

STATE OF MICHIGAN  
COURT OF APPEALS

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CADLE COMPANY II, INC.,

Plaintiff-Appellee,

v

JAMES E. WRIGHT,

Defendant-Appellant.

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UNPUBLISHED

November 24, 2009

No. 288866

Genesee Circuit Court

LC No. 07-087366-CK

Before: Talbot, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order granting plaintiff’s motion for summary disposition in this contract dispute. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The undisputed facts show that defendant issued an unlimited guaranty to Old Kent Bank, now known as Fifth Third Bank, for debts incurred by J. Wright Franchise Development (JWFD), a company owned by defendant’s son, John Wright. In November 2000, the bank loaned JWFD \$150,000. JWFD defaulted on the note, even after the due date was extended, and subsequently declared bankruptcy. The bank assigned its interests to plaintiff, which sought payment of the balance due on the note from defendant. The original note executed by John Wright on behalf of JWFD has apparently been lost, but a copy containing the material terms and the parties’ signatures exists. The copy, however, is incomplete and it is not clear whether the “boilerplate” additional terms, which were printed on the back of the original, are the same as those produced by plaintiff. The trial court determined that this deficiency was not material to the dispute and granted plaintiff’s motion.

The trial court’s ruling on a motion for summary disposition is reviewed de novo on appeal. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). When reviewing a motion under subrule (C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists warranting a trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). “A genuine issue of material fact exists when the record, giving the

benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West, supra*.

The crux of defendant’s claim on appeal is that the trial court erred in granting plaintiff’s motion because there was a genuine issue of fact concerning the authenticity of John Wright’s promissory note. Assuming without deciding that plaintiff failed to demonstrate that the underlying note was admissible under MRE 1003, MRE 1004, or MCL 600.2148(2), that does not defeat its right to judgment. While only evidence admissible may be considered in determining whether a genuine issue of fact exists, *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002), this means only that the evidence must be admissible in content, not in form. Thus, if documentary evidence would be “plausibly admissible” at trial if a proper foundation were laid, it can be considered for purposes of a (C)(10) motion. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 286003, issued August 18, 2009), lv pending, slip op at 6-7; *1300 Lafayette East Coop v Savoy*, 284 Mich App 522, 526; \_\_\_ NW2d \_\_\_ (2009). Therefore, assuming plaintiff could establish that the original note was destroyed as part of the bank’s routine business practice or that the original was inadvertently lost and that the original bore the same additional provisions as contained in the copies available, the note would be admissible in evidence.

Further, the additional provisions of the note do no involve a material issue of fact because defendant’s liability is premised on the written guaranty, which establishes defendant’s liability for loans made to JWFD, as well as costs, attorney fees, and other enforcement expenses. Defendant admitted that he signed the guaranty and he does not question its authenticity. Further, defendant admitted at the motion hearing that JWFD obtained loans from the bank and that the note form itself was an authentic copy of the original. That form showed that JWFD obtained a loan of \$150,000, repayable with interest of a stated amount, and the affidavit of plaintiff’s account representative established the balance owed on the note. Because there was no genuine issue of fact whether defendant was liable for the bank’s loans to JWFD, whether the bank loaned money to JWFD, whether JWFD failed to repay the loan in full and the amount due on the debt, and whether the bank assigned its interest in the note to plaintiff, the trial court did not err in granting plaintiff’s motion.

Affirmed.

/s/ Michael J. Talbot  
/s/ Peter D. O’Connell  
/s/ Alton T. Davis