SUPREME COURT OF SOUTH DAKOTA

Citibank (S.D.), N.A. v. Hauff

668 N.W.2d 528 (S.D. 2003) · No. No. 22664 · Decided August 13, 2003

SUMMARY

The South Dakota Supreme Court held that a credit card account holder was not liable for charges made by an authorized user who activated renewal cards after the originally authorized cards had expired. The court construed the credit card agreement narrowly against Citibank and affirmed summary judgment for the account holder on the collection claim. It reversed the denial of summary judgment for Citibank on claims for intentional infliction of emotional distress and barratry, concluding that the collection conduct was not sufficiently outrageous and that Citibank's claim was neither frivolous nor malicious.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Johns, Circuit Judge, sitting for Sabers, Justice
JURISDICTION	South Dakota
DECIDED	August 13, 2003
DOCKET	No. 22664
DISPOSITION	reversed
PROCEDURAL POSTURE	Citibank appealed certified summary-judgment rulings in a credit-card collection action and on Tonette Hauff's counterclaims for intentional infliction of emotional distress and barratry.
STANDARD OF REVIEW	Summary judgment is reviewed de novo to determine whether the moving party demonstrated the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. The evidence is viewed most favorably to the nonmoving party, with reasonable doubts resolved against the moving party.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of South Dakota.
PARTIES	Citibank (S.D.), N.A. v. Tonette L. Hauff

TOPICS

contract interpretation · summary judgment · consumer protection · torts · commercial litigation

PRACTICE AREAS

contracts · consumer protection · torts · civil procedure · commercial litigation

QUESTIONS PRESENTED

1. Whether, under the credit-card agreement, an authorized user was liable to activate newly issued renewal cards after the authorized cards had expired, thereby making the account holder liable for charges incurred on those cards.
2. Whether Citibank was entitled to summary judgment on Tonette Hauff's counterclaims for intentional infliction of emotional distress and civil barratry.

HOLDINGS

1. Under the credit-card agreement, an authorized user who was not the account holder had authority only to use the card and account authorized by the account holder, not to activate newly issued renewal cards after the authorized cards had expired. Because Citibank allowed David Hauff to activate renewal cards without Tonette's authorization, Tonette was not liable for the subsequent charges.
2. Citibank was entitled to summary judgment on Tonette Hauff's intentional-infliction-of-emotional-distress claim because the alleged collection contacts, including calls at her workplace, allegedly harsh language, threats of garnishment, and a call attempted after her son's death, did not constitute extreme and outrageous conduct as a matter of law.
3. Citibank was entitled to summary judgment on Tonette Hauff's civil-barratry claim because, although Citibank ultimately lacked a legal claim against Tonette, its collection action was supported by rational arguments based on the evidence and law and was not frivolous or malicious.

KEY QUOTATIONS

> *"Because David's card had expired, and because Citibank allowed a non-account holder to activate renewal cards not authorized by Tonette or the agreement, the account holder was not liable for the subsequent unauthorized charges."* (668 N.W.2d at 535)

> *"They were not, however, "so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.""* (668 N.W.2d at 537)

FACTUAL BACKGROUND

Tonette Hauff obtained a Citibank credit-card account and authorized her then-husband, David Hauff, to use an additional card. During their divorce, the account balance was paid off, and Tonette told Citibank she wanted the account closed, although the parties disputed whether the account was formally closed. After the divorce, Citibank sent renewal cards to the former marital home; David took the cards without Tonette's knowledge, activated them, and incurred charges. Citibank sought to collect those charges from Tonette and also made collection contacts that formed the basis of her counterclaims.

PROCEDURAL HISTORY

Citibank sued Tonette Hauff to collect charges made by her former husband, David Hauff, after he obtained and activated renewal cards without her knowledge or permission. The circuit court granted Tonette summary judgment on Citibank's collection claim and denied Citibank summary judgment on Tonette's counterclaims, certifying the rulings as final under SDCL 15-6-54(b). The Supreme Court of South Dakota affirmed the judgment for Tonette on the collection claim and reversed the denial of Citibank's motion on the counterclaims.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The circuit court's denial of Citibank's motion for summary judgment on the intentional-infliction-of-emotional-distress and barratry counterclaims was reversed. The summary judgment in Tonette Hauff's favor on Citibank's collection claim was affirmed.

CASES CITED

- Braun v. New Hope Township, 2002 SD 67, ¶ 8, 646 N.W.2d 737, 739
- South Dakota State Cement Plant Commission v. Wausau Underwriters Insurance Co., 2000 SD 116, ¶ 9, 616 N.W.2d 397, 400-01
- Gray v. American Express Co., 743 F.2d 10, 18 (D.C. Cir. 1984)
- Cleveland Trust Co. v. Snyder, 55 Ohio App. 2d 168, 380 N.E.2d 354, 360 (1978)
- Dakota, Minnesota & Eastern Railroad Corp. v. Heritage Mutual Insurance Co., 2002 SD 7, ¶ 11, 639 N.W.2d 513, 515-16
- Farm and City Insurance Co. v. Estate of Davis, 2001 SD 71, ¶ 6, 629 N.W.2d 586-87
- Aamot v. Eneboe, 352 N.W.2d 647, 650 (S.D. 1984)
- Harris v. Jefferson Partners, L.P., 2002 SD 132, ¶ 11, 653 N.W.2d 496, 500
- Kjerstad v. Ravellette Publications, Inc., 517 N.W.2d 419, 429 (S.D. 1994)
- Richardson v. East River Electric Power Cooperative, Inc., 531 N.W.2d 23, 27 (S.D. 1995)
- Tibke v. McDougall, 479 N.W.2d 898, 907 (S.D. 1992)
- Wade v. Ford Motor Credit Co., 455 F. Supp. 147, 151-52 (D. Mo. 1978)
- Ruple v. Brooks, 352 N.W.2d 652 (S.D. 1984)
- Ridley v. Lawrence County Commission, 2000 SD 143, ¶ 14, 619 N.W.2d 254, 259
- Stratmeyer v. Engberg, 2002 SD 91, ¶ 20, 649 N.W.2d 921, 926
- Nelson v. WEB Water Development Association, Inc., 507 N.W.2d 691, 699 (S.D. 1993)
- Speck v. Federal Land Bank of Omaha, 494 N.W.2d 628, 633 (S.D. 1993)
- Mackintosh v. Carter, 451 N.W.2d 285, 287 (S.D. 1990)
- Groseth International, Inc. v. Tenneco, Inc., 440 N.W.2d 276, 280 (S.D. 1989)

- Reeves v. Reiman, 523 N.W.2d 78 (S.D. 1994)
- Ruane v. Murray, 380 N.W.2d 362 (S.D. 1986)