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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-30

Filed: 17 July 2018

Wake County, No. 16 CVD 012480

COSMOS GRANITE & MARBLE, Plaintiff,

v.

CAROLINA CABINETS & GRANITE INC. AND ROGER H. GLENISTER,
Defendants.

Appeal by Defendant from Judgment entered 2 August 2017 by Judge Margaret P. Eagles in Wake County District Court. Heard in the Court of Appeals 16 May 2018.

Smith, Debnam, Narron, Drake, Saintsing & Myers, LLP, by Gerald H. Groon, Jr., for Plaintiff-Appellee.

Roger H. Glenister, pro se, for Defendant-Appellant.

INMAN, Judge.

Roger H. Glenister (“Defendant”) appeals from a trial court judgment awarding Cosmos Granite & Marble (“Plaintiff”) \$34,851.39, plus interest and attorney’s fees, for breach of contract and breach of a guaranty agreement. Defendant argues that a credit agreement between Plaintiff and Carolina Cabinets & Granite Inc.

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(“Defendant-Corporation”) and a personal guaranty agreement that he signed to secure the credit agreement were invalid under the statute of frauds. Defendant also argues that he is shielded from liability based on his filing for personal bankruptcy. Because Defendant failed to raise these issues before the trial court and committed gross violations of the Rules of Appellate Procedure, we dismiss his appeal and leave the trial court’s judgment undisturbed.

Facts & Procedural History

The evidence at trial tended to show the following:

On 27 May 2010, Defendant-Corporation entered into a credit agreement (the “Credit Agreement”) with Plaintiff. As part of this agreement, Defendant signed a personal guaranty agreement (the “Guaranty Agreement”) in which he promised to be personally liable for any amount owed on the line of credit in the event of a default by Defendant-Corporation. The Guaranty Agreement provided that any unpaid invoices shall bear an interest rate of 18% per annum on all past due amounts and allows for the collection of reasonable attorney’s fees incurred by Plaintiff.

Throughout the course of business, Defendant-Corporation incurred \$34,851.39 in expenses on the line of credit. Defendant-Corporation then defaulted on the outstanding account, which resulted in Plaintiff filing the complaint in this action.

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The complaint, filed on 13 October 2016, alleged that Defendant and Defendant-Corporation were in breach of the Guaranty Agreement and Credit Agreement, respectively. Plaintiff sought damages in the amount of \$34,851.39 with an interest rate of 18%, plus reasonable attorney's fees.

Plaintiff's claims were heard in a bench trial on 1 August 2017 before the Honorable Margaret P. Eagles. Defendant represented himself *pro se*, while Defendant-Corporation went unrepresented. Plaintiff presented witness testimony from Ramsi Nalapati, the president of Cosmos Granite & Marble, and called on Defendant to testify as an adverse witness. In addition to the testimony, Plaintiff presented, without objection, the Credit and Guaranty Agreements, along with invoices and account statements linked to Defendant-Corporation's credit line. Defendant also testified on his own behalf. Defendant did not present any documentary evidence. Defendant argued that the Credit and Guaranty Agreements violated the statute of frauds, and that he was shielded from liability because he filed for bankruptcy.

The trial court issued its judgment on 2 August 2017, which contained the following findings of fact:

1. Defendant Carolina Cabinets & Granite Inc submitted an application for credit to Plaintiff on or about May 27, 2010.
2. Defendant Roger H. Glenister executed a guaranty agreement for the purpose of inducing the extension of

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credit by Plaintiff to Defendant Carolina Cabinets & Granite Inc.

3. The guaranty agreement provided that the unpaid invoices shall bear interest at 18% per annum on all amounts past due.

4. The guaranty agreement further provided for the collection of reasonable attorney's fees.

5. Thereafter, Plaintiff sold and delivered goods to Defendant Carolina Cabinets & Granite Inc.

6. Plaintiff billed Defendant Carolina Cabinets & Granite Inc for the goods sold and delivered under a series of invoices.

7. Defendant Carolina Cabinets & Granite Inc failed to pay the entire amount to Plaintiff due under the invoices.

8. As a result of the failure of the Defendant Carolina Cabinets & Granite Inc to pay Plaintiff the amount due under the invoices, the Plaintiff has been damaged in the amount of \$34, 851.39.

Based on these findings, the trial court made the following conclusions of law before finding in favor of Plaintiff:

1. The Court has jurisdiction over the parties and the subject matter of this action.

2. Plaintiff and Defendant Carolina Cabinets & Granite Inc entered into a contract.

3. Plaintiff well and truly performed its obligations under the contract.

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4. Defendant Carolina Cabinets & Granite Inc is in material breach of the contract by reason of its failure to pay the invoices of Plaintiff.

5. Defendant Roger H. Glenister is in material breach of the guaranty agreement by his failure to pay Plaintiff the sum of money owed by Defendant Carolina Cabinets & Granite Inc.

6. Plaintiff has been damaged, directly and proximately, by the breach of Defendants in the in the [sic] amount of \$34,851.39.

Defendant filed a notice of appeal on 15 August 2017.

Analysis

As an initial matter, Plaintiff argues that Defendant's failures to follow the Rules of Appellate Procedure merit dismissal of Defendant's appeal. We agree.

The North Carolina Supreme Court, in *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co., Inc.*, 362 N.C. 191, 657 S.E.2d 361 (2008), provided our Court with extensive instructions regarding violations of the appellate rules. *Dogwood* identifies three categories of rule violations: "(1) waiver occurring in the trial court; (2) defects in appellate jurisdiction; and (3) violation of nonjurisdictional requirements." *Id.* at 194, 657 S.E.2d at 363. Plaintiff's assertion relies primarily on the first category; however, our review of Defendant's brief reveals violations of the nonjurisdictional requirements as well.

The first category of rule violations—known commonly as "the waiver rule"—"arises out of a party's failure to properly preserve an issue for appellate review." *Id.*

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at 194-95, 657 S.E.2d at 363. These violations stem from Rule 10(a)(1) of the North Carolina Rules of Appellate Procedure, which provides that “[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make[.]” N.C. R. App. P. 10(a)(1) (2017). Aside from extraordinary circumstances in which this Court reviews an issue for plain error or where we invoke Rule 2 to excuse a party’s default to “prevent manifest injustice to a party” or to “expedite decision in the public interest,” “a party’s failure to properly preserve an issue for appellate review ordinarily justifies the appellate court’s refusal to consider the issue on appeal.” *Dogwood*, 362 N.C. at 195-96, 657 S.E.2d at 364.

With regard to the third category, the Court in *Dogwood* reasoned that because nonjurisdictional rules primarily serve to keep “the appellate process flowing in an orderly manner . . . a party’s failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal.” *Id.* at 198, 657 S.E.2d at 365-66 (internal quotation marks and citations omitted). This normative rule, however, does permit dismissal “in the most egregious instances of nonjurisdictional default[.]” *Id.* at 200, 657 S.E.2d at 366 (citations omitted). In dismissing a case for a nonjurisdictional default, the *Dogwood* Court provided a three-part analysis:

[T]he court should first determine whether the noncompliance is substantial or gross under Rules 25 and

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34. If it so concludes, it should then determine which, if any, sanction under Rule 34(b) should be imposed. Finally, if the court concludes that dismissal is the appropriate sanction, it may then consider whether the circumstances of the case justify invoking Rule 2 to reach the merits of the appeal.

Id. at 201, 657 S.E.2d at 367.

Turning to the violations in the present case, we first address those occurring under the waiver rule. On appeal, Defendant argues that the trial court erred by admitting the Credit and Guaranty Agreements into evidence and by allowing Plaintiff's counsel to ask questions concerning Defendant-Corporation because Defendant-Corporation was unrepresented by counsel. But a review of the trial transcript reveals that Defendant failed to object to the introduction of either document. Defendant further failed to object to the questions asked by Plaintiff's counsel. We hold that by failing to object to these issues at trial, Defendant waived his right to assert these arguments on appeal.

Plaintiff also argues that Defendant failed to properly preserve his affirmative defenses of the statute of frauds and bankruptcy by failing to adequately plead these defenses in his answer. We are unable to review this issue because neither party included in the appellate record Defendant's responsive pleadings. Nevertheless, Defendant's nonjurisdictional violations of the appellate rules on these issues amounts to abandonment of the arguments by Defendant. Defendant's appellate brief wholly lacks any citation to authority or supportive reasoning; rather, Defendant's

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submission offers only one or two conclusory sentences to support each asserted error. Defendant's brief further lacks a statement of the grounds for appellate review or a statement of the appropriate standard of review. As the Court in *Dogwood* explained, violations such as these "may constitute a default precluding substantive review." *Dogwood*, 362 N.C. at 200, 657 S.E.2d at 367 (citation omitted); *see also* N.C. R. App. P. 28(b)(6) (2017) ("An argument, to contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned."). Because Defendant failed to cite any authority or provide any reasoning in support of his contested errors before the trial court, we hold these arguments—including his asserted affirmative defenses of the statute of frauds and bankruptcy—are abandoned.

Conclusion

For the foregoing reasons, Defendant's appeal is dismissed.

DISMISSED.

Judges DILLON and DAVIS concur.

Report per Rule 30(e).