

SUPREME COURT OF ARKANSAS

No. 11-1308

LVNV FUNDING, LLC

APPELLANT

V.

RAE NARDI

APPELLEE

Opinion Delivered December 13, 2012

APPEAL FROM THE
MONTGOMERY COUNTY
CIRCUIT COURT,
[NO. CV2009-36]

HONORABLE J.W. LOONEY, JUDGE

AFFIRMED.**JIM HANNAH, Chief Justice**

LVNV Funding, LLC (“LVNV”) appeals an order of summary judgment entered in favor of appellee Rae Nardi. According to LVNV’s complaint filed May 21, 2009, Nardi received a credit card from Citibank, made purchases with the card, failed to pay on her account, and LVNV as an assignee has a cause of action for recovery of the amount due on the account. LVNV asserts that Arkansas Code Annotated section 16-45-104 (Repl. 1999) permits commencement of a lawsuit on an account by filing a complaint with a section 16-45-104 affidavit attached. According to LVNV, Arkansas Rule of Civil Procedure 10(d)’s requirement that a copy of the “instrument or document” on which the claim is based be attached to the complaint is inapplicable.

In a motion for summary judgment, LVNV alleged a contractual relationship between Nardi and Citibank and attached various documents as exhibits, including the alleged agreement between Citibank and Nardi. Nardi filed a motion for summary judgment,

alleging that the affidavit attached to the complaint was deficient and that the failure to attach to the complaint a copy of the agreement between Nardi and Citibank constituted a violation of Rule 10(d). The circuit court found that under Rule 10(d), the agreement between Nardi and Citibank had to be attached to the complaint and entered summary judgment in Nardi's favor.¹ We affirm the decision of the circuit court. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(b)(1)(2012).

Summary judgment may be granted only when no genuine issue of material fact exists requiring trial and when the moving party is entitled to judgment as a matter of law. *Ark. Dep't of Human Servs. v. Civitan Ctr., Inc.*, 2012 Ark. 40, at 7, ___ S.W.3d ___, ___. On appeal this court determines if summary judgment was appropriate based on whether the evidentiary items presented by the moving party have left a material question of fact unanswered. *Id.*, ___ S.W.3d at ___. We view the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.*, ___ S.W.3d at ___. We review issues of interpretation of the rules of civil procedure de novo. *Deaver v. Faucon Props., Inc.*, 367 Ark. 288, 290, 239 S.W.3d 525, 528 (2006).

Rule 10(d) concerns form of pleadings and required exhibits, and states that “[a] copy

¹In an October 13, 2011 letter opinion, the circuit court cited *Calvary SPV, LLC v. Anderson*, 99 Ark. App. 309, 260 S.W.3d 331 (2007) and noted that under that case, “items such as a signed credit card application along with a card-member agreement” may be sufficient. The circuit court also noted that even if the attachment of a card-member agreement to the motion for summary had been sufficient, LVNV offered nothing to show that this agreement would have been applicable to Nardi.

of any written instrument or document upon which a claim or defense is based shall be attached as an exhibit to the pleading in which such claim or defense is averred unless good cause is shown for its absence in such pleading.” LVNV attached to its motion for summary judgment a written “Card Agreement” alleged to be the instrument upon which the claim was based. Pursuant to Rule 10(d), any instrument upon which the claim was based had to be attached as an exhibit to the complaint. Compliance with Rule 10(d) is mandatory. See *Ray & Sons Masonry Contractors, Inc. v. U.S. Fid. & Guar. Co.*, 353 Ark. 201, 114 S.W.3d 189 (2003).

LVNV asserts that Rule 10 is inapplicable because suit may be brought on an account based on a complaint and a section 16-45-104 affidavit. Section 16-45-104 provides as follows:

In any suit on an account in any of the courts of this state, the affidavit of the plaintiff, duly taken and certified according to law, that the account is just and correct shall be sufficient to establish the account, unless the defendant denies under oath the correctness of the account, either in whole or in part, in which case the plaintiff shall be held to prove by other evidence such part of his account as is thus denied.

Ark. Code Ann. § 16-45-104. As the circuit court found, section 16-45-104 if the “Affidavit to Correctness of Account,” complies with the rules of evidence, might offer proof of the account amount (“establish the account”), but it does not satisfy or excuse compliance with Rule 10(d). “[R]ules regarding pleading, practice, and procedure are solely the responsibility of this court.” *Johnson v. Rockwell Automation, Inc.*, 2009 Ark. 241, at 7, 308 S.W.3d 135, 141 (citing Ark. Const. amend. 80, § 3). Compliance with Rule 10(d) is mandatory. Entry of the order of summary judgment was proper.

Affirmed.

Hosto & Buchan, P.L.L.C., by: *John William Crow*, for appellant.

Robin Smith Law Firm, PA, by: *Robin C. Smith*, for appellee.