

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

DAHLINK FINANCIAL)	
CORPORATION,)	
Plaintiff,)	
)	
v.)	C.A. No. CPU4-10-006863
)	
KIMBERLY L. RACHIELE,)	
Defendant.)	

Submitted: July 26, 2012
Decided: July 26, 2012

DECISION AFTER TRIAL

This is a debt action arising from a credit card issued by Chase Bank USA, N.A. (“Chase Bank”). The Defendant, Kimberly L. Rachiele, concedes that she had a credit card account with Chase Bank, and she also concedes there was an account balance of \$10,267.00 as of November 15, 2007. Plaintiff Dahlink Financial Corporation (“Dahlink”) established at trial that it is the successor in interest to Chase Bank with respect to this credit card account.

Dahlink presented three witnesses at trial. Delaware lawyer Mark H. Froehlich testified about a real estate refinancing that took place on November 15, 2007. Mr. Froehlich represented Ms. Raichele and her husband. Dahlink called Ms. Rachiele as a witness. Finally, Dahlink called

its President, CEO and Owner, Ms. Christa Scalies. Dahlink also presented documentary evidence in support of its claim.

In her own case in chief, Ms. Rachiele testified as a witness but did not present documentary evidence.

It is the duty of the Court to weigh the evidence that is presented. In a non-jury trial, the judge, acting as the sole trier of fact, determines the credibility of witnesses and resolves conflicting testimony.¹ Assessing the credibility of witnesses is a matter of judicial discretion, and this Court does not abuse that discretion by choosing to give greater weight to the testimony of one witness over the opposing witness.²

Dahlink bears the burden to prove the case by a preponderance of the evidence. The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists.³ To establish a cause of action for breach of contract, Dahlink must establish three elements by a preponderance of the evidence. First, Dahlink must prove that a contract existed. Second, Dahlink must establish that Ms. Rachiele breached

¹ *Jamison v. State*, 1995 WL 716806, at *2 (Del. Super.).

² *Romain v. State Farm Mut. Auto Ins. Co.*, 1999 WL 1427801, at *2-3 (Del. Super.).

³ *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

an obligation imposed by the contract. Finally, Dahlink must show that it incurred damages as a result of the breach.⁴

Based on the evidence presented, the Court finds there was a valid contract between Chase Bank and Ms. Rachiele. The Court finds that Dahlink is the successor in interest and has standing to pursue this breach of contract action. Finally, the Court finds that Ms. Rachiele breached the contract by failing to make the payments due and owing.

The Court rejects Ms. Rachiele's claim that she had paid off the debt to Chase Bank when she refinanced her home on November 15, 2007. The record evidence established that a refinancing settlement did take place on November 15, 2007 and that \$50,007.61 was deposited into Ms. Rachiele's account at Delaware Federal Credit Union. The record evidence also established that Ms. Rachiele wrote three checks at closing: (i) to Bank of America in the amount of \$16,604.00; (ii) to Citi in the amount of 16,484.00; and (iii) to Chase Bank in the amount of \$10,267.00. However, the record evidence establishes that those checks were never negotiated. The record evidence also establishes that Ms. Rachiele continued to make payments on the Chase account after the November 15, 2007 refinancing.

⁴ *VLIW Tech., LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).

Therefore, the credible evidence establishes that the Chase Bank account at issue here was *not* paid off with the proceeds of the refinancing.

Dahlink has waived any claim to any interest or financial penalties that may have accrued after November 15, 2007, the day of the refinancing settlement.

The general rule is that each party must bear its attorney's fees and expenses of litigation unless there is a "contractual or statutory basis for liability."⁵ Although courts of equity are permitted to impose attorney's fees on the losing side if the prevailing party can show a compelling special equity, law courts in Delaware "may not order the payment of attorney's fees as part of costs to be paid by the losing party unless the payment of such fees is authorized by some provision of statute or contract."⁶ The Court is satisfied that Dahlink has established that there is a contractual basis for an award of attorney's fees and costs of litigation. The Court finds that Dahlink has established a claim for reasonable attorney's fees.

⁵ *Bergin v. McCloskey*, 2008 WL 4662378, at * 1 (Del. Com. Pl.) (citations omitted).

⁶ *Id.* (citing *Casson v. Nationwide Ins. Co.*, 455 A.2d 361, 370 (Del. Super. 1982)).

ORDER OF JUDGMENT

Based on the findings of fact and conclusions of law, the Court concludes that Dahlink has met its burden of proof to establish Ms. Rachiele's liability to Dahlink. **Therefore, Judgment is hereby entered on behalf of Dahlink Financial Corporation and against Kimberly L. Rachiele in the amount of \$10,267.00, attorney's fees in the amount of \$1,702.25, court costs in the amount of \$154.50, and post-judgment interest at the legal rate.**

IT IS SO ORDERED this 26th day of July 2012.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli