

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT,
IN AND FOR MANATEE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

75th STREET LLC,

Plaintiff-Counterclaim Defendant,

vs.

No.: 2012-CA-001965

JESSICA LEBOFF, MS. MANNERS
CHILDCARE, INC. and LEARNING
UNLIMITED SCHOOL, INC,

Defendants-Counterclaim Plaintiffs.

**PLAINTIFF'S RESPONSE TO DEFENDANT JESSICA LEBOFF'S MOTION TO
DISMISS AND FOR SUMMARY JUDGMENT**

Defendant Jessica LeBoff asserts that she “is not listed as a personal guarantor in the lease agreement dated August 1, 2011” and therefore “requests this Honorable Court enter an order Dismissing Defendant, Jessica LeBoff, with prejudice as a party Defendant to this action.” However, the very first paragraph on the very first page of the June 16, 2011 lease,¹ refers to “Mrs. Jessica LeBoff, having offices at 2209/2015 75th Street West, Bradenton, Florida 34209, Party of the second part (‘Lessee’).”² The face of the document thus belies Defendant LeBoff’s argument that she is not personally bound by the lease at issue in this lawsuit.³

Defendant Jessica LeBoff’s practice in this case of personally obligating herself on the lease with Plaintiff was apparently consistent with Defendants’ usual business

¹ In her motion, Defendant refers to an agreement dated August 1, 2011. However, the agreement was actually dated June 16, 2011, but was scheduled to commence August 1, 2011.

² 75th Street, LLC, is which is owned by Habib Shobeiri, is referred to as “75th Street LLC” (represented by Mr. Habibollah Shobeiri), having offices at 11531 Savannah Lakes Drive, Parrish, FL 34219, party of the first part (‘Lessor’).” The contracting parties therefore clearly distinguished between representative and personal capacities.

³ Defendant LeBoff’s failure to attach this lease to her motion even though she references it therein is glaring.

practice. For example, the lease signed by her company at its previous location with the Benderson Company shows that she personally guaranteed that lease on behalf of Ms. Manners Childcare, Incorporated. Shobeiri00045. Likewise, the lease she signed after absconding from 75th Street also provided for a personal guarantee. Exhibit B to Peerage Lease. Defendant LeBoff is therefore hard pressed to argue that she did not intend to obligate herself personally on her lease with Plaintiff.

Mr. Shobeiri also testified several times that he understood that Ms. LeBoff had obligated herself on the lease. See generally January 8, 2014 Deposition of Habibollah Shobeiri at Pages 62-65 and 120-121, Page 121:20-24 (“Q. Well, my question is: When you first started talking with Jessica about leasing No. 1 to her, did you understand that you were leasing the building to her or to her company? A. To her.”), see also May 27, 2014 Appeasement Affidavit of Habibollah Shobeiri (Filed June 24, 2014) at Page 3, Paragraph 12 (“my company, 75th Street, is suing Ms. LeBoff personally because she signed the June 16, 2011 lease in her personal capacity.”) Mr. Shobeiri’s testimony, combined with the clear language of the lease, clearly creates a material issue of fact sufficient to defeat summary judgment.⁴

Although admittedly not a model of clarity, the final page of the lease, which contains the typewritten words “Manatee Learning Academy (Jessica LeBoff)” and contains Ms. LeBoff’s signature and handwritten name without any remark about any other capacity in which she signed, also undercuts any assertion that Ms. LeBoff clearly signed only in her capacity as a representative of one of her entities. As stated in previous briefing, any ambiguity in the lease should be construed against Ms. LeBoff

⁴ Courts have held that when signature line and the body of a contract conflict, the issue of whether a person signed in a corporate or individual capacity is a material issue of fact which precludes summary judgment. See e.g. *Addison State Bank v. National Maintenance*, 174 Ill.App.3d 857 (1988).

under the doctrine of *contra proferentem* because she was the primary author. See Plaintiff's Motion for Summary Judgment, Filed January 30, 2014, at Page 13, Note 2. In this case, Ms. LeBoff provided a previous lease she had used as the model for this lease, was actively involved in the negotiation and finalization of the lease, and had paralegal training. *Id.* Under these circumstances, the ambiguity, if any, should be resolved against Ms. LeBoff.

Lastly, Defendant LeBoff's assertion that "Ms. Manners Childcare, Inc is the only active Corporation with the State of Florida," implies that Manatee Learning Academy or any other entity may have been dissolved and therefore undercuts her argument. If Ms. LeBoff was aware of the dissolution of Manatee Learning Academy⁵ or any other entity and continued to conduct business in that name, she would be personally liable. Fla. Stat. 607.1421(4).

Legal Argument

Florida Courts have held that "the mere addition of description personae to a signature does not exculpate the signatory party from responsibility." *Manufacturers' Leasing v. Florida Development*, 330 So.2d 171, 172 (Fla. 4th DCA 1976). The court held that the body of a contract controls over the signature line, citing, among others, Williston on Contracts. *Id.* Here, the body of the contract clearly shows that Defendant LeBoff was the contracting party, and the signature line does little to rebut that interpretation. *Accord* 11 Fla. Jur. 2d Contracts § 177, Person Not Named as Bound by Signature ("in the absence of words in the body of the instrument showing a different

⁵ Manatee Learning Academy does not appear in the Florida Department of State Division of Corporations Listings as such. There is a Manatee Learning Center, Inc., but this corporation was dissolved on September 24, 2010 for failure to file an annual report, and its relationship, if any, with Defendant LeBoff is unclear.

intent . . . the agent or official is personally the contracting party . . . When it becomes necessary to determine the capacity in which parties entered into an agreement, the court must look at the entire agreement of the parties.”)

Similarly, in *Robert C. Malt & Co. v. Carpet World*, 763 So.2d 508, 510 (Fla. 4th DCA 2000), the court held that one signature sufficed to personally obligate the president even though the signature line clearly indicated that he was signing in a representative capacity. Here, where the signature line is, at best, ambiguous, this Honorable Court should reject Defendant LeBoff’s argument. The court clearly held that a single signature could obligate not only the company but the principal. *Id.* at 510. Again, the court held that the signature line should not nullify the clear language of a contract provision, as Defendant LeBoff attempts to do here. *Id.* at 510-511.

Conclusion

Wherefore, this Honorable Court should deny Defendant Jessica LeBoff’s Motion to Dismiss and for Summary Judgment and should, in fact, consider entering a partial summary judgment in favor of Plaintiff on the issue of whether Ms. LeBoff is personally obligated on the June 16, 2011 lease.

Filed: March 12, 2015.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Michael Beltran, certify that a true and correct copy of the foregoing was electronically filed on the system of the Twelfth Judicial Circuit Court in and for Manatee County, Florida, which will serve the same on Anthony Fantauzzi, Counsel for Defendants-Counterclaim Plaintiffs, by email at afantauzzi@fantauzzilaw.com on this the 12th day of March, 2015.

/s/Michael Paul Beltran
Michael Paul Beltran