

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT JACKSON

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**EQUITEC REAL ESTATE  
INVESTORS FUND XII,**

Plaintiff-Appellee,

Vs.

Shelby Equity No. 99398-3  
C.A. No. 02A01-9506-CH-00127

**POPLAR PIKE, INC.,  
(a/k/a WINCOR, INC.),  
JOHN E. GOODWIN and  
CHARLES EUGENE GOODWIN,**

Defendants-Appellants.

**FILED**

**August 15, 1996**

**Cecil Crowson, Jr.**  
**Appellate Court Clerk**

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FROM THE CHANCERY COURT OF SHELBY COUNTY

THE HONORABLE CHARLES O. MCPHERSON, Special  
Chancellor Sitting by Designation

Jerome A. Broadhurst, Harkavy, Shainberg, Kosten & Pinstein  
of Memphis, For Plaintiff-Appellee

Donald W. Pemberton of Memphis for Defendants-Appellants

***AFFIRMED IN PART, VACATED IN PART AND REMANDED***

Opinion filed:

**W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.**

**CONCUR:**

**ALAN E. HIGHERS, JUDGE**

**HOLLY KIRBY LILLARD, JUDGE**

This appeal involves a suit seeking damages based upon a lease agreement and a guaranty of that lease agreement. Defendants, Poplar Pike, Inc., and Charles Eugene Goodwin, appeal from the judgment of the chancery court awarding money damages against them to plaintiff

Equitec Real Estate Investment Fund XII (Equitec). The lease agreement in question is dated January 23, 1988, and on its face is between Equitec Investors Fund, XII, lessor, and Poplar Pike, Inc., lessee. The ultimate question in this appeal is whether the named lessee, Poplar Pike, Inc., is the Delaware corporation, Poplar Pike, Inc., or a Tennessee corporation chartered as Poplar Pike Co., Inc. On January 23, 1988, Equitec and Poplar Pike also executed a letter agreement as a part of the lease agreement. The letter provides:

In reference to the lease dated January 23, 1988, between Equitec Real Estate Investors Fund XII, Lessor, and Poplar Pike, Inc., Lessee, for the premises described as 5100 Poplar Avenue, Suite 170, Memphis, Tennessee, 38137.

Lessor hereby grants Lessee occupancy of said premises for a period of five (5) months at full rental abatement, with the first two (2) months commencing on February 1, 1990, and ending March 31, 1990, the second two months commencing on February 1, 1991, and ending on March 31, 1991, and the last month commencing on February 1, 1992, and ending on February 29, 1992.

In addition to the above rental abatement, Lessor agrees to provide Lessee with ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) to prepay existing rent liability at 6750 Poplar Avenue.

Said rental abatement shall not constitute a waiver of any other lease term, covenant, or condition. Should Lessee default during the term of this lease, the said rental abatement and monies provided shall become due and payable.

This document is not an offer to lease until executed by Lessor. This letter shall be attached to and become a part of the lease.

Agreed to this 23rd day of January, 1988.

Both the original lease agreement and the letter agreement were signed:

POPLAR PIKE, INC.

By: /s/  
John E. Goodwin  
President

By instrument dated January 27, 1988, defendant Charles Eugene Goodwin signed a guaranty of the lease which guaranteed "the obligation for the payment of rent and other sums due to Lessor thereunder." The guaranty, in part, pertinent to the liability of defendant Goodwin, provides:

7. Notwithstanding any provision hereof to the contrary, Guarantor's obligation to the Lessor shall be in the amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00). This amount shall be reduced each year on the anniversary date of the Lease's start date by TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00).

In April of 1990, the lessee stopped making rent payments and defaulted under the lease agreement. On November 28, 1990, plaintiff-appellee Equitec filed a complaint against defendants-appellants Poplar Pike, Inc., John E. Goodwin, and Charles Eugene Goodwin, seeking judgment against John E. Goodwin, jointly and severally with Poplar Pike, Inc., and against Charles Eugene Goodwin as a guarantor of the lease, together with reasonable attorney fees and costs of collection. The defendants' answer denies the material allegations of the complaint, and alleges that, irrespective of the "typographical error" on the lease, Equitec employees knew that they were dealing with Poplar Pike Co., Inc., rather than Poplar Pike, Inc., a Delaware corporation.

At trial the defendants stated that the only issue for review was whether the lease agreement should be reformed to reflect Poplar Pike Co., Inc., as the lessee. The defendants also stipulated that a judgment for the full amount of plaintiff's damages may be entered against Poplar Pike Co., Inc.

At the close of plaintiff's proof, judgment was entered for defendant John E. Goodwin, and at the conclusion of all the proof in the nonjury trial, the trial court found that there was not sufficient evidence of mistake or fraud to support reformation of the contract. The judgment states in pertinent part:

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the plaintiff, Equitec Real Estate Investors Fund XII, against defendant, Poplar Pike, Inc. (a/k/a Wincor, Inc.), a Delaware corporation, as follows:

1. Judgment is hereby awarded to plaintiff against said defendant for rent payable under the Lease in the amount of Sixty-One Thousand Eight Hundred Fifty-Nine and 35/100 (\$61,859.35) Dollars.

2. Judgment is hereby awarded to plaintiff against said defendant for pre-judgment interest on the \$61,859.35 in rent payable as referenced above, with such interest calculated at the "formula rate" of interest, as provided by statute, from April 1, 1990, when

the rent under the Lease became due and payable, through and including the date of entry of this Judgment; said interest amounts to Twenty-Eight Thousand Eight Hundred Four and no/100 (\$28,804.00) Dollars as of May 5, 1994, and shall increase by Eighteen and 22/100 (\$18.22) Dollars per day from May 5, 1994 to and including the date that Judgment is entered with the Clerk of the Chancery Court.

3. Judgment is hereby awarded to plaintiff against said defendant in the amount of thirty-three (33%) percent of said judgments for rent and interest, representing plaintiff's reasonable attorney fees and costs of collection, in the amount of Twenty-Five Thousand and no/100 (\$25,000.00) Dollars, all as provided for under the Lease.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is awarded to plaintiff against defendant, Charles Eugene Goodwin, for Sixty Thousand and no/100 (\$60,000.00) Dollars, plus twenty-five (25%) percent thereof, that is Fifteen Thousand and no/100 (\$15,000.00) Dollars, for plaintiff's reasonable attorney fees in connection therewith, as provided for in the Guaranty Agreement, dated January 27, 1988, as executed by Charles Eugene Goodwin, guarantying defendant's, Poplar Pike Inc., payment obligation under these Lease with respect to the One Hundred Thousand and no/100 (\$100,000.00) Dollars advanced to defendant, Poplar Pike, Inc., in connection with the Lease; said judgment is separate from and not a part of the judgment for rent awarded to plaintiff against defendant, Poplar Pike, Inc. (a/k/a Wincor, Inc.), as set forth above.

IT IS ALSO ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of defendant, John E. Goodwin, as to all claims by plaintiff in this cause and that this cause as to John E. Goodwin is hereby dismissed and he is discharged from any and all liability which could possibly accrue from the allegations contained in the Complaint filed by plaintiff in this cause.

IT IS ALSO FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of defendant, Poplar Pike, Inc. (a/k/a Wincor, Inc.), on plaintiff's claim for the return of Twenty-Four Thousand and no/100 (\$24,000.00) Dollars in rent abatement claimed by plaintiff to be repayable to plaintiff by said defendant under the Lease.

Defendants Poplar Pike, Inc., and Charles E. Goodwin have appealed and present the following issues for our review:

I. Whether a Delaware corporation known as Poplar Pike, Inc. which was not incorporated or in existence at the time of the execution of the lease agreement which reflected its name as lessee may be held liable on the lease absent proof of adoption, ratification, performance or acknowledgment of the lease after incorporation.

II. Whether the proof in the record supports the finding of the

trial court that defendants failed to establish by clear, cogent and convincing evidence the intended corporation to be the lessee pursuant to the lease; as well as a finding that all parties knew with whom they were dealing and who was to be the corporate entity on the lease and therefore there was no basis for a reformation of the lease to properly reflect the parties.

III. Whether the proof in the record supports the finding of the trial court that the personal guaranty of defendant-appellant, Charles Eugene Goodwin, was exclusively related to the advancement of funds by plaintiff-appellee for the purchase of an existing lease obligation and separate and apart from any issue of liability on the lease.

IV. Whether the personal guaranty of defendant-appellant Charles Eugene Goodwin expired by its terms on January 23, 1993.

V. Whether the trial court erred in changing the style and heading of this case.

The plaintiff-appellee presents the following three issues for our review:

I. Whether the trial court erred in reducing to \$61,859.35 defendant Poplar Pike, Inc.'s liability under the lease agreement dated January 23, 1988 and signed by plaintiff-appellee on January 28, 1988 (the "Clark Tower Lease"), from the \$233,789.99 claimed by plaintiff-appellee at trial as being the amount due and payable as a result of lessee's default under the lease, when said damage amount was not disputed by defendant-appellant, and plaintiff-appellee was denied the opportunity by the trial court to introduce at trial any proof other than proof related to the original or initial lease negotiations between the parties.

II. Whether the trial court erred in excluding from the judgment entered in plaintiff-appellee's favor against Poplar Pike, Inc., liability for the \$100,000-cash-advance to Poplar Pike, Inc. under the Clark Tower Lease.

III. Whether the trial court erred in entering judgment for defendant-appellants with regard to the \$24,090-rent-abatement granted to Poplar Pike, Inc., under the Clark Tower Lease.

Plaintiff's proof, in addition to the exhibits, consists of the testimony of three witnesses.

G. Kirby Ross, Equitec's former director of real estate, testified by deposition. He testified that John Goodwin told him that the lease would be with Poplar Pike, Inc., rather than Poplar Pike Co., Inc. We quote from the record:

Q. Who furnished you and Equitec the name Poplar Pike, Inc?

A. John did. John Goodwin.

Q. Goodwin. Do you understand why he had that particular name? What was the background to that?

A. Well, the only background that I'm -- that I'm clear on is that in the early proceedings of this discussion or this negotiation, we were aware that they were wanting to leave their -- their office space that they were currently in, I believe, with Vantage Company, because of some changes in their structure of how they were doing business and the amount of business they were doing.

And we were informed that they were going to change their name in the new location. That was -- that was important to us because we didn't want to have to worry about other vendors or creditors muddying up the water, so to speak.

And we agreed -- we understood that Poplar Pike, Inc. would be the new entity that the negotiations would be under. And that was one of the reasons for -- and because it was a new entity, so to speak -- that's one of the reasons why we requested the \$100,000 from Gene to cover our buyout exposure.

Mr. Ross also testified that the \$100,000.00 advancement was provided to "the Goodwins . . . to get out of an existing lease." Mr. Ross further testified that no one ever informed him that there was a mistake in the name of the corporation which signed the lease agreement with Equitec. On cross examination, Mr. Ross acknowledged that he believed that the lease was entered into with "an already existing corporation."

"Skip" Carnell, the senior leasing manager of Equitec, testified that John Goodwin informed him that he (John Goodwin) was the president of Poplar Pike, Inc., and that John Goodwin never informed him that there was a mistake in the name of the lessee on the lease agreement. Mr. Carnell testified that Equitec required financial statements from prospective lessees, and that this requirement for financials was satisfied by statements from Poplar Pike Co., Inc. He acknowledged that the financial statements he received clearly indicated that they were financial statements of Poplar Pike Co., Inc., and that the only financial statements which he received were financial statements of Poplar Pike Co., Inc. Mr. Carnell was asked if the name Poplar Pike Co., Inc., on the financial statements raised any question in his mind as to which entity he was dealing with, and he replied, "No . . . because they had indicated to me that they were starting a new company and that they were transferring these assets over to the new company." Notwithstanding this testimony, Mr. Carnell unequivocally testified that Equitec would not have entered into any lease with a corporation not in existence. He also acknowledged that Equitec never sought any financial information dealing with the "new" entity.

Harold Moss, the Clark Tower<sup>1</sup> Property Manager for Equitec, testified that the rent was paid by checks drawn on an account in the name Poplar Pike Co., Inc., and also by checks drawn on an account in the name Poplar Pike, Inc. He testified that the name Poplar Pike was used at the business address in Clark Tower, but he could not remember any specific designation as “Co., Inc.” or “Inc.” He also identified two letters written to the building management on letterhead stationary showing Poplar Pike, Inc., as the author of the letters.

Charles Eugene Goodwin testified that in 1985, he purchased 100 percent of the stock of Poplar Pike Co., Inc., and that the business was then operated as a real estate brokerage business by his son, John Goodwin, who served as the corporation’s president and chief executive officer. He testified that Poplar Pike Co., Inc., had its office in the Forum Building at 6750 Poplar Avenue at a rather high rent, and that the company’s officers desired get a more reasonably priced space. Charles Goodwin testified that the Vantage Company managed the Forum Building and agreed to release Poplar Pike Co., Inc., from its liability on its lease for \$100,000.00. Charles Goodwin further testified that John Goodwin, on behalf of Poplar Pike Co., Inc., negotiated with Equitec to move the company’s offices to Clark Tower, and that in the course of these negotiations, he (Charles Goodwin) was informed by John Goodwin that he would need to sign some form of lease guaranty. Charles Goodwin stated that he reluctantly agreed to guarantee the lease between Equitec and Poplar Pike Co., Inc. Charles Goodwin testified that Poplar Pike, Inc., was a Delaware corporation chartered in July, 1988, and was not activated until December, 1988. He stated that at the time of the negotiations between Equitec and John Goodwin, there was no contemplation on anyone’s part that a Delaware corporation known as Poplar Pike, Inc., was going to be formed. Mr. Goodwin stated that Poplar Pike, Inc., the Delaware corporation, was formed for the purpose of acting as a land-holding company, and that the company was never authorized to do business in Tennessee. According to Charles Goodwin, after Poplar Pike, Inc., was formed, its business operations were conducted at his office, which was not located in Clark Tower. Mr. Goodwin testified that right after the lease was executed, he pointed out to Mr. Carnell that the name Poplar Pike, Inc., was not technically

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<sup>1</sup>The lease agreement at issue in this case involves an office space in the Clark Tower located at 5100 Poplar Avenue, Memphis, Tennessee.

correct as the lessee. He stated that his son, John Goodwin, handled the lease negotiations, and that neither he nor John ever represented to anyone at Equitec that a new corporation was to be formed to be the lessee with Equitec. Mr. Goodwin admitted that he signed the guaranty agreement, and that he did so because Poplar Pike Co. Inc., did not have good credit. He testified that he really did not pay any attention to the formal name of the lessee because he knew the name referred to the real estate corporation that had been in business since 1972 (Poplar Pike Co., Inc.), and that the company was referred to as Poplar Pike Company, Poplar Pike, Inc., or Poplar Pike Realty Company. He further testified that he never paid any rent to Equitec, and that John did not have authority to sign checks on the Delaware corporation Poplar Pike, Inc.'s account. He stated that the Poplar Pike, Inc., checks that were used to pay the rent on occasion were drawn on a First American account that had no connection with Poplar Pike, Inc., the Delaware corporation.

John Edwin Goodwin testified that he was the president and chief executive officer of Poplar Pike Co., Inc., but was not a shareholder in the company. He stated that Poplar Pike Co., Inc., occupied an office in the Forum Building at Poplar and Massey, when they decided to move to Clark Tower. He testified that at Equitec's request, he furnished financial information relating to Poplar Pike Co., Inc. In his testimony, John Goodwin denied that he ever told anyone at Equitec that a new corporation was being formed to be the lessee. He stated that he knew nothing about any plan to form a Delaware corporation chartered as Poplar Pike, Inc. John Goodwin testified that Poplar Pike, Inc., was his father's company, and that he had nothing to do with it. After the financial statements were furnished, John Goodwin was told that because of the financial condition of Poplar Pike Co., Inc., he would have to get a guarantor on the lease. John Goodwin testified that Equitec representatives agreed to furnish the \$100,000.00 to settle the rental obligation of Poplar Pike Co., Inc., with the Vantage Company for the Forum space. John Goodwin further testified that at the time the lease was executed, he noticed that the name of the lessee was incorrect. He stated that he told Kirby Ross and Skip Carnell that the proper name of the lessee should be Poplar Pike Co., Inc., but they acted like that was not important and didn't see any need to correct the mistake. He further testified that Poplar Pike, Inc., was a common misnomer for Poplar Pike Co., Inc., and that Poplar Pike Co., Inc., used Poplar Pike,

Inc., Poplar Pike Realty, and Poplar Pike Co., interchangeably. He stated that Poplar Pike Co., Inc., had several bank accounts, and that although some accounts were in the name of Poplar Pike Company, Inc., while others were in the name of Poplar Pike Co., Inc., or Poplar Pike, Inc., they were all the same company. John Goodwin stated that he had authority to sign on all those accounts but never had any authority to sign on the account of Poplar Pike, Inc., the Delaware corporation that was formed in July, 1988. He further stated that although rental checks may have been paid on an account showing Poplar Pike, Inc., as the drawer, the checks were not drawn on an account of Poplar Pike, Inc., the Delaware corporation.

We will first address the appellants' issue relating to the liability of Poplar Pike, Inc., on the lease executed prior to its formation and incorporation. The appellants argue that Poplar Pike, Inc., should not have been found liable on the lease agreement, because it was not in existence at the time of execution of the lease, and it never adopted, ratified, acknowledged, or otherwise accepted the benefits of the lease agreement in question. The appellants admit that John Goodwin made rent payments with checks which listed Poplar Pike, Inc., as the drawer, but they maintain that the checks which John Goodwin signed were not in fact Poplar Pike Inc.'s (the Delaware corporation's) checks. The appellants assert that the intended lessee was Poplar Pike Co., Inc., as evidenced by the fact that John Goodwin was the president of Poplar Pike Co., Inc., rather than Poplar Pike, Inc.

The appellee on the other hand, contends that Poplar Pike, Inc., is liable under the lease agreement, notwithstanding the fact that it was not in existence at the time of execution of the lease, because Poplar Pike, Inc., adopted the lease subsequent to its incorporation.

A corporation may become liable on a preincorporation contract by way of ratification or adoption. *Kemmons Wilson v. Allied Bank of Texas*, 836 S.W.2d 104, 109 (Tenn.App. 1992); *Pittsburgh & Tennessee Copper Co v. Quintrell*, 20 S.W. 248, 91 Tenn. 693 (1892). The payment of rent and assumption of the leased space would constitute an adoption of the lease agreement if the entity which paid the rent and assumed the leased space was in fact Poplar Pike, Inc., the Delaware Corporation, rather than Poplar Pike Co., Inc., which placed the name Poplar Pike, Inc., on its checks and business stationary. It is undisputed that the lease agreement (dated January 23, 1988) and the guaranty of the lease agreement (dated January 27, 1988) list Poplar

Pike, Inc., as the lessee of suite 170, 5100 Poplar Avenue. It is also undisputed that the lessee in suite 170 made rent payments for the months of February, 1990, through August, 1990, with checks listing Poplar Pike Co., Inc., as the drawer, and that the lessee made rent payments for the months of September, 1990, through March, 1991, with checks listing Poplar Pike, Inc., as the drawer.

From our reading of the record, there is no evidence to indicate that the Delaware corporation, Poplar Pike, Inc., ever adopted or ratified the lease agreement. Although Equitec has introduced proof that its employees believed they were dealing with a company named Poplar Pike, Inc., the uncontroverted proof is that the defendant corporation, Poplar Pike, Inc., was not incorporated until some six months after the lease was signed. Moreover, this defendant was not qualified to do business in Tennessee. The mistaken beliefs of Equitec's employees will not serve to impose liability upon the Delaware corporation Poplar Pike, Inc., absent some evidence that the corporation adopted or ratified the lease. There is no evidence that the entity dealing with Equitec's employees, occupying the leased space at 5100 Poplar Avenue, and paying the rent for the leased space was the Delaware corporation Poplar Pike, Inc. The appellees introduced evidence that the entity occupying the leased space at 5100 Poplar Avenue paid with checks listing Poplar Pike, Inc., as the drawer, however, John and Charles Goodwin testified that the checks were checks of Poplar Pike Co., Inc., rather than checks of Poplar Pike, Inc. John and Charles Goodwin also testified that John Goodwin had no authority to write checks on the account of the Delaware corporation, Poplar Pike, Inc. There is no evidence in the record to contradict this testimony.<sup>2</sup>

With respect to the entity actually occupying the leased space, there is no evidence to indicate that the entity was the Delaware corporation, Poplar Pike, Inc. Charles Goodwin testified that the Delaware corporation Poplar Pike, Inc., occupied a building "called Poplar Pike, Inc., out on the marquis in 1989." He testified,

Mr. Carnell knew how to reach me at all times. I was in a

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<sup>2</sup>There is nothing in the record by way of signature cards, account histories, account statements, or other bank records which would show that the checks listing Poplar Pike, Inc., as the drawer were in fact checks drawn on or debited against the account of the Delaware corporation, Poplar Pike, Inc.

building called Poplar Pike, Inc., out on the marquis in 1989. In 1990, he always knew then that Poplar Pike, Inc., was not the real estate company that was in his building.

There is nothing in the record to contradict this testimony. The evidence indicates that Equitec knew or should have known that the entity actually occupying the leased space was Poplar Pike Co., Inc. During the course of the lease negotiations, Richard Carnell, the senior leasing manager at Equitec, received balance sheets from Poplar Pike Co., Inc., which listed Poplar Pike Co., Inc., as the entity which had been “audited” as part of Equitec’s credit check of Poplar Pike Co., Inc., in order to determine if the corporation would be a suitable tenant. Carnell stated in his testimony that the financial statements were provided by Poplar Pike Co., Inc., and were necessary “before we [Equitec] can get into a lease with them [Poplar Pike Co., Inc.]” Carnell stated that he did not receive any balance sheets from Poplar Pike, Inc. Mr. Carnell was asked if the name Poplar Pike Co., Inc., on the balance sheet raised any question in his mind as to which entity he was dealing with, and he replied, “No . . . because they had indicated to me that they were starting a new company [Poplar Pike, Inc.] and that they were transferring these [Poplar Pike Co., Inc.’s] assets over to the new company.” The appellees rely heavily on this testimony to prove that the entity with which they were dealing was Poplar Pike, Inc. This reliance is misplaced. All of the Equitec witnesses noted the inadequacy of Poplar Pike Co., Inc.’s assets, so the fact of their transfer to a new company could be of little consequence. Mr. Carnell also testified that he (on behalf of Equitec) would not have entered into a lease with a corporation “to be formed in the future.” From his testimony it is clear that he knew that the “new” entity was not formed at the time of the execution of the lease.

The record further indicates that at the time the lease was signed, John Goodwin was the president of Poplar Pike Co., Inc., and that he was never the president of Poplar Pike, Inc. The lease was signed by John Goodwin as president of Poplar Pike, Inc. Finally, the letter agreement states that the \$100,000.00 advancement was to “prepay existing rent liability at 6750 Poplar Avenue.” This rent liability was the liability of the existing Tennessee corporation.

In summary, from our review of the record, we find that the evidence preponderates against the trial court’s finding that Poplar Pike, Inc., is the lessee in the lease in question or that it ever assumed, adopted, or ratified the lease in question.

The third issue raised by the appellant concerns the guaranty of the lease agreement signed by Charles Goodwin. The guaranty is entitled “Standard Form Guaranty of Lease” and provides:

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, and as an inducement to EQUITEC REAL ESTATE INVESTORS FUND XII (hereinafter “Lessor”) to enter into a certain Lease Agreement (“Lease”) between Lessor and POPLAR PIKE, INC. (hereinafter “Lessee”), the undersigned, and each of them, if more than one (hereinafter collectively “Guarantor”) hereby jointly and severally, unconditionally guarantee and promise as follows:

\* \* \*

1. Guarantor hereby guarantees the full, faithful, and prompt performance of each and every term, covenant, condition, and obligation to be kept and performed by Lessee under the Lease, including, but not limited to, the obligation for the payment of rent and other sums due to Lessor thereunder.

\* \* \*

5. Guarantor hereby waives presentment and notice of demand by Lessor as well as any notice of default in the payment of rent or in the performance of any other obligations of Lessee under the Lease. Guarantor agrees to pay all cost of collection, including reasonable attorneys fees, in the event Lessor engages the services of an attorney to enforce any of the provisions hereof.

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7. Notwithstanding any provision hereof to the contrary, Guarantor’s obligation to Lessor shall be in the amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00). This amount shall be reduced each year on the anniversary date of the Lease’s start date by TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00).

The appellants argue that the lease guaranty was only a guarantee of the lease rather than a guarantee of the \$100,000.00 payment advanced to Poplar Pike Co., Inc., to buy out its lease at 6750 Poplar Avenue. The appellants contend that the \$100,000.00 advancement was included in the monthly rental payment to Equitec as evidenced by the fact that neither the guaranty nor the lease agreement make any provision for repayment of the advancement. They argue that, therefore, the trial court erred in ruling that Charles Goodwin was liable on the guaranty for the

\$100,000.00 cash advance separate and apart from any liability of Poplar Pike Co., Inc., as a result of the breach of the lease agreement. The appellee, on the other hand, contends that the guaranty secured its \$100,000.00 advance to Poplar Pike, Co., Inc., and, therefore, upon default, Charles Goodwin was liable for the entire \$100,000.00 cash advance.

The guaranty by its plain and unambiguous terms is a guarantee of the lease rather than the \$100,000.00 cash advance to Poplar Pike Co., Inc. The instrument guarantees the performance of the lease agreement and the payment of rent to Equitec. The guaranty also provides for a reduction of Charles Goodwin's liability on the lease by \$20,000.00 a year. The reduction occurs automatically on the "anniversary date of the Lease's start date," and the reduction is not contingent upon any repayment scheme of the \$100,000.00 advancement. The lease agreement began on January 23, 1988, and at the time of the default in April of 1990, the lease agreement had been in effect through two anniversary dates. Therefore, Charles Goodwin's liability on the lease was reduced by forty thousand dollars (\$40,000.00) at the time of the default. Accordingly, Charles Goodwin is liable on the lease agreement in the amount of sixty thousand dollars (\$60,000.00) plus attorneys fees incurred by Equitec to enforce the guaranty.

In their fourth issue the appellants contend that the lease guaranty expired on January 23, 1993, because that date was the fifth "anniversary date" of the lease agreement, and Charles Goodwin's liability on the lease was, therefore, reduced by \$100,000.00. This argument is without merit. The intention of the parties as evidenced by the documents in question and the record in this case, was clearly to hold Charles Goodwin personally liable on the lease in the event of a default, the amount of liability to be dependent upon and set by the time of default.

The judgment of the trial court against defendant Charles Eugene Goodwin in the amount of \$60,000.00 is affirmed. The judgment of the trial court against defendant Poplar Pike, Inc., a Delaware corporation, is vacated. Our decision renders resolution of the remaining issues unnecessary, thus, they are pretermitted. The case is remanded to the trial court for such further proceedings as may be necessary, and costs of the appeal are assessed one-half to the appellee and one-half to appellant Charles Eugene Goodwin.

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**W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.**

**CONCUR:**

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**ALAN E. HIGHERS, JUDGE**

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**HOLLY KIRBY LILLARD, JUDGE**