

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

MIDLAND CREDIT MANAGEMENT, INC.)
ASSIGNEE OF CAPITAL ONE, NA.)
(WALMART))
Plaintiff,)
)
v.)
)
MARIAN E. BEARD,)
)
Defendant.)
)
)
)

C.A. No. CPU6-22-000947

ORDER

Submitted: September 5, 2023

Decided: December 26, 2023

*Upon Consideration of the Commissioner’s Findings of Fact
and Recommendation – ADOPTED*

On this 26th day of December 2023, having considered the Commissioner’s Findings of Fact and Recommendation (“Recommendation”) recommending the Court grant Plaintiff’s Motion for Summary Judgment and deny Defendant’s Motion to Dismiss, and the record, as well as no objections from the parties it appears:

1. On December 12, 2022, Midland Credit Management, Inc. (“Plaintiff”) filed a consumer debt action against Marian E. Beard (“Defendant”). Plaintiff stated Defendant entered into a credit card agreement (“Agreement”) originally with Capital One, NA. (Walmart) who assigned the rights to the account to Plaintiff, who now maintains the debt.¹ Plaintiff stated

¹ Plaintiff’s Complaint ¶¶ 2-3.

Defendant failed to make payments on account XXXXXXXXXXXXX7766 and therefore Defendant defaulted under the terms of the Agreement.² Plaintiff stated Defendant owes Plaintiff \$7,423.08 plus interest and costs.³

2. On January 18, 2023, Defendant filed an Answer to Plaintiff's Complaint. Defendant stated she did not know the rights to the Agreement were Assigned to Plaintiff, Defendant denied owing Plaintiff for the debt, Defendant stated she did not know she defaulted under the Agreement and Defendant denied she owed \$7,423.08.⁴

3. On February 22, 2023, the Court scheduled a pre-trial conference for April 4, 2023. On February 23, 2023, Plaintiff filed a Motion for Summary Judgement. Plaintiff argues that by sworn affidavit they met their burden that the account exists, the account belonged the Defendant, Defendant defaulted on payments to the account and the balance due belongs to Plaintiff as the holder of the account.⁵ Plaintiff asserted Defendant answered Plaintiff's Complaint by denying the allegations without particulars.⁶

4. "The motion shall be served at least 10 days before the time fixed for the hearing."⁷ "The adverse party prior to the day of hearing may serve opposing affidavits."⁸ "The judgement sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgement as a matter of law."⁹ "When a

² *Id* at ¶ 4.

³ *Id* at ¶ 5.

⁴ Defendant's Answer.

⁵ Plaintiff's Motion for Summary Judgement ¶ 3.

⁶ *Id* ¶ 2.

⁷ Ct. Com. Pl. Civ. R. 56(c).

⁸ *Id*.

⁹ *Id*.

motion for summary judgement is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response must set forth specific facts showing that there is a genuine issue for trial."¹⁰

5. On April 4, 2023, the Court held a hearing for Plaintiff's Motion for Summary Judgement. All parties were present. The Commissioner continued the proceeding and directed the Defendant to file a response to Plaintiff's Motion by May 12, 2023. On April 13, 2023, Defendant filed a response to Plaintiff's Motion for Summary Judgement. Defendant stated her contract was with Capital One and not Midland and Capital One wrote off the debt.¹¹ Defendant stated she tried to keep up with the payments, however once she went on Social Security Disability, she could no longer make the payments as Capital One continued to add more interest.¹²

6. On April 13, 2023, Defendant filed a Motion to Dismiss the case in addition to the Answer for the Motion for Summary Judgement. Defendant asserted Plaintiff buys debt pennies on the dollar expecting full payment and she never signed any agreement to pay with Plaintiff.¹³ In considering motions to dismiss filed pursuant to Court of Common Pleas Civil Rule 12(b)(6), the Court must assume that all well-pled facts in the complaint are true.¹⁴ The complaint should not be dismissed unless "the plaintiff would not be entitled to recovery under any reasonably conceivable set of circumstances susceptible to proof."¹⁵ "The Court is required to accept only those "reasonable inferences that logically flow from the face of the complaint, [it] is not required to

¹⁰ Ct. Com. Pl. Civ. R. 56(e).

¹¹ Defendant's Response to Plaintiff's Motion for Summary Judgement ¶ 3.

¹² *Id.*

¹³ Defendant's Motion to Dismiss ¶ 1.

¹⁴ *Battista v. Chrysler Corp.*, 454 A.2d 286, 287 (Del. Super. 1982).

¹⁵ *Id.*

accept every strained interpretation of the allegations proposed by the plaintiff.”¹⁶ “An allegation, though vague or lacking in detail, is nevertheless, ‘well-pleaded’ if it puts the opposing party on notice of the claim being brought against it.”¹⁷ While, the Court is required to accept only those ‘reasonable inferences that logically flow from the face of the complaint,’ [it] ‘is not required to accept every strained interpretation of the allegations proposed by plaintiff.’¹⁸ Moreover, the Court may dismiss a claim “if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law.”¹⁹ Ultimately, “[d]ismissal is warranted only when ‘under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.’”²⁰

7. On April 24, 2023, Plaintiff filed a Motion opposing Defendant’s Motion to Dismiss.²¹ Plaintiff asserted that Defendant failed to demonstrate that Plaintiff cannot prove any set of facts that would entitle relief.²² Plaintiff contended that the assertions made in Defendant’s Motion to Dismiss are wholly without merit, unfounded, and/or inapplicable to this action.²³ Plaintiff noted that it has standing to bring the action through evidence of a bill of sale of Defendant’s debt.²⁴

8. On June 20, 2023, the Court held a hearing for Plaintiff’s Motion for Summary Judgement and Defendant’s Motion to Dismiss. The Commissioner recommended Plaintiff’s

¹⁶ *Abdul-Ahad v. Nationwide Mut. Fire Ins. Co.*, 2016 WL 4269512, at * 2 (Del. Com. Pl. Aug.10, 2016)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Lawyer v. Christiana Care Health System, Inc.*, 2016 WL 2610653, at *3 (Del. Com. Pl. May 6, 2016). (internal citations omitted).

²¹ Plaintiff’s Opposition to Defendant’s Motion to Dismiss.

²² *Id.* at ¶6.

²³ *Id.*

²⁴ *Id.* at ¶ 7.

Motion for Summary Judgement be granted as the Defendant's only response was that it was unfair Plaintiff buys debt at a discount and enforce them against the debtor.²⁵ Defendant provided no legal basis to support this argument, and she does acknowledge her debt to Capital One and the amount she owed.²⁶ The Commissioner recommended Defendant's Motion to Dismiss be denied as Defendant bases it solely on it being unfair Plaintiff can enforce the debt and Defendant's failure to allege that Plaintiff cannot state a claim.²⁷

9. A Commissioner's decision to grant a Motion for Summary Judgement or Motion to Dismiss is case dispositive.²⁸ Appeals from a Commissioner's report regarding case dispositive matters are governed by Court of Common Pleas Civil Rule 112(A)(4).²⁹ "That rule provides a Judge of the Court shall make a *de novo* determination of those portions of the report or specified proposed findings of fact or recommendations made by the Commissioner."³⁰ "A Judge may also receive further evidence or recommit the matter to the Commissioner with instructions."³¹

Under the Court's review, Plaintiff filed a Complaint against the Defendant for the default of a credit card. Plaintiff provided documentation of a bill of sale of Defendant's debt from Capital One, Inc., through an affidavit, Defendant's contact information, the debt amount of \$7,423.08 and two years of statements to Defendant. Defendant filed an Answer to the Motion for Summary Judgement as well as a Motion to Dismiss. Defendant offered no specific facts where there is a genuine issue for trial. Defendant denies being in contract with Plaintiff and claims she tried to

²⁵ Commissioner's Proposed Findings of Fact and Recommendation.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Ct. Com. Pl. Civ. R. 112(A)(4).

²⁹ *Id.*

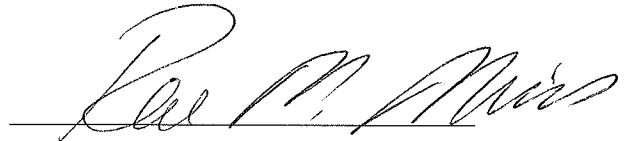
³⁰ *Platinum Financial Services, Corp. v. Huffman & Huffman*, 2001 WL 155537 at *1 (Del. Super. Oct. 31, 2001).

³¹ *Id.*

make payments but went on Social Security Disability. Defendant claims the debt was written off. Defendant's Motion to Dismiss provides no facts supporting Plaintiff's inability to be granted relief.

NOW, THEREFORE, after a review of the record and the Commissioner's Findings of Fact and Recommendation dated September 5, 2023:

IT IS HEREBY ORDERED that the Court Adopt the Commissioner's Findings of Fact and Recommendation in its entirety as neither party filed objections.

A handwritten signature in cursive script, reading "Rae M. Mims", written over a horizontal line.

The Honorable Rae M. Mims
Judge

Cc: Shelly Swafford, Judicial Case Manager Supervisor