

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FEDERATED CAPITAL CORPORATION,	:	NO. 11 – 01,023
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
	:	
SAMUEL M. CASILIO and SAMMY, INC.,	:	
Defendants	:	Non-jury Trial

OPINION AND VERDICT

Before the Court is Plaintiff's request for a judgment for sums allegedly owed based on a credit card issued to Defendants in March 2006.¹ A trial was held on October 15, 2012. The matter is now ripe for decision and the Court enters the following:

FINDINGS OF FACT

1. Defendant Samuel M. Casilio opened a commercial credit card agreement with Advanta Bank on behalf of Sammy, Inc. on March 2, 2006.
2. Defendants used the credit card and incurred charges but at some point failed to make the required monthly payments.
3. Plaintiff is the assignee of the account, having purchased such from Advanta Bank on February 29, 2008. Also on that date, Advanta Bank "charged off" the amount due and sent Defendants a Statement showing the charge off and a zero balance.
4. As of the date of the assignment to Plaintiff, the account had a balance due of \$6,786.76.
5. Defendants made no payments on the account after the assignment.
6. As of October 8, 2012, the \$6,786.76 balance had accrued interest of \$10,136.32, such having accrued at the rate of 34.99% per annum.

¹ Although Plaintiff requested attorneys' fees at trial, as no demand for such was contained in the Complaint, no award of attorneys' fees will be made.

DISCUSSION

Defendants raise two issues in defense of Plaintiff's claim: (1) that there is nothing due, based on the last statement received from Advanta which showed a zero balance, and (2) that Defendant Samuel Casilio is not liable as the application was submitted by Samuel Casilio as President of Sammy, Inc. and not individually. Neither issue has merit.

With respect to the contention that nothing is due, while it is true that nothing may be due to Advanta Bank, the entity from whom the statement was received, the claim is made not by Advanta but by Federated Capital Corporation, the entity which purchased the debt from Advanta. Defendants' argument that the debt "disappeared" in the process of transfer from one company to another has no basis in law and will not be considered further.

With respect to the issue of personal liability, while Defendant Samuel Casilio did sign the credit application as President of Sammy, Inc., by his signature he also agreed to the terms and conditions of the account (See Plaintiff's Exhibit 4, Application) and those terms are clear as to the effect of the signature:

5. LIABILITY: "Amounts Due" means the total of the following items remaining unpaid on the Account at any given time: all Purchases, Balance Transfers, Convenience Checks, Cash Advances and other transactions, plus applicable finance charges, fees and other charges, minus any credits and payments. The Business promises to pay us all Amounts Due in connection with all Cards and Convenience Checks issued to the Business, to the Signing Individual, and to any other Cardmembers, or otherwise requested or charged with respect to the Account. **The Signing Individual, in addition to and jointly with the Business, promises to pay us all Amounts Due** in connection with all Cards and Convenience Checks issued to the Business, to the Signing Individual and to any other Cardmembers, or otherwise requested or charged with respect to the Account. **THE SIGNING INDIVIDUAL IS PERSONALLY LIABLE FOR ALL SUCH AMOUNTS DUE.** Each Cardmember and other person or legal entity who uses a Card or a Convenience Check, in addition to and jointly with the Business and the Signing Individual, promises to pay us all Amounts Due in connection with all Cards and Convenience Checks issued to such Cardmember or otherwise requested or used by him or her with respect to the Account, even though periodic billing statements and other Account materials may be sent to the Business or to the Signing Individual and not directly to such Cardmember or other person. **EACH CARDMEMBER OR OTHER PERSON IS PERSONALLY LIABLE FOR**

ALL SUCH AMOUNTS DUE. THE SIGNING INDIVIDUAL AND EACH CARDMEMBER UNDERSTAND THAT A 'PERSONAL LIABILITY' MEANS AN INDIVIDUAL OBLIGATION WHICH MUST BE PAID BY HIM/HER EVEN IF THE BUSINESS BECOMES INSOLVENT OR INACTIVE OR CEASES TO EXIST OR OTHERWISE FAILS TO PAY US OR HE/SHE DISCONTINUES HIS/HER EMPLOYMENT OR OTHER CONNECTION WITH THE BUSINESS. . . .

Plaintiff's Exhibit 3, Advanta Business Card Agreement, Paragraph 5 (emphasis added). Thus, Defendant Samuel Casilio is personally liable for the debt. The court finds the testimony offered by Defendant's wife that the terms and conditions were not included with the credit application not only suspect, but also of no moment; the application referred to the terms and conditions and thus were part of the application even if, as Defendant Samuel Casilio testified, he chose not to read them.

The court is not entirely unsympathetic to Defendants' plight, and enters this verdict with a certain reluctance. That a debt of \$6800 should grow to the astronomical sum of nearly \$17,000 in a few short years, especially in these times of record low interest rates, seems incredible. The interest rate in this case, just shy of 35%, is astoundingly extreme. It is not illegal, however, and the court is thus constrained to uphold the parties' agreement and enforce the debt.

Accordingly, the Court draws the following:

CONCLUSIONS OF LAW

1. Plaintiff is owed \$16,923.08 as of this date.
2. Both Defendants are liable for this amount.

VERDICT

AND NOW, this 16th day of October 2012, for the foregoing reasons, the Court finds in favor of Plaintiff and against Defendants in the amount of \$16,923.08.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson