IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

MEGHAN HOWLETT	)	
	)	
Plaintiff below	)	
Appellant,	)	
	)	
v.	)	C.A. No. CPU6-11-001128
	)	
	)	
RICHARD ZAWORA,	)	
	)	
Defendant below	)	
Appellee.	)	
	)	

Submitted: February 15, 2012
Decided: March 30, 2012

Rebecca Trifillis, Esq., Attorney for Appellant.
Appellee, pro se.

DECISION ON APPEAL

This is an appeal from the Justice of the Peace Court. Appellant Meghan Howlett brings this action seeking $14,874.34 in breach of contract damages. Appellant Howlett alleges that Appellee Richard Zawora agreed to assist her in the repayment of various debts that were accrued during the parties' six-year relationship. Having concluded the trial on this matter and

after reviewing the parties' submissions, the Court finds in favor of Appellant Megan Howlett and against Appellee Richard Zawora in the amount of $2,023.17 plus prejudgment and post judgment interest and court costs.

Facts

This is an appeal from the March 14, 2011 Justice of the Peace Court order in which judgment was entered for Appellant/Plaintiff-below Howlett and against Appellee/Defendant-below Zawora in the amount of $595.05 plus court costs and interest. On March 29, 2011, Appellant filed a notice of appeal with this Court.

The parties accrued a significant amount of debt while dating for six years. A portion of that debt, $7,500.11, comes in the form of a personal loan from Citi Financial obtained and signed by both parties. The remainder of the debt is attributable to multiple credit card accounts. These credit card accounts were issued to and held by Appellant Howlett, with Appellee Zawora listed as an authorized user.

The relationship between the parties ended during the last week of August 2010. An agreement was allegedly reached between the parties regarding the repayment of these debts. At trial, Appellant Howlett

introduced into evidence four emails[1] dated October 8, 2010 that were sent between the parties. Appellant Howlett argued that these emails constitute a contract in which Appellee Zawora agreed to pay her, in installments, half of the total debt accrued from both the credit cards and personal loan. In support of this argument, Appellant Howlett made note of the fact that Appellee Zawora left $550.00 in the parties' joint checking while in the process of transferring his funds into an account of his own, allegedly to cover his first installment payment under their debt payment agreement. Appellee Zawora denied that an agreement had been reached and argued instead that the emails show only an attempt at reaching a finalized agreement and that the $550.00 was left in the checking account as a sign of good faith while negotiations proceeded.

When Appellee Zawora failed to perform as expected, Appellant Howlett filed this action seeking to recover half of the $14,874.34 debt the parties accrued for Appellee's alleged breach of the contract.

Discussion

Appeals from the Justice of the Peace Court to the Court of Common Pleas are tried *de novo*.[2]

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[1] Plaintiff's Exhibit 1.

[2] 10 *Del. C.* § 9571.

a. Appellant's Breach of Contract Claim

In an action for breach of contract, the plaintiff must prove the following by a preponderance of the evidence: "first, the existence of the contract, whether express or implied; second, the breach of an obligation imposed by that contract; and third, the resultant damage to the plaintiff."[3] Thus, before a court determines whether a breach of the contract occurred, the plaintiff must prove by a preponderance of the evidence the existence of a contract between the parties.

Under Delaware law, "a contract is an agreement upon a sufficient consideration to do or not to do a particular thing."[4] "The elements necessary to create a contract include mutual assent to the terms of the agreement, also known as the meeting of the minds."[5] "Mutual assent requires an offer and an acceptance wherein 'all the essential terms of the proposal must have been reasonably certain and definite.'"[6] "Thus, if any portion of the proposed terms is not settled there is no agreement."[7] "Where

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

[4] *Rash v. Equitable Trust Co.*, 159 A. 839, 840 (Del. Super. Ct. 1931).

[5] *Thomas v. Thomas*, 2010 WL 1452872 (Del. Com. Pl. 2010).

[6] *Id*. (quoting *Gleason v. Ney*, 1981 WL 88231 (Del. Ch. 1981)).

[7] *Id*.

there is no meeting of the minds, there is no enforceable contract in Delaware."[8]

In the case at hand, after reviewing the four emails submitted by Appellant Howlett, and the testimony of the parties, the Court holds that the parties never reached a mutual assent or a meeting of the minds as to whether Appellee Zawora would be responsible for paying half of their accrued debt. The first email begins with Appellee Zawora informing Appellant Howlett that he will be giving her $550 a month for the next six months to cover half of the debt. He then goes on to state that he would be willing to give her more than $550 a month if she would be willing to "come up with some kind of matching agreement or something."[9] The email concludes with Appellee Zawora expressing shock at a referenced earlier arrangement between the parties regarding ownership of a GMC Suburban: "As for the Suburban…that's a shock. The deal was I kept the truck and the boat, finished paying off the boat loan along with the three credit cards being matched by both of us. What happened to that arrangement?"[10] It is at this point that the tentative agreement between the parties regarding repayment

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[8] *Rodgers v. Erickson Air-Crane Co. L.L.C.*, 2000 WL 1211157 (Del. Super. 2000).

[9] Plaintiff's Exhibit 1 (Friday, October 8, 2010 at 11:41 AM).

[10] *Id*.

of the debt begins to unravel, with the ownership of the Suburban playing the pivotal role.

The second email opens with Appellant Howlett referencing the earlier agreement mentioned in the first email regarding the Suburban: "The arrangement was not that you kept the Suburban, it was simply that you were able to use it to get the boat out of the water and use for transportation of the boat. But, it was a gift that was given to ME from my uncle. I thought that was made clear from day one when we agreed to only put it in your name due to the insurance being lowered – no other reason."[11] Appellant Howlett closes the email by stating: "Let me know if we can do the Suburban and boat deal in the next couple of weeks."[12]

The third and fourth emails are both from Appellee Zawora to Appellant Howlett. The third email begins with Appellee Zawora rebutting Appellant Howlett's claims from the second email: "The Suburban was not needed nor used to pull the boat. The boat has been out of the water since well before your father called me and asked me to come and get the Suburban out of his driveway. The arrangements from day one have nothing to do with the arrangements made when you decided to make me leave. The

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[11] Plaintiff's Exhibit 1 (Friday, October 8, 2010 at 11:51 AM).

[12] *Id*.

arrangements that day were for me to keep the truck."[13] The email continues with Appellee Zawora linking his assistance towards repaying the debt with ownership of the Suburban: "If you want the boat and the truck you can have them and do whatever you please. At that point I will wash my hands of any other debt with you. Otherwise, if you want the truck we need to go back to the drawing boards as to what I'm paying on."[14] The fourth and final email involves Appellee Zawora discussing how he believed the Suburban was given to the both of them in order to tow the boat and how he has fixed and repaired the Suburban since the breakup.[15] The email closes with Appellee Zawora stating: "I will think about things and get back to you."[16]

It becomes clear from reading the emails as a continuous conversation between the parties that Appellant Howlett envisioned two separate agreements (one regarding repayment of debt and the other regarding the ownership of the Suburban and boat) while Appellee Zawora saw one, all-inclusive agreement. Appellee Zawora offers to set up a monthly installment plan with Appellant Howlett in the first email, and in the third

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[13] Plaintiff's Exhibit 1 (Friday, October 8, 2010 at 12:15 PM).

[14] *Id.*

[15] Plaintiff's Exhibit 1 (Friday, October 8, 2010 at 12:37 PM).

[16] *Id*.

email he states that unless he keeps the Suburban and boat he will not pay Appellant Howlett *anything*. He then offers to go back to the drawing board regarding his payments if she wants the Suburban. Finally, the fourth email concludes with Appellee Zawora rejecting all tentative agreements up to that point and stating that he will think things over and get back to Appellant Howlett.

Taking the content of all of the emails into account, the Court holds that Appellant Howlett has not established by a preponderance of the evidence a meeting of the minds between the parties that would prove the existence of a contract governing Appellee Zawora's obligation to assist with the repayment of the accrued debt. Additionally, the Court agrees with Appellee Zawora's contention that the $550.00 left in the joint checking account was payment he was willing to make toward debt based on his belief that two major assets of the parties, the Suburban and the boat were to belong to him. Once it became clear, however, that the ownership of the Suburban and boat remained in dispute, Appellee Zawora walked away from negotiations and ceased communications.

b. Credit Card Debt

The amount of the accrued debt at issue not attributable to the personal loan can be traced to three credit card accounts. These credit card

accounts were issued to and held by Appellant Howlett. Appellee Zawora was listed as an authorized user. As an authorized user on the accounts held by Appellant Howlett, Appellee Zawora would only be financially responsible to Appellant Howlett if a contract had existed between them governing repayment of the debt.

In *Gregory v. Frazer*, the Plaintiff sued the Defendant for breach of contract alleging that the parties "had a contract whereby Defendant would use Plaintiff's Reader's Digest Credit Card for Defendant's business expenses and would repay Plaintiff for Defendant's charges on the Credit Card plus interest."[17] The court held that such a contract did exist, "because Defendant concedes there was an agreement between himself and Plaintiff, whereby he was permitted to use the Credit Card and was responsible for re-payment of his charges plus interest."[18] In the case at hand, because the Court holds that no contract was formed between Appellant Howlett and Appellee Zawora governing repayment of the credit card debt, as an authorized user, Appellee Zawora is not responsible for any of the accrued debt attributable to the credit card accounts.

c. The Personal Loan

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[17] *Gregory v. Frazer*, 2010 WL 4262030 (Del. Com. Pl. 2010).

[18] *Id*.

Unlike the credit card accounts, which were in Appellant Howlett's name with Appellee Zawora listed only as an authorized user, the personal loan was obtained and signed by both parties. The parties are thus jointly and severally liable to Citi Financial for the entirety of the loan. Therefore, Appellant Howlett is entitled to a judgment against Appellee Zawora for one-half of all payments she has made towards to loan from the time the parties ended their relationship to the date of this trial.

At trial, Appellant Howlett submitted into evidence without objection two documents regarding the personal loan. The first document was the Note and Security Agreement detailing the loan itself.[19] According to this document, the original amount financed was $7,500.11. The loan was subject to an annual percentage rate of 28.99% with a finance charge of $6,781.09. The total amount due was $14,281.20, repayable over sixty months with monthly payments of $238.02. Payments were due on the twelfth of each month beginning September 12, 2008. The second document was an account statement from Citi Financial dated September 23, 2010.[20] This document showed a direct debit payment of $238.02 made on September 12, 2010 by Appellant Howlett.

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[19] Plaintiff's Exhibit 6.

[20] Plaintiff's Exhibit 7.

In addition to the two above documents entered into evidence without objection, Appellant Howlett testified at trial that since October 2010, she alone has been making the minimum monthly payments of $238.02 towards the loan. Appellee Zawora offered no rebuttal and admitted that he has not assisted Appellant Howlett with these payments. Based upon the credible and unrebutted testimony of Appellant Howlett during the trial, the Court concludes as a finding of fact that since October 2010, Appellant Howlett, alone, has been making the monthly minimum payments towards the loan. As payments are due on the twelfth of each month, the Court concludes that since the parties' relationship ended, Appellant Howlett has made seventeen payments towards the loan.[21] Appellant Howlett has thus paid $4,046.34 towards the loan.

Appellant argued at trial that, based upon the doctrine of "anticipatory breach" or "anticipatory repudiation," judgment should be entered in favor of Appellant Howlett and against Appellee Zawora for one-half of the total remaining balance on the loan as of October 2010. Appellant argued that because Appellee Zawora has stated unequivocally on numerous occasions[22]

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[21] The first payment was made on October 12, 2010 and the most recent payment up to the date of the trial was made on February 12, 2012.

[22] Including in his testimony during the trial at hand.

that he has no intentions of assisting with the further repayment of the loan, he has anticipatorily breached the contract allegedly formed in the four emails discussed earlier.

The Court of Common Pleas is a court of law and not of equity, and as such this Court could only grant such a request if there had existed a contract between Appellant Howlett and Appellee Zawora governing repayment of the loan. As the Court of Chancery has stated, "anticipatory repudiation by an obligor to a contract gives the obligee the immediate right to sue for breach of contract."[23] Thus, because the Court finds that no contract was formed between the parties regarding the repayment of the debt, it is beyond the ability of this Court to issue a judgment against Appellee Zawora for an amount beyond one-half of what has already been paid by Appellant Howlett.

The Court holds that, as a co-signer to the loan, Appellee Zawora is responsible for one-half of what Appellant Zawora has paid towards the loan, or $2,023.17.

Conclusion

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[23] *UbiquiTel Inc. v. Sprint Corp.*, 2005 WL 3533697 (Del. Ch. 2005).

Judgment is entered for Appellant Howlett and against Appellee Zawora in the amount of $2,023.17 plus prejudgment and post judgment interest and court costs.

IT IS SO ORDERED this _____ day of March, 2012.

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Judge Rosemary B. Beauregard