

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

CanDo Credit Union

Appellee

v.

Mark Pollock

Appellant

Court of Appeals No. L-12-1233

Trial Court No. 11 CVF 00683

DECISION AND JUDGMENT

Decided: September 6, 2013

* * * * *

Howard B. Hershman, for appellee.

Mark Pollock, pro se.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Mark Pollock, appeals the July 20, 2012 judgment of the Oregon Municipal Court which granted summary judgment in favor of appellee, CanDo Credit Union, for monetary damages following a default on a promissory note. Because we find no genuine issues remain for trial, we affirm.

{¶ 2} Appellee, CanDo Credit Union (“CanDo”), commenced an action for monetary damages on November 15, 2011. The complaint alleged that appellant was in

default on the note in the sum of \$3,126.49 with an 18 percent interest rate. A copy of the note was attached to the complaint.

{¶ 3} Appellant's answer denied "each and every allegation of the complaint" and, as affirmative defenses, stated that the complaint failed to state a claim for relief and that CanDo, as a "predatory" lender, assumed the risk of injury.

{¶ 4} On February 10, 2012, CanDo filed its motion for summary judgment. CanDo argued that no issue of fact remained because, in appellant's answer, he merely denied the allegations but did not dispute the execution of the promissory note. In support of its motion, CanDo attached the affidavit of its collection manager, James Watson, who averred that, based on his personal knowledge as collections manager, CanDo made a loan to appellant and that \$3,126.49 plus 18 percent interest remained due and owing. In opposition to the motion and set forth in his affidavit, appellant, pro se, stated that he did not owe CanDo any money.

{¶ 5} On May 3, 2012, the court granted summary judgment in favor of CanDo. Thereafter, on July 20, 2012, judgment in the amount of \$3,497.84 plus interest at 18 percent until paid, was entered against appellant. This appeal followed.

{¶ 6} Appellant raises two assignments of error for our review:

1. The trial court erred in considering documentary evidence which was not properly authenticated and fell outside the criteria of Civil Rule 56-C.

2. The trial court erred in granting summary judgment where genuine issues of material fact exist.

{¶ 7} Appellant's first assignment of error contends that the loan documents attached to the complaint were never authenticated and, thus, were not proper summary judgment evidence under Civ.R. 56(C). Conversely, CanDo contends that it is not clear whether the trial court relied on the affidavit or the note when it granted its summary judgment motion but that, regardless, the note was presumed valid where appellant did not specifically deny that he signed the note.

{¶ 8} Civ.R. 56(C) provides that summary judgment shall be rendered if the pleadings demonstrate that there is no genuine issue of fact. R.C. 1303.36(A) provides, in part:

Unless specifically denied in the pleadings, in an action with respect to an instrument, the authenticity of, and authority to make, each signature on an instrument is admitted. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the party claiming validity but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or becomes incompetent at the time of the trial on the issue of the validity of the signature.

{¶ 9} In *Dryden v. Dryden*, 86 OhioApp.3d 707, 621 N.E.2d 1216 (4th Dist.1993), the court held that a defendant's general denial to the allegation in the complaint for

breach of contract on a promissory note was insufficient to create an issue of fact as to the genuineness of the instrument. Based on the foregoing, we find that the trial court did not err in relying on the promissory note attached to CanDo's complaint. Appellant's first assignment of error is not well-taken.

{¶ 10} In appellant's second assignment of error, he contends that the court erred when it granted summary judgment in CanDo's favor. We review the trial court's grant of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241(1996). A motion for summary judgment should only be granted when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978); Civ.R. 56(C). The burden of showing that no genuine issue of material fact exists falls upon the party who moves for summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 294, 662 N.E.2d 264 (1996). However, once the movant supports his or her motion with appropriate evidentiary materials, the nonmoving party "may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E).

{¶ 11} Upon review, we find that CanDo was entitled to summary judgment on its claim. In his answer, appellant failed to specifically deny the authenticity of his signature

on the loan documents and, in response to CanDo's summary judgment motion, his affidavit failed to set forth specific facts showing that he did not owe CanDo the money in question. Appellant's second assignment of error is not well-taken.

{¶ 12} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Oregon Municipal Court is affirmed.

Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.

CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
