Missouri Court of Appeals
Southern District

In Division

SHIFT CAPITAL INCOME FUND, LP, Plaintiff-Appellant, v. STANDLEY PLASTICS, INC., et al., Defendants-Respondents.	Case Number SD38802 **Filed: March 13, 2026**

APPEAL FROM THE CIRCUIT COURT OF BARTON COUNTY

The Honorable David R. Munton, Judge

AFFIRMED

Shift Capital Income Fund, LP ("Shift") appeals a judgment from the Circuit Court of Barton County, Missouri ("trial court"), granting Defendant Christine Standley's ("Mrs. Standley's") Motion for Judgment on the Pleadings (the "Motion") as to Shift's claims against Mrs. Standley for misrepresentation/fraudulent inducement (Count X) and

breach of contract (Count XII) related to a "Spousal Consent" as asserted in its Third Amended Petition (the "Petition").[1] The trial court's Judgment is affirmed.

Factual Background and Procedural History[2]

Mrs. Standley and Steven Standley were married at all relevant times herein.[3] On May 1, 2018, Shift, a Texas limited partnership located in Austin, Texas, and Standley Plastics, Inc. ("SPI"), a Missouri corporation located in Lamar, Missouri, entered into a Term Loan and Security Agreement ("Initial Loan Agreement") where Shift agreed to loan SPI $3,000,000 to acquire certain equipment necessary to scale SPI's business. Per

[1] In its July 21, 2023 Petition, Shift asserts 12 counts against four separate defendants. On July 9, 2024, the trial court, by docket entry, sustained the Motion as to Counts X and XII asserted against Mrs. Standley. On October 30, 2024, Shift dismissed the remaining claims asserted in its Petition against Mrs. Standley without prejudice. The trial court's ruling on the Motion along with Shift's dismissal without prejudice of the remaining claims against Mrs. Standley disposed of a "judicial unit" of claims as those actions disposed of all claims asserted against Mrs. Standley. As such, and pursuant to Shift's unopposed request for it to enter a final and appealable judgment sustaining Mrs. Standley's Motion pursuant to Rule 74.01(b), the trial court entered its Judgment on November 21, 2024, finding "these dismissals dispose of a distinct judicial unit, finds that there exists no just reason for delay of the appeal of this Judgment, and certifies this Judgment for immediate appeal."

[2] Much of the factual background between the parties is taken from exhibits attached to Shift's Petition. While these exhibits were not filed separately with this Court, the trial court's judgment was on the pleadings. In this Court's review of a judgment on the pleadings, the non-moving party's pleadings "are treated as admitted for purposes of the motion." ***BBX Cap. Corp. v. Scottsdale Ins. Co.***, 713 S.W.3d 590, 601 (Mo. App. W.D. 2025) (quoting ***Eaton v. Mallinckrodt, Inc.***, 224 S.W.3d 596, 599 (Mo. banc 2007)). An exhibit to a pleading is a part of the pleading for all purposes. Rule 55.12. All references to rules are to Missouri Court Rules (2026).

[3] Steven Standley passed away during the course of the underlying lawsuit. Defendant Shawn Standley, in his capacity as Administrator of the Estate of Steven C. Standley, now deceased, was ordered by the trial court to be a substitute party for Steven Standley.

the Initial Loan Agreement, Shift was defined as the "Lender" and SPI as "Borrower." Together with the Initial Loan Agreement, certain other loan documents ("Loan Documents") were executed by Steven Standley that same date, including a Guaranty and a Promissory Note. The Guaranty was signed by "Steven Standley, individually and on behalf of his marital estate[.]" The Guaranty stated:

> FOR VALUE RECEIVED, and to induce Lender to extend credit to Borrower as provided for in the Loan Agreement, the Note and the other Loan Documents, Steven Standley, as a married man domiciled in Missouri, on behalf of his separate and marital estate, hereinafter referred to as "**Guarantor**," hereby unconditionally agrees as follows[.]

Before Steven Standley executed the Guaranty, Mrs. Standley executed a Spousal Consent dated May 1, 2018. The Spousal Consent reads:

> SPOUSAL CONSENT
>
> The undersigned executes this Spousal Consent to signify that he or she consents to the execution thereof by her spouse, Steven Standley[,] and to the granting of a security interest in any community property interest she may have in [SPI] and, to the extent she may be deemed to have an interest in [SPI] or to be regarded as a Shareholder the signatures of the undersigned below shall also be deemed to be joinder in the execution hereof by the undersigned as the holder of an ownership interest in [SPI] either directly or indirectly.
>
> The undersigned hereby authorizes, ratifies, confirms and approves the execution of the Deeds of Trust owned by the undersign and her spouse, the Stock Grant Agreement and the Guaranty, both dated even herewith, as currently written and as hereafter may be amended, by the undersigned's spouse with the same force and effect as if the undersigned were a party hereto, such ratification, confirmation and approval being retroactive to the date of the execution of the Deeds of Trust, Stock Grant Agreement and/or Guaranty, and all amendments thereto, and the undersigned appoints her spouse as his or her lawful attorney-in-fact and surrenders to said spouse, for said spouse's use, all rights said undersigned may have with respect to the management and control of [SPI] and the acquisition, management, control, encumbrance and disposition of [SPI's] assets, including the power to transfer or encumbrance of the ownership interests in the L [sic] [SPI].

> that the undersigned and his or her spouse may have in the L [sic] [SPI]. The power granted herein shall survive the death or disability of the undersigned.

Over the next few months, SPI borrowed additional money from Shift. On July 1, 2018, SPI borrowed "an additional 600,000.00 advance" from Shift. On June 28, 2018, an Amended and Restated Guaranty was executed by Steven Standley as "Guarantor" "individually and on behalf of his marital estate" and defined "Steven Standley, as a married man domiciled in Missouri, on behalf of his separate and marital estate," as "**Guarantor**[.]"

SPI borrowed "an additional $515,000.00 advance" on August 31, 2018, and "an additional $1,000,000.00 advance" on December 17, 2018, from Shift. Each additional advance was made pursuant to amended and restated loan and security agreements, amended and restated interest reserve application agreements, and additional promissory term notes.[4]

On April 1, 2019, SPI borrowed "an additional $500,000.00 advance" pursuant to the terms in the Fourth Amended and Restated Term Loan and Security Agreement ("Final Loan Agreement"). As in the prior loan agreements, Shift was defined as

[4] The additional $600,000.00 advance was pursuant to the terms of an Amended and Restated Loan and Security Agreement, Second Promissory Term Note, and an Amended and Restated Interest Reserve Application Agreement. The additional $515,000.00 advance was pursuant to the terms of a Second Amended and Restated Loan and Security Agreement, Third Promissory Term Note, and Second Amended and Restated Interest Reserve Application Agreement. The additional $1,000.000.00 advance was pursuant to the terms of a Third Amended and Restated Loan and Security Agreement, Fourth Promissory Term Note, and Third Amended and Restated Interest Reserve Application Agreement.

"Lender" and SPI as "Borrower." This Final Loan Agreement outlined and incorporated all the previous loan agreements between "Lender" and "Borrower," stating that "the execution and delivery of this Agreement does not constitute or affect a novation or a waiver or release of any Obligations under the Prior Agreement[s], all of which will continue under and are governed by this Agreement." The Final Loan Agreement is signed by Steven Standley as President of SPI.

SPI, with Steven Standley as its "Guarantor," defaulted on the loan. On February 8, 2020, the 152nd Judicial District Court of Harris County, Texas, entered a judgment in favor of Shift and against SPI in the amount of $5,529,037.53 in damages and $12,049.57 in attorneys' fees and costs in a case styled Shift Capital Fund, LP v. Standley Plastics, Inc., Case 2019-58223 ("SPI Judgment"). The SPI Judgment was registered in the Circuit Court of Jasper County on February 25, 2020 (Case No. 20AO-CC00053), and in the Circuit Court of Barton County on February 26, 2020 (Case No. 20B4-CV0066).

On July 16, 2019, the 113th Judicial District Court of Harris County, Texas, entered a judgment in favor of Shift and against Steven Standley in the amount of $5,215,759.25 in damages and $5,696.41 in attorney's fees and costs in a case styled Shift Capital Income Fund, LP v. Steven Standley Case 2019-37019 ("Standley Judgment"). The Standley Judgment was registered in the Circuit Court of Barton County on November 26, 2019 (Case No. 19B4-C00391). Neither the SPI Judgment nor the Standley Judgment was against Mrs. Standley.

Shift's Petition in the underlying lawsuit alleges, among other things, that after the SPI Judgment and the Standley Judgment were entered and registered in Missouri, Steven

Standley and/or Mrs. Standley fraudulently transferred titles to vehicles, fraudulently conveyed real property to their daughter, and fraudulently transferred numerous other assets to other Standley owned, controlled, or operated entities or other persons to prevent Shift from collecting on its security interests. Additionally, Shift claims Mrs. Standley never intended to secure the financing with assets of her marital estate or Steven Standley's share of their marital estate as set forth in the Spousal Consent. On December 5, 2023, Mrs. Standley filed her Motion arguing, among other things, that:

> 3. [Shift's] Third Amended Petition treats this Spousal Consent as a broad guaranty by [Mrs. Standley]. It is not.
> 4. Nevertheless, Count X of [Shift's] Third Amended Petition alleges [Mrs. Standley] defrauded [Shift] via statements made in the Spousal Consent and Count XII alleges [Mrs. Standley] breached the Spousal Consent by "failing to provide Shift the pledged security backing the loan."
> 5. However, [Shift] fails to plead any false representation made by [Mrs. Standley] or any contractual obligation breached by [Mrs. Standley].
> 6. Therefore, [Mrs. Standley] respectfully requests this honorable Court enter Judgment on the pleadings in her favor as to [Shift's] Counts X and XII.

The trial granted the Motion. This appeal followed.

Motion to Dismiss this Appeal

Before reaching the merits of Shift's appeal, we must first determine whether Mrs. Standley's Motion to Dismiss filed in this appeal has merit. Mrs. Standley argues in her Motion to Dismiss that the language in the Judgment certifying it for "immediate appeal" made the Judgment final for purposes of appeal the date it was entered by the trial court, November 21, 2024. Mrs. Standley argues that, pursuant to Rule 81.04, Shift was required to file its appeal within 10 days after November 21, 2024. Shift filed its notice of appeal on December 19, 2024. Mrs. Standley argues Shift's Notice of Appeal filed more

than 10 days after November 21, 2024 is untimely, requiring this Court to dismiss Shift's appeal.

The trial court granted Mrs. Standley's Motion on July 10, 2024. On November 5, 2024, Shift voluntarily dismissed all remaining counts asserted against Mrs. Standley in its Petition and filed an Unopposed Motion for Entry of Judgment Pursuant to Rule 74.01(b). The trial court entered its Judgment on November 21, 2024, stating: "Pursuant to Rule 74.01(b), the Court finds these dismissals dispose of a distinct judicial unit, finds that there exists no just reason for delay of the appeal of this Judgment, and certifies this Judgment for immediate appeal."

Rule 74.01(b) provides:

> **(b) Judgment Upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may enter a judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of such determination, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Further, a judgment becomes final thirty days after its entry. Rule 81.05(a)(1). There is no language in Rule 74.01 that indicates Rule 81.05 does not apply to a judgment entered pursuant to paragraph (b). *See* ***Suelthaus & Kaplan, P.C. v. Byron Oil Indus., Inc.***, 847 S.W.2d 873, 875 (Mo. App. E.D. 1992) ("Nothing in the Rules indicates Rule 81.05(a) does not apply to Rule 74.01 judgments."). The Judgment, which

was filed on November 21, 2024, became final for purposes of appeal on December 21, 2024. Shift had 10 days from December 21, 2024, to timely file its notice of appeal. Shift filed its notice of appeal prematurely on December 19, 2024. Therefore, Shift's notice of appeal is treated as timely filed immediately after the Judgment became final on December 21, 2024. Rule 81.05(b). Mrs. Standley's Motion to Dismiss appeal is denied.

Standard of Review

A trial court's grant of a motion for judgment on the pleadings is reviewed *de novo.* ***BBX***, 713 S.W.3d at 601. "Judgment on the pleadings is appropriate where the question before the court is strictly one of law." ***Id.*** (quoting ***Eaton***, 224 S.W.3d at 599). A judgment on the pleadings is reviewed by this Court to determine "whether the moving party is entitled to judgment as a matter of law based on the face of the pleadings." ***Ocello v. Koster***, 354 S.W.3d 187, 197 (Mo. banc 2011) (quoting ***RGB2, Inc. v. Chestnut Plaza, Inc.***, 103 S.W.3d 420, 424 (Mo. App. S.D. 2003)). "The well-pleaded facts of the non-moving party's pleading are treated as admitted for purposes of the motion." ***Id.*** (quoting ***Eaton***, 224 S.W.3d at 599).

Analysis

Shift presents three points on appeal. In Point I, Shift contends the trial court erred in granting Mrs. Standley's Motion as to Count X for misrepresentation/fraudulent inducement because Shift properly pled a claim for misrepresentation and fraud in that Shift pled that Mrs. Standley falsely represented to Shift her consent to her husband's pledge of her marital estate to secure repayment of the loan. In Point II, Shift claims the trial court erred in granting Mrs. Standley's Motion as to Count X because Shift properly

alleged a claim of fraud against Mrs. Standley in that Missouri law recognizes that a spouse can consent to an encumbrance of her marital estate and Shift pled Mrs. Standley's consent. In its final point, Point III, Shift argues the trial court erred in granting Mrs. Standley's Motion as to Count XII for breach of contract because Shift pled that Mrs. Standley, for consideration, agreed in the Spousal Consent that her marital estate would serve as a guarantor of the loan and she thereafter breached that agreement by refusing to allow her marital estate to serve as a guarantor after SPI defaulted on the loan.

Notably, all three points on appeal base the alleged trial court error on Shift's interpretation of the Spousal Consent itself and the assumed legal effect of the Spousal Consent based on that interpretation. Shift contends that the Spousal Consent executed by Mrs. Standley effectively pledged, encumbered, and guaranteed that Mrs. Standley's marital estate would secure SPI's obligations under the loan in the event of a default. Because Shift's argument does not accord with Missouri law regarding the necessary preconditions to encumber a marital estate, and because all of Shift's points on appeal depend on that failed proposition to be true in order to succeed, we address that issue alone.

Paragraph 12 of Shift's Third Amended Petition sets forth the basis on which it seeks to hold Mrs. Standley's marital estate liable for the debts of her husband's company, SPI:

> Before Steven Standley executed the Loan Documents, [Mrs. Standley] executed a Spousal Consent … by and through which she authorized, ratified, confirmed, and approved her husband Steven Standley

> executing the Loan Documents, including the Amended and Restated Guaranty (the "Guaranty"). … The Spousal Consent is and was a representation to Shift, and contains representations to Shift, that [Mrs. Standley] authorized, ratified, confirmed, and approved her husband Steven Standley executing the Loan Documents. By virtue of the Consent, [Mrs. Standley] specifically represented to Shift that she consented and agreed to Steven Standley's pledge and offer of his interest in his "separate and marital estate" and that she agreed that said interest secured repayment of the loan(s) from Shift. [Mrs. Standley] further and expressly represented to Shift that she consented and agreed to this pledge of assets "as if [she] were a party" to the documents executed by her husband to make such pledges.

Paragraph 14 further states: "[Mrs. Standley] consented and agreed to Steven Standley's execution of the Loan Documents, including the Guaranty, with the same force and effect as if she were a party to the Loan Documents, in exchange for and in consideration of Shift's agreement to loan SPI funds."

Thus, it is clear from the allegations in Shift's Third Amended Petition that Mrs. Standley did not actually sign any of the Loan Documents themselves, and this fact is dispositive of the appeal.

To answer the question of whether the Loan Documents in this case convey a valid lien to Shift on Mrs. Standley's interest in the marital estate, we must:

> … ascertain the intent of the parties by looking at the words of the contract and giving those words their plain, ordinary, and usual meaning. *State ex rel. Vincent v. Schneider,* 194 S.W.3d 853, 859–860 (Mo. banc 2006). The "intent of the parties ... is determined based on the contract alone unless the contract is ambiguous." *Trimble v. Pracna*, 167 S.W.3d 706, 714 (Mo. banc 2005) (citing *J.E. Hathman, Inc. v. Sigma Alpha Epsilon Club*, 491 S.W.2d 261, 264 (Mo. banc 1973)).
>
> "[A] contract is only ambiguous, and in need of a court's interpretation, if its terms are susceptible to honest and fair differences." *Schneider*, 194 S.W.3d at 860. "A contract is not ambiguous merely because the parties disagree as to its construction." *Id.* "An ambiguity exists when there is duplicity, indistinctness, or uncertainty in the meaning of the language in the policy. Language is ambiguous if it is reasonably open to

> different constructions." *Seeck v. Geico General Ins. Co.*, 212 S.W.3d 129, 132 (Mo. banc 2007) (quoting *Gulf Ins. Co. v. Noble Broadcast*, 936 S.W.2d 810, 814 (Mo. banc 1997)).

Ethridge v. TierOne Bank, 226 S.W.3d 127, 131 (Mo. banc 2007).

In Missouri, it is "elementary in our law" that both spouses must agree to encumber marital property, as property owned as tenants by the entirety cannot be encumbered by only one spouse. ***Kenny's Tile & Floor Covering, Inc. v. Curry***, 681 S.W.2d 461, 467 (Mo. App. W.D. 1984) (citing ***Kaufmann v. Krahling***, 519 S.W.2d 29, 31 (Mo. App. E.D. 1975)). Neither spouse, acting alone, can convey the other spouse's interest.

While Shift and Mrs. Standley agree that, under Missouri law, Steven Standley could not unilaterally pledge the Standleys' marital estate as security for the loan, Shift mistakenly argues in its briefing that the Guaranty "expressly and unambiguously defined the Standley's marital estate as a [g]uarantor of the subject loan," and that Mrs. Standley, by virtue of the Spousal Consent "expressly assented to her marital estate being pledged to guaranty the loan." While Shift consistently refers to "his marital estate" or "her marital estate," the Standley's marital estate was not divisible. ***Kaufmann***, 519 S.W.2d at 31 (stating that "[t]he essential characteristic of the tenancy by the entirety has always been and still is the idea that each tenant owns the whole estate but no divisible part.")

Further, it is undisputed in this case that Mrs. Standley was not a borrower or guarantor of the loan, and is not personally liable for the SPI Judgment or Standley Judgment. All of the Loan Documents at issue in this case define SPI as the "Borrower" and Steven Standley as the "Guarantor" of the loan. As such, Shift's Third Amended

Petition does not, and cannot, allege that Mrs. Standley is named as a borrower or a guarantor anywhere in any of the Loan Documents in this case. "This definition is not open to different constructions and cannot reasonably be construed to mean that [Mrs. Standley] also is a borrower under the [Loan Documents]." ***Ethridge***, 226 S.W.3d at 131.

Shift nonetheless cites ***Kaufmann*** in support of its argument that the trial court's judgment is contrary to Missouri law that expressly allows one spouse to pledge marital assets as collateral if the other spouse assents to such a conveyance. Shift argues the Spousal Consent satisfied this "assent" requirement. Shift misconstrues ***Kaufmann***, however, which mostly discussed the theory of implied agency as it concerns a husband's ability to legally bind his wife to a contract, or to place a lien against their marital home. 519 S.W.2d at 31. The court held that the husband in that situation could do neither. ***Id.*** at 31. Where the wife did not sign any notes to pay for the remodeling of the marital home, and the husband alone directed the remodeling, the plaintiff could not place a lien on the marital estate, as the wife's level of activity did not arise to the level of "joint participation" under the theory of implied agency. ***Id.*** at 31-33.

With respect to Shift's argument that Mrs. Standley's "assent" evidences her agreement to Steven Standley's purported pledge of "his" marital estate by virtue of the Guaranty – we disagree. Going back to 1887, our courts have held that "[s]igning, sealing, and acknowledging a deed by the wife in which her husband is the only grantor[] will not convey her estate." ***Ethridge***, 226 S.W.3d at 131 (quoting ***Bradley v. Missouri Pac. Ry. Co.***, 4 S.W. 427 (Mo. banc 1887)).

Following this 1887 holding, Missouri courts have repeatedly held that the intent of both spouses to encumber the marital property must be explicit, and that even if the non-borrowing spouse signs a separate "assent," that assent does not replace the requirement that the spouse must be named on the loan document to create a lien against the marital property. For example, in ***Ethridge***, the Supreme Court of Missouri held that, where the deed of trust securing a loan on marital property listed only the husband as the borrower, even though the wife signed the deed of trust below the husband's name on the signature line, the deed of trust failed to create a lien in favor of the lender because the wife was not specifically named as a borrower in the deed of trust. 226 S.W.3d at 131-32.

The facts of ***Ethridge*** are instructive here. The husband and wife owned their home as tenants by the entirety. ***Id.*** at 129. The husband refinanced the property through a $100,000 loan, and the husband alone signed the promissory note. ***Id.*** The deed of trust identified the husband as the sole borrower and described the property as his separate property. ***Id.*** at 130. While the wife had attended the closing and signed the deed of trust below her husband's signature, none of the loan documents identified the wife as a borrower or a grantor. ***Id.*** When the husband died and the wife did not make any payments, she sued to invalidate the deed of trust on the basis it did not convey her interest in the marital property. ***Id.*** Our high court agreed. ***Id.*** at 131. Judge Wolff encapsulated the essence of the ***Ethridge*** case with such force and clarity, we restate his introduction here in full:

> When David Ethridge refinanced the home that he and his wife, Mary, held as tenants by the entirety, the lender prepared loan documents that slighted the wife. As the wife later said, her husband was "head of the

> household." That legally quaint assumption appears embodied in the lender-drafted refinancing papers that list David Ethridge, a married man, as the sole owner and the sole borrower. The law, as set forth in precedent cases dating to 1887, is harsh and unforgiving of such slights.
>
> TierOne Bank, successor to the refinancing lender, seeks to impose the obligations of borrower on Mary Ethridge now that her husband is dead. To allow Mary Ethridge to retain the home free of the refinancing lien, the bank says, is unjust. The law, however, is unforgiving of the injustice of slighting the wife's interests at the time of refinancing—that injustice produces an enrichment of the wife who has no obligation to pay her late husband's loan. Equitable doctrines will not help. The bank loses.

Id. at 129.

Fed. Nat'l Mortg. Ass'n v. Pace, 528 S.W.3d 417 (Mo. App. E.D. 2017), cited ***Ethridge*** as the basis for its holding that the trial court's reformation of a deed of trust was improper where that deed of trust purported to encumber property owned by husband and wife as tenants by the entirety, but had named only husband as the borrower. ***Id.*** at 420-21. In ***Pace***, husband had signed a promissory note for $197,000 to purchase a piece of property (deeded by special warranty deed to husband and wife), secured by a deed of trust to First Horizon Home Loan Corporation ("First Horizon"). ***Id.*** at 419. The promissory note identified only husband as the borrower, and wife did not sign the promissory note or the deed of trust. ***Id.*** Wife did, however, sign a document titled "Assent to Execution of Deed," wherein wife agreed that she "expressly assent[ed] to the conveyance of real estate by [Husband], and … any such conveyances are not to be deemed to be in fraud of [Wife's] marital rights." ***Id.*** The deed of trust incorporated the Assent to Execution of Deed by reference. ***Id.***

Fannie Mae purchased the property at a foreclosure sale and attempted to quiet title in its favor. ***Id.*** The court of appeals reversed the trial court's grant of summary

judgment quieting title in favor of Fannie Mae, because it held that the deed of trust was executed only by the husband and did not validly encumber the property, which was deeded to both husband and wife. ***Id.*** (citing ***Fed. Nat'l Mortg. Ass'n v. Pace***, 415 S.W.3d 697, 703 (Mo. App. E.D. 2013) "***Pace I***"). Notably, the wife's signature on the Assent to Execution of Deed did not change the court's analysis, as the court explicitly stated such an assent "did not waive the necessity to name the wife as a grantor and borrower in the deed of trust and the necessity of her signature thereon in order to convey a valid lien on the entire property." ***Pace I***, 415 S.W.3d at 704.

On remand, the court of appeals again reversed the trial court's attempt to quiet title in Fannie Mae on the basis of reformation of the deed. 528 S.W.3d at 421. The court of appeals held that, while the result might be unfair, there was simply no evidence that First Horizon had any agreement with the wife to encumber the property with a lien, and absent such evidence, the agreement took place solely between the husband and the lender. ***Id.***

Here, on the face of the pleadings, it is apparent that the Guaranty names only Steven Standley, Mrs. Standley's husband, as the "Guarantor." The document does not otherwise mention Mrs. Standley, or identify her as a guarantor or a borrower. "This definition is not open to different constructions, and we cannot reasonably construe it to mean that the wife is also a grantor or [guarantor] under the [Guaranty]." ***Pace I***, 415 S.W.3d at 703. Because Mrs. Standley was not named a guarantor on the Guaranty, much less a borrower under the loan agreements, it is apparent from the face of the pleadings that she did not make any covenants to repay the loan, or otherwise convey an interest in

the marital property. ***Id.*** at 704. This is further evidenced by the fact that Shift did not sue Mrs. Standley as a guarantor in the Texas lawsuits as it did Steven Standley. Mrs. Standley is not liable for SPI's debts, or that of her husband as "Guarantor" of SPI's debts.

With respect to Shift's argument that Mrs. Standley's signature on the Spousal Consent serves as her explicit agreement that her marital estate would serve as a guarantor of the loan, our courts have consistently held that a guaranty is a very specific type of contract, with different legal ramifications from a mere "assent" or "consent."

> "A guaranty is a collateral agreement for performance of an undertaking of another, and it imports two different obligations, that of the principal debtor and of the guarantor." *United Sav. & Loan Ass'n v. Lake of Ozarks Water Festival, Inc.*, 805 S.W.2d 350, 353 (Mo.App.S.D.1991) (citation omitted). "A guaranty is a contract in which a guarantor agrees to become secondarily liable for the obligation of a debtor in the event the debtor does not perform the primary obligation." *Capitol Group, Inc. v. Collier*, 365 S.W.3d 644, 648 (Mo.App.E.D.2012) (citing *Jamieson–Chippewa, Inv. Co. v. McClintock*, 996 S.W.2d 84, 87 (Mo.App.E.D.1999)). "The heart of a contract for guaranty is that the signor has agreed to be liable principally for another's debt." *ITT* [*Commercial Finance Corp v. Mid-America Marine Supply Corp.*], 854 S.W.2d [371,] 386 [(Mo. banc 1993), *overruled on other grounds by Greene v. Fotoohighiam*, 606 S.W.3d 113 (Mo. banc 2020)]; *accord Patterson v. Katt*, 791 S.W.2d 466, 468 (Mo.App.E.D.1990) ("both guaranty and suretyship involve the acceptance by the promisor of liability for the debt of another").

Cent. Bank of Kansas City v. Perry, 427 S.W.3d 285, 288 (Mo. App. W.D. 2014). Here, by signing the Guaranty, Steven Standley, Mrs. Standley's husband, agreed to pay the debts of SPI in the event of SPI's default. Mrs. Standley, however, did not sign that Guaranty, and Shift cannot impute her agreement thereto even by showing her knowledge of the loan's or Guaranty's existence (or purported agreement thereto) by way of the

Spousal Consent. In ***Bryant v. Bryant Constr. Co.***, the court held that a wife's interest in the marital property is not subject to a lien even when she knows of or acquiesces in certain improvements made upon the property. 425 S.W.2d 236, 242 (Mo. App. E.D. 1968). While it did find the wife's actions sufficient to create a lien on the marital estate, "[t]he most significant … was her execution of the note and mortgage for the purpose of financing the proposed improvements." ***Id.*** Mrs. Standley unequivocally did not sign the Loan Documents in this case.

"[T]he liability of a guarantor is to be strictly construed according to the terms agreed upon, and a guarantor is bound only by the precise words of his contract, and no stretching or extension of terms can be indulged in order to hold the guarantor liable." ***LeMay Bank & Trust Co. v. Lawrence***, 710 S.W.2d 318, 322 (Mo. App. E.D. 1986) (quoting ***U.S. Suzuki Motor Corp. v. Johnson***, 673 S.W.2d 105, 107 (Mo. App. E.D. 1984)). This is in accordance with other Missouri law which states that in order to recover in an action for a contract of guaranty, the creditor must show that the debtor actually signed it. ***ITT***, 854 S.W.2d at 382.

Thus, as the court concluded in ***Pace I***, Mrs. Standley's signature on the Spousal Consent did not waive the necessity to name Mrs. Standley as a guarantor in the Guaranty, and the necessity of her signature thereon in order to convey a valid lien on the marital property. ***Pace I***, 415 S.W.3d at 704.[5]

[5] We also reject Shift's argument under an implied agency theory. Implied agency is an equitable theory by which creditors seek to impose an equitable lien on property where the law does not otherwise provide an adequate remedy. ***Ethridge***, 226 S.W.3d at 133-34. The cases to consider implied agency under these circumstances, however, note that this

JENNIFER R. GROWCOCK, C.J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

JACK A. L. GOODMAN, J. – CONCURS

theory of recovery still requires a duty from one person to another, and where the wife did not actually sign the documents at issue, the wife cannot be held to hold an obligation to the lender. ***Id.*** at 134. As such, Shift's theory of liability fails under this theory of recovery as well.