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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1338-07T3

PALISADES COLLECTION, L.L.C.,

Plaintiff-Respondent,

v.

STEVEN GRAUBARD,

Defendant-Appellant.

Argued October 15, 2008 - Decided April 17, 2009

Before Judges Fuentes, Gilroy and Chambers.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-3394-06.

Ronald P. Groseibl argued the cause for appellant (Mr. Groseibl, attorney; Lawrence W. Lipman, of counsel and on the brief; Mr. Groseibl, on the brief).

Lawrence J. McDermott, Jr., argued the cause for respondent (Pressler and Pressler, attorneys; Mr. McDermott, on the brief).

PER CURIAM

In this credit card collection case, defendant Steven Graubard appeals from the order of the trial court issued after a bench trial, entering judgment against him in the amount of $17,508. Plaintiff, Palisades Collection L.L.C., is a collection agency that allegedly acquired this account as part

of a portfolio of delinquent accounts originating from Bank One Corporation.

On appeal, defendant argues that the trial court incorrectly applied the doctrine of judicial notice, as codified in N.J.R.E. 201, to determine that plaintiff had the standing to prosecute this claim and that the damages awarded were not supported by competent evidence. We agree with defendant's argument pertaining to the question of liability and reverse.

The evidence presented at trial consisted of a series of documents and the testimony of one witness Peter Fish, the Director of Litigation for Palisades Collection. We derive the following factual recitation from this evidence.

On April 29, 1999,[1] defendant applied for and received authorization to transfer a balance of $18,000 from another credit card to a Bank One credit card. According to Fish, defendant continued to use the Bank One credit card until May of 2003, increasing his debt to a balance of $30,543.67. A Bank One Statement dated April 25, 2003, showing defendant's name and address, reflects a payment on the account in the amount of

[1] This date is based on the testimony of plaintiff's representative. However, the only competent evidence presented at trial as to the date plaintiff acquired the credit card was a balance transfer authorization document signed by plaintiff indicating that the credit/balance transfer offer was "Good until May 10, 1999."

$521.97, and an outstanding balance of $25,73343. The next payment of $514 was due on June 16, 2003.

By letter dated February 3, 2006, the law firm of Pressler and Pressler contacted defendant as plaintiff's legal representative, informing him that "the delinquent account # . . . which was previously owed to Chevy Chase Bank has been purchased by PALISADES COLLECTION, L.L.C., and has been placed with the Law Firm of Pressler and Pressler for collection." By letter dated February 6, 2006, defendant informed the Pressler Firm that he was disputing the validity of the claim because, to his knowledge, he had "never been granted credit by the original creditor named in your notification."

On May 5, 2006, plaintiff filed suit against defendant alleging that it was "the owner of the defendant's CHEVY CHASE VISA account . . . ." The suit demanded judgment in the amount of $30,543.67. Defendant filed an answer and counterclaim grounded on the Consumer Fraud Act, N.J.S.A. 56:8-1 to -20, and the Fair Debt Collection Practices Act, 15 U.S.C.A. 1692k(a)(1)(2)(3). After engaging in motion practice, the court dismissed defendant's counterclaim on plaintiff's motion for summary judgment.

At the commencement of the bench trial, plaintiff's counsel moved, pursuant to N.J.R.E. 201(d), to admit into evidence a New

York Times article he personally retrieved from the archives of that newspaper. The article produced in court was a print copy of the electronic version. It was offered to establish that on September 3, 1998, First U.S.A., a unit of Bank One Corporation, "had bought the credit card operations of Chevy Chase Bank F.S.B."

Counsel for plaintiff further moved to admit into evidence a print version of a page from the website of Wikipedia, a company which markets itself as an electronic encyclopedia. Plaintiff offered this to establish that Bank One Corporation was purchased by J.P. Morgan & Company in 2004. Against this backdrop, counsel represented to the trial judge that J.P. Morgan sold the accounts, (including defendant's account) to his client Palisades Acquisition.

Over defense counsel's objections, the trial court granted plaintiff's motions, admitting into evidence the New York Times article and the page from Wikipedia. In support of his ruling, the trial judge took judicial notice that "banks are frequently purchased." After reviewing the two articles, the judge also took judicial notice that "ultimately defendant's account landed at J.P. Morgan . . . [and] was assigned or sold to Palisades Assets."

Immediately after these rulings, plaintiff introduced, again over defendant's objection, a Bill of Sale showing that

> [f]or value received and pursuant to the conditions of the Credit Card Account Purchase Agreement between Chase Bank USA, National Association ("Seller") and Palisade Acquisition X, L.L.C. ("Purchaser"), Seller does hereby sell, assign and convey to Purchaser, its successors and assigns, as of September 30, 2005, all right, title and interest of Seller in and to those certain Charged off Accounts described in Exhibit A attached hereto and made a part hereof for all purposes.

According to Fish, the Exhibit A attachment referred to in the Bill of Sale was delivered in electronic form on a compact disc (CD). Although the CD was not admitted into evidence, Fish testified that he had personally reviewed the information contained in the CD to confirm that defendant's account was one of those transferred in this sale.

In light of this evidence, the trial court found that plaintiff failed to produce sufficient evidence to support the charges that increased defendant's debt from $18,000 to $30,543.67. The court found, however, that defendant had made a payment of $492, and subtracted that amount from the original balance transfer of $18,000. Thus, the court awarded plaintiff $17,508.

The common law doctrine of judicial notice is codified in N.J.R.E. 201. Subsection (b)(3) describes the rationale of the rule.

> The purpose of judicial notice is to save time and promote judicial economy by precluding the necessity of proving facts that cannot seriously be disputed and are either generally or universally known. Judicial notice cannot be used "to circumvent the rule against hearsay and thereby deprive a party of the right of cross-examination on a contested material issue of fact." Because judicial notice may not be used to deprive a party of cross-examination regarding a contested fact, the doctrine also cannot be used to take notice of the ultimate legal issue in dispute.
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> [State v. Silva, 394 N.J. Super. 270, 275 (App. Div. 2007) (quoting RWB Newton Assocs. v. Gunn, 224 N.J. Super. 704, 711 (App. Div. 1988)).]

We now turn to the court's ruling concerning the admissibility of the Wikipedia and New York Times articles. The question of plaintiff's standing to prosecute this claim was a central issue in dispute. In this context, the doctrine of judicial notice cannot be invoked to permit plaintiff to meet its burden of proof on this issue because: (1) it deprives defendant his right to cross examination regarding contested material facts; and (2) it impermissibly settles the ultimate legal question in dispute, to wit, plaintiff's standing to prosecute this claim. Silva, supra, 394 N.J. Super. at 275.

The trial court's acceptance of Wikipedia was also contrary to the principle that judicial notice must be based upon "sources whose accuracy cannot be reasonably questioned." N.J.R.E. 201(b)(3). We come to this conclusion after reviewing Wikipedia's own self-assessment.

Wikipedia bills itself as the "online encyclopedia that anyone can edit."[2] Anyone with an internet connection can create a Wikipedia account and change any entry in Wikipedia. In fact, Wikipedia warns readers that "[t]he content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields."[3] Thus, it is entirely possible for a party in litigation to alter a Wikipedia article, print the article, and thereafter offer it in court in support of any given position. Such a malleable source of information is inherently unreliable, and clearly not one "whose accuracy cannot be reasonably questioned."

Purged of this inadmissible material, plaintiff has not produced sufficient evidence to show it has the right to collect

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[2] Wikipedia Main Page, http://en.wikipedia.org/wiki/Main_Page

[3] Wikipedia Disclaimer Page, http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer

this claim from defendant. In this light, we need not, and specifically do not reach the issue of damages.

Reversed.