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2013 IL App (3d) 120972-U

Order filed September 23, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

DEALER SERVICES CORPORATION,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	
)	
EDWARD F. BOLIAUX,)	Appeal No. 3-12-0972
)	Circuit No. 08-L-800
Defendant-Appellant)	
)	
(EMC Automotive, Inc. and EMC)	
Acceptance, LLC,)	Honorable
)	Rick Mason,
Defendants).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court did not lack subject matter jurisdiction as a result of its decision to consolidate cases.
(2) The trial court did not err in entering summary judgment in favor of the creditor due to the guarantor's failure to pay defendants' indebtedness where the record demonstrated the existence of a valid guaranty and guarantor's breach of his contractual obligations.

¶ 2 Defendant, Edward F. Boliaux, appeals from the order of the circuit court seeking to replevy assets of EMC Automotive, Inc. and EMC Acceptance, LLC, which constituted the security for an unpaid promissory note and guaranty executed by Boliaux to plaintiff, Dealer Services Corporation. On appeal, Boliaux argues that the trial court (1) lacked subject matter jurisdiction because this case had been previously consolidated with another matter in which the trial court lacked jurisdiction, and (2) "abused its discretion when it granted the [p]laintiff's motion for [s]ummary [j]udgment." We affirm.

¶ 3 Dealer Services is an automobile finance company that provides loans to retail and wholesale car dealers. In July of 2007, Dealer Services agreed to loan funds to defendant EMC Automotive to purchase vehicles to be sold by EMC Automotive to retail customers. Boliaux, as the president of EMC Automotive, signed a promissory note and a security agreement in the principal amount of \$200,000, granting Dealer Services an interest in all of its collateral and inventory.

¶ 4 On November 29, 2007, the parties entered into a second promissory note and security agreement for an additional line of credit in the sum of \$500,000. Under the second note, EMC Automotive agreed that Dealer Services could demand repayment in full or in part at any time and that EMC Automotive would remit payment within 48 hours after the sale of any item purchased with funds advanced by Dealer Services. Boliaux also executed a personal guaranty, which granted the prompt and full payment of all obligations of EMC Automotive to Dealer Services.

¶ 5 By the fall of 2008, Dealer Services had loaned EMC Automotive more than \$648,600.82. EMC Automotive failed to remit payments to Dealer Services within 48 hours after the sale of certain inventory acquired by loaned funds, and Boliaux failed to pay EMC Automotive's obligation

under the terms of the personal guaranty. Dealer Services notified EMC Automotive and Boliaux that they were in default on their loan obligation under the security agreement and the guaranty and demanded payment. EMC Automotive and Boliaux failed to pay.

¶ 6 Dealer Services filed a complaint against EMC Automotive, EMC Acceptance and Boliaux on October 2, 2008 (No. 08-L-800). In addition to the case brought by Dealer Services, Automotive Finance Corporation filed a case against Boliaux (No. 08-L-619) on August 1, 2008, raising similar default issues. As a result, Boliaux filed a motion requesting that the court consolidate both cases because "[i]t would be an aid to the court and be a greater use of judicial resources." The trial court granted the motion by simply ruling, "The Motion to Consolidate is allowed."

¶ 7 On August 25, 2010, Dealer Services filed a motion for summary judgment against EMC Automotive for breach of contract and against EMC Acceptance for piercing the corporate veil and conversion. The trial court held that there was no genuine issue of material fact and that Dealer Services was entitled to judgment against both defendants. The court entered judgment in the amount of \$648,600.82, plus interest, attorney fees and costs.

¶ 8 On February 22, 2011, Dealer Services filed a motion for summary judgment against Boliaux on its breach of guaranty claim. On March 1, 2011, the trial court ordered case No. 08-L-800 severed from case 08-L-619. On October 18, 2012, the trial court granted Dealer Services's motion for summary judgment against Boliaux. He then filed a motion to vacate, which the trial court denied on October 26, 2012.

¶ 9 The notice of appeal filed by Boliaux states that he appeals to this court from (1) "[t]he Courts [sic] order of October 26th, 2012, denying Defendant, Edward F. Boliaux's[,] Motion to Vacate Judgment Pursuant to 735 ILCS 5/2-1301(e)," and (2) "[t]he Courts [sic] order from October

18th, 2012, granting Plaintiff, Dealer Services Corporation's[,] Motion for Summary Judgment."

¶ 10

I

¶ 11 Boliaux first argues that the trial court lacked subject matter jurisdiction as to Dealer Services's claims against him as a result of the consolidation of case No. 08-L-800 and case No. 08-L-619. Specifically, Boliaux claims the trial court lacked jurisdiction as to case No. 08-L-619 because the complaint in that case did not state that "defendant is wrongfully detaining the property in issue" as required in the replevin statute. See 735 ILCS 5/19-104 (West 2010). He maintains that because the court lacked jurisdiction in case No. 08-L-619, the order consolidating case No. 08-L-619 with case No. 08-L-800 and all subsequent orders are void.

¶ 12 Subject matter jurisdiction refers to a court's power to adjudicate the general question involved and to grant the relief requested. *In re K.D.*, 407 Ill. App. 3d 395 (2011). Illinois circuit courts "have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction" relating to the redistricting of the General Assembly and the ability of the Governor to serve in office. Ill. Const. 1970, art. VI, §9. The circuit court's authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition, pleading which function to frame the issues for the court and circumscribe the relief the court is empowered to order. *In re Custody of Ayala*, 344 Ill. App. 3d 574 (2003). A defectively stated cause of action will not destroy jurisdiction if the court has jurisdiction of the subject matter and has acquired jurisdiction of the parties. *Irving v. Rodriguez*, 27 Ill. App. 2d 75 (1960). The question of whether a trial court had subject matter jurisdiction is reviewed *de novo*. *Doctor's Associates, Inc. v. Duree*, 319 Ill. App. 3d 1032 (2001).

¶ 13 Here, the trial court had subject matter jurisdiction over the matter in case No. 08-L-619. On

August 1, 2008, Automotive Finance Corporation filed a verified complaint for order of replevin against Boliaux. The complaint sufficiently stated facts related to a replevin action and reasonably informed Boliaux of the nature of the claim he was called upon to meet. Although the complaint in that case may not have included the required statutory language, that defect did not destroy the circuit court's jurisdiction of the subject matter raised by the plaintiff. See *Irving*, 27 Ill. App. 2d at 79.

¶ 14 Even assuming the trial court lacked subject matter jurisdiction with regard to case No. 08-L-619, consolidation of the two cases had no effect on the court's jurisdiction in case No. 08-L-800. Section 2-1006 of the Code of Civil Procedure provides that "[a]n action may be severed, and actions pending in the same court may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right." 735 ILCS 5/2-1006 (West 2012). Illinois courts have recognized three forms of consolidation where several actions are pending: (1) the court may stay proceedings in all but one case and determine whether the disposition of one case may settle the others; (2) the cases may be tied together but with separate docket entries and judgments in matters involving an inquiry into the same event; or (3) the cases may be consolidated into one action, to be disposed of as one suit, in cases that could have been brought as a single action. *Busch v. Mison*, 385 Ill. App. 3d 620 (2008). Where cases are consolidated merely for convenience and are not merged into a single action, the rights of the parties in one action are not affected by matters concerning the other suit. *First Robinson Savings & Loan v. Ledo Construction Co.*, 210 Ill. App. 3d 889 (1991).

¶ 15 In this case, the record demonstrates that consolidation was merely for convenience. Boliaux's motion for consolidation stated that it would "be an aid to the Court and be a greater use of judicial resources to consolidate the above captioned matter with 08 L 619." The order entered by the trial court simply granted the motion without stating that the cases would be consolidated into

a single action. Following consolidation, there was never a joint complaint filed by the parties or any other jointly filed motion. Moreover, from the date of consolidation until the cases were severed in March of 2011, the two matters maintained their separate case numbers, with orders and motions naming the individual case that was being argued. The cases often had separate court dates and many of the trial court's orders involved either Dealer Services or Automotive Finance Corporation, but not both. Thus, the two cases remained separate actions, and Dealer Services's rights were not affected by the trial court's jurisdiction, or lack thereof, in case No. 08-L-619. Accordingly, the consolidation of the two matters had no effect on the trial court's jurisdiction in this case.

¶ 16

II

¶ 17 Boliaux also claims that the trial court "abused it's discretion" in granting Dealer Services's motion for summary judgment.

¶ 18 Summary judgment is appropriate 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 judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). To defeat a summary judgment motion, the opposing party must show, through affidavits or other proper documents, that a material issue of evidentiary fact exists. *Extel Corp. v. Cermetek Microelectronics, Inc.*, 183 Ill. App. 3d 688 (1989). An allegation that an issue of fact exists, without supporting documentation, does not create a genuine issue of material fact. *Id.* at 691. We note that the appropriate standard of review on appeal from a summary judgment order is *de novo*. *Williams v. Manchester*, 228 Ill. 2d 404 (2008).

¶ 19 A personal guaranty is construed under the same principles that govern contract interpretation. *Zirp-Burnham, LLC v. E. Terrell Associates, Inc.*, 356 Ill. App. 3d 590 (2005). To

recover for breach of guaranty, the plaintiff must establish (1) the existence of a valid and enforceable guaranty, (2) performance by the plaintiff, (3) the defendant's breach of the guaranty obligations, and (4) resulting injury to the plaintiff. *Id.* at 600.

¶ 20 In this case, Dealer Services demonstrated that the guaranty is valid and enforceable against Boliaux. The guaranty bears Boliaux's signature. During his deposition, Boliaux was shown a copy of the personal guaranty dated November 29, 2007, and he identified his signature on the document. Boliaux claims that the copy of the guaranty he was shown at his deposition and the one attached to Dealer Services's complaint are not the same document. However, a comparison of the guaranty Boliaux was shown at the deposition and the guaranty attached to Dealer Services's complaint demonstrates that they are the same document with different exhibit labels. Boliaux was shown the guaranty at his deposition and testified under oath that it bore his signature.

¶ 21 Further, we find no genuine issue of material fact as to the three remaining elements of the cause of action. There is no dispute that Dealer Services fulfilled its obligation under the guaranty by advancing funds to EMC Automotive for the purchase of its vehicle inventory. In addition, Boliaux does not dispute that he defaulted on the note and the personal guaranty by failing to remit payments to Dealer Services within 48 hours after the disposition by sale of the inventory. As a result of the breach of the guaranty, Dealer Services suffered damages in the amount of \$648,600.82. Thus, the trial court did not err in granting Dealer Services's summary judgment motion.

¶ 22

CONCLUSION

¶ 23 The judgment of the circuit court of Will County is affirmed.

¶ 24 Affirmed.