

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

GLV INTERNATIONAL, INC.,	)	
a Washington Corporation,	)	DIVISION ONE
	)	
Respondent,	)	No. 67956-2-I
	)	
v.	)	
	)	UNPUBLISHED OPINION
AMERICAN RODSMITHS, INC.,	)	
a Texas Corporation; and ROBERT	)	
SCHERER and "JANE DOE"	)	
SCHERER, husband and wife, and	)	
the marital community comprised	)	
thereof,	)	
	)	
Appellants.	)	FILED: January 22, 2013
_____	)	

Dwyer, J. — American Rodsmiths, Inc. purchased more than \$300,000 worth of fishing rods and other sport fishing equipment from GLV International, Inc. When American Rodsmiths failed to pay the outstanding balance, GLV International filed this collection action against American Rodsmiths and its president, Robert Scherer. Because American Rodsmiths and Scherer failed to demonstrate a genuine factual dispute as to the amount owed, the trial court properly entered summary judgment in favor of GLV International. We therefore affirm.

I

American Rodsmiths is a Texas corporation that sells recreational fishing equipment. In 2009 and 2010, American Rodsmiths purchased more than \$300,000 of worth of fishing rods and other equipment from GLV International, a Washington wholesaler.

When American Rodsmiths was unable to pay for all of the merchandise, GLV

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International agreed to extend credit in exchange for a personal guaranty from Robert Scherer, American Rodsmiths' owner. On March 22, 2010, Scherer executed a personal guaranty for the outstanding indebtedness.

In a series of emails and other communications through November 2010, Scherer assured Jack Huang, GLV International's owner, that payment of the "balance" was imminent. On December 2, 2010, after American Rodsmiths failed to pay off the outstanding amounts, GLV International filed this action for breach of contract and enforcement of Scherer's personal guaranty.

GLV International eventually moved for summary judgment. In support of its motion, GLV International relied on Huang's declaration and a summary of American Rodsmiths' account, which listed purchase order numbers, invoice dates and numbers, shipping details, shipment tracking numbers, and the unpaid amounts. Based on the statement, GLV International sought a judgment for the outstanding balance of \$328,277.23. GLV International later submitted extensive additional documentation, including American Rodsmiths' complete order history, shipping schedules, copies of all shipping invoices, packing lists, and bills of lading, and emails confirming American Rodsmiths' receipt of orders.

In opposing summary judgment, American Rodsmiths conceded that it owed some money but maintained there was a factual dispute about the amount. In his declaration, Scherer asserted that (1) he had not authorized the purchase of all of the merchandise on GLV International's statement, (2) American Rodsmiths did not

receive “a large portion” of the documented orders, and (3) there were “numerous products” that had “warranty issues.” To support the existence of warranty issues, Scherer attached a 14-page document entitled “Items Sold to Customers For the Period From Nov 9, 2009 to Aug 31, 2011.”

On September 23, 2011, the trial court entered summary judgment in favor of GLV International for the requested amount of \$328,277.23. The court later entered a judgment against American Rodsmiths and Scherer totaling \$342,497.13, including interest and attorney fees.

## II

When reviewing a grant of summary judgment, an appellate court undertakes the same inquiry as the trial court. Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). We consider the evidence and the reasonable inferences therefrom in the light most favorable to the nonmoving party. Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). Summary judgment is appropriate “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 and that the moving party is entitled to a judgment as a matter of law.” CR 56(c); White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). The party opposing summary judgment “may not rely merely upon allegations or self-serving statements, but must set forth specific facts showing that genuine issues of material fact exist.” Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Grp., Inc., 114 Wn. App. 151, 157,

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52 P.3d 30 (2002).

Relying on allegations that it did not receive all of the invoiced merchandise and that some items were defective, American Rodsmiths contends that there is a genuine factual dispute about the amount that it owes to GLV International. We disagree.

In support of its motion for summary judgment, GLV International provided extensive documentation, including copies of American Rodsmiths' orders, invoices, and the relevant shipping documents. That evidence established the specific amount that American Rodsmiths owed and was sufficient to meet GLV International's initial burden on summary judgment. See CR 56(c).

The burden then shifted to American Rodsmiths to set forth specific facts demonstrating the existence of a disputed material fact. Seven Gables Corp. v. MGM/UA Entm't Co., 106 Wn.2d 1, 13, 721 P.2d 1 (1986). But American Rodsmiths' response involved nothing more than conclusory assertions of a factual dispute.

In his supporting declaration, Scherer alleged generally that he had not authorized some purchases and that some of the merchandise was either not received or was defective. But Scherer did not associate any of these alleged deficiencies with the relevant invoices, purchase orders, or other documents referenced in GLV International's initial account statement. Nor did American Rodsmiths attempt to dispute or even address the extensive materials attached to GLV International's reply in support of summary judgment, including all relevant

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invoices and shipping documents. See CR 56(f) (permitting opposing party to seek continuance to develop additional supporting evidence). The materials attached to Scherer's declaration apparently reference merchandise that American Rodsmiths' customers returned. But the documents do not indicate the reason for the return or identify the original supplier and relevant unpaid invoices.

American Rodsmiths also points to the approximately \$80,000 of merchandise on GLV International's statement that was never shipped. But as the statement and record clearly establish, GLV International placed these items "on hold" until American Rodsmiths paid for them. American Rodsmiths makes no showing that the orders were not properly included in the amount that it owed.

In order to defeat a properly supported summary judgment motion, the nonmoving party

may not rely on the allegations in the pleadings but must set forth specific facts by affidavit or otherwise that show a genuine issue exists. Additionally, any such affidavit must be based on personal knowledge admissible at trial and not merely on conclusory allegations, speculative statements or argumentative assertions.

Las v. Yellow Front Stores, Inc., 66 Wn. App. 196, 198, 831 P.2d 744 (1992)

(footnotes omitted). American Rodsmiths' conclusory allegations are insufficient to satisfy this burden. The trial court properly entered summary judgment.<sup>1</sup>

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<sup>1</sup> Because American Rodsmiths failed to establish a factual dispute as to the amount that it owed, we need not address GLV International's alternative argument based on the doctrine of account stated. See Assoc. Petroleum Prods., Inc. v. Nw. Cascade, Inc., 149 Wn. App. 429, 203 P.3d 1077 (2009).

III

American Rodsmiths contends that the trial court erred in awarding prejudgment interest and attorney fees. But this argument rests on its claim that there is a factual dispute about the amount it owes. Because the trial court properly entered summary judgment, the challenge to prejudgment interest and attorney fees also fails.

IV

American Rodsmiths' final contention that the trial court erred in entering findings of fact and conclusions of law on summary judgment is also without merit. See Hemenway v. Miller, 116 Wn.2d 725, 731, 807 P.2d 863 (1991) (findings of fact on summary judgment are superfluous). The challenged findings and conclusions were not entered on summary judgment, but rather in support of the subsequent final judgment, which included an award of interest and attorney fees. American Rodsmiths fails to demonstrate any error.

V

GLV International has requested attorney fees on appeal under RAP 18.1 and the attorney fee provision in Scherer's personal guaranty. The request is granted. A commissioner of our court will enter an appropriate award upon proper compliance with RAP 18.1(d).

Affirmed.

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Dwyer, J.

We concur:

Schiveller, J.

Becker, J.