[Cite as *Keogh v. Invest in Ohio.com, L.L.C.*, 2018-Ohio-2007.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JAMES F. KEOGH

Plaintiff-Appellee

-vs-

INVEST IN OHIO.COM, LLC AKA INVEST IN OHIO.COM ET AL.

Defendants-Appellants

JUDGES:
Hon. John W. Wise, P.J.
Hon. W. Scott Gwin, J.
Hon. William B. Hoffman, J.

Case No. 2017CA00192

O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Common Pleas, Case No. 2017CV00365
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	May 21, 2018

APPEARANCES:

For Appellee	For Appellants
LANCE D. GILL 3570 Executive Drive, Suite 201 Uniontown, OH 44685	DANIEL S. WHITE 34 Parmelee Drive Hudson, OH 44236

Hoffman, J.

{¶1} Appellants Invest in Ohio.com, LLC aka Invest in Ohio.com (hereinafter "Invest") and Danielle G. Hayduk appeal the summary judgment of foreclosure entered against them by the Stark County Common Pleas Court. Appellee is James F. Keogh.

STATEMENT OF THE FACTS AND CASE

{¶2} Between the dates of June 30, 2014, and January 14, 2016, Appellants entered into four loan transactions with Appellee, which were secured by four properties owned by Invest. The cognovit promissory notes Appellants executed were secured by mortgages on four properties owned by In-Touch. Appellant Danielle Hayduk was the sole member of the Invest Corporation, and guaranteed payment on each of the loans.

{¶3} Appellants defaulted in the payments due under the cognovit notes. Under the terms of the notes, Appellants waived presentment and demand for payment, notice of dishonor, protest and notice of protest, and further confessed judgment in favor of Appellee under the cognovit terms of each note.

{¶4} Appellee filed the instant action in foreclosure on February 21, 2017. The action set forth eight counts against the following properties:

Counts One and Two: 1115 Ardmore SW, Canton

Counts Three and Four: 3015 12th Street SW, Canton

Counts Five and Six: 3105 14th Street SW, Canton

Counts Seven and Eight: 1390 Ivydale SW, Canton

{¶5} Appellee filed a motion for summary judgment on July 11, 2017, attaching his own affidavit. Appellee later discovered errors in his calculations regarding amounts

due, and filed a supplement to his motion, including an affidavit of Laura Zietlow, CPA, and his own amended affidavit.

{¶6} Appellants filed their response on August 11, 2017, attaching the affidavit of Appellant Hayduk. Hayduk disputed the amounts due on some of the notes. She also averred she did not receive notice of default and acceleration of the loans secured by 1115 Ardmore and 3105 14th Street.

{¶7} Appellee filed an affidavit in response. In his affidavit he stipulated as to the payoff balances set forth in Hayduk's affidavit as to all four properties.

{¶8} Appellants filed a motion seeking an extension of time to respond to Appellee's supplement to his motion. The trial court denied the motion for failure to comply with Civ. R. 56(F), but nonetheless afforded Appellants seven additional days to file a response to the supplement to the motion for summary judgment. Appellants did not file an additional response.

{¶9} The court entered summary judgment of foreclosure on all counts on September 15, 2017 in the amounts reflected in Appellant Hayduk's affidavit and as stipulated to by Appellee. It is from this judgment Appellants prosecute their appeal, assigning the following error:

> THE TRIAL COURT'S DECISION TO GRANT THE APPELLEE'S MOTION FOR SUMMARY JUDGMENT CONSTITUTES REVERSIBLE ERROR.

{¶10} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.,* 30 Ohio St.3d 35, 36 (1987). As such, we must refer to Civ. R. 56(C) which provides in pertinent part:

> 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. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that 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, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

{¶11} Pursuant to the above rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record which demonstrate the absence of a genuine issue of material

fact. The moving party may not make a conclusory assertion the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating a genuine issue of material fact for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 1997-Ohio-259, *citing Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107.

{¶12} App. R. 16(A)(7) requires the brief of the appellant to include an argument with respect to each assignment of error, with reasons in support of the contentions and citations to the parts of the record on which the appellant relies. Local Rule 9(A)(2) further requires, in an appeal from a summary judgment, the brief of the appellant to include a statement on a separate page following the assignments of error which sets forth whether the appellant claims summary judgment is inappropriate on the undisputed facts or claims there is a genuine dispute as to a material fact, with a separate statement of the factual issues claimed in the trial court to have been material and disputed. Appellants did not comply with either rule in the instant case. Appellants argue in conclusory fashion at page six of their brief, “In the instant case, numerous genuine issues of material fact exist, requiring that the motion for summary judgment be denied,” without specifying what such disputed material facts are, and where their claims are demonstrated by the record.

{¶13} However, upon review of the record, we find no error in the summary judgment entered by the trial court. Appellants did not present any evidence disputing the loans were in default. Appellant Hayduk’s affidavit disputed the amounts due under the notes. However, in response Appellee filed an affidavit stipulating to the amounts due

as set forth in Hayduk's affidavit. Accordingly, there are no disputed facts as to the amounts due.

{¶14} As to the Ardmore property in counts one and two and the 14th Street property in counts five and six, Appellant Hayduk averred she did not receive notice of default and intent to accelerate. However, the cognovit notes attached to the complaint, as well as the supplemental affidavit of Keogh, establish Appellants had waived notice. Appellants have presented no evidence to refute the claim of waiver.

{¶15} The assignment of error is overruled. The judgment of the Stark County Common Pleas Court is affirmed.

By: Hoffman, J.

Wise, John, P.J. and

Gwin, J. concur