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NO. COA05-976

NORTH CAROLINA COURT OF APPEALS

Filed: 2 May 2006

INTERNATIONAL FURNITURE PRODUCTS  
SHIPPERS ASSOCIATION, INC.,  
Plaintiff,

v.

Guilford County  
No. 04 CVD 0111446

MASTEN FURNITURE CO.,  
JIM HARRIS AND SONNY WHEELER,  
Defendants.

Appeal by defendant from judgment entered 29 March 2005 by Judge Patrice Hinnant in Guilford County District Court. Heard in the Court of Appeals 15 March 2006.

*Gordon Law Offices by Harry G. Gordon, for plaintiff appellee.*

*Mercedes O. Chut for defendant appellant.*

MCCULLOUGH, Judge.

Defendants appeal from the trial court's decision to grant the motion for summary judgment where there was no genuine issue of material fact and plaintiff was entitled to judgment as a matter of law. We agree with the decision of the trial court and affirm.

International Furniture Products Shippers Association, Incorporated ("IFPSA") brought suit against Masten Furniture Co. ("Masten") to recover money advanced by IFPSA on behalf of Masten in accordance with services rendered pursuant to a contractual

agreement between the two parties. IFPSA moved the court for summary judgment submitting the affidavit of James L. Garst, III, ("Garst") President of IFPSA, and supporting documents on 8 March 2005.

IFPSA is a transportation and logistics business engaged in assisting companies in arranging transportation and dealing with matters such as clearance of customs. The affidavit of Garst stated: "On or about October 10, 2002, Ms. Mary Pinte of Masten Furniture Company. . .contacted me at IFPSA and requested me to handle orders that were being shipped from China to the United States. The request was that IFPSA do the services for Masten." The affidavit further states that IFPSA and Masten had done business per the request of Mary Pinte before, and an email from Mary Pinte was further submitted in support stating, "I need help once again in moving some containers." Garst's affidavit states that in response to the oral and written requests from Masten, a quote for services was provided; and in response to this quote, the goods were shipped from China arriving in Wilmington, North Carolina, but that IFPSA was unaware of the identity of the ultimate customer. However, at the time of arrival, the bills of lading needed to clear customs did not arrive, and therefore the goods could not be released. The goods were detained at the port in Wilmington, North Carolina, and accrued demurrage charges of \$50 to \$100 per day until the bills of lading were sent to IFPSA by Masten. Garst's affidavit further shows that Masten requested Garst to advance funds to cover the demurrage charges in order to allow the goods to

be released and that based on this request, IFPSA wired \$3,225 to cover the charges.

In opposing the motion for summary judgment, James B. Harris (Harris), President of Masten, submitted an affidavit and supporting documents. The affidavit of Harris stated, "When IFPSA was contacted concerning the shipments in question[] in this case, it was made clear to IFPSA that the shipping was being done on behalf of Elite Furniture Company" and that all shipments were shipped at the request of Elite Furniture. Harris further provided that Mary Pinte did not have the authority to contract for shipping on behalf of Masten. Harris stated in his affidavit that five of six bills of lading were released to IFPSA prior to the date on which demurrage charges began to accrue and further that Elite Furniture is responsible for any demurrage charges. In addition, Harris states that he never requested IFPSA to advance funds to Hanjin Shipping Company. The trial court granted the motion for summary judgment finding that there was no genuine issue of material fact and that IFPSA was entitled to judgment as a matter of law.

Defendant now appeals.

We now address Masten's argument on appeal that the trial court erred in granting summary judgment. We disagree.

Summary judgment should 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 any material fact and that any party is entitled to a

judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2005). A moving party "has the burden of establishing the lack of any triable issue of fact" and its supporting materials are carefully scrutinized, with all inferences resolved against it. *Kidd v. Early*, 289 N.C. 343, 352, 222 S.E.2d 392, 399 (1976).

"Once the party seeking summary judgment makes the required showing, the burden shifts to the nonmoving party to produce a forecast of evidence demonstrating specific facts, as opposed to allegations, showing that he can at least establish a *prima facie* case at trial." *Gaunt v. Pittaway*, 139 N.C. App. 778, 784-85, 534 S.E.2d 660, 664, *disc. review denied and appeal dismissed*, 353 N.C. 262, 546 S.E.2d 401 (2000), *cert. denied*, 353 N.C. 371, 547 S.E.2d 810, *cert. denied*, 534 U.S. 950, 151 L. Ed. 2d 261 (2001). "It is also clear that the opposing party is not entitled to have the motion denied on the mere hope that at trial he will be able to discredit movant's evidence; he must, at the hearing, be able to point out to the court something indicating the existence of a triable issue of material fact.'" *Kidd*, 289 N.C. at 367-368, 222 S.E.2d at 409 (citation omitted). If the nonmoving party does not come forth with **specific facts** showing that there is a genuine issue of material fact, then summary judgment shall be entered against them. N.C. Gen. Stat. § 1A-1, Rule 56(e).

In the instant case, the moving party set forth through its affidavit and supporting materials that an oral agreement was entered into between Masten and IFPSA for IFPSA to handle services

in shipping orders from China to the United States. The contract was entered into on behalf of Masten by Mary Pinte, an employee of Masten who had previously entered into agreements with IFPSA. When the shipments arrived in the United States, they were unable to be released to IFPSA due to a failure to deliver all appropriate documents. Demurrage charges accrued per day until the appropriate documents were able to be obtained. Masten belatedly sent the documents to IFPSA in order to enable them to acquire the shipments. Acting at the request of Masten, IFPSA advanced the demurrage charges of \$3,225 to enable the shipments to be released. Masten has refused to repay IFPSA for the advanced funds.

In response Masten provided the affidavit of Harris stating that IFPSA was aware that the agreement to ship was entered into on behalf of Elite Furniture Company, that Mary Pinte had no authority to contract for Masten, and that Harris himself never requested that IFPSA advance the funds to cover the demurrage charges. However, these facts set forth by the affidavit are not sufficient to create a genuine issue of material fact.

The opposing party, Masten, does not deny that there was a contract between the two parties and while Harris contends in his affidavit that Mary Pinte did not have authority to contract for shipping, the affidavit and supporting materials of IFPSA clearly show that there was a course of conduct between the two parties in which Mary Pinte entered into shipping agreements with IFPSA. See *Bell Atlantic Tricon Leasing Corp. v. DRR, Inc.*, 114 N.C. App. 771, 774, 443 S.E.2d 374, 376 (1994) (A principal is liable where the

agent has apparent authority, authority which the principal has held the agent out as possessing or which he has permitted the agent to represent that he or she possesses.) Moreover, Harris admits that the bills of lading were released to IFPSA to enable completion of the shipments, ratifying the actions of Mary Pinte.

Harris further tries to create a genuine issue of material fact by stating that he, himself, never requested IFPSA to advance funds; however, we find that the glaring silence of all other employees as to whether or not Masten requested the advancement of the funds is a telling omission. Masten was required to produce **specific facts** contradicting the *prima facie* case established by IFPSA. The mere statement of one officer of the company that **he** did not request advancement of the funds is not enough to surmount a *prima facie* case for purposes of summary judgment. Here, corroborative evidence is required in order to create a genuine triable issue of material fact. Therefore, this assignment of error is overruled.

Accordingly, the trial court properly determined that there was no genuine issue of fact, and further that IFPSA was entitled to summary judgment as a matter of law. Therefore the decision of the trial court is

Affirmed.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).