

[Cite as *Federated Fin. Corp. of Am. v. DeMonte*, 2009-Ohio-6114.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FEDERATED FINANCIAL
CORPORATION OF AMERICA

Plaintiff-Appellant

-vs-

DAVID P. DEMONTE

Defendant-Appellee

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Julie A. Edwards, J.

Case No. 2009 AP 07 0037

OPINION

CHARACTER OF PROCEEDING:

Appeal from the New Philadelphia
Municipal Court, Case No. CVF0801502

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 17, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Weltman, Weinberg & Reis Co., L.P.A.
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Hoffman, J.

{¶1} Plaintiff-appellant Federated Financial Corporation of America appeals the May 8, 2009 Judgment Entry entered by the New Philadelphia Municipal Court, awarding it court costs only on its complaint on a credit card account of defendant-appellant David P. Demonte.

STATEMENT OF THE CASE¹

{¶2} Appellant, as owner of an account receivable for a credit card account of Appellee, filed a complaint against Appellee for amount due plus interest and court costs. Appellee failed to file an answer or otherwise appear.

{¶3} Appellant filed a motion for default judgment and the trial court set the case for a default hearing on January 8, 2009. Following that hearing, the magistrate filed an order dated March 3, 2009, finding a hearing pursuant to Ohio Civil Rule 55(A) is necessary and set the matter for further hearing on March 19, 2009. That hearing proceeded in front of the trial court judge and resulted in a judgment for Appellant for court costs. Appellee did not appear at either hearing. Neither did Appellant order a transcript of either of the two hearings for inclusion in the record.

{¶4} Appellant assigns as error:

{¶5} "I. THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION AND REVERSIBLE ERROR IN AWARDING ONLY COURT COSTS FOR DEFAULT JUDGMENT.

¹ A rendition of the facts is unnecessary for our resolution of this appeal.

{¶16} “II. THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION AND REVERSIBLE ERROR BY FAILING TO HOLD A HEARING ON DAMAGES, WHERE DAMAGES WERE AT ISSUE FOR GRANTING DEFAULT JUDGMENT.”

{¶17} This case comes to us on the accelerated calendar and is governed by App.R. 11.1, which states the following, in pertinent part:

{¶18} “(E) Determination and judgment on appeal

{¶19} “The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court’s decision as to each error to be in brief and conclusionary form.

{¶10} “The decision may be by judgment entry in which case it will not be published in any form.”

{¶11} This Court will proceed according to that rule.

I & II

{¶12} We overrule both of Appellant’s assignments of error for two reasons. First, Appellant failed to order a transcript of either of the two hearings on its default judgment motion which we find necessary for our review. Accordingly, we affirm under the presumption of regularity as established in *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197.

{¶13} Second, we find Appellant’s claim the trial court should have held a Civ.R. 55(A) hearing disingenuous. The magistrate’s order setting the matter for further hearing specifically stated it did so because a hearing was necessary under Civ.R. 55(A). It appears what Appellant wants is not just one or two bites, but a third bite at the apple.

{¶14} Appellant's assignments of error are overruled.

{¶15} The judgment of the trial court is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Edwards, J. concur

s/ William B. Hoffman _____
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin _____
HON. W. SCOTT GWIN

s/ Julie A. Edwards _____
HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FEDERATED FINANCIAL
CORPORATION OF AMERICA

Plaintiff-Appellant

-vs-

DAVID P. DEMONTE

Defendant-Appellee

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JUDGMENT ENTRY

Case No. 2009 AP 07 0037

For the reasons stated in our accompanying Opinion, the May 8, 2009 Judgment Entry of the New Philadelphia Municipal Court is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS