Skipper v. Chase Manhattan Bank USA

2006 | Cited 0 times | Court of Appeals of Texas | March 16, 2006

MEMORANDUM OPINION

The trial court rendered judgment in favor of Chase Manhattan Bank USA, N.A. ("Chase") in its suit on an account that it brought against Lurline L. Skipper ("Skipper"). Skipper appeals. We reverse and render.

Background

First Deposit National Bank ("First Deposit"), a non-party to the underlying suit, and Skipper entered into a credit agreement under which Skipper received cash advances. Chase maintains it is an assignee of the loan to Skipper and alleges that it acquired Skipper's account from another non-party, Providian National Bank ("Providian"). Although not entirely clear from the record, it appears that Providian was either a successor to First Deposit, or acquired the loan by assignment from First Deposit. Chase sued Skipper for defaulting on the debt she incurred under the credit agreement that originated with First Deposit. Skipper filed a general denial. Chase did not follow the procedures that apply to suits on sworn accounts and pursued its claim under a breach of contract theory.

The parties presented the case on March 17, 2005 in a non-jury trial. Over Skipper's objection, Chase offered into evidence a business records affidavit of its assistant treasurer, Kristen Wendt. Attached to Wendt's affidavit were eighty-seven pages of records on Skipper's account. Chase's affidavit and documents do not include testimony or written documents evidencing Chase's acquisition of Skipper's debt from Providian. After introducing Wendt's affidavit and the records attached to it, Chase's attorney testified concerning his attorneys' fees, and then rested. Skipper presented no evidence. The trial court awarded Chase a judgment in the principal amount of $5,875.07, interest, and attorneys' fees.

The central issue here is whether Chase established that it acquired Skipper's account as an assignee. Because we find no evidence of any assignment to Chase, we reverse and render judgment for Skipper.

Breach of Contract

The elements of a breach of contract cause of action include: (1) the existence of a valid contract; (2) the plaintiff's performance or tendered performance; (3) the defendant's breach of the contract; and (4) damages from the breach. Sullivan v. Smith, 110 S.W.3d 545, 546 (Tex. App.- Beaumont 2003, no

pet.). Here, Chase's alleged contractual rights did not arise through a contract between Chase and Skipper. We also note that Skipper's account agreement with First Deposit provided that First Deposit could assign or transfer its rights to all or some of Skipper's payments.

"An assignment generally transfers some right or interest from one person to another." MG Bldg. Materials, Ltd. v. Moses Lopez Custom Homes, Inc., 179 S.W.3d 51, 57 (Tex. App.- San Antonio 2005, pet. denied). In Texas, the right to receive payment for a debt is generally assignable. Cloughly v. NBC Bank-Seguin, N.A., 773 S.W.2d 652, 655 (Tex. App. - San Antonio 1989, writ denied).

The resolution of this appeal depends upon whether the law requires Chase to prove that a prior lender assigned its right to collect Skipper's payments to Chase. The party asserting that a debt is due to it by virtue of an assignment must prove that the debt was in fact assigned to it. Ceramic Tile Intern., Inc. v. Balusek, 137 S.W.3d 722, 724 (Tex. App. - San Antonio 2004, no pet.); Delaney v. Davis, 81 S.W.3d 445, 448-49 (Tex. App. - Houston [14th Dist.] 2002, no pet.). In Ceramic Tile, the Court of Appeals reversed a trial court's judgment favoring an assignee who never introduced the assignment into evidence at the trial. See 137 S.W.3d at 725. Although the assignee attached a copy of the assignment to its pleadings, the appellate court held that the assignee's failure to place the assignment into evidence during trial precluded it from recovering on its claim. Id. Several appellate courts have relied on the same principle requiring creditors to prove their assignees' rights at trial and, where the evidence failed to show the assignments, similarly denied their recoveries. See Powell v. McCauley, 126 S.W.3d 158, 163 (Tex. App. - Houston [1st Dist.] 2002, no pet.); American Fire & Indem. Co. v. Jones, 828 S.W.2d 767, 769 (Tex. App. - Texarkana 1992, writ denied); Pape Equipment Co. v. I.C.S., Inc., 737 S.W.2d 397, 399 (Tex. App. - Houston [14th Dist.] 1987, writ ref'd n.r.e.); see also Esco Elevators, Inc. v. Brown Rental Equipment Co., Inc., 670 S.W.2d 761, 764 (Tex. App. - Fort Worth 1984, writ ref'd n.r.e.); Briscoe v. Texas General Ins. Agency, 60 S.W.2d 814, 815 (Tex. Civ. App. - Amarillo 1933, no writ); Indemnity Ins. Co. of North America v. Garsee, 54 S.W.2d 817, 820 (Tex. Civ. App. - Beaumont 1932, no writ).

Conclusion

Because Chase failed to prove that it obtained an assignment of Skipper's account, we sustain Skipper's issue in which she complains the evidence supporting the judgment is legally insufficient. We need not address the remaining issues raised by Skipper because this issue is dispositive of this appeal. Tex. R. App. P. 47.1. We reverse the trial court's judgment and render judgment that Chase take nothing on its claims against Skipper.

REVERSED AND RENDERED.

Submitted on January 19, 2006

Before McKeithen, C.J., Kreger, and Horton, JJ.