

non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "*** 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. ***" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} This case involves the purchase of lottery tickets by plaintiff from a Convenient Food Mart (CFM) store owned and operated by defendants/third-party plaintiffs. Plaintiff claims that he was misled by defendants/third-party plaintiffs' employees regarding the lottery rules. In its third-party complaint defendants/third-party plaintiffs allege:

{¶5} "2. At all times mentioned herein, third party defendant, Ohio Lottery Commission was[.] and is, an entity authorized under Ohio statute to establish, regulate, fund, conduct and supervise

certain games of chance and/or contests and/or lotteries, organized & existing under the laws of the state of Ohio.

{¶6} "3. If the Defendants are found to be liable to the plaintiff, said liability is specifically denied, then Defendants state that their negligence or any other alleged wrongful acts, if any, is secondary to the primary responsibility of the third party defendant, Ohio Lottery Commission, and the defendants are entitled to indemnity from the third party defendant, Ohio Lottery Commission."

{¶7} The third-party complaint does not allege any specific act that OLC did or did not perform that would subject OLC to liability to defendants/third-party plaintiffs under the indemnity theory set forth in the third-party complaint. Moreover, plaintiff has not filed a response to the motion.

{¶8} The Tenth District Court of Appeals has stated:

{¶9} "The moving party bears the initial responsibility 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 fact on a material element of one or more of the nonmoving party's claims for relief. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1, 2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of*

Ohio, Inc. (June 28, 2001), Franklin App. No. 00AP-1110." *Nu-Trend Homes, Inc., et al. v. Law Offices of DeLibera, Lyons & Bibbo, et al.*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

{¶10} In support of its motion for summary judgment, OLC submitted the deposition testimony of Harjinder Singh, owner and manager of the CFM store where plaintiff purchased the tickets at issue. Singh acknowledged that he had been trained by OLC regarding the rules of the lottery; that he knew the rules, and that he had no criticisms of OLC.

{¶11} In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that OLC is not liable to defendants/third-party plaintiffs under an indemnity theory. Consequently, there are no genuine issues of material fact for trial and OLC is entitled to judgment as a matter of law.

{¶12} A non-oral hearing was conducted in this case upon third-party defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, third-party defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of third-party defendant. Court costs are assessed against defendants/third-party plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

{¶13} Accordingly, the court finds that the state is no longer a party to this action; therefore, pursuant to R.C. 2743.03(E)(2) this case shall be REMANDED to the Cuyahoga County Court of Common Pleas. The clerk is directed to return the original papers thereto.
