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

CAPTIAL ONE BANK (USA), N.A.	)	
	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No. CPU4-10-006248**
	)	
MARY J. ARMBRUST,	)	
	)	
Defendant.	)	

ORDER GRANTING MOTION FOR JUDGMENT
IN FAVOR OF PLAINTIFF PURSUANT TO RULE 37(B)(2)(C)

Submitted: October 5, 2012
Decided: October 17, 2012

Seth Yeager, Esquire, Wilmington, Delaware, for Plaintiffs
Mary J. Armbrust, New Castle, Delaware, self-represented Defendant

ROCANELLI, J.

This is a debt collection action. On October 18, 2010, Capital One Bank (USA), N.A. ("Plaintiff") filed a Complaint against Defendant, Mary J. Armbrust, alleging that Ms. Armbrust defaulted on a credit card agreement entered into with Plaintiff. Plaintiff alleged that Ms. Armbrust breached the terms of the agreement by failing to make payments. Plaintiff requested that the Court enter judgment in the amount of $10,573.15 (principal balance of $8,810.96 and attorney's fees of $1,762.19), plus interest and costs due.

On November 19, 2010, Ms. Armbrust filed an Answer denying the allegations set forth in the Complaint.

On December 22, 2010, Plaintiff served Ms. Armbrust with Plaintiff's First Set of Interrogatories and Requests for Admissions. On May 19, 2011, Plaintiff filed a Motion to Compel Ms. Armbrust to respond to Plaintiff's First Set of Interrogatories. On June 10, 2011, the Court granted Plaintiff's Motion to Compel and ordered Ms. Armbrust to respond to Plaintiff's First Set of Interrogatories by June 24, 2011. On June 24, 2011, Ms. Armbrust mailed her response to Plaintiff's First Set of Interrogatories.

On September 19, 2011, Plaintiff filed a Motion for Summary Judgment. On November 4, 2011, the Court denied Plaintiff's Motion for Summary Judgment.

On January 27, 2012, the Court held a civil trial. At the conclusion of the trial, the Court made a ruling from the bench granting judgment in favor of Ms. Armbrust and against Plaintiff, with leave to file a Motion to Re-Open.

On March 6, 2012, Plaintiff filed a Motion to Re-Open. On April 13, 2012, the Court granted Plaintiff's Motion to Re-Open.

On June 7, 2012, Plaintiff filed a second Motion for Summary Judgment. On June 18, 2012, Plaintiff filed a Supplement to Plaintiff's Motion for Summary Judgment requesting the Court to deem Plaintiff's Requests for Admissions admitted pursuant to Ms. Armbrust's failure to respond to Plaintiff's discovery request within thirty days of service. On June 28, 2012, Ms. Armbrust filed a Response to Plaintiff's Motion for Summary Judgment, requesting that the Court strike Plaintiff's Supplement to Plaintiff's Motion for Summary Judgment.

On June 29, 2012, the Court denied Plaintiff's Motion for Summary Judgment. The Court ordered Ms. Armbrust to file answers to Plaintiff's Requests for Admissions

by the close of business on July 30, 2012. The Court stated that if Ms. Armbrust did not comply with this order, Admissions sought by the Plaintiff would be deemed admitted.

On August 1, 2012, Plaintiff filed a Motion for Relief pursuant to Court of Common Pleas Civil Rule 36 on the grounds that Ms. Armbrust responded to each request for admission with the response "immaterial." Plaintiff argued that all of the requests submitted to Ms. Armbrust were material and requested the Court to deem the Admissions admitted or, in the alternative, to order Ms. Armbrust to adequately and fully respond to Plaintiff's discovery.

On August 31, 2012, the Court held a hearing on Plaintiff's Motion for Relief. The Court denied Plaintiff's request to deem the Admissions admitted, but granted Plaintiff's Motion to Compel. The Court ordered Ms. Armbrust to serve adequate responses to Plaintiff's Requests for Admissions.

On September 25, 2012, Plaintiff filed the motion now before the Court, Motion for Judgment pursuant to Court of Common Pleas Civil Rule 37(b)(2)(C). Plaintiff averred that Ms. Armbrust responded to Plaintiff's Request for Admissions for a second time by objecting to all of the admissions as "immaterial," and did not adequately set forth the grounds on which she objected. Therefore, according to Plainitff, Ms. Armbrust violated Court of Common Pleas Civil Rule 36 and disregarded the Court's August 31, 2012 Order. Plaintiff requests that the Court enter default judgment against Ms. Armbrust, pursuant to Rule 37(b)(2)(C), on the grounds that Ms. Armbrust has deliberately and persistently refused to adequately respond to Plaintiff's requests and on the grounds that she has willfully disregarded the Court's Orders.

The Court has considered Plaintiff's Motion for Judgment and Ms. Armbrust's response thereto. The Court has reviewed the docket, including prior Orders of the Court directing Ms. Armbrust to provide adequate responses, specifically Orders dated June 29, 2012 and August 31, 2012.

The Court has reviewed the Plaintiff's Requests for Admissions. Plaintiff requested and was granted the opportunity to explain to the Court why each of the admissions requests would lead to the discovery of information relevant to the subject matter involved in the pending matter. The Court finds that the Admissions are carefully crafted to lead to the discovery of admissible evidence.[1]

The Court rejects the objections posed by Ms. Armbrust that the admissions sought are not material or relevant. Ms. Armbrust cites to Rule 36 in support of an objection as an appropriate response. However, Ms. Armbrust's reliance on Rule 36 is misplaced because she has not provided responses which meet the standard set forth in Rule 36(a) which requires that an objection be accompanied by a specific denial.

The Court rejects the repeated assertions by Ms. Armbrust that the admissions sought are immaterial. To the contrary, the admissions sought go to the very heart of this case and Ms. Armbrust's repeated assertions that this is not her debt. Plaintiff is entitled to the use of discovery to test those assertions and Ms. Armbrust repeatedly refuses to comply with the Rules or Court Orders.

The Court recognizes "that entering judgment against a party as a sanction for discovery violations is an extreme remedy and generally requires some element of

[1] Ct. Com. P. Civ. R. 26(b)(1).

willfulness or conscious disregard of a court order . . . ."[2] Ms. Armbrust has been given numerous opportunities to comply with the Rules of Civil Procedure and the Court's Orders directing responses to the Requests for Admissions. The Court finds that Plaintiff is entitled to relief because Ms. Armbrust has willfully and consciously disregarded this Court's Orders and has refused to engage in the discovery process as required by the Rules.

Plaintiff has sought attorney fees. In consideration of the significant resources expended by the Plaintiff as a result of Ms. Armbrust's disregard of Court Orders and refusal to engage in the discovery process, the Court makes a specific finding that the attorney's fees sought are reasonable.

AND NOW, THEREFORE, this 17th day of October 2012, IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Default Judgment is GRANTED;
2. Attorney's Fees in the amount of $1,762.19 are AWARDED; and
3. Judgment is AWARDED against Defendant in the amount of $8,810.96 plus post judgment interest at the legal rate from this day of judgment.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

[2] *Lehman Capital v. Lofland ex rel. Estate of Monroe*, 906 A.2d 122, 131 (Del. 2006) (alterations in original).