

VERMONT SUPERIOR COURT
CHITTENDEN UNIT
CIVIL DIVISION

SHARON ALLEN
Defendant-Appellant

v.

MIDLAND FUNDING, LLC
Plaintiff-Appellee

Docket No. 1332-12-14 Cnev

VERMONT SUPERIOR COURT

APR 23 2015

Chittenden Unit

RULING ON SMALL CLAIMS APPEAL

This is an appeal from a ruling of the Small Claims Court. Midland Funding sued Sharon Allen for an alleged credit card debt. The court awarded Midland judgment. Allen, now represented by counsel, appeals. Gwendolyn Harris, Esq., represents Midland. Jean Murray, Esq., represents Allen.

Discussion

This is a very disturbing case. First, the court never required Plaintiff to present any evidence at all. Plaintiff's counsel came to court with no witness. She summarized her claim, but never offered any exhibits into evidence. She never questioned the Defendant. The entire hearing consisted of a discussion about whether the statute of limitations was three years or six, and then the judge asked Allen "do you disagree with the amount?" Defendant said no, and the judge ruled for Midland. This was entirely inadequate. Although a plaintiff can at times base its case solely upon testimony from the defendant, no case was made here. There was arguably an agreement to the dollar amount, but there was no evidence that there was a contract, and no evidence that Midland had the right to enforce the contract. The judge took the idea of informality to the extreme: assuming the Plaintiff had a case before one was proven.

Moreover, even if there had been a witness for the plaintiff through whom the documents that were attached to the complaint had gotten into evidence, they would not have supported a judgment here. Those records include an invoice from JCP Rewards to Allen in June of 2009. It shows two inconsistent account numbers: one ending in 617-3 and one ending in 617-31. Next, there is a bill of sale from GE Money Bank to Midland Funding in 2010, with an attachment listing an account in Allen's name ending in 6173. That creates yet a third version of the account number.

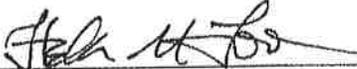
There is *no assignment from JCP Rewards to either GE Money Bank or Midland*. Although at oral argument on the appeal Midlands' counsel argued that JCP Rewards was actually owned by GE Money Bank, there was nothing in the record showing that fact. There is just no evidence to support the right of Midland to sue on the credit card at issue.

The fact that small claims hearings are supposed to be simple and informal does not mean that testimony and documentary evidence are not required to prove a case. A plaintiff still has the burden to prove all elements of its claim by a preponderance of the evidence. In credit card cases, the plaintiff must prove at least what is required by Rule 3 (h), including the record of assignments to the current plaintiff. Acting judges handling small claims cases must remember that this is a judicial process, where important legal issues are being adjudicated. The courtroom is supposed to be a level playing field, not a room where the plaintiff is assumed to be right.

Order

The judgment of the Small Claims Court is reversed. Judgment will be entered for Sharon Allen.

Dated at Burlington this 23rd day of April, 2015.


Helen M. Toor, Superior Court Judge