[Cite as *FIA Card Servs., N.A. v. Pfundstein*, 2015-Ohio-2514.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101808

FIA CARD SERVICES, N.A.

PLAINTIFF-APPELLEE

vs.

JOSEPH A. PFUNDSTEIN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-813834

BEFORE: Laster Mays, J., Celebrezze, A.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: June 25, 2015

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ANITA LASTER MAYS, J.:

{¶1} In this appeal assigned to the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1, defendant-appellant Joseph A. Pfundstein, proceeding pro se, appeals from the trial court's decision to grant summary judgment to plaintiff-appellee FIA Card Services, N.A. ("FIA") on its complaint. FIA sought payment on a line-of-credit issued to Pfundstein by a predecessor-in-interest.

{¶2} Pfundstein presents one assignment of error, arguing that summary judgment in FIA's favor was unwarranted. The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983). Because a review of the record supports the trial court's decision, Pfundstein's assignment of error is overruled. The trial court's order is affirmed.

{¶3} The complaint FIA filed in this action alleged that it issued a line of credit to Pfundstein based upon a "credit agreement," and that Pfundstein used the credit but failed to pay FIA. FIA alleged that Pfundstein used the line of credit to the amount of $22,123.51, and demanded payment of that amount. FIA attached copies of several documents to its complaint.[1]

{¶4} After Pfundstein received service of the complaint, he filed an answer in which he generally denied the allegations and presented some affirmative defenses.

[1]The first consisted of a statement dated November 2012 that "Bank of America" sent to Pfundstein indicating that the balance due on his credit line was $22,123.51. Another was a letter that indicated that Bank of America had merged with FIA, effective October 20, 2006.

These included "Accord and Satisfaction" and an assertion that the "collection process" violated the "Fair Debt Collection Act."

{¶5} FIA subsequently filed a motion for summary judgment on its complaint. It argued that it was entitled to judgment because the evidence proved Pfundstein was indebted to FIA on a "credit account/personal loan" in the amount of $22,123.51. In support of its argument, FIA attached the affidavit of Marty Jerrol, Custodian of Records for FIA.[2]

{¶6} Pfundstein filed a brief in opposition, to which he attached his affidavit. Therein, he merely pointed out that FIA had not "presented" any agreement to the court, that he could not "dispute the validity of the signature" on the document, that none of the documents FIA produced showed that he entered into any agreement with it, that he "never contracted with [FIA] for any credit services," and that FIA "provided no accounting" to demonstrate the validity of the alleged amount due.

{¶7} The trial court nevertheless granted summary judgment to FIA on its complaint. Pfundstein appeals from the trial court's decision and, in his sole assignment of error, argues that summary judgment was inappropriate. In effect, Pfundstein's

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[2]Jerrol averred that he was authorized to make the Affidavit, that it was based upon his personal knowledge of the documents, "including but not limited to the credit application, account billing statements, and/or customer agreement * * * governing the use of the instant account," and that he had care, custody and control over the records relating to Pfundstein's account. Jerrol further averred that Pfundstein had failed to make payments after using the account and owed FIA $22,123.51 on the account. Finally, Jerrol averred that Bank of America, N.A. had merged into and under the charter and title of FIA, effective October 20, 2006. Jerrol authenticated the copies of the documents that FIA had attached, both to its complaint originally and, once again, to its motion.

argument challenges the adequacy of the evidence FIA presented in support of its motion, therefore, forcing him to deny the existence of an account.

{¶8} Based upon this court's decision in *Cach, L.L.C. v. Hutchinson*, 8th Dist. Cuyahoga No. 101288, 2014-Ohio-5148, Pfundstein's argument lacks merit. In *Hutchinson*, this court observed:

> [a] party seeking damages on an account need not proffer a signed agreement. As this court has held, an account must show the name of the party charged and contain (1) a beginning balance; (2) listed items representing charges or debits; and (3) summarization of a running or developing balance of the amount claimed to be due. [Citations omitted.] Every element was satisfied in this case.
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> CACH presented admissible evidence * * * [t]he affidavits * * * identified Hutchinson as the individual owing the $56,746.14 balance and authenticated the monthly billing statements demonstrating the running account. [Footnote omitted.] CACH satisfied its burden, and a signed agreement was not necessary to the disposition of its claims.
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> Hutchinson never directly denied the existence or use of the account, the receipt of the monthly billing statements, nor any facts as presented by CACH. He merely indicated that he "could not recall" agreeing to create the account, to using the account, to receiving the monthly statements, or to possessing any documents to dispute the amount owed. Not "recalling" the existence of, or agreement to use, the account is not the same as denying the same for the purposes of determining the existence of genuine issues of material fact upon summary judgment. *See Davis-Payne v. Miami Valley Hosp*., 2d Dist. Montgomery Nos. 14747 and 15182, 1995 Ohio App. LEXIS 5806, *12 (Dec. 29, 1995) * * *. Accordingly, Hutchinson * * * did not provide any evidence to sustain his reciprocal burden of demonstrating genuine issues of material fact in opposition to CACH's undisputed evidence demonstrating the final debt Hutchinson owed on the account.

{¶9} This case presents a similar situation. Pfundstein denied having an account with FIA or its predecessor Fleet Bank, in his answer as well as the affidavit he submitted in support of his brief in opposition to the summary judgment motion. He contends because FIA failed to produce an accounting of his alleged line of credit, an agreement or signature that he could dispute, summary judgment should have been denied. Pfundstein ends his affidavit by stating "without any evidence to the contrary, Affiant denies owing Plaintiff any monies." Following *Cach,* adequate information was given to support the existence of an account. The burden then shifted to Pfundstein to demonstrate genuine issues of material fact existed.

{¶10} Civ.R. 56(E) states that when a motion for summary judgment is properly made and supported, the nonmoving party may not rest on the mere denials of the pleadings. *Todd Dev. Co., Inc. v. Morgan*, 116 Ohio St.3d 461, 880 N.E.2d 88, 2008-Ohio-87, ¶ 11. Instead, the burden shifts to the defending party to set forth specific facts, supported by evidence of the type listed in Civ.R. 56(C), showing that there is a genuine issue for trial. *Id.*

{¶11} Furthermore, a nonmoving party may not avoid summary judgment by merely submitting a self-serving affidavit that simply contradicts the evidence offered by the moving party. *Greaney v. Ohio Turnpike Comm.*, 11th Dist. Portage No. 2005-P-0012, 2005-Ohio-5284, ¶ 16. Permitting a nonmoving party to avoid summary judgment by asserting nothing more than "bald contradictions of the evidence offered by

the moving party" would render the summary judgment exercise meaningless. *Id*. *See also C.R. Withem Ents. v. Maley*, 5th Dist. Fairfield No. 01 CA 54, 2002-Ohio-5056, ¶ 24.

{¶12} FIA supported its motion for summary judgment with an affidavit from its records custodian. The affiant attached and authenticated all the necessary documents to prove the existence of Pfundstein's line of credit and the amount of the debt. Pfundstein offered nothing but his own self-serving affidavit to oppose the summary judgment. However, a self-serving affidavit standing alone, without corroborating materials contemplated by Civ.R. 56, is simply insufficient to overcome a properly supported motion for summary judgment. *Id.* Pfundstein could have moved, pursuant to Civ.R. 56(F), to request additional time to conduct discovery in order to find evidence to support his argument, but he did not.

{¶13} Therefore, we conclude that, in the face of FIA's evidence, Pfundstein's affidavit was insufficient to demonstrate the existence of any genuine issues of material fact. *Burkes v. Stidham*, 107 Ohio App.3d 363, 668 N.E.2d 982 (8th Dist.1995) ("A dispute of fact is 'material' if it affects the outcome of the litigation, and is 'genuine' if manifested by substantial evidence going beyond the allegations of the complaint."). Therefore, the trial court correctly granted summary judgment to FIA on its complaint. *PNC Bank v. Dunlap*, 4th Dist. Ross No. 11CA3282, 2012-Ohio-2917; *Matrix Acquisitions, L.L.C. v. Swope*, 8th Dist. Cuyahoga No. 94943, 2011-Ohio-111; *RBS Citizens, N.A. v. Zigdon*, 8th Dist. Cuyahoga No. 93945, 2010-Ohio-3511. Pfundstein's assignment of error is overruled.

{¶14} The trial court's judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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ANITA LASTER MAYS, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
EILEEN T. GALLAGHER, J., CONCUR