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

CITIBANK (SOUTH DAKOTA) N.A.)	
Plaintiff,)	
v.)	C.A. No.: CPU4-11-004196
ROBERT T. WILLIAMS,)	
Defendant.)	

Submitted: October 22, 2012 Decided: December 3, 2012

Ms. Holly M. Whitney 200 Continental Drive, Suite 215 Newark, Delaware 19713 Attorney for Plaintiff Robert T. Williams 233 Cornwell Drive Bear, Delaware 19701 Self-represented Defendant

ORDER ON PLAINTIFF'S MOTION TO CONVERT STIPULATION OF PAYMENTS TO JUDGMENT

PROCEDURAL HISTORY

This matter is before the Court on Citibank (South Dakota, N.A.) ("Citibank") Motion to Convert Stipulation of Payments Agreement to Judgment. Defendant Robert T. Williams ("Williams") did not respond to the motion. On September 21, 2012, the Court held a hearing on the motion, at the conclusion of which the Court ordered Citibank to submit written support for its motion. Citibank failed to comply with the Court's order.

Therefore, this is the Court's opinion based upon the motion and the pleadings in the record.

On June 29, 2011, Plaintiff, Citibank filed a consumer debt action against Defendant, Williams. Citibank alleged Mr. Williams entered into a credit card agreement with Citibank, with account ending in #5472, and defaulted in payments. Therefore, Citibank demanded damages in the amount of \$2,597.82, attorney fees of \$259.78, costs and post-judgment interest at the legal rate.

In the answer filed by Williams on August 17, 2011, which was in narrative form, he did not deny the debt. Williams' response outlined why he could not pay the debt because he was unemployed and suffered certain medical conditions. Williams stated he considered bankruptcy, but wanted to seek a payment plan.

On January 18, 2012, Citibank filed a Stipulation for Payments ("Stipulation") with the Court that was executed by Citibank and Mr. Williams. The Stipulation provided as follows:

Commencing January 20, 2012, the defendant shall pay to plaintiff's counsel, Mattleman, Weinroth & Miller, P.C., a minimum monthly payment of \$88.00 per month and continue to make payments until payments are made totaling \$2,597.82. In the event that future payments are not made on of each month, its due date [sic] or the funds are declined[,] the defendant shall be in default under the terms of this agreement. Thereafter, counsel for plaintiff shall forward to the defendant a default letter allowing them five days from the date of the letter to cure the default. In the event that the default is not cured within the time period, then the Plaintiff can move for the conversion to a judgment in the amount of \$2,966.60 plus post judgment interest at the legal rate, less credit for any payments received.

The Court signed the document and entered it as an order on January 20, 2012.

On August 23, 2012, Citibank filed the instant "Motion to Convert Stipulation of Payments to Judgment," alleging Williams defaulted on the stipulation. Citibank alleged it only received one payment and such payment was returned unpaid. Thereafter, Citibank alleges it sent Williams notice of default on July 2, 2012 and Williams failed to cure the default within five days of notification as required by the Stipulation. Citibank now seeks entry of judgment on the stipulation.

DISCUSSION

This motion confronts the Court with two issues, first to determine the status of the parties' relationship upon the execution of the stipulation of payments and second what is the proper recourse for the non-defaulting party upon default of the debtor.

The document executed by the parties on January 13, 2012 and filed with the Court on January 18, 2012 while labeled stipulation for payments is in fact a settlement agreement. The language of the document provides that Williams will make certain payments for a period of time which will equal a certain amount. It further provides that in the event of a default under the terms of the agreement, Williams was entitled to notice and opportunity to cure within five (5) days. In the event of failure to cure Citibank can move for the conversion to a judgment with credit for any payments. The Court approved and entered this document on January 20, 2012.

While the document may be titled stipulation for payments, it is in essence a settlement agreement. Such agreement is created where the terms are clear, unambiguous, and entered into by the parties with the intent to conclude the pending litigation.¹

¹ One Virginia Ave. Condominium Ass'n of Owners v. Reed, 2005 WL 1934195 (Del. Ch. 2005)

Settlement is made in compromise of disputed claims and relinquishment of certain potential defenses. When an agreement is reached and approved by the Court, it ends the pending litigation.

Citibank's motion to convert stipulation of payments to judgment assumes by its nature that there is a pending action in these proceedings. This assumption is not supported by the record because the Court ended the case by its order of January 20, 2012; therefore, there is nothing to convert.

Where there is a properly executed settlement and a failure of a party to comply, the proper course of action for the non-defaulting party is to file a "Motion to Enforce the Terms of a Settlement Agreement." While the Stipulation between the parties states that "Plaintiff can move for conversion to judgment," the nature of the proceeding must be to enforce the agreement because the parties have entered into a new contract. The action is required so Williams is put on notice and afforded an opportunity to present any defenses he may have to the enforcement proceeding. Accordingly, despite Citibank's failure to submit post-hearing briefing, the only proper procedure is to analyze the Motion under the principles to enforce settlement agreements.

"A settlement agreement is enforceable as a contract." The party moving to enforce the terms of a settlement agreement must prove that the parties entered into an agreement by preponderance of the evidence. "In Delaware, '[a] contract comes into existence if a reasonable person would conclude, based on the objective manifestations of assent and the

² Heiman Aber & Goldlust v. Ingram, 1998 WL 442691, at *2 (Del. Super. May 14, 1998).

³ Id. See also Schwartz v. Chase, 2010 WL 2601608, at *4 (Del. Ch. June 29, 2010).

surrounding circumstances, that the parties intended to be bound to their agreement on all essential terms."⁴

Citibank relies upon the Stipulation, signed by both parties. There is no dispute regarding the authenticity of Williams' signature on the stipulation, and he has not challenged the validity of the document. Moreover, Williams has not responded at any time to these proceedings. As a result, the Court finds that the record is sufficient to prove by a preponderance that a contract existed between Citibank and Mr. Williams and that both parties expressly agreed to the terms of the agreement.

"Delaware law favors the voluntary settlement of cases." Evidence on the record suggests that the parties voluntarily entered into the Stipulation filed with the Court. Thus, the Court concludes that the agreement as the principal debt should be enforced in accordance with the intentions of the parties. However, while I conclude there is basis for the agreement on the principal sum, I do not so find as attorney fees and costs. The Court directed counsel to submit support for its position, which it failed to do. Therefore, there is no basis to award costs and attorney fees.

⁴ Gillenardo v. Connor Broadcasting Del. Co., 1999 WL 1240837, at *4 (Del. Super Oct. 7, 1999) (alteration in original) (quoting Leeds v. First Allied Conn. Corp., 521 A.2d 1095, 1097 (Del. Ch. 1986)).

⁵ Williams v. Chancellor Care Ctr. of Delmar, 2009 WL 1101620, at *3 (Del. Super. Apr. 22, 2009) (citing Clark v. Ryan, 1992 WL 163443, at *5 (Del. Ch. Jun. 17, 1992)).

CONCLUSION

IT IS HEREBY ORDERED this 3rd day of December, 2012 the settlement is

enforced and judgment is entered in the amount of \$2,703.00.

The Honorable Alex J/Smalls

Chief Judge