

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

LHR, Inc.,	:	
	:	C.A. No. 07-09-0123
Plaintiff,	:	
	:	
v.	:	
	:	
Oscar Mosley and	:	
Blinds, Shades & More, Inc.,	:	
	:	
Defendants.	:	
	:	

Submitted: August 22, 2008

Decided: September 3, 2008

**Decision on Cross Motions for Summary Judgment**

**Plaintiff's Motion is granted and Defendants' Motion is denied.**

**Patrick Scanlon, Esquire, 203 N.E Front Street, Suite 101, Milford, Delaware 19963,  
Attorney for Plaintiff.**

**Timothy A. Reisinger, Esquire, 19 South State Street, Dover, Delaware 19901,  
Attorney for Defendants.**

**Trader, J.**

In this civil action the plaintiff and the defendants have filed cross motions for summary judgment. I conclude that there is no material issue of fact and the plaintiff is entitled to summary judgment as a matter of law.

The relevant facts are as follows: the plaintiff, LHR, Inc., in its amended complaint, alleges that the defendants, Oscar M. Mosley and Blind, Shades & More, Inc., a Delaware corporation, are indebted to it in the amount of \$12,025.39 plus pre-judgment interest, post-judgment interest, and the costs of these proceedings. Oscar M. Mosley, in his answer to the complaint, asserts that he is not personally liable for this debt. Thereafter, the parties filed cross motions for summary judgment.

On or about July 8, 2003, the defendant, Oscar Mosley, applied for a business credit card with First Equity Card Corporation (hereinafter "First Equity"). (Plaintiff's Exhibit C.) Mr. Mosley's signature appears in a box that indicates that he is an owner, officer, or partner of the company soliciting the credit card and that he has the authority to bind the company. Pursuant to the terms and conditions of the account, the authorizing officer is personally joint and severally liable to First Equity for all charges and fees resulting from the use of such card. (Plaintiff's Exhibit D.)

The account was transferred from First Equity to LHR, Inc. on October 17, 2006. According to the plaintiff's affidavit (Plaintiff's Exhibit E), the principal balance on the account as of September 4, 2006 was \$7,974,.31. This amount was previously \$12,025.39 but \$4,051.08 of unpaid finance charges and late fees were written off by First Equity on September 4, 2006. However, for purposes of collection, the original balance of \$12,025.39 was put back on the account by November 4, 2006. The plaintiff claims that as of August 6, 2008, the defendants owe \$14,175.90. This amount includes pre-judgment interest at the rate of 8.75% per annum. The affidavit of Oscar Mosley

(Defendant's Exhibit F) does not address the issues contained in plaintiff's affidavit. In his affidavit, he concedes there was an account with First Equity, but he claims that he is not personally liable for the account.

Summary judgment will be rendered in any civil action if the pleadings, depositions, 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. *Van Dyke v. Pennsylvania R. Co.*, 86 A.2d 346, 349 (Del. Super. Ct. 1952); *See* DEL. CT. COM. PL. CIV. R. 56(c). Summary judgment may be granted only where, considering the facts in light most favorable to the non-moving parties, there is no material issue of fact. *Pullman, Inc. v. Phoenix Steel Corp.*, 304 A.2d 334, 335 (Del. Super. Ct. 1973). When the moving party clearly establishes there is no genuine issue of material fact, summary judgment is appropriate. *Pryor v. Aviola*, 301 A.2d 306, 308 (Del. Super. Ct. 1973). When a motion for summary judgment is supported by such a showing under the rule, the burden shifts to the non-moving party to demonstrate that there is a material issue of fact. *Moore v. Sizemore*, 405 A.2d 679, 681 (Del. 1979).

In the case before me, the plaintiff has established through its pleadings and its affidavit that there is no genuine issue of material fact and that summary judgment is appropriate. Conversely, while the defendant, Oscar M. Mosley, has filed an affidavit in connection with the Defendants' motion for summary judgment, the affidavit neither supports the contentions of their motion nor controverts the facts sets forth in the plaintiff's affidavit.

The defendants, in their motion for summary judgment, set forth two contentions. First, that the assignment from First Equity to LHR, Inc. cannot be established and

second, that the debt to LHR, Inc. is a corporate debt rather than a personal debt. These contentions are speculative and are not supported by the affidavit of Oscar Mosley.

“A claim which is not supported by relevant documentation ‘cannot be considered on face value alone. To do so calls for speculation and conjecture ... It is fundamental that a motion for summary judgment must be decided on the record presented and not on evidence potentially possible.’” *Chrysler Corp. v. New Castle County*, 464 A.2d 75, 85 (Del. Super. Ct. 1983)(citing *Rochester v. Katalan*, 320 A.2d 704, 708 n.7 (Del. 1974)). Accordingly, the affidavit of the plaintiff remains unopposed and must be accepted as true.

The plaintiff’s affidavit sets forth facts which would be admissible into evidence. John Skipper, Director of Operations of LHR, Inc., is competent to testify concerning the business records of the corporation. This includes the assignment of accounts from First Equity, as well as the current status of the defendants’ accounts with LHR, Inc.

Based on these conclusions of law, the plaintiff’s motion for summary judgment is granted and the defendants’ motion for summary judgment is denied. Accordingly, judgment is entered on behalf of the plaintiff, LHR, Inc., and against the defendants, Oscar M. Mosley and Blinds, Shades & More, Inc., in the amount of \$14,175.90, plus any additional pre-judgment interest, at the contract rate, and post-judgment interest at the legal rate, as well as the costs of the proceedings.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**