

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

LIFENG L. HSU, )  
)  
Defendant/Appellant, )  
) C.A. No. 08A-10-003 MMJ  
v. )  
)  
GREAT SENECA FINANCIAL )  
CORPORATION A MARYLAND )  
CORPROATION, ASSIGNEE OF )  
MADISON STREET INVESTMENTS, )  
ASSIGNEE OF CHASE MANHATTAN )  
BANK )  
)  
Plaintiff/Appellee. )

Submitted: March 29, 2010

Decided: June 29, 2010

On Appeal from the Court of Common Pleas

**AFFIRMED**

**OPINION**

Lifeng L. Hsu, *pro se*.

Neal J. Levitsky, Esquire, Seth A. Niederman, Esquire, Wilmington,  
Delaware, Fox Rothschild LLP, Attorneys for Appellee Great Seneca  
Financial Corporation.

**JOHNSTON, J**

Appellant Lifeng L. Hsu appealed the Court of Common Pleas finding of Summary Judgment in favor of Appellee Great Seneca Financial Corporation. The Court holds that neither Justice of the Peace Directive 14 nor the Federal Debt Collection Practices Act prohibit a debt collector who has properly purchased a debt, or is the assignee of a debt purchaser or credit issuer, from bringing a legal action in the judicial district encompassing the debtor's home.

The Court affirms the ruling of the Court of Common Pleas in its entirety and denies Appellant's motions to substitute another party, to compel the withdrawal of Great Seneca's Delaware counsel, and to dismiss and vacate the Court of Common Pleas' ruling.

### **FACTUAL AND PROCEDURAL CONTEXT**

On January 19, 2005, Appellee Great Seneca Financial Corporation purchased the defaulted debt of Appellant Lifeng L. Hsu from Madison Street Investments, an assignee of the original credit issuer, Chase Manhattan Bank. Great Seneca filed suit in the Court of Common Pleas requesting \$11,616.00 for the repayment of that debt. Hsu filed an answer and a counterclaim.

The Court of Common Pleas considered the parties' cross-motions for summary judgment and found in favor of Great Seneca on

May 17, 2006. Hsu filed a motion to amend the judgment, which the Court of Common Pleas also denied. Hsu appealed both decisions to the Superior Court.

This Court affirmed and reversed, in part, the lower court's decision, holding that the Court of Common Pleas' findings of fact were the product of an orderly and logical deduction process – with one exception. The Court remanded the case to the Court of Common Pleas for further proceedings. On remand, the Court of Common Pleas resolved the remaining issue of material fact in favor of Great Seneca and amended its original order to reflect a specific monetary judgment.

Hsu appealed the Court of Common Pleas' decision on October 19, 2009. Great Seneca filed an answering brief on November 9, 2009 and Hsu filed a reply brief on November 23, 2009.

Hsu argues that Great Seneca does not have the authority bring suit in its own name because Great Seneca is a debt collector and only a creditor may bring suit. Hsu also contends that the Court of Common Pleas' finding of summary judgment in favor of Great Seneca was premature.

On November 23, 2009, Hsu also filed a Motion for Substitution of the Proper Party. Great Seneca filed a response on January 5, 2010. Hsu filed a reply brief on January 14, 2010. Hsu also filed a Motion to Dismiss on March 1, 2010 and, on March 29, 2010, filed both a Consolidated Motion to Dismiss and a Motion to Compel Withdrawal of the Appearance of Appellee's Attorney.

## **DISCUSSION**

### *Standard of Review*

On an appeal from a decision of the Court of Common Pleas, the Superior Court has the authority to review the entire record and to make its own findings of fact in certain cases.<sup>1</sup> However, the Court may not ignore the findings made by the Court of Common Pleas.<sup>2</sup> If the lower court's findings are sufficiently supported by the record and are the product of an orderly and logical deductive process, the Superior Court must accept them, even though, independently, it might have reached an opposite conclusion.<sup>3</sup>

The Superior Court may make contradictory findings of fact only where the record reveals that the findings of the Court of Common Pleas are clearly wrong and the Court determines that justice

---

<sup>1</sup> *State v. Cagle*, 332 A.2d 140, 142 (Del. 1972).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

requires a correction.<sup>4</sup> If there is sufficient evidence to support the Court of Common Pleas' findings, the Superior Court sitting in its appellate capacity must affirm, unless the findings are clearly wrong.<sup>5</sup>

The Court will review issues of law *de novo*.<sup>6</sup>

### *Appeal from Court of Common Pleas*

#### Great Seneca's Standing to Bring Suit Under Justice of the Peace Directive 14

Hsu first argues that in a debt-collection matter, Delaware law does not provide a debt-collector the authority to sue in its own name. Hsu argues that, when bringing a debt-collection suit, a plaintiff should follow Justice of the Peace Court Directive 14, titled Suits Brought in Justice of the Peace Courts by Collection Agencies.

Directive 14 states:

1. Before a Collection Agency may bring suit on behalf of the plaintiff, they must file with the Justice of the Peace Court in which they wish to bring suit a Power of Attorney signed by the creditor specifically giving them this authority.

Even if such Power of Attorney is filed as above outlined, this does not give the Collection Agency the right to bring suit in its own name . . . .

---

<sup>4</sup> *Id.*

<sup>5</sup> *Grand Ventures, Inc. v. Whaley*, 632 A.2d 63, 66 (Del. 1993).

<sup>6</sup> *Downs v. State*, 570 A.2d 1142, 1144 (Del.1990).

Hsu argues that because the Superior Court previously confirmed that Great Seneca Financial Corporation is a debt collector, Great Seneca is prohibited from bringing the action in the Court of Common Pleas.<sup>7</sup>

Without discussing the applicability of a Justice of the Peace Court Directive to the Court of Common Pleas, Hsu's argument fails for two reasons.

First, even if Justice of the Peace Court Directive 14 applies, paragraph 2 provides:

2. An alternative method [for a Collection Agency to bring suit] would be an assignment by the plaintiff to the Collection Agency of all his rights in the claim. Any such assignment should be filed in the Justice of the Peace Court and made a part of the record in each case before the Collection Agency can proceed in its own name as assignee.

In the instant case, the Court of Common Pleas determined that Great Seneca was an indirect assignee of the original creditor, Chase Manhattan Bank. Pursuant to Directive 14, a Collection Agency may bring suit in its own name after presenting evidence of the debt assignment to the trial court. The Superior Court will find facts contradictory to the Court of Common Pleas only where the record

---

<sup>7</sup> This Court previously found that "Great Seneca is a debt collector for purposes of the FDCPA." *Hsu v. Great Seneca Financial Corp.*, C.A. No. 06A-07-005, at 5, Johnston, J. (June 7, 2007) (ORDER).

reveals that the lower court's findings are clearly wrong and justice requires a correction. Hsu has not provided any evidence to suggest that Great Seneca was not an assignee of the original creditor. The Court of Common Pleas' findings of fact are not clearly wrong.

Second, Hsu's argument fails because this Court found, during Hsu's prior appeal, that Great Seneca purchased the defaulted debt on January 19, 2005.<sup>8</sup> It is well-settled in Delaware that the purchaser of a debt also purchases the right to seek recovery of that debt in the purchaser's own name.

Great Seneca's Standing to Bring Suit Under Under the Fair Debt  
Collection Practices Act

The Fair Debt Collection Practices Act (FDCPA) defines a "debt collector," *i.e.*, collection agency, as any entity "who regularly collects or attempts to collect, directly or indirectly, debts owed or due [to] another . . . ."<sup>9</sup> Hsu argues that because of this Court's prior finding that Great Seneca is a debt collector for the purposes of the FDCPA, the FDCPA bars Great Seneca from bringing a legal action.

Hsu is correct that the FDCPA states that nothing in the section of the FDCPA discussing legal actions by debt collectors "shall be

---

<sup>8</sup> *Hsu*, C.A. No. 06A-07-005, at 4.

<sup>9</sup> 15 U.S.C. § 1692a(6).

construed to authorize the bringing of legal action by debt collectors.”<sup>10</sup> However, Hsu’s argument disregards the previous subheading in which the FDCPA states that a debt collector may bring legal action on a debt against a consumer “only in the judicial district . . . in which [the] consumer signed the contract sued upon or . . . in which [the] consumer resides . . . .”<sup>11</sup> As this Court and the Court of Common Pleas previously found: Hsu “fails to understand that 15 U.S.C. §i(b), though awkwardly worded, does not prohibit all legal recourse by debt-collectors – it merely restricts such suits to the judicial district in which the real property exists,” the judicial district in which the consumer signed the credit agreement, or the judicial district in which the consumer resides at the commencement of the action.<sup>12</sup> The record reflects that Hsu was a resident of Hockessin, Delaware at the commencement of this action.

The FDCPA does not specifically grant a collection agency the authority to bring legal action against a debtor. Nevertheless, the debt collector obtains standing in Delaware to sue in its own name upon purchase of the debt. Great Seneca purchased the debt on January 19, 2005. The Court finds that the FDCPA does not bar Great Seneca

---

<sup>10</sup> 15 U.S.C. § 1692i(b).

<sup>11</sup> 15 U.S.C. § 1692i(a).

<sup>12</sup> 15 U.S.C. § 1692i(a)(2)



from bringing suit in the courts of New Castle County – the debtor’s residence.

***Review of the Court of Common Pleas’ Summary Judgment Decision***

A trial court may grant a motion for summary judgment where “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”<sup>13</sup> The trial court’s decision is subject to a *de novo* standard of review on appeal.<sup>14</sup>

After considering Hsu’s initial appeal of the Court of Common Pleas’ finding of summary judgment in favor of Great Seneca, this Court found that the Court of Common Pleas’ findings of fact were the product of an orderly and logical deduction process, with one exception – whether Hsu timely mailed a letter which would have required Great Seneca’s collection efforts to temporarily cease.

On remand, Hsu conceded that he could not establish the timeliness of the letter in question. The Court of Common Pleas found that without evidence of the letter’s timeliness, Great Seneca was not required to temporarily cease its efforts to collect Hsu’s debt

---

<sup>13</sup> *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428 (Del. 2005) (quoting Super. Ct. Civ. R. 56(c)).

<sup>14</sup> *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002) (citing *Stroud v. Grace*, 606 A.2d 75, 81 (Del. 1992)).

and the Court of Common Pleas granted summary judgment in favor of Great Seneca.

Hsu does not appeal the Court of Common Pleas' conclusion regarding the cessation of Great Seneca's collection efforts. Rather, Hsu challenges the lower court's earlier finding, and this Court's earlier affirmation, that Hsu was an account holder and not an authorized user, who would be exempt from suit.

The Delaware Supreme Court has held that “[u]nless [a] trial court's rulings were clearly in error or there has been an important change in circumstances, the Court's prior rulings must stand.”<sup>15</sup> Hsu has not suggested any significant change in circumstances and, as this Court stated in Hsu's first appeal, the Court of Common Pleas' ruling was not clearly erroneous. Both this Court's and the Court of Common Pleas' findings constitute the law of this case and will not again be reviewed by this Court without a significant change in circumstances.

***Appellant's Motion for Substitution of the Proper Party***

Hsu argues, and Great Seneca concedes, that Great Seneca Financial Corporation ceased to exist following the commencement of

---

<sup>15</sup> *Hughes v. State*, 490 A.2d 1034, 1048 (Del. 1985) (citing *United States v. Estrada-Lucas*, 651 F.2d 1261, 1263 (9th Cir. 1980); *Smith v. United States*, 406 A.2d 1262 (D.C. 1979)).

this action. On February 5, 2007, Palisades Acquisition XVII, LLC purchased all accounts of Great Seneca. Hsu requests that the Court, pursuant to Superior Court Rule 25, substitute Palisades as the real party in interest, and order Palisades to present qualified copies of its debt assignment before that substitution.

Superior Court Civil Rule 25 provides that in the case of transferred interest, “the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.”<sup>16</sup> Under Rule 25(c), substitution is purely a matter of discretion with the Court.<sup>17</sup> In the instant case, the Court declines to exercise its discretion to order the substitution of Palisades Acquisition as the real party in interest. Such a substitution would serve no discernible purpose.

***Appellant’s Motion to Compel Withdrawal of the Appearance of  
Appellee’s Attorney***

Because Great Seneca’s Maryland attorney’s firm, Mann Bracken, LLP, has dissolved since the commencement of this action,

---

<sup>16</sup> Super. Ct. Civ. R. 25(c).

<sup>17</sup> See 7C C. Wright & A. Miller, Federal Practice and Procedure: Civil 2d § 1958 at 555, 557 (1986) (“The most significant feature of Rule 25(c) is that it does not require that anything be done after an interest has been transferred. The action may be continued by or against the original party, and the judgment will be binding on his successor in interest even though he is not named. An order of joinder is merely a discretionary determination by the trial court that the transferee’s presence would facilitate the conduct of the litigation.”).

Hsu requests that the Court order the withdrawal of Great Seneca's Delaware counsel, Fox Rothschild LLP.

It is abundantly clear that “the Delaware lawyer who appears in an action always remains responsible to the Court for the case and its presentation.”<sup>18</sup> A “Delaware lawyer always appears as an officer of the Court and is responsible for the positions taken, the presentation of the case, and the conduct of the litigation.”<sup>19</sup>

The authority of Delaware counsel stems from the client, not from forwarding counsel. In the absence of a withdrawal request from the client, the dissolution or removal of forwarding counsel has absolutely no effect on the authority of Delaware counsel to represent the client. There has been no such request here. As a result, Appellant's Motion to Compel Withdrawal of the Appearance of Appellee's Attorney must be denied.

***Appellant's Motion to Dismiss Under Rule 25(a)(1)***

Superior Court Rule of Civil Procedure 25(a) states that in the event of the death of a party, the Court may order the substitution of

---

<sup>18</sup> *State Line Ventures, LLC v. RBS Citizens, N.A.*, 2009 WL 4723372, at \*1 (Del. Ch. 2009) (citing Ct. Ch. R. 170(b) (“The admission of an attorney *pro hac vice* shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court.”)). *See also* Super. Ct. Civ. R. 90.1(a).

<sup>19</sup> *Id.*

the proper parties.<sup>20</sup> In such an event, the motion for substitution must be made not later than 90 days after the death is suggested upon the record.<sup>21</sup>

Hsu argues that the March 25, 2009 dissolution of Great Seneca constitutes the death of a party and, pursuant to Superior Court Civil Rule 25, Great Seneca's failure to file a motion for substitution gives cause for a dismissal of the underlying case and vacation of the Court of Common Pleas' findings.

The evidence presented shows that Palisades Acquisition purchased the entirety of Great Seneca's accounts on February 5, 2007. The Court has declined to exercise its authority to order the substitution of Palisades in this case. The subsequent dissolution of the original plaintiff has no bearing on this appeal. Further, the courts routinely have recognized a distinction between death and dissolution. The dissolution of a company or corporation is not the statutory equivalent of the death of a party. Death and dissolution have independent legal significance. Appellant's Motion to Dismiss Under Rule 25(a)(1) is denied.

---

<sup>20</sup> Super. Ct. Civ. R. 25(a)(1).

<sup>21</sup> *Id.*

## CONCLUSION

The Court finds that Justice of the Peace Directive 14 does not prevent a debt collector from bringing a legal action in the Court of Common Pleas against a debtor. Further, the Federal Debt Collection Practices Act does not bar a debt-collector from bringing a debt collection action in the judicial district encompassing the debtor's home.

Although Superior Court Civil Rule 25 authorizes the Court to order the substitution of party who has, subsequent to the commencement of a legal action, transferred its interest in the proceeding to another, the Court may decline to exercise its discretion. The Court also emphasizes that the attorney-client relationship between Delaware counsel and the client is not extinguished by the dissolution or withdrawal of forwarding counsel.

Finally, the Court finds that death and dissolution are not synonymous terms. The dissolution of a corporate party does not have legal significance identical to the death of a necessary party.

**THEREFORE**, the Court of Common Pleas' finding of summary judgment in favor of Great Seneca is hereby **AFFIRMED**. Appellant's Consolidated Motion to Dismiss and Compel the

Withdrawal of the Appearance of Appellee's Attorney is hereby  
**DENIED.**

**IT IS SO ORDERED.**

/s/ Mary M. Johnston  
The Honorable Mary M. Johnston