

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-405

JOANIE HARP

APPELLANT

V.

SECURITY CREDIT SERVICES, LLC

APPELLEE

Opinion Delivered March 27, 2013

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SIXTH
DIVISION

[NO. CV-10-4838-6]

HONORABLE TIM FOX, JUDGE

REVERSED AND REMANDED

ROBIN F. WYNNE, Judge

Joanie Harp appeals from a judgment entered in favor of Security Credit Services for \$19,456.63 following a jury trial.¹ She makes the following arguments on appeal: (1) the trial court abused its discretion in allowing certain evidence introduced by appellee to be admitted because the evidence was not provided to her until the day before trial, (2) the trial court abused its discretion in permitting appellee to introduce certain evidence over her objection, and (3) the trial court erred in denying her motion to dismiss because the evidence offered by appellee was insufficient to show that she had authorized the charges or that there had been a valid assignment of the account. We reverse the judgment and remand the case to circuit court.

¹This court previously ordered rebriefing and remanded to supplement the record. *Harp v. Sec. Credit Servs., LLC*, 2012 Ark. App. 661. The deficiencies in appellant's brief as well as the record have been corrected, and we may consider the merits of the appeal.



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Appellee filed a complaint on August 16, 2010, in which it alleged that appellant obtained a credit card from General Electric Capital Corporation (GECC), which was issued by GE Money Bank, and made various charges on the account, leaving an outstanding balance of \$19,456.63. Appellee further alleged that it was the assignee of the account. Appellant filed an answer denying the material allegations in the complaint. Appellant propounded various requests for discovery upon appellee. In response to her discovery requests, appellant received, among other things, a bill of sale purporting to show the assignment of appellant's account to appellee, a copy of the GE Money Credit Card Agreement, and various credit-card statements bearing appellant's name and address.

The day prior to trial, appellee supplemented its discovery responses with an exhibit appellant refers to as a "supplemental bill of sale." The exhibit consists of a printout showing appellant's name and address, the balance on the account in question, and the date the account in question was opened and "charged off" by GECC. Appellant made a motion in limine to exclude the document, arguing that it was not timely provided to her in response to her discovery requests. The trial court denied the motion.

Rhonda Horton, appellee's vice-president of litigation, was the sole witness to testify at trial. She testified that appellee's trial exhibits were business records pertaining to appellant. She identified appellee's Exhibit 1 as a bill of sale and stated that the document evidenced appellee's purchase of the account in question from GECC. Exhibit 1 included the supplemental bill of sale. Appellant objected to the introduction of the exhibit and questioned Ms. Horton regarding her personal knowledge of the contents of the exhibit. The trial court



allowed the exhibit to be introduced over appellant's objection.

Ms. Horton identified appellee's Exhibit 2 as the terms and conditions of the credit card. Appellant objected to the introduction of the exhibit, arguing that it was not a business record from appellee. The trial court overruled appellant's objection and admitted the document.

Ms. Horton identified appellee's Exhibit 3 as copies of credit-card statements listing appellant's name and address. Appellant objected to the exhibit, arguing that there was no proper foundation for its admittance, that it was hearsay, and that it was not a business record. The trial court overruled appellant's objection and admitted the exhibit.

At the close of appellee's case and again at the close of all the evidence, appellant made a motion to dismiss, arguing that there was no proof that appellant either received a card or made any of the charges. Appellant's motions were denied.

The jury rendered a verdict in favor of appellee and awarded damages of \$19,456.63. The trial court entered a judgment awarding appellee damages of \$19,456.63 and costs of \$227.74. Appellee moved for attorney's fees, and the trial court entered a separate order awarding appellee \$2000 in attorney's fees. This appeal followed.

We find merit in appellant's argument that appellee failed to prove that she had authorized the charges made on the account. Our standard of review of the denial of a motion for directed verdict is whether the jury's verdict is supported by substantial evidence. *Gross & Janes Co. v. Brooks*, 2012 Ark. App. 702, 425 S.W.3d 795. Substantial evidence is that which goes beyond suspicion or conjecture and is sufficient to compel a conclusion one



way or the other. *Id.* It is not this court's place to try issues of fact; rather, this court simply reviews the record for substantial evidence to support the jury's verdict. *Id.* In determining whether there is substantial evidence, we view the evidence and all reasonable inferences arising therefrom in the light most favorable to the party on whose behalf judgment was entered. *Id.*

Section 1643(b) of the Fair Credit Billing Act, 15 U.S.C. § 1666, places the burden of proving that any disputed use made of a credit card was authorized upon the card issuer. As appellee alleged that the card issuer assigned the account to it, the burden of proof would fall on appellee. In *Danner v. Discover Bank*, 99 Ark. App. 71, 257 S.W.3d 113 (2007), the proof submitted by the card issuer in a suit to collect on an unpaid credit-card account consisted of an affidavit verifying records that the account had been opened as a result of a telemarketing sale, evidence that the person who applied for the card provided appellant's name and address, billing statements purporting to reflect the debt owed, and evidence that appellant had previously made some payments on the account. This court held that the issuer had failed to prove that the disputed charges were authorized and reversed a judgment in favor of the issuer. *Danner*, 99 Ark. App. at 72, 257 S.W.3d at 115.

The evidence submitted at trial in the instant case consisted of three exhibits: (1) the bill of sale, (2) the terms and conditions of the account, and (3) the credit-card statements. The only proof submitted by appellee to show that the charges on the account had been authorized by appellant were copies of billing statements bearing appellant's name and address. We held in *Danner* that credit-card statements were not sufficient to prove that a particular



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individual authorized the charges at issue. Accordingly, appellee failed to prove that appellant had authorized the disputed charges, and the jury's verdict in favor of appellee is not supported by substantial evidence.

Remand, as opposed to dismissal, is proper in this case because, where there is a simple failure of proof, justice requires that the court remand the case to allow the appellee an opportunity to supply the defect. Only where the record affirmatively shows that there can be no recovery on retrial should the case be dismissed in the appellate court. *Little Rock Newspapers, Inc. v. Dodrill*, 281 Ark. 25, 660 S.W.2d 933 (1983); *Danner, supra*. The judgment of the trial court is hereby reversed, and the case is remanded to circuit court. Because the underlying judgment that formed the basis for the award of attorney's fees has been reversed, the order awarding attorney's fees to appellee is likewise reversed. As we have decided the merits of the appeal on other grounds, it is not necessary for us to consider appellant's remaining arguments.

Reversed and remanded.

WALMSLEY and BROWN, JJ., agree.

Sanford Law Firm, PLLC, by: *Josh Sanford*, for appellant.

Hosto & Buchan, PLLC, by: *Travis A. Gray*, for appellee.