STATE OF VERMONT

SUPERIOR COURT Franklin Unit	CIVIL DIVISION Docket No. 60-2-19 Frcv
ACCESSLEX INSTITUTE d/b/a ACCESSGROUP, Plaintiff, v. JOSHUA MARTIN, Defendant	Vermont Superior Court JUL 15 2021 FILED: Franklin Civil

RULING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Motion #3)

I. Introduction

This is a suit to collect on student loans allegedly made to, or on behalf of the Defendant, Joshua Martin. Presently before the court is Plaintiff Accesslex Institute d/b/a AccessGroup's Motion for Summary Judgment. Plaintiff contends that there are no issues of material fact and that it is entitled to judgment as a matter of law on its claim for amounts allegedly due on the student loans and for attorney's fees. Defendant opposes the motion on the grounds that there are disputed material facts requiring a trial on the merits.

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). "[S]ummary judgment is required when, after adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an element essential to [his or] her case and upon which [he or] she has the burden of proof." Gallipo v. City of Rutland, 2005 VT 83, ¶ 13, 178 Vt. 244 (citations and internal quotation marks omitted).

When determining whether there is a disputed issue of material fact, a court must afford the party opposing summary judgment the benefit of all reasonable doubts and inferences. Carr v. Peerless Insurance Co., 168 Vt. 465, 476, 724 A.2d 454 (1998). However, a non-moving party cannot rely on unsupported generalities or speculation to defeat a properly-supported motion for summary judgment. See V.R.C.P. 56 (c), (e).

Conclusory allegations without facts to support them do not preclude the entry of summary judgment. Robertson v. Mylan Laboratories, Inc., 2004 VT 15, ¶15, 176 Vt. 356; accord Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) ("If the evidence is merely colorable, . . . or is not significantly probative, . . ., summary judgment may be granted.") (citations omitted). An opposing party's allegations must be supported by affidavits or other documentary materials which show specific facts sufficient to justify submitting that party's claims to a factfinder. See Robertson, 2004 VT 15, ¶15; Samplid Enterprises, Inc. v. First Vermont Bank, 165 Vt. 22, 25, 676 A.2d 774 (1996).

The court heard oral argument on the motion and opposition on July 6, 2021. Based upon the parties' submissions, arguments and contentions, the court agrees with the Defendant that there are material factual issues in dispute.

II. Material Facts

Plaintiff is a Pennsylvania non-profit corporation that provides education loan programs for students in graduate and professional schools. The loans are made through banks such as the National City Bank (now known as PNC Financial Services Group, Inc.).

In January of 2001, while a student at Tulane University School of Law, Defendant applied to the National City Bank for a $19,500 student loan for the law school's 2000-2001 academic year (Complaint, Exhibit 1). His application was approved, the Bank allegedly distributed $19,500 to Tulane, and the Bank then assigned the loan to the Plaintiff. The following fall, Defendant applied to the Bank for a second student loan in the amount of $20,680 for the 2001-2002 year (Id., Exhibit 2). This application was also approved, although the amount that distributed to Tulane is unclear; Plaintiff claims that the full $20,681 was distributed, but the affidavit submitted in support of Plaintiff's renewed motion for summary judgment says that $10, 340 was distributed (Affidavit of Christopher J. Mulvihill dated April 29, 2021, ¶ 8).

From August 29, 2003, to February 19, 2013, Defendant made a series of payments on both loans. His payments on the two loans totaled $40,489.13.[1] Nevertheless, Plaintiff asserts that the Defendant is in default on the loans and that he owes Plaintiff an additional $30,193.89. Defendant denies the Plaintiff's contention, and, in an affidavit dated December 9, 2020, he attests:

[1] Neither party provided the court with the total amount of the Defendant's payments on the loans. The court determined that itself with the aid of a calculator. Although the court tried to get the total right, the court acknowledges that the exact total might be slightly higher or lower than the court's figure.

> The amount that Plaintiff claims is due is substantially higher than what was actually disbursed. Namely, each check was for approximately $3,000 less than the loan amount. This was later explained as an "origination" or "service" fee which was not explained or disclosed prior to completing the loan.

(Id., ¶ 10).

Based upon the foregoing, the court cannot conclude that the Plaintiff is entitled to judgment in its favor as a matter of law. Key facts remain unestablished and in dispute. First, it is unclear exactly how much was lent to the Defendant. Plaintiff claims that the Bank distributed $40,180 to Tulane in response to the Defendant's loan applications, but Plaintiff has not provided to the court any affidavit or document from the Bank establishing that such took place. Moreover, the two affidavits submitted by Christopher J. Mulvihill contradict each other with respect to the amount that was distributed in the second loan. In addition, the Plaintiff has submitted an affidavit attesting that each distribution check was for approximately $3,000 less than the loan amount due to certain undisclosed fees.

Second, assuming the full $40,180 was distributed to Tulane in response to the Defendant's loan applications, if the Defendant paid the Plaintiff $40,489.13 towards the loans, it is difficult to see how he could still owe Plaintiff another $30,193.89. The variable interest rates charged on the loans were never high enough to make such a difference.

Third, Plaintiff alleges that the Defendant defaulted on the loans, but Plaintiff has offered no explanation for its contention, nor has the Plaintiff provided the court with any notices of default or other documents showing that it complied with applicable statutory and contractual requirements for declaring a default.

Fourth, the ledgers for these loans show that in 2003, just as the Plaintiff was beginning to make payments on the loans, the Plaintiff added a total of $10,062.48 in fees to the Defendant's loan balances.[2] These do not include late payment fees. Plaintiff has offered no explanation for why these fees were added to the Defendant's loan balances, nor has the Plaintiff cited to any provision of the loan documents that would justify it's doing so.[3] Moreover, the Defendant was

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[2] On the first loan, Plaintiff added $2,817.50 to the loan balance due on February 10, 2003, for a "suppl guarantee fee," plus $2,251.42 on February 11, 2003, for a "full cap" fee, plus $489.43 on August 16, 2003, for another "full cap" fee. Similarly, on the second loan, Plaintiff added $2,816.70 to the loan balance due on February 10, 2003, for a "suppl guarantee fee," plus $1,154.19 for a "full cap" fee, plus $533.24 on September 2, 2003, for another 'full cap" fee. These total $10,062.48, not counting "late payment" fees.

[3] The court could not find authorization for a "full cap" fee in any of the loan documents. Paragraph G of the Loan Terms and Conditions did authorize the charging of "a guarantee fee not to exceed 12.9% of the outstanding

apparently given a "Disclosure Statement" at the time he took out his loans, but the disclosure statements have not been provided to the court. Therefore, the court has no basis for concluding that such fees were justified or ever disclosed to the Defendant.

Lastly, Plaintiff has not sought summary judgment on any of the Defendant's affirmative defenses, including unconscionability and fraud in the inducement. Therefore, the court could not enter judgment in Plaintiff's favor at this time, even if the Plaintiff had met its burden of proof on its own claim.

III. Conclusion

Because Plaintiff has failed to come forward with sufficient undisputed evidence to support its claim against the Defendant, Plaintiff's Motion for Summary Judgment must be, and hereby is DENIED.

SO ORDERED this 15th day of July, 2021.

Robert A. Mello
Superior Judge

principal balance," but there is no evidence in the record that either loan was ever guaranteed by anyone, and each of the "suppl guarantee fees" that the Plaintiff added to the account exceeded the 12.9% limit.