

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK : PART 30

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COLORADO CAPITAL INVESTMENTS, INC. s/i/i
PROVIDIAN NATIONAL BANK,

Plaintiff,

Index No. 5894/2005
26 of 11/5/08

-against-

DECISION/ORDER

IVELISSE DEL VILLAR,

Defendant.

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HON. DEBRA ROSE SAMUELS, J.C.C.:

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion to: amend the caption and grant summary judgment in favor of plaintiff; cross-motion for summary judgment in favor of defendant.

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1- 3</u>
Cross-Motion and Affidavits Annexed.....	<u>8-10</u>
Answering Affidavits.....	<u>23</u>
Replying Affidavits.....	<u> </u>
Exhibits	<u>4-7;11-21</u>
Othermemo of law.....	<u>22</u>

Upon the foregoing cited papers, the Decision/Order on this motion and cross-motion is as follows:

In this action by an assignee to collect a credit card debt of \$1,544.17, plaintiff moves for an order to amend the caption and pursuant to CPLR 3212 for summary judgment. Defendant opposes and cross moves. Based upon the discussion below, plaintiff’s motion is denied; defendant’s cross-motion for dismissal is granted; defendant’s cross-motion for summary judgment on her counterclaim for damages for money taken from defendant’s bank account as a consequence of plaintiff’s illegal restraint, along with costs and fees is denied.

Any party may move for summary judgment once issue is joined (CPLR 3212[a]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v. New York University Medical Center*, 64 NY2d 851 [1985]).

In this case, plaintiff asserts that it is the owner of defendant's account. In support, plaintiff provides copies of documents showing the transfer of defendant's account from the original owner, Providian National Bank, to the entity that movant describes as the current owner. None of these assignments, however, contain a list of the accounts which were included in the transfer, except for the most recent one. Thus on their face, these assignments and bills of sale do not specify that defendant's account was included in any transfer, and cannot support movant's contention that defendant's account was so transferred.

Furthermore, the Assignment and Bill of Sale from the current plaintiff to the proposed new plaintiff and current owner, dated July 16, 2006, refers to the sale of "Accounts" on Appendix "A". It also provides that the seller transferred all of the seller's rights, title and interest "...in each and every one of the accounts described in the agreement." But inexplicably, Appendix "A" as annexed only consists of one account, defendant's account.

In support plaintiff also provides an affidavit from Jim Scoroposki, an authorized agent of the Recovery Division of Colorado Capital Asset Management Corp., the alleged current owner of defendant's account and the proposed new plaintiff. Although Mr. Scoroposki asserts that he is personally familiar with the manner and method by which Recovery Division of Colorado Capital Asset Management Corp., such assertion cannot support the introduction into evidence of the records of all the prior entities which owned the account, including the original credit card issuer. Mr.

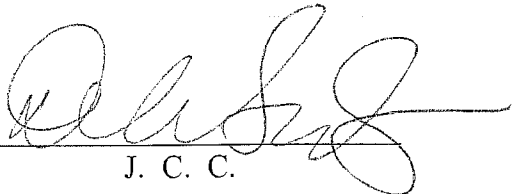
Scoroposki's knowledge is limited to the current owner, and thus the chain of title of defendant's account has not been properly authenticated. Defendant cross-moved to dismiss, and plaintiff has not, in its opposition to such motion, enhanced its presentation of its entitlement to maintain the claims asserted herein, and should have done so to defend the cross- motion.

Therefore, for all the above reasons, plaintiff's motion for summary judgment and to amend the caption must be denied, and defendant's cross-motion for dismissal must be granted.

Defendant's cross-motion for summary judgment on her counterclaim is denied. Defendant has failed to provide any definitive documentation, nor does her affidavit establish that plaintiff restrained her accounts and retained funds. In addition, defendant cannot state with precision how much money she is entitled to be reimbursed. Defendant may serve a notice of trial within sixty days to proceed to trial on her counterclaim.

This constitutes the decision and order of the court.

Dated: New York, New York
December 12, 2008



J. C. C.