

COURT OF COMMON PLEAS
STATE OF DELAWARE
WILMINGTON, DELAWARE 19801

ANDREA L. ROCANELLI
JUDGE

December 16, 2011

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Re: Capital One Bank (USA), N.A. v. Rock Brown, et al.
C.A No. CPU4-09-004909

Date Submitted: November 4, 2011
Date Decided: December 16, 2011

LETTER OPINION

Dear Counsel:

This matter comes before the Court upon Plaintiff Capital One Bank (USA), N.A.'s ("Plaintiff") Motion for Summary Judgment against Defendant Rock Brown ("Defendant") pursuant to Court of Common Pleas Civil Rule of Civil Procedure 56. The parties presented their arguments before this Court on November 4, 2011. The Court granted Defendant's request to pass the matter for 30 days to allow the parties an opportunity to resolve the dispute. As the matter remains unresolved, the Court now must render its opinion. For the reasons set forth below, Plaintiff's Motion for Summary Judgment is GRANTED.

Procedural Posture and Summary of Facts

This is a simple debt action. On July 1, 2009, Plaintiff filed a complaint against Defendant Brown and his co-Defendant, "E Cst Minority Supplie," ("East Coast") seeking recovery of the balance owed after Defendants defaulted on a

Visa Business Platinum Card business account. Plaintiff is the original creditor. Defendant Brown was the President of co-Defendant East Coast and the authorized signatory on the account. Paragraph 4 of the Complaint alleges Defendants are indebted to Plaintiff in the amount of \$ 1,932.18, which is comprised of principal owed and attorneys' fees. Plaintiff also seeks interest and costs of suit.

On July 26, 2009, Plaintiff perfected personal service upon Defendant Brown. To date, the docket does not reflect that co-defendant East Coast Minority Suppliers, Inc. has been served.

On August 3, 2011, Defendant Brown filed his Answer denying both liability and damages. On August 18, 2011, Plaintiff propounded Interrogatories and Requests for Admission. Defendant Brown responded to discovery on October 3, 2011.

Prior to Defendant's responses being served, Plaintiff moved for summary judgment on September 20, 2011. Defendant did not file a response, but appeared at the hearing on November 4, 2011. Plaintiff did not submit an Affidavit of Attorneys' Fees.

By letter dated November 28, 2011, Plaintiff submitted additional billing statements dated November 2004 through September 2008 as a supplement to its original filing, to corroborate the amount of damages alleged. Plaintiff also included a charge-off summary, date illegible, with its post-hearing submission.¹

Contentions of the Parties

Plaintiff now moves this Court for summary judgment arguing that no genuine dispute as to any material fact exists as to Defendant's liability on this debt. Plaintiff submitted documentation verifying liability on the account, as well as the amount of damages alleged. Accordingly, Plaintiff is entitled to judgment as a matter of law.

Conversely, while Defendant concedes that he served as President of defendant company and indeed applied for the credit card, he denies any individual liability for the debt alleged. Brown alleges that the owner of the defendant company incurred the debt and was responsible for payments on the

¹ The date of Exhibit B, the charge off summary submitted by Plaintiff, is illegible at the top of the page.

account. The owner has since died and the company is defunct.² Thus, according to the Defendant, liability, should any there be, lies with the defendant company and the company alone.

The Law

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”³ The moving party bears the burden of meeting this exacting standard.⁴ The Court must view the evidence in a light most favorable to the non-moving party.⁵ If the proponent properly supports his claims, the burden shifts to the non-moving party to establish the existence of material issues of fact.⁶ Where the moving party produces an affidavit or other evidence sufficient under the Rules of Civil Procedure, and the burden shifts, Rule 56(e) states that the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.⁷ Summary judgment will be denied if, after viewing the evidence in a light most favorable to the non-moving party, there are material facts in dispute or if judgment as a matter of law is not appropriate.⁸

Discussion

The Court must determine whether any issue of material fact exists as to Defendant Brown's liability for the debt alleged. The Court finds that Plaintiff has met its burden of proof that no genuine issue of material fact exists as to liability or damages in this case. As such, Plaintiff is entitled to judgment as a matter of law.

² The Delaware Division of Corporations website reflects that East Coast Minority Suppliers, Inc. was incorporated as a domestic corporation on January 19, 1993. The registered agent is listed as East Coast Minority Suppliers, Inc., 610 W. 8th Street, Wilmington, DE 19801. The current status of the corporation is not disclosed. Defendant Brown admits that he lives at the same address as the defendant company, but on the second floor.

³ Ct. Com. Pl. Civ. R. 56(c); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

⁴ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Moore*, 405 A.2d at 680.

⁵ *Burkhart*, 602 A.2d at 59.

⁶ Ct. Com. Pl. Civ. R. 56(e); *Moore*, 405 A.2d at 681.

⁷ Ct. Com. Pl. Civ. R. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

⁸ *Storm v. NSL Rockland Place LLC*, 898 A.2d 874, 879-80 (Del. Super. Ct. 2005).

With respect to the issue of liability, this Court finds that no genuine issue of material fact exists as to Defendant Brown's liability in this case for the debt alleged. Plaintiff submitted ample documentation to demonstrate Defendant Brown's contractual liability on this account.

First, Plaintiff submitted a sworn Affidavit by Angela Zalewski dated September 1, 2011 in support of its motion against Defendant Brown. The Affidavit confirms the account number; a date of default of September 10, 2008 and the gross unpaid balance as of that date in the amount of \$ 1,610.15. The Affidavit further incorporates by reference the Credit Card Agreement ("Agreement"), specifically noting the provisions regarding Plaintiff's rights upon default, including, but not limited to, acceleration of the account, attorneys' fees, interest and costs of suit. The Agreement also allows for finance charges to be assessed and late penalties.

Second, Plaintiff produced a copy of the Visa Business Platinum Authorization Form, executed by Defendant Brown on February 10, 2004. Notwithstanding Defendant's protestation to the contrary, he identifies himself on the form as the President of Defendant East Coast and the "authorized signatory" on the account. By executing that application, Brown certified that he read the Agreement on behalf of the company and himself, and agreed to be bound by its terms.⁹

Third, Plaintiff submitted the Agreement and Addendum to the Agreement as Exhibit A to its motion. The Agreement contains a default provision which defines Plaintiff's rights in default, including account acceleration, recovery of court costs, collection expenses and attorney's fees.

The Addendum is further proof of Defendant's liability. It defines the term "authorized signatory" as "the person authorized to sign on behalf of the company."¹⁰ The Addendum goes on to state that the authorizing user certifies that the "authorizing signatory holds a position in the Company, such as officer, director or owner, and is capable of legally binding the Company." The Addendum further states that "Authorizing Signatory will be jointly and severally liable for all transactions made on the account and that anyone issued a card on the account as an Authorized User will also be liable for all transactions made with

⁹ See Plaintiff's Exhibit B attached to its Motion for Summary Judgment.

¹⁰ The Court notes that the Addendum mandates that the account will be used only for business or commercial purposes, and not for "personal, family or household purposes." Notwithstanding said mandate, the billing statements appear to contain charges that are non-business related.

this such card.” As Defendant Brown’s signature is evidence that he signed as an "authorizing signatory," the terms unequivocally provide for joint and several liability for the debt accrued, irrespective of the company's status or whether the Owner is deceased.

Based upon the foregoing, this Court finds that Plaintiff has established liability as against Defendant Brown as a matter of law. Defendant Brown was an authorized signatory and user on the account. The contract terms provide for joint and several liability for the transactions on that card. Accordingly, liability is clear. There is no factual dispute.

The Court now turns its attention to the issue of damages, and whether Plaintiff established as a matter of law that it is entitled to damages in the amount alleged.

Initially, Plaintiff's submission was skeletal at best on the issue of damages. Plaintiff only submitted two billing statements to buttress its claim, June/July 2006 and September 3, 2008 respectively. At oral argument, the Court questioned Plaintiff as to the sparse billing records and requested validation of the debt alleged. Otherwise, the Court would be inclined to grant Plaintiff only a portion of the debt alleged.

By letter dated November 28, 2011, Plaintiff's counsel supplemented his prior submission providing billing statements from Nov/Dec 2004 through September 3, 2008. A gap in statements exists from July 2006 through October 2006, but activity on the account spanned from November 2004 until March 2008. There was no activity from April 2008 through September 2008. The account was charged off in September 2008. The balance owed as of September 3, 2008 was \$1,538.10, which is inclusive of finance charges of 24.9% and late fees.

Plaintiff's Exhibit B of its supplemental submission, a charge off summary, reflects a gross unpaid balance of \$1,610.15. An additional late fee of \$39.00 and finance charges of \$33.05 had accrued since September 2008, which brings the grand total owed to \$1,610.15. The date that the charge off summary was printed is illegible due to the top of the Court’s copy being cut off. However, the summary provides for a “due date” of October 4, 2008. Accordingly, Plaintiff’s damages claim is verified.

WHEREFORE, the Court concludes that Plaintiff met its burden that no genuine issue of material fact exists as to either liability or damages in this case. As no genuine issue of material fact appears to exist, Plaintiff is entitled to judgment as a matter of law. Judgment is hereby **GRANTED** in favor of Plaintiff against Defendant Brown in the amount of **\$1,610.15**.

The Court is aware that the Agreement provides for recovery of attorneys' fees in the event of default; however, Plaintiff's Counsel failed to tender an Affidavit or otherwise substantiate its fee claim. Consequently, Plaintiff's claim for attorneys' fees is **DENIED**. Plaintiff's claim for pre-judgment interest from September 10, 2008 to August 7, 2011 is **DENIED**. The Court awards post-judgment interest at the legal rate.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli