DOCKET NO.: DBD CV-19-6033022-S	:	SUPERIOR COURT
BANK OF AMERICA, N.A.	:	J.D. OF DANBURY
V.	:	AT DANBURY
GARY N. RAWLINS	:	APRIL 24, 2024

MEMORANDUM OF DECISION

The plaintiff filed a civil action by way of complaint dated July 24, 2019. The complaint is in one count alleging that the defendant, Gary N. Rawlins failed to pay for goods and services charged upon his credit account. The defendant entered a self-represented appearance filed an answer and a special defense dated October 2, 2019. The defendant alleges Accord and Satisfaction in his special defense.

On January 9, 2024, the court conducted a trial in this matter. The plaintiff entered four exhibits in support of their complaint. The defendant did not submit any full exhibits in support of his denial or in support of his special defense. There were witnesses for each party in support of the claims and defenses.

FINDINGS OF FACT

After the hearing, and considering the credible testimony and evidence presented, the court finds the following facts to have been proven by a fair preponderance of the evidence.

The defendant, Gary Rawlins entered into a credit card agreement with the plaintiff on October 6, 2010 (Ex. 1). The defendant used the credit account number ending in ****8603 to purchase goods, services or cash advances beginning on this date. The defendant received statements from the plaintiff with amounts due on the account. He made payments on the account. The last payment in accordance with the agreement was made on February 22, 2018. There were no notations of any complaint regarding the goods or services charged to the account or a question as to the sums noted on the monthly accounts sent to the defendant for payment.

In February-March 2018 and thereafter, the defendant failed to pay the monthly amounts due. The defendant did make a partial payment on March 8, 2018. The plaintiff made a demand for payment of the sum of $8,051.06 on or about July 23, 2019. The defendant did not make payment as demanded by the plaintiff. After filing the complaint, the defendant filed a special defense stating: "This matter was settled pursuant to the Uniform Commercial Code § 3-311 by Accord and Satisfaction. The defendant claims the plaintiff accepted $250 to settle the disputed obligation, and "knew that the instrument was tendered in full satisfaction of the claim."

DISCUSSION

A. General Standard

"It is well established that in cases tried before courts, trial judges are the sole arbiter of the credibility of witnesses and it is they who determine the weight to be given specific testimony. . . it is the quintessential function of the fact finder to reject or accept certain evidence . . ." (Citations omitted; internal quotation marks omitted.) *In re Antonio M.,* 56 Conn. App. 534, 540, 744 A.2d 915 (2000). The trier of fact must evaluate the credibility of both testimonial and documentary evidence. *Coombs* v. *Phillips*, 5 Conn. App. 626, 627, 501 A.2d 395 (1985) (per curiam). "The fact-finding function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of the circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties." (Internal quotation marks omitted.) *Cavoli* v. *DeSimone*, 88 Conn. App. 638, 646, 870 A.2d 1147, cert. denied, 274 Conn. 906 (2005).

The trier of fact must observe the demeanor of witnesses and draw inferences as to the motives underlying their testimony and conduct. *Christie* v. *Eager*, 129 Conn. 62, 64-65, 26 A.2d 352 (1942). "It is well established that [t]he trier of fact may accept or reject the testimony of any witness. . . The trier can, as well, decide what-all, none, or some of a witness' testimony to accept or reject." (Citation omitted; internal quotation marks omitted.) *Wilson* v. *Hryniewicz*, 51 Conn. App. 627, 633, 724 A.2d 531,

cert. denied, 248 Conn. 904, 731 A.2d 310 (1999). Additionally, [T]he right of self-representation [however] provides no attendant license not to comply with the relevant rules of procedural and substantive law." (Citations omitted; internal quotation marks omitted.) *Macricostas* v. *Kovacs*, 67 Conn. App. 130, 133, 787 A.2d 64 (2001).

The court has analyzed the evidence and arguments based upon these factors. The court notes that the defendant although a self-represented party appears to have some legal training which assisted him in arguing his position. However, his arguments included many claims which were not specifically supported with evidence to address the amount of the claim or the defenses proposed by the defendant.

B. Account Stated

The basis of the plaintiff's claim is the theory of "account stated." This theory provides the debtor with a reasonable period of time to question all or part of the indebtedness, after which the "account stated" is conclusively presumed to be the amount due." *Citibank (South Dakota) N.A.* v. *Stewart,* Superior Court, Judicial District of New Haven, Docket No. CV-05-4012384 (November 30, 2005*, Silbert*, J.) (40 Conn. L. Rptr. 337). Several Superior Court decisions have recognized the validity of an account stated cause of action in Connecticut involving a banking institution. *Citibank (South Dakota) N.A.* v. *Griffing*, Superior Court, judicial district of Hartford , Docket No. CV-05-4011520 (July 17, 2006, *Keller*, J.) citing *Citibank (South Dakota) N. A.* v. *Manger*, Superior Court, judicial district of Danbury, Docket No. CV-05-4001358 (May 25, 2006, *Schuman,* J.), *Citibank (South Dakota) N.A*. v. *Piscitelli,* Superior Court, judicial district of New Haven, Docket No. CV-04-0491060 (March 16, 2006, *Corradino*, J.). The plaintiff contends that it has complied with the disclosure of the monthly account statements to the defendant in accordance with the Truth and Lending Act (FTILA) and the Fair Credit Billing Act (FCBA). In accordance with these acts, the customer must identify a billing error within 60 days after the billing statement. The defendant did not submit any objection to any item of the billing nor disputed the accuracy. The

defendant filed a document he entitled Answer and Special Defense which was filed on October 2, 2019 which was a general denial with a special defense of accord and satisfaction. The defendant at no time questioned the amount of the claim or the accuracy of any charges on the account. His main argument in this action is that he has settled the claim by a payment of $250 on February 19, 2018. The defendant did not identify any billing error within 60 days of the statements noted in Ex. 2 or Ex. 3. The plaintiff has submitted as exhibits the statements which support an amount due of $8,051.06. The plaintiff has proven by a fair preponderance of the evidence that the defendant owes $8,051.06 for the account ending in ****8603.

C. Special Defense of Accord and Satisfaction

In addition to denying the claim, the defendant filed a special defense of accord and satisfaction. He argues that the court must dismiss any claims based upon this doctrine. Accord and satisfaction is a method of discharging a claim whereby the parties agree to give and accept something other than that which is due in settlement of the claim and to perform the agreement. *Association Resources, Inc*. v. *Wall,* 298 Conn. 145, 2 A.3d 873 (2010). When there is a good faith dispute about the existence of a debt about the amount that is owed, the common law authorizes the debtor and creditor to negotiate a contract of accord to settle the outstanding claims. ID.

The defendant bears the burden of proving accord and satisfaction when it is pleaded as a special defense. *Schoonmaker* v. *Lawrence Brunoli, Inc*., 265 Conn. 210, 277, 828 A.2d 64 (2003). Whether there is accord and satisfaction and a meeting of the minds is a factual determination. *Douthwright* v. *Northeast Corridor Foundations*, 72 Conn. App. 319, 323-24, 805 A.2d 157 (2002), *MJ Daly & Sons, Inc*. v. *West Haven*, 66 Conn. App. 41, 48, 783 A.2d 1138, cert. denied, 258 Conn. 944, 786 A. A2d. 430 (2001).

The defendant argued and testified on his own behalf that he had sent a check in the amount of $250 as full and final settlement of the claim by the plaintiff. In his answer, he referred to a check dated February 19, 2018 before the filing of this action. The defendant argues that the notation of the

February 19 check which states, “Full and Final Settlement,” resolved the differences of the parties as to the claim of $8,051.06. The plaintiff counters that there is no full and final settlement and refers to the provision in the credit agreement under the heading of “Other Payment Terms.” This provision states that: “We can accept late payments, partial payments, or payments with any restricted writing without losing any of our rights under this agreement. This means that no payments including those marked with ‘paid in full’ or with any other restricted words, shall operate as an accord and satisfaction without the prior written approval of one of our senior officers. . .” (Ex. 2). Additionally, the plaintiff argues that a review of the credit statements (Ex.3) notes that the defendant submitted another payment for $200 which was ultimately returned or not a valid payment. Thus, the plaintiff argues that the defendant has not proven the special defense of accord and satisfaction. During the course of the testimony, the defendant was asked a series of questions concerning the provision which requires approval by a senior officer. The defendant did not have any approval in accordance with this provision. In fact, there was no communication about a settlement or the inclusion of such language in any payment to the plaintiff. Thus, the plaintiff argues that even if there was a proper submission of a payment and discussion, there is no meeting of the minds and this is apparent from the lack of any approval from an employee with authority to do so. This argument certainly makes sense since the check amount is far less than the sum claimed due and without abiding by the other payments provision a debtor could unfairly reduce a sum without agreement from all parties. The defendant has failed to produce any exhibits at trial which would support his position. The defendant raised for the first-time issues concerning the irregularity with secure payment methods that caused him to have difficulty with sending payments but he has never demonstrated that the charges were incorrect or unreasonable. If so, the defendant also had a duty to bring this irregularity to the attention of the plaintiff in writing within a reasonable time (60 days) but he has failed to challenge the sums due except to deny all claims in this legal action.

In *Stamford Hospital* v. *Schwartz*, 190 Conn. App. 6, 209 A.3d 1243 (2019), the court found that the submission of a payment without meeting of the minds or agreement of an amount that was 1.39 percent of the bill did not satisfy the criteria of accord and satisfaction. In *Stamford Hospital* like the present action, the defendant simply submitted a check with the notation of full and final settlement. The court determined that this submission was not submitted in good faith. The court stated that the threshold requirement of § 42a-3-311 is that the tender of the check must be made in good faith. Uniform Commercial Code comment (4) to the statute states: "Good faith in subsection (a) is defined as not only honesty in fact, but also the observance of reasonable commercial standards. Although the parties in *Stamford Hospital* engaged in more disturbing conduct during the ongoing legal action, the emphasis on the need to honestly communicate and arrive at a possible settlement is clear. The unilateral decision to settle at an amount that is clearly not a fair and honest resolution of claim is not accord and satisfaction.

The defendant has failed to satisfy his burden of demonstrating that the parties entered into an accord and satisfaction of the claim for $8,051.06.

CONCLUSION

Based upon the above, the court finds that the plaintiff has proven by a fair preponderance that the defendant has failed to pay on the account in the amount of $8.051.06. Judgment is entered in favor of the plaintiff in the amount of $8,051.06 plus costs in the amount of $428.60 for a total judgment of $8,479.66.

THE COURT

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Brazzel-Massaro, J.T.R.