

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON
STATE OF LOUISIANA
DIVISION "D"
ARROW FINANCIAL SERVICES, LLC.

NUMBER: 671 - 515

VERSUS

LUZ G. LUCAS

FILED: _____ DEPUTY CLERK

FILED
MAY 20 2009
M. MURPHY
DEPUTY CLERK

J U D G M E N T

Plaintiff Arrow Financial Services, LLC seeks to confirm the default entered in this matter on May 20, 2009. On review of the record in this matter, the court finds that petitioner is has failed to present a *prima facie* case and is therefore not entitled to the relief sought for the written reasons assigned this date and made part hereof. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that confirmation of the May 20, 2009 be and the same is hereby DENIED at petitioner/mover's costs.

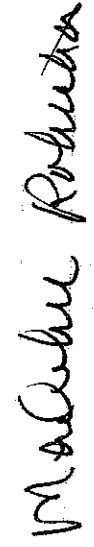
JUDGMENT READ, RENDERED AND SIGNED this 23 day of June, 2009 at

Gretna, Louisiana.


JUDGE ROBERT M. MURPHY

PLEASE NOTIFY:

Arrow Financial Services, L.L.C., petitioner/mover
Through its counsel of record:
GREGORY M. EATON, ESQ.
APRIL T. POLLET, ESQ.
PAUL E. PENDLEY, ESQ.
EATON GROUP ATTORNEYS, L.L.C.
P.O. Box 3001
309 North Boulevard
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Luz G. Lucas, defendant
1809 Princeton Street
Metairie, Louisiana 70003

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VERSUS

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W. Sublette
Robuchon

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REASONS FOR JUDGMENT

STATEMENT OF THE CASE:

Plaintiff Arrow Financial Services, LLC contends it owns a receivable issued through Washington Mutual Bank whereby defendant Luz G. Lucas is allegedly indebted on a credit card account in the amount of \$8,002.35, with additional interest of 5.5% from November 30, 2007, 25% attorney's fees and all costs. Arrow filed its petition on April 2, 2009; Lucas was served personally on April 9, 2009 and failed to file responsive pleadings when the preliminary default was entered on May 20, 2009.

Arrow now seeks to confirm the default judgment *ex parte* and filed the following

attachments:

- 1) A certificate of confirmation the clerk's certification that no answer or opposition had been filed;
- 2) An affidavit of correctness of account by Arrow of the correctness of the balance;
- 3) A supplemental affidavit of correctness executed by plaintiff counsel's employee restating the balance due and that the account is not subject to any credit;
- 4) A copy of plaintiff counsel's demand letter to defendant;
- 5) Plaintiff's statement of account; and
- 6) Plaintiff's proposed judgment confirming the default.

FINDINGS:

Based on the law and the evidence, the court finds that the plaintiff is not entitled to confirmation of the default. The court finds that petitioner has not presented competent evidence

of a prima facie case that convinces the court that it is more probable that not it would prevail in a trial on the merits. *Signlite, Inc. v. Northshore Service Ctr., Inc.*, 2007 WL 437264 (La.App. 1 Cir. 2007). Arrow has not proved with competent evidence the essential allegations of its petition as fully as if each of the allegations were specifically denied. See *Beevers v. Burmaster*, 787 So.2d 381 (La.App. 5 Cir. 1998).

First, the court finds that the petitioner has failed to set forth evidence that a valid contract exists between the parties. Louisiana law provides that consent is required to perfect a contract. C.C. art. 1927. The record is this proceeding is devoid of any signed cardholder's agreement, any copy or facsimile of the agreement, any standard form, any recitation of terms, including interest rate, and no indication of the date of the agreement. Nothing indicates notice, consent and/or acquiescence to the agreement or its terms. The court therefore concludes that there is no proof that an agreement exists and rejects the stronger party's unilateral attempt to impose its terms and conditions without such proof.

Second, there is no competent evidence that the plaintiff Arrow had been assigned the debt from Washington Mutual. Without any of the assignment agreements or details thereof, the court is unable to ascertain the status of the parties. The evidence is therefore insufficient to support confirmation of the default judgment against the debtor on a past due credit card balance in favor of an alleged creditor's assignee. See *Bureaus Inv. Group No. 2, L.L.C. v. Howard*, 947 So.2d 37 (La.App. 5 Cir. 2006).

Third, even assuming that petitioner had supplied proof of consent/acceptance and a valid assignment of the debt, petitioner has also failed to establish the existence of an open account. Arrow includes in the record a statement of the balance due at \$8,002.35. Without any degree of itemization, there is no indication of whether this amount reflects one or more transactions. There is no factual basis to determine whether there running or current dealings between the parties or whether there are expectations of other dealings. See *Paddison Builders, Inc. v. Newpark Square One Condo. Ass'n*, 848 So.2d 750, 753 (La.App. 5 Cir. 2003). The court takes notice of the affidavit(s) of correctness; however, affiants do not attest that they monitored the

account during the dates in question or that they are even familiar with the charges or terms of the account.

In the instant matter, petitioner has failed to set forth evidence of the essential elements of its claim, including existence of a contract, a valid assignment to petitioner or existence of an open account.

CONCLUSIONS:

In light of the foregoing Reasons, the court DENIES petitioner Arrow Financial Services, LLC's motion to confirm default judgment at mover's costs.

REASONS READ AND SIGNED this 23 day of June, 2009 at Gretna, Louisiana.


JUDGE ROBERT M. MURPHY

