

July 31, 2007

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**Re: Damien August v. Anita Pauksts**  
**Civil Action No. 06-07-021**

**LETTER OPINION**

Dear Counsel,

Trial in the above captioned matter took place on Thursday, July 19, 2007.

Following the receipt of evidence and testimony, the Court reserved decision. This is the Court's Final Decision and Order.

The sole issue following trial is whether Damien August (“plaintiff”) has proven by a preponderance of evidence an underlying debt of \$30,034.85 allegedly owed by Anita Pauksts (“defendant”) as detailed in his complaint. For the reasons set forth below, the Court finds based upon the trial record including sworn testimony and documentary evidence received into evidence that by a preponderance of evidence that judgment shall be entered in favor of the plaintiff in the amount of \$30,034.85.

## THE FACTS

Following trial and receipt of all evidence,<sup>1</sup> the Court finds the relevant facts as follows:

Plaintiff testified that he began a mutual social relationship with defendant in 2004 and cohabited with the defendant in his home until their relationship ended in 2006. Plaintiff purchased a diamond “friendship ring” for the defendant and at times introduced her as his fiancé to friends and family, despite never asking her to marry him. Plaintiff presented evidence that in the course of this relationship he entrusted to her the right to write and sign checks on his behalf for bills associated with his home. The defendant was unemployed during a majority of this period. The defendant entered a rehab facility for cocaine abuse during the period of August 21, 2005 to September 17, 2005; a treatment program funded by her family. During the period of March 31, 2005 through February 6, 2006 defendant wrote, signed and cashed numerous checks in payable to her order totaling \$30,034.85, the bulk of which were written in odd amounts. Copies of these checks were offered as Plaintiff Exhibit No. 2 and the sum total offered as Plaintiff Exhibit No. 3.

At trial, the defendant testified she used defendants’ money for “personal expenses” that included clothes, makeup, haircuts, manicures and other cosmetic

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<sup>1</sup> At trial the following exhibits were either stipulated or moved into evidence: Plaintiff's Exhibit No. 1 was letter from Damien August dated March 27, 2006 addressed to the President of the Wilmington Savings Fund Society informing him of the unauthorized withdrawals and requesting assistance in recovering the amount that was withdrawn. Plaintiff's Exhibit No. 2 was a composite exhibit of checks issued to and cashed by Anita Pauksts from March 31, 2005 through February 6, 2006 including date of cashing. Plaintiff's Exhibit No. 3 was a listing that denoted the individual amounts of each check issued and cashed by Anita Pauksts and the sum total of the checks in the amount of \$30,034.85.

Defendant's Exhibit 1 was a composite exhibit of checks issued by the plaintiff Damien August and plaintiff's mother Cheryl August from August 9, 2005 through September 12, 2005 including date of cashing. Defendant's Exhibit 2 was a copy of Plaintiff's complaint filed in this Court. Defendant's Exhibit 3 was the official transcript of the arbitration hearing dated February 16, 2007.

purchases. The defendant was unable to offer written documents or receipts to verify these purchases. Some of the funds were used to purchase cocaine for her personal use. The defendant was unable to verify what funds, if any, were used on plaintiff's behalf to pay bills per his express agreement to do so. The defendant further stated she had never reviewed bank statements or discussed the payments made to herself with the plaintiff except when he was highly intoxicated in the late evening or morning hours.

The defendant indicated at trial that the disbursements written in her handwriting were justified based on oral promises by the plaintiff to financially support her during the course of their relationship as well as an implied promise of marriage based on the diamond "friendship ring" that he gave to her. Defendant indicated she had not sought employment based on these promises. Defendant testified the plaintiff had assured her that she was under no obligation to work. The defendant was unable to verify at trial through any documentary evidence or specific oral testimony via receipts or other written documents any such financial provisions by the plaintiff on her behalf. Defendant further stated that the withdrawals were justified because a majority of the funds were directed towards her personal upkeep. These expenditures were also on account of plaintiff who always wanted her to "look good".

Plaintiff became aware of the withdrawals by the defendant in March of 2006 after which he attempted to recoup the money from his bank via a letter offered as Plaintiff Exhibit No. 1. Plaintiff indicated that despite having ample opportunities to review his bank statements prior to discovering the withdrawals, he had failed to do

so. Plaintiff at trial insisted that he did not financially support defendant and had never offered to at any point in their relationship to assure her personal financial obligations. Plaintiff also asserted that the defendant's parents were her sole means of support as they were responsible for her bills and expenses during their relationship. In short, plaintiff testified he only authorized the defendant to write checks on his account to pay bills.

Defendant's mother, Renate Pauksts was sworn and testified that she had provided financial support to her daughter "whenever necessary" helping pay for her mortgage, vehicle, insurance, and other household bills among other things. These payments were made for "several months" but not more than a year, by her account.

### **THE LAW**

This is a civil debt action. The plaintiff has a burden of proving the underlying debt action by a preponderance of the evidence. Orsini Topsoil and Frank Orsini 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 sole judge of the credibility of each fact witness. As this Court stated in Drabold v. Kenney:

The Court notes as a 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 in 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 Court finds by a preponderance of the evidence that the monies in dispute in this civil action constituted an actual underlying debt by the defendant to the plaintiff. After considering the credibility of the witness as well as all the exhibits and oral testimony received into the evidence, the Court finds credible plaintiff's sworn testimony that he did not provide the defendant with financial support during their relationship. The Court notes the absence of any written documents or receipts in the record suggesting otherwise.

Plaintiff presented evidence that he was in a relationship with the defendant and in the course of this relationship entrusted to her the right to write checks on his behalf for bills associated with his home. The detailed transactions of the cash disbursements obviously indicate defendant withdrew money from the plaintiff's account. The defendant used these funds for her own personal use and was unable to verify what funds, if any, were used on behalf of the plaintiff. The Court finds that the bills were written with "odd number" dollars and cents to disguise plaintiff's misuse of plaintiff's agreement to pay bills only which he was duly indebted.

Regarding defendant's contradicting testimony that plaintiff had promised to support her, the Court finds that given the consideration of plaintiff and defendant's testimonies, the testimony of Renate Pauksts, and applying the case law set forth in determining credibility, as well as the Court's own observation of defendant's demeanor

during her testimony, the Court finds her version of the facts less than credible. The payment of defendant's mortgage, vehicle, insurance and utility bills, as well as extraneous expenses such as treatment for addiction as evidenced in the record suggest that defendant was supported financially by her parents during this time period. The Court once again notes the absence of any writing in the record or documentary evidence that would suggest plaintiff was financially supporting the defendant.

As to credibility, even though the plaintiff is, in fact, a convicted felon, in considering his sworn testimony and recollection, the Court finds his testimony more credible than the defendant's testimony at trial.

The Court enters judgment in favor of the plaintiff on the claim of Thirty Thousand Thirty Four Dollars and Eighty Five Cents (\$30,034.85) plus costs. The Court also awards pre-judgment interest plus post-judgment interest at the legal rate. 6 Del. C. §2301 et. al. No award of attorney's fees is authorized by the Court by civil statute, case law, or contract provision.<sup>2</sup> Each party shall bear their own costs.

**IT IS SO ORDERED** this 31<sup>st</sup> day of July, 2007.

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John K. Welch  
Associate Judge

Cc: Ms. Karen Gallagher, Chief Civil Clerk, Civil Division  
File

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<sup>2</sup> Neither counsel asserted at trial or in the pleadings cited a statute, case law or any written or oral contract provision which would allow this Court to award attorney's fees.