COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
WILMINGTON, DELAWARE 19801

John K. Welch
Judge

September 19, 2011

William W. Erhart, Esquire
William W. Erhart, P.A.
1011 Centre Road, Suite 117
Wilmington, DE 19805
Attorney for Plaintiff

Mr. Clarence Raynor
920 N. Monroe Street
Apt 305
Wilmington, DE 19801-1337
Pro-se Defendant

Ms. Jerri L. Cherry
115 5th Street, Lot #3
Delaware City, DE 19706
Pro-se Defendant

Re: W*ilmington Police & Fire FCU v. Clarence Raynor and Jerri Cherry*
C.A. No.: CPU4-10-005303

Date Submitted: September 13, 2011
Date Decided: September 19, 2011

LETTER OPINION

I. Introduction.

Dear Counsel:

Trial in the above captioned matter took place on Tuesday, September 13, 2011 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of documentary evidence and sworn testimony the Court reserved decision. This is the Court's Final Decision and Order.

II. Procedural Posture.

This is a breach of contract or debt collection action. Wilmington Police and Fire FCU (hereinafter "Plaintiff") filed a Complaint on August 27, 2010, alleging that Jerri L. Cherry (hereinafter "Defendant") and Clarence Raynor (hereinafter "Raynor") entered into two separate loan agreements with Plaintiff, that Defendant and Raynor failed to make payments as required under the loan agreements, resulting in Plaintiff suffering damages. More specifically, Plaintiff alleged that the parties entered into a loan agreement on April 6, 2005, for a loan in the amount of $7,519.00 plus interest at the rate of 5.5% per year. Defendant and Raynor failed to make payments on this loan, the collateral securing the loan was repossessed and sold, and a deficiency balance in the amount of $3,294.33 remains on the loan, plus $105.00 in accrued interest. Further, Plaintiff alleged that on June 14, 2007, the parties entered into another loan agreement for the amount of $3,780.00 plus interest at the rate of 13% per year. Defendant and Raynor failed to make payments on the loan, and the remaining balance is $1,648.15, plus $210.70 in interest. Finally, Defendant demanded judgment in the total amount of $4,942.48, plus post judgment interest, attorneys fees, and costs.

On October 7, 2010, Plaintiff filed a default judgment against Raynor for want of an answer. On October 2, 2010, Defendant filed a Motion to Dismiss disputing the authenticity of both Defendant and Raynor's signatures on the April 6, 2005 loan agreement. On October 18, 2010, Defendant filed an Answer denying the existence

of a contract with respect to the April 6, 2005 loan agreement only. On November 5, 2010, Judge Rocanelli denied Defendant's Motion to Dismiss. At trial, Defendant again disputed the existence of only the April 6, 2005 contract, arguing that her purported signature on the document is not authentic.

Thus, the sole issue before this Court is whether Plaintiff has proved beyond a preponderance of the evidence that the April 6, 2005 contract existed between the Plaintiff and Defendant. More specifically, whether Defendant's purported signature on the document is authentic is the dispositive issue for this Court to decide by a preponderance of the evidence. For the reasons set forth below, the Court enters judgment in favor of the Plaintiff.

III. The Facts.

At trial, Plaintiff presented its case in chief and called Defendant as its first witness. Defendant admitted to co-signing the June 14, 2007 loan, but denied co-signing the April 6, 2005 loan application, promissory note, or insurance documents.

Plaintiff then called Douglas Rifenburgh (hereinafter "Rifenburgh") to testify.[1] Rifenburgh worked for Plaintiff as a teller and loan officer from 1989 through 2006. Rifenburgh was working at the bank as a teller on April 6, 2005. Rifenburgh testified to the standard procedure for the witnessing of loan documents. First, the bank employee/witness will identify the applicant, usually by looking at their driver's

[1] Rifenburgh testified at deposition on September 1, 2011. Select portions of Rifenburgh's deposition were read into the record by Plaintiff and Defendant at trial. Additionally, Rifenburgh's entire deposition was admitted into evidence as Plaintiff's exhibit # 6.

license. Then, the witness will watch the applicant sign the application in person. Rifenburgh testified that he would not sign a contract as a witness unless he visually observed the borrower sign the contract.

Rifenburgh testified that on April 6, 2005, he knew who Defendant was because she had an account with the bank, and he had encountered her while working as a teller on multiple occasions. He testified that he witnessed Defendant sign the April 6, 2005 application[2], promissory note[3], and insurance form[4].

Plaintiff also called Maria Gestwicki (hereinafter "Gestwicki"), the current manager of the Wilmington Police and Fire FCU branch where Plaintiff alleges the April 6, 2005 contract was entered into. Prior to becoming manager, Gestwicki had 11 years of experience working in banks. Gestwicki was not an employee of the bank on April 6, 2005.

Gestwicki testified as to the amounts currently owed on both the April 6, 2005 and June 14, 2007 loans. The remaining balance on the April 6, 2005 loan is $3,588.20. This includes a principal balance of $3,294.33 plus $293.87 in interest. The remaining balance on the June 14, 2007 loan is $ 2081.99. This includes a principal balance of $1,648.18 plus $433.81 in interest. After Gestwicki finished testifying, Plaintiff rested.

[2] Pl's. Ex. # 2.
[3] Pl's. Ex. # 1.
[4] Pl's. Ex. # 3.

Defendant then began her case in chief and called Raynor as her first witness. Raynor is Defendant's uncle. Raynor testified that he signed the April 6, 2005 loan application, promissory note, and insurance document. He testified that Defendant was not with him when he signed these documents and that she did not sign any of those documents.

Finally, Defendant testified that she was not at the bank on April 6, 2005. In support of this testimony, Defendant introduced a time log from her employer that provided that Defendant was at work from 9:25 am to 3:00pm on April 6, 2005.[5] Defendant represented that the bank closes at 3:00pm, and therefore she could not have been at the bank on April 6, 2005.

IV. The Law.

In a civil claim for breach of contract, the burden of proof is on the Plaintiff to prove the claim by a preponderance of the evidence.[6] To state a claim for breach of contract, the plaintiff must establish the following: (1) a contract existed between the parties; (2) the defendant breached the contractual obligations; and (3) as a result of the breach, the plaintiff suffered damages.[7]

[5] Def's. Ex. # 1.
[6] *Interim Healthcare, Inc. v. Spherion Corp.*, 844 A.2d 513, 545 (Del. Super. 2005).
[7] *VLIW Technology, LLC v. Hewelett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

V. Discussion

As stated *infra*, the sole issue pending before this Court is whether Plaintiff has established by a preponderance of the evidence that Defendant's purported signature on the April 6, 2005 promissory note is authentic. The balance of the elements listed above were also proven at trial by a preponderance of the evidence; namely element 1, 2, and 3. Based on all the documentary and oral testimony in the record, the Court finds that the Plaintiff has proven beyond a preponderance of the evidence all elements of its breach of contract claim.

Plaintiff has also established by a preponderance of the evidence that Defendant's signature on the April 6, 2005 promissory note is, in fact authentic and is defendant Cherry's signature. Defendant does not dispute the authenticity of the June 14, 2007 loan documents. Defendant's signature on the June 14, 2007 loan documents is nearly identical to Defendant's purported signature on the April 6, 2005 loan documents. The April 6, 2005 loan documents contain Defendant's correct social security number, drivers license number, address, and employment information. Rifenburgh testified that on April 6, 2005 he personally witnessed Defendant sign the documents at issue. Rifenburgh also testified that he knew who Defendant was because he had encountered her before when he was working as a teller, and it was his standard practice to check all loan applicants' drivers' licenses before signing any loan documents as a witness.

Defendant introduced some evidence to dispute the authenticity of the signature. Raynor, Defendant's uncle, testified that Defendant was not with him at the bank on April 6, 2005. Defendant introduced her employer's employee time log dated April 6, 2005. The log established that Defendant was at work from 9:25am-3:00pm on April 6, 2005.[8] Defendant represented on the record that the bank is only open until 3:00pm. The Court does not find this evidence sufficient to rebut Plaintiff's evidence regarding the authenticity of the signature. As the trier of fact, the Court must weigh the evidence presented and make credibility determinations.[9] Simply put, the Court finds the aforementioned evidence presented by Plaintiff to be more credible, and Defendant and Raynor's testimony less credible. Thus, the Court finds that Plaintiff has met its burden of proving all elements of its claim for breach of contract by a preponderance of the evidence.

Therefore, the Court enters judgment in favor of the plaintiff in the amount of $4,942.48 plus post judgment interest at the legal rate, 16 *Del.C.* §2301 *et seq.* Pre-judgment interest shall be awarded in the amount of $2,070 pursuant to the Exhibit "D" of Plaintiff's Complaint, Plaintiff has not pled a statute, case law, or contract for attorney's fees, and hence attorney's fees are not awarded.

[8] Def's. Ex. # 1.
[9] *Richardson v. A & A Air Servs., Inc.*, 2007 WL 2473284, *1, *5 (Del. Super. July 31, 2007).

IT IS SO ORDERED this 19th day of September, 2011.

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John K. Welch
Judge

/jb
cc: Ms. Tamu White, CCP Chief Civil Case Manager