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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

2180836

Morgan Wood

v.

CraneWorks, Inc.

Appeal from Jefferson Circuit Court
(CV-18-904279)

HANSON, Judge.

This appeal arises from an action initiated by CraneWorks, Inc. ("CraneWorks"), seeking to collect a balance allegedly owed by Morgan Wood related to equipment he rented from CraneWorks. The Jefferson Circuit Court ("the trial

court") granted a motion for a summary judgment filed by CraneWorks and entered a judgment in the amount of $10,587.46 in favor of CraneWorks and against Wood. Wood appealed, and we reverse and remand.

Facts and Procedural History

On October 10, 2018, CraneWorks filed a complaint against Wood in the trial court asserting alternative claims of breach of contract and unjust enrichment. The complaint alleged that the parties had entered into a contractual agreement on April 14, 2017; that Wood had defaulted on his payment obligation under the contract; and that Wood owed a principal balance of $6,980, not including interest and attorneys' fees (which CraneWorks also claimed were due under the contract).[1]

On April 3, 2019, CraneWorks filed a two-page motion for a summary judgment in which it asserted simply that Wood had

[1]CraneWorks asserted that it was entitled to an aggregate monetary award, including attorneys' fees, of $10,587.46. At the time CraneWorks initiated its action, i.e., before Ala. Code 1975, § 12-11-30(1), was amended in 2019, Alabama circuit courts had concurrent jurisdiction with Alabama district courts over civil actions in which the amount in controversy, exclusive of costs, exceeded $3,000, and had exclusive jurisdiction over civil actions in which the amount in controversy, exclusive of interest and costs, exceeded $10,000; under Act No. 2019-405, Ala. Acts 2019, those amounts have respectively increased to $6,000 and $20,000.

defaulted on payments due as a result of his rental of equipment from CraneWorks and that CraneWorks was entitled to a judgment as a matter of law against Wood in the amount of $10,587.46, which included the alleged $6,980 principal balance purportedly owed by Wood, $2,324.34 in attorneys' fees, and $1,283.12 in interest. CraneWorks's narrative statement of facts was a mere three sentences long:

> "[CraneWorks] rented equipment on credit to [Wood]. [Wood] defaulted in the payments. [Wood] owes the balance of $6,980.00 in principal, plus interest, attorney fees, less payments, plus court costs pursuant to the attached documentation for equipment rented and not paid for."

The summary-judgment motion contained no legal argument and did not cite any specific contractual language under which CraneWorks claimed that payment from Wood was due.

CraneWorks's summary-judgment motion was also supported by the affidavit of Dan Jamison, the credit manager employed by CraneWorks. In the affidavit, Jamison testified that he was familiar with Wood's file and stated that, after crediting Wood for all payments, Wood had had an outstanding balance of $6,980 and that he had refused to pay that balance. Jamison also testified that he was the custodian of records for CraneWorks and that the documents attached to the affidavit

were true and correct copies of the rental agreement between Wood and CraneWorks, a work order for the repair of the equipment rented to Woods, and an invoice related to Wood's equipment rental.

The "Rental Agreement" submitted by CraneWorks in support of the summary-judgment motion indicated that Wood had rented a "backhoe" from CraneWorks on April 14, 2017, at a rate of $250 per day or $750 per week, and that he had agreed to the "Rental Protection Program" offered by CraneWorks that was, according to the rental agreement, subject to a $2,500 deductible amount. The rental agreement also contained various "terms and conditions." We note that the copy of the rental agreement contained in the record is of poor quality and that much of the "terms and conditions" portion of the agreement appearing in the appellate record is not readable. We have discerned, however, the following potentially pertinent provisions:

> "13. Risk of Loss. Lessee [Wood] assumes the entire risk of loss or damage, including but not limited to destruction, theft, requisition, loss, or any other damage to the rented items from any cause whatsoever (hereinafter 'loss') whether or not insured, until the rented items are returned to lessor. In the event of any such loss to any rented item, Lessee will immediately notify Lessor

[CraneWorks] and Lessee's insurer in writing. No such loss shall end the rental term or relieve Lessee of its duties hereunder, including without limitation, the obligation of Lessee to continue to pay rental hereunder. At Lessor's option, Lessee shall either (a) repair such rented items; (b) replace such rented items with equipment of like value and utility and reasonably acceptable to Lessor; or (c) pay to Lessor an amount reasonably calculated by Lessor to give Lessor all of the benefits of its ownership of such rented items and amount payable hereunder but for such loss. Furthermore, and in addition to any payments with respect to damages, Lessee shall continue to pay rental for the damaged rented item while it is being repaired or replaced even if the rental term ends prior to full repair or repayment.

"....

"15. Rental Protection Program. If lessee has elected the Rental Protection Program (RPP) and the Rented items are stolen, provided the Conditions are Satisfied and no Exclusion applies, then Lessee's responsibilities under Section 13 (Risk of Loss) shall be modified by the RPP and the Lessee's liability to Lessor for the Rented Items stolen shall be limited to: (i) 25% of the replacement cost for Rented Items stolen from a secure location (being defined as under lock and key with only the Lessee having access); (ii) 50% of the replacement cost for Rented items stolen from an unsecure location; and (iii) continued rental payments for the stolen Rented Items while such Rented Items are being replaced, even if the Rental Term ends prior to replacement. THE RPP IS NOT INSURANCE AND DOES NOT PROTECT LESSEE FROM LIABILITY TO LESSOR OR OTHERS ARISING OUT OF POSSESSION OR OPERATION OF THE RENTED ITEMS, INCLUDING WITHOUT LIMITATION, INJURY OR DAMAGE TO PERSONS OR PROPERTY.

"a. RPP Conditions. In order for the RPP to apply, the Lessee must (i) accept the RPP; (ii) pay 14% of the gross rental charges as the fee for the RPP; (iii) fully comply with the terms of this Agreement; (iv) have a current account at the time of the theft; and (iv) not be subject to any of the Exclusions.

"b. RPP Exclusions. If any Exclusion applies, the RPP will not cover the theft of the Rented Items. 'Exclusions' shall mean theft of the Rented Items[] (i) due to possession and/or operation of the Rented Items by a person other than Lessee or Lessee's authorized employee or any dishonest acts by the Lessee; (ii) which is not reported by Lessee to the police within 48 hours of discovery and substantiated by a written policy report (promptly delivered to Lessor); and (iii) occurring during the loading, unloading or transportation of the Rented item. The RPP will not apply to accessories for which no RPP fee is paid. THE EXCLUSIONS ARE RISKS ASSUMED BY THE LESSEE AND ARE NOT COVERED BY THE RPP.

"c. Recovery of Equipment. If the Rented Items are recovered at a later date, Lessor retains ownership of the Rented Items. Notwithstanding anything to the contrary in this Agreement, if stolen Rented Items are later recovered, neither Lessee nor Lessee's insurance company shall have any ownership rights to such items, regardless of any payments made by Lessee or Lessee's insurance company with respect to such Rented Items, all of which payments are non-refundable. Lessee agrees to promptly return any Rented Items which are recovered.

"d. Subrogation. Lessor shall be subrogated to Lessee's rights to recover against any person or entity relating to any theft of the Rented Items. Lessee shall cooperate with, assign Lessor all claims and proceeds arising from such theft, execute and deliver to Lessor whatever documents are

> required and take all other necessary steps to secure to Lessor such rights."

(Capitalization in original.)

CraneWorks also submitted a copy of an invoice to Woods in the amount of $6,980. That invoice indicated that Woods had been charged $4,480 for labor at overtime rates for work conducted by three CraneWorks employees on April 15, 2017, and $2,500 for a "deductible." CraneWorks also submitted a copy of a work order indicating that it had incurred $17,156.87 to repair damage to the equipment that Woods had rented.

Wood opposed CraneWorks's motion for a summary judgment, asserting, among other things, that CraneWorks "ha[d] not carried [its] burden as a movant [under] the Alabama summary judgment standard," and he moved to strike the exhibits submitted in support thereof on the basis that the documents constituted inadmissible hearsay. Wood further argued that the $2,500 deductible was not applicable to him because, under the terms and conditions of the rental agreement, the rental-protection program applied only to the theft of rented equipment and, he said, the equipment had not been stolen. Likewise, he argued that he had not agreed to pay the labor costs billed to him, much less at overtime rates. Wood also

submitted an affidavit in which he testified that (a) the backhoe he had rented from CraneWorks had rolled over on his property; (b) the backhoe had not been stolen; (c) he had never been informed regarding hourly labor or overtime charges for work done by CraneWorks employees following an accident; (d) he had paid all the rental fees for the backhoe; and (e) he had disputed the amount that had been invoiced to him.

A hearing on the summary-judgment motion filed by CraneWorks was conducted on May 7, 2019.[2] On June 3, 2019, the trial court granted the summary-judgment motion and, in its judgment in favor of CraneWorks and against Wood, awarded CraneWorks the amount of $10,587.46. Wood appealed.

Analysis

Our standard for review of a summary judgment is well settled.

> "'"'[An appellate court]'s review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a

[2]No transcript of that hearing appears in the record.

> prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce "substantial evidence" as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, 12-21-12. "[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonable infer the existence of the fact sought to be proved." West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989).'"'

"Gooden v. City of Talladega, 966 So. 2d 232, 235 (Ala. 2007) (quoting [Prince v. Poole, 935 So. 2d 431, 442 (Ala. 2006)], quoting in turn Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004))."

Poole v. Prince, 61 So. 3d 258, 272 (Ala. 2010). Furthermore, CraneWorks, as the plaintiff in this action, assumes the burden of proof at any trial.

> "'"'[T]he manner in which the [summary-judgment] movant's burden of production is met depends upon which party has the burden of proof ... at trial.'" Ex parte General Motors Corp., 769 So. 2d 903, 909 (Ala. 1999) (quoting Berner v. Caldwell, 543 So. 2d 686, 691 (Ala. 1989) (Houston, J., concurring specially)). If ... "'the movant has the burden of proof at trial, the movant must support his motion with credible evidence, using any of the material specified in Rule 56(c), [Ala.] R. Civ. P. ("pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits").'" 769 So. 2d at 909. "'The movant's proof must be such that he would be entitled to a directed verdict [now referred to as a judgment as a matter of law, see Rule 50, Ala. R. Civ. P.] if this evidence was not controverted at trial.'" Id. In other words, "when the movant has the burden [of proof at trial], its own submissions in support of the motion must entitle it to judgment as a matter of law." Albee Tomato, Inc. v. A.B. Shalom Produce Corp., 155 F.3d 612, 618 (2nd Cir. 1998) (emphasis added). See also Equal Employment Opportunity Comm'n v. Union Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico, 279 F.3d 49 (1st Cir. 2002); Rushing v. Kansas City Southern Ry., 185 F.3d 496 (5th Cir. 1999); Fontenot v. Upjohn Co., 780 F.2d 1190 (5th Cir. 1986); Calderone v. United States, 799 F.2d 254 (6th Cir. 1986).'

> "Denmark v. Mercantile Stores Co., 844 So. 2d 1189, 1195 (Ala. 2002)."

White Sands Grp., L.L.C. v. PRS II, LLC, 32 So. 2d 5, 10 (Ala. 2009).

Wood makes two arguments on appeal. First, he contends that the trial court should have granted his motion to strike the documents submitted by CraneWorks. We disagree. Jamison testified that he was the custodian of records for the documents attached to his affidavit and indicated that the documents were kept by CraneWorks in the ordinary course of its business. He further testified that he was familiar with the documents; that they related to Wood's rental of the equipment; and that they were "true and correct copies" of the rental agreement, work order, and invoice. Accordingly, the documents were "sworn" pursuant to Rule 56(e), Ala. R. Civ. P., and we detect no error in the trial court's refusal to strike the documents. See Dailey v. State Farm Mut. Auto. Ins. Co., 270 So. 3d 274, 276 (Ala. Civ. App. 2018) (holding that insurance policy was "sworn" pursuant to Rule 56(e) when policy was attached to affidavit by custodian of records stating that policy was a "true and accurate" copy of policy in effect at date of loss and that the policy was admissible

over a hearsay objection pursuant to Rule 803(6), Ala. R. Evid.).

Next, Wood argues that CraneWorks failed to meet its initial burden as the summary-judgment movant to establish that it was entitled to a judgment as a matter of law. As to this issue, we agree. The abbreviated motion for a summary judgment and attached exhibits filed by CraneWorks established little more than the amount CraneWorks claimed it was owed by Wood; it did not, however, set forth the basis for Wood's alleged contractual or legal obligation to pay that amount -- a basis that is not obvious to this court from the face of the submitted documents. Indeed, the amount allegedly owed by Wood was not simply a calculation of past-due rental charges based on an agreed rental rate (as implied by the summary-judgment motion), but, rather, the amount claimed by CraneWorks appears to include additional charges that had been assessed by CraneWorks following accidental damage to the rented equipment -- charges that Wood had disputed. Although CraneWorks submitted a copy of the rental agreement and an invoice in support of its summary-judgment motion, CraneWorks made no effort to establish even the most basic facts

surrounding the incident and resulting charges. For instance, CraneWorks did not attempt to justify or explain the labor and overtime charges assessed to Wood or how that labor related to the damage to, recovery of, or repair of the equipment; likewise, CraneWorks did not explain the reason it assessed a S2,500 "deductible" to Wood and did not identify any specific contractual provision allegedly obligating Wood to pay those charges. Moreover, CraneWorks did not submit any legal argument in support of its motion beyond the conclusory statement that "there is no genuine issue as to any material fact and that [CraneWorks] is entitled to a judgment as a matter of law."[3] In short, CraneWorks did not establish the elements of its alternative breach-of-contract or unjust-enrichment claims as a matter of law in the manner required by White Sands, supra.

"[A] party moving for summary judgment always bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that it argues demonstrate the absence of a genuine issue of material fact." Northwest Florida Truss, Inc. v. Baldwin Cty.

[3]We note that CraneWorks did not submit a brief on appeal.

Comm'n, 782 So. 2d 274, 276 (Ala. 2000). In light of the meager argument and evidence offered by CraneWorks in support of its motion for a summary judgment, we conclude that CraneWorks did not make a prima facie showing through its own submissions that it was entitled to a judgment as a matter of law with respect to its claims against Wood. Accordingly, we conclude that the trial court erred in entering the summary judgment in favor of CraneWorks.

Conclusion

For the above-stated reasons, the judgment is reversed, and the cause is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Thompson, P.J., and Moore, Donaldson, and Edwards, JJ., concur.