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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 02/11/2010
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

VT MOTORS, INC., an Arizona) 1 CA-CV 09-0043
corporation dba VAN CHEVROLET,)
) DEPARTMENT A
Plaintiff/Counter-)
Defendant/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
T. SHOSUN SHONI SAKTHIVEIL and)
JANE DOE SAKTHIVEIL, husband and)
wife,)
)
Defendants/Counter-)
Claimants/Appellants.)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2007-050767

The Honorable Brian R. Hauser, Judge

AFFIRMED

T. Shosun Shoni Sakthiveil
Defendant/Counterclaimant/Appellant
In Propria Persona

Phoenix

Clark Hill PLC
by Darrell E. Davis
Lisa M. Bliss
Attorneys for Plaintiff/Counterdefendant/Appellee

Scottsdale

P O R T L E Y, Judge

¶1 Defendant T. Shosun Shoni Sakthiveil appeals the summary judgment granted to Plaintiff VT Motors and the subsequent award of attorneys' fees. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 This action arose from a June 26, 2006 contract to purchase an automobile between Plaintiff and Defendant. After Defendant took possession of the vehicle, but failed to remit valid payment, Plaintiff filed the action on March 13, 2007, and asserted claims for breach of contract, fraud, conversion, and violation of Arizona's "bad check" statute, Ariz. Rev. Stat. ("A.R.S.") § 12-671(A) (2003). Defendant answered and asserted counterclaims for bad faith, abuse of process, and violation of "the Act."

¶3 Plaintiff subsequently withdrew all but its breach of contract claim and moved for summary judgment on it and on Defendant's counterclaims on February 29, 2008. After oral argument, the court granted Plaintiff's motion and found that "there [were] no genuine issues of material fact regarding [] Defendant's breach of the purchase contract." Plaintiff then successfully requested attorneys' fees pursuant to the parties' contract and A.R.S. § 12-341.01 (2003).

¶4 Defendant appeals, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21 (2003) and -2101(B) (2003).

DISCUSSION

¶5 Defendant argues that the trial court erred by granting Plaintiff summary judgment on its breach of contract claim.¹ He contends that "there is simply no ground for Plaintiff's claim."

¶6 We review a grant of summary judgment de novo and view the facts in the light most favorable to the non-moving party. *Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12, 69 P.3d 7, 11 (2003). A court may grant summary judgment "if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). The determination of whether a genuine issue of material fact exists is based on the record made in the trial court. *Phoenix Baptist Hosp. & Med. Ctr., Inc. v. Aiken*, 179 Ariz. 289, 292, 877 P.2d 1345, 1348 (App. 1994).

¹ Defendant also argues that the motion for summary judgment was "premature" and improper because a "trial date was already set by [the] court." Arizona Rule of Civil Procedure 56(a), however, permits a party seeking to recover on a claim to file a motion for summary judgment "no later than 90 days prior to the date set for trial." Because Plaintiff timely filed its motion, Defendant's argument has no merit.

¶7 "In an action on a contract[,] plaintiff has the burden of proof to show, 1) a contract, 2) a breach, and 3) damages." *Thunderbird Metallurgical, Inc. v. Ariz. Testing Labs.*, 5 Ariz. App. 48, 50, 423 P.2d 124, 126 (1967) (citing *Clark v. Compania Ganadera de Cananea, S.A.*, 95 Ariz. 90, 387 P.2d 235 (1963)). At summary judgment, however, the plaintiff is not "required to present evidence negating the non-moving party's . . . defense[s] when the non-moving party bears the burden of proof on th[ose] . . . defense[s] at trial." *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 117, ¶ 22, 180 P.3d 977, 982 (App. 2008).

¶8 With its motion for summary judgment, Plaintiff provided evidence of an agreement executed by the parties involving the sale of a 2005 Chrysler PT Cruiser in exchange for two trade-in vehicles and \$10,000.01. It also provided evidence that Defendant twice remitted payment in the form of a check, but subsequently contacted his bank to stop the payments. Plaintiff consequently argued that no genuine issues of material fact existed on any of the elements of the breach of contract claim and that it was entitled to judgment as a matter of law.

¶9 Defendant did not dispute that he entered into the purchase agreement with Plaintiff, or that he failed to remit payment for the balance due. Rather, he argued that the contract was revocable because: (1) "Plaintiff was not truthful

and defrauded [him]"; (2) he lacked capacity to contract because he "did not have [his] reading glasses" and because he "was taking pain medication" at the time; and (3) the salesmen were "very aggressive and pushy" and he "was hypnotized by the[] different managers and [] was not in the right state of mind." See *U.S. Insulation, Inc. v. Hilro Constr. Co.*, 146 Ariz. 250, 253, 705 P.2d 490, 493 (App. 1985) ("Grounds in equity or law for revocation of a contract include an allegation that the contract is void for lack of mutual consent, consideration or capacity or voidable for fraud, duress, lack of capacity, mistake, or violation of a public purpose."). Although Defendant claimed that he had evidence to support his contract defense allegations, he failed to present anything more than self-serving unsworn statements in response to Plaintiff's motion.² Because Defendant bore the burden of proving his defenses at trial, he cannot "defeat [a] motion [for summary judgment] by a simple contention that an issue of fact exists; he must show that evidence is available that would justify a trial." *W.J. Kroeger Co. v. Travelers Indem. Co.*, 112 Ariz. 285, 286, 541 P.2d 385, 386 (1975); see also Ariz. R. Civ. P.

² In his reply brief, Defendant states that he "honestly and truthfully did not know and didn't know that [he] should have filed sworn statements." However, pro se litigants are "held to the same familiarity with required procedures and the same notice of statutes and local rules as would be attributed to a qualified member of the bar." *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983).

56(e) (stating that when a motion for summary judgment is made and properly supported, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial"). Defendant produced no evidence to support even an inference that any of his alleged defenses would apply. Thus, there are no genuine issues of fact that require a trial, and summary judgment on the breach of contract claim was properly granted.³

¶10 Defendant next asks that we vacate the award of attorneys' fees because, during compulsory arbitration, Plaintiff's request for fees was denied. Plaintiff argues that the arbitrator's decision "does not render the fee award invalid." Because compulsory arbitration pursuant to Arizona Rule of Civil Procedure 72 is not binding, *Graf v. Whitaker*, 192 Ariz. 403, 405, ¶ 6, 966 P.2d 1007, 1009 (App. 1998); see also Ariz. R. Civ. P. 77, the court was free to independently

³ Although Defendant appears to confine his appeal to challenging the grant of judgment on Plaintiff's breach of contract claim, we nevertheless review the summary judgment against Defendant on his counterclaims. First, his counterclaim alleging a violation of "the Act" fails to state a claim upon which relief can be granted. Second, although his counterclaims for breach of the duty of good faith and fair dealing and abuse of process state permissible causes of action, Defendant failed to present any evidence supporting the claims. Because he fails to raise any issues of fact, we likewise affirm summary judgment on the counterclaims.

consider and resolve the attorneys' fees issue. Consequently, the trial court did not err in awarding fees to Plaintiff.

¶11 Finally, Plaintiff requests an award of attorneys' fees and costs incurred on appeal pursuant to A.R.S. § 12-341.01. Plaintiff has prevailed on all issues raised, and therefore, we grant its request for reasonable attorneys' fees on appeal subject to its compliance with Arizona Rule of Civil Appellate Procedure 21. We also award Plaintiff its costs on appeal to likewise be determined upon its compliance with Rule 21.

CONCLUSION

¶12 For the foregoing reasons, we affirm the judgment entered in favor of Plaintiff.

/s/ _____
MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/ _____
LAWRENCE F. WINTHROP, Judge

/s/ _____
MARGARET H. DOWNIE, Judge