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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

SMS FINANCIAL 30, LLC
Plaintiff

FREDERICK D. HARRIS M.D., INC., ET AL.
Defendant

Case No: CV-16-857614

Judge: SHANNON M GALLAGHER

JOURNAL ENTRY

98 DISPOSED - FINAL

FINDINGS OF FACT AND CONCLUSIONS OF LAW. O.S.J.
COURT COST ASSESSED TO THE DEFENDANT(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

O.S.J.
Judge Signature Date

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CUYAHOGA COUNTY

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04/11/2017

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

SMS FINANCIAL 30, LLC	)	**CASE NUMBER: CV 16-857614**
	)	
Plaintiff,	)	
vs.	)	**JUDGE: SHANNON M. GALLAGHER**
	)	
FREDERICK D. HARRIS M.D., INC., et al.	)	**FINDINGS OF FACT AND CONCLUSIONS OF LAW**
	)	
Defendants.	)	
	)	

Shannon M. Gallagher, J.:

I. INTRODUCTION AND STATEMENT OF THE CASE

Plaintiff, SMS Financial 30, LLC, filed suit against Defendant Frederick D. Harris M.D., Inc. for breach of a Small Business Equity Line of Credit Agreement with National City Bank (the "LOC") (count one of Complaint) and against Defendant Frederick D. Harris for breach of Guaranty of Payment – Waiver of Rights in favor of National City Bank (count two of the Complaint). Defendants admit that they executed the LOC but deny the material allegations of the Complaint to the extent that there is a breach of the LOC or that Plaintiff is entitled to recover.

After both Plaintiff and Defendant moved for summary judgment, this Court issued the following order:

> Plaintiff's motion for summary judgment, filed 06/16/2016, is denied. Defendants' cross-motion for summary judgment and brief in opposition to plaintiff's motion for summary judgment, filed 09/09/2016, is granted in part. The court finds that defendants are entitled to summary judgment on plaintiff's request for attorney fees contained in the complaint. Pursuant to R.C. 1319.02, plaintiff is not entitled to its attorney fees as line of credit underlying plaintiff's complaint is a "contract of indebtedness" that does not exceed one hundred thousand dollars. The court finds that there are issues of material fact as to whether proper, certified mail notice of the dissolution of Frederick D. Harris, M.D., Inc. was provided to plaintiff's predecessor, PNC Bank, in 2013 and also as to the assignment of the line of credit and personal guaranty to plaintiff from PNC Bank. The court finds

that the line of credit is a negotiable instrument subject to the statute of limitations of R.C. 1303.16. The court further finds that the complaint is not time barred as the line of credit was accelerated on May 1, 2012, six years within the filing of this complaint on 01/20/2016. See R.C. 1303.16(a).

This matter proceeded to a bench trial on March 15, 2017. Plaintiff presented sworn testimony of Robert Stewart, in-house counsel for SMS Financial from 1998 to the present. Defendant presented sworn testimony from Milton Jefferson, Esq., Defendants' attorney, and Defendant Dr. Frederick Harris.

Based upon the evidence and testimony presented at trial, the court finds in favor of Plaintiff on both counts and renders judgment in the amount of $57,395.94 against Defendants, jointly and severally, as well as costs of this action.

II. FINDINGS OF FACT

A. THE LINE OF CREDIT AGREEMENT AND GUARANTY

On or about March 22, 2000, Frederick D. Harris M.D., Inc. entered into a Small Business Equity Line of Credit Agreement with National City Bank (the "LOC"), account number ending in 4574, entered into evidence at trial as **Exhibit 1**. Pursuant to the terms and conditions of the LOC, National City Bank issued various loans ("Advances") to Frederick D. Harris M.D., Inc. Paragraph 3 of the Note provides that the Advances would accrue interest at the Wall Street Journal Prime Rate. Paragraph 3 of the Note also provided that in the event of a default, the Advances would accrue interest at an additional three percentage points (3%).

Pursuant to the terms and conditions of the LOC, Defendant Frederick D. Harris executed a Guaranty of Payment – Waiver of Rights in favor of National City Bank. The Guaranty of Payment is set forth on page 4 of the LOC. The Harris Defendants admit that Harris signed the LOC on behalf of his company, the Harris Corporation, and that they drew advances or loans on the LOC.

B. DEFENDANT FREDERICK D. HARRIS, M.D., INC. DISSOLVES

In 2013 Defendant Frederick Harris, M.D., Inc. dissolved. Attorney Milton Jefferson handled the dissolution. On June 18, 2013, Mr. Jefferson sent a notice to PNC, by certified and regular mail, advising that Defendant Frederick Harris, M.D., Inc. was being dissolved and there were no remaining assets in the corporation to be used to settle outstanding debts. **Exhibit D.**[1]

C. SMS' PURCHASE OF THE LOC AND GUARANTY

Plaintiff SMS is a limited liability company having its principal place of business in Phoenix, Arizona.

On or about October 29, 2014, Plaintiff acquired and purchased the LOC from PNC Bank, the successor by merger to National City Bank.

Pursuant to the Loan Sale Agreement, PNC sold, assigned and transferred any and all rights in and to the LOC to Plaintiff. A true and accurate copy of the General Assignment is marked as **Exhibit 2.** See also Plaintiff's **Exhibit 6**, the Loan Sale Agreement.

D. THE DEFENDANT'S DEFAULT

Thereafter, as a result of the execution of the Allonge, **Exhibit 1-A**, and the General Assignment and Loan Sale Agreement, **Exhibit 2**, SMS became the owner and holder of, among other things, the Note, as well as all of National City Bank's and PNC's records, reports, payment histories, and related documents which relate to the Loan. PNC's records, reports and payment histories, and related documents which relate to the Loan have been integrated and incorporated into SMS's records which SMS keeps in the regular course of SMS's business, and it is the regular course of SMS's business to keep those records, reports, payment histories, and related documents which relate to the Loan.

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[1] Although Exhibit D does not indicate that it was sent by certified mail, Mr. Jefferson testified that he remembered sending the letter by certified mail, and the court finds this testimony credible.

Entered into evidence as **Exhibit 3** are six months of statements issued by PNC Bank to the Borrower on this account from February, 2012 to July, 2012. These statements were delivered to SMS at the time of its purchase of the account and integrated into the records of SMS. The statements demonstrate that the last payment made by Borrower was in April, 2012. Further, the statements provide on the last page of each statement the current principal balance and applicable interest rate on the account as of the date of each statement.

Pursuant to the LOC, Defendants were required to make installment payments of principal and interest on the first day of each month. As of May 1, 2012, Defendants were in default of the terms and conditions set forth in the above stated LOC including but not necessarily limited to the failure to pay principal, interest and other charges.

As of May 1, 2012, Defendants failed to make the required principal and interest payments due to Plaintiff. As of the date of default, the applicable contract rate of interest charged on the account was 3.25%. Thereafter, the default rate of 6.25% per annum was applied to the account balance.

On or about October 23, 2015, Plaintiff placed Defendants on notice that a Default occurred under the terms of the LOC, and, as a result of this Default, all or any one of the rights, powers, privileges and other remedies available to the Plaintiff against Defendants of the LOC or at law or in equity may be exercised by the Plaintiff at any time whether or not the Plaintiff commenced any collection action, foreclosure proceeding or other litigation for enforcement of its rights and remedies under the LOC. A true and accurate copy of the Demand Notice was entered into evidence as **Exhibit 4**.

Plaintiff further notified Defendants that Plaintiff declared all of the indebtedness evidenced by the LOC, including the Guaranty agreements, to be immediately due and payable

and that for so long as any Default continued to exist, the unpaid principal balance of the LOC would continue to bear interest and late charges and any other applicable charges or obligations would continue to accrue. Plaintiff further notified Defendants that the Default Balance would increase on a per diem basis pursuant to the LOC.

With regard to the LOC, the total amount of indebtedness as of October 16, 2015, is as follows:

PRINCIPAL	$ 46,762.64
ACCRUED INTEREST	$ 10,633.30
TOTAL	$ 57,395.94

A true and accurate copy of the Statement of Account was admitted into evidence as **Exhibit 14.**

Despite due demand, Defendants failed and refused to pay the Default Balance on the LOC.

III. CONCLUSIONS OF LAW

A. BREACH OF CONTRACT

SMS is the assignee and current holder of the LOC. SMS obtained its rights to enforce the LOC through a chain of assignments. SMS submitted evidence and testimony proving the assignment of the LOC. *Zwick & Zwick v. Suburban Constr. Co.*, 103 Ohio App. 83, 134 N.E.2d 733 (8th Dist. 1956), paragraph one of the syllabus.

First, NCB merged with and into PNC Bank effective the close of business on November 6, 2009. A certified copy of the official certification of the Comptroller of the Currency, which was filed with the Commonwealth of Pennsylvania, Department of State, December 17, 2009 was entered into evidence as **Exhibit 5.**

PNC sold, assigned and transferred all rights in and to the LOC to Plaintiff on or about October 29, 2014. As such, Plaintiff is entitled to enforce the LOC pursuant to R.C. 1303.31.

The evidence also demonstrates that the Defendants are in default, and that no payment has been made on the account since April 1, 2012. All conditions precedent have been met, including notice, which Plaintiff sent to the Defendants on or about October 23, 2015.

B. ADOPTED BUSINESS RECORDS

In order to be admissible, business records must be authenticated by evidence sufficient to support a finding that the matter in question is what its proponent claims. Evid. R. 901. Pursuant to Evid. R. 901(B)(10), authentication of business records "is governed by Evid.R. 803(6)." *Cent. Mtge. Co. v. Bonner,* 12th Dist. Butler No. CA2012-10-204, 2013-Ohio-3876, ¶14, citing *Great Seneca Fin. v. Felty,* 170 Ohio App.3d 737, 2006-Ohio-6618, ¶9 (1st Dist.); *Ohio Receivables, LLC. v. Dallariva,* 10th Dist. Franklin No. 11AP-951, 2012-Ohio-3165, ¶18.

To qualify for admission under Evid. R. 803(6), "a business record must manifest four essential elements: (i) the record must be one regularly recorded in a regularly conducted activity; (ii) it must have been entered by a person with knowledge of the act, event or condition; (iii) it must have been recorded at or near the time of the transaction; and (iv) a foundation must be laid by the custodian of the record or by some other qualified witness." *Bonner* at ¶13, citing *State v. Glenn,* 12th Dist. Butler No. CA2009-01-008, 2009-Ohio-6549, ¶17; and *State v. Davis,* 116 Ohio St.3d 404, 2008-Ohio-2, ¶171. Even after the above elements are established, however, a business record may be excluded from evidence if "the source of information or the method of circumstances of preparation indicate lack of trustworthiness." *Id.*

Pursuant to the "adoptive business records exception, Evid. R. 803(6) does not require the witness whose testimony establishes the foundation for a business record to have personal knowledge of the exact circumstances of preparation and production of the document or of the

transaction giving rise to the record." *Green Tree Servicing, LLC v. Roberts*, 12th Dist. Butler No. CA2013-03-039, 2013-Ohio-5362, ¶30, quoting *Dallariva*, *supra*, 2012-Ohio-3165 at ¶19 (internal quotations omitted). Rather, the adoptive business records exception "permits exhibits to be admitted as business records of an entity even when the entity was not the maker of the records, so long as the other requirements of [Evid.R. 803(6)] are met and circumstances indicate the records are trustworthy." *Bonner*, 2013-Ohio-3876 at ¶16, quoting *Dallariva* at ¶20. "Records need not be actually prepared by the business offering them if they are received, maintained, and relied upon in the ordinary course of business" and "incorporated into the business records of the testifying entity." *Dallariva* at ¶20, citing *Great Seneca*, 2006-Ohio-6618 at ¶15.

In this case, Plaintiff's records custodian, Robert Stewart testified at trial as to the authenticity of the records acquired from PNC, namely the LOC and guarantee, **Exhibit 1**, and the account statements, **Exhibit 3**. Mr. Stewart has personal knowledge of the account at issue and provided all of his testimony based upon his personal review of the business records identified. Although the records were not created by SMS, the circumstances indicate that these records are trustworthy. The records were received, maintained, and relied upon in the ordinary course of business and incorporated into the business records of SMS. These records are therefore admissible as business records pursuant to Evid. R. 803(6).

C. PLAINTIFF HAS STANDING TO ENFORCE THE NOTE

The Harris Defendants argue that the chain of title and ownership of the LOC is "incomplete, and its ownership of the LOC is not conclusively established." The Harris Defendants appear to first argue that the J. Harris Affidavit does not properly authenticate the documents attached to it. Specifically, Defendants argue that the General Assignment and its

Schedule 1 are not properly authenticated because the referenced Loan Sale Agreement was not produced in discovery.

The General Assignment, **Exhibit 2**, and the attached Schedule 1, however, specifies the relevant account sold for purposes of the present case as being:

2014-00148-106	FREDERICK D. HARRIS, M.D., INC.	4857058001014574	4/28/2000	$50,000.00

The identification of the account sold, as identified on the Schedule 1 attached to the General Assignment, corresponds to the identification of the Borrower on the LOC (Frederick D. Harris, M.D., Inc.) and the amount identified on the LOC ($50,000.00), as well as the account number on the account statements issued to Defendants.

Specifically, the account statements, admitted into evidence as **Exhibit 3**, show the account number on the face of the document.

Business credit line

Account #	XXXX XXXX XXXX 4574
Statement closing date	02/08/12
New balance	$47,016.08
Total amount due	$253.44
Due date	03/04/12

Questions?

PNC BANK
PO BOX 3429
Pittsburgh PA 15230-8003

Check here if address, phone or e-mail changes are indicated on reverse side

	Account #	XXXX XXXX XXXX 4574
	New balance	$47,016.08
$	Total amount due	$253.44
2	Due date	03/04/12

PAYMENT ENCLOSED

$ ___,___.___

48570580010145740004701608000001267200000253445

In support of their argument, the Harris Defendants rely on *Premier Capital, LLC v. Baker,* 11th Dist. Portage No. 2011-P-0041, 2012-Ohio-2834. *Premier Capital* does not support the Harris Defendants' position. In *Premier Capital,* the debtor entered into a finance agreement with City Loan which assigned the agreement to RMA, which in turn, assigned the finance agreement to Premier. Premier failed to attach every assignment in the chain of title to the

affidavit in support including the assignment from City Loan to RMA. Next, the bill of sale referenced an exhibit which was not attached. Instead, Premier attached a "sheet of paper with a single entry with Mr. Baker's surname and some unexplained reference codes." *Id. at ¶45.* The Court found that this evidence was insufficient to show that Premier's Vice President had personal knowledge that Mr. Baker's note was part of the assets transferred to Premier. This case is distinguishable from the facts of *Premier Capital.*

In this case, Plaintiff submitted The General Assignment with a redacted Schedule of assigned accounts. The information relating to Defendants' account is clearly present on this Schedule. Moreover Robert Stewart has personal knowledge of these documents and is competent to provide testimony with regard to the General Assignment and the attached Schedule 1. Robert Stewart is the in-house counsel for SMS Management, LLC, which is the Manager of Plaintiff SMS Financial 30, LLC ("SMS"). Mr. Stewart is also in custody and control of all business records of the Plaintiff relating to the account at issue. Mr. Stewart testified that the business records entered into evidence at trial are all kept in the ordinary course of regularly conducted business activities. Mr. Stewart is also a Custodian of Records for SMS. He has personal knowledge of the account at issue and provided all of his testimony based upon his personal review of the business records identified.

By virtue of Mr. Stewart's position with SMS Management, LLC, Mr. Stewart has direct access to and regularly reviews the records, reports, payment histories, and related documents routinely prepared and/or maintained by employees of SMS for the benefit of SMS. Mr. Stewart has personal knowledge of and is familiar with the business of SMS and the mode of SMS's operations. The records, reports, payment histories, and related documents prepared by SMS's employees were made in the ordinary course of SMS's business and within the scope of the SMS

employees' employment. SMS's records, reports, payment histories, and related documents were made or obtained in the ordinary course of SMS's business by persons who have a business duty to SMS to prepare or provide those records, reports, payment histories, and related documents. The records, reports, payment histories, and related documents were made at or near the occurrence of the event or events of which they are a record.

Plaintiff is in possession of the original LOC, the Allonge, and the General Assignment, as well as the attached Schedule 1 and the account statements. **Exhibits 1, 1-A, and 2**. SMS has established chain of title and ownership of the account. SMS has complied with the adopted business records exception to the hearsay rule and all documents have been properly authenticated.

The Harris Defendants argue that Plaintiff failed to produce the Loan Sale Agreement in violation of this Court's August 26, 2016 Order. The Loan Sale Agreement has been produced, was properly authenticated at trial, and admitted as evidence as **Exhibit 6**. Defendants failed to demonstrate that they have been prejudiced by Plaintiff's failure to produce the Loan Sale Agreement prior to trial.

What's more, Plaintiff's compliance with the terms and conditions of the LSA is entirely irrelevant to Plaintiff's right to enforce the LOC. When a Plaintiff has established itself as the assignee of the loan documents when the case was filed, challenges to the validity or timeliness of the indorsement of the note and assignment of the mortgage are irrelevant. *Bank of New York Mellon v. Matthews,* 6th Dist. Fulton No. F-12-008, 2013-Ohio-1707, ¶24.

Finally, the Harris Defendants argue that Plaintiff cannot enforce the terms of the LOC because the LOC proffered as Exhibit 1 is not the correct LOC connected with the PNC account ending in 4574. Defendants argue that Exhibit 1 contains a 16-digit handwritten number that

does not match the account number connected with the account assigned to Plaintiff on Schedule 1 of the General Assignment or the account statements admitted as Exhibits 2 and 3, respectively. However, there was no evidence submitted supporting Defendants' contention that the 16-digit number handwritten at the top of Exhibit 1 is an account number. Further, the loan documents, Allonge, and General Assignment demonstrating Plaintiff's assignment of the LOC are trustworthy as properly-authenticated business records. The court finds Plaintiff has standing to bring this lawsuit.

D. DEFENDANT'S NOTICE OF DISSOLUTION WAS INEFFECTIVE TO BAR PLAINTIFF'S CLAIM

Ohio Revised Code 1701.87 requires a corporation to give notice of dissolution by certified mail to each known creditor. The notice shall state the following:

> (1) That all claims shall be presented in writing and shall identify the claimant and contain sufficient information to reasonably inform the corporation of the substance of the claim;
>
> (2) The mailing address to which the person must send the claim;
>
> (3) The deadline, which shall be not less than sixty days after the date the notice is given, by which the corporation must receive the claim;
>
> (4) That the claim will be barred if the corporation does not receive the claim by the deadline;
>
> (5) That the corporation may make distributions to other creditors or claimants, including distributions to shareholders of the corporation, without further notice to the claimant.

Defendants' attorney Milton Jefferson sent a notice of dissolution to PNC on or about June 18, 2013, admitted into evidence as **Exhibit D**. However, this notice did not state all the requirements contained within R.C. 1701.87(B). Accordingly, the notice does not bar Plaintiff's claim pursuant to R.C. 1701.87(D).

E. THIS LAWSUIT IS NOT TIME-BARRED BY THE STATUTE OF LIMITATIONS

Defendants move the court to reconsider its prior ruling that the LOC was accelerated on May 1, 2012. Defendants argue that the account was closed and the Statute of Limitations began to run on January 8, 2010.

Defendants received an account statement dated January 8, 2010 from National City Bank indicating that the account ending in 4574 was past due and requesting that Defendants remit the past due amount immediately, **Exhibit A**. The account statement included the notice "your account is currently closed."

However, this account statement did not toll the six-year statute of limitations. The account statement did not advise Defendants that National City Bank intended to accelerate the debt by demanding immediate repayment of the entire amount due. Defendants continued to receive monthly statements from PNC until May, 2014.[2]

Based upon testimony of Robert Stewart presented at trial, the LOC was accelerated not on May 1, 2012, but on October 23, 2015, when Plaintiff sent a notice of default to the Defendants, **Exhibit 4**. Plaintiff's complaint in this matter was filed on January 20, 2016, well within the six-year statute of limitations. R.C. 1303.16(a).

F. THE GUARANY IS ENFORCEABLE

A guaranty must be interpreted consistent with the expressed intent of the parties under an objective standard. *Wells Fargo Bank, N.A. v. WSW Franchising, Inc.*, Slip Copy, 2009 WL 2374559 at *4 (Ohio App. 10 Dist., 2009); citing *Advanced Sleep Products v. Soep,* 8 F.3d 25

[2] While Defendant Harris denied receiving statements or making additional payments after 1/8/2010, the court does not find this testimony to be credible. Defendants' attorney Milton Jefferson testified that he was aware of the debt by as late as mid-2013, and sent a letter on his clients' behalf attempting to notify PNC of Defendant LLC's dissolution on June 18, 2013.

(C.A.9, 1993); citing *Home Fed. Sav. & Loan Assn. v. Ramos,* 229 Cal.App.3d 1609, 1613, 284 Cal.Rptr. 1 (1991).

The Guaranty in question secures all of the debt evidenced by the LOC. Although a guaranty is initially a collateral obligation and liability of the guarantor is originally secondary, after maturity of the debt, default by the debtor, and performance by the creditor of any conditions precedent, the guarantor becomes a debtor of, and primarily liable to, the creditor. *Mutual Finance Co. v. Politzer*, 16 Ohio App. 2d 83, 241 N.E.2d 906 (8 Dist. 1968), reversed on other grounds in *Mutual Finance Co. v. Politzer*, 21 Ohio St.2d 177 (1971). Where guarantors are absolute and unconditional guarantors of payment, plaintiff, as creditor, has no duty to proceed first against the maker of the note. *Id*; *Society National Bank v. Duffy,* 8th Dist. Cuyahoga No. 65246, 1994 WL 144486 (April 21, 1994); *Stone v. National City Bank,* 106 Ohio App.3d 212, 665 N.E.2d 746 (8th Dist. 1995).

Ohio courts have consistently held "a continuing, unlimited guaranty is a separate and distinct agreement from loan agreements." *Midam Bank v. Dolin*, 6th Dist. Lucas No. L-04-1033, 2005-Ohio-3353, ¶110; *Fifth Third Bank v. Jarrell*, 10th Dist. Franklin No. 04AP-358, 2005-Ohio-1260, at ¶16.

Defendant Harris argues that the Guaranty is no longer enforceable because the guarantor did not "personally and unconditionally" guarantee "each and every obligation... until paid in full." Defendant Harris also argues that the guaranty was satisfied as soon as the balance of the LOC "zeroed." These arguments lack merit.

The Guaranty in question provides, in pertinent part:

> For value received, the undersigned ("Guarantor") guarantees the prompt payment of the indebtedness evidenced by and arising under the above Agreement when **each** payment becomes due, and approves **all** the provisions of the above Agreement. **Guarantor's liability under this Guaranty shall remain in effect**

> **until the Indebtedness evidenced by this Agreement is fully paid or until Lender gives Guarantor a written release**. Guarantor agrees that: (1) Guarantor's liability shall remain in effect even if Lender agrees to changes in basic terms of the Agreement without Guarantor's consent, such as (a) renewals or extensions of time, (b) releases of security or other obligors other than Guarantor, or (c) changes in the rate or method of computing interest; and (2) Lender need give Guarantor no notice of Default, no notice of any change in basic terms of the Agreement nor any other notice of any kind: and (3) Lender may proceed directly against Guarantor, whether or not Lender shall have first made any presentment or demand for payment to anyone and whether or not Lender proceeds against anyone else or against security (if any); and (4) **Guarantor will not use, and Guarantor hereby waives, any defense to Guarantor's direct and absolute obligation to pay the indebtedness evidenced by this Agreement when due, together with any interest accruing on the indebtedness evidenced by this Agreement**. To the extent that Borrower or any other person liable for all or any part of the indebtedness evidenced by this Agreement makes a payment or payments to the Lender, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be paid to a trustee, receiver or any other party under any bankruptcy act or any other law, then to that extent of such payment, the obligation of the Guarantor hereunder to make such payment shall remain in full force and effect as if such payment had not been made. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorney's fees and Lender's legal expenses, incurred in connection with the enforcement of this guaranty. (Emphasis supplied.)

Precise language is not required or mandated to render a guaranty enforceable. Instead, a guaranty must be interpreted consistent with the expressed intent of the parties under an objective standard. *Wells Fargo Bank, N.A. v. WSW Franchising, Inc.*, 10th Dist. Franklin No 09AP-26, 2009 Ohio App. LEXIS 3265, ¶15 (Aug. 4, 2009); citing *Advanced Sleep Products v. Soep,* 8 F.3d 25 (C.A.9, 1993). Words used in a guaranty are to be interpreted "in light of the surrounding circumstances and of the object intended to accomplished." *Id.*, quoting *Morgan v. Boyer*, 39 Ohio St. 324 (1883). A guaranty is not rendered ambiguous by the absence of certain terms such as "personally" or "continuing." *See, e.g., MidAm Bank v. Dolin*, 6th Dist. Lucas No. 05-LW-2836, 2005-Ohio-3353, ¶64.

In the present case, the Guaranty in question specifically "guarantees the prompt payment of the indebtedness evidenced by and arising under the above Agreement when each payment becomes due, and approves all the provisions of the above Agreement." The provisions of the LOC included the ability to obtain additional advances, *see ¶2 of the LOC,* and it is undisputed that Defendant Harris Corporation did obtain additional advances. Defendant Harris also agreed that his "liability under this Guaranty remains in effect until the Indebtedness evidenced by this Agreement is fully paid or until Lender gives Guarantor a written release." Defendant Harris agreed that he "will not use, and Guarantor hereby waives, any defense to Guarantor's direct and absolute obligation to pay the indebtedness evidenced by this Agreement when due, together with any interest accruing on the indebtedness evidenced by this Agreement."

A person who signs a guaranty is charged, as a matter of law, "with knowledge of the content of the guarantee." *Barclays American/Commercial, Inc. v. ROYP Marketing Group, Inc.*, 61 Ohio App.3d 701, 706, 573 N.E.2d 1115 (10th Dist. 1988); *Jazwa v. Alesci*, 8th Dist. Cuyahoga Nos. 69857 and 69881, 1996 WL 517639 (Sept. 12, 1996), at *14 ("it is unreasonable for any court to assume that a guarantor signs a guaranty without understanding the nature of the document").

The Guaranty reaches beyond the initial advances and continues to be enforceable as to any account balance, even after the LOC reaches a "zeroed" balance.

Finally, Defendant Harris argues that the Guaranty is unenforceable because the LOC is no longer enforceable due to PNC Bank and/or NCB Bank's alleged failure to make a claim under R.C. 1701.87(D). This argument lacks merit because the Harris Corporation failed to comply with R.C. 1701.87 and because Defendant Harris waived "any defense to Guarantor's direct and absolute obligation to pay the indebtedness evidenced by this Agreement."

IV. CONCLUSION

For the foregoing reasons, judgment is rendered in favor of Plaintiff SMS Financial 30, LLC and against Defendants Frederick D. Harris M.D., Inc. and Frederick D. Harris, jointly and severally, in the following amount:

PRINCIPAL	$46,762.64
ACCRUED INTEREST (as of October 16, 2015)	$ 10,633.30
TOTAL	$57,395.94

Interest from October 16, 2015 shall accrue on the total amount due at the rate of 6.25% per annum until paid in full.

IT IS SO ORDERED.

Date: April 11, 2017

SHANNON M. GALLAGHER, JUDGE