

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

OHIO RECEIVABLES LLC,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-L-099
ALBERT L. PUROLA,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 10CV002025.

Judgment: Reversed and remanded.

Jackson T. Moyer, and Parri J. Hockenberry, 471 East Broad Street, 12th Floor, Columbus, OH 43215 (For Plaintiff-Appellee).

Albert L. Purola, pro se, 38298 Ridge Road, Willoughby, OH 44094 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Albert L. Purola, appeals from a judgment of the Lake County Court of Common Pleas, granting appellee’s, Ohio Receivables LLC’s, motion for summary judgment.

{¶2} By way of background, Ohio Receivables filed a complaint against Purola to recover \$18,589.88, plus accrued interest of \$8,563.55, future interest, and costs. Ohio Receivables claims that it is the real party in interest, alleging that it succeeded to an obligation on a credit card account that Purola opened with Chase Bank USA N.A.,

upon which he later defaulted. Ohio Receivables claims Purola's account was sold by Chase to Turtle Creek Assets, Ltd. and that Turtle Creek subsequently sold Purola's account to Ohio Receivables.

{¶3} Purola does not dispute that he opened an account with Chase, defaulted on his obligation, and owes the specified balance. Rather, Purola argues that Ohio Receivables is not the real party in interest.

{¶4} Ohio Receivables was awarded summary judgment. Purola filed a timely appeal asserting the following assignment of error:

{¶5} "The trial court erred in granting summary judgment."

{¶6} Purola is not challenging that Chase issued him a credit card or the balance owed on the account. Instead, Purola argues the court erred in concluding that Ohio Receivables is the real party in interest because Ohio Receivables failed to establish that his account was one of the accounts acquired by Ohio Receivables.

{¶7} Thus, we need to determine whether the affidavits, together with the factual allegations and submissions, demonstrate that Purola's account was one of the accounts transferred from Chase to Turtle Creek, and then from Turtle Creek to Ohio Receivables.

{¶8} An appellate court reviews a trial court's decision to grant a motion for summary judgment under a de novo standard. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment is proper when: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most

strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. Civ.R. 56(C); *Welco Indus., Inc. v. Applied Cos.*, 67 Ohio St.3d 344, 346, 617 N.E.2d 1129 (1993).

{¶9} Once the moving party has met its burden of supporting its motion with sufficient admissible evidence, the nonmoving party has a reciprocal burden under Civ.R. 56(E) to set forth facts showing that there is a genuine issue for trial. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). If the nonmoving party does not satisfy this reciprocal burden, summary judgment, if appropriate, shall be granted against the nonmoving party. Civ.R. 56(E).

{¶10} Civ.R. 17(A) requires that “[e]very action shall be prosecuted in the name of the real party in interest.” “A ‘real party in interest’ has been defined as any individual or entity who has a real interest in the subject matter of the litigation and not a mere interest in the action itself, i.e., ‘one who is *directly* benefited or injured by the outcome of the case.’ (Emphasis sic.)” *Midwest Business Capital v. RFS Pyramid Mgt., LLC.*, 11th Dist. No. 2011-T-0030, 2011-Ohio-6214, at ¶19, quoting *Shealy v. Campbell*, 20 Ohio St.3d 23, 24, 485 N.E.2d 701 (1985).

{¶11} Although Ohio Receivables claims to be the real party in interest, it is not clear from the submissions that it is the owner of Purola’s outstanding obligation. The bills of sale between Chase and Turtle Creek and later between Turtle Creek and Ohio Receivables are general, one-page documents transferring interest in Chase accounts. Both bills of sale describe the specific transferred accounts in “Exhibit 1.” The only way to determine which specific accounts were in fact transferred is to review each “Exhibit 1.”

{¶12} In order to protect the identities of other accountholders not subject to this lawsuit, a redacted copy of “Exhibit 1” referenced in the bill of sale from Chase to Turtle Creek listing Purola’s account was submitted by Ohio Receivables. Thus, the evidence establishes that Chase specifically sold Purola’s debt to Turtle Creek. However, “Exhibit 1,” or a redacted copy, referenced in the bill of sale from Turtle Creek to Ohio Receivables was not submitted by Ohio Receivables. Therefore, the evidence does not establish that Purola’s specific account was later transferred from Turtle Creek to Ohio Receivables.

{¶13} Specifically, with respect to the transfer between Chase and Turtle Creek, the bill of sale generally states that 25,756 Chase accounts were sold to Turtle Creek and describes the transferred accounts in “Exhibit 1.” In an effort to show that Chase transferred Purola’s account to Turtle Creek, Ohio Receivables submitted affidavits from its custodian of record, Elaine North, and its Vice President, Gabriel Cheek.

{¶14} North attached to her affidavit the Cardmember Agreement between Purola and Chase, over three years of credit card statements, copies of payments that Purola made on the account, and the bill of sale between Chase and Turtle Creek. However, North did not attach “Exhibit 1,” or a redacted copy, referenced in that bill of sale. Thus, North’s affidavit and attachments do not establish that Chase specifically sold Purola’s debt to Turtle Creek.

{¶15} However, Ohio Receivables established that Chase specifically sold Purola’s debt to Turtle Creek through Cheek’s affidavit and attachments. Cheek attached to his affidavit the bill of sale between Chase and Turtle Creek, and a redacted copy of “Exhibit 1” from that bill of sale. That redacted copy of “Exhibit 1” is a

spreadsheet listing Purola's account by name and account number, showing that Purola's account was one of the transferred accounts from Chase to Turtle Creek. Thus, Cheek's affidavit and attachments establish that Chase specifically sold Purola's debt to Turtle Creek.

{¶16} However, Ohio Receivables fails to establish that it later purchased Purola's specific debt from Turtle Creek. With respect to the transfer between Turtle Creek and Ohio Receivables, the bill of sale generally states that 846 of the 25,756 accounts that Turtle Creek purchased from Chase were sold to Ohio Receivables and describes the transferred accounts in "Exhibit 1."

{¶17} In an effort to show that Turtle Creek transferred Purola's account to Ohio Receivables, North attached to her affidavit the bill of sale between Turtle Creek and Ohio Receivables. However, she did not attach "Exhibit 1," or a redacted copy, referenced in that bill of sale, in order to show that Purola's specific account was transferred from Turtle Creek to Ohio Receivables. Cheek averred that the bill of sale between Turtle Creek and Ohio Receivables as well as the spreadsheet listing Purola's alleged transferred account referenced in "Exhibit 1" were attached to his affidavit. However, they were not. As stated, the only documents attached to Cheek's affidavit were the bill of sale between Chase and Turtle Creek and a redacted copy of "Exhibit 1" from that bill of sale. Thus, neither submission establishes that Turtle Creek sold Purola's account to Ohio Receivables.

{¶18} Ohio Receivables has not presented sufficient evidence, at this point, to show that Purola's account was transferred from Turtle Creek to Ohio Receivables. Thus, there is a genuine issue of material fact as to whether Purola's account was

ultimately acquired by Ohio Receivables and whether Ohio Receivables is the real party in interest. Therefore, the trial court erred in granting Ohio Receivables' motion for summary judgment.

{¶19} For the foregoing reasons, appellant's sole assignment of error is well-taken. The judgment of the Lake County Court of Common Pleas is reversed and the matter is remanded for further proceedings consistent with this opinion.

DIANE V. GRENDALL, J.,

MARY JANE TRAPP, J.,

concur.