

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LIFENG L. HSU,	§
	§
Appellant Below-	§ No. 609, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
CITIBANK SOUTH DAKOTA, NA,	§ in and for New Castle County
	§ C.A. No. 04A-09-013
Appellee Below-	§
Appellee.	§

Submitted: April 23, 2007
Decided: July 19, 2007

Before **BERGER, JACOBS,** and **RIDGELY,** Justices.

ORDER

This 19th day of July 2007, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Lifeng Hsu, filed this appeal from a decision of the Superior Court, which affirmed a decision of the Court of Common Pleas entering judgment against Hsu for failure to pay an outstanding credit card balance. After considering the parties' respective positions on appeal, we conclude that the decision of the Superior Court must be affirmed.

(2) Hsu raises four issues in this appeal. First, he contends that the Superior Court abused its discretion in permitting the appellee, Citibank, to file its answering brief late. Second, Hsu argues that the Superior Court

abused its discretion in permitting Citibank's counsel to withdraw and allowing substitute counsel to enter an appearance. Third, Hsu argues that Citibank violated 15 U.S.C. § 1692g(b). Finally, Hsu asserts that the issue in the case is controlled by 15 U.S.C. § 1666i and not 15 U.S.C. §1666(a).

(3) The record below reflects that the Superior Court held a hearing on May 9, 2006 regarding Citibank's failure to file a timely answering brief. At the hearing, Citibank's counsel stated that he had never been served with a copy of Hsu's opening brief. Based on this testimony, the Superior Court granted Citibank until June 1, 2006 to file an answering brief. On appeal, Hsu contends that counsel's statement that he never received the opening brief was false and that the Superior Court thus abused its discretion in granting Citibank an extension of time. The decision to permit the late filing of a brief, however, is a matter within the sound discretion of the Superior Court.¹ Despite Hsu's contention to the contrary, it was entirely within the judge's discretion to credit counsel's statement that he had not received the opening brief and, thus, permit the late filing of the answering brief.² Accordingly, we find no merit to Hsu's first argument on appeal.

¹ Del. Super. Ct. Civ. R. 107(e) (2007).

² *Knight v. State*, 690 A.2d 929, 932 (Del. 1996) (holding that the judge, as the trier of fact, was the "sole judge of the credibility of witnesses").

(4) Next, Hsu argues that the Superior Court erred by allowing Citibank's counsel to withdraw on appeal. The record reflects that Hsu filed an objection to counsel's motion to withdraw on June 6, 2006. After considering the parties' positions, the Superior Court granted the motion to withdraw and gave Citibank a week to retain new counsel and two weeks to file an answering brief. Although Hsu contends that the substitution of counsel prejudiced his Superior Court appeal, he points to no specific prejudice. In the Superior Court, he argued that the substitution of counsel would cause unnecessary delay. We find, however, that the grant of an additional three weeks to Citibank to retain new counsel and file an answering brief was not unreasonable and was within the sound discretion of the Superior Court. We find no prejudice to Hsu from the three-week delay and there is no evidence of any other prejudice to Hsu caused by the substitution of Citibank's counsel.

(5) Hsu's final two arguments, regarding the applicability of 15 U.S.C. § 1692g(b) and § 1666i, were not raised below either to the Court of Common Pleas or to the Superior Court. Accordingly, this Court will not consider these issues for the first time in this appeal.³

³ Del. Supr. Ct. R. 8 (2007).

(6) Having considered the parties' respective positions carefully, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated October 31, 2006. We find no legal error or abuse of discretion in the Superior Court's rulings, and we conclude that the judgment entered against Hsu is clearly supported by the record.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice