

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Discover Bank [etc.],	:	
Plaintiff-Appellee,	:	
v.	:	No. 08AP-1001 (M.C. No. 2008CVF-14152)
Stephanie Heinz,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 16, 2009

Thomas & Thomas, and Anne C. Little, for appellee.

Stephanie Heinz, pro se.

APPEAL from the Franklin County Municipal Court.

PER CURIAM.

{¶1} Defendant-appellant, Stephanie Heinz, pro se in both the trial court and on appeal, appeals from a judgment of the Franklin County Municipal Court granting the summary judgment motion of plaintiff-appellee, Discover Bank, and entering judgment for plaintiff in the amount of \$8,549.63, plus contractual interest and costs. Because the trial court properly granted summary judgment for plaintiff on its breach of contract claim

against defendant arising from defendant's failure to pay her Discover Bank credit card account, we affirm.

{¶2} Defendant undisputedly signed an application for a Discover Bank credit card (the "Discover card") on January 22, 2003. Following defendant's application, plaintiff issued the Discover card to defendant with a Cardmember Agreement that contained the terms and conditions of the Discover card account. The agreement states that "[t]he use of your Account or a Card by you [the cardholder] or an Authorized User, or your failure to cancel your Account within 30 days after receiving a Card, means you accept this Agreement[.]" (Agreement, 2.)

{¶3} Under the terms of the agreement, the cardholder expressly agrees to pay for "all purchases, cash advances, and balance transfers including applicable Finance Charges and other charges or fees" that the cardholder or an authorized user incurs and to pay the minimum payment due each month as shown on the monthly billing statement sent to the cardholder. (Agreement, 4.) The agreement provides that if a required payment on the Discover card account is not made when due, the cardholder is in "default." According to the agreement, plaintiff then can declare the entire balance of the cardholder's account immediately due and payable and refer the matter for collection. (Agreement, 8.)

{¶4} Shortly after receiving the Discover card and Cardmember Agreement, defendant made a \$6,000 balance transfer to her Discover card account and used the Discover card to purchase various goods and services. Defendant made payments on the account until November 2007, when she sent a letter to plaintiff contending she was not

required to pay any amounts due on the account. Defendant did not dispute any individual charges appearing on her Discover card account.

{¶5} On March 28, 2008, plaintiff filed a breach of contract action against defendant seeking to recover damages in the amount of \$8,549.63, the balance due according to the January 6, 2008 billing statement for defendant's Discover card account. Defendant did not respond to the complaint with an answer. Instead, she filed assorted documentary materials, which the trial court declared on May 5, 2008 to be her "answer" to the complaint.

{¶6} As discovery ensued, plaintiff moved for summary judgment on its breach of contract claim. In support, plaintiff submitted documentary evidence, including defendant's signed application for the Discover card, the Cardmember Agreement issued to defendant with her Discover card, defendant's Discover card account statements from March 2003 through April 2008, along with an affidavit authenticating the documents. Plaintiff also submitted plaintiff's interrogatories and requests for admissions served upon defendant, together with her responses, and letters exchanged between the parties.

{¶7} In response to plaintiff's summary judgment motion, defendant filed a "Motion to Oppose Summary Judgment" as well as a "Motion to Claim and Exercise Constitutional Rights and Require the Presiding Judge to Rule Upon This Motion, and All Public Officers of This Court to Uphold Said Rights," a "Request [to Plaintiff] for Admissions," an "Affidavit of Truth" by defendant, a "Notice of Default," and various documentary materials. Subsequently, defendant also filed: (1) "Motion to Demand This Court Read All Pleadings Defendant Files With This Court, and Adhere Only to Constitutionally Compliant Law and Case Law, and More Particularly, the Bill of Rights, in

Its Rulings"; (2) "Motion to Void Judgment Pursuant to Rule 60(b)(4), Violation of the Federal Constitution, the Powers of and Rights Guaranteed therein, and Violation of Federal and State Law"; (3) "Motion for Citizen's Demand for Trial by Jury"; and (4) "Motion to Dismiss Based on Counsel's and Plaintiff's Failure to Answer Request for Admissions and Counsel's Denial of Her Oath."

{¶8} In opposition to defendant's motion to dismiss, plaintiff filed a copy of its "Response to Defendant's First Request for Admissions" that plaintiff had served upon defendant.

{¶9} On October 15, 2008, the trial court conducted a hearing on plaintiff's motion for summary judgment and defendant's motion to dismiss the complaint. Following the arguments of both parties, the trial court overruled defendant's motion to dismiss, concluding neither the law nor the evidence supported it. The trial court granted plaintiff's summary judgment motion, determining the evidence revealed no genuine issues as to any material facts and plaintiff is entitled to judgment as a matter of law. On October 17, 2008, the court entered judgment for plaintiff in the amount of \$8,549.63, plus court costs and contractual interest from January 6, 2008.

{¶10} Defendant timely filed an appeal of the trial court's judgment. In her appeal, "without accepting jurisdiction" of this court, defendant filed two motions entitled: (1) "Motion to Challenge Jurisdiction of this Court and to Require the Court to Verify and Prove Jurisdiction in this Matter or to Dismiss for Lack of Jurisdiction" and (2) "Motion for Reconsideration of Heinz's Motions."

{¶11} In her motion challenging jurisdiction of this court, defendant argues that plaintiff's case against her must be dismissed because both the trial court and this court

"have no lawful authority or jurisdiction" to act in this matter. Contrary to defendant's contentions, the municipal court had jurisdiction over this breach of contract action pursuant to authority granted in R.C. Chapter 1901 and Section 1, Article IV, of the Ohio Constitution. This court has jurisdiction over defendant's appeal pursuant to authority granted in R.C. Chapter 2501 and Sections 1 and 3, Article IV, of the Ohio Constitution. Defendant's motion is accordingly overruled because it is without merit.

{¶12} In her motion for reconsideration, defendant requests that this court "reconsider" the trial court's rulings denying the motions defendant filed in that court. Initially, although appellate courts review trial court rulings on appeal, no appellate rule or other legal basis exists for an appellate court to "reconsider" a trial court's ruling. More significant to this appeal, defendant's motion for reconsideration essentially contains the same arguments defendant presented in her brief on appeal, which we will consider in that context. Defendant's motion for reconsideration is overruled.

{¶13} Before addressing the substance of defendant's appeal, we note that defendant's brief on appeal fails to set forth any specific assignments of error as App.R. 16(A)(3) requires. Pursuant to App.R. 12(A)(2), this court may disregard errors not separately assigned and argued in an assignment of error. Nonetheless, in the interest of justice, we attempt to discern and address the merits of defendant's arguments.

{¶14} "To prove a breach of contract claim, a plaintiff must show 'the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff.' " *Discover Bank v. Poling*, 10th Dist. No. 04AP-1117, 2005-Ohio-1543, ¶17, quoting *Nilavar v. Osborn* (2000), 137 Ohio App.3d 469, 483, quoting *Doner v. Snapp* (1994), 98 Ohio App.3d 597, 600. Pursuant to Ohio law, "credit card agreements are

contracts whereby the issuance and use of a credit card creates a legally binding agreement." *Bank One, Columbus, N.A. v. Palmer* (1989), 63 Ohio App.3d 491, 493; *Poling*, supra; *Asset Acceptance LLC v. Davis*, 5th Dist. No. 2004-CA-00054, 2004-Ohio-6967.

{¶15} On appeal, as in the trial court, defendant argues generally that the contract plaintiff seeks to enforce is ultra vires and fraudulent, and therefore invalid and unenforceable. In support, defendant contends: (1) she never received nor signed a "contract"; (2) plaintiff failed to make full disclosure it was loaning "credit" rather than "money"; (3) plaintiff gave no lawful consideration in the form of currency or coins and was merely "creating money out of thin air"; (4) plaintiff's manner of transacting business made defendant a "debt slave," in violation of constitutional prohibitions against involuntary servitude; and (5) plaintiff's actions denied defendant various constitutional rights, including due process and equal protection of the law.

{¶16} We note that similar arguments were raised and rejected as frivolous in *Rene v. Citibank N.A.* (E.D.N.Y.1999), 32 F.Supp.2d 539. Defendant has not claimed that she did not reap the benefits of using the credit card plaintiff issued. Her arguments, like those in *Bank of New York v. Barclay*, 10th Dist. No. 04AP-48, 2004-Ohio-4555, ¶9, "appear ultimately grounded in the theory that no debt need ever be repaid but at the option and convenience of the debtor." Although defendant asserts she was denied due process under the law, the record demonstrates she was afforded all the process she was due, including service of plaintiff's complaint, opportunities to file motions and have them determined, and the opportunity to present evidence in response to plaintiff's summary judgment motion.

{¶17} In short, defendant has failed to demonstrate that she has a meritorious defense to plaintiff's breach of contract claim. Plaintiff presented uncontroverted evidence in the trial court that defendant applied for a Discover card in January 2003, was issued the credit card, and used the credit card for purchases and balance transfers. By using the credit card, defendant became bound by the terms and conditions set forth in the Cardmember Agreement. *Poling; Palmer, supra*. After November 2007, defendant failed to make any required minimum monthly payments due on her Discover card account and therefore was in "default" under the express terms of the Cardmember Agreement. In defaulting on her Discover card account, defendant breached the Cardmember Agreement, which resulted in a loss to plaintiff in the amount of \$8,549.63, as established by the January 6, 2008 billing statement for defendant's Discover card account.

{¶18} Because no genuine issue of material fact exists that the parties have a legally binding agreement, defendant breached the agreement, and plaintiff sustained a loss of \$8,549.63 as a result of defendant's breach, the trial court properly entered summary judgment for plaintiff. Accordingly, the judgment of the Franklin County Municipal Court is affirmed.

*Motions denied;
judgment affirmed.*

BRYANT, J., FRENCH, P.J., and TYACK, J., concur.
