

**Opinion issued January 20, 2011.**



**In The  
Court of Appeals  
For The  
First District of Texas**

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**NO. 01-09-01000-CV**

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**GRY STRAND TARALDSEN, Appellant**

**V.**

**DODEKA, L.L.C., Appellee**

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**On Appeal from the County Court at Law No. 3  
Harris County, Texas  
Trial Court Case No. 936226**

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**MEMORANDUM OPINION**

This is an appeal of a traditional summary judgment in a credit card debt collection matter. Dodeka L.L.C. sued Gry Strand Taraldsen for breach of contract and moved for summary judgment to collect the unpaid credit card debt and attorney's fees. The trial court granted the motion. Taraldsen appeals, contending

that the trial court erred in granting summary judgment because Dodeka failed to prove the existence of a binding agreement. Finding no error, we affirm.

### **Background**

Chase Bank issued a credit card account to Taraldsen in 2004. Taraldsen used the card and made periodic payments on the balance until March 2006. Unifund Portfolio A, LLC acquired the right to collect on the account from Chase Bank, which it transferred to Unifund CCR Partners (Unifund). In 2008, Unifund assigned its rights to Dodeka. Soon after, Dodeka sued Taraldsen to recover the unpaid balance under a breach of contract theory.

In its original petition, Dodeka alleged damages in the amount of \$13,965.48, representing the sum of the unpaid principal plus interest. The petition alleged that Taraldsen had purchased and received goods and services using the card and that she had incurred all of the charges on the account.

In its motion for summary judgment, Dodeka contended that Taraldsen's use of the credit card and payments on the account conclusively establish that she had agreed to be bound to the account's terms. Dodeka included (1) an affidavit from Unifund's agent explaining the business records documenting the existence and terms of the original account and the amount of principal due; (2) an affidavit from Dodeka's agent authenticating its own business records, documenting the account's chain of title, and reciting the total balance due; (3) an unsigned copy of

the credit card agreement; and (4) an affidavit showing Taraldsen's non-military status.

### **Discussion**

We review de novo the trial court's grant of a motion for summary judgment. *Provident Life & Accid. Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003). To be successful, a motion under Texas Rule of Civil Procedure 166a(c) must establish that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). When a plaintiff moves for summary judgment on its own claim, the plaintiff must conclusively prove all essential elements of its cause of action as a matter of law. *Rhône-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999); *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979).

If the movant conclusively establishes its cause of action, the burden shifts to the nonmovant to respond with evidence raising a genuine issue of material fact that would preclude summary judgment. *Rhône-Poulenc*, 997 S.W.2d at 222–23. In deciding whether a disputed material fact precludes summary judgment, we take as true evidence favorable to the nonmovant and indulge every reasonable inference in the nonmovant's favor. *Knott*, 128 S.W.3d at 215.

### *Breach of Contract*

To be entitled to summary judgment on its breach of contract claim, Dodeka was required to prove, as a matter of law, (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of contract by the defendant; and (4) damages sustained as a result of the breach. *Williams v. Unifund CCR Partners*, 264 S.W.3d 231, 235–36 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (citing *Wincheck v. Am. Express Travel Related Servs. Co.*, 232 S.W.3d 197, 202 (Tex. App.—Houston [1st Dist.] 2007, no pet.)). Parties form a binding contract when the following elements are present: (1) an offer, (2) an acceptance in strict compliance with the terms of the offer, (3) meeting of the minds, (4) each party’s consent to the terms, and (5) execution and delivery of the contract with the intent that it be mutual and binding. *Id.* at 236.

Taraldsen contends that Dodeka did not conclusively establish the fifth element, that is, the execution and delivery of a contract with the intent that it be mutual and binding. Taraldsen points to the absence of a signed credit card agreement as support for this contention. Texas law, however, “recognizes that a contract need not be signed to be ‘executed’ unless the parties explicitly require signatures as a condition of mutual assent.” *Mid-Continent Cas. Co. v. Global Enercom Mgmt., Inc.*, 323 S.W.3d 151, 157 (Tex. 2010). Manifestations of intent

through actions and words may demonstrate delivery of a contract and enable its enforcement. *Wincheck*, 232 S.W.3d at 204.

The credit card agreement accompanying Dodeka's motion states that "you will be bound by this agreement if you or anyone authorized by you use your account for any purpose." The affidavits included with the summary judgment establish that Taraldsen either used or authorized the use of the card and also made payments on the account. This evidence meets Dodeka's burden to show the existence of a binding contract. *See Wincheck*, 232 S.W.3d at 204. Taraldsen offered no countervailing evidence. We therefore hold that the trial court correctly granted Dodeka's motion.<sup>1</sup>

### **Conclusion**

We hold that the trial court correctly granted Dodeka's motion for summary judgment. We therefore affirm the judgment of the trial court.

Jane Bland  
Justice

Panel consists of Justices Keyes, Higley, and Bland.

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<sup>1</sup> This holding makes it unnecessary to address Taraldsen's remaining issue.