COURT OF APPEALS
DECISION
DATED AND FILED

October 11, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1601 **Cir. Ct. No. 2013CV919**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

VAN HORN HYUNDAI, INC.,

PLAINTIFF-APPELLANT,

V.

LAKE CITY SUPPLY COMPANY LLC, SHEA RUTHE AND HANS SUNGAARD,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Sheboygan County: ANGELA W. SUTKIEWICZ, Judge. *Affirmed*.

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

¶1 PER CURIAM. Van Horn Hyundai, Inc. appeals from a judgment dismissing its claims after a jury trial against automobile parts supplier Lake City Supply Company, LLC, Hans Sundgaard and Shea Ruthe (hereafter Lake City). On appeal, Van Horn argues that the circuit court should have granted its summary judgment motion that the items of value received by its parts purchasing agent constituted a prohibited commission under WIS. STAT. § 134.05(2)(b) (2013-14).[1] Van Horn has not established on appeal that the circuit court erred when it denied summary judgment. Van Horn also argues that the circuit court improperly admitted hearsay evidence at trial which necessitates a new trial. This issue is inadequately briefed and we reject the hearsay challenges. We affirm.

Summary Judgment

¶2 We review the circuit court's grant of summary judgment de novo, and we apply the same methodology employed by the circuit court. ***Brownelli v. McCaughtry***, 182 Wis. 2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994). "We independently examine the record to determine whether any genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law." ***Streff v. Town of Delafield***, 190 Wis. 2d 348, 353, 526 N.W.2d 822 (Ct. App. 1994).

¶3 Van Horn brought claims against Lake City and other automobile parts suppliers alleging that their practice of providing items of value to Van Horn's parts purchasing agent, Kristopher Mylius, constituted improper incentives to purchase parts from them and was actionable under the Wisconsin Organized

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Crime Control Act, WIS. STAT. § 946.81 et seq. In so arguing, Van Horn alleged a pattern of racketeering activity contrary to § 946.83 and bribery of an agent contrary to WIS. STAT. § 134.05.[2]

¶4 The summary judgment proceeding focused on the nature of the items of value Mylius received from the parts suppliers, including Lake City.[3] Van Horn argued that there was no genuine material factual dispute that the items of value constituted a commission, which Mylius was not permitted to receive. *See* WIS. STAT. § 134.05(2)(b). The parts suppliers contended that the items of value were gifts and were only unlawful if corruptly given. Section 134.05(1).

¶5 At the summary judgment hearing, the circuit court determined that the items Mylius received were gifts. The court reserved for the factfinder at trial whether the gifts were an industry practice, a bribe or some other unlawful or corrupt activity.

¶6 In its appellant's brief, Van Horn cites trial testimony in support of its argument that the circuit court should have granted summary judgment. It is axiomatic that the circuit court did not rely upon trial testimony when it denied Van Horn's summary judgment motion. Our de novo review of the circuit court's summary judgment ruling does not absolve Van Horn, the party challenging the denial of summary judgment, from arguing to us from the summary judgment record. Therefore, we do not consider citations to trial testimony as we consider

[2] Because the summary judgment briefing is insufficient, we need not discuss the provisions of WIS. STAT. § 134.05.

[3] Lake City and related persons are the only respondents on appeal.

whether the circuit court erroneously denied Van Horn's summary judgment motion.

¶7 Van Horn's appellant's brief refers to and includes in its appendix excerpts of the depositions of Mylius, Lake City employee Jared Pirolli, and Lake City co-owner Shea Ruthe.[4] Van Horn offers no citation to the summary judgment record to show that these depositions were before the circuit court at the time it denied Van Horn's summary judgment motion. Unguided by the appellant's brief, we decline to rummage through the sizable summary judgment record[5] to determine if that record demonstrates the presence of genuine material factual issues such that the circuit court should not have granted summary judgment against Van Horn. *See* ***Mogged v. Mogged***, 2000 WI App 39, ¶19, 233 Wis. 2d 90, 607 N.W.2d 662.

Hearsay

¶8 Van Horn argues that on two occasions the circuit court improperly admitted hearsay evidence at trial. Van Horn cites all of the January 22, 2016 trial testimony of Shea Ruthe about the Nissan incentive program. Van Horn objected to this testimony on hearsay grounds because it was based on information obtained from others. Van Horn also challenges the admission of "the Wurth documents at trial" as Exhibit 54 and Sungaard's "extensive testimony about parts number[s]"

[4] The record references in the appellant's brief are inadequate. The appellant's brief cites to the appellant's appendix, but there are no citations to the record to assist us in locating the summary judgment pleadings in which Van Horn relied upon various depositions. In addition, numerous factual assertions are unsupported by references to the record as required by WIS. STAT. RULE 809.19(1)(d) (2015-16).

[5] The summary judgment record is four inches thick and consists of over forty record items.

and his reference to Exhibit 54. This evidence was also admitted over Van Horn's hearsay objection.

¶9 Van Horn's briefing on the hearsay issues is inadequate in more than one respect. Van Horn does not adequately explain the challenged testimony or place the testimony or the circuit court's rulings in the context of the trial. In addition, other than citing WIS. STAT. § 908.01, the hearsay statute, Van Horn offers no analysis supported by citation to authority to establish that the circuit court erroneously exercised its discretion in overruling Van Horn's hearsay objections. *See* ***Martindale v. Ripp***, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698.

¶10 We will not independently develop Van Horn's arguments, and therefore we will not consider Van Horn's challenge to these evidentiary rulings. *See* ***Vesely v. Security First Nat'l Bank***, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593 (Ct. App. 1985).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2015-16).