UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: AUTOMOTIVE FINANCE CO., INC. CASE NO. 99-20087

AUTOMOTIVE FINANCE CO., INC. PLAINTIFF

VERSUS ADV. PROC. NO. 03-1120

PAUL TYLER DEFENDANT

OPINION

On consideration before the court is a motion for summary judgment filed in the above captioned adversary proceeding by the defendant, Paul Tyler; a response thereto having been filed by the plaintiff, Automotive Finance Co., Inc.; and the court, having considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (O).

II.

This Chapter 11 case was filed on January 8, 1999. At the time of the filing, Automotive Finance Co., Inc., ("Automotive Finance"), was owned and operated by Jim Earl Aron ("Aron"). In November, 1999, Aron sold the company to the defendant herein, Paul Tyler ("Tyler"). As a result of the sale, Tyler became the sole stockholder of Automotive Finance. In August, 2001, Aron repurchased 100% of the stock from Tyler. This stock purchase is evidenced by a

document entitled "Agreement of Purchase and Sale of Stock," dated August 2, 2001 ("repurchase agreement").

On June 2, 2003, Aron filed the present adversary proceeding alleging that Tyler had improperly withdrawn sums of money from Automotive Finance during the time that Tyler was the sole stockholder. An amended complaint was filed on March 5, 2004, substituting Automotive Finance as the plaintiff. In the amended complaint, Automotive Finance seeks a judgment against Tyler in the amount of $449,873.60, in compensatory damages, plus $2,500,000.00, presumably as punitive damages. Tyler filed a timely answer to the complaint generally denying the allegations.

In his motion for summary judgment, Tyler asserts that he was released from all liability to Aron and Automotive Finance by the terms set forth in the aforementioned repurchase agreement. Based on this alleged release, Tyler contends that summary judgment should be granted in his favor and the complaint dismissed.

III.

The release clause, set forth in the repurchase agreement, is found in Paragraph 2. It provides as follows: "It is further agreed and understood that purchaser and seller agree to execute mutual releases at Closing each to the other for all liability of whatever nature, whether known or unknown." The first sentence of the agreement provides as follows: "Agreement dated August 2nd, 2001, by and between JIM ARON (purchaser), and PAUL TYLER (seller) being the sole and only shareholder of AUTOMOTIVE FINANCE CO., INC., a Mississippi corporation (company)." Based on this clear and unambiguous language, the court finds that the

parties to the agreement were Aron and Tyler. Although Tyler was the sole and only shareholder of Automotive Finance, the corporation was not a necessary or bona fide party to the agreement.

The court's finding that Automotive Finance was not a party to the agreement should come as no surprise to Tyler. In his motion for summary judgment at Paragraph 11, Tyler admits that Automotive Finance was not a named party to the agreement. Tyler asserts, however, that Automotive Finance was "obviously a constructive party thereto, assented to the terms of the agreement, and is bound by the terms of the agreement as evidenced by its signature on the agreement." The court acknowledges that Tyler signed the agreement twice - once as "seller" and again on behalf of "Automotive Finance Co., Inc.," as its "President." Despite the corporate signature, the document is still only an agreement by Tyler to convey his shares of stock to Aron. Only the purchaser and seller agreed to execute mutual releases.

IV.

Tyler argues that this court should find that Automotive Finance was a constructive party to the agreement which would place the corporation under an obligation to release Tyler from any liability he might owe to the corporation. Tyler has provided no authority to this court to support such a conclusion.

The proceeding before the court involves an issue of contract interpretation. This is a question of law not fact. Parkerson v. Smith, 817 So.2d 529, 532 (Miss. 2002). In reviewing a contract, a court "is not at liberty to infer content contrary to that emanating from the text at issue." Royer Homes of Mississippi, Inc. v. Chandeleur Homes, Inc., 857 So.2d 748, 752 (Miss. 2003)(citing Cooper v. Crabb, 587 So.2d 236, 239 & 241 (Miss. 1991)). Furthermore, contractual language which tends to limit liability is given "strict scrutiny" by courts in

Mississippi. Royer Homes of Mississippi, Inc. v. Chandeleur Homes, Inc., 857 So.2d 748, 754 (Miss. 2003) (citing Farragut v. Massey, 612 So.2d 325, 330 (Miss. 1992)). Based on these cited authorities, the court finds that it cannot infer that Automotive Finance is subject to the release language in the agreement since Automotive Finance was not an actual party to the release provision.

V.

Summary judgment is properly granted when pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Bankruptcy Rule 7056; Uniform Local Bankruptcy Rule 18. The court must examine each issue in a light most favorable to the nonmoving party. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Phillips v. OKC Corp., 812 F.2d 265 (5th Cir. 1987); Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). The moving party must demonstrate to the court the basis on which it believes that summary judgment is justified. The nonmoving party must then show that a genuine issue of material fact arises as to that issue. Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.29 265 (1986); Leonard v. Dixie Well Service & Supply, Inc., 828 F.2d 291 (5th Cir. 1987), Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). An issue is genuine if "there is sufficient evidence favoring the nonmoving party for a fact finder to find for that party." Phillips, 812 F.2d at 273. A fact is material if it would "affect the outcome of the lawsuit under the governing substantive law." Phillips, 812 F.2d at 272.

VI.

Based on the foregoing analysis, the court finds that genuine issues of material fact remain in dispute in this proceeding. Tyler is not entitled to judgment as a matter of law. As such, the motion for summary judgment is not well taken, and it will be denied by a separate order entered contemporaneously herewith.

This the 6thday of May, 2005.

/s/ DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE