

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

CATHERINE M. GREGORY,)	
Plaintiff)	
v.)	C.A. No: 2007-09-492
BRANDON R. FRAZER,)	
Defendant, Third-Party Plaintiff)	
v.)	
NICOLE M. FRAZER,)	
Third-Party Defendant)	

Submitted: September 22, 2010
Decided: October 8, 2010

DECISION ON REMAND

Thomas C. Marconi, Esquire, Wilmington, Delaware, Attorney for Plaintiff and Third-Party Defendant

Maggie Clausell, Esquire, Dover, Delaware and Robert M. Goode, Esquire, Tigard, Oregon, Attorneys for Defendant and Third-Party Plaintiff
ROCANELLI, J.

This is a breach of contract/debt action. Catherine M. Gregory (“Plaintiff”) contends she and Brandon R. Frazer (“Defendant”) had a contract whereby Defendant would use Plaintiff’s Reader’s Digest Credit Card (“Credit Card”) for Defendant’s business expenses and would repay Plaintiff for Defendant’s charges on the Credit Card plus interest. Plaintiff seeks re-payments of amounts she paid on the Credit Card which Plaintiff attributes to Defendant’s business expenses and which she claims he has not repaid.

After trial and post-trial briefing, the Court issued a decision on October 2, 2009 granting relief to Plaintiff in the amount of \$22,750.41 plus post-judgment interest. Upon an appeal by Defendant of this Court's decision, the Superior Court remanded the matter for a determination on the record as to the second and third elements of Plaintiff's contract claim. As to all other issues raised on appeal, the Superior Court affirmed the judgment of this Court. This is the Court's decision on remand.

To establish a prima facie case of breach of contract, Plaintiff must prove each of three elements by a preponderance of the evidence: (1) a contract existed; (2) Defendant breached an obligation imposed by the contract; and (3) damages resulted from Defendant's breach. The Court finds that Plaintiff met her burden of proof by establishing each element of her contract claim by a preponderance of the evidence.

The first element is satisfied because Defendant concedes there was an agreement between himself and Plaintiff, whereby he was permitted to use the Credit Card and was responsible for re-payment of his charges plus interest. Defendant did not dispute that he was obligated to re-pay Plaintiff for his business charges on the Credit Card.

On the other hand, there was a dispute regarding the second and third elements of Plaintiff's contract claim, whether there was a breach and

whether damages are due and owing. The Court finds that Plaintiff met her burden of proof on the second and third elements which were established at trial by a preponderance of the evidence, that Defendant breached the contract by failing to pay Plaintiff for Defendant's charges on the Credit Card and that Plaintiff suffered damages as a result of Defendant's breach of contract.

With respect to the second element, it was established by a preponderance of the evidence that Defendant breached the contract by failing to make payments to Plaintiff for the money he borrowed through his use of Plaintiff's Credit Card. The Court rejects as incredible Defendant's claims that he paid cash to the Third-Party Defendant that he intended would be used to repay Plaintiff for the Credit Card debt. On the other hand, the Court credits the evidence presented that Defendant made \$900.00 in payments by three separate money orders. The Court therefore finds that Defendant breached the contract because he made no payments other than the three \$300.00 payments by money order.

With respect to the third element, it was established by a preponderance of the evidence that Plaintiff suffered damages attributable to Defendant's breach of contract. It was established at trial by a preponderance of the evidence that Defendant charged \$21,404.95 on the

Credit Card from March 2005 through December 2006 pursuant to his contract with Plaintiff. The damages established by a preponderance of the evidence do not include four separate charges on the Credit Card Statements, totaling \$288.90, that were disputed by Defendant.

The record evidence established by a preponderance of the evidence that Plaintiff paid the Credit Card balance in full on September 17, 2007 and has not been repaid by Defendant. By subtracting \$900.00 repaid by money orders by Defendant to Plaintiff, the damages established by a preponderance of the evidence are \$20,504.95.

The damages established by a preponderance of the evidence do not include any finance charges. The Court finds Plaintiff did not meet her burden of proof to establish finance charges on the Credit Card which are properly attributed to charges made by Defendant. Therefore, the Court finds Plaintiff failed to establish finance charges for which Defendant is responsible under the contract.

Plaintiff has requested and is entitled to both prejudgment and post-judgment interest. Prejudgment interest is \$3,362.17, calculated at \$3.01 per diem on the principal balance of debt from September 17, 2007, when Plaintiff paid the account balance in full, until October 8, 2010, the date of

the entry of Order of Judgment. The judgment totals \$23,867.12. Post-judgment interest accrues at the legal rate from the date judgment is entered.

CONCLUSION

Therefore, an Order of Judgment is hereby entered on behalf of the Plaintiff and against the Defendant in the amount of \$23,867.12, plus post-judgment interest at the legal rate.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli