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DISTRICT II

November 20, 2013

To:

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You are hereby notified that the Court has entered the following opinion and order:

2013AP725

Asset Acceptance LLC v. Eli M. Rosenberg (L.C. # 2012CV911)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Eli Rosenberg appeals from a circuit court order granting summary judgment to Asset Acceptance LLC on its claim that Rosenberg defaulted on a credit card account. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12).¹ Because Rosenberg did not respond to either Asset's discovery or its summary judgment motion, summary judgment was appropriate. We affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

We review decisions on summary judgment by applying the same methodology as the circuit court. *M & I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.*, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). That methodology has been recited often and we need not “repeat it here except to observe that summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Id.* at 496-97.

The summary judgment rules are clear. The party opposing summary judgment may not rest on mere denials but must counter with evidentiary materials demonstrating a factual dispute. WIS. STAT. § 802.08(3); *Dawson v. Goldammer*, 2006 WI App 158, ¶¶30-31, 295 Wis. 2d 728, 722 N.W.2d 106. The opponent must set forth specific evidentiary facts “showing that a genuine issue exists for trial.” *Helland v. Kurtis A. Froedtert Mem'l Lutheran Hosp.*, 229 Wis. 2d 751, 756, 601 N.W.2d 318 (Ct. App. 1999). If the party opposing summary judgment fails to respond or raise an issue of material fact, summary judgment can be rendered on that basis alone. *See Bank of Two Rivers v. Zimmer*, 112 Wis. 2d 624, 632, 334 N.W.2d 230 (1983).

Other than stating at the summary judgment hearing that he objected to Asset's summary judgment motion, Rosenberg did not oppose the summary judgment motion with evidentiary materials demonstrating a factual dispute.² Summary judgment was appropriate on this basis.

Not only did Rosenberg fail to counter Asset's summary judgment motion, Rosenberg failed

² The record supports the circuit court's finding that Rosenberg was served with the summary judgment motion and had notice of the summary judgment hearing date.

to respond to Asset's requests for admission.³ Therefore, Rosenberg admitted the basis of Asset's claim. WIS. STAT. § 804.11(1)(b) (matters admitted if party fails to answer requests for admission). Summary judgment can be granted if a party fails to respond to requests for admission. *Bank of Two Rivers*, 112 Wis. 2d at 630. Rosenberg's admissions supported Asset's prima facie case for summary judgment.

Rosenberg argues that the circuit court erroneously determined that it could not grant him a continuance to respond to Asset's summary judgment motion unless Asset consented. Whether to grant a continuance was within the circuit court's discretion. *Schwab v. Baribeau Implement Co.*, 163 Wis. 2d 208, 216, 471 N.W.2d 244 (Ct. App. 1991). We will uphold a circuit court's discretionary decision if we can conclude that there are facts of record which would support the circuit court's decision had discretion been exercised on the basis of those facts.⁴ *Liddle v. Liddle*, 140 Wis. 2d 132, 150-51, 410 N.W.2d 196 (Ct. App. 1987). The record reveals that Rosenberg admitted that he was served with Asset's summary judgment motion and discovery requests, but he did not state cause for his failure to respond or for a continuance.

³ The requests for admission were dated and served on October 17, 2012; responses were due thirty days thereafter. WIS. STAT. § 804.11(1)(b). Asset's summary judgment motion was filed on December 7, 2012. At the January 25, 2013 summary judgment hearing, Asset's counsel reported and Rosenberg confirmed that he answered certain of the requests for admission on January 24, well past the deadline for doing so.

⁴ For this reason, we need not decide whether the circuit court erred in denying a continuance because Asset would not consent.

The circuit court properly granted summary judgment to Asset because Rosenberg did not demonstrate the existence of any genuine material fact necessitating a trial.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals