

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ohio Receivables, LLC,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-921
Carolyn P. Ryan,	:	(M.C. No. 2011 CVF 010791)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on July 19, 2012

Cheek Law Offices, LLC, Parri J. Hockenberry, and Jackson T. Moyer, for appellee.

Carolyn P. Ryan, pro se.

APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶ 1} Defendant-appellant, Carolyn P. Ryan ("appellant"), appeals from the October 21, 2011 judgment of the Franklin County Municipal Court granting summary judgment in favor of plaintiff-appellee, Ohio Receivables, LLC ("appellee"). For the following reasons, we affirm.

I. Facts and Procedural Background

{¶ 2} On March 22, 2011, appellee filed a complaint to collect upon appellant's Chase Bank USA, N.A. ("Chase") credit card account. In its complaint, appellee alleged that Chase issued appellant a credit card ending in 6684. Appellee further alleged that it purchased appellant's obligation owed to Chase and is the legal owner of the obligation. Additionally, appellee alleged that appellant defaulted upon her obligation and owed

\$1,197.58, plus accrued interest of \$557.78, for a total amount owed of \$1,755.36, plus future interest at 24 percent.

{¶ 3} On May 25, 2011, appellant filed a motion for a more definite statement alleging that she could not reasonably respond to appellee's complaint because: (1) the terms and conditions and/or cardholder's agreement are not attached to the complaint; (2) a copy of the assignment identifying appellant's account is not attached to the complaint; (3) an agreement signed by appellant is not attached to the complaint in accordance with Civ.R. 10(D)(1); and (4) Cheek Law Offices, LLC did not sign the complaint. Appellee filed a memorandum contra on June 13, 2011. That same day, the trial court denied appellant's motion.

{¶ 4} On June 27, 2011, appellant filed an answer denying every allegation in appellee's complaint.

{¶ 5} On September 15, 2011, appellee filed a motion for leave to file its motion for summary judgment instante, and, on September 19, 2011, the trial court granted appellee's motion. Appellee filed its motion for summary judgment on September 19, 2011, and attached the following exhibits: (1) affidavit of Bree DeMoss, Director of Operations for Turtle Creek Assets, Ltd.; (2) affidavit of Gabriel S. Cheek, custodian of records for appellee; (3) Bill of Sale from Chase to Turtle Creek; (4) redacted copy of spreadsheet purporting to list appellant's Chase account as one of those sold to Turtle Creek; (5) Bill of Sale from Turtle Creek, by and through its general partner, Forward Properties International, Inc., to appellee; (6) redacted copy of spreadsheet purporting to list appellant's Chase account as one of those sold to appellee; (7) Chase account statements; (8) Cardmember Agreement; (9) copies of several checks showing payments made from appellant to Chase; and (10) affidavit of Jackson T. Moyer, Esq. attesting that appellant is not a minor, not incompetent, and not on active duty in the military.

{¶ 6} On October 3, 2011, appellant, through counsel, filed a motion for an extension of time to respond to appellee's motion for summary judgment. The trial court granted appellant's motion and gave her until October 18, 2011, to file a response.

{¶ 7} On October 20, 2011, appellant filed a motion to file her memorandum contra instante. That same day, appellant also filed her memorandum contra. The trial

court did not rule upon appellant's October 20, 2011 motion to file her memorandum contra instanter.

{¶ 8} On October 21, 2011, the trial court granted appellee's motion for summary judgment. In its judgment entry, the trial court stated:

Judgment is hereby awarded against [appellant], and in favor of [appellee], in the amount of \$1,197.58, plus accrued interest in the amount of \$699.52 through September 13, 2011, and further interest at 24.00 % thereafter until the date of Judgment, plus future interest on this Judgment at 24.00 % per annum that [appellant] agreed to pay in the written contract plus the costs of this action.

(R. 23.)

{¶ 9} On October 26, 2011, appellant filed a motion to reconsider. In support of her motion, appellant attached the affidavit of her attorney, Ronald B. Noga ("Noga"). In his affidavit, Noga admitted that, due to taking a prescription medication for a neck injury, he failed to timely complete and file appellant's memorandum contra by October 18, 2011. The trial court did not rule upon appellant's motion to reconsider.

II. Assignment of Error

{¶ 10} On October 27, 2011, appellant timely filed a notice of appeal. Appellant sets forth a single assignment of error for our consideration:

The Trial Court [e]rred in granting summary judgment to Ohio Receivables LLC and by issuing its Judgment Entry as to Defendant, Carolyn P. Ryan dated October 21, 2011.

{¶ 11} We review a grant of summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579, 588 (8th Dist.1994), citing *Brown v. Scioto Cty. Bd. of Commrs.*, 87 Ohio App.3d 704, 711 (4th Dist.1993). When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.*, 83 Ohio App.3d 103, 107 (10th Dist.1992); *Brown* at 711.

{¶ 12} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action,

show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party 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 come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978). Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59 (1992), citing *Norris v. Ohio Std. Oil Co.*, 70 Ohio St.2d 1, 2 (1982).

{¶ 13} Under summary judgment motion practice, the moving party bears an initial burden to inform the trial court of the basis for its motion, and to point to portions of the record that indicate that there are no genuine issues of material fact on a material element of the non-moving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280 (1996). Once the moving party has met its initial burden, the non-moving party must produce competent evidence establishing the existence of a genuine issue for trial. *Id.*

{¶ 14} In her sole assignment of error, appellant argues that appellee's documentation creates genuine issues of material fact for the following reasons: (1) appellee failed to establish a proper chain of title; (2) appellee failed to establish that its claims are enforceable or valid; and (3) appellee failed to establish that a contract existed with Chase and/or appellee. *See* appellant's brief, at 4.

{¶ 15} In support of this argument, appellant cites our decision in *Harvest Credit Mgmt. VII v. Ryan*, 10th Dist. No. 09AP-1163, 2010-Ohio-5260. In *Harvest Credit* at ¶ 20-21, we reversed and remanded the trial court's decision granting summary judgment in favor of the appellee, Harvest Credit, because there were "genuine issues of material fact with regard to [the] appellee's chain of title and whether it is the assignee or purchaser entitled to collect upon [the] appellant's specific account." Specifically, we found that the appellee attached documentation to its motion for summary judgment potentially setting forth two separate chains of title. We noted that the documentation showed a transfer from Chase to Mid-Coast Credit Corp. to Harvest Credit, and that the

documentation also showed a transfer from Chase to CreditMax LLC to Harvest Credit. We also noted that, although the bills of sale referenced exhibits purportedly identifying the transferred accounts, those exhibits were nowhere in the record.

{¶ 16} After careful review of the record currently before us, we find this case clearly distinguishable from *Harvest Credit*. In the present matter, appellee submitted evidence of two bills of sale, first from Chase to Turtle Creek, and second from Turtle Creek to appellee. *See* motion for summary judgment, exhibits A and C. The bills of sale indicate that, on December 8, 2010, Turtle Creek, purchased 23,485 delinquent accounts from Chase, and that, on December 14, 2010, appellee purchased 706 delinquent accounts from Turtle Creek. The bills of sale reference exhibit No. 1, which list specific accounts purchased by Turtle Creek and appellee.

{¶ 17} Unlike *Harvest Credit*, appellee submitted redacted portions of exhibit No. 1 showing that Turtle Creek purchased appellant's account and then sold it to appellee. Additionally, exhibit No. 1 identifies: (1) appellant's name; (2) the last four digits of appellant's account number; (3) the amount owed; (4) the date appellant entered into the contract with Chase; (5) appellant's address; (6) appellant's telephone number; (7) the last four digits of appellant's social security number; (8) the charge-off date; (9) the date of first delinquency; (10) the last payment date; (11) last payment amount; (12) the purchase balance; and (13) interest and fees.

{¶ 18} The above documentation clearly establishes that appellee owns appellant's debt owed on the Chase account. Therefore, for the foregoing reasons, appellant has failed to establish that any genuine issues of material fact exist with regard to the chain of title.

{¶ 19} Further, the evidentiary materials filed in support of appellee's motion for summary judgment establish the existence of the Chase credit card account, the terms of the cardmember agreement, appellant's default, and the balance owed on the account. These evidentiary materials sufficiently carry appellee's burden of showing that there was no genuine issue of material fact, and that it was entitled to judgment as a matter of law on its claims.

{¶ 20} Due to the untimeliness of appellant's October 20, 2011 memorandum contra, appellant essentially failed to provide an affidavit or any other evidence as

required by Civ.R. 56 in response to appellee's motion for summary judgment that would create a genuine issue of material fact as to whether or not the debt was hers or whether or not the claims are valid and enforceable. Accordingly, rendering summary judgment in favor of appellee was proper. *See Discover Bank v. Paoletta*, 8th Dist. No. 95223, 2010-Ohio-6031 (summary judgment in bank's favor proper where bank's affidavit in support of its motion for summary judgment demonstrated an agreement between the parties for use of a credit card and that attached account statements accurately reflected the amount due on the account, and the cardholder failed to present any evidence contrary); *Discover Bank C/O DFS Servs. L.L.C. v. Lammers*, 2d Dist. No. 08-CA-85, 2009-Ohio-3516 (because the defendant submitted no evidence in response to a bank's summary judgment motion on amounts due on a credit card account, summary judgment was properly granted to the bank); *Pinnacle Credit Servs., LLC v. Kuzniak*, 7th Dist. No. 08 MA 111, 2009-Ohio-1021 (no error in granting summary judgment on a claim for amounts due on a credit card account where the defendant failed to provide any evidence to create a genuine issue of material fact).

III. Conclusion

{¶ 21} In conclusion, appellee presented uncontroverted evidence in the trial court that appellant applied for the Chase card, was issued the Chase card, and used the Chase card for a number of years. After failing to make the required minimum monthly payments, appellant was then in default by terms of the cardmember agreement. Because appellant failed to file a timely response to appellee's motion for summary judgment, she did not meet her reciprocal burden under Civ.R. 56 to establish the existence of a genuine issue of material fact. As such, appellee was entitled to judgment as a matter of law. Accordingly, we find the trial court did not err in granting summary judgment in favor of appellee.

{¶ 22} Appellant's sole assignment of error is overruled.

{¶ 23} For the foregoing reasons, appellant's sole assignment of error is not well-taken, and the judgment of the Franklin County Municipal Court is hereby affirmed.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.
