

[Cite as *Double L Builders, Inc. v. Equine Estates*, 2009-Ohio-7008.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DOUBLE L BUILDERS, INC.

Plaintiff-Appellee

-vs-

EQUINE ESTATES AND MARK HILL

Defendants-Appellants

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 2009CA00067

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Licking County Municipal
Court, Case No. 08CVH00636

JUDGMENT:

Affirmed in part, Reversed in part and
Remanded

DATE OF JUDGMENT ENTRY:

December 31, 2009

APPEARANCES:

For Defendant-Appellant

For Plaintiff-Appellee

MARK A. HILL, PRO SE
P.O. Box 30823
Gahanna, Ohio 43230

JOEL R. CAMPBELL
Strip, Hoppers, Leithar, McGrath &
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575 South Third Street
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Hoffman, P.J.

{¶1} Defendant-appellants Mark A. Hill and Equine Estates appeal the July 25, 2008 Judgment Entry of the Licking County Municipal Court entering summary judgment and finding specified damages in favor of Plaintiff-appellee Double L Builders, Inc.

STATEMENT OF THE FACTS AND CASE

{¶2} On April 20, 2005, Donald Parrill sold a parcel of land consisting of 88.875 acres in Licking County, Ohio to Equine Estates, LLC. Equine then sold 5.091 vacant acres to Double L Builders, Inc., 8.504 acres to Double Builders of improved land, and 16 acres of vacant land to a Ms. Dockter. Equine retained the remaining parcels. Ohio Title Johnstown Agency conducted the closing on all of the real estate transactions.

{¶3} Ohio Title determined the back taxes owed by Parrill could not be determined at the time of the closing. Back taxes were owed by Parrill for all of 2004, and 177 days of 2005. On April 20, 2005, in order to proceed with closing, the parties hereto entered into an agreement entitled "Tax Letter" by which Equine would pay Double L the back taxes due after Parrill paid Equine the amount ultimately calculated to be due and owing.

{¶4} Appellants do not dispute liability for the taxes owed. Rather, Appellants assert Ohio Title has not to date calculated the amount of back taxes owed; thus leaving the amount owed undetermined.

{¶5} Appellee Double L filed the within action seeking the back taxes due and owing, praying for damages in the amount of \$2,755.68 plus punitive damages, interest and costs. Double L then filed a motion for summary judgment with the trial court.

{¶6} Via Judgment Entry of July 25, 2008, the trial court entered summary judgment in favor of Double L Builders, Inc., entering judgment in the amount of \$1,535.36 as compensatory damages, plus interest at the statutory rate. The trial court denied Double L's request for punitive damages.

{¶7} Appellants now appeal, assigning as error:

{¶8} "I. THE COURT ERRED, TO THE PREJUDICE OF DEFENDANT'S EQUINE AND HILL, BY GRANTING SUMMARY JUDGMENT TO PLAINTIFF IN AN UNREASONABLE, ARBITRARY, AND CAPRICIOUS WAY AND WITHOUT RELEVANT, COMPETENT OR CREDIBLE EVIDENCE UPON WHICH THE FACT FINDER COULD BASE ITS JUDGMENT.

{¶9} "II. THE COURT ERRED, TO THE PREJUDICE OF DEFENDANTS EQUINE AND HILL, BY GRANTING SUMMARY JUDGMENT TO THE PLAINTIFF ON MATTERS BEYOND THE KNOWLEDGE OR EXPERIENCE POSSESSED BY LAY PERSONS, WITHOUT THE SUPPORT OF AN EXPERT WITNESS.

{¶10} "III. THE COURT ERRED, TO THE PREJUDICE OF DEFENDANTS EQUINE AND HILL, BY ARBITRARILY GRANTING SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF WITHOUT THE SUPPORT OF AN EXPERT WITNESS, WHILE AT THE SAME TIME TELLING DEFENDANTS EQUINE AND HILL THAT THEY MUST HAVE AN EXPERT WITNESS TO SUCCEED WITH THEIR THIRD PARTY CLAIMS; WHICH WERE BASED ON EXACTLY THE SAME FACTS, CONTRACTS, AND TRANSACTIONS, IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION PROVISIONS OF THE UNITED STATES AND OHIO CONSTITUTIONS WITH REGARD TO THE FOLLOWING GROUNDS: DENIAL OF SUBSTANTIVE DUE

PROCESS; FUNDAMENTAL UNFAIRNESS; AND DENIAL OF EQUAL PROTECTION UNDER LAW.”

I.

{¶11} In the first assignment of error, Appellants argue the trial court erred in granting summary judgment and specifying an award of damages in favor of Double L Builders without relevant, competent, credible evidence upon which to base the amount of the judgment.

{¶12} We review the assigned error pursuant to the standard set forth in Civ.R. 56. Said rule was reaffirmed by the Supreme Court of Ohio in *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 448, 1996-Ohio-211:

{¶13} “Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. *State ex. rel. Parsons v. Fleming* (1994), 68 Ohio St.3d 509, 511, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327.”

{¶14} As an appellate court reviewing summary judgment motions, we must stand in the shoes of the trial court and review summary judgments on the same standard and evidence as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35.

{¶15} In support of the amended motion for summary judgment, Appellee submitted an “Affidavit of Plaintiff in Support of Motion for Summary Judgment” citing an attached “calculation of the real estate obligation due from Defendant Hill to Plaintiff Double L Builders, Inc. in the amount of \$1,535.36***.” The affidavit in support of the motion is signed by “David Lloyd, Affiant” without designating Mr. Lloyd’s capacity as affiant for the corporation. The attached invoice purporting to calculate the amount of the real estate obligation was prepared by Double L Builders, Inc. in order to bill Equine Estates for the purported amount of back taxes due and owing. The figures used in calculating the amount due are scratched out, adjusted and recalculated without an explanation thereto. The invoice does not indicate how the calculation for apportionment of the taxes among the various parcels was determined, and on what basis. Accordingly, we find the evidence attached in support of the motion for summary judgment is insufficient to affirmatively establish the amount of back taxes owed. The affidavit does not set forth the procedure used in calculating the amount due, is apparently self-serving in favor of Appellee, and does not demonstrate the affiant has personal knowledge concerning the respective values of the parcels.

{¶16} Appellants’ first assignment of error is sustained.

II, III

{¶17} Pursuant to our analysis and disposition of the first assignment of error, we find the second and third assignments of error to be moot.

{¶18} The July 25, 2008 Judgment Entry of the Licking County Municipal Court is affirmed as to its determination of liability in favor of Appellee but is reversed as to the amount of damages and the case is remanded to the trial court for further proceedings in accordance with the law and this opinion.

By: Hoffman, P.J.

Edwards, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DOUBLE L. BUILDERS, INC.	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
EQUINE ESTATES AND MARK HILL	:	
	:	
Defendant-Appellants	:	Case No. 2009CA00067

For the reasons stated in our accompanying Opinion, the July 25, 2008 Judgment Entry of the Licking County Municipal Court is affirmed in part, reversed in part and remanded to the trial court for further proceedings in accordance with the law and our Opinion. Costs to Appellee.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY