

Ohio Business Litigation Blog

A blog about Ohio business litigation and beyond.

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Thursday, December 16, 2010

Recent Ruling On Account Agreements By Ohio's Sixth District Highlights Account & Billing Procedures That Every Ohio Business Should Make Sure It Has Implemented

This blog posts covers a recent rulings by Ohio's Sixth Appellate District in an account collection lawsuit. The ruling addresses a business's ability to apply the terms of its customer account agreements in a collection actions (for review of what "actions on account" are and some of the requirements that must be met to collect on a past due account, see this [previous post](#)). At the end of this post, I review some procedures that all businesses should make sure they have implemented in light of this ruling.

Enforceability of the Terms of an Account Agreement

When parties engage in business transactions for property or services, an "account" is formed. In most account transactions, a formalized contract or agreement governs the transaction and sets out the terms, conditions, obligations, and rights of the parties. Credit card "accounts" are no different. When consumers sign up for a credit card, they agree to certain terms and conditions (the fine print) that govern the transaction. Like many businesses, credit card companies include terms in there account agreements that are very legally advantageous. For example, it is common for account agreements to contain large interest rates, fees, and



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penalties for late payments, mandatory arbitration clauses, choice of law provisions, and other terms that limit a debtor's ability to dispute or settle a debt on an account.

But are these advantageous provisions enforceable? And, are there any limitations under Ohio law that effect the general enforcement of account agreements? This is the issue addressed by Ohio's Sixth District Appellate Court in [Citibank \(South Dakota\) v. Perz., 2010-Ohio-5890](#) (6th Dist. Lucas Co., Dec. 3, 2010).

In [Citibank](#), the court had to determine the enforceability of an account agreement provision that prohibited the settlement of an overdue account balance by a business's acceptance of a late and partial payment from its customer. The debtor, Julie Benoit (also called Julie Prez) owed Citibank approximately \$13,000 on two separate Citibank credit cards. In an attempt to avoid bankruptcy, Julie tried to settle her debt with Citibank by having her attorney mail Citibank \$4,000 in the form of two restrictively indorsed checks for the full settlement of her account.

Citibank accepted Julie's settlement checks, but subsequently sued her for the rest of the money due on her accounts. It claimed that its acceptance of the partial payments (the two checks for \$4000) could not settle the overdue accounts because the customer account agreement that Julie signed when she opened her accounts contained a provision that specifically prohibited the settlement of accounts by late or partial payment. The trial court agreed with Citibank, but on appeal, the Sixth District reversed.

The court found that Citibank's defense failed because there was no evidence that the "customer agreements" it provided to the court were the agreements that Citibank made with Julia when she opened her accounts with Citibank. The court noted that the agreements were nothing more than "unsigned, undated, and unauthenticated generic forms" that contained no evidence at all that they "applied to [Julia], had any relation to her account, or were otherwise mailed or sent to her." Therefore, the court held that the agreements were unenforceable. Subsequently, the court also found that Citibank's acceptance of Julie's \$4,000 settlement checks was a valid settlement of the debt.

Account Procedures that Every Ohio Business Should Make Sure It Has Implemented

There are lessons to be learned from the Citibank case. The Citibank case demonstrates the risks and possible consequences that a business can face if it does not keep adequate records of its customer accounts agreements and billing statements. Although the case involves credit cards, its ruling is relevant to the billing and account procedures of any business that wants to ensure that the terms of its account agreements are enforceable and that it can collect on an unpaid account. The following is a short list of some procedures that all businesses should consider implementing in light of the [Citibank](#) case:

- (1) Keep original copies of signed and dated customer account agreements on record. This applies whether a company is conducting business strictly online or has a store with a physical presence. Only keeping records of generic account agreements that a company uses or has used is not sufficient;
- (2) Companies that frequently update customer account agreement terms or have multiple account agreements should keep track of each individual account agreement and the transactions that each governs;
- (3) When updating or changing a customer account agreement, establish a

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record of the change and evidence that customers effected by the changes were notified and accepted (or acquiesced, depending on the terms of an account agreement) to the new terms.

Businesses looking for more advice on customer account agreements, collection of overdue accounts, and refinement of billing and accounting procedures should contact an attorney in there area for more assistance.

Posted by Aaron Minc at 2:37 PM 

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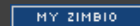
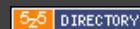
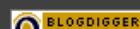
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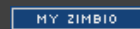
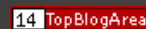
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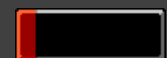
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