

[Cite as *TimePayment Corp. v. Rite Stop, Inc.*, 2010-Ohio-5852.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 95334**

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**TIMEPAYMENT CORP.**

PLAINTIFF-APPELLEE

vs.

**RITE STOP, INC., ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
REVERSED AND REMANDED**

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Civil Appeal from the  
Rocky River Municipal Court  
Case No. 09 CVF 2770

BEFORE: Kilbane, P.J., Jones, J., and Cooney, J.

**RELEASED AND JOURNALIZED:** December 2, 2010

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MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellants, Rite Stop, Inc. (“Rite Stop”) and Ibrahim Najjar (“Najjar”) (collectively “appellants”), appeal from the judgment of the Rocky River Municipal Court in favor of appellee, TimePayment Corp. (“TimePayment”), for allegedly defaulting on payments for leased business equipment.<sup>1</sup> After carefully reviewing the facts and the law, we reverse.

{¶ 2} On August 13, 2009, TimePayment filed suit against appellants alleging that Rite Stop entered into a commercial finance lease for business

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<sup>1</sup>According to an amendment on the Multiple Equipment Agreement with TimePayment, the leased equipment included a CPU, monitor, keyboard, camera, thumbprint scanner, check scanner, work group switch, mouse, software key, thumbprint key, software, and cords.

equipment and owed appellee \$5,875.48. The complaint alleged that Najjar personally guaranteed the lease agreement of Rite Stop. TimePayment sought judgment against Rite Stop and Najjar for \$5,875.48 plus interest, attorney fees, and costs.

{¶ 3} On May 14, 2010, after the parties attended a pretrial conference, the trial court made the following entry:

**“\* \* \* By agreement of the parties the deadline to file dispositive motions is extended to May 21, 2010. Responses are due 14 days from date of service.”**

{¶ 4} On May 21, 2010, TimePayment moved for summary judgment.

{¶ 5} On May 28, 2010, the trial court signed, journalized, and dated a prepared entry submitted by TimePayment granting TimePayment’s motion for summary judgment and awarding \$4,875.48. The \$1,000 difference in the amount prayed for and the actual award was the result of a typographical error in the judgment entry submitted by TimePayment.

{¶ 6} On June 1, 2010, Rite Stop and Najjar timely filed a joint brief in opposition to TimePayment’s motion for summary judgment.

{¶ 7} On June 3, 2010, the entry granting summary judgment in favor of TimePayment was entered on the court’s electronic docket, stating: “\* \* \* Journal entry (see image).” However, the “image” referred to is the entry granting TimePayment’s motion for summary judgment on May 28, 2010.

{¶ 8} On June 24, 2010, Rite Stop and Najjar appealed. They assert the following single assignment of error:

**“The trial court erred in sustaining plaintiff’s motion for summary judgment as there were genuine issues of fact which were in dispute.”**

### **Summary Judgment Standard of Review**

{¶ 9} Ordinarily, we review an appeal from summary judgment under a de novo standard. *Baiko v. Mays* (2000), 140 Ohio App.3d 1, 10, 746 N.E.2d 618. Accordingly, we afford no deference to the trial court’s decision and independently review the record to determine whether summary judgment is appropriate. *N.E. Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.* (1997), 121 Ohio App.3d 188, 192, 699 N.E.2d 534. In addition, Loc.R. 31 of the Rocky River Municipal Court provides that “\* \* \* the adverse party shall file a brief in opposition within fourteen (14) days after service of the motion.”

{¶ 10} While neither party raises the timing of the trial court’s ruling as an error, a plain reading of the record reveals that the trial court granted TimePayment’s motion for summary judgment without considering Rite Stop and Najjar’s brief in opposition, which was filed three days after the trial court’s order was journalized. We find that the trial court erred in prematurely granting summary judgment to TimePayment.

{¶ 11} On May 21, 2010, TimePayment filed its motion in accordance with this rule and the trial court’s order. However, when the trial court granted

TimePayment's motion on May 28, 2010, Rite Stop and Najjar had not filed their brief in opposition.

{¶ 12} By virtue of Loc.R. 31 and the trial court's May 14, 2010 entry, Rite Stop and Najjar had 14 days within which to respond after they were served with TimePayment's motion. In the instant case, appellants responded on June 1, 2010, but the court had already granted summary judgment in favor of TimePayment on May 28, 2010. The court therefore could not have considered appellants' brief in opposition before granting summary judgment. The trial court's premature ruling on TimePayment's motion for summary judgment deprived Rite Stop and Najjar of the opportunity to file their response and to be heard on summary judgment. See *Wachovia Bank of Delaware v. Jackson*, 5th Dist. No. 2010CA00038, 2010-Ohio-3970; *Bank of New York v. Brunson*, 9th Dist. No. 25118, 2010-Ohio-3978. See, also, *Crosby v. N. Pointe Ins. Co.*, 8th Dist. No. 84178, 2004-Ohio-5867, holding inter alia that trial courts must adhere to the civil rules when granting summary judgment, and it is error for a trial court to grant summary judgment prematurely.

{¶ 13} In *Bank of New York*, the Ninth District stated “\* \* \* Civ.R. 56's procedural fairness requirements place significant responsibilities on all parties and judges to ensure that summary judgment should be granted only after all parties have had a fair opportunity to be heard.” Id. at ¶10, citing *Hooten v. Safe Auto Ins. Co.*, 100 Ohio St.3d 8, 2003-Ohio-4829, 795 N.E.2d 648, at ¶34.

{¶ 14} Here, as in *Bank of New York*, the trial court did not provide Rite

Stop or Najjar with an opportunity to be heard when it prematurely ruled on TimePayment's motion for summary judgment. *Id.* Accordingly, we reverse the trial court's order granting summary judgment and remand the case to the trial court to fully consider Rite Stop and Najjar's opposition to appellee's motion for summary judgment before ruling on TimePayment's motion.

**Judgment reversed and case remanded.**

**It is ordered that appellants recover from appellee costs herein taxed.**

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Rocky River Municipal 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.

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**MARY EILEEN KILBANE, PRESIDING JUDGE**

**LARRY A. JONES, J., and  
COLLEEN CONWAY COONEY, J., CONCUR**