

FIRST DIVISION
MARCH 29, 2013

No. 1-12-0433

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DISCOVER BANK, a Delaware Banking Corporation,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	No. 11 M1 113916
v.)	
)	
RHODA JEFFRIES,)	Honorable
)	Sheryl A. Pethers,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* The judgment of the trial court is affirmed because the trial court did not err in denying the defendant's motion to dismiss, and did not abuse its discretion in making evidentiary rulings.
- ¶ 2 This appeal arises from a November 17, 2011 judgment entered by the circuit court of Cook County which awarded \$4,709.47 to plaintiff-appellee Discover Bank, a Delaware Banking Corporation (Discover Bank). On appeal, defendant-appellant Rhoda Jeffries (Jeffries), acting *pro se*, argues that: (1) the trial court erred in denying her motion to dismiss because Discover Bank

lacked standing to bring this cause of action; (2) the trial court erred in denying her motion to dismiss because the trial court lacked subject-matter jurisdiction over this cause of action; and (3) the trial court erred by allowing improper evidentiary admissions. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 On February 23, 2011, Discover Bank filed a complaint for breach of contract against Jeffries in the circuit court of Cook County. The complaint alleged that on or around May 2, 2007, Discover Bank issued a credit card to Jeffries. The complaint further alleged that Jeffries last made a credit card payment on May 4, 2010, and that she had an outstanding balance of \$4,359.47 at the time the complaint was filed. The complaint also requested \$350 in costs and fees. Attached to the complaint was a credit card agreement, a monthly account statement, and an affidavit executed by Discover Bank's servicing agent. Shortly thereafter, Jeffries filed a motion to dismiss Discover Bank's complaint.¹ On July 21, 2011, Discover Bank filed a response to Jeffries' motion to dismiss. On July 26, 2011, the trial court denied Jeffries' motion to dismiss. On September 15, 2011, the trial court set the matter for trial, and denied Jeffries leave to file an amended motion to dismiss. On October 11, 2011, Jeffries filed an answer to Discover Bank's complaint. Jeffries attached additional defenses to the answer.

¶ 5 On November 17, 2011, Jeffries filed a second set of additional defenses. Also, on

¹The parties both state that the motion to dismiss was filed on June 7, 2011. However, the motion only appears in the appendix of Jeffries' appeal brief and not in the record. Documents that are part of an appendix but not part of the record, cannot be considered. *Geary v. Telular Corp.*, 341 Ill. App. 3d 694, 697 n.1 (2003).

November 17, 2011, the trial commenced in the circuit court of Cook County. There is no transcript of the trial or bystander's report contained in the record on appeal. After trial, the trial court entered a judgment in favor of Discover Bank in the amount of \$4,709.47. On December 15, 2011, Jeffries filed a motion to reconsider. On January 11, 2012, the trial court denied Jeffries' motion to reconsider. On February 9, 2012, Jeffries filed a timely notice of appeal. Therefore, this court has jurisdiction to consider Jeffries' arguments on appeal pursuant to Illinois Supreme Court Rule 303 (eff. June 4, 2008).

¶ 6 ANALYSIS

¶ 7 We determine the following issues on appeal: (1) whether the trial court erred in denying Jeffries' motion to dismiss because Discover Bank lacked standing to bring this cause of action; (2) whether the trial court erred in denying Jeffries' motion to dismiss because the trial court lacked subject-matter jurisdiction over this cause of action; and (3) whether the trial court erred by allowing improper evidentiary admissions.

¶ 8 We first determine whether the trial court erred in denying Jeffries' motion to dismiss based on the assertion that Discover Bank lacked standing to bring its cause of action.

¶ 9 Jeffries argues that the trial court erred in denying her motion to dismiss because Discover Bank lacked standing to bring this cause of action. Specifically, Jeffries argues that Discover Bank lacked standing to file its complaint because the contract attached to the complaint was not signed. Jeffries also contends that counsel for Discover Bank did not file a notice of debt pursuant to section 1692g(a) of the Fair Debt Collection Practices Act (15 U.S.C. § 1692g(a) (2006)). Further, Jeffries argues that Discover Bank failed to comply with section 2-403 of the Illinois Code of Civil

Procedure (Code) (735 ILCS 5/2-403 (West 2010)).

¶ 10 In response, Discover Bank argues that the trial court did not err in denying Jeffries' motion to dismiss because it did have standing to file its complaint. Discover Bank contends that in order to file its complaint, it did not need to produce a written and signed contract because the document attached to the complaint is not a contract. Discover Bank claims that the document attached to the complaint is actually a credit card agreement that represents the terms and conditions for the use of the credit card issued to Jeffries. Discover Bank argues that causes of action arising from credit card agreements are not based on written contracts. Rather, when a cardholder is issued a credit card, a new contract is formed between the cardholder and the bank each time the credit card is used. Discover Bank also asserts that Jeffries' reliance on section 2-403 of the Code is misplaced because that statute governs actions in which there has been an assignment of debt. Discover Bank argues that because there has been no assignment of debt in this case, section 2-403 of the Code is inapplicable to this matter. Further, Discover Bank contends that it properly presented a viable cause of action. Discover Bank argues that the pleading requirements for small claim matters are minimal under Illinois Supreme Court Rule 282 (eff. July 1, 1997), and that its complaint in this case clearly complied with those requirements.

¶ 11 According to both parties, Jeffries filed her motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). The appellate court reviews the trial court's denial of a motion to dismiss under section 2-615 of the Code using the *de novo* standard of review. *Neppl v. Murphy*, 316 Ill. App. 3d 581, 583 (2000). "A motion to dismiss based on section 2-615 admits all well-pleaded facts and attacks the legal sufficiency of the complaint." *Id.* at 584.

¶ 12 As Discover Bank points out, Illinois courts have repeatedly held that the issuance of a credit card and a credit card agreement is not a contract, but rather a standing offer to extend credit. *Portfolio Acquisitions, L.L.C. v. Feltman*, 391 Ill. App. 3d 642, 649 (2009). "[E]ach time a credit card is used, a separate contract is formed between the cardholder and the bank." *Id.* In order to plead a cause of action on an unwritten credit card contract, the plaintiff must present: (1) allegations or documents reflecting the terms of the agreement between the plaintiff and defendant; (2) allegations that the terms pertained to the defendant's account; (3) allegations that the defendant was mailed the agreement; and (4) allegations that the defendant agreed to those terms when she used the credit card thereafter. *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶¶ 33-34. The plaintiff must plead that the terms attached to the complaint are the same terms under which plaintiff seeks to recover. *Id.*, ¶ 34.

¶ 13 We agree with Discover Bank's arguments regarding this issue. In its complaint, Discover Bank did not allege that the credit card agreement was a written contract between it and Jeffries. Rather, Discover Bank alleged that the credit card agreement represented the terms and conditions governing the use of the credit card issued to Jeffries. Discover Bank further alleged that: a credit card was issued to Jeffries upon her request around May 2, 2007; Jeffries agreed to pay Discover Bank all amounts charged by use of the credit card; the credit card agreement was mailed to Jeffries; after the credit card agreement was mailed to Jeffries, she incurred charges by using the credit card; Discover Bank submitted monthly statements to Jeffries demanding payment of her account; Jeffries defaulted by failing to make the requisite payments under the terms of the agreement; and Jeffries owed Discover Bank \$4,359.47. Attached to Discover Bank's complaint was the credit card

agreement, a monthly account statement that reflected the unpaid balance of \$4,359.47, and an affidavit executed by its servicing agent. The affidavit stated that the account statement was a true and correct statement of the balance on Jeffries' account, and that the credit card agreement governed the terms and conditions of the relationship between Jeffries and Discover Bank. Thus, Discover Bank's complaint complied with the pleading requirements as set forth in *Razor Capital*.

¶ 14 Moreover, as Discover Bank points out, its complaint was clearly sufficient to satisfy the minimal pleading requirements for a small claim matter. Illinois Supreme Court Rule 281 (eff. Jan 1, 2006) defines a "small claim" as a "civil action based on either tort or contract for money not in excess of \$10,000 ***." Rule 282 states that a cause of action on a small claim requires a short and simple complaint setting forth: (1) the plaintiff's name, address and phone number; (2) the defendant's name and place of residence; and (3) the nature and amount of the plaintiff's claim, giving dates and relevant information. Ill. S. Ct. R. 282 (eff. July 1, 1997). If the claim is based upon a written instrument, a copy of the written instrument must be attached to the original complaint. *Id.* As previously discussed, Discover Bank's complaint clearly fulfilled these requirements.

¶ 15 Additionally, Jeffries' argument that counsel for Discover Bank failed to file a notice of debt pursuant to section 1692g(a) of the Fair Debt Collection Practices Act is without merit. Section 1692g(a) of the Fair Debt Collection Practices Act specifically applies to "debt collectors." However, according to the Fair Debt Collection Practices Act, Discover Bank falls under the definition of a "creditor" rather than a "debt collector." See 15 U.S.C. § 1692a(4), (6) (2010). Thus, section 1692g(a) of the Fair Debt Collection Practices Act has no bearing on the resolution of this

case. Likewise, Jeffries' reliance on section 2-403 of the Code is misplaced. Section 2-403 of the Code governs who may be a plaintiff in an action when there has been an assignment of debt. There was no assignment of debt in this case, therefore, section 2-403 of the Code is inapplicable to the resolution of this matter. Because Discover Bank's complaint complied with the pleading requirements set forth in *Razor Capital* and Rule 282, it was sufficient to state a cause of action for breach of contract against Jeffries. Thus, we hold that the trial court did not err in denying Jeffries' motion to dismiss based on her argument that Discover Bank lacked standing to file a complaint against her.

¶ 16 We next determine whether the trial court erred in denying Jeffries' motion to dismiss because the trial court lacked subject-matter jurisdiction over Discover Bank's cause of action.

¶ 17 In her brief on appeal, Jeffries simply argues that the trial court did not have subject-matter jurisdiction over Discover Bank's cause of action, thus the orders entered by the trial court were void. In support of her argument, Jeffries cites many general rules of law regarding jurisdiction. However, she does not provide a coherent reason as to why she believes the trial court lacked subject-matter jurisdiction over this case. We understand that Jeffries is acting *pro se*, but that does not absolve her from following the rules of the court. She did not apply any of the cited case law to the facts of this case nor did she make a coherent argument regarding how the cited case law supports her contentions. This court cannot make her argument for her. See *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1994). Discover Bank filed its complaint in the circuit court of Cook County as a small claim matter. As previously discussed, a "small claim" is a "civil action based on either tort or contract for money not in excess of \$10,000 ***." Ill. S. Ct. R. 281 (eff. Jan. 1, 2006). The

trial court clearly had jurisdiction over the subject matter of Discover Bank's complaint. See Ill. Const. 1970, art. I, § 9; *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334-36 (2002). Therefore, we are unpersuaded by Jeffries' argument. We hold that the trial court did not err in denying Jeffries' motion to dismiss based on her argument that the trial court lacked subject-matter jurisdiction over Discover Bank's cause of action.

¶ 18 We next determine whether the trial court erred by allowing improper evidentiary admissions.

¶ 19 Jeffries argues that the trial court improperly allowed certain documents and testimony into evidence at trial. Jeffries claims that she raised various objections at trial to Discover Bank's affidavits, exhibits, and testimony. She claims that the trial court did not act on her objections. Jeffries argues that the affidavit executed by Discover Bank's servicing agent did not satisfy the business records exception to the hearsay rule. Jeffries also contends that "the second hand information, computer screen printouts, alleged account balances, and account numbers," were hearsay.

¶ 20 Discover Bank responds by arguing that the trial court did not err in ruling on any evidentiary issues at trial. Discover Bank claims that the affidavit executed by its servicing agent was not used at trial. Discover Bank also points out that there was no transcript of the trial, and Jeffries did not provide a bystander's report. Thus, Discover Bank contends that none of Jeffries' objections to evidence are in the record on appeal and therefore are not subject to review.

¶ 21 We agree with Discover Bank's arguments. When a party challenges a trial court's evidentiary ruling, this court applies the abuse of discretion standard of review. *Adams v. Sara Bush Lincoln Health Center*, 369 Ill. App. 3d 988, 998 (2007). "An abuse of discretion exists where no

reasonable person would agree with the position of the trial court." *Skubak v. Lutheran General Health Care Systems*, 339 Ill. App. 3d 30, 36 (2003). It is the duty of the appellant to provide the reviewing court with a proper record on appeal. *Midwest Builder Distributing, Inc. v. Lord and Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007). "Where there is a gap in the record that could have a material impact on the outcome of the case, the reviewing court will presume that the missing evidence supported the judgment of the trial court and resolve any doubts against the appellant." *Id.*

¶ 22 As Discover Bank points out, Jeffries' argument is based on her alleged objections at trial which are not in the record presented to this court on appeal. There is no transcript of the trial, and Jeffries did not provide a bystander's report pursuant to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). Therefore, we do not have a record of the issues that were addressed or the arguments and evidence that were presented to the trial court. Based on the insufficiency of the record, we must presume that the evidence presented at trial supported the judgment of the trial court. *Lord and Essex*, 383 Ill. App. 3d at 655. Thus, we hold that the trial court did not abuse its discretion in making any evidentiary rulings.

¶ 23 We note that Jeffries raises numerous additional arguments on appeal. However, the remaining arguments are specious and not presented in a coherent manner. Accordingly they do not lend themselves to a response. Therefore, we decline to address Jeffries' remaining arguments.

¶ 24 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 25 Affirmed.