

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

John K. Welch
Judge

June 25, 2012

Mrs. Caroline Gibeau
1203 Hogan Grove Church Rd.
Dublin, GA 31021

Deborah M. Kosh
Steve D. Bennett, Jr.
14 Forrest Ave.
Claymont, DE 19703

Re: Caroline Gibeau v. Deborah M. Kosh and Steve Bennett, Jr.
C.A. No. CPU4-11-005403

LETTER OPINION

Dear Caroline Gibeau, Deborah M. Kosh, and Steve Bennett, Jr.:

Trial in the above captioned matter took place on Tuesday, May 29, 2012 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of documentary evidence¹ and sworn testimony, the Court reserved decision. This is the Court's Final Decision and Order.

¹ The court received into evidence the following items: Plaintiff's Exhibit # 1 (Credit bureau summary report for Ms. Gibeau); Plaintiff's Exhibit # 2 (Documents from Wachovia Bank of Delaware, NA and e-mail correspondence between Ms. Gibeau and Ms. Kosh from February to June 2009); Plaintiff Exhibit # 3 (Laurens County criminal report regarding alleged fraud reported by Ms. Gibeau against Ms. Kosh); Plaintiff's Exhibit # 4 (American Express account statements dated August through October 2008 for account ending in # 81008, Chase unauthorized use form, other credit card statements, employee pay stubs for Ms. Gibeau for the year 2008, and various Georgia sales receipts including: Wal-Mart, Best Buy, and Home Depot); Plaintiff's Exhibit # 5 (Western Union, Wachovia bank statement, check receipts); Plaintiff's Exhibit # 6 (Copy of check from Ms. Gibeau to Ms. Kosh in the amount of \$1,425.00); Plaintiff's Exhibit # 7 (Court order dismissing civil fraud claim in Georgia filed by Ms. Gibeau against Ms. Kosh, and related court documents); Defendant's Exhibit # 1 (Letter from American Express to Ms. Kosh stating a zero balance on account ending in # 82014, dated May 8, 2012); Defendant's Exhibit # 2 (Letter from American Express to Mr. Bennett stating a zero balance on account ending in # 82022, dated May 16, 2012); Defendant's Exhibit # 3 (Letter from Ms. Gibeau to Ms. Kosh requesting Ms. Kosh contact her regarding a dispute between Ms. Gibeau

I. Procedural Posture

This is an action brought by Caroline Gibeau ("Ms. Gibeau"), seeking money damages for fraud and breach of contract. On August 29, 2011, the Justice of the Peace Court entered judgment in favor of Ms. Gibeau. On September 13, 2011, Deborah Kosh ("Ms. Kosh") and Steve Bennett, Jr. ("Mr. Bennett") filed an appeal in this Court.

On October 12, 2011, Ms. Gibeau filed a Complaint alleging Ms. Kosh fraudulently opened American Express Green and Chase Amazon credit card accounts in Ms. Gibeau's name in August 2008 without Ms. Gibeau's knowledge or permission. Ms. Gibeau alleged that Ms. Kosh and Mr. Bennett used the credit card accounts, failed to make payments on the American Express account, and made one partial payment on the Chase Amazon account. Ms. Gibeau alleged a balance of \$5,734.72 on the American Express account and \$165.90 on the Chase Amazon account. Ms. Gibeau seeks damages in the amount \$5,823.67, based on the \$5,734.72 American Express principal balance plus the remaining \$88.95 balance on the Chase Amazon account. Ms. Gibeau also seeks damages based on an allegedly unpaid personal loan between Ms. Gibeau and Ms. Kosh in the amount of \$3,490.00. Finally, Ms. Gibeau seeks to recover \$709.38 for a Laurens County, Georgia court filing fee and transportation fee for Laurens County officers to retrieve Ms. Kosh from Delaware related to a fraud charge Ms. Gibeau filed against Ms. Kosh in Georgia.

On October 28, 2011, Ms. Kosh and Mr. Bennett each filed an Answer. Ms. Kosh and Mr. Bennett denied fraudulently opening the American Express Green and Chase Amazon credit

and Ms. Kosh); Defendant's Exhibit # 4, 5, 6 (Court documents and related documents regarding offenses and treatment of Ms. Kosh); Defendant's Exhibit # 7 (Various documents filed in the Justice of the Peace Court in this action); Defendant's Exhibit # 8 (Ms. Kosh's correspondence with a collection agency and payment information for her Verizon Wireless and Direct TV accounts).

card accounts in Ms. Gibeau's name. Ms. Kosh and Mr. Bennett denied owing money to American Express. Also, Ms. Kosh and Mr. Bennett each provided a letter from American Express that stated there was a zero balance on American Express credit card account numbers ending in # 82022 and # 82014.² Ms. Kosh admitted receiving the separate personal loan from Ms. Gibeau but stated she has made payments on the loan. Mr. Bennett denied the existence of a personal loan between Ms. Gibeau and Ms. Kosh. Ms. Kosh and Mr. Bennett denied liability for the Laurens County, Georgia court filing and transportation fees.

II. Facts

Ms. Gibeau and Ms. Kosh are sisters. Ms. Gibeau testified that Ms. Kosh approached Ms. Gibeau and asked her to be a reference on an American Express credit card account for Ms. Kosh. Ms. Gibeau agreed to be a reference on Ms. Kosh's account but made no other representations. At the end of 2008, Ms. Gibeau received calls from American Express regarding the balance on an American Express account ending in # 81008. Ms. Gibeau was advised by American Express that the credit card account ending in # 81008 was opened in her name, listing a Wilmington, Delaware address, and had an outstanding balance. Ms. Gibeau testified that she has never lived in the State of Delaware. Ms. Gibeau testified that she recognized the Delaware address provided for the American Express account as a prior address of Ms. Kosh and Mr. Bennett.

Ms. Gibeau submitted statements into evidence showing purchases made in Delaware on the American Express account ending in # 81008. Ms. Gibeau testified that she could not have made these purchases because she was living in Georgia at the time. In support of her testimony, Ms. Gibeau offered numerous receipts showing purchases made in Georgia close in time to the

² Defendant's Exhibit # 1 and # 2.

Delaware purchases reflected in the American Express statements. Ms. Gibeau testified she made these Georgia purchases. During the time the American Express purchases were made, Ms. Kosh and Mr. Bennett testified that they lived in the State of Delaware.

Ms. Gibeau submitted into evidence American Express credit card statements with transactions dated from August 2008 through October 2008 for account ending in # 81008. The transactions listed on the American Express statements were made at various locations in Delaware.³ Ms. Gibeau also submitted into evidence employment pay stubs, various receipts, and statements for other credit cards reflecting her employment and credit card purchases she made in Georgia, dated during the same time period, August 2008 through October 2008.⁴

Ms. Kosh conceded that she opened the American Express credit card in both her and Ms. Gibeau's names. Later, Ms. Kosh added Mr. Bennett to the account. Ms. Kosh and Mr. Bennett admitted using the card but testified that there is no balance presently owed on the account. Ms. Kosh and Mr. Bennett each submitted a letter from American Express which stated that there is a zero balance due on an American Express credit card.⁵ The account number listed on Ms. Kosh's letter from American Express ends in # 82014, and the account number listed on Mr. Bennett's letter from American Express ends in # 82022.

III. Discussion

In a civil case, the Plaintiff bears the burden to prove her claim by a preponderance of the evidence.⁶ Common law fraud consists of five elements: (1) a false representation, usually one of fact, made by the defendant; (2) the defendant's knowledge or belief that the representation was false, or was made with reckless indifference to the truth; (3) an intent to induce the plaintiff

³ Plaintiff's Exhibit # 4.

⁴ Plaintiff's Exhibit # 4.

⁵ Defendants' Exhibits # 1 and # 2.

⁶ *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

to act or to refrain from acting; (4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and (5) damage to the plaintiff as a result of such reliance.⁷

For the reasons set forth, this Court finds that Ms. Gibeau has proven her fraud claim regarding the American Express credit card account by a preponderance of the evidence. This Court finds that Ms. Kosh made a knowingly false representation when she opened the American Express credit card in both her and Ms. Gibeau's names without Ms. Gibeau's consent. Ms. Gibeau refrained from acting until she received calls from American Express regarding the balance on account ending in # 81008 because she was unaware Ms. Kosh had opened the credit card account in her name. Ms. Kosh used the card for purchases and Mr. Bennett's name was added to the card so he could also use the card for purchases.

The American Express statements submitted by Ms. Gibeau showed that the transactions for card ending in # 81008 made by Ms. Kosh and Mr. Bennett were at various locations in Delaware. For example, the credit card was used on September 6, 2008 at Acme in Delaware and on September 14, 2008 at Cumberland Farms in Delaware.⁸ However, Ms. Gibeau submitted various receipts, other credit card statements, and employee pay stubs to show that she was in Georgia during the time the American Express transactions were made in Delaware. For example, Ms. Gibeau submitted receipts from a Visa credit card that showed Ms. Gibeau made purchases at a Wal-Mart in Georgia on the same dates the American Express card was used in Delaware, September 6 and September 14, 2008.⁹ Simply put, Ms. Gibeau could not have made the American Express card purchases in Delaware.

⁷ *Malinak v. Kramer*, 2012 WL 174958, at *2 (Del. Com. Pl. Jan. 5, 2012).

⁸ Plaintiff's Exhibit # 4.

⁹ Plaintiff's Exhibit # 4.

Ms. Kosh and Mr. Bennett each submitted a letter from American Express stating there is a zero balance for account numbers ending in # 82014 and # 82022. The letter from American Express to Ms. Kosh is dated May 8, 2012 and references an account ending in # 82014.¹⁰ The letter from American Express to Mr. Bennett is dated May 16, 2012 and references an account ending in # 82022.¹¹ However, Ms. Gibeau's American Express statements listed account ending in # 81008 for the time period the charges were made, August 2008 through October 2008. Even assuming, *arguendo*, the American Express account number changed from the time the card was opened in 2008, Ms. Kosh and Mr. Bennett did not present any documentation linking account ending in # 81001 to account numbers ending in # 82014 and # 82022.

Based on the Complaint, Ms. Gibeau seeks \$5,734.72 in damages related to the American Express card. However, the balance reflected in the last American Express statement submitted, October 2008, shows a balance of \$5,245.79.¹² Therefore, Ms. Gibeau has only established damages in the amount of \$5,245.79 with respect to this claim.

Ms. Gibeau has not proven her fraud claim regarding the Chase Amazon credit card account by a preponderance of the evidence. At trial, there was limited testimony by Ms. Gibeau, Ms. Kosh, and Mr. Bennett regarding the Chase Amazon credit card account. Ms. Gibeau submitted into evidence a Chase form she filled out regarding the charges she disputed on the Chase Amazon card, however, the form did not reflect the balanced owed or partial payment made on the Chase Amazon account.¹³ Ms. Kosh and Mr. Bennett denied owing the balance on the card, and Ms. Gibeau did not submit sufficient evidence to support a claim of damages as a result of Ms. Kosh's and Mr. Bennett's use of the Chase Amazon credit card.

¹⁰ Defendant's Exhibit # 1.

¹¹ Defendant's Exhibit # 2.

¹² Plaintiff's Exhibit # 4. See American Express statement with closing date November 3, 2008.

¹³ Plaintiff's Exhibit # 4.

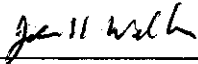
Ms. Gibeau has proven her claim to recover the remaining balance on the separate personal loan given to Ms. Kosh in the amount of \$3,490.00. Ms. Kosh admitted to being given the personal loan by Ms. Gibeau, and owing the balance of the loan to Ms. Gibeau as detailed in the Complaint. Ms. Gibeau admitted that Mr. Bennett was not a party to this loan. Therefore, Ms. Gibeau is entitled to recover the \$3,490.00 from Ms. Kosh.

Ms. Gibeau cannot recover the \$709.38 for the Laurens County, Georgia court filing fees and transportation fee she paid with reference to Ms. Kosh. This court does not have jurisdiction to award monetary damages for out-of-state court fees.

IV. Conclusion

For the foregoing reasons, Judgment is hereby **GRANTED** in favor of Ms. Gibeau against Ms. Kosh and Mr. Bennett in the amount of \$5,245.79 regarding the American Express credit card account, and against Ms. Kosh in the amount of \$3,490.00 regarding the personal loan. Ms. Gibeau's claim for damages regarding the Chase Amazon credit card account and for the out-of-state court filing fees and transportation fee are hereby **DENIED**. Ms. Gibeau is also awarded the costs of pursuing this action and post judgment interest at the legal rate. *See 6 Del. C. §2301 et seq.*

IT IS SO ORDERED this 25th day of June, 2012.



John K. Welch
Judge

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