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

CAPITAL ONE BANK (USA), N.A.,)
Plaintiff,)
v.) C.A. No.: CPU4-11-006017
WILLIAM R. ALTEMUS,	<u>}</u>
Defendant.)
Seth Yeager, Esq.	William R. Altemus
Lyons, Doughty, & Veldhuis, P.A.	17 Matthews Road
15 Ashley Place Suite 2B	Newark, DE 19713
Wilmington, DE 19804	
Attorney for Plaintiffs	Self-represented Defendant

MEMORANDUM OPINION AND ORDER AFTER TRIAL

Submitted: April 26, 2013 Decided: May 20, 2013

SURLES, J.

This is a credit card debt collection action that arose out of a credit card agreement between Plaintiff Capital One Bank (USA), N.A. ("Capital One") and Defendant William Altemus. Capital One filed a Complaint against Mr. Altemus on February 3, 2012. A trial was held on April 26, 2013, and the Court reserved decision. This is the Court's Memorandum Opinion and Order in connection with the relief sought by the Complaint. For the reasons set forth below, the Court is entering judgment in favor of Capital One.

FACTUAL AND PROCEDURAL BACKGROUND

On February 3, 2012, Capital One filed a Complaint against Mr. Alternus. The Complaint alleged that the parties entered into a credit card agreement for an account ending in #0901; that Mr. Alternus breached the agreement; and that Mr. Alternus owes \$1,397.64 in damages plus \$279.53 in attorney's fees, for a total amount of \$1,677.17. On March 28, 2012, a default judgment was entered against Mr. Alternus.

Mr. Altemus filed an Answer on April 5, 2012, denying all the allegations in the Complaint. The default judgment was subsequently vacated by Court Order at the request of Mr. Altemus. After several motions and continuance requests by both parties, a trial took place on April 26, 2013.

Capital One submitted two exhibits into evidence¹ and had one witness testify during their case-in-chief. Capital One's witness was James Massenburgh, III. Mr. Massenburgh is employed as a legal specialist with Capital One. His main responsibilities involve working with the records systems, quality assurance, and monitoring customer service calls. Mr. Massenburgh testified that he is familiar with how Capital One maintains their business records and is familiar with the credit card account ending in #0901 ("Altemus Account") and the terms and conditions regarding the credit card agreement.

Mr. Massenburgh testified concerning the Capital One billing statements for the Altemus Account. Mr. Massenburgh identified Mr. Altemus as the account holder of the billing statements submitted into evidence. The address listed on the statements was 17 Matthews Road, Newark, Delaware 19713. The addressee on the statements was "William R. Altemus." The last payment received on the account was on February 16, 2011, for \$150.00. The Altemus Account

¹ Plaintiff Ex. 1 is a copy of the unsigned Capital One Customer Agreement specifying the terms of the credit card agreement between the parties. Plaintiff Ex. 2 contains Capital One credit card statements from August 1, 2010 with a credit of \$22.83 through October 3, 2012, with a balance past due of \$1,827.97.

was charged off on July 5, 2011, due to the delinquent status of the account and no further payments have been received. The billing statements submitted into evidence indicate that the amount owed on the Altemus Account, as of October 3, 2012, was \$1,827.97. Capital One, however, is only seeking \$1,397.64, which is the amount due for the June 5, 2011 through July 4, 2011 billing cycle because the card was charged off on July 5, 2011.

Additionally, Mr. Massenburgh testified about Capital One's fraud allegation policy. After review of the Altemus Account, Mr. Massenburgh testified that there were no signs of fraudulent activity and no notes that a customer reported fraud, which would usually be indicated on the account.

Mr. Altemus was the sole witness for the defense case-in-chief. Mr. Altemus testified that he was the victim of identity theft. He claimed that his live-in niece and her husband stole and used his Capital One credit card. Although Mr. Altemas admitted to the credit card account in question, he stated that he stopped using the Capital One card around May 2010. Mr. Altemus believed that the fraud began around July 2010. Sometime after Thanksgiving 2010, Mr. Altemus alleged that he discovered the fraud and called Capital One's customer service. Mr. Altemus stated that he could not access the credit account over the telephone because he did not know the security pin. Mr. Altemus refused to file a police report or insurance claim reporting the alleged fraud because he testified that it was a personal family matter.

PARTIES' CONTENTIONS

Capital One's position is that Mr. Alternus owes a total of \$1,397.64 on the Alternus Account plus attorney's fees. Mr. Alternus admits to the existence of a credit card agreement between the parties, but denies owing any money to Capital One. Mr. Alternus alleges that he

was the victim of identity theft by a family member and is therefore not responsible for breach of the agreement or the resulting damages.

DISCUSSION

The Court, sitting as fact-finder, weighs the credibility and reconciles conflicts in the evidence presented.² In civil claims, the plaintiff, here Capital One, bears the burden to prove each and every element of its claim by a preponderance of the evidence.³ The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists.⁴ The defendant, likewise, bears the burden of proof for any affirmative defenses raised.⁵

In order to succeed on the breach of contract claim, Capital One must prove the following elements by a preponderance of the evidence: (1) the existence of a contract; (2) that defendant breached an obligation imposed by the contract; and (3) that plaintiff incurred damages as a result of the breach.⁶

Next, the Court turns towards the merits of Capital One's debt collection claim. The parties stipulated that a contract exists between the parties in the form of a credit card agreement between Capital One and Mr. Altemus. Capital One submitted documentary evidence showing a breach of the contract and damages, Mr. Altemus' delinquent account in the amount of \$1,397.64. Additionally, Mr. Massenburgh's testimony indicated that payment had not been received my Mr. Altemus since February 2011 and no subsequent payments were made towards the Altemus Account.

² Johnson v. Wagner, 2003 WL 1870365, at *4 (Del. Ch. Apr. 10, 2003).

³ Reynolds v. Reynolds, 237 A.2d 708, 711 (Del. 1967).

⁴ *Id.*

⁵ Warwick Park Owners Ass'n, Inc. v. Sahutsky, 2005 WL 2335485, at *4 (Del. Ch. Sept. 20, 2005).

⁶ VLIW Tech., LLC v. Hewlett-Packard, Co., 840 A.2d 606, 612 (Del. 2003).

Mr. Altemus' affirmative defense of identity theft or fraud was not pled in the Answer; however, the Court will consider the defense as if Mr. Altemus had pled the defense in the first instance. Mr. Altemus was unable to provide any documentary evidence or testimony to show that fraud occurred on the Altemus Account. Mr. Altemus conceded that he did not report the alleged fraudulent activity to either the police or the insurance company. Furthermore, Mr. Massenburgh testified that he reviewed the Altemus Account and there was no evidence of fraudulent activity or reporting of fraudulent activity. The burden was on Mr. Altemus to prove fraud by a preponderance of evidence. The Court finds that Mr. Altemus failed to carry his burden and finds that there is not sufficient evidence of fraud.

Accordingly, the Court finds that Plaintiff has proven a breach in the credit card agreement in the amount of \$1,397.65 by a preponderance of the evidence. Under the agreement, Mr. Altemus is also responsible for attorney fees of \$279.53. Therefore, judgment is entered in favor of Capital One for a total of \$1,677.17.

CONCLUSION

For the reasons stated above, after trial, the Court finds for Plaintiff and enters judgment in favor of Capital One for \$1,677.17.

IT IS SO ORDERED this 20th day of May, 2013.

Robert H. Surles,

Judge.