

Baker v. Providian National Bank, No. 2002-CA-002355-MR (Ky.App. 12/19/2003)

[1] Commonwealth Of Kentucky Court of Appeals

[2] NO. 2002-CA-002355-MR

[3] 2003.KY.0001715< <http://www.versuslaw.com>>

[4] December 19, 2003

[5] **JOHNNY R. BAKER, APPELLANT**
v.
PROVIDIAN NATIONAL BANK, APPELLEE

[6] APPEAL FROM WAYNE CIRCUIT COURT HONORABLE ROBERT L.
WILSON, JUDGE ACTION NO. 02-CI-00003

[7] Brief For, Appellant Pro Se:

[8] Johnny R. Baker Monticello, Kentucky

[9] Brief For, Appellee:

[10] **Paul Croushore** Cincinnati, Ohio

[11] Before: Combs, Johnson, and Minton, Judges.

[12] The opinion of the court was delivered by: Combs, Judge

[13] NOT TO BE PUBLISHED

[14] OPINION

[15] AFFIRMING

[16] Johnny Baker appeals from a summary judgment entered against him by the Wayne Circuit Court. Proceeding pro se, Baker contends that the trial court erred by entering summary judgment in favor of the appellee, Providian National Bank ("Providian"), since genuine issues of material fact regarding the nature of their financial transaction remained unresolved. We agree with the trial court that summary judgment was properly entered. Thus, we affirm.

[17] Pursuant to a credit application and his promise to pay, Baker received a credit account from Providian. He used the credit account and made payments according to the terms of the parties' agreement. However, he eventually defaulted by failing to make payments toward the balance as promised. Under the terms of the agreement, Providian eventually declared the entire balance due and payable and instituted this collection action against Baker.

[18] Providian filed a motion for summary judgment following a period of discovery. After reviewing the pleadings and discovery depositions, the trial court concluded that Providian had established Baker's obligation under the account. Finding that no genuine issues of material fact existed, the court held that Providian was entitled to judgment as a matter of law. Judgment was entered against Baker in the amount of \$5,886.25 plus interest, costs, and attorneys' fees. This appeal followed.

[19] Our standard of review for a summary judgment is summarized in *Scrifres v. Kraft*, Ky. App., 916 S.W.2d 779, 781 (1996), as follows:

[20] The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue. *Goldsmith v. Allied Building Components, Inc.*, Ky., 833 S.W.2d 378, 381 (1992). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center Inc.*, Ky., 807 S.W.2d 476, 480 (1991). "Summary judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest*, 807

S.W.2d at 480, citing Paintsville Hospital Co. v. Rose, Ky., 683 S.W.2d 255 (1985). Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . ." Huddleston v. Hughes, Ky. App., 843 S.W.2d 901, 903 (1992), citing Steelvest, supra (citations omitted).

[21] Baker's brief fails in many respects to comply with the technical requirements of CR 76.12. The brief consists almost entirely of portions of a letter purportedly prepared by Ike Ikokuwu, a certified public account residing in Georgia. However, that correspondence does not appear to have any bearing on the transaction at issue in this action. In the final portion of his brief, Baker denies that he received a loan from Providian and characterizes the amount in dispute as a "deposit" to which he is entitled.

[22] While a party moving for summary judgment must convince the court that the movant is entitled to judgment as a matter of law, the non-moving party cannot defeat the motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of material fact for trial. Steelvest, Inc. v. Scansteel Serv. Center, Inc., Ky., 807 S.W.2d 476, 483 (1991). The record establishes that Baker opened a credit account with Providian, that he enjoyed the use of that account, that he defaulted on his obligations under the terms of the parties' agreement, and that he is indebted to Providian in the amount of the judgment entered by the trial court. Baker's unsubstantiated denial, standing alone without corroborating evidence, is insufficient to defeat Providian's well-supported motion for summary judgment. The trial court did not err by entering summary judgment in favor of the appellee.

[23] The judgment of the Wayne Circuit Court is affirmed.

[24] ALL CONCUR.

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