
ONEIDA SMALL BUSINESS, INC.,

Plaintiff,

vs.

Case No. 13 CV 1838

WHITE EAGLE SPORTS BAR & GRILL, LLC,
PAUL F. DANFORTH and CHRISTINA S. DANFORTH,Defendants.

**DEFENDANT, CHRISTINA S. DANFORTH'S,
BRIEF IN OPPOSITION TO SUMMARY JUDGMENT
AND MOTION TO STRIKE AFFIDAVIT**

The Plaintiff, Oneida Small Business, Inc.'s, motion for summary judgment should be denied. The Defendant, Christina S. Danforth, has filed an answer contesting the amount the Plaintiff asserts is owed.

The purpose of summary judgment procedure is to determine whether there are genuine factual disputes in order to "avoid trials where there is nothing to try." *Rollins Burdick Hunter of Wis., Inc. v. Hamilton*, 101 Wis. 2d 460, 470, 304 N.W.2d 752 (1981). A party is entitled to summary judgment only when there are no genuine issues of material fact or differing reasonable inferences that can be drawn from undisputed facts, and the party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2); *Delmore v. American Family Mut. Ins. Co.*, 118 Wis. 2d 510, 516, 348 N.W.2d 151 (1984).

In support of its motion for summary judgment, the only proof offered is an affidavit from Attorney Van Sickel. That affidavit should be stricken as hearsay.

The moving party must support its motion with evidentiary materials that establish all facts necessary to establish the claim as a matter of law. Evidentiary facts may be derived from admission in the pleadings, answers to interrogatories, depositions, admissions on file, and from affidavits setting forth other evidentiary facts. Affidavits must be made on personal knowledge, Wis. Stat. § 802.08(3), and must lay an evidentiary foundation for any attached documents. *Gross v. Woodman's Food Market, Inc.*, 2002 WI App 295, ¶ 38, 259 Wis. 2d 181, 655 N.W.2d 718. Affidavits made "on information and belief," made on summary or vague evidence, or stating a conclusion of law are not sufficient. Hearsay and documents

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without a proper evidentiary foundation cannot be considered by the court. See Wis. Stat. § 802.08(3); *Helland v. Kurtis A. Froedtert Mem'l Lutheran Hosp.*, 229 Wis. 2d 751, 764, 601 N.W.2d 318 (Ct. App. 1999).

Attorneys' affidavits are to be scrutinized closely, as attorneys may not act as advocates and witnesses on contested matters. Attorney Van Sickel's affidavit does not set out the alleged default or state the calculation of the balance of the account. Additionally, the Defendant, Christina S. Danforth, is forwarding discovery requests seeking the Plaintiff's file and the payment history for the account.

As such, the Defendant, Christina S. Danforth, asks the court to strike the affidavit and to deny the Plaintiff's motion for summary judgment.

Dated this 12 day of March, 2014.

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