

**IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO**

National Collegiate Student Loan Trust 2007-2,

2018CV0474

Plaintiff,

Judge Alan R. Mayberry

v.

ORDER ON MOTIONS

Richard J. Heber, et al.,

JUDGMENT ENTRY

Defendants.

July 31, 2019

This matter comes before the court on the motion for summary judgment of Plaintiff National Collegiate Student Loan Trust 2007-2 (hereinafter "NCT"), filed February 7, 2019, and on the motion for summary judgment of Defendant Richard J. Heber (hereinafter "Defendant Heber"), filed January, 7, 2019. The Plaintiff asks for an entry of judgment on its contract claim against Defendant Heber and for Defendant Heber's counterclaims against it to be dismissed. Defendant Heber asks for judgment on his counterclaims and for the Plaintiff's complaint against him to be dismissed.

Also pending are the following motions:

1. Non-party Reimer Law Company's motion to dismiss the purported counterclaims against it.
2. Plaintiff NCT's motion to strike Defendant Heber's summary judgment reply brief.

**MOTION TO STRIKE**

The Plaintiff asks the court to strike Defendant Heber's reply brief that was filed in support of his motion for summary judgment, arguing that it wasn't timely filed. The motion is denied. The

reply brief was fully considered by the court in ruling on the competing motions for summary judgment.

#### REIMER'S MOTION TO DISMISS

Defendant Heber asks for a judgment against Reimer Law Company, but Reimer Law Company is not a party to this action. A defendant in a civil matter may not counterclaim against a non-party. Civil Rule 13 dictates that the proper party upon which to serve either a compulsory or a permissive counterclaim is an "opposing party". Reimer Law Co. is not an opposing party of Defendant Heber, rather Reimer Law Co. is counsel for an opposing party of Defendant Heber. Defendant Heber's claims against Reimer Law Co. have not been properly made a part of this action. Non-party Reimer Law Co.'s motion to dismiss the purported counterclaims against it is granted.

#### MOTIONS FOR SUMMARY JUDGMENT

The Plaintiff's breach of contract claim is to collect on Defendant Heber's unpaid student loan. Defendant Heber's counterclaims relate to a CFPB (Consumer Financial Protection Bureau) consent order, the FDCPA (Fair Debt Collection Practices Act) and the FCRA (Fair Credit Reporting Act).

The dispositive issue before the court is whether Plaintiff NCT owns Defendant Heber's loan. If NCT owns Defendant Heber's loan, then NCT is entitled to judgment on its breach of contract claim and Defendant Heber's counterclaims against NCT fail.

NCT's chain of title documents showing that the loan was assigned to it include a schedule that identifies the loan by Defendant Heber's social security number, amount of loan, date of disbursement, reference number, and a supporting affidavit. The Plaintiff argues that Defendant

Heber's counterclaims fail because NCT has the relevant chain of title documents and also because NCT was not a party to that CFPB consent order but even if it was, Defendant Heber has no private right of action for alleged violations of such an order; NCT is not attempting to collect the debt of another and the debt involved herein was not in default when NCT obtained it, therefore NCT is not a "debt collector" and is not subject to the FDCPA; and Defendant Heber has no private right of action under the FCRA.

Defendant Heber argues that NCT cannot provide the court with documentation that shows a complete chain of assignment of his student loan. Defendant Heber argues that the Plaintiff's documentation is not authenticated by affidavit or notary and is therefore inadmissible hearsay.

NCT owns the loan. On April 3, 2007, Defendant Heber executed a credit agreement for a student loan with The Huntington National Bank (HNB) in the amount of \$25,000. On June 14, 2007, HNB sold and assigned the loan to National Collegiate Funding, LLC (NCF). On June 14, 2007, NCF sold and assigned the loan to NCT (the Plaintiff herein). Because the Plaintiff owns the loan, the Plaintiff is entitled to a judgment on its breach of contract claim and the counterclaims against it fail.

Defendant Richard J. Heber's motion for summary judgment as to the Plaintiff's complaint against him is denied. Defendant Richard J. Heber's motion for summary judgment as to his counterclaims against the Plaintiff is denied.

Plaintiff NCT's motion for summary judgment as to its complaint against Defendant Richard J. Heber for breach of contract is granted. Plaintiff NCT's motion for summary judgment as to Defendant Richard J. Heber's counterclaims against it is granted. Said counterclaims are dismissed as against Plaintiff NCT. The purported counterclaims against non-party Reimer Law Company are also dismissed.

Plaintiff is granted judgment against Defendant Richard J. Heber in the amount of \$34,697.12, together with accrued interest of \$3,742.77, for a total judgment of \$38,439.89, together with interest thereafter at the rate of 4% on \$34,697.12 from the date of judgment and costs.

Defendant Lori A. Heber was served with process via certified mail on August 24, 2018 but has not answered or otherwise defended. The Plaintiff shall file the appropriate motion or notice as to Defendant Lori A. Heber.

The trial date of January 31, 2020 is vacated as is the final pre-trial conference of December 16, 2019.

Clerk to furnish copies of this entry to registered attorneys electronically with pdf attachment and via ordinary mail to all unregistered attorneys and unrepresented parties.

So Ordered.

<b>Journalized 07/31/2019</b>	/s/ ALAN R MAYBERRY, Judge
<b>Signed</b> 2019 Jul 31 PM 2 16	Wood County Court of Common Pleas

Thursday, August 08, 2019 4:29:43 PM

2018CV0474 - Alan R Mayberry

COURT OF COMMON PLEAS  
WOOD COUNTY OHIO

CINDY A. HOFNER  
CLERK OF COURTS WOOD COUNTY OHIO

NATIONAL COLLEGIATE STUDENT  
LOAN TRUST 2007-2,

Plaintiff,

v.

RICHARD J. HEBER, et al.,

Defendants.

Case No. 2018CV0474

Judge Alan R. Mayberry

**ORDER GRANTING DEFAULT  
JUDGMENT AGAINST  
DEFENDANT LORI HEBER**

This matter is before the Court on Plaintiff National Collegiate Student Loan Trust 2007-2's Motion for Default Judgment Against Defendant Lori Heber. For good cause shown, the Court finds that Defendant Lori Heber was properly served and failed to move, plead or otherwise respond to Plaintiff's Complaint. Accordingly, judgment is hereby **GRANTED** in the amount of \$38,439.89, with \$34,697.12 in principal and \$3,742.77 in accrued interest, plus 4% statutory interest on \$34,697.12 accruing from the date of judgment, plus court costs. Judgment for Court Costs rendered to Wood County.

**IT IS SO ORDERED.**

\_\_\_\_\_  
DATE

Electronic Signature Below.

\_\_\_\_\_  
Judge Alan R. Mayberry

CLERK TO FURNISH TO ALL COUNSEL OF  
RECORD AND UNREPRESENTED PARTIES  
NOT IN DEFAULT FOR FAILURE TO APPEAR  
WITH A COPY OF THIS ENTRY INCLUDING  
THE DATE OF ENTRY ON THE JOURNAL

Journalized 08/08/2019

/s/ ALAN R MAYBERRY, Judge

Signed 2019 Aug 7 PM 1 10

Wood County Court of Common Pleas