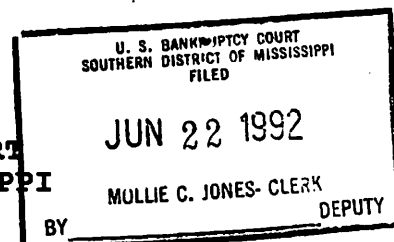


IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE: PATTI H. HILTON

CASE NO. 9000118JC

RESOLUTION TRUST CORPORATION  
AS RECEIVER FOR REPUBLIC BANK  
FOR SAVINGS, F.A.

PLAINTIFF

VS.

ADVERSARY NO. 900152JC

PATTI H. HILTON

DEFENDANT

J. Fred Spencer, Jr.  
P.O. Box 650  
Jackson, MS 39205

Attorney for Plaintiff

Marc Brand  
P.O. Box 3508  
Jackson, MS 39201

Attorney for Defendant

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This adversary proceeding came on for hearing upon the Defendant's Motion to Dismiss, wherein the Defendant, Patti H. Hilton, seeks dismissal of the complaint to determine dischargeability of debt and to object to the discharge of Patti Hilton. Counsel for the parties have requested a ruling upon the memorandum briefs submitted to the Court, and the Court having considered said briefs, and being fully advised in the premises does hereby find that said motion is not well taken, and should be

denied. In so finding, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

On March 1, 1988, the Defendant, Patti Hilton, as President and sole shareholder of The Hilton Company, a Mississippi Corporation, executed a combination promissory note and security agreement on behalf of The Hilton Company, in favor of the Republic Bank for Savings, in the principal amount of \$ 115,000.00. As security for the loan, The Hilton Company granted to Republic Bank an assignment of accounts receivable. Also, Patti Hilton, individually, granted to Republic Bank a second deed of trust on her home, and an assignment of a \$ 200,000.00 life insurance policy on Hilton. In addition to the foregoing, Republic Bank also required a continuing guaranty to be executed by the Defendant in her individual capacity.

Each item of security appears on the face of the combination promissory note and security agreement. However, the continuing guaranty recites in relevant part as follows:

In Consideration of Republic Bank for Savings, F.A., giving or extending credit to Patti H. Hilton hereinafter called "debtor", I hereby give this continuing guaranty to the said Republic Bank for Savings, F.A. ... for the payment in full ... of any indebtedness, direct or contingent whether secured or unsecured, of said debtor to said Bank up to the amount of One hundred fifteen thousand & no/100 Dollars ... .

The guaranty is signed by Patti H. Hilton, and is dated March 1, 1988.

The Hilton Company subsequently defaulted on the promissory note. On November 1, 1989, the Resolution Trust Corporation (RTC), as conservator for Republic Bank, filed suit against both The Hilton Company and Patti Hilton in the United State District Court for the Southern District of Mississippi.

On January 12, 1990 Hilton filed her petition for relief under chapter 7 of the Bankruptcy Code. The RTC subsequently filed its complaint to determine the dischargeability of its debt, and to object to the discharge of Patti Hilton, based on her liability to Republic Bank under the terms of the continuing guaranty.

Hilton then filed a Motion to Dismiss the complaint, asserting that she has no personal liability to Republic Bank on the continuing guaranty, and therefore the complaint should be dismissed. The Defendant argues that the continuing guaranty on its face states that it was given in consideration for the extension of credit to Patti H. Hilton, and is signed by Patti H. Hilton. Since Republic never extended credit to Patti Hilton individually, but only to her corporation, The Hilton Company, the Defendant asserts that she has no liability under the guaranty.

The RTC asserts in its response and supplemental response to Hilton's motion to dismiss that the insertion of the name "Patti H. Hilton" instead of "The Hilton Company" in the guaranty was a clerical mistake, and argues in its memorandum brief that the Court should reform the continuing guaranty to reflect the intent of the parties.

## CONCLUSIONS OF LAW

The Court notes that while bankruptcy proceedings are controlled by federal law, the rights of creditors must be determined by looking to state law, and therefore, Mississippi law regarding the construction of contracts is applicable in this case. Fields v. First Natchez Bank (In re Fields), 719 F.2d 402 (5th Cir. 1983), (No. 83-4243, Oct. 18, 1983); Fruehauf Corp. v. Sherman (In re Gringeri Brothers Transportation Co., Inc.), 14 B. R. 396, 399 (Bankr. D. Mass. 1981).

The law in Mississippi is well settled that when interpreting a contract, "the cardinal rule of construction is to give effect to the mutual intentions of the parties". Kight v. Sheppard Building Supply, 537 So.2d 1355, 1358 (Miss. 1989); Newell v. Hinton, 556 So.2d 1037, 1042 (Miss. 1990); Hoerner v. First National Bank of Jackson, 254 So. 2d 754, 759 (Miss. 1971).

Naturally, the best method of discerning the intent of the parties is to look to the language used in the contract, and when the contract is clear and unambiguous the court should look only to the language found within the four corners of the document. McKee v. McKee, 568 So.2d 262 (Miss. 1990); Estate of Hensley v. Estate of Hensley, 524 So.2d 325, 327 (Miss. 1988) Additionally, when more than one document is executed as part of an entire agreement, "... the instruments should be interpreted collectively, having been executed on the same date and for the purpose of being read in conjunction with one another ...". Hardy v. First National Bank of Vicksburg, 505 So.2d 1021, 1023 (Miss. 1987); U.S. for Use

and Benefit of Sanford v. Continental Casualty Co., 293 F. Supp. 816 (N.D. Miss. 1968).

Furthermore, when the intent of the parties is obvious from the written instrument, the court may strike an improper word, or correct a clerical error in order to give effect to the intent of the parties. Newell v. Hinton, 556 So.2d 1037, 1042 (Miss. 1990); D. G. Robinson v. Martel Enterprises, 337 So.2d 698, 701 (Miss. 1976); Garner v. Sperry, 161 So. 703, 704 (Miss. 1935).

In considering both the combination promissory note and security agreement and the continuing guaranty, it is evident to the Court that the parties intended for Patti Hilton, individually, to guarantee the debt of her corporation, The Hilton Company. The promissory note and security agreement along with the guaranty were both executed on the same day. The promissory note and security agreement specifically listed the personal guaranty of Patti Hilton as security for the loan to The Hilton Company, and Republic Bank never extended any credit to Patti Hilton individually. Additionally, there would be no reason whatsoever for Patti Hilton to guarantee a debt for which she would be primarily liable.

For the foregoing reasons, the Court is of the opinion that the parties intended for Patti H. Hilton, individually, to guarantee the debt of The Hilton Company to Republic Bank; that the insertion of the name "Patti H. Hilton" as the primary debtor in the continuing guaranty was a clerical error; and that the name, "The Hilton Company" was the name which the parties intended to insert in the continuing guaranty.

The Court finds the Defendant's Motion to Dismiss should be denied. A separate order consistent with this opinion will be entered.

DATED this the 22 day of June, 1992.

  
UNITED STATES BANKRUPTCY JUDGE

JUN 22 1992

MOLLIE C. JONES- CLERK  
DEPUTY

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
BY JACKSON DIVISION

IN RE: PATTI H. HILTON

CASE NO. 9000118JC

RESOLUTION TRUST CORPORATION  
AS RECEIVER FOR REPUBLIC BANK  
FOR SAVINGS, F. A.

PLAINTIFF

VS.

ADVERSARY NO. 900152JC

PATTI H. HILTON

DEFENDANT

ORDER DENYING MOTION TO DISMISS

Consistent with the opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the Defendant's Motion to Dismiss is hereby denied.

ORDERED AND ADJUDGED this the 22 day of June, 1992.

  
UNITED STATES BANKRUPTCY JUDGE