

IN THE COUNTY COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 2007-SC-7009-XXXX-MA
DIVISION: I

NORTH STAR CAPITAL ACQUISITION,
LLC,

Plaintiff,

vs.

DENNIS LEWIS,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT FOR DAMAGES

This matter came before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint for Damages and the Court having heard argument of counsel for the Plaintiff and Defendant, having reviewed the file and being otherwise sufficiently advised in the premises, finds as follows:

1. Plaintiff filed its Complaint for Damages seeking relief for Breach of Contract (Count One), Account Stated (Count Two) and Unjust Enrichment (Count Three).
2. Attached to Plaintiff's Complaint for Damages was an illegible "Wells Fargo Bank - Customer Agreement and Disclosure Statement Effective April 1, 1988." In its Complaint for Damages, Plaintiff references Exhibit "A" and Exhibit "B." Contrary to these allegations there is only one attachment and it is not clear which exhibit the attached document represents or if other exhibits should have been attached.
3. The illegible document attached to Plaintiff's Complaint for Damages does not

contain Defendant's name or any other indicia that this document relates to the allegations in Plaintiff's Complaint for Damages. Further, Plaintiff does not allege the date the credit card contract was entered into, the date of the last payment or the date of default.

4. Fla.Sm.Cl.R. 7.050(a) provides that a case shall be commenced by filing a

Statement of Claim. -Actions are commenced by the filing of a statement of claim in concise form, which shall inform the Defendant of the basis and the amount of the claim. If the claim is based on a written document, a copy or the material part thereof shall be attached to the statement of claim.

5. As to Count Two - Account Stated, Plaintiff failed to attach any statements or other proof of an account including the items, time of accrual of each, and amount of each.

6. As to Count Three - Unjust Enrichment, Plaintiff attempts to state a cause of action for unjust enrichment based upon the Defendant's alleged use of a credit card while also claiming there was a breach of a written contract. Plaintiff has failed to state a cause for the equitable relief of unjust enrichment because this type of relief is founded upon the legal fiction that there is an implied, rather than written contract. This fiction can not be maintained when the rights of the parties are described in a written contract. See Carol Ann May v. Sessums & Mason, P.A.; 700 So.2d 22 (Fla. 2d DCA 1994); Corn v. Greco, 694 So.2d 833 (Fla. 2d DCA 1997).

It is therefore,

ORDERED:

A. For the reasons stated in Paragraphs 2, 3 and 4 above, Defendant's Motion to Dismiss Count One - Breach of Contract is granted.

B. For the reasons stated in Paragraph 5 above, Defendant's Motion to Dismiss

Count Two - Account Stated is granted.

C. For the reasons stated in Paragraph 6 above, Defendant's Motion to Dismiss

Count Three - Unjust Enrichment is granted.

D. Plaintiff shall have thirty (30) days from the date of this order to serve an amended complaint. Defendant shall have thirty (30) days after service of the amended complaint to file a response.

DONE AND ORDERED in Duval County, Florida, this 23rd day of October, 2007.

/s/ Pauline M. Drayton

PAULINE DRAYTON
COUNTY COURT JUDGE

Copies furnished to:

Steven M. Canter, Attorney for Plaintiff
Lynn Drysdale, Attorney for Defendant