

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-294

JUNE TERM, 2006

Citibank, S. Dakota

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APPEALED FROM:

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v.

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Caledonia Superior Court

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David Timson

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DOCKET NO. 119-6-04 Cacv

Trial Judge: Theresa S. DiMauro

In the above-entitled cause, the Clerk will enter:

Defendant David Timson appeals the superior court=s summary judgment ruling in favor of plaintiff Citibank, S. Dakota in this collection action. We affirm.

Plaintiff filed suit against defendant seeking to collect the balance owed on a credit card debt. The matter was initially dismissed on September 28, 2004 when plaintiff=s attorney encountered cell phone problems and

failed to place a telephone call, as permitted and expected by the court, during a status conference. That same day, plaintiff filed a motion under V.R.C.P. 60(b) to reopen the case. The court granted the motion, and plaintiff filed a motion for summary judgment in November 2004. Defendant responded to the motion in a brief letter stating that his only income was social security. Following a hearing on the summary judgment motion, the superior court awarded plaintiff \$6365 plus costs and attorneys' fees.

In his one-page appellate brief, defendant states that (1) the case was reopened at the last possible minute, which constitutes abuse and harassment; (2) at no time during any hearings was an oath given to any parties present or represented by telephone; (3) waiting times for the hearings were lengthy, which made a fair and expedient trial impossible; (4) his only source of income is social security disability income; (5) he was unable to obtain information from any agency without first paying a retainer fee, which he was unable to do; (6) insurance covering his debt was implied over the telephone but never offered again; and (7) he did not understand some of the court documents and procedures. None of these arguments is specific enough to determine whether any reversible error occurred in the superior court proceedings. Defendant has failed to demonstrate that the superior court abused its discretion or committed any error in reopening the case and granting plaintiff summary judgment. See Lyddy v. Lyddy, 173 Vt. 493, 497 (2001) (AA trial court's decision on a Rule 60(b) motion is committed to the sound discretion of the court and will stand on review unless the record indicates that such discretion was abused.); White v. Quechee Lakes Landowners Ass'n v. Helo Factories, Ltd., 170 Vt. 25, 29 (1999) (articulating rule that in response to motion for summary judgment, opposing party may not rest upon mere allegations or denials, but rather must set forth specific facts showing that there is genuine issue of material fact or that moving party is not entitled to judgment as matter of law). Because the case was decided on summary judgment, no in-court testimony was received.

Defendant's ability to pay is not a defense to the debt action. The Court explored the issue raised in argument (whether the debt should be covered by a disability insurance policy). Defendant did not raise the insurance coverage as a defense in his answer, and the information provided to this Court and the trial court does not show that the insurance covered payments missed because of defendant's disability. We are left only with defendant's claim that insurance upon the said debt was implied. It is not sufficient to raise a defense

to plaintiff=s action for collection on the credit card debt.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice