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

CREDIT ACCEPTANCE CORPORATION ASSIGNEE OF MARTIN NEWARK DEALERSHIP, Plaintiff,	)	
v.	)	**C.A. No. CPU4-12-003710**
BERNADETTE JOHNS, Defendant.	)	

Submitted: February 15, 2013
Decided: March 13, 2013

On Plaintiff's Motion for Summary Judgment
DENIED

Charles S. Knothe, Esquire, Wilmington, Delaware, Attorney for Plaintiff
Bernadette Johns, Wilmington, Delaware, Defendant

ROCANELLI, J.

On October 11, 2012, Plaintiff Credit Acceptance Corporation ("Credit Acceptance") filed this debt collection action against Defendant Bernadette Johns to collect on a debt allegedly owed by Ms. Johns in connection with a car purchased from Martin Newark Dealership in August 2004. Credit Acceptance is the assignee of the debt; contends that Ms. Johns defaulted under the terms of the agreement by failing to make payments; and claims damages in the amount of $3,715.97 plus costs and fees.

On November 25, 2012, Credit Acceptance filed the Motion for Summary Judgment that is now before the Court. A hearing on the Motion took place on January 11, 2013. In support of Credit Acceptance's claim for damages, Charles S. Knothe, Esquire presented a Customer Payment History Report ("Payment Report"). After the hearing, Credit Acceptance provided

additional documentation in support of its claim by letter dated February 13, 2013, as well as citation to case authority regarding whether the claim was time-barred.

According to Credit Acceptance, the Payment Report shows that the vehicle was repossessed on three separate occasions.[1] The last payment made on the account prior to the final repossession was a "lock box transmission" payment made on June 12, 2006, in the amount of $200.00. Also according to the Payment Report, on June 1, 2012–nearly ***six years*** after the vehicle was sold at auction–a $100.00 payment was made on the account as follows:

> Description: BANK WIRE TRANSFER
> Sub Type: MONEY GRAM
> Ref. No. 78489662
> Tran. Amount: -$100.00
> Balance: $5,751.83

This lawsuit was filed just four months later.

Credit Acceptance contends that there are no material issues of fact and that Plaintiff Credit Acceptance is entitled to judgment as a matter of law. In response to the Court's inquiries about the documentation supporting the claim, Credit Acceptance asserted that its claim was not time-barred by the statute of limitations because the June 1, 2012 payment revived the claim for this legal action.

DISCUSSION

The Superior Court recently addressed the standard of review for summary judgment as follows: "Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law… Summary judgment is

[1] The vehicle was first repossessed on February 1, 2005, but was redeemed by Ms. Johns that same day. The vehicle was repossessed for a second time on February 10, 2006, but was redeemed by Ms. Johns one week later, on February 17, 2006. The vehicle was repossessed for the third and final time on September 1, 2006, and the car was sold at auction on November 2, 2006.

inappropriate 'when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.'"[2]

a. June 2012 Payment

In response to the Court's inquiry regarding the June 2012 payment which revived an otherwise time-barred claim, Credit Acceptance provided the Court with the Account Notes for Ms. Johns' account. The Account Notes suggest that legal action was pursued in 2007 and abandoned in 2010. There are no notations during the time period from 2007 to 2010 that suggest any contact with Ms. Johns.

After December 29, 2010, the next notation is January 15, 2012: "Notes prior to this date are archived in window L44." The next notations reference an inbound inquiry from Ms. Johns on May 2, 2012 and an offer by her to settle the account for $1,500.00. On May 31, 2012, according to the Account Notes, Credit Acceptance received another call from Ms. Johns requesting an extension until June 15, 2012 to fulfill the $1,500.00 settlement. According to the Account Notes, Ms. Johns was advised she must make a $100.00 payment to hold the account open until June 15. Ms. Johns made a $100 payment on June 1, 2012. Although there was further contact between Credit Acceptance and Ms. Johns after the June 1 payment regarding the $1,400.00 owed, no other payments were ever made on the account. The file was referred to counsel in August 2012 and suit was filed in October 2012.

[2] *Jackson v. Minner, et al*, C.A. No. 07C-11-030 JTV, at 6 (Del. Super March 1, 2013) (quoting *Mumford & Miller Concrete, Inc v. New Castle County*, 2007 WL 404771, at *4 (Del. Super. Jan. 31, 2007).

b. Reviving the Statute of Limitations.

Credit Acceptance contends that Ms. Johns' June 1, 2012 payment revived the claim for purposes of the statute of limitations. In support of this position, Credit Acceptance relies upon *Hart v. Deshong*, 8 A.2d 85 (Del. Super. 1939). In *Hart*, the Delaware Superior Court explained that the bar of the statute of limitations can be lifted by an unconditional acknowledgment of the debt or by payment on the account. However, the Court states that "[t]he debt must be pointed out and the intention to partly discharge that particular debt made clear, and there must be no surrounding circumstances to repel the implied promise to pay the balance."[3]

Moreover, the courts have recognized narrowly defined circumstances by which an acknowledgment of debt will remove the debt from the statute of limitations.[4] For the statute to be tolled there must be a "clear, distinct and unequivocal acknowledgment of a subsisting debt and a recognition of an obligation to pay it."[5] Furthermore, "[t]here should be no uncertainty as to the debt referred to by an acknowledgment or new promise."[6]

The facts surrounding the payment in *Hart* were notably different than the facts of the present case. In *Hart*, the payment on account was made before the statute of limitations had run; a fact which the court explicitly noted.[7] In the present case, the payment was made after the debt was already time-barred by the statute of limitations. Although it is well-settled that a payment on account not yet time-barred tolls the statute, the affect of a payment made on a debt

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[3] *Hart*, 8 A.2d at 87.
[4] *Snyder v. Baltimore*, 532 A.2d 624 (Del. Super. 1986).
[5] *Kojro v. Sikorski*, 267 A.2d 603, at 606 (Del. Super. 1970) (citing 12 Am.Jur.2d 73, Bills & Notes, Sec. 1059; *Windsor v. Hearn*, 5 W.W.Harr. 184, 161 A. 288 (Supreme Ct.Del.1932)); *Insurance Co. of North America v. NVF Co.*, 2000 WL 305338 (Del. Super. Jan. 20, 2000) (a "vague and imprecise" acknowledgment of a subsisting debt does not amount to an unequivocal acknowledgment of the debt).
[6] *Id*. at 606 (quoting 34 Am.Jur. 246, Limitation of Actions, Sec. 305).
[7] *Hart*, 8 A.2d at 88.

that is *already* barred by the statute has not been addressed by the Delaware courts. It is not necessary to reach that question at this time.

c. More Through Inquiry Required

Based on the record before the Court, the Court cannot conclude that Credit Acceptance is entitled to judgment as a matter of law. The record evidence does not establish that Ms. Johns made a clear, distinct, and unequivocal acknowledgment of an obligation to pay a specific debt owed to Credit Acceptance. More thorough inquiry is required to determine if Ms. Johns' promise to pay was sufficient to revive the statute of limitations.

AND NOW, THEREFORE, IT IS HEREBY ORDERED THIS 12th DAY OF MARCH, 2013:

1. **Plaintiff's Motion for Summary Judgment is DENIED; and**
2. **This judicial office retains jurisdiction of this case for trial on the merits. A pre-trial conference shall be scheduled.**

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli