

[Cite as *Providian Natl. Bank v. Ponz*, 2004-Ohio-2815.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Providian National Bank,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 03AP-806
	:	(C.P.C. No. 02CVH06-7105)
Gloria Ponz,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 1, 2004

Weltman, Weinberg & Reis Co., L.P.A., and Stephen A. Santangelo, for appellee.

Gloria Ponz, pro se.

APPEAL from the Franklin County Court of Common Pleas.

LAZARUS, P.J.

{¶1} Defendant-appellant, Gloria Ponz, appeals from the July 10, 2003 decision and judgment entry granting summary judgment in favor of plaintiff-appellee, Chase Manhattan Bank.¹ Because we find that the trial court properly granted appellee's motion for summary judgment, we affirm.

¹ Chase Manhattan Bank was substituted as plaintiff in this action as it had purchased the credit card account which is the subject of this action from the original named plaintiff, Providian National Bank.

{¶2} Appellee initiated this lawsuit on June 18, 2002, seeking the balance due and owing on a credit card account. Appellant filed an answer and a "Memorandum of Points & Authorities to Defendant's Answer to Plaintiff's Complaint." Appellee filed a motion for summary judgment on April 7, 2003. On May 21, 2003, appellant filed an answer to the motion for summary judgment. On June 13, appellee filed a motion to strike on the grounds that appellant, although purporting to be representing herself, had submitted pleadings and materials prepared by an unlicensed person, Curtis Richmond.

{¶3} On July 7, 2003, the parties appeared for trial. Appellant appeared pro se; appellee was represented by counsel. Before trial, the court considered the pending motion for summary judgment and the pending motion to strike. Appellant did not dispute that she had made the charges on the credit card or the balance claimed by appellee. Appellant also acknowledged that she had not prepared her own pleadings, but rather an individual named Curtis Richmond had done so. Mr. Richmond is not a licensed attorney. Appellant referred to him as a legal advisor or legal consultant. The trial court found the motion to strike to be well-taken, and struck appellant's pleadings. The trial court also found that appellee was entitled to summary judgment, and entered judgment against appellant in the amount of \$27,030.90 plus interest.

{¶4} Appellant filed a timely notice of appeal, assigning as error the following:

STATEMENT OF ASSIGNMENT OF ERRORS #1

Judge violated Appellant's Constitutional Right to Speak To whomever she wishes in obtaining legal advice and the Constitutional Right to Represent Herself.

STATEMENT OF ASSIGNMENT OF ERRORS #2

Judge ignored all of the Facts & Statutes relating to The Credit Card Dispute including evidence of Fraud.

STATEMENT OF ASSIGNMENT OF ERRORS #3

Neither Appellee or Judge provided any Statute or Case As Appellant demanded showing Appellant is liable When No Value was Received.

STATEMENT OF ASSIGNMENT OF ERRORS #4

Because Appellee was a Third Party to transactions, It has No Admissible Evidence under Federal Hearsay Evidence Rules and Regulation Z.

STATEMENT OF ASSIGNMENT OF ERRORS #5

Under Regulation Z 226.12 and .13, Appellee was PROHIBITED from trying to Collect.

STATEMENT OF ASSIGNMENT OF ERRORS #6

Judge ignored UCC Sect. 505 Sect. 9-210. No Court has Jurisdiction to Nullify the Articles of UCC because it is Administrative Law. Now there is also a UCC1 Lien.

STATEMENT OF ASSIGNMENT OF ERRORS #7

Judge violated Appellant's Constitutional Rights of Free Speech and the Right to Represent Herself.

{¶5} Because we find the trial court's ruling on appellee's motion for summary judgment to be dispositive, we address assignments of error two through six first.

{¶6} Civ.R. 56(C) states that summary judgment shall be rendered forthwith if:

* * * [T]he pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * *

{¶7} Accordingly, summary judgment is appropriate only where: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving

party, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party. *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, 629, citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 65-66. "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record * * * which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. Once the moving party meets its initial burden, the nonmovant must then produce competent evidence showing that there is a genuine issue for trial. *Id.* Summary judgment is a procedural device to terminate litigation, so it must be awarded cautiously with any doubts resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356, 358-359.

{¶8} Appellate review of summary judgments is de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588; *Midwest Specialties, Inc. v. Firestone Tire & Rubber Co.* (1988), 42 Ohio App.3d 6, 8. We stand in the shoes of the trial court and conduct an independent review of the record. As such, we must affirm the trial court's judgment if any of the grounds raised by the movant at the trial court are found to support it, even if the trial court failed to consider those grounds. (See *Dresher, Coventry Twp. v. Ecker* [1995], 101 Ohio App.3d 38, 41-42.)

{¶9} In this case, appellee moved for summary judgment on the grounds that appellant had applied for a credit card account with Providian National Bank, and that account was subsequently assigned to appellee. By using the account, appellant became bound by the terms of the credit card agreement. Appellant failed to make

payments pursuant to the agreement, and therefore appellee exercised its right to accelerate the time for payment of the entire balance due.

{¶10} Setting aside for the moment the trial court's decision to strike appellant's pleadings, appellant responded to the motion for summary judgment by contending that she was not liable for the balance due on her account because Regulation Z of the Truth in Lending Act precluded appellee from collecting the disputed debt. Appellant acknowledged that she signed the credit card agreement and used the credit card. (Defendant's Answer to Plaintiff's Motion for Summary Judgment, at 4.) Appellant indicated that she was not claiming a billing error, but rather that she was the victim of fraudulent practices by a non-party entity known as Purchase Plus. Appellant used her credit card to purchase phone cards from Purchase Plus in order to become an independent contractor/distributor of the cards. Purchase Plus went out of business, and appellant claimed that she was defrauded by Purchase Plus because the phone cards she purchased were not valid. Appellant claimed that Providian Bank was prohibited from undertaking collection activities because of Purchase Plus' fraudulent conduct.

{¶11} Unfortunately, in filing her response, appellant failed to present any competent evidence of the type set forth in Civ.R. 56(E), which provides that:

* * * When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

{¶12} Although appellant attempted to claim she had a legal defense to appellee's claim, appellant failed to present any evidence of the type listed in Civ.R. 56(C) demonstrating the existence of a genuine issue for trial. Once appellee discharged its burden of showing appellant had a credit card account, she made charges on the account, appellee demanded payment, and appellant failed to make payment, appellant had the burden to present evidence that she met the criteria under Regulation Z if that was the defense she wished to pursue at trial. *Dresher*, supra, at 293. In sum, appellant failed to meet her burden of showing a genuine issue for trial, and appellee fulfilled its burden of showing it was entitled to summary judgment. Appellant's assignments of error two through six are not well-taken.

{¶13} Based on the foregoing, assignments of error two, three, four, five, and six are overruled, we have no reason to address assignments of error one and seven, accordingly they are overruled as moot, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and KLATT, JJ., concur.
