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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1793  
A13-1795**

Portfolio Recovery Associates, LLC,  
Respondent,

vs.

Diane M. Staeheli,  
Appellant (A13-1793),

Ronald Staeheli,  
Appellant (A13-1795).

**Filed April 14, 2014  
Affirmed  
Connolly, Judge**

Dakota County District Court  
File No. 19HA-CV-12-5136

Joel Boon, Rodenburg Law Firm, Bismarck, North Dakota (for respondent)

Diane M. Staeheli, Eagan, Minnesota (attorney pro se)

Ronald Staeheli, Eagan, Minnesota (attorney pro se)

Considered and decided by Chutich, Presiding Judge; Connolly, Judge; and Smith,  
Judge.

## **UNPUBLISHED OPINION**

**CONNOLLY**, Judge

In this consolidated appeal, pro se appellants challenge the district court's grant of summary judgment to respondent. Appellants argue that the district court erred in considering the evidence that respondent submitted in support of its motion and by determining that there is no genuine issue of material fact. We affirm.

### **FACTS**

#### **A. Ronald Staeheli**

On June 14, 2007, appellant Ronald Staeheli (R.S.) opened a credit card with GE Money Bank. The account was opened under R.S.'s name and a copy of the account statement from 2008 was addressed to him at his Eagan, Minnesota address. The majority of the charges on the account were made in the immediate vicinity of Eagan, but at some point between 2008 and 2009, the address on R.S.'s account changed to an address in Davenport, Florida.

The last payment on the account was made on July 8, 2008. This payment did not constitute payment or settlement of the account in full. On February 6, 2009, the account was "charged off," or shutdown, with a balance of \$2,642.62.

On February 26, 2009, respondent Portfolio Recovery Associates LLC, purchased R.S.'s account from GE Money Bank. On June 5, 2012, R.S. was served with respondent's summons and complaint by substituted service on his spouse, Diane Staeheli. The complaint alleges that R.S. owes respondent \$2,642.62 plus interest. R.S. denied all of the allegations in the complaint and asserted the following affirmative

defenses: (1) accord and satisfaction, (2) arbitration and award, (3) assumption of risk, (4) contributory negligence, (5) discharge in bankruptcy, (6) duress, (7) estoppel, (8) failure of consideration, (9) fraud, (10) illegality, (11) injury by fellow servant, (12) laches, (13) license, (14) payment, (15) release, (16) res judicata, (17) statute of frauds, (18) statute of limitations, and (19) waiver.

On June 20, respondent served R.S. with interrogatories and requests for production. On September 12, respondent received R.S.'s first set of discovery requests. Respondent responded 15 days later and included a letter requesting that R.S. respond to its June 20 discovery request. On December 17, R.S. served his second set of discovery requests on respondent. He also included a letter stating he could not attend a hearing scheduled for this matter because he needed to care for his father in Davenport, Florida. Respondent responded four days later and made another request that R.S. respond to its June 20 request. On January 25, 2013, R.S. served respondent with his third set of discovery requests. Respondent responded 12 days later and again requested that R.S. respond to its original discovery request. R.S. never responded to respondent's discovery requests.

#### **B. Diane Staeheli**

On January 18, 1995, appellant Diane Staeheli (D.S.) opened a credit card account with HSBC Card Services Inc. The card was opened in her name and a copy of an account statement was addressed to her at an address in Davenport, Florida. The last payment on the account was made on June 25, 2008, but it did not constitute payment or

settlement of the account in full. On January 31, 2009, the account was “charged off” with a balance of \$3,774.49.

On July 28, respondent purchased D.S.’s account from HSBC Card Services Inc. On June 5, 2012, D.S. was personally served with respondent’s summons and complaint at her address in Eagan, Minnesota. The complaint alleges that D.S. owes respondent \$3,774.49 plus interest. In her answer, she denied all allegations in the complaint and asserted the following affirmative defenses: (1) accord and satisfaction, (2) arbitration and award, (3) assumption of risk, (4) contributory negligence, (5) discharge in bankruptcy, (6) duress, (7) estoppel, (8) failure of consideration, (9) fraud, (10) illegality, (11) injury by fellow servant, (12) laches, (13) license, (14) payment, (15) release, (16) res judicata, (17) statute of frauds, (18) statute of limitations, and (19) waiver.

On August 29, respondent served interrogatories and requests for production on D.S. On September 12, respondent received D.S.’s answers to the interrogatories in which she generally denied all claims against her. D.S. did not respond to respondent’s requests for production.

### **C. Summary Judgment**

On February 11, 2013, respondent moved for summary judgment against R.S. On February 25, respondent moved for summary judgment against D.S. Respondent filed affidavits and exhibits in support of its motions for summary judgment. Appellants both responded by submitting their own affidavits in which they claimed for the first time that they are the victims of identity theft. Appellants also claimed that they did not make charges on their respective credit accounts and that they have both received notices from

creditors informing them that their personal information may be compromised. Appellants did not submit any other evidence to support their claims.

On May 6, 2013, the district court held hearings on respondent's motions for summary judgment. On July 26, the district court issued its findings of fact, conclusions of law, and order granting summary judgment to respondent in both cases. This appeal follows.

### **D E C I S I O N**

Appellants challenge the district court's grant of summary judgment in favor of respondent and argue that they offered sufficient proof to create genuine issues of material fact. We disagree.

Summary judgment is appropriate when "the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). On appeal from summary judgment, this court examines the record to determine whether any genuine issues of material fact exist and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DHL, Inc.*, 566 N.W.2d at 71. We view the evidence in the light most favorable to the party against whom summary judgment was granted, but the party

resisting summary judgment must do more than rest on mere averments. Minn. R. Civ. P. 56.05; *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

#### **A. Foundational Reliability**

First, appellants argue that the district court erred by admitting the bill of sale and account statements for appellants' respective accounts because the supporting affidavits do not provide a sufficient foundation for their admissibility. We disagree. Although we conduct a de novo review of the district court's decision to grant or deny summary judgment, "[w]e review a district court's evidentiary rulings, including rulings on foundational reliability for an abuse of discretion." *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012).

In support of its motions for summary judgment, respondent submitted identical affidavits of one of its agents, the bills of sale for appellants' accounts, and appellants' account statements. These documents show that appellants had accounts with GE Money Bank and HSBC Card Services Inc., respectively. Respondent's agent's affidavits state,

I . . . am an authorized agent of [respondent] and am competent to testify to the matters stated herein, which are made on my personal knowledge and are true and correct based upon my review of [respondent's] business records maintained relative to the account.

I have personal knowledge of the manner in which [respondent] creates and maintains its normal business records, including computer records of its accounts receivables.

[Respondent's] business records are regularly and contemporaneously maintained during the course of [respondent's] business.

[Respondent's] records include information provided by [respondent's] predecessor such as the [appellant's] name, address, Social Security number, account balance, last payment date, the identity of the original creditor, and the account number.

I know from my experience in reviewing such records, and from common knowledge, that it was the regular practice of [respondent's] predecessor for its business records to be created at or near the time of the transactions reflected therein by a person having personal knowledge of the information contained in the records and that it was also the regular practice of [respondent's] predecessor to maintain those records as part of its regularly conducted business activity. Exhibits attached to my affidavit are true and correct copies of the originals.

The district court determined that the agent's affidavits provide a sufficient foundation for the admissibility of the attached account statements and bills of sale under the business-records exception to the hearsay rule. It stated, "The [a]ffidavit of [respondent's agent] establishes that the attached account statements and [b]ill of [s]ale are records that are kept by [respondent], and were kept by [respondent's] predecessor, in the course of regularly conducted business activities and were made as a part of [respondent's] and its predecessor's regular business practice."

Appellants argue that, while respondent's agent may be qualified to offer documents as to respondent's business, she is not qualified to offer the documents or business records of respondent's predecessors in interest because she lacks sufficient firsthand knowledge of their business practices. They cite to Minnesota Rule of Evidence 602, which states, "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."

But the committee comment to rule 602 clarifies, “[t]he requirement of firsthand knowledge does not preclude a witness from testifying as to a hearsay statement which qualifies as an exception to the hearsay rule.” *Id.*

One such exception to the hearsay rule is the business-records exception.

Business records are admissible under the business-records exception if the custodian or another qualified witness can testify that the records were (1) made by a person with personal knowledge of the matters recorded and a business duty to report accurately or from information transmitted by a person with such knowledge, (2) made at or near the time of the recorded event, (3) kept in the course of a regularly conducted business activity, and (4) made as part of the regular practice of the business activity.

*In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003) (citing Minn. R. Evid. 803(6)). “[O]ne business entity may submit the records of another business entity to establish a proposition at trial.” *Nat’l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 61-62 (Minn. 1983). The actual custodian need not testify, but the person laying foundation must be familiar with how the business compiles its documents. *Id.* at 62.

The agent’s affidavits state that the account statements and the bills of sale were kept in the regular course of respondent’s and respondent’s predecessors’ business and were kept as a part of their regular business practices. She further stated that the information in the affidavits is based on her personal knowledge, industry experiences, and her review of the records kept in the ordinary course of respondent’s business. The agent is familiar with respondent’s predecessors’ business practices and how their records are created and maintained. We therefore conclude that the district court did not abuse its

discretion by determining that the affidavits provide sufficient foundation for the attached bills of sale and account statements.

## **B. Summary Judgment**

Next, appellants argue that they have presented a genuine issue of material fact because they claim that they never entered into any contracts with respondent or respondent's predecessors in interest. We disagree.

The affidavits, bills of sale, and account statements establish that appellants had credit card accounts with HSBC and GE Money Bank, that R.S. and D.S. owed \$2,642.62 and \$3,774.49, respectively, and that respondent purchased appellants' accounts from its predecessors in interest. Conversely, appellants have not submitted any evidence, other than their own affidavits, to support their argument that they are the victims of identity theft.

In their affidavits, appellants state that they did not own the accounts at issue. These affidavits contradict appellants' respective answers, in which they both asserted several affirmative defenses, including accord and satisfaction and discharge in bankruptcy. They did not raise the identity theft defense until after respondent moved for summary judgment and have not produced any documents to support their claims. "In order to successfully oppose a motion for summary judgment, appellant must extract *specific*, admissible facts from the voluminous record and particularize them for the trial judge." *Kletschka v. Abbott-Northwestern Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988), *review denied* (Minn. Mar. 30, 1988). "General assertions" are not enough

to create a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).

Appellants cite to the fact that the account statements were sent to addresses in both St. Paul, Minnesota and Davenport, Florida to support their argument that their identities were stolen. But, the record shows that R.S. was at some point in Davenport to care for his father, and appellants' affidavits submitted in opposition to summary judgment were notarized in Florida before being filed in Minnesota, indicating that appellants have some connection to both states. Moreover, although appellants claim that they have received notices from creditors regarding security breaches on their accounts, appellants have not produced any evidence to support this claim. Because they have not produced even a scintilla of evidence to support their arguments, we conclude that the district court did not err in determining that there is no genuine issue of material fact in this case. *See DLH, Inc.*, 566 N.W.2d at 71.

But appellants also argue that the district court made impermissible credibility determinations by reasoning that appellants' affidavits did not create a genuine issue of material fact for trial. We disagree. *See* Minn. R. Civ. P. 56.03 (stating that summary judgment is appropriate when "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.").

Appellants are correct that "[w]eighing the evidence and assessing credibility on summary judgment is error." *Hoyt Properties, Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 320 (Minn. 2007). But the purpose of summary judgment is to "prevent the

assertion of unfounded claims or the interposition of specious denials or sham defenses.” *Camfield Tires, Inc. v. Michelin Tire Corp.*, 719 F.2d 1361, 1365 (8th Cir. 1983) (quotation omitted).

The district court found that appellants “failed to raise any credible or genuine issues of material fact.” The district court did not assess the credibility of appellants as witnesses, but rather, determined whether their claims had sufficient merit to withstand summary judgment. The district court went through the proper summary judgment considerations by determining whether “the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc.*, 566 N.W.2d at 69 (quotation omitted). We conclude that the district court did not err in granting summary judgment to respondent.

**Affirmed.**