2016 IL App (1st) 150182
No. 1-15-0182

THIRD DIVISION
January 20, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STONEGATE PROPERTIES, INC.,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14 L 001591
	)	
WANDA J. PICCOLO,	)	The Honorable
	)	Patrick Sherlock,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* A lease addendum modifying a lease with a corporate lessee released the individual corporate officer defendant from her individual personal guaranty in the original lease where the modification was material because it by added additional properties and nearly tripled the rental amount and there was no language in the personal guaranty that defendant gave her consent to continue the guaranty for such material modifications of the lease.

¶ 2 BACKGROUND

¶ 3 This lawsuit was brought to enforce the guarantee provision of a commercial lease agreement. Appellant, Stonegate Properties, Inc., was a lessor of commercial property, at Suites 1550 and 1555 located at 2401 West Hassel Road, Hoffman Estates, Illinois. An original

commercial lease agreement was entered between plaintiff and B&F Technical Code Services, Inc. (B&F) on April 4, 2001. Defendant, Wanda J. Piccolo, is the Chief Executive Officer (CEO) of B&F. Defendant signed the lease agreement on behalf of B&F. The original lease was for a five-year term, from July 1, 2001 through June 30, 2006, with rent payable in equal monthly installments each year and an increase in rent every year. The monthly rent for the first year was $1,035.65, increasing each year to $1,150.90 per month for the fifth year. The lease also provided that any and all riders executed by the parties would be incorporated by reference into the original lease. The lease further provided that in the event of default, plaintiff would be entitled to "recover damages in an amount equal to the then present value of the rent *** for the residue of the stated term thereof, less the fair rental value of the premises for the residue of the stated term."

¶ 4 As part of this original lease agreement, defendant also signed a personal guaranty in her individual capacity. The language of the guaranty agreement, in relevant part, is as follows:

> "In consideration of the making of the above lease by Lessor with the Lessee at the request of the undersigned and in reliance on this guaranty, the undersigned hereby guarantees the payment of the rent to be paid by the Lessee and the performance by the Lessee of all the terms, conditions covenants and agreements of the Lease, and the undersigned promises to pay all the Lessor's expenses, including reasonable attorney's fees, incurred by the Lessor in enforcing all obligations of the Lessee under the lease or insured by the Lessor in enforcing this guaranty. The undersigned further agrees to all terms and conditions of the confession of judgement [*sic*] against the undersigned to the extent and set forth in the body of this lease. The Lessor's [*sic*] consents to any assignment or assignments, and successive assignments by the Lessee and Lessee's

assigns, of this lease, made either with or without notice to the undersigned, or changed or different use of the demised premises, or Lessor's forbearance, delays extensions of time or any other reason whether similar to or different from the foregoing, shall in no wise manner release the undersigned from liability as guarantor."

¶ 5 Defendant signed this guaranty provision personally and individually.

¶ 6 Paragraph 43 of the lease provided for automatic renewal for successive terms of equal length, as follows:

"43. TERM: The term of this Lease shall be as stated in Paragraph #1. The Lease shall be automatically renewed for an additional term equal in length to the term stated in Paragraph 1 and shall renew for successive and continuous terms of equal length ("Renewal Terms"), unless either party notifies the other in writing in accordance with Paragraph 16 herein. If Lessee elects not to renew this Lease, Lessee shall give Lessor at least sixty (60) days written notice prior to the end of the original term or any succeeding Renewal Terms. All of the terms and conditions of this Lease shall apply during the Renewal Terms, except:

i.) Rent shall increase on the commencement date of each Renewal Term and on the first day following each succeeding Rent payment for the immediately preceding twelve (12) month period by the percentage increase in the National Consumer Price Index ("CPI") over the period measured from the last month prior to the immediately preceding twelve (12) month period to the last month of the immediately preceding twelve (12) month period. The increase in Rent shall, in no event, be less than five percent (5%) of the Rent at the end of the immediately preceding twelve (12) month period. If the National Consumer Price Index is discontinued or is unavailable, Lessor

> will substitute a comparable index reflecting changes in the cost of living or purchasing power of the consumer dollar that is published by any other governmental agency, bank or financial institution.
>
> ii.) The additional taxes described in Paragraph 32 herein for the fractional year from January 1 of the last calendar year of the final Renewal Term to the termination date shall be computed on the basis of the Ownership Taxes for the calendar year last ended."

¶ 7 On May 29, 2009, B&F and plaintiff executed Addendum IV to the lease, which provided that all other conditions were to remain the same as the original lease dated April 4, 2001.

¶ 8 B&F continued to occupy the premises and pay rent according the terms of the original lease through the end of the lease on June 30, 2006. Thereafter, plaintiff and B&F failed to renew Addendum IV or to execute any further written agreement to lease the property.

¶ 9 Several years later, on April 4, 2009, about three years after the original five-year lease term end date, plaintiff requested B&F to execute a document entitled, "Addendum IV To Lease Agreement, Dated April 4, 2001, Between B&F Technical Code Services, Inc., and Stonegate Properties, Inc." (Addendum IV).[1] The very first provision of Addendum IV provided: "All conditions to remain the same as original lease dated April 4, 2001." Addendum IV covered a time period through April 2014, and was for a rental price of $33,049.20 per year, $2,754.10 per month, almost three times the original lease rental price. The leased property under Addendum

¶ 1 [1] No explanation was provided as to what transpired during the three-year interim after the original five-year lease term end date, or whether there were Addendums I, II, and III and what their terms were.

IV included not only Suites 1550 and 1555 located at 2401 West Hassel Road, Hoffman Estates, Illinois, previously leased under the original lease agreement, but also Suites 1560, 1565, and 1570, as well as three additional addresses. Defendant signed in her capacity as CEO of B&F, and not in her individual capacity.

¶ 10 B&F filed for bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois on October 28, 2013. According to plaintiff, the declaration of bankruptcy constituted a default under the terms of the original lease.

¶ 11 B&F failed to pay rent. On January 20, 2014, demand was made upon defendant to pay the amounts due, but defendant refused.

¶ 12 Plaintiff filed a complaint to enforce the guaranty against defendant. Defendant filed a motion to dismiss pursuant to section 2-615 and section 2-606 of the Illinois Code of Civil Procedure (735 ILDS 5/2-615, 2-606 (West 2014)). Plaintiff attached a copy of the original lease agreement and personal guaranty. Plaintiff also attached a demand letter. However, plaintiff did not attach a copy of Addendum IV.

¶ 13 Defendant filed a motion to dismiss. The circuit court granted the motion to dismiss pursuant to section 2-615 for failure to state a claim. The court instructed plaintiff that mere conjecture was not sufficient to sustain a cause of action for breach of contract, and that no written guaranty agreement actually existed to subject defendant to any personal liability. The court also found that the guaranty agreement attached to the complaint did not constitute a contract binding defendant to Addendum IV. The court granted plaintiff's request to file an amended complaint and advised it to plead more than conjecture, speculation, and conclusions of law, or attach a contract that would bind defendant.

¶ 14 Plaintiff then filed an amended verified complaint seeking judgment in the amount $1,369,832.75, plus interest and late charges. The original lease agreement, personal guaranty and Addendum IV were all attached to the amended complaint. The amended complaint alleged that defendant signed Addendum IV in her corporate capacity and that defendant did not object to the Addendum or her "continuing obligations" under the guaranty in the original lease agreement. The amended complaint alleged that the leased premises were occupied by B&F from April of 2001 through January 20, 2014. The amended complaint alleged that "B&F failed to pay the rent for the residue of the Lease term."

¶ 15 Defendant filed a motion to dismiss, pursuant to section 2-615 and section 2-606 of the Illinois Code of Civil Procedure (735 ILDS 5/2-615, 2-606 (West 2014)). The circuit court granted defendant's motion pursuant to section 2-615 for failure to state a claim and dismissed the amended verified complaint with prejudice.

¶ 16 Plaintiff filed a motion to reconsider, which the court denied. Plaintiff did not move to again amend the complaint. Plaintiff timely appealed.

¶ 17 ANALYSIS

¶ 18 I. Motion to Dismiss.

¶ 19 Plaintiff argues that the court erred in dismissing its amended complaint and in denying its motion for reconsideration where the amended complaint indeed states a cause of action for breach of contract.

¶ 20 A. Standard Applied to the 2-615 Motion to Dismiss.

¶ 21 As a threshold matter, plaintiff argues that the circuit court confused the procedural standard in deciding defendant's motion to dismiss. Plaintiff argues that the court's finding that defendant's guaranty of the original lease did not extend to Addendum IV went beyond the

standards for ruling on a motion to dismiss pursuant to section 2-615 (735 ILCS 5/2-615 (West 2014)). Plaintiff argues that the court erred by dismissing the amended complaint under the "pre-text" of a summary judgment standard under section 2-1005 (735 ILCS 5/2-1005 (West 2014)). Plaintiff then goes on to argue that the interpretation of the original lease, Addendum IV, and the personal guaranty contain certain ambiguities sufficient enough to create a genuine issue of material fact necessitating the admission of extrinsic evidence, thereby precluding entry of summary judgment. We find plaintiff's argument has no merit.

¶ 22 A motion to dismiss pursuant to section 2-615 attacks the legal sufficiency of the complaint by alleging defects on its face. *Dloogatch v. Brincat*, 396 Ill. App. 3d 842, 846 (2009). In ruling on a section 2-615 motion to dismiss, a reviewing court must examine the allegations of the complaint in the light most favorable to the plaintiff and accept as true all the well-pleaded facts and reasonable inferences therefrom. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). A section 2-615 motion does not admit conclusions of law or factual conclusions unsupported by specifics. *Harris, N.A. v. Sauk Village Development, LLC*, 2012 Ill. App. 120817, ¶ 20. If the facts are insufficient to state a cause of action upon which relief may be granted then dismissal pursuant to section 2-615 is appropriate. *Vitro*, 209 Ill. 2d at 81. Also, as a reviewing court, we may affirm the judgment of the circuit court on any basis appearing in the record. *White v. DaimlerChrysler Corp*., 368 Ill. App. 3d 278, 282 (2006).

¶ 23 Summary judgment is appropriate when "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 a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010). Deciding a summary judgment motion implicates the same standard of review: *de*

novo. See *Palm v. 2800 Lake Shore Drive Condo. Ass'n, 2013 IL 110505, 28 (citing Millennium Park Joint Venture, LLC v. Houlihan, 241 Ill. 2d 281, 309 (2010)).*

¶ 24 A court's determination of the construction of a contract is also a question of law subject to *de novo* review. *Regency Commercial Associates, LLC v. Lopax, Inc.*, 373 Ill. App. 3d 270, 275 (2007).

¶ 25 Contrary to plaintiff's contention, the circuit court properly addressed defendant's motion pursuant to section 2-615 both in deciding the motion and in deciding plaintiff's motion to reconsider. Plaintiff maintains in its reply brief that "[e]ssentially, the trial court admits that it looked directly beyond the Amended Complaint and made a ruling of law as to the legal sufficiency of the Lease and Addendum IV." However, because the lease and Addendum IV were attached to the amended complaint and incorporated by reference, they are part of the complaint itself. "An exhibit attached to a complaint becomes part of the pleading for every purpose, including the decision on a motion to dismiss. [Citations.] Where an exhibit contradicts the allegations in a complaint, the exhibit controls. [Citations.]" *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18. When ruling on a section 2-615 motion to dismiss, "[e]xhibits attached to the complaint are a part of the complaint and must be considered." *Kirchner v. Greene*, 294 Ill. App. 3d 672, 677 (1998). Where the attached exhibit contradicts an allegation in the complaint, the exhibit controls. See *Burton v. Airborne Express, Inc.*, 367 Ill.App.3d 1026, 1035–36 (2006) (the contract attached to the complaint belied the plaintiff's breach of contract claim); *Metrick v. Chatz*, 266 Ill.App.3d 649, 653 (1994) (factual matters contained in exhibits attached to the complaint negate any inconsistent facts alleged in the complaint). Thus, the trial court properly relied on these documents in deciding the 2-615 motion to dismiss.

¶ 26 Plaintiff nevertheless argues that the circuit court did not properly address the legal sufficiency of the amended complaint and that, since the amended complaint is seeking redress for breach of the guarantee on a commercial lease, all of the elements for breach of contract should have been discussed in granting the 2-615 motion to dismiss, citing *Redelmann v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912, 923 (2007). The trial court's discussion and analysis was focused on the first element for a claim for breach of contract: whether there was a valid and enforceable agreement. The court found that plaintiff failed to state a claim because this essential element was not met. A complaint is subject to dismissal for failure to state a claim if the exhibits attached to the complaint contradict an essential allegation of the complaint. See *Brunette v. Vulcan Materials Co.*, 119 Ill.App.2d 390, 395-96 (1970) (affirming dismissal of complaint for breach of contract for failure to state a cause of action where exhibits attached to complaint demonstrated parties had not entered a contract but merely exchanged correspondence agreeing to terms to be reduced to writing for formal execution). We find no error in the circuit court focusing on an element it found lacking and, therefore, we affirm the court's disposition of the 2-615 motion to dismiss.

¶ 27 B. Merits of the 2-615 Motion to Dismiss.

¶ 28 Plaintiff first argues that its amended complaint was improperly dismissed, where it stated a cause of action for breach of contract. Plaintiff argues that the court prematurely determined that the personal guaranty executed in the original lease was a separate contract and was unenforceable as to Addendum IV. Plaintiff maintains that defendant was personally obligated under Addendum IV. Plaintiff argues that the renewal term in the original lease agreement controlled and covered the relevant time period for which damages are sought and that the guaranty provision within the original lease agreement thereby also was extended.

¶ 29 Defendant responds that the court correctly dismissed the second amended complaint because no written guarantee agreement covering the alleged time period or covering Addendum IV was attached as an exhibit to the complaint. Defendant argues that conclusions of law or factual conclusions "unsupported by any specifics" cannot sustain a cause of action. Defendant also argues that the guaranty for the original lease agreement "did not remotely relate to the alleged Addendum some three and a half years later." According to defendant, if plaintiff "possessed another written Guaranty Agreement in conformance with the Addendum to support their Conclusions of Law and Conclusions of Fact in the Complaint, then they would of [*sic*] possibly had a viable cause of action, but they did not." Defendant argues that Addendum IV changed nearly all the terms of the original lease. Defendant further argues that Addendum IV was not in accordance with the original lease agreement regarding renewals since it was executed in the middle of a renewal period, thereby effectively terminating any automatic renewal period. Defendant argues that Addendum IV encompasses several additional properties and significant additional rental amounts and was entered into three years after the original lease agreement had expired.

¶ 30 Defendant stresses the fact that the guaranty uses the singular term to refer to the original lease which, in defendant's view, cannot encompass further extensions of the lease. Defendant argues that Addendum IV did not make any reference to the original guaranty agreement. Defendant argues that guaranty agreements are strictly construed in favor of the guarantor, who is to be afforded the benefit of any doubt that may arise from the contract language, citing *Exchange National Bank v. Bergman*, 153 Ill. App. 3d 470, 473 (1987). See Exchange National Bank, 153 Ill. App. 3d at 473 ("A guarantor is not liable for anything which he did not agree to

and if the creditor and principal have entered into an agreement materially different from that contemplated by the instrument of guaranty, the guarantor will be released.").

¶ 31 The trial court found that the original lease agreement was clear and unambiguous but that it was void of any language or clauses which would bind the guarantor on any subsequent lease agreements, contract, leases, and addendums.

¶ 32 1. Standard of Review.

¶ 33 Defendant states in her brief that our standard of review should be abuse of discretion for a petition for relief from judgment. However, defendant is not appealing any order on a petition for relief from judgment but, rather, an order granting a section 2-615 motion to dismiss. As already indicated above, we employ the *de novo* standard of review to decisions on 2-615 motions to dismiss. *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 34 To properly plead a cause of action for breach of contract, a plaintiff must allege the essential elements of the cause of action. A*llstate Insurance Co. v. Winnebago County Fair Association, Inc*., 131 Ill. App. 3d 225, 233 (1985). The essential elements for breach of contract are: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of the contract by the defendant; and (4) resultant injury to the plaintiff. *Nielsen v. Unites Services Automobile Association*, 244 Ill. App. 3d 658, 662 (1993) (citing *Allstate Insurance Co*., 131 Ill. App. 3d at 233). A plaintiff's pleadings must allege sufficient facts to indicate the terms of the contract claimed to have been breached. *Nielsen*, 244 Ill. App. 3d at 662. Also, the meaning of a guaranty agreement is a matter of law to be determined by the court. *Exchange Bank v. Bergman*, 153 Ill. App. 3d 470, 472 (1987).

¶ 35 Plaintiff alleged the existence of a valid and enforceable contract. The amended complaint alleged that defendant signed Addendum IV in her corporate capacity and that defendant did not object to the Addendum or her "continuing obligations" under the guaranty in the original lease agreement. Plaintiff alleged that the space was indeed leased to B&F and that the leased premises were occupied by B&F from April of 2001 through January 20, 2014, thus alleging performance. Plaintiff also alleged breach by defendant in that "B&F failed to pay the rent for the residue of the Lease term." Plaintiff further also alleged damages. Thus, plaintiff apparently satisfies all the elements to state a claim for breach of contract. The only issue in this case is the first element, whether the guaranty was valid for the relevant time period.

¶ 36 Defendant's motion to dismiss was also brought pursuant to section 2-606 of the Illinois Code of Civil Procedure (735 ILCS 5/2-606 (West 2010)), which provides that "[i]f a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein." The circuit court found that there was no separate guaranty attached to the amended complaint. Plaintiff argued below and maintains on appeal that this action is brought pursuant to the Addendum IV's extension of the original lease, which includes the guaranty provision. Plaintiff attached all the relevant documents to its amended complaint, which include the lease with the guaranty provision and Addendum IV, and thereby satisfied section 2-606.

¶ 37 Defendant cites to an unreported case affirming a 2-615 dismissal where the plaintiff failed to attach a contract as having "remarkably similar circumstances" to the case at bar. Since the case is not proper authority, we do not address it. We emphasize, however, that the issue in this case is not failing to attach a contract, as plaintiff did attach a contract. Rather, the issue is

also whether the attached contract (the lease guaranty) incorporated a later contract (Addendum IV) by reference.

¶ 38 The central question in this case is whether the guaranty provision in the original lease agreement applies to Addendum IV and is valid and enforceable. The arguments in the parties' briefs on appeal are woefully insufficient to shed any light on the crux of this central issue. Nevertheless, because our review is *de novo* and because a 2-615 dismissal review is limited to the pleadings, with the attached and incorporated documents, we address the issue.

¶ 39 2. Rules of Construction for Leases and Guaranties

¶ 40 A lease is a contract between landlord and tenant, and the rules of contract construction apply to the construction of leases. *Fuller Family Holdings, LLC v. N. Trust Co*., 371 Ill. App. 3d 605, 620 (2007) (citing *Williams v. Nagel*, 162 Ill. 2d 542, 555 (1994); *Oliva v. Amtech Reliable Elevator Co*., 366 Ill. App. 3d 148, 151-52 (2006)). Where the terms of a contract are clear and unambiguous, they must be given effect as written, and under those circumstances, the meaning of the contract is a question of law. *Fuller Family Holdings*, 371 Ill. App. 3d at 620 (citing *T.C.T. Building Partnership v. Tandy Corp*., 323 Ill. App. 3d 114, 118 (2001)).

¶ 41 The basic rules of contract interpretation are well settled. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). Our primary objective is to give effect to the parties' intent. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). The best indication of the parties' intent is the contract's language, giving the words used their plain and ordinary meaning. *Id*. at 233. A contract must be construed as a whole, viewing each contractual provision in light of the other provisions; therefore, the parties' intent cannot be determined by viewing a specific provision in isolation or by looking at detached portions of the contract. *Thompson*, 241 Ill. 2d at 441.

¶ 42 A guaranty is an agreement by one or more parties to answer to another for the debt or obligation of a third party. *Fuller Family Holdings*, 371 Ill. App. 3d at 620 (citing *Williams Nationalease, Ltd. v. Motter*, 271 Ill. App. 3d 594, 596 (1995), citing 38 C.J.S. Guaranty § 1 (1943)). A guarantor's liability is determined from the guaranty contract, which, like a lease, is also interpreted under principles of contract interpretation. *Bank of America National Trust & Savings Association v. Schulson*, 305 Ill. App. 3d 941, 945 (1999). See also *Fuller Family Holdings*, 371 Ill. App. 3d at 620 (general rules of contract construction apply in interpreting the terms and conditions of a guaranty, including a contract guaranteeing payment of rent under a lease).

¶ 43 Where the terms of a guaranty are clear and unambiguous, they must be given effect as written. *Fuller Family Holdings*, 371 Ill. App. 3d at 620. That principle applies even where a guaranty contains broad statements of guarantor liability, including waivers of all defenses. *Chemical Bank v. Paul*, 244 Ill. App. 3d 772, 781 (1993). The rule that guaranty contracts are to be strictly construed in favor of the guarantor applies only where some doubt arises as to the meaning of the guaranty language. (Citations.) *Roth v. Dillavou*, 359 Ill. App. 3d 1023, 1028 (2005). Where the terms of a guaranty are clear and unambiguous, they must be given effect as written. *T.C.T. Building Partnership*, 323 Ill. App. 3d at 119.

¶ 44 3. A Guaranty is a Separate Agreement.

¶ 45 "It is well-established that a guaranty is an independent obligation separate from the underlying contract." *Armbrister v. Pushpin Holdings, LLC*, 896 F. Supp. 2d 746, 755 (N.D. Ill. 2012) (citing *Colonial Am. Nat'l Bank v. Kosnoski*, 617 F.2d 1025, 1030-31 (4th Cir.1980). " 'Guarantees invol[ve] duties and impos[e] responsibilities very different from those created by the original contract to which it is collateral. The fact that both contracts are written on the same

paper or instrument does not affect their separate nature.' " *Armbrister*, 896 F. Supp. 2d at 755 (quoting *Kosnoski*, 617 F.2d at 1030-31). Thus, although the guaranty agreement is within the same document as the original lease agreement, it is considered a separate agreement.

¶ 46 We further note that reliance on the guaranty as a "separate agreement" is not prohibited. The lease does not contain an integration clause that would prohibit consideration of the contemporaneously executed guaranty. See *L.D.S., LLC v. S. Cross Food, Ltd.*, 2011 IL App (1st) 102379, ¶ 33 (even where there was an integration clause, the court held that the integration clause applies only to agreements between the parties, and that the integration clause did not preclude the argument that the guaranty was executed contemporaneously with the lease). We assume that the guaranty was executed contemporaneously with the original lease because, even though the guaranty itself is not dated, it is part of the lease it is guaranteeing and the parties do not argue it was executed on a different date. See *McDonald v. Harris*, 75 Ill. App. 111 (1898) (holding that a guaranty not containing a date is presumed to have been executed at date of instrument on which guaranty is given, in absence of contrary evidence).

¶ 47 4. Guaranties In a Lease Are Only Automatically Extended

If the Lease Extension is in Accordance With the Lease Terms.

¶ 48 Paragraph 43 of the lease provided that "[*a]ll of the terms and conditions of this Lease* shall apply during the Renewal Terms," except an increase in rent for cost of living and taxes. (Emphasis added.) Defendant argues that the guaranty was not extended because it was not a "condition" of the original lease. The issue here is whether the guaranty was one of the terms and conditions of the original lease that would continue during a lease renewal. The circuit court stated, in a footnote in its order granting defendant's motion to dismiss, that "[t]he guarantee was not a 'condition' of the original lease, but a separate agreement between different parties."

¶ 49 The guaranty states:

> "*In consideration of the making of the above lease by Lessor with the Lessee at the request of the undersigned and in reliance on this guaranty*, the undersigned hereby guarantees the payment of the rent to be paid by the Lessee and the performance by the Lessee of all the terms, conditions covenants and agreements of the Lease, and the undersigned promises to pay all the Lessor's expenses, including reasonable attorney's fees, incurred by the Lessor in enforcing all obligations of the Lessee under the lease or insured by the Lessor in enforcing this guaranty." (Emphasis added.)

¶ 50 The guaranty is not a classic condition *precedent*, as the language of the guaranty states "in reliance on," not "contingent upon." See *Matter of Estate of Rice*, 130 Ill. App. 3d 416, 428 (1985) ("condition precedent" is one which must be performed before contract becomes effective or which is to be performed by one party to existing contract before other party is obligated). Thus, we agree with defendant that the guaranty is not a term or condition of the lease.

¶ 51 However, the guaranty was part of the consideration for contract formation for the lease. The lease was entered into by plaintiff (lessor) at the request of defendant (the undersigned) in reliance on the guaranty, and that "*[i]n consideration of*" plaintiff entering into the lease, defendant guarantees the payment of the rent. "Consideration consists of some detriment to the offeror, some benefit to the offeree, or some bargained-for exchange between them." *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 38 (citing *A. Epstein & Sons International, Inc. v. Eppstein Uhen Architects, Inc.*, 408 Ill. App. 3d 714, 720 (2011)). "A bargained-for exchange exists if one party's promise induces the other party's promise or performance." *Ross v. May Co.*, 377 Ill. App. 3d 387, 391 (2007) (citing *Boomer v. AT & T Corp.*, 309 F.3d 404, 416 (7th Cir.2002) (applying Illinois law)). "A guaranty which is executed

contemporaneously with the debt it guarantees is supported by sufficient consideration." *City National Bank of Hoopeston v. Russell*, 246 Ill. App. 3d 302, 307 (1993) (citing *American National Bank v. Warner*, 127 Ill. App. 3d 203, 207 (1984)).

¶ 52 The guaranty explicitly states it was part of the consideration inducing plaintiff to enter into the lease with B&F. Nevertheless, as noted above, it is well established that a guaranty provision is considered a separate agreement. The question is whether this separate agreement was also extended along with the automatic extension of the lease.

¶ 53 *Roth* was the first Illinois case that directly addressed whether a guaranty applies during a tenancy after the original lease term. *Roth*, 359 Ill. App. 3d at 1028. The *Roth* court noted that there was a split of authority on the question of whether a guaranty applies to an extension or renewal of the original lease term, and also with respect to a holdover period. Roth, 359 Ill. App. 3d at 1029. The court held that the "better reasoning" is that, once a guarantor is on notice that a month-to-month tenancy may result and the landlord consents to the arrangement, the guaranty continues to apply. *Roth*, 359 Ill. App. 3d at 1031. The rule was then re-stated and applied in the context of leases that "[t]he guarantor of a lease, absent his or her consent, cannot be held liable for the lessee's obligations incurred during any extended term other than one secured in accordance with the lease's terms." *Roth*, 359 Ill. App. 3d at 1028 (citing *T.C.T. Building*, 323 Ill. App. 3d at 118).

¶ 54 Although defendant argues that there was no automatic renewal or extension of the original lease, paragraph 43 of the original lease provided that it would be automatically renewed "unless either party notifies the other in writing in accordance with Paragraph 16," which did not happen. Paragraph 43 of the lease also provided that "[i]f Lessee elects not to renew this Lease, Lessee shall give Lessor at least sixty (60) days written notice prior to the end of the original

term or any succeeding Renewal Terms," which also did not happen. Defendant has not put forth any evidence that she notified plaintiff, in writing in accordance with the termination provisions, that she would terminate the lease. Thus, the lease automatically renewed at the expiration of the initial five-year term.

¶ 55 The guaranty also continued in effect during the automatic renewal period, after the natural expiration of the lease on June 30, 2006, because the automatic renewal was in accordance with the terms of the lease. The amount of the rent remained the same, and the rental properties remained the same. None of the terms or conditions were changed during the automatic renewal period after the initial five-year term. Thus, defendant remained individually liable under the guaranty during the automatic renewal period after June 30, 2006.

¶ 56 5. Addendum IV is a Modification of the Original Lease.

¶ 57 However, the automatic renewal of the lease and renewed guaranty continued only up until the date Addendum IV was executed, on May 29, 2009, as Addendum IV did not merely renew or extend the original lease; it modified its terms. Addendum IV did not occur on a regular renewal date. Addendum IV altered the terms of the original lease to include additional leased premises and a substantially increased rent in consideration.

¶ 58 The trial court found that the extended term of Addendum IV "was not in accordance with [the] original lease terms concerning automatic five[-]year renewals, which put a limit on future rent increases and did not contemplate any additional space being added to the demised premises," and that, therefore, under *Roth*, defendant's guaranty did not cover the extended term under Addendum IV. When a lessor, without the consent of the guarantor, permits a lessee to exercise its option to extend a lease's term without strictly complying with the provisions

contained in the lease, the guarantor is released from liability during the extended term. *T.C.T. Building Partnership*, 323 Ill. App. 3d at 118.

¶ 59 Plaintiff argues that it has always contended, and maintains on appeal, that Addendum IV was incorporated by reference into the original lease and thus is part of the original lease. Plaintiff relies on section 16, subsection (h) of the original lease which states, "Provisions typed on the back of this lease signed by Lessor and Lessee and all riders attached to this lease and signed by Lessor and Lessee are hereby made a part of this lease as though inserted in this section."

¶ 60 "A 'modification' of a contract is a change in one or more respects which introduces new elements into the details of the contract, or cancels some of them, but leaves the general purpose and effect undisturbed." *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 36 (citing *Hartwig Transit, Inc. v. Menolascino*, 113 Ill. App. 3d 165, 170 (1983); *International Business Lists, Inc. v. American Telephone & Telegraph Co.*, 147 F.3d 636, 640 (7th Cir.1998) (applying Illinois law)). That is exactly what happened here. Addendum IV changed the leased premises to include more property and changed the rent due, while keeping all other "terms and conditions" of the original lease. As plaintiff points out in its brief, Addendum IV specifically indicates as alleged in paragraph 15 of the amended complaint, "All conditions to remain the same as original lease dated April 4, 2001." Addendum IV thus is a modification of the lease.

¶ 61 Defendant also argues in the alternative that there was no new consideration to support Addendum IV's modification of the lease. "A contract modification must satisfy the same criteria required for a valid contract: offer, acceptance, and consideration." *Watkins v. GMAC Fin. Services*, 337 Ill. App. 3d 58, 64 (2003) (citing *Nebel, Inc. v. Mid–City National Bank of*

Chicago, 329 Ill. App. 3d 957, 964 (2002)). "Preexisting obligations are not sufficient consideration." *Watkins*, 337 Ill. App. 3d at 64 (citing *Johnson v. Maki and Associates, Inc.*, 289 Ill. App. 3d 1023, 1028 (1997)). But here Addendum IV clearly provides for the lease of more property in exchange for a higher rent, which was not a preexisting obligation. There was thus sufficient consideration to support Addendum IV's lease modification.

¶ 62 We note, however, that Addendum IV was not typed on the back of the lease, nor was it attached to the lease, as the incorporation by reference provision requires. Addendum IV was a separate modification of the original lease. It is unclear whether the parties anticipated that such separate modifications would be incorporated by reference. Nevertheless, even if it could be said that Addendum IV was incorporated into the original lease agreement by reference, we must look to the terms of the guaranty provision to determine whether the guaranty continued in effect, even for such a material modification, as we explain next.

¶ 63 6. A Material Modification of the Original Lease Terms,

Without Express Consent in the Guaranty to Future

Material Modifications, Releases the Guarantor.

¶ 64 The issue regarding whether the guaranty continued after Addendum IV is not that Addendum IV did not follow the renewal process (because the lease was automatically renewed and Addendum IV was a modification and not a renewal). Rather, the issue is whether the modification to the original lease was material, and if so, whether the guaranty contained express consent to such future material modifications. If the modification was material, and the guaranty did not state express consent to such future material modifications, then the guarantor is released from liability.

¶ 65 "In Illinois, the general rule is that 'a guarantor is not released unless the essentials of the original contract have been changed and the performance required of the principal is materially different from that first contemplated.' " *Chicago Exhibitors Corp. v. Jeepers! of Illinois, Inc.*, 376 Ill. App. 3d 599, 607 (2007) (quoting *Roels v. Drew Industries, Inc.*, 240 Ill. App. 3d 578, 581 (1992)). " ' "Unless there is some material change in the business dealings between the debtor and the creditor-guarantee and some increase in the risk undertaken by the guarantor, the obligation of the guarantor is not discharged." ' " *Chicago Exhibitors Corp*., 376 Ill. App. 3d at 607 (quoting *Roels*, 240 Ill. App. 3d at 582, quoting *Essex International, Inc. v. Clamage*, 440 F.2d 547, 550 (7th Cir.1971)). " 'Whether a guarantor is exposed to an increase in the risk it originally undertook is a key variable in determining whether there has been a material change in the guaranty agreement.' " *Chicago Exhibitors Corp*., 376 Ill. App. 3d at 607 (quoting *Roels*, 240 Ill. App. 3d at 582).

¶ 66 Of course, where the terms of the guarantee specify that the guaranty shall be effective regardless of any modifications to the lease, this rule releasing the guarantor is inapplicable and courts will give effect to the blanket continuing guaranty. See *Chicago Exhibitors Corp*., 376 Ill. App. 3d at 609 (guaranty specifically provided that the guaranty would remain intact regardless of changes and modifications to the lease). See also *Zirp–Burnham, LLC v. E. Terrell Associates, Inc*., 356 Ill. App. 3d 590, 605 (2005) (where guaranty provided that the guarantor " 'guarantee[d] the landlords, its successors and assigns, the prompt and full payment of all Rent,' 'notwithstanding any amendment, addition, assignment, sublease, transfer, renewal, extension or other modification of the Lease,' " (emphasis omitted) the guarantor was not relieved from personal liability). Such language is not present in the guaranty in this case, however, where the

guaranty said nothing about continuing in effect regardless of extensions or modifications to the lease terms.

¶ 67 Plaintiff argues in its reply brief that the lease contemplated "agreements" of the lease, and thus that the execution of the original lease sufficed as consent to further modification and continuing effect of the guaranty. However, plaintiff misses the fact that the original lease was also executed by defendant in her corporate capacity. Although the signature line does not indicate any corporate capacity, the lessee was clearly B&F and paragraph 34 of the lease specifically stated: "It is expressly represented by Lessee and its officers executing this lease upon its behalf, that the Lessee is a Corporation duly organized and existing under the laws of the State of Illinois, and duly authorized by the State of Illinois to do business in Illinois; and that the execution of this lease by said President has been duly authorized by resolution of its Officers."

¶ 68 The guaranty language quoted by plaintiff in support of its argument on this point contains language for irrevocability of the guaranty only in the case of assignments by the lessee:

> "The *Lessor's [sic] consents to any assignment or assignments*, and *successive assignments* by the Lessee and Lessee's assigns, of this lease, made either with or without notice to the undersigned, or changed or different use of the demised premises, or Lessor's forbearance, delays extensions of time or any other reason whether similar to or different from the foregoing, *shall in no wise manner release the undersigned from liability as guarantor*." (Emphases added.)

¶ 69 In the case before us, there is no similar language regarding the continuing liability under the guaranty despite any *modifications*. Plaintiff argues that an original document's language may control in the absence of any personal guaranty reaffirmation and that the language of the

guaranty is controlling, citing to *Zirp-Burnham*. However, in *Zirp-Burnham*, the guaranty specifically provided that the guarantor "guarantee[d] the landlords, its successors and assigns, the prompt and full payment of all Rent," "notwithstanding any amendment, addition, assignment, sublease, transfer, renewal, extension or other modification of the Lease" (emphasis omitted). *Zirp-Burnham*, 356 Ill. App. 3d at 605. The guarantor was not released in that case because the guaranty was a blanket guaranty specifically covering "any" "modification." In the present case, there is no such broad, blanket language mandating the continuing effect of the guaranty despite any modification. Without any specific provision stating that the guaranty would continue even with modifications, the law is clear that a guarantor is released when there is a material modification increasing his or her risk.

¶ 70 In its motion to reconsider below, and on appeal, plaintiff also relies on *Lawndale Steel Co. v. Appel*, 98 Ill. App. 3d 167, 173 (1981). In *Lawndale*, the court held that "the test of materiality is not whether the alteration ultimately harmed or benefitted the guarantor, but whether it substantially affected a contractual right." *Lawndale Steel Co*., 98 Ill. App. 3d at 174. The court held:

> "Here, a specific price term was agreed upon and then increased by one third *without the guarantor's consent*. This modification substantially altered Lawndale's obligation. It is entirely possible that a considerable raise in price could contribute to a default. It certainly varied the 'manner' and 'circumstances' (Telegraph Savings) of Appel's original obligation under his contract of guaranty, and increased his risk." (Emphasis added.) *Lawndale Steel Co*., 98 Ill. App. 3d at 174.

¶ 71 Because the substantial price increase was material, the court held that the price increase discharged the guarantor. *Id*.

¶ 72 Here, the rent amount due under Addendum IV was triple the amount of the original lease. The risk to defendant individually as guarantor was substantially increased. We find that Addendum IV was a material change to the lease which should release defendant from her personal guaranty.

¶ 73 However, we emphasize the fact that, in *Lawndale*, the price term was substantially increased "without the guarantor's consent." *Id.* In reaching its decision, the *Lawndale* court noted one of the exceptions to this well-established rule and reiterated that the "rule has no application where the guarantor has knowledge of and assents, either expressly or by implication, to such change." *Lawndale Steel Co.*, 98 Ill. App. 3d at 172 (citing *Bank of Commerce v. Riverside Trails*, 52 Ill. App. 3d 616 (1977)). The question then arises whether defendant's execution of Addendum IV in her corporate capacity operates as consent to her continuing her guaranty as part of the original lease agreement.

¶ 74 7. Signing a Lease Modification in a Corporate Capacity

Does Not Constitute Assent to an Increase in Individual Guarantor Liability.

¶ 75 Plaintiff argues that defendant had full knowledge of and acquiesced to Addendum IV to the original lease agreement when she executed it. Defendant signed the guaranty in her individual capacity. However, defendant signed Addendum IV in her name on behalf of "B&F Technical Code Services, Inc." indicated under her signature line, thus in her corporate capacity and not in her individual capacity.

¶ 76 In Illinois, " 'a corporation is a legal entity separate and distinct from its shareholders, directors and officers.' " *Stark v. Illinois Emcasco Ins. Co.*, 373 Ill. App. 3d 804, 808 (2007) (quoting *Rohe v. CNA Insurance Co.*, 312 Ill. App. 3d 123, 127, (2000)). In Illinois, a corporation is "an entity separate and distinct from its officers, shareholders, and directors, and

those parties will not be held personally liable for the corporation's debts and obligations." *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc*., 371 Ill. App. 3d 1019, 1033 (2007). "One of the purposes of a corporate entity is to immunize the corporate officer from individual liability on contracts entered into in the corporation's behalf." *People ex rel. Madigan v. Tang*, 346 Ill. App. 3d 277, 284 (2004) (quoting *National Acceptance Co. of America v. Pintura Corp*., 94 Ill. App. 3d 703, 706 (1981)). "The interests of the corporate officers and that of the corporation, a distinct legal entity, are separate." *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, ¶ 17. Limited liability will ordinarily exist even though the corporation is closely held or has a single shareholder. *Apollo Real Estate Inv. Fund, IV, L.P. v. Gelber*, 398 Ill. App. 3d 773, 787 (2009) (citing *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 526 (2002)).

¶ 77 "However, the officers and directors may be held liable for the debts of the corporation 'when the corporation is merely the alter ego or business conduit of a governing or a dominating personality.' " *Dismuke v. Rand Cook Auto Sales, Inc*., 378 Ill. App. 3d 214, 218 (2007) (quoting *Macaluso v. Jenkins*, 95 Ill.App.3d 461, 464 (1981)). "[A] judgment creditor may initiate an action to pierce the corporate veil to enforce a judgment against a corporation's shareholders." *Gelber*, 398 Ill. App. 3d at 787 (citing *Peetoom*, 334 Ill. App. 3d at 527). But plaintiff did not bring an action to pierce the corporate veil to collect B&F's rent; instead, plaintiff sued defendant directly in her individual capacity as guarantor. Given the clear law in Illinois that a corporation is a distinct entity, neither defendant's execution of the lease nor of Addendum IV in her corporate capacity indicated her individual consent to extend the guaranty for the original lease to cover Addendum IV's material modification.

¶ 78 We therefore affirm the trial court's grant of defendant's 2-615 motion to dismiss, as the pleadings themselves show that defendant is not personally liable under the guaranty as alleged.

¶ 79 II. Motion for Reconsideration.

¶ 80 Plaintiff also argues that the court erred in denying its motion for reconsideration. Defendant makes no response to plaintiff's argument, nor does she address the merits of this argument, in her appellate response brief.

¶ 81 Plaintiff argues that the court entirely misunderstood the nature of its motion to reconsider and addressed plaintiff's argument concerning the Lawndale case, when in fact plaintiff's motion to reconsider was based on plaintiff's argument that the court misinterpreted the law and misunderstood the actual standard of review. We already rejected plaintiff's argument that the court misunderstood the correct standard of review, as the court's dismissal order clearly indicates the correct standard of review for 2-615 dismissals and its application to this case by the court.

¶ 82 We now also address plaintiff's argument that the court erred in denying its motion to reconsider and should have granted it where the court misinterpreted the law regarding guaranties and lease extensions. Where a motion to reconsider is based only on the allegation that the circuit court misapplied existing law, the *de novo* standard of review applies. C*ompton v. County Mutual Insurance Co.*, 382 Ill. App. 3d 407, 415 (2006) (citing *Muhammad v. Muhammad-Rahmah*, 363 Ill. App. 3d 407, 415 (2006)).

¶ 83 We find that the court did not misinterpret the law. In its order denying plaintiff's motion to reconsider, the court followed the rule in *Roth*. The court stated, "[v]iewed most favorably to plaintiff, Addendum IV was an extension of the original ease," but {a} the court held in *Roth v. Dillavou*, 359 Ill. App. 3d 1023, 1028 (2d Dist. 2005), unless the language of a lease guarantee specifically provides otherwise, the guarantee will not cover 'any extended term other than one secured in accordance with the lease's terms.' " The court correctly recited and applied the law.

We find no error in the court's denial of plaintiff's motion to reconsider. We affirm the order denying the motion to reconsider as well.

¶ 84 CONCLUSION

¶ 85 The lease addendum in this case materially modified the original lease in modifying the property leased and nearly tripling the rental amount, thereby releasing defendant from her individual guaranty in the original lease. The guaranty did not state it would continue in effect with any modifications, and thus consent to the material modification was necessary. Because the addendum was executed in defendant's corporate capacity, and not her individual capacity, it could not be considered her individual consent to continue her liability on the guaranty. The circuit court correctly granted dismissal and denied plaintiff's motion for reconsideration.

¶ 86 Affirmed.