2017 IL App (2d) 161066-U
No. 2-16-1066
Order filed June 20, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CONSUMERS COOPERATIVE CREDIT UNION, Plaintiff-Appellee, v. DONNA PLICHTA and ROBERT PLICHTA, Defendants-Appellants.	))))))))))	Appeal from the Circuit Court of McHenry County No. 16-LA-07 Honorable Michael T. Caldwell, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order granting summary judgment in favor of plaintiff on its breach of contract claim was affirmed where no genuine issue of material fact existed.

¶ 2 Plaintiff, Consumers Cooperative Credit Union, filed a breach of contract complaint against defendants, Donna and Robert Plichta. Defendants appeal from the trial court's order granting summary judgment in favor of plaintiff and entering a judgment against defendants in the amount of $240,893.02 plus costs. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 7, 2016, plaintiff filed its breach of contract complaint, which alleged as follows. On January 18, 2008, defendants borrowed $210,000.00 from plaintiff, as evidenced by a "Note and Disclosure" statement. Under the terms of the note, defendants agreed to repay the loan in monthly installments of $490.37, but they failed to make the monthly payments. At the time of the filing of the lawsuit, defendants owed $236,148.24 on the note, plus attorney fees. The note was attached to the complaint as an exhibit.

¶ 5 On August 8, 2016, plaintiff filed a motion for summary judgment. An affidavit dated August 3, 2016, from Vince Castelli was attached to the motion, and he averred as follows. Castelli was the Director of Collections for plaintiff, and he had personal knowledge of plaintiff's books and records, as well as defendants' note. Specifically, on January 18, 2008, defendants and plaintiff entered into a revolving loan agreement with a line of credit of $210,000.00. The note that evidenced the loan was secured by a mortgage on defendants' home. After plaintiff loaned defendants money, defendants failed to repay the loan as required by the agreement. Defendants were in default in the amount of $243,583.77, which included (1) the unpaid balance on principal and interest; (2) court costs and service fees, and (3) attorney fees. The note and defendants' payment history were also attached to the motion for summary judgment.

¶ 6 In their response to plaintiff's motion for summary judgment, defendants claimed the following. They suffered economic hardship in 2008, and, on December 2, 2008, plaintiff charged-off the loan. After the loan was charged-off, plaintiff stopped sending monthly statements or making demands for payment. Plaintiff then formally "wrote off" the loan on September 15, 2009. In March 2013, two of plaintiff's employees told Donna Plichta that the note had been "written-off" in September 2009 and that no amount was due. Plaintiff also

"publicly and repeatedly" reported to credit agencies that no balance remained on the loan. Defendants further claimed that the note was unenforceable and that a genuine issue of material fact existed as to whether (1) plaintiff "wrote-off" the loan without intending to collect the amount due and (2) defendants detrimentally relied on plaintiff's representations that the loan was unenforceable. While defendants also stated in their response that the foregoing claims were evidenced in Donna Plichta's affidavit, no affidavits or other materials were attached to their response.

¶ 7 In its reply, plaintiff argued that no issue of material fact existed because defendants did not dispute that they entered into a contract with plaintiff or that they failed to make payments under the contract. Plaintiff also noted that charging-off or writing-off loans was an accounting practice, which did not negate the underlying debt or otherwise prohibit plaintiff from attempting to collect the debt. In a similar vein, plaintiff noted that defendants continued to make sporadic payments on the loan after it was charged-off in September 2009. Plaintiff also attached a "counter-affidavit" from Castelli, who averred as follows. Plaintiff and defendants never modified or amended the loan issued on January 18, 2008, nor did they enter into a forbearance agreement. Additionally, plaintiff repeatedly attempted to collect the debt after it was charged-off in September 2009, as evidenced by business records from December 2008, October 2010, and March 2013 that showed notices, messages, and conversations between plaintiff and defendants during those months. Furthermore, under industry standards and regulations, plaintiff charged-off loan balances that were 180 days past due or were otherwise deemed uncollectable; this accounting practice did not mean that the charged-off loan had been paid. Plaintiff charged-off defendants' loan on September 15, 2009, because it was delinquent and the loan was deemed

uncollectable without legal action. Plaintiff also attached business records documenting plaintiff's communications with defendants in December 2008, October 2010, and March 2013.

¶ 8 On November 10, 2016, the court granted plaintiff's motion for summary judgment and entered judgment in favor of plaintiff and against defendants in the amount of $240,893.02 plus costs of the lawsuit. The written order did not contain any findings of fact, and the record does not contain any transcripts.

¶ 9 Plaintiff timely appealed.

¶ 10 II. ANALYSIS

¶ 11 Defendants argue that the trial court erred in granting plaintiff's motion for summary judgment because a genuine issue of material fact existed as to whether plaintiff wrote-off the loan with no intention of collecting the amount owed.

¶ 12 Summary judgment is appropriate when the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact such that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2016). Courts construe the record strictly against the movant and liberally in favor of the nonmoving party. *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007). Summary judgment should not be granted unless the moving party's right to judgment is clear and free from doubt. *Forsythe*, 224 Ill. 2d at 280. Summary judgment should be denied if there is a dispute as to a material fact or if the undisputed material facts could lead reasonable observers to divergent inferences. *Forsythe*, 224 Ill. 2d at 280. We review an order granting summary judgment *de novo*. *Forsythe*, 224 Ill. 2d at 280.

¶ 13 Defendants contend that the "conflicting affidavits" create an issue of material fact. Specifically, they maintain that Donna Plichta's affidavit, which was allegedly presented to the

trial court, showed that plaintiff told defendants that the debt was written-off and that it did not intend to pursue collection. On appeal, defendants included Donna's affidavit in the appendix to their brief. The affidavit, however, was not attached to their response to the motion for summary judgment, and it was not included in the record on appeal. "Attachments to briefs that are not included in the record are not properly before this court and cannot be used to supplement the record." *McGee v. State Farm Fire and Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000). Consequently, we will not consider Donna Plichta's affidavit. See *McGee*, 315 Ill. App. 3d at 679.

¶ 14 To establish a breach of contract claim, a plaintiff must prove (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages or injury to the plaintiff resulting from the breach. *Carlson v. Rehabilitation Institute of Chicago*, 2016 IL App (1st) 143853, ¶ 13. Here, plaintiff attached Castelli's affidavit to its motion for summary judgment. Castelli averred that plaintiff and defendants entered into a loan agreement with a line of credit of $210,000.00; the agreement was evidenced by a note that was secured by a mortgage on defendants' home; plaintiff loaned defendants money; defendants breached the agreement by failing to make monthly payments to repay the loan; and defendants owed $243,583.77 as a result of the breach. Because defendants failed to file a counter-affidavit or present any evidence to contradict Castelli's affidavit or the other documentary evidence, no genuine issue of fact existed as to the breach of contract claim or the amount of damages. See *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 31 ("Facts contained in an affidavit in support of a motion for summary judgment which are not contradicted by counteraffidavit are admitted and must be taken as true for purposes of the motion.").

¶ 15 Moreover, defendants do not dispute that they entered into a valid loan agreement with plaintiff or that they breached the agreement when they failed to make the requisite monthly payments. Instead, without citing any authority, they argue that they detrimentally relied on plaintiff's alleged assertions that it no longer intended to collect the debt after it was charged-off. Defendants also contend, without argument or authority, that they should "not be charged with understanding a technical meaning of 'write-off' when faced with plain language representation by plaintiff that no amount was due on the loan."

¶ 16 Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) provides that an appellant's brief must contain "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Mere contentions, without argument or citation of authority, do not merit consideration on appeal. *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010). Contentions supported by some argument but by absolutely no authority do not satisfy Rule 341(h)(7). *Vilardo*, 406 Ill. App. 3d at 720. "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *Vilardo*, 406 Ill. App. 3d at 720. Here, defendants failed to provide any authority or cogent legal argument in support of their claim of detrimental reliance. Indeed, they failed to identify the elements of promissory estoppel or otherwise explain how the facts satisfy those elements. See, *e.g.*, *Wagner Excello Foods, Inc. v. Fearn International, Inc.*, 235 Ill. App. 3d 224, 234 (1992) ("[T]o establish a cause of action for promissory estoppel, the plaintiff must prove (1) an unambiguous promise by the defendant to the plaintiff, (2) the plaintiff's reliance on such promise, (3) that the plaintiff's reliance was expected and foreseeable by the defendant, (4) that the plaintiff's reliance was detrimental, and (5) that the plaintiff's reliance was reasonable

and justified."). Thus, defendants' detrimental reliance argument is forfeited. Similarly, defendants' one-sentence argument that they should not be "charged" with understanding the term "write-off" is forfeited. We note, however, that the payment history attached to plaintiff's motion for summary judgment belies any argument that defendants did not understand the meaning of a write-off or charge-off, as they continued to make payments on the loan after it was charged-off on September 15, 2009.

¶ 17 Defendants also argue that plaintiff failed to comply with 15 U.S.C. § 1692g, which pertains to "initial communications" between a debt collector and a debtor. They again provide no legal authority to support their position that the alleged failure to comply with this provision creates a genuine issue of material fact on the breach of contract claim. That argument is therefore forfeited. See Ill. S. Ct. R. 341(h)(7); see also *Vilardo*, 406 Ill. App. 3d at 720.

¶ 18 Finally, defendants fault the trial court for not making findings of fact and for failing to evaluate the "conflicting" evidence presented by the parties. Our review of the trial court's grant of summary judgment is *de novo*, and our determination is not dependant on the trial court's reasoning. *Makowski v. City of Naperville*, 249 Ill. App. 3d 110, 116 (1993). It is "not reversible error for a trial court to fail to provide findings of fact or law when ruling on a motion for summary judgment. While such a failure can leave the nonprevailing party in a quandary as to exactly why the trial court ruled as it did, it is the ruling which is being appealed, not the reasons for the ruling." *Makowski*, 249 Ill. App. 3d at 115. Furthermore, the appellant has the burden to present a sufficiently complete record of the proceedings in the trial court to support a claim of error; in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the

incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. Here, defendants did not attach any documents to their response to the motion for summary judgment, and Donna Plichta's affidavit was not included in the record on appeal. Additionally, the record on appeal does not include a report of proceedings, so there is no transcript of any hearing on the motion for summary judgment in the record. We thus presume that the trial court acted in conformity with the standards applicable to motions for summary judgment when it considered both of Castelli's affidavits and the other documentary evidence properly before it. Accordingly, we affirm the trial court's order granting summary judgment in favor of plaintiff.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's order granting plaintiff's motion for summary judgment and entering a judgment against defendants in the amount of $240,893.02.

¶ 21 Affirmed.