STATE OF MINNESOTA
IN COURT OF APPEALS
A11-638

Don Mashak,
Appellant,

1st National Repossessors, Inc.,
Plaintiff,

vs.

Dannette Meeks-Hull, et al.,
Respondents.

Filed January 17, 2012
Affirmed; motions denied
Crippen, Judge[*]

Isanti County District Court
File No. 30-CV-09-429

Don Mashak, Albertville, Minnesota (pro se appellant)

Dannette L. Meeks-Hull, Michael Hull, Isanti, Minnesota (pro se respondents)

Considered and decided by Johnson, Chief Judge; Schellhas, Judge; and Crippen, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CRIPPEN, Judge

Appellant Don Mashak challenges the district court's order dismissing his claim for recovery of damages. Appellant repossessed and sold a vehicle and claims that respondents, who are responsible for paying the debt on the vehicle, owe him an additional sum of over $3,000. In a summary judgment, the district court dismissed appellant's claim, primarily based on its determination that he had not complied with statutory requirements under the Uniform Commercial Code. The record supports the district court's decision, and we affirm. We also deny appellant's motions for leave to file supplemental documents and for other relief.

FACTS

This case originated in conciliation court in January 2008. Appellant claimed that respondents Dannette Meeks-Hull and Michael Hull owed him for a deficiency arising out of the repossession and sale of a 2000 Ford Excursion on which appellant was a secured creditor and cosigner. Appellant claimed that he paid $6,900 to the creditor, that he sold the vehicle for $5,500, and that respondents now owe him the difference of $1,400 plus approximately $1,700-$1,800 in attorney fees and other related expenses. The conciliation court found in favor of respondents, and appellant removed the case to district court.

On February 9, 2011, the district court dismissed appellant's claim, and, on reconsideration, the court affirmed this decision. This appeal followed.

D E C I S I O N

1.

Under the provisions of the Uniform Commercial Code (UCC) as adopted in Minnesota, for a secured party to recover on a deficiency claim, there must be an authenticated notice before sale. Minn. Stat. § 336.9-611(b), (c) (2008). The notice must contain a variety of information, including the time and place of the public auction. *See* Minn. Stat. § 336.9-613(1)(E) (2008). The UCC also requires an explanation after the sale explaining the calculation of any deficiency. Minn. Stat. § 336.9-616(b) (2008).

Appellant disputes the district court's conclusion that he failed to send the necessary notice of sale, but he does not dispute the court's further conclusion that appellant "at no time after the sale . . . [sent] an explanation of the calculation of any debt still owed." The record does not contain a postsale notification that explains the calculation of the deficiency. *See id.* The absence of this postsale notice requires dismissal of appellant's claim even if he sent presale notice pursuant to section 336.9-611. Moreover, the presale notice asserted by appellant (an October 2006 certified letter) does not comply with the statutory requirements because it failed to notify respondents of the time and place of the public auction. *See* Minn. Stat. § 336.9-613(1)(E). The district court did not err by determining that appellant failed to comply with the UCC's statutory requirements for a secured party to recover on a deficiency claim.[1]

[1] The district court noted that appellant had rights arising both as a secured party and as a cosigner of the obligation. He has at all times elected to abandon any separate claim as a cosigner and to rest on his assertions of his rights as a secured party to seek a deficiency judgment.

2.

Appellant also challenges the district court's decision to deny his motion to amend the complaint. On five separate occasions between June 2010 and January 7, 2011, appellant filed motions to amend his complaint to include claims of defamation, business-related torts, and conversion. The first four of these motions were either withdrawn or "expunged" at appellant's request.

Appellant argues here that the district court abused its discretion by denying his third motion to amend the complaint, dated December 17, 2010, because that motion was timely filed. But this motion was explicitly withdrawn in favor of later motions to amend.

The district court expressly denied appellant's fifth motion to amend the complaint, made at the summary judgment hearing on January 7, 2011, observing that the interests of justice did not require amendment because the motion was untimely and prejudicial to respondents. *See* Minn. R. Civ. P. 15.01 (indicating that, once a responsive pleading is served, a party may amend the complaint only with leave of the court and that leave to amend "shall be freely given when justice so requires"). Appellant waited until January 7, 2011, more than one year after the district court proceedings began, to assert this motion. The motion occurred after the close of discovery and after the court's December 17, 2010 deadline for all nondispositive motions. And appellant failed to request a ruling on one of his motions to amend until the day set for determining respondents' motion for summary judgment. The record requires that the district court's denial be affirmed. *See Peterson v. Sorlien*, 299 N.W.2d 123, 132 (Minn. 1980) (justice

did not require leave to amend when motion to amend was made one year after plaintiff initiated the action and the delay would likely have prejudiced the adverse party).

3.

Finally, appellant challenges the district court's action on his motion to compel respondents to submit to discovery. Appellant overlooks the fact that the court granted his motion to compel with respect to written discovery, and that he ultimately received and relied on respondents' written discovery in responding to the motion for summary judgment. Insofar as the motion to compel addressed oral discovery, the district court determined that appellant failed to give respondents reasonable notification as required by the rules of civil procedure. *See* Minn. R. Civ. P. 30.02(a) ("A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing . . . ."). Appellant began to arrange for depositions just 11 days before the discovery deadline, and respondents only had one day's notice of the scheduled deposition. There was no district court error on appellant's discovery motion.

4.

We have carefully examined the entire record and find no error in the district court's decisions. Appellant has made several motions to accept supplemental documents. The transcripts and pleadings identified by appellant are already part of the record on appeal. Those documents and appellant's arguments have been considered in reaching the decision. Therefore, appellant's motions are denied as unnecessary.

On December 6, 2011, appellant filed a document containing additional motions. The motion to expedite is moot because the appeal has now been decided. Appellant's

motions regarding appointment of counsel, the conduct of attorneys, and amendment of the complaint to add defendants are not within the scope of this appeal and are denied. Appellant has been permitted to proceed in this court pro se, as he requested, but we conclude that no additional briefing is required. Finally, the request to reconsider this court's June 15, 2011, order determining that Don Mashak is the sole appellant and that First National Repossessors failed to appeal, is denied. *See* Minn. R. Civ. App. P. 140.01 (providing that no petition for rehearing is allowed in this court).

Affirmed; motions denied.