

**IN THE COURT OF APPEALS OF IOWA**

No. 7-604 / 06-1793  
Filed October 12, 2007

**BANK OF AMERICA,**  
Plaintiff-Appellee,

**vs.**

**STUART DANIEL JUAREZ,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Don C. Nickerson,  
Judge.

Defendant appeals summary judgment for plaintiff in a collection case.

**AFFIRMED.**

Stuart Juarez, Des Moines, pro se.

Charles Litow and Piper Lori Hughes of Litow Law Office, P.C., Cedar  
Rapids, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**ZIMMER, J.**

Defendant, Stuart Daniel Juarez, appeals from a district court order granting summary judgment to the plaintiff, Bank of America (BOA). Upon our review of the record and consideration of the arguments asserted on appeal, we affirm.

BOA issued a credit card to the defendant. Juarez used the card for a number of years making purchases and partial payments. In October 2005 Juarez sent BOA a letter in which he claimed to raise a dispute under 12 C.F.R. 226.13(b)(1) of the Truth in Lending Act. Juarez did not dispute specific charges and credits on the account. Instead, he disputed the entire balance due. BOA deemed the letter was insufficient to be considered a dispute under the Truth in Lending Act. Juarez failed to make any further payments on his account.

In May 2006 BOA filed a petition seeking to collect the balance due on Juarez's credit card account. Juarez filed an answer asserting a variety of affirmative defenses. BOA filed a motion for summary judgment under a stated account theory. Juarez responded by filing a purported counterclaim against BOA's counsel, two motions to strike, a resistance to the summary judgment motion, and a motion to dismiss. Following a hearing held August 29, 2006, the district court granted BOA's motion for summary judgment in an order filed October 16, 2006. The same day the court's ruling was filed, Juarez filed a motion to compel and a motion for summary judgment. Later, he filed a motion to set aside judgment.

Juarez has appealed. He contends BOA was not entitled to summary judgment.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.4; *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Grinnell Mut. Reins. Co. v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002).

Juarez has raised numerous legal arguments on appeal. We begin our discussion by mentioning that his appellate brief includes a variety of arguments that are not part of the summary judgment record, have not been preserved for our review, or are not pertinent to our review of the district court's entry of summary judgment. For instance, the district court granted the plaintiff's motion for summary judgment by order filed on October 16. On October 23 the defendant filed a "Notice to Set Aside Summary Judgment," a "Motion to Set Aside Summary Judgment," and an accompanying affidavit in support of the motion.

On appeal, the defendant raises the issue

whether a reasonable finder of fact can determine if there was or if there exist an inadvertent and unavoidable casualty of any material fact(s) or issue(s) presented from being heard, reviewed, or considered by District Court? Furthermore, would any material fact(s) or issue(s) conceivably afford the Defendant-Appellant another remedy or conclusion based on those fact(s), issue(s) and Rules of Civil Procedure?

Juarez cites to rule 1.977 in support of his claim the summary judgment should be set aside because of inadvertence or unavoidable casualty.

His claim fails for at least two reasons. First, rule 1.977 provides that a court may set aside a default judgment. The judgment at issue here was not a default judgment, so rule 1.977 does not apply to the circumstances of this case. Second, the district court did not rule on the motion, so the issue is not preserved for our review. *See Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002).

The defendant also contends the court should have ordered the plaintiff to comply with his discovery requests, and he argues the court should have considered the facts deemed admitted from his requests for admissions to which plaintiff did not respond. The problem with this argument is that the summary judgment hearing was held before the due date for plaintiff's response to defendant's discovery requests. Juarez did not request a continuance or otherwise make any provision for later admission of evidence. His October 16 "Summary Judgment Notice of Motion" with accompanying exhibits concerning the supposed admissions of the plaintiff stated a motion would be made, but did not constitute a motion for summary judgment. The district court granted the plaintiff's motion for summary judgment the same day the defendant filed his "Notice of Motion." The filings made by the defendant after the summary judgment hearing was held were untimely, and the district court had no obligation to consider them in its ruling on BOA's motion for summary judgment.

The record reveals BOA's motion for summary judgment was properly supported as required by our rules of appellate procedure. Therefore, it was incumbent on Juarez to set forth specific facts showing there was a genuine issue for trial. Upon review of the summary judgment record, we agree with the district court's conclusion that the defendant's response to the summary

judgment record is insufficient to avoid summary judgment. Accordingly, we affirm the district court.

**AFFIRMED.**