

[Cite as *Matrix Acquisitions, LLC v. Styer*, 2010-Ohio-5343.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MATRIX ACQUISITIONS, LLC

Plaintiff-Appellant

-vs-

DANIEL M. STYER, ET AL.

Defendants-Appellees

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 2010AP040014

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County
Common Pleas Court, Case No.
2009 CV 11 1124

JUDGMENT:

Reversed and remanded

DATE OF JUDGMENT ENTRY:

November 1, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellees

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Hoffman, P.J.

{¶1} Plaintiff-appellant Matrix Acquisitions, LLC appeals the April 8, 2010 Judgment Entry entered by the Tuscarawas County Court of Common Pleas, which granted summary judgment in favor of defendants-appellees Daniel M. Styer, et al., and dismissed Appellant's Complaint with prejudice.

STATEMENT OF THE FACTS AND CASE

{¶2} On April 11, 1979, Appellees opened a credit card account with Chase Bank ("Chase") or one of its subsidiaries. The account ultimately reached a principal balance of \$12,469.46, at which point Chase "charged off" the account as being in default. Chase sold the obligation to H.S. Financial Group ("H.S. Financial") on or about June 2, 2009. Appellant purchased the defaulted obligation from H.S. Financial on June 11, 2009. On November 6, 2009, Appellant filed a Complaint against Appellees in the Tuscarawas County Court of Common Pleas, seeking money damages in the principal sum plus interest. Appellees filed a timely answer, asserting a general denial as well as several affirmative defenses, including lack of standing.

{¶3} After the parties exchanged discovery, Appellees filed a Motion for Summary Judgment and Dismissal on January 19, 2010. Appellees argued there were no genuine issues of material fact in dispute as Appellant was not a valid purchaser, assignor, and/or proper party in interest. Appellant filed a memorandum contra on March 19, 2010. Thereafter, the parties filed multiple replies and supplemental memoranda in support and/or in opposition to their respective positions.

{¶4} Via Judgment Entry filed April 8, 2010, the trial court granted Appellees' motion for summary judgment, and dismissed Appellant's Complaint with prejudice.

The trial court found the evidence supported the conclusion there was no valid assignment of Appellees' account to Appellant; therefore, Appellant was not the real party in interest in prosecuting the claims against Appellees. The trial court also found the evidence supported the conclusions Appellant lacked standing, and the trial court lacked subject matter jurisdiction.

{¶15} It is from this judgment entry Appellant appeals, raising the following assignment of error:

{¶16} "I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY GRANTING APPELLEES' MOTION FOR SUMMARY JUDGMENT AND DISMISSAL."

I

{¶17} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 36, 506 N.E.2d 212. As such, this Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241.

{¶18} Civ.R. 56 provides summary judgment may be granted only after the trial court determines: 1) no genuine issues as to any material fact remain to be litigated; 2) the moving party is entitled to judgment as a matter of law; and 3) it appears from the evidence that reasonable minds can come to but one conclusion and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 364 N.E.2d 267.

{¶9} It is well established the party seeking summary judgment bears the burden of demonstrating that no issues of material fact exist for trial. *Celotex Corp. v. Catrett* (1987), 477 U.S. 317, 330, 106 S.Ct. 2548, 91 L.Ed.2d 265. The standard for granting summary judgment is delineated in *Dresher v. Burt* (1996), 75 Ohio St.3d 280 at 293, 662 N.E.2d 264: “ * * * a party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.” The record on summary judgment must be viewed in the light most favorable to the opposing party. *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150, 309 N.E.2d 924.

{¶10} Essentially, a motion for summary judgment forces the plaintiff to produce probative evidence on all essential elements of the case for which the plaintiff has the burden of production at trial. *Celotex Corp. v. Catrett*, supra. The plaintiff's evidence

must be such that a reasonable jury might return a verdict in the plaintiff's favor. *Seredick v. Karnok* (1994), 99 Ohio App.3d 502, 651 N.E.2d 44.

{¶11} In deciding a motion for summary judgment, Civ.R. 56(C) only allows the trial court to consider “pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact.” Generally, the failure to authenticate a document submitted on summary judgment renders the document void of evidentiary value. See *Citizens Ins. Co. v. Burkes* (1978), 56 Ohio App.2d 88, 381 N.E.2d 963.

{¶12} Upon summary judgment consideration, the proper procedure for introducing evidentiary material not specifically authorized by the rule is to incorporate such material by reference in a properly framed affidavit. See *Biskupich v. Westbay Manor Nursing Home* (1986), 33 Ohio App.3d 220, 515 N.E.2d 632.

{¶13} Civ.R. 56(E) mandates sworn or certified copies of all papers filed in support of or in opposition to a motion for summary judgment must be accompanied by an affidavit swearing the matters contained within the document were made on the affiant's personal knowledge. The affidavit shall also set forth facts that would be admissible into evidence, and shall affirmatively show the affiant is competent to testify to those matters. *Id.* Thus, the proper procedure for introducing an evidentiary matter not specifically authorized by Civ.R. 56(E) is to incorporate it by reference into a properly framed affidavit. *Biskupich*, *supra*, citing *State ex rel. Corrigan v. Seminatore* (1981), 66 Ohio St.2d 459, 467, 423 N.E.2d 105. Documents submitted in opposition to a motion for summary judgment that are neither sworn, certified, nor authenticated by

affidavit have no evidentiary value. *Green v. B.F. Goodrich Co.* (1993), 85 Ohio App.3d 223, 228, 619 N.E.2d 497, 500-501.

{¶14} In this case, Appellant filed a Complaint for an action on a credit card account. Appellant filed the action as the holder of Appellees' credit card account by assignment. In their motion for summary judgment, Appellees argued Appellant had failed to set forth sufficient evidentiary material to prove it was the holder of Appellees' account by assignment.

{¶15} In support of their Motion for Summary Judgment and Dismissal, Appellees attached Appellant's Responses to Interrogatories and Requests for Admissions, as well as documents provided pursuant to Appellees' Request for Production of Documents. Appellees contend two documents, each labeled Bill of Sale and which were included in Appellant's response to production request, fail to list or reference the account number which is subject to the current lawsuit. Appellees submit each Bill of Sale references "Exhibit 1", which purports to describe the receivables, judgments, or evidences of debt relative to the respective Bill of Sale. Appellant was asked to produce Exhibit 1 and/or any documents proving the existence of a valid assignment of the subject account from Chase to HS Financial, and subsequently from HS Financial to Appellant. Appellant failed to produce said requested documents.

{¶16} In its memoranda contra, Appellant submitted the Affidavit of Elaine North, a custodian of Appellant's records. North stated she had reviewed Appellant's books and records with respect to Appellees' account and such review revealed the debt and claim was purchased by and assigned to Appellant from H.S. Financial. North attached a copy of the Bill of Sale from Chase to HS Financial; a copy of the Bill of Sale from HS

Financial to Appellant; a redacted spreadsheet identifying and detailing Appellant's ownership of Appellees' obligation; and copies of account statements establishing the amount due and owing by Appellees. North further noted Appellant was "currently seeking additional testimony to authenticate the records listed above, as well as other evidence in [Appellant's] possession." March 17, 2010 Affidavit at para. 7. In its supplemental memoranda contra, Appellants attached the Affidavit of Erik Hunter, a business analyst with Chase, who stated Appellees' credit card account with Chase had been sold and transferred to HS Financial on or about June 2, 2009. The information contained in the Hunter Affidavit conforms with the information contained in the Bill of Sale evidencing the sale of Appellees' debt with Chase to HS Financial.

{¶17} As noted, supra, a party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied.

{¶18} We find Appellees failed to meet their initial burden. Appellees did not identify those portions of the record which affirmatively demonstrate the absence of a

genuine issue of material fact on the issue of a valid assignment to Appellant. Appellees simply conclusorily assert Appellant cannot prove a valid assignment because Appellant failed to produce Exhibit 1. While Exhibit 1 may be necessary to establish Appellant's standing, the failure to produce same, at this stage of the proceedings is not the evidence a valid assignment does not exist.¹ Because Appellees failed to meet their initial burden, we find the trial court erred in granting summary judgment in their favor.

{¶19} Appellant's sole assignment of error is sustained.

{¶20} The judgment of the Tuscarawas County Court of Common Pleas is reversed and the matter remanded for further proceedings.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

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

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

¹ Appellees can seek an order to compel the production of Exhibit 1. Should Appellant fail to produce same after court order, the court can issue appropriate sanction(s) which might precipitate renewal of Appellees' motion for summary judgment.

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

MATRIX ACQUISITIONS, LLC	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
DANIEL M. STYER, ET AL.	:	
	:	
Defendants-Appellees	:	Case No. 2010AP040014

For the reasons stated in our accompanying Opinion, the judgment of the Tuscarawas County Court of Common Pleas is reversed and the matter remanded for further proceedings consistent with our Opinion and the law.

Costs assessed to Appellees.

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

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY