IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

RICHARD STAFFORD,

Appellant,

v.

BARCLAYS BANK DELAWARE,

Appellee.

_____/

CASE NO.: 2014-CV-000078-A-O
Lower Case No.: 2013-SC-10129-O

Appeal from the County Court,
in and for Orange County, Florida,
A. James Craner, County Court Judge.

Tanner Andrews, Esq.,
for Appellant.

Carlos Cruanes, Esq.
for Appellee.

Before EGAN, H. RODRIGUEZ, and MUNYON, J.J.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING IN PART AND REVERSING IN PART TRIAL COURT'S FINAL JUDGMENT

Appellant, Richard Stafford ("Stafford"), appeals the trial court's October 2, 2014 Order granting Appellee Barclays Bank Delaware's ("Barclays") Motion for Summary Judgment and Final Summary Judgment rendered October 6, 2014. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We affirm in part and reverse in part.

Procedural History

Appellee ("Barclays") filed a Complaint for Damages on November 6, 2013 for breach of contract, unjust enrichment in the alternative, and account stated in the alternative for failure to pay $4,540.69 owed in credit card charges. On January 7, 2014, Appellant ("Stafford") filed an Answer and Affirmative Defenses and a Demand for Jury Trial. His affirmative defenses included lack of personal jurisdiction due to improper service as the result of 1) lack of personal service, 2) failure to inform the party served of the contents of the documents, and 3) the server's failure to endorse the date and hour of service along with his identification number. He also claimed that Barclays failed to attach a copy of the contract to its Complaint and failed to allege sufficient facts as to their claim of unjust enrichment. On October 2, 2014, Barclays' Motion to Strike Affirmative Defenses was granted.

On March 13, 2014, Stafford was deposed. The following facts are derived from the motions filed in this case and Stafford's deposition. Stafford was the only individual who had access to the credit card at issue. He physically destroyed the card and kept all of the pertinent information for purchases in his phone, using separate applications in order to prevent improper use by others. He claimed he did not know the contents of the credit card statements as his mail service was irregular and the bill was paid by his bookkeeper. As a result, the statements were given directly to the bookkeeper by whomever in the house opened the mail. The bookkeeper would then write a check for payment, and Stafford would sign the check. He testified that the amount due on each statement corresponded to a check that he signed. He stated that he did not recall if he had used three convenience checks in the amounts of $1,900, $1,500, and $1,400 but reiterated that no one else would have had access to the actual card and he did not authorize anyone to use the card.

Barclays filed a Motion for Summary Judgment on April 28, 2014 which was granted on September 22, 2014.

Arguments on Appeal

On appeal, Stafford argues that the trial court erred in granting summary judgment due to his sworn testimony contradicting Barclays' claims. He also claims that the trial court erred in striking his affirmative defense of failure to serve, as he raised this defense in his original Answer and Affirmative Defenses.

Conversely, Barclays argues that the summary judgment was proper as they provided competent sufficient evidence as to its entitlement. Barclays also argues that the issues of personal service and the lower court's lack of jurisdiction were matters that were waived by Stafford.

Standard of Review

The standard of review addressing the entry of summary judgment is *de novo*. *Krol v. City of Orlando*, 778 So. 2d 490, 491 (Fla. 5th DCA 2001). Accordingly, an appellate court must determine if there is any genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(c).

Analysis

Stafford claims that there are disputed facts in regards to convenience checks that were issued. He asserts that his sworn testimony contradicted Barclays' claims that he was the recipient and user of three convenience checks and that he owed $4,540.69 in unpaid credit card bills. At deposition, Stafford stated that he did not receive these checks and that someone else must have them. He acknowledged that he was the only individual with access to the credit card, but also pointed out that any purchases he made were done on the internet. Additionally, Stafford

claimed that his mail service was unreliable and that when the mail did arrive, it went straight to his bookkeeper. Stafford alleged that he did not recall if he used the three convenience checks that Barclays asserts he used. Barclays is unable to refute this testimony as they did not provide any copies of the checks, leaving the issue of the checks' use in dispute.

When there are disputed issues of material fact or disputed inferences derived from those facts, a cause is not ripe for summary judgment. *Spence v. Pen Air Federal Credit Union*, 421 So. 2d 20, 21 (Fla. 1st DCA 1982) (cause deemed not ripe for summary judgment and reversed for a trial on the merits); *Montadas v. Dade Scrap Iron and Metal, Inc.*, 666 So. 2d 1054, 1055 (Fla. 3d DCA 1996) (entry of summary judgment is inappropriate where there are disputed facts); *Lewis v. Florio*, 179 So. 2d 898, 899 (Fla. 3d DCA 1965) (when the record discloses the presence of disputed facts, summary judgment should not be granted).

Stafford also asserts that there are disputed facts as to service. He avers that the process server must have gone to the wrong house and that the papers then ended up on his porch where his daughter found them.

In this case, an Affidavit of Service was provided to the Court, showing that a co-resident of the home was served at the appropriate address. The individual refused to provide a name. A simple denial of proper service of process is not sufficient to refute the validity of service. *Bennett v. Christiana Bank & Trust Co.*, 50 So. 3d 43, 45 (Fla. 3d DCA 2010). If a party moving for summary judgment provides the Court with competent evidence showing undisputed facts, this party is entitled to judgment as a matter of law unless the non-moving party can produce competent evidence refuting the claim that there are no material facts at issue. Fla. R. Civ. P. 1.510. Stafford is required to show competent evidence that material facts are at issue. *Central Florida Machinery Co., Inc. v. Williams*, 424 So. 2d 201 (Fla. 2d DCA 1983). He failed to do so,

and instead, made speculative assumptions that were not based in fact. Specifically, in his brief, he states, "We prefer to assume the process server delivered papers somewhere." He also claims that the method in which the papers came to be on the porch for his daughter to find "requires speculation." No speculation is necessary as Bank provides an Affidavit of Service explaining exactly how an individual at the home was served and Stafford is unable to provide evidence that disproves or rebuts this.

Stafford claims that his objection to personal jurisdiction was not waived as he raised this in his Answer and Affirmative Defenses. This is correct. However, he did not properly plead these defenses because he did not provide information specific to this case in his pleading. *Thompson v. Bank of N.Y.*, 862 So. 2d 768, 771 (Fla. 4th DCA 2003); *Cady v. Chevy Chase Sav. And Loan, Inc.*, 528 So. 2d 136, 138 (Fla. 4th DCA 1988) ("certainty is required when pleading defenses, and pleading conclusions of law unsupported by allegations of ultimate fact is legally insufficient."). Hence, his affirmative defenses were appropriately stricken as they were not pled with the appropriate level of certainty required when pleading defenses.

Lastly, Stafford claims that he was denied due process. He claims that this is the result of the trial court striking his defense and deeming personal jurisdiction to be waived. He asserts that he did not waive this defense and that he was deprived of his opportunity to be heard. He was not denied due process as he was given the opportunity to file affirmative defenses and filed defenses that were legally insufficient. This does not deny him his due process rights.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the trial court's Final Judgment is **AFFIRMED** as pertains to the matter of service, **REVERSED** on all other matters**,** and this cause is **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 8th day of May, 2015.

/S/
ROBERT J. EGAN
Presiding Circuit Judge

H. RODRIGUEZ and MUNYON, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Judge A. James Craner,** 425 N. Orange Ave., Orlando, Florida 32801; **Carlos Cruanes, Esq.,** Law Offices of Andreu, Palma, & Andreu, PL, at 1000 N.W. 57th Court, Suite 400, Miami, Florida 33126, as counsel for Appellee; and **Tanner Andrews, Esq.**, Tanner Andrews, P.A., at 112 W. New York Avenue, #203, P.O. Box 1208, DeLand, Florida 32721, as counsel for Appellant on the 8th day of May, 2015.

/S/
Judicial Assistant