IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

SUNCOAST SCHOOLS FEDERAL CREDIT UNION,

Plaintiff,

v. Case No. 10-CA-4036

SAM TARAD SKY a/k/a SAM T. SKY,

Defendant.

_____/

FINAL JUDGMENT (IN FAVOR OF DEFENDANT, SAM TARAD SKY a/k/a SAM T. SKY)

THIS CAUSE came before the Court on April 21, 2015 for trial. Plaintiff's counsel, Thomas Sciarrino, Jr., Esquire, prosecuted the claim of Plaintiff, SUNCOAST SCHOOLS FEDERAL CREDIT UNION ("SUNCOAST"), with the assistance of its representative, Deborah Steele. Plaintiff pursued a single claim for an unpaid account (credit card). Defendant, SAM TARAD SKY a/k/a SAM T. SKY, represented himself *pro se*. He denied Plaintiff's claims and affirmatively claimed "accord and satisfaction" as a defense. Each side had an opportunity to call witnesses and to introduce exhibits into the record. After weighing the evidence (testimony and documentary exhibits) and considering the parties' respective arguments and claims, it is hereby **FOUND, ORDERED, and ADJUDGED**:

1. Plaintiff, SUNCOAST SCHOOLS FEDERAL CREDIT UNION, sued Defendant in this cause, claiming entitlement to damages in the amount of $27,149.13 as set forth in the Complaint, not inclusive of other claimed damages such as costs, attorney's fees, and interest. Defendant denied the claim, and further, affirmatively claimed that Plaintiff's claim for the unpaid account was satisfied by "accord and satisfaction." Essentially, both parties acknowledged that the defense issue of "accord and satisfaction" constitutes the crux of this particular case, with Defendant bearing the burden of proof by the greater weight (preponderance) of the evidence. (The Court notes, parenthetically, that Plaintiff is now technically known as SUNCOAST CREDIT UNION, which was formerly known as SUNCOAST SCHOOLS FEDERAL CREDIT UNION, however, no motion to formally make such change in the pleadings was made prior to trial. Irrespective, it does not bear on the outcome of the case and arguably was tried by consent.)

2. At trial, Defendant, SAM TARAD SKY a/k/a SAM T. SKY, did not deny that he had opened up a credit card account with Plaintiff. Plaintiff established jurisdiction, along with the fact that Defendant had an open VISA account by virtue of his use of a SUNCOAST credit

card. There is no dispute the credit card account number is 4608-1900-9802-6054. The evidence further established that Defendant received the statements of account as attached to the Complaint, and that he failed to pay off said account despite Plaintiff's demand for the same. Plaintiff, likewise, established that it had satisfied conditions precedent to bringing this action.

3. The primary dispute in this cause is whether Defendant, SAM TARAD SKY a/k/a SAM T. SKY, established by a preponderance of the evidence the defense of "accord and satisfaction," an avoidance of the majority of the debt as claimed by Plaintiff. Defendant argued general entitlement to such relief under Florida Statutes, section 673.3111. To wit, though his company letterhead, DNA Debt Negotiation Associates, Defendant wrote Plaintiff and signed off individually on two letters concerning disputes/inquiries regarding the amount claimed by Plaintiff in the statements.

4. Defendant initially wrote Plaintiff on October 1, 2009, disputing at least a portion of the amount claimed, largely in regard to late fees, and requested information regarding Plaintiff's manner of calculation of the late fees, the amount, et cetera. *See*, Defendant's Exhibit A-1. Plaintiff responded in writing shortly thereafter, basically declining or refusing to provide the information Defendant previously requested in the aforementioned letter. *See*, Defendant's Exhibit A-3. Thereafter, Defendant wrote Plaintiff again, on November 6, 2009, still disputing at least a portion of the account relative to fees: "... [T]here is a dispute over 'account fees' including, but not limited to, applicable interest rates, penalties, late fees, etc, [sic] which prompted our prior letter, wherein **I, am disputing the total balance claimed by you to be owed...**")(emphasis added). *See*, Defendant's Exhibit A-2. Of further note, he asked in his second letter for someone to contact him regarding discussion of "an amicable resolution of the dispute [he] raised" in the first letter. Plaintiff received both of Defendant's letters, but only provided a written response to the first one.

5. The parties never engaged in formal negotiations with respect to Defendant's express hope of reaching "an amicable resolution" prior to suit. Plaintiff was well aware, however, of Defendant's dispute by virtue of his letters, as evidenced by their response to the first letter and Plaintiff's subsequent numerous efforts and unsuccessful attempts to reach Defendant by telephone.

6. Following his second letter, to which Plaintiff did not respond, Defendant mailed Plaintiff a valid negotiable instrument (check) on or about December 22, 2009, payable to Plaintiff. Clearly and conspicuously, per Plaintiff's acknowledgment, the check referenced both the disputed account by specific reference to the account number and the following language on the face of the check in the "memo" section: "This check is payment in full for the account referenced herein and in full satisfaction of the unliquidated claim and/or bonafide dispute as the disputed total monies due, and the account shall be reported to the

3 bureaus as such (not 'for less than the full amount') or entirely removed, and subject to FL law & venue in Lee Co., FL."

7. Plaintiff negotiated the instrument by cashing the check after endorsing the same shortly after receipt, without reservation, objection, or other annotation. For that matter, Plaintiff appears to have hand-stamped an endorsement over language that Defendant clearly had marked on the back of the check in the endorsement section, noting that: "This check is payment in full for the account referenced herein and in full satisfaction of the unliquidated claim and/or bonafide dispute as the disputed total monies due and the 4608190098026054." Plaintiff not only cashed the check drawn on Defendant's behalf and collected the funds, it determined it would credit said funds toward the account without reservation. Despite Defendant's claim of "accord and satisfaction,"

8. Plaintiff never retendered the funds back to Defendant within 90 days of notice thereof, nor was it established as a matter of record that the check was not received by a specially designated office, person, or location. Plaintiff conceded at trial that there was no policy or procedure in place for receipt of annotated checks other than to deposit them unless any such checks were sent to an address for disputes, which was not specifically provided to Defendant. Defendant did not send his check to the standard P.O. Box address for regular credit card payments, but rather, he sent it to the address to which he had lodged his prior complaints/disputes/inquiries.

9. Although Defendant initially appears to only have disputed a small portion of the account claimed, he did indicate in correspondence that based upon the fees and the lack of information requested that he was disputing the whole amount, as previously referenced herein. Defendant's inquiries and denials/disputation regarding the account, of which Plaintiff was aware, and Defendant's subsequent unilateral settlement offer for his account by tender of an annotated "jumbo check," on which he conspicuously indicated in two places that acceptance/negotiation of the check would constitute settlement of his account, appear well taken. Although not necessarily unliquidated (albeit Defendant essentially had asked how Plaintiff arrived at its liquidated number in his first letter, which Plaintiff refused to do), Defendant appears to have raised a bona fide concern of which Plaintiff admitted knowledge, though it claims is not well taken. Defendant, however, did not leave the Court with the impression that his initial inquiries/concerns/disputes regarding some aspect of the account and his efforts to resolve them for that matter, were machinations. Of no doubt however, Defendant certainly knew what he was doing relative to attempting to resolve the matter at hand in his favor.

10. In short, Plaintiff accepted Defendant's offer to resolve the entire (disputed) account by its endorsement of the check on which Defendant had clearly and conspicuously marked that acceptance/endorsement thereof would settle the noted account in full. *See, generally,*

St. Croix Lane Trust & M.L. v. St. Croix at Pelican Marsh Condominium Association, Inc., 144 So.3d 639, 642 (Fla. 2d DCA 2014)("When the Association negotiated the Trust's check that was tendered in full and final satisfaction of the Association's disputed claim, an accord and satisfaction resulted. [citations omitted] If the Association did not wish to accept the $840 check in full settlement of its claims in accordance with the Trust's conditional tender, then it should have returned the check instead of negotiating it. *See The Burke Co. v. Hilton Dev. Co.*, 802 F.Supp. 434, 439 (N.D.Fla. 1992)(applying Florida law). 'Simply put, the [Association] cannot have [its] cake and eat it too.'").

Accordingly, based upon the foregoing and Defendant having met his burden of proof regarding the defense of "accord and satisfaction," Plaintiff shall take nothing from this action and the parties shall go hence without day. This is a final judgment/order, all for which let execution issue, as applicable or otherwise required herein. In further accordance herewith, however, Plaintiff is to contact the appropriate credit agencies within thirty (30) days and to otherwise advise said agencies that Plaintiff's claimed account was either compromised or settled by "accord and satisfaction" as of the date of Plaintiff's endorsement of Defendant's check and the acceptance of the $4,500 there from. The Court reserves jurisdiction for the enforcement of this judgment, to assess and award taxable fees and costs, and to enter such further orders as may be necessary to effectuate this judgment and/or the interests of justice.

DONE and ORDERED in Chambers, Lee County, Florida, April 22, 2015.

KEITH R. KYLE 4/22/15

Hon. Keith R. Kyle, Circuit Judge, 20th Judicial Circuit

Conformed copies sent to all Parties/Counsel of Record to address of record by U.S. Mail and electronic service by Judicial Assistant on April 22, 2015:

Plaintiff's counsel, Thomas Sciarrino, Jr., Esquire
Defendant, SAM TARAD SKY a/k/a SAM T. SKY, *pro se*

Judicial Assistant