

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

WELLS FARGO FINANCIAL)	
NATIONAL BANK F/K/A)	
NORWEST FINANCIAL)	
NATIONAL BANK, INC.,)	C.A. No.: CPU4-10-002726
Plaintiff,)	
)	
v.)	
)	
WENDI M. LUCUS-CAPLE,)	
Defendant.)	

Date Submitted: January 21, 2011

Date Decided: January 24, 2011

Patrick Scanlon, Esquire
203 NE Front Street, Suite 101
Milford, DE 19963
Attorney for Plaintiff

Ms. Wendi Lucus-Caple
620 Candlestick Lane
Newark, DE 19702
Pro-Se Defendant

**ORDER ON PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND
DEFENDANT’S CROSS-MOTION FOR SUMMARY JUDGMENT**

On or about October 4, 2010, Plaintiff Wells Fargo Financial National Bank (hereinafter “Wells Fargo” or “Plaintiff”) filed a Motion for Summary Judgment in the above-captioned matter. Thereafter, on or about January 12, 2011, Defendant Wendi Lucus-Caple (hereinafter “Lucus-Caple” or “Defendant”) filed a Response to Plaintiff’s Motion and a Cross Motion for Summary Judgment and Motion to Dismiss. On Friday, January 21, 2011, the Court heard argument on both Motions. This is the Court’s Decision and Order on Plaintiff’s Motion for Summary Judgment and on Defendant’s Cross Motion for Summary Judgment.

I. The Facts

This is a simple debt action. In the complaint Wells Fargo alleges it is the creditor for the obligation identified below with defendant Lucas-Caple. Paragraph 3 of the complaint alleges that defendant is in default for non-payment on an account owned by Wells Fargo First National

Bank who is the original account holder provided to the defendant. Paragraph 4 of the complaint alleges defendant is indebted to plaintiff in the amount of \$5,344.67 plus interest to the date of the filing of the complaint in the amount of \$727.46 plus further prejudgment interest due at the contract rate of 24%. Plaintiff also alleged that the contract in issue pays for attorney's fees and therefore seeks all these sum certain from defendant.

The basis of plaintiff's Motion for Summary Judgment are defendant's Answers to Plaintiff's Request for Admissions attached to the Motion.

II. Discussion

In this Motion for Summary Judgment, Wells Fargo seeks to recover \$5,344.67 plus pre-judgment interest at the contractual rate of 24% per annum, post-judgment interest at the contractual rate of 24% per annum from the date of judgment, reasonable attorney fees and costs. Wells Fargo argues that there is no genuine issue of material fact as to whether Defendant maintained an account with Plaintiff and failed to make payments on that account.

Lucus-Caple also has a Cross Motion for Summary Judgment and Motion to Dismiss asserting that Plaintiff, *inter alia*, cannot prove at least one essential element of its claim and all other elements of the claim are rendered immaterial.

III. The Law

In order to prevail on a Motion for Summary Judgment, the moving party must prove that there are no genuine issues as to any material fact and that it is entitled to judgment as a matter of law.¹ In reviewing the record, the Court must review all facts and all reasonable inferences in the light most favorable to the non-moving party.² If a Motion for Summary Judgment is properly supported, the burden shifts to the nonmoving party to demonstrate that there are

¹ *Browning-Ferris, Inc. v. Rockford Enterprises, Inc.*, 642 A.2d 820, 823 (Del. Super. Ct. 1993).

² *Stein v. Griffith*, 2002 WL 32072578 at *1 (Del. Com. Pl. Dec. 12, 2002).

material issues of fact. The Motion for Summary Judgment will be denied if the Court finds any genuine issues of material fact.³

IV. Opinion and Order

Regarding Wells Fargo's Motion for Summary Judgment, in deciding whether the Plaintiff is entitled to recover the amount of the debt sought, the Court must determine that there are no genuine issues as to any material fact in the record. *CCP Civ.R. 56(e)*. Although it is clear to the Court from the record that Lucus-Caple had an account with Wells Fargo, there is, in fact, a genuine issue of material fact in the record as to the accuracy of plaintiff's account statement. Lucus-Caple asserts that she held three (3) different accounts with Wells Fargo. Further, Lucus-Caple disputes her assent to the Credit Card Agreement as valid as a contract because no page of the Credit Card Agreement contains the signature of the Defendant. Lucus-Caple also denies that the account is in default for non-payment. Therefore, because there is a genuine issue of material fact, Wells Fargo's Motion for Summary Judgment is hereby denied. *CCP Civ. R. 56(c)*.

Lucus-Caple's Cross Motion for Summary Judgment consists of a Motion to Dismiss or in the alternative, a grant of Summary Judgment in favor of Defendant. Lucus-Caple moves this Court to dismiss Plaintiff's Complaint based upon Plaintiff's failure to meet the burden of proof regarding the claims. Further, Lucus-Caple requests that this Court find that Plaintiff has not been able to produce nor will be able to produce sufficient evidence to meet the burden of proof. Defendant argues that Plaintiff cannot prove one essential element of its claim and as such, all other elements of the claim are rendered immaterial.

Specifically, Lucus-Caple alleges that Plaintiff cannot prove that her signature constituted a contract with Plaintiff and that the amount due was never paid. Defendant also seeks validation of the debt as well as verification for the amount sought by Plaintiff. Lucus-Caple

³ *Moore v. Anesthesia Services*, 2008 WL 484452 at * 4 (Del. Super. Ct. Feb. 15, 2008).

argues that the validity and accuracy of the debt, as well as the default status of the account are disputed facts which create a genuine issue of material fact.

Lucus-Caple further seeks for the Court to enter Summary Judgment in her favor based upon her assertion that Plaintiff has not and will not be able to prove the elements of its claim.

The Court finds that the proper time and place regarding whether Plaintiff will be able to carry its burden of proof is at trial. Thus, because Summary Judgment would be inappropriate at this juncture as well as based upon the genuine issues of material fact that have been raised, the Court denies Lucus-Caple's Cross Motion for Summary Judgment. *CCP Civ.R. 56(e)*. It is clear to this Court that genuine issues of material fact exist as to both plaintiff and the defendant within the record. As such, both parties' Motions for Summary Judgment are denied as clearly genuine issues of material fact exist in the record before the Court.

The Court hereby DENIES Wells Fargo's Motion for Summary Judgment and also DENIES Lucus-Caple's Cross Motion for Summary Judgment pursuant to *Court of Common Pleas Civil Rule 56*, or alternatively her Motion to Dismiss.

This matter is to be scheduled for trial at the earliest convenience of the Court.

IT IS SO ORDERED this 24th day of January 2011.

Judge John K. Welch

/jb

cc: Ms. Tamu White, Chief Clerk, Civil Division