

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110939-U

Filed 6/6/12

NO. 4-11-0939

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WILLIAMSVILLE STATE BANK & TRUST,	)	Appeal from
an Illinois Banking Institution,	)	Circuit Court of
Plaintiff-Appellee,	)	Sangamon County
v.	)	No. 06CH216
ANGELA S. SHUMAKER, CLIFFORD W.	)	
JAMES, ROBERT G. SHUMAKER, and	)	
SHARON E. SHUMAKER,	)	
Defendants-Appellants,	)	
and	)	
ALL STARS AUTO SALES, INC., an Illinois	)	
Corporation; JOHN R. SHUMAKER; BJC	)	
DEVELOPMENT, INC.; BRETT CUMMING;	)	
MATT MANTEL; and UNKNOWN OWNERS	)	Honorable
AND NONRECORD CLAIMANTS,	)	John Schmidt,
Defendants.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Appleton and Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, rejecting the defendants' argument that the trial court erred by granting the plaintiff-Bank's motion for summary judgment based, in part, on the parties' consent decree.

¶ 2 In April 2006, plaintiff, Williamsville State Bank & Trust (the Bank), filed a complaint, naming, in pertinent part, defendants, Angela S. Shumaker, Clifford W. James, Robert G. Schumaker, and Sharon E. Shumaker (collectively, defendants), seeking to (1) recover the balance due under a loan the Bank had issued to codefendant, All Stars Auto Sales, Inc., and (2) foreclose on various security agreements that it claimed defendants had entered into. In July

2006, the parties entered into a "Stipulation and Consent Decree" as to the complaint. Over the next several years, the parties exchanged several motions related to, among other things, the Bank's request for judgment on the consent decree.

¶ 3 In March 2011, the Bank filed a motion for summary judgment on its April 2006 complaint. Following a May 2011 hearing, the trial court granted summary judgment in the Bank's favor and against defendants based, in part, upon the parties' consent decree.

¶ 4 Defendants appeal, arguing that the trial court erred by granting the Bank's motion for summary judgment because (1) the Bank had breached the terms of the consent decree and (2) defendants were not individually a party to the consent decree. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In April 2006, the Bank filed a complaint against defendants, seeking to (1) recover the balance due under a loan the Bank had issued to All Stars Auto Sales, Inc., and (2) foreclose on various security agreements that it claimed defendants had entered into. In July 2006, the parties entered into a "Stipulation and Consent Decree," which included a stipulation as to the amount All Stars Auto Sales, Inc., owed the Bank, a schedule for repayment of that amount, and a promise by defendants to withdraw their motion to dismiss the Bank's complaint. As to security and enforcement, paragraph 10 of the parties' consent decree states, as follows:

"All notes, evidence of obligations and security interests given to [the] Bank and all guarantees given to the Bank *by the respective defendants* shall remain in full force and effect pending this workout and may be relied upon by the Bank as being in full force and as collateral for the unpaid balance due the Bank from

time to time remaining unpaid." (Emphasis added.)

¶ 7 In August 2006, the Bank filed a motion for judgment on the consent decree, seeking to collect the amount it was owed under its agreement with defendants. Defendants replied, objecting to the enforcement of the parties' consent decree because (1) the Bank prevented them from making payments by not correcting the credit information as it was required to do under the decree, rendering defendants unable to secure financing to comply with the decree, and (2) they were not individually liable for the debts of All Stars Auto Sales, Inc.

¶ 8 In March 2011, the Bank filed a motion for summary judgment on its April 2006 complaint, and the defendants replied. Following a May 2011 hearing, the trial court granted summary judgment in the Bank's favor and against defendants in the amount of \$522,688.81 based, in part, upon the parties' consent decree.

¶ 9 This appeal followed.

¶ 10 II. THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT

¶ 11 Defendants argue that the trial court erred by granting the Bank's motion for summary judgment because (1) the Bank had breached the terms of the consent decree and (2) defendants were not individually a party to the consent decree. We disagree.

¶ 12 A. Summary Judgment and the Standard of Review

¶ 13 Summary judgment is proper when the "pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010). Moreover, "[s]ummary judgment is appropriate when there is no genuine issue of material fact and the moving party's right to judgment is clear and free from doubt." *Espinoza v.*

*Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113, 649 N.E.2d 1323, 1326 (1995). We review *de novo* a trial court's order granting summary judgment. *A.B.A.T.E. of Illinois, Inc. v. Quinn*, 2011 IL 110611, ¶ 22, 957 N.E.2d 876, 881.

¶ 14 B. Defendants' Claim That the Bank Breached the Terms of the Consent Decree

¶ 15 Defendants first contend that the trial court erred by granting the Bank's motion for summary judgment because the Bank had first breached the terms of the consent decree. Specifically, defendants assert that the Bank breached the parties' consent decree by "failing and refusing [to] provide the full releases of the property of John and Angela Schumaker as required by paragraph 8 of the [agreement]." Paragraph 8 of the parties' consent decree states, as follows:

"Upon the receipt of the total sum of \$155,369.88 from John R. Shumaker and Angela S. Shumaker the Bank shall release all its security interest in the car and residence, including its release of the real estate from the security of the All Stars loans."

Defendants claim that having breached this clause of the consent decree, the Bank cannot rely upon the agreement to establish liability as to defendants. Although defendants acknowledge that they failed to provide any evidence that the Bank failed to comply with the decree, they contend that the allegation alone created a genuine issue of material fact sufficient to avoid summary judgment. Defendants' contention in this regard demonstrates an apparent misapprehension of the standards for avoiding summary judgment.

¶ 16 Contrary to defendants' assertion, "[m]ere speculation, conjecture, or guess is insufficient to withstand summary judgment." *McGath v. Price*, 342 Ill. App. 3d 19, 27, 793 N.E.2d 801, 808 (2003) (quoting *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328,

722 N.E.2d 227, 237 (1999)). Here, defendants failed to present a shred of support for their claim that the Bank failed to comply with paragraph 8 of the parties' consent decree. As previously stated, such unsupported assertions are insufficient to withstand summary judgment.

¶ 17 Accordingly, we reject defendants' contention that the trial court erred by granting the Bank's motion for summary judgment because the Bank had first breached the terms of the consent decree.

¶ 18. C. Defendants Claim That They Were Not Individually a Party to the Consent Decree

¶ 19 Defendants next contend that they were not individually a party to the consent decree. Defendants further assert that because they were not a "party" to the consent decree, the decree cannot be used as the basis for summary judgment against them.

¶ 20 The law on consent decrees is as follows:

"A consent decree entered by a court adopting a settlement agreement is considered a contract. *People v. Scharlau*, 141 Ill. 2d 180, 195[, 565 N.E.2d 1319, 1326] (1990). Consent decrees should not be characterized as a court order, but instead a contractual agreement 'controlled by the law of contracts.' *Id.* A consent decree must be interpreted giving effect to the words used in the decree and the parties' intention underlying the decree. *Allied Asphalt Paving Co. v. Village of Hillside*, 314 Ill. App. 3d 138[, 144, 731 N.E.2d 425, 429] (2000)." *People v. R.J. Reynolds Tobacco Co.*, 2011 IL App (1st) 101736, ¶ 17, 951 N.E.2d 1225, 1231.

¶ 21 In this case, defendants entered into the consent decree in July 2006 to avoid the potential adverse judgment that might flow from the Bank's April 2006 complaint. Our review of that decree shows that each of the defendants was a party to the decree. For example, the decree begins, as follows:

"Now comes the *Defendants*, by *their* counsel John B. Narmont, and the Plaintiff, [the Bank], by its counsel, Paul E. Presney, Sr.[,] and by virtue of their respective authority obtained from their respective clients do hereby [*sic*] that as to the pending proceedings \*\*\* the court will enter a decree approving the stipulated agreement [below]." (Emphasis added.)

Moreover, as to security and enforcement, paragraph 10 of the consent decree states, as follows:

"All notes, evidence of obligations and security interests given to [the] Bank and all guarantees given to the Bank *by the respective defendants* shall remain in full force and effect pending this workout and may be relied upon by the Bank as being in full force and as collateral for the unpaid balance due the Bank from time to time remaining unpaid." (Emphasis added.)

¶ 22 Giving effect to the words used in the decree—that is, the plain language of the decree—we conclude that the parties' intention underlying the decree was to have each respective defendant acknowledge the debt owed the Bank. The consequence of defendants' acknowledgment in this regard is that they could not later assert, as the trial court recognized, that they were not individually responsible for the debts of All Stars Auto Sales, Inc.

