

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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FEDERATED FINANCIAL CORP. OF  
AMERICA, assignee of Advanta Bank Corp.,

UNPUBLISHED  
March 13, 2008

Plaintiff/Appellant,

v

JACK V. SENG and JVS AUTO SALVAGE,  
INC.,

No. 276224  
Gladwin Circuit Court  
LC No. 06-002384-CK

Defendants,

and

CHEMICAL BANK,

Defendant/Appellee.

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Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

In this garnishment action, plaintiff, Federated Financial Corporation of America (Federated Financial), appeals as of right the trial court's order granting summary disposition in favor of garnishee defendant, Chemical Bank. Because plaintiff did not provide the trial court with any evidence to support its claim that garnishee defendant knowingly filed a false and perjured disclosure when it replied to plaintiff's writ of garnishment; and, instead, garnishee defendant provided specific documentary evidence clearly demonstrating a conflict between information listed on the writ of garnishment and the address contained on the bank's records, thus supporting the veracity of its response to plaintiff's writ of garnishment, we affirm.

Defendants, JVS Auto Salvage, Inc. (JVS) and Jack V. Seng (Seng), entered into a revolving credit account agreement with Advanta Bank Corporation (Advanta). According to the agreement, defendants were jointly and severally liable for the payment monies borrowed via the revolving credit account. Advanta loaned money to defendants but defendants defaulted on the payment terms of the account. Advanta assigned defendants' account to plaintiff, Federated Financial. Plaintiff initiated an action against defendants to recover the unpaid balance on the account. Plaintiff obtained a judgment against defendants in the amount of \$44,865.55. Thereafter, plaintiff served two requests and writs for non-periodic garnishment on garnishee defendant Chemical Bank. The first request was in the name of defendant Seng, and it listed his

social security number, and address as 2985 Lakeshore Drive in Gladwin. The second request was in the name of defendant JVS and listed the address as 1445 M-30 in Gladwin and no other identifying information. Neither request referenced a bank account number. Both writs sought to collect \$45,390.17 which reflected the amount of the unsatisfied judgment, plus interest, and costs.

Garnishee defendant responded to the request in defendant Seng's name disclosing that it was not indebted to defendant Seng in any amount because no funds were available. Garnishee defendant also responded to the request in defendant JVS's name and disclosed as follows: "CONFLICTING INFORMATION PREVENTS THE BANK FROM MAKING AN ACCURATE DISCLOSURE." Plaintiff responded by serving garnishee defendant with "Interrogatories and Requests for Admission." Garnishee defendant answered with a letter to plaintiff's counsel stating that due to federal regulations concerning its responsibility for customer privacy, it could not answer interrogatories without a subpoena for records. Plaintiff then served garnishee defendant a subpoena for bank-related records including "account applications, signature cards and the like" relating to both defendants Seng and JVS.

Garnishee defendant responded by providing bank documents including copies of a signature card listing defendant JVS's address as 1445 S. M-30 and electronic bank statements listing defendant JVS's address as 2985 Lakeshore Drive. The financial documents garnishee defendant provided also included bank account balances by date. Thus, on reviewing the statements, plaintiff discovered that an account in the name of defendant JVS had a balance of \$716.23 on the date the garnishment was served. Plaintiff sent a letter to garnishee defendant demanding that garnishee defendant "remit a check in the amount of \$716.23 . . . in accordance with the requirements of the original writ." The letter further stated that if the funds were not received within seven days plaintiff would file a motion for the entry of a default judgment against garnishee defendant. In response, garnishee defendant orally requested plaintiff to file a new writ of garnishment on it. On the seventh day following plaintiff's initial letter to garnishee defendant, plaintiff sent another letter informing the bank that it declined to file a new writ of garnishment and again threatening to file a motion for the entry of a default judgment against garnishee defendant. Plaintiff's correspondence also stated as follows:

[t]he disclosure filed . . . was not only inaccurate, it appears to have been utilized in an intentional attempt to avoid filing an accurate and truthful disclosure in order to assist the account holder in avoiding the lawful garnishment payment due  
....

Garnishee defendant responded to plaintiff's demand letter in writing informing plaintiff that it was unable to remit funds to plaintiff without a new writ of garnishment.

Plaintiff filed a motion for summary disposition, default judgment, or sanctions against garnishee defendant. Plaintiff accused garnishee defendant of: filing a false pleading with the court, failing to file a truthful and accurate amendment to its disclosure after being requested to do so, improperly preventing meaningful discovery, and exhibiting a "total and complete lack of candor and honesty[.]" Plaintiff sought relief in the form of a judgment in the amount of \$47,705.12 together with attorney fees and any other appropriate sanctions. Garnishee defendant responded requesting that the trial court deny the motion for the reason that the disclosure it filed was not false or perjured. Garnishee defendant argued that the writ of garnishment plaintiff

served was deficient and ineffective because it did not provide identifying information such as a federal tax identification number, employer number, or bank account number. Further the writ of garnishment provided an address that did not match the bank's records. Garnishee defendant asserted that it follows a policy of not remitting funds from a customer's account under a writ of garnishment unless the writ provides at least one item of identifying information that matches the bank's records. Garnishee defendant also stated that it had maintained a hold on the funds at issue in anticipation of receiving an effective writ of garnishment from plaintiff but believed that plaintiff did not remit a second writ because it was pursuing a windfall by asking the trial court to compel the bank to pay the full underlying judgment amount.

The trial court entertained oral argument on the motion. At the conclusion of the parties' arguments, the trial court found that conflicting information existed between plaintiff's writ of garnishment and the bank's records regarding the address listed for defendant JVS. The trial court ruled that "plaintiff has failed to meet its burden of showing that the answer filed by the garnishee defendant bank was knowingly false or that it was perjured." The trial court memorialized its rulings from the bench in an order not specifically granting or denying plaintiff's motion for summary disposition, default judgment, or sanctions entitled "Order Regarding Motion for Summary Disposition." The order also required garnishee defendant to remit the amount it held in defendant JVS's account at the time of the writ, \$716.23, to plaintiff plus \$250 in attorney fees, and dismissed any remaining claims plaintiff brought with prejudice. Plaintiff filed a motion for reconsideration that the trial court denied. This appeal followed.

We review de novo a trial court's grant of summary disposition under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The pleadings, affidavits, depositions, admissions, and other admissible documentary evidence submitted by the parties must be considered in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 712; 737 NW2d 179 (2007). "Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and other documentary evidence show that there is no genuine issue concerning any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue on which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

On appeal, plaintiff argues that garnishee defendant failed to submit any admissible evidence to rebut plaintiff's claims on its own motion for summary disposition, thus this Court should reverse the trial court's ruling and enter judgment in favor of plaintiff for the full amount of the underlying judgment. Garnishee defendant counters arguing that plaintiff did not meet its own burden as the moving party to support its allegations that garnishee defendant filed a false and perjured disclosure. Garnishee defendant also asserts that it did not rely on mere allegations but instead relied on specific documentary evidence that clearly demonstrate a conflict between the address listed on the writ of garnishment and the address contained on the bank's records.

Because it pursued summary disposition based on MCR 2.116(C)(10) in the trial court, plaintiff, as the moving party, had the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Without providing any documentary evidence, plaintiff alleged in the trial court and again asserts in its brief on appeal that garnishee defendant

knowingly filed a false and perjured disclosure and thus it should be entitled to summary disposition. But mere conclusory allegations that are devoid of detail are insufficient to support a motion for summary disposition. *Id.* at 371-372. Our review of the record reveals that plaintiff did not provide the trial court with any evidence to support its claim that that garnishee defendant knowingly filed a false and perjured disclosure when it replied to plaintiff's writ of garnishment.

In support of its argument on appeal, plaintiff also asserts that garnishee defendant failed to submit any admissible evidence to rebut plaintiff's claims on its motion for summary disposition. "When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4). But this argument also fails because it is not until plaintiff itself, as the moving party, has satisfied its initial burden before the burden then shifts to the nonmoving party. MCR 2.116(G)(4); *Quinto, supra* at 362. Nonetheless, plaintiff ignores the bank records it attached to its motion. The same bank records form the basis and constitute the documentary evidence in support of garnishee defendant's position. MCR 2.116(G)(5).

The situation is unique in the instant case because garnishee defendant presented very specific documentary evidence in the form of bank records clearly illustrating that conflicting account information existed in the bank's records regarding the address for defendant JVS. The address on garnishee defendant's immediately accessible computerized banking records did not match the address plaintiff provided in its writ of garnishment. The writ of garnishment is also plain on its face that plaintiff did not provide garnishee defendant with any other identifying information in its writ such as a bank account number. In fact, the record reveals that it was not until garnishee defendant was able to retrieve from storage the actual original signature card dated approximately ten years before that it was able to match the address plaintiff provided on its writ of garnishment. Hence, the record plainly shows that when garnishee defendant responded to the writ of garnishment disclosing that, "CONFLICTING INFORMATION PREVENTS THE BANK FROM MAKING AN ACCURATE DISCLOSURE," it was not knowingly filing a false or perjured disclosure. The disclosure statement is objectively and verifiably true based on the documentary evidence before the trial court.

Because plaintiff failed to meet its initial burden, and garnishee defendant clearly established through documentary evidence that it did not knowingly file a false or perjured disclosure, the trial court properly rendered judgment in accordance with MCR 2.116(I)(1) and (2). MCR 2.116(I)(1) directs a court to "render judgment without delay" when the pleadings and facts show that a party is entitled to judgment as a matter of law. MCR 2.116(I)(1) specifically provides: "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." Thus, after reviewing the record including the undisputed bank records we conclude that the trial court did not err when it rendered its judgment based on the existence of conflicting evidence in the record. MCR 2.116(I)(1) and (2).

Plaintiff also asserts that this Court should reverse the trial court's order and order garnishee defendant to pay the full amount of the underlying judgment to plaintiff pursuant to MCL 600.4051, and/or enter a default judgment against garnishee defendant pursuant to MCR 3.101. MCL 600.4051 states:

Any person summoned as a garnishee or any officer, agent, or other person who appears and answers for a corporation summoned as a garnishee, who knowingly and wilfully answers falsely upon his disclosure or examination on oath is liable to the plaintiff in garnishment, or to his executors or administrators, to pay out of his own goods and estate the full amount due on the judgment recovered with interest, to be recovered in a civil action.

And, MCR 3.101(S)(1) states in pertinent part:

If the garnishee fails to disclose or do a required act within the time limit imposed, a default may be taken as in other civil actions.

Both of plaintiff's arguments fail because they rely on plaintiff's invalid and unfounded assertion that garnishee defendant knowingly filed a false and perjured disclosure. Because the undisputed bank records plainly demonstrated the existence of conflicting evidence in the record, plaintiff's premise fails and the arguments invoking MCL 600.4051 and MCR 3.101(S)(1) are without merit.

Affirmed.

/s/ Henry William Saad

/s/ William B. Murphy

/s/ Pat M. Donofrio