

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GE MEDICAL SYSTEMS : CIVIL ACTION
: :
v. : :
: :
EDWARD SILVERMAN, et al. : No. 96-4596

O'Neill, J. February , 1998

MEMORANDUM

This dispute arises from various contracts between plaintiff GE Medical Systems ("GEMS"), an unincorporated division of General Electric Company, and Franklin Square Hospital. Defendants guaranteed Franklin's payment under these contracts pursuant to guaranty agreements. Franklin has since filed for bankruptcy and GEMS is therefore suing defendants for payment of Franklin's obligations under the contracts. Defendants move for summary judgment on two grounds. They first assert that the statute of limitations bars the action. They also contend that one of the underlying contracts and a promissory note are beyond the scope of the guaranty agreements. Plaintiff also moves for summary judgment contending that there are no genuine issues of material fact and that the express terms of the guaranty agreements mandate defendants' liability as a matter of law.

I. Factual Background

Much of the factual background of this action is not in dispute. On October 12, 1990, Franklin entered into a Leaseline Agreement (the "Lease") for the lease of certain medical equipment from GEMS. On the same day that the Lease was prepared, a Promissory Note for \$250,000 was also prepared. On April 6, 1991, Franklin leased additional equipment from GEMS, pursuant to a

Maxiservice Agreement, and on November 19, 1992 Franklin entered into a Nuclear Medicine Maintenance Service Agreement whereby GEMS agreed to provide certain maintenance services to Franklin.

On October 17, 1990, Franklin and defendants Mark Mendelson, Edward Silverman and Hampton Hospital Group, Inc. executed personal guaranties to GEMS whereby each defendant agreed to guarantee the payment by Franklin of “all indebtedness or obligation of any kind which [Franklin] has incurred or may occur pursuant to the lease or purchase of equipment from GE[.]” Defendants do not contest that they executed the guarantees or that they failed to make any payments pursuant to those guarantees.

Franklin fell behind in its payments to GEMS under its various obligations and eventually defaulted. It defaulted on its two equipment lease contracts on October 1, 1991 and on September 1, 1991, and it defaulted on the promissory note on July 1, 1991. It did not default on the service maintenance agreement until December 15, 1992. On February 6, 1992 GEMS notified defendants of Franklin’s default and on February 5, 1993, GEMS notified defendants of its intent to accelerate all payments due under the various obligations.

Shortly thereafter Franklin’s attorney, Charles M. Golden, Esq., contacted Rudolph DiMassa, Esq., GEMS’ counsel at that time, regarding the acceleration letter. The discussions between Golden and DiMassa resulted in a letter agreement dated April 1, 1993. Pursuant to the agreement the monthly payments on the various obligations were reduced to \$40,000 for a period not to exceed four months. Franklin made two of the payments pursuant to the letter agreement, but neither Franklin nor any of the defendants have made any payments since June 1, 1993. Plaintiff’s demands for payment from Franklin and from defendants have not resulted in payment, and it filed this complaint

on June 25, 1996.

II. Summary Judgment Standard

When considering a motion for summary judgment, I must view all evidence and resolve all doubts in favor of the non-moving party. Bixler v. Central Pa. Teamsters Health & Welfare Fund, 12 F.3d 1292, 1297 (3d Cir. 1993); Meyer v. Riegel Prods. Corp., 720 F.2d 303, 307 (3d Cir. 1983). I may grant summary judgment only “if the pleadings, deposition, answers to interrogatories, 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 judgment as a matter of law.” Fed.R.Civ.P. 56(c); SEC v. Hughs Capital Corp., 124 F.3d 449, 452 (3d Cir. 1997).

The movant bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). If the movant sustains this burden the non-moving party must then identify facts showing the existence of a genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

Both plaintiff and defendants moved for summary judgment on the statute of limitations issue, an issue on which plaintiff has the burden of proof.¹ Thus, both sides contend that there are no material issues of genuine fact and that the statute of limitations either bars or does not bar the action as a matter of law. The applicable legal standards by which I decide a summary judgment

¹ As discussed below, plaintiff filed his claim after the applicable limitations period ran. Therefore, the issue is whether the limitations period was tolled pursuant to an acknowledgment of the debt. Both New York and Pennsylvania law agree that under these circumstances, plaintiff bears the burden of establishing the tolling of the limitations period. See Corbett v. Weisband, 551 A.2d 1059, 1067 (Pa. Super. Ct. 1988); McNair v. Weikers, 446 A.2d 905, 909 (Pa. Super. Ct. 1982); see also Assad v. City of New York, 656 N.Y.S.2d 669, 669 (N.Y. Sup. Ct. 1997); Cox v. Kingsboro Medical Group, 646 N.Y.S.2d 656, 660 (N.Y. Sup. Ct. 1997). This agreement obviates any need to discuss choice of law issues.

motion do not change when the parties file cross-motions for summary judgment. Appelmans v. City of Philadelphia, 826 F.2d 214, 216 (3d Cir. 1987); Manufacturers Life Ins. Co. v. Dougherty, 1997 WL 778585, *2 (E.D. Pa. 1997).

III. Discussion - Statute of Limitations

Defendants contend that plaintiff's claims are barred by the statute of limitation. Plaintiff's claims are state law breach of contract claims, and therefore state law will determine the applicable statute of limitations. Erie Railroad Co. v. Tompkins, 304 U.S. 64, 65 (1938); Guaranty Trust Co. of New York v. York, 326 U.S. 99, 110 (1945). As a federal district court adjudicating state-law claims, I must apply the choice-of-law rules of Pennsylvania, the forum state. Klaxon Co. v. Stentor Electric Mfg. Co., Inc., 313 U.S. 487, 496 (1941); System Operations, Inc. v. Scientific Games Development Corp., 555 F.2d 1131, 1136 (3d Cir. 1977). The choice-of-law rule in Pennsylvania governing limitation periods is statutory and provides that "[t]he period of limitation applicable to a claim accruing outside this Commonwealth shall be either that provided or prescribed by the law of the place where the claim accrued or by the law of this Commonwealth, whichever first bars that claim." See 42 Pa. C.S.A. § 5521. The parties agree that all of the material events occurred in Pennsylvania and that the cause of action accrued in Pennsylvania. Therefore, Pennsylvania's statute of limitations along with its accrual and tolling rules apply. See Gee v. CBS, Inc., 471 F. Supp. 600, 641 (E.D. Pa.) (holding that where Pennsylvania statute of limitations applies, Pennsylvania's tolling provision also apply regardless of which state's substantive law is chosen to be applied to the

contracts themselves), aff'd mem., 612 F.2d 572 (3d Cir. 1979).² The parties further agree that the applicable limitations period is four years. See 42 Pa. C.S.A. § 5525.

The latest of the defaults for the three contracts between Franklin and plaintiff at issue was October 1, 1990 and this action was not filed until June 26, 1996, nearly six years later. Therefore, if the limitations period was not tolled, plaintiff's claim is barred.³ Plaintiff contends that the April 1, 1993 letter agreement between GEMS and Franklin and the two payments made by Franklin pursuant to that agreement tolled the statute of limitations and caused it to run anew because of Pennsylvania's acknowledgment doctrine and because of the language of the guaranty agreement.

Pursuant to the acknowledgment doctrine, a statute of limitations may be tolled or its bar removed by a promise to pay the debt:

A clear, distinct and unequivocal acknowledgment of a debt as an existing obligation, such as is consistent with a promise to pay, is sufficient to toll the statute. There must, however, be no uncertainty either in the acknowledgment or in the identification of the debt; and the acknowledgment must be plainly referable to the very debt upon which the action is based; and also must be consistent with a promise to pay on demand and not accompanied by other expressions indicating a mere willingness to pay at a future time.

Huntington Finance Corp. v. Newtown Artesian Water Co., 659 A.2d 1052, 1054 (Pa. Super. Ct.

² The guaranty agreements have a choice-of-law provision which states that "[t]he guaranty and its interpretation and application shall in all respects be governed by the laws of the State of New York." While this provision governs the interpretation of the language of the guaranty agreement, for a choice-of-law provision to determine the applicable statute of limitations, the provision must "expressly so provide." See Unisys Finance Corp. v. U S Vision, Inc., 630 A.2d 55, 57-58 (Pa. Super. Ct. 1993) (citing Gluck v. Unisys Corp., 960 F.2d 1168 (3d Cir. 1992)). The guaranty's choice-of-law provision does not expressly provide for application of New York's statute of limitations, and therefore Pennsylvania's statute of limitations applies to this action.

³ See Leedom v. Spano, 647 A.2d 221, 226 (Pa. Super Ct. 1994) (holding that limitations period for bringing action on guaranty begins to run within reasonable time after material default on underlying obligation). Plaintiff does not contend, even allowing for a reasonable time after default, that its cause of action was filed within the four year limitations period. Its sole argument is that the acknowledgment of the debt tolled the limitations period. See infra.

1995) (quoting Gurenlian v. Gurenlian, 595 A.2d 145, 151 (Pa. Super. Ct. 1991)). From the acknowledgment of the debt the law will infer a promise to pay the underlying debt. Receiver of Anthracite Trust Co. v. Loughran, 19 A.2d 61, 62 (Pa. 1941) (citing Dick v. Daylight Garage, 6 A.2d 826 (Pa. 1939)). To toll the statute of limitations, a partial payment “must constitute a constructive acknowledgment of the debt from which a promise to pay the balance may be inferred.” Id. (quoting City of Philadelphia v. Holmes Electric Protective Co., 6 A.2d 884, 888 (Pa. 1939)). See also Quaker City Chocolate & Confectionary Co. v. Delhi-Warnock Bldg. Ass’n, 53 A.2d 597, 600 (Pa. 1947) (“[O]rdinarily, a payment on account of a debt is regarded as an acknowledgment of liability and of willingness to pay the balance due thereon and therefore is held to interrupt the operation of the statute”).⁴

Plaintiff contends that the record establishes that Franklin unequivocally acknowledged its obligations under the various agreements with plaintiff by the April 1, 1993 letter agreement and by the partial payments it made in accordance with the letter agreement. I agree. The letter agreement reads as follows:

This will confirm our understanding that GE will accept, for a limited time, reduced monthly payments of \$40,000 under the agreements between GE and Franklin Square Hospital. These \$40,000 payments are to be made by the 20th of each month, beginning in April, 1993. . . . GE will accept these reduced payments for no longer that four months. Accordingly, we should begin to discuss, as soon as possible, your client’s intention to (a) honor its lease obligations, bring arrearages current and provide assurance of future payment or (b) breach its lease obligation and establish the extent of its liability for such a breach.

While Franklin does not explicitly state that it acknowledges its obligations under the lease

⁴ In Quaker City, the court held that there was an exception to this general rule when the debtor made the payments involuntarily, such as pursuant to an execution of a judgment. 53 A.2d at 600. Nothing in the record supports an inference that these payments were made “involuntarily” as that term is used in Quaker City.

agreements with plaintiff, the agreement along with Franklin's two \$40,000 payments operate as a constructive acknowledgment of its obligations to plaintiff from which the law infers a promise to pay the balance.⁵ Defendants submitted no evidence that Franklin ever disputed its obligation to pay the underlying debt, and in the absence of such a dispute the law infers the acknowledgment from the partial payments. This case is even stronger than a typical partial payment case because the partial payments do not stand alone. The uncontroverted record also shows that Franklin entered into negotiations GEMS which culminated in a letter agreement. Further, any interpretation of the partial payments and the agreement other than an acknowledgment of the debt is strained and inconsistent with the evidence in the record.

Defendants argue that because neither the agreement nor the payments contained an unequivocal and unconditional promise to pay the underlying debt, the partial payments cannot be an acknowledgment. They emphasize that the agreement could not have been an unconditional promise to pay the remaining debt because the agreement stated that "we should begin to discuss, as soon as possible, [Franklin's] intention to (a) honor its lease obligations and bring arrearages current and provide assurances of future payment or (b) breach its lease obligations and establish the extent of its liability for such a breach."⁶

⁵ The letter agreement identifies the debt as "under the agreements between GE and Franklin Square Hospital." The agreements enumerated above are the only agreements between the parties and Defendants do not contest that this identification is adequate for acknowledgment doctrine purposes.

⁶ Defendants also argue that the acknowledgment doctrine does not operate unless the statute of limitations has already run. I disagree. As plaintiff correctly points out, the acknowledgment doctrine can revive a debt where the statute of limitations has already run or cause the limitations period to toll and run anew where the debtor makes payments during the limitations period. See Quaker City Chocolate & Confectionery Co. v. Delhi-Warnock Bldg. Ass'n, 53 A.2d 597, 600 (Pa. 1947). Many of the acknowledgment doctrine cases that the parties cite deal with whether the debtor acknowledged the obligation during the limitations period, and none of them base their holding on the position the defendants advocate for here. See e.g., Receiver of Anthracite Trust Co. v. Loughran, 19 A.2d 61, 61 (Pa. 1941); Cole

If Franklin had disputed its obligation to pay the debt or if it had not made the partial payments, defendants' argument would be correct because the agreement standing alone does not contain an unequivocal, unconditional promise to pay the remaining debt.⁷ Under Pennsylvania law, however, the acknowledgment is inferred from partial payments, the negotiations between GEMS and Franklin and the letter agreement. See Huntington Finance Corp., 659 A.2d at 1054; Holmes Electric Protective Co., 6 A.2d at 888.

Defendants also contend that, regardless of Franklin's acknowledgment of the debt, they are entitled to summary judgment because plaintiff failed to produce any evidence that they independently acknowledged the underlying debt. Plaintiff counters that Franklin's acknowledgment of the debt through the April 1, 1993 agreement and the payments made pursuant to that agreement bind defendants as a matter of law because of the language of the guaranty agreements. I agree that Franklin's acknowledgment of the debt binds defendants as a matter of law.

Franklin is not a defendant in this matter and normally debtor's acknowledgment of the debt would not bind the guarantors because the guaranty agreement is a separate contract. Thus, an acknowledgment of the obligation by the debtor would not extend the statute of limitations as to the guarantors unless the debtor was acting as an agent for the guarantors. See Cole v. Lawrence, 701 A.2d 987, 990 (Pa. Super. Ct. 1997) (insurer's partial payment of debt owed by patient constituted acknowledgment of only of the insurer's obligations absent evidence that patient authorized it to

v. Lawrence, 701 A.2d 987, 989-990 (Pa. Super. Ct. 1997); see also United States v. Hemmons, 774 F. Supp. 346, 351 (E.D. Pa. 1991) (payments during limitations period constitute acknowledgment under Pennsylvania law).

⁷ See Huntington, 659 A.2d at 1054-55 (where debtor previously contested interest on principal, court will not infer promise to pay interest from payment of principal).

make partial payments on her behalf).⁸ Plaintiff, however, contends that the language of the guaranty agreements impute Franklin's acknowledgment of the debt to defendants as a matter of law. The applicable provisions read:

[T]he undersigned hereby guarantees, absolutely and unconditionally, the full and punctual payment to GE of all indebtedness or obligation of any kind which Debtor has incurred or may occur pursuant to the lease or purchase of the equipment from GE The liability of the undersigned shall not be affected by the amount of credit extended hereunder, nor by any change in the form of said indebtedness, by note or otherwise, nor by any extension or renewal thereof.

The undersigned expressly waives notice of acceptance of this guaranty, extension of credit hereunder, of default in payment, change in form, or renewal or extension of said indebtedness, or of any matter with respect thereto.

This is a continuing Guaranty and shall remain in full force and effect until such time as GE shall receive from the undersigned written notice of revocation, and such revocation shall not in any way relieve the undersigned from liability for any indebtedness incurred prior to the actual receipt by GE of said notice.

Plaintiff contends that in the above-quoted agreement, defendants consented to any attempts by GEMS and Franklin to work out alternative payment arrangements and any acknowledgment by Franklin of its obligations to GEMS made during those attempts.

The parties agree that the interpretation of this agreement is governed by New York law. Under New York law, guaranty agreements are construed under ordinary principles of contract construction, and the objective of interpreting the agreement is to give effect to the expressed intentions of the parties. Continental Airlines, Inc. v. Lelakis, 943 F. Supp. 300, 304 (S.D.N.Y. 1996) (citation omitted). If the intent of the parties is clear from the four corners of the agreement,

⁸ Plaintiff also contends that it has presented sufficient evidence that during the negotiations that led to the April 1, 1993 agreement Golden represented not only Franklin, but also the defendants. I need not reach this issue, however, because I conclude that if Franklin acknowledged the debt, that acknowledgment binds defendants.

its interpretation is a matter of law. Id. (citing Thompson v. Gjivoje, 896 F.2d 716, 721 (2d Cir. 1990)); see also Price v. Barkowiak, 715 F. Supp 76, 79 (S.D.N.Y. 1989) (“Where contractual language is plain on its face, it should be construed as a matter of law in the summary judgment context.”).

I find the plain meaning of the guaranty agreement clear and the intent of the parties manifest. The parties provided that defendants would be liable for any extension, renewal, or change in the form of the credit. Defendants also waived notice to renewal, extension or change in the form of the credit, or any matter related thereto. It is clear, therefore, that the parties anticipated changes in the credit issued to Franklin and that defendants agreed to allow GEMS and Franklin the freedom to negotiate those changes without their consent and without notifying them. Defendants further agreed to remain liable for any changes negotiated by GEMS and Franklin. In any negotiation of an extension or renewal of credit or a change in the form of the obligation, the debtor will, as Franklin did here, acknowledge the original obligation causing the limitations period to begin to run anew pursuant to Pennsylvania law. I conclude that the guaranty agreements manifests defendants’ intent to be bound by these negotiations and any concomitant acknowledgments for statute of limitations purposes without having given consent or authorization and without having independently acknowledged the original obligation.

Defendants interpret this guaranty agreement as requiring plaintiff to get defendants’ independent acknowledgment of the original obligation to toll the statute of limitations. This interpretation, however, is directly contrary to the clear intent of the parties to allow Franklin and GEMS the flexibility to negotiate changes in the obligation without notifying and obtaining approval from defendants. In fact, defendants’ interpretation would subvert the parties’ intent by requiring

plaintiff to sue guarantors within four years of the original default despite subsequent successful attempts to restructure debtor's obligations. For example, had Franklin failed to make a payment due on December 31, 1990, GEMS and Franklin restructured the debt to reduce the periodic payments, and Franklin made all of the other payments, defendants' interpretation of the guaranty agreements would require GEMS to have sued defendants by December 31, 1994 or the statute of limitations would bar its claims. Thus, GEMS would have found itself in the untenable position of having to sue the guarantors, despite the debtor's ability to make all the payments due pursuant to the restructured obligation, to preserve its rights under the guaranty agreements. This example illustrates that defendants' interpretation is directly contrary the intent of the parties as expressed in the guaranty agreements, which was to allow Franklin and GEMS the flexibility to negotiate changes in Franklin's obligations without involving the guarantors and while still preserving GEMS' rights under the guaranty agreements.⁹

Alternatively, defendants contend that interpreting the guaranty agreements to hold them liable without their independent acknowledgment of the debt contravenes New York's proscription against clauses in contracts that waive or extend the statute of limitations.¹⁰ Under well-settled New

⁹ Plaintiff's interpretation, which I adopted, is also consistent with what would presumably be the guarantors' preference -- that GEMS pursue all avenues of recovery against the primary debtor before bringing an action against the guarantors.

¹⁰ Plaintiff contends that New York's proscription against pre-accrual extensions of the statute of limitations does not apply here because Pennsylvania's statute of limitations applies as well as its accrual rules. I disagree. The contract contains a broad choice-of-law provision which reads, "[t]he guaranty and its interpretation and application shall in all respects be governed by the law of the State of New York." The only reason that Pennsylvania's limitation period applies is because a choice-of-law provision did not explicitly state to apply New York's limitations period, a requirement under Pennsylvania's choice-of-law rules. See supra note 2. Therefore, this dispute is governed in all respects by New York law with the exception of Pennsylvania's limitations period and Pennsylvania's tolling and accrual rules. See Kruzits v. Okuma Machine Tool, Inc., 40 F.3d 52, 55 (3d Cir. 1994) ("Pennsylvania courts generally honor the intent of contracting parties and enforce choice of law provisions in contracts executed by them."); Windt v.

York law, agreements to waive or extend the statute of limitations made before the cause of action accrues are generally unenforceable as against public policy. See John J. Kassner & Co., Inc. v. City of New York, 389 N.E.2d 99, 103 (N.Y. 1979); New York General Obligation Law, § 17-103.3 (McKinney 1989). This proscription, however, does “not change the . . . effect with respect to the statute of limitations, of an acknowledgment or promise to pay, or a payment or part payment of principle or interest[.]” Id. § 17-103.4(a).¹¹ Therefore, to the extent defendants agreed to be bound by Franklin’s acknowledgment of the obligation during negotiations to renew, extend or change the form of the debt, this agreement does not violate New York’s public policy against pre-accrual waivers or extensions of the statute of limitations.¹²

Shepard’s/McGraw-Hill, Inc., 1997 WL 152795, *4 (E.D. Pa. 1997) (interpreting similar provision as requiring that New York law govern not only interpretation and construction of the agreement, but also enforcement of the agreement). Plaintiff does not contend that New York law lacks a reasonable relationship to the parties or the transaction which would preclude application of New York law. See Lang Tendons, Inc. v. Great Southwestern Marketing Co., Inc., 1994 WL 159014, *3 (E.D. Pa. 1994) (“In straight contract actions, Pennsylvania courts have held that conflict of laws principles generally are not offended by the application of a contractual choice of law provision, provided that the law chosen has a reasonable relationship to the parties or the transaction.”); Restatement (Second) of Conflicts of Laws § 187.

¹¹ Defendants assert that the interpretation I adopt above is tantamount to an indefinite waiver of the statute of limitations and therefore transgresses New York’s public policy against waivers and extensions of the limitations period. In fact, however, my interpretation does not effect an indefinite waiver; it merely places the guarantors in the same position as debtor with respect to the statute of limitations in accordance with the intent of the parties. Nothing in the cases cited by defendants indicates that the New York courts would hold that this provision, as interpreted, is unenforceable as against public policy.

¹² See also Continental Bank & Trust Co. v. Scotch Presbyterian Church, 64 N.Y.S.2d 24, 26 (N.Y. Sup. Ct. 1939) where the Court held that a provision preventing release of guarantors after extension of time for debtor to make payment without consent of guarantors did not violate state’s public policy against pre-accrual waivers of the statute of limitations because the provision was never intended nor did it constitute an agreement to waive the statute of limitations. It was designed to permit an extension of the time of payment of the debt without discharge of the guarantor. The Court thus concluded that the debtor’s extension of time to make payment also extended the statute of limitations for the guarantor because the guarantor guaranteed the performance of a contract which, by its terms, permitted the parties to change the terms.

The agreement here was also not intended as a waiver or an extension of the statute of limitations. It was intended to allow free negotiations of changes in the debt between GEMS and Franklin without having to consult or get approval from the guarantors, and therefore New York’s public policy against pre-accrual

I therefore conclude that defendants are not entitled to summary judgment on the statute of limitations issue, and that plaintiff has established that the defense is not operative here as a matter of law. Perhaps inadvisedly, after I denied defendants' motion to dismiss I limited discovery to the facts surrounding the acknowledgment of the debt. As a result plaintiff did not address defendants' other affirmative defenses and therefore summary judgment for plaintiff is not appropriate at this time. Plaintiff may, however, move for summary judgment again when and if it considers it appropriate.

IV. Scope of the Guaranty Agreements

Defendants also seek summary judgment contending that the promissory note and the Nuclear Maintenance Service Agreement are beyond the scope of the guaranty agreements. Under New York law, the scope of a guaranty agreement is narrowly construed and the guarantor's liability must not be extended beyond the plain and explicit language of the agreement. Chase Manhattan v. American Nat. Bank, 93 F.3d 1064, 1073-74 (2d Cir. 1996) (citations omitted). Pursuant to this principle, I agree that the Nuclear Maintenance Service Agreement is beyond the scope of the guaranty agreements, but I conclude that a genuine issue of material fact remains as to the promissory note, precluding summary judgment.

The applicable language of the guaranty agreements read as follows:

[T]he undersigned hereby guarantees, absolutely and unconditionally, the full and punctual payment to GE of all indebtedness or obligation of any kind which Debtor has incurred or may incur pursuant to the lease or purchase of equipment from GE[.]

Defendants contend that the promissory note issued by Franklin contemporaneously with the

waivers or extensions of the statute of limitations is not operative.

Leaseline Agreement was not “incurred . . . pursuant to the lease or purchase of equipment from GE.” I disagree. How the promissory note was related to the lease or purchase of equipment from plaintiff is a question of fact, and the above-quoted language of the guaranty agreement does not preclude inclusion of the promissory note as a matter of law. Neither party contended that no genuine issues of material fact remain concerning how the promissory note relates to the lease or purchase of equipment from GE, and therefore summary judgment is inappropriate.

I agree, however, that the above-quoted language of the guaranty agreement precludes inclusion of the Nuclear Maintenance Service Agreement as within the scope of the guaranty agreements. Pursuant to the service agreement, plaintiff agreed to service certain nuclear medical equipment already in Franklin’s possession.¹³ Franklin’s liability pursuant to this service agreement was not “plainly and explicitly,” *id.*, incurred “pursuant to the lease or purchase of equipment from GE.” Therefore, interpreting the service agreement as within the guaranty agreement’s scope would impermissibly extend the guarantors’ liability. I thus conclude that the service agreement is beyond the scope of the guaranty agreement as a matter of law.¹⁴

¹³ It is unclear from the service agreement whether the nuclear equipment was GE equipment or the equipment of another manufacturer. The equipment, however, was not part of the Leaseline agreement or any other agreement between GE and Franklin brought to my attention.

¹⁴ While plaintiff does not explicitly concede this point, they do not make an argument opposing summary judgment on the claim based on the Nuclear Maintenance Service Agreement.

