

[Cite as *RHM Homes Corp. v. Brown*, 2009-Ohio-6315.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93186

RHM HOMES CORP.

PLAINTIFF-APPELLEE

VS.

BRUCE ANDREW BROWN, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Bedford Municipal Court
Case No. 08CVF05232

BEFORE: Kilbane, P.J., Dyke, J., and Celebrezze, J.

RELEASED: December 3, 2009

JOURNALIZED:

APPELLANTS

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Bruce Brown and Suzanne Brown (“the Browns” or “appellants”), pro se, appeal the decision of the trial court denying their motion for summary judgment and granting summary judgment in favor of RHM Homes Corp., d/b/a Myers Homes (“RHM” or “appellee”), on an account for home improvement work performed by RHM for the Browns at their residence in Solon, Ohio. After reviewing the pertinent law and facts, we affirm.

Statement of Facts and Procedural History

{¶ 2} In February 2008, appellants hired appellee to perform painting, plumbing, and electrical work at their home, 6075 Penfield Lane, Solon, Ohio.

Upon completing the work, appellee submitted invoices to appellants, which were never paid.

{¶ 3} On August 12, 2008, appellee filed a four-count complaint against appellants in Bedford Municipal Court. Count 1 alleged that appellants failed to pay \$6,377.92 due and owing on the above-mentioned account for home improvement work. Count 2 alleged breach of the contract for home improvement work. Count 3 alleged that the Browns were the third-party beneficiaries of work performed at the home by RHM, in view of the fact that the home itself was titled to B. Andrew Brown & Associates, LLC. Count 4 alleged that the Browns unjustly enriched themselves by maintaining the benefit of RHM’s work without paying for it.

{¶ 4} On August 19, 2008, Suzanne Brown filed two pro se motions for summary judgment on behalf of the Browns in their personal capacity, not as officers of B. Andrew Brown & Associates, LLC.

{¶ 5} On September 25, 2008, the trial court denied appellants' motions for summary judgment.

{¶ 6} On March 6, 2009, appellee filed a motion for summary judgment against the Browns, who did not respond to this motion.

{¶ 7} On March 10, 2009, appellee filed a motion for default judgment against B. Andrew Brown & Associates, LLC. B. Andrew Brown & Associates, LLC never responded to the motion.

{¶ 8} On April 7, 2009, trial commenced. The Browns failed to appear at trial, and the trial court entered judgment in favor of RHM in the amount of \$6,377.92 plus "last [sic] fees of \$496.20."

{¶ 9} On April 15, 2009, appellants filed a notice of appeal.

{¶ 10} Appellants' sole assignment of error states:

The trial court abused its discretion by denying appellants' motion for summary judgment [sic].

Summary Judgment Standard of Review

{¶ 11} We review an appeal from summary judgment under a de novo standard. *Baiko v. Mays* (2000), 140 Ohio App.3d 1, 10, 746 N.E.2d 618. Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is

appropriate. *Northeast Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.* (1997), 121 Ohio App.3d 188, 192, 699 N.E.2d 534.

{¶ 12} Civ.R. 56(C) provides that before summary judgment may be granted, a court must determine that “(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 the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the nonmoving party.” *Duganitz v. Ohio Adult Parole Auth.*, 77 Ohio St.3d 190, 191, 1996-Ohio-326, 672 N.E.2d 654.

{¶ 13} The moving party carries the initial burden of setting forth specific facts that support the motion for summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 1996-Ohio-107, 662 N.E.2d 264. If the movant fails to meet this burden, summary judgment is not appropriate. If the movant does meet this burden, summary judgment will be appropriate only if the nonmovant fails to establish the existence of a genuine issue of material fact. *Id.* at 293.

{¶ 14} In their sole assignment of error, appellants argue that the trial court erred in denying their motion for summary judgment because they cannot be held personally liable for the debts of B. Andrew Brown & Associates, LLC, pursuant to R.C. 1705.48(B), the titled owner of the Browns’ Penfield Lane home. This is a recapitulation of appellants’ arguments in their motion for summary judgment. Appellants argue this despite their clear status as the third-party beneficiaries of the work performed on their

home.

{¶ 15} A de novo review of appellants' motion for summary judgment reveals that, outside of the assertion that they cannot be held liable under R.C. 1705.48(B), appellants do not submit any facts, evidence, or materials in support of their motion for summary judgment. Further, appellants fail to address their status as third-party beneficiaries of the work performed by RHM on their home. Appellants have failed to meet their initial burden to set forth specific facts entitling them to relief under *Dresher*, supra. The trial court did not err in overruling the Browns' motion for summary judgment.

Judgment affirmed.

It is ordered that appellee recover from appellants its costs herein taxed.

It is ordered that a special mandate issue out of this court directing the Bedford Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

ANN DYKE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR