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**IN THE
COURT OF APPEALS OF INDIANA**

MELDON WAYNE SMITH a/k/a)
M. WAYNE SMITH,)
)
Appellant,)
)
vs.)
)
JPMORGAN CHASE BANK, N.A.,)
Successor By Merger With)
BANK ONE, N.A.,)
)
Appellee.)

No. 41A01-0710-CV-484

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Kevin M. Barton, Judge
Cause No. 41D01-0603-MF-102

April 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Meldon Wayne Smith (“Smith”) appeals the trial court’s grant of summary judgment in favor of JPMorgan Chase Bank, N.A., successor by merger with Bank One, N.A. (“Chase”).

We affirm.

ISSUE

Whether the trial court properly found that no genuine issues of material fact existed as to Smith’s mental capacity or his subsequent ratification of the contract at issue.

FACTS

In 1969, Smith secured financing from an unknown lender and built a house at 643 Brookview Drive in Greenwood (“the Brookview property”). In 1976 or 1977, Smith married Janet Smith, and their marriage ended in divorce after approximately two years. Smith operated a dentistry practice until he suffered a heart attack on June 27, 1997. Shortly thereafter, Smith and Janet reconciled. They remarried on September 2, 1998. On April 21, 2000, they took out a personal loan line of credit from Chase in the amount of \$100,000.00 (“the 2000 loan”). On February 6, 2001, Smith mortgaged the Brookview property to secure another loan (“the 2001 loan”) from Chase in the amount of \$103,778.00. Smith used a portion of the 2001 loan proceeds to pay the balance of the 2000 loan. On January 2, 2002, Smith and Janet executed another note and mortgage on the Brookview property in the amount of \$217,202.00 (“the 2002 loan”) to pay off the 2001 loan and to consolidate all of their debts.

Following his heart attack, Smith was given a pacemaker defibrillator and was diagnosed with the following medical conditions: hypoxemic encephalopathy; congestive heart failure; chronic renal insufficiency; Type 2 diabetes; hypertension; hyperlipidemia; hypothyroidism; obstructive sleep apnea; and morbid obesity. At no time between his 1997 heart attack and his entering into the loan and mortgage agreements did Smith apprise Chase or anyone else of any competency issues resulting from having suffered a heart attack.

During the course of his recovery, Smith's various doctors noted their impressions of his progress, activities, and state of mind prior to the year 2006. Basically, their observations and conclusions were as follows:

- July 17, 1997 -- Dr. Michael J. Deal examined Smith in order to determine "whether he was competent to make his own medical decisions." (Chase's App. 147). Dr. Deal concluded that Smith's "thought processes were logical, though[t] content revealed no hallucination [or] delusions. * * * Insight is fair, and judgement [sic] seem[ed] to be reasonably intact." (Chase's App. 148). Thus, Dr. Deal concluded that "[Smith] is competent to make medical decisions." (Chase's App. 148).
- July 18, 1997 -- Dr. Deo Vrat Singh noted that neurologist Dr. David Glander examined Smith because of his significant hypoxemic encephalopathy. Thereafter, Smith "underwent psychiatric evaluation to evaluate his competence. He was found to be fully competent by Dr. Deal" (Chase's App. 143). Dr. Singh also noted that Smith "has been found to be competent by a neurological consultation by Dr. Hellerstein as well as by psychiatric evaluation" (Chase's App. 145). Dr. Singh discussed Smith's course of treatment with him at length, particularly the risks involved in open heart surgery. Smith understood the risks and consented to the procedure.
- June 11, 1999 -- Smith met with Dr. Bruce H. Bender. Dr. Bender noted that Smith "says that he feels well." (Chase's App. 142).

- August 22, 2001 -- Smith met with Dr. Bender. Dr. Bender noted that Smith “feels well.” (Chase’s App. 141). Dr. Bender further noted that despite concerns about Smith’s blood sugar, Smith was “generally doing extremely well.” (Chase’s App. 141).
- January 24, 2006 -- Dr. Bender wrote, “Despite [his suffering from various medical conditions], I feel [] Smith is mentally competent to care for his own needs and manage his own affairs.” (Chase’s App. 139).

Lastly, Smith consented to planned medical procedures on the following ten occasions: July 16, 1997; August 11-12, 1997; June 4, 1999; May 29, 2001; August 8, 2002; August 12, 2003; September 9, 2003; October 13, 2003; July 7, 2004; and April 5, 2005.

On March 2, 2006, Chase filed a Complaint on Note and to Foreclose Mortgage, alleging that Smith and Janet had defaulted on the 2002 loan. Chase declared the total principal balance of the 2002 loan immediately due and owing, plus accrued interest and expenses. As relief, Chase sought (1) a personal judgment against Smith and Janet on the “unpaid principal balance of \$205,950.56, plus default interest at the rate of 9.0% per annum from and after September 17, 2005 to the date that judgment is entered,” (Chase’s App. 3); (2) reasonable attorney’s fees and costs; (3) a decree of foreclosure as to Smith’s mortgage and the equity of redemption; (4) sale of the Brookview property at a sheriff’s sale; (5) issuance of the deed to the winning bidder; (6) permission to bid for the Brookview property; and (7) a personal money judgment in the event of a deficiency.

On March 8, 2006, six days after Chase filed its complaint, Smith consulted with Dr. David A. Glander, a neurologist, about “his chronic cognitive deficits” (Chase’s App. 135). Chase obtained Dr. Glander’s report and designated it to the trial court as well. Smith apprised Dr. Glander of his history because he had not seen Dr. Glander “in

a few years.” (Chase’s App. 135). Although Dr. Glander’s report does not contain any information as to the last time he saw Smith or the reasons for the visit, his 2006 report noted,

[Smith]’s cognitive abilities have waxed and waned [since his heart attack]. He remains forgetful. * * * His wife is not in the home. In fact, there may be some litigation against her as he had lost most of the money from his banking accounts. He has a friend and an attorney who are helping him with his finances.

(Chase’s App. 135). Dr. Glander then concluded,

[Smith] has had significant cognitive impairment It certainly would be reasonable to assume that there would be periods of fluctuation where he would not be understanding what he is signing as far as legal documents are concerned. I am encouraged that he has an attorney and friends that are helping him in this regard.

(Chase’s App. 135).

On May 4, 2006, Chase filed a motion for summary judgment on its promissory note and foreclosure of mortgage with an accompanying Affidavit in Support of Motion for Summary Judgment, wherein Chase alleged that the Brookview property was “subject to the first mortgage from [Smith] to [Chase].” (Chase’s App. 18-19). On June 2, 2006, Smith filed his answer, affirmative defenses,¹ and counter-claim. He alleged that he “was incompetent to execute and deliver” the 2002 loan, and had been “fraudulently induced in[to] executing and delivering the same.” (Chase’s App. 28). In his counter-claim, he alleged that (1) he “lacked the legal capacity to bind himself to the [2002 loan]”; (2) Chase owed to [him] a duty of care regarding the execution of the [2002 loan]; (3) Chase

¹ Smith asserted the following affirmative defenses: duress; estoppel; lack of capacity; failure of consideration; fraud; mistake; condition of the mind; and unclean hands.

breached its duty of care to [him]; and (4) [he] “suffered damages as a direct and proximate result of [Chase]’s breach of its duty of care to [him].” (Chase’s App. 33, 34).

On August 14, 2006, Smith filed an affidavit with the trial court, wherein he averred that Janet had “tak[en] advantage” of him financially, had made unauthorized withdrawals from his investments, and had “trick[ed]” him into mortgaging his home to secure both the 2001 and 2002 loans. (Smith’s App. 31). He added that since his heart attack, he had experienced “swings of both physical and mental health, where at times [he felt] good and th[ought] clearly, and at other times, [] required the assistance of medical professionals” (Smith’s App. 31). Smith denied having a “reasonable understanding” of the 2002 loan terms or “the nature and affect [sic] of signing the notes or the mortgages,” claiming that with respect to incurring those debts, he was of unsound mind. (Smith’s App. 32).

On March 16, 2007, Chase filed a second motion for summary judgment on both its Complaint on Note and to Foreclose Mortgage and Smith’s counterclaim. Smith filed his response on April 30, 2007. On May 29, 2007, the trial court issued its order. It stated, in relevant part, the following:

5. The law is well summarized in *Wilcox Manufacturing Group, Inc. v. Marketing Services of Indiana, Inc.*, 832 N.E.2d 559 (Ind. Ct. App. 2005) as follows:

‘The test for determining a person’s mental capacity to contract is whether the person was able to understand in a reasonable manner the nature and effect of his act. *Gallagher v. Central Ind. Bank, N.A.*, 448 N.E.2d 304, 307 (Ind. Ct. App. 1987). In order to avoid a contract, the party must not only have been of unsound mind, but also must have had no reasonable understanding of the contract’s terms due to his instability. *Id.*

Contractual defenses, such as capacity, may be waived and the party estopped by behavior inconsistent with their objections. *Scherer v. Scherer*, 405 N.E.2d 40, 47 (Ind. Ct. App. 1980). A contract may be upheld despite incapacity where the attacking party acted in accordance with the contract terms and delayed in bringing his subsequent action. *Id.* Ratification is based on the existence of three essential elements: (1) an unauthorized act performed by an individual for and on behalf of another and not on account of the actor himself; (2) knowledge of all material facts by the person to be charged with said unauthorized act; and (3) acceptance of the benefits of said unauthorized act by the person to be charged with the same. *T.L.G. v. R.J.*, 683 N.E.2d 633, 635 (Ind. Ct. App. 1997) (citing *Benefit Mortgage Co. of Ind. v. Powers*, 550 N.E.2d 793, 796 (Ind. Ct. App. 1990)).” *Id.* at 562-563.

6. Plaintiff designates to the Court the Defendant’s medical records from Dr. Deal and Dr. Bender. The said physicians determined Dr. Smith to be competent at times both before and after the execution of the note and mortgage in question. Dr. Smith does not present any expert testimony in opposition to the conclusions of his physicians. Dr. Smith only presents his own Affidavit wherein he disclaims that he understood the Note and Mortgage that he had signed, and he disclaimed that he possessed legal capacity at the time of execution. However, even if the Affidavit of Dr. Smith established a genuine issue of material fact regarding Dr. Smith’s capacity at the time of execution by denial of capacity, Dr. Smith acknowledges that “at times I feel good and think clearly.” Indeed, [Chase] designates to the Court several instances in which Dr. Smith has executed authorization for medical treatment as well as Power of Attorneys. By the execution of such documents, Dr. Smith deemed himself competent. The designated evidence supports acceptance of benefits. Accordingly, even if a genuine issue of material fact does exist as to Dr. Smith’s capacity at the time of execution, there is no issue of fact that he subsequently ratified the prior act at a time when he was competent.

7. The court further fails to find that a duty was created by the relationship of the parties so as to support Dr. Smith’s Counterclaim. See *Wilson v. Lincoln Federal Savings Bank*, 790 N.E.2d 1042, 1046 (Ind. Ct. App. 2003).

8. The Court finds that there is no genuine issue of material fact and that [Chase] is entitled to judgment as a matter of law on the cause of action asserted by the Complaint and the cause of action asserted by Dr. Smith by Counterclaim. [Chase]’s Motion for Summary Judgment is granted.

There is no reason for delay and final judgment should be entered. Judgment entered in favor of Plaintiff [JP]Morgan Chase Bank, N.A. and against Defendant Meldon Wayne Smith on the claims asserted by Plaintiff by Complaint. Court enters separate Judgment and Decree of Foreclosure.

(Smith's App. 12-13).

Additional facts will be provided below.

DECISION

Smith argues that the trial court's grant of summary judgment was improper because genuine issues of material fact exist as to (1) his legal capacity to enter into the 2002 loan, and (2) whether he "had knowledge of material facts such that he could be deemed to have ratified [Janet's alleged] wrongdoing." Smith's Br. at 11.

Summary judgment is appropriate when the evidence establishes that there exists no issue of material fact and the moving party is entitled to judgment as a matter of law. *State Auto Ins. Cos. v. Shannon*, 769 N.E.2d 228, 231 (Ind. Ct. App. 2002) (citing Ind. Trial Rule 56(C)). For summary judgment purposes, a fact is "material" if it bears on the ultimate resolution of relevant issues. *Cox v. NIPSCO*, 848 N.E.2d 690, 695-96 (Ind. Ct. App. 2006). When reviewing a trial court's grant or denial of summary judgment, we stand in the shoes of the trial court and employ a *de novo* standard of review. *Bader v. Johnson*, 732 N.E.2d 1212, 1216 (Ind. 2000).

The party moving for summary judgment has the burden of making a *prima facie* showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. If the moving party meets these two requirements, the burden then shifts to the non-moving party to show the existence of a genuine issue of material fact by setting forth specifically designated facts. We must accept as true those facts alleged

by the nonmoving party, construe the evidence in favor of the nonmoving party, and resolve all doubts against the moving party.

Ryan v. Brown, 827 N.E.2d 112, 116-17 (Ind. Ct. App. 2005).

A trial court's grant of summary judgment is clothed with a presumption of validity, and the party who lost in the trial court bears the burden of demonstrating that the grant of summary judgment was erroneous. *Cox*, 848 N.E.2d at 695. "Where a trial court enters specific findings and conclusions, they offer insight into the rationale for the trial court's judgment and facilitate appellate review, but are not binding upon this court."

Id. We will affirm upon any theory or basis supported by the designated materials. *Id.*

When a trial court grants summary judgment, we carefully scrutinize that determination to ensure that a party was not improperly prevented from having his or her day in court.

Id. at 696-96.

1. Mental Capacity to Contract

With regard to an individual's mental capacity to contract, we have stated that

[t]he test for determining a person's mental capacity to contract is whether the person was able to understand in a reasonable manner the nature and effect of his act. In order to avoid a contract, the party must not only have been of unsound mind, but also must have had no reasonable understanding of the contract's terms due to his instability. The acts or deeds of a person of unsound mind whose unsoundness of mind has not been judicially ascertained and who is not under guardianship are merely voidable and not absolutely void, and are subject to ratification or disaffirmance on removal of the disability.

Contractual defenses, such as capacity, may be waived and the party estopped by behavior inconsistent with their objections.

Wilcox Mfg. Group, Inc., v. Marketing Services of Indiana, Inc., 832 N.E.2d 559, 562

(Ind. Ct. App. 2005) (internal citations omitted).

In support of its contention that no genuine issue of material fact existed as to Smith's legal capacity to contract, Chase designated the medical reports from Smith's health care providers – specifically, Drs. Bender, Deal, and Singh. These doctors' reports indicate that they deemed Smith to be mentally competent at times both before and after he executed the 2002 loan.² The designated evidence reveals that Smith saw Dr. Glander on March 8, 2006 – six days after Chase filed its complaint on the note and foreclosure. Dr. Glander's report indicates that he had not seen Smith for several years. The report does not, however, address the nature of Smith's last visit or state whether or not Smith's cognitive ability was impaired in 2000, 2001, and 2002, when Smith executed the promissory notes and mortgages at issue.

Thus, Chase made a *prima facie* showing that (1) no genuine issue of material fact existed as to Smith's legal capacity, and (2) it was entitled to judgment as a matter of law. The burden then shifted to Smith to show, by setting forth specifically designated facts, the existence of a genuine issue of material fact. He has not met his burden.

Chase relied upon the medical records and determinations of Smith's own doctors regarding Smith's mental competence to contract. Smith, however, responded with no contradictory evidence – save his own designated self-serving affidavit – to bolster his contentions that he was of unsound mind and lacked any reasonable understanding of the terms of the 2002 loan. Instead, Smith simply declared his mental incapacity and placed

² Shortly after Smith's heart attack in 1997, Dr. Michael J. Deal examined Smith and concluded that he was indeed competent to make medical decisions. In the years following, Dr. Bruce Bender periodically saw Smith for follow-up care. On January 14, 2006, Dr. Bender also noted that Smith was mentally competent "to care for his own needs and manage his own affairs." (Tr. 139).

the blame for his default squarely at Janet's doorstep. We, like the trial court before us, are not persuaded and will not permit such self-serving testimony to create a genuine issue of material fact. *Miller v. Martig*, 754 N.E.2d 41, 46 (Ind. Ct. App. 2001). See *Raymundo v. Hammond Clinic Ass'n*, 449 N.E.2d 276, 282 (Ind. 1983) (“[t]ransparent contentions, mere pleading allegations, and self-serving unverified statements of facts, as opposed to the movant’s controverting evidentiary materials cannot defeat a motion for summary judgment”). Chase’s Br. at 10.

Chase’s designated materials support the finding that Smith was mentally competent when he executed the 2002 loan. Smith has not demonstrated that the trial court’s grant of summary judgment in favor of Chase was erroneous. We find no error.

2. Ratification

Even assuming *arguendo* that Smith lacked mental capacity to contract at the time he entered into the 2002 loan, the facts and circumstances indicate that he later ratified the loan. Smith contends that a genuine issue of material fact exists as to whether he “had knowledge of material facts such that he could be deemed to have ratified [Janet’s alleged] wrongdoing.” Smith’s Br. at 11.

Ratification means the adoption of that which was done for and in the name of another without authority. It is in the nature of a cure for [lack of] authorization. When ratification takes place, the act stands as an authorized one, and makes the whole act, transaction, or contract good from the beginning. Ratification is a question of fact, and ordinarily may be inferred from the conduct of the parties. The acts, words, silence, dealings, and knowledge of the principal, as well as many other facts and circumstances, may be shown as evidence tending to warrant the inference or finding of the ultimate fact of ratification

* * *

Knowledge, like other facts, need not be proved by any particular kind or class of evidence, and may be inferred from facts and circumstances

Heritage Development of Indiana, Inc. v. Opportunity Options, Inc., 773 N.E.2d 881, 889-90 (Ind. Ct. App. 2002) (quoting *State ex rel. Guaranty Building & Loan Co. v. Wiley*, 100 Ind. App. 438, 196 N.E.2d 153, 154 (1935)).

Ratification is based on the existence of three elements: “(1) an unauthorized act performed by an individual for and on behalf of another and not on account of the actor himself; (2) knowledge of all material facts by the person to be charged with said unauthorized act; and (3) acceptance of the benefits of said unauthorized act by the person to be charged with the same.” *Wilcox*, 832 N.E.2d at 562. Of these elements, Smith challenges only the second – knowledge of all material facts by the person to be charged with said unauthorized act; thus, we address only this element below.

The designated evidence contains facts and circumstances from which Smith’s knowledge of all material facts may be inferred. *See Heritage*, 773 N.E.2d at 889-90. The relevant 2002 loan documents appear to bear Smith’s signature. Moreover, Chase designated the transcript of a deposition conducted on September 26, 2006, wherein Smith acknowledged the signatures as his own. (Chase’s App. 65). It is well settled under Indiana law that a person is presumed to understand the documents that he signs. *Robert’s Hair Designers, Inc. v. Pearson*, 780 N.E.2d 858, 869 (Ind. Ct. App. 2002).

The foregoing facts and circumstances constitute an adequate basis from which to infer Smith’s knowledge of material facts such that he ratified the 2002 loan. Because the designated evidence supports this conclusion, we find no error in the trial court’s

conclusion that no genuine issue of material fact exists as to whether Smith subsequently ratified the 2002 loan.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.