

RENDERED: OCTOBER 27, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001302-MR

JOSEPH H. SAMUELS

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS L. WALLER, JUDGE
ACTION NO. 04-CI-00224

PNC BANK CORPORATION

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; ACREE, JUDGE; KNOPF,¹ SENIOR JUDGE.
COMBS, CHIEF JUDGE: Joseph Samuels appeals from a summary judgment entered by the Bullitt Circuit Court in favor of PNC Bank concerning Samuels's breach of a commercial loan agreement. Since the record does not disclose the existence of any genuine issue of material fact that would render inappropriate the entry of summary judgment, we affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On March 3, 2004, the Bank filed a complaint against Samuels and alleged that he had failed to repay a commercial loan made to him on July 18, 2000, in his capacity as the sole proprietor of Absolute Plumbing, Heating, Cooling, and Remodeling. The loan agreement extended a \$10,000.00, line of credit to Samuels. A copy of the agreement was attached to the complaint.

Acting *pro se*, Samuels answered the complaint. He admitted that he had executed the note and explained that he was unable to meet his obligations to the bank after he had been involved in a car accident in November 2000. Samuels also contended that the Bank should not recover under the loan agreement since it had failed to secure any collateral. He protested the conversion of his line of credit to a term note.

After taking some discovery, the Bank filed its motion for summary judgment, and Samuels filed a written response. The trial court conducted a hearing on the motion on June 14, 2004. At the hearing, Samuels admitted that he was indebted to the Bank in the amounts alleged in the complaint, but he argued that the Bank should not be permitted to pursue its claim for default because of the injuries he had sustained in the car accident. On June 23, 2004, summary judgment was entered in favor of the Bank both as to liability and as to damages. This appeal followed.

Summary judgment is appropriate when it appears that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. CR 56.03; Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 483 (Ky. 1991). The movant bears the burden of persuading the court that he is entitled to judgment.

We have reviewed all the material submitted by the parties both at the trial court and on appeal. While Samuels's injuries were most unfortunate, they did not excuse his obligation to the Bank as a matter of law. He remained bound by the clear terms of his contract with the Bank, and the Bank was not obligated to secure collateral for the loan. His promise to repay the loan in exchange for the money was sufficient consideration. He agreed to the provisions allowing the Bank to convert his line of credit to a term note, and adequate notice of the conversion was provided.

Samuels was unable to present any evidence upon which a trier of fact might reasonably find judgment in his favor. The Bank successfully demonstrated that there were no genuine issues of material fact to preclude judgment and that it was entitled to judgment as a matter of law. Consequently, the trial court did not err by granting summary judgment to the Bank.

The judgment of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Joseph H. Samuels, *Pro se*
Brooks, Kentucky

BRIEF FOR APPELLEE:

Elizabeth H. Turner
Louisville, Kentucky