

THIS IS A FINAL ORDER.



Judge David A. Oblon

MAR 11 2022

Entered

PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA,
ENDORSEMENT OF THIS ORDER IS WAIVED BY DISCRETION OF THE COURT PURSUANT TO RULE 1:13
OF THE RULES OF THE SUPREME COURT OF VIRGINIA. PLAINTIFF ASKED FOR THIS ORDER.
DEFENDANTS OBJECT FOR ALL THE SPECIFIC REASONS SET FORTH IN THEIR MEMORANDUM IN
SUPPORT OF MOTION TO STRIKE, AND ON THEIR ARGUED BASIS THAT THE GUARANTEE IS NOT
LEGALLY ENFORCEABLE. ADDITIONAL ENDORSEMENT OBJECTIONS MAY BE FILED WITHIN 10 DAYS.