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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0417**

Barclays Bank Delaware,
Respondent,

vs.

Abdulkarim Dahir,
Appellant.

**Filed December 11, 2017
Affirmed
Reyes, Judge**

Anoka County District Court
File No. 02-CV-16-5499

Shawn Anderson, Gurstel Law Firm, Golden Valley, Minnesota (for respondent)

Abdulkarim Dahir, Blaine, Minnesota (pro se appellant)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges the district court's grant of summary judgment to respondent-creditor on its claims against appellant to collect credit-card debt, arguing that the district court erred in deeming admitted respondent-creditor's requests for admission and that genuine issues of material fact exist that preclude summary judgment. Appellant further

argues that the district court erred in denying his motion for reconsideration of the district court's summary-judgment order. We affirm.

FACTS

On November 12, 2015, respondent Barclays Bank Delaware (Barclays) filed a complaint against appellant Abdulkarim Dahir. Barclays alleged that Dahir applied for credit from Barclays, Barclays accepted Dahir's application, and Barclays issued a credit account to Dahir. It also alleged that Dahir accepted and used the account, owes Barclays \$14,616.42 for credit extended on or before August 15, 2015, and has failed to pay that amount to Barclays despite receiving invoices and statements of account detailing the amount owed. Barclays requested a judgment of \$14,616.42 and its costs and disbursements incurred in the action. On November 27, Dahir answered the complaint, denying Barclays's allegations.

On August 1, 2016, Barclays served discovery on Dahir, including requests for admission related to its allegations. Dahir did not respond to the requests for admission. On October 28, 2016, Barclays moved for summary judgment, arguing that (1) by failing to timely respond to the requests for admission, Dahir "admitted facts that conclusively establish liability to [Barclays] in the total amount of \$14,616.42"; (2) "[Barclays] is entitled to the contract balance remaining on [Dahir's] credit card as a matter of law"; (3) Dahir must pay Barclays under the account-stated doctrine; (4) Dahir waived the right to dispute the balance due by failing to object in writing within 60 days; and (5) Dahir has been unjustly enriched to Barclays's detriment. Barclays attached an affidavit to the motion from a Barclays employee regarding the credit account and credit-card statements.

On January 9, 2017, Dahir filed a memorandum in opposition to Barclays's motion for summary judgment. Dahir also moved to "withdraw and/or deny any admission," arguing that he "denied any liability to the claims mentioned in the Complaint" in his answer.

On January 31, the district court held a summary-judgment hearing. Dahir did not appear at the hearing. Following the hearing, the district court granted Barclays's summary-judgment motion. The district court noted that if a party receives a request for admission and fails to respond within the time limits in Minn. R. Civ. P. 36, the statements contained in that request are deemed admitted. The district court found that Barclays's affidavits and billing statements established an account stated and that Dahir was accordingly indebted to Barclays in the amount claimed by Barclays. The district court entered judgment of \$15,155.92 for Barclays, consisting of the amount owed of \$14,616.42 as well as \$539.50 in costs and disbursements.

Dahir moved for reconsideration of the summary-judgment order. The district court denied Dahir's motion, stating that motions to reconsider are prohibited except by express permission of the court, that under Minn. R. Gen. Pract. 115.11, such requests must be made by letter to the district court and not by motion, and that Dahir failed to establish "compelling circumstances" justifying a motion to reconsider. This appeal follows.

DECISION

I. The district court did not err in granting summary judgment in favor of Barclays because there are no genuine issues of material fact.

Dahir argues that the district court improperly determined that he admitted the statements in Barclays's requests for admission and that genuine issues of material fact exist. We address each issue in turn.

“A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *see also* Minn. R. Civ. P. 56.03. A nonmoving party “may not rest upon the mere averments or denials of the adverse party’s pleading but must present specific facts showing that there is a genuine issue for trial.” Minn. R. Civ. P. 56.05; *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). We review a district court’s grant of summary judgment de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). In doing so, we view the evidence in the light most favorable to the nonmoving party. *Id.*

A. The district court did not abuse its discretion by deeming the statements in Barclays’s requests for admission admitted.

Dahir contends that he denied any admission in his answer which is sufficient to meet the standard required by rule 36, moved the district court to vacate any admission pursuant to rule 36(b), and that the district court never responded to his motion to vacate. We are not persuaded.

Minn. R. Civ. P. 36.01 provides that a “matter is admitted unless within 30 days after service of the request” the party serves upon the requesting party a “written answer or objection.” If the district court determines that the party receiving requests for admission has not complied with this requirement, it may order that the matter is admitted or that an amended answer be served. Minn. R. Civ. P. 36.01.

Any matter admitted pursuant to rule 36 is “conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Minn. R. Civ. P. 36.02. The district court may allow a party to withdraw or amend an admission when doing so will further the presentation of the merits of the action and the requesting party fails to establish that withdrawal or amendment will prejudice that party. *Id.* Rulings regarding requests for admission under rule 36 are reviewed for an abuse of discretion. *See Dahle v. Aetna Cas. & Sur. Co.*, 352 N.W.2d 397, 402 (Minn. 1984) (allowing extension for responding to requests for admission within discretion of district court).

Here, it is undisputed that Dahir never served a written answer or objection on Barclays regarding Barclays’s requests for admission. Rather, Dahir moved to “withdraw and/or deny any admission” and “denied any liability to the claims mentioned in the Complaint” in his answer to that complaint.

First, Dahir’s answer to the complaint does not meet the requirements of rule 36.01. Dahir served his answer on Barclays on November 27, 2015, approximately eight months *before* Barclays served its requests for admission on Dahir. Because Dahir’s answer was not served “within 30 days after” Barclays’s request, it does not qualify as a written answer or objection addressed to that request.

Second, Dahir is correct that the district court did not expressly rule on his motion to withdraw or vacate the admissions. However, Barclays mentioned the motion at the motion hearing, and in its summary-judgment order, the district court found that Dahir had failed to respond to the requests for admission, noted that the statements contained in a request for admission are deemed admitted if a receiving party fails to timely respond to the request, and granted summary judgment in favor of Barclays. The district court implicitly determined that granting Dahir's motion would not further the presentation of the merits of the action here. The record supports this determination. Dahir has failed to present evidence containing specific facts showing that there is a genuine issue of material fact for trial. Instead, Dahir has relied on his answer denying the allegations contained in Barclays's complaint.

Finally, Dahir appears to argue that it was unfair for the district court to deem the statements in Barclays's requests for admission admitted because he is a pro se party. "Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). "The right to represent oneself in legal proceedings does not entitle a party to modification of procedural rules." *Ronay v. Ronay*, 369 N.W.2d 12, 14 (Minn. App. 1985). As a pro se party, Dahir is governed by the same procedural rules as an attorney, including rule 36. Dahir has not established that the district court abused its discretion in applying the rule here and deeming admitted the statements in Barclays's requests for admission.

B. The district court did not err in granting summary judgment to Barclays because it was entitled to judgment as a matter of law.

Dahir argues that “[t]he district court erred when it granted summary judgment in the face of the existence of genuine material facts without due process.” We disagree.

In the absence of evidence of an express contract, a party may establish liability for a debt through the doctrine of account stated. *Am. Druggists Ins. v. Thompson Lumber Co.*, 349 N.W.2d 569, 573 (Minn. App. 1984). An “account stated” is an expression of agreement by a debtor and creditor to a charge as an accurate amount due the creditor. *Cherne Contracting Corp. v. Wausau Ins. Cos.*, 572 N.W.2d 339, 345 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Feb. 19, 1998). A party’s “acquiescence in the charges result in the law implying a promise to pay those charges.” *Am. Druggists Ins.*, 349 N.W.2d at 573; *see also Meagher v. Kavli*, 251 Minn. 477, 487, 88 N.W.2d 871, 879, (1958). “[A]n account stated is prima facie evidence of the accuracy and correctness of the items noted thereon and of the liability of the party against whom the balance refers.” *Erickson v. Gen. United Life Ins. Co.*, 256 N.W.2d 255, 259 (Minn. 1977).

The credit-card statements in the record indicate that Dahir has had a credit account with Barclays since at least December 2012. Dahir used the account to make purchases and made monthly payments from January 2013 through August 2014. Dahir did not make payments on the account from September 2014 through February 2015. Dahir’s February 2015 statement indicates that the outstanding balance on the account was \$14,616.42. There is no evidence in the record that Dahir disputed these charges, and the district court found that Dahir did not dispute any of the charges with Barclays in writing. Dahir’s

acquiescence to the charges establishes a promise to pay the balance of \$14,616.42 and the existence of an account stated. Barclays has therefore presented prima facie evidence of Dahir's liability.

Dahir does not support his due-process allegations with constitutional analysis or citation. Therefore, this court need not address them. *See, e.g., Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address due-process arguments unsupported by constitutional analysis or citation).

To the extent that Dahir argues that the district court erred in granting Barclays summary judgment because genuine issues of material fact exist, we disagree. Dahir's assertion that Barclays lacks standing because he was never "made aware by Barclays that [he] owned a credit card or a loan with them" is a mere averment unsupported by specific facts in the record and therefore does not establish a genuine issue of material fact. *See* Minn. R. Civ. P. 56.05. Moreover, it is contrary to the statements in Barclays's requests for admission that the district court deemed Dahir had admitted. Likewise, Dahir's mere assertion that he and Barclays did not have a contractual relationship does not establish a genuine issue of material fact because Barclays established prima facie evidence of Dahir's liability under the account-stated doctrine, which does not require evidence of a contract. *See Am. Druggists Ins.*, 349 N.W.2d at 573.

Finally, Dahir is correct that this court has cautioned that "wholesale adoption of one party's findings and conclusions raises the question of whether the [district] court independently evaluated each party's testimony and evidence." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993). However, Dahir did

not present any evidence for the district court to consider and failed to respond to Barclays's requests for admission. Our careful, de novo review of the record indicates that the district court did not err in granting summary judgment in favor of Barclays.

II. The district court did not err in denying Dahir's motion for reconsideration.

Dahir argues that the district court erred in denying his motion for reconsideration of the summary-judgment order. We are not persuaded.

Minn. R. Gen. Pract. 115.11 provides that “[m]otions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances.” “Requests to make such a motion . . . shall be made only by letter to the court. . . .” Minn. R. Gen. Pract. 115.11. This court reviews a district court's denial of a request for leave to file a motion to reconsider for an abuse of discretion. *Anderson v. Rengachary*, 608 N.W.2d 843, 848 (Minn. 2000).

Dahir contends that he failed to attend the summary-judgment hearing because he reasonably believed the district court had denied summary judgment based on its issuance of a scheduling order 11 days before the hearing listing a trial date. Dahir asserts that he called the district court judge's law clerk on the day before the scheduled summary-judgment hearing inquiring as to any changes to the July 17, 2017 trial date, left a voicemail, and never received a response from the court. At the summary-judgment hearing, the district court confirmed receiving the message, but did not indicate that any court staff had responded to it. The district court denied Dahir's request for reconsideration because Dahir failed to establish compelling circumstances justifying a motion to

reconsider and because Dahir had made the request by motion rather than by letter to the court.

Dahir does not argue that he lacked notice of the summary-judgment hearing. But Dahir contends that his misunderstanding of the district court's scheduling order caused him to not attend the summary-judgment hearing and constitutes a compelling circumstance. Dahir argues that "any reasonable person asking for a trial and dismissal of a summary judgment [motion] would, under similar circumstances, conclude the summary judgment moot in absence of any other new orders from the court." But Dahir does not explain why it was reasonable to conclude that the district court had denied summary judgment absent an explicit order from the district court denying summary judgment. Moreover, Dahir called inquiring about the trial date, not about the summary-judgment hearing. And, as noted above, Dahir is held to the same standards as an attorney, despite his pro se status. *See Fitzgerald*, 629 N.W.2d at 119.

It is unfortunate that Dahir did not receive a response to his message before the summary-judgment hearing, especially given Dahir's pro se status. However, given the circumstances, the district court did not abuse its discretion when it determined that Dahir's misunderstanding regarding the summary-judgment hearing was not a compelling circumstance justifying a motion to reconsider. Moreover, Dahir requested reconsideration through a motion rather than through a letter to the court as required by the plain language of Minn. R. Gen. Pract. 115.11. The district court did not abuse its discretion by denying Dahir's request for reconsideration.

Affirmed.