

NO. CAAP-15-0000352

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

BANK OF AMERICA, N.A., Plaintiff-Appellee,
v.
DYLAN THEDE, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CIVIL NO. 11-1-0041)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, and Fujise and Leonard, JJ.)

Defendant-Appellant Dylan Thede (Thede), *pro se*, appeals from the Judgment entered by the Circuit Court of the Fifth Circuit (Circuit Court).¹ The Judgment was entered in the amount of \$71,788.22 in favor of Plaintiff-Appellee Bank of America, N.A. (BOA) and against Thede, pursuant to the Circuit Court's grant of BOA's motion for summary judgment. On appeal, Thede contends that: (1) the Circuit Court erred in granting BOA's motion for summary judgment; (2) BOA's complaint should have been dismissed for insufficiency of service of process; and (3) BOA lacked standing to pursue its claim. We affirm.

¹The Honorable Randal G.B. Valenciano presided.

I.

A complaint was filed by FIA Card Services, N.A. (FIA), seeking to collect amounts allegedly owed by Thede on his credit card account. Thede filed an answer to the complaint. The caption of the complaint was later amended to name BOA as the plaintiff. BOA filed a motion for summary judgment, which was set for a hearing on February 19, 2015. Thede filed a motion to continue the hearing for ninety days, which the Circuit Court denied on February 18, 2015. The record on appeal does not contain any written opposition to BOA's motion for summary judgment, and Thede did not appear at the hearing. The Circuit Court granted BOA's motion for summary judgment and filed its Judgment on May 28, 2015.

II.

We resolve the arguments raised by Thede on appeal as follows:

1. The Circuit Court did not err in granting BOA's motion for summary judgment. In support of its motion, BOA submitted the affidavit of Wendy Parnell (Parnell), who represented that she was a custodian of records for BOA, along with exhibits which showed: (1) that BOA was a subsidiary of Bank of America Corporation and the successor in interest to FIA, which had merged into BOA; (2) that Thede had opened a credit card account with FIA; (3) that Thede had used the account or authorized its use to acquire goods, services, or cash advances; and (4) that Thede had made certain payments on the account, but had stopped making payments and owed an outstanding balance of \$71,440.22.

Contrary to Thede's contentions, Parnell's affidavit was not deficient and BOA met its burden of showing that there was no genuine issue as to any material fact and that it was entitled to judgment as a matter of law. See Hawai'i Rules of Civil Procedure (HRCPP) Rule 56(c), (e) (2000). To the extent

that Thede contends that the Circuit Court erred in denying his motion to continue the hearing on BOA's summary judgment motion, we disagree. Thede's continuance motion was based on his assertions that he was unable to attend the hearing, he wanted more time to pursue settlement, and there were motions the Circuit Court needed to address before he could properly frame his defense. However, Thede did not explain why he was unable to attend the hearing, and he did not specify and the record does not disclose what motions the Circuit Court needed to address before he could frame his defense. We conclude that the Circuit Court did not abuse its discretion in denying Thede's motion for a continuance.

2. Thede contends that the service of the complaint on him was insufficient. However, Thede did not file a motion claiming insufficiency of service of process, and he filed an answer to the complaint without asserting this defense. Accordingly, Thede waived his claim of insufficiency of service of process. See HRCF Rule 12(b) and (h) (2000).

3. Thede's claim that BOA lacked standing is without merit. The record reflects that BOA is the successor in interest to FIA, that Thede had opened a credit card account with FIA, and that Thede was in breach of his payment obligations under the account.²

²We note that in his opening brief, Thede refers to documents he claims were submitted to the Circuit Court but were omitted from the record on appeal. However, it is Thede's responsibility, as the appellant, "to provide a record . . . that is sufficient to review the points asserted and to pursue appropriate proceedings in the court or agency from which the appeal is taken to correct any omission." Hawaii's Rules of Appellate Procedure Rule 11(a) (2010). Thede did not make the documents he claims were omitted part of the record on appeal, and our decision in this case is based on the record before us.

III.

Based on the foregoing, we affirm the Circuit Court's Judgment.

DATED: Honolulu, Hawai'i, March 31, 2016.

On the briefs:

Dylan Thede
Defendant-Appellant
Pro Se

Chief Judge

Marvin S.C. Dang
Jason M. Oliver
for Plaintiff-Appellee

Associate Judge

Associate Judge