

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA14-499
NORTH CAROLINA COURT OF APPEALS

Filed: 4 November 2014

RREF ST ACQUISITIONS, LLC,
Plaintiff,

v.

Guilford County
No. 13 CVS 5201

BILL AGAPION; SOPHIA S. AGAPION;
EMANUEL AGAPION; and BASIL N.T.
AGAPION,
Defendants.

Appeal by defendants from order entered 26 February 2014 by Judge A. Moses Massey in Guilford County Superior Court. Heard in the Court of Appeals 8 October 2014.

Poyner Spruill LLP, by Richard A. Prosser and Andrew H. Erteschik, for plaintiff-appellee.

Bill Agapion, Sophia S. Agapion, Emanuel Agapion, and Basil N.T. Agapion, pro se defendant-appellants.

BRYANT, Judge.

Where there is no transcript or other recording of the hearing before the trial court, and where the proposed narrative is stricken, all we have is an incomplete record; therefore, this Court is unable to conduct a meaningful review of the

issues raised. We decline to address defendants' arguments, so the judgment of the trial court is affirmed.

On 22 April 2013, in Guilford County Superior Court, plaintiff RREF ST Acquisitions, LLC, filed a verified complaint against defendants Bill Agapion, Sophia Agapion, Emanuel Agapion, and Basil Agapion. In its complaint, RREF ST Acquisitions alleged that, on 15 February 2006, Bill Agapion and Sophia Agapion executed a promissory note associated with a loan from SunTrust Bank with a principal amount of \$1,291,640.13 (Note 1). On 15 February 2007, Bill Agapion and Sophia Agapion executed a promissory note associated with a loan from SunTrust with a principal amount of \$411,730.36 (Note 2). On 12 October 2007, Emanuel Agapion, Bill Agapion, and Sophia Agapion executed a promissory note associated with a loan from SunTrust with a principal amount of \$640,875.00 (Note 3). On 27 May 2008, Emanuel Agapion, Bill Agapion, and Sophia Agapion executed a promissory note associated with a loan from SunTrust with a principal amount of \$360,000.00 (Note 4). On 17 December 2007, Basil Agapion, Bill Agapion, and Sophia Agapion executed a promissory note associated with a loan from SunTrust with a principal amount of \$175,000.00 (Note 5). On 19 December 2012,

by virtue of an allonge affixed to each note, plaintiff became the legal holder of Notes 1, 2, 3, 4, and 5.

At the time the complaint was filed, plaintiff alleged that the respective obligations under Notes 1, 2, 3, 4, and 5 had matured, and defendants were in present and continuing default. Plaintiff alleged that, as of 29 March 2013, the balance due under Note 1 was \$817,722.51; the balance due under Note 2 was \$236,556.08; the balance due under Note 3 was \$640,875.00; the balance due under Note 4 was \$261,932.66; and the balance due under Note 5 was \$120,080.46.

Appearing *pro se*, defendants answered the allegations of the complaint and, in addition, stated the following:

[a]lthough all payments were made on time when the notes came up for renewal Sun Trust [sic] refused to renew. . . .

Defendants have listed all of the properties for sale. Several houses were sold and all of the proceeds went to Sun Trust towards the reduction of the debt.

Plaintiff moved for summary judgment.

On 26 February 2014, after considering the pleadings, responses to plaintiff's requests for admissions, plaintiff's affidavit in support of summary judgment, and arguments presented at the hearing, the Honorable Judge A. Moses Massey

entered an order granting plaintiff's motion for summary judgment as to all claims. Defendants appeal.

On appeal, defendants question whether the trial court erred by granting plaintiff's motion for summary judgment.

Narrative of summary judgment hearing

Per the trial court's order, a hearing was conducted concerning plaintiff's motion for summary judgment; however, the record on appeal does not include a transcript of the proceedings. The record does contain a one page narrative of the hearing. In a motion filed with this Court, plaintiff contends that this narrative was not a part of the record at the time the record was settled by agreement of the parties and requests that we strike the narrative. Plaintiff disputes the substance of the narrative by contesting whether accounting documents were submitted for the trial court's review and whether the asserted basis for the trial court's ruling to exclude documents from evidence is accurate. Defendants did not respond to plaintiff's motion to strike and the contentions asserted therein. For the reasons stated in plaintiff's unchallenged motion to strike the narrative of the summary judgment proceeding included in the record on appeal, we grant

plaintiff's motion. See *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 201, 657 S.E.2d 361, 367 (2008) (“[W]hen a party fails to comply with one or more nonjurisdictional appellate rules, the court should first determine whether the noncompliance is substantial or gross under Rules 25 and 34. If it so concludes, it should then determine which, if any, sanction under Rule 34(b) should be imposed.”); see also N.C. R. App. P. 34(b) (2014) (“A court of the appellate division may impose one or more of the following sanctions: . . . (3) any [] sanction deemed just and proper.”). Accordingly, the narrative of the summary judgment hearing is stricken from the record.

Standard of Review

Pursuant to our General Statutes, section 1A-1, Rule 56,

[summary] judgment sought shall be rendered forthwith 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) (2013). “We review an order allowing summary judgment *de novo*. If the granting of summary judgment can be sustained on any grounds, it should be affirmed on appeal.” *State Farm Mut. Auto. Ins. Co. v. Gaylor*, 190 N.C.

App. 448, 450, 660 S.E.2d 104, 105 (2008) (citation and quotations omitted).

I

Defendants argue that the trial court erred by failing to admit certain documents defendants proffered as evidence. More specifically, defendants contend that at the hearing concerning plaintiff's motion for summary judgment, the trial court abused its discretion by failing to admit into evidence SunTrust Bank Commercial Loan Past Due Notices, handwritten calculations, and two sets of the Receiver's Accounting. We decline to address this argument.

"It is the appellant's responsibility to make sure that the record on appeal is complete and in proper form." *Miller v. Miller*, 92 N.C. App. 351, 353, 374 S.E.2d 467, 468 (1988) (citation omitted); see also N.C. R. App. P. 9(a)(1)(e) (2014) ("The record on appeal in civil actions and special proceedings shall contain: . . . (e) so much of the litigation, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all issues presented on appeal, or a statement specifying that the verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed[.]"). The record

before us contains no ruling by the trial court concerning the admissibility of the materials upon which defendants' argument rests. Neither a transcript or narrative of the summary judgment hearing nor a written order reflecting the proffer of the evidence or the trial court's ruling, is included in the record. To render a holding concerning any refusal to admit defendants' proffered documents into evidence would be to engage in speculation regarding the context in which each document was proffered and the manner in which defendants proffered each document to the court. As we will not speculate regarding the materials presented during the summary judgment hearing, we must dismiss this argument.

II

In their second argument, defendants challenge the amount the trial court awarded associated with each promissory note and the trial court's failure to credit defendants' outstanding account balances with payments made after the commencement of plaintiff's action.

However, as with Issue I, the record provides no indication these arguments were raised before the trial court. See N.C. R. App. P. 10(a) (2014) ("In order to preserve an issue for appellate review, a party must have presented to the trial court

a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context."); *Plemmer v. Matthewson*, 281 N.C. 722, 725, 190 S.E.2d 204, 206 (1972) ("Since plaintiffs' [] contention was not made in the court below it may not be raised for the first time on appeal." (citation omitted)). Accordingly, we decline to address this argument.

For the foregoing reasons, we affirm the trial court's grant of summary judgment in plaintiff's favor.

Affirmed.

Judges ELMORE and ERVIN concur.

Report per Rule 30(e).