

SUPREME COURT OF RHODE ISLAND

CACH, LLC v. Brandon Potter

154 A.3d 939 (R.I. 2017) · No. 2016-90-Appeal · Decided March 3, 2017

SUMMARY

The Rhode Island Supreme Court affirmed summary judgment for CACH, LLC in a credit card debt collection action against Brandon Potter. The court held that Potter waived arbitration by failing to plead it as an affirmative defense and that the trial justice properly denied his untimely motion to amend. The court also concluded that Potter failed to establish a genuine issue of material fact regarding CACH's standing, the admissibility of business records, or the debt.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	William P. Robinson III; Frank Williams Suttell, Chief Justice; Maureen McKenna Goldberg; Francis X. Flaherty; Gilbert V. Indeglia
JURISDICTION	Rhode Island
DECIDED	March 3, 2017
DOCKET	2016-90-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	Brandon Potter appealed from the Superior Court's grant of summary judgment to CACH, LLC, denial of his motion to compel arbitration, and denial of his motion to amend his answer.
STANDARD OF REVIEW	The denial of a motion to compel arbitration and the grant of summary judgment are reviewed de novo. A ruling on a motion to amend is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published opinion
PARTIES	Brandon Potter v. CACH, LLC

TOPICS

[arbitration](#) [waiver](#) [motion to amend](#) [summary judgment](#) [civil procedure](#)

PRACTICE AREAS

[civil procedure](#) [arbitration](#) [consumer debt collection](#) [summary judgment](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether Potter waived his right to compel arbitration by failing to plead arbitration as an affirmative defense in his answer.
2. Whether the Superior Court abused its discretion by denying Potter's motion to amend his answer to add a demand for arbitration.
3. Whether CACH was entitled to summary judgment because no genuine issue of material fact existed concerning the debt, CACH's assignment of the account, or CACH's entitlement to collect.

HOLDINGS

1. A defendant seeking arbitration must specifically plead the right to arbitrate in the answer; failure to do so waives the defense. Potter therefore waived arbitration, and the Superior Court properly denied his motion to compel arbitration and dismiss or stay the action.
2. The Superior Court did not abuse its discretion in denying Potter's motion to amend his answer to assert arbitration because the motion was filed more than a year and a half after the answer, amendment would cause extreme prejudice to CACH, and allowing amendment would circumvent the rule that arbitration must be pleaded or is waived.
3. CACH was entitled to summary judgment because the record contained no genuine issue of material fact and CACH was entitled to judgment as a matter of law. Potter failed to submit evidence or affidavits sufficient to oppose CACH's evidence concerning the debt and assignment.

KEY QUOTATIONS

“a defending party seeking arbitration must specifically plead the right to arbitrate in its answer or the defense will be deemed waived.” (at 941)

“If, after viewing the evidence in the light most favorable to the nonmoving party, we conclude “that there is no genuine issue of material fact to be decided and that the moving party is entitled to judgment as a matter of law,” we will affirm the grant of summary judgment.” (at 946)

FACTUAL BACKGROUND

Potter owed \$10,288.04, plus statutory interest and costs, on a credit card account opened and maintained with Bank of America, N.A. Bank of America assigned the right to collect the debt to CACH, LLC, which sued Potter in Superior Court. Potter's answer did not demand arbitration, and he produced no evidence or affidavits opposing CACH's motion for summary judgment.

PROCEDURAL HISTORY

CACH filed a credit card debt collection complaint in Kent County Superior Court. Potter answered without asserting arbitration as an affirmative defense. After CACH moved for summary judgment, Potter moved to compel arbitration and later moved to amend his answer to add the arbitration defense. The Superior Court denied the arbitration and amendment motions, granted summary judgment to CACH, and entered judgment; the Rhode Island Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- DeFontes v. Dell, Inc., 984 A.2d 1061, 1066 (R.I. 2009)
- Soprano v. American Hardware Mutual Insurance Co., 491 A.2d 1008, 1010 (R.I. 1985)
- Associated Bonded Construction Co. v. Griffin Corp., 438 A.2d 1088, 1091 (R.I. 1981)
- Lomastro v. Iacovelli, 56 A.3d 92, 94 (R.I. 2012)
- Harodite Industries, Inc. v. Warren Electric Corp., 24 A.3d 514, 529 (R.I. 2011)
- Wachsberger v. Pepper, 583 A.2d 77, 78 (R.I. 1990)
- Inleasing Corp. v. Jessup, 475 A.2d 989, 992 (R.I. 1984)
- Faerber v. Cavanagh, 568 A.2d 326, 330 (R.I. 1990)
- Ferris Avenue Realty, LLC v. Huhtamaki, Inc., 110 A.3d 267, 279 (R.I. 2015)
- DeMarco v. Travelers Insurance Co., 26 A.3d 585, 605 (R.I. 2011)
- Urena v. Theta Products, Inc., 899 A.2d 449, 452 (R.I. 2006)
- Brochu v. Santis, 939 A.2d 449, 452 (R.I. 2008)