UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

EDNA FAY BALES

Debtor(s)

No. 96-12516
Chapter 13

EDNA FAY BALES

Plaintiff

v.

GIBSON'S AUTO SALES

Defendant

Adversary Proceeding
No. 96-1112

MEMORANDUM AND ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This adversary proceeding is before the Court on Plaintiff's Motion for Partial Summary Judgment with respect to liability as well as damages, both actual and punitive. The motion is supported by the affidavit of the plaintiff, Edna Fay Bales, and defendant's responses to plaintiff's request for admissions. The plaintiff also relies upon an unsworn statement from her employer regarding wages earned and an unverified letter from the defendant's attorney. Without more, neither the letter nor the statement of wages can be considered for purposes of summary judgment.

Pursuant to Fed. R. Civ. P. 56(c), made applicable to this adversary proceeding through Fed. R. Bankr. P. 7056, summary judgment is available only when a party is entitled to a judgment as a matter of law and when, after consideration of the evidence presented by the pleadings, affidavits, answers to interrogatories, and depositions in a light most favorable to the nonmoving party, there remain no genuine issues of material fact. The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgement. The factual dispute must be genuine. *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505 (1986); *Street v. J.C. Bradford & Co.,* 886 F.2d l472 (6th Cir. 1989).

The moving party must inform the court of the basis of its motion and clearly and convincingly demonstrate "the absence of any genuine issues of material fact." *Sims v. Memphis Processors, Inc.,* 926 F.2d 524, 526 (6th Cir. 1991). If this initial burden is met, the nonmoving party is required to defeat the summary judgment motion by presenting "'significant probative evidence,' showing that genuine, material factual disputes remain." *Id.* (citation omitted) (quoting *Gregg v. Allen-Bradley Co.*, 801 F.2d 859, 861 (6th Cir. 1986)). The nonmoving party will not be allowed to rely on the mere allegations of its pleadings or "on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact." *Street*, 886 F.2d at 1479. Rather, it must "go beyond the pleadings and by its own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v. Catrett*, 106 S. Ct. 2548, 2553 (1986) (quoting Fed R. Civ. P. 56(c), (e)).

The defendant, in opposition to the motion for summary judgment, filed affidavits of Robert Gibson and Gayla Carden. These affidavits dispute several statements made by the plaintiff in her affidavit.

The court can reach no other conclusion except that there are genuine issues of material fact still in dispute; therefore, summary judgment is not appropriate. Accordingly,

It is ORDERED that the motion for partial summary judgment filed on behalf of the plaintiff, Edna Fay Bales, is OVERRULED.

ENTER:

BY THE COURT

_____

entered 10/29/1996

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE