

TAURUS LEASING CORPORATION *v.*
Jerry HOWARD d/b/a JERRY HOWARD, D.D.S. et al

81-19

614 S.W. 2d 502

Supreme Court of Arkansas
Opinion delivered April 20, 1981
[Rehearing denied May 18, 1981.]

1. JUDGMENT — SUMMARY JUDGMENT — WHEN PROPER. — Summary judgment is properly granted if the moving party has established of record that no genuine issue of material fact remains for trial.
2. JUDGMENT — SUMMARY JUDGMENT — ERROR TO GRANT UNDER CIRCUMSTANCES. — Where the trial court granted summary judgment based upon conclusory allegations in the complaint and upon affidavits stating that a written contract for the sale and lease-back of office equipment had been entered into between an Arkansas resident and a foreign corporation, but there were no admitted allegations, supporting affidavits, or other proof of record from which the trial court could have found that the contract in question was made in Arkansas, the unresolved fact question of where the contract was made is one that remains for trial as to each matter upon which summary judgment was granted.

Appeal from Pulaski Chancery Court, First Division,
Lee A. Munson, Chancellor; reversed and remanded.

W. J. Walker, for appellant.

Overby, Moody & Peace, by: *Edward O. Moody*, and
Wilbur C. Bentley, Pros. Atty., by: *Hugh L. Brown* and
Larry Page, Deputy Pros. Attys., for appellees.

RICHARD B. ADKISSON, Chief Justice. Appellant, Taurus Leasing Corporation, brings this appeal from a summary judgment declaring void a written contract between it and appellee, Jerry Howard, as being usurious and made in violation of the Wingo Act, Ark. Stat. Ann. § 64-1201 et seq. (Repl. 1980); and, from a summary judgment granting the appellee, State of Arkansas, a money penalty against it for doing business in Arkansas in violation of the Wingo Act.

Summary judgment is properly granted if the moving party has established of record that no genuine issue of material fact remains for trial. See Rule 56, Ark. Rules Civ. Proc., Ark. Stat. Ann., Vol. 3A (Repl. 1979); *UPI v. Heinrich*, 241 Ark. 36, 406 S.W. 2d 317 (1966).

In this case the trial court apparently granted summary judgment based upon conclusory allegations in the complaint and upon affidavits stating that a written contract for the sale and lease-back of office equipment had been entered into between appellant, a foreign corporation, and appellee, Howard, an Arkansas resident. However, we find no admitted allegations, supporting affidavits, or other proof of record from which the trial court could have found that the contract was made in Arkansas; therefore, the unresolved fact question of where the contract was made is one that remains for trial as to each matter upon which summary judgment was granted.

Reversed and remanded.

HOLT, J., not participating.
