

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

|                           |   |                         |
|---------------------------|---|-------------------------|
| RITA CARNEVALE,           | ) |                         |
| Plaintiff Below/Appellant | ) | C.A. No. CPU4-09-000873 |
|                           | ) |                         |
| v.                        | ) |                         |
|                           | ) |                         |
| GERARD FULCHER,           | ) |                         |
| WILMINGTON VIEWS JOURNAL, | ) |                         |
| COMPULSIVE GAMBLING       | ) |                         |
| INSTITUTE,                | ) |                         |
| Defendants/Appellees      | ) |                         |

Submitted: January 5, 2010  
Decided: January 12, 2010

**DECISION AFTER TRIAL**

**ROCANELLI, J.**

This is a breach of contract/debt action.

According to Plaintiff Rita Carnevale, Defendants Gerard Fulcher, Wilmington Views Journal, and Compulsive Gambling Institute failed to pay Plaintiff \$251.81 owed for copies, office supplies, five hundred (500) blank envelopes, and for her research and investigation associated with addressing an additional five hundred (500) envelopes. Plaintiff also requested an award of court costs of \$203.00, consisting of \$35.00 for Justice of the Peace Court fees and \$168.00 for fees associated with this Court of Common Pleas action. The total amount of Plaintiff's claim, including court costs, is \$454.81.

Prior to trial and until the presentation of his defense at trial, Defendant Fulcher admitted he had a contract with Plaintiff, but claimed he had paid Plaintiff in full under the contract. During the presentation of his defense at trial, Defendant Fulcher conceded Plaintiff was owed the monies she sought from him pursuant to a contract between the parties. Defendant Fulcher opposed any award of court costs to Plaintiff.

Trial *de novo* was held on January 5, 2010, and the Court reserved decision. This is the Court's decision after trial.

After Plaintiff's presentation of evidence and during the presentation of his defense, Defendant Fulcher stipulated and agreed that he owed Plaintiff \$251.81, consistent with Plaintiff's claim. Plaintiff agreed that, after Defendant compensated Plaintiff for the supplies and labor for one thousand (1000) envelopes, she would provide to Defendant Fulcher the five hundred (500) labeled envelopes she had prepared pursuant to the contract and the five hundred (500) blank envelopes she had purchased pursuant to the contract.<sup>1</sup>

The sole issue remaining for decision by the Court is whether Plaintiff should be awarded court costs incurred in filing the two lawsuits against Defendants for breach of contract, first in Justice of the Peace Court and then in

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<sup>1</sup> The Court agreed to retain the envelopes at issue in the Clerk's Office. When Plaintiff informs the Court that she has received payment in full from Defendants, Defendant Fulcher may retrieve the envelopes from the Clerk's Office.

Court of Common Pleas. The Court finds that Plaintiff is entitled to an award of court costs as the prevailing party.

Defendant Fulcher failed to appear at a scheduled pretrial conference. In addition, Defendant Fulcher failed to comply with the Court Order dated August 24, 2009 to “file responsive pleadings on behalf of Defendants Wilmington Views Journal and Compulsive Gambling Institute within 20 days of this order.”<sup>2</sup> Finally, and perhaps most importantly, Defendant Fulcher contested Plaintiff’s claims throughout the litigation in two courts, only to concede his liability at trial.

Costs may be awarded to the prevailing party. Court of Common Pleas Civil Rule 55(d) provides: “[e]xcept when express provision therefore is made either in a statute or in these Rules or in the Rules of the Supreme Court, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs.” In addition, the Delaware Code provides: “[g]enerally a party for whom final judgment in any civil action, or on a writ of error upon a judgment is given in such action, shall recover, against the adverse party, costs of suit, to be awarded by the court.”<sup>3</sup>

Plaintiff is the prevailing party in this action. She has obtained judgment in the full amount sought for breach of contract. Determination of whether to grant

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<sup>2</sup> *Carnevale v. Fulcher, Wilmington Views Journal, and Compulsive Gambling Inst.*, C.A. No: CPU4-09-000873 (Del. Com. Pl. 2009).

<sup>3</sup> 10 *Del.C.* § 5101.

court costs is a matter of judicial discretion.<sup>4</sup> The Court finds it is appropriate to award court costs to Plaintiff.

**THEREFORE, JUDGMENT IS HEREBY ENTERED** in favor of Plaintiff against Defendants in the amount of \$454.81, including court costs.

**IT IS SO ORDERED.**

*Andrea L. Rocanelli*

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The Honorable Andrea L. Rocanelli

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<sup>4</sup> *Donovan v. Delaware Water and Air Resources Comm'n*, 358 A.2d 717, 722-23 (Del. 1976).