

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CACH, LLC,)
Plaintiff)
)
v.) No. CPUU4-12-003000
)
DEBORAH J. TAYLOR,)
Defendant.)

Submitted: January 11, 2013
Decided: February 19, 2013

On Plaintiff's Motion for Summary Judgment
DENIED

On Plaintiff's Request for Continuance
DENIED

Patrick Scanlon, Esquire, Milford, Delaware, for Plaintiff
George E. Evans, Esquire, Wilmington, Delaware, for Defendant

ROCANELLI, J.

This is a consumer debt collection action filed by Plaintiff CACH, LLC ("CACH") against Defendant Deborah J. Taylor. According to CACH, Ms. Taylor owes money to CACH as the assignee of a debt arising from a \$6,000 check offered to Ms. Taylor as a loan. Also according to CACH, Ms. Taylor negotiated the check and therefore agreed to the terms and conditions of a loan.

On August 2, 2012, CACH filed the Complaint, alleging that an agreement existed between Ms. Taylor and creditor HSBC Consumer Lending (USA) Inc. ("HSBC"); that CACH purchased the account between Ms. Taylor and HSBC from HSBC; that Ms. Taylor breached the contract by failing to make payments; and that CACH incurred damages in the principal amount of \$12,593.26 plus interest and costs. CACH claims to be the assignee of the account.¹

¹ CACH did not include in the caption the name of both the original creditor and the current assignee as required by Admin. Directive No. 2011-1 (Del. Com. Pl. Mar. 16, 2011).

On September 19, 2012, counsel for Ms. Taylor filed an Answer admitting only to her address for service and denying all other allegations in the Complaint. Ms. Taylor also set forth a number of affirmative defenses, including a statute of limitations defense.

On September 20, 2012 a civil trial for the matter was scheduled to take place on January 11, 2013. The following day, September 21, 2012, CACH served Ms. Taylor with a Request for Admissions, Interrogatories, and Requests for Production. Ms. Taylor filed Answers to CACH's Request for Admissions on October 22, 2012. Ms. Taylor denied all requests for admissions with the exception of Request 3 and Request 5, which read:

Request 3: That the signature on the reverse side of the check attached hereto as Exhibit "A", is Defendant's signature.

Response 3: Admitted.

Request 5: That Defendant cashed and/or deposited the check attached hereto as Exhibit "A" in the amount of \$6,000.00.

Response 5: Admitted.

Ms. Taylor did not respond to the Interrogatories or Requests for Production, and CACH did not file a motion to compel.

On December 3, 2012, CACH filed a Motion for Summary Judgment, arguing that there are no genuine issues of material fact. CACH claims that it is entitled to judgment as a matter of law because Ms. Taylor admitted that she cashed the \$6,000 check subject to the lawsuit and that Ms. Taylor defaulted on payments due. At CACH's request, a hearing on the Motion was scheduled for January 11, 2013, the same day the case was scheduled for trial. CACH did not request that the trial be continued.

Ms. Taylor served CACH with Requests for Production on December 10, 2012. CACH filed a response to Ms. Taylor's Request for Production on January 8, two days before the

scheduled hearing and trial. Ms. Taylor responded to CACH's Interrogatories and Requests for Production on January 9, 2013.

On January 10, 2013, Ms. Taylor filed a response to CACH's Motion for Summary Judgment, arguing that questions of material fact exist because the check in question was issued by "Beneficial" and no records were presented to establish CACH as the owner of the Beneficial account. Therefore, according to Ms. Taylor, CACH did not have standing to bring the present action. Ms. Taylor also argued that the action is time-barred under the statute of limitations, 10 *Del. C.* § 8106.

On January 11, 2013, the Court held a hearing on the Motion and heard oral argument from both parties. At the conclusion of the Motion hearing, the Court indicated the case would proceed to trial. At that time, counsel for CACH indicated that CACH was not prepared for trial and asked for a continuance. Ms. Taylor stated she was ready for trial and opposed CACH's request for a continuance.

DISCUSSION

I. MOTION FOR SUMMARY JUDGMENT

Summary judgment may be granted when, after viewing all facts and reasonable inferences in the light most favorable to the non-moving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.² To prevail, the moving party must show that, on unquestioned fact, that party is entitled to judgment as a matter of law.³ Conversely, summary judgment will not be granted where "there is some reasonable indication

² Ct. Com. Pl. Civ. R. 56(c); *Pullman, Inc. v. Phoenix Steel Corp.*, 304 A.2d 334, 336 (Del. Super. 1973).

³ *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. 1973).

that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law.”⁴

Summary judgment is not appropriate in this case. After examining the record in the light most favorable to the non-moving party, the Court concludes that there are genuine issues of material fact in dispute, and the moving party has failed to establish that it is entitled to judgment as a matter of law. Therefore, the motion for summary judgment must be denied.

A. CACH has not established as a matter of law that it is the real party in interest

The plaintiff must be a real party in interest.⁵ Ms. Taylor contends that CACH has failed to establish that it has a legal right to collect the debt owned by a third party, Beneficial. To prevail on its summary judgment motion, CACH must establish that it is the proper party in interest to prosecute the claim.⁶ Absent proof of current ownership of the account between Ms. Taylor and Beneficial, the claim fails.⁷

Ms. Taylor concedes that she had an agreement with Beneficial and that she breached the agreement by failing to make payments.⁸ However, she questions CACH’s right to collect on the debt that she admittedly owes to Beneficial. Specifically, she contends that the documents proffered by CACH to establish the chain of title are insufficient to establish that CACH is the present owner of the account owned originally by Beneficial.

Addressing the chain of title issues raised by Ms. Taylor, CACH asserted at the hearing that Beneficial Company, LLC was a member of HSBC Group which was also identified on the check cashed by Ms. Taylor. CACH relies upon a Bill of Sale from HSBC Consumer Lending

⁴ *Tew v. Sun Oil Co.*, 407 A.2d 240, 242 (Del. Super. 1979).

⁵ Ct. Com. Pl. Civ. R. 17(a); *see Insurance Co. of North America v. Stuller*, 1979 WL 184079 (Del. Super. Sept. 24, 1979).

⁶ *Dahlink Financial Corp v. Bochniak*, 2012 WL 1415815, *5 (Del. Com. Pl. March 13, 2012).

⁷ *Id.*

⁸ Plaintiff’s Response to Request for Admissions.

(USA), Inc. (“HSBC Lending”), which states that, on October 19, 2010, HSBC Lending, as managing company for Beneficial Company, LLC, entered an agreement to sell a number of accounts to CACH.⁹ The Bill of Sale states that the seller of the accounts, HSBC Consumer Lending (USA), was acting “on behalf of and as managing company for Beneficial Company, LLC.”

Ms. Taylor conceded that she entered an agreement with “Beneficial,” but not with Beneficial Company, LLC. The check cashed by Ms. Taylor was from “Beneficial,” not Beneficial Company, LLC. CACH offered no evidence to support the contention that Beneficial is the same organization as Beneficial Company, LLC. Absent a connection established as a matter of law between Beneficial and Beneficial Company, LLC, the Bill of Sale does not establish that *any* accounts were sold from Beneficial to CACH, let alone Ms. Taylor’s account.

B. CACH has not established as a matter of law that Ms. Taylor’s account was transferred

According to Ms. Taylor, the Bill of Sale states generally that accounts were sold to CACH but it does not specify which accounts were transferred in the sale nor does it expressly identify Ms. Taylor’s account as part of the October 19, 2010 sale of accounts. CACH relies upon a reference in the Bill of Sale to “Exhibit B,” as follows: “for good and valuable consideration, Seller [HSBC Lending] hereby sells, assigns, and transfers to Purchaser [CACH] its successors and assigns, all of Seller’s rights, title, and interest in each and every one of the Accounts described in the Agreement and within Exhibit B attached hereto.” Attached to the Bill of Sale with the Motion for Summary Judgment, CACH presented a spreadsheet as “Exhibit

⁹ Pl. Ex. #10. (The Bill of Sale states that “HSBC Consumer Lending (USA) on behalf of and as managing company for Beneficial Company, LLC . . . has entered into an Account Purchase and Sale Agreement dated September 29, 2010, (“Agreement”) for the sale of accounts dated in the initial paragraph of the Agreement thereof to CACH, LLC.”)

B.”¹⁰ CACH explained that the spreadsheet shows activity related specifically to Ms. Taylor’s account: that an account ending in #9865 was created on June 19, 2006, between Beneficial and Ms. Taylor, and that the account had a balance of \$12,593 when it was transferred in October 2010. However, CACH conceded at the hearing that this spreadsheet could not be the document that accompanied the sale transaction referenced in the Bill of Sale because it is a spreadsheet that was updated as late as June 24, 2011. Accordingly, the spreadsheet submitted to the Court and updated as recently as June 2011 was not the same document that was attached to the Bill of Sale for the transaction that took place in October 2010.

Ms. Taylor further argued that, even though CACH claimed it owned her account as of October 2010, creditors other than CACH were attempting to collect on the account as recently as March 2011 by sending her monthly billing statements demanding payment.¹¹ Indeed, CACH’s own submissions to the Court in support of its Motion for Summary Judgment included monthly account statements addressed to Ms. Taylor which instructed her to “Mail Payment To: HFC” at a Baltimore, Maryland address. In addition, the balance claimed as due in these monthly account statements submitted to the Court by CACH claim different account balances than the amount sought as a balance by CACH in this lawsuit. According to the April 23, 2011 Account Statement, the balance due on the account was \$11,934.54.¹² These discrepancies warrant more thorough inquiry into the facts of the case and defeat the argument that CACH is entitled to judgment as a matter of law.

¹⁰ Pl. Ex. #12 and Pl. #13

¹¹ Pl. Ex. #18.

¹² The Account Statements are very difficult to read. They appear to state as follows:

Pl. Ex. #15: dated January 23, 2011, balance due \$11,013.60.

Pl. Ex.#16 and #17: dated February 23, 2011, balance due \$11,313.19.

Pl. Ex. #18: dated March 23, 2011, balance due \$11,620.04.

Pl. Ex. #19: dated April 23, 2012, balance due \$11,834.50

C. CACH is not entitled to judgment as a matter of law because it has not established definite contract terms were agreed by the parties

CACH argued that, in June 2006, Ms. Taylor received a check issued by Beneficial in the amount of \$6,000, which served as an offer for a loan, and Ms. Taylor accepted that offer when she signed and cashed the check, thereby creating a contract between the parties. However, CACH conceded at the hearing that no terms or conditions accompanied the check when it was sent to Ms. Taylor. CACH argues that the check was sent as an offer for a loan and that a contract was formed when Ms. Taylor accepted that offer by cashing the check. Contrary to CACH's position, judgment as a matter of law can only be awarded if CACH can show that there are no genuine issues of material fact as to each element of its claim for breach of contract, including the terms and conditions of the contract.¹³ CACH contends that the monthly bills Ms. Taylor received after she cashed the check put her on notice of the interest rate, and she assented to the terms by payment. CACH offered no case law to support its position that the billing statements sent subsequent to the acceptance of the offer constituted sufficient terms to create a valid contract. Accordingly, CACH is not entitled to judgment as a matter of law because it has not established definite contract terms were agreed by the parties.

D. CACH is not entitled to judgment as a matter of law because Ms. Taylor has presented a meritorious affirmative defense that this action is barred by the statute of limitations

By affidavit in opposition to the motion for summary judgment, Ms. Taylor provided a sworn statement that the last payment she made on the account was in 2008. According to Ms. Taylor, the lawsuit filed more than three years later on August 2, 2012 is barred by the statute of limitations. Accordingly, summary judgment cannot be granted for a claim that may be time-barred.

¹³ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, at 1158-1159 (Del. 2009).

II. REQUEST FOR CONTINUANCE OF TRIAL BY CACH ON DAY OF TRIAL

The case was scheduled for trial on the same day as the motion hearing, January 11, 2013. The trial had been scheduled since September 20, 2012. CACH did not request a continuance of the trial until after the Court heard argument on the motion for summary judgment and indicated to the parties that the Motion would be denied. Counsel for CACH stated that he was not prepared to proceed to trial. Ms. Taylor was prepared for trial, opposed the continuance request, and requested that the trial proceed as scheduled. Under these circumstances, the continuance request is denied as untimely.

AND NOW, THEREFORE, IT IS HEREBY ORDERED this 19th day of February 2013:

- 1. Plaintiff's Motion for Summary Judgment is DENIED;**
- 2. Plaintiff's request for continuance of trial date is DENIED;**
- 3. The parties are directed to file submissions regarding how this case should be disposed on the merits. Plaintiff's submission shall be docketed and served no later than February 28, 2013 (with a courtesy copy to chambers). Defendant's submission shall be docketed and served no later than March 7, 2013 (with a courtesy copy to chambers); and**
- 4. This judicial officer retains jurisdiction of this case.**

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli