2018 IL App (1st) 170922-U

FIRST DIVISION
September 28, 2018

No. 1-17-0922

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

FIRST BANK & TRUST, Plaintiff and Counterdefendant-Appellee, v. MARCO A. RODRIGUEZ and NUESTRA CASA INTERNATIONAL LLC, Defendants (Marco A. Rodriguez, Defendant and Counterplaintiff-Appellant).	)	Appeal from the Circuit Court of Cook County No. 10 L 5222 The Honorable Brigid M. McGrath Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Griffin and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's judgment is affirmed. The circuit court (1) did not abuse its discretion by denying defendant a further extension of time to serve his responses to plaintiff's requests to admit, (2) did not abuse its discretion in denying defendant leave to file an amended pleading where defendant did not make a proper request for leave to amend, (3) properly granted summary judgment in favor of plaintiff, (4) properly denied defendant's cross-motion for summary judgment, and (5) did not abuse its discretion by denying defendant's motion to reconsider.

¶ 2 Plaintiff First Bank & Trust sued defendant Nuestra Casa International LLC (Nuestra Casa) for breach of a promissory note and defendant Marco A. Rodriguez for breach of a guaranty. Nuestra Casa obtained a discharge in bankruptcy, so First Bank proceeded solely against Rodriguez on the guaranty. The circuit court granted summary judgment in favor of First Bank on its guaranty claim and found no just cause for delay of enforcement or appeal. Rodriguez's motion to reconsider was denied. Rodriguez appeals. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 First Bank initiated this action in September 2010 and subsequently filed a first amended complaint. Count I asserted a breach of contract claim against Nuestra Casa for breach of a promissory note. First Bank alleged that on or about October 26, 2007, it loaned Nuestra Casa $100,000 in exchange for a promissory note. The note matured on October 25, 2008, and Nuestra Casa failed to pay the balance due. Count II asserted a breach of contract claim against Rodriguez, claiming that Rodriguez executed a commercial guaranty and that he failed to pay the outstanding balance on the note after it matured. Attached to the first amended complaint was a copy of the note executed by Rodriguez acting as manager of Nuestra Casa, and a copy of the guaranty executed by Rodriguez individually. The first page of the guaranty did not contain a loan number or make any specific reference to the note. The remaining pages of the guaranty, including the signature page, did contain the loan number identified on the note.

¶ 5 Defendants, through counsel, moved to dismiss the first amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)). Nuestra Casa asserted in part that count I should be dismissed because the note was secured by a life insurance policy and by collateral described in a "Commercial Security Agreement dated

October 26, 2007," neither of which were referenced in or attached to the first amended complaint. With respect to count II, Rodriguez asserted that no guaranty existed because the first page of the guaranty failed to reference the note, and thus it could not be determined what the parties were agreeing to. The motion to dismiss was briefed, and defendants' counsel was allowed to withdraw. The circuit court subsequently "discharged" count I of the amended complaint due to Nuestra Casa having obtained a discharge in bankruptcy. The circuit court took the motion to dismiss count II under advisement and then denied the motion. Rodriguez, acting *pro se*, filed an answer to count II and asserted affirmative defenses of "impairment of collateral" and fraud.[1] The parties then engaged in discovery.

¶ 6 On May 9, 2014, First Bank served Rodriguez with a set of requests to admit pursuant to Illinois Supreme Court Rule 216 (eff. May 1, 2013). First Bank requested, in relevant part, that Rodriguez admit (1) the genuineness and authenticity of both the note and the guaranty, as well as his signatures on those documents, (2) that First Bank Loaned Nuestra Casa $100,000 pursuant to the note and that Rodriguez guaranteed repayment of the note, (3) that he signed the guaranty, and (4) that he "did not re-sign any loan documents for the loan represented by the [n]ote at a later date following the closing on October 26, 2007[,] of said loan, including the [g]uaranty." Rodriguez did not respond to the requests to admit within 28 days of service and did not seek an extension of time to do so.

¶ 7 On October 30, 2014, First Bank filed a motion to deem the requests to admit as admitted. The circuit court set a briefing schedule on the motion and subsequently granted Rodriguez an extension of time to respond. Rodriguez filed an untimely "motion in opposition to deny plaintiff's motion to deem its request to admit as admitted," and requested additional time

[1]Rodriguez also filed a three-count counterclaim. His amended counterclaims were still pending in the circuit court at the time he filed his notice of appeal, and are therefore not before this court.

to respond to the requests to admit. On May 11, 2015, the circuit court held a hearing on First Bank's motion to deem facts admitted, which Rodriguez attended via telephone. The circuit court entered a handwritten order setting a status hearing for July 14, 2015, and further ordered, in relevant part,

> "Plaintiff's motion to deem its Request to Admit admitted is denied, subject to [d]efendant filing within 24 hours (by 12:00 p.m. on May 12, 2015) his responses to [p]laintiff's Request to Admit. If [d]efendant fails to file his responses **** within said time, the Request to Admit will be deemed admitted in their [*sic*] entirety."

¶ 8 Rodriguez did not file his responses to the requests to admit by the circuit court's deadline, but instead filed his responses on May 13, 2015, at 10:23 a.m. First Bank subsequently filed a second motion to deem its requests to admit as admitted, as well as a motion for sanctions against Rodriguez for his noncompliance with various discovery orders, and noticed both motions for the July 14, 2015, status hearing. Rodriguez did not appear at the July 14, 2015, status hearing. The circuit court granted First Bank's motion and deemed all of the facts in the requests to admit as admitted.

¶ 9 Within 30 days, Rodriguez filed a motion to vacate, asserting that he received a copy of the circuit court's May 11, 2015, order at around 4:30 p.m. that day, but that it was very difficult to read. He asserted that he believed "in good faith" that his responses were due on May 13, 2015. He further asserted that on July 3, 2015, he informed First Bank's counsel that he would be on vacation from July 4 to July 15, but that First Bank failed to inform the circuit court of this fact. Rodriguez also argued that he believed that the status hearing was set for July 16. Rodriguez's motion accused First Bank's counsel of "tactics" that went "well beyond what is

acceptable behavior in any courtroom and perhaps in violation of many ethical rules." The circuit court denied Rodriguez's motion to vacate.

¶ 10 Rodriguez filed a motion for summary judgment. He argued that First Bank's first amended complaint alleged that the note and guaranty were executed "on or about" October 26, 2007, and that the note and guaranty were dated October 26, 2007, but First Bank's answers to interrogatories asserted the note and guaranty were executed on November 30, 2007. First Bank filed a cross-motion for summary judgment based on Rodriguez's judicial admissions as to the authenticity and genuineness of the note and guaranty and his signature on those instruments. First Bank asserted that under the terms of the guaranty it could seek to collect from Rodriguez without first pursuing Nuestra Casa or any collateral pledged for repayment of the note. Attached to First Bank's motion was the affidavit of Edward Bylina, one of First Bank's vice presidents, which stated the amount due on the guaranty was $125,715.07 and that interest continued to accrue at $12.95 per day. Also attached was an affidavit of J. Timothy Cerney, First Bank's counsel, which stated the amount of attorney fees incurred in enforcing the guaranty, and to which First Bank was entitled under the terms of the guaranty, was $165,247.93. The cross-motions for summary judgment were fully briefed. During briefing, Rodriguez sought to compel production of numerous documents and sought leave to amend his answer and affirmative defenses, although the record does not contain any proposed amended pleading.

¶ 11 On August 29, 2016, the circuit court denied Rodriguez's motion for summary judgment and denied his motion for leave to file an amended answer and affirmative defenses. The circuit court granted First Bank's motion for summary judgment, but stated "judgment will be entered on Sept[ember] 27, 2016[,] *** following clarification of an issue as to an alleged payment of approximately $11,000 that [Rodriguez] alleges should have been credited to [his] account." On

October 19, 2016, the circuit court entered a handwritten order granting First Bank's motion for summary judgment in the amount of $328,512.27, and made a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). Rodriguez filed a timely motion to reconsider, which the circuit court denied, and which was also contained a Rule 304(a) finding. Rodriguez, acting *pro se*, filed a timely notice of appeal from the August 29, 2016, summary judgment order, and asks this court to reverse virtually every order entered in the circuit court.

¶ 12 ANALYSIS

¶ 13 On appeal, Rodriguez identifies five issues for review: (1) whether the circuit court erred in granting summary judgment in favor of First Bank; (2) whether the circuit court abused its discretion in deeming the facts in First Bank's requests to admit as admitted; (3) whether the circuit court erred in denying him leave to file an amended answer and affirmative defenses; (4) whether the circuit court erred in denying his motion to reconsider the summary judgment order; and (5) whether the circuit court erred by denying his cross motion for summary judgment. We address these arguments in a more logical order.

¶ 14 We first address whether the circuit court abused its discretion in deeming the facts in First Bank's requests to admit as admitted. Rodriguez argues that his responses were only 18 hours late and that he had a "good faith" belief that his responses were due May 13, 2015. He contends that First Bank's counsel did not email him a copy of the circuit court's May 11, 2015, order until after 4:00 p.m. that day, and that the order was illegible. Rodriguez places some of the blame on First Bank by contending that it remained silent for five months until it brought its motion to deem the facts admitted. In other words, Rodriguez argues that under all of the circumstances, the circuit court erred by refusing to extend the time for him to respond to First Bank's requests to admit. We disagree.

¶ 15 Rodriguez incorrectly asserts that our standard of review is *de novo*. It is well-settled that whether good cause exists under Supreme Court Rule 183 (eff. Feb. 16, 2011) is left to the sound discretion of the circuit court. See *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007) ("The circuit court has the sound discretion to consider all objective, relevant evidence presented by the delinquent party with respect to why there is good cause for its failure to comply with the original deadline and why an extension of time should now be granted."). There is no precise definition of good cause in the context of a request for additional time under Rule 183, "as that determination is fact-dependent and rests within the sound discretion of the circuit court." *Id.* A circuit court abuses its discretion only if it acts arbitrarily without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law, or if no reasonable person would take the position adopted by the circuit court. *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452 (2006).

¶ 16 In the circuit court, Rodriguez's proffered several reasons why his responses were late, but never expressly argued that he satisfied the good cause requirement in Rule 183. In his motion to vacate the circuit court's order deeming the facts admitted, Rodriguez argued that he did not receive the May 11, 2015, order until the late afternoon and that the order was very difficult to read. It is clear from the record, however, that he participated in the May 11, 2015, hearing by telephone. In an email he sent to First Bank's counsel on May 11, 2015, which acknowledged receiving the order and asserted that it was difficult to read, he wrote that the circuit court "provided 24 hours for me to submit answers to your request to admit." He then alluded to unidentified "standing court rules" to assert a theory that "the day of the hearing order is not counted." Rodriguez cites no authority in support of his purported belief that his additional 24 hours to respond started on May 12, 2015, nor would it be a reasonable to assume that when

the circuit court orders a party to do something within 24 hours that the clock starts running 24 hours later. The circuit court's order specifically stated the time and date on which Rodriguez's responses were due and specifically stated the consequences for noncompliance. Rodriguez did not comply. Furthermore, we observe that at time the circuit court gave Rodriguez a final 24-hour extension to respond, his responses were already 11 months late. Under these circumstances, we cannot say that the circuit court abused its discretion in refusing to further extend the time for Rodriguez to respond to the requests to admit.

¶ 17 We next consider whether the circuit court abused its discretion by refusing to allow Rodriguez to file an amended answer and affirmative defenses. First Bank contends that this order was not appealable, but fails to develop an argument on this point. It appears, however, that First Bank's argument is premised on the assertion that the circuit court's August 29, 2016, order, which in relevant part denied Rodriguez's motions for leave to amend and for summary judgment, was not made final and appealable pursuant to Rule 304(a). We believe, however, that the October 19, 2016, order finalized the August 29, 2016, order that granted summary judgment in favor of First Bank, and that the Rule 304(a) finding in the October 19, 2016, order extends to all of the matters resolved in the August 29, 2016, order. We will therefore review Rodriguez's arguments related to his motion for leave to amend.

¶ 18 On appeal, Rodriguez fails to explain the nature of his proposed amendments, and a review of the record reflects that he similarly failed to explain the nature of his proposed amendments in the circuit court. On January 15, 2016, Rodriguez filed a motion consisting of a single sentence: "That after obtaining more documents and facts from [p]laintiff's possession through discovery ordered by this court and the production and retrieval of [d]efendant's records/documents new information has surfaced which allows Rodriguez to amend his answers

and counter claim [*sic*] to more precisely answer and respond with his counter claims [*sic*]." The motion was not accompanied by a proposed amended pleading. Later, as part of his response to First Bank's cross-motion for summary judgment, Rodriguez sought leave to amend his answer and affirmative defenses, asserting that he "obtained more documents and facts from FBT's possession through discovery ordered by this court and the production and retrieval of Defendants [*sic*] records and documents. Since such new information had surfaced, Rodriguez filed his motion to amend his answers and counter-claims [*sic*] to more precisely answer, respond with his counter claims [*sic*]." Again, he failed to attach a proposed amended pleading. In neither of his requests to amend his answer and affirmative defenses did Rodriguez specify what amendments he sought to make.

¶ 19 "In order for the circuit court to exercise its discretion in deciding on the motion [to file an amended pleading], it must review the proposed amended pleading to determine whether it would cure the defect in the pleadings, whether it was timely, whether it prejudiced the opposing party, and whether there were previous opportunities to amend." *In re Huron Consulting Group, Inc. Shareholder Derivative Litigation*, 2012 IL App (1st) 103519, ¶ 68. In order to be a proper motion for leave to amend, the motion "must contain an argument for permitting amendment *** and include a copy of the proposed amended pleading." *Id.* Here, Rodriguez's motions were not proper requests for leave to file an amended pleading, and thus the circuit court did not abuse its discretion by denying leave to amend.

¶ 20 Next, Rodriguez argues that the circuit court erred in granting summary judgment in favor of First Bank. He argues that a genuine issue of material fact existed as to whether he ever executed a guaranty in connection with the note, and, if so, the date on which the guaranty was executed. He argues that a Business Loan Agreement required two guarantors before First Bank

would disburse the funds, but that the there was only one purportedly executed guaranty, while a second guaranty was prepared but not executed. Furthermore, he contends that the note and guaranty are dated October 26, 2007, but that First Bank stated in an answer to an interrogatory that the note and guaranty were executed on November 30, 2007. Rodriguez's brief regularly fails to cite to the record in support of his arguments, in violation of Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017). Despite the deficiencies of Rodriguez's brief, we will address the merits of his argument.

¶ 21 Summary judgment is appropriate if the pleadings, depositions, affidavits, and other admissions on file establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016); *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 17. The purpose of summary judgment is not to try a question of fact, but rather to determine whether one exists. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). "In determining whether a genuine issue of material fact exists, the court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the nonmovant." *West Bend Mutual Insurance Co. v. DJW-Ridgeway Building Consultants, Inc.*, 2015 IL App (2d) 140441, ¶ 20.

¶ 22 As we discussed above, the circuit court committed no error by granting First Bank's motion to deem its requests to admit as admitted. Where a fact has been admitted in a Rule 216 request to admit, "it becomes an incontrovertible judicial admission and the fact is withdrawn from contention." *Oelze v. Score Sports Venture, LLC*, 401 Ill. App. 3d 110, 125 (2010). Here, Rodriguez admitted that the copies of the note and guaranty attached to the first amended complaint and his signatures on those instruments were genuine, and that he signed the guaranty. In light of these judicial admissions, the date on which the note and guaranty were executed is

immaterial. Furthermore, First Bank presented an uncontroverted affidavit showing that the note matured and was in default and setting forth the amount due and owing. Additionally, it is immaterial that other documents connected with the loan required two guaranties before the loan proceeds were disbursed because the loan was disbursed and Rodriguez guaranteed repayment of the loan. Therefore, we affirm the circuit court's judgment that there were no genuine issues of material fact that would preclude the entry of judgment in First Bank's favor on count II of First Bank's first amended complaint.

¶ 23 Next, Rodriguez argues that the circuit court erred by denying his cross-motion for summary judgment. Rodriguez's motion for summary judgment was premised on his assertion that First Bank's answers to Rodriguez's interrogatories stated that the note and guaranty were executed on November 30, 2007. We have already concluded, however, that due to Rodriguez's admission that he executed the guaranty, the date on which the loan documents were executed is immaterial. The circuit court therefore did not err in denying Rodriguez's cross-motion for summary judgment.

¶ 24 Finally, Rodriguez contends that the circuit court abused its discretion by denying his motion to reconsider the October 19, 2016, order granting First Bank's motion for summary judgment. The motion to reconsider argued that the circuit court should have permitted Rodriguez to file his responses to First Bank's requests to admit, that there were discrepancies as to the date on which the note and guaranty were purportedly executed, and that there was newly discovered evidence that created a genuine issue of material fact. That newly discovered evidence comprised two emails that were purportedly omitted from Rodriguez's responses to requests to produce documents due to a copying error. These emails, dated November 2, 2007, reflect communications between Rodriguez and First Bank in which Rodriguez and his wife

stated they would not be guaranteeing any more loans because Nuestra Casa had over $1 million in combined savings and funds on deposit with First Bank. All of Rodriguez's arguments on appeal must fail, however, due to his judicial admissions described above. The circuit court did not abuse its discretion in denying Rodriguez's motion to reconsider the circuit court's entry of summary judgment in favor of First Bank.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.