

November 18, 2004

Mr. Dominic Grigoli
16 Currant Drive
Newark, DE 19713

Jeffrey M. Boyer, Esquire
Boyer & Katz
42 Reads Way, Suite 112
New Castle, DE 19720
Attorney for Defendant Kenny Cummings

Re: *Dominick Grigoli v. Kenny Cummings*
C.A. No.: 2004-07-200

Date Submitted: November 15, 2004

Date Decided: November 18, 2004

LETTER OPINION

Dear Mr. Grigoli and Mr. Boyer:

Trial in the above captioned matter took place on Monday, November 15, 2004. Following the receipt of evidence and testimony the Court reserved decision. This is the Court's final decision and order.

THE FACTS

This is an appeal *de novo* brought pursuant to 10 *Del. C.* §9570 *et seq.* from the Magistrate's Court. Plaintiff Dominick Grigoli ("Grigoli") seeks \$2,300.00 in his Complaint filed in the Court of Common Pleas for the purchase and delivery of tables allegedly by the end of March 2004. (Complaint, ¶ 3). In his Complaint Grigoli alleges Defendant Kenny Cummings ("Cummings") did not deliver the tables, nor did he refund the money given to purchase the

tables pursuant to an agreement allegedly documented by a handwritten note following the mutual dissolution of their business. Grigoli asked for a judgment in the amount of \$2,300.00.

Defendant Cummings has answered the Complaint and denied the allegations of the Complaint as well as asserted a counter-claim. The essence of Cummings' counter-claim is Defendant had made the tables available to Grigoli but Grigoli failed to pay the \$2,300.00 per the terms of the agreement.

Grigoli testified at trial that Defendant never presented the tables to him at the end of the month, nor did he provide him the \$2,300.00 as a result of the handwritten agreement.¹

Grigoli conceded during direct testimony that the times and dates set forth in his Complaint below in Magistrate's Court are different than the dates and times and money sought in the Court of Common Pleas *de novo* in this Court. Grigoli concedes he has no receipt, contract or written documentary evidence to show he ever gave the Defendant \$2,300.00 in USC. Nor did the Defendant ever give him the tables in return for the USC which appeared to the Court the *quid pro quo* for the tables.

The Defendant took the stand and testified that he never received the \$2,300.00; nor did he give the Defendant the tables pursuant to the hand written agreement. He asserts no agreement was every consummated and no debt is therefore owed to Grigoli.

THE LAW

In a debt action Plaintiff has the burden of proving the underlying debt by a preponderance of the evidence. *See; e.g. Wirt v. Matthews, et al.*, 2002 Del. C.P. Lexis 16, Welch, J. (April 9, 2002).

¹ It must be noted that Defendant made a Motion for a Directed Verdict at the conclusion of the Plaintiff's case at which time the Court reserved decision. For the reasons set forth in this decision, that Motion is now moot.

OPINION AND ORDER

At trial the Court received testimony from both Grigoli and Cummings. The sole issue before this Court is whether Grigoli proved by a preponderance of evidence that he is owed the \$2,300.00 in USC as a result of the breach of contract asserted in his Complaint.²

It is clear from the testimony and evidence received at trial that Plaintiff failed to meet the burden of preponderance of evidence that the \$2,300.00 was owed by the Defendant to the Plaintiff as a *quid pro quo* for the tables mentioned in the handwritten note. (Plaintiff's Exhibit No. 1). It appears from the testimony at trial, albeit mixed, that the tables were to be exchanged and served as the *quid pro quo* for the \$2,300.00 USC. Plaintiff never presented any documentary evidence to show that he actually paid the \$2,300.00. Nor did the Defendant ever deliver the tables in question pursuant to the handwritten note marked as Plaintiff's Exhibit No.: 1.

Judgment is therefore entered in favor of the Defendant in this matter. As to Defendant's counter-claim, judgment is entered in favor of the Plaintiff as Defendant failed to prove the counter-claim by a preponderance of the evidence. Each party shall bear their own costs.

IT IS SO ORDERED 18th day November, 2004.

John K. Welch
Associate Judge

/jb
cc: Barbara C. Dooley
CCP Civil Case Manager

² Plaintiff's Exhibit No.: 1 was a handwritten note from Kenny Cummings that "released 9-1 anything of KC's Pizza d/k/d/c Corp. for \$6,000.00. Two thousand dollars owed at the end of the month with tables." It was signed by Kenny Cummings.