

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

**DAHLINK FINANCIAL CORPORATION,)
assignee of CHASE BANK USA, N.A.,)**

Plaintiff,)

v.)

JASON E. BOCHNIAK,)

Defendant.)

C.A. No.: CPU4-11-005047

Submitted: January 13, 2012

Decided: March 13, 2012

Clark C. Kingery, Esq., CLARK C. KINGERY, P.A., 203 West 18th Street, Wilmington, DE 19802, *Counsel for Plaintiff.*

Adam R. Elgart, Esq., MATTLEMAN, WEINROTH & MILLER, P.C., 200 Continental Drive, Suite 215, Newark, DE 19713, *Counsel for Defendant.*

FLICKINGER, J.

DECISION AFTER TRIAL

Trial was held in this matter on January 13, 2012. Following receipt of documentary evidence, sworn witness testimony, and closing arguments presented by Counsel, the Court reserved decision. This is the Court's Final Decision and Order.

Procedural History

This case originated as a debt action to collect on a delinquent credit card account. On August 25, 2011, Plaintiff Dahlink Financial Corporation ("Dahlink"), assignee of Chase Bank USA, N.A., ("Chase"), filed its complaint against Defendant Jason E. Bochniak ("Defendant"). Dahlink alleges that Defendant defaulted on a Chase Visa credit card agreement, and that Dahlink is the successor in interest on that account. Dahlink asserts that damages on the account are due in the amount of \$21,806.21. Dahlink also seeks post-judgment interest at the legal rate and court costs. Dahlink appended exhibits to the Complaint, including (1) a purported credit card account summary; (2) a purported Bill of Sale from Chase to Turtle Creek Assets, Ltd. ("Turtle Creek") dated May 12, 2011; (3) a purported Bill of Sale from Turtle Creek to Dahlink effective June 2, 2011; and (4) a redacted spread sheet allegedly reflecting the status of a credit card account.

On September 30, 2011, Defendant answered the Complaint generally denying the averments asserted therein. Defendant admitted that he resides at 152 Canal Way, Newark, Delaware.¹ Defendant did not assert any affirmative defense, nor did he file any counterclaim.

¹ For the record, Defendant concedes the accuracy of the address alleged in the Complaint, which is the same address reflected on the Chase billing statements.

On October 11, 2011, Dahlink served Interrogatories and Requests for Admission to Defendant. On December 29, 2011, Defendant filed his notice of response to Dahlink's Interrogatories following a court order issued December 16, 2011. It does not appear that he filed responses to the Request for Admissions.

A pre-trial conference was held on November 7, 2011. Defendant did not appear. Only Dahlink submitted a pre-trial worksheet. Defense counsel, Mr. Elgart, entered his appearance the same day as the pretrial conference, but it is unclear whether he attended the conference.

Trial was held on January 13, 2012. At trial, Dahlink's counsel called one witness, Christa Scalies, who serves as the President and Chief Executive Officer of Dahlink. Ms. Scalies provided direct testimony as to (1) the facts of this case; and (2) two exhibits proffered by Dahlink in support of its case-in-chief.² Dahlink argued that the testimony combined with the proffered exhibits established that it was the proper party in interest to prosecute this action. Dahlink further argued liability and damages which are due and owing. Defendant cross-examined Ms. Scalies, but opted not to call any witnesses in its case-in-chief. Defendant did not submit any exhibits. Defendant did not testify.

Defendant objected to the admissibility of one of the documents proffered as part of Plaintiff's Exhibit 1 -- the Affidavit of Bree DeMoss ("DeMoss Affidavit"). Defendant

² The Court received into evidence the following items:

Plaintiff's Exhibit 1 (pre-marked for identification as Plaintiff's Exhibit A) which contained (1) a Bill of Sale dated May 12, 2011 from Chase Bank USA, N.A. to Turtle Creek Assets, Ltd; (2) a Bill of Sale effective June 2, 2011 from Turtle Creek Assets, Ltd. To Dahlink Financial; (3) redacted spreadsheet reflecting the status for the account of Jason Bochniak; and (4) an Affidavit of Bree DeMoss of Turtle Creek Assets, Ltd dated January 12, 2012.

Plaintiff's Exhibit 2 (pre-marked for identification as Plaintiff's Exhibit B) which contained Chase billing statements with due dates ranging from May 7, 2008 through October 7, 2009.

objected to its admission on the grounds of timeliness of production and trustworthiness. Defendant maintained that it should be struck in its entirety as inadmissible.

Following a colloquy on the admissibility issue, the Court admitted the DeMoss Affidavit over Defendant's objection. While Defense counsel initially raised the issue of timeliness of the production of this document, the primary focus of his objection targeted an error in the DeMoss Affidavit as to the legal entity named as the original creditor. The Complaint names "Chase Bank USA, N.A." as the original creditor, but the DeMoss Affidavit identifies "J.P Morgan Chase Bank, N.A" as the original creditor. Counsel conceded the accuracy of the balance of the affirmations which related to Defendant's identity, account number, and balance on the account. Defendant did not object to any other aspect of the chain of title, or the admissibility of any other document.

At the conclusion of the trial, the Court reserved decision.

Facts

Following trial and receipt of all documentary evidence and sworn testimony, the Court finds the relevant facts to be as follows.

Each party provided an Opening Statement. Dahlink opened by stating that Chase issued a credit card to Defendant. That Defendant defaulted on that account. Post default, Chase sold the account to Turtle Creek Assets, Ltd., by and through its general partner, Forward Properties International, Inc. ("Turtle Creek"), which in turn sold the account to Dahlink. Dahlink stated that it seeks the outstanding balance on the account, plus court costs and post-judgment interest at the legal rate. Dahlink waived two years of pre-judgment interest and attorneys' fees.

Defendant stated outright during his opening that he did not contest being issued a Chase credit card, nor that he made charges on that account. Rather, he argued that Dahlink lacks standing to prosecute this action. Defendant further contended that he made payments on the Chase account that are not accurately reflected in the Dahlink's damages claim.

Dahlink's first witness, Christa Scalies ("Ms. Scalies"), testified that she has served as the President, Chief Executive Officer and Owner of Dahlink since March 2000. Ms. Scalies described Dahlink as a "receivables acquisition company" which purchases delinquent debt portfolios. She testified that she is involved in the acquisition of every account, and she personally has purchased over one hundred (100) portfolios.

Ms. Scalies provided detailed testimony as to the general debt acquisition process followed by Dahlink. She stated that first Dahlink performs a general due diligence on the companies who are the original creditors. Second, she performs due diligence on the intermediary company, in this case Turtle Creek, including its principals and how long it has been in business. She also consults colleagues to ascertain the reputation of each of these intermediary companies in the industry. Finally, she performs due diligence on the process for the accounts being sent to Dahlink. Once she receives the portfolio, she reviews the accounts; the supporting documents related to chain of title and billing statements and consults various databases to verify the debtor data contained in that portfolio.

Specifically, with respect to the intermediary in this case, Turtle Creek, Ms. Scalies provided testimony that Turtle Creek has a direct relationship with Chase, the terms of which are confidential and unknown to her. Ms. Scalies stated that Turtle Creek does not "work the accounts." She expanded upon that assertion by testifying that accounts pass from Chase

directly through to Turtle Creek. Turtle Creek in turn sells the accounts directly to Dahlink. Ms. Scalies stated that Dahlink is able to secure credit card statements for 98% of the accounts that Dahlink purchases, which in turn corroborates the debts. Ms. Scalies stated that she personally reviews the receivables, including spreadsheets, which hold confidential consumer data. She runs the consumer data through a “scrub”³ database process to verify critical pieces of information that are identifiers for the individual debtor. She conceded that some information proves unreliable, such as the debtor’s address, as individuals often move. However, the account numbers and social security numbers need to be valid and accurate. She further testified that she insists that chain of assignment documents be provided so that Dahlink is able to prove that it is the rightful owner of the account.

Ms. Scalies next addressed the specific account at issue in this case in relation to four pages contained in Plaintiff’s Exhibit 1. Ms. Scalies testified that page one was a redacted Bill of Sale from Chase to Turtle Creek dated May 17, 2011, with a “blacked out batch number.”⁴ She elaborated that defendant’s account was one of nine hundred (900) accounts purchased by Dahlink on that date. Defendant did not object to this testimony.

Ms. Scalies testified that page two of Plaintiff’s Exhibit 1 reflected a second bill of sale of the account from Turtle Creek to Dahlink. The document is dated June 2, 2011. Defendant did not raise any objection.

³ Ms. Scalies used what appears to be an industry term without expanding upon its meaning in her testimony.

⁴ The Bill of Sale references a purchase agreement dated February 7, 2011 as between Chase Bank USA, N.A. and Turtle Creek Assets, Ltd., by and through its general partner Forward Properties International, Inc.. The assignment of accounts was effective May 11, 2011. The Bill of Sale was executed on May 12, 2011 by Teresia Buxton on behalf of Chase Bank USA, N.A. and an individual (name illegible) on behalf of Turtle Creek Assets, Ltd..

Ms. Scalies testified that the third page of Plaintiff's Exhibit 1 is a sheet that provides certain data identifiers as to *this* account. The document includes this Defendant's name, address, truncated social security number, the original creditor, the contract date, account number, the balance owed, date of first delinquency, date and amount of last payment, and finally, the charge-off date. Defendant did not object to the admission of this testimony.

Ms. Scalies next testified as to the DeMoss Affidavit as it relates to the chain of title for this account. She testified that the DeMoss Affidavit reflects a transfer from Chase to Turtle Creek. She further stated that the Affidavit contains the accurate account number and shows a delinquent balance of \$ 21,806.21. At that point, Defendant objected to the testimony and the admission of the DeMoss Affidavit.

Defendant argued that the DeMoss Affidavit was prepared the day before trial, and was not timely provided to Defendant. In fact, Defendant first received it on the day of trial. Defendant also directed the Court's attention to an error contained in the Affidavit misidentifying the original creditor. Instead of Chase Bank USA, N.A., the DeMoss Affidavit refers to J.P. Morgan Chase N.A. as the original creditor, which Counsel maintained is a wholly separate legal entity. Defendant maintained that the Affidavit was being offered "to cure a deficiency in bill of sale," and that the mistake causes confusion by not stating the proper owner of the account, nor any party who had been heretofore involved in this case. Defendant cited DRE 902(11)(A)⁵ as support for his argument.

⁵ DRE 902(11) entitled "Certified domestic records of regularly conducted activity" provides in pertinent part that

[t]he original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other

Dahlink countered that the error contained in the DeMoss Affidavit is harmless and that said mistake does not render the entire document defective. Counsel argued that the limited purpose of the Affidavit is to show Dahlink owns the account. Dahlink further argued that the DeMoss Affidavit correctly affirms the Defendant's name, account number, amount due and accuracy is corroborated by other documents. Dahlink argued that even without the Affidavit, chain of title is established. Dahlink correctly raised the fact that Defendant did not object on the grounds of hearsay or lack of foundation.

The Court acknowledged that the Affidavit had not existed more than 24 hours.⁶ The Court observed that viewing the DeMoss Affidavit in its entirety, all of the other information contained therein comports with the contents of other documents contained in Plaintiff's Exhibit 1. The Court determined that the mistake at issue did not render the DeMoss Affidavit invalid for that purpose. Further, the Court concluded that the objection articulated by Defendant goes to the weight of the evidence, not admissibility. Accordingly, the Court overruled Defendant's objection and admitted Plaintiff's Exhibit 1 in its entirety into evidence.

qualified person, in a manner complying with any law of the United States or of this State, certifying that the record (A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (B) was kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

⁶ The Court notes for the record that Defendant did not articulate any basis to find that he had been prejudiced by the timing of the production of the DeMoss Affidavit since the Affidavit does not put forth any new information, and merely reiterates facts that had already been provided throughout the litigation. Specifically, the Complaint and its appended exhibits, as well as Dahlink's Pretrial Worksheet, and appended exhibits, provide the same information that is laid out in the DeMoss Affidavit.

Ms. Scalies then testified regarding the documents contained in Plaintiff's Exhibit 2, which included eighteen (18) credit card statements issued by Chase to Defendant dated May 7, 2008 through October 7, 2009. She testified that the statements confirmed Defendant's name, address and account information. Ms. Scalies conceded that Defendant appeared to be making an effort to pay down the balance. However, toward the end of the cycle, the payments end. She testified that the Chase statements reflect that in January 2009, payments were returned. In April 2009, she testified that several electronic payments were returned, presumably for insufficient funds. Defendant did not object to any aspect of this testimony, and Plaintiff's Exhibit 2 was admitted into evidence.

Ms. Scalies also testified as to communications between Dahlink's counsel and Defendant. Ms. Scalies stated that Dahlink sent a collection letter dated June 13, 2011 to Defendant. Ms. Scalies also testified that her personal notes on the file reflected that Dahlink's counsel had a telephone conversation with Defendant on June 21, 2011, and that during that conversation, Defendant admitted to owing the debt and "wanted to make good on the balance."⁷

On cross-examination, Ms. Scalies testified that Chase Bank USA N.A. is the original creditor. She stated that all legal documents, including contracts, identify Chase Bank USA, N.A. as the original creditor. Referring to Plaintiff's Exhibit 1, Ms. Scalies testified that when Dahlink receives a portfolio, Dahlink also receives a copy of an amassed national file that contains all of the accounts being sold in that lot. The portfolio at issue here had a "face value"

⁷ The Court notes for the record that Defendant did not object to this testimony on either hearsay grounds or DRE 408 "Compromise or Offers to Compromise."

of 29 million, but was likely purchased for much less. She stated that within that lot, she reviews the Delaware cases and the total unpaid balances. Ms. Scalies further stated that she reviews the documents twice. First, during the due diligence phase, she reviews the national file to get assurance that it has not been manipulated. Second, once Dahlink purchases the account, she receives the documents again to verify the purchase. Ms. Scalies conceded that she did not witness Bree DeMoss executing her affidavit.

Defendant did not present a case-in-chief, nor did he call any witnesses. Both parties rested. The Court heard closing arguments from both sides.⁸ At the conclusion of trial, the Court reserved its decision.

Discussion

The matter pending before this Court brings three issues to the table for resolution. First, the Court must decide whether Dahlink is a proper party in interest with standing to sue upon this account. Second, assuming *arguendo* that ownership and standing are established, Dahlink must prove Defendant's liability on this account. Finally, the Court must decide whether the documentary evidence corroborates Dahlink's alleged damages claim. It is the duty of the Court to weigh the evidence that is presented. Dahlink bears the burden to prove its

⁸ The Court notes that Defendant alluded in his closing that the error contained in the DeMoss Affidavit violated the Fair Debt Collection Practices Act. However, even if Defendant had a valid argument, such allegations must be raised by counterclaim and will not be considered defenses to a breach of contract claim. Further, Defendant erred in his argument that a Bill of Sale violates this Court's Administrative Directive on Debt Collection insofar as it fails to include the last four digits of Defendant's social security number.

case by a preponderance of the evidence.⁹ The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists.”¹⁰

A. Dahlink established liability as against this Defendant by showing that a valid credit card agreement existed and that Defendant breached that agreement.

To state a claim for breach of contract, Dahlink must establish three elements by a preponderance of the evidence.¹¹ First, Dahlink must prove that a contract existed. Second, Dahlink must prove that Defendant breached an obligation imposed by the contract.¹² Finally, Dahlink must show that it incurred damages as a result of Defendant’s breach.¹³ However, before this Court reaches the issue of whether liability exists in this case, it must first determine whether Dahlink is a proper party in interest to prosecute this claim. Absent proof of ownership by Dahlink, the claim must fail.

1. Dahlink met its burden of proof as to the chain of assignment and established that it is a proper party in interest to collect on this debt.

Defendant does not dispute that Chase issued a Visa credit card to him; that Defendant incurred charges on that credit card; that he defaulted in his payments on the account; or that a delinquent account balance exists. Rather, Defendant concentrates on the narrow issue of whether Dahlink, as an alleged third party purchaser of the debt, has a legal right to collect upon any alleged debt owed to the original creditor, Chase. Defendant specifically challenges

⁹ *Reynolds v. Reynolds*, 237 A.2d 708, 711 (1967).

¹⁰ *Id.*

¹¹ *VLIW Technology, LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).

¹² *Id.*

¹³ *Id.*

the integrity of the DeMoss Affidavit proffered to establish Dahlink's ownership of the account and its right to collect on the debt.

The first leg of the assignment pertains to the transfer from Chase to Turtle Creek. As part and parcel to Plaintiff's Exhibit 1, Dahlink provided a Bill of Sale dated May 12, 2011 from Chase Bank USA, N.A. to Turtle Creek Assets, Ltd., by and through its general partner, Forward Properties International, Inc., as evidence of this transfer. Defendant did not object to the admission of this document into evidence on any grounds. Further, the DeMoss Affidavit, entered into evidence as part of Exhibit 1 over Defendant's objection, also corroborates the purchase of this account by Turtle Creek from Chase.

For the record, the Court understands Defendant's objection to the DeMoss Affidavit. However, it should be clear that the Court provided ample opportunity for Defendant to state a proper basis for an objection to said Affidavit.¹⁴ Defendant made a tactical decision and chose the path of objecting on the grounds of timeliness and what appears to be a typographical error – not hearsay. The Court cannot rule on an objection that is not raised by counsel and properly before the Court.¹⁵ Moreover, even if the Court sustained Defendant's objection and struck the Affidavit from the record, other evidence exists as part of the record which establishes Dahlink's ownership of Defendant's account. The exclusion of the affidavit would not have changed the ultimate finding.

As to the second leg of the assignment – the transfer from intermediary Turtle Creek to Dahlink – the Court reviewed a Bill of Sale effective June 2, 2011 executed by Gordon Engle,

¹⁴ See Trial Transcript 11:36; 11:56; 11:57.

¹⁵ D.R.E. 103; *Yankanwich v. Wharton*, 460 A.2d 1326, 1330 (Del. 1983).

President of Forward Properties International, Inc., the general partner to Turtle Creek Assets, Ltd. This Bill of Sale was contained in Plaintiff's Exhibit 1. This Bill of Sale "sells, conveys, transfers and assigns to [Dahlink] . . . as of June 2, 2011, all rights, title and interest" to the "accounts, receivables, judgments or evidences of debt" owned by Turtle Creek. Defendant did not object to this document's admissibility. Further, Dahlink's witness, Ms. Scalies, testified in detail as to Dahlink's acquisition of Defendant's account from Turtle Creek. Ms. Scalies further testified as to the validation process employed by Dahlink to verify the accuracy of the accounts purchased, including chain of title documentation and the status of the account. Thus, Dahlink laid a proper foundation for admission into evidence of the second Bill of Sale and its appended exhibit, the redacted spreadsheet showing the status of the Chase account.

Accordingly, this Court finds that Dahlink proved by a preponderance of the evidence that it is a proper party in interest to collect on Defendant's account.

2. Dahlink met its burden of proof that Defendant defaulted on his contractual obligation to pay thereby establishing liability for the debt alleged.

The Court now turns its attention to the question of whether a liability exists upon which Dahlink may sue. Being a proper party in interest is meaningless absent the existence of a liability to pursue. As stated *infra*, to recover on a claim for breach of contract, Dahlink must establish three elements by a preponderance of the evidence: (1) the existence of a contract, whether express or implied; (2) the breach of an obligation imposed by the contract; and (3) resultant damages to Dahlink.¹⁶

¹⁶ *VLIW Technology*, 840 A.2d at 612.

The Court observes that Dahlink failed to produce a copy of the original, executed Credit Card Agreement, as between Chase and this Defendant.¹⁷ Only the Chase billing statements were produced. However, this point is moot as Defendant never disputes that a valid contract existed as between Chase and Defendant. Defendant concedes that he received a Chase Visa credit card and that he made purchases on the account. Defendant does not contest liability for the charges, nor that he defaulted on his payments. Both witness testimony and documentary evidence corroborate these findings. Defendant offered no proof to the contrary. Therefore, the Court need not reach the issue of whether a valid credit card agreement existed, or if Defendant breached that agreement, because these contentions are undisputed. Accordingly, the Court concludes that Dahlink met its burden of proof to establish Defendant's liability for this debt.

B. Dahlink met its burden of proof to establish the damages alleged.

As the Court has found that Dahlink is a proper party in this case and that Defendant is liable for the delinquent account, the only remaining issue to be decided is whether Dahlink met its burden of proof as to its damages claim. Damages for breach of contract will be in an amount sufficient to return the moving party damaged to the position that the party would have been in had the breach not occurred.¹⁸ The moving party, however, bears the responsibility of

¹⁷ For the record, the Court observes that absence of the original solicitation or agreement shall not be an impediment and/or fatal to Dahlink's claim. *Grasso v. First USA Bank*, 713 A.2d 304, 308 (Del. Super. 1998). Moreover, "[u]se of the credit card would constitute acceptance of the terms in the Agreement." *Id.* at 309.

¹⁸ *Meyer v. Meyer, Inc. v. Brooks*, 2009 WL 2778426, at *3 (Del. Com. Pl. May 19, 2009) (citing *Delaware Limousine Service, Inc. v. Royal Limousine Service*, 1991 LEXIS 130, at *8 (Del. Super. 1991)).

proving damages as an essential element of its claim by a preponderance of the evidence.¹⁹ Damages cannot be speculative.²⁰

Dahlink seeks \$21,806.21 in principal damages, as reflected by its Complaint and evidence adduced at trial. The collection of billing statements contained in Plaintiff's Exhibit 1, to which Ms. Scalies testified without objection, corroborate that as of April 9, 2009, Defendant owed a balance of \$21,806.21 on this account. Late fees and finance charges were already included in that balance. Ms. Scalies confirmed that the last Chase billing statement addressed to Defendant, with a billing cycle of August 13, 2009 through September 12, 2009, was due by October 2009 and reflected a delinquent balance of \$21,806.21.

The Court also reviewed the DeMoss Affidavit contained in Plaintiff's Exhibit 1. That sworn affidavit verifies that when Turtle Creek purchased the account from Chase, the unpaid charge-off balance for "Account Number [XXXX]8806," was \$21,806.21. Finally, the redacted spreadsheet admitted into evidence as part of Plaintiff's Exhibit 1 verifies that the account was delinquent as of April 9, 2009 in the amount of \$21,806.21.²¹ Thus the billing statements, together with the DeMoss Affidavit and redacted spreadsheet, verify the debt alleged. Further, despite Defendant's initial representation that he intended to challenge the

¹⁹ *Id.* at *3.

²⁰ *Pharmathene, Inc. v. Siga Technologies, Inc.*, 2011 WL 4390726, *31 (Del. Ch. Sept. 22, 2011); *Meyer*, 2009 WL 2778426 at * 3; *Scotton v. Wright*, 121 A. 180 (Del. Super. 1923).

²¹ The redacted spreadsheet reflects that account holder, Jason E. Bochniak who resides at 152 Canal Way, Newark, Delaware 19702-4840, was delinquent on his account as of April 9, 2009. While the print-out reflects that the last payment in the amount of \$452.00 was received on April 2, 2009, billing statements reflect that the electronic payment was returned as were several others. Earlier in her testimony, Ms. Scalies suggested that the payments were returned "presumably" for insufficient funds. Thus, the account was deemed delinquent as of April 9, 2009, only a few days later. The original creditor, Chase Bank USA, N.A., charged off the account as of September 30, 2009. The sheet reflects a balance owed of \$21,806.21.

accuracy of the damages claim sought by Dahlink, Defendant brought forth no evidence whatsoever to controvert the damages alleged.

Based upon the uncontroverted testimony and documentary evidence, this Court concludes that judgment should be entered in favor of Dahlink in the principal amount demanded, \$21,806.21. While trial evidence showed that Defendant attempted to pay down the balance on the account, payments came to a full stop thereby leaving a delinquent balance. Accordingly, the Court finds that Dahlink met its burden of proof that it is entitled to damages alleged in the amount of \$21,806.21.

Conclusion

For the reasons stated above, the Court hereby enters judgment in favor of Plaintiff Dahlink Financial Corporation on its Complaint against Defendant Jason E. Bochniak. The Court further awards damages to Plaintiff in the amount of \$21,806.21, plus costs and post-judgment interest at the legal rate until satisfied.²² Plaintiff waived its claim to pre-judgment interest and attorneys' fees.

IT IS SO ORDERED this 13th day of March, 2012.

/S/ Joseph F. Flickinger III

Joseph F. Flickinger, III
Judge

²² 6 Del. C. § 2301 *et seq.*