

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2011

GEORGE C. GRIMSLEY,
Appellant,

v.

**MOODY, JONES, INGINO & MOREHEAD, P.A., and GENERAL
MOTORS ACCEPTANCE CORPORATION, a/k/a GMAC,**
Appellees.

No. 4D10-4544

[October 5, 2011]

HAZOURI, J.

George C. Grimsley (“Grimsley”) appeals the trial court’s grant of summary final judgment in favor of General Motors Acceptance Corporation (“GMAC”). We affirm the summary final judgment and remand back to the trial court to correct a scrivener’s error.

Grimsley filed an amended complaint against Moody, Jones, Ingino & Morehead, P.A. (“Moody”) and GMAC, alleging negligence and violations of the Fair Debt Collection Practices Act. GMAC filed a counter-claim against Grimsley, seeking \$5689.15 in damages for Grimsley’s default on a motor lease agreement. GMAC then moved for summary final judgment and Grimsley filed a response.

Ultimately, the trial court entered summary final judgment in favor of GMAC. The trial court included a handwritten note at the bottom of the typed order granting summary final judgment which stated that “[t]he court considered the opposition filed by ▲ [defendant] as well as payments. As a matter of law, there are issues of a material fact.”

“The standard of review of an order granting summary judgment is *de novo*.” *Bender v. CareGivers of Am., Inc.*, 42 So. 3d 893, 894 (Fla. 4th DCA 2010) (quoting *Mobley v. Gilbert E. Hirschberg, P.A.*, 915 So. 2d 217, 218 (Fla. 4th DCA 2005)). “When a defendant moves for summary judgment, the court is not called upon to determine whether the plaintiff can actually prove his cause of action.” *Id.* at 894 (quoting *Winston Park, Ltd. v. City of Coconut Creek*, 872 So. 2d 415, 418 (Fla. 4th DCA 2004)

(citations omitted)). Rather, the court's role is to determine whether the record conclusively shows that the moving party proved a negative, that is, "the nonexistence of a genuine issue of a material fact." *Id.* (citation omitted).

In the instant case, the trial court did not err in granting summary final judgment in GMAC's favor. Grimsley does not dispute that he surrendered the subject vehicle prior to the lease's termination date and that a resulting balance was due and owing to GMAC. Rather, Grimsley argues the existence of issues of material fact which are not material to GMAC's claim for damages. "Issues of nonmaterial facts are irrelevant to the summary judgment determination." *Cont'l Concrete, Inc. v. Lakes at La Paz III Ltd. P'ship*, 758 So. 2d 1214, 1217 (Fla. 4th DCA 2000) (citing Fla. R. Civ. P. 1.510(c)). While the trial court included a handwritten note at the bottom of its typed order granting summary final judgment stating "[a]s a matter of law, there are issues of a material fact," it appears that the trial court omitted an important word, intending to write there are *no* issues of a material fact.

Accordingly, we affirm the summary final judgment and remand to the trial court with directions that the scrivener's error be corrected with an amended summary final judgment *nunc pro tunc* to October 6, 2010.

Affirmed and Remanded.

TAYLOR and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Jack Tuter, Judge; L.T. Case No. 09-069226 CACE 11.

George C. Grimsley, West Palm Beach, pro se.

Michael J. Ingino of Moody, Jones, Ingino & Morehead, P.A., Plantation, for appellees.

Not final until disposition of timely filed motion for rehearing.