

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Erie Community Federal Credit Union

Court of Appeals No. E-08-046

Appellant

Trial Court No. 07 CVF 00240

v.

Mary Hunter, et al.

DECISION AND JUDGMENT

Appellees

Decided: November 6, 2009

* * * * *

Walter J. Celley and Dawn E. Sanderson, for appellant.

* * * * *

HANDWORK, P.J.

{¶ 1} This appeal is from the April 25, 2008 judgment of the Erie County Municipal Court, which granted judgment in favor of appellees, Mary Hunter and Tamala Jones, and dismissed the claims of appellant, Erie Community Federal Credit Union.

Upon consideration of the assignments of error, we affirm the decision of the lower court.

{¶ 2} Appellant, Erie Community Federal Credit Union, asserts the following assignments of error on appeal:

{¶ 3} "First Assignment of Error

{¶ 4} "The Trial Court erred in finding that appellant (plaintiff) failed to meet its burden of proof by a preponderance of evidence as to appellees (defendants), Patricia Crooks and Tamala Jones.

{¶ 5} "Second Assignment of Error

{¶ 6} "The Trial Court erred in granting judgment in favor of appellees (defendants), Patricia Crooks and Tamala Jones."

{¶ 7} Erie Community Federal Credit Union ("Credit Union") filed an action against Mary Hunter and Patricia Crooks alleging that they violated R.C. 2913.11 by writing a check which caused an overdraft on their account (No. 10204), which they have not satisfied after receiving notice of the dishonor of their check pursuant to R.C. 2307.61(A)(2)(a). The Credit Union alleged that appellees owed it statutory damages of \$3,572 as of November 16, 2005, plus interest. The Credit Union later added Tamala Jones as a defendant to the action.

{¶ 8} Patricia Crooks answered the complaint denying that she had any part in the overdraft. She indicated that she had knowledge that her father intended to put her name on his account, but had no further contact with him regarding this matter or her siblings until his death in 2005. When she was notified of the overdraft, she contacted the Credit Union and told them of her knowledge of the account. She even attempted to contact her sister, Mary Hunter, but was unsuccessful.

{¶ 9} Tamala Jones answered the complaint also asserting that she did not have any interest in Account No. 10204. She asserted that she was a co-owner of Account No. 10203, which was opened on December 6, 2001, and closed on August 14, 2003, and that Mary Hunter was never a party to that account. It was opened solely to assist her father after the death of their mother. Jones had no knowledge of Account No. 10204. She also attempted to contact her sister and gave this information to the Credit Union.

{¶ 10} The Credit Union moved for summary judgment against Crooks and Jones and for default judgment against Mary Hunter. Following a hearing on the matter, the trial court denied summary judgment regarding the claims against Crooks and Jones. The trial court found that Mary Hunter overdrew the account and, therefore, entered default judgment against her. Tamala Jones then filed a "Counterclaim" (which was really a cross-claim) against Mary Hunter. The matter went to trial on April 9 and April 25, 2008. The court approved a statement of the evidence presented at trial because the trial testimony could not be transcribed.

{¶ 11} The judge's statement of the evidence indicates that Ezell Hunter closed Account No. 10203 on July 25, 2003. Crooks and Jones executed a Member Application and Agreement ("signature card"), as joint owners with rights of survivorship of Account No. 10204, with their father, Ezell Hunter, on December 6, 2001. Crooks had not intended to be a joint owner on this account number and Hunter's name was not on the signature card at the time Crooks signed the card. It was the customary procedure of the

bank to have the signature cards signed first and then add the account number at a later date.

{¶ 12} Crooks and Jones had not intended to be joint owners with Mary Hunter and were never notified when she was added to the account. Both believed that Account No. 10204 had been closed. However, both had payroll deductions deposited to Account No. 10204 from 2001 until 2004. Crooks had also made cash withdrawals from the account.

{¶ 13} Mary Hunter closed Account No. 10204 on November 16, 2005, taking all of the funds after Ezell Hunter's death on October 30, 2005. Because Ezell Hunter's social security payment had been made after his death, the U.S. Treasury reclaimed the payment that was deposited on November 3, 2005. In the interim, Hunter had withdrawn that amount, causing an overdraft on the account.

{¶ 14} The trial court concluded that the Credit Union failed to meet its burden of proof as to Crooks and Jones and dismissed the claims against them. The trial court did not address the counterclaim, but we find that it was moot since the trial did not find Jones liable.

{¶ 15} On appeal, appellant argues that the trial court's judgment is contrary to the manifest weight of the evidence. Appellant's sole argument is that the contract created by the signature card clearly satisfies appellant's burden of establishing that Crooks and Jones were liable for the account deficit and that the trial court could not interpret the

contract differently when it was clear and unambiguous. The contractual language provides that: Every joint owner is "* * * jointly and individually liable for any account deficit resulting from charges or overdrafts, whether caused by [any one of the owners] and our costs to collect the deficit * * *."

{¶ 16} We agree that this is the contractual obligation under the agreement, except that the agreement is only between Ezell Hunter, Crooks, and Jones. We find that the crux of this case is not a factual issue, but a legal question of whether a joint owner can be held liable for the overdraft by another joint owner if the first joint owner had no knowledge that the second joint owner was added as joint owner to the account.

{¶ 17} To form a contract, there must be an offer and an acceptance, a meeting of the minds, supported by consideration. *Lucas v. Costantini* (1983), 13 Ohio App.3d 367, 368. In a written contract, the intent to contract is evident in the contract language. *Kelly v. Medical Life Ins. Co.* (1987), 31 Ohio St.3d 130, syllabus.

{¶ 18} In this case, the intent of the parties in this case was to be jointly liable with the parties to the agreement. The signature card signed by Crooks and Jones did not include Mary Hunter. The agreed statement of facts indicates that there is no evidence that Crooks and Jones had any knowledge of the separate signature card signed by Ezell Hunter and Mary Hunter. Furthermore, Crooks and Jones testified that they never intended to be joint owners with Mary Hunter. Therefore, we find that there was no costs

contract between Ezell Hunter, Crooks, Jones, and Hunter to be joint owners. Therefore, Crooks and Jones cannot be found liable for the overdraft on the account by Hunter.

{¶ 19} Appellant's first and second assignments of error are found not well-taken. Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Erie County Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

John R. Willamowski, J.
CONCUR.

JUDGE

Judge John R. Willamowski, Third District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.