

July 18, 2007

Thomas C. Marconi, Esquire
Losco & Marconi, P.A.
1813 N. Franklin Street
P.O. Box 1677
Wilmington, DE 19899
Attorney for Plaintiff

Anthony A. Figliola, Esquire
Figliola & Facciolo
1813 Marsh Road, Suite A
Wilmington, DE 19810
Attorney for Defendant

Re: *Catherine M. DiMaio v. Joseph Rychalsky, Jr.*
Civil Action No.: 2007-01-185

LETTER OPINION

Dear Counsel,

Trial in the above captioned matter took place on Thursday, July 12, 2007. Following the receipt of evidence and testimony, the Court reserved decision. This is the Court's Final Decision and Order.

The instant complaint is a civil action for a debt in the amount of \$6,273.60 purportedly for money lent by Plaintiff Catharine DiMaio ("Catherine") to Defendant Joseph Rychalsky, Jr. ("Joseph") on January 15, 2004 and the interest that subsequently accrued on her credit card accounts. According to paragraph 3 of the complaint, Plaintiff advanced cash to Defendant in the amount of \$2,250.00 from her Bank One credit card, and \$1,750.00 from her Citibank credit card and loaned these funds to Defendant with the oral agreement that Defendant would repay her. Plaintiff alleges that the Defendant breached the agreement by failing and refusing to repay the balance owing on the loan. Plaintiff therefore seeks \$6,273.60 plus pre-and post-judgment

interest at the rate of 21.49% plus attorney's fees and costs.¹ Defendant has answered the complaint and denied liability.

THE FACTS

Following trial and receipt of all the evidence,² the Court finds the relevant facts as follows:

Catharine DiMaio met Joseph Rychalsky, Jr. through her father, Rudolph DiMaio ("Rudolph"). As friends, Rudolph and Joseph helped each other and had the practice of loaning each other money back and forth, sometimes concurrently. Catherine was on friendly terms with Joseph and loaned money to him and her father on at least one occasion prior to the transactions at issue in this case. Joseph had also performed some financial work for Catherine.

Catherine testified Joseph had talked to her numerous times about his financial problems and asked her for a loan of \$4,000.00 in early January 2004. Rudolph told Catherine to make the loan to Joseph, vouching for Joseph's ability to repay her. On January 15, 2004, Catherine went to her bank and withdrew \$2,250.00 and \$1,750.00 in cash from two separate credit accounts. She gave the cash, totaling \$4,000.00 to Joseph, who met her at or near the bank. They

¹ Counsel for Plaintiff did not assert, either at trial or in the pleadings, a statute, case law, or any written or oral contract provision which would allow this Court to award attorney's fees.

² At trial the following exhibits were either stipulated or moved into evidence: Joint Exhibit No. 1 was a copy of two Cash Advance Drafts, made out to Catharine DiMaio in the amounts of \$2,250.00 and \$1,750.00. Joint Exhibit No. 2 was a February 2, 2004 statement for Catharine DiMaio's Citi Gold Card indicating a January 15, 2004 advance of \$1,750.00. Joint Exhibit No. 3 was a June 3, 2004 statement for DiMaio's Citi Gold Card. Joint Exhibit No. 4 was a July 6, 2004 statement for DiMaio's Citi Gold Card. Joint Exhibit No. 5 was an August 5, 2004 statement for DiMaio's Citi Gold Card. Joint Exhibit No. 6 was a December 6, 2004 statement for DiMaio's Citi Gold Card. Joint Exhibit No. 7 was a statement from Bank One covering the period from March 6, 2004 to April 6, 2004. Joint Exhibit No. 8 was a statement from Bank One covering the period from August 6, 2004 to September 6, 2004. Joint Exhibit No. 9 was a printout from DiMaio's Wachovia checking account showing a deposit of \$90.00 on February 9, 2004. Joint Exhibit No. 10 was a printout from DiMaio's Wachovia checking account showing a deposit of \$100.00 on April 29, 2004. Joint Exhibit No. 11 was a printout from DiMaio's Wachovia checking account showing a deposit of \$100.00 on May 28, 2004. Joint Exhibit No. 12 was a printout from DiMaio's Wachovia checking account showing a deposit of \$100.00 on June 24, 2004. Joint Exhibit No. 13 was a page from DiMaio's calendar for September 2004 recording several calls asking "Joe" for "the money." Defendant's Exhibit No. 1 was a series of payment receipts showing that between January 15, 2004 and June 23, 2004, Joseph Rychalsky had made payments on Rudolph DiMaio's title loan account in the amounts of \$190.00, \$184.00, \$185.00, \$180.00, and \$180.00.

originally agreed that Joseph would pay Catherine back the full amount within the next month, but when Joseph was unable to do so they agreed that he would also pay her interest on the loan until he was able to pay off the full amount. Neither agreement was supported by a promissory note or in writing.

Joseph never told Catherine that any of the cash would be going to her father Rudolph, and this was not part of Catherine's understanding of the nature of their agreement. However, she knew that both Joseph and Rudolph had the practice of helping each other financially by loaning U.S.C. At some later point Joseph asked Catherine for more money and asked her not to tell her father. Catherine declined to loan Joseph any further cash.

Over several months Joseph paid Catherine \$690.00 on the loan, and Rudolph paid her \$45.00. Joseph changed his address without Catherine's knowledge. Catherine ultimately became aware that Joseph was in bankruptcy proceedings, but she did not file a formal claim in those bankruptcy proceedings. Joseph later pled guilty to perjury for his conduct arising out of those proceedings.

At trial Joseph testified under oath that on January 15, 2004 Catherine had given him only \$3,000.00, and that the money was not for him, but for Rudolph. The record was clear that Joseph had made several payments on Rudolph's title loan, but Rudolph testified that Joseph made these payments as repayment for money that Rudolph had loaned to Joseph, and that such payments had "nothing to do" with the money Catherine had given to Joseph.

The principal Catherine withdrew from her two credit accounts ultimately accrued \$3,008.60 in interest on the two credit cards at 21.49%.

THE LAW

As this is a civil debt action, the Plaintiff has the burden of proving the underlying debt action by a preponderance of the evidence. *Orsini Top Soil and Frank J. Orsini, Jr., v. Kenneth T. Carter and Lisa Carter*, 2004 Del. C.P. LEXIS 10, (April 17, 2007, Welch, J). As the trier of fact, the Court is the sole judge of the credibility of each fact witness. As this Court stated in *Drabold v. Kenney*:

The Court notes as the trier of fact it is the sole judge of the credibility of each fact witness. If the Court finds the evidence to be presented in conflict, as in the instant record, it is the Court's duty to reconcile these conflicts, if reasonably possible to make one harmonious story. If the Court cannot do this, the Court must give credit to the portion of the testimony which, in the Court's judgment, is most worthy of credit and disregard any portion of the testimony in which the Court's judgment is unworthy of credit. In performing this task, the Court takes into consideration the demeanor of each fact witness, the apparent fairness in giving their testimony, the opportunities in hearing and knowing the facts about which each fact witness testified, and any bias or interest each fact witness may have concerning the case.

2005 Del. C.P. LEXIS 32, at *11. The Court will apply this same methodology to the conflicting evidence in the instant record.

OPINION AND ORDER

The evidence in the record seems to indicate that the parties enjoyed some sort of social relationship during the time period in which the disputed transactions took place. The specifics were not detailed in the trial record. However, the Court finds very credible Catherine's sworn testimony that she loaned Joseph the full \$4,000.00 and that he initially agreed to pay her back within a month. It is also clear to this Court based upon the trial testimony that the parties made this agreement without a mutual understanding that any portion of the money was to go to

Rudolph. The Court finds that whether any of the money did in fact go to Rudolph is therefore immaterial to Joseph's contractual obligation to pay Catherine back.

The Court also finds that after Joseph was unable to pay back the full amount within a month, Catherine and Joseph orally amended their initial oral agreement so that Joseph would be liable both for the balance of the loan and also any interest accrued upon that loan. The evidence indicates that Joseph is therefore liable to Catherine for the principal amount of \$4,000.00, plus accumulated interest of \$3,008.60, less the \$735.00 paid to Catherine by both Joseph and Rudolph. The interest charges were also proven by a preponderance at trial by the plaintiff represents interest in plaintiff's two credit card accounts at the rate of 21.49% as a result of the loan to the defendant's \$4,000.00 in U.S.C.

Regarding Joseph's contradicting testimony that Catherine gave him only \$3,000 and that this money was to go directly to her father Rudolph, the Court must say in all candor that given the consideration of both Catherine and Rudolph's testimonies and applying the case law set forth above in determining credibility, Joseph's admission of perjury in the earlier bankruptcy proceeding, as well as the Court's own observation of Joseph's demeanor during his testimony, the Court finds his version of the facts less than creditable. The Court finds Catherine's testimony to be very credible, factually specific and a correct account of the facts that occurred in this matter.

Thus, the Court finds by a preponderance of the evidence at trial that Plaintiff has proven the damages in the amount of Six Thousand Two Hundred and Seventy-Three Dollars and Sixty Cents (\$6,273.60). This amount includes the principal sum plus interest on the credit cards at 21.49%. The Court enters judgment in favor of Plaintiff against Defendant in the amount of \$6,273.60 plus costs and post-judgment interest at the legal rate. 6 *Del.C.* §2301, et seq.

IT IS SO ORDERED this 18th day of July, 2007.

John K. Welch
Associate Judge

cc: Ms. Karen Gallagher
CCP – Civil Division Supervisor