

[Cite as *Styles v. RZL, Inc.*, 2010-Ohio-172.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Stella Styles,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 09AP-385
v.	:	(M.C. No. 2007 CVF 054276)
	:	
RZL, Inc.,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on January 21, 2010

Ray J. King, for appellant.

James R. Leickly, for appellee.

APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶1} Appellant, Stella Styles ("appellant"), appeals the decision of the Franklin County Municipal Court granting summary judgment to appellee, RZL, Inc. ("appellee"). For the reasons that follow, we affirm the judgment of the trial court.

{¶2} Appellant owned real estate located at 551 Wickham Way in Gahanna, Ohio. Because appellant wanted to rent the property while she resided in Germany for two years, she entered into a management agreement with Rich Kost, a real estate agent working on behalf of appellee. Appellee found tenants who apparently damaged

appellant's property. After already having obtained and collected portions of a judgment against the tenants, appellant filed suit in the Franklin County Municipal Court against appellee.

{¶3} On January 15, 2009, appellee filed its motion for summary judgment, which the trial court granted. Appellant timely appealed and raises the following assignment of error:

The Trial Court improperly granted Summary Judgment when there are genuine issues of material fact and the Court failed to construe the evidence most strongly in favor of the non-moving party.

{¶4} In appellant's assignment of error, she challenges the decision to grant summary judgment. Appellate review of summary judgment motions is de novo. *Andersen v. Highland House Co.*, 93 Ohio St.3d 547, 548, 2001-Ohio-1607. " 'When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court.' " *Abrams v. Worthington*, 169 Ohio App.3d 94, 2006-Ohio-5516, ¶11, quoting *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103. Civ.R. 56(C) provides that a trial court must grant summary judgment when the moving party demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶16.

{¶5} When seeking summary judgment on the ground that the nonmoving party cannot prove its case, the moving party 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 an essential element of the nonmoving party's claims. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The moving party does not discharge this initial burden under Civ.R. 56 by simply making a conclusory allegation that the nonmoving party has no evidence to prove its case. *Id.* Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that the nonmoving party has no evidence to support its claims. *Id.* If the moving party meets this initial burden, then the nonmoving party has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party. *Id.*

{¶6} In appellant's assignment of error, she argues that the management agreement itself creates an issue of fact because it required appellee to exercise due diligence, while also limiting appellee's liability to damages associated with gross negligence and willful misconduct. The relevant portions of the agreement provide:

2. The Agent accepts the employment and agrees:

(a) To use due diligence in the management of the premises for the period and upon the terms herein provided, and agrees to furnish the services of his/its organization for the renting, leasing, operating, maintaining and managing of the herein described premises.

* * *

4. The Owner further agrees:

(a) To save the Agent harmless from all damage suits in connection with the management of the herein described property and from liability from injury suffered by any employee or other person whomsoever * * *. The Agent also shall not be liable for any error of judgment or for any mistake of fact of [sic] law, or for anything which it may do or refrain from doing hereinafter, except in case of willful misconduct or gross negligence.

{¶7} Appellant fails to explain how these two provisions create issues of fact. Instead, she merely makes a broad, generalized statement in this regard. We find no merit to this argument and no conflict in these provisions.

{¶8} Appellant also argues that the trial court erred by issuing its decision before she had the opportunity to develop her case. Initially, we note that appellant has not raised an assignment of error under Civ.R. 56(F). Further, we note that appellant requested and was granted Civ.R. 56(F) leave for an extension of time to conduct discovery before responding to appellee's motion for summary judgment. After receiving this extension, appellant filed a memorandum contra. Despite these facts, appellant now makes the argument that she had no chance to develop her case. Again, we find no merit to appellant's argument.

{¶9} When presented with contractual exculpatory clauses, the typical strict construction analysis centers around public policy concerns, issues of unconscionability, and issues pertaining to the clarity of the clause's terms. *DeRosa v. Elliot Leveling, Inc.*, 6th Dist. No. L-07-1148, 2008-Ohio-3502, ¶28, citing *Collins v. Click Camera & Video, Inc.* (1993), 86 Ohio App.3d 826, 832. Indeed, such clauses are generally disfavored. *Id.*, see also *Swartzentruber v. Wee-K Corp.* (1997), 117 Ohio App.3d 420, 424; *Glaspell v. Ohio Edison Co.* (1987), 29 Ohio St.3d 44, 46-47.

{¶10} In the instant matter, however, we need not engage in this analysis because appellant never challenged the enforceability of the exculpatory clause on these grounds. Instead, in the trial court's proceedings, appellant argued that appellee had fiduciary duties that could not be waived by contract, a theory appellant has since completely abandoned.

{¶11} Because we must limit our analysis to the issues presented and appellant never challenged the enforceability of the exculpatory clause, it remained as a basis for obtaining judgment. As a result, appellee's liability was limited to damages associated with gross negligence and willful misconduct. In its motion for summary judgment, appellee presented evidence demonstrating that appellant had no evidence of gross negligence or willful misconduct. Appellant therefore had the reciprocal burden of demonstrating that there was a genuine issue of material fact on this issue. She failed to present such evidence.

{¶12} Based upon the foregoing analysis, we find that the trial court did not err by finding that there were no genuine issues of material fact that would have necessitated a trial. We, therefore, find that the trial court did not err by granting summary judgment. Accordingly, we overrule appellant's sole assignment of error and affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

KLATT and McGRATH, JJ., concur.
