

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

**CITIBANK (SOUTH DAKOTA) NA)
now merged into CITIBANK NA,)
Plaintiff,)**

v.)

C.A. No.: CPU4-11-004966

**GARLA R. HACKMAN,)
Defendant.)**

JUDGMENT ORDER

This matter is before the Court on Plaintiff Citibank (South Dakota) NA's, now merged into Citbank NA, request for entry of judgment and petition for an award of attorney fees and costs in this matter. The Court conducted a hearing on April 13, 2012.

1. Plaintiff filed its Complaint on August 19, 2011, which was personally served upon Defendant on September 28, 2011. By its Complaint, Plaintiff sought a principal balance owed of \$6,487.41 after Defendant allegedly defaulted on a credit card account. Plaintiff attached two documents to the Complaint: (1) a sworn Affidavit which affirms the principal balance owed upon default; and (2) a summary of account for Citi Cards reflecting the status of the account as of November 18, 2010, which corroborates the principal balance sought of \$6,487.41.

2. On October 13, 2011, Plaintiff's counsel, Holly Whitney, filed a "Stipulated Judgment" requesting that a court order of judgment be entered against Defendant in the amount of \$7,245.15 (\$6,487.41 for the principal balance owed,

\$109 for court costs, and \$648.74 for in attorney fees.) The Stipulation also provided for post-judgment interest to accrue at the legal rate. The Stipulation sets forth the consequences in the event that Defendant defaults on the monthly payments.

3. By letter dated October 24, 2011, the Court requested that Plaintiff's counsel submit further information in support of the order requested, including an affidavit in support of the petition for an award for attorney fees. Defendant was sent a copy of the Court's October 24 letter.

4. Plaintiff's counsel did not respond to the Court's letter. The Court made numerous efforts to contact Plaintiff's counsel to obtain a response to its October 24 letter, but counsel did not respond.

5. Because Plaintiff's counsel never responded to the Court's inquiries, the Court scheduled a hearing for April 13, 2012. Only Plaintiff's counsel appeared at the hearing, at which the Court inquired as to why Plaintiff's counsel failed to respond to the Court's inquiries. Plaintiff's counsel did not offer an explanation for her failure to respond to the Court's letter and subsequent inquiries. In addition, the Court provided an opportunity at the hearing for Plaintiff's counsel to make a presentation in support of the award of attorney fees and costs but counsel declined to do so. It was counsel's contention that, although she was asking the Court to enter an order of judgment, the Court had no authority to inquire regarding the terms and conditions of the judgment order requested.

6. The general rule is that each party must bear its attorney fees and expenses of litigation unless there is a “contractual or statutory basis for liability.”¹ Although courts of equity are permitted to impose attorney 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.”²

7. Even if this Court assumes *arguendo* that a valid legal basis exists for this Court to award Plaintiff its attorney fees, the analysis does not end there. Under Delaware law, attorney fees must be “reasonable.” Rule 1.5(a) of the Delaware Lawyers’ Rules of Professional Conduct provides that “[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.” Thus, if even if this Court accepts that a contractual or statutory basis exists for Plaintiff’s recovery of fees, Plaintiff still must establish that the requested attorney fees are reasonable.

8. The Court has authority to issue an award of costs to the prevailing party pursuant to 10 *Del. C.* §5101 and Rule 54(d) of the Court of Common Pleas Civil Rules of Procedure. Costs are considered to be allowances made to reimburse a

¹ *Bergin v. McCloskey*, 2008 WL 4662378, at * 1 (Del. Com. Pl. Oct. 22, 2008) (citations omitted).

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

successful party for its expense necessarily incurred.³ The decision to award costs in a civil suit is a matter of judicial discretion.⁴

Because Plaintiff failed to provide any support of the requested award of fees and costs, Plaintiff's request for attorney fees in the amount of \$648.74 and costs in the amount of \$109 is hereby DENIED.

NOW, THEREFORE, JUDGMENT IS HEREBY ENTERED in favor of PLAINTIFF and against DEFENDANT in the amount of \$6,487.41, with post-judgment interest at the legal rate calculated from the date of this Judgment Order.

IT IS SO ORDERED this 3rd day of May, 2012.

Andrea L. Rocanelli

Hon. Andrea L. Rocanelli

³ *Ableman v. Katz*, 481 A.2d 114 (Del. Super. 1984).

⁴ CCP Civ. R. 54(d); *Donovan v. Delaware Water and Air Resources Commission*, 358 A.2d 717 (Del. 1976).