

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

ANDREW S. KONDRATICK, SR., and : CIVIL ACTION
MELISSA A. KONDRATICK, h/w :
INDIVIDUALLY AND ON BEHALF OF :
OTHERS SIMILARLY SITUATED :
: :
: :
vs. :
: :
: :
BENEFICIAL CONSUMER DISCOUNT : NO. 04-4895
COMPANY, d/b/a BENEFICIAL :
MORTGAGE COMPANY OF :
PENNSYLVANIA, et al. :

MEMORANDUM

ROBERT F. KELLY, Sr. J.

SEPTEMBER 14, 2006

Presently before the Court is the interpretation of a “Reinstatement Agreement” entered into between Beneficial Consumer Discount Company, d/b/a/ Beneficial Mortgage Company of Pennsylvania and the Pennsylvania Housing Finance Agency (PHFA)¹.

The parties have requested and this Court has agreed to decide this case based upon a Joint Statement of Undisputed Facts and Legal Issues. The agreed facts are as follows:

1. On or about June 27, 2001, Plaintiffs obtained a home equity line of credit from Beneficial in the amount of \$25,000.00 (the “Line of Credit”).
2. Both Mr. And Mrs. Kondratick signed the Home Equity Credit Line Revolving Loan Agreement (the “Note”) evidencing the Line of Credit. Exhibit A.
3. The Line of Credit was secured by a mortgage (the “Mortgage”) on certain real

¹A detailed background of this litigation is set forth in this Court’s Memorandum Opinion of September 21, 2005.

property located at 43 East Main Street, Lansdale, Pennsylvania (the “Property”). Exhibit B. Mr. Kondratick was the only party that signed the Mortgage, as he is the owner of the Property, having obtained title to the Property from his father.

4. The Mortgage securing the Line of Credit was a secondary mortgage on the property. Option One Mortgage Company held a prior first mortgage lien on the Property as security for a loan it made to Plaintiffs before June 27, 2001.

5. Plaintiffs withdrew the full principal amount provided for under the Line of Credit (\$25,000.00) and used the funds to satisfy a truck loan and to help pay various bills. At the outset, Plaintiffs were timely with their monthly payment.

6. Though the Kondraticks were timely with their initial monthly payments, by August 31, 2002, they had fallen behind in their monthly payment obligations and, by October 17, 2002, they fell behind by four payments.

7. On August 31, 2002, Beneficial sent a letter to Plaintiffs advising them of their delinquency and requesting that Plaintiffs contact Beneficial if payment cannot be made. Exhibit C. The letter advised Plaintiffs that beneficial was willing to assist them with their financial needs and that Beneficial would provide them with a list of counseling agencies that may be able to assist them through financial counseling. *Id.*

8. On October 17, 2002, Beneficial sent Plaintiffs their monthly mortgage statement advising them that their credit line had been suspended due to their “failure to make two or more payments when due under this Agreement.” Exhibit D.

9. On October 24, 2002, Beneficial sent another letter to Plaintiffs advising them that their account was “seriously past due” and noting Plaintiffs’ lack of response to Beneficial’s

request for payment. Exhibit E. The letter further advised that Beneficial intended to take legal action against Plaintiffs unless payment of the past due amount was received within ten days of the date of this letter. *Id.*

10. After this correspondence, Beneficial referred the Plaintiffs' file to outside counsel, Chromulak & Associates, LLC (successor in interest to Mollica & Murray) (hereinafter "Chromulak")² to collect the amount claimed to be due and owing by Plaintiffs to Beneficial.

11. On November 12, 2002, Chromulak sent a letter to Plaintiffs advising them that "[l]egal proceedings may be filed against you in thirty days from the date of this notice if this matter is not resolved during this time." Exhibit F. This letter included a "Notice to Consumer Debtor" in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g. *Id.* Plaintiffs did not contact Beneficial or Chromulak in response to the November 12, 2002 letter.

12. Plaintiffs received all of the aforementioned communications, and do not deny that the amount of their debt was valid and, as of November 12, 2002, totaled \$27,864.78.

13. On December 18, 2002, Chromulak initiated a lawsuit in the Court of Common Pleas of Montgomery County, Pennsylvania, seeking money damages for Plaintiffs' violation of the Note (the "State Action"). Exhibit G. The State Action was brought pursuant to the Note which was attached to the Complaint and not the Mortgage.

14. The Note provided Beneficial with the authority to terminate the credit line and commence a lawsuit upon default, and provided that "[a]fter default, you will pay our court costs, reasonable attorney's fees . . . and other collection costs related to the default, if not

²The Chromulak defendants have been voluntarily dismissed from this lawsuit. There are no longer any claims pending against the Chromulak defendants.

prohibited by applicable law.” Exhibit A at 5.

15. At the same time in which Plaintiffs began missing their monthly mortgage payments with Beneficial, Plaintiffs also fell behind on their monthly mortgage payments with Option One. Option One initiated mortgage foreclosure proceedings against Plaintiffs.

16. In September 2002, Plaintiffs contacted the Pennsylvania Housing Finance Agency (“PHFA”), and applied for a loan under the Homeowner’s Emergency Mortgage Assistance Program (“HEMAP”), for assistance with both their Option One first mortgage and their Line of Credit with Beneficial.

17. On January 10, 2003, a Beneficial representative signed a Reinstatement Agreement with PHFA. Exhibit H. The Reinstatement Agreement provided that Andrew Kondratick “has been approved for a mortgage assistance loan” and that such loan “will reinstate the mortgage to a current status, including reasonable attorney fees and costs.” *Id.* The Reinstatement Agreement further provided that:

- a. “Upon payment of the sum of money [the delinquency amount] set forth above, you agrees [sic] to satisfy all delinquent principal, interest, late charges, real estate taxes, escrow AND total escrow shortage, legal fees and costs owed by the Borrower. You will reinstate the Borrower’s account to a current status.” *Id.*
- b. “Upon payment of such sums, all pending legal action arising out of the delinquency of the Borrower will be discontinued.” *Id.*

18. The Reinstatement Agreement is an agreement drafted by PHFA and signed by PHFA and Beneficial.

19. While the Reinstatement Agreement is dated January 10, 2003, PHFA did not make payment to Beneficial on behalf of Plaintiffs until April 8, 2003. Payment by the PHFA

brought the loan account current as of April 8, 2003.

20. On March 17, 2003, prior to payment by the PHFA, Chromulak filed a Praecipe for Judgment in the State Action. Exhibit I. That same day, the Court of Common Pleas of Montgomery County, Pennsylvania, entered a default judgment in the amount of \$27,715.40, in favor of Beneficial (the "Default Judgment"). Exhibit J (docket report).

21. By letter dated May 29, 2003, after receiving PHFA's payment, Chromulak advised the PHFA that "[a]s long as the monthly payments are made, Beneficial will take no further collection action against Mr. And Mrs. Kondratick." Exhibit K.

22. Plaintiffs subsequently defaulted on their payment obligations in September 2003 by failing to make their monthly payments. By letter dated September 3, 2003, Chromulak advised Plaintiffs that "payment in the amount of \$894.30 be sent to my office on or before September 15, 2003. If this amount is not received by the date indicated, Beneficial may proceed with further collection action on account of the full amount of the debt and not on any reduced or compromised amount represented by this letter." Exhibit L.

23. Plaintiffs subsequently defaulted on their payment obligations in October 2003, January 2004, March 2004 and May 2004, by failing to make their monthly payments. Chromulak sent Plaintiffs letters (dated October 31, 2003, January 8, 2004, March 4, 2004, and May 3, 2004) identical to the letter of September 3, 2003, advising Plaintiffs of their default. Exhibits M, N, O and P, respectively.

24. On July 9, 2004, as a result of the subsequent delinquencies, Chromulak filed and served a writ of execution on the Default Judgment with the Plaintiffs' credit union and received a payment of \$526.00. Exhibit J. The writ of attachment was discontinued by Beneficial

on August 9, 2004. *Id.*

25. Following the writ of execution and garnishment of funds from Plaintiffs' credit union account, Chromulak received a letter, dated July 21, 2004, from the PHFA. Exhibit Q. This letter claimed that the Reinstatement Agreement required Beneficial to strike the March 17, 2003, default judgment when PHFA made payment to Beneficial on April 8, 2003. *Id.*

26. By letter dated August 2, 2004, Chromulak responded to PHFA. Exhibit R. This letter indicated that Beneficial never agreed to satisfy or vacate the default judgment, and that the Reinstatement Agreement did not require Beneficial to do so. *Id.* Chromulak acknowledged that it had agreed to refrain from taking any action on the judgment so long as there was no future delinquency, but never agreed to vacate the judgment on the Note. *Id.* Chromulak further advised that Beneficial intended to keep its judgment and continue collection actions in this matter. *Id.*

27. PHFA did not respond to the August 2, 2004 letter or otherwise later contest the August 2, 2004 letter.

28. Plaintiffs have not made a payment to Beneficial since July 2004.

29. Plaintiffs commenced the present lawsuit on October 19, 2004.

30. As to the claims that remain, the parties agree that compensatory damages are in the amount of \$526.00.

BREACH OF CONTRACT CLAIM

In order to recover, Plaintiffs have the burden of proving “(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages.” J.F. Walker Co. Inc. v. Excalibur Oil Group, Inc., 792 A.2d 1269, 1272 (PA Super. 2002). Therefore, in order to succeed in their breach of contract claim, Plaintiffs had to

establish that the Reinstatement Agreement imposed some duty on Beneficial, that the duty was breached, and that Plaintiffs suffered damage as a result of the breach. More specifically, Plaintiffs must prove that the Defendants had a duty under the Reinstatement Agreement to satisfy a judgment it had obtained against the Plaintiffs prior to the receipt by Beneficial of payments required by the Reinstatement Agreement. The language of the Agreement relied upon by Plaintiffs to establish this duty is as follows:

- A. Upon payment of the sum of money [the delinquency amount] set forth above, you agrees [sic] to satisfy all delinquent principal, interest, late charges, real estate taxes, escrow AND total escrow shortage, legal fees and costs owed by the Borrower. You will reinstate the Borrower's account to a current status.”
- B. Upon payment of such sums, all pending legal action arising out of the delinquency of the Borrower will be discontinued.

This Court has already determined that the “discontinuance” provision of the Reinstatement Agreement is ambiguous and therefore susceptible to two reasonable alternative interpretations. See Kondratick I at 26-27. The Reinstatement Agreement was drafted by the PHFA. See Joint Statement ¶ 18. Based upon this I conclude that any ambiguity in the Reinstatement Agreement must be construed in favor of Beneficial. See Central Transportation, Inc. v. Board of Assessment Appeals of Cambria County, 417 A.2d 144, 149 (PA 1980); Sun Company Inc. v. Pennsylvania Turnpike Comm'n, 708 A.2d 875, 879-80 (PA Super. 1989).

In addition to the rule of construction which would justify a finding for Beneficial I find that the surrounding circumstances justify an interpretation of the word “discontinued” as not requiring Beneficial to satisfy a judgment in place prior to the payment of money required by the Reimbursement Agreement.

In the first place the word discontinued in legal jargon does not fit with the word judgment. Lawyers speak of satisfying a judgment or striking a judgment not discontinuing a judgment. The word discontinued contemplates stopping something that is in process or ongoing. A judgment is the end result of a lawsuit. The Reinstatement Agreement does not require the vacating of a judgment, it requires that “all pending legal action arising out of the delinquency” be “discontinued” upon payment of the delinquency. Because the default judgment represented a final judgment entered in the state court prior to PHFA’s payment to Beneficial, there was no “pending legal action” to discontinue when Beneficial received payment from PHFA on April 8, 2003. Because the judgment had been entered, the action was final there was no pending legal action to discontinue.

This interpretation is supported by the Pennsylvania Superior Court which stated “when called upon previously to define the term ‘judgment’, this Court reviewed our Rules of Civil Procedure and held that a judgment is ‘the official entry of a verdict or decision of the trial Judge upon the docket.’” Dombrowski v. Cherkassky, 691 A.2d 976, 977 (PA Super. 1997) (citing Sands v. Andino, 590 A.2d 761, 764 (PA Super. 1991)). Central to the definition of “judgment” is finality; Blacks Law Dictionary defines the term as “[a] court’s final determination of the rights and obligations of the parties in a case.” Blacks Law Dictionary, 358 (8th Ed. 2004). Moreover, a “final judgment terminates the controversy” and is entitled to full faith and credit in every American jurisdiction. Allegheny County v. Maryland Casualty Co., 132 F.2d 894, 897 (3d Cir. 1943).

Furthermore, the term “pending” has been defined as “[b]egun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled [t]hus, an

action or suit is ‘pending’ from its inception until the rendition of final judgment.” Wilson Townhouses v. Berks Co. Bd. of Assessment Appeals, 535 A.2d 1226, 1228 (PA Comm. Court 1988) quoting Blacks Law Dictionary 1291 (4th Ed. 1968).

Therefore, a judgment is by its very definition the termination of legal proceedings. The legal action was terminated when the judgment was entered. The judgment cannot be considered a “pending” legal action for the purpose of interpreting the Reinstatement Agreement. Beneficial did not agree under the terms of PHFA’s Reinstatement Agreement to vacate, satisfy or strike the default judgment and the Reinstatement Agreement did not require Beneficial to do so.

To the extent that Plaintiffs argue that the state lawsuit was to be dismissed upon the signing of the Reinstatement Agreement, such interpretation is clearly not supported by the record. The Reinstatement Agreement specifically states that any action is to be discontinued only “upon payment” by the PHFA. The Agreement makes clear that the triggering event is the payment by the PHFA which in this case did not occur until after a default judgment had already been entered.

Based upon the foregoing I find that Plaintiffs have failed to prove by a preponderance of the evidence that Beneficial had a duty under the Reinstatement Agreement to satisfy a default judgment it had obtained prior to the payment by PHFA of the delinquency on April 8, 2003.

PLAINTIFFS UNFAIR TRADE PRACTICES CLAIM

After the delinquencies were paid under the Reinstatement Agreement Plaintiffs again defaulted on their payments in October 2003, January, March and May 2004. After several notices to the Plaintiffs Beneficial served a writ of execution based on the default judgment with

Plaintiffs' Credit Union. As a result of this execution Plaintiffs received a payment from the Credit Union of \$526.00. See joint statement 22-24. Plaintiffs allege that this execution was a violation of 73 P.S. 2001-1 et seq. and 73 P.S. 2270.4 et seq. Because I have already found that there was no breach of the Reinstatement Agreement by Beneficial, Plaintiff cannot prove this claim and judgment will be entered for the Defendant.

I therefore enter the following Order.

