

[Cite as *Hillstreet Fund III, L.P. v. Bloom*, 2009-Ohio-6583.]

IN THE COURT OF APPEALS OF MIAMI COUNTY, OHIO

THE HILLSTREET FUND III, L.P. :  
 Plaintiff-Appellee : C.A. CASE NO. 09CA12  
 vs. : T.C. CASE NO. 08-177  
 DONALD BLOOM, et al. : (Civil Appeal from  
 Defendants-Appellants : Common Pleas Court)

. . . . .

O P I N I O N

Rendered on the 11<sup>th</sup> day of December, 2009.

. . . . .

Jason V. Stitt, Atty. Reg. No.0078513; Allison Bisig Oswald, Atty.  
 Reg. No. 0080601, One East 4<sup>th</sup> Street, Suite 1400, Cincinnati, OH  
 45202  
 Attorneys for Plaintiff-Appellee

Donald R. Bloom; Brenda C. Bloom, 8242 Innsbrook Lane, Springboro,  
 OH 45066  
 Defendants-Appellants, pro se

. . . . .

GRADY, J.:

{¶ 1} On March 9, 2009, Plaintiff, The Hillstreet Fund III,  
 L.P. ("Hillstreet") filed its complaint in foreclosure against  
 Defendants, Donald R. Bloom and Brenda C. Bloom, in the court of  
 common pleas of Miami County. Hillstreet's complaint pleaded that

the Blooms are indebted to Hillstreet in the sum of \$5,500,000.00, and that a judgment against the Blooms and in favor of Hillstreet on that indebtedness has been granted by the court of common pleas of Hamilton County. A certificate of the Hamilton County judgment was attached to Hillstreet's complaint, along with the legal descriptions of two parcels of real property in Miami County titled in Brenda Bloom's name and to which Hillstreet's recourse against her under the Hamilton County judgment is limited.

{¶ 2} The Blooms answered, admitting that Hillstreet's recourse against Brenda Bloom under the Hamilton County judgment is limited to the two parcels, but denying that the Hamilton County judgment remains unsatisfied. The Blooms alleged that Hillstreet "has or will be paid all or a material substantial sum against the judgment amount of distributions in certain bankruptcy proceedings pending in the United States Bankruptcy Court, Southern District of Ohio," in three separate cases.

{¶ 3} Hillstreet moved for summary judgment, arguing that its judgment remains unsatisfied. The motion was supported by an affidavit of Christian L. Meininger, who averred that the amount of the Hamilton County judgment remains due and owing.

{¶ 4} The Blooms filed a memorandum contra Hillstreet's motion, supported by an affidavit of Donald Bloom. The affidavit avers that "upon information and belief" certain assets in which

the Blooms had an interest were sold in the bankruptcy proceedings mentioned in their complaint and that some or all of the proceeds were paid to Hillstreet. Bloom's affidavit further states:

{¶ 5} "18. Affiant states that Affiant met with Tom Prozo, the accountant and duly authorized representative of The Hillstreet Fund.

{¶ 6} "19. Based upon . . . the statements/admissions made to Affiant by Tom Prozo, the accountant and duly authorized representative of The Hillstreet Fund, The Hillstreet Fund has been paid or acknowledges credits against the Hillstreet loans in the amount of Seven Million One Hundred Ninety-Nine Thousand Six Hundred Seventy-Five Dollars (\$7,199,675.00)."

{¶ 7} The trial court found that the Blooms had failed to go forward with any evidentiary material establishing that a genuine material fact exists, and on that basis granted summary judgment for Hillstreet on its complaint in foreclosure. The court subsequently granted a decree in foreclosure against Brenda Bloom's interest in the two parcels and ordered a sheriff's sale of Brenda Bloom's properties. The Blooms filed a notice of appeal from that order.

ASSIGNMENT OF ERROR

{¶ 8} "THE TRIAL COURT ERRED IN GRANTING THE PLAINTIFF-APPELLEE'S MOTION FOR SUMMARY JUDGMENT."

{¶ 9} Summary judgment may not be granted unless the entire record demonstrates that there is no genuine issue of material fact and that the moving party is, on that record, entitled to judgment as a matter of law. Civ.R. 56. The burden of showing that no genuine issue of material fact exists is on the moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64. All evidence submitted in connection with a motion for summary judgment must be construed most strongly in favor of the party against whom the motion is made. *Morris v. First National Bank & Trust Co.* (1970), 21 Ohio St.2d 25. In reviewing a trial court's grant of summary judgment, an appellate court must view the facts in a light most favorable to the party who opposed the motion. *Osborne v. Lyles* (1992), 63 Ohio St.3d 326. Further, the issues of law involved are reviewed de novo. *Nilavar v. Osborn* (1998), 127 Ohio App.3d 1.

{¶ 10} When the moving party has satisfied its burden, "the non-moving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the non-movant does not so respond, summary judgment, if appropriate, shall be entered for the moving party."

*Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The trial court found that the affidavit of Donald Bloom fails to satisfy the Blooms' reciprocal burden under *Dresher* because the statements

in Bloom's affidavit are mere conclusory statements based on information and belief and not on Bloom's personal knowledge.

{¶ 11} Civ.R. 56(E) states that "supporting and opposing affidavits shall be made on personal knowledge, and shall set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein . . ." "'Personal knowledge' is defined as, 'knowledge of the truth in regard to a particular fact or allegation, which is original, and does not depend on information or hearsay. Personal knowledge of an allegation in an answer is personal knowledge of its truth or falsity; and if the allegation is a negative one, this necessarily includes a knowledge of the truth or falsity of the allegation denied.' Black's Law Dictionary (6 Ed. 1990) 873, citing *Hidalgo v. General Fire & Cas. Co.* (La.App. 1971), 254 So.2d 493, 496." *Haack v. Bank One, Dayton, N.A.* (April 11, 1997), Montgomery App. No. 16131.

{¶ 12} Bloom's representations "on information and belief" are not assertions based on his personal knowledge of the truth of the facts concerned, on which a trier of fact could rely to find that such facts exist. Those representations are no more than speculative assertions concerning which a witness would not be competent to testify. Therefore, they do not satisfy the evidentiary requirements of Civ.R. 56(E).

{¶ 13} The Blooms argue that Donald Bloom's assertions of paragraphs 18 and 19 of his affidavit are sufficient evidence. They argue that, to the extent that those assertions report statements made by Tom Prozo to Donald Bloom, the evidence is Bloom's personal knowledge of a hearsay statement made by a party opponent or its representative and therefore is not inadmissible as hearsay per Evid.R. 801(D)(2). We do not agree. Bloom's statement is a mere conclusion by him based on the alleged representations of Prozo, which derive from Prozo's personal knowledge, not Bloom's.

{¶ 14} We find that, on this record, the trial court was correct in holding that the Blooms failed to satisfy their reciprocal burden under *Dresher v. Burt*, and therefore Hillstreet is entitled to summary judgment on the complaint in foreclosure it filed.

{¶ 15} The assignment of error is overruled. The judgment of the trial court will be affirmed.

FAIN, J. And FROELICH, J., concur.

Copies mailed to:

Jason V. Stitt, Esq.  
Allison Bisig Oswald, Esq.  
Donald R. Bloom  
Brenda C. Bloom  
Hon. Robert J. Lindeman