

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

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