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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3778-20**

DISCOVER BANK,

Plaintiff-Respondent,

v.

THOMAS J. FALCO,

Defendant-Appellant.

Submitted May 26, 2022 – Decided June 7, 2022

Before Judges Haas and Mawla.

On appeal from the Superior Court of New Jersey, Law
Division, Atlantic County, Docket No. L-3480-20.

Erik M. Helbing, attorney for appellant.

Zwicker & Associates, PC, attorneys for respondent (G.
Todd Pondish and Kirsten E. Davis, on the brief).

PER CURIAM

In this credit card collection matter, defendant Thomas J. Falco appeals from an August 5, 2021 Law Division summary judgment order requiring him

to pay plaintiff Discover Bank \$21,719.31, plus \$340 in costs, and post-judgment interest pursuant to Rule 4:42-11. He also appeals the court's denial of his motion to dismiss plaintiff's complaint. We affirm.

Plaintiff issued a credit card to defendant, who subsequently made charges to the account. Plaintiff sent monthly statements to defendant, and he initially made payments without objection. Defendant later stopped making the required minimum payments, and plaintiff filed a complaint against him to collect the balance due.

Plaintiff filed a motion for summary judgment. Defendant opposed the motion by arguing he was not sure whether plaintiff properly calculated the amount he owed. However, plaintiff submitted defendant's account statements listing his balances, all transactions and credits, the periodic interest rates and the balances upon which it computed the finance charges, and accrued fees and finance charges.

It is well established that in order "[t]o collect on a revolving credit card debt, [the plaintiff] is required to provide the transactions for which payment has not been made, any payments that have been made, the annual percentage and finance charge percentage rates[,] and the billing cycle information." LVNV Funding, L.L.C. v. Colvell, 421 N.J. Super. 1, 7-8 (App. Div. 2011)

(citing R. 6:6-3(a)). Moreover, the consumer's use of a credit card constitutes the formation of a contract and signifies the consumer's acceptance of, and acquiescence to, the terms therein. See Novack v. Cities Serv. Oil Co., 149 N.J. Super. 542, 547-49 (Law Div. 1977), aff'd, 159 N.J. Super. 400 (App. Div. 1978).

Applying these principles, the trial court determined there was no dispute as to any of the material facts underlying plaintiff's claim. The court found that plaintiff's statements were "an accurate and original reflection of the account information[,]" and granted plaintiff's motion for summary judgment.

In so ruling, the court rejected defendant's argument¹ that plaintiff was barred from bringing this action in New Jersey because it was a "foreign bank" that did not have a certificate of authority to operate in this state. In its written decision, the court found that plaintiff was "not subject to the registration requirements foreign banks are subject to under the New Jersey Banking Act of 1948."

On appeal, defendant repeats the contentions he unsuccessfully presented to the trial court. Defendant argues:

¹ Defendant presented this contention in a cross-motion he filed to dismiss plaintiff's complaint.

POINT A

THE TRIAL COURT ERRED WHEN IT DETERMINED THAT DISCOVER BANK IS NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE BANKING ACT OF 1948.

POINT B

THE TRIAL COURT ERRED WHEN IT ENTERED SUMMARY JUDGMENT WHEN THE CONTRACT ENTERED INTO EVIDENCE LACKED A MATERIAL TERM.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court, namely, the standard set forth in Rule 4:46-2(c). Conley v. Guerrero, 228 N.J. 339, 346 (2017). Thus, we consider, as the trial court did, whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

If, as here, there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." Dickson v. Cmty. Bus Lines, 458 N.J. Super. 522, 530 (App. Div. 2019) (citing Prudential Prop. & Cas. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998)). We accord no

deference to the trial judge's conclusions of law and review these issues de novo. Nicholas v. Mynster, 213 N.J. 463, 478 (2013). In reviewing the denial of a motion to dismiss, we also employ a de novo standard of review. Donato v. Moldow, 374 N.J. Super. 475, 483 (App. Div. 2005).

Based on our review of the record, we are satisfied plaintiff presented sufficient undisputed evidence of defendant's credit card debt warranting the entry of summary judgment in its favor as a matter of law. The trial court also properly concluded that plaintiff, as a foreign corporation operating in interstate commerce, was not required to obtain a certificate of authority. See Materials Rsch. Corp. v. Metron, Inc., 64 N.J. 74, 84 (1973); Bonnier Corp. v. Jersey Cape Yacht Sales, Inc., 416 N.J. Super. 436, 444 (App. Div. 2010). Defendant's contentions on appeal are without sufficient merit to require discussion in a written opinion. See R. 2:11-3(e)(1)(E). We affirm substantially for the reasons articulated by the trial court.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION