IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-1844
Summary Calendar

FEDERAL DEPOSIT INSURANCE CORPORATION,

Plaintiff-Appellee,

versus

ROBERT E. LUXEN,

Defendant-Appellant.

Appeal from the United States District Court for
the Northern District of Texas
(3:91-CV-2829-D)

(March 14, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

REAVLEY, Circuit Judge:[*]

BACKGROUND

Market Center Joint Venture borrowed money from RepublicBank Dallas, and six promissory notes were executed. Robert Luxen, a Market Center partner, claims that he only guaranteed a portion of the interest on the notes, while the FDIC argues that the interest guaranteed was the total interest payable on all the

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

notes. The Federal Deposit Insurance Corp. is the current owner and holder of the notes and guaranty.

The FDIC filed a motion for summary judgment against Luxen on his guaranty when Market Center defaulted on the notes. The district court held that the Limited Guaranty signed by Luxen was ambiguous as to the amount of principal guaranteed, but the court found that Luxen was liable under the contract for all the interest due on the notes in the Joint Venture. The parties stipulated before trial that the amount of principal owed was 5% of the current principal due and unpaid under the notes ($81, 828.86), but did not reach an agreement as to the amount of interest owed. The stipulation only left the dispute over interest, and the FDIC moved for entry of judgment based upon the district court's previous summary judgment. The district court entered judgment for the FDIC in the amount of $444,693.48 (principal owing plus the total amount of interest due on the notes). Luxen moved for a new trial or to amend the judgment which the district court denied. Luxen now appeals and argues that he is not liable for the entire amount of interest on the notes. We agree.

DISCUSSION

Our review of the district court's grant of summary judgment and the district court's contract interpretation is *de novo.* Travelers Ins. Co. v. Liljeberg Enter., Inc., 7 F.3d 1203, 1206 (5th Cir. 1993). The FDIC argues that the district court correctly found that the guaranty provision unambiguously

obligates Luxen to pay the interest due on all the Market Center Notes.

The guaranty provides:

> Maximum amount guaranteed: $ 161, 240.00 (5%)
>
> 1. Guaranty. The undersigned (Guarantors) jointly and severally agree to pay to the Lender at its address set out above, when due or declared due, all debt or other liability of every kind for which Debtor now is or hereafter shall be obligated to the Lender (Debtor's Total Obligations) *up to a principal sum* in the maximum amount guaranteed set out above, *plus interest as provided in any agreement between Lender and Debtor (or if there is no agreement, at the highest lawful rate)*. . . (emphasis added).

The limited guaranty was executed in Texas. The guarantor is the "favorite of the law" in Texas, and Texas courts apply the construction most favorable to the guarantor if two reasonable constructions may be made as to an agreement. E.g., Moffitt v. DSC Fin. Corp., 797 S.W.2d 661, 666 (Tex. App.--Dallas 1990), writ denied per curiam, 815 S.W.2d 551 (Tex. 1991). Furthermore, the instrument must be viewed in its entirety and no single portion or clause will control when considered alone. Myers v. Gulf Coast Minerals Management Corp., 361 S.W.2d 193, 196 (Tex. 1962).

We disagree with the district court's interpretation of the interest provision. Considering the instrument as a whole and construing it in favor of the guarantor, Luxen limited his liability as to interest as he did to principal. If the instrument were to provide a guarantee to pay all the interest on any indebtedness beyond the maximum principal guaranteed, we would expect a full statement to that effect rather than the

simple language highlighted above. The language used refers to the rate of computation, which explains the parenthetical direction to the legal rate, and does not impose an entire new scope of guarantee. Luxen is only liable for interest on the amount of principal he guaranteed, which is 5% of the total amount of accrued, unpaid interest on the notes.

The judgment is vacated and the case is remanded to the district court for computation of the judgment in accord with this opinion.

VACATED and REMANDED.