

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA**

**AMERICAN EXPRESS BANK, FSB,**

Appellant,

v.

**MARTY COLEY,**

Appellee.

---

**CASE NO.: 2013-CV-000030-A-O**

Lower Case No.: 2012-CC-005696-O

Appeal from the County Court, for Orange County,  
Florida, Faye L. Allen, County Judge.

Zoran D. Jovanovich, Esquire,  
and G. Michael Samples, II, Esquire, for Appellant.

No Appearance for Appellee.

Before MURPHY, APTE, and THORPE, J.J.

**PER CURIAM.**

**FINAL ORDER REVERSING TRIAL COURT**

Appellant, American Express Bank, FSB (“Am Ex”), timely appeals the Trial Court’s “Order Denying Motion for Reconsideration” and “Final Judgment of Dismissal” entered on March 8, 2013. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

### ***Summary of Facts and Procedural History***

Am Ex issued Appellee, Marty Coley (“Coley”) two credit cards with each card bearing its own associated credit card account number. On April 27, 2012, Am Ex filed a two count Complaint against Coley with both causes of action sounding in breach of contract. In the Complaint, Count I addressed one credit card account (“account 1”) in the amount of \$14,042.00 and Count II addressed the other credit card account (“account 2” ) in the amount of \$2,608.28. Among the exhibits attached to the Complaint were separate credit card agreements governing each account. Further, the exhibits included Coley’s corresponding billing statement relating to each particular credit card account.

On August 16, 2012, a default was entered by the Clerk of Court against Coley. Thereafter, Am Ex filed its Motion for Judgment and supporting documents with the Trial Court on January 31, 2013. On February 5, 2013, the Trial Court issued an Order mandating that the amount in controversy exceeded the jurisdiction of the County Court and required that the instant action be transferred to the Circuit Court within 30 days or the action would be dismissed. Am Ex filed a Motion for Reconsideration of the February 5, 2013 Order. On March 8, 2013, the Trial Court denied Motion for Reconsideration and entered a Final Judgment of Dismissal that this Court now addresses on appeal.

### ***Argument on Appeal***

On appeal, Am Ex argues that the Trial Court erred in dismissing this case for lack of subject matter jurisdiction as the amount in controversy does not exceed the County Court’s jurisdictional limits.

### *Standard of Review*

The question of whether a court has subject matter jurisdiction generally involves a question of law; thus, the standard of review is de novo. *Baker & Hostetler, LLP v. Swearingen*, 998 So. 2d 1158 (Fla. 5th DCA 2008) (applying the de novo standard of review for orders determining subject matter jurisdiction); *Wendler v. City of St. Augustine*, 108 So. 3d 1141, 1143, 1146 n.3 (Fla. 5th DCA 2013) (applying the de novo review and distinguishing the case from cases where factual determinations are made and the abuse of discretion standard of review was applied with issues per the Uniform Child Custody Jurisdiction Act).

### *Analysis*

Am Ex argues that its action is properly within the jurisdiction of the County Court because each count in the Complaint is a separate cause of action or demand and the amount in controversy in each count does not exceed \$15,000. Further, Am Ex argues that the facts of this case do not justify or permit an aggregation of claims to confer jurisdiction on the Circuit Court.

Section 34.01(1)(c), Florida Statutes (2013), addresses actions in the jurisdiction of county courts to include all actions at law in which the matter in controversy does not exceed the sum of \$15,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts. In addition, case law provides clarification as to the issue of aggregation of claims in determining subject matter jurisdiction.

In support of its argument, Am Ex cites *Batts v. Dep't of Education*, 631 So. 2d 369, 370 (Fla. 4th DCA 1994) (involving an action filed in circuit court relating to four separate promissory notes with each note amounting to \$2,500.00 and holding that because the amount in controversy involved separate promissory notes, the amounts could not be aggregated to meet the then existing \$5,000 jurisdictional requirement to confer jurisdiction on the circuit court). Am

Ex also cites *Ilana Ben-David v. The Education Resources Institute, Inc.*, 974 So. 2d 1138, 1139-1140 (Fla. 3d DCA 2008) (involving an action filed in circuit court relating to three promissory notes totaling \$30,510.46 and holding that the circuit court lacked subject matter jurisdiction and reasoning that “separate, unrelated, distinct, and wholly independent demands, such as promissory notes given for wholly unrelated and separate items of indebtedness, may not be joined or aggregated to make up the amount to give jurisdiction to a superior (circuit) court”). In addition, Am Ex cites *Director General of Railroads v. Wilford*, 88 So. 256 (Fla. 1921). Lastly, Am Ex correctly distinguishes the instant case from cases involving class action lawsuits where an aggregation of claims conferring jurisdiction a circuit court was proper. See *Hernando County v. Morana*, 979 So. 2d 276 (Fla. 5th DCA 2008); *Johnson v. Plantation General Hospital Limited Partnership*, 641 So. 2d 58 (Fla. 1994).

This Court finds the cases cited by Am Ex in support of its argument to be controlling. In addition, this Court cites *Grunewald v. Warren*, 655 So. 2d 1227, 1230 (Fla. 1st DCA 1995) citing *Batts and Walker v. Smith*, 161 So. 551 (Fla. 1935) (holding that separate and distinct claims, even against the same defendant, cannot be aggregated in order to meet the jurisdictional threshold). Further, this Court concurs with Am Ex’s argument as follows: The instant involved two separate and distinct credit cards and accounts that were governed by independent card member agreements. Further, Coley was issued separate and distinct billing statements with each statement containing Coley’s itemized charges and payments associated with each respective credit card account. Thus, because Am Ex’s causes of action or demands are separate, unrelated, distinct, and independent from each other, case law does not permit the aggregation of claims to confer jurisdiction in the Circuit Court. Therefore, Am Ex’s action was properly within the jurisdiction of the County Court.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Trial Court's "Order Denying Motion for Reconsideration" and "Final Judgment of Dismissal" entered on March 8, 2013 are **REVERSED** and **REMANDED** for further proceedings consistent with this opinion.

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida, on this 6th day of November, 2013.

/S/ \_\_\_\_\_  
**MIKE MURPHY**  
Presiding Circuit Judge

APTE and THORPE, J.J., concur.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished to: **Zoran D. Jovanovich, Esquire, and G. Michael Samples, II, Esquire**, Zwicker & Associates, P.C., 10550 Deerwood Park Blvd., Bldg. 300, Suite 300, Jacksonville, Florida 32256, [zjovanovich@zwickerpc.com](mailto:zjovanovich@zwickerpc.com) and **Marty Coley**, 14101 Lake Price Drive, Orlando, Florida 32826 on the 7th day of November, 2013.

/S/ \_\_\_\_\_  
Judicial Assistant