

appellant's motion for summary judgment. We affirm the decision of the trial court.¹

{¶ 2} Riverwalk initiated this action on January 13, 2011, against appellant in Hamilton County to recover for appellant's failure to pay on a credit card account. Because it was not filed in the proper venue, the case was transferred to Clermont County. The parties exchanged discovery and both parties filed for summary judgment. The trial court issued a decision on December 7, 2011, finding in favor of Riverwalk and against appellant in the amount of \$24,422.06 plus accrued interest of \$14,416.37, plus future interest at a rate of 18%, and court costs.²

{¶ 3} Appellant appeals the trial court's decision on summary judgment, raising the following two assignments of error:

{¶ 4} Assignment of Error No. 1:

{¶ 5} THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT.

{¶ 6} Assignment of Error No. 2:

{¶ 7} THE TRIAL COURT ERRED BY GRANTING RIVERWALK'S MOTION FOR SUMMARY JUDGMENT.

{¶ 8} In his first assignment of error, appellant argues that the trial court erred by denying his motion for summary judgment. Specifically, appellant states that Riverwalk refused to answer discovery requests and that Riverwalk and its predecessor, US Bank, are not legally permitted to collect the debt in question. Therefore, appellant contends that his motion should have been granted.

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this appeal from the accelerated calendar.

2. At oral argument a concern arose regarding whether the trial court's December 7, 2011 decision was a final appealable order. After further review of the record, the decision states the amount due on the credit card account within its body and then states that appellee is granted summary judgment "in all respects." As such, this decision is a final appealable order.

{¶ 9} This court reviews a trial court's decision on summary judgment under a de novo standard of review. *Discover Bank v. Brockmeier*, 12th Dist. No. CA2006-057-078, 2007-Ohio-1552, ¶ 6. "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 only come to a conclusion adverse to the party against whom the motion is made, construing the evidence most strongly in that party's favor." *Id.*; Civ.R. 56(C). The party requesting summary judgment bears the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact as to the essential elements of the nonmoving party's claims. *See FT Mortgage Companies v. Williams*, 12th Dist. No. CA2000-09-023, 2001-Ohio-8694; *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996).

{¶ 10} In this case, appellant's motion stated that Riverwalk failed to provide discovery in the form of a completed credit card application containing appellant's signature pursuant to 12 C.F.R. 226.5(a) and all credit history for the credit card for the past six years pursuant to R.C. 1109.69. Based upon these failures, appellant requested judgment as a matter of law. No affidavits or attachments accompanied the motion.

{¶ 11} We first note that "[f]ailure to support a motion for summary judgment with an affidavit is not of itself fatal as the rule provides a movant 'may' provide supporting affidavits." *Pond v. Carey Corp.*, 34 Ohio App.3d 109, 111 (10th Dist.1986); Civ.R. 56(C). "However, there must be other sufficient evidence upon which the court could reach a conclusion regarding the facts in order to properly rule that there were no issues upon which reasonable minds could differ." *Id.* In this case, appellant failed to support his motion with any evidence. As such, the trial court did not err in denying appellant's motion for summary judgment.

{¶ 12} Yet, even had appellant supported his motion with evidence, the trial court's denial of appellant's motion for summary judgment was still proper, as appellant was never

entitled to the discovery materials he claims were imperative to his case, and the trial court denied a motion to compel this discovery material on December 1, 2011.³ Therefore, appellant's first assignment of error is overruled.

{¶ 13} In his second assignment of error, appellant argues that the trial court erred in granting Riverwalk's motion for summary judgment. Specifically, appellant states that there were numerous questions of fact regarding payments and charges on the credit card and, without a proper answer to appellant's discovery requests, these questions of fact could not have been properly addressed. Appellant fails, however, to elaborate on these numerous questions of fact.

{¶ 14} As stated above, the party moving for summary judgment bears the burden of demonstrating a lack of genuine issues of material fact. See *Dresher*, 75 Ohio St.3d at 293. In this case, Riverwalk's motion for summary judgment stated that appellant was issued a credit card by US Bank and had subsequently defaulted on his obligation to pay for the goods and services purchased with the credit card. The motion was supported by an affidavit from a representative of Riverwalk, copies of the assignments establishing Riverwalk as owner of the claim, copies of cardholder statements and payments establishing the amount due, and a copy of the Terms and Conditions or Cardholder Agreement. In response to this motion, appellant continued to argue, without evidentiary support, that Riverwalk failed to provide proper discovery.

{¶ 15} Once a party moving for summary judgment has satisfied its initial burden to establish a lack of genuine issues of material fact, the nonmoving party has the reciprocal burden to set forth specific facts showing that genuine issues remain. *Id.*; Civ.R. 56(E).

3. 12 C.F.R. 226.5(a) relates to information which must be provided to a credit or charge card recipient at the time of solicitation, not at the time payment is requested. Further, R.C. 1109.69 does not include a "credit history" as an item which must be retained by a bank for six years.

Summary judgment is proper if the party opposing the motion fails to set forth such facts. *Id.*

{¶ 16} Riverwalk set forth facts indicating that a credit card agreement was entered into by US Bank and appellant, that appellant defaulted on payments, and that the debt was assigned to Riverwalk. Thus, Riverwalk met its burden of establishing a lack of genuine issues of material fact. Appellant then failed to provide any specific facts showing that genuine issues remain, arguing only that additional discovery would demonstrate genuine issues of material fact. As it was previously determined that appellant was not entitled to the discovery requested, and appellant failed to submit any other evidence establishing a genuine issue of material fact, the trial court did not err in granting Riverwalk's motion for summary judgment. Therefore, appellant's second assignment of error is overruled.

{¶ 17} Judgment affirmed.

POWELL, P.J., and PIPER, J., concur.