IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PETER JACOB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 00C-12-101 RRC
	)	
ROBERT HARRISON and R & R TRUCKING,	)	
	)	
Defendants.	)	

Submitted: September 18, 2002
Decided: December 16, 2002

On Plaintiff's "Appeal from Commissioner's Findings of Fact and Recommendations."
COMMISSIONER'S FINDINGS AND RECOMMENDATIONS ACCEPTED IN WHOLE.

ORDER

This 16th day of December, 2002, upon consideration of an "Appeal from Commissioner's Findings of Fact and Recommendations" (the "Appeal") filed by Peter Jacob (the "Plaintiff"), it appears to the Court that:

1. Plaintiff has filed this Appeal pursuant to Superior Court Civil Rule 132. That rule provides that when a Superior Court Commissioner has decided a case-dispositive matter that has been referred to such commissioner, "[a] judge of the [Superior] Court shall make a *de novo* determination of those portions of the report or specified proposed findings

of fact or recommendations to which an objection is made."[1] After conducting its *de novo* review and determining that the "presumption of validity" that Plaintiff argues attaches to the handwritten document at issue here does not in fact apply (and also determining that Plaintiff's "admission of liability" argument was not properly presented to the commissioner), this Court agrees with the findings and recommendations that the commissioner made. Accordingly, the Court **ACCEPTS IN WHOLE** the commissioner's findings of fact and recommendations of law.[2]

2. Plaintiff filed a complaint requesting judgment against Robert Harrison in the amount of $25,000 (plus pre- and post-judgment interest) and against Harrison and R & R Trucking in the amount of $5,000 (plus pre- and post-judgment interest), plus the costs associated with the action.[3] Plaintiff was apparently a buyer of wood veneer and Harrison and R & R Trucking apparently supplied him with wood. Plaintiff alleged that R & R Trucking was an unincorporated entity "owned and operated" by Harrison,[4]

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[1] Super. Ct. Civ. R. 132(a)(4)(iv).

[2] See Super. Ct. Civ. R. 132(a)(4)(iv) (providing that a judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the [c]ommissioner.")

[3] Compl. ¶ ¶ 10.a., 10.b.

[4] Compl. ¶ 3.

that Harrison owed Plaintiff $25,000 “for equipment totaling $20,000.00 and a loan of $5,000.00,”[5] that Plaintiff paid R & R Trucking $5,000 “for certain logs to be provided by R & R [Trucking] to…[Plaintiff],”[6] and that “despite demand,” Harrison “failed and refused to pay the [$25,000] amount[ ] due,”[7] and R & R Trucking “failed and refused to deliver the logs….”[8] In support of Plaintiff’s complaint for the $25,000, he attached a handwritten document allegedly signed by Harrison as witnessed by Deborah L. Jacob (Plaintiff’s daughter-in-law), the entirety of which provided:

> 3/27/98
>
> I Robert Harrison owe Peter Jacob $25,000 (twenty five thousand dollars), as of 3/27/98 for the following:
>
> 1). $15,000 for Caterpillar loader
> 2). $5,000 for a loan
> 3). $5,000 for a tag-a-long trailer[9]

Plaintiff provided no written documentation with regard to the $5,000 “for certain logs” R & R Trucking was allegedly to provide to him.

In their Answer, Harrison and R & R Trucking “denied” that R & R Trucking was an “unincorporated entity” owned by Harrison[10] but did not

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[5] Compl. ¶ 4.

[6] Compl. ¶ 8.

[7] Compl. ¶ 6.

[8] Compl. ¶ 9.

[9] Ex. “A” to Compl.

[10] Answer ¶ 3.

affirmatively clarify what R & R Trucking was. Furthermore, Harrison and R & R Trucking "denied" that the $25,000 debt (as evidenced by Exhibit "A" to Plaintiff's Complaint) "exist[ed],"[11] and further "denied" that Plaintiff had paid R & R Trucking $5,000 "for certain logs to be provided" to Plaintiff.[12] Harrison and R & R Trucking also alleged in a counterclaim that "Defendant [Harrison], with Plaintiff's permission, has possession of Plaintiff's Caterpillar loader,"[13] that "Defendant [Harrison], with Plaintiff's knowledge and approval, undertook certain repairs and purchased parts to restore the…[machine] to operable condition,"[14] and that Plaintiff was therefore obligated to Harrison "in the amount of $4,938.88 on a theory of quantum meruit."[15] Harrison and R & R Trucking provided no documentation to support the counterclaim with the Answer.

Subsequently, an arbitration was held pursuant to Superior Court Civil Rule 16.1. The arbitrator found for Plaintiff in the amount of $30,000, and

[11] Answer ¶ 6.

[12] Answer ¶ ¶ 8, 9, 10.

[13] Countercl. ¶ 12.

[14] Countercl. ¶ 13.

[15] Countercl. ¶ 17.

assessed costs against Harrison and R & R Trucking.[16] Harrison and R & R Trucking requested a trial *de novo*.[17]

Following discovery (and the granting of Plaintiff's unopposed motion in limine precluding expert testimony on behalf of Harrison and R & R Trucking on the question of the authenticity of Harrison's purported signature),[18] this Court—with the agreement of the parties—referred the matter to a Superior Court Commissioner "for disposition pursuant to Superior Court Civil Rule 132."[19]

After such referral, but before the commissioner's hearing, the parties entered into a Pretrial Stipulation. That document identified the "nature of the action" as involving Plaintiff's efforts "to recover $25,000.00 from defendants Robert Harrison and R & R Trucking…."[20] Both parties identified as an "issue of fact" remaining to be litigated the question of "[w]hether Harrison acknowledged the foregoing obligation[ ] in a writing

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[16] See Dkt. #6.

[17] See Dkt. #7.

[18] Jacob v. Harrison and R & R Trucking, Del. Super., C.A. No. 00C-12-101, Cooch, J. (May 13, 2002) (ORDER).

[19] Jacob v. Harrison and R & R Trucking, Del. Super., C.A. No. 00C-12-101, Cooch, J. (June 5, 2002) (ORDER).

[20] Pretrial Stip. ¶ "A" (Dkt. #16).

dated March 28, 1998 [sic]."[21] Neither party identified any "issue of law" in the Pretrial Stipulation that then remained to be litigated.

At the hearing held by the Superior Court Commissioner, Harrison's wife was cross-examined by Plaintiff's attorney as follows:

> Q. And then within four days of the date of…[being served with a demand] letter you had the trailer [allegedly referenced in the 3/27/98 document] re-titled to reflect…[a lien in your favor] on it, correct?
> A. Yes, I did.
> Q. And [that] was a result of [your] having received the letter?
> A. Yes, it was.
> Q. Because you knew that the assets might be subject to attachment in a lawsuit, correct?
> A. Yes, I did. And I wanted to protect…[the] $40,000 [I had put into R & R Trucking from a refinance of my home], my personal money.
> ….
> Q. So even though this lawsuit was only against your husband, and it was your son's trailer, you wanted to make sure that you got your lien protected on your son's trailer?
> A. I just assumed that if I…[re-titled other equipment used by R & R Trucking in which I had invested], I should…[re-title the trailer also].[22]

Following the hearing, the commissioner "ordered and recommended" judgment for Harrison and R & R Trucking after having found that "a preponderance of the evidence d[id] not support Plaintiff's claims."[23] The commissioner viewed the validity of Plaintiff's evidence, *i.e.*, the

[21] Pretrial Stip. ¶ "C.4".

[22] Tr. at 103-104.

[23] Jacob v. Harrison and R & R Trucking, Del. Super., C.A. No. 00C-12-101, Vavala, Comm'r. (Jul. 16, 2002), Report at 12.

handwritten document allegedly signed by Harrison as witnessed by Deborah L. Jacob, as dependant upon the credibility of Ms. Jacob's testimony; the commissioner implicitly found her testimony unpersuasive, as reflected by the commissioner's statement that "to use such evidence as the sole means of proof at trial has proven insufficient,"[24] and the commissioner's statement that he would not accept the handwritten document "as proof of an obligation."[25] With regard to the potential liability of Harrison and R & R Trucking vis-à-vis the trailer within which Mrs. Harrison perfected a lien, Harrison and R & R Trucking apparently produced a bill of sale at the hearing which bore Plaintiff's signature and which the commissioner determined "refuted soundly"[26] the implication that money was owed to Plaintiff thereon. The commissioner therefore awarded Plaintiff nothing.

Following the commissioner's hearing and written findings and recommendations, Plaintiff filed the Appeal currently under consideration.

3. On appeal, Plaintiff argues that the commissioner applied the wrong legal standard in determining the validity of the March 27, 1998

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[24] Id. at 6.

[25] Id. at 9.

[26] Id. at 11.

handwritten document allegedly signed by Harrison and that the commissioner failed to consider the "admission of liability" Mrs. Harrison made when she testified that she had taken steps to perfect a lien in the trailer referenced in that document. Specifically, Plaintiff argues that under Delaware's version of Article 3 of the U.C.C. ("Negotiable Instruments"), Harrison and R & R Trucking failed to rebut the "presumption of validity"[27] that attaches to signatures contained within negotiable instruments.[28] With regard to Mrs. Harrison's action of perfecting a lien after being served with a demand letter, Plaintiff argues that "[t]he transfer of a security interest in…assets of [Harrison and R & R Trucking] constitutes an admission of liability."[29] Plaintiff argues that the commissioner's "failure to…use [this 'admission of liability']…in weighing the credibility of the defen[se]…was error."[30] Plaintiff therefore requests that this Court "make a *de novo*

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[27] Pl.'s Appeal at 2.

[28] See DEL. CODE ANN. tit. 6, § 3-308(a) (1999) (providing that "[i]f the validity of…[a] signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized….").

[29] Pl.'s Appeal at 3.

[30] Id. at 4.

determination that the [P]laintiff is entitled to a judgment for $30,000.00[.]"[31]

In response, Harrison and R & R Trucking requests that this Court accept the commissioner's findings and recommendations because the commissioner "relied on the entirety of evidence presented to conclude that the [handwritten] instrument [allegedly signed by Harrison] was invalid."[32] Harrison and R & R Trucking argue that "[e]ven if…[title 6, section 3-308(a) of the Delaware Code were to apply so that] the signature of…[Harrison was presumed]…to be authentic, there is no additional evidence to support [P]laintiff's contention that the document is valid."[33] With regard to Mrs. Harrison's action of perfecting a lien after being served with a demand letter, Harrison and R & R Trucking argue that the commissioner did not address this argument "because this was not a disputed fact."[34] Harrison and R & R Trucking also argue that the commissioner did not need address the argument because there was "no basis for Plaintiff's contention that Mrs. Harrison transferred property in response to a

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[31] Id.

[32] Resp. at 1.

[33] Id. at 2.

[34] Id. at 3.

lawsuit."[35] Harrison and R & R Trucking therefore urge the Court to not disturb the commissioner's findings and recommendations.

4. Superior Court Civil Rule 132(a)(4) provides that a Superior Court Commissioner has the power "to conduct case-dispositive hearings…and to submit…proposed findings of fact and recommendations for the disposition…of any such case-dispositive matter." Under the rule, a party may file written objections to the commissioner's proposals, in which case this Court "shall make a *de novo* determination of those portions of the report or specified proposed findings of fact or recommendations to which an objection is made."[36] In making its *de novo* determination, this Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [c]ommissioner."[37]

Initially, the Court notes that the Pretrial Stipulation entered into between the parties identified the amount in dispute as $25,000. That amount would therefore be the maximum amount that Plaintiff could recover

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[35] Id.

[36] Super. Ct. Civ. R. 132(a)(4)(iv).

[37] Id.

were the Court to find for him in conducting its review.[38] Additionally, the Pretrial Stipulation also recites that prior to referral of this matter to the commissioner, the parties represented that there were no issues of law left to be determined. However, the argument now raised by Plaintiff in reference to whether Mrs. Harrison's action of perfecting a lien after being served with a demand letter constitutes an "admission of liability" can fairly be described as such an issue.[39]

Plaintiff's argument that title 6, section 3-308(a) of the Delaware Code controls so that there is a "presumption of validity" attached to the handwritten document at issue here presupposes that Article 3 of Delaware's U.C.C. applies. However, as Professors White and Summers state in their treatise on commercial law, "[o]ne must first understand that a negotiable instrument is a peculiar animal and that many animals calling for the payment of money and others loosely called 'commercial paper' are not negotiable instruments and not subject to the rules of Article 3."[40] In fact,

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[38] See Super. Ct. Civ. R. 16(e) (providing that once entered as an order of the Court, a pretrial stipulation "shall control the subsequent course of the action unless modified by a subsequent order.").

[39] Black's Law Dictionary defines an issue of law as "[a] point on which the evidence is undisputed, the outcome depending on the court's interpretation of the law." BLACK'S LAW DICTIONARY 836 (7th ed. 1999).

[40] 2 JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE § 16-1, at 70 (4th ed. 1995).

section 3-104(a) states that "'negotiable instrument' means an unconditional promise…to pay a fixed amount of money…."[41] Section 3-103(a)(9) in turn provides that "promise" means "a written undertaking to pay money signed by the person undertaking to pay," but that "[a]n acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.[42]

Here, the text of the handwritten note with which the Court is concerned states simply that "I Robert Harrison owe Peter Jacob $25,000…."[43] The document is therefore an acknowledgement of a debt, and although a promise to pay may be legally implied from such acknowledgement, section 3-103(a)(9) indicates that for a document to be a "promise" (and thus a "negotiable instrument"), the obligor must also undertake to pay the obligation. Such an undertaking does not exist on the face of the document at issue here, and Article 3 of the Delaware U.C.C. therefore does not apply.

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[41] DEL. CODE ANN. tit. 6, § 3-104(a) (1999)

[42] DEL. CODE ANN. tit. 6, § 3-103(a)(9); <u>see</u> <u>also</u> <u>Gay v. Rooke</u>, 23 N.E. 835 (Mass. 1890) (stating that "although from…an acknowledgement [of a debt] a promise to pay may be legally implied, it is an implication from the existence of the debt, and not from any promissory language [such as is required to establish a written promise to pay money].").

[43] Ex. "A" to Compl.

Without the "presumption of validity" that Plaintiff seeks to have applied to the handwritten document here, this Court, in reviewing the commissioner's findings of fact and recommendations, must defer to the commissioner's determination of the validity of that document; the commissioner, unlike this reviewing Court, was able to hear live testimony on the issue.[44] Accordingly, the Court accepts that part of the commissioner's report in which the commissioner concluded that he would not accept the handwritten document "as proof of an obligation."[45]

With regard to Plaintiff's second argument, Harrison and R & R Trucking do not dispute that Mrs. Harrison took steps to perfect a lien at a time after Plaintiff's demand letter was received. Consequently, the commissioner would need only to have determined the legal effect of that action, if the question had properly been presented.[46] As stated above, however, the Pretrial Stipulation identified no issues of law that were then

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[44] Cf. Keeler v. Metal Masters Foodservice Equip. Co., Inc., 712 A.2d 1004 (Del. 1998) (stating in the context of an appellate review of an Industrial Accident Board decision that "[c]redibility determinations, if based on relevant disputes of fact, will not be disturbed on appeal.").

[45] Jacob v. Harrison and R & R Trucking, Del. Super., C.A. No. 00C-12-101, Vavala, Comm'r. (Jul. 16, 2002), Report at 9.

[46] See BLACK'S LAW DICTIONARY, *supra* note 39 (defining "issue of law").

left to be determined.[47] The commissioner was therefore correct in not having considered Plaintiff's cross-examination of Mrs. Harrison and closing argument on this point.[48]

Superior Court Civil Rule132 confers authority on a commissioner to "conduct case-dispositive hearings"[49] such as the trial in this case. Although Harrison and R & R Trucking had originally demanded a trial by jury, the parties later consented to have the trial heard by a commissioner without a jury. The parties were bound by the Pretrial Stipulation approved by this judge prior to that trial. Accordingly, this Court will not now consider on appeal an argument regarding an issue of law not earlier identified in the Pretrial Stipulation.[50] The Court therefore accepts the commissioner's decision not to consider Plaintiff's "admission of liability" argument.

5. Based on the above analysis and in accordance with Superior Court Civil Rule 132, after considering Plaintiff's written objections to the commissioner's findings of fact and recommendations of law contained in

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[47] Pretrial Stip. ¶ "D".

[48] See Super. Ct. Civ. R. 16(e) (providing that a pretrial stipulation normally controls the subsequent course of an action).

[49] Super. Ct. Civ. R. 132(a)(4).

[50] Cf. Supr. Ct. R. 8 (stating that only questions "fairly presented" below may be presented for review).

his Appeal, the Court **ACCEPTS IN WHOLE** such findings and recommendations.

IT IS SO ORDERED.

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Richard R. Cooch, J.

oc: Prothonotary
xc: John H. Newcomer, Jr., Esquire, Attorney for Plaintiff
Robert C. McDonald, Esquire, Attorney for Robert Harrison and R & R Trucking