In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-14-00275-CV

MOHAMMAD RANJBAR, APPELLANT

V.

CITIBANK, N.A., APPELLEE

On Appeal from the County Court at Law No. 3
Bexar County, Texas
Trial Court No. 373746, Honorable David J. Rodriguez, Presiding

January 25, 2016

MEMORANDUM OPINION

Before CAMPBELL and HANCOCK and PIRTLE, JJ.

Appellant Mohammad Ranjbar appeals the trial court's judgment in favor of Citibank, N.A. in its suit to recover a consumer credit card debt. Through five issues, Ranjbar argues the evidence is legally and factually insufficient to support the judgment. We disagree, and will affirm.

Background

Citibank sued Ranjbar to recover an unpaid balance on a credit card issued to Ranjbar. Pleading in the alternative, Citibank asserted causes of action for breach of contract, account stated and common-law debt. The case was tried to the bench. Citibank presented the testimony of Steven Sabo, an assistant vice president and custodian of records for Citibank. Ranjbar also testified, disputing the charges on the credit card and denying receipt of some of the account statements. The trial court entered a judgment in favor of Citibank. No findings of fact or conclusions of law were requested. This appeal followed.

Analysis

Standard of Review

Findings of fact in a bench trial have the same force and dignity as a jury's verdict. *Ortiz v. Jones,* 917 S.W.2d 770, 772 (Tex. 1996) (per curiam); *Catalina v. Blasdel,* 881 S.W.2d 295, 297 (Tex. 1994). In a bench trial where, as here, no findings of fact or conclusions of law are filed, all findings necessary to support the trial court's judgment are implied. *Holt Atherton Indus., Inc. v. Heine,* 835 S.W.2d 80, 83 (Tex. 1992). When a complete reporter's record is filed, implied findings, like a trial court's findings, may be reviewed for legal and factual sufficiency by the same standards applied to a jury's answer. *Catalina,* 881 S.W.2d at 297.

A challenge to the legal sufficiency of a trial court's judgment will be sustained if there is a complete absence of evidence of an essential fact, the trial court was barred

by rules of law or evidence from giving weight to the only evidence proving an essential fact, no more than a scintilla of evidence was offered to prove an essential fact, or the evidence conclusively establishes the opposite of the essential fact. *City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005). We view the evidence in the light most favorable to the trial court's determination, crediting favorable evidence if a reasonable fact finder could have done so and disregarding contrary evidence unless a reasonable fact finder could not. *Id*. at 807. Circumstantial evidence may be used to establish any material fact, but it must establish more than mere suspicion. *Lozano v. Lozano,* 52 S.W.3d 141, 148 (Tex. 2001). We consider the totality of the known circumstances in determining the legal sufficiency of the circumstantial evidence and the reasonable inferences to be drawn from it. *Id.*

The trial court as fact finder is the sole judge of the witnesses' credibility and the weight to be given their testimony, and we will not disturb the court's resolution of evidentiary conflicts that turn on credibility determinations. *See City of Keller,* 168 S.W.3d at 819 (jurors as fact finders).

Ownership of Account

Ranjbar's first and second issues are briefed together and present a multifarious contention. His primary argument is that the judgment was erroneous because Citibank failed to prove it owned Ranjbar's credit card account. Ranjbar's argument in support of his issues also complains of the court's admission into evidence of documents supported by a business records affidavit.

It is undisputed that Ranjbar's credit card was issued in December 2005 by Citibank (South Dakota), N.A. Ranjbar's argument challenges the evidence that Citibank (South Dakota), N.A. later merged with Citibank, N.A., in July 2011, so as to make Citibank, N.A. the owner of Ranjbar's account. We agree with Citibank that its evidence was properly admitted, and was sufficient to establish Citibank, N.A. as the owner of the account.

The business records affidavit was that of Ashley Cooley, identified in the affidavit as "a custodian of records for Citibank, N.A." It and its attached records were admitted over Ranjbar's objections. Cooley's affidavit substantially complies with the form prescribed by Rule of Evidence 902(10). TEX. R. EVID. 902(10) (authentication of business records accompanied by affidavit). After review of the record, we find also that the trial court did not abuse its discretion by overruling Ranjbar's contentions that the records were not made by a person with knowledge and that the circumstances of their preparation indicate a lack of trustworthiness. *See* TEX. R. EVID. 803(6) (hearsay exception for records of regularly conducted activity). Cooley's affidavit says the records were prepared and kept in the ordinary course of Citibank's business by a person with knowledge.

Sabo's testimony also supported Cooley's statement. He identified Cooley as a Citibank employee, and testified he too was familiar with Ranjbar's account. He identified the items of information contained in the monthly statements attached to Cooley's affidavit. The court heard no evidence casting doubt on the authenticity of the records attached to the affidavit, or casting doubt on their admissibility as business records excepted from the hearsay rule under rule of evidence 803(6). Nothing the

court heard indicates the records lacked trustworthiness. The court did not abuse its discretion by admitting them.

Sabo also testified he was an assistant vice president of Citibank, N.A. and had been employed by Citibank, N.A. or one of its direct operating subsidiaries for some 23 years. He testified to his personal knowledge of the merger between Citibank (South Dakota), N.A., and Citibank, N.A., effective July 1, 2011, and testified that Citibank, N.A. owned Ranjbar's account. Sabo also read from a Citibank record attached to Cooley's affidavit, containing the statement, "Important notice about your account. Effective July 1st, 2011, Citibank (South Dakota), N.A., is merged into Citibank, N.A. Citibank, N.A., which is located in Sioux Falls, South Dakota is the new issuer of your account. All references to Citibank (South Dakota), N.A., in your account documentation, including the Card Agreement, and in communications about your account should be deemed to refer to Citibank, N.A." On appeal, Ranjbar argues there is no evidence the "important notice" was included in any statement actually mailed to him. *Cf. Dulong v. Citibank (S.D.), N.A.,* 261 S.W.3d 890, 894 (Tex. App.—Dallas 2008, no pet.) (evidence showed similar "important message" appeared on statement sent to card debtor). Nonetheless, the notice bears Ranjbar's account number, and the trial court could have seen the presence of such a notice among Citibank's records for Ranjbar's account as evidence of the occurrence of the merger and its effect on his account. *See Castilla v. Citibank (S.D.), N.A.,* No. 05-11-00013-CV, 2012 Tex. App. LEXIS 1931, at *19 (Tex. App.—Dallas Mar. 9, 2012, no pet.). (mem. op.) (evaluating similar evidence).

The monthly statements for Ranjbar's account attached to Cooley's affidavit bear neither the name Citibank, N.A., nor the name Citibank (South Dakota), N.A. The

statements say checks should be made payable to "Citi Cards," and that name appears in the payment mailing address on the statements. "Citicards" also appears in an online address mentioned on the statements. Nonetheless, we find Sabo's testimony and the "important notice" of the merger, viewed in the light most favorable to the judgment, provide legally sufficient evidence Ranjbar's account was held by Citibank, N.A. *See Jaramillo v. Portfolio Acquisitions, L.L.C.,* No. 14-08-00939-CV, 2010 Tex. App. LEXIS 2219, at *10 (Tex. App.—Houston [14th Dist.] Mar. 30, 2010, no pet.) (mem. op.) (finding similar evidence sufficient to show assignee held credit card account). Other than the undisputed evidence the account originally was held by Citibank (South Dakota), N.A., there is no evidence the account was held by an entity other than Citibank, N.A. The evidence is thus factually sufficient as well. *See Wood v. Pharia L.L.C.,* No. 01-10-00579-CV, 2010 Tex. App. LEXIS 9819, at *19-20 (Tex. App.—Houston [1st Dist.] Dec. 9, 2010, no pet.) (mem. op.) (finding evidence of ownership of credit card account factually sufficient).

Ranjbar sometimes characterizes his challenge to the evidence supporting Citibank, N.A.'s ownership of the account as a contention Citibank, N.A. lacked standing to pursue the unpaid debt and the trial court thus lacked jurisdiction. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.,* 852 S.W.2d 440, 444-45 (Tex. 1993) (standing as prerequisite to subject-matter jurisdiction); *Cadle Co. v. Lobingier*, 50 S.W.3d 662, 669-70 (Tex. App.—Fort Worth 2001, pet. denied); *Eaves v. Unifund CCR Partners,* 301 S.W.3d 402, 405 (Tex. App.—El Paso 2009, no pet.) (ownership of account establishing standing). Citibank, N.A. pled, in its petition, "Citibank, N.A. is the successor by merger to Citibank (South Dakota), N.A." The court heard no evidence contrary to that

statement. And, as noted, the court heard evidence supporting the statement. Accordingly, the court did not err by concluding Citibank, N.A. had standing to litigate Ranjbar's unpaid account. *See, e.g., Nguyen v. Citibank N.A*., 403 S.W.3d 927, 931 (Tex. App.—Houston [14th Dist.] 2013, pet. denied).

Ranjbar's first and second issues are overruled.

Sufficiency of Evidence of Account Stated

Ranjbar briefs his third, fourth, and fifth issues together. He contends Citibank failed to prove elements of its claims against him.[1]

Texas courts, including the Fourth Court of Appeals,[2] have found a cause of action for account stated to be proper for collection of unpaid credit card debt. *Rodriguez v. Citibank, N.A.,* No. 04-12-00777-CV, 2013 Tex. App. LEXIS, at *13-14 (Tex. App.—San Antonio, Aug. 30, 2013, no pet.) (mem. op.)*, Walker v. Citibank, N.A.*, 458 S.W.3d 689, 692 (Tex.App.—Eastland 2015, no pet.); *Busch v. Hudson & Keyse, LLC,* 312 S.W.3d 294, 298 (Tex.App.—Houston [14th Dist.] 2010, no pet.); *Dulong,* 261 S.W.3d at 893. An account stated cause of action permits relief where (1) transactions between the parties give rise to indebtedness of one to the other; (2) an agreement, express or implied, between the parties fixes an amount due, and (3) the one to be

[1] We find it necessary to address the sufficiency only of the evidence to support Citibank's account-stated cause of action.

[2] This case was transferred to us from the Fourth Court of Appeals in San Antonio pursuant to an order of the Texas Supreme Court under the authority of Section 73.001 of the Texas Government Code. TEX. GOV'T CODE ANN. 73.001 (West 2013); *see* TEX. R. APP. P. 41.3 (precedent in transferred cases).

charged makes a promise, express or implied, to pay the indebtedness. *Rodriguez,* 2013 Tex. App. LEXIS 11160, at *13-14 (*citing Dulong,* 261 S.W.3d at 893). An implied agreement can arise from the acts and conduct of the parties. *Dulong,* 261 S.W.3d at 894; *see McFarland v. Citibank, N.A*., 293 S.W.3d 759, 763, (Tex. App.—Waco 2009, no pet.).

The evidence supporting the trial court's judgment begins with Ranjbar's testimony, in which he acknowledged Citibank (South Dakota), N.A. issued a credit card to him in 2005, he used the card to make purchases, he received billing statements and he made payments to the account.

The records appended to Ashley Cooley's business records affidavit include, in addition to the "important notice" of the merger, the monthly statements for Ranjbar's account, a Citibank (South Dakota), N.A. card agreement dated in 2010, and three canceled checks drawn on Ranjbar's checking account, payable to Citi Cards or another Citi entity[3] and bearing Ranjbar's credit card account number.

The first of the appended monthly account statements reflects activity from June 9 through July 8, 2009. The statement shows a previous balance of $6053.44, a payment posted on July 2 of $150.00, another payment of $131.29, a merchant's credit of $4.33, a "credit protector" fee of $50.16, two purchases totaling $60.02, and a finance charge of $73.72, with a resulting new balance of $5951.72. The $150.00 payment

[3] The first check, dated June 20, 2009, is payable to "Citi Cards," in the amount of $150.00. The second is dated December 17, 2007, and is payable to "CitiBank," in the amount of $550.26. The third is dated March 16, 2007, and is payable to "Citi" in the amount of $6418.80.

posted July 2 corresponds with Ranjbar's canceled check for that amount appended to Cooley's affidavit and dated June 20.

The last of the appended statements shows activity from June 8 through July 7, 2011. It reflects a previous balance of $6195.21, no payments or other credits, no purchases or advances, and interest charged of $154.53, resulting in a new balance of $6349.74, which is the amount for which Citibank pled. Sabo testified that was the amount due on the account, and that is the principal amount of the court's judgment.

During his testimony, Sabo acknowledged that the statements appended to Cooley's affidavit were not duplicates of the statements mailed to Ranjbar.[4] He testified, however, that they include "all the financial history for that particular monthly billing statement." In addition to the account activity for each month, each statement contains Ranjbar's name and address, and the number of his account, in addition to late payment warnings, interest charge calculations and similar information.

Ranjbar acknowledged receiving some statements but denied he received others, and generally denied incurring the charges owed on the account. The trial court was not required to give great weight to Ranjbar's contention, however. *See City of Keller,* 168 S.W.3d at 819 (fact finder is sole judge of credibility and weight to be given witness testimony and may choose to believe one witness and disbelieve another). The statements all contain the same address, and Ranjbar testified it was still his address at the time of trial. Moreover, proof of its account stated cause of action did not require

[4] Sabo stated, "All the originals were sent to Mr. Ranjbar. There's no way I could have looked at them." The evidence does not explain in what respects the statements mailed to Ranjbar would have differed from those in the record.

Citibank to prove Ranjbar actually received any particular statement. *See, e.g., Rodriguez,* 2013 Tex. App. LEXIS 11160, at *16-17.

Ranjbar did not deny making the payments reflected on the statements. The statements show a payment on the account during each month from June 2009 through December 2010. The last regular payment shown was a $102.00 payment posted February 26, 2011, and later statements reflect other crediting transactions.

As to Ranjbar's testimony denying he incurred the more recent charges to the account, we note the most recent purchase shown occurred in June 2010, a charge from San Antonio College. Ranjbar acknowledged his wife had been a student at the college.

The evidence showed also that the principal balance owed on the account changed little during the two years reflected in the statements in the record. As noted, the period began with a balance of just over six thousand dollars, and ended with a balance of some six thousand, three hundred fifty dollars. The statements thus reflect that substantially all the ending balance was "incurred" before the beginning date of the statements in evidence.

Ranjbar testified he called Citibank at one point to dispute recent charges but did not provide written notice of his dispute. Sabo testified Citibank "will process phone requests" but he "showed no record of a dispute" by Ranjbar. Ranjbar did not identify any particular charge that he disputed.

Viewing the evidence in the light most favorable to the trial court's judgment, we find the evidence was legally sufficient to support the trial court's implicit conclusions

that transactions between them gave rise to Ranjbar's indebtedness to Citibank, that an express or implied agreement between them fixed the amount due as that shown by the last statement in evidence and Sabo's testimony, and that Ranjbar promised to pay that amount. *Rodriguez,* 2013 Tex. App. LEXIS 11160, at *13-14. Similarly, considering all the evidence, we find the trial court's implicit conclusions are not against the great weight and preponderance of the evidence, or so contrary to the overwhelming weight of the evidence that they are clearly wrong and unjust. *Dow Chem. Co. v. Francis,* 46 S.W.3d 237, 242 (Tex. 2001). We overrule Ranjbar's third, fourth and fifth issues.

Conclusion

Having resolved each of Ranjbar's issues against him, we affirm the judgment of the trial court.

James T. Campbell
Justice