IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

AMERICAN EXPRESS CENTURION BANK,	:	
	:	
Plaintiff	:	
	:	
vs.	:	**No. 10-1370**
	:	
RUTH ISENBERG,	:	
	:	
Defendant	:	

David A. Apothaker, Esquire — Counsel for Plaintiff
Kimberly F. Scian, Esquire — Counsel for Plaintiff
Cynthia S. Ray, Esquire — Counsel for Defendant

MEMORANDUM OPINION

Matika, J. – December 31, 2012

Before this Court is American Express Centurion Bank's, (hereinafter "Plaintiff"), appeal from the decision of the Board of Arbitrators who ruled in favor of Ruth Isenberg, (hereinafter "Defendant"), and against Plaintiff in a credit card default action. For the reasons stated herein the Court finds in favor of Defendant and against Plaintiff.

BACKGROUND

Plaintiff filed a breach of contract[1] and *quantum meruit* causes of action against Defendant alleging that Defendant defaulted on a line of credit issued by Plaintiff by means of an American Express credit card. The matter was heard before a

[1] Although Plaintiff in its pre-trial statement labeled the legal basis for the cause of action as "Account Stated," the averments in count one of the Complaint state a breach of contract cause of action.

Board of Arbitrators who found in favor of Defendant and against Plaintiff. Plaintiff has appealed the decision of the Board of Arbitrators to this Honorable Court.

A non-jury trial was held on September 23, 2012. Based upon the testimony and evidence presented at trial, the Court makes the following findings of fact:

1) In 1991 Defendant applied for, and received, a line of credit from Plaintiff in the form of an American Express credit card.

2) Accompanying the credit card was a cardholder agreement that governed the contractual relationship between Plaintiff and Defendant. The cardholder agreement outlined the terms and conditions of the Defendant's responsibilities and use of the card.

3) From date of inception until date of discharge of the account, Defendant used her American Express credit card to her benefit and made monthly payments on the account personally or by someone on her behalf. Through Defendant's conduct of using the card and making payments on the account, she assented to the terms and conditions of the cardholder agreement.

4) Throughout Defendant's use of the credit card, from 1991 to June 2010, Plaintiff issued subsequent cardholder agreements with each new agreement superseding the previous one. However, at the time of trial Plaintiff was unable to produce the original cardholder agreement and instead offered only a cardholder agreement with a date of July 2009.

DISCUSSION

Plaintiff, in its Complaint, laid out two different causes of action: a breach of contract claim, and a claim for *quantum meruit*. Although the present action before the Court is one based upon a default of a credit card account, each claim involves different elements and as such the Court will address each claim separately.

I. BREACH OF CONTRACT

For a plaintiff to prove a breach of contract in a credit card default action, the creditor must present the original cardholder agreement. *See*, *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340, 345 (Pa. Super. 2003). As this Court has stated previously, "[a] generic card member agreement that bears a copyright date of any year other than the year plaintiff and defendant entered into such agreement is deemed insufficient

to meet the requirements set forth by [Pennsylvania Rules of Civil Procedure] Rule 1019(i)." *Capital One Bank (USA) v. Quinn*, 11-2723 (Pa. Com. Pl. Apr. 18 2012).

Plaintiff, however, only provided the Court with a July 2009 cardholder agreement. Although Defendant's conduct was such that she assented to the terms and conditions of the cardholder agreement, without such agreement the Court does not know what promises and conditions Defendant assented to and thus the Court cannot enforce any such terms of the original agreement.

In addition to producing the original cardholder agreement or the cardholder agreement that was in effect at the time a defendant's debt began to accrue, a creditor must also furnish all monthly statements that comprise the outstanding balance. *Remit Corporation v. Miller*, 5 Pa. D. C. 5th 43 (Pa. Com. Pl. 2008). Therefore, in order for a creditor to prove the balance it claims is outstanding on defendant's account, it needs to submit all monthly statements starting with the month showing defendant's account at zero balance, whether at the inception of the contractual obligation or some subsequent time during the contractual relationship, and continuing up and until the monthly statement showing the account balance has been charged

off. *See*, *Capital One Bank (USA) NA v. Clevenstine*, 2009 WL 1245043 (Pa. Com. Pl. 2009).

In the case before the Court, the first monthly statement Plaintiff submitted was a September 2004 statement showing a previous balance of twenty-one thousand, nine hundred four dollars and fifty cents ($21,904.50). Without the monthly statement or statements showing how the twenty-one thousand, nine hundred four dollars and fifty cents ($21,904.50) was accrued, the Defendant, and more importantly the Court is forced to accept the balance as stated as accurate and correct. The Courts are unwilling to do so and to simply allow creditors to establish such debts on mere assumptions. *See*, *Chase Bank USA v. Rader*, 2009 WL 2757904 (Pa. Com. Pl. Mar. 2009) *aff'd sub nom. Chase Bank v. Rader*, 15 A.3d 537 (Pa. Super. 2010).[2]

Since Plaintiff has failed to produce the original cardholder agreement and all necessary monthly statements, it has failed to prove its breach of contract claim.

II. QUANTUM MERUIT

[2] Plaintiff's records custodian testified at trial that Plaintiff has a retention policy of seven years for monthly statements. Based on this policy, Plaintiff was unable to produce all the necessary monthly statements. Although the Court respects Plaintiff's policy, the Court is unwilling to allow Plaintiff's retention policy to circumvent the evidence necessary for a creditor to prove its case in a credit card default action. As Judge Boyko of Ohio stated, "[t]he institutions seem to adopt the attitude that since they have been doing this for so long, unchallenged, this practice equates with legal compliance. Finally put to the test, their weak legal arguments compel the Court to stop them at the gate." *In re Foreclosure Cases*, 2007 WL 3232430 at *3 (N.D. Ohio Oct. 31, 2007).

Plaintiff has also plead a cause of action seeking to recover the outstanding balance under the theory of *quantum meruit.* The doctrine of *quantum meruit* rests upon the equitable principle that a person who has been unjustly enriched at the expense of another is required to make restitution to the other. *Mitchell v. Moore*, 729 A.2d 1200, 1206 n.2 (Pa. Super. 1999). *Quantum meruit* is a quasi-contractual remedy where a contract is implied in law under a theory of unjust enrichment. *Ragnar Benson, Inc. v. Bethel Mark Associates*, 454 A.2d 599, 603 (Pa. Super. 1982). "A quasi-contract imposes a duty, not as a result of any agreement, whether express or implied, but in spite of the absence of an agreement, when one party receives unjust enrichment at the expense of another." *AmeriPro Search, Inc. v. Fleeming Steel Co.*, 787 A.2d 988, 991 (Pa. Super. 2001) (citation omitted).

The elements that make up the cause of action of *quantum meruit* are: 1) that a benefit has been conferred on defendant by plaintiff; 2) the appreciation of such benefit by defendant; and 3) the acceptance and retention of such benefit under circumstances that it would be inequitable for defendant to retain the benefit without payment of value. *Discover Bank v. Stucka*, 33 A.3d 82, 88 (Pa. Super. 2011) (citing *Stoeckinger v. Presidential Financial Corporation of Delaware Valley*, 948 A.2d

828, 833 (Pa. Super. 2008)).[3] "In determining if the doctrine applies, [the Court's] focus is not on the intention of the parties, but rather on whether the defendant has been unjustly enriched. *Schenck v. K.E. David. Ltd.*, 666 A.2d 327, 328 (Pa. Super. 1995).[4] Whether the doctrine applies depends on the unique factual circumstances of each case. *Northeast Fence & Iron Works, Inc. v. Murphy Quigley Co. Inc.*, 933 A.2d 664, 668-69 (Pa. Super. 2007).

In examining the facts presented to the Court, a benefit was conferred upon Defendant from Plaintiff in the form of a line of credit on which Defendant made various purchases for certain goods and services. Defendant appreciated such benefit conferred upon her by making various purchases knowing such purchases were made from borrowed money issued by Plaintiff in the form of a line of credit.

The most significant element of the doctrine of *quantum meruit* is whether the enrichment of the Defendant is unjust. *Styer v. Hugo*, 619 A.2d 347, 350 (Pa. Super. 1993) *aff'd*, 637 A.2d 276 (Pa. 1994); *In re Beltrami* 324 B.R. 255, 275 (Bankr.

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[3] "Benefit" in the context of *quantum meruit*, means any form of advantage. *Zvonik v. Zvonik*, 435 A.2d 1236, 1241 (Pa. Super. 1981) (citing Restatement (First) of Restitution § 1, Comment b).

[4] The Court is aware that the doctrine of *quantum meruit* is only applicable where a written or express contract does not exist. *Lackner v. Glosser*, 892 A.2d 21, 34 (Pa. Super. 2006). With that being stated, because the original contract between Plaintiff and Defendant was not produced, nor the contract in effect when Defendant's debt started to accrue, the Court will consider this matter in the context of a *quantum meruit* claim only.

M.D. Pa. 2005). The doctrine does not apply simply because a defendant may have benefited as a result of the actions of the plaintiff. *State v. Barden*, 949 A.2d 820, 828 (N.J. 2008).

In determining what makes a defendant's receipt of a benefit unjust, the focus is on the reasonable expectation of the plaintiff. *Quandry Solutions Inc. v. Verifone Inc.* 2009 WL 997041 (E.D. Pa. Apr. 13, 2009). "*Quantum meriut* may be held when one party has a 'reasonable expectation' of payment from the other party, and it would be unconscionable-i.e., a form of unjust enrichment-for the second party to receive the benefit of the first party's services without payment." *King of Prussia Equipment Corporation v. Power Curbers, Inc.*, 158 F. Supp. 2d 463, 467 (E.D. Pa. 2001) *aff'd* 117 F.App'x 173 (3d Cir. 2004).

The nature of the relationship between Plaintiff and Defendant is such that Plaintiff extends a line of credit to Defendant for Defendant's use to make various purchases. When Defendant used her American Express credit card to purchase goods and services, she voluntarily created a debt with Plaintiff having a reasonable expectation that Defendant will pay back the borrowed money. Thus to allow Defendant to retain any benefit she received without just compensation to the Plaintiff, knowing Plaintiff expected repayment, would be unjust.

In fashioning a remedy based upon the legal theory of *quantum meriut* the Court can only compensate the Plaintiff to the extent Defendant was unjustly enriched, that being that we order the Defendant to make restitution to the Plaintiff. *See*, *Northeast Fence & Iron Works, Inc.*, 933 at 669. However, the Court can only award Plaintiff such compensation of the charges shown on the monthly statements provided to the Court minus payments Defendant has made over that time period.[5]

In examining the monthly statements presented to the Court, beginning with the September 2004 statement,[6] the Court finds that for the period from September 2004 through June 2010, the Plaintiff has been compensated to the fullest. The Court based this upon calculation of the charges and payments made by Defendant during this time period. The Court finds that the payments made are more than sufficient to cover the charges accrued, save those not considered in a *quantum meruit* claim.

[5] The Court does note that the monthly statements reflect such charges as "Finance Charge," "Delinquency Fee Assessment," "Overlimit Fee Assessment," "Annual Membership Fee," and "Fee For Returned Payment." However, these charges and fees are contractual terms and because Plaintiff was unable to produce either the original cardholder agreement or the agreement in place when Defendant's debt started to accrue, the Court cannot consider such charges in determining just compensation owed to Plaintiff under the theory of *quant meruit*. That is not to say that if Plaintiff plead a different cause of action and was able to prove such claim it would not be entitled to such fees.

[6] The Court commenced its examination of the monthly statements beginning with the September 2004 statement as this was the first statement provided by the Plaintiff. Even though the statement indicates a balance of $21,904.50, Plaintiff has provided no evidence as to how this figure was accumulated. Therefore, the Court disregards this amount as a starting point for ascertaining what if anything Defendant owes Plaintiff under the theory of *quantum meruit*. Instead, we begin at $0.00.

Thus, under the theory of *quantum meriut*, Plaintiff has been fully compensated insofar as the evidence it produced at trial.

Accordingly the Court enters the following order:

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Cynthia S. Ray, Esquire — Counsel for Defendant

ORDER OF COURT

AND NOW, this 31st day of December, 2012, this matter having come before the Court for a Non-Jury Trial, the Court finds in favor of the Defendant, Ruth Isenberg, and against the Plaintiff, American Express Centurion Bank.

Pursuant to Pennsylvania Rule of Civil Procedure 227.4, the Prothonotary shall, upon praecipe, enter judgment accordingly if no motion for post-trial relief is filed pursuant to Pennsylvania Rule of Civil Procedure 227.1 within ten (10) days after notice of the filing of this Memorandum Opinion.

BY THE COURT:

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Joseph J. Matika, Judge