

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00412-CV

CORA MARTIN, Appellant

V.

DODEKA, L.L.C., Appellee

On Appeal from the County Court at Law No. 2
Montgomery County, Texas
Trial Cause No. 08-07-07167 CV

MEMORANDUM OPINION

Dodeka, L.L.C. sued Cora Martin to collect a debt based upon her credit card account with Chase Manhattan Bank USA, N.A. Following a bench trial that resulted in a judgment for Dodeka, Martin appealed. In six issues, Martin contends the trial court erred in admitting an agreement between Martin and Chase and that insufficient evidence was introduced to support the trial court's judgment. We affirm the trial court's judgment.

Background

Martin opened a credit card with Chase on April 30, 2002. The agreement allowed Martin to use the credit card to make charges and to receive cash advances. After opening

the account, Martin received monthly statements showing her charges, payments, and monthly balances.

The evidence during the trial showed that Martin never disputed any information in her monthly statements, nor did she dispute the amount shown to be due on her monthly statements. Martin's monthly statements reflect that Martin made payments on her credit card account through September 23, 2005.

Martin failed to pay the balance on her account as of March 18, 2006, in the amount of \$12,045.74. Chase sold Martin's account to Unifund CCR Partners on November 14, 2007. On February 4, 2008, Unifund sold Martin's debt to Dodeka. On February 25, 2008, Dodeka made a written demand that Martin pay the balance due on the account, but Martin did not respond.

On July 23, 2008, Dodeka filed suit against Martin. At trial, Martin acknowledged that the Chase account belonged to her, that she had never contested any of the monthly statements sent to her by Chase, that she had not responded to Dodeka's demand letter, and that she owed \$12,045.74. Although Martin specifically admitted that she owed money to Chase, she then testified that she did not know whether she owed anything to Dodeka.

During the trial, the trial court admitted Holly M. Chaffin's affidavit into evidence. Chaffin, Dodeka's custodian of business records and authorized representative, explained how Dodeka purchased Martin's account. Chaffin's affidavit also asserts that

Martin failed to make payments that were due on her account and that the current unpaid balance of Martin's account was \$13,388.33. Several documents attached to Chaffin's affidavit were also admitted into evidence, including a 2004 Chase Cardmember Agreement; documents indicating that Dodeka had purchased Martin's account;¹ twenty monthly Chase statements, dating from November 2002 through March 2006; Dodeka's demand letter to Martin; and an Affidavit of Indebtedness and Assignment, signed by a representative of Unifund.² The only objection that Martin made to Dodeka's request to admit Chaffin's affidavit with its attached exhibits concerned one of the exhibits, Chase's Cardmember Agreement. Martin objected because the Cardmember Agreement is dated October 2004, although Martin had initially opened her account in April 2002. The trial court overruled Martin's objection and admitted Chaffin's affidavit, together with the documents attached to it.

The trial court's judgment awards Dodeka \$12,045.74 in damages and \$400.00 in attorney's fees. Martin appeals.

Admission of Evidence

In her first issue, Martin asserts that the trial court erred by admitting the 2004 Chase Cardmember Agreement.

¹The bill of sale, which had been redacted to exclude some information in Dodeka's records, reflects that Martin's "remaining balance" was \$12,045.74 on the day Chase sold Martin's account.

² Unifund's affidavit of indebtedness asserts that Martin owed principal in the amount of \$12,045.74 when it purchased the account from Chase.

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *In re J.P.B.*, 180 S.W.3d 570, 575 (Tex. 2005). A trial court abuses its discretion when it acts without reference to any guiding rules or principles. *Garcia v. Martinez*, 988 S.W.2d 219, 222 (Tex. 1999). We must uphold the trial court's evidentiary ruling if there is any legitimate basis for the ruling. *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998).

Because Martin opened her credit card account with Chase in April 2002, she asserted that Chase's October 2004 Cardmember Agreement could not be the agreement "that controlled this account." Dodeka responded that Martin's objection related to the weight of the evidence, but not its admissibility. In overruling Martin's objection, the trial court stated, "The objection will go to the weight, if any, of the exhibit."

At trial, Martin did not assert that the documents attached to Chaffin's affidavit were not properly authenticated as Dodeka's "business records." *See* TEX. R. EVID. 803(6), 902(10). Martin admitted that the Chase account belonged to her and her monthly statements reflect activity after 2004, which she acknowledges she did not dispute. We conclude that the trial court did not abuse its discretion in admitting the 2004 Cardmember Agreement. *See In re J.P.B.*, 180 S.W.3d at 575. We overrule Martin's first issue.

Sufficiency of Evidence

In issues two through six, Martin argues there is no evidence of a contract, no evidence of the alleged contract's terms and conditions, no evidence of the terms that govern the card's finance charges or the card's applicable rates of interest, and no evidence to show how the finance charges and the final balance were calculated.

“The final test for legal sufficiency must always be whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review.” *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). In determining legal sufficiency, we must credit favorable evidence if reasonable fact-finders could, and disregard contrary evidence unless reasonable fact-finders could not. *Id.* A reviewing court cannot substitute its judgment for that of the trier-of-fact, so long as the evidence falls within the zone of reasonable disagreement. *Id.* at 822. Although the reviewing court must consider evidence in the light most favorable to the judgment, and indulge every reasonable inference that would support it, if the evidence allows only one inference, neither fact-finders nor the reviewing court may disregard it. *Id.*

The essential elements of a breach of contract claim are: (1) the existence of a valid contract, (2) the performance or tendered performance by the plaintiff, (3) breach of contract by the defendant, and (4) damages sustained as a result of the breach. *Winchek v. Am. Express Travel Related Servs. Co., Inc.*, 232 S.W.3d 197, 202 (Tex. App.–Houston [1st Dist.] 2007, no pet.). A binding contract exists when there has been an offer, an

acceptance that complies with the terms of the offer, a meeting of the minds, the parties' respective consent to the agreement's terms, and the execution and delivery of the contract with the intent that it be mutual and binding. *Id.* "To be enforceable, a contract must be sufficiently certain to enable a court to determine the rights and responsibilities of the parties." *Id.* (citing *T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221 (Tex. 1992)).

At trial, Martin acknowledged that she held the account with Chase. She also admitted that she owed Chase the outstanding balance on the account. Even though the Cardmember Agreement in evidence is dated 2004, the evidence reflects that Martin continued making payments on her Chase account after 2004, and she further testified at trial that she never disputed any of the statements that Chase had sent to her. Chase's monthly statement for March 2006 indicates that Martin's outstanding balance was \$12,045.74. There are also documents admitted into evidence that reflect that Dodeka purchased Martin's credit card account, and that Martin owed an outstanding balance when the account was purchased of \$12,045.74.

Viewing the evidence in the light most favorable to the judgment, we find the evidence legally sufficient to support Dodeka's claim that Martin breached her account agreement. *See City of Keller*, 168 S.W.3d at 827. We also conclude that the evidence is legally sufficient to support the amount of the trial court's judgment. We overrule Martin's second through sixth issues, and we affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on April 7, 2010
Opinion Delivered June 10, 2010
Before Gaultney, Kreger, and Horton, JJ.