WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0650

Date of Decision: 12 February 2018

Complaint

The customer submits that the company incorrectly registered a County Court Judgment ("CCJ") against the customer, in September 2016. She only became aware of the CCJ in the summer of 2017 when she was in the course of applying for a mortgage. The company eventually took steps to have the CCJ set aside but by that stage, the customer had lost the opportunity to buy the specific property that she wanted (with a mortgage that was affordable.) In the circumstances, the customer had to look to an alternative purchase but this was of a much less desirable house both in terms of location and other features. She seeks compensation of £10,000 for these matters.

Defence

The correct procedure was followed to secure payment of unpaid bills at the address in question and it was appropriate for the company to apply for and obtain the CCJ against the customer.

No settlement proposals have been put forward but purely as a gesture of goodwill, the company has offered the sum of £950.00. The customer, however, has rejected that offer.

Findings

The debt recovery measures against the customer in this case were applied in a manner that was fair, reasonable and compliant with the company's policies and Charges Scheme. In view of the facts, it was appropriate for the company to seek and obtain the CCJ in the way that it did.

Outcome

The company does not need to take any further action.

The customer must reply by 12 March 2018 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 12 February 2018

Party Details

Customer: [redacted]

Company:. [redacted]

Case Outline

The customer's complaint is that:

- Without her knowledge and incorrectly, the company registered a County Court Judgment ("CCJ") against her in September 2016. She was a customer of the company at that time.
- The relevant events in this case relate to a previous address, namely: RST Street, ("RST Street").
- In May 2017, she and her partner were looking to buy a new home. After paying £250.00 to reserve a property on a [ ] development – her "*dream home*" - she set about applying for a mortgage. She obtained her credit report from Equifax and discovered that she had a CCJ against her name for unpaid water charges.
- Given the impact of the CCJ, the cheapest mortgage offered to her had repayments of £1,150.00 per month, which was unaffordable.
- She investigated and discovered that the CCJ had been obtained by the company for unpaid bills. She made contact with the company's litigation team. They admitted fault and said that the CCJ had been entered mistakenly "*due to a miscommunication between SWW and the County Court*". They promised that the relevant paperwork - to have the CCJ set aside - would be processed within 24 hours.
- The company's litigation team informed her on 27 June 2017 that the set aside application had gone through. It was not until 1 July 2017, however, that the record of the CCJ was removed from her Equifax credit report.
- With the CCJ removed, she was – by 3 July 2017 - accepted for a competitive mortgage that

had a monthly repayment of only £704.00. However, given the amount of time that had elapsed in sorting out the CCJ situation, the deadline to exchange contracts on her dream home could not then be met. The opportunity to make that purchase was gone and she lost the £250.00 reservation fee paid to [ ].

- In the circumstances, she was forced to reserve a new plot in a worse location on the [ ] site. The positioning of this alternative plot was poor and there were undesirable issues regarding the leasehold garage agreement. Moreover, the alternative plot was:
    - £5,000 higher in price than the 'dream home' originally reserved; and
    - the last available on site within her budget (and with the floor plan and specification required).
- In view of all the problems caused by the company's incorrect registration of the CCJ against her, she claims compensation of £10,000. This is comprised of the following losses[1]:
    - difference in house cost - £5,000
    - difference in plot (worse positioning/garage issue) - £5,000
    - 3 full days out of the office (sorting out the CCJ set aside after losing original reservation) - £487.00
    - phone calls to Equifax, 90 minutes to an 0845 number at £1.50 per minute - £135.00
    - 3 months of Equifax credit reports at £14.99 per month - £44.97
    - emotional stress and defamation of character - £1,000.

The company's response is that:

- The proper procedure was followed to secure payment for unpaid bills at the RST Street address and the CCJ was issued correctly against the customer.
- The customer moved into RST Street on or around 21 February 2013. However, she did not make the company aware of this until a telephone call on 10 April 2014. The water and sewerage charges incurred by the customer up to this point were backdated and set up on her account.
- At this time, the customer had an outstanding debt of £300.90 from a previous property, which she was paying back via a debt collection agency called "PastDue". That debt has since been repaid.
- The customer was to be billed quarterly for her usage at RST Street and a Direct Debit was set up of £51.96 per month. This was based upon her ongoing charges of £39.50 and a minimum

[1] In keeping with the Scheme Rules, the customer's claim appears to be limited to £10,000.

repayment towards the backdated charges, which at the time totalled £498.41 (not including the previous debt).

- The monthly Direct Debit of £51.96 was taken on 22 April, May, June, July, August, and September 2014. The payment on 22 October 2014 could not be taken and was returned by the bank as being unpaid. A letter was sent to the customer dated 23 October 2014 advising that the company would attempt to take the payment again, and encouraging the customer to make contact if she was having difficulty paying.
- A payment for the customer's previous debt was received on 27 October 2014 and as such, the Direct Debit was attempted again on 3 November 2014 (the next available date). This payment was also returned unpaid by the bank.
- The company's policy dictates that if two Direct Debits are declined then the Direct Debit is cancelled, and this is what happened. A letter was sent to the customer on 4 November 2014 advising her of this cancellation and asking her to make contact in order to discuss other payment options. The customer did not get in touch.
- The correspondence sent to the customer at this time explained that her Direct Debit had failed and as such, her water charges were not being paid. Even if (for some reason) the customer had not received this correspondence, it would have shown in her bank statement that a somewhat substantial amount of money (£51.96) was no longer being taken from her account each month.
- On 7 May 2015, a bill was sent to the customer at the RST Street address. The balance of this was £799.75. Payment was not received for this bill and the customer made no attempt to contact the company.
- A demand letter for the outstanding sum was sent to the customer at RST Street on 19 May 2015.
- A Letter Before Action dated 11 July 2015 ("the Letter Before Action") was issued to the customer for the outstanding debt. By that stage, no payment had been received for 10 months for water and sewerage charges at the RST Street property and no notification had been given that the customer had left the address.
- On 3 August 2015, a change of tenancy notice was received by [redacted] ("the Change of Tenancy Notification"). This explained that a new occupier had moved into RST Street as of 27 July 2015. For reasons unknown, this notice confirmed that the outgoing occupier was Ms [redacted], the landlord of the property. It did not provide a forwarding address for the customer and the customer made no effort to contact the company to confirm that she had moved address at this time.

- It was not incumbent on the company to have checked the electoral roll in order to find the customer's new address. There is no company procedure for this to happen. With 768,950 domestic households, if it were to do this for all customers that left properties whilst still in debt, a substantial amount of human resource would be required. Had the customer simply set up a postal redirect to her new address - or contacted the company to update her details - then the issues with the CCJ could have been avoided.
- The customer had failed to engage for almost 7 months regarding her account at RST Street, ignoring the correspondence dated 4 November 2014, 7 May 2015, and 11 July 2015.
- As the customer had not responded to the Letter before Action, a County Court Claim was issued in September 2015 for the outstanding sum due. This claim was issued and served to the customer at the RST Street address. Civil Procedure Rule 6.9 confirms that - if the defendant in the case does not give an address at which the defendant may be served - the Claimant is entitled to serve the Claim Form upon the usual or last known residence. In this instance, that last known residence was RST Street.
- It was not until the beginning of 2016 that the customer next contacted the company and this was to advise that she had moved to ABC Road. The customer stated in her letter that she moved into ABC Road on 12 January 2016. The customer, at this point, made no mention of her outstanding debt and did not acknowledge whether she had received any correspondence from the company. By this time, the claim against her had been issued but a judgment had yet to be obtained.
- Whilst the customer stated that she moved into ABC Road on 12 January 2016, the Change of Tenancy Notification demonstrates that she moved out of RST Street by 27 July 2015 at the latest. The customer's whereabouts between 27 July 2015 and 12 January 2016 is unknown. This, however, does not detract from the fact that the customer was likely still living at RST Street when the Direct Debit cancellation letter, the reminders and the Letter Before Action were sent to her.
- In the debt recovery proceedings, the customer had neither acknowledged receipt of the claim nor issued a defence. As such, the County Court found in favour of the company and entered the CCJ against her.
- The company has acted correctly in this matter and all procedures have been followed in an attempt to collect the customer's debt. The company's policy for failure to pay charges when they are due is included in the Charges Scheme and the 2014/2015 version - which was in force at the time the customer's debt accrued ("Charges Scheme") - confirms the following:
    - If the company does not receive payment when it is due, it will send a reminder;

- If no payment is received or there is no contact to discuss the outstanding debt after sending a reminder, the company will send a notice of its intention to ask the County Court to issue a Court claim for non-payment;
- If still no payment response is received to this notice, depending on a customer's payment history, the company will either:
  - ask the Court to issue a Court Claim; or
  - contact the customer again itself; or
  - ask a Debt Collection Agency to recover the outstanding money.
- if a Customer does not respond to a Court claim, the Court will make an Order against that customer for the full debt. Further legal action, such as the issue of Warrant for the seizure of goods, can then be taken. A Court Order for payment may affect a customer's ability to obtain credit.

- In this case, the company actually allowed more leeway than required by the Charges Scheme. Legal proceedings could have been issued after the customer's Direct Debit failed in November 2014. Instead, the customer was given the opportunity to resolve the matter without the issuing of a Court Claim against her. This opportunity bore no result and as such, the claim was issued against her.
- When (in June 2017) the CCJ was set aside, it was agreed with the customer that this was being done as a gesture of goodwill only - ***and not*** in recognition of any error with the issuing of the Court claim or the CCJ originally.
- The purpose of a CCJ is to identify that the person subject to it has an outstanding debt that has not been paid. This was the situation applying in this case.
- Despite the fact that it was in no way at fault for this matter, the company was sympathetic to the customer's situation and offered her a total of £950.00 as a goodwill gesture and to bring this matter to an amicable conclusion. This being in recognition of the time it had taken her to investigate the CCJ and also as reimbursement for the loss of the £250 reservation fee that she paid to [ ]. This offer was greater than the original debt that the customer owed to it that led to the CCJ. The gesture was declined, however.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.

2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. I should remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove her case on the balance of probability.

2. I should also acknowledge that I have had the benefit of reading:
    a. **the customer's comments**, filed at the end of January 2018, in response to the company's defence ("Comments"). To some limited extent, in paragraph 1 of her Comments, it is apparent that the customer is introducing new evidence - particularly as to the arrangements under which she submits that she moved out of RST Street. Bearing in mind Scheme Rule 5.4.3, I must disregard any such new evidence. However, I do take notice of the customer's assertion that she "*has always told* ▬ *L*" that September 2014 was the date when she left RST Street; and
    b. **the company's 4-page response,** dated 1 February 2018, filed in reply to the Comments.

3. It seems to me that the customer's case stands or falls on whether – in all the circumstances - the CCJ was properly applied for by the company. The customer's strong contention is that it was registered incorrectly or mistakenly or without justification. She develops her argument, as I see it, along three specific lines, i.e. that:
    a. the company ought to be have been aware that she was no longer living at RST Street as she had "*always told*" it that she moved out in September 2014. The customer's implication is that the company should not, therefore, have served its court proceedings at the RST Street address (when it knew or ought to have known that the customer was

no longer resident there); and

b. even if the company did not know or appreciate that the customer had moved out of RST Street: "… *as a customer of* [redacted] *at ABC Road from 12th January 2016 along with being on the electoral roll, should there have been an outstanding debt at the previous address (RST Street),* [the company] *would not have had to look too far to find my details before the CCJ was added in 2016 .... As it was I was never informed of any Court action taken against me …"; and*

c. in any event, when she contacted them in the summer of 2017, the company's litigation team "*admitted fault*" and conceded that there had been a 'miscommunication between the company and the County Court' (as to how the CCJ had come to be registered).

4. I propose to deal with each of these three strands to the customer's submissions in turn.

The customer had "*always told*" the company that she had moved out in September 2014

5. I am not satisfied that there is any (or any sufficient evidence) that might enable me to conclude that the customer was consistently giving this information to the company, i.e. that she had moved out of RST Street in September 2014.

6. At paragraph 20 of its defence, the company submits that it did not become aware that a new occupier had moved into RST Street until 3 August 2015. Having examined defence exhibit "HP/5", I accept the company's submission in this respect. 3 August 2015 was when the company states that it received the Change of Tenancy Notification and that is the date I find that the company first became aware that the customer had left the property at RST Street.

The company could readily have found out the customer's new address

7. The customer's point here is that it ought not to have been too difficult for the company to realize that she was at a new address. A simple search of the electoral roll would have confirmed the position, she submits.

8. On this, I have given some careful consideration to the fact that – as at 3 August 2015 – the company *knew* that the customer was no longer living at RST Street. Notwithstanding this knowledge, the company went on to issue County Court proceedings the next month, September 2015, and to serve those proceedings at the RST Street address. At first reading, this appeared to me – potentially - to be a course of action by the company that could be criticised. Ostensibly, the company was serving proceedings on the customer at an address

that *it knew* she was not resident. It must have been appreciated, therefore, that the Court papers would not come to the customer's attention (or so the criticism would be made).

9. The company's answer to this potential criticism is given at paragraph 23 of its defence, I note. It explains that the customer had not given it an address at which she might be served. That being the situation, the company points to Part 6.9 of the Civil Procedure Rules ("CPR"). CPR 6.9, I find, does indeed entitle the company to serve a Claim Form at the defendant's "***last known***" residence. It was 'good service' under the CPR, therefore, I find, for the Court papers to have been sent to the RST Street address.

10. This point leads into whether it was incumbent on the company to make enquiries and try to find out what the customer's new address was. I am not persuaded that the company *was* under any such obligation, however. I accept the argument that the company makes at paragraph 21 of its defence. "*With 768,950 domestic households*" on its books, as it suggests, it would be far too burdensome to expect the company to trace debtors who had left properties without paying. Also, it seems to me, this burden is probably one of the reasons that the entitlement in CPR 6.9 is provided for in the way that it is.

The company's litigation team had "*admitted fault*" in connection with the entry of the CCJ

11. I note that the company firmly disputes the customer's assertion on this. For its part, the company submits that it agreed to assist the customer in removing the CCJ "*as a gesture of goodwill*" only.

12. It does not seem very plausible to me that the company would have admitted fault as freely as the customer seems to suggest. Also, notably, the customer does not expand upon the alleged 'miscommunication with the County Court' in any detail. Although I have not seen a copy of the company's set aside application or correspondence with the Court, I accept the company's account of events on this aspect.

13. Finally, I note the comprehensive submissions made by the company – about its policy for failure to pay charges ("Policy") – as detailed at paragraphs 27, 28 and 29 of its defence. In light of the facts, I am satisfied that the debt recovery measures against the customer in this case were taken in a way that was fair, reasonable and compliant with the company's Policy and with the relevant Charges Scheme generally.

14. For all the reasons set out above, I cannot find any failing on the part of the company in the provision of its services to the customer to the standard to be reasonably expected by the average person. It follows that the customer has not made out her case about the CCJ having been registered incorrectly. Her complaint in this regard – together with her request for compensation – is unable, therefore, to succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 12 March 2018 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.

Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator