

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**
KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

CHARLES W. WELCH, III
JUDGE

October 2, 2012

Seth H. Yeager, Esq.
Lyons, Doughty, and Veldhuis, P.A.
15 Ashley Place Suite B
Wilmington, DE 19804

Ms. Traci Yearwood Van Horn
10 Foxhound Court
Dover, DE 19904

RE: Midland Funding, LLC. v. Traci Yearwood Van Horn
C.A. No. CPU5-11-000732

Decision After Trial

Dear Mr. Yeager and Ms. Van Horn:

This civil case involves a debt action to collect on a delinquent Citibank charge account that has been assigned to the plaintiff, Midland Funding, LLC (Midland). Midland alleges that the defendant, Traci Yearwood Van Horn (Van Horn), owes it an unpaid balance on the Citibank charge account. A trial was held for this matter, after which the Court reserved decision. This correspondence constitutes the Court's decision. Judgment is entered for Midland and against Van Horn in the amount of \$3,046.64, plus pre judgment interest at the contract rate of 26.73% per annum from December 2, 2009, and post judgment interest at the legal rate of 5.75% and court costs.

Van Horn entered into a credit agreement with Citibank for a Gordon's Jewelers Charge Account on or about September 20, 2003, when she purchased an engagement ring for her brother to give to his girlfriend. The rights under the credit agreement have been assigned to Midland.

The engagement ring that Van Horn purchased for her brother cost a total of \$4,995.00. Van Horn paid \$500.00 in cash for the ring when it was purchased and financed the remaining \$4,495.00 through the charge account. The financing terms for the account at the time provided that Van Horn would be charged no interest for one year if the entire amount financed was paid in its entirety by the end of that year.

Van Horn was not able to pay the amount financed in its entirety by the end of the year. Originally, her brother had helped her with the payments. However, at some point during the year, he just stopped. After the conclusion of the one year grace period to pay the entire balance on the charge account, interest started accruing at the rate of 9.9% per year.

Eventually, Van Horn stopped making payments on the charge account. By the time she stopped making payments, the interest accruing on the account had risen to 26.73% per annum. Van Horn's last payment on the charge account was on or about October 12, 2009, when she paid \$10.00. At the time, she knew that the interest rate was 26.73% per annum and did not agree with it. She did not dispute the rate, however, because she was overwhelmed and was unaware how to handle the situation. Her next payment on the account was due on December 2, 2009. Van Horn never made that payment and never made another payment on the charge account. The balance due on the account at that time was \$3,046.64.

Midland is seeking recovery on the balance due on the charge account. Van Horn believes that she has paid over \$8,000.00 on the account and contends that she should not have to pay any additional sums.

When considering whether to grant judgment on a debt action, the party seeking the judgment has the burden to prove the debt sued upon, the amount due and that the

debtor has defaulted on the debt. In this case, Van Horn defaulted on the balance due on the Gordon's Jewelers Charge Account that is owned by Midland when she failed to make any payments after October of 2009. On or about October 12, 2009, she made a \$10.00 payment on the account. At the time, she knew the balance due on the account and that the interest on that balance was accruing at the rate of 26.73% per annum. When a debtor makes a payment on the amount due and does not dispute it, they admit that they are the owner of the account and are liable for any unpaid balance on it. *Shoh v. 201 Investments, Inc.*, 2011 WL 5627191, at *1 (Del. Super. Nove. 15, 2011). Although she contends that she did not agree with the interest rate and balance due when she made her last payment, Van Horn did not contact Midland to dispute the amount due on the charge account or the rate at which interest was accruing. Her next payment was due on December 2, 2009, and she simply did not pay it or any additional payments. At the time, the balance on the account was \$3,046.64. Therefore, judgment is entered for Midland and against Van Horn in the amount of \$3,046.64, plus pre judgment interest at the contract interest rate of 26.73% per annum from December 2, 2009, and post judgment interest at the legal rate of 5.75% per annum, and court costs.¹

IT IS SO ORDERED.

Sincerely,

Charles W. Welch, III

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¹ In the pretrial conference worksheet and stipulation, Midland appears to be requesting an award of \$629.87 in attorney's fees. However, no proof was provided at trial that Midland is entitled to such an award. Therefore, the Court has not granted it.