

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

First Resolution Investment Corporation,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-212 (M.C. No. 2009CVF26002)
Harvey C. Griffith,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 30, 2010

Cheek Law Offices, LLC, and Aaron J. Wilson, for appellee.

*Luftman, Heck & Associates, LLP, Jeremiah E. Heck, and
Scott C. Florin, for appellant.*

APPEAL from the Franklin County Municipal Court

KLATT, J.

{¶1} Defendant-appellant, Harvey C. Griffith, appeals from a judgment of the Franklin County Municipal Court granting summary judgment to plaintiff-appellee, First Resolution Investment Corporation ("First Resolution"). For the following reasons, we reverse that judgment and remand this case to the trial court.

{¶2} On June 12, 2009, First Resolution filed suit against Griffith alleging that he had defaulted on his credit card agreement with Chase Bank USA, N.A. ("Chase"). In its complaint, First Resolution averred that it had purchased the obligation that Griffith owed

to Chase, and it sought from Griffith \$2,031.72 that it claimed was due on his account. First Resolution attached to its complaint a document styled as a "Statement of Account," which included the name of the original creditor, the partially redacted original account number, the date Chase charged-off the account, the balance due on the charge-off date, the amount of interest that had accrued from the charge-off date to April 14, 2009 using a 22.99 percent interest rate, and the total amount due as of April 14, 2009.

{¶3} In response to First Resolution's complaint, Griffith filed a Civ.R. 12(E) motion for a more definite statement. Griffith maintained that First Resolution had failed to comply with Civ.R. 10(D)(1), which requires a plaintiff to attach a copy of the account to its complaint when it asserts a claim founded on an account. The trial court denied Griffith's motion, holding that the summary account statement attached to First Resolution's complaint satisfied the Civ.R. 10(D)(1) requirement.

{¶4} On January 8, 2010, First Resolution moved for summary judgment. The motion relied heavily on the affidavit of Angel Page, a records custodian for First Resolution, to prove facts and authenticate documents establishing First Resolution's claim. First Resolution, however, neglected to attach Page's affidavit to its motion.

{¶5} Griffith pointed out in his memorandum contra that the motion for summary judgment lacked any admissible evidentiary support. Nevertheless, on February 9, 2010, the trial court issued a judgment entry granting the motion. Griffith now appeals from that judgment, and he assigns the following errors:

[1.] THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION FOR MORE DEFINITE STATEMENT.

[2.] THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE APPELLEE INCLUDED

NO AFFIDAVIT OR OTHERWISE AUTHENTICATING THE
ATTACHED BUSINESS RECORD.

{¶6} We will begin our analysis with the second assignment of error. First Resolution concedes that it did not attach Page's affidavit to its motion for summary judgment. Because First Resolution failed to provide any Civ.R. 56(C) evidence establishing the absence of a genuine issue of material fact and its entitlement to judgment as a matter of law, the trial court erred in granting First Resolution summary judgment. Accordingly, we sustain Griffith's second assignment of error.

{¶7} By his first assignment of error, Griffith argues that the trial court erred in concluding that the summary account statement attached to First Resolution's complaint satisfied Civ.R. 10(D)(1). We conclude that even if the trial court erred as alleged, the error is harmless.

{¶8} Pursuant to Civ.R. 10(D)(1), "[w]hen any claim or defense is founded on an account or other written instrument, a copy of the account or written instrument must be attached to the pleading." For purposes of Civ.R. 10(D)(1):

[A]n account must show the name of the party charged. It begins with a balance, preferably at zero, or with a sum recited that can qualify as an account stated, but at least the balance should be a provable sum. Following the balance, the item or items, dated and identifiable by number or otherwise, representing charges, or debits, and credits, should appear. Summarization is necessary showing a running or developing balance or an arrangement which permits the calculation of the balance claimed to be due.

Hudson & Keyse, LLC v. Carson, 10th Dist. No. 07AP-936, 2008-Ohio-2570, ¶13 (quoting *Asset Acceptance Corp. v. Proctor*, 156 Ohio App.3d 60, 2004-Ohio-623, ¶12). Although attaching a statement that meets this definition will without question satisfy Civ.R. 10(D)(1), a party may also achieve compliance with Civ.R. 10(D)(1) by attaching

documents that do not strictly constitute a statement of account. *Id.* at ¶14-15. This court has indicated that attaching monthly credit card statements to a complaint will satisfy Civ.R. 10(D)(1). *Id.* at ¶15.

{¶9} Here, First Resolution attached 18 monthly account statements to its motion for summary judgment. Griffith concedes that if First Resolution had attached these account statements to its complaint, it would have complied with Civ.R. 10(D)(1). Thus, Griffith's receipt of the account statements alleviates any prejudice that he allegedly suffered by the denial of his motion for a more definite statement. Upon remand, Griffith may use the account statements as a basis for conducting the discovery that he claims he could not pursue without a statement of account. Because the asserted error did not materially prejudice Griffith, we will not disturb the trial court's judgment. Civ.R. 61; *Theobald v. Univ. of Cincinnati*, 160 Ohio App.3d 342, 2005-Ohio-1510, ¶17. Accordingly, we overrule Griffith's first assignment of error.

{¶10} For the foregoing reasons, we overrule the first assignment of error and sustain the second assignment of error. We remand this case to the Franklin County Municipal Court for further proceedings consistent with law and this opinion.

Judgment reversed; cause remanded.

SADLER and McGRATH, JJ., concur.
