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COMMON PLEAS COURT

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JENNIFER WILKINS
CLERK OF COURTS
OTTAWA COUNTY, OHIO

IN THE COMMON PLEAS COURT OF OTTAWA COUNTY, OHIO

Cove West Properties)	Case No. 1CV072H
Plaintiffs,)	Judge Bruce Winters
v.)	<u>DECISION AND JUDGMENT</u>
Hilary A. Nunnari, et al.)	<u>ENTRY</u>
Defendants.)	

This cause comes before this Court upon a Motion for Summary Judgment filed by Defendant on March 18, 2011, a Memorandum in Opposition filed March 31, 2011, a Reply filed April 7, 2011, a Motion for Summary Judgment filed by Plaintiff on March 18, 2011, a Memorandum in Opposition filed April 14, 2011, a Motion to Strike Exhibits filed by Defendant on April 21, 2011, a Memorandum in Opposition filed April 27, 2011 and a Reply filed April 28, 2011.

Facts

On November 10, 1995, Defendant Hillary Nunnari ("Nunnari") and her then husband John R. Moore, IV ("Moore") purchased a two-acre parcel of land ("the Property"), which was part of Treasure Cove Marina, from Plaintiff Cove West Properties ("CWP"). Nunnari and Moore agreed to pay \$500,000 for the Property and executed a note and mortgage in favor of CWP. On May 28, 1999, a satisfaction of mortgage was filed with the Ottawa County Recorder. On January 4, 2006, Nunnari and Moore divorced. The divorce decree provides that Moore is to

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assume, pay, keep current and hold Nunnari harmless of certain obligations including Treasure Cove Marina and Cove West Properties.

Analysis

Civ.R. 56(C) provides that before summary judgment may be granted, the court must determine that (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. Osborne v. Lyles (1992), 63 Ohio St. 3d 326.

In reviewing a motion for summary judgment, the court must construe the evidence and all reasonable inferences drawn therefrom in a light most favorable to the party opposing the motion. Morris v. Ohio Cas. Ins. Co. (1988), 35 Ohio St. 3d 45; Harless v. Willis Day Warehousing (1978), 54 Ohio St. 2d 64.

The burden of establishing that no genuine issues to any material fact remain to be litigated is on the party moving for summary judgment. Turner v. Turner (1993), 67 Ohio St. 3d 337; Fyffe v. Jenos Inc. (1991), 59 Ohio St. 3d 115, 120.

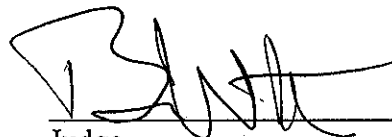
Once a party moves for summary judgment and has supported his or her motion by sufficient and acceptable evidence, the party opposing the motion has a reciprocal burden to respond by affidavit or as provided in Civ.R. 56(C), setting forth specific facts explaining that a genuine issue of material fact exists for trial. Jackson v. Alert Fire & Safety Equip., Inc. (1991), 58 Ohio St. 3d 48,52; Mitseff v. Wheeler (1988), 38 Ohio St. 3d 112, 115.

In the present case, Cove West seeks judgment against Defendant on a promissory note executed by Defendant and John R. Moore, IV. In Defendant and John R. Moore, IV's divorce

case (“the divorce case”), to which CWP was a party, the Court found, “[John R. Moore, IV] has engaged in financial misconduct involving . . . Cove West Properties.” *Moore v. Moore, Case No.02DR064 at paragraph 392*. The Court further found that “[John R. Moore, IV] has engaged in a pattern of conduct utilizing the various entities to shift debt, encumber and intentionally defeat [Nunnari’s] distribution.” *Id at paragraph 487*. Also in the divorce case, the Court found “. . . [John R. Moore, IV] attempted to reduce the value of the real estate and defeat [Nunnari’s] distribution of the marital assets.” *Id at paragraph 366*. Finally, the Court ordered, in the divorce case, that “[John R. Moore, IV] shall assume, pay, keep current and hold [Nunnari] harmless of all obligation arising from the operation, maintenance, or disposal of . . . Cove West Properties . . .” *Id at paragraph 489*. CWP never appealed the aforementioned findings or judgments in the divorce case.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiff’s Motion for Summary Judgment is DENIED; Defendant’s Motion to Strike is DENIED. Defendant’s Motion for Summary Judgment is GRANTED.

Clerk of Courts shall send copies of this Order to all counsel of record and pro se parties by regular U.S. Mail forthwith.



Judge

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