

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



---

### ATTORNEY FOR APPELLANTS

Alexandra M. Curlin  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Reynold T. Berry  
John M. Rogers  
Rubin & Levin, P.C.  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

PARS Transport, LP and  
Sandeep P. Singh a/k/a Sandeep  
Singh,

*Appellants-Defendants,*

v.

H19 Capital, LLC and 19<sup>th</sup>  
Capital Group, LLC, 19<sup>th</sup> Capital  
Titling Limited Quality  
Companies, LLC, Quality, A  
Division of 19<sup>th</sup> Capital Group,  
LLC, Quality Equipment  
Leasing, LLC and Love's  
Solution, LLC,

*Appellees-Plaintiffs.*

February 6, 2023

Court of Appeals Case No.  
22A-CC-1705

Appeal from the Marion Superior  
Court

The Honorable Gary L. Miller,  
Judge

The Honorable Therese Hannah,  
Magistrate

Trial Court Cause No.  
49D03-2105-CC-15180



## **Memorandum Decision by Judge Riley**

**Chief Judge Altice and Judge Pyle concur**

### **STATEMENT OF THE CASE**

[1] Appellants-Defendants/Cross-Appellants-Cross-Plaintiffs, Pars Transport L.P. (Pars Transport) and Sandeep P. Singh (Singh) (collectively, Appellants) appeal the trial court's summary judgment in favor of Appellee-Plaintiff, H19 Capital, LLC (H19), on H19's Complaint seeking damages and replevin with respect to truck leases. Appellants, in their capacity as Cross-Appellants, appeal the trial court's denial of their cross-motion for summary judgment against Cross-Appellees-Cross-Defendants, H19 and 19<sup>th</sup> Capital Group LLC, 19<sup>th</sup> Capital Titling Limited, Quality Companies, LLC, Quality, a division of 19<sup>th</sup> Capital Group, LLC, Quality Equipment Sales, LLC, Quality Equipment Leasing, LLC (collectively, Third Parties), on Cross-Appellants' claim of overpayment on certain truck leases.

[2] We affirm.

### **ISSUES**

[3] Appellants present three issues on appeal, which we consolidate and restate as the following two issues:



- (1) Whether the trial court properly determined that no genuine issue of material fact existed that Appellants had defaulted on their obligations pursuant to certain truck leases entered into with H19; and
- (2) With respect to Appellants' cross-motion on summary judgment, whether there are genuine issues of material fact that H19 is the alter ego of or has merged with Third Parties and that the perceived overpayment on certain truck leases entered into between Appellants and Third Parties should be offset against the indebtedness of Appellants to H19.

[4] H19 presents one issue on appeal, which we restate as: Whether the trial court abused its discretion when it denied H19's motion to strike Appellants' designated materials.

## **FACTS AND PROCEDURAL HISTORY**

- [5] During 2016 and 2017, Pars Transport, as lessee, entered into seven truck lease agreements. Five of the lease agreements were entered into with lessor 19<sup>th</sup> Capital Titling Limited, and the remaining two leases were entered into with lessor Element Transportation, LLC. H19 acquired the lessors' interests in the leases pursuant to an Asset Purchase Agreement, executed on May 1, 2020.
- [6] On May 6, 2021, H19, as successor in interest with regard to the seven leases it had acquired, filed a Complaint, alleging that Pars Transport had defaulted on its lease payments. The Complaint sought damages from Pars Transport and Singh, as guarantor, and replevin with respect to two of the trucks. On July 13,



2021, H19 filed a motion for summary judgment, together with a memorandum in support thereof and designation of evidence.

[7] On August 26, 2021, Appellants responded to the Complaint with their Third Amended Answer, Affirmative Defenses, Counterclaim, and Crossclaim. They admitted the execution of the seven leases held by H19 as the successor in interest, but they also alleged that an overpayment existed because H19 had failed to credit payments made to companies which Appellants considered to be predecessors to H19.<sup>1</sup> Appellants' pleading identified these predecessor companies as Third Parties and Love's Solution, LLC.<sup>2</sup>

[8] Appellants' claim for uncredited payments arises from an Accounts Purchase and Security Agreement (Factoring Agreement), entered into on August 22, 2016, between Pars Transport and Qualify Companies, LLC (Quality). Pursuant to the terms of the Factoring Agreement, Pars Transport assigned its accounts receivable to Quality and agreed to enter into certain truck leases with Quality Equipment Sales, a Quality Affiliate. Quality was responsible for collecting payment on the loads transported by Pars Transport from its

---

<sup>1</sup> In its summary judgment, the trial court summarily denied Appellants' cross-claim, in essence concluding that no genuine issue of material fact existed that would deem H19 to be the successor of Third Parties. Yet, Appellants' fact section in their appellate brief disregards the trial court's order and presumes the fact that H19 is the successor of Third Parties to be true. As a result, Appellants' fact section is convoluted and difficult to understand. We caution Appellants that the fact section should "be stated in accordance with the standard of review appropriate to the judgment or order being appealed." *See* Ind. Appellate Rule 46(A)(6)(b).

<sup>2</sup> Love's Solution, LLC is not part of this appeal. In so far as facts with respect to Love's Solution, LLC are relevant to the issues in this appeal, they have been included.



customers and then paying Pars Transport for the transportation. In exchange Pars Transport paid Quality a factoring fee, which was a set percentage of the monies collected, as well as the lease payments on the trucks. Appellants allege that the Factoring Agreement included the seven leases which are the subject of H19's Complaint.

[9] On October 19, 2021, Appellants filed a motion to substitute, in which they asked the trial court to substitute H19 for Third Parties as they alleged H19 to be the successor to Third Parties. The trial court denied the motion on November 18, 2021.

[10] On November 11, 2021, Appellants filed their brief in opposition to H19's motion for summary judgment, as well as their own cross-motion for summary judgment on their claim of overpayment of the leases. In support of their cross-motion, Appellants filed a memorandum in support and designated evidence. The designated evidence included Singh's affidavit and exhibits in support of Singh's statements. On December 21, 2021, Appellants also filed an additional compilation of twenty-two exhibits, characterized as a designation of evidence.<sup>3</sup>

[11] On December 13, 2021, H19 filed designated evidence in opposition to Appellants' cross motion for summary judgment. H19 also filed a motion to strike numerous statements in the Singh affidavit and the accompanying materials designated by Appellants on the grounds that the statements and

---

<sup>3</sup> These exhibits included the same exhibits previously submitted on November 11, 2021.



materials were not based on personal knowledge, represented conclusions and conjectures, were otherwise inappropriate and inadmissible, and were unsworn or uncertified. On December 29, 2021, Appellants filed a motion to strike H19's designated evidence.

[12] On May 2, 2022, the trial court conducted a hearing on the parties' cross motions for summary judgment. On June 22, 2022, the trial court issued its Order, in which it denied the parties' motion to strike, granted summary judgment to H19, denied Appellants' cross-motion for summary judgment, and entered final judgment as a matter of law to H19, in the principal sum of \$113,100.00, plus accrued interest, attorney fees, and expenses, for a total sum of \$201,806.64.

[13] Appellants now appeal. Additional facts will be provided if necessary.

## **DISCUSSION AND DECISION**

### *I. Admission of Designated Evidence*

[14] Before addressing the propriety of the trial court's entry of summary judgment, we must first address H19's assertion that the trial court abused its discretion in denying its motion to strike<sup>4</sup> by admitting Singh's affidavit and the

---

<sup>4</sup> H19 phrases its challenge such that the trial court "properly disregarded the many materials submitted by [Appellants] which do not comply with Trial Rule 56(E)." (H19 Br. p. 12). Because the summary nature of the trial court's Order, which did not include findings and conclusions, does not allow us to discern whether or not the trial court disregarded Appellants' designated materials, we characterize H19's contention as a challenge to the trial court's denial of its motion to strike.



accompanying designated materials.<sup>5</sup> Indiana Trial Rule 56(E) requires that supporting and opposing affidavits “shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” The requirements of Trial Rule 56(E) are mandatory and a court considering a motion for summary judgment should disregard inadmissible information contained in supporting or opposing affidavits. *Guzik v. Town of St. John*, 875 N.E.2d 258, 265 (Ind. Ct. App. 2007), *trans. denied*. A trial court has broad discretion in ruling on the admissibility of evidence. *Price v. Freeland*, 832 N.E.2d 1036, 1040 (Ind. Ct. App. 2005). “This discretion extends to rulings on motions to strike affidavits on the grounds that they fail to comply with the summary judgment rules.” *Id.* “We will determine that a trial court has abused its discretion when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it.” *Williamson v. U.S. Bank Nat’l Ass’n*, 55 N.E.3d 906, 911 (Ind. Ct. App. 2016).

[15] In support of their cross-motion for summary judgment, Appellants submitted Singh’s affidavit and various accompanying designated materials. Indiana Trial Rule 56 permits parties to submit affidavits in support of their motions for summary judgment. However, subsection E of that rule imposes certain mandatory requirements, in that “[s]upporting and opposing affidavits shall be

---

<sup>5</sup> Appellants do not appeal the trial court’s denial of their motion to strike H19’s designated materials.



made on personal knowledge, shall set forth such facts as would be admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies not previously self-authenticated of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.” T.R. 56(E).

[16] Thus, in ruling on a motion for summary judgment, the trial court will consider only properly designated evidence which would be admissible at trial. *See, e.g., D.H. by A.M.J. v. Whipple*, 103 N.E.3d 1119, 1126 (Ind. Ct. App. 2018), *trans. denied*. Such evidence does not include inadmissible hearsay contained in an affidavit. *See, e.g., Holmes v. Nat’l Collegiate Student Loan Trust*, 94 N.E.3d 722, 725 (Ind. Ct. App. 2018). Nor does it include documents that are unsworn statements or unverified exhibits. *Greenfield v. Arden Seven Penn Partners, L.P.*, 757 N.E.2d 699, 702 n.3 (Ind. Ct. App. 2001), *trans. denied*. Moreover, it is well-settled that “if a document is relied upon to support a motion for summary judgment, it must be exhibited in full; affidavits as to its substance, effect or interpretation are not sufficient.” *Reef v. Asset Acceptance, LLC*, 43 N.E.3d 652, 654 (Ind. Ct. App. 2015).

[17] After establishing that he is the owner of Pars Transport, Singh, in his affidavit explained that,

2. On or about August of 2016, I saw an advertisement from Quality Companies, LLC (hereinafter “H19,” as H19 has substituted itself for the original party) which allowed owner/operators the ability to own trucks after a certain lease period and enter into factoring agreement.



3. After Quality and H19 merged, I still dealt with the same staff that I had worked with from the original company. Their email contact information also remained the same.

(Appellee's App. Vol. II, pp. 54-55). The next twenty-nine allegations in the affidavit relate to Appellants' Factoring Agreement between Pars Transport and Quality, and explain the inner workings of the relationship. Instead of defining the relationship between Quality and Pars Transport or Quality and H19, Singh, in a sleight of hand, substitutes all references to Quality with H19 because of the assertion in paragraph 3 that Quality had merged with H19. However, nothing in the affidavit supports that Singh had any personal knowledge about the relationship between Quality and H19, nor does he offer any purported merger documents.

[18] Paragraphs 17, 18, and 31 of the affidavit each assume, without explanation, that H19 was the same company as Quality, and note that H19 had withheld a certain amount of "Pars' receivables, which Pars *presumed* was withheld to pay the lease and factoring payments[.]" (Appellee's App. Vol. II, pp. 56, 58) (emphasis added). These 'presumptions' amount to nothing more than speculation which have no place in an affidavit submitted within the parameters of T.R. 56(E). *See Price*, 832 N.E.2d at 1042 (A statement that is "mere speculation" does not meet the standard of admissible evidence for a summary judgment motion and should have been stricken.)

[19] Similarly, paragraphs 19-23 and 26-28 relate to the mechanisms of H19 and Love's Solution LLC's internal management of accounts. However, Singh, as



the owner of Pars Transport, fails to explain how he gained personal knowledge of the internal accounting methods of a company he does not own and therefore these statements amount to nothing more than speculation.

[20] Paragraphs 4-7 and 9-11 contain impermissible hearsay<sup>6</sup> by offering Singh's understanding of promises allegedly made by an unidentified person with respect to the meaning of the Factoring Agreement between Pars Transport and Quality. For example, in paragraph 4 of the affidavit, Singh asserts, without any identification of the person he interacted with, that he "contacted H19 to clarify my understanding of the advertisement and understood that if I agreed to assign my accounts to H19, H19 would collect on the accounts on my behalf." (Appellee's App. Vol. II, p. 55). The following paragraphs further describe the mechanisms of the Factoring Agreement, as explained to Singh by an unidentified individual at H19.

[21] Even if these paragraphs did not contain inadmissible hearsay, they violate the parol evidence rule. The parol evidence rule bars the admission of evidence of oral representations that contradicts a written contract. *See Ruff v. Charter Behavioral Health Sys. of Northwest Indiana*, 699 N.E.2d 1171, 1175 (Ind. Ct. App. 1998), *trans. denied*. Generally, where parties have reduced an agreement to writing and have stated in an integration clause that the written document

---

<sup>6</sup> Hearsay is an out of court assertion offered in court to prove the truth of the matter asserted. Ind. Evid. Rule 801(c). Absent an exception to the rule, hearsay is inadmissible as evidence. *In re E.T.*, 808 N.E.2d 639, 641 (Ind. 2004); Ind. Evid. Rule 802.



embodies the complete agreement between the parties, the parol evidence rule prohibits courts from considering extrinsic evidence for the purpose of varying or adding to the terms of the written contract. *I.C.C. Protective Coatings, Inc. v. A.E. Staley Mfg. Co.*, 695 N.E.2d 1030, 1035 (Ind. Ct. App. 1998), *trans. denied*. As a written instrument, the Factoring Agreement and its contents are interpreted solely by the “four corners” of the document. *Evan v. Poe & Assocs.*, 873 N.E.2d 92 (Ind. Ct. App. 2007). Like most commercial contracts, the Factoring Agreement is an unambiguous, fully integrated contract which expressly states that it constitutes the entire agreement between Pars Transport and Quality. Contrary to the statements included in paragraphs 4-7 and 9-11 of Singh’s affidavit, the Factoring Agreement only contemplates truck leases with Quality Equipment Sales and makes no mention of any requirement that Pars Transport enter into lease agreements through H19 or to any alleged obligation to collect accounts, establish an escrow account for the payment of lease agreements, or establish transportation of truck loads and payment for the same. As such, the referenced paragraphs are inadmissible as violative of the parol evidence rule.

- [22] In addition to the Singh affidavit, Appellants also designated twenty-two exhibits, which purportedly support Singh’s statements that payments had been made but not credited, and that H19 merged with or succeeded Quality. Appellants submitted copies of dozens of checks showing payments to Quality Companies, apparently made in connection with the Factoring Agreement, and copies of two insurance checks from 2021 and 2022 apparently for collision



losses. Appellants did not certify or submit sworn copies of these checks. “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Ind. Evidence Rule 901(a). “Unsworn statements and unverified exhibits do not qualify as proper Rule 56 evidence.” *Smith v. Delta Tau Delta, Inc.*, 9 N.E.3d 154, 159 (Ind. 2014). In addition, these unsworn and unverified documents were not authenticated as records of regularly conducted business activity pursuant to the hearsay exception specified in Evidence Rule 803(6). *See, e.g., Williams v. State*, 64 N.E.3d 221, 225 (Ind. Ct. App. 2016) (holding that, in order to admit documents under the business records exception, “the proponent of the exhibit may call a witness who has a functional understanding of the record-keeping process of the business with respect to the specific entry, transaction, or declaration contained in the document.”).

[23] Appellants also designated multiple complaints filed with Indiana’s trial courts, evidencing lawsuits between H19 and various parties unrelated to this cause and instituted on grounds similar to the ones here—unpaid monetary obligations which were due under the terms of a lease agreement. Although a court may judicially notice “records of a court of this state,” these submitted complaints are irrelevant to a determination of the cross-motions for summary judgment, *i.e.*, whether Pars Transport is indebted to H19 for unpaid lease obligations. *See* Evid. Rule 201(2)(C); *Brenwick Associates, LLC v. Boone Cnty Redevelopment Comm’n*, 870 N.E.2d 474, 478 (Ind. Ct. App. 2007) (finding that



the trial court was not required to take judicial notice of irrelevant facts), *summarily aff'd in relevant part*, 889 N.E.2d 289, 290 n.4 (Ind. 2008).

[24] Other exhibits—including hundreds of pages of photocopied articles, documents downloaded from the internet and purported to be from the Office of the Secretary of State, documents printed from the internet and purported to be from the Better Business Bureau, assorted invoices, and communications between parties other than the parties involved in this cause—were submitted without any certification or foundation as required in accordance with T.R. 56(E).

[25] While we agree with Appellants that “facts can be established by affidavits,” these affidavits must be made on personal knowledge by an individual who is competent to testify to these matters, with the materials that are sworn or certified submitted together with the affidavit. T.R. 56(E); Appellants’ Reply Br. p. 3. Based on our review of Singh’s affidavit and the submitted exhibits, we conclude that the majority of the paragraphs recited in the affidavit were not made on personal knowledge or contain inadmissible hearsay. *Hussain v. Salin Bank & Trust Co.*, 143 N.E.3d 322, 328 (Ind. Ct. App. 2020) (When ruling on a summary judgment motion, the trial court will consider only properly designated evidence that would be admissible at trial. Such evidence does not include inadmissible hearsay contained in an affidavit.). Likewise, no adequate foundation was established for the twenty-two exhibits designated by Appellants and submitted in support of the affidavit. Therefore, we conclude that paragraphs 2-7; 9-11; 17-18; 19-23; 26-28, and 31 of Singh’s affidavit,



together with the twenty-two exhibits are inadmissible in the summary judgment proceeding.

## II. *Summary Judgment*

### A. *Standard of Review*

[26] “We review an appeal of a trial court’s ruling on a motion for summary judgment using the same standard applicable to the trial court.” *Perdue v. Gargano*, 964 N.E.2d 825, 831 (Ind. 2012). “Therefore, summary judgment is appropriate only if the designated evidence reveals ‘no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Id.* (quoting Ind. Trial Rule 56(C)). Our review of a summary judgment is limited to evidence designated to the trial court. *Id.* (citing T.R. 56(H)). All facts and reasonable inferences drawn from the evidence designated by the parties are construed in a light most favorable to the non-moving party, and we do not defer to the trial court’s legal determinations. *Id.*

[27] “The purpose of summary judgment is to terminate litigation about which there can be no factual dispute and which may be determined as a matter of law.” *Bushong v. Williamson*, 790 N.E.2d 467, 474 (Ind. 2003). Once the moving party has sustained its burden of proving the absence of a genuine issue of material fact and the appropriateness of judgment as a matter of law, the opposing party must designate specific facts establishing a genuine issue for trial. *Id.* A factual issue is material for the purposes of Trial Rule 56(C) if it bears on the ultimate resolution of a relevant issue, and a factual issue is genuine if it is not capable of



being conclusively foreclosed by reference to undisputed facts. *Id.* “As a result, despite conflicting facts and inferences on some elements of a claim, summary judgment may be proper where there is no dispute or conflict regarding a fact that is dispositive of the claim.” *Id.* “If the opposing party fails to meet its responsive burden, the court shall render summary judgment.” *Id.*

[28] We observe that, in the present case, the trial court did not enter findings of fact and conclusions of law thereon in support of its judgment. Generally, special findings are not required in summary judgment proceedings and are not binding on appeal. *Jernagan v. Ind. Univ. Health*, 156 N.E.3d 734, 740 (Ind. Ct. App. 2020). However, such findings offer a court valuable insight into the trial court’s rationale and facilitate appellate review. *Id.* “The fact that the parties made cross-motions for summary judgment does not alter our standard of review. Instead, we must consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law.” *Mahan v. Am. Standard Ins. Co.*, 862 N.E.2d 669, 676 (Ind. Ct. App. 2007).

#### B. H19’s Motion for Summary Judgment

[29] Appellants contend that the trial court erred when it determined that no genuine issue of material fact existed that Appellants had defaulted in their payment obligations pursuant to certain truck leases entered into with H19. The uncontroverted designated evidence reflects that on May 1, 2020, H19 purchased from Element Transportation LLC and 19<sup>th</sup> Capital Group, LLC certain assets pursuant to an Asset Purchase Agreement and corresponding Bill



of Sale. In accordance with the terms and conditions of the Asset Purchase Agreement, H19 purchased “all right, title, and interest in and to” the vehicles delineated in seven specified leases which had been previously entered into between Appellants and 19<sup>th</sup> Capital Titling Limited or Element Transportation, LLC. (Appellee’s App. Vol. II, p. 63). Prior to H19’s purchase of these leases, Appellants made payments toward the monthly rent due on the leases between March 1, 2017, and October 15, 2019. Thereafter, Appellants defaulted on their payment obligations under the leases, in the principal amount of \$113,200.00. As Appellants did not submit any evidence to dispute H19’s designated affidavits and materials, we find that no genuine issue of material fact exists that Appellants defaulted on the terms of the leases and we affirm the trial court’s summary judgment in favor of H19.

*C. Appellants’ Cross-Motion for Summary Judgment*

[30] Next, Appellants contend that the trial court erred when it denied their motion for summary judgment, concluding that there are no genuine issues of material fact establishing that H19 succeeded to or merged with Third Parties and that the perceived overpayment on certain truck leases entered into between Appellants and Third Parties should be offset against the indebtedness of Appellants to H19.

[31] Appellants did not submit any admissible designated evidence in support of their contention that H19 merged with Third Parties. H19 disputed Appellants’ claim by designating a second supplemental affidavit from Buddy Beaman



(Beaman), H19's Chief Commercial Officer. In his affidavit, Beaman affirmed that the leases which are the subject of the Complaint were acquired by H19 pursuant to the Asset Purchase Agreement, executed on May 1, 2020. He affirmed that H19 is not a party to the Factoring Agreement, has not entered into any contracts with Quality or Quality Equipment Sales, and has never assumed or purchased any liabilities regarding to, or arising from, Appellants' relationship with Third Parties. Beaman affirmed that H19 has never merged with, succeeded to, or shared any common ownership with Third Parties.

[32] Accordingly, as there are no conflicting facts establishing a merger between H19 and Third Parties or that H19 assumed any liabilities related to the Factoring Agreement, we conclude that the trial court properly denied Appellants' cross-motion for summary judgment.

## **CONCLUSION**

[33] Based on the foregoing, we hold that Appellants' affidavit and designated exhibits are inadmissible pursuant to the parameters established in T.R. 56(E). We further affirm the trial court's entry of summary judgment in favor of H19 and the trial court's denial of Appellants' cross-motion for summary judgment.

[34] Affirmed.

[35] Altice, C.J. and Pyle, J. concur