

NOT DESIGNATED FOR PUBLICATION

WILLIAM T. NEWMAN, JR. * **NO. 2006-CA-0849**
VERSUS * **COURT OF APPEAL**
PAULA R. GEORGE * **FOURTH CIRCUIT**
 * **STATE OF LOUISIANA**

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APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 2004-51982, SECTION "C"
Honorable Sonja M. Spears, Judge

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JUDGE MAX N. TOBIAS, JR.

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(COURT COMPOSED OF JUDGE MAX N. TOBIAS JR., JUDGE DAVID S. GORBATY, AND JUDGE EDWIN A. LOMBARD)

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REVERSED AND REMANDED.

NOVEMBER 15, 2006

The defendant-appellant, Paula R. George (“Ms. George”), appeals from a summary judgment entered in favor of plaintiff-appellee, William T. Newman, Jr. (“Mr. Newman”). After reviewing the record, we reverse the judgment and remand the case to First City Court for the Parish of Orleans for further proceedings.

This is a suit for open account pursuant to La. R. S. 9:2781 arising out of Ms. George’s alleged failure to pay Mr. Newman for carpentry work performed at two of Ms. George’s properties in the city of New Orleans. Based on a review of the record and the invoices contained therein, it appears that the carpentry work began in December 2000 and continued until the end of May 2001. Mr. Newman alleges that Ms. George has owed him \$12,815.52 since 4 May 2001, the date of the last invoice, and has not paid anything toward the balance. Mr. Newman also sought reimbursement in the amount of \$108.00, the cost of securing a contractor’s lien against her property.

Mr. Newman filed suit on 5 April 2004 in First City Court for the City of Orleans and served Ms. George with the citation and lawsuit on 9 June 2004. After

receiving an extension of time, Ms. George answered the lawsuit on 19 July 2004 and asserted several affirmative defenses, including that Mr. Newman unreasonably inflated the amounts due, performed his work in a substandard manner, and caused Ms. George to suffer theft losses due to his failure to properly secure her property.

Mr. Newman filed a motion for summary judgment on 4 February 2005, seeking the amount of \$12,815.53 along with costs and attorney's fees as authorized by La. R. S. 9:2781. In support of the motion, Mr. Newman attached his affidavit and the outstanding invoices. In his affidavit, Mr. Newman stated:

That the total owed to him by Paula R. George totals \$12,815.53 as indicated on the attached invoices[.]

Ms. George opposed the motion, first arguing that discovery was not complete. In her affidavit, Ms. George also stated that Mr. Newman was not entitled to the full amount due to his "shoddy and careless workmanship," he charged her for labor to which she did not agree, he caused several items to be stolen because he did not secure her premises, and he violated the terms of their contract.¹

The motion was heard on 9 May 2005. Following the hearing, Ms. George filed a supplemental affidavit wherein she outlined in detail the reasons why summary judgment should not be granted and also submitted the affidavit of Elmer Stretz, a framing and finishing contractor, who outlined the alleged deficiencies in Mr. Newman's work.

¹ We assume that no written contract exists as none was filed into the record by either party.

Judgment was rendered in Mr. Newman's favor on 12 July 2005. He was awarded the amount of \$12,815.53, plus \$108.00 in special damages, and legal interest from the date of judicial demand until paid. In addition, the trial court awarded attorney's fees in the sum of \$2,700.00 pursuant to La. R. S. 9:2781 and court costs in the amount of \$258.00. Ms. George appeals from this judgment.

In *Independent Fire Ins. Co. v. Sunbeam Corp.*, 99-2181, 99-2257 (La.2/29/00), 755 So.2d 226, the Louisiana Supreme Court discussed the standard of review of a summary judgment as follows:

Our review of a grant or denial of a motion for summary judgment is de novo. *Schroeder v. Board of Sup'rs of Louisiana State University*, 591 So.2d 342 (La.1991). A motion for summary judgment will be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(B). This article was amended in 1996 to provide that "summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action...." La. C.C.P. art. 966(A)(2). In 1997, the article was further amended to specifically alter the burden of proof in summary judgment proceedings as follows: The burden of proof remains with the movant. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. La. C.C.P. art. 966(C)(2).

99-2181, 99-2257, p. 7, 755 So.2d at 230-31. See also *Shelton v. Standard/700 Associates*, 2001-0587 (La.10/16/01), 798 So.2d 60. Therefore, we are required to conduct a de novo review in the instant case.

Mr. Newman brings this suit under La. R. S. 9:2781 which provides a cause of action to recover for debts incurred on open account for services rendered. In

proving an open account under the statute, the plaintiff must first prove the account by showing that the record of the account was kept in the course of business and by introducing supporting testimony regarding its accuracy. *Deutsch, Kerrigan & Stiles v. Fagan*, 95-0811, p. 5 (La. App. 1 Cir. 12/15/95), 665 So. 2d 1316, 1320, writ denied, 96-0194 (La. 3/15/96), 669 So. 2d 418. We recognize that the “supporting testimony” may be in the form of an affidavit and verified invoices. However, after review of the record on appeal, we cannot reconcile the invoices submitted by Mr. Newman in support of his motion to arrive at the \$12,815.53 claimed. Thus, he has not carried his burden of proof.

The first invoice in the record from December 2000² begins with a balance of \$2,101.31 as of 6 December 2000. After credits of \$1,300.00, the balance due on that invoice is \$3,863.31. That balance is carried to the next invoice dated 9 February 2001, which, after credits, totals \$5,925.65. The next invoice is dated 8 March 2001 and covers only the week of 5-12 February 2001 in the amount of \$2,550.00. The next invoice is dated 28 April 2001, covering the month of April along with a balance from March for \$10,735.65, for which no invoice is attached. The April invoice indicates a total balance due of \$17,640.65. The final invoice dated 4 May 2001 begins with a balance of \$17,640.65. After additional labor costs and credits given for May payments by Ms. George, the balance due was asserted to be \$12,688.65. To that amount, Mr. Newman added \$126.88, which represented one percent interest on the unpaid balance, for a total balance due of \$12,815.53, the amount sought and awarded in the judgment.

² It bears an illegible date.

While Mr. Newman may well be entitled to recover the amounts he seeks, issues of material fact exist with regard to his invoices. First, no documentation exists to substantiate the beginning balance of \$2,101.31 as of 6 December 2000. Further, it is unknown how Mr. Newman calculated the balance from March 2001 in the amount of \$10,735.65. In addition, we find no support for the interest charge of \$126.88 included on the May 2001 invoice. Finally, and most importantly, the court cannot reconcile the invoices to arrive at the total amount due as claimed by Mr. Newman, despite our numerous attempts.³ Thus, summary judgment is inappropriate in this case.

Based on the above, we reverse the judgment in favor of Mr. Newman and remand the case to the trial court for further proceedings.⁴

REVERSED AND REMANDED.

³ At oral argument, Mr. Newman's counsel argued that reconciliation of the invoices was immaterial because the final invoice, as supported by Mr. Newman's affidavit, stated the total amount due by Ms. George. In this case, we disagree. In Mr. Newman's affidavit, he specifically relies on the invoices that he attached to support his claim. As such, we should be able to add the charges for the work performed and materials purchased, subtract all credits, and arrive at \$12,815.53. We were unable to do so.

⁴ In light of our ruling reversing the trial court's judgment, Mr. Newman's answer to the appeal seeking an increase in the attorney's fees awarded is moot.