

Household Fin. Corp. III v Garland
2011 NY Slip Op 30596(U)
March 11, 2011
Supreme Court, New York County
Docket Number: 107719-09
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE

PART 10

Justice

Index Number : 112788/2010

HOUSEHOLD FINANCE CORP. III

VS.

QUEEN GARLAND

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

FILED

MAR 15 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: MAR 11 2011

HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

-----X
Household Finance Corporation III,

Plaintiff,

DECISION/ ORDER
Index No.: 107719-09
Seq. No.: 001

-against-

Queen Garland,

Defendant (s).

Present:
Hon. Judith J. Gische
J.S.C.

-----X

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Pltff's n/m (3212) w/RFM affirm, ST affid, exhs	1
Defs' answer	2
Defs' affid in opp	3
Pltff's reply w/RFM	4

FILED

MAR 15 2011

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NEW YORK
COUNTY CLERK'S OFFICE
Upon the foregoing papers, the decision and order of the Court is as follows:

GISCHE J.:

Plaintiff, Household Finance Corporation III ("Plaintiff"), has brought this action seeking to enforce the terms of a "Personal Credit Line Account Agreement" ("credit agreement"). Plaintiff contends that defendant, Queen Garland ("Ms. Garland"), borrowed from the line of credit issued to her, but then defaulted in repaying the loan.

Ms. Garland, appearing *pro se*, answered the complaint. Issue has been joined and plaintiff now moves for summary judgment against Ms. Garland. This motion will be decided on the merits pursuant to CPLR § 3212(a); Myung Chun v. North American Mortgage Co., 285 A.D.2d 42 (1st Dept. 2001).

The court's decision and order is as follows:

Facts and Arguments Presented

Certain facts are undisputed or indisputable in the record. On November 27, 2006, plaintiff extended Ms. Garland a revolving line of credit with a limit of \$8,000. The unpaid balance was subject to a variable monthly finance charge at the initial rate of 1.959% per month or 23.5% annually. The credit agreement was subject to an annual fee of \$50 and a bad check fee of \$20 that could be charged for each bad check.

There is no dispute that Ms. Garland has failed to make timely minimum payments on her account and is, therefore, in default. According to plaintiff, as of July 30, 2010, Ms. Garland owed a balance of \$7,659.74 to Plaintiff. Plaintiff claims there was \$6,940.14 of unpaid principal, \$436.57 in uncollected finance charges, \$203.03 in uncollected credit insurance charges, and \$80 in bad check fees. After crediting Ms. Garland with two payments of \$100 in each of August and September and adding additional finance charges of \$3.52 per day, plaintiff claims that as of November 2, 2010, Ms. Garland owed a balance of \$7,794.14.

Ms. Garland has answered the complaint; she has not, however, raised any defenses disputing the validity of the credit agreement, or any claim that she is up to date on her loan payments. In her opposition to plaintiff's motion, Ms. Garland disputes the amount owed. She claims she sought the assistance of Green Path Debt Solutions ("Green Path") to help her manage her debt and that Green Path developed a debt management program for her. Defendant has submitted correspondence from Green

Path dated December 06, 2010 indicating that Green Path has been forwarding monthly payments of \$100 to plaintiff since July 2, 2010. Green Path also indicates that because of Ms. Garland's limited budget, the amounts submitted could not be increased without causing her financial hardship.

In reply, plaintiff has credited Ms. Garland with the monthly \$100 payments she made from August 2010 to December 2010, reducing their claim to the principle sum of \$6,940.14.

Discussion

A movant seeking summary judgment in its favor must make a *prima facie* showing of entitlement to judgment as a matter of law, tending sufficient evidence to eliminate any material issues of fact from the case. Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 (1985). The evidentiary proof tendered, however, must be in admissible form. Friends of Animals v. Assoc. Fur Manufacturers, 46 N.Y.2d 1065 (1979). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. Alyarez v. Prospect Hosp., 49 N.Y.2d 320, 324 (1986); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980).

Plaintiff has proved that Ms. Garland sought and was extended a personal line of credit with a limit of \$8,000. Plaintiff has also proved that Ms. Garland defaulted in making payments. Although, plaintiff seeks \$7,663.10, that amount includes \$203.03 in uncollected credit insurance charges, which plaintiff has not proven was authorized under the agreement. Moreover, although plaintiff has ultimately given Ms. Garland credit for 5 payments, there is proof she made six \$100 payments. The unpaid finance

charges, according to plaintiff's printout, are \$390.36 not \$439.93. The printout is also unclear in terms of the charges requested bad check fees, specifically whether they were paid for or not. Finally, although plaintiff "calculates" the interest at \$3.52 per day, there is no support for how the calculation was made. Given the variable rate in the contract and the variable principle due, this interest calculation cannot be correct.

The court finds that plaintiff is entitled to summary judgment. The court finds, however, that plaintiff has only proven entitlement to the following amount: \$6,940.14 in unpaid principle from July 2010; \$390.39 in uncollected finance charges; less \$600 attributable to the six payments of \$100 that Ms. Garland has made from 08/10 to 12/10. Thus through July 30, 2010, the amount of \$6,730.53 has been proven due for which plaintiff shall have a judgment. The court finds that prejudgment interest is due, since however, plaintiff has failed to explain its calculation, the court awards interest only the statutory rate, from July 30, 2010.

Conclusion

In accordance with the foregoing:

It is hereby

ORDERED that plaintiff, Household Finance Corporation III's motion for summary judgment is granted; and it is further

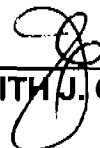
ORDERED that the Clerk shall enter judgment in favor of plaintiff, Household Finance Corporation III and against defendant, Queen Garland, in principle amount of; Six Thousand Seven Hundred and Thirty and 93/100 Dollars (\$6,730.53), together with interest from July 30, 2010 at the statutory rate; and it is further

ORDERED that any requested relief not expressly addressed herein has nonetheless been considered by the Court and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of the court.

Dated: New York, New York
March 11, 2011

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

FILED

MAR 15 2011

**NEW YORK
COUNTY CLERK'S OFFICE**