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Morris Hardwick Schneider LLC et al. Order on Plaintiff Landcastle Title, LLC's Motion for Summary Judgment on Defendant's Counterclaim

Melvin K. Westmoreland
Fulton County Superior Court Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA**

MORRIS HARDWICK SCHNEIDER, LLC,)	
and LANDCASTLE TITLE, LLC,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action File No.: 2014CV250583
)	
NATHAN E. HARDWICK IV, and DIVOT)	
HOLDINGS, LLC,)	
)	
Defendants.)	

**ORDER ON PLAINTIFF LANDCASTLE TITLE, LLC’S MOTION FOR SUMMARY
JUDGMENT ON DEFENDANT’S COUNTERCLAIM**

Before this Court is Plaintiff Landcastle Title, LLC’s Motion for Summary Judgment on Defendant’s Counterclaim. Having considered the Motion and the briefs submitted by the parties, the Court finds as follows:

On January 5, 2015, Defendant Nathan E. Hardwick asserted counterclaims against Plaintiffs Morris Hardwick Schneider, LLC (“MHS”) and Landcastle Title, LLC.¹ Hardwick asserted counterclaims against Landcastle for Money Had and Received (Count 2) and Unjust Enrichment (Count 3). The Counterclaims allege Hardwick (1) spent personal funds conducting marketing and business development efforts on behalf of both Plaintiffs and (2) contributed \$1.4 million of his personal funds to cover Plaintiffs’ escrow shortfalls, and claim he is entitled to reimbursement. Landcastle has moved for summary judgment on these two counterclaims. First, Landcastle asserts Hardwick has made admissions *in judicio* that MHS, not Landcastle, employed Hardwick and thus would be liable for his unreimbursed expenses, and MHS, not Landcastle, received the \$1.4 million to cover escrow shortfalls. Second, Landcastle argues

¹ All counterclaims against MHS were dismissed by Order dated February 14, 2017.

Hardwick has failed to present any evidence in support of his claims in response to the Motion for Summary Judgment, and has therefore failed to meet his evidentiary burden under O.C.G.A. § 9-11-56(e) to set forth specific facts showing there is a genuine issue for trial.

In response, Hardwick argues the parties have until July 31, 2017 to complete fact discovery under the Fourth Revised Consent Scheduling Order, and therefore, he should be allowed more time to submit facts in opposition to the Motion for Summary Judgment under OCGA § 9-11-56(f).

Summary Judgment should be granted when the movant shows “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.” O.C.G.A. § 9-11-56(c). A party may do this by “showing the court the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff’s case.” *Cowart v. Widener*, 287 Ga. 622, 623-24 (2010); *Scarborough v. Hallam*, 240 Ga. App. 829, 829 (1999). To avoid summary judgment, “an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Code section, must set forth specific facts showing that there is a genuine issue for trial.” O.C.G.A. § 9-11-56(e). The Court views the evidence in the light most favorable to the nonmoving party. *Morgan v. Barnes*, 221 Ga. App. 653, 654 (1996). “[M]ere speculation, conjecture, or possibility [are] insufficient to preclude summary judgment.” *State v. Rozier*, 288 Ga. 767, 768 (2011); see *Pafford v. Biomet*, 264 Ga. 540, 544 (1994) (finding mere speculation did not give rise to a genuine issue of material fact).

“Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavits facts essential to justify his opposition, the court may refuse

the application for judgment, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or may make such other order as is just.” O.C.G.A. § 9-11-56(f). “Under O.C.G.A. § 9-11-56(f), the movant must set forth the reasons for a continuance and show that if the continuance were granted, what relevant and material evidence would be produced in opposition to the motion for summary judgment.” *Gilco Investments, Inc. v. Stafford Cordele, LLC*, 267 Ga. App. 167, 169 (2004) (citing *NationsBank, N.A. v. SouthTrust Bank*, 226 Ga. App. 888, 895(2) (1997)). In other words, Hardwick must show “how further discovery would produce evidence material to his claims.” *Zywiciel v. Historic Westside Vill. Partners, LLC*, 313 Ga. App. 397, 404 (2011). “A continuance is not required to permit fishing expeditions.” *Id.*

Here, Hardwick did not present any evidence in support of his counterclaims and instead relied solely on citations to his allegations in his Answer and Counterclaim. This is insufficient to show a genuine issue of material fact sufficient to avoid summary judgment. However, Hardwicks’ Counsel, Matthew Daley, submitted an affidavit pursuant to O.C.G.A. § 9-11-56(f) stating Defendants’ have been hindered in their ability to present evidence of intermingling of Plaintiffs’ accounts or Landcastle’s receipt and benefit from Hardwick’s money because discovery is ongoing. As noted above, discovery closes on July 31, 2017. Defendant has noticed fourteen depositions and Plaintiff has noticed fifteen witnesses. The depositions have been delayed due to a series of document production problems. Daley anticipates these witnesses will be able to “provide information about Plaintiffs’ accounting and financial processes and records and each Plaintiff’s role therein” which is relevant to whether Landcastle received and benefited from Hardwick’s expenditures and contributions.

As such, the Court hereby allows a continuance to permit Defendants to obtain affidavits and complete the discovery which will enable Defendants to adduce the facts necessary to oppose Landcastle's Motion. Defendants are hereby ORDERED to submit their supplemental brief in response to Landcastle's Motion and to file a supplemental statement of material facts by **SEPTEMBER 1, 2017**.

SO ORDERED, this 19th day of June, 2017.



HON. MELVIN K. WESTMORELAND, JUDGE
 Fulton County Superior Court Business Case Division
 Atlanta Judicial Circuit

Copies to: All registered users of eFileGA associated with the case.

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