

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

REMIT CORPORATION,

Plaintiff,

vs.

EDITH POTTER,

Defendant.

) CIVIL DIVISION

)

) AR 07-3345

)

) DECISION

)

) Filed by the Honorable

) JUDITH L. A. FRIEDMAN

)

) Copies mailed to:

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FILED
REMIT CORPORATION
EDITH POTTER

*Debt buyer
collector*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

REMIT CORPORATION,)	AR 07-3345
)	
Plaintiff,)	
)	
vs.)	
)	
EDITH POTTER,)	
)	
Defendant.)	FRIEDMAN, J.

DECISION

This Decision is filed pursuant to Pa. R.C.P. 1038. See also Pa. R.C.P. 227.1(c)(2).

The captioned matter involves a Discover credit card debt allegedly owed by the Defendant to the card issuer which allegedly sold the debt to Unifund CCR Partners as part of a package of "charged off" debts. Unifund then transferred the debt in some fashion to instant Plaintiff for collection.

We have assumed, without deciding, that the assignments or transfers leading to the named Plaintiff were proper and that Plaintiff would have the right to a judgment against Defendant so long as the evidence shows, by a preponderance, that Defendant did owe the amount claimed, plus interest and late fees, to the issuer of the Discover card.

Defendant admits that she had the Discover card at issue and that she used it at some point in the past, but not very much. She admits making payments over the years totaling more than \$4,000. Plaintiff has offered no proof of what the contract terms were that Defendant agreed to at the time she first was given the card, in 1994 or 1995. The earliest evidence of what the terms might have been is Plaintiff's Exhibit 4, which reflects that it is a 1999 version. However, there is no evidence of what purchases Defendant made using the card or when they were made. In particular, there is no evidence that she purchased anything after Plaintiff's Exhibit 4 was created. There is therefore no evidence that by using the card after a certain date she accepted the 1999 version of the terms and conditions of the credit card. (We note that on occasion a card statement in Plaintiff's Exhibit 5 has an entry for a "Purchase," but the testimony, *from Plaintiff*, was that that was not a real purchase but was rather a late fee.)

Plaintiff has not proven that the limited records it received in support of the face amount of the debt Unifund purchased from the issuer are consistent with the bank's agreement with Defendant. All we know is that the issuer appears to have "charged off," which, according to Plaintiff, means the issuer has taken a tax loss of \$4,640.38, based on an unexplained amount the bank says Defendant owed it as of July 31, 2003. (See the last several pages of Plaintiff's Exhibit 5.)

Plaintiff has the burden of proving the terms of the contract with the Defendant. It has not done so. Plaintiff has the burden of proving that the debt purchased was the correct amount Defendant owed. It has not done so. Any ruling in

favor of Plaintiff would have to be based on conjecture and speculation. In effect, Plaintiff is asking the Court to assume that the issuer's incomplete records are correct and to further assume that Defendant made purchases in or after 1999 and so accepted the new terms of the credit card agreement. The Court refuses to make these unsupported assumptions.

We note that the documentary evidence was admitted as *Plaintiff's* business records. That ruling, however, does not make those records believable as to the amount the *issuer* was owed by Defendant. Furthermore, there is insufficient proof of an assignment from the bank to Unifund. All we have are Plaintiff's Exhibits 2 and 3, which are Unifund's own documents and which were attached to the Complaint filed in this action, and Plaintiff's Exhibit 1, which is an incomplete photocopy of an affidavit of claim by an account manager of Discover Financial Services, Inc. Missing from Exhibit 1 is the "annexed statement" of Defendant's account. The actual assignment to Unifund is only referred to in Exhibit 1 but is not otherwise in evidence.

Plaintiff would have us take on faith the accuracy of the issuer's claims without any reliable record whatsoever.

The Court finds in favor of Defendant and against Plaintiff.

Pursuant to the Rules of Court cited above, this Decision constitutes the verdict of this Court; there will be no separate verdict slip filed.

By the Court
Dredman, J.

DATED: June 2, 2008