

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
MUSKINGUM COUNTY, OHIO

WRIGHT-PATT CREDIT UNION,
INC.

Plaintiff - Appellee

-vs-

SUP SOGGY DOGGY, LLC, ET AL.,

Defendants - Appellants

Case No. CT2026-0022

Opinion and Judgment Entry

Appeal from the Muskingum County Court of
Common Pleas, Case No. CE2025-0129

Judgment: Reversed and Remanded

Date of Judgment Entry: October 5, 2026

BEFORE: Andrew J. King; William B. Hoffman; David M. Gormley, Judges

APPEARANCES: Branson D. Dunlop, Dinsmore & Shohl, LLP, for Plaintiff-Appellee;
Brian W. Benbow, Benbow Law Offices, LLC, for Defendants-Appellants.

Hoffman, J.

{¶1} Defendants-Appellants Sup Soggy Doggy, LLC and Steven R. Simmons appeal the March 4, 2026 decision of the Muskingum County Common Pleas Court granting Appellee Wright-Patt Credit Union, Inc.'s motion for summary judgment.

STATEMENT OF THE FACTS AND CASE

{¶2} On October 7, 2022, Sup Soggy Doggy, LLC executed a Term Note ("Note") made payable to Wright-Patt Credit Union, Inc. ("WPCU") in the original principal amount of \$500,000.00, plus interest as set forth therein together with all amendments and modifications thereof. The Note was executed in connection with and is governed by the

terms of a Loan Agreement dated October 7, 2022. On the same day, Steven R. Simmons ("Simmons") executed and delivered to WPCU a Continuing Guaranty Agreement pursuant to which Simmons absolutely and unconditionally guaranteed the full and prompt payment and performance of Sup Soggy Doggy's obligations to WPCU under the Note ("Guaranty").

{¶3} As security for the repayment of the obligations due under the Note, Sup Soggy Doggy executed and delivered to WPCU an Open-End Mortgage and Security Agreement dated October 7, 2022, which was recorded on October 7, 2022, in Book 3107, Page 187, of the Muskingum County, Ohio Official Records ("Mortgage"). The Mortgage granted WPCU a security interest in the real property commonly known as 2455 Maysville Pike, Zanesville, Ohio, 43701, which is more fully described in the legal description attached to the Mortgage (the "Property"). The Mortgage is a valid first and existing lien on the Property, subject only to the lien of the Muskingum County Treasurer for unpaid real estate taxes and assessments due on the Property.

{¶4} WPCU also has a further interest in all rents and profits derived from the Property by virtue of an Assignment of Rents and Leases executed by Sup Soggy Doggy and delivered to WPCU which was also recorded on October 7, 2022, in Book 3107, Page 210, of the Muskingum County, Ohio Official Records ("Assignment of Rents").

{¶5} According to WPCU, a default occurred under the terms of the Note as a result of, among other things, the failure of Sup Soggy Doggy, LLC to make the required monthly payments under the Note since October, 2024. WPCU alleges because of Sup Soggy Doggy, LLC's default of its obligations under the Note as governed by the Loan Agreement, Simmons breached his obligations under the Guaranty by failing to satisfy the Note. WPCU further claims the default constitutes a specific event of default under the terms of the Mortgage and

Assignment of Rents and, as a result of said defaults, WPCU exercised its right to accelerate the Note and pursue its rights and remedies under the Mortgage and other Loan Documents.

{¶6} On April 2, 2025, Plaintiff-Appellee Wright-Patt Credit Union, Inc. filed a Complaint for Money Damages and Foreclosure of Mortgage. WPCU's Complaint named various parties as defendants who might claim an interest in the Property as identified in the Preliminary Judicial Report filed April 2, 2025, including, but not limited to, the United States - Small Business Administration ("SBA").

{¶7} On April 8, 2025, Defendant Muskingum County Treasurer promptly appeared and filed its Answer, asserting its statutory interest in any unpaid real estate taxes and assessments - an interest which WPCU does not dispute.

{¶8} On April 18, 2025, Defendant Riverside Bank of Dublin likewise appeared and filed its Answer, asserting its interest in the Property by virtue of a Mortgage and Assignment of Rents recorded July 17, 2024, which interests are junior in priority to the interests held by WPCU.

{¶9} Defendant Community Capital Development Corporation was served by Certified Mail on April 7, 2025, but has not yet filed an answer or other responsive pleading in the case.

{¶10} Similarly, the SBA was served by Certified Mail on April 10, 2025, April 17, 2025, and October 20, 2025, but it also has not yet filed an answer or other responsive pleading to WPCU's claims.

{¶11} On September 12, 2025, Defendants Sup Soggy Doggy, LLC and Steven R. Simmons (collectively "Defendants-Appellants") appeared by virtue of a Joint Stipulation and Agreement to Waive Service and Extend the Answer Deadline of Defendants Sup Soggy

Doggy, LLC and Steven R. Simmons wherein the Appellants waived service of process of the Complaint and were granted an extension of time to file their responsive pleading up to and including October 27, 2025.

{¶12} On October 24, 2025, Defendants-Appellants filed a motion requesting an additional thirty (30) days to file a responsive pleading indicating its counsel had not been able to meet with Defendants-Appellants to discuss an outstanding insurance claim involving damages to the property which could require naming a third-party insurer as a defendant. By Judgment Entry filed October 27, 2025, the trial court granted Defendants-Appellants leave to file a responsive pleading up to and including November 26, 2025.

{¶13} On November 24, 2025, Defendants-Appellants filed their joint Answer, generally denying all Plaintiff-Appellee's claims and asserting a total of thirteen affirmative defenses.

{¶14} On January 26, 2026, WPCU filed its Motion for Summary Judgment.

{¶15} On January 28, 2026, the trial court issued a scheduling order requiring all parties opposing Summary Judgment to file their evidentiary materials and legal briefs by February 19, 2026.

{¶16} On February 18, 2026, Defendants-Appellants filed a Motion to Hold Plaintiff's Motion for Summary Judgment and Motion for Judgment on the Pleadings in Abeyance Pursuant to Civ.R. 56(F). Civ.R. 56(F) states:

When affidavits unavailable. Should it appear from the affidavits of a party opposing the motion for summary judgment that the party cannot for sufficient reasons stated present by affidavit facts essential to justify the party's

opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

{¶17} On March 3, 2026, WPCU filed its Response in opposition to the 56(F) Motion.

{¶18} On March 4, 2026, the trial court granted the Summary Judgment Motion and entered its Judgment Entry and Decree of Foreclosure in favor of WPCU.

{¶19} Defendants-Appellants Sup Soggy Doggy, LLC and Steven R. Simmons now appeal the trial court's March 4, 2026 judgment entry, assigning the following errors for review:

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT PRIOR TO AFFORDING APPELLANTS AN OPPORTUNITY TO FILE A REPLY BRIEF IN SUPPORT OF THEIR CIV.R. 56(F) MOTION PURSUANT TO CIV.R. 6. THE TRIAL COURT THEREBY ABUSED ITS DISCRETION BY EFFECTIVELY DENYING APPELLANTS' CIV.R. 56(F) MOTION WITHOUT PERMITTING A TIMELY REPLY.

II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT PRIOR TO AFFORDING APPELLANTS AN OPPORTUNITY TO FILE A REPLY BRIEF IN SUPPORT OF THEIR CIV.R. 56(F) MOTION PURSUANT TO CIV.R. 6. IN DOING SO, THE TRIAL COURT THEREBY ABUSED ITS DISCRETION AND EFFECTIVELY DENIED APPELLANTS' CIV.R. 56(F) MOTION IN VIOLATION OF THEIR DUE PROCESS RIGHTS.

III. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT WHERE NECESSARY PARTIES HAD NOT APPEARED, AS EXPRESSLY RAISED IN APPELLANTS' CIV.R. 56(F) MOTION.

I., II.

{¶20} In both these two assignments of error, Defendants-Appellants argue the trial court committed error by issuing summary judgment in favor of Plaintiff-Appellee prior to the expiration of time it had to file its reply brief to its Civ.R. 56(F) motion. We agree.

{¶21} Civ.R 6 provides in relevant part:

(A) Time: computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of

the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. * * *

(C) Time: Motions.

(1) Motion Responses and Movants' Replies Generally. Responses to a written motion, other than motions for summary judgment, may be served within fourteen days after service of the motion. Responses to motions for summary judgment may be served within twenty-eight days after service of the motion. A movant's reply to a response to any written motion may be served within seven days after service of the response to the motion.

(2) Motions Prior to Hearing or Trial. Unless a different period is fixed under these rules or by order of the court, a written motion for purposes of a hearing that is not a trial shall be served no later than fourteen days prior to the hearing, and a written motion for purposes of a trial shall be served no later than twenty-eight days prior to the start of trial. Responses to such motions may be served as provided by Civ.R. 6(C); however, a movant's reply to the response is not permitted.

(3) Modification for Good Cause Upon Motion. Upon motion of a party in an action, and for good cause, the court may reduce or enlarge the periods of time provided in divisions (C)(1) and (C)(2) of this rule.

{¶22} Civil Rule 6 reflects the fact "[f]undamental due process principles require that each party have the opportunity to be heard prior to a trial court rendering a decision." *Equable Ascent Fin. v. Ybarra*, 2013-Ohio-4282, ¶ 6 (9th Dist.); *Henry Cty. Bank v. Toledo Radio*, 2022-Ohio-1360, ¶ 5 (3rd Dist.).

{¶23} As Civ.R. 6 allows for the filing of a reply after a response has been filed, the trial court must wait for the time for reply to expire before the matter is deemed submitted. Here, the trial court issued its judgment entry granting summary judgment in favor of Plaintiff-Appellee prior to the expiration of time for Defendants-Appellants to file their reply to Plaintiff-Appellee's response to the Civ.R. 56(F) motion. Civ.R. 6 makes plain Defendants-Appellants had seven days from the filing of Plaintiff-Appellee's Response in which to file their Reply. The lower court therefore issued its judgment entry granting WPCA summary judgment prior to the expiration of time for Defendants-Appellants to file their Reply. This premature ruling implicated and arguably directed impacted Defendants-Appellants' procedural due process rights. (See *Cty. Risk Sharing Auth.*, 2022-Ohio-164, ¶ 9 (11th Dist.)). We find by doing so, the trial court committed reversible error.

{¶24} Accordingly, we remand this matter to the trial court to allow Defendants-Appellants the opportunity to file a Reply to the Civ.R. 56(F) motion and response.

{¶25} Appellant's first and second assignments of error are sustained.

III.

{¶26} Based on our decision on Assignments of Error I and II, Assignment of Error III is premature.

{¶27} For the foregoing reasons, the judgment of the Court of Common Pleas of Muskingum County, Ohio, is reversed and the cause is remanded to that court for further proceedings consistent with the law and this opinion.

{¶28} Costs to Appellee.

By: Hoffman, J.

King, P.J. and

Gormley, J. concur.