Illinois Official Reports

Appellate Court

***In re Estate of Hofer,* 2015 IL App (3d) 140542**

Appellate Court Caption	*In re* ESTATE OF JAMES E. HOFER, Deceased (Reynolds State Bank, Claimant-Appellee, v. Lucinda Jane White, Executor of the Estate of James E. Hofer, Deceased, Respondent-Appellant (Gene Cooper and Kristi Murdock, as Interested Persons)).
District & No.	Third District Docket No. 3-14-0542
Filed	October 28, 2015
Decision Under Review	Appeal from the Circuit Court of Rock Island County, No. 11-P-19; the Hon. Linnea E. Thompson, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	Dwight L. Shoemaker (argued), of Aledo, for appellant. W. Matthew Hays (argued), of Katz Nowinski P.C., of Moline, for appellee.
Panel	PRESIDING JUSTICE McDADE delivered the judgment of the court, with opinion. Justices O'Brien and Wright concurred in the judgment and opinion.

OPINION

¶ 1 This appeal presents an issue of first impression in the Illinois courts. The case involves a probate claim brought by plaintiff-appellee, Reynolds State Bank (Bank), against defendant-appellants, Lucinda Jane White, Executor of the Estate of James E. Hofer (decedent), and interested persons, Gene Cooper and Kristi Murdock (collectively, Estate), pursuant to a promissory note (note) designated as loan number 30759 and signed by the decedent on September 2, 2004. Though their first motion for summary judgment was dismissed, without prejudice, because of uncertainty regarding the location of the original copy of the note, the trial court granted the Bank's second motion for summary judgment and denied the Estate's subsequent motions to dismiss and vacate. On appeal, the Estate argues summary judgment was erroneous because the Bank failed to take action to collect on the note for 77 months, the note was discharged, the bank is equitably estopped from collecting on the note, and the trial court failed to allow the Estate proper discovery. The Estate concludes that the standard for summary judgment was not met because of all of these failings. We reverse.

¶ 2 FACTS

¶ 3 The Bank is a rural state bank with its only banking office located in Reynolds, Illinois. It has made loans to area farmers for many years. It uses two different liability ledgers–one handwritten and one electronic–to maintain and track the status of individual loan accounts including documenting the date various loans are granted, the amounts, and when payment is made.

¶ 4 On September 2, 2004, James Hofer, as borrower, executed a note listed in the ledgers as loan number 30759 for the amount of $129,000 to the Bank, as lender, with a maturity date of December 2, 2004. Norman E. Wait, then and current president of the Bank, signed the note as lender. The note provided for an annual interest rate of 7%.

¶ 5 The very last entry for the decedent's loan account in the handwritten ledger, dated December 30, 2004, notes that $129,000 was "charged to the Reserve for Bad Debts" and cites loan number 30759. The electronic ledger shows that on December 30, 2004, a balance of $129,000 for loan number 30759 was "charged off." Also on that same day, the Bank's handwritten ledger shows that the decedent made a payment on a different loan, number 28620, in the amount of $17,427.90, which appears to be the balance of all of decedents' remaining debts with the bank.[1]

¶ 6 The record shows that the Bank filed a 2004 IRS Form 1099-C (Form 1099-C) and issued the decedent a copy of the form. The Form 1099-C is labeled "Cancellation of Debt" and slated for year 2004 in preprinted text. Its prelabeled boxes were completed in typed text and listed the Bank as the creditor, the decedent as the debtor, the description of the debt as

[1]The Bank's handwritten ledger notes a running balance on the far right of the ledger. On the line of the last entry for decedent's account that notes the charge off, a single line has been drawn striking through the space for a balance amount.

"Farm Loan," the date the debt was canceled as "12/30/2004," the amount of debt cancelled as "$131, 944.03," the amount of interest included in the canceled debt as "2,944.03," and the fair market value of the property as "131,944.03." With regard to the only other information required on the form, the Bank did not include information in the box labeled account number, did not check in the box labeled bankruptcy, nor did it select that the form was corrected Form 1099-C. The decedent included the cancelled amount on his 2004 tax return as additional income, and alleges it increased his 2004 taxes by $31,461.

¶ 7 On November 6, 2010, James died leaving as his heirs and legatees, his two daughters, Lucinda Jane White and Jennifer Luanne Hofer. He appointed Lucinda executor of his estate.

¶ 8 On June 1, 2011, the Bank filed a claim against the Estate for the note. The bank alleged it was owed $189,909.21 plus a daily penalty of $24.7397[2] for each day after June 1, 2011, that the claim remained unpaid.

¶ 9 On September 25, 2012, the Bank filed its first motion for summary judgment pursuant to section 2-1005 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005 (West 2010)). Affidavits from Norman Wait and David Wait, both dated September 25, 2012, were attached.

¶ 10 In Norman's affidavits, he averred that he was and had been president of the Bank for the past 33 years and had been employed by the Bank for 62 years. He stated that he had personally known the decedent his entire life, that the decedent was a long-time customer of the Bank, that he personally saw the decedent sign the note on September 2, 2004, and that the note had a maturity date of December 2, 2004. Norman made no reference of any kind to the Bank's reporting the note as "charged off" in its ledgers, circumstances leading to the cancellation of the note on December 30, 2004 and filing of the Form 1099-C, or whether he ever spoke to the decedent again about the note.

¶ 11 In his affidavit, David averred that he had been employed with the Bank for nine years and had served as a loan officer for the past five years. He stated that he was a loan processor on September 2, 2004, he had prepared the note for the decedent, and he saw the decedent sign the note. David did not reference the payment made by decedent on December 30, 2004, for loan number 28620, or state whether he talked with the decedent about the note on loan number 30759 or why it would be "charged-off" and cancelled on that date.

¶ 12 The Estate's reply in the trial court noted that the Bank's motion failed to include information regarding the debt's charge-off and cancellation on December 30, 2004. After oral argument on August 26, 2013, the trial court denied the Bank's motion, without prejudice, because of doubts as to who had possession of the original note. Both parties were granted leave to file additional pleadings upon locating or failing to locate the original note.

¶ 13 On August 28, 2013, the Bank filed a second motion for summary judgment. It again attached Norman's and David's affidavits dated September 25, 2012. It also attached a second affidavit from Norman dated August 28, 2013. Attached to Norman's second affidavit was a copy[3] of the original note and Norman averred that it has been and is still being maintained by the Bank. He asserted that it has not been modified or altered in any way and

[2]We are unsure what this figure represents–whole dollar or percentage. It appears this way in the parties' pleadings so we include it in this opinion in the same format.

[3]The original note is not included in the record.

no mutilation, striking of any written language or party's signature, surrender of the instrument, or other destruction of the document has occurred.

¶ 14 After hearing oral arguments on the Bank's second motion for summary judgment, the trial court granted the motion on January 16, 2014. It entered a judgment in favor of the Bank in the amount of $189,909.21, which amount included roughly $60,000 in accrued interest.

¶ 15 The Estate's motion to vacate the judgment was denied on June 13, 2014, and it timely appealed.

¶ 16 ANALYSIS

¶ 17 A trial court must grant a motion for summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014). All submitted documents along with the summary judgment motion are viewed in the light most favorable to the nonmoving party. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). Our standard of review for a trial court's grant of summary judgment is *de novo*. *Id*.

¶ 18 Here on appeal, the Estate advances several arguments in support of its claim that the trial court erred in granting the Bank's second motion for summary judgment. The central contention of these arguments is what, if any, effect filing a Form 1099-C has on a debtor's subsequent liability for the note. This contention is one of first impression in this state.

¶ 19 It is well settled that administrative regulations are interpreted in accord with the same standards that govern the construction of statutes because they "have the force and effect of law." *People v. Hanna*, 207 Ill. 2d 486, 497 (2003) (citing *Union Electric Co. v. Department of Revenue*, 136 Ill. 2d 385, 391 (1990)). Therefore, we first look to the regulation requiring the filing of a Form 1099-C because the regulation provides us with the best indication of the legislature's intent. *Id*. at 497-98. If the statutory language is clear, it must be given effect without utilizing other tools of interpretation. *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 556 (1999). Our standard of review for the interpretation of a statute is *de novo*. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 267 (2003).

¶ 20 Section 1.6050P-1(a)(1) of the Code of Federal Regulations (Code) states, in pertinent part, that:

> "[A]ny applicable entity *** that discharges an indebtedness of any person *** of at least $600 during a calendar year must file an information return on Form 1099-C with the Internal Revenue Service. Solely for purposes of the reporting requirements of section 6050P and this section, *a discharge of indebtedness is deemed to have occurred *** if and only if there has occurred an identifiable event described in paragraph* (b)(2) of this section, whether or not an actual discharge of indebtedness has occurred on or before the date on which the identifiable event has occurred." (Emphasis added.) 26 C.F.R. § 1.6050P-1(a)(1) (2014).

¶ 21 Section 1.6050P-1(b)(2)(i) of the Code further names eight "identifiable events" that would trigger an applicable entity's need to complete a Form 1099-C. They are:

"(A) A discharge of indebtedness under title 11 of the United States Code (bankruptcy);

(B) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or State court, as described in section 368(a)(3)(A)(ii) (other than a discharge described in paragraph (b)(2)(i)(A) of this section);

(C) A cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection of an indebtedness, subject to the limitations described in paragraph (b)(2)(ii) of this section, or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding;

(D) A cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness;

(E) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding;

(F) A discharge of indebtedness pursuant to an agreement between an applicable entity and a debtor to discharge indebtedness at less than full consideration;

(G) A discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; or

(H) In the case of an entity described in section 6050P(c)(2)(A) through (C), the expiration of the nonpayment testing period, as described in § 1.6050P-1(b)(2)(iv)." 26 C.F.R. § 1.6050P-1(b)(2)(i) (2014).

¶ 22 Therefore, the form was created for the mandatory reporting by applicable entities to the IRS of discharges, cancellations, or extinguishments rendering a debt unenforceable or uncollectible by the creditor. The form itself is not a means of accomplishing an actual discharge of a debt. The plain language of the statute also notes that the occurrence of any of the aforementioned "identifiable events" is deemed to be a discharge that *triggers* the mandatory reporting.

¶ 23 Some of the listed "identifiable events," specifically (F), (G), and (H), are, however, in line with what would be considered an actual discharge of a debt under Illinois law. Pursuant to section 3-604(a)(i) of the Illinois Uniform Commercial Code (Commercial Code), a negotiable instrument such as a note may be found to have been discharged by the entity entitled to enforce it if the entity engages in "an intentional voluntary act, such as surrender of the instrument to the [indebted] party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge." 810 ILCS 5/3-604(a)(i) (West 2014). In the instant case, however, when the Bank filed the Form 1099-C for the 2004 tax year there was no designated area requiring the creditor to indicate which of the "identifiable events" prompted the filing of the form as is present on the standard Form 1099-C at the time of this case.[4] The

[4]At the time of this case, the Form 1099-C has a "Box 6" where the creditor is required to indicate by its respective code which "identifiable event" triggered the filing of the form.

filing of the Form 1099-C is, however, an acknowledgment by the Bank that one of those "identifiable events" has occurred.

¶ 24 According to the I.R.S. the identification of *which* event triggered the form filing is irrelevant as it is only for reporting purposes. In an informational letter regarding this section of the federal law, the I.R.S. states that:

> "Section 1.6050P-1(a)(1) of the regulations provides that solely for purposes of the reporting requirements of section 6050P of the Code, *a discharge of indebtedness is deemed to have occurred upon the occurrence of an identifiable event whether or not there is an actual discharge of indebtedness.* Section 6050P and the regulations do not prohibit collection activity after a creditor reports by filing a Form 1099-C." (Emphasis added.) I.R.S. Priv. Ltr. Rul. 2005-0208 (Dec. 30, 2005).

¶ 25 The Fourth Circuit of the United States Court of Appeals provides an informative analysis about this letter and section 1.6050P-1(a)(1) of the Code in *Federal Deposit Insurance Corp. v. Cashion*, 720 F.3d 169, 180 (4th Cir. 2013). This case shares the same issue we are addressing here and seems to be identical with respect to the uncertainty of the creditor's purpose for filing the Form 1099-C. Either the structure of the Form 1099-C at the time the creditor in that case issued it also did not have a designated area requiring the creditor to name the "identifiable event" that triggered the filing of the form or the creditor simply failed to list the code. *Id*. at 172, 179-80 (the court analyzes the facts as if the "identifiable event," if any, was unknown). Additionally, the debtor in that case claimed that because the creditor issued the Form 1099-C there was a material issue of fact as to whether the debt had been *actually* discharged.

¶ 26 The *Cashion* court acknowledged that several state and federal published but mostly unpublished opinions had discussed the significance of Form 1099-C yet presented "no uniformity" with respect to its effect on a debt. *Id.* at 177. It then reasoned that the I.R.S.'s treatment of the Form 1099-C as "a means for satisfying a reporting obligation and not as an instrument effectuating a discharge of debt or preventing a creditor from seeking payment on a debt" was due " 'respect *** to the extent that [its] interpretations have the power to persuade.' " *Id*. at 179 (quoting *Christensen v. Harris County*, 529 U.S. 576, 587 (2000)). The court stated that:

> "Without more [than Form 1099-C having been filed], it is impossible for a court to know what the existence of a filed Form 1099-C means. It may mean the debt has been discharged; it may mean the creditor intended to discharge the debt in the future; or it may mean that another of the 'identifiable events' in the regulation occurred apart from the actual discharge. Furthermore, it may also have simply been filed by mistake."[5] *Id*. at 180.

¶ 27 Ultimately, the *Cashion* court held that a creditor's issuance of a Form 1099-C did not alone amount to *prima facie* evidence of an intent to discharge the debt identified on the form. In support of this holding, it discussed other unpublished court cases that employed a similar interpretation. *Id*. at 179-80 (citing *Owens v. Commissioner*, 67 F. App'x 253 (5th

[5]The Bank has not alleged at any time that it filed the form 1099-C in error, requiring it to issue a correct Form 1099-C, nor has it issued such a form. See *In re Zilka*, 407 B.R. 684, 689 (Bankr. W.D. Pa. 2009); see also *In re Crosby*, 261 B.R. 470, 474-75, 477 (Bankr. D. Kan. 2001); *Franklin Credit Management Corp. v. Nicholas*, 812 A.2d 51, 62-63 (Conn. App. Ct. 2002).

Cir. 2003) (holding that Form 1099-C was at most evidence of a future intention to cancel a debt and not an actual cancellation thus *alone* not evidence of an actual discharge), and *Capital One, N.A. v. Massey*, No. 4:10-CV-01707, 2011 WL 3299934, at *2 (S.D. Tex. Aug. 1, 2011) (holding that the creditor's issuance of a Form 1099-C is irrelevant to the borrower's indebtedness as Form 1099-C is not a legal admission of absolution of the debt but simply an I.R.S. reporting requirement)).

¶ 28 In our case, the trial court reasoned in accord with the *Cashion* court and held that the filing of a Form 1099-C, by itself, is not sufficient evidence that the debt has been cancelled. We, however, do not find that interpretation of a Form 1099-C dispositive in a summary judgment context and given the facts in this record.

¶ 29 The *Cashion* court noted that a small majority of cases have held that filing a Form 1099-C is *prima facie* evidence of a creditor's intent to discharge a loan, thus shifting the burden of persuasion to "the creditor to proffer evidence that it was filed by mistake or pursuant to another triggering event in the regulations" that does not amount to a discharge. *Id.* at 178 (citing *In re Welsh*, No. 06-10831ELF, 2006 WL 3859233 (Bankr. E.D. Pa. Oct. 27, 2006), *Amtrust Bank v. Fossett*, 224 P.3d 935, 936-38 (Ariz. Ct. App. 2009), and *Franklin Credit Management Corp. v. Nicholas*, 812 A.2d 51, 58-60 (Conn. App. Ct. 2002)). We are convinced that the filing of a Form 1099-C is more significant than just presenting a rebuttable presumption of a creditor's *intent* to discharge the debt. We find support for the conviction in the regulatory language, stating that the form is filed "*if and only if*" there has occurred an "identifiable event." (Emphasis added.) 26 C.F.R. § 1.6050P-1(a)(1) (2014).

¶ 30 As previously noted, several of the "identifiable events" are tantamount to actual discharges of the debt under Illinois law. Of the eight events, three (A, F, and G) identify outright discharges, two (C and H) identify cancellations or extinguishments of the debt because certain statutory deadlines have passed barring any attempts by the creditor to collect the debt, and three (B, D, and E) identify cancellations or extinguishments resulting from specified proceedings in state or federal court. When the Bank, in this case, filed the form, it was representing and acknowledging that at least one of those identifiable events had, in fact, occurred.

¶ 31 Pursuant to section 2-1005 of the Code of Civil Procedure, the Bank, as movant for summary judgment, must prove that there are no material factual disputes and that it is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2014). It does appear, at least superficially, that whether they are described as discharge or cancellation/extinguishments, all eight of the "identifiable events" foreclose collection of this debt by this creditor under Illinois law. Nonetheless, the Bank argues that there is a qualitative difference between a discharge and a cancellation/extinguishment. If it is correct in that assertion, and we believe it is, the standard for summary judgment requires that it prove which of the "identifiable events" triggered its filing of the Form 1099-C and that it was not a discharge under Illinois law.

¶ 32 The Bank did not make such a showing in the trial court. The materials submitted by the Bank in support of summary judgment establish that: the loan was made, the debt was incurred, the original note allegedly exists unaltered in any way, its books document the "charge off" of the debt, and the Form 1099-C was filed in a year in which designation of a specific "identifiable event" that must have occurred prior to its filing was not required. The

affidavits of Norman and David are silent as to any reason for or circumstances surrounding the filing of the Form 1099-C.

¶ 33 As previously noted, consideration of each of the "identifiable events" could result in a finding that there was an actual discharge under Illinois law, foreclosing the Bank's ability to collect on the debt. Currently, the record, including the Waite affidavits, does not support the possibility of six of the eight events having been the occurrences triggering the Bank's obligation to file the Form 1099-C. There is no evidence that the decedent filed for bankruptcy; was included in a foreclosure, receivership or similar proceeding on the property; or was involved in a probate proceeding at that time. The period between the execution of the note and the "charge-off" of the debt was three months. The 10-year statute of limitation to collect on the debt had just started to run (735 ILCS 5/13-206 (West 2014)), and other statutory deadlines were inapplicable. The timeframe also does not comply with the statute or case law regarding the length of a nonpayment testing period (*Amtrust Bank v. Fossett*, 224 P.3d 935, 938 (Ariz. Ct. App. 2009); 26 C.F.R. § 1.6050P-1(b)(2)(iv) (2014)). The other two events (F and G) would be actual discharges, rather than cancellations or extinguishments.

¶ 34 This discussion demonstrates both the existence of material factual disputes and a resulting legal impediment to a finding that the Bank is entitled to judgment as a matter of law. For these reasons, the Bank has failed to meet its burden, and the trial court's order awarding summary judgment in its favor is reversed.

¶ 35 We remand this matter to the trial court for further proceedings in line with this decision. We do so (1) because this is a case of first impression and remand is most appropriate in this circumstance (*Tankersley v. Peabody Coal Co.*, 31 Ill. 2d 496, 504 (1964)) and (2) because the case calls out for case management and discovery.

¶ 36 CONCLUSION

¶ 37 For the forgoing reasons the judgment of Rock Island County is reversed and remanded.

¶ 38 Reversed and remanded.