

[Cite as *LVNV Funding, L.L.C. v. Kaminsky*, 2011-Ohio-3085.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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|----------------------|---|----------------------------|
| LVNV Funding, LLC, | : | |
| | : | |
| Plaintiff-Appellee, | : | |
| | : | No. 10AP-1141 |
| v. | : | (M.C. No. 2010 CVF 022649) |
| | : | |
| Randy Kaminsky, | : | (REGULAR CALENDAR) |
| | : | |
| Defendant-Appellant. | : | |

D E C I S I O N

Rendered on June 23, 2011

Weltman, Weinberg & Reis, Co. L.P.A., and Matthew G. Burg, for appellee.

Randy Kaminsky, pro se.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Defendant-appellant, Randy Kaminsky ("appellant"), appeals the judgment of the Franklin County Municipal Court, which granted the motion of plaintiff-appellee, LVNV Funding, LLC ("LVNV"), for summary judgment in its favor. Having concluded that the trial court did not err, we affirm.

{¶2} On June 10, 2010, LVNV filed a complaint against appellant. In it, LVNV alleged that it is the owner of an account held by appellant, appellant had failed to pay the balance, and he currently owed a balance of \$5,242.98, plus interest. Attached to the complaint is an "account summary," which had not been provided previously to appellant. The summary identifies the original creditor, previous owner, statement closing date, purchase date by LVNV, and account origination date. The summary identified appellant's name and address, the account number, and a listing showing the principal owed as \$5,242.98. Although the summary had categories under the heading "TRANSACTIONS," the summary listed no transactions.

{¶3} On July 1, 2010, appellant submitted a letter, which he addressed to LVNV's attorney and filed with the court. He requested validation of the debt, a copy of the original contract, and validation of LVNV's ownership of the account.

{¶4} With leave of the court, on August 17, 2010, LVNV filed a motion for summary judgment in its favor. LVNV attached to its motion a copy of appellant's responses to LVNV's requests for admissions. Appellant had not answered the questions, except to refer to his cover letter. In that letter, appellant stated he could not "answer these questions as I did not receive validation of said debt." LVNV also attached the affidavit of Tobie Griffin, a representative of LVNV. In the affidavit, Griffin identified the account held by appellant and owned by LVNV, the origination date, and the unpaid balance.

{¶5} On September 1, 2010, appellant filed a "REQUEST FOR OPPOSITION" to LVNV's motion, which was signed under oath as an affidavit. At the outset, appellant apologized for his requests for validation and his reliance on that request for his

responses to discovery. He stated that he had discovered only recently that his requests for validation were improper after suit was filed. Appellant listed "EVIDENTIARY OBJECTIONS," which included a statement that he had no relationship with LVNV and then several questions concerning the debt and LVNV's right to collect on it. He stated that issues of material fact still remained and precluded summary judgment.

{¶6} In an entry filed on November 8, 2010, the trial court granted LVNV's motion for summary judgment against appellant. Specifically, the court found the following: (1) appellant's responses to discovery, including his responses to the requests for admission, did not deny the debt or the amount sought, and, therefore, LVNV's admissions were deemed admitted; and (2) with the admissions admitted, LVNV had met its burden to show that no genuine issues of material fact remain. The court entered judgment in favor of LVNV in the amount of \$5,242.98, plus statutory interest.

{¶7} Appellant filed a timely appeal, and he asserts the following assignments of error:

[I.] Defendant's conviction is against the court's ruling that the motion for summary judgment be granted based on the answers to discoveries and solely refer to such as admittance of guilt.

[II.] Defendant's conviction is against the court's ruling without consideration of any weight of evidence as it pertains to the case and therefore constitutes a denial of due process.

{¶8} As an initial matter, LVNV contends that appellant's brief does not comply with applicable appellate rules and, on this basis, should be dismissed. We agree with

LVNV that, in some respects, appellant's brief does not comply with applicable rules. Nevertheless, we are able to discern appellant's assigned errors sufficiently and, in the interest of justice, will consider his appeal.

{¶9} We interpret appellant's assignments of error to contend that the trial court erred by granting summary judgment to LVNV by relying on his responses to discovery, including his responses to LVNV's requests for admission. We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶10} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the 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." Accordingly, summary judgment is appropriate only under the following circumstances: (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 non-moving party, reasonable

minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶11} "[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 before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. Once the moving party meets its initial burden, the non-movant must set forth specific facts demonstrating a genuine issue for trial. *Id.* at 293. Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95, quoting *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 2.

{¶12} Here, LVNV supported its motion for summary judgment with appellant's responses to its requests for admission and the affidavit of Tobie Griffin. In its entry, the trial court relied only on appellant's admissions.

{¶13} Civ.R. 36 allows a party to serve requests for admission on another party. The matter identified in the requests is deemed admitted unless, within the designated period, the answering party serves on the requesting party a written answer or objection addressed to the matter. Civ.R. 36(A)(1). If the answering party makes an objection, "the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter." Civ.R. 36(A)(2). "An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states" that he "has

made reasonable inquiry and that the information known or readily obtainable" by him "is insufficient to enable" him to admit or deny the matter. Civ.R. 36(A)(2).

{¶14} Any matter deemed admitted under Civ.R. 36 "is conclusively established" unless the court allows a withdrawal or amendment. Civ.R. 36(B). "A request for admission can be used to establish a fact, even if it goes to the heart of the case. This is in accord with the purpose of the request to admit—to resolve potentially disputed issues and thus to expedite the trial." *Cleveland Trust Co. v. Willis* (1985), 20 Ohio St.3d 66, 67.

{¶15} Here, appellant objected to LVNV's requests. His stated reason was that he had not received verification of the debt. Appellant did not, however, state that he had made a reasonable inquiry into the matter or that the information available to him (for example, the name of the originating bank and the account number) was insufficient to enable him to admit or deny LVNV's requests. Ohio courts have held that, if an objecting party fails to comply with these requirements, the admissions are deemed admitted. *Cleveland Constr., Inc. v. Roetzel & Andress, L.P.A.*, 8th Dist. No. 94973, 2011-Ohio-1237, ¶47; *Equitable Life Assur. Soc. of the United States v. Kuss Corp.* (1984), 17 Ohio App.3d 136, 139.

{¶16} In addition, appellant thereafter essentially withdrew the stated reason for his objection, i.e., the lack of validation. Even then, however, appellant gave no other reason for his objection or failure to obtain information that might be available to him.

{¶17} Under these circumstances, the trial court did not err by deeming the admissions admitted. Because these admissions went to the essential facts necessary

to support LVNV's claim—the existence of the account held by appellant and the unpaid balance—the court did not err by relying on them to support summary judgment.

{¶18} While the trial court relied only on the admissions, the court also could have relied on the affidavit of Tobie Griffin. The affidavit established the existence of the account held by appellant, the proper transfer of that account to LVNV, and the unpaid balance on the account.

{¶19} In response to LVNV's motion and evidence, appellant presented no contrary evidence to support a finding that genuine issues of material fact existed. As noted, he withdrew his reliance on the lack of validation for his failure to respond to discovery and offered no other reason for his failure to respond. Although he denied having a relationship with LVNV, he did not deny that the account was his or that he owed the balance. Instead, he raised only "OBJECTIONS" and questions concerning the account.

{¶20} Based on the evidence before it, the trial court properly granted summary judgment in favor of LVNV. Therefore, we overrule appellant's assignments of error. We affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

KLATT and SADLER, JJ., concur.
