

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Olaoye,
Appellant-Defendant,

v.

Galaxy International Purchasing
LLC,
Appellee-Plaintiff.

January 27, 2023

Court of Appeals Case No.
22A-CC-1905

Appeal from the Lake Superior
Court

The Honorable Bruce D. Parent,
Judge

Trial Court Cause No.
45D11-2110-CC-7650

Bradford, Judge.

Case Summary

- [1] James Olaoye took out a \$40,000.00 loan from WebBank on September 17, 2017. He subsequently failed to repay the loan, pursuant to the terms of the loan agreement. Galaxy International Purchasing, LLC (“Galaxy”), obtained WebBank’s interest in the loan in November of 2018. On October 29, 2021, Galaxy filed suit against Olaoye in an attempt to recover the \$36,186.41 loan balance. Galaxy sought and was granted summary judgment and the trial court entered judgment against Olaoye in the amount of \$36,186.41 plus interest. However, because we conclude that Olaoye designated evidence sufficient to create a genuine issue of material fact, we reverse the judgment of the trial court and remand for further proceedings.

Facts and Procedural History

- [2] WebBank issued a loan in the amount of \$40,000.00 to Olaoye on September 19, 2017. Pursuant to the terms of the loan, Olaoye agreed to make fifty-nine monthly payments in the amount of \$932.39 beginning October 19, 2017, and one final payment of \$931.99 on September 19, 2022. Olaoye made eight of the fifty-nine monthly payments, but has not made any payments since May 24, 2018. WebBank sold its interest in Olaoye’s loan to Galaxy on November 28, 2018.
- [3] On October 29, 2021, Galaxy filed suit against Olaoye, claiming that it had acquired the right to pursue Olaoye’s outstanding debt from a loan that

originated from WebBank. Galaxy asserted that “[d]espite demand for payment and the requirement to do so under the note,” Olaoye had failed “to make payments due and owing to [Galaxy] in the amount of \$36,186.41.” Appellant’s App. Vol. II p. 11. Galaxy attached the original loan documents as exhibits to its complaint. Galaxy also attached an “affidavit of debt” as an exhibit to its complaint, in which employee Merle Worsham averred that (1) he was familiar with the record keeping practices of Galaxy and his representations were “true according to documents kept in the normal course of [Galaxy’s] business and/or [his] personal knowledge,” (2) Olaoye “has an unpaid balance of \$36,186.41” on the loan account which “was opened on 09/19/2017,” and (3) the last payment from Olaoye “was received in the amount of \$932.39 on 05/24/2018.” Appellant’s App. Vol. II p. 58. Service was completed at Olaoye’s residence on November 1, 2021.

[4] On November 16, 2021, Olaoye filed a *pro se* motion to dismiss Galaxy’s complaint “based on [i]nsufficiency of service of process, [l]ack of jurisdiction over person and for [Galaxy’s] failure to comply with [the] Indiana Trial Rules.” Appellant’s App. Vol. II p. 61 (underlining omitted). Galaxy filed a memorandum in opposition to Olaoye’s motion to dismiss on December 2, 2021, in which it stated the following:

Defendant has filed a motion to dismiss which appears to claim that he was not served with the complaint in this matter.

Defendant bases this allegation on his assertion that he “first learned about this lawsuit through another soliciting law firm who sent an advertising material to the defendant’s address...”

That solicitation was sent to 647 165th St. Defendant admits that

this is his address.

As shown by the return of service, Defendant was served according to Rule 4 by having the summons posted to his residence (that same 647 165th St. address) and by first class mail to that address. Rule 4.1(A)(3) and (B) allow for the completion of service in this regard. And the filed Verified Return of Service document its completion upon the record. Defendant's awareness or actual receipt of the summons is irrelevant.

Appellant's App. Vol. II p. 68. The trial court denied Olaoye's motion to dismiss on January 6, 2022.

- [5] On January 21, 2022, Olaoye filed a *pro se* motion requesting that the trial court strike the affidavit of debt that was attached as an exhibit to Galaxy's complaint, claiming that "the document is merely an accumulation of hearsay[.]" Appellant's App. Vol. II p. 72. In support of his motion, Olaoye attached a "sworn affidavit of denial" dated January 19, 2022, in which he denied owing the debt, denying "that it is a valid debt and if it is a valid debt[, denying] the amount sued for ... is the correct amount." Appellant's App. Vol. II p. 78. Olaoye also attached a second sworn affidavit also dated January 19, 2022, in which he averred that he had "never entered into any credit transaction, borrowed money, or entered any contract" with either Galaxy or WebBank. Appellant's App. Vol. II p. 80. In response, Galaxy asserted that Olaoye's motion to strike should be denied because the affidavit is subject to the business records exemption to the hearsay rule. The trial court denied Olaoye's motion to strike on February 23, 2022.

[6] On May 16, 2022, Galaxy filed a motion for summary judgment, in support of which it attached the original loan documents, certificate of loan sale, and the affidavit of debt as designated evidence. On June 3, 2022, Olaoye filed a *pro se* motion to compel discovery, which he claimed had been served on Galaxy on January 20, 2022. Olaoye also filed a *pro se* motion opposing Galaxy's request for summary judgment, again relying on his previously-filed motion to strike and affidavits. On June 21, 2022, the trial court issued an order in which it stayed Galaxy's motion for summary judgment and ordered the parties to engage in "a teleconference whereby they actually speak to one-another in a conversation" no later than July 13, 2022, the purpose of which would be to coordinate a date by which Galaxy would respond to Olaoye's discovery requests and agree on dates by which Olaoye would then respond to Galaxy's motion for summary judgment and by which Galaxy would, if necessary, file a reply. Appellant's App. Vol. II p. 222.

[7] On July 1, 2022, Olaoye filed a *pro se* motion for reconsideration and clarification of the trial court's June 21 order. Specifically, Olaoye requested that the court "reconsider all evidence timely and properly submitted therein and deny [Galaxy's] motion for summary judgment and grant [Olaoye's] cross motion, and [Olaoye's] motion to strike [the] affidavits of [M]erle H. Worsham and [the] unauthenticated document used in [Galaxy's] motion for summary judgment." Appellant's App. Vol. II p. 226. In an attempt to comply with the trial court's June 24 order, Galaxy filed a proposed scheduling order on July 11, 2022. On July 19, 2022, the trial court issued an order in which it found that

Olaoye’s “motion to reconsider was well founded, in that [he] *had* filed a response to [Galaxy’s] motion for summary judgment along with its motion to compel; it was simply mis-labeled by [the court clerk] when it [was] placed into Odyssey.” Appellant’s App. Vol. II p. 6 (emphasis in original). Thus, the trial court vacated its June 21 order, reconsidered Galaxy’s summary judgment motion and Olaoye’s response thereto, and entered summary judgment in favor of Galaxy, finding that Galaxy had “carried its initial burden” of presenting a *prima facie* case in favor of summary judgment and that Olaoye had, in turn, failed to demonstrate a genuine issue of material fact. Appellant’s App. Vol. II p. 8 (emphasis in original). Thereafter, on August 10, 2022, the trial court entered judgment in favor of Galaxy in the amount of \$36,186.41 plus interest.

Discussion and Decision

- [8] Olaoye contends that the trial court erred in granting Galaxy’s motion for summary judgment.

The standard of review of a summary judgment order is well-settled. Summary judgment is appropriate if the designated evidentiary matter shows 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. Summary judgment will be granted where the evidence presented demonstrates that no genuine issue of material fact exists, entitling the moving party to judgment as a matter of law. Summary judgment is intended to end litigation about which there can be no factual dispute. Once the movant for summary judgment has established that no genuine issue of material fact exists, the nonmovant may not rest on her pleadings but must set forth specific facts which show the existence of a

genuine issue for trial.

We are bound by the same standard as the trial court and will consider only those matters which were designated at the summary judgment stage. We will not reweigh the evidence but will liberally construe all designated evidentiary material in the light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact for trial. The party who lost at the trial court has the burden to persuade the appellate court that the trial court erred. A trial court's grant of summary judgment is clothed with a presumption of validity. A grant of summary judgment may be affirmed by any theory supported by the designated materials. However, a trial court's grant of summary judgment may not be reversed on a ground which was not presented to the trial court.

Perkins v. Fillio, 119 N.E.3d 1106, 1110–11 (Ind. Ct. App. 2019) (internal citations omitted).

- [9] Olaoye argues that the trial court erred in granting Galaxy's motion for summary judgment because he designated evidence which sufficiently created an issue of material fact. "An issue of material fact is genuine if a trier of fact is required to resolve the parties' differing accounts of the truth." *Hughley v. State*, 15 N.E.3d 1000, 1004 (Ind. 2014) (internal quotation omitted). Galaxy designated materials showing that Olaoye had entered into a loan agreement and had accepted the loan from WebBank but had defaulted on said loan.¹ In

¹ We note that Olaoye asserts that Galaxy's affidavit of debt should have been stricken because it lacked a personal attestation regarding the authenticity of the loan agreement and that Galaxy failed to properly authenticate the loan documents, claiming that the documents submitted lacked certain information such as Olaoye's signature, the interest rate, the term of the loan, a re-payment schedule, commencement date, and maturity date. However, despite Olaoye's claims to the contrary, review of the designated evidence clearly

response, Olaoye designated two affidavits in which he denied that the debt at issue was “a valid debt and if it is a valid debt[, denying] the amount sued for ... is the correct amount” and averred that he had “never entered into any credit transaction, borrowed money, or entered any contract” with either Galaxy or WebBank. Appellant’s App. Vol. II pp. 78, 80. Although Olaoye’s affidavits are clearly self-serving, Olaoye’s designated evidence “clears [the] low bar” of creating an issue of material fact that makes summary judgment inappropriate. *See Hughley*, 15 N.E.3d at 1004 (concluding that Hughley’s “perfunctory and self-serving” affidavit was minimally sufficient to raise a factual issue to be resolved at trial, and thus to defeat the State’s summary-judgment motion). As such, we must agree that the trial court erred by granting Galaxy’s motion for summary judgment and, accordingly, remand the matter to the trial court for further proceedings.²

[10] The judgment of the trial court is reversed and remanded.

May, J., and Mathias, J., concur.

demonstrates that the affidavit of debt contained an adequate personal attestation and the loan documents included all relevant terms.

² In their appellate briefs, the parties discuss disagreements over whether certain discovery requests were properly served upon and/or answered by the parties. The record makes clear that at the time summary judgment was entered, the parties had yet to complete discovery and, given that we are remanded the case for further proceedings, we decline to address any matters relating to discovery but, rather, leave all discovery matters to be resolved by the trial court.