

ELLSWORTH AMERICAN, INC.¹

v.

DAVID J. GOULD

Argued February 7, 2011

Decided March 10, 2011

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, MEAD, GORMAN, and
JABAR, JJ.

MEMORANDUM OF DECISION

David J. Gould appeals from a judgment in favor of Ellsworth American, Inc., entered by the District Court (Ellsworth, *Staples, J.*). The judgment, following a nonjury trial, found Gould personally liable for amounts that Dave Gould Ford, Inc. (the Corporation) owed to The Ellsworth American under an advertising contract.

Contrary to Gould's contentions, the court did not err in finding, by a preponderance of the evidence, that Gould entered into an oral agreement guaranteeing the debt owed by the Corporation. *See Wood v. Bell*, 2006 ME 98, ¶ 12, 902 A.2d 843, 849 ("It is primarily for the factfinder to judge the credibility of witnesses and to consider the weight and significance of any other evidence."); *Rulon-Miller v. Carhart*, 544 A.2d 340, 341 (Me. 1988) (stating that whether parties have made an oral contract is mainly a question of fact reviewed for clear error); *Graybar Elec. Co. v. Sawyer*, 485 A.2d 1384, 1388-89 (Me. 1985) (holding that the fact-finder could rationally find by a preponderance of the evidence the existence of a guarantee by an oral contract).

¹ Ellsworth American, Inc. is the corporation name as it appears in the court papers. The corporation publishes *The Ellsworth American* newspaper.

Additionally, the court did not err as a matter of law in concluding that the “main purpose” exception applied, taking Gould’s oral guarantee out of the statute of frauds, 33 M.R.S. § 51(2) (2010),² such that Ellsworth American was not barred from seeking to enforce the agreement. *See Fitzgerald v. Hutchins*, 2009 ME 115, ¶¶ 20-21, 983 A.2d 382, 389-90; *Graybar*, 485 A.2d at 1389-90. Whether or not Gould actually received a “substantial, immediate, and pecuniary” benefit from his promise, the record supports the determination that the main purpose for his promise was his expectation of receiving such a benefit. *See Fitzgerald*, 2009 ME 115, ¶¶ 21-22, 983 A.2d at 389-90; *Graybar*, 485 A.2d at 1389-90; *see also Wolff Ardis, P.C. v. Kimball Prods., Inc.*, 289 F. Supp. 2d 937, 942-43 (W.D. Tenn. 2003); *Precision Commc’ns, Inc. v. Rodrigue*, 451 A.2d 300, 302 (Me. 1982).

The entry is:

Judgment affirmed.

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² Section 51(2) provides:

No action shall be maintained in any of the following cases:

....

2. Debt of another. To charge any person upon any special promise to answer for the debt, default or misdoings of another;

....

unless the promise, contract or agreement on which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith, or by some person thereunto lawfully authorized; but the consideration thereof need not be expressed therein, and may be proved otherwise.

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Ellsworth District Court docket number CV-2007-298
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