Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-178

OCTOBER TERM, 2005

Charter One Bank, N.A.	}	APPEALED FROM:
	}	
	}	
v.	}	Rutland Superior Court
	}	
Evergreen Advertising & Marketing, Inc.,	}	
Robert R. Kesner, Michael Palmer and	}	DOCKET NO. 200-3-04 Rdvc
Palmer Legal Mediation Services	}	
		Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

In this suit for monies owed on a promissory note and personal guaranty, defendants Evergreen Advertising & Marketing, Inc. and Robert R. Kesner appeal from a summary judgment of the Rutland Superior Court in favor of plaintiff Charter One Bank. Defendants contend the court erred in granting summary judgment because a genuine issue remained in dispute as to the amount owed. We affirm.

Plaintiff filed this action, alleging that defendants had defaulted on a loan agreement and promissory note, and demanded payment of the remaining principal of $112,000 plus interest and late charges accruing after the last monthly payment in August 2003. In June 2004, the court granted plaintiff=s motion for judgment on the pleadings, finding defendants liable on the loan, but deferring to a later date a determination of the exact amount of monies owed. In February 2005, the court granted summary judgment in favor of plaintiff on the amount due and owing, finding that plaintiff was entitled as a matter of law to an amount totaling $133,059 in unpaid principal plus interest. This appeal followed.

Defendants contend that a genuine issue remained in dispute as to the amount owed on the loan. We review a summary judgment using the same standard as the trial court, affirming the judgment only when the moving party has demonstrated that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. O=Donnell v. Bank of Vt., 166 Vt. 221, 224 (1997). In determining whether material facts exist for trial, we must resolve all reasonable doubts in favor of the party opposing summary judgment. Id. Assessed in light of this standard, we find no basis to disturb the judgment.

In support of its motion, plaintiff produced the affidavit of a loan officer setting forth the terms of the loan and the history of defendants= payments, noting that the loan amount had been $112,000, that defendants had made interest payments only through early August 2003 and had made no payments toward the principal, and that interest charges to date rendered a total amount due of $133,059.89. The affidavit was supported by a copy of the promissory note and a spreadsheet detailing the bank=s calculation of interest due. In their opposition to the motion, defendants did not specifically dispute the evidence adduced by plaintiff or the figures set forth therein. Rather, defendants asserted that a genuine issue remained in dispute about the amount owing based on a form letter that defendants had received from plaintiff in October 2003, stating initially that $48,988.52 was due on the loan, followed by a statement that a payment totaling $133,544 must be received before November.

The trial court concluded, correctly in our view, that the letter failed to raise a genuine issue of material fact. Significantly, defendants did not challenge plaintiff=s evidence showing the amount of unpaid principal ($112,000) and interest due on the loan, and these undisputed figures showed that the total amount due and owing was $133,059. The October 2003 letter from the bank was internally inconsistent and unsupported by any documentation or data showing any basis for the figures therein, which, as the bank argued without dispute, appeared to be typographical errors unconnected to the actual amount of the loan and unpaid principal and interest in question. Thus, as the trial court correctly concluded, defendants had adduced no evidence to support Aa conclusion that defendants actually owe a different amount than that calculated by plaintiff.@ Accordingly, we discern no basis to disturb the summary judgment in favor of plaintiff.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice