[Cite as *Union Sav. Bank v. Washington*, 2019-Ohio-3203.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

UNION SAVINGS BANK	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 28305
	:	
v.	:	Trial Court Case No. 2018-CV-1821
	:	
JAMES E. WASHINGTON	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 9th day of August, 2019.

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DONOVAN, J.

{¶ 1} James Washington appeals pro se from the trial court's January 24, 2019 final judgment entry in favor of Union Savings Bank ("USB"), which was issued after the court granted partial summary judgment in favor of USB on Washington's counterclaim and after USB dismissed its remaining claims against Washington. We hereby affirm the judgment of the trial court.

{¶ 2} On April 25, 2018, USB filed a complaint in foreclosure against Louis Marzetta, Washington, and the Montgomery County Treasurer. The complaint provided that USB was the holder of "a fixed rate Balloon Note" in the original principal amount of $89,000 ("note"), a balloon loan modification ("modification") and a mortgage ("mortgage"), copies of which were attached to the complaint. The note reflects that property at issue is on Garber Road. According to Count One of the complaint, Marzetta was in default under the terms of the note, modification and mortgage and $72,010.36 was due, plus interest.

{¶ 3} In Count Two, USB alleged that the "Conditions of defeasance contained in the Mortgage * * * ha[d] been broken" and USB was "entitled to have its Mortgage foreclosed and all liens and other interests marshaled." The complaint stated that Washington "may claim an interest or right in the subject real property by virtue of being the current titleholder, which interest he should set forth or be forever barred from asserting."

{¶ 4} On May 24, 2018, Washington filed a pro se answer and a counterclaim[1]

[1] Washington called this filing a complaint and "cross-claim", but a defendant's claim against a plaintiff is properly characterized as a counterclaim, and we will refer to it as such.

against USB. Washington asserted that the delinquent balance due and owed as of March 31, 2018 was only $353.76. In his counterclaim, he asserted that he incurred expenses processing advertising brochures for Jim Wendel, Vice President of USB, and he requested that the court "allow reasonable overhead and profit." Washington also filed a "Demand for Impartial Judge from Northern County" and requested a jury trial.

{¶ 5} On May 30, 2018, the court found that Marzetta was "in default for answer or appearance." On June 4, 2018, Washington filed interrogatories, a request for admissions, and a request for the production of documents from USB. On June 5, 2018, USB objected to Washington's demand for an impartial judge from a northern county.

{¶ 6} On June 14, 2018, Washington filed additional interrogatories, requests for admissions, and requests for the production of documents. Washington attached to this document a "motion contra" USB's objections to his motion for an impartial judge and other attachments.

{¶ 7} USB filed an answer to Washington's counterclaim on June 21, 2018.

{¶ 8} On July 24, 2018, the trial court overruled Washington's request for an impartial judge from a northern county. On July 26, 2018, the court referred the matter to a magistrate.

{¶ 9} On July 27, 2018, USB filed a motion for leave to file an amended complaint. The motion stated that "the underlying mortgage foreclosure ha[d] been satisfied," but USB sought to assert causes of action against Washington which arose "under the same facts and circumstances" as Washington's counterclaim. The motion stated that the mortgage loan had been paid in full as a result of the sale of the property by Washington to a third-party purchaser. As a result, USB sought to withdraw its claim for foreclosure

and to assert that Washington's actions resulted in a breach of contract, unjust enrichment, and defamation "when Washington altered USB's advertising materials without authority to do so and distributed these advertisements without authority to do so." The motion further provided that USB sought to add a claim against Washington for tortious interference with a contract, because Washington purchased the property from Marzetta for less than fair market value, agreed to assume the loan payments to USB (without USB's knowledge or assent), and "subsequently cause[d] the default payments on the Marzetta Loan, requiring USB to proceed with this foreclosure action."

{¶ 10} The amended complaint was attached to the motion for leave. It stated that, in the spring of 2017, a representative of USB and Washington had entered into an agreement whereby Washington would distribute advertising material on behalf of USB by mail. The amended complaint asserted that Washington "requested only reimbursement for the costs of mailing." Washington "then fraudulently altered a door knocker advertisement belonging to [USB]" by adding his own contact information and other statements to the door knocker. A copy of the altered door knocker was attached as Exhibit A, and a copy of the original door knocker was attached as Exhibit B. USB alleged that the alterations made by Washington also "concealed required disclosures" that USB was required to make on any of its advertising materials. USB alleged that it did not authorize Washington to make any alterations to its advertising materials, nor did it authorize him to distribute the door knockers on its behalf.

{¶ 11} Further, the amended complaint alleged that Washington entered into a sales contract to purchase the Garber Road property for $3,500, "far less than the fair market value of the property," with knowledge that Marzetta had entered into the

promissory note and mortgage with USB. USB did not consent to this transfer of ownership in the property. According to USB, on December 15, 2016, Marzetta "issued a Quit-Claim deed in favor of" Washington, which was recorded April 18, 2017. USB alleged that Washington represented to the Montgomery County Auditor that the purchase price for the transfer was $111,590, and that after the property was transferred, "the payments to [USB] went into default."

{¶ 12} The magistrate granted leave for USB to file the amended complaint.

{¶ 13} On August 13, 2018, Washington filed a motion for summary judgment, claiming that USB had not filed an answer to his counterclaim. Washington requested a judgment against USB "in an Amount not less tha[n] $12,500.00 plus overhead and costs or not less than $15,000.00." The same day, Washington filed an answer to USB's amended complaint and a counterclaim. In his counterclaim, Washington sought $12,500, plus "Cost and Overhead" from USB for production and delivery of mailings, plus $17,000 for unjust enrichment "for excessive payoff of property." On August 27, 2018, USB filed a motion in opposition to Washington's motion for summary judgment. USB asserted that Washington's motion for summary judgment provided no evidentiary or legal basis for the court to conclude that there were no genuine issues of material fact to be litigated; instead, it merely alleged that USB was "in default of answer despite the fact that the pleadings in this action show otherwise." USB argued that Washington's motion must be denied.

{¶ 14} On August 29, 2018, Washington filed a third set of interrogatories, requests for admissions, and requests for production of documents. On September 6, 2018, he filed an affidavit in which he stated that he had "reviewed his files on several occasions

lately" and found no evidence that USB had filed an answer to his June 4, 2018 counterclaim.

{¶ 15} On September 20, 2018, the magistrate overruled Washington's motion for summary judgment, which is described as "actually a Motion for Default Judgment" governed by Civ.R. 55. The magistrate noted that Washington's motion for summary judgment was "devoid of any law or authority," that his "sole fact" was that USB has failed to answer his counterclaim, and that the court's docket "firmly and without question" established that USB had timely filed an answer on June 21, 2018. On October 10, 2018, the trial court adopted the magistrate's decision.

{¶ 16} On November 2, 2018, USB filed a motion that its requests for admissions be deemed admitted, because Washington had failed to respond. Attached to the motion was an affidavit of Andrew J. Ferguson, an attorney for USB. The affidavit asserted that Washington was served by email with the requests for admissions on September 14, 2018, his responses were due on or before October 12, 2018, and none had been received. The requests for admissions were also attached. The same day, USB also filed a motion for partial summary judgment, asserting that Washington had produced "no evidence [that] he entered into an agreement with USB which provide[d] for the compensation he [was] seeking." An affidavit of Jim Wendel, Vice President of USB, was attached to the motion for summary judgment. The motion stated:

> USB admits that [it] entered into an agreement with Washington whereby he agreed to distribute flyers through USPS deliver[y] to residents in Montgomery County. As averred to by Jim Wendel, Vice President of USB, Washington did not request, nor did USB agree to pay, any

compensation to Washington for his efforts. USB had printed and delivered to Washington the flyers that he was to distribute, and Washington was reimbursed for postage and delivery costs in the amount of $300.00 on March 21, 2017. By failing to respond to USB's requests for admissions, Washington has admitted that he is not entitled to any compensation for his time and that no written agreement with USB exists.

In reviewing the records of this case, Jim Wendel discovered that an additional $258.60 is owed to Washington for additional postage and delivery costs due to a clerical error in which the payment was not processed. USB is prepared to deposit this amount into escrow with the Court or to send the funds directly to Washington. This was the extent of the agreement between USB and Washington. By preparing flyers and reimbursing the postage costs to Washington, USB will have fully performed under the agreement once the additional $258.60 is sent and is not in breach. Washington is not entitled to any further payment from USB.

In addition, Washington unlawfully, and without the knowledge or consent of USB, altered a doorknocker advertisement belonging to USB, had the doorknocker advertisement reproduced, and distributed these door knockers throughout the community. Washington's alterations of the doorknocker caused the Equal Housing Lender and FDIC logos to be removed from the advertisement, and were otherwise false and misleading in that Washington included the language, "Jim Washington, Realtors is giving back to the Trotwood Community with the Assistance of Union

> Savings." This statement was false and misleading because USB has no relationship with Jim Washington, aside from his agreement to mail advertisements created by USB. Washington also added his contact information to the doorknocker.

{¶ 17} Wendel's affidavit stated that, in early 2017, he visited Washington's office "to prospect relationships with realtors in the Greater Dayton Area" to help generate new loan accounts for USB and to advertise USB's Community Outreach program. Wendel averred that he explained to Washington that USB was looking for local professionals to help it advertise this program. According to Wendel's affidavit, Washington stated that he was knowledgeable about the USPS Every Door Direct Mail program and that it would be a "good method for USB to utilize to advertise the Outreach program." According to Wendel, Washington stated that he would be "happy" to assist USB in mailing the advertisement regarding the Outreach program on behalf of USB because "the Dayton market was underserved." Wendel delivered 2,500 self-mailer flyers to Washington for him to distribute through the USPS Every Door Direct Mail program at the end of March 2017, and Washington agreed to do so. Although Wendel "provided Washington with a copy of a door hanger that USB had created," and he and Washington talked about Washington's willingness to distribute these door hangers to Dayton neighborhoods, they did not enter into an agreement for Washington to do so. Wendel averred that Washington altered the door hangers as set forth above, reproduced them, and distributed them to various Dayton communities.

{¶ 18} On November 21, 2018, the trial court granted USB's motion that its requests for admissions be deemed admitted. The requests for admissions, which were

attached to the court's entry as Exhibit A, were as follows:

1. Admit that you stated to a representative of [USB] that you would assist in the distribution of advertising materials.

2. Admit that you did not request [USB] to compensate you for your time in distributing the advertising materials.

3. Admit that [USB] did not agree to compensate you for your time in distributing advertising materials.

4. Admit that [USB] reimbursed you for the costs of mailing the advertising materials.

5. Admit that [USB] did not request you to distribute any door to door advertising materials.

6. Admit that you altered the door to door advertising materials prior to distribution.

7. Admit that [USB] and you did not enter into any agreement to distribute the door to door materials.

8. Admit that you did not enter into any written agreements with [USB].

{¶ 19} On November 27, 2018, Washington filed a motion contra USB's motion for partial summary judgment, to which an affidavit of Malaasia Wilkinson and numerous other documents were attached. Washington cited Civ.R.6(B)(2), argued that his "late pleading" was due to excusable neglect, and argued that the "test for excusable neglect under Civ.R. 6(B)(2) is less stringent than that applied under Civ.R. 60(B)." (Civ.R. 6(B)(2) relates to the extension of time.) Wilkinson's affidavit stated that, on October 10, 2018, Washington sustained burns to his left hand while trying to assist her with car

trouble. Also on November 27, Washington filed answers to USB's interrogatories and requests for admissions.

{¶ 20} On December 20, 2018, the trial court granted USB's motion for partial summary judgment. The court determined as follows:

> * * * On November 27, 2018, [Washington] filed a Motion Contra Partial Summary Judgment and Affidavits of * * * Washington and Wilkinson out of time. As such, the Court will not consider [Washington's] filing. After reviewing the Motions and evidence and being fully advised of the facts and the law, this Court finds that [USB's] Motion is well-taken and is hereby GRANTED.
>
> The court hereby f[i]nds that [USB] and Washington entered into an agreement whereby Washington agreed to mail advertising material on behalf of [USB], that the Parties agreed Mr. Washington would be reimbursed for the costs of shipping and handling of the advertising material, and that the parties did not agree for Washington to be entitled to any additional payment for his time. By its own admission, [USB] has stated Washington is entitled to payment of $258.60 for the costs of postage which has not yet been paid to Washington through inadvertence or mistake of [USB]. [USB] is willing and able to make payment of this amount.
>
> The Court [f]urther [f]inds that there is no material fact left for determination by this Court and that [USB] is entitled to a judgment against Defendant James E. Washington as to his counterclaims, upon payment by [USB] of the remaining $258.60.

> The Court hereby orders [USB] to submit payment to Defendant James E. Washington in the amount of $258.60 by check sent to his home address. Upon submission of this amount, [USB] is directed to file a notice of compliance with the Court.
>
> The Court hereby orders that [USB] is granted summary judgment as to all remaining claims contained within James E. Washington's counterclaim. This matter shall proceed to trial only as to the claims asserted by [USB] against Defendant James E. Washington.

{¶ 21} On December 21, 2018, USB voluntarily dismissed its amended complaint against Washington, without prejudice. On December 31, 2018, it filed a notice of compliance with the court's instruction that it remit a check to Washington for $258.60.

{¶ 22} On January 3, 2019, Washington filed a "Disclosure of Experts." On January 4, 2019, he filed a document captioned "Courts Abuse of Discretion as a Non Impartial Judge Refuse to Recuse Himself," citing Civ.R. 6(B)(2). Washington asserted that a "trial court's Civ.R. 6(B)(2) determination" was "addressed to the sound discretion of the trial court * * *." He further argued as follows regarding the judge's "refusal to recuse himself" and appoint a judge from another part of the state:

> * * * Defendant presented evidence of Montgomery County Commissioners, The Montgomery County Sheriff and the Montgomery County Prosecutors refusal to honor FOIC request * * *. Further Plaintiff ignored and refused to honor FOIC request. Montgomery County Commissioner refused to reveal how much The Sheriff's Office paid for Friday morning use of the top floor of the County office Building. The

Montgomery County Sheriff's office runs a local REO Auction wherein no Black Realtors in Montgomery County and the 12 surrounding Counties are allowed to participate in the Listing, Sales of any Real Estate Properties as a result of the free taxpayer use of County Property.

{¶ 23} Also on January 4, 2019, Washington filed a motion contra the granting of USB's motion for partial summary judgment. He argued therein in part as follows:

The Court[']s motion is not well taken and was issued in spite of Jim Wendel[']s Affidavit dated attached 1-November-2018 where in on page 7 item 5 admits under oath that Defendant Washington was suppose[d] to be re-imbursed for the cost of postage and HANDLING. Handling included but was not limited to re-construc[t]ion of the brochure with Defendant Washington's EDDR mailing stamp, folding, taping brochure at both ends, counting into bundles o[f] 50, placing rubber bands around each bundle, facing with the EDDR stamp showing with a face plate downloaded from the US Postal site and placed in each USPS Trays front with a route number on each tray. Each tray had to be delivered to each post office according to zip codes.

Handling of EDDR mail averages from 70 cents to 95 cents per piece plus mileage.

{¶ 24} On January 24, 2019, the court issued a final judgment entry, which stated:

On December 20, 2018, the Court entered its Entry Granting Plaintiff's Motion for Partial Summary Judgment wherein summary judgment was granted in favor of [USB] and against * * * Washington * * *

as to all claims asserted by Washington in his counter-claims against USB. The Court's December 20, 2018 Entry did not address USB's claims against Washington as asserted in the Amended Complaint.

On December 21, 2018, USB filed a Notice of Dismissal, voluntarily dismissing its Amended Complaint against Washington.

Based on the foregoing record in this matter, the Court hereby finds that all claims in this action have been either dismissed without prejudice or decided in USB's favor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that final judgment is hereby entered in favor of USB and against Washington as to Washington's counter-claims.

* * *

This is the final judgment entry of the Court and there is no just reason for delay.

{¶ 25} Washington appeals, raising multiple assignments of error. On page six of his brief he asserts his first assigned error is as follows:

TRIAL COURT "DENIAL OF DEFENDANT CIV.R[.] 60(B) HEARING" WAS A[N] "ABUSE OF D[I]SCRETION[.]"

{¶ 26} Later in his brief he asserts his first assignment of error as follows:

THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT WASHINGTON'S MOTION FOR RELIEF UNDER CIV.R. * * * 60(B).

{¶ 27} Washington argues that he "had caused the property in question to be paid

off in full via cash on June 20, 2018, even though [USB] engaged in unjust enrichment by causing or manipulating the loan balance in a manner that caused [Washington] to pay at least $7,900.00 more than was due." Washington asserts that he filed a timely motion for relief from judgment, which included "all of the operative facts and affidavits which warranted relief under Civ.R. 60(B)," and that the trial court should have held a hearing to take evidence and verify those facts before it ruled on the motion.

{¶ 28} USB responds that, while Washington "submitted many filings" in the trial court, he never filed a Civ.R. 60(B) motion. According to USB, since Washington's filings, including his motion contra USB's motion for partial summary judgment, were filed prior to the trial court's final judgment entry, Civ.R. 60(B) had no application and Washington's motion was actually a motion for reconsideration of the trial court's decision. USB notes that Washington's motion contra partial summary judgment contained legal theories that discussed a Civ.R. 6(B) motion for an extension of time, but "Washington provided no factual basis to support an excusable neglect claim aside from a purported 'affidavit' of Malaasia Wilkinson." Although Wilkinson averred that Washington burned his hand on October 10, 2018, that date was 23 days prior to when USB filed and served its motion for partial summary judgment and 37 days prior to the date Washington's response to that motion was due. USB argues that the trial court did not abuse its discretion because Washington failed to set forth any factual or legal argument as to why the burn he allegedly suffered 37 days prior to his response date "caused or created excusable neglect for his failure to respond in time."

{¶ 29} We agree with USB that Washington did not file a motion for relief from judgment. "[W]e emphasize that Civ.R. 60(B) applies only to final appealable orders."

BJ Building Co., LLC v. LBJ Linden Co., LLC, 2d Dist. Montgomery No. 21005, 2005-Ohio-6825, at ¶ 39. "R.C. 2505.02 defines which orders are final. R.C. 2505.02(B)(1) provides that an order is final if it 'affects a substantial right in an action that in effect determines the action and prevents a judgment.' " *Id.* at ¶ 40. The trial court's grant of partial summary judgment in favor of USB on Washington's claim was not a final, appealable order, and it did not contain the Civ.R. 54(B) certification that there was "no just reason for delay," as did the court's January 24, 2019 final judgment entry. Accordingly, Washington did not properly seek Civ.R. 60(B) relief.

{¶ 30} To the extent that, in his motion contra USB's motion for partial summary judgment," Washington may have merely sought reconsideration of the trial court's grant of partial summary judgment against him, as USB suggests, Civ.R. 54 provides:

> * * * In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

{¶ 31} As this Court has previously noted:

> A trial court "retains jurisdiction to reconsider its interlocutory orders, either *sua sponte* or upon motion, any time before it enters final judgment in the case." *Nilavar v. Osborn* (2000), 137 Ohio App.3d 469, 499, 738 N.E.2d 1271. Because the trial court has this plenary power of

> reconsideration, a "reviewing court, therefore, should not reverse a trial court's judgment absent an abuse of discretion." *Vanest v. Pillsbury Co.* (1997), 124 Ohio App.3d 525, 535, 706 N.E.2d 825.

Stuck v. Coulter, 2d Dist. Darke No. 1707, 2008-Ohio-485, ¶ 22.

{¶ 32} "An abuse of discretion occurs when the trial court's decision is unreasonable, arbitrary, or unconscionable." *Rucks v. Moore*, 2d Dist. Montgomery No. 27928, 2018-Ohio-4692, ¶ 7.

{¶ 33} Having reviewed Wendel's sworn affidavit and considering Washington's admissions as deemed by the court, we see no abuse of discretion. In his affidavit, Wendel averred that the only agreement entered into between USB and Washington was for the reimbursement of postage and handling costs, that USB did not agree to compensate Washington for his time, and that USB did not agree to Washington's distribution of door-to-door materials. Washington was deemed to have admitted that he did not request compensation and USB did not agree to compensate him for his time in distributing advertising materials, that USB reimbursed him for the costs of mailing the advertising materials, that USB did not request that he distribute door-to-door advertising materials, and that he did not enter into a written agreement with USB. For the foregoing reasons, Washington's first assignment of error is overruled.

{¶ 34} On page 6 of his brief, Washington lists the following as his second assignment of error:

> PLAINTIFF-APPELLANT UNION SAVINGS BANK UNJUSTLY ENRICHED [ITSELF] BY MANIPULATION OF THE PAYOFF BALANCE BY AT LEAST $7,900.00. * * * PLAINTIFF-APPELLANT UNION SAVINGS

BANK REFUSE[D] TO PROVIDE ACCURATE PAYOFF INFORMATION UNDER THE STATE AND FEDERAL FOIC * * *.

{¶ 35} In the body of his brief, Washington lists the following as his second assignment of error:

ENTRY GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

{¶ 36} Washington's third assignment of error is as follows:

PLAINTIFF-APPELLANT UNION SAVINGS BANK OWES DEFENDANT-APPELLANT WASHINGTON $3,214.00 FOR FLYERS MAILED THRU US POSTAL EDDR.

{¶ 37} We will consider these assignments of error together as an argument that the trial court erred in entering final judgment in favor of USB and against Washington as to his counterclaim.

{¶ 38} As this Court has noted:

Summary judgment is proper when (1) there is no genuine issue as to any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds, after construing the evidence most strongly in favor of the nonmoving party, can only conclude adversely to that party. Civ.R. 56(C); *Zivich v. Mentor Soccer Club, Inc.,* 82 Ohio St.3d 367, 369-370, 696 N.E.2d 201 (1998). The moving party carries the initial burden of affirmatively demonstrating that no genuine issue of material fact remains to be litigated. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798 (1988). To this end, the movant must be able to point to evidentiary materials of the type listed in Civ.R. 56(C), "the pleadings, depositions,

answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action," to show that there is no genuine issue as to any material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996).

Once the moving party satisfies its burden, the nonmoving party may not rest upon the mere allegations or denials of the party's pleadings. *Dresher* at 293; Civ.R. 56(E). Rather, the burden then shifts to the nonmoving party to respond, with affidavits or as otherwise permitted by Civ.R. 56, setting forth specific facts that show that there is a genuine issue of material fact for trial. *Id.* Throughout, the evidence must be construed in favor of the nonmoving party. *Id.*

We review the trial court's ruling on a motion for summary judgment de novo. *Hudson v. Petrosurance, Inc.,* 127 Ohio St.3d 54, 2010-Ohio-4505, 936 N.E.2d 481, ¶ 29; *Schroeder v. Henness*, 2d Dist. Miami No. 2012 CA 18, 2013-Ohio-2767, ¶ 42. De novo review means that this court uses the same standard that the trial court should have used, and we examine the evidence, without deference to the trial court, to determine whether, as a matter of law, no genuine issues exist for trial. *Ward v. Bond*, 2d Dist. Champaign No. 2015-CA-2, 2015-Ohio-4297, ¶ 8.

Vectren Energy Delivery of Ohio, Inc. v. Bansal Constr., Inc., 2d Dist. Montgomery No. 27815, 2018-Ohio-2861, ¶ 9-11

{¶ 39} Washington asserts that the trial court erred in granting USB's motion for partial summary judgment because "no agreement existed" between Washington and

USB. Citing Wendel's affidavit, he asserts that USB owed him $3,214 for "mailings, printing, and 'HANDLING' and 'Redesign,' " and that USB only paid him $558.60.

{¶ 40} According to Washington, USB also owed him over $7,900 "for unjust enrichment when [Washington] paid off the loan on June 20, 2018." He argues that he attempted to obtain the correct loan payoff balance "using the Fed FOIC and the Ohio FOIC * * * and [USB] refused" to provide that information, stating that "neither FOIC [a]pplied." He also alleges "LOAN PAYOFF MANIPULATIONS," and that USB refused "to discuss this loan balance situation, only threat[en]ing to proceed with foreclosure unle[ss] the loan was closed."

{¶ 41} As noted above, Washington's counterclaim alleged that he was entitled to be paid for "reasonable overhead and profit" based upon his agreement with USB for distributing advertising materials. We conclude that the foregoing affidavit and admissions establish the absence of a genuine issue of material fact as to Washington's counterclaim for reasonable overhead and profit.

{¶ 42} In his answer to the amended complaint and counterclaim, Washington also argued that USB was unjustly enriched in the amount of $17,000 "for excessive payoff of property." Washington's argues that USB somehow manipulated the loan payoff on the property that was the subject of the foreclosure complaint. He asserts that USB was unjustly enriched.

{¶ 43} Unjust enrichment occurs when one party confers some benefit upon another without receiving just compensation for the reasonable value of the services rendered. *Quadtek, Inc. v. Foister*, 12 Dist. Warren No. CA2004-09-112, 2005-Ohio-4191, ¶ 22. An unjust enrichment claim, however, is barred by the existence of an

express written contract that governs the same subject matter. *Caras v. Green & Green*, 2d Dist. Montgomery No. 14943, 1996 WL 407861, *4 (June 28, 1996). Any claim for unjust enrichment under the facts of this case was necessarily barred.

{¶ 44} USB had a valid and enforceable promissory note and mortgage loan ("loan agreement") with Marzetta. The loan agreement was fully satisfied, which resulted in USB amending its complaint to dismiss the complaint for foreclosure. The payoff amount referenced in Washington's third assignment of error is a reference to the amount necessary to satisfy the loan agreement with Marzetta. These amounts were authorized to be charged through the express written language included in the loan agreement. As this subject matter was subject to an express written contract with Marzetta, Washington's unjust enrichment allegations necessarily fail.

{¶ 45} Furthermore, Washington does not have privity of contract with USB with regard to the loan agreement between USB and Marzetta. Thus, Washington does not have standing to assert a cause of action against USB in relation to the loan agreement. "A plaintiff must have a contractual relationship with a defendant in order to recover damages for economic loss." *OC Property Mgt., L.L.C. v. Gerner & Kearns Co., L.P.A.*, 8th Dist. Cuyahoga No. 90736, 2008-Ohio-4709, ¶ 13. The existence of privity or a sufficient substitute for privity is required before a person can seek a claim against a defendant in contract for economic loss. *Fed. Ins. Co. v. Fredericks*, 2015-Ohio-694, 29 N.E.3d 313, ¶ 28 (2d Dist.).

{¶ 46} Washington's third assignment of error is merely an attempt to assert economic loss as a result of an action undertaken by USB pursuant to its written contract with Marzetta. Even if Washington had denominated his claim as a breach of contract

claim, his action would have failed, as he lacked privity with USB. USB entered into an agreement with Marzetta for the payment of the mortgaged debt. Washington had no rights under the agreement between Marzetta and USB, expressed or implied. Accordingly, Washington lacked privity of contract with USB to assert any cause of action related to the payoff of the Marzetta mortgage.

{¶ 47} For the foregoing reasons, the above assigned errors are overruled. The judgment of the trial court is affirmed.

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FROELICH, J. and TUCKER, J., concur.

Copies sent to:

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