

LATHROP & LATHROP, INC.

v.

MARCO F. DeSALLE

Submitted on Briefs June 4, 2009

Decided July 28, 2009

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, and GORMAN, JJ.

MEMORANDUM OF DECISION

Marco F. DeSalle appeals from three judgments in the Superior Court (Cumberland County, *Delahanty, J.*) granting summary judgment in favor of Lathrop & Lathrop, Inc., denying DeSalle's motion for additional findings of fact and conclusions of law, and granting attorney fees to Lathrop. DeSalle contends that the court: (1) erred in granting summary judgment as a matter of law; (2) abused its discretion in granting attorney fees in the amount of \$15,999.30; and (3) erroneously interpreted the timing requirement of M.R. Civ. P. 52(a). We affirm.

Contrary to DeSalle's contentions, the court did not err in granting summary judgment. Lathrop established its claim that DeSalle's guarantee extended to the renewal of the lease by demonstrating that there was no genuine issue of material fact and that it was entitled to judgment as a matter of law. *See Scott v. Androscoggin County Jail*, 2004 ME 143, ¶ 14, 866 A.2d 88, 92. Although a material change to the underlying contract may discharge a guarantor of liability, *Bumila v. Keiser Homes of Me., Inc.*, 1997 ME 139, ¶ 14, 696 A.2d 1091, 1094, and although LeRay Pepper's absence from the option exercise agreement may have constituted a material change, DeSalle waived the issue by failing to properly raise it in opposing or challenging summary judgment. *See Fitch v. Doe*, 2005 ME 39, ¶ 27, 869 A.2d 722, 729. As DeSalle contends, the forgery of Pepper's signature on the option exercise agreement was an issue brought before the court by other parties. However, DeSalle, who was responsible for raising that issue in the context of his own liability either in his answer to Lathrop's complaint

or at the summary judgment stage, failed to raise any such issue due to his failure to comply with M.R. Civ. P. 56(h)(4). Because DeSalle did not offer record citations in his statement of facts, the court was well within its discretion to disregard DeSalle's assertions. *See* M.R. Civ. P. 56(h)(4). Accordingly, DeSalle did not properly controvert Lathrop's statement of material facts, and Lathrop's assertions, which were supported by record citations, were deemed admitted. Therefore, the court did not err in granting summary judgment. *See Scott*, 2004 ME 143, ¶ 14, 866 A.2d at 92.

Contrary to DeSalle's contention, the court's award of attorney fees was well within its discretion. *See Efstathiou v. Aspinquid, Inc.*, 2008 ME 145, ¶ 66, 956 A.2d 110, 126. Competent evidence existed in the record to support the court's factual findings, *see In re Beauchene*, 2008 ME 110, ¶ 7, 951 A.2d 81, 84, and the findings were sufficient to support the court's determination.

Finally, notwithstanding the possibility that the court erroneously interpreted the timing requirement of M.R. Civ. P. 52(a), as DeSalle contends, the court had already provided sufficient findings, supported by competent evidence in the record, to support its conclusions as to the narrow issues that remained at trial. *See In re Jacob B.*, 2008 ME 168, ¶ 15, 959 A.2d 734, 738. We therefore affirm the court's ruling on other grounds. *See Bouchard v. Frost*, 2004 ME 9, ¶ 8, 840 A.2d 109, 111.

The entry is:

Judgments affirmed.

Attorney for Marco F. DeSalle:

James F. Cloutier, Esq.
Cloutier, Conley & Duffett, P.A.
465 Congress Street
Portland, Maine 04101

Attorneys for Lathrop & Lathrop, Inc.:

Timothy Norton, Esq.
Lauri Boxer-Macomber, Esq.
Kelly, Remmel & Zimmerman
53 Exchange Street
Portland, Maine 04112-0597