ONE STOP SUPPLY, INC.,	)	
	)	
Plaintiff/Appellant,	)	
	)	Appeal No.
	)	01-A-01-9509-CV-00403
VS.	)	
	)	Montgomery Circuit
	)	No. C7-398
JOHNNY RANSDELL,	)	
	)	
Defendant/Appellee.	)	

FILED

April 19, 1996

Cecil W. Crowson
Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY
AT CLARKSVILLE, TENNESSEE

THE HONORABLE ROBERT W. WEDEMEYER, JUDGE

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REVERSED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:
TODD, P.J., M.S.
LEWIS, J.

O P I N I O N

The question raised in this appeal is whether a personal guaranty clause in a credit application binds the president of a corporation who signed it on behalf of his company. The trial court found that the clause was "clearly boilerplate, fine-print contract language," which did not bind the contractor personally. We reverse.

I.

Appellee Johnny Ransdell was the President of Ransdell Air Conditioning Plumbing and Heating, Inc., (hereafter Ransdell AC) and had functioned in that capacity since 1979. In April of 1987, he sought a line of credit from appellant One Stop Supply, Inc. Mr. Ransdell filled out a double-sided, one-page pre-printed credit application provided by the supply company. On the back of the application, above the signature line, was a paragraph all in capital letters, reading in relevant part:

> THE UNDERSIGNED AGREES THAT IN THE EVENT LEGAL ACTION IS INSTITUTED TO ENFORCE PAYMENT OF ANY MONEY DUE ONE STOP SUPPLY INC., THE UNDERSIGNED SHALL BE LIABLE FOR ALL ATTORNEY'S FEES, COSTS, AND EXPENSES OF COLLECTION, AS WELL AS INTEREST AT THE MAXIMUM LEGAL RATE FROM THE DATE THE ORIGINAL AMOUNT WAS DUE. THE UNDERSIGNED FURTHER AGREES THAT NOTWITHSTANDING THE FACT THAT THIS CREDIT APPLICATION AND REPRESENTATIONS HAVE BEEN EXECUTED IN A CORPORATE OR REPRESENTATIVE CAPACITY, EACH SIGNER HEREOF BY SUCH SIGNATURE, HEREBY ARE PERSONALLY AND INDIVIDUALLY RESPONSIBLE FOR PAYMENT TO ONE STOP SUPPLY, INC., OF ALL AMOUNTS DUE PURSUANT TO SUCH EXTENSION OF CREDIT . . . ."

Mr. Ransdell signed the application as President of Ransdell AC. Upon receipt of the credit application, Kenneth McMaster, One Stop's credit manager, checked the credit references Mr. Ransdell had listed for his company. Mr. McMaster also procured a consumer credit report on Mr. Ransdell's personal finances. The

credit manager signed the document on April 22, 1987, approving a line of credit in the amount of $2,500 per month. The credit line was increased to $10,000 per month on March 15, 1988.

Ransdell used the credit line extensively, purchasing as much as $21,000 worth of supplies in a single month (July 1988). Bills were paid in a timely way until the Summer of 1988. On September 19, 1988, Mr. Ransdell placed his company in Chapter 7 Bankruptcy. At the time of the bankruptcy, Ransdell AC owed One-Stop about $48,000.

On May 29, 1990, One-Stop filed suit against Johnny Ransdell individually for $48,631.39, plus attorney fees and interest, claiming that he was obligated under his personal guaranty. After the bankruptcy settlements and collection of materialmen's liens, the unpaid portion of the debt amounted to $12,572.

II.

At trial Mr. Ransdell argued that the guaranty language in the credit application was never brought to his attention, and that he was not aware that he could be held personally liable for debts incurred by Ransdell AC. In the alternative, he argued that his personal guarantee was limited to $2,500, the initial amount of monthly credit approved by One-Stop Supply, because he was never directly notified that his credit line had been increased.

Mr. Ransdell's trial briefs (and his appellate brief) rely heavily upon prior opinions of this court, particularly *Parton v. Pirtle Oldsmobile-Cadillac-Isuzu, Inc.,* 730 S.W.2d 634 (Tenn.App. 1987), where we found that the plaintiff's signature on a car dealer's work order did not constitute a waiver of his right to hold the dealer liable for negligence. We acted in part because the waiver provision on the order was never

brought to the attention of the signatory, was inconspicuously placed on the document, and was difficult for a layperson to understand.

The trial court found that Mr. Ransdell's signature bound his corporation, but did not bind him personally. The court's order made no direct reference to any of the cited cases, but its language and reasoning so closely follow the opinions in those cases that it is quite clear that that the trial judge relied squarely upon them to reach his decision.

We believe, however, that the present case is distinguishable from *Parton v. Pirtle Oldsmobile*, supra, and from the other cases cited in this appeal. Those cases involved exceptional circumstances that enabled us to relieve the signatories from the normal rule that a party is bound by all the provisions of a written contract that he signs. We find no equivalent circumstances in the present case.

III.

In the *Parton* case, supra, the plaintiff automobile wholesaler signed a preprinted work order which authorized the defendant dealer's service shop to perform repairs on the plaintiff's Cadillac. In one corner of the work order, was a paragraph which stated in small print: "I hereby authorize the repair work hereinafter set forth to be done along with the necessary material and agree that you are not responsible for loss or damage to the vehicle or articles left in case of fire, theft, or any other cause beyond your control." The car was subsequently stolen from an unfenced and untended rear lot where the defendant's employees had parked it. It was eventually recovered, but in a damaged condition.

The dealer argued that the customer's signature on the document containing the above-quoted paragraph relieved it from any responsibility for the

damage that resulted from the theft of the automobile, even though it could reasonably be inferred that the damage would not have occurred were it not for the negligence of the dealer's employees.

In rejecting the dealer's argument, we discussed the general principles of contract formation. It is, of course, axiomatic that the minds of the parties must meet before a contract between them is formed. *Johnson v. Central National Ins. Co. Of Omaha*, 356 S.W.2d 277, 210 Tenn. 24 (1961); *American Lead Pencil Co. v. Nashville C. & St. L. Ry*, 134 S.W. 613, 124 Tenn 57 (1911).

However we also noted that it has long been the general rule that "a person cannot avoid a written contract into which he has entered on the ground that he did not attend to its terms, that he did not read the document." 730 S.W.2d at 636 quoting *DeFord v. National Life and Accident Insurance Co.*, 182 Tenn. 255, 185 S.W.2d 617 (1945).

We dealt with the apparent contradiction between these two very well established principles of law, by focusing on the question of assent to contract terms, making use of the writings of Professor Karl Llewellyn and Professor J. Murray, who have extensively studied contracts for the sale of goods.

We agreed with both writers that a party need not specifically assent to each provision in a written contract in order to make that provision binding on him. Speaking of contract formation involving a form furnished by one of the parties, Professor Llewellyn said:

> Instead of thinking about "assent" to boilerplate clauses, we can recognize that as far as concerns the specific, there is no assent at all. What has in fact been assented to, specifically, are the few dickered terms, and the broad type of the transaction, and but one more. That one thing more is a "blanket assent (not a specific assent) to any not unreasonable or indecent terms the seller may have on his

> form, which do not alter or eviscerate the dickered terms." 730 S.W.2d at 637.

Professor Murray referred to the binding terms of a contract as falling within a "circle of assent" and opined that we should permit the enforcement of "terms which allocate the risks of the bargain in a manner which the parties should reasonably have expected." He also emphasized the importance of any reallocation of risk being physically conspicuous, and comprehensible to the party against whom enforcement is sought, and that "such party must have had a reasonable choice in relation to such reallocation." 730 S.W.2d at 637.

We adopted these principles in our own formulation, which we stated somewhat more broadly:

> . . . the party who signs a printed form furnished by the other party will be bound by the provisions in the form over which the parties actually bargained and such other provisions that are not unreasonable in view of the circumstances surrounding the transaction." 730 S.W.2d at 638.

Applying these principles to the work order in question, we found it unreasonable to enforce a waiver of negligence in favor of the party that had supplied the form, where the primary subject-matter of the contract was the repair of an automobile, not the terms of its bailment, and where the waiver provision was in fine-print, was inconspicuously placed on the document, and was apparently never brought to the attention of the signatory. We included a facsimile of the work order with the published opinion to afford some basis of comparison in future cases.

IV.

Though there are some obvious similarities between the facts of the present case and those discussed in *Parton v. Pirtle Oldsmobile,* we believe that it is

the differences which dictate the outcome.[1] In *Parton*, the offending clause bore only a tangential relationship to the terms "over which the parties actually bargained." Clearly, the nature and cost of the repairs to be made were the primary concerns of the parties. Provisions for allocation of risk in case of fire and theft were not. In the present case the contract was for the extension of credit, and the question of responsibility for payment was central.

Further, there were no indications that Mr. Parton had the opportunity to peruse the work order at his leisure before signing it, and as we said earlier, there was no evidence that the offending clause was ever pointed out to him. It is true that the guaranty clause was never specifically pointed out to Mr Ransdell, but the record shows that he was furnished with a copy of One-Stop's credit application, that he took it home, and that he had ample opportunity to read it and study its provisions before filling it out and returning it.

Other questions upon which the appellee places much emphasis are the alleged lack of clarity and the inconspicuousness of the guaranty clause. We believe Mr. Ransdell overstates these arguments. The appellee's brief mentions in five different places that the personal liability clause is in the form of a six (6) line run-on sentence, and in four other places he declares that it is part of a longer sentence of 84 words! From these facts, he concludes that the clause would not be clear to the average reader.

While we would be reluctant to present the disputed clause as a model of clarity, we believe that if a knowledgeable businessman like Mr. Ransdell actually read it, he would easily realize that it purports to hold him personally responsible for the debts of his company.

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[1]A copy of the back page of the contract signed by Mr. Ransdell is attached as an appendix to this opinion.

The appellee's argument that the guaranty clause is not conspicuous, consists of the observations that it is single-spaced, while other parts of the contract are double-spaced, and that no typographic device, such as bolding, is used for emphasis to set it off from the longer paragraph of which it is a part. He also notes that the clause is on the back of the form, and that all the questions for the credit applicant to fill out are on the front.

But we do not agree that the clause is so inconspicuous, either by virtue of its appearance or of its position, to excuse Mr. Ransdell's alleged failure to read it. We observe that the typeface is of the same size and boldness as the rest of the application, and that one cannot read the rather short contract from beginning to end without reading the guaranty clause (as opposed to the work order in the *Parton* case, where the waiver clause was in one corner of a form that was not designed to be read sequentially). It is true that the clause is on the back of the form, but the signature line is also on the back, and as the clause relates to the legal effect of the signature affixed below, we cannot agree with the appellee that the location of the clause "appears to be designed to obtain personal liability by using strategem, trick or artifice."

We must also consider the reasonableness of the clause, or to use a term derived from Professor Murray, its "decency." Of course, an individual is free to bind himself by a contract whose terms may not seem reasonable or decent to an outside observer, and the court will not concern itself with the wisdom or folly of the contract. See *Chapman Drug Co. v. Chapman*, 341 S.W.2d 392, 207 Tenn. 502 (1961). But where the question is legitimately raised as to whether a party knew, or should have known, that he was binding himself by a particular provision, the court has the power to examine the contract to determine if that provision falls within the "circle of assent."

In the present case, we have the signature of the president of a closely held corporation, on a credit contract which states that the signatory will be personally liable for payment on purchases, even if he signs in a representative capacity. We have numerous purchases, all of which Mr. Ransdell admits were made either by the signatory or by his designated agents, and all of which were used to further the purposes of Mr. Ransdell's business.

If the appellee objected to the guaranty clause, he was under no compulsion to sign the application, for One-Stop was only one of many supply houses to which he could have turned for purchases. He testifed that he wanted to deal with One-Stop because their prices were good, but he could also have availed himself of those prices by paying cash. It is no defense to the contract to state, as the appellee has done, that the whole reason he adopted the corporate form was to avoid personal liability, for that only begs the question of whether in this situation he surrendered corporate immunity for business advantage.

V.

To bolster his arguments, the appellee cites several other cases following *Parton*, in which this court declined to enforce a provision in a pre-printed contract. An examination of those cases reveals, however, that he failed to mention some of the most important reasons that we ruled as we did.

The appellee cites *Harriman School District v. Southwestern Petroleum*, 757 S.W.2d 669 (Tenn.App. 1988), for example, for its discussion of what is required before a contract clause can be considered to be "conspicuous." In that case, the Eastern Division of this Court found ineffective a disclaimer of warranty on an order

form for roofing materials that proved to be defective. The court noted that the disclaimer was in extremely small print, but in addition the disclaimer did not use the language required by the U.C.C. to draw attention to a waiver of statutory warranty, and it directly contradicted language of warranty conspicuously present in other parts of the agreement. Thus the inconspicuousness of the disclaimer was only one if its flaws.

The unpublished case of *Taylor v. Liberty Mutual Insurance Co.*, Appeal No. 01-A-01-9210-CV-00420 (filed January 26, 1994), was also cited by the appellee for its use of "circle of assent" analysis, and as a source for the language he used to accuse One-Stop of resorting to "stategem, trick or artifice" in obtaining Mr. Ransdell's signature on a contract purporting to hold him personally liable.

The *Taylor* case involved a private individual who was involved in an auto accident. Pamela Taylor accepted a $69.43 insurance company check for out-of-pocket prescription expenses related to the accident. The check included a broad release, found in fine print on the reverse side above the endorsement line. Nowhere on the face of the check did it state that it was a release, and the insurance adjustor did not direct Ms. Taylor's attention to the language on the back.

When she subsequently incurred $27,000 in medical expenses, as a result of neck and shoulder injuries that later manifested themselves, the insurance company insisted that Ms. Taylor's endorsement and cashing of its check released it from any further liability to her. We reversed the trial court's summary judgment in favor of the insurance company, because we believed there was a genuine dispute concerning Mrs. Taylor intentions when she accepted and endorsed the check. Needless to say, the facts in the *Taylor* case are not truly analogous to those in the case before us, and they suggest a more compelling case against enforcement of the disputed provision.

VI.

The order of the trial court is reversed. Remand this cause to the Circuit Court of Montgomery County for further proceedings consistent with this opinion. Tax the costs on appeal to the appellee.

_____
BEN H. CANTRELL, JUDGE

CONCUR:

_____
HENRY F. TODD, PRESIDING JUDGE,
MIDDLE SECTION

_____
SAMUEL L. LEWIS, JUDGE

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

ONE STOP SUPPLY, INC.,	)	
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Plaintiff/Appellant,	)	01-A-01-9509-CV-00403
	)	
	)	Montgomery Circuit
VS.	)	No. C7-398
	)	
	)	Reversed
JOHNNY RANSDELL,	)	and
	)	Remanded
Defendant/Appellee.	)	

J U D G M E N T

This cause came on to be heard upon the record on appeal from the Circuit Court of Montgomery County, briefs and argument of counsel; upon

consideration whereof, this Court is of the opinion that in judgment of the trial court there is reversible error.

It is, therefore, ordered and adjudged by this Court that the judgment of the trial court is reversed. The cause is remanded to the Circuit Court of Montgomery County for further proceedings in accordance with the opinion filed herein.

Costs of this appeal are taxed to Johnny Ransdell.

ENTER: _____.

_____
HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION

_____
SAMUEL L. LEWIS, JUDGE

_____
BEN H. CANTRELL, JUDGE