

February 11, 2009

Mr. Pedro Flores
20 E. Edinburgh Drive
New Castle, DE 19720
Pro-Se Plaintiff Below Appellant

Ms. Marisol Santiago
11 S. Gray Avenue
Wilmington, DE 19805
Pro-Se Defendant Below Appellee

Re: *Pedro Flores v. Marisol Santiago*
C.A. No.: U408-05-410

Date Submitted: February 10, 2009

Date Decided: February 11, 2009

Letter Opinion

Dear Mr. Flores and Ms. Santiago:

Trial in the above captioned matter took place on Tuesday, February 10, 2009 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of documentary evidence and sworn testimony the Court reserved decision. This is the Court's Final Decision and Order.

Procedural Posture

This is an *appeal de novo* brought pursuant to the Court of Common Pleas under 10 *Del. C.* §9570 *et seq.* from the Magistrate's Court. Plaintiff has timely perfected his appeal and defendant has answered the Complaint. Both parties stipulated pursuant to the Court policy to retain and pay the professional services of Certified Court

Interpreters. The instant action is a debt action for which plaintiff claims defendant borrowed money from plaintiff on different occasions “dating back from March to June 2007”. Paragraph 3 of the Complaint also alleges the “total amount of money borrowed is \$5,400.00.” Finally, in paragraph 3 of the Complaint plaintiff alleges that “...[d]efendant needed to money to pay a lawyer for a criminal charge against her son. Defendant promised to pay the total amount.”

Finally, plaintiff alleges in his prayer for relief that defendant has not repaid the loan and requests this Court to award the amount borrowed plus interests and costs.

The Facts

At trial the plaintiff, Pedro Flores (“Flores”) presented his case-in-chief and called as a witness Louis Garcia (“Garcia”).

Garcia allegedly worked for Pedro Flores but offered little substantive testimony as to the relationship between the plaintiff and defendant in the instant civil action. He earned \$540.00 as an employee of the plaintiff before taxes and \$440.00 net income, but he has never earned more than \$1,000.00 per week. Garcia testified he has never seen defendant Marisol Santiago’s son, Pedro Rivera, either at the jobsite or working under the employ of the plaintiff.

Pedro Flores was sworn and testified. Flores introduced a series of written documentary evidence marked as Plaintiff’s Exhibit 1 and moved into evidence without objection by the defendant. Many of the documents were copies of bills from Sears Optical for glasses, sunglasses, as well as checks for payment of various

living expenses for Pedro Rivera (“Rivera”), who is not a party-defendant to the instant civil action. Some of the documents were Cingular wireless, AT & T bills, and other included expenses at Sam’s Club paid for Pedro Rivera. In addition, several of the individual documents were individual checks made out to Pedro Rivera. Flores testified that he gave these checks to the defendant, who is Pedro Rivera’s mother. At trial the Court learned that Rivera is 23 years of age. On cross-examination defendant questioned how Flores received access to her identification cards and handbags. Defendant also asked plaintiff why he put sugar in her gas tank, as well as damaged her two motor vehicles.

Defendant presented her case-in-chief. Marisol Santiago (“Santiago”) was duly sworn and testified as follows.

Santiago claims she owes Flores no money as his relationship involved a business relationship solely with her son Pedro Rivera. He is not a party to this action. Santiago presented testimony that plaintiff is her mother’s ex-husband and that Flores constantly “persecutes her family and ruins and damages her motor vehicles.” According to defendant, her sole relationship with Flores is that her eldest son accepted employment work at Flores’ business. Plaintiff then allegedly paid her son with checks, but all of them were “stopped payment at the bank.” Santiago presented a group of documents marked as Defendant’s Exhibit 1 which included checks made out to Pedro Rivera; again, most of which the defendant testified were the subject of stop payment orders by various banking institutions. Some of these

checks, all made out to Pedro Rivera individually, not a party-defendant, indicated they were returned reasons: (stop payment). Also enclosed in Defendant's Exhibit 1 were various bank indicating records of Pedro Rivera with different banking institutions displaying that various checks paid by the plaintiff in the instant action were returned for "insufficient funds".

The Law

The instant action is a civil debt action appealed from the Justice of the Peace Court. As such, the plaintiff has a burden of proving the underlying debt action by a preponderance of evidence. *See e.g. Orsini Topsoil v. Carter*, 2004 Del. C.P. LEXIS 17, May 18, 2004 (Welch, J.); *Mantyla v. Wilson*, 2004 Del. C.P. LEXIS 44, February 4, 2004 (Welch, J.); and *Wirt v. Matthews*, 2002 Del. C.P. LEXIS 17, January 11, 2002 (Welch, J.).

Opinion and Order

The Court, as a matter of law, finds by a preponderance of evidence based upon the sworn testimony and documentary evidence submitted at trial that plaintiff has failed to prove its case-in-chief. Not only is the indispensable party, Pedro Rivera, not joined in this action either as a co-defendant or a third-party defendant, no evidence was submitted at trial either by plaintiff or defendant pursuant to paragraph 3 of the allegations of the Complaint that plaintiff provided defendant money for criminal charges and lawyer fees against her son who is not a party to this action.

Clearly, by a preponderance of the evidence, the Court must find that plaintiff failed to prove a debt owed by the defendant. Each party shall bear their own costs.

IT IS SO ORDERED this 11th day of February, 2009

John K. Welch
Judge

/jb

cc: LuAnn Smith, Clerk of the Court
CCP, Civil Division