

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

GORDON BROOKS

Case No. 2006-05438

Plaintiff

Judge Joseph T. Clark
Magistrate Matthew C. Rambo

v.

MAGISTRATE DECISION

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

{¶1} On November 29, 2006, defendant filed an amended answer. Plaintiff did not oppose the filing. Defendant is sua sponte GRANTED leave to amend its answer. On March 13, 2007, defendant filed a motion for summary judgment. Plaintiff did not file a response. On April 19, 2007, an oral hearing was held at the Southern Ohio Correctional Facility (SOCF) on defendant's motion.

{¶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, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

Case No. 2006-05438	- 2 -	MAGISTRATE DECISION
---------------------	-------	---------------------

{¶4} At all times relevant to this action plaintiff was an inmate in the custody and control of defendant at SOCF. Plaintiff alleges that on June 6, 2005, he was placed in segregation by defendant's employees and was denied the opportunity to "pack-up" his personal property. Plaintiff claims that defendant's employees did not promptly pack his property and that numerous items were lost or damaged as a result. Defendant raises the affirmative defense of accord and satisfaction.

{¶5} Defendant attached to its motion for summary judgment an affidavit from James Goodman, the institutional inspector at SOCF. Accompanying Goodman's affidavit are both a document titled "Release of Claim" (release) that was signed by plaintiff and dated September 15, 2005, and a copy of the October 5, 2005, settlement warrant issued to plaintiff in the amount of \$96.81. Defendant asserts that the settlement warrant was bargained for, and accepted by plaintiff and that it operates as a bar to plaintiff's claim under the doctrine of accord and satisfaction.

{¶6} In Ohio, "[w]hen an accord and satisfaction is pled by the defendant as an affirmative defense, the court's analysis must be divided into three distinct inquires. First, the defendant must show that the parties went through a process of offer and acceptance — an accord. Second, the accord must have been carried out — a satisfaction. Third, if there was an accord and satisfaction, it must be have been supported by consideration." *Allen v. R.G. Indus. Supply* (1993), 66 Ohio St.3d 229, paragraph one of the syllabus. In *Allen*, the court observed that "[t]wo essential safeguards built into the doctrine of accord and satisfaction protect creditors from overreaching debtors: '[1] there must be a good-faith dispute about the debt and [2] the creditor must have reasonable notice that the check is intended to be in full satisfaction of the debt.'" *Id.* at 232; citing *AFC Interiors v. DiCello* (1989), 46 Ohio St.3d 1, 12. While the relationship between the parties in this case is not technically that of a debtor and creditor, the safeguards still apply.

Case No. 2006-05438	- 3 -	MAGISTRATE DECISION
---------------------	-------	---------------------

{¶7} By signing the release, plaintiff acknowledged that “in consideration of \$96.81” he would “voluntarily and knowingly” release all claims against defendant based upon the loss of his property on June 6, 2005, and that he understood the terms and conditions contained in the release. The court notes that the release was also signed by SOCF Warden, Edwin Voorhies.

{¶8} Upon examination of the release and consideration of the applicable standards, the court finds that the document signed by plaintiff shows that the parties participated in a “good-faith” exchange concerning defendant’s liability for the loss of plaintiff’s property, and that an accord was reached to settle the dispute. Furthermore, the court finds that the accord was satisfied by the settlement warrant issued to plaintiff. Thus, defendant has met its burden of proof regarding the affirmative defense of accord and satisfaction.

{¶9} As stated above, plaintiff did not file a response to defendant’s motion, nor did he provide the court with any affidavit or other permissible evidence to support his allegations. Civ.R. 56(E) states, in part, as follows:

{¶10} “*** When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.”

{¶11} Upon consideration of the arguments presented by the parties and the evidence provided by defendant, the court finds that no genuine issues of material fact exist and that defendant is entitled to judgment as a matter of law. Accordingly, it is recommended that defendant’s motion for summary judgment be granted and that judgment be rendered in favor of defendant.

[Cite as *Brooks v. Ohio Dept. of Rehab. & Corr.*, 2007-Ohio-3868.]

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

MATTHEW C. RAMBO
Magistrate

cc:

Gordon Brooks, #389-393 P.O. Box 45699 Lucasville, Ohio 45699	Daniel R. Forsythe Assistant Attorney General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130
MR/cmd	

Filed June 27, 2007
To S.C. reporter July 30, 2007