

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GARNET MUSE, : CIVIL ACTION
 :
 v. :
 :
 TRANS UNION LLC, : NO. 07-3277

MEMORANDUM & ORDER

AND NOW, this 18th day of August, 2008, IT IS HEREBY ORDERED that Trans Union's motion for reconsideration (Dkt. # 27) is DENIED.

Trans Union makes two arguments in its motion for reconsideration: 1) the Court misapprehended the record regarding the March payment and the assessment of late fees; and 2) Citibank was entitled to deposit plaintiff's check and refuse to give her credit for her payment for ninety days under U.C.C. § 3-311(c)(2).

1) The plaintiff is the non-moving party and all facts must be viewed in the light most favorable to her on summary judgment. Therefore, I must accept that she sent her payment on March 11, 2002, the date indicated on her check, and that when Citibank *deposited* her check on Monday, March 18, 2002, it had *received* that check on or before the Friday, March 15, 2002, due date. Plaintiff has therefore provided facts that viewed in her favor show that she paid her March bill on time and in full.

2) Under the UCC, Citibank could refuse to accept plaintiff's payment as "payment in full" if it repaid the plaintiff her \$41.32 within ninety days of March 18, 2002. However, Trans Union has not previously argued that Citibank's failure to credit plaintiff's account was because it was exercising its right to refuse the check as payment in full and they have likewise failed to provide any evidence that Citibank ever repaid the plaintiff. Regardless of whether Citibank

“accepted” plaintiff’s payment, there is no doubt that for the purpose of summary judgment payment was deposited by Citibank on March 18, 2002 and was not credited to plaintiff’s account prior to the first date on which Citibank can be said to have initiated any type of collection effort.

BY THE COURT:

/s/ J. William Ditter, Jr.
J. WILLIAM DITTER, JR., S.J.