

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Hudson & Keyse, LLC Assignee	:	
Chase Bank USA, N.A.,	:	
	:	
Plaintiff-Appellee,	:	No. 08AP-1061
	:	(M.C. No. 2006 CVF 019209)
v.	:	
	:	(ACCELERATED CALENDAR)
Kenneth J. Carson,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 9, 2009

Hudson & Keyse, LLC, and Timothy J. Hacking, for appellee.

Kenneth J. Carson, pro se.

APPEAL from the Franklin County Municipal Court.

SADLER, J.

{¶1} Appellant, Kenneth J. Carson ("appellant"), filed this appeal seeking reversal of a judgment by the Franklin County Municipal Court granting summary judgment in favor of appellee, Hudson & Keyse, LLC ("appellee"). For the reasons that follow, we reverse.

{¶2} Appellee is the assignee of a credit card account created by an agreement for the extension of credit between appellant and Chase Bank USA. Appellee filed a complaint against appellant asserting four causes of action: (1) failure to pay money owed on an account, (2) quantum meruit based on the failure to pay for the agreed upon financial services, (3) unjust enrichment, and (4) breach of contract. The complaint was based both on the credit card account assigned by Chase Bank and on an alleged oral financial services agreement.

{¶3} The initial complaint did not have attached to it a copy of either the account or the financial services agreement. Instead, appellee attached an affidavit executed by one of its employees setting forth, among other information, the amount allegedly owed on the account. Appellant filed a motion seeking a more definite statement on the grounds that the complaint did not include an itemized copy of the account, a copy of the alleged financial services agreement, or a copy of the assignment of the account by Chase Bank to appellee.

{¶4} Ultimately, appellee filed a motion for summary judgment. The motion relied on certain requests for admissions propounded by appellee to which appellant had not responded, which were deemed admitted. The trial court granted the motion for summary judgment, and appellant appealed.

{¶5} We reversed, finding that the trial court erred when it denied appellant's motion for a more definite statement based on appellee's failure to attach a copy of the account to the complaint, and remanded the case with instructions requiring appellee to file an amended complaint complying with Civ.R. 10(D). *Hudson & Keyse, LLC v.*

Carson, 10th Dist. No. 07AP-936, 2008-Ohio-2570, ¶17. We found moot an assignment of error raised by appellant regarding the trial court's grant of summary judgment based on the requests for admissions that had been deemed admitted by appellant's failure to respond. *Id.*

{¶6} On remand, appellee filed an amended complaint that included copies of account statements and a copy of the bill of sale by which Chase Bank assigned the account to appellee. Appellant filed an answer denying all allegations in the complaint. On October 22, 2008, appellant filed a motion for summary judgment alleging that res judicata precluded appellee from proceeding on its complaint.

{¶7} On November 6, 2008, appellee filed a pleading identifying itself as a brief in opposition to appellant's motion for summary judgment, as well as a "renewed" motion seeking summary judgment on appellee's behalf. In support of the claim that it was entitled to summary judgment, appellee pointed to the requests for admissions upon which it had relied to obtain summary judgment initially. Those requests for admissions included requests that appellant admit the terms of the credit card agreement upon which the action was based and admit that appellant breached the agreement.

{¶8} On November 13, 2008, the trial court signed an entry granting summary judgment in favor of appellee. The entry stated that the court was taking the action "upon the claim and subsequent application for Summary Judgment of the Plaintiff, Hudson & Keyse, LLC Assignee Chase Bank USA, N.A., and the Defendant, Kenneth J. Carson, having failed to reply to Plaintiff's Requests for Admissions, although duly served with process according to law."

{¶9} Appellant then filed this appeal, alleging a single assignment of error with four subheadings:

The Civ. R. 56(C) of the Ohio Rules of Civil Procedure: Summary Judgment Orders and resulting journal entries of the Municipal Court of Franklin County, Ohio, entered November 13, 2008 against Mr. Carson should be reviewed de novo, set aside and held for naught, and reversed because of the errors respecting the following particulars, to wit:

1. They appear to be contrary to law.
2. They appear to be contrary to the Public Policy of the State of Ohio, and also contravening Mr. Carson's rights to due process and equal protection as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution and also under 42 U.S.C.A. § 1983.
3. They appear to be against the manifest weight and sufficiency of evidence.
4. They appear to amount to abuse of process, prejudicial error, and abuse of discretion of the trial Court.

{¶10} Essentially, appellant argues that the trial court erred when it granted summary judgment in favor of appellee. We review the trial court's grant of summary judgment de novo. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38. Summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, when the evidence is construed in a light most favorable to the nonmoving party. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183, 1997-Ohio-221.

{¶11} Under summary judgment motion practice, the moving party bears an initial burden to inform the trial court of the basis for its motion, and to point to portions of the record that indicate that there are no genuine issues of material fact on a material element of the non-moving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107. Once the moving party has met its initial burden, the non-moving party must produce competent evidence establishing the existence of a genuine issue for trial. *Id.*

{¶12} The trial court granted appellee's motion for summary judgment seven days after it was filed. Under Loc.R. 3.04 of the Franklin County Municipal Court, appellant had 14 days from the date of service of the motion to file a written response. Thus, even assuming appellee met its initial burden of showing that summary judgment in its favor was proper, the trial court erred when it failed to allow appellant the opportunity to meet his reciprocal burden by pointing to evidentiary materials in the record that would establish the existence of a genuine issue of material fact.

{¶13} Furthermore, the only evidence cited by the trial court in its entry granting summary judgment in favor of appellee were the requests for admissions, which appellee argued were deemed admitted pursuant to Civ.R. 36 by appellant's failure to respond to them. Initially, we note that the requests for admissions pre-dated the filing of the amended complaint after our remand, and therefore required appellant to respond based on information that he had not been placed on notice as required by Civ.R. 10(D). Moreover, the copies of the requests for admissions that were attached to appellee's initial summary judgment and to the renewed motion for summary judgment contain a certificate of service stating that the requests were served on appellant on August 15,

2006, but appellee's counsel did not sign the certificate of service.¹ Consequently, it was improper for the trial court to rely upon the requests for admissions in granting summary judgment in favor of appellee.

{¶14} Accordingly, we sustain appellant's assignment of error, reverse the judgment by the Franklin County Municipal Court granting summary judgment in appellee's favor, and remand this case to the trial court for further proceedings consistent with this decision.

Judgment reversed and cause remanded.

BRYANT and BROWN, JJ., concur.

¹ The record shows that on August 21, 2006, appellee filed a pleading entitled "NOTICE OF SERVICE OF PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS UPON DEFENDANT KENNETH J. CARSON." While this pleading does contain a signed certificate of service, the actual discovery requests were not attached to it.