[Cite as *Brown Bark I L.P. v. Rubertino,* 2009-Ohio-5897.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

BROWN BARK I. L.P.,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-L-046**
- vs -	:	
VINCENT A. RUBERTINO, JR., et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 07 CV 003813.

Judgment: Affirmed.

Richard Boydston, Greenebaum, Doll & McDonald, P.L.L.C., 255 East Fifth Street, #2900, Cincinnati, OH 45202-4728 (For Plaintiff-Appellee).

David H. Davies, Law Firm of David H. Davies, 38108 Third Street, P.O. Box 1264, Willoughby, OH 44094-1264 (For Defendants-Appellants).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellants, Vincent A. Rubertino, Jr., and Judy Ann Rubertino, appeal from the February 25, 2009 judgment entry of the Lake County Court of Common Pleas, awarding judgment for appellee, Brown Bark I, L.P.

{¶2} On December 13, 2007, appellee filed a complaint against appellants alleging the following: appellee is a Texas limited liability company; appellants are husband and wife; on or about November 8, 2001, National City Bank ("National City") loaned $35,000 to Action Mobile Transportation, Inc. ("AMT") as evidenced by a

promissory note; appellants guaranteed the payment of the note; for good and valuable consideration, appellee purchased all rights, title, and interests of National City in the note and appellee is the owner and holder in due course of the note; and appellants owe appellee $29,623.82 plus $1,040.82 in interest, and further interest at the rate of $9.13 per day from June 29, 2007. On February 11, 2008, appellants filed an answer, in which they acknowledged that AMT had financial dealings with National City, but denied all of the remaining allegations in the complaint, including the fact that they are husband and wife.

{¶3} Thereafter, the parties entered into the following stipulations: (1) National City is owed $29,623.82 plus interest at $9.13 per day from June 29, 2007; (2) the account summaries attached to appellee's second request for admissions of June 24, 2008 are accurate; (3) the Small Business Credit Application dated November 8, 2001 for AMT is accurate; and (4) the signatures on the Small Business Credit Application are appellants.

{¶4} A hearing was held before the magistrate on October 24, 2008. Appellants did not attend. The sole testifying witness was Dale Savage ("Savage").

{¶5} Savage testified that he was employed by NC Ventures ("NC"), which acts as an agent for appellee to collect loan obligations. He said that he was familiar with the account at issue and had an opportunity to review the file earlier that week. Savage identified the allonge between appellee and National City and indicated that it represented the transfer of the loan from National City to appellee.

{¶6} On cross-examination, Savage testified that he does a variety of work for appellee, including general contracting, property inspections, auctions, bidding, and

court cases. Savage indicated that he is an independent contractor of NC. Both NC and appellee are located in Texas. Savage said that he is not the person who actually collects the monthly moneys on the account at issue; does not manage accounts; and is not the actual record keeper of these documents.

{¶7} On re-direct examination, Savage testified that he received the AMT file from Dan Norton ("Norton") an employee of NC. According to Savage, Norton is the person in charge of collecting the account.

{¶8} On re-cross examination, Savage stated that Norton provided all of the information to him and talked to him about being in court.

{¶9} On November 12, 2008, the magistrate filed a decision, determining that appellants, by signing their names as guarantors, agreed to pay the credit issuer should AMT default. The magistrate indicated that judgment should be awarded to appellee and against appellants, jointly and severally, in the sum of $29,623.82 plus interest at $9.13 per day from June 29, 2007.

{¶10} Appellants filed an objection to the magistrate's decision on November 25, 2008. Also, after being granted leave by the trial court, appellants filed a detailed objection and supplemented the record with the filing of the transcript on January 26, 2009. Appellee filed a memorandum in opposition on February 3, 2009.

{¶11} Pursuant to its February 25, 2009 judgment entry, the trial court modified stipulation one to read "National City Bank is owed $29,623.82 plus interest at $9.13 a day from June 29, 2007." As for the remainder of the decision, the trial court found no error of law or other defect on the face of the decision and overruled appellants' remaining objections. The trial court determined that the personal guarantee signed by

appellants in their credit application for AMT is binding against them. The trial court awarded judgment for appellee and against appellants, jointly and severally, in the sum of $29,623.82 plus interest at $9.13 per day from June 29, 2007. It is from that judgment that appellants filed a timely appeal, raising the following assignments of error for our review:

{¶12} "[1.] The decision of the Trial Court finding that the Defendants were personally obligated to pay the money due on the Action Mobile Transport account was against the manifest weight of the evidence.

{¶13} "[2.] The decision finding that the plaintiff was entitled to a judgment on the account was contrary to law."

{¶14} In their first assignment of error, appellants argue that the trial court erred by finding that they were personally obligated to pay the money due on the AMT account.

{¶15} Pursuant to App.R. 16(A)(7), an appellant is required to include in his appellate brief "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies."

{¶16} In *Hawkins v. Anchors*, 11th Dist. Nos. 2002-P-0098, 2002-P-0101, and 2002-P-0102, 2004-Ohio-3341, at ¶59-60, quoting *Village of S. Russell v. Upchurch*, 11th Dist. Nos. 2001-G-2395 and 2001-G-2396, 2003-Ohio-2099, at ¶10, this court stated:

{¶17} "'[a]n appellant "bears the burden of affirmatively demonstrating error on appeal." *Concord Twp. Trustees v. Hazelwood Builders* (Mar. 23, 2001), 11th Dist. No. 2000-L-040, 2001 Ohio App. LEXIS 1383. It is not the obligation of an appellate court to search for authority to support an appellant's argument as to an alleged error. See *Kremer v. Cox* (1996), 114 Ohio App.3d 41, 60 ***. Furthermore, if an argument exists that can support appellant's assignments of error, "it is not this court's duty to root it out." *Harris v. Nome*, 9th Dist. No. 21071, 2002-Ohio-6994, (***).' (Parallel citations omitted.)" See, also, *Cominsky v. Malner*, 11th Dist. No. 2005-L-108, 2006-Ohio-6205, at ¶36-39; *Bischof v. Mentor Exempted Village School Dist*., 11th Dist. No. 2007-L-056, 2007-Ohio-6155, at ¶24-25; and *Parkman Properties, Inc. v. Tanneyhill*, 11th Dist. No. 2007-T-0098, 2008-Ohio-1502, at ¶43-44.

{¶18} In the instant assignment of error, appellants have failed to support their assertions, and did not set forth a single, legal authority to support their contention that the trial court erred by finding that they were personally obligated to pay the money due on the AMT account. Thus, they clearly did not follow the requirements of App.R. 16(A)(7).

{¶19} Appellants' first assignment of error is overruled.

{¶20} In their second assignment of error, appellants contend that the trial court erred by finding that appellee was entitled to judgment on the account. Specifically, appellants maintain that appellee failed to prove that the assignment met all of the requirements under R.C. 1319.12.

{¶21} This court stated in *Russin v. Shepherd*, 11th Dist. No. 2006-G-2708, 2007-Ohio-3206, at ¶30-32:

{¶22} "It is well-settled that appellate courts 'do not consider questions not presented to the court whose judgment is sought to be reversed.' *State ex rel. Porter v. Cleveland Dept. of Public Safety* (1998), 84 Ohio St.3d 258, 259 ***. This court has held that a party's failure to raise an issue at the trial court level acts as a waiver of the issue on appeal. *Sekora v. General Motors Corp.* (1989), 61 Ohio App.3d 105 ***. An appellate court may decline to consider errors which could have been brought to the trial court's attention and hence avoided or corrected. *Schade v. Carnegie Body Co*. (1982), 70 Ohio St.2d 207, 210 ***.

{¶23} "Further, a party who receives an adverse judgment in the trial court may not expand his claims in the appellate court to maximize his chances of reversal. *Shumaker v. Ohio Dept. of Human Serv*. (1996), 117 Ohio App.3d 730 ***.

{¶24} "Issues that are not raised or tried in the trial court and are not addressed in the court's judgment may not be raised for the first time on appeal. *State ex rel. Martin v. Cleveland* (1993), 67 Ohio St.3d 155 ***; see, also, *Sellers v. Morrow Auto Sales* (1997), 124 Ohio App.3d 543, 547 ***. A party must adhere on appeal to the theory on which the case was tried in the trial court. A theory that was not introduced in the trial cannot be raised for the first time on appeal. *Federal Deposit Ins. Corp. v. Willoughby* (1984), 19 Ohio App.3d 51 ***." (Parallel citations omitted.)

{¶25} In the case at bar, our review of the record reveals that appellants never raised the issue of R.C. 1319.12 before the trial court. That court, therefore, never had an opportunity to consider this issue. Thus, this argument is waived and cannot be considered for the first time on appeal.

{¶26} Appellants' second assignment of error is without merit.

{¶27} For the foregoing reasons, appellants' assignments of error are not well-taken. The judgment of the Lake County Court of Common Pleas is affirmed. It is ordered that appellants are assessed costs herein taxed. The court finds there were reasonable grounds for this appeal.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.