[Cite as *CACH, L.L.C. v. Potts,* 2016-Ohio-4742.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

CACH, LLC,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2015-T-0106**
- vs -	:	
JEFF POTTS,	:	
Defendant-Appellant.	:	

Civil Appeal from the Niles Municipal Court, Case No. 14 CVF 00909.

Judgment: Affirmed.

Megan J. Urban and *Austin A. Cortez,* Taylor Law PLLC, P.O. Box 436709, Louisville, KY 40253-6709 (For Plaintiff-Appellee).

Jeff Potts, pro se, 865 Summit Avenue, Unit A, Niles, OH 44446 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} Appellant, Jeff Potts, pro se, appeals the summary judgment entered by the Niles Municipal Court against him and in favor of appellee, CACH, LLC. CACH sued appellant due to his failure to pay the balance he owed CACH on his credit card account. At issue is whether a genuine issue of material fact existed, precluding summary judgment. For the reasons that follow, we affirm.

{¶2} Appellant applied for and received a Sam's Club Discover credit card from GE Capital Bank. Thereafter, appellant made purchases and obtained cash advances on the account.

{¶3} Since the account was opened, GE Capital regularly sent monthly statements on the account to appellant at his Niles, Ohio address where he still resides. The statements showed the amount due and owing on the account.

{¶4} On June 18, 2013, appellant made his last payment on the account, which was less than the minimum payment due. Appellant subsequently defaulted on the account, and on October 30, 2013, GE Capital charged off $5,892, representing the closing balance, which was then due and owing.

{¶5} Subsequently, appellant made no additional payments on the account, and GE Capital assigned the account to CACH.

{¶6} CACH sent a demand letter to appellant, but he failed to respond. Consequently, some 45 days later, on December 15, 2014, CACH filed its complaint against appellant, seeking judgment in the amount of $5,892.

{¶7} Appellant, acting pro-se, filed an answer, denying the material allegations of the complaint.

{¶8} On January 23, 2015, CACH issued its combined First Set of Interrogatories, Request for Admissions, and Request for Production of Documents to appellant.

{¶9} On March 31, 2015, CACH filed a motion for summary judgment supported by evidentiary materials, which included the assignment of the account to CACH; the final statements on appellant's account; the affidavit of CACH's records

custodian, Signe Espinoza, regarding the account; and a copy of CACH's blank discovery requests, which appellant had not yet answered, although his responses were overdue.

{¶10} On April 6, 2015, appellant filed a brief in opposition to summary judgment, to which he attached his responses to CACH's discovery requests. Appellant objected to virtually every one of CACH's discovery requests.

{¶11} The trial court denied every objection to CACH's discovery requests and gave appellant leave to respond to CACH's requests for admissions and interrogatories. In response, appellant filed his answers to the discovery requests, simply denying nearly every request for admission and stating almost every interrogatory was "not applicable."

{¶12} Subsequently, the court entered summary judgment in favor of CACH and against appellant in the amount of $5,892, noting that appellant failed to file a countervailing affidavit to create a genuine issue of material fact.

{¶13} Appellant filed a motion for reconsideration, arguing the court's summary judgment violated his constitutional rights. The court denied the motion.

{¶14} Appellant appeals, asserting one assignment of error, which alleges:

{¶15} "[T]he trial court improperly granted summary judgment to plaintiff because the evidence in the record, as defined by Rule 56(C), Ohio Rules of Civil Procedure, showed that there were genuine issues of material fact, and that plaintiff was not entitled to judgment in its favor as a matter of law."

{¶16} Summary judgment is proper when: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3)

reasonable minds can come to but one conclusion, and that conclusion is adverse to the nonmoving party, that party being entitled to have the evidence construed most strongly in his favor. Civ.R. 56(C); *Leibreich v. A.J. Refrigeration, Inc*., 67 Ohio St.3d 266, 268 (1993).

{¶17} The party seeking summary judgment on the ground that the nonmoving party cannot prove his case bears the initial burden of informing the trial court of the basis for the motion and of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential elements of the nonmoving party's case. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996).

{¶18} The moving party must point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates the nonmoving party has no evidence to support his case. *Dresher, supra*, at 293.

{¶19} If this initial burden is not met, the motion for summary judgment must be denied. *Id*. However, if the moving party meets his initial burden, the nonmoving party must then produce competent evidence showing there is a genuine issue for trial. Civ.R. 56(E). When a motion for summary judgment is made and supported as provided in Civ.R. 56, the adverse party may not rest on the mere allegations or denials of his pleadings. The adverse party's response must set forth *specific facts by affidavit or as otherwise provided by Civ.R. 56*, showing that there is a genuine issue for trial. *Dresher, supra.* If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against him. *Id*.

{¶20} Since a trial court's ruling on a motion for summary judgment involves only questions of law, we conduct a de novo review of the judgment. *DiSanto v. Safeco Ins. of Am*., 168 Ohio App.3d 649, 2006-Ohio-4940, ¶41 (11th Dist.).

{¶21} Appellant does not challenge the sufficiency of the records submitted by CACH in support of its motion for summary judgment. Rather, he argues that CACH was not entitled to summary judgment because, he argues, its records custodian, Signe Espinozo, did not have personal knowledge of him or the transactions on his account. As a result, appellant argues her affidavit and the records referenced therein were insufficient to support the court's award of summary judgment.

{¶22} Civ.R. 56(E) provides in pertinent part: "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit."

{¶23} "[I]t is well settled that personal knowledge may be inferred from the contents of an affidavit." *Bank of America, N.A. v. Merlo*, 11th Dist. Trumbull No. 2012-T-0103, 2013-Ohio-5266, ¶26. "Further, it has been held that an officer of the lender could authenticate copies of the loan documents in her affidavit in support of summary judgment based on her review of the lender's loan documents." *Id*., citing *Bank of New York v. Dobbs*, 5th Dist. Knox No. 2009-CA-000002, 2009-Ohio-4742, ¶40. Moreover, an affiant providing the foundation for a recorded business activity is not required to have firsthand knowledge of the transaction at issue. *Id*. at ¶27. However, it must be shown that the witness is sufficiently familiar with the operation of the business and with

the circumstances of the record's preparation and maintenance so that he can testify the record is what it purports to be and was made in the ordinary course of business. *Id*.

{¶24} Signe Espinoza testified via affidavit that she is the authorized agent and a records custodian of CACH and that she is authorized by CACH to make the statements contained in her affidavit. She also said she is competent to testify regarding the matters contained therein. She said that she has reviewed CACH's records and is thus familiar with appellant's account. She said CACH's records contain account records and information regarding appellant's account that were provided to CACH by GE Capital, the original creditor. She said the records regarding appellant's account were made by a person with personal knowledge of the information contained therein and were kept in the ordinary course of a regularly conducted business. Ms. Espinoza said that, based on her experience in reviewing such records, the records regarding appellant's account were made and maintained by individuals who had a duty to make entries in the records accurately at or near the time of the events they record.

{¶25} Ms. Espinoza said CACH's records show that appellant opened a credit card account with GE Capital; that appellant defaulted in his payments to GE Capital; that CACH purchased appellant's account from GE Capital; and that CACH is the current creditor of the account. She said that all payments made by appellant were properly applied to the account; that the balance on the account is currently due and owing; and that appellant now owes CACH the principal amount of $5,892.

{¶26} Significantly, appellant did not present any Civ.R. 56(C) evidence disputing that Ms. Espinoza's affidavit was based on personal knowledge or disputing the accuracy of any part of her affidavit or of any of the records referenced therein.

{¶27} We thus hold that Ms. Espinoza's affidavit is based on personal knowledge and that she was competent to testify regarding appellant's account.

{¶28} Appellant argues that even if Ms. Espinoza's affidavit was based on personal knowledge, he created genuine issues of material fact by denying CACH's requests for admission. We do not agree.

{¶29} Ohio Appellate Districts have held that a "self-serving affidavit and responses to requests for admission" that do not provide "specific facts" in support "are insufficient to rebut [a] motion for summary judgment." *RWS Bldg. Co. v. Freeman*, 4th Dist. Lawrence No. 04CA40, 2005-Ohio-6665, ¶42. *Accord King Painting & Wallpapering, Inc. v. Aswin Ganapathy Hospitality Assocs., LLC,* 11th Dist. Trumbull No. 2013-T-0076, 2014-Ohio-1372, ¶75. In explaining the rationale for this rule, this court in *Greaney v. Ohio Tpk. Comm'n*, 11th Dist. Portage No. 2005-P-0012, 2005-Ohio-5284, ¶16, stated:

> **{¶30}** This rule is based upon judicial economy: Permitting a nonmoving party to avoid summary judgment by asserting nothing more than "bald contradictions of the evidence offered by the moving party" would necessarily abrogate the utility of the summary judgment exercise. *C.R. Withem Enterprises v. Maley*, 5th Dist. [Fairfield] No. 01Ca 54, 2002-Ohio-5056, ¶24. Courts would be unable to use Civ.R. 56 as a means of assessing the merits of a claim at an early stage of the litigation and unnecessary dilate [or enlarge] the civil process.

{¶31} Here, appellant sought to create genuine issues of material fact and to avoid summary judgment by simply denying CACH's requests for admission without providing any specific facts in support. We therefore hold the trial court did not err in entering summary judgment in favor of CACH.

{¶32} For the reasons stated in this opinion, the assignment of error lacks merit and is overruled. It is the order and judgment of this court that the judgment of the Niles Municipal Court is affirmed.

COLLEEN MARY O'TOOLE, J., concurs,

THOMAS R. WRIGHT, J., concurs in judgment only.