IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-718

Filed: 17 March 2015

Franklin County, No. 11 CVD 789

FIRST CITIZENS BANK, NA, Plaintiff,

v.

L&M REALTY & INVESTMENT PROPERTY, INC., LINDSAY HUTCHINSON and MARY ELLA HUTCHINSON, Defendants.

Appeal by defendants from judgment entered 6 December 2013 by Judge Daniel Finch in Franklin County District Court. Heard in the Court of Appeals 4 November 2014.

*Hatch, Little & Bunn, LLP, by John N. McClain, Jr., for plaintiff-appellee.*

*Mary Ella and Lindsay R. Hutchinson, defendant-appellants, pro se.*

McCULLOUGH, Judge.

Defendants Mary Ella Hutchinson and Lindsay R. Hutchinson appeal from a judgment by the trial court, granting plaintiff First Citizens Bank, NA's motion for a

directed verdict. Based on the reasons stated herein, we affirm the judgment of the trial court.

## I. Background

On 18 August 2011, plaintiff First Citizens Bank, a national banking association, filed a complaint against defendants L&M Realty & Investment Properties, LLC ("L&M"), Mary Ella Hutchinson and Lindsay Hutchinson ("the Hutchinsons"). Plaintiff alleged that on 5 July 2006, it entered into a credit card agreement with L&M, wherein L&M agreed to repay plaintiff within the terms of their agreement. Defendants also executed a personal guarantee "wherein they guaranteed the full and timely payment of all sums due by [L&M]" to plaintiff. Plaintiff further alleged that because defendants had failed to make monthly payments as provided in the loan agreement, plaintiff was forced to declare their loan agreement in default. As a result of defendants' default, plaintiff was damaged in the amount of $10,850.29 plus interest at a rate of ten percent since 20 June 2011.

On 16 September 2011, defendants filed an answer. Defendants admitted that they signed a promissory note, however, argued that "[p]laintiff pretended to loan money to defendants[.]" Defendants argued that "[d]efendants never received any Loaned money from any Bank. Defendant only received funds created from their own signatures." Defendants stated as follows:

> plaintiff never loaned defendants any money, they simply created money by depositing the defendants signed

> promissory note into a deposit account in the defendants name as a Tier 1 asset increasing the bank's reserves. It is very clear that the real relationship that plaintiff and defendants have is that of a Creator and Facilitator not a Lender and Borrower as they make you believe. The bank being the Facilitator and the defendants being the Creator of the new money because all banks create every penny they ever pretend to loan out.
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> . . . .
>
> The act of taking Defendants promissory note and converting them into Deposit Instruments or Cash then returning these funds back to Defendants is called conversion and is unlawful.

On 7 October 2011, defendants filed a "Writ of Subpoena," asking plaintiff to produce the following, in pertinent part:

> 1. The **ORIGINAL, wet ink contract, front and back**, of the alleged Promissory Note for Loan No. 4053010300024285, as it has been presumed or imagined.
>
> 2. A certified copy of the Transaction Chart that reflects all transactions pertaining to this alleged loan, as it has been presumed or imagined
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> 3. A certified copy of the IRS 4506T pertaining to this alleged loan as it has been presumed or imagined.
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> 4. Any and all information pertaining to the sale or transfer or assignment of this alleged note to any and all entities including but not limited to the assignment agreement, the CUSIP number, the name of the Special Purpose Vehicle, the REMIC, or any other vehicle used, trust ID numbers including dates of assignment and copies or all such information.
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> . . . .

> 6. All information as it pertains to the true party of interest of this alleged debt as set out in the Truth in Lending Act pursuant to 15 USC, 1601-1667 (full disclosure). If First Citizens Bancshares, Inc. is not the true party of interest, stipulate who is with proof of said interest.
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> . . . .
>
> 12. An identification of the source of the funds used to fund the loan since its origination, including account name(s), source(s), number(s) and amount(s)[.]

On 13 October 2011, plaintiff filed a motion for a protective order, stating that plaintiff was not required to produce the documents requested in defendants' 7 October 2011 "Writ of Subpoena," except for items one and two.

On 17 October 2011, the Hutchinsons filed a "Motion to Compel," arguing that plaintiff had agreed to only submit the original contract and a record of all the transactions made on the credit card, thereby failing to comply with their 7 October 2011 "Writ of Subpoena."

On 6 February 2012, the Hutchinsons filed a "Motion to Establish Real Party of Interest under Ratification of Commencement Rule 17a (Lack of Standing and Subject Matter Jurisdiction)." The Hutchinsons argued that "until the 'real party' of interest" could be established, no subject matter jurisdiction existed because plaintiff had not offered "any proof of claim and has denied the existence of any plausible

evidence by which a court can be granted subject matter jurisdiction." Also on the same date, the Hutchinsons filed an "Affidavit of Fact: The Fraud of Lending Money" concerning "the rules of law that govern commerce and banking, Case Law, Laws of Money."

On 14 February 2012, the trial court entered an order. The order contained the following pertinent findings of fact:

> 5. That in response to the discovery requests of the Defendants, the attorney for the Plaintiff, on or about August 9, 2011, sent a letter to the Defendants in which he reiterated that First Citizens Bank was the owner of the credit card account in question, and thus was the real party in interest in this matter; he enclosed in said letter a copy of the original Credit Card Agreement signed by the individual Defendants, and approximately three years' worth of credit card statements which had been mailed monthly to the Defendants on account number 4053010300024285.
>
> 6. That the monthly statements (in the name of Mary Ella Hutchinson and Lindsay Hutchinson), along with the copy of the Credit Card Application signed on June 27, 2006 by both individual Defendants, clearly show that First Citizens Bank is the present owner of the account, and the real party in interest, when combined with the letters of the Plaintiff's Senior Vice President and the verified Complaint.
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> 7. That the letters referenced above were acknowledged by the Defendants to have been received, along with the discovery documents, and the Court notes that some of the letters were copied and attached to various pleadings of the Defendants. The Court finds that the Plaintiff has substantially complied with the Discovery Requests by the Defendant that are relevant to this action,

> and that the other matters requested are not relevant to this lawsuit.
>
> 8. That the matter is ready to proceed to trial in view of the fact that the Plaintiff has provided all relevant documents to the Defendants, and the fact that Plaintiff is the real party in interest.
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> 9. That the documents also clearly establish that First Citizens Bank is the owner of this credit card account.

The trial court concluded that it had subject matter jurisdiction over the case, granted plaintiff's protective order, and denied the Hutchinsons' motion to compel.

On 5 March 2012, the Hutchinsons filed an interlocutory notice of appeal to the Court of Appeals. On 3 August 2012, the Hutchinsons' appeal was dismissed by the Court of Appeals.

On 8 October 2012, the Hutchinsons filed an amended motion to dismiss plaintiff's action pursuant to North Carolina Rules of Civil Procedure 12(b)(1) and (6). Following a hearing for the Hutchinsons' motion to dismiss held on 8 April 2013, the trial court denied the Hutchinsons' motion.

Thereafter, the parties' case was heard at the 9 April 2013 term of Franklin County District Court, Civil Division, by the Honorable Daniel Finch, presiding. Following the hearing, the trial court entered the following pertinent findings of fact on 6 December 2013:

> 4. That on or about July 5, 2006, the corporate Defendant entered into a credit card agreement with the Plaintiff herein the corporate Defendants received a credit

> card from the Plaintiff, Contemporaneous with the execution of the Note, [the Hutchinsons] executed a Personal Guarantee wherein they guaranteed the full and timely payment of all sums due by the corporate Defendant, which money was to be repaid with interest on the unpaid balance. Defendant Mary Ella Hutchinson admitted the agreement was signed by the individual Defendants.
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> 5. That Defendant Mary Ella Hutchinson admitted the Defendants failed to make the monthly payments as called for in the agreement, and the Plaintiff declared the account to be in default in the amount of $10,850.29, plus interest in the amount of 10.0 percent since June 20, 2011[.]
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> 6. That the Defendants were notified by certified mail of their rights under the North Carolina General Statutes, including attorney's fees, but have failed to avail themselves of the privileges therein. The three (3) demand letters were signed for by Defendant Lindsay Hutchinson.
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> 7. That the Defendant's presented no evidence to contradict the testimony presented by the Plaintiff's agent, and in fact admitted that the credit card was used by them and payments were made to Plaintiff until September of 2010.

Based on the foregoing, the trial court concluded the "there is no dispute as to the material facts alleged by Plaintiff, and that Plaintiff is entitled to a directed verdict under Rule 50 of the North Carolina Rules of Civil Procedure." Plaintiff was to recover from defendants, the sum of $10,850.29 plus ten percent interest from 20 June 2011 and attorney's fees in the amount of $1,627.54.

On 3 January 2014, the Hutchinsons filed notice of appeal.

## II. Discussion

On appeal, the Hutchinsons present the four issues: whether the trial court erred by (A) exercising subject matter jurisdiction over the matter; (B) allowing plaintiff's blanket relevancy and hearsay claims to deny defendants' motion to compel; (C) denying the admission of relevant evidence; and (D) granting a directed verdict in favor of plaintiff.

A. Subject Matter Jurisdiction

The Hutchinsons first argue that the trial court erred by determining that it had jurisdiction over the subject matter. We disagree.

"Subject-matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it." *In re K.U.*, 208 N.C. App. 128, 131, 702 S.E.2d 103, 105 (2010) (citation and quotation marks omitted). "Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010).

On 6 February 2012, the Hutchinsons filed a "Motion to Establish Real Party of interest under Ratification of Commencement Rule 17a (Lack of Standing and Subject Matter Jurisdiction)," asserting that until a "real party" of interest and subject matter jurisdiction could be established, the current "action cannot proceed." The Hutchinsons argued that plaintiff had "not offered any proof of claim and has denied the existence of any plausible evidence by which a court can be granted subject matter jurisdiction." In its 14 February 2012 order, the trial court concluded that

"the parties are properly before this Court, and that the Court has jurisdiction over the parties and the subject matter herein."

On appeal, it appears that the Hutchinsons' arguments amount to challenging plaintiff's standing to pursue this action. It is well established that:

> [t]he North Carolina Rules of Civil Procedure require that "every claim shall be prosecuted in the name of the real party in interest." "A real party in interest is 'a party who is benefited or injured by the judgment in the case' and who by substantive law has the legal right to enforce the claim in question." A party has standing to initiate a lawsuit if he is a "real party in interest."

*Green Tree Servicing LLC v. Locklear*, __ N.C. App. __, __, 763 S.E.2d 523, 526 (2014) (citations omitted).

Here, the Hutchinsons argue that plaintiff has failed to establish that an actual contract exists, merely relying on copies of credit card statements to prove its case. The Hutchinsons also argue that plaintiff has failed to establish that it is a "real party in interest" to the contract and that plaintiff should be required to produce the "original wet ink signature document" at issue and evidence of a signed promissory note in order to establish the existence of a contract.

We first note that the Hutchinsons do not direct us to any legal authority to support their argument that plaintiff must produce the "original wet ink signature document" to have standing. In spite of this, at trial, Albert Kramer, an employee of plaintiff in the recovery department of the Credit Resolution Group, testified that he handled all the defaults within the bank. In his capacity as a member of the recovery

department, Kramer testified that he was familiar with a credit card account in the name of L&M. Plaintiff offered in its exhibit number one, a business credit card application for L&M signed on 27 June 2006. Kramer testified that the Hutchinsons individually signed this application as "maker and guarantors." In a section of the application entitled, "Effect of signing," the application provided that "[b]y signing the loan, the borrower and each signer agree to repay the bank's indebtedness incurred by the use of the credit card account." Under a section entitled "Unconditional [G]uaranty," the application provided that "[e]ach signer unconditionally guarantees to the bank payment of all obligations of borrower arising from the credit card account with the bank when the same becomes due, whether by acceleration or otherwise." Kramer testified that all payments were not made in a timely manner by L&M.

In addition, Mary Hutchinson testified that in 2006, she opened a credit card with plaintiff in L&M's name. She admitted that she made charges and obtained goods and services using the credit card for over four years. Mary Hutchinson also testified that she made payments toward this credit card bill until September 2010. The following exchange occurred:

> [Plaintiff's counsel:] What, if anything, occurred in September of 2010 to make you and [Lindsay Hutchinson] and your company stop the repayment of more than $10,000 that had been charged on the credit card?
>
> [Mary Hutchinson:] As you pointed out to the Court this

> morning, we went through a loss of a business, we went through bankruptcy, we lost a great deal of everything that we had in terms of assets.
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> And it became impossible to keep up the monthly payments. . . .

Furthermore, in their answer filed 16 September 2011, defendants argued that plaintiff "created money by depositing the defendants signed promissory note into a deposit account in the defendants['] name" and that "[d]efendant only received funds created from their own signatures."

Based on the foregoing evidence, it is clear that plaintiff was a real party in interest to the present case, and therefore, had the legal right to enforce its claim against defendants. Accordingly, we hold that the trial court did not err by concluding that it had the authority to exercise subject matter jurisdiction.

B. Defendants' Motion to Compel

In their next argument, the Hutchinsons argue that the trial court erred by allowing plaintiff to offer hearsay evidence and by allowing plaintiff to make a "blanket" relevancy objection in defense of defendants' motion to compel.

First, the Hutchinsons argue that it was error to allow plaintiff to introduce exhibit number two into evidence as it amounted to inadmissible hearsay. Exhibit number two was a letter from plaintiff's senior vice president, J. Barry Dumser, to Mary Hutchinson. The letter, dated 1 April 2011, indicated that Mr. Dumser had a telephone conversation with Mary Hutchinson on 23 March 2011 wherein Mary

Hutchinson had mentioned that she had filed for bankruptcy "but chose not to include this debt." Mr. Dumser stated in the letter that he had researched the matter, and found that the Hutchinsons had filed

> Chapter 7 on June 6, 2008 and were discharged on September 4, 2008. . . . I then had some research done regarding this debt and found that the charges which brought about this debt occurred after the bankruptcy (see copies of statements attached). That means this debt was "post bankruptcy filing" debt and therefore not discharged. We are willing to work with you on paying this debt and would agree to let you pay one-hundred dollars ($100.00) per month or more and would not charge any interest providing your monthly payments are made timely. I have enclosed a repayment agreement for you to peruse and, if you agree, please you're your [SIC] signature and that of your husband notarized then mail it back to me in the enclosed, self-addressed envelope. By waiving interest you will save literally thousands of dollars.

Mr. Albert Kramer testified that the Hutchinsons did not respond to this letter.

When plaintiff moved to introduce exhibit number two at trial, defendants did not object. The Hutchinsons have also failed to argue plain error on appeal. As such, we dismiss their argument, as it was not properly preserved for appeal. *See* N.C. R. App. P. 10(a)(1) (2015) (stating that "[i]n 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").

Next, the Hutchinsons argue that the trial court erred by allowing plaintiff to make a "blanket" relevancy objection in response to defendants' motion to compel. The record reveals that in response to defendants' 7 October 2011 "Writ of Subpoena," plaintiff filed a motion for a protective order on 13 October 2011. In the protective order, plaintiff argued that it was not required to produce the documents requested, "except for items 1 and 2, which requests do appear relevant to this matter." Plaintiff contended that the other items were "a random list of documents totally unrelated to this matter, and which appear to have been taken from some type of form book or internet site, only two (2) of which are relevant to the Defendants failure to repay the obligation to plaintiff."

The Hutchinsons rely on *K2 Asia Ventures v. Trota*, __ N.C. App. __, 717 S.E.2d 1 (2011) for their argument. In *K2 Asia Ventures*, our Court held that "blanket general objections purporting to assert attorney-client privilege or work product immunity to all of the opposing parties' discovery requests are inadequate to effect their intended purpose and do not establish a substantial right to an immediate appeal." *Id* at __, 717 S.E.2d at 4-5. We do not find *K2 Asia Ventures* to be controlling in the case before us, as the circumstances are distinguishable. *K2 Asia Ventures* dealt with blanket general objections asserting attorney-client privilege or work product immunity in response to discovery requests, whereas here, the Hutchinsons are arguing that plaintiff made a blanket relevancy objection in response to

defendants' discovery requests. Moreover, we find that the Hutchinsons have mischaracterized plaintiff's response to defendants' "Motion to Compel." Plaintiff complied with defendants' "Motion to Compel" in terms of providing items one and two which were relevant to the action. In fact, the trial court concluded in its 14 February 2012 order that "[p]laintiff has substantially complied with the relevant discovery submitted by the Defendants, and has provided all relevant documents to the Defendants." Based on the foregoing, we reject the Hutchinsons' argument.

C. Admission of Evidence

Defendants contend that "[t]he Trial Court committed reversible error and an abuse of discretion when it would not allow admissible, relevant evidence to be presented at the Trial." Defendants argue that "the Letter and Affidavit from [ ] Mr. Rowe Campbell, [the] Acting Commissioner of Banks" was "admissible under the various rules of evidence." Defendant fails to clarify to this Court what ruling by the trial court was "reversible error" or even exactly what evidence is at issue. Defendants cite the general rules of evidence regarding relevancy, and then provide a one-paragraph argument which fails to cite the transcript or record. Defendants have not demonstrated that they made a proffer of the evidence, exactly what the trial court's ruling, if any was on that evidence, or why the evidence would be relevant to any issue raised by this case. It is not even clear if the basis of the trial court's ruling was relevancy, given defendants' failure to direct us to the transcript or the

record. We also note that defendants' very short one paragraph argument also mentions authentication, hearsay, and a protective order. "It is not the role of the appellate courts . . . to create an appeal for an appellant". *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (2005). This argument is unreviewable, and as such, overruled.

D. Directed Verdict

In their last argument, the Hutchinsons assert that the trial court erred by granting a directed verdict in favor of plaintiff when material facts remained in question. We disagree.

> This Court reviews a trial court's grant of a motion for directed verdict *de novo*. The Court must determine whether, upon examination of all the evidence in the light most favorable to the nonmoving party, and that party being given the benefit of every reasonable inference drawn therefrom, the evidence [is] sufficient to be submitted to the jury.

*Willis v. Willis*, 216 N.C. App. 1, 6, 714 S.E.2d 857, 861 (2011) (citation omitted).

In the instant case, plaintiff alleged in its complaint that the Hutchinsons had entered into a credit card agreement with plaintiff in 2006, wherein the Hutchinsons signed as personal guarantees for L&M. Plaintiff alleged that the credit card account was in default in the amount of $10,850.29 plus interest at a rate of ten percent since 20 June 2011, as defendants had failed to make the required monthly payments under their agreement. Subsequently, the Hutchinsons admitted in their pleadings

and at trial that they signed a business credit card application in 2006 with plaintiff as personal guarantees for L&M. Mary Hutchinson testified at trial and admitted to making charges on the credit card at issue and making payments toward the credit card bill until September 2010, when she could no longer make payments. Viewing the foregoing evidence in the light most favorable to the Hutchinsons, plaintiff failed to present any evidence that created issues of material fact requiring resolution by a jury. Accordingly, we hold that the trial court did not err by granting plaintiff's motion for directed verdict.

## III. Conclusion

We affirm the 6 December 2013 judgment of the trial court, granting plaintiff's motion for a directed verdict.

Affirmed.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).