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BRAUNGER FOODS, LLC, FORMERLY KNOWN AS TOBA OF IOWA, LLC, DOING BUSINESS AS BRAUNGER FOODS, APPELLANT, V. MICHAEL K. SEARS AND HUNGRY'S NORTH, INC., APPELLEES.

823 N.W.2d 723

Filed December 18, 2012. No. A-11-1109.

1. **Contracts: Parties.** An agreement to make a future contract is not binding upon either party unless all terms and conditions are agreed upon and nothing is left to future negotiation.
2. **Contracts: Parties: Time.** A contract is not formed if the parties contemplate that something remains to be done to establish contractual arrangements or if elements are left for future arrangement.
3. **Contracts.** Where a purported agreement is subject to approval and such approval is not obtained, the document does not satisfy the legal requirements for a written agreement.

Appeal from the District Court for Dakota County: PAUL J. VAUGHAN, Judge. Affirmed.

Jeana L. Goosmann and Anthony L. Osborn, of Goosman Law Firm, P.L.C., for appellant.

Michael K. Sears, pro se.

IRWIN, PIRTLE, and RIEDMANN, Judges.

RIEDMANN, Judge.

INTRODUCTION

Braunger Foods, LLC, appeals from the order of the district court for Dakota County finding the personal guaranty unenforceable against Michael K. Sears. We affirm.

BACKGROUND

Sears is the owner of Hungry's North, Inc. (Hungry's). Braunger Foods sold food product supplies to Hungry's beginning in 2004 on an "open account." Hungry's began to fall behind on payments in September 2006 but resumed its timely payments in November. However, 36 sales between September 5 and November 14 remained unpaid.

In October 2009, Hungry's began falling behind on payments again. As a result, on November 16, "Kevin," a sales

representative from Braunger Foods, asked Sears to sign a credit application, which included a guaranty provision purporting to personally obligate Sears for all obligations of Hungry's. Sears signed the application and guaranty.

Braunger Foods filed suit against Sears and Hungry's to recover the amount of the unpaid invoices. After trial, the court entered judgment against Hungry's for the unpaid invoices plus interest. The trial court found, however, that the personal guaranty was unenforceable against Sears because the agreement was incomplete and never signed or approved by anyone from Braunger Foods. Braunger Foods appeals.

ASSIGNMENT OF ERROR

Braunger Foods assigns that the trial court erred in finding that the personal guaranty is not enforceable against Sears.

STANDARD OF REVIEW

A guaranty is interpreted using the same general rules as are used for other contracts. *Builders Supply Co. v. Czerwinski*, 275 Neb. 622, 748 N.W.2d 645 (2008). The meaning of a contract is a question of law, and an appellate court must reach its conclusions independently of the decisions made by the trial court. See *id.*

ANALYSIS

Braunger Foods argues that the trial court erred in refusing to enforce the personal guaranty against Sears. The trial court found the guaranty unenforceable because the agreement was incomplete, as the terms were never approved by anyone from Braunger Foods.

[1-3] An agreement to make a future contract is not binding upon either party unless all terms and conditions are agreed upon and nothing is left to future negotiation. *Nebraska Nutrients v. Shepherd*, 261 Neb. 723, 626 N.W.2d 472 (2001). A contract is not formed if the parties contemplate that something remains to be done to establish contractual arrangements or if elements are left for future arrangement. *Id.* We have previously found that where a purported agreement was subject to approval and such approval was not obtained, the document did not satisfy the legal requirements for a written

agreement. See *First Nat. Bank of Osceola v. Gabel*, No. A-01-968, 2003 WL 21146098 (Neb. App. May 20, 2003) (not designated for permanent publication). While we recognize *Gabel* was an unpublished opinion, we find it persuasive for the action before us.

We agree with the trial court that no contract was formed here, because the guaranty was incomplete. The first two pages of the credit application state that the personal guaranty is on "terms that are approved." Thus, before the agreement could be finalized, the terms were to be approved by a representative of Braunger Foods.

There are several locations on the credit application where Braunger Foods could have indicated its approval but which were left blank. The upper right-hand corner of the first page has a section which states, "Approved By:" with a blank line next to it, but there is no name filled in as to who had given approval. Similarly, the bottom of the first page indicates "OFFICE USE ONLY: TERMS APPROVED," with a blank line next to it, but this space was also left blank. There are spaces on the second page for the signature of a Braunger Foods representative under the section containing the terms and conditions and under the section containing the guaranty, but both of those spaces were left blank as well.

The upper right-hand corner of the first page indicates that the salesperson connected with the credit application was "Kevin," but there is no indication that he approved the terms of the application. Therefore, we agree that because the terms were never approved by anyone from Braunger Foods, the agreement is incomplete. Accordingly, the personal guaranty is not binding upon Sears.

CONCLUSION

The trial court was correct in finding that the personal guaranty was unenforceable against Sears, because there is no indication it was ever approved by anyone from Braunger Foods.

AFFIRMED.