VERMONT SUPREME COURT
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Case No. 26-AP-004

Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

JULY TERM, 2026

Citibank, N.A. v. Michelle Clough*	}	APPEALED FROM:
	}	Superior Court, Orange Unit, Civil Division
	}	CASE NO. 24-CV-05065
		Trial Judge: Timothy B. Tomasi

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

Defendant appeals from the entry of summary judgment for plaintiff Citibank, N.A., in this credit-card-debt collection action. We affirm.

In December 2024, Citibank filed a complaint including the following factual allegations. Citibank issued defendant a credit card in October 2007. Under the terms of the accompanying credit-card agreement, defendant was required to make monthly payments on her account balance. Defendant used the card, and Citibank provided her with monthly account statements. In August 2022, defendant defaulted on the account by ceasing to make timely payments. In May 2023, Citibank charged off the account with a balance due of $1,981.17. Citibank sought judgment in the amount of this debt and its court costs.

Defendant, self-represented, filed an answer denying the existence of any credit-card agreement between herself and Citibank. She subsequently moved for an order compelling Citibank to produce, in response to her discovery requests, "the Application submitted by the Defendant for the Credit Card at your organization." Citibank opposed the motion, asserting that it was unable to locate the requested document in its records. It argued that the relevant federal regulations require creditors to retain such applications for a two-year period, after which destruction is permissible in the absence of a legal hold or other duty. See 12 C.F.R. § 226.25 (imposing two-year retention requirement for certain records under Truth in Lending Act). Citibank indicated that defendant's account was opened in 2007, the retention period had long since expired, and the application had therefore likely been destroyed in the ordinary course of business. On this basis, the court denied defendant's motion to compel.

In August 2025, the parties filed cross-motions for summary judgment under Vermont Rule of Civil Procedure 56. Citibank argued that it was entitled to judgment as a matter of law because the undisputed facts demonstrated the existence of a valid credit-card agreement, defendant's breach of the payment terms, and the amount of her resulting debt. Defendant contended that Citibank failed to identify admissible evidence demonstrating the existence of such an agreement or establishing her liability.

The trial court issued a written order denying defendant's motion and granting Citibank's motion. It first observed that defendant failed to support her factual assertions in the manner required by Rule 56(c) and therefore accepted Citibank's statement of facts as undisputed for purposes of summary judgment. The court then held that, on this record, Citibank was entitled to judgment as a matter of law and entered final judgment for Citibank in the requested amount. This appeal followed.[1]

We first address defendant's challenge to the trial court's denial of her motion to compel production of the requested credit-card application. "We apply a deferential standard of review to trial court rulings on discovery, which are left to the sound discretion of the trial judge." Schmitt v. Lalancette, 2003 VT 24, ¶ 9, 175 Vt. 284. To prevail on a claim of error under this standard, defendant "must show that the court failed to exercise its discretion, or exercised it for reasons clearly untenable or to an extent clearly unreasonable." Record v. Kempe, 2007 VT 39, ¶ 9, 182 Vt. 17 (quotation omitted). Defendant has not demonstrated any abuse of discretion.

As the trial court pointed out, a party may request the production of only those documents which are—among other requirements—"in the possession, custody or control of the party upon whom the request is served." V.R.C.P. 34(a). Here, the court reasoned that because the credit-card application was no longer in Citibank's possession and defendant had not demonstrated the existence of any obligation to retain it indefinitely, there was no basis to compel its production. See, e.g., Rathe Salvage, Inc. v. R. Brown & Sons, Inc., 2008 VT 99, ¶ 15, 184 Vt. 355 (explaining that in determining whether documents are within party's possession, custody, or control, "the relevant inquiry is whether the party from whom the materials are sought has the practical ability to obtain those materials" (quotation omitted)). The court acted within the scope of its discretion in denying the motion, and we therefore uphold its ruling. Pcolar v. Casella Waste Sys., Inc., 2012 VT 58, ¶ 11, 192 Vt. 343 (explaining that discretionary discovery rulings "are not subject to review if there is a reasonable basis for the court's action" (quotation omitted)).

Defendant next argues that the court erred in granting Citibank's motion for summary judgment. We review a grant of summary judgment without deference, applying the same standard as the court below. Tillson v. Lane, 2015 VT 121, ¶ 7, 200 Vt. 534. Summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a).

Defendant contends that Rule 56 precluded the entry of summary judgment because she asserted that the material facts were disputed. "It is not enough, however, for the nonmoving party to rest on allegations in the pleadings to rebut credible documentary evidence or affidavits." Boulton v. CLD Consulting Eng'rs, Inc., 2003 VT 72, ¶ 5, 175 Vt. 413 (quotation omitted). Rule 56(c) sets forth the requirements a nonmoving party must satisfy when "responding to a statement of undisputed material facts and asserting that a fact is genuinely disputed, that the materials cited do not establish the absence of a genuine dispute, or that the moving party cannot produce admissible evidence to support the fact." V.R.C.P. 56(c)(2). Defendant does not challenge the trial court's conclusion that her opposition rested on bare denials, and that she failed to file the requisite "paragraph-by-paragraph response" accompanied by "specific citations to particular parts of materials in the record that the responding party asserts demonstrate a dispute," including affidavits or other admissible materials. V.R.C.P. 56(c)(2); see, e.g., Gore v. Green Mountain Lakes, Inc., 140 Vt. 262, 266 (1981) ("Time and again we have held that the opponent to a summary judgment motion may not rest on allegations

[1] Citibank did not file a brief or otherwise participate in this appeal.

in the pleadings to rebut credible documentary evidence or affidavits."). Where, as here, a party "fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the motion" and "grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it." V.R.C.P. 56(e)(2), (3). Thus, the court did not err in accepting Citibank's statement of facts as undisputed for purposes of ruling on the summary-judgment motion.

Nor has defendant shown that the court erred in concluding that Citibank was entitled to judgment as a matter of law. The court explained that the business records Citibank relied on were admissible because they were verified as reliable in the affidavit of its record custodian. See V.R.E. 803(6) (providing that records of regularly conducted business activity are admissible if certain factors are satisfied "as shown by the testimony of the custodian"); V.R.C.P. 56(c)(6) (explaining that affidavit used to support summary-judgment motion "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated"). These records demonstrate the existence of a credit-card agreement between the parties, show that defendant breached the terms of that agreement, and support that defendant was therefore indebted to Citibank in the amount alleged. See, e.g., Sweet v. St. Pierre, 2018 VT 122, ¶ 11, 209 Vt. 1 ("[W]hether a contract existed depends on facts as well as the reasonable inferences to be drawn from them, and is also influenced by the situation of the parties and the subject matter." (quotation omitted)).

Defendant briefly contends that: (1) Citibank's affidavits "failed to establish personal knowledge, failed to authenticate attached records, and failed to satisfy the business-records exception to the hearsay rule"; (2) Citibank failed to establish standing because "[t]he record reflects references to multiple account numbers and incomplete documentation, creating uncertainty as to whether the debt alleged is the same debt referenced in the pleadings"; and (3) unredacted Social Security numbers were filed into the record in violation of court rules, reflecting "improper handling of evidence" and "undermin[ing] the integrity and completeness of the record relied upon by the court."[2] Defendant does not, however, offer further analysis on these points, identify relevant legal authorities, or cite to any portion of the record below in support of the underlying assertions. See V.R.A.P. 28(a)(4)(A) (requiring that appellant's brief include "appellant's contentions and the reasons for them—with citations to the authorities, statutes, and parts of the record on which the appellant relies"); Pcolar, 2012 VT 58, ¶ 19 (explaining that self-represented litigants must satisfy minimum briefing standards of Rule 28(a)(4) and declining to address inadequately briefed argument). We therefore decline to address each of these arguments as inadequately briefed. See In re S.B.L., 150 Vt. 294, 297 (1988) (holding that "[i]t is the burden of the appellant to demonstrate how the lower court erred warranting reversal," and this Court "will not comb the record searching for error").

Finally, defendant argues that the grant of summary judgment violated her due-process rights because—in light of her assertions that the facts were disputed and her self-represented

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[2] With respect to defendant's third argument, we observe that she moved below for the redaction of publicly filed documents allegedly containing personal identifiers. In accordance with the Vermont Rules for Public Access to Court Records, the court granted the motion and sealed the documents identified in defendant's filing. See V.R.P.A.C.R. 7(a) (providing that filer of case record bears responsibility to determine whether any part of record is not publicly accessible and file such materials in accordance with public-access rules); V.R.P.A.C.R. 7(c) (providing that party aggrieved by filing made in noncompliance with public-access rules may move for change to record's public-access status).

status—an evidentiary hearing was necessary to afford her a meaningful opportunity to be heard. To be sure, "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Bandler v. Cohen Rosenthal & Kramer, LLP, 2015 VT 115, ¶ 13, 200 Vt. 333 (quotation and brackets omitted). But due process "is flexible and calls for such procedural protections as the particular situation demands." Id. (quotation omitted). Defendant has not shown that due process mandated an evidentiary hearing here.

We first note that defendant elected to proceed in this manner. The record reflects that a bench trial was scheduled for August 2025 but, at a pretrial conference, both parties expressed their "willingness and interest in submitting the claims to summary judgment." The court therefore cancelled the scheduled trial and directed the parties to file their cross-motions for summary judgment. Defendant subsequently had a full and fair opportunity to raise any factual disputes by presenting them to the court in compliance with Rule 56(c)(2). As discussed above, she failed to do so, and the rules therefore authorized the court to consider the facts undisputed for purposes of Citibank's motion and to grant summary judgment upon concluding that Citibank demonstrated it was entitled to the same. See In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 22, 188 Vt. 262 (explaining that while trial court must exercise caution to ensure self-represented parties are not "taken advantage of by strict application of rules of procedure," it "does not abuse its discretion where it enforces the rules of civil procedure equitably, even against a pro se litigant" (quotations omitted)). Defendant has not identified any denial of the right to due process here.

We have addressed all arguments discernable in defendant's brief and see no grounds to disturb the judgment below.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Michael P. Drescher, Associate Justice