

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

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May 22, 2015

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***RE: James R. Klinedinst v. CACH, LLC  
C.A.No. S14A-11-001 ESB***

Dear Counsel:

This is my decision on appellant James R. Klinedinst's appeal of the Court of Common Pleas' post-trial decision entering a \$31,064.00 judgment in favor of appellee CACH, LLC, and against Klinedinst in this credit card collection case.<sup>1</sup> The sole issue in this case at trial was whether CACH owned Klinedinst's credit card account. Klinedinst admitted that he had a credit card with MBNA, but argued that CACH did not own his account. CACH argued that (1) Klinedinst opened an account with MBNA, (2) FIA Card Services was the successor-in-interest to MBNA, and (3)

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<sup>1</sup> At trial the parties stipulated that Klinedinst had made three payments through a wage attachment of \$308.10, which lowered the balance owed by \$924.30 from \$31,988.30 to \$31,064.00. The wage attachment was made pursuant to an earlier grant of summary judgment in this case that was reversed on appeal.

FIA Card Services assigned Klinedinst's account to CACH. In support of its argument, CACH offered the testimony of Christie Coston, an employee of Square Two Financial, the parent company of CACH. Coston (1) testified that FIA Card Services was the successor-in-interest to MBNA, (2) provided account statements sent by FIA Card Services to Klinedinst showing that FIA Card Services was the account issuer and administrator on Klinedinst's account, and (3) provided a Bill of Sale and Assignment of Loans showing that FIA Card Services assigned Klinedinst's account to CACH. Klinedinst did not testify. The Court of Common Pleas ruled in favor of CACH, finding that the evidence established that CACH owned Klinedinst's account.

## **TRIAL**

The trial in this matter was held in the Court of Common Pleas on August 27, 2014. CACH called Christie Coston as its sole witness. Coston is employed by SquareTwo Financial, the parent company of CACH. CACH purchases portfolios of charged-off accounts from financial institutions. CACH has no employees. CACH's records are maintained in an electronic system kept by SquareTwo. Coston is the records custodian for those records. CACH submitted two exhibits into evidence at trial. Exhibit "A" was the Bill of Sale and Assignment of Loans between FIA Card Services, as assignor, and CACH, as assignee. Attached to the Assignment was a

Loan Schedule listing all of the accounts that were being assigned. Exhibit “B” was account statements for Klinedinst’s account from January 2009 through December 2009. Each statement provides that the account was issued and administered by FIA Card Services. Klinedinst did not testify nor did he offer any witnesses or evidence on his behalf.

Coston testified that CACH purchases portfolios of charged-off accounts from financial institutions. Those accounts are then electronically transferred to CACH and uploaded into its electronic system. Coston testified that she has trained with various financial institutions, including FIA Card Services at its facility in Greensboro, North Carolina. Coston testified that FIA Card Services is a wholly-owned subsidiary of Bank of America.

Coston testified about the Assignment and Loan Schedule. The Assignment was signed by Debra L. Pellicciaro, an Assistant Vice President of FIA Card Services. Coston testified that she recognized Pellicciaro’s signature because she trained with her in North Carolina. The Loan Schedule lists the accounts that were purchased by CACH from FIA Card Services. Coston identified Klinedinst’s account on the Loan Schedule. Coston testified that the Loan Schedule shows that MBNA was the original creditor for Klinedinst’s account when it was opened in 1996, and that FIA Card Services, most recently, administered the account prior to its sale to CACH. As

part of the purchase of the accounts, Coston testified that CACH also obtained the “media” for the account, which is the supporting documentation such as account statements. The account statements for Klinedinst’s account covered the time period from January 2009 through December 2009. Coston testified about the account statements. The name on the statements identified the account as belonging to Klinedinst. The statements also identified the account as being issued and administered by FIA Card Services. The statements indicate that from January 2009 through May 2009 Klinedinst made regular monthly payments on the account, but became delinquent after that. Coston also testified that the December 2009 account balance was the amount that FIA Card Services assigned to CACH.

### **THE COURT OF COMMON PLEAS’ DECISION**

The Court of Common Pleas made three findings in reaching its decision. The first finding was that Coston was qualified to offer the exhibits into evidence. Under Delaware Rule of Evidence 803(6), a qualified witness must understand the record keeping system and must attest to the foundational requirements of Rule 803(6). The foundational requirements are:

- (1) [that] the declarant in the records had knowledge to make accurate statements;
- (2) that the declarant recorded statements contemporaneously with the actions, which were the subject of the reports;
- (3) that the declarant made the record in the regular course of business activity; and
- (4) that such records were regularly kept by the

business.<sup>2</sup>

Coston testified in detail about her experience reviewing accounts, her familiarity with the record-keeping of the companies involved, CACH's process in acquiring accounts and making sure the accounts are accurate prior to purchasing them, her training with various financial institutions, and her knowledge of the credit card industry. Coston testified that the records introduced were made in the regular course of business and relied upon by CACH in purchasing Klinedinst's account. Based on this testimony, the Court of Common Pleas found that Coston was a qualified witness and could satisfy the foundational requirements of Rule 803(6) to offer the exhibits into evidence.

The second finding was that CACH established that FIA was the owner of Klinedinst's account as of December 2009 and prior to the sale of Klinedinst's account to CACH. The Court of Common Pleas relied upon Coston's testimony, the Assignment, Loan Schedule, and account statements to support this finding. The account statements covered the period from January 2009 to December 2009. The December 2009 statement indicated a balance on the account of \$31,988.30. The language on the account statements identified the account as being issued and

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<sup>2</sup> *Trawick v. State*, 845 A.2d 505, 508-09 (Del. 2004).

administered by FIA Card Services. The account statements also had Klinedinst's name and address on them. The account statements indicated Klinedinst made monthly payments on the account from January 2009 through May 2009. Coston testified that she was aware of MBNA's merger and name change through her own personal knowledge and a review of the FDIC and Office of Comptroller web sites. The Loan Schedule listed MBNA as the original creditor for Klinedinst's account. Based on this testimony and evidence, the Court of Common Pleas found that Klinedinst's account had gone from MBNA to FIA Card Services.

The third finding was that FIA Card Services had assigned Klinedinst's account to CACH on January 20, 2010. This finding was based on the Assignment and Loan Schedule dated January 20, 2010, the account statements, and Coston's testimony. The Assignment assigned all of FIA Card Services' rights and interests in the accounts identified in the Loan Schedule to CACH. The Loan Schedule listed Klinedinst's account. At no time did Klinedinst object to the admissibility of either exhibit offered into evidence by CACH. Coston testified that she verified the information on the Loan Schedule and discussed the validation process CACH follows before purchasing accounts. Coston also testified that the account balance on Klinedinst's December 2009 statement was identical to the account balance on the Loan Schedule acquired by CACH. The Court of Common Pleas found that FIA Card

Services transferred Klinedinst's account to CACH. Based upon these three findings, the Court of Common Pleas found that Klinedinst was liable to CACH for \$31,064.00.

### STANDARD OF REVIEW

When reviewing an appeal from the Court of Common Pleas, this Court reviews the decision in the same manner as the Supreme Court would consider an appeal.<sup>3</sup> The function of the Court is to correct errors of law and to review the factual findings of the court below to determine “if they are sufficiently supported by the record and are the product of an orderly and logical deductive process.”<sup>4</sup> First, errors of law are reviewed de novo.<sup>5</sup> Second, “if substantial evidence exists for a finding of fact, this Court must accept that ruling, as it must not make its own factual conclusions, weigh evidence, or make credibility determinations.”<sup>6</sup> “Substantial evidence” means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>7</sup> Substantial evidence is more than a scintilla but

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<sup>3</sup> *Fiori v. State*, 2004 WL 1284205, at \*1 (Del. Super. May 26, 2004).

<sup>4</sup> *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

<sup>5</sup> *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

<sup>6</sup> *Fiori*, 2004 WL 1284205, at \*1, citing *Johnson v. Chrysler Corp.*, 213 A.2d 64 (Del. 1965).

<sup>7</sup> *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

less than a preponderance.<sup>8</sup>

## DISCUSSION

The sole issue in this case is ownership of Klinedinst's credit card account. Put another way, CACH had to prove the movement of Klinedinst's account from MBNA to FIA Card Services to CACH. The amount owed on the credit card account is not in dispute. Klinedinst argues that the Court of Common Pleas erred in finding Coston's testimony provided a sufficient foundation for the admission of the documents used to establish CACH's ownership of Klinedinst's account. Klinedinst argues further that the foundational basis was not met because Coston had not actually reviewed the contract between FIA Card Services and CACH, had not reviewed the exhibits, and could not tell the court how many exhibits were attached to the contract and what they were about.

CACH introduced into evidence the Assignment and Loan Schedule without objection. CACH also introduced into evidence one-year's worth of Klinedinst's account statements prior to its purchase of Klinedinst's account without objection. The Court of Common Pleas found that these exhibits together with Coston's testimony established that CACH owned Klinedinst's credit card account.

CACH argues that by failing to object to the admission of the exhibits that

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<sup>8</sup> *Id.*

Klinedinst failed to preserve the issue for appeal. I agree. A party that fails to object to the admission of a document into evidence waives the right to challenge that on appeal.<sup>9</sup> Moreover, I find no abuse of discretion in the Court of Common Pleas' determination that Coston was an "other qualified witness."<sup>10</sup> Coston testified that she has testified over 200 times in her capacity as the records custodian of CACH, reviewed over 300 accounts, that based on her training she is familiar with the record-keeping practices of FIA Card Services, is knowledgeable about CACH's process of acquiring accounts, and that the Assignment and Loan Schedule, and account statements were made in the regular course of business and all relied upon by CACH when purchasing the accounts. This certainly satisfies the foundational requirements for Coston in her role as records custodian of CACH to be considered an "other qualified witness."

The evidence established the movement of Klinedinst's account from MBNA to FIA Card Services. Coston testified, based on her knowledge of the credit card industry and her review of FDIC and Comptroller of Currency web sites, that FIA Card Services was the successor-in-interest to MBNA. Coston's testimony is

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<sup>9</sup> *Weedon v. State*, 647 A.2d 1078,1082 (Del. 1994).

<sup>10</sup> "The trial judge's rulings regarding the admissibility of evidence are reviewed for abuse of discretion." (*Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1108 (Del. 2006)).

supported by the Loan Schedule, which states that MBNA was the original issuer of Klinedist's credit card. Coston's testimony is further supported by Klinedist's account statements, which provide that FIA Card Services is the issuer and administrator of Klinedist's account.

The evidence also establishes that CACH acquired Klinedinst's credit card account from FIA Card Services. The Assignment assigns certain accounts from FIA Card Services to CACH. Those accounts are listed on the Loan Schedule. Klinedinst's account is listed on the Loan Schedule. The balance on the December 2009 account statement identified as belonging to Klinedinst was the same as the amount transferred by FIA Card Services to CACH on the Loan Schedule.

### **CONCLUSION**

The record clearly established that FIA Card Services was the owner of Klinedinst's account in December 2009, that it assigned its interest in Klinedinst account to CACH on January 20, 2010, and that CACH was the legal owner of Klinedinst's account at all relevant times in this case. The Court of Common Pleas' decision is **AFFIRMED**.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ E. Scott Bradley*

E. Scott Bradley

ESB/sal

oc: Prothonotary

cc: Counsel  
Court of Common Pleas