

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

CACH, LLC,)
)
 Plaintiff,)
)
 v.) C.A. No. CPU6-12-001280
)
)
 MARY F. DRANDORFF,)
)
 Defendant,)

Submitted December 23, 2013
Decided February 3, 2014

Patrick Scanlon, Esquire, Attorney for Plaintiff
Defendant Mary Drandorff, *self-represented*

DECISION ON APPEAL FROM COMMISSIONER’S RECOMMENDATION

For the reasons discussed below, the Defendant’s Appeal from the Commissioner’s Findings of Fact and Recommendation is **DISMISSED** for failure to prosecute.

Procedural History

On November 16, 2012, Plaintiff CACH, LLC filed this debt action against Defendant Mary Drandorff, seeking \$2,471.37 on an allegedly defaulted credit card account. After a series of discovery and continuances requests, Plaintiff filed a Motion for Summary Judgment. On September 26, 2013, a hearing was held on the matter. On November 4, 2013, the Commissioner issued a report recommending that Plaintiff’s Motion for Summary Judgment be granted.

On November 12, 2013, Defendant filed an appeal of the Commissioner’s recommendation, but failed to request a transcript as required by Court of Common Pleas Civil Rule 112(A)(4)(iii). The following day, Defendant filed an affidavit generally

denying the debt, but still failed to comply with Rule 112 regarding the transcript. On November 20, 2013, the Court sent Defendant a letter granting her an additional twenty days to comply. On December 11, 2013, Defendant sent an untimely request for a second extension of time to comply with the mandates of Rule 112. Additionally, Defendant filed a Motion to Dismiss, alleging that Plaintiff failed to comply with Administrative Directive 2011-1.

Standard of Review

Summary judgment is a case-dispositive determination. When reviewing a Commissioner's decision on a case-dispositive determination, the judge of the Court reviews the decision *de novo*. A judge may accept, reject, or modify in whole or in part the findings or recommendations made by the Commissioner.¹

Discussion

Defendant plainly failed to timely perfect her appeal of the Commissioner's Recommendation by failing to comply with Civil Rule 112(A)(4)(iii), which provides that, "[t]he party filing written objections to a Commissioner's order shall cause a transcript of the proceedings before the Commissioner to be prepared, served, and filed unless, subject to the approval of a Judge, all parties agree to a statement of facts."²

In *Labarge v. Hensley*³, the Superior Court affirmed this Court's dismissal of a case in which a *pro se* litigant failed to prosecute her appeal of a Commissioner's decision by non-compliance with our Rule 112(A)(4)(iii). The Court determined that non-compliance was fatal to the defendant's case, therefore, it was not legal error for this Court to dismiss the case.

¹ Ct. Com. Pl. Civ. R. 112(A)(4)(iv).

² *Id.*

³ *LaBarge v. Hensley*, 2006 WL 306925 (Del. Super. 2006).

Defendant here filed a timely appeal of the Commissioner's Recommendation without, however, requesting the required transcript. On November 20, 2013, the Court sent Defendant a letter granting her an additional twenty days to comply. A day after that extended deadline, Defendant requested a second extension of time. In that late request, the Defendant stated that she "need[s] additional time to properly prepare the documentation needed." All Defendant needed to do, however, was submit a one-sentence request to order a transcript of the motion hearing, within the twenty days granted.

"All judges are sympathetic to the problems faced by *pro se* litigants. But the problems and perils faced by *pro se* litigants [do] not mean that a separate set of rules should be applied when a person is not represented by an attorney."⁴ Although the Court is mindful that Defendant represents herself in this action, the Court had already granted Defendant additional time to order a transcript, and her stated reason for needing an extension lacks credibility.

Even if the Court were to overlook Defendant's procedural failing and grant her request for an additional extension of time to request the transcript, the Court nonetheless would affirm the Commissioner's recommendation to grant Plaintiff's Motion for Summary Judgment. The decision issued by the Commissioner found no triable issue of fact based upon Plaintiff's motion affidavit, records evidencing the transfer of the original account to Plaintiff, and account statements for the relevant time periods, as well as Defendant's own admissions made in discovery responses. The decision was not dependent upon any additional evidence or argument put forth in the

⁴ *LaBarge v. Hensley*, 2006 WL 306925 (Del. Super. 2006).

Motion hearing. The Commissioner's findings and recommendations are well-reasoned and supported by the law and the evidence.⁵

Therefore, Defendant's Appeal from Commissioner's Findings of Fact and Recommendation is **DISMISSED**, and the Commissioner's November 4, 2013 Report is **AFFIRMED**. Defendant's subsequently-filed Motion to Dismiss is **MOOT**. Judgment is entered in favor of Plaintiff and against Defendant in the amount of \$2,471.37, inclusive of court costs, plus post-judgment interest at 5.75% until paid in full.

IT IS SO ORDERED this ____ day of February, 2014.

Kenneth S. Clark, Jr., Judge

⁵ See Ct. Com. Pl. Civ. R. 56(e); *Burris v. Beneficial Delaware, Inc.*, 2011 WL 2420423, (Del. Super. 2011).