

Page 1

Unpublished Opinion

Unifund                    CCR                    Partners  
v.  
Brent                    W.                    Harrell  
Opinion No.: 89765

No. FST CV 05 4003017

Connecticut Superior Court

Judicial District of Stamford-Norwalk at  
Stamford

August 3, 2005

MEMORANDUM OF DECISION

WILLIAM B. LEWIS, JUDGE TRIAL  
REFEREE.

The plaintiff, Unifund CCR Partners, alleges that it is the successor in interest to American Ski Company's rights, title and interest in an agreement with the defendant, Brent W. Harrell. The complaint alleges that the defendant entered into an agreement with American Ski Company "relative to the purchase of commodities and/or services under a credit agreement." It is apparent, from the unverified copies of credit card bills, that the alleged "credit agreement" refers to a credit card issued by American Ski Company to the defendant. The plaintiff seeks payment under the credit agreement in the sum of \$6,530.43 plus statutory interest, attorneys fees and costs of suit.

The plaintiff has filed motion (#104) for summary judgment on the ground that there is no genuine issue of material fact and that plaintiff is therefore entitled to judgment as a matter of law.

Practice Book §17-49 "provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as

to any material fact and that the moving party is entitled to judgment as a matter of law . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact." (Citations omitted; internal quotation marks omitted.) Barrett v. Montesano, 269 Conn. 787, 791-92, 849 A.2d 839 (2004).

"In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact, but rather to determine whether any such issues exist." Nolan v. Borkowski, 206 Conn. 495, 500, 538 A.2d 1031 (1988). "In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party . . . The test is whether a party would be entitled to a directed verdict on the same facts." (Internal quotation marks omitted.) Niehaus v. Cowles Business Media, Inc., 263 Conn. 178, 188, 819 A.2d 765 (2003). "To succeed on a motion for summary judgment, [t]he movant must show that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact . . . [A] summary disposition . . . should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party . . . [A] directed verdict may be rendered only where, on the evidence viewed in the light most favorable to the nonmovant, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed." (Emphasis in original; internal quotation marks omitted.) Dugan v. Mobile Medical Testing Services, Inc., 265 Conn. 791, 815, 830 A.2d 752 (2003).

Practice Book §17-45 provides in relevant part that "[a] motion for summary judgment

shall be supported by such documents as may be appropriate, including but not limited to affidavits, certified transcripts of testimony under oath, disclosures, written admissions and the like . . ." In support of its motion, the plaintiff submitted an affidavit of debt by Autumn Hopkins, who avers that she is the plaintiff's legal coordinator. The affidavit was accompanied by four unverified copies of credit card bills dated March, April, May and June of 2002.

In the recent case of *New Haven v. Pantani*, 89 Conn.App. 675, 874 A.2d 849 (2005), the prerequisites for the granting of summary judgment were outlined. "In fact, we have held that Practice Book §[17-45], although containing the phrase 'including but not limited to,' contemplates that supporting documents to a motion for summary judgment be made under oath or be otherwise reliable . . . [The] rules would be meaningless if they could be circumvented by filing [unauthenticated documents] in support of or in opposition to summary judgment . . . Therefore, before a document may be considered by the court in support of a motion for summary judgment, there must be a preliminary showing of [the document's] genuineness, i.e., that the proffered item of evidence is what its proponent claims it to be. The requirement of authentication applies to all types of evidence, including writings . . . Conn. Code Evid. §9-1(a), commentary. Documents in support of or in opposition to a motion for summary judgment may be authenticated in a variety of ways, including, but not limited to, a certified copy of a document or the addition of an affidavit by a person with personal knowledge that the offered evidence is a true and accurate representation of what its proponent claims it to be. In this case, the plaintiff submitted numerous exhibits in support of its motion for summary judgment. The plaintiff failed, however, either to attach an affidavit attesting to the truth and accuracy of the various submissions or to provide certified copies of any of the documents." (Citation omitted; internal quotation marks omitted.) *Id.*, 678-79.

"When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue." *Allstate Ins. Co. v. Barron*, 269 Conn. 394, 405, 848 A.2d 1165 (2004).

That same lack of authentication is present in this case as well, and thus the plaintiff has failed to prove that there is no genuine issue of material fact regarding liability and damages. The defendant does not admit that he entered into an agreement with American Ski Company. The plaintiff has not produced a copy of the signed agreement or credit application between the defendant and American Ski Company. The affidavit of Autumn Hopkins, the plaintiff's legal coordinator, merely avers that she "has access to the records of Unifund CCR Partners and therefore has personal knowledge of the facts" as set forth in the affidavit of debt. There are, however, no authenticated copies of business records reflecting the amount claimed due or the defendant's failure to make payments.

Applying the "stringent standard" for the granting of summary judgment; *New Haven v. Pantani*, *supra*, 89 Conn.App. 680; the plaintiff has not met its burden of proof and its motion for summary judgment is denied. The motion is denied, however, without prejudice to refile provided the standards outlined in *New Haven v. Pantani* are followed.

So Ordered.

William B. Lewis, Judge T.R.