

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

LAFARGE NORTH AMERICA, INC.

**v.
DANIEAL MILLER**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD74424

DATE: August 7, 2012

Appeal From:

Boone County Circuit Court
The Honorable Mary (Jodie) Capshaw Asel, Judge

Appellate Judges:

Division One: James M. Smart, Jr., Presiding Judge, Lisa White Hardwick, Judge and Gary D. Witt, Judge

Attorneys:

Michael W. Bartolacci, St. Louis, MO, for respondent.

Bradley H. Lockenvitz, Columbia, MO and James M. Garrett, Kirksville, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

LAFARGE NORTH AMERICA, INC.,

RESPONDENT,

v.

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No. WD74424

Boone County

Before Division One: James M. Smart, Jr., Presiding Judge, Lisa White Hardwick, Judge and Gary D. Witt, Judge

Danieal H. Miller (“Miller”), appeals the circuit court’s grant of summary judgment to Lafarge North America, Inc. (“Lafarge”) based on Lafarge’s claim against Miller for personal liability on a credit account of Tiger Ready Mix LLC (“Tiger”). Miller is the sole member of Tiger, a company in the cement business. Miller gave an employee of Tiger a rubber signature stamp bearing only his name, "Danieal H. Miller," for use in conducting Tiger’s business. A Tiger employee used the signature stamp to execute a Credit Agreement with Lafarge that included a personal guarantee.

Tiger stopped paying, and Lafarge brought this action for unpaid invoices against Tiger and against Miller individually under the agreement. The trial court granted summary judgment in favor of Lafarge against Tiger and Miller.

REVERSED AND REMANDED.

Division One holds:

Here, the facts established that an agent (Deason) signed (stamping) the name of the corporate officer (Miller) to bind the principal (Tiger). Lafarge admitted below that the "signature" on the agreement was obviously a stamp. Lafarge makes no allegation that Miller had any contact with them, made any statement to them, or did anything personally to evidence his clear intent to be individually bound by the agreement. Therefore, based on these facts, there remains a disputed factual issue as to whether there was clear evidence appearing from the document itself that Miller intended to be personally bound to the Agreement.

Lafarge contends that even if Deason did not have actual authority to bind him in his individual capacity, she had apparent authority to bind Miller. But what Lafarge fails to consider is that apparent authority results from a *direct communication* from the principal to a third party. Lafarge made no allegation that it ever had a direct communication with Miller. Under these

facts, where it is not shown that Miller personally executed the guaranty and not shown that he personally did anything to suggest to Lafarge that he intended or consented to enter into a personal guaranty contract, a rubber stamp of a signature does not, by itself, clearly and explicitly evidence an intention to be individually bound. The burden was on Lafarge to demonstrate that there were no genuine issues of material fact. That burden was not met and the trial court erred in sustaining their motion for summary judgment.

Opinion by: Gary D. Witt, Judge

August 7, 2012

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