

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

FRANK A. SEOANE,
Appellant,

v.

BARCLAYS BANK DELAWARE
Appellee.

Ref. No. 11000046AP-88B
UCN: 522011AP000046XXXXCV

ORDER AND OPINION

THIS CAUSE is before the Court on appeal filed by Frank Seoane, the defendant below, from the County Court's Order of Final Summary Judgment in favor plaintiff, Barclays Bank Delaware. Upon review of the briefs and the record, and being otherwise fully advised, this Court affirms the Order of Final Summary Judgment.

Mr. Seoane was issued a credit card by Barclays Bank Delaware, and subsequently used or authorized use of the credit card for transactions totaling \$3,542.78. Mr. Seoane defaulted on his obligation to make monthly payments on the account in February 2009.

Barclays Bank Delaware filed an action to recover, pleading breach of contract, unjust enrichment, and account stated claims. No written instrument was attached to the pleadings, but Barclays Bank Delaware produced credit card bills for July 2009 through October 2009 that show Mr. Seoane's present address and a lump sum due on the account of \$3,542.78. Mr. Seoane did not dispute the accuracy or the validity of the credit card bills, and the Bank produced an affidavit attesting to the correctness of the account. Summary judgment was granted for Barclays Bank Delaware in the amount of \$3,542.78 plus \$350.00 in court fees. Mr. Seoane appeals that final judgment.

Appellate courts review a ruling on summary judgment de novo. *Law Office of James M. Thomas, Esq., P.A. v. WorkNet Pinellas, Inc.*, No. 09-000015AP-88A (Fla. 6th Cir. App. Ct. August 17,

2010). A motion for summary judgment shall be rendered forthwith if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Florida Rules of Civil Procedure 1.510(c).

Mr. Seoane contends that summary judgment was improper because Barclays Bank Delaware failed to produce the signed cardholder agreement necessary to prevail on a cause of action based on breach of contract. Fla. R. Civ. P. 1.130(a). While there is some merit to Mr. Seoane's argument with regards to the breach of contract claim, Barclays Bank Delaware was entitled to summary judgment on its account stated claim. An account stated is established when there is proof of an express or implied agreement between the parties fixing the price of the transactions, and an explicit or implied promise of payment. *Martyn v. Arnold*, 36 Fla. 446, 18 So. 791, 793 (Fla. 1895). A written contract is not necessary to establish an account stated, because the action is often based on an implied promise. *Farley v. Chase Bank, U.S.A., N.A.*, 37 So.3d 936, 937 (Fla. 4th DCA 2010). A prima facie case for an account stated may be created when the debtor has received periodic account statements and made no objection to them. *Dudas v. Dade County*, 385 So.2d 1144, 1144 (Fla. 3rd DCA 1980). Once the plaintiff has established a prima facie case for an account stated, the defendant must show fraud or mistake to attack the claim. *Farley* at 937.

In the instant case, Barclays Bank Delaware produced four bills and an affidavit attesting to Mr. Seoane's use of the credit card account totaling \$3,542.78. The name and address on the bills are Mr. Seoane's, and there is no evidence in the record to suggest that Mr. Seoane ever objected to the account statements. Mr. Seoane also does not claim fraud, duress or mistake on appeal. Accordingly, Barclays Bank Delaware was entitled to recover on the credit card based on an account stated.

Because summary judgment was proper on the account stated claim, it is immaterial that summary judgment may not have been proper on the other counts in the complaint. *See Wingreen Co. v. Montgomery Ward & Co.*, 171 So. 2d 408 (Fla. 3d DCA 1965) (affirming summary judgment supportable under count for goods bargained for and sold even though it was not supportable on contract count pleaded alternatively in complaint). "Recovery is not supportable on the contract account. It is

supportable under the account for goods bargained and sold, and the record supporting the judgment in this particular, it will therefore be affirmed." *Id.* at 409. Barclays Bank Delaware properly pled and proved an account stated claim, and summary judgment is supportable on the account stated claim.

Accordingly, the trial court's order granting Barclays Bank Delaware summary judgment is hereby

AFFIRMED.

DONE AND ORDERED in St. Petersburg, Pinellas County, Florida, on this 24 day of

Sep, 2012.

Original order entered on September 24, 2012, by Circuit Judges Amy M. Williams, Peter Ramsberger, and Pamela A.M. Campbell.

Copies furnished to:

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