JAMES DONNAN : NUMBER 533,670 - B

VERSUS : FIRST JUDICIAL DISTRICT COURT

EASTEX MATERIALS INC. : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT**

**ON MOTIONS FOR SUMMARY JUDGMENT**

The Court has considered the Motion for Summary Judgment, filed July 19, 2013 by James Donnan (Donnan), its exhibits and memoranda, the Cross Motion for Summary Judgment filed October 4, 2013 by Eastex Materials Inc. (Eastex), its exhibits and memoranda, oral arguments of counsel held on November 4, 2013 and applicable law. Based on a thorough review of the record, and for reasons which follow, the Court concludes that Donnan’s Motion for Summary Judgment should be granted and that the Cross Motion by Eastex should be denied.

A contract of “guaranty” is equivalent to a contract of “suretyship,” and the two terms may be used interchangeably.[[1]](#footnote-1) As such, contracts of guaranty, like contracts of suretyship, are subject to the same rules of interpretation as contracts in general.[[2]](#footnote-2) A suretyship must be express and in writing.[[3]](#footnote-3) The Court must give legal effect to all written contracts according to the true intent of the parties, which must be sought within the four corners of the instrument.[[4]](#footnote-4)

Focusing on the instrument, it is clear that Donnan guaranteed only the debts of Ameri-Tech Building Systems, LLC (ABS), and not those of ACP Ameri-Tech Acquisition, LLC (ACP), the latter of which was not a party to the March 13, 2006 contract between Eastex and ABS. Because of this unambiguous language, any issue arising out of this instrument as it would pertain to ACP and Donnan is immaterial -- Eastex, ABS, and Donnan were the only named parties to the original agreement, and all of the outstanding invoices claimed by Eastex (which invoices reflect obligations incurred after November 2008) are those of ACP.

Eastex had sufficient knowledge and ample opportunity to modify the existing agreement to include ACP as a party, to execute a new agreement with ACP and to secure any future indebtedness with an individual surety, such as Donnan. Eastex’s failure to do so precludes it, as a matter of law, from recovering on an open account from a totally separate business entity, which was unnamed in the original agreement, regardless of that separate entity’s asset or membership structure. Stated another way, the bottom line is the debts at issue are the debts of ACP. A suretyship must be in writing and there is no writing in which Donnan consented to act as a surety for ACP. Thus, Donnan is not the surety or guaranty of ACP and cannot be held liable for the debts at issue. When the 2007 ASP/ABS purchase agreement was effected, Eastex could have obtained another suretyship from Donnan but declined to do so, thus leaving an inadequate security device for the open account. Accordingly, the Motion For Summary Judgment by James Donnan is granted and the Cross Motion for Summary Judgment by Eastex is denied.

Counsel shall submit formal judgments in accordance with this ruling and La. Dist. Ct. R. 9.5.

Signed this 8th day of November, 2013, in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

Kristina B. Gustavson, Counsel for James Donnan

Walter D. White, Counsel for Eastex Materials, Inc.

1. *Custom-Bilt Cabinet & Supply, Inc. v. Quality Built Cabinets, Inc.*, 32,441, 748 So.2d 594 (La. App. 2d Cir. 1999) [↑](#footnote-ref-1)
2. *Id*. at 599 [↑](#footnote-ref-2)
3. La. Civ. Code art. 3038. [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)