

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

CAPITAL ONE BANK (USA), N.A.,)
) C.A. No. CPU5-14-000196
Plaintiff,)
)
v.)
)
DONNIE A. GARNES,)
)
Defendant.)

Submitted: July 21, 2014
Decided: August 18, 2014

Seth Yeager, Esq.
Lyons, Douty & Veldhuis, P.A.
15 Ashley Place, Suite 2B
Wilmington, DE 19804
Attorney for the Plaintiff

Donnie A. Garnes
4386 S. State St.
Magnolia, DE 19962-1495
Pro Se

DECISION ON MOTION FOR SUMMARY JUDGMENT

The plaintiff, Capital One Bank (USA), N.A, has filed this civil debt action for damages resulting from breach of a credit card agreement entered into with the defendant, Donnie A. Garnes. Before trial, the plaintiff filed a motion for summary judgment alleging that it is entitled to judgment against the defendant in the amount of \$2,403.83, plus costs and post-judgment interest of 5.75% per annum. The defendant contends that

he is not liable to the plaintiff for the amount being requested and opposes the plaintiff's motion for summary judgment.

The Court heard the defendant's motion for summary judgment on July 21, 2014, and at the conclusion of the proffered evidence and oral argument reserved decision. The plaintiff's motion for summary judgment is granted. Judgment is hereby entered against the defendant in the amount of \$1,906.18, plus pre-judgment interest at the contract rate of 22.90% per annum from February 15, 2013, post-judgment interest at the rate of 5.75% per annum and court costs.

FACTS

The defendant entered into a credit card agreement with the plaintiff and proceeded to charge various items to his credit account. The defendant made minimum payments on the credit card account, with interest accruing at the rate of 22.90% per annum, for a period of at least several months. The defendant's last payment on his account with the plaintiff was on January 16, 2013, when he paid the minimum payment due of \$61.00. At the time, interest continued to accrue on the account at the rate of 22.90% per annum. The defendant stopped making payments on his credit card account with the plaintiff on February 13, 2013, when he decided to dispute the amount due and attempt to negotiate a new payment amount. At that time, the balance on the account was \$1,906.18. A payment on the credit card account was due on February 15, 2013, in the minimum amount of \$76.00; however, the defendant did not make that payment and never made any additional payments on the balance due. The defendant hoped to negotiate with the plaintiff for a new payment plan on the account, but the plaintiff was not willing to negotiate.

LEGAL STANDARD FOR A MOTION FOR SUMMARY JUDGMENT

For the plaintiff to prevail on its motion for summary judgment, it must prove by a preponderance of the evidence that there are no genuine issues as to any material fact and that it is entitled to a judgment as a matter of law. *Browning-Ferris, Inc. v. Rockford Enters., Inc.*, 642 A.2d 820, 823 (Del. Super. 1993). In reviewing the record, the Court must view the facts and all reasonable inferences in the light most favorable to the non-moving party. *Stein v. Griffith*, 2002 WL 32072578, at *1 (Del. Com. Pl. Dec. 12, 2002).

DECISION

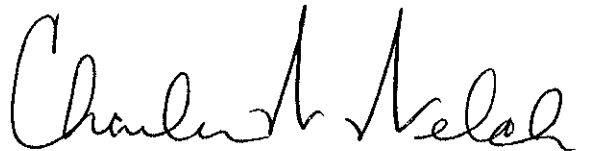
From the evidence proffered at the motion hearing, the plaintiff has proven by a preponderance of the evidence that the defendant is liable on the credit card account in the amount of \$1,906.18, plus pre-judgment interest at the rate of 22.90% per annum from February 15, 2013, post judgment interest of 5.75% per annum and court costs. The defendant admits that he held a credit card account with the plaintiff and had incurred a balance on it. He was making payments on the balance until February of 2013 when he decided to dispute the amount due. When making the last few payments on the account, the defendant knew the amount of the balance due and that the interest on that balance was accruing at the rate of 22.9% per annum. When a debtor makes a payment on the amount due and does not dispute it, they admit that they are the owner of the account and are liable for any unpaid balance on it. *See Shoh v. 201 Invs., Inc.*, 2011 WL 5627191, at *1 (Del. Super. Nov. 15, 2011). The defendant had been making payments on the account. His next payment was due on February 15, 2013, and he did not make it or any

future payments. At the time, the balance due on the account was \$1,906.18. Therefore, judgment is entered for the plaintiff and against the defendant in the amount of \$1,906.18, plus pre-judgment interest at the contract rate of 22.90% per annum from February 15, 2013, post-judgment interest at the requested rate of 5.75% per annum and court costs.

CONCLUSION

As a result of the Court's findings of fact, which are based upon the entire record, and the Court's above-referenced conclusions of law, the plaintiff's motion for summary judgment requesting that judgment be entered against the defendant is granted. Since no genuine issues of material fact remain, the plaintiff is entitled to a judgment against the defendant as a matter of law. As such, judgment is entered for the plaintiff and against the defendant in the amount of \$1,906.18, plus pre-judgment interest at the contract rate of 22.90% per annum from February 15, 2013, post-judgment interest at the requested rate of 5.75% per annum and court costs.

IT IS SO ORDERED THIS 18th day of August, 2014.

A handwritten signature in black ink, appearing to read "Charles W. Welch". The signature is written in a cursive style with a horizontal line underneath it.

**CHARLES W. WELCH
JUDGE**