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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3545-16T4

ROBERT W. BUSCH,

Plaintiff-Respondent,

v.

COLLEEN BUSCH,

Defendant-Appellant.

Submitted March 21, 2018 – Decided April 12, 2018

Before Judges Nugent and Geiger.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Hunterdon
County, Docket No. FM-10-0001-15.

Carter, Van Rensselaer and Caldwell, attorneys
for appellant (William J. Caldwell, on the
brief).

The Deni Law Group, LLC, attorneys for
respondent (Allison M. Roberts, on the brief).

PER CURIAM

This appeal involves the parties' post-divorce dispute over responsibility for pre-divorce credit card debt. The debt is the sum of the balances on two Discover Card accounts. After

considering defendant's initial motion and her motion for reconsideration, the trial court entered an order requiring plaintiff to reimburse defendant in monthly installments for \$9867 of the balances. Defendant appeals from that order. We affirm.

Married in 2004, the parties separated in June 2014 and divorced in June 2016. The parties' Final Judgment of Divorce (FJOD) incorporated a Matrimonial Settlement Agreement (MSA).

The typewritten MSA provided defendant would waive her interest in the marital residence and leave the marriage "debt free." The MSA does not itemize the marital debt. This omission, coupled with numerous handwritten edits and insertions to the typewritten MSA, create some ambiguity concerning the amount of marital debt that existed when the parties divorced.

Nonetheless, when questioned by defendant's attorney at the divorce hearing, plaintiff acknowledged that "[o]ne of the major considerations . . . in terms of the alimony was the fact that [he was] agreeing to take on all matrimonial debt." He also acknowledged the debt he was assuming included the house and credit cards; and that with the exception of some limited debt defendant was assuming, such as "a car loan and a credit card that she's opened since [the separation]," she was "supposed to leave th[e] marriage debt free." Plaintiff agreed that "whatever [the] numbers might be . . ., if it turns out that there is more or less

matrimonial debt . . . than is actually recited, [he would] still [be] responsible for making payments on it."

Two weeks after the divorce, defendant sent plaintiff statements from two Discover Card accounts: the first covering the period from September 14, 2013 through October 13, 2013, with a \$9987.55 balance; the second covering a period from June 14, 2014 through July 13, 2014, with an \$8948.16 balance. When plaintiff ignored this and two additional demands that he pay the Discover Card debt, defendant filed a motion to compel him to do so.¹

In a supporting certification, defendant averred she had "provided all the information available regarding our joint [D]iscover [C]ard." Plaintiff responded that in 2014, when he and defendant divided "things such as furniture and credit cards," defendant took responsibility for the Discover Card. He claimed the card was in her name alone and used solely by her. Plaintiff asserted, "I never had this card, and it was not included as marital credit card debt in the MSA." He insisted a handwritten notation on the MSA limited his responsibility to \$12,500 of credit card debt.

¹ Defendant's motion also sought enforcement of other MSA provisions. On this appeal we are concerned only with the credit card debt.

In reply, defendant explained there were two accounts because "they were reissued due to earlier fraudulent activity."² She insisted the FJOD required plaintiff to assume responsibility for all marital debt.

Unable to determine if the Discover Card statement balances were marital debt, the trial court resolved the problem by entering an order that included this provision:

[Defendant's request] that the [c]ourt direct the [p]laintiff to reimburse [d]efendant the sum of \$742 for the Discover cards and to pay the balance in full of the Discover [C]ards is [granted], as modified. If there is proof that, before signing the MSA, [plaintiff] was supplied with the Discover [C]ard statements or other documentation demonstrating that balances existed on the accounts at the time of separation, he is responsible for this debt. If there is no proof that he was ever supplied with this information, he is not responsible. [Defendant] shall have 14 days to supply to the court proof that [plaintiff] was supplied with the information before the MSA was executed. If she fails to supply it, he shall not be responsible for the debt. If she does supply it, [plaintiff] shall have seven days to advise the court if he contests the documentation supplied and/or requests a plenary hearing regarding the proofs. The court will then decide which party is responsible for this debt.

² Defendant actually sent plaintiff four account statements. Although two were presumably the replacement accounts following the fraudulent activity, defendant did not explain why there were two separate Discover Card accounts in her name.

The record is unclear as to what, if anything, defendant provided to the court in response to its order. Nearly three months after the court entered the order, defendant moved for reconsideration. Although defendant's motion was untimely, the trial court exercised its discretion and considered. Defendant presented to the court, among other things, plaintiff's 2014 Case Information Statement (CIS). In the section entitled "Statement of Liabilities," plaintiff listed the amount owed on a Discover Card as \$9867. The CIS form included this direction: "if you contend liability should not be shared, state reason." Plaintiff made no such contention.

Plaintiff cross-moved to deny defendant's reconsideration motion. Among other allegations, plaintiff asserted defendant had used the Discover Card for her business. He pointed out a reference in the MSA requiring the parties "be solely and exclusively responsible for the repayment of such individual credit card debt accrued in their own names."

In a reply certification, defendant repeated and re-emphasized the MSA stated she would leave the marriage "debt free." She asserted she had bargained away her claim for higher alimony and a share of the matrimonial residence in return for plaintiff's agreement to assume all marital debt.

The trial court disposed of the motion in paragraphs two and three of its March 15, 2017 order. The paragraphs provided:

[Defendant's request] that the court direct [p]laintiff to reimburse [d]efendant for all payments made on the two Discover [C]ards since the date of divorce is [denied.]

[Defendant's request] that the court direct the [p]laintiff to pay the balance of the two Discover [C]ards and provide proof of such payments is [granted], as modified. [Defendant] shall be responsible for payment of all the Discover credit card debt. [Plaintiff] shall reimburse [defendant] for \$9,867 of this debt. He shall make payments to [defendant] at a rate of \$100 per month until \$9,867 is paid in full, with the first payment to be made in March 2017.

On appeal, defendant asserts the trial court misapplied the terms of the MSA as well as the parties' intent, which plaintiff acknowledged during the hearing. Plaintiff counters that both the terms of the MSA and the parties' intent are clear and unequivocal. Plaintiff contends, alternatively, if an ambiguity exists, it must be resolved by way of a plenary hearing. Plaintiff has not cross-appealed from the trial court's final order.

We affirm, substantially for the reasons expressed by the trial court in its written decisions accompanying its orders. We add only that the trial court misinterpreted neither the MSA nor the intentions of the parties. Rather, the MSA's omission of an

itemization of credit card debt foreshadowed future disputes about what was included or excluded.

In its order disposing of defendant's initial motion, the trial court provided her with an opportunity to prove that the amount owed on the Discover Cards was marital debt. Plaintiff's CIS proved the issue to the extent of the debt plaintiff acknowledged in that document. In contrast, defendant failed to demonstrate the remaining money owed on the Discover Cards was marital debt. The monthly statements were not dispositive. They could have been incurred for the debt related to defendant's business. Although defendant did not deny the credit cards had always been in her name, she did not provide any statements identifying the items she had used the cards to purchase. She could have used the cards for business expenses, as claimed by plaintiff.

Defendant produced no evidence on the motion record to establish the remaining credit card debt was marital debt. Given the absence of any proof on the issue, we cannot conclude the court erred by denying in part defendant's motion to compel plaintiff to pay the entire credit card balances.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION