[Cite as *Capital One Bank (USA) v. Baumanis*, 2010-Ohio-5250.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94608

CAPITAL ONE BANK (USA)

PLAINTIFF-APPELLEE

vs.

GEORGE J. BAUMANIS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-691816

BEFORE: Blackmon, J., McMonagle, P.J., and Jones, J.

RELEASED AND JOURNALIZED: October 28, 2010
APPELLANT

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PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant George J. Baumanis appeals the trial court's decision granting summary judgment in favor of Capital One Bank (USA) ("Capital One") and assigns the following errors for our review:

> **"I. The trial court erred in denying the defendants-appellant's Rule 60 and 61 motion for relief from judgment on February 16, 2010."**
>
> **"II. The trial court erred in denying the defendants-appellant's filing on November 2, 2009."**
>
> **"III. The trial court erred in awarding the [sic] Thomas & Thomas compensation."**

"IV. The trial court erred in awarding an excessive judgment."

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court's decision. The apposite facts follow.

{¶ 3} On May 5, 2009, Capital One filed a complaint for breach of contract against Baumanis. In the complaint, Capital One alleged that it issued a credit card to Baumanis, who used it to purchase goods and/or services, as well as to make cash advances. The complaint also alleged that Baumnis failed to make the minimum monthly payments as required and that since the last statement was generated, Baumanis remained in default.

{¶ 4} The complaint further alleged that on October 29, 2008, Baumanis's account was charged in the amount of $2,727.54. Finally, the complaint alleged that Baumanis owed the principal sum of $2,727.54 with accrued interest of $226.99 through February 28, 2009, plus interest thereafter on the principal balance at the rate of 24.9% per year and costs.

{¶ 5} On July 10, 2009, Baumanis having failed to answer the complaint, Capital One filed a motion for default judgment. On July 23, 2009, Baumanis filed an answer, pro se, and a motion in opposition to Capital One's motion for default judgment. On July 30, 2009, the trial court denied Capital One's motion for default judgment.

{¶ 6} On October 8, 2009, Capital One filed a motion for summary judgment, which Baumanis opposed. On December 30, 2009, the trial court

granted Capital One's motion for summary judgment. On January 29, 2010, Baumanis filed his notice of appeal. Thereafter, on February 1, 2010, Baumanis filed a motion for relief from judgment in the trial court.

Summary Judgment

{¶ 7} We will address Baumanis's assigned errors in concert. In the instant appeal, although Baumanis has assigned four errors, he essentially argues that the amount the trial court awarded when it granted summary judgment in favor of Capital One was excessive.

{¶ 8} Preliminarily, we note that in his brief to this court, Baumanis fails to present any citations to case law or statutes in support of his assertions as required by App.R. 16(A)(7). We, therefore, will not address them pursuant to App.R. 12(A)(2). See *Meerhoff v. Huntington Mtge. Co.* (1995), 103 Ohio App.3d 164, 169, 658 N.E.2d 1109.

{¶ 9} We review an appeal from summary judgment under a de novo standard of review. *Baiko v. Mays* (2000), 140 Ohio App.3d 1, 746 N.E.2d 618, citing *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 506 N.E.2d 212; *N.E. Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.* (1997), 121 Ohio App.3d 188, 699 N.E.2d 534. Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate. Id. at 192, citing *Brown v. Scioto Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 622 N.E.2d 1153. Under Civ.R.

56, summary judgment is appropriate when: (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can reach only one conclusion that is adverse to the non-moving party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

{¶ 10} The moving party carries an initial burden of setting forth specific facts that demonstrate his or her entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 1996-Ohio-107, 662 N.E.2d 264. If the movant fails to meet this burden, summary judgment is not appropriate; if the movant does meet this burden, summary judgment will be appropriate only if the non-movant fails to establish the existence of a genuine issue of material fact. Id. at 293.

{¶ 11} In the instant case, in his motion opposing summary judgment Baumanis admitted that he applied for, received, and used the Capital One credit card. In addition, Baumanis did not deny owing the balance Capital One claimed to be due and owing on the credit card.

{¶ 12} Further, in his appellate brief, Baumanis still does not dispute that he owes the debt to Capital One and even admits that the application fees and interest were calculated correctly. Notwithstanding all these

admissions, Baumanis opines that the amount of the judgment should have been less.

{¶ 13} However, in its motion for summary judgment, Capital One attached the authenticated signed application, customer agreement, and numerous account statements, as well as an affidavit of Michelle Lance, the custodian of records. In the affidavit, Lance averred in pertinent part as follows:

> **"4. The books and records of Capital One shows that Defendant(s) is/are currently indebted to Capital One on account number * * * for the just and true sum of $3,225.70 as of 05/31/2009, plus interest accruing from said date at an annual percentage rate in accordance with the Customer Agreement, currently 24.90%, and that all just and lawful offsets, payments, and credits have been allowed.**
>
> **"5. Post-judgment interest will continue to accrue on Defendant(s) indebtedness at the rate authorized by law and as set forth in the judgment order."**

Capital One's Motion for Summary Judgment.

{¶ 14} Our review of the record indicates that the amount the trial court awarded when it granted summary judgment in Capital One's favor did not depart from the prayer for relief and the substantiated and undisputed indebtedness. As such, we find Baumanis's assertions without merit. Accordingly, we overrule all assigned errors.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and
LARRY A. JONES, J., CONCUR