



In the Missouri Court of Appeals Eastern District

DIVISION ONE

BONNIE HARGIS,) No. ED94750
)
 Appellant,)
)
 v.) Appeal from the Circuit Court of
) St. Louis County
) Cause No. 09SL-CC00676
 JLB CORPORATION d/b/a) Honorable Robert Cohen
 GOLDEN OAK LENDING,)
 Respondent.)
) Filed: January 25, 2011

Introduction

Bonnie Hargis (Hargis) appeals from the trial court's entry of summary judgment in favor of defendant JLB Corporation d/b/a Golden Oak Lending (JLB). We affirm.

Facts and Procedural History

JLB is a Missouri corporation in the business of mortgage brokering and providing mortgages to home purchasers and homeowners. In January 2009, appellant Bonnie Hargis refinanced the loan on her Barnhardt, Missouri home with JLB.¹ In addition to providing other refinancing services, JLB prepared Hargis's loan application and mortgage disclosure documents. JLB did not prepare the note, mortgage, or deed in

¹ Hargis owed her previous lender \$171,072.22 in principal.

this refinancing transaction. JLB billed Hargis for its services.²

On 13 February 2009, Hargis filed a Petition against JLB alleging it had engaged in the unauthorized practice of law, violated the merchandizing practices act, and was thereby unjustly enriched from money had and received. After filing its Answer, JLB filed a Motion for summary judgment on the claims Hargis alleged in her Petition. In its summary judgment Motion, JLB asserted that it had charged Hargis fees for tasks associated with processing her loan like gathering documents and communicating with the underwriter, but it had not prepared any legal documents or levied any “document preparation” charges. Therefore, JLB concluded that there was no genuine dispute as to any material fact in the claim that it engaged in the unauthorized practice of law and its Motion for summary judgment should be granted.

The trial court granted summary judgment in favor of JLB, but it did not specify its findings of fact or conclusions of law. Hargis now appeals.

Standard of Review

The standard of review on appeal from summary judgment is essentially de novo. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Although we view the record and construe all reasonable inferences in favor of the non-moving party, facts given in support of the moving party’s Motion for summary judgment are taken as true unless contradicted by the non-moving party’s response. *See id.*

We will affirm summary judgment if there were no genuine disputes of material fact and, on based on the undisputed facts, the moving party was entitled to judgment as a

² Consisting in part of a \$1,890.50 “Loan Origination Fee,” \$1,923.58 “Loan discount,” \$899.00 “Processing Fee,” \$550.00 “Underwriting Fee,” \$900.00 “Broker Fee,” and \$208.00 “Administration Fee.”

matter of law. *Id.* at 377. But we must affirm the trial court’s judgment if, as a matter of law, it is sustainable under any theory the record reasonably supports. *Bamberger v. Freeman*, 299 S.W.3d 684, 686 (Mo. App. E.D. 2009).

Discussion

Unauthorized Practice of Law

In her first point on appeal, Hargis argues that summary judgment was improperly entered on the unauthorized practice of law claims because there are genuine disputes of material fact as to whether JLB practiced law without authorization in the course of refinancing her loan. Specifically, Hargis claims JLB engaged in the unauthorized practice of law by: (1) charging to prepare legal documents; (2) charging to procure legal documents; and (3) acting as a representative on behalf of Hargis in refinancing her loan.

Section 484.010³ defines the practice of law for the criminal misdemeanor of practicing law without a license in Missouri. § 484.010. The statute’s primary purpose is to prevent people without legal qualifications from rendering to the public services that require special legal knowledge and skill to ensure a client’s protection. *See Bray v. Brooks*, 41 S.W.3d 7, 13 (Mo. App. 2001). To demonstrate statutory liability for unauthorized practice of law, the Missouri Supreme Court requires a showing of two things: (1) the preparation of conventional legal documents, and (2) the charging of a separate fee for the legal documents’ preparation. *Carpenter v. Countrywide Home Loans, Inc.*, 250 S.W.3d 697, 702 (Mo. banc 2008). Missouri courts have recognized as “conventional legal documents” promissory notes, deeds of trust, and mortgages. *Id.* at 699.

Hargis contends that the term “conventional legal documents” also applies to the

³ All statutory references are to RSMo (2008) unless otherwise noted.

loan application and mortgage disclosures JLB prepared in association with processing her loan. As support, Hargis notes that lenders like JLB have been held liable for the unauthorized practice of law where they separately charged clients to prepare mortgage-related documents. *See id.* at 702; *see also Eisel v. Midwest BankCentre*, 230 S.W.3d 335, 337 (Mo. 2007). Hargis specially emphasizes that even pre-printed forms relating to a mortgage can qualify as “conventional legal documents” for liability purposes. *Eisel*, 230 S.W.3d at 337.

Contrary to what Hargis suggests, the case law does not support her conclusion that the loan application and mortgage disclosures JLB prepared were “conventional legal documents.” No case has identified a loan application or mortgage disclosures as “conventional legal documents.” And in analyzing what “mortgage-related forms” constitute “conventional legal documents,” the key issue is content, not form. *See, e.g., Hulse v. Criger*, 247 S.W.2d 855, 859 (Mo. banc 1952). Whether a form is pre-printed or otherwise has no bearing on the legal skill needed to prepare it. But apparently Hargis just assumes that if a pre-printed mortgage-related form can ever be a “conventional legal document,” then all mortgage-related forms must be conventional legal documents. This flawed reasoning does not support extending statutory meaning to prohibit lenders from charging to prepare any and all documents facilitating mortgage transactions as the unauthorized practice of law. Moreover, even if JLB had prepared conventional legal documents, Hargis fails to offer any facts suggesting that JLB charged her a separate fee to prepare them. Thus, her contention that there is a genuine dispute of material fact that JLB prepared documents in the unauthorized practice of law fails.

The two other ways that Hargis claims JLB engaged in the unauthorized practice

of law – by procuring legal documents prepared by others and by acting as Hargis’s representative in securing a loan on her behalf – are even less persuasive than the first. The former claim is not supported by case law and directly contradicts state and federal statutory law. *See* §§ 443.803, 443.805, 443.812; *see also* 24 C.F.R. § 3500. And the latter claim effectively morphs the entire mortgage brokering business into “the practice of law,” an interpretation that is patently unreasonable. Both claims would overextend the meaning of “the practice of law” to absurd results. Any business that acts on behalf of clients in transactions involving money would now be the exclusive province of attorneys. Unsurprisingly, even Hargis must mince words and parse meanings out of context to claim these actions were unauthorized practices of law. Missouri statutes are not to be interpreted unreasonably. *Richter v. Union Pac. R.R. Co.*, 265 S.W.3d 294, 297 (Mo. App. 2008). Therefore, Hargis’s claims on this point fail.

Arguments in JLB’s Reply

In her second point on appeal, Hargis argues that the trial court could not consider arguments JLB first raised in its Reply to its summary judgment Motion and that those arguments nonetheless failed. But the trial court granted summary judgment without setting out its findings of fact or conclusions of law, so there is no way this Court can determine whether the trial court considered arguments from JLB’s Reply or not in deciding to grant JLB’s summary judgment Motion. For this reason alone Hargis’s second point must fail, making it unnecessary for us to review the arguments in JLB’s Reply on their merits. Absent our finding summary judgment improper under any theory the record reasonably supports, we need not consider this point further. And our analysis of the other points on appeal gives us ample grounds to find that summary judgment was

not improper here.

JLB's Statement of Material Facts

In her third and fourth points on appeal, Hargis claims summary judgment was improper because the trial court's failure to require JLB to file a statement of uncontroverted material facts with its Reply was prejudicial error warranting reversal.⁴ The record, however, does not support this conclusion.

To start, Hargis's assertion that JLB failed to file an uncontroverted fact statement in support of its Motion for summary judgment is incorrect as a matter of fact. JLB did file an uncontroverted fact statement. Hargis evades this issue by emphasizing when, rather than if, the statement was filed. But Hargis ignores that JLB's statement was timely filed pursuant to the trial court's instruction, given at JLB's request in response to Hargis first raising an objection. Hargis waited for over four months after JLB filed its summary judgment Motion to object that there was no statement of undisputed facts attached to the Motion. When Hargis finally did object, JLB promptly requested leave to file the objected-to missing statement, which the court granted and which JLB then timely filed.

Hargis claims prejudicial error warranting reversal based on JLB's alleged failure to file a statement which it did, in fact, file. We will not reverse summary judgment based on a misleading claim of prejudicial error Hargis fashioned from an incomplete and inaccurate recount of the actual facts. And Hargis fails to show how the prejudicial error alleged warrants reversal in light of what actually occurred. Hargis cannot have summary judgment reversed for a prejudicial error alleged from false assertions of fact. Therefore, this claim fails.

Money Had and Received

⁴ Pursuant to the requirements set forth in Rule 74.04(c)(1).

Hargis also argues in her fourth point on appeal that summary judgment was improperly entered against her on the claim of money had and received because she asserted money had and received as an independent claim separate from the unauthorized practice of law claims. Hargis argues JLB violated Rule 74.04(c)(1), which requires a moving party to provide a “legal basis” for summary judgment, because JLB did not set out a separate legal basis for summary judgment specific to the claim for money had and received. Hargis concludes this oversight by JLB made it an abuse of the trial court’s discretion to enter summary judgment against Hargis which we must reverse. We again disagree.

Hargis raises this argument for the first time in her appellate brief. But arguments opposing summary judgment that were never raised in briefs filed with the trial court in opposition to summary judgment may not subsequently be made for the first time on appeal. *Schwartz v. Custom Printing Co.*, 926 S.W.2d 490, 493 (Mo. App. 1996). Without reaching its merits, therefore, we find that Hargis’s argument on this point fails. And even if it had been timely raised, this argument against summary judgment is nevertheless unfounded. Hargis made no allegations of fact or wrongdoing specific to the claim of money had and received with respect to which JLB could provide a separate legal basis for summary judgment. Thus JLB’s failure to do so was not error.

Denial of Leave to Amend

In her fifth and final point on appeal, Hargis claims summary judgment was improper because the trial court erred in denying her Motion for leave to amend her petition. Once again, we disagree. The trial court has broad discretion to grant or deny leave to amend pleadings, and we will not disturb its decision in the matter absent a

showing the trial court obviously and palpably abused its discretion. *See Dye v. Div. of Child Support Enforcement, Dept. of Soc. Servs.*, 811 S.W.2d 355, 358 (Mo. banc 1991). Hargis contends we should reverse because the denial of her Motion for leave to amend amounted to an obvious, palpable abuse of trial court discretion.

Based just on the timing of the request for leave, we find that denial of leave was not improper and the trial court did not abuse its discretion in denying it. Hargis requested leave to amend her Petition more than a year after she had filed it and with trial scheduled to begin in exactly two months. At that point, JLB's summary judgment Motion had been on file for over six months and was ready for decision. The deadlines for taking depositions and making expert disclosures had long since passed. Allowing Hargis leave to amend would have required a trial continuance, additional discovery, and far more expense. It would have also been prejudicial to JLB. Furthermore, the additional claims that Hargis sought leave to add to her Petition were already pending in federal court, so they would have been without merit in the state trial court where they would have been dismissed under the doctrine of abatement. *See Rule 55.27(a)(9); Golden Valley Disposal, LLC v. Jenkins Power, Inc.*, 183 S.W.3d 635, 641-42 (Mo. App. 2006); *see also Hudson v. Riverport Performance Art Ctr.*, 37 S.W.3d 261, 266 (Mo. App. 2000) (holding that a trial court does not err in denying a motion to amend a pleading to assert a claim that is without merit). For these reasons, we cannot say that the trial court's decision to deny Hargis leave to amend her petition was an abuse of discretion. Consequently, we find no reason which warrants us to reverse. *See Lunn v. Anderson*, 302 S.W.3d 180, 190 (Mo. App. 2009).

Conclusion

For the reasons set out above, the trial court's summary judgment in favor of JLB is AFFIRMED.

Kenneth M. Romines, J.

Roy L. Richter, C.J. and Kathianne Knaup Crane, J., concur.