

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Atlantic Credit & Finance, Inc.,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-973
David Lee Davis,	:	(M.C. No. 2011 CVF 017612)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on May 8, 2012

David Lee Davis, pro se.

APPEAL from the Franklin County Municipal Court

TYACK, J.

{¶ 1} David Lee Davis is appealing from a judgment rendered against him in the Franklin County Municipal Court. He assigns a single error for our consideration:

The trial court erred in granting Summary Judgment to the Appellee, failing to adequately consider the counter arguments of the Appellant nor recognizing the abundance of evidence and contra facts by the Appellant which satisfies the argument of a presence of genuine issues and material facts as prescribed for in Ohio Civ.R. 56 (C).

{¶ 2} Atlantic Credit & Finance, Inc. filed suit against Davis on May 11, 2011 claiming that it had purchased a credit card account on which Davis was indebted and that Davis owed \$2,175.11.

{¶ 3} After service of process was perfected, Davis filed an answer of sorts in which he denied that he owed the money.

{¶ 4} After mediation was unsuccessful, the case was assigned a trial date of October 12, 2011. Davis then began pursuing discovery. On September 2, Davis filed "Defendant's Combined Interrogatories, Requests for Admissions and Requests for Production of Documents."

{¶ 5} Less than three weeks later, and without responding to the discovery request with the requested information, Atlantic Credit & Finance Inc.'s counsel filed a motion requesting leave to file a motion for summary judgment. The trial court granted the leave for the late filing on September 27, 2011. The motion for summary judgment was filed the next day.

{¶ 6} Appended to the motion for summary judgment was an affidavit from one Cameron Gray who alleged personal knowledge of the records involving Davis. The affidavit listed Davis as having had an account with "HSBC," not with Atlantic Credit & Finance, Inc. Appended to the motion was a series of statements related to a Mastercard handled by HSBC card services. A statement reads, "AFFIANT further states that there was an agreement between Defendant and Plaintiff. Defendant defaulted on said Credit Card Agreement." (Affidavit of Cameron Gray.) The accuracy of this statement is open to serious question, since Davis never had a credit card with Atlantic Credit & Finance, Inc. Instead, Atlantic Credit & Finance, Inc. purchased accounts from other lenders which have charged off the account. No direct relationship exists with the debtor or alleged debtor.

{¶ 7} Davis filed his own affidavit, indicating that this was the second time Atlantic Credit & Finance, Inc. had sued him. He alleged that Atlantic Credit & Finance,

Inc. was in the business of purchasing the balance due on closed credit cards with no effort being made to determine if the credit card company properly logged purchases or payments. Any correspondence between the original credit card issuer and the credit card holder is not transferred to Atlantic Credit & Finance, Inc., so contested charges are not known by Atlantic Credit & Finance, Inc.

{¶ 8} Davis filed his response on October 11, 2011. His response was prior to the October 12, 2011 deadline for a response set by the court. Although the entry states no genuine issue of material fact exists, we cannot tell from the entry that the trial court judge who signed the entry knew that Davis had filed a response and an extended affidavit the day before contesting the amount owed on the credit card.

{¶ 9} Davis timely filed a notice of appeal. He filed his brief as appellant and a corrected brief. No brief has been filed on behalf of Atlantic Credit & Finance, Inc.

{¶ 10} Davis is clearly correct in his assertion in his assignment of error that genuine issues of fact exists. The assignment of error is sustained. The judgment of the Franklin County Municipal Court is reversed. The case is remanded for further, appropriate proceedings.

*Judgment reversed and remanded
for further appropriate proceedings.*

BRYANT and DORRIAN, JJ., concur.
