

August 3, 2004

Ms. Eileen C. Bifferato
2113 Elder Drive
Wilmington, DE 19808

Ms. Aleidra A. Seth
2115 Elder Drive
Wilmington, DE 19808

**Re: Eileen C. Bifferato v. Aleidra A. Seth
Case No. 2004-04-033**

LETTER OPINION

Dear Ms. Bifferato and Ms. Seth:

Trial in the above captioned matter took place on Monday, August 2, 2004. Following the receipt of evidence and testimony the Court reserved decision. This is the Court's final decision and order.

The sole issue following trial is whether Eileen Bifferato ("plaintiff") proved by a preponderance of evidence an underlying debt of \$1,000.00 allegedly owed by Aleidra A. Seth ("defendant"). For the reasons set forth below, the Court finds based upon the trial record that by a preponderance of evidence that plaintiff is owed a total sum of \$293.52 by the defendant.

THE FACTS

The trial court has a very limited record in this matter.¹ At trial, plaintiff indicated that defendant was her neighbor and she lent her \$1,000.00 because of their friendship. Defendant's Exhibit 4. Plaintiff testified that defendant had two opportunities to repay her the money in full; monies from defendant's income tax refund and on one another occasion; some annuity money defendant allegedly received. No payment has been made as of this date except through wage attachment by defendant's employer. The parties are friends and apparently share a mutual social relationship having been neighbors for sometime. Plaintiff indicated the Note, which is Defendant's Exhibit 4, memorializes the underlying debt of \$1,000.00.

Seth testified at trial. On December 26, 1999 she moved into a new house and borrowed the \$1,000.00 allegedly owed to plaintiff. She believed that her husband had paid \$600.00 and therefore the outstanding debt was settled. Defendant offered hearsay statements from Defendant's Exhibit 3 which indicated Ms. Bifferato and her husband Michael Bifferato told the police only \$500.00 remains unpaid.

¹ The Court received the following exhibits into evidence by stipulation; Defendant's Exhibit 1 was a deed between John B. Fernandez and Jennifer L. Fernandez and Kevin L. Seth; Defendant's Exhibit 2 was copy of a Disbursement By Vendors sheet indicating the attached wages of Ms. Seth by Christiana Care Health Services, Inc.; Defendant's Exhibit 3 was a Police Statement; Defendant's Exhibit 4 was a copy of a Note executed by the parties dated March 29, 1999 wherein Ms. Seth agreed to pay \$200.00 a month until a debt of \$1,000.00 was paid in full. The Note indicated the debt is scheduled to be paid in full on or before August 31, 1999 and provided "all payments were recorded on this logsheet to ensure payment status each month".

THE LAW

A plaintiff in this debt proceeding must prove the underlying action and outstanding debt by a preponderance of evidence. *See e.g. Wirt v. Matthews*, C.C.P. N.C., C.A. No. 199-12-271, 2002 CP Lexis 17, January 17, 2002 (Welch, J.)

OPINION AND ORDER

Based upon the trial testimony and the evidence received, the Court finds by a preponderance of evidence, the outstanding balance owed to the plaintiff is \$293.52. Defendant's Exhibit 2. The Court has carefully examined the credibility of each fact witness who testified at trial and believes no other monies were paid by defendant to the plaintiff other than the monies received through wage attachment by Magistrate's Court with defendant's employer. Defendant's Exhibit 4. The Court therefore enters judgment for \$293.52 with interest from the date of the filing of the Complaint in the Court of Common Pleas. 6 *Del. C.* §2301 *et seq.* Each party shall bear their own costs.

Before concluding the Court notes that the defendant has not filed a supersedeas bond or filed a Motion to Modify the Underlying Wage Attachment with her employer or in Magistrate's Court. Upon communication with court personnel, defendant has indicated that she does not intend to do so. The Court makes this observation because it appears the wage attachment apparently will continue and the judgment debt will ultimately be satisfied without further intervention by this Court.

IT IS SO ORDERED this 3rd day of August 2004.

John K. Welch
Associate Judge

cc: Clerk of the Court, Civil Division
Court of Common Pleas