2019 IL App (5th) 170375-U

NO. 5-17-0375

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

STATE BANK OF WATERLOO, Plaintiff-Appellant, v. K.C. DEVELOPMENT GROUP, LLC, KENNETH R. OSTERHAGE, CHARLES F. HESSE, UNKNOWN OWNERS AND NONRECORD CLAIMANTS, Defendants (Charles F. Hesse, Defendant-Appellee).	)	Appeal from the Circuit Court of Monroe County. No. 14-CH-16 Honorable Dennis B. Doyle, Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justice Welch concurred in the judgment.
Presiding Justice Overstreet dissented.

ORDER

¶ 1 *Held:* Circuit court erred in considering parol evidence and shifting the burden of proof to the Bank as to the intent of the parties that the defendant be personally liable on a promissory note where the terms of the note and the manner of the defendant's signature were unambiguous; circuit court's judgment that the defendant was not personally liable on the note was against the manifest weight of the evidence.

¶ 2 The plaintiff, State Bank of Waterloo (Bank), appeals the August 29, 2017, order of the circuit court of Monroe County, entering a judgment in favor of defendant, Charles F. Hesse, on count II of the Bank's second amended complaint, which alleged Hesse's default on a promissory note (note). In addition, the Bank appeals the circuit court's January 20, 2016, and

January 31, 2017, orders, which denied its motion for summary judgment in its favor on count II of the Bank's complaint. For the reasons that follow, we reverse all three orders and remand with directions that the circuit court enter judgment in favor of the Bank as to Hesse's liability on the note, and for further proceedings to determine the amount due and owing by Hesse, to the Bank, under the note.

¶ 3 FACTS

¶ 4 On March 6, 2014, the Bank filed a complaint in the circuit court of Monroe County, against Hesse, as well as defendants K.C. Development Group, LLC, Kenneth R. Osterhage, K.D.O., Inc., and unknown owners and nonrecord claimants. Count I of the complaint sought to foreclose a mortgage dated December 8, 2008, on a parcel of real estate containing several addresses located in Waterloo. According to count I, the unpaid principal balance on the mortgage was $685,822.46, and the total amount due as of March 3, 2014, was $725,738.28, plus interest accruing thereafter at $285.76 per day, as well as court and title costs and attorney fees. Count I named K.C. Development Group as the current owner of the real estate; K.D.O., Inc., as having a mechanic's lien on the property; and K.C. Development Group, Osterhage, and Hesse as personally liable for any deficiency following the foreclosure. Count II of the complaint, entitled "promissory note," alleged default on the note secured by the mortgage, and requested a judgment against K.C. Development Group, K.D.O., Inc., Osterhage, and Hesse in the amount of $728,238.27.[1]

¶ 5 Exhibit A to the complaint, entitled "Real Estate Mortgage," named K.C. Development Group as the mortgagor. The mortgage states that "THIS MORTGAGE SECURES A NOTE

[1]On September 15, 2014, the Bank was granted leave to file an amended complaint, which, *inter alia*, specified that count II was brought against Hesse and Osterhage individually. On July 28, 2015, the Bank was granted leave to file a second amended complaint to add additional counts against Hesse which are not subjects of this appeal. The Bank was later granted leave to voluntarily dismiss all counts of the complaint other than count II.

FROM K.C. DEVELOPMENT GROUP, LLC IN FAVOR OF [THE BANK], DATED 12/8/08 IN THE AMOUNT OF $705,000, MATURING 12/8/13 WITH AN INITIAL INTEREST RATE OF 6.50% PER ANNUM, SUBJECT TO CHANGES FROM TIME TO TIME." The mortgage further stated that the mortgagor will be in default if any party obligated on the secured debt failed to make a payment when due.

¶ 6 Exhibit B to the complaint is a note dated December 8, 2008. It lists the borrower as K.C. Development Group, LLC, and the lender as the Bank. In the box containing the name of the borrower, underneath "K.C. Development Group, LLC," the note states that, " 'I' includes each borrower above, jointly and severally." The loan amount is listed as $705,000, the maximum amount which the borrower could borrow, payable in multiple advances, "as requested for land development." The purpose of the loan is listed as "REFINANCE LOAN & LAND DEVELOPMENT." Below a line that states "SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 2. I have received a copy on today's date," the following appears, with "[s]" indicating a handwritten signature:

> "K.C. DEVELOPMENT GROUP, LLC
> [s] Charles F. Hesse_____
> HESSE DEVELOPMENT INC. MEMBER BY: CHARLES F. HESSE PRES
> [s] Charles F. Hesse_____
> CHARLES F. HESSE, PERSONALLY
> [s] Kenneth R. Osterhage_____
> KDO, INC., MEMBER BY: KENNETH R. OSTERHAGE, PRESIDENT
> [s] Kenneth R. Osterhage_____
> KENNETH R. OSTERHAGE, PERSONALLY"

¶ 7 On page two of the note, a section entitled "DEFINITIONS" states, " 'I,' 'me' or 'my' means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as 'us').

'You' or 'your' means the Lender and its successors and assigns." In a section on page two of the note entitled "OBLIGATIONS INDEPENDENT" the note states:

> "I understand that I must pay this note even if someone else has also agreed to pay it, by, for example, signing this form or a separate guarantee or endorsement. You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect the note. You may do so without any notice that it has not been paid [notice of dishonor]. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liablilty for payment on this note. I will not assign my obligation under this agreement without your prior written approval."

¶ 8 On June 16, 2014, the circuit court entered default judgments against Osterhage, K.D.O., Inc., and unknown owners and nonrecord claimants on count II of the complaint, with judgment against Osterhage specified in the amount of $753,674.33.[2] On June 10, 2015, the Bank filed a motion for summary judgment on counts I and II of the complaint, seeking a judgment for

[2]According to documents contained within the record on appeal and evidence introduced at a subsequent trial, Osterhage tendered all of his assets to the Bank and refinanced his home to settle multiple other debts for which he was in default.

foreclosure and liability on the note against K.C. Development Group and Hesse.[3] As to the Bank's motion for summary judgment as to Hesse's liability on the note as pled in count II, the Bank argued that per the note detailed above, it was clear and unambiguous that Hesse was personally liable on the note and the circuit court was required to enforce the note as written without allowing or considering parol evidence. In a response to the Bank's motion dated December 7, 2015, Hesse filed an affidavit in which he averred as follows:

> "1. I executed the promissory note dated December 8, 2008, in a representative capacity on behalf of K.C. Development, LLC, and as President of a Member of that LLC, namely Hesse Development, Inc.
>
> 2. I did not sign said promissory note as a co-maker or as a co-signer, and I did not agree to pay said promissory note in my individual capacity. Further Affiant sayeth not."

¶ 9 On January 20, 2016, the circuit court entered an order denying the motion for summary judgment on count II as against Hesse. Therein, the circuit court found that the note was ambiguous and that parol evidence was necessary to determine the intent of the parties. According to the circuit court, the following questions were presented on the face of the note resulting in the ambiguity:

> "If only K.C. Development Group, LLC was to be the borrower, and [the d]efendant Hesse signed as Hesse Development, Inc., one of its members, why did he sign again over the printed words 'CHARLES F. HESSE, PERSONALLY[?'] On the other hand, if [Hesse] is a borrower, as indicated by his signature, why is he not listed in the box marked 'BORROWER'S NAME AND ADDRESS[?']"

[3]The Bank filed a first amended motion for summary judgment on October 9, 2015, to address counts it added to the first amended complaint which were later voluntarily dismissed and are not at issue in this appeal.

¶ 10 On July 25, 2016, the Bank filed a motion to reconsider the circuit court's denial of its motion for summary judgment on count II as against Hesse. Before this was heard, the Bank filed a second motion for summary judgment on count II. In its second motion, the Bank referenced an extension agreement dated December 8, 2013, and signed by Hesse in connection with the orginal note dated December 8, 2008. The extension agreement, which is attached to the motion, is signed in the exact manner as the original note. The extension agreement extended the time for repayment of $705,000 from December 8, 2013, to December 8, 2018, and provided that, "except as specifically amended by [the extension], all other terms of the original obligation remain in effect."

¶ 11 On January 31, 2017, the circuit court entered an order denying the Bank's second motion for summary judgment on count II "on the same basis as the first motion for summary judgment." On April 3, 2017, the circuit court held a bench trial on count II of the complaint for breach of the note against Hesse only. At trial, Hesse testified he had an agreement with Osterhage that Hesse's participation in the development project for which the loan was sought would be limited to Hesse providing $250,000 in "seed money." Nevertheless, he participated in at least two meetings with Osterhage and the Bank's president to discuss the loan at issue. Hesse testified that there was no discussion as to whether he would be personally liable for the loan but that the Bank's president did assure him that he would not need to put up additional collateral. On the date the note was executed, Osterhage called him and told him he was needed at the Bank right away. Hesse tried to call his attorney but was unable to reach him. At the closing on the loan, Hesse merely signed where he was told and did not read anything he was signing. Hesse testified that he never intended that he was to be personally liable for the loan.

¶ 12 Mark Altadonna, who was president of the Bank at the relevant times, testified that Osterhage and Hesse requested the loan for the development project. Altadonna testified that the Bank's policy for loans to closely held entities such as those involved in the loan at issue was to require a personal guarantee from the members of such entities. Altadonna testified that the proposal that was approved by the Bank for the loan at issue required a personal gurantee from the members of the closely held entities involved. Altadonna testified, contrary to Hesse's testimony, that he explained this to both Hesse and Osterhage prior to the execution of the note at issue. Osterhage also testified that he knew that he and Hesse were personally signing the note, as Altadonna had explained it, but he thought that each of them was 50% personally liable. Although additional testimony and evidence was presented regarding the relationship between Osterhage and Hesse after the development project funded by the loan failed, as well as subsequent dealings between Hesse and the Bank, we do not detail that evidence here due to our disposition of the legal issues presented by this appeal.

¶ 13 On August 29, 2017, the circuit court entered an order containing its findings of fact and concluding as follows:

> "After receiving evidence and considering arguments of counsel, I continue to find the language of the note in question to be ambiguous. It is well settled that an ambiguous term can be construed against the drafter. I find that the term 'I' in 'I promise to pay you' means K.C. Development Group, L.L.C. and that it does not include Charles F. Hesse in his personal capacity. I find in favor of [Hesse] as stated in attached order."

¶ 14 The circuit court entered judgment in favor of Hesse on count II of the Bank's complaint on the same date. In its judgment order, the circuit court stated that "[the Bank] failed to sustain its evidentiary burden of proving that [Hesse] intended to be personally liable." On September

22, 2017, the Bank filed a notice of appeal, and on September 26, 2017, an amended notice of appeal as to proof of service.

¶ 15 After briefing and oral argument, which was held on July 18, 2018, this court entered an order directing the parties to submit supplemental briefing on the following issue(s): (1) whether the note and/or extension agreement meet(s) the definition of "negotiable instrument" set forth in section 3-104 of the Uniform Commercial Code (UCC) (810 ILCS 5/3-104 (West 2016)); and (2) the application of section 3-402 of the UCC (*id.* § 3-402) to the issue of Hesse's liability on the note and extension agreement. After supplemental briefing, this court held an additional oral argument on the UCC issues on March 26, 2019.

¶ 16 ANALYSIS

¶ 17 We begin our analysis with the applicable standards of review. First, our standard of review regarding decisions of the circuit court with regard to motions for summary judgment is *de novo. Murphy-Hylton v. Lieberman Management Services, Inc.*, 2016 IL 120394, ¶ 16. "A motion for summary judgment will be granted only where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' " *Id.* (quoting 735 ILCS 5/2-1005(c) (West 2012)). In addition, no matter the procedural context, we consider questions of law, including issues of statutory or contract interpretation, *de novo*. *Illinois State Toll Highway Authority v. South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 32; *Asset Recovery Contracting, LLC v. Walsh Construction Co. of Illinois*, 2012 IL App (1st) 101226, ¶ 57. In contrast, we will not disturb factual determinations made by the circuit court unless they are against the manifest weight of the evidence. *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35.

¶ 18 Upon initial review of the note and extension agreement at issue in this case, this court questioned whether the issues in this case were governed by article III of the UCC. 810 ILCS 5/3-101 *et seq.* (West 2016). Recognizing the vital public policies underlying the UCC, such as the need for certainty and predictability in commercial transactions and the resolution of commercial disputes (see *Euro Motors, Inc. v. Southwest Financial Bank & Trust Co.*, 297 Ill. App. 3d 246, 252-53 (1998) (citing *Brown v. Cash Management Trust of America*, 963 F. Supp. 504, 506 n.4 (D. Md. 1997) quoting *Putnam Rolling Ladder Co. v. Manufacturers Hanover Trust Co.*, 546 N.E.2d 904, 908 (N.Y. 1989))), we entered an order requiring supplemental briefing, and conducted a second oral argument, focusing on the applicability of article III of the UCC to the transactions at issue. We requested supplemental briefing on this issue based on our concern that sections 3-401 and 3-402 of the UCC (810 ILCS 5/3-401, 3-402 (West 2016)) may be determinative as to the legal effect of Hesse's signature on the note and extension agreement. Accordingly, we turn to this threshold issue.

¶ 19 To determine whether the note and extension agreement are governed by article III of the UCC, we must determine whether they are negotiable instruments. 810 ILCS 5/3-104 (West 2016). Pursuant to section 3-104 of the UCC, a "negotiable instrument" requires the following: (1) an unconditional promise, (2) to pay a fixed amount of money, (3) to bearer or to order, (4) on demand or at a definite time, (5) without any other requirement of undertaking or instruction on the part of either party. *Id.* § 3-104(a). The parties agree that, pursuant to section 3-112(b) of the UCC (*id.* § 3-112(b)), a variable interest rate such as that contained in the note does not remove the note from the purview of article III of the UCC. The only question Hesse raises regarding negotiability of the note is the fact that the note calls for advance payments "as requested."

¶ 20 Hesse questions whether the advance payments feature of the note defeats the requirement that the note be a promise to pay a fixed amount of money. Both Hesse and the Bank agree that this question is one of first impression in Illinois. After reviewing the law of other jurisdictions, we agree with Hesse that the advance payments feature of the note defeats its negotiability. See *e.g.*, *Yin v. Society National Bank Indiana*, 665 N.E.2d 58, 62-63 (Ind. Ct. App. 1996) (citing *Resolution Trust Corp. v. Oaks Apartments Joint Venture*, 996 F.2d 995 (5th Cir. 1992); *In re Hipp, Inc.*, 71 B.R. 643 (N.D. Tex. 1987); *Cadle Co. v. Richardson*, 597 So. 2d 1052 (La. Ct. App. 1992); *Goss v. Trinity Savings & Loan, Ass'n*, 813 P.2d 492 (Okla. 1991); *In re 1301 Connecticut Avenue Associates*, 126 B.R. 823 (D.C. 1991)).

¶ 21 Having determined that the advance payment feature on the note itself defeats its negotiability, we next address whether the extension agreement meets the UCC's definition of negotiable instrument. After review of the extension agreement, we find that it is not a negotiable instrument. While the extension agreement, unlike the note itself, meets the sum certain requirement of section 3-104 of the UCC (810 ILCS 5/3-104 (West 2016)), it does not meet the unconditional requirement of that section. This is because the extension agreement refers to the note for a statement of additional obligations and terms, basically incorporating the terms of the note by reference. Section 3-106(a) provides that a promise is not unconditional if it states that the promise or order "is subject to or governed by another writing" or that "rights or obligations with respect to the promise or order are stated in another writing." *Id.* § 3-106(a). Accordingly, article III of the UCC does not apply to the note or the extension agreement at issue in this case because neither meets the criteria for negotiability.

¶ 22 Having determined that article III of the UCC does not apply to the terms of the transaction at issue in this case, we will address the circuit court's judgment according to the

common law of contracts. See *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 305 (2010) (common law determines the rights of the parties in the absence of statute). The following principles of contract interpretation are particularly relevant to our analysis:

> "A court must construe the meaning of a contract by examining the language and may not interpret the contract in a way contrary to the plain and obvious meaning of its terms. Unless the contract clearly defines its terms, the court must give the contractual language its common and generally accepted meaning. Furthermore, the court must place the meanings of words within the context of the contract as a whole. A contract term is ambiguous when it may reasonably be interpreted in more than one way. The mere fact that the parties disagree on some term, however, does not render the term ambiguous. [Citation.] 'A court will neither add language or matters to a contract about which the instrument is silent, nor add words or terms to an agreement to change the plain meaning of the parties as expressed in the agreement.' [Citation.]
>
> If the language of the contract is facially unambiguous, then the 'four corners' rule requires the trial court to interpret the contract as a matter of law without the use of parol evidence." *Dean Management, Inc. v. TBS Construction, Inc.*, 339 Ill. App. 3d 263, 269 (2003).

¶ 23 In this case, the circuit court found a contradiction between how the term "I" is defined by the note in different places in the note's terms, from which the circuit court inferred an ambiguity. It characterized the ambiguity as one concerning which parties were agreeing to pay the note. We find no such ambiguity. In the box at the top of the note, where the borrower's name and address is listed, the note states that " 'I' *includes* each borrower above, jointly and severally." (Emphasis added.) The plain meaning of "includes" is "to take in or comprise as a

part of a whole or a group." Merriam-Webster's Collegiate Dictionary 629 (11th ed. 2006); see also Black's Law Dictionary 763 (6th ed. 1990) ("Term may, according to context, express an enlargement and have the meaning of *and* or *in addition to*, or merely specify a particular thing already included within general words theretofore used.". (Emphasis in original)). We find error in the circuit court's ascription of a meaning to the word "includes" that infers "limited to," or "only," as that interpretation is contrary to the word's plain meaning. See *id.*

¶ 24 Above the signature line, the note states "I agree to the terms of the note (including those on page 2)." On page 2 of the note, in a section entitled "DEFINITIONS," the note defines "I," "me," or "my" to include all parties who agree to pay the note. Hesse signed the note and extension agreement twice, once above a line stating "Hesse Development Inc, Member By: Charles F. Hesse President," and once above a line stating "Charles F. Hesse, Personally." Based on common law principles of contract interpretation, as set forth above, we find no ambiguity on the face of the contract.

¶ 25 Hesse, in an affidavit in response to the Bank's first motion for summary judgment, averred that he had executed the note in a representative capacity on behalf of K.C. Development, LLC, and as a president of Hesse Development, Inc., a member of that LLC. Further, he averred that he did not sign the note as a co-maker or as a co-signer, and did not agree to pay the note in his individual capacity. Thus, the propriety of the circuit court's order denying the Bank's motion for summary judgment turns on whether Hesse's affidavit presented a question of material fact sufficient to warrant such a denial. See *Murphy-Hylton*, 2016 IL 120394, ¶ 16.

¶ 26 Our Illinois Supreme Court has stated:

> "Traditional contract interpretation principles in Illinois require that:

'[a]n agreement, when reduced to writing, must be presumed to speak to the intention of the parties who signed it. It speaks for itself, and the intention with which it is executed must be determined from the language used. It is not to be changed by extrinsic evidence.' " *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999) (quoting *Western Illinois Oil Co. v. Thompson*, 26 Ill. 2d 287, 291 (1962)).

¶ 27 In addition to these well-established principles of contract interpretation, we find further guidance in the law of agency. "As a general rule an agent may not introduce parol evidence to escape liability on an agreement he signed in his individual capacity, even though he later contends he signed it as an undisclosed agent for another party." *Bank of Pawnee v. Joslin*, 166 Ill. App. 3d 927, 935 (1988). "[U]nless there is something on the face of an instrument or in the manner of its signature to create ambiguity or uncertainty, parol evidence is inadmissible to rebut the presumption the person signing the instrument is personally liable thereon." *Id.* Here, Hesse signed the note at issue twice, once as a disclosed agent of Hesse Development, Inc., and the other time "personally." Thus, in addition to finding no ambiguity in the terms of the note itself, we find no ambiguity in the manner of its signature. For these reasons, we find that the circuit court erred in considering parol evidence to determine whether, despite his signature on the contract "personally," the parties intended that Hesse be personally liable on the note.

¶ 28 For the foregoing reasons, we find that the circuit court erred in denying the Bank's motion for summary judgment, and thus in holding an evidentiary hearing to consider parol evidence. Assuming, *arguendo*, that denying the Bank's motion for summary judgment was proper, we find that the circuit court applied an improper burden of proof. It is clear from the circuit court's order that it considered whether the Bank met a burden of proving that Hesse intended to be personally liable. However, as explained above, there is a presumption that a

person signing an instrument is personally liable thereon. *Id.* Accordingly, Hesse had the burden of proof that the parties intended that he not be personally liable.

¶ 29 Properly placing the burden of proof on Hesse regarding the intent of the parties, the circuit court's decision is against the manifest weight of the evidence. There was no affirmative evidence at trial that the parties to the note did not intend Hesse to be personally liable. Although there was some evidence that Hesse and Osterhage agreed Hesse's contribution to the development project would be limited to Hesse providing $250,000 in "seed money," there is no evidence of an affirmative agreement involving the Bank. Rather, the evidence presented was that Hesse simply did not know what he was signing and did not himself understand that he was agreeing to be personally liable. "Failure to read a document before signing it is normally no excuse for a party who signs it." *State Bank of Geneva v. Sorenson*, 167 Ill. App. 3d 674, 681 (1988). "In the absence of a fiduciary duty, a bank does not have an obligation to explain the legal effect of a document to the person whose signature is sought on that document." *Id.* Nevertheless, both Altadonna and Osterhage testified Altadonna explained to both Osterhage and Hesse that the Bank required a personal guarantee on loans involving closely held entities prior to the execution of the loan at issue.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we reverse the January 20, 2016, and January 31, 2017, orders of the circuit court of Monroe County, which denied the Bank's motions for summary judgment against Hesse on count II of the Bank's complaint. We further reverse the circuit court's August 29, 2017, order, which entered a judgment in favor of Hesse on count II, and remand with directions that the court enter judgment in favor of the Bank as to Hesse's liability on the note,

and for further proceedings regarding the amount due and owing by Hesse, to the Bank, on the note.

¶ 32 Orders and judgment reversed; cause remanded with directions.

¶ 33 PRESIDING JUSTICE OVERSTREET, dissenting:

¶ 34 I respectfully dissent, as I would affirm the judgment of the circuit court in favor of Hesse on count II of the Bank's second amended complaint. I agree with the circuit court's conclusions that the note was ambiguous, that parol evidence was necessary, and that the evidence supported a judgment in favor of Hesse. I agree that the note was ambiguous as to whether Hesse agreed to be personally liable for the loan, in that although Hesse signed over the words, "Charles F. Hesse, personally," Hesse was not listed in the box marked "Borrower's Name and Address." The contract provided that " 'I' [as in "I promise to pay *** $705,000"] includes each borrower above, jointly and severally," and the only "borrower [named] above" was K.C. Development Group, LLC. Unlike the majority, I agree with the circuit court that a reasonable interpretation of the phrase, " 'I' includes each borrower above, jointly and severally," is that "I" includes K.C. Development Group, LLC, the only borrower named in the box above. I note that this interpretation is further supported by the language of the extension agreement, which did not utilize the word "include." In the extension agreement, the borrower's box states that " 'I' means the BORROWER(S) named above," and the borrower named above is K.C. Development Group, LLC.

¶ 35 I submit that interpreting this language to include K.C. Development Group, LLC, as the only borrower liable to pay the amount due is reasonable, as is the majority's interpretation, and therefore, the language used was susceptible to more than one meaning and was ambiguous.

Meyer v. Marilyn Miglin, Inc., 273 Ill. App. 3d 882, 888-89 (1995). Because the contract language was ambiguous, the circuit court properly considered parol evidence to determine the parties' intent. *Id.* This parol evidence supported the circuit court's conclusion that although Hesse signed on a line with the appearance of the word "personally" typed below his signature, Hesse intended to sign the note only in his representative capacity and did not intend to be personally liable. See *Kankakee Concrete Products Corp. v. Mans*, 81 Ill. App. 3d 53, 57 (1980) (mere typing of "individually" under signature blank is insufficient to create additional liability not found in the rest of the document). I would therefore uphold the circuit court's decision to construe the ambiguous terms against their drafter, and I would uphold the circuit court's conclusion, pursuant to the evidence before it, that Hesse did not promise to pay in his personal capacity. An opposite conclusion is not apparent, the circuit court's findings are not unreasonable or arbitrary, and the circuit court's judgment is based on evidence. See *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001) ("A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence."). Accordingly, I would conclude that the circuit court's order finding in favor of Hesse was not against the manifest weight of the evidence. See *Eychaner v. Gross*, 202 Ill. 2d 228, 251-52 (2002); *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35.