

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1447**

Absolute Resolutions Investments, LLC,
Respondent,

vs.

Ari D Clark,
Appellant.

**Filed April 14, 2025
Affirmed
Bond, Judge**

Hennepin County District Court
File No. 27-CV-24-1318

Marcus S. Boston, Derrick N. Weber, Messerli & Kramer, P.A., Plymouth, Minnesota (for respondent)

Ari Clark, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Reyes, Presiding Judge; Bjorkman, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

BOND, Judge

Appellant challenges the summary-judgment dismissal of his claims against respondent debt collector. Appellant contends that (1) genuine issues of material fact exist, (2) the district court improperly applied the account-stated doctrine, (3) respondent's counsel withheld information in violation of attorney ethical standards, and (4) respondent

violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (2018) (FDCPA). Because no genuine issue of material fact exists precluding the grant of summary judgment in favor of respondent, the district court correctly applied the account-stated doctrine, and appellant's remaining arguments are forfeited, we affirm.

FACTS

In 2016, appellant Ari D Clark was issued a credit card through U.S. Bank. Clark made purchases on the account and made payments until September 2019, when he defaulted on the account.

U.S. Bank assigned the account to respondent Absolute Resolutions Investments, LLC in May 2023. In September 2023, Absolute served Clark with a consumer-credit breach-of-contract complaint seeking recovery of the outstanding balance of \$5,967.56 owed on the account. Clark answered Absolute's complaint with a general denial and a request for validation of the debt.¹ In October 2023, Absolute sent Clark a validation response, which included billing statements dating from September 2019 until the "charge-off date" of March 31, 2020.² Absolute's documentation identified U.S. Bank as the original creditor, the account number, the date the account was opened, the date of the last

¹ Clark did not file the answer in district court. As such, the answer in its entirety appears to be outside the record. *See* Minn. R. Civ. App. P. 110.01 (providing that the record on appeal consists of "documents filed in the trial court, the exhibits, and the transcript of the proceedings"). However, the parties discussed the answer at the summary-judgment hearing and the answer's existence and general contents are not disputed.

² Absolute contends that it sent Clark billing statements dating back to February 2019 but only filed statements dating back to September 2019 in the district court. Therefore, only statements dating back to September 2019 are part of the record. *See* Minn. R. Civ. App. P. 110.01.

payment, the charge-off date, the assignment to Absolute, and the balance due. Clark did not respond to Absolute's validation response.

In December 2023, Absolute served Clark with a set of discovery requests, including requests for admission. The requests for admission asked Clark to admit that he was issued and used the account, he received monthly billing statements on the account, he did not dispute any billing statements, his last payment on the account was in August 2019, he was required to pay the account balance, and the account had an outstanding balance of \$5,967.56. Clark did not respond to the requests for admission.

In January 2024, Absolute moved for summary judgment. Absolute argued that there is no genuine issue of material fact because Clark's failure to respond to the requests for admission meant that the statements in the requests, including statements regarding his liability for the debt, must be deemed admitted under Minn. R. Civ. P. 36.01. Alternatively, Absolute argued that Clark was liable for the debt under the account-stated doctrine. Clark did not file a timely response to the summary-judgment motion.

In April 2024, the district court held a summary-judgment hearing. Clark appeared at the hearing and argued that summary judgment should be denied because Absolute failed to verify the debt properly and because the account-stated doctrine should not apply "in this circumstance." Clark told the district court that he had been out of the country when he received Absolute's discovery requests, and thus his failure to respond was "an inadvertent mistake."

The district court issued an order granting summary judgment in favor of Absolute. The district court determined that Absolute had provided adequate verification of the debt,

and that Clark is deemed to have admitted all essential facts in the case by his failure to answer or object to Absolute's requests for admission. Accordingly, the district court determined that no genuine issue of material fact exists and Clark is liable for the debt based on breach of contract and an account stated.

This appeal follows.

DECISION

We review a district court's grant of summary judgment de novo, analyzing whether there are any genuine issues of material fact and whether the district court correctly applied the law. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). We view the evidence in the light most favorable to the party against whom summary judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Summary judgment shall be granted if the moving party shows that there is no genuine issue of material fact and they are entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. "A genuine issue of material fact exists when reasonable minds can draw different conclusions from the evidence presented." *Rygwall, as Tr. for Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416, 427 (Minn. 2024). The nonmoving party "cannot defeat a summary judgment motion with unverified and conclusory allegations or by postulating evidence that might be developed at trial." *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001); *see also Wendell v. Comm'r of Revenue*, 7 N.W.3d 405, 413 (Minn. 2024) (stating that to demonstrate the existence of a genuine issue of material fact, the nonmoving party "must do more than rest on mere averments" (quotation omitted)); *DLH*,

Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997) (stating that it is not sufficient for the nonmoving party to rely on “evidence which merely creates a metaphysical doubt as to a factual issue”). Rather, the nonmoving party “must produce evidence that is sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *Metro. Transp. Network, Inc. v. Collaborative Student Transp. of Minn., LLC*, 6 N.W.3d 771, 778 (Minn. App. 2024) (quoting *DLH, Inc.*, 566 N.W.2d at 69), *rev. denied* (Minn. July 23, 2024).

I. The district court properly granted summary judgment in favor of Absolute on its breach-of-contract claim.

Clark first argues that the district court erred in determining there is no genuine issue of material fact on Absolute’s breach-of-contract claim because he sent Absolute a general denial and requested verification of the debt. But Clark failed to timely respond to Absolute’s motion for summary judgment and, even at the summary-judgment hearing, he presented no evidence calling into question the existence or amount of the debt. Absolute presented multiple account statements bearing Clark’s name and address; documentation of the assignment of the account that included Clark’s name, address, Social Security number, and other identifying information; and documentation showing the last payment, charge-off date, and unpaid balance. This evidence conclusively established that Clark had a credit card account with U.S. Bank, that he owed \$5,967.56 on the account, and that U.S. Bank assigned Clark’s account to Absolute. Clark’s unsupported allegations questioning the validity of the debt are insufficient to establish a genuine issue of material fact. *See Wendell*, 7 N.W.3d at 413 (stating “mere averments” by the nonmoving party are

insufficient to show the existence of a genuine issue of material fact (quotation omitted)); *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (stating “general assertions . . . are not sufficient”).

Furthermore, Clark did not respond to Absolute’s requests for admission. Minnesota Rule of Civil Procedure 36 allows, as part of discovery, a party to serve on another party written requests for the admission of any matters related to “statements, opinions of fact, or the application of law to fact.” Minn. R. Civ. P. 36.01. A matter is deemed admitted unless the recipient party serves a written answer or objection within 30 days of service of that request. *Id.* A matter admitted pursuant to rule 36 is “conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Minn. R. Civ. P. 36.02. Clark conceded that he did not respond to Absolute’s requests for admission and did not move for withdrawal or amendment of his resulting admissions. As such, the matters in Absolute’s requests for admission, including the existence of the debt and Clark’s obligation to pay it, were “conclusively established.”

Because Absolute presented sufficient evidence that the debt was valid and that Clark failed to make payments as he was contractually obligated to do, and because Clark did not produce evidence creating a genuine issue of material fact and is deemed to have admitted the matters in Absolute’s requests for admission, the district court did not err by granting summary judgment in favor of Absolute on its breach-of-contract claim against Clark.

II. The district court properly granted summary judgment in favor of Absolute under the account-stated doctrine.

Next, Clark argues that the district court improperly granted summary judgment to Absolute because it misapplied the account-stated doctrine. Clark appears to argue that, because his answer to the complaint included a general denial of the debt, there are genuine issues of material fact as to the amount owed on the account.

The doctrine of account stated is a means of establishing liability for a debt as an alternative to a contract-based theory of liability. *Am. Druggists Ins. v. Thompson Lumber Co.*, 349 N.W.2d 569, 573 (Minn. App. 1984). “An account stated is a manifestation of assent by a debtor and creditor to a stated sum as an accurate computation of an amount due the creditor.” *Id.* If a party retains an account statement rendered by another party “without objection for an unreasonably long time,” then under the account-stated doctrine, this retention establishes the party’s assent to the account. *Id.* An account stated constitutes “prima facie evidence of the accuracy and correctness of the items noted thereon and of the liability of the party against whom the balance refers.” *Erickson v. Gen. United Life Ins. Co.*, 256 N.W.2d 255, 259 (Minn. 1977).

The last statement Clark received in March 2020 showed that Clark had a credit account with U.S. Bank and that the amount of the debt Clark owed on the account was \$5,967.56. Clark does not dispute that he received that March 2020 statement or that he retained it without objection for the nearly three-and-one-half years before Absolute commenced this action. Clark’s retention of the March 2020 statement constituted a manifestation of assent and implied a promise to pay the amount owed. These facts are

sufficient to establish a prima facie case of Clark's liability under the doctrine of account stated. *Id.*; *Am. Druggists*, 349 N.W.2d at 573. Clark failed to provide any specific evidence to dispute the amount owed on the account.

Citing *American Druggists*, Clark argues that "[the account-stated] doctrine is inapplicable when the debtor disputes the debt." But *American Druggists* does not stand for that proposition. *See Am. Druggists*, 349 N.W.2d at 573 (rejecting argument that a dispute as to the amount of finance charges owed prevented summary judgment because, under the account-stated doctrine, contractor's retention without objection of subcontractor's invoices that included finance charges implied a promise to pay charges). Clark's claim that the account-stated doctrine is inapplicable because his answer to the complaint contained a general denial of the debt is based on an incorrect recitation of the law and, consequently, it is unavailing. Because Clark retained the March 2020 statement for over three years without objecting to it, the district court correctly applied the account-stated doctrine and determined that Absolute was entitled to summary judgment as a matter of law.

III. Clark's remaining arguments are forfeited.

Clark raises two final arguments. Clark argues that the district court erred by granting summary judgment because Absolute's counsel withheld information in violation of attorney ethical standards and because Absolute failed to comply with the FDCPA. Clark did not properly present either of these arguments to the district court. It is well-established that a party may not raise an issue or argument for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally

consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it.” (quotations omitted)). We therefore conclude that Clark forfeited these arguments, and we decline to address them for the first time on appeal.

Affirmed.