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King County No 11-2-09592-4 SEA

Court of Appeals No 67440-4-1

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

AMERICAN EXPRESS CENTURION BANK,
Respondent

v.

ZAAKERA R STRATMAN,
Appellant

APPEAL FROM THE DISTRICT COURT FOR KING COUNTY
THE HONORABLE THERESA B. DOYLE, WSBA # 12966

BRIEF OF PETITIONER

INFORMATIONAL STATEMENT AND JURISDICTIONAL
STATEMENT

This appeal is taken from the Superior court's decision to render summary judgment against the defendant/appellant. The Appellate Court of Washington has jurisdiction to consider the issues raised in this appeal under authority of the Washington Rules of Appellate Procedure, Rule 2.2.

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ISSUES

1. The record will show that the complaint/information was not properly before the court as the complaint was defective.
2. The record will show that the “witness” for the plaintiff was not present in court to be cross-examined over the objections of the defendant and did not qualify under Court Rule 804.

3. The record will show that the plaintiff failed to state a claim upon which relief can be granted.
4. The record will show that there was no justiciable controversy before the court.
5. The record will show that the alleged Plaintiff failed to state a Cause of Action.
6. The record will show that the Superior Court Judge Theresa B. Doyle violated the appearance of fairness doctrine.

ASSIGNMENT OF ERRORS

1. The Superior Court erred when the defendant challenged the authority of counsel to represent the plaintiff and counsel failed to provide such documents. RCW 4.08.080 (see page 6 in Verbatim Report of Proceedings, lines 16-17)
2. The Superior Court erred when the court accepted the declaration of Paul Lavarta as testimony, over the objections of the defendant when the witness was not present in court to be cross-examined in violation of Evidence Rule 602, 801 & 802. (see page 5 in Verbatim Report of Proceedings, lines 24-30, page 6 lines 1-2, 16-18)

3. The Superior Court erred when the court accepted the counterfeit documents as legitimate records, over the objections of the defendant in violation Evidence Rule 904 (c). (see page 6 in Verbatim Report of Proceedings, lines 16-18, page 7 lines 12-15)
4. The Superior Court erred when the Superior court issued a summary judgment with facts in dispute.
5. The Superior Court erred when the defendant objected to the counterfeit documents and the court allowed the documents into the records in violation of Court Rule 1002. (see page 6 in Verbatim Report of Proceedings, lines 16-19, page 7 lines 12-15)
6. The Superior Court erred when there was no competent testimony before the court by the plaintiff and the court granted summary judgment.
7. The Superior Court erred when the plaintiff had no facts before the court and the court granted summary judgment.
8. The Superior Court erred when there was no evidence before the court and the court granted summary judgment.
9. The Superior Court erred when the Superior Court ignored the Affidavit Denying Existence of Debt and the Objection to Motion for Summary Judgment and Motion to Dismiss of the accused.
10. The Superior Court erred when the Superior Court ignored the requirement for validating the alleged debt when demanded before

pursuant to 15 USC § 1692 and all collection activities are to cease until the alleged creditor validates the debt (including court action) or the alleged creditor violates Federal Law.

11. The Superior court erred when the Superior Court ignored plaintiff's violation of Court Rule 4 when serving the Summons & Complaint as the Summons & Complaint were served to a female minor who was 16 years old. RCW 4.28.080 (15)

12. The Superior Court erred when the court accepted the Plaintiff's pleadings as proof in violation RCW 5.40.010

STATEMENT OF THE CASE

Plaintiff filed a claim against defendant for failure to pay Plaintiff moneys allegedly owing on account. Defendant demanded verification of the alleged debt and issued a general denial. Defendant objected to declaration of Plaintiff's alleged witness and to the counterfeit documentation. The Superior Court issued a summary judgment against defendant. This case is about the ability of a defendant to be able to face a witness allegedly testifying against them and to be able to determine the accuracy of their statements presented in court, or to be able to determine

that such a witness actually even exists by being able to cross examine them in open court.

ARGUMENT

THIS APPELLATE COURT IS NOTICED: STATEMENTS OF COUNSEL IN BRIEF OR IN ARGUMENT ARE NOT FACTS BEFORE THE COURT. The court is further noticed: on the day of the hearing that was had for determination on the summary judgment motions, the plaintiffs declarant was not in appearance and unable to be cross examined in violation of the Hearsay Rule, Evidence Rule 602, Evidence Rule 801(a)(b)(c), Evidence Rule 802, Evidence Rule 904(c): Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment, *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647. The Accused is possessed of all rights pursuant to the Constitution for the United States / United States of America, the Constitution of Washington state, common law and the rules applicable to civil procedure. The record shows that the Superior Court was deprived of subject matter jurisdiction when there was no competent witness to testify for the Plaintiff over the objections of the defendant (see page 5 in Verbatim Report of Proceedings, lines 25-30 and page 6, lines 1-2). Plaintiff is a National Lending Institution and is subject to Federal

Law. Defendant has asked for validation of the alleged debt pursuant to 15 USC § 1692 and all collection activities are to cease until the alleged creditor (Plaintiff) validates the debt (including court action) or the alleged creditor violates Federal Law (refer to Debt Validation letter submitted to King County Superior Court as a supporting document included with the Objection/Opposition documents, Sub Number 17 on May 25, 2011) (see page 5 in Verbatim Report of Proceedings, lines 25-30 and page 6, lines 1-2).

The plaintiff failed to provide any evidence that they represent anyone and failed to have a competent witness to testify to the facts or issues before the court, and the defendant was deprived of her due process rights to at least face the witness and to cross examine him in open court if only to determine the accuracy of his statements or even to determine if such a person exists (see page 5 in Verbatim Report of Proceedings, lines 19-20, 25-30 and page 6, lines 1-2). It would appear that anyone can make any statement, supply any counterfeit documents and present it to the court as legitimate business records, and without the defendant able to investigate or cross examine the declarant, for the court to accept them as true, even without the witness present, and over the objections of the defendant. It would appear at this rate that there is no reason to even have to go to court to challenge a claim if a witness isn't necessary. Only statements of

counsel appear necessary to win a case which is contrary to *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647.

The standard of review for both dismissals and summary judgments is *de novo*. Cite omitted. *De novo* review of 11-2-09592-4 SEA shows that defendant proved her case by entering facts on the record. The only testimony of record in support of Plaintiff is Plaintiff's declarant who was not present to testify, **WHICH DO NOT DISPUTE THE MATERIAL FACTS OF DEFENDANT'S CASE.**

Appellant's first point on Appeal

Although all competent jurists understand appeal of summary judgment is considered *de novo*, to an extent, the decision of the court below should be reviewed for abuse of discretion as the record shows the court below: (1) There were no material facts before the court as there was no competent witness testifying before the court, only a declaration of Paul Lavarta which was objected to and who admitted in his declaration that he did not have any first hand knowledge, and at that point his declaration became inadmissible hearsay. (2) Conducted a bench trial where the court contravened United States Supreme Court authority regarding the pleadings of pro se litigants *Haines v Kerner*, 404 U.S. 519-421 . (3) The court was deprived of subject matter jurisdiction for reason that the court's misapplication of the rules of civil procedure denied Defendant/Appellant of due process.

Appellant's second point on Appeal

De novo review of the record made in the court below shows Defendant, not Plaintiff, was entitled to summary judgment.

Appellant's third point on Appeal

Defendant had a motion to dismiss before the court (refer to Objection to Motion for Summary Judgment and Motion to Dismiss, submitted to King County Superior Court as part of the Objection/Opposition, Sub Number 17 on May 25, 2011) (see page 5 in Verbatim Report of Proceedings, lines 27-30, page 6, lines 18, 28-30) and the court failed to hear Defendant's motion to dismiss on June 17, 2011.

CONCLUSION

Judge Theresa B. Doyle should have denied the motions for summary judgment due to facts in dispute. The only testimony in court and on the record was the Defendants. The Plaintiff had no witness present in court therefore the Plaintiff had no facts before the court to base a summary judgment on and the court was deprived of subject matter jurisdiction. Also statements of counsel in briefs or arguments are not a basis for granting a summary judgment.

Ideals of substantial justice and fair play, as well as proper administration of the rules of court, justly require reversing the decision of the Superior Court.

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