

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO: CV-07-056 ✓  
RAC-CUM-12/12/2007

HOMANS ASSOCIATES, INC./  
HOMANS ASSOCIATES, LLC.  
STATE OF MAINE  
Cumberland, ss. Clerk's Office  
Plaintiffs, SUPERIOR COURT

v.

DEC 12 2007

ORDER ON PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT

RECEIVED  
PORTLAND AIR CONDITIONING, INC. and  
KATHRYN MOONEY,

Defendants.

This case comes before the Court on Plaintiffs Homans Associates, Inc. and Homans Associates, LLC.'S (Plaintiffs) Motion for Summary Judgment pursuant to M.R. Civ. P. 56.

#### FACTUAL BACKGROUND

The facts of this case are undisputed as Defendants have failed to properly respond to Plaintiffs' motion for summary judgment pursuant to M.R. Civ. P. 56(c), (e), and (h).

Plaintiffs brought this action in order to collect on a debt owed by Defendant Portland Air Conditioning, Inc. (Portland Air) which debt was personally guaranteed by Defendant Kathryn Mooney (Ms. Mooney) (collectively the "Defendants"). The Defendants received materials supplied by Plaintiffs and have failed to pay the invoices due for those materials. The amount outstanding on the invoices is \$54,069.29. The credit agreement also provided for interest and attorneys fess. With interest and service fees the total amount claimed through August 30, 2007 is \$67,980.52. Plaintiff claims \$1,757.00 in attorney's fess through August 31, 2007 by affidavit of Jeffrey Jones, Esq.

Defendants deny that a credit agreement exists between the parties and deny that there have been no payments have been made on the invoices.

### STANDARD OF REVIEW

Summary judgment is proper where there exist no genuine issues of material fact such that the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *see also Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 4, 770 A.2d 653, 655. A genuine issue is raised “when sufficient evidence requires a fact-finder to choose between competing versions of the truth at trial.” *Parrish v. Wright*, 2003 ME 90, ¶ 8, 828 A.2d 778, 781. A material fact is a fact that has “the potential to affect the outcome of the suit.” *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575. “If material facts are disputed, the dispute must be resolved through fact-finding.” *Curtis v. Porter*, 2001 ME 158, ¶ 7, 784 A.2d 18, 22.

### DISCUSSION

Plaintiffs moved for summary judgment on September 18, 2007. Defendants filed a timely opposition on October 1, 2007; however, the opposition failed to comply with the Maine Rules of Civil Procedure. *See* M.R. Civ. P. 56. According to those rules, “an adverse party may not rest upon the mere allegations or denials of that party’s pleading, but must respond by affidavit or as otherwise provided in this rule. . . .” M.R. Civ. P. 56(e). Consequently, Defendants had the “obligation to come forward with affidavits or other materials setting forth by competent proof specific facts that would be admissible in evidence. . . .” *Bangor & Aroostook R.R. Co. v. Daigle*, 607 A.2d 533, 535 (Me. 1992) (citations omitted). Facts not properly controverted are deemed admitted. M.R. Civ. P. 56(h)(4).

Defendants' only filing in opposition to summary judgment is a reply to Plaintiffs' statement of material facts. There is no memorandum of law and there are no affidavits in support of the opposition. The denials are largely unsupported by any record citations. The only record citation given is a reference to an "Exhibit A – Vendor Ledger" attached to the opposition. It appears to be a vendor ledger from Portland Air Conditioning, but no affidavit is associated with the exhibit to provide a foundation, nor is it stipulated to by Plaintiffs. Consequently, the citation reference is inadmissible under M.R. Civ. P. 56(e).

The Defendants claim that the credit agreement between the parties is not binding as Plaintiffs' corporate status has changed. For the same reasons, Defendants claim that Kathryn Mooney's personal guaranty is not valid. Moreover, Defendants claim that some payments have been made to Plaintiffs.

In contrast, Plaintiffs' have moved for summary judgment and supported that motion in compliance with the Maine Rules of Civil Procedure. *See* M.R. Civ. P. 56(e). Plaintiffs have filed invoices credited by an affidavit of Karen Tise, Plaintiffs' Credit Manager, as well as Defendants' credit agreement with Plaintiffs (also supported by affidavit). Each statement of material fact proffered by Plaintiffs is supported by a specific record citation.


Based on the foregoing, Plaintiffs' statement of material facts are deemed admitted because they have not been properly controverted. Accordingly, summary judgment is granted to Plaintiffs as a matter of law because there are no genuine issues of material fact in controversy.

**Therefore, the entry is:**

Plaintiffs' Motion for Summary Judgment against Defendants is GRANTED. Under a credit agreement Defendants owe Plaintiffs \$67,980.52 plus attorney's fees in the amount of \$1,757.00.

The clerk shall incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Dated at Portland, Maine this 12<sup>th</sup> day of December 2007.



\_\_\_\_\_  
Roland A. Cole  
Justice, Superior Court

F COURTS  
nd County  
ox 287  
ie 04112-0287

JEFFREY JONES ESQ  
243 US ROUTE ONE  
SCARBOROUGH ME 04074

*Plaintiff*

F COURTS  
nd County  
iox 287  
ne 04112-0287

KATHRYN MOONEY/PORTLAND AIR CONDITIONING  
401 MANSONLIBBY ROAD  
SCARBOROUGH ME 04074

*Defendant*