SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1134-15T3

CAPITAL ONE, N.A., assignee
of CHASE BANK, USA,

Plaintiff-Respondent,

v.

SAMUEL SOLOMON,

Defendant-Appellant.

Submitted March 14, 2017 – Decided March 27, 2017

Before Judges Fisher, Leone and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Special Civil Part, Essex County, Docket No. DC-18897-14.

G. Victoria Calle, attorney for appellant.

Lyons, Doughty & Veldhuis, P.C., attorneys for respondent (Lauren Keating, on the brief).

PER CURIAM

Plaintiff Capital One, N.A., commenced this Special Civil Part action seeking to recover an unpaid balance on what it claims to be defendant Samuel Solomon's credit card account, which was assigned to plaintiff by Chase Bank, in 2010. At the conclusion

of a one-day bench trial, during which only plaintiff's representative and defendant testified, the judge rejected defendant's assertion that he was an identity-theft victim and found plaintiff demonstrated defendant was responsible for the debt. For that and other reasons, judgment was entered in plaintiff's favor for the amount sought. In adhering to our familiar standard of review, which requires deference to a trial judge's findings of fact, Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974), we affirm.

As is the accepted practice in an action on a book account, see, e.g., Priest v. Poleschuck, 15 N.J. 557, 560-61 (1954), plaintiff called an employee familiar with its books and records to testify about the existence of the credit card account and the outstanding balance of $3805.62. Here, because the account originally belonged to Chase Bank, plaintiff's representative also testified about the assignment of the claim to plaintiff. In light of defendant's claim that he was the victim of identity theft, plaintiff also elicited testimony from its representative about the mailing of billing statements to defendant's address[1] and about the process followed when, like here, a cardholder claims an unauthorized use. Plaintiff's representative testified that

[1] Defendant's own testimony adequately confirmed he resided at the address to which statements were sent.

plaintiff's records revealed such a claim was asserted but not sustained, although plaintiff sent a check to defendant in partial consideration of the alleged unauthorized use or uses. Plaintiff's representative also testified that "pretty consistent" payments on the account were made by telephone until sometime in 2012; this was significant because information would have been requested to establish the caller as the true cardholder. In addition, the tendering of a partial payment would demonstrate the payor acknowledged responsibility for the account.

Defendant, who was self-represented at trial, baldly asserted in his testimony that he was the victim of an identity theft and that he had not received plaintiff's billing statements, even though he confirmed living at the address where the statements were sent. Moreover, defendant acknowledged he received — at the same address — plaintiff's check for the alleged unauthorized use of the account.

The trial judge made thorough findings of fact. In ruling in plaintiff's favor, the judge was particularly impressed by the fact that defendant acknowledged receiving a check from plaintiff on his authorized-use assertion and that payments were made against the account — something, the judge determined, an identity thief was unlikely to do. Based on these and other findings, judgment

was entered in favor of plaintiff and against defendant in the amount of $3805.62.

Defendant appeals, arguing:

> I. THE TRIAL COURT ERRED IN FINDING PLAINTIFF PROVED BY SUFFICIENT EVIDENCE THAT THE CREDIT CARD DEBT BELONGED TO DEFENDANT AND DEFENDANT OWED THIS DEBT.
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> > A. New Century Financial Services v. Oughla, 437 N.J. Super. 299 (A[pp]. D[iv]. 2014) Is Not Applicable to This Case in Defining the Sufficiency of Evidence to prove Defendant ow[]ed the debt.
> >
> > B. There is Insufficient Evidence to prove Defendant ow[]ed the debt.
> >
> > C Additional Details of New Century Financial Services v. Oughla.
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> II. DEFENDANT WAS DENIED DUE PROCESS BECAUSE HE WAS NOT AFFORDED SUFFICIENT OPPORTUNITY TO PRESENT HIS CASE.

Except for generally agreeing with the thrust of defendant's Point I(A) about the scope of Oughla, we find insufficient merit in defendant's other arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following comments.

We agree with defendant that Oughla determined what a plaintiff must show to prove ownership of the claim assigned to it. 437 N.J. Super. at 314-16. While plaintiff's right to sue on this debt was also based on an assignment, we do not view

defendant's arguments as including a serious assertion that plaintiff was not entitled to sue on this debt. To the extent we are mistaken about the scope of defendant's argument, we find no merit in any contention that the 2010 assignment from Chase to plaintiff was not proven.

That plaintiff owned the debt with a right to sue on it does not end the matter. Oughla does not stand for the proposition that if the assignment is proven, then the defendant's obligation to pay the account is proven. A creditor in that situation remains obligated to prove not only the amount of the indebtedness but also that defendant was the person responsible for the account. The judge assessed the testimony of the parties and found plaintiff established that defendant was the cardholder and that the amount sought was what was due and owing. Although it may have made plaintiff's path to recovery smoother in this case, plaintiff was not obligated to provide the actual documents that created the account, which plaintiff lacked because of the passage of time and the intervening assignment of the debt.

In reviewing the matter through application of the familiar Rova Farms standard, we have been presented with no principled reason for second-guessing the judge's findings in this matter.

Affirmed.