

SUPREME COURT OF NORTH DAKOTA

Discover Bank v. Hornbacher

2020 ND 307 (N.D. 2020) · No. 20200232 · Decided December 17, 2020

SUMMARY

The North Dakota Supreme Court held that a stipulation consenting to entry of judgment was contractual in nature and plainly authorized Discover Bank to obtain judgment by affidavit. The court distinguished entry of judgment from post-judgment execution and reversed and remanded for entry of judgment.

CASE DETAILS

|                       |                                                                                                                           |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of North Dakota                                                                                             |
| WRITING FOR THE COURT | Jerod E. Tufte, Justice; Jon J. Jensen, C.J.; Gerald W. VandeWalle; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte |
| JURISDICTION          | North Dakota                                                                                                              |
| DECIDED               | December 17, 2020                                                                                                         |
| DOCKET                | 20200232                                                                                                                  |
| DISPOSITION           | reversed_and_remanded                                                                                                     |
| PROCEDURAL POSTURE    | Discover Bank appealed from a district court order denying its motion for judgment and dismissing the case.               |
| STANDARD OF REVIEW    | De novo review of the construction of a written contract and determination of its legal effect.                           |
| PRECEDENTIAL VALUE    | Published North Dakota Supreme Court opinion                                                                              |
| PARTIES               | Discover Bank v. Bryan L. Hornbacher                                                                                      |

TOPICS

- motion for judgment on the pleadings
- contract interpretation
- contracts
- appellate procedure
- commercial litigation

PRACTICE AREAS

- civil procedure
- contracts
- remedies
- appellate procedure
- commercial litigation

## QUESTIONS PRESENTED

1. Whether the stipulation required the district court to enter judgment immediately, or instead barred Discover from seeking judgment until Hornbacher defaulted on the agreed payment schedule.
2. Whether the district court properly construed the stipulation and applied North Dakota execution law.

## HOLDINGS

1. The stipulation was contractual because it resolved the merits of the case and affected the subject matter of the lawsuit.
2. The stipulation required entry of judgment for the specified amount, less payments made, without requiring a default under the payment schedule.

## KEY QUOTATIONS

*“All the provisions of this stipulation must be considered together, and the plain language of the agreement controls.”* (¶ 3)

*“A judgment must be entered before a party can execute on the judgment, and the terms of the judgment determine the execution available.”* (¶ 4)

## FACTUAL BACKGROUND

Discover Bank alleged that Bryan Hornbacher owed \$14,695.13 on a credit card debt. The parties stipulated that Hornbacher had been served, had no defenses, and consented to entry of judgment for \$14,695.13, plus costs and disbursements. In exchange, Discover agreed to accept \$10,080 over three years as full satisfaction and not to execute on the judgment unless Hornbacher defaulted on the payment schedule.

## PROCEDURAL HISTORY

Discover Bank sued Bryan Hornbacher on an alleged credit card debt. The parties entered a stipulation and consent under which Hornbacher consented to entry of judgment for the amount claimed while Discover agreed to accept a reduced payment schedule and refrain from execution unless Hornbacher defaulted. The district court interpreted the stipulation as preventing Discover from seeking judgment absent default, denied Discover's motion, and dismissed the case. The North Dakota Supreme Court reversed and remanded for entry of judgment.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand for entry of judgment against Hornbacher pursuant to the stipulation.

## CASES CITED

- Welch Constr. & Excavating, LLC v. Duong, 2016 ND 70, ¶ 6, 877 N.W.2d 292

- Lawrence v. Lawrence, 217 N.W.2d 792, 796 (N.D. 1974)
- Markwed Excavating, Inc. v. City of Mandan, 2010 ND 220, ¶¶ 19-20, 791 N.W.2d 22

## OPINION

PER CURIAM.

FILED IN THE OFFICE OF THE CLERK OF SUPREME COURT DECEMBER 17, 2020  
STATE OF NORTH DAKOTA IN THE SUPREME COURT STATE OF NORTH DAKOTA 2020  
ND 307 Discover Bank, Plaintiff and Appellant v. Bryan L. Hornbacher, Defendant No. 20200232  
Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable  
Bruce A. Romanick, Judge. REVERSED AND REMANDED.

Opinion of the Court by Tufte, Justice. Clifton G. Rodenburg and Amanda M. Lee, Fargo, N.D.,  
for plaintiff and appellant; submitted on brief. Bryan L. Hornbacher, defendant; no appearance.  
Discover Bank v. Hornbacher No. 20200232 Tufte, Justice. [¶1] Discover Bank (Discover) appeals  
a district court order denying its motion for judgment and dismissing the case.

On appeal, Discover argues the district court erred in finding that the stipulation stated Discover  
would not move for judgment unless the terms of the agreement were breached. We reverse and  
remand for entry of judgment. I [¶2] Discover sued Bryan Hornbacher, alleging he was indebted to  
it on a credit card debt for \$14,695.13.

The parties entered into a stipulation and consent. The stipulation provided an acknowledgment by  
Hornbacher that he had been served with the summons and complaint and an admission that he  
had no defenses to the allegations in the complaint. Hornbacher consented to entry of judgment in  
the amount of \$14,695.13 in exchange for Discover’s agreement to accept \$10,080.00 payable  
over three years as full satisfaction of the judgment, and to forego execution on the judgment  
unless there were a default in the agreed-upon payment schedule.

II [¶3] “Generally, the construction of a written contract to determine its legal effect is a question  
of law for the court to decide.” Welch Constr. & Excavating, LLC v. Duong, 2016 ND 70, ¶ 6, 877  
N.W.2d 292 (citation omitted). This Court has recognized two different types of stipulations.  
Lawrence v. Lawrence, 217 N.W.2d 792, 796 (N.D. 1974). A stipulation aimed at facilitating the  
course of a lawsuit is procedural in nature.

Id. A stipulation that affects the subject matter of a lawsuit is contractual in nature. Id. Contractual  
stipulations deal with the rights or property at issue, and they are entitled to all the sanctity of a  
conventional contract. Id. Here, the stipulation states, “Defendant consents to entry of judgment  
for the amount of \$14,695.13, costs of \$35.00 and any additional costs and disbursements to date  
of judgment.” The stipulation, 1 therefore, deals with the subject matter of the lawsuit by resolving  
the merits of the case and is a contractual stipulation.

All the provisions of this stipulation must be considered together, and the plain language of the agreement controls. See *Markwed Excavating, Inc. v. City of Mandan*, 2010 ND 220, ¶¶ 19-20, 791 N.W.2d 22. [¶4] In its order, the court found that “[p]laintiff files a stipulation stating it will not move for judgment unless the terms of the agreement are [breached].” This is an error.

The stipulation provided, in part: [Hornbacher] consents to entry of judgment for the amount of \$14,695.13, costs of \$35.00 and any additional costs and disbursements to date of judgment. In this regard, defendant consents and agrees that plaintiff by affidavit may cause judgment to be entered against defendant by the court in the amount noted above, less payments made, without necessity of notice, hearing or court order.

The stipulation further provided that Discover would “not execute on said judgment unless there [was] a default in the following payment schedule...” Section 28-21-01, N.D.C.C., establishes that execution is a post-judgment means to collect upon a judgment. A judgment must be entered before a party can execute on the judgment, and the terms of the judgment determine the execution available.

N.D.C.C. §§ 28-21-01 to 28-21-04.1. “If the judgment requires the payment of money... the judgment may be enforced by execution.” N.D.C.C. § 28-21-03.1. [¶5] The court, in its order, focused on the lack of default under the stipulation having occurred. This was in error, as Discover was not moving to execute the judgment, but rather was, by affidavit, moving for judgment to be entered against Hornbacher pursuant to the stipulation.

The court misread the stipulation and misapplied the law. 2 III [¶6] Because the plain language of the stipulation provided for judgment against Hornbacher to be entered, we reverse and remand for entry of judgment. [¶7] Jon J. Jensen, C.J. Gerald W. VandeWalle Daniel J. Crothers Lisa Fair McEvers Jerod E. Tufte 3