

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

CAPITAL ONE BANK (U.S.), N.A.,                    )  
  )  
                  Appellant, Plaintiff-Below,        )  
  )  
                                  v.                                    )  
  )  
JOAN F. ROBINSON                                    )  
  )  
                  Appellee, Defendant-Below.        )  
  )

C.A. No. N12A-11-012 JRJ

Date Submitted: March 26, 2013  
Date Decided: May 21, 2013

**OPINION**

*Upon Appeal from the Court of Common Pleas:* **REVERSED and REMANDED**

David L. Finger, Esquire, Finger & Slanina, LLC, One Commerce Center, 1201 N. Orange Street, 7th fl., Wilmington, DE 19801; Attorney for Appellant, Plaintiff-Below.

Joan F. Robinson, *pro se*, 59 Northfield Road, Newark, DE 19713; Appellee, Defendant-Below.

**JURDEN, J.**

## I. INTRODUCTION

Appellant, Capital One Bank (U.S.), N.A. (“Capital One”), appeals the decision of the Court of Common Pleas (the “trial court”) vacating summary judgment in favor of Capital One, entering judgment in favor of the Appellee, Joan F. Robinson (“Robinson”), and sanctioning counsel for Capital One. For the reasons set forth below, the Court finds that the trial court’s factual findings are not supported by the record. Accordingly, the trial court’s decision is **REVERSED** and this matter is **REMANDED** for proceedings consistent with this opinion.

## II. FACTS AND PROCEDURAL HISTORY

Capital One filed a Complaint in the trial court on August 29, 2011, alleging that Robinson defaulted under the terms of a Credit Card Agreement (the “Agreement”).<sup>1</sup> Capital One sought to collect on the credit card debt in the amount of \$2,656.48.<sup>2</sup> Acting *pro se*, Robinson filed her Answer (along with eight affirmative defenses and a counterclaim) on October 4, 2011.<sup>3</sup> On October 5, 2011, the trial court set a trial date of February 3, 2011.<sup>4</sup> On that same day, Capital One filed its First Set of Interrogatories and Request for Admissions.<sup>5</sup> On October 11, 2011, Capital One answered Robinson’s counterclaim.<sup>6</sup> On October 31, 2011, Robinson answered Capital One’s interrogatories and request for admissions.<sup>7</sup> Ms. Robinson served no discovery requests on Capital One.

---

<sup>1</sup> Appendix to Opening Brief on Appeal of Appellant Capital One Bank (U.S.), N.A. at A-4 and A-6, *Capital One Bank (U.S.), N.A. v. Robinson*, No. N12A-11-012 JRJ (Del. Super. Feb. 4, 2013) (Trans. ID 49263978) [hereinafter Appendix].

<sup>2</sup> *Id.* at A-6.

<sup>3</sup> *Id.* at A-4, A-14-17.

<sup>4</sup> *Id.* at A-4.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

On November 4, 2011, Capital One filed Motions to Amend the Complaint, to Dismiss the Counterclaim, and for Summary Judgment, all to be heard on December 16, 2011.<sup>8</sup> Attached to the motions was a copy of the Agreement, an accounting of the amount due, and statements of Robinson's past credit card history.<sup>9</sup> At the motion hearing on December 16, 2011, the trial court granted Capital One's Motion to Amend the Complaint and denied Capital One's Motion to Dismiss. Capital One withdrew its Motion for Summary Judgment.<sup>10</sup> On January 13, 2012, Robinson filed her Answer to the Amended Complaint, which did not contain a counterclaim.<sup>11</sup>

On January 24, 2012, Capital One requested a continuance of the February 3, 2011, trial date, claiming difficulty in obtaining an out-of-state witness.<sup>12</sup> Capital One received a call from the trial court soon after filing its continuance request which "counsel understood as granting the requested continuance."<sup>13</sup> Based on its mistaken belief that the February 3<sup>rd</sup> Trial date had been continued, Capital One filed a Motion for Summary Judgment as to its Amended Complaint and Robinson's Counterclaim on January 31, 2012.<sup>14</sup> Attached to Capital One's Motion was (again) documentation supporting its claim, including a copy of the Agreement, an accounting of the amount due, and statements of Robinson's past credit card history.<sup>15</sup>

On February 3, 2012 – the original trial date – counsel for Capital One happened to be before the trial court on an unrelated matter (and without any paperwork pertaining to Capital One's dispute with Robinson) when Robinson arrived.<sup>16</sup> Robinson claimed she had not been

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at A-25-39.

<sup>10</sup> *Id.* at A-3.

<sup>11</sup> *Id.* at A-3, A-54-57.

<sup>12</sup> *Id.* at A-3, A-58.

<sup>13</sup> *Id.* at 225-26; Opening Brief on Appeal of Appellant Capital One Bank (U.S.), N.A. at 3, *Capital One Bank (U.S.), N.A. v. Robinson*, No. N12A-11-012 JRJ (Del. Super. Feb. 4, 2013) (Trans. ID 49263978) [hereinafter Brief].

<sup>14</sup> Appendix at A-3, A-59-190.

<sup>15</sup> *Id.* at A-63-190. Capital One had previously provided this documentation to Robinson on November 4, 2012.

<sup>16</sup> *See id.* at A-3 and A224-230; *see also* Brief at 3.

notified of any continuance and denied receiving any “substantial documentation” from Capital One.<sup>17</sup> Counsel for Capital One was unable to respond to these claims because he did not have access to his case file. The trial court decided to reschedule the trial for March 16, 2012, a week before the scheduled hearing on Capital One’s Motion for Summary Judgment.<sup>18</sup> The trial court ordered Capital One to send Robinson “a copy of the credit card agreement and a copy of the statements of the account.”<sup>19</sup> Capital One complied with this order on February 10, 2012.<sup>20</sup>

Because the rescheduled trial date preceded the scheduled summary judgment motion hearing, Capital One re-noticed its Motion for Summary Judgment to be heard on February 24, 2012.<sup>21</sup> Robinson did not appear at the February 24, 2012, hearing and the trial court granted Capital One’s Motion for Summary Judgment, awarding Capital One damages totaling \$2,356.27.<sup>22</sup>

On March 16, 2012, Robinson appeared before the trial court, again claiming that she had not received any documentation from Capital One.<sup>23</sup> Capital One did not appear, because it believed the case was over as a result of the summary judgment entered on February 24.<sup>24</sup> Although the trial court had previously granted summary judgment, it proceeded to trial, entered judgment in favor of Robinson, and sanctioned counsel for Capital One by imposing a fine of \$500 with interest until judgment was paid.<sup>25</sup> The trial court explained its ruling as follows:

Plaintiff failed to comply with the Courts [*sic*] order [to comply with Defendant’s demand for discovery] and in violation thereof filed a motion for default judgment three days following the on [*sic*] February 6, 2012 and failed to provide in the notice, neither that the matter had been scheduled for trial nor that there was

---

<sup>17</sup> Appendix at A-224-25, 228.

<sup>18</sup> *Id.* at A-226-27.

<sup>19</sup> *Id.* at A-228.

<sup>20</sup> *Id.* at A-2, A-193.

<sup>21</sup> *Id.* at A-2-3, A-191-92.

<sup>22</sup> *Id.* at A-2, A-218-21.

<sup>23</sup> *Id.* at A-240-43.

<sup>24</sup> *See* Brief at 5.

<sup>25</sup> Appendix at A-240-43; Brief at Exhibit A.

compliance with the Courts [*sic*] order. In a letter filed with the Court on February 10, 2012 Plaintiff attached Defendants [*sic*] response to Request for Admissions where Defendant indicate [*sic*] her response will be provided in detail when the materials ordered by the Court was provided [*sic*]. Plaintiff never indicated to the Court in Motion for Summary Judgment that there was a prior order of the Court for which Plaintiff had failed to comply prior to filing the motion. Plaintiff failed to appear for trial on March 16, 2012 therefore Judgment is entered for the Defendant.<sup>26</sup>

Capital One filed a Motion to Vacate the March 16, 2012 Order on April 3, 2012 (the “Motion to Vacate”), arguing that it had complied with the trial court’s order relating to discovery and did not appear for trial on March 16 because its Motion for Summary Judgment had been granted on February 24.<sup>27</sup> The trial court held a hearing on Capital One’s Motion to Vacate Order on May 4, 2012.<sup>28</sup> At that hearing, Robinson again claimed that she had not received any of the requested documentation.<sup>29</sup> Counsel for Capital One represented “as an officer of the Court,” that he “personally wrote the letter” and “personally mailed all of the documentation” requested.<sup>30</sup> The trial court said it would “give [Capital One] the benefit of that,” but was “troubled” by the fact that, after the trial court rescheduled the trial for March 16, Capital One re-noticed its summary judgment motion without sending it to the trial judge who set the trial date.<sup>31</sup>

The trial court issued an order on November 2, 2012, finding that on February 6, 2012, Capital One “filed a second motion for summary judgment” that “failed to indicate that there was a discovery dispute and more importantly, the Court had just three (3) days previously scheduled the matter for trial and ordered certain documents provided to Robinson.”<sup>32</sup> The trial court did

---

<sup>26</sup> Brief at Exhibit A.

<sup>27</sup> Appendix at A-2, A-194-96.

<sup>28</sup> *Id.* at A-1, A-230-38.

<sup>29</sup> *Id.* at A-234-36.

<sup>30</sup> *Id.* at A-236.

<sup>31</sup> *Id.* at A-237.

<sup>32</sup> *Id.* at A-1, Exhibit B, p. 2.

however note in its order that “on the same day that Capital One filed the summary judgment motion, it sent the ordered discovery materials to Robinson.”<sup>33</sup> The trial court rejected Capital One’s explanation that it was merely re-noticing a previously filed Motion for Summary Judgment, explaining that “[t]he point which Capital One fails to take into account is that on February 3, 2012, with all parties present, the Court entered a verbal scheduling order which was binding on all parties.”<sup>34</sup> The trial court further explained that:

The provisions of *Civil Rule 56(a)* provide that a party may seek to recover after the expiration of 20 days . . . after service of a motion for summary judgment. Notice by Capital One was sent on February 6, 2012 which is less than 20 days required by the rule. But more importantly, it did not provide [Ms.] Robinson sufficient time to review and respond to the discovery previously ordered by the Court. This action is not only contrary to the Civil Rules, but is run afoul [*sic*] of the Principles of Professionalism . . . .”<sup>35</sup>

The trial court held that it was “unable to conclude that counsel complied with these principles, the order of the Court or the civil rules of the Court,” and consequently, that “there was an overt violation of the scheduling order imposed by the Court.”<sup>36</sup> The trial court vacated the order “granting summary judgment on February 24, 2012” and denied Capital One’s “motion to vacate the Court’s Order of March 16, 2012.”<sup>37</sup>

Capital One filed a Notice of Appeal on November 30, 2012, from both the March 16, 2012 Order entering judgment for Robinson and the November 2, 2012 Order denying Capital One’s Motion to Vacate and imposing sanctions on Capital One.<sup>38</sup> Robinson has filed nothing in response to Capital One’s appeal.

---

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at Exhibit B, p. 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Notice of Appeal, *Capital One Bank (U.S.), N.A. v. Robinson*, No. N12A-11-012 JRJ (Del. Super. Nov. 30, 2012) (Trans. ID 48075909).

### **III. STANDARD OF REVIEW**

The Superior Court has statutory authority to review final decisions from the Court of Common Pleas.<sup>39</sup> Appeals are on the record and not *de novo*.<sup>40</sup> This Court's role is to "correct errors of law and to review the factual findings of the Court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process."<sup>41</sup> It is not the duty of the reviewing court to weigh the evidence, determine the questions of credibility or make its own factual findings.<sup>42</sup> This Court is limited to correcting errors of law and determining whether substantial evidence exists to support factual findings.<sup>43</sup> Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>44</sup> The trial Court's factual findings supported by the record "will be upheld even if, acting independently, [this Court could reach] a contrary result."<sup>45</sup> The reviewing court may only make contradictory findings of fact in reaching its own determination "when the record below indicates that the trial judge's findings are 'clearly wrong'" and the Court "is convinced that a mistake has been made which, in justice, must be corrected."<sup>46</sup>

---

<sup>39</sup> 10 *Del. C.* § 1326(c); Super. Ct. Civ. R. 72(g); *see also* DEL. CONST. art. IV, §28. In reviewing appeals from the Court of Common Pleas, this Court sits as an intermediate appellate Court. *Disabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. 2002) (citing *State v. Richards*, 1998 WL 732960, at \*1 (Del. Super. May 28, 1998)). When sitting as an intermediate court of appeals, the Superior Court functions the same as the Supreme Court. *Shipkowski v. State*, 1989 WL 89667, at \*1 (Del. Super. July 28, 1989).

<sup>40</sup> *Id.*

<sup>41</sup> *Disabatino*, 808 A.2d at 1220 (citing *Steelman v. State*, 2000 WL 972663, at \*1 (Del. Super. May 30, 2000)).

<sup>42</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>43</sup> *Shahan v. Landing*, 643 A.2d 1357 (Del. Super. 1994).

<sup>44</sup> *Oceanport Indus. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).

<sup>45</sup> *Hicklin v. Onyx Acceptance Corp.*, 970 A.2d 244, 248 (Del. 2009).

<sup>46</sup> *Bennefield v. State*, 2006 WL 258306 (Del. Super. Jan. 4, 2006) at \*2 (citing *Fiori v. State*, 2004 WL 1284205, at \*1).

#### IV. DISCUSSION

##### A. **The March 16, 2012 Order**

In its March 16, 2012 Order, the trial court entered judgment in favor of Robinson and sanctioned counsel for Capital One because it determined that: (1) Capital One failed to comply with the Court's February 3, 2012 Order to provide Robinson her requested discovery, (2) Capital One filed a motion for Summary Judgment without indicating that there was a prior order of the Court granting Robinson's request for discovery which Capital One had failed to comply with prior to filing the motion, and (3) Capital One failed to appear for the March 16, 2012 trial date.<sup>47</sup>

A review of the record shows that, contrary to Robinson's representations to the trial court, Capital One did comply with the February 3, 2012 Order. Capital One sent Robinson a copy of the Agreement, a financial report, and account/billing statements on three separate occasions, the last of which was in compliance with (and in direct response to) the Court's February 3, 2012 Order.<sup>48</sup> Additionally, as required by, and in compliance with, the February 3, 2012 Order, Capital One sent a copy of its letter to Robinson to the trial court. Robinson's representations to the trial court that Capital One failed to provide documentation supporting its claim are wholly belied by the record and are therefore not supportable.<sup>49</sup> Because no

---

<sup>47</sup> *Id.* at Exhibit A.

<sup>48</sup> Capital One sent discovery-related documentation to Robinson with their December 16, 2011, Motion to Amend Complaint, Motion to Dismiss Counterclaim, and Motion for Summary Judgment; with their January 31, 2012, Motion for Summary Judgment; and in response to the trial court's February 3, 2012, order. *See supra* § II.

<sup>49</sup> Appendix at A-241 (THE COURT: "And I ordered that the attorney of Capital One was supposed to supply you with information and they never did that, did they?" MS. ROBINSON: "No, they did not."). Though notice must actually be received to be effective, there is a presumption that mailed material, correctly addressed, stamped, and mailed, was received by the party to whom it was sent. *Windom v. William C. Ungerer, W.C.*, 903 A.2d 276, 282 (Del. 2006). The record supports the fact that Capital One did so, notwithstanding Robinson's numerous and unsupported claims to the contrary.



substantial evidence exists to support the factual findings of the trial court, the trial court's March 16, 2012, Order is therefore **REVERSED**.

**B. The November 2, 2012 Order**

In its November 2, 2012 Order, the trial court denied Capital One's Motion to Vacate and vacated its own February 24, 2012 order granting summary judgment in favor of Capital One because it determined that: (1) Capital One re-noticed its Motion for Summary Judgment in violation of Rule 56(a) of the Civil Rules Governing the Court of Common Pleas ("Rule 56(a)") because Capital One re-noticed only three days after the trial court's verbal trial scheduling order, (2) Capital One disregarded the trial court's verbal scheduling order when it re-noticed its Motion for Summary Judgment, (3) Robinson did not have enough time to review and respond to the discovery previously ordered by the Court, and (4) Capital One's behavior violated Delaware's *Principles of Professionalism* by undermining the judicial system.<sup>50</sup>

Rule 56(a) states in pertinent part:

A party seeking to recover upon a claim, counterclaim or crossclaim may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment and at any time prior to the marking of the case for trial, move, without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof . . . ."

In the case *sub judice*, the action "commenced" when Capital One filed its Complaint on August 29, 2011. Capital One filed the Motion for Summary Judgment at issue on January 31, 2012, which is past the twenty-day minimum. The trial court verbally scheduled trial for March 16, 2012, aware that a Motion for Summary Judgment was scheduled for March 23, 2012.<sup>51</sup> The

---

<sup>50</sup> Brief at Exhibit B.

<sup>51</sup> Appendix at A-225 (THE COURT: "I understand that but usually I write granted or someone writes granted on it. I don't have anything that says granted." THE COURT CLERK: "I don't have anything and, Your Honor, on January 31st Mr. Doughty's office noticed a motion for summary judgment to be heard on March the 23rd." THE COURT: "No, I didn't grant the rescheduling on this matter. I think you were misinformed.").

trial court neither restricted nor limited Capital One's ability to re-notice its Motion for Summary Judgment.<sup>52</sup> Thus, Capital One did not disregard the trial court's order.

The trial court held that Capital One's re-noticing did not provide Robinson sufficient time to review and respond to the discovery previously ordered by the Court.<sup>53</sup> The record establishes, however, that Robinson had ample opportunity to review the documentation supporting Capital One's claims against her. Capital One sent Robinson a copy of the Agreement, a financial report, and account/billing statements on three separate occasions, the last of which was in compliance with the Court's February 3, 2012 Order.<sup>54</sup> Thus, Robinson could not have been prejudiced by the fact that Capital One re-noticed its Motion for Summary Judgment on the same day it provided Robinson (for the third time) with the documentation.

Finally, this Court finds insufficient evidence in the record to support a conclusion that any action on the part of counsel for Capital One was inappropriate, unethical, or in violation of court rules. Instead, it appears that Capital One's appeal before the Court is the culmination of pretrial miscommunication and misunderstandings between Capital One and the trial court with regard to scheduling, and repeated misrepresentations by Robinson. Because no substantial evidence exists to support the factual findings of the trial court, the trial court's November 2, 2012 Order is **REVERSED**.<sup>55</sup>

---

<sup>52</sup> *See id.* at A-224-30.

<sup>53</sup> Brief at Exhibit B, p. 3.

<sup>54</sup> Capital One sent discovery-related documentation to Robinson with its December 16, 2011, Motion to Amend Complaint, Motion to Dismiss Counterclaim, and Motion for Summary Judgment; with its January 31, 2012, Motion for Summary Judgment; and in response to the trial court's February 3, 2012, order. *See supra* § II.

<sup>55</sup> The Court recognizes that the Court of Common Pleas docket is fast-paced and voluminous. In reversing the trial court's orders, the Court finds that Robinson's misrepresentations misled the trial court and created confusion which resulted in the rulings at issue. A review of the record shows that the trial judge was simply not given truthful information by Robinson.

**V. CONCLUSION**

For the reasons set forth above, the trial court's March 16, 2012, and November 2, 2012, Orders are **REVERSED** and the matter is **REMANDED** to the Court of Common Pleas for proceedings consistent with this opinion.

**IT IS SO ORDERED.**

---

Jan R. Jurden, Judge

cc: Prothonotary