STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0563

American Express Bank, FSB,
Respondent,

vs.

Abdulkarim Dahir,
Appellant.

Filed December 4, 2017
Affirmed
Connolly, Judge

Anoka County District Court
File No. 02-CV-16-3540

Shawn J. Anderson, Amy Goltz, Gurstel Law Firm, Minneapolis, Minnesota (for respondent)

Abdulkarim Mohamed Dahir, Blaine, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant, holder of a credit card from respondent bank, challenges the grant of summary judgment to respondent arguing that there are genuine issues of material fact in dispute. We affirm.[1]

FACTS

A cardmember agreement dated June 26, 2011, lists respondent American Express Bank, FSB, as the issuer, Twin Cities Care Services as the company name, and appellant Abdulkarim M. Dahir as the cardmember name. A statement dated October 28, 2014, informed appellant that his new balance was $13,379.59, payment was due by November 22, 2014, his account was past due and in default, and the balance was due in full. Appellant did not make the payment.

In August 2015, respondent served a summons and complaint on appellant, alleging that: (1) he applied for credit from respondent; (2) respondent issued him a credit account; (3) he accepted and used the credit account and thereby agreed to abide by its terms and conditions; (4) he owed respondent $13,379.59 for credit on or before July 8, 2015; (5) appellant failed to pay that amount on respondent's demand and was therefore indebted

[1] Appellant also raises two new issues on appeal: whether those sued by collection agencies have due-process rights under the federal and state constitutions and whether pro se defendants are fairly treated in court cases involving law firms that are also debt collectors. Because these issues were not raised in the district court during the summary judgment proceedings, the district court never addressed them, and there is no decision for us to review. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that appellate courts do not generally consider matters not argued to and considered by a district court).

to respondent; (6) respondent had provided appellant with invoices and statements of account, which appellant kept and to which he did not object within a reasonable time; and (7) the full account between the parties showed a balance of $13,379.59 due to respondent from appellant. Respondent sought payment of that amount plus costs and disbursements.

In September 2015, appellant, pro se, served an answer disputing the application and issuance of a credit account and the amount owed, denying any personal or individual relationship with respondent and any failure to pay, and saying appellant was "confused as to the role of" the law firm representing respondent because the firm also claimed to be a debt collector. Appellant was served with discovery and requests for admissions in August 2016; respondent filed an affidavit of service by mail to appellant's correct address. Appellant did not respond to the discovery or the requests and later said he had not received them.

Respondent moved for summary judgment, arguing that: (1) it had a binding and enforceable contract with appellant, which appellant breached by failing to pay the amount owed; (2) respondent stated an amount to which appellant did not object by disputing any of the specific charges on the account and appellant defaulted by failing to make timely payments and therefore owed the balance on the account; (3) federal law gave appellant 60 days from the receipt of disputed charges to notify respondent in writing of billing errors, appellant had not notified respondent of any error, and his failure to do so was a consent to the accuracy of the account; (4) appellant failed to cooperate with discovery and raised no specific fact issues to be tried; and (5) respondent sought judgment against appellant in the

amount of $13,379.59 plus costs and disbursements. Following a hearing, the district court granted respondent's motion. Appellant challenges the grant of summary judgment.

D E C I S I O N

On an appeal from summary judgment, this court reviews de novo both whether there is a genuine issue of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

The district court noted in its memorandum that:

> In this case, the complaint lays out a basic consumer credit debt claim. [Respondent's] summary judgment pleadings consist of the expected argument and attachments. [Appellant's] answer contains a general denial. [Appellant] did not respond to [respondent's] discovery demands which included a set of Requests for Admissions. [Appellant] asserts he never received them but an affidavit of service by mail to the correct address has been filed. [Appellant] produced a demand letter addressed to an entity other than himself as proof that the debt is owed by another and [respondent] has sued the wrong party.
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> [Appellant's] claims are frivolous. The note was signed by [appellant] in his individual capacity and as the authorized signatory for a corporation. [Appellant] is personally liable for the debt. There is no basis to [the] claim that [respondent] must first proceed against the corporation or may only proceed against the corporation. [Appellant's] "pierce the corporate veil" argument is similarly flawed. [Respondent] is not seeking to disregard the corporate structure. [Respondent] is simply proceeding against a party to the note.

Appellant argues on appeal that he did not receive the request for admissions and implies that whether he received the request for admissions is a genuine issue of material fact that should have precluded summary judgment. But whether appellant received the request for admissions is not material to the issue on summary judgment: whether

respondent was entitled to judgment against appellant for the amount of appellant's debt and costs and disbursements. The district court correctly concluded that no genuine issue of material fact precluded summary judgment on that issue.

Appellant also argues that the district court erred in concluding that the parties had a contract because respondent lacked standing, an issue appellant claims to have raised to the district court. At the hearing, the district court noted that it had not received any paperwork from appellant and asked him, "[W]hat's wrong with [respondent's] motion [for summary judgment]?" Appellant then produced a letter dated December 22, 2016, from respondent, saying, "If you look, . . . this is the same case with the different Defendant written there. Basically, what this law firm is saying [is] that there is someone else that they have not even mentioned in the complaint. And in my memo, I'm saying, simply put, [that] they're suing the wrong person here." Appellant later reiterated this: "[T]he basic argument is that I'm not the Defendant in this case. It's up to . . . [respondent] . . . [T]he burden is on them to show that I am the person they should be suing in the first place. That's the issue . . . ."

Respondent's attorney refuted this argument:

> With respect to the letter dated December 22nd bearing the name of Twin City Care Service at the . . . address where [appellant] resides, that is the joint cardholder for the American Express account at issue here. And if I could refer the Court's attention to Exhibit A to [respondent's] affidavit . . . [it] is a Card Member Agreement and on the first page of the Card Member Agreement it contains the names of Twin Cities Care Service and [appellant's] name.
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> Page 5 of that agreement states under words we use in the agreement, "You agree to jointly and severally . . . be

> bound by the terms of the agreement." Accordingly, [appellant] is responsible for the card at issue today.

When asked for his response, appellant said,

> This is a business account. . . . I was an officer of the business. . . . [T]he issue being raised . . . appears to be a piercing the corporate veil issue. I'm not liable and that the business doesn't hold for any misgivings or any misjudgments of the business as long as this was something that I was doing in good faith for the business.
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> And the issue isn't here about this . . . account that was owned by a business[. I]t's not a piercing the corporate veil issue and it's about collection and I'm not liable for this collection.

But the cardmember agreement stated that appellant was jointly and severally liable for expenses incurred on the account, and he offers no legal support for his view that he is not liable.

The district court did not err in granting summary judgment to respondent.

Affirmed.