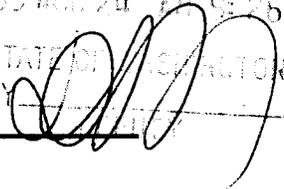


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY 

NO. 39209-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

DISCOVER BANK

RESPONDENT / PLAINTIFF

V.

JOHN S. BRIDGES AND JULIE A. BRIDGES

APPELLANT(S) / DEFENDANT(S)

Appeal from the Superior Court of Cowlitz County
The Honorable James Warme
Cowlitz County Superior Court Cause No. 08-2-02092-5

BRIEF OF APPELLANT

By
JOHN S. BRIDGES
Appellant / Defendant
pro-se

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RULES

Civil Rule 56(e)

A. INTRODUCTION

The Court realizes that this is an appeal of a summary judgment order. This Court is required to review the trial court's decision on summary judgment *de novo*, and must perform the same inquiry as the trial court. *Owen v. Burlington Northern and Santa Fe Railroad Co.*, 153 Wn.2d 780, 787, 108 P.3d 1220 (2005). The Court must examine the pleadings, affidavits, and depositions before the trial court and "take the position of the trial court and assume facts [and reasonable inferences] most favorable to the nonmoving party." *Id.*

B. APOLIGIES TO THE COURT AND PAYMENT OF SANCTIONS

Appellant apologizes to the court for the Appellant's error in the filing of this brief and thanks the court for not dismissing the case out of hand. Appellant is *pro-se* and failed to understand the scope of the research necessary to prepare this brief. Appellant has paid the \$200.00 sanction, which he feels is reasonable under the circumstances.

C. ASSIGNMENT OF ERROR AND ISSUES

PERTAINING THERETO:

1. Did the trial court err when it considered plaintiff's hearsay affidavit for its summary judgment ruling?
2. Did the trial court err when it granted the plaintiff's motion for summary judgment where the plaintiff failed to meet its burden to show that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law?

D. STATEMENT OF THE CASE.

1. **FACTS:**

On 09-27-2008 Defendants were served a summons and complaint for monies due from Discover bank. On 11-14-2008 defendants filed with the Court, Answer & Affirmative Defense, (CP 3), and Affidavits of JOHN S. BRIDGES and JULIE A. BRIDGES, defendants. (CP 4 & 5). On 11-21-08 Discover Bank filed an Affidavit of Ashlea Kiser. (CP 9), and on 11-23-08 a declaration of Robert Atkins and a declaration of Laurie K. Friedl. (CP 19).

A summary judgment hearing was held on 12-29-08 and Judge Stephen Warning Denied Discover Banks motion for summary judgment. (See court hearing minutes of 12-29-08). Discover Bank then filed an affidavit of Denise Brooks (CP 23) and a re-note for motion as if Judge Warning gave them a continuance, when in fact Judge Warning denied plaintiff's motion for summary judgment and did not give them a continuance. (CP 24). The re-note for motion hearing was heard by Judge James Warne and summary judgment was granted on 3-16-09. (CP 29)

E. ARGUMENT

1. The trial court erred when it allowed the plaintiffs hearsay affidavits, by non-parties to the case, to be admitted as evidence in the case.

The affidavit of Ashlea Kiser, (CP 9), the declaration of Robert Atkins, (CP 19), and the affidavit of Denise Brooks (CP 23) are all inadmissible as evidence, as they are not sworn testimony by a competent fact witness with first hand knowledge. CR56(e) All parties admit to being employees of DFS SERVICES LLC.

They do not work directly for Discover Bank who has brought this suit, therefore do not have first hand knowledge and can not testify.

Robert Atkins exhibits A & B (CP 19) are also inadmissible because they are not true certified copies nor sworn to and are not signed by the defendants. CR56(e) *Pacific Concrete Fed. Credit Union*, 62HAW. At 336-37, 614 P.2d at 938, *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32.

The declaration of Discover Bank's Attorney Laurie K. Friedl (CP 27) and his affidavit included with Robert Atkins declaration (CP 19), are inadmissible because a party cannot be both witness and counsel in the same cause. *United States v. Lovasco* (06/09/77) 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 *Gonzales v. Buist* (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463, *Holt v. United States*, (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2.

Since none of Discover Bank's evidence is admissible, the court erred in making its ruling based on said inadmissible evidence. Because the plaintiff's evidence is inadmissible the court ruled contrary to the only admissible evidence in the case.

1. The trial court erred when it granted the plaintiff's motion for summary judgment because there is a genuine issue of material fact.

Defendant's filings of 11-14-08 clearly deny any and all allegations brought forth in the Plaintiffs summons and complaint (CP 3,4 &5). Plaintiff should be required to prove its claims and to provide Defendants with all original documents relative to the account that is the subject of this lawsuit, or certified copies thereof, as required by the laws of the State of Washington.

Ernst v. Jesse L. Riddle, P.C., M.D.La.1997, 964 F.Supp. 213 First requisite element of debt under Fair Debt Collection Practices Act (FDCPA) is existence of obligation.

The well-established rule for granting summary judgment provides that:

“Summary Judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to the judgment as a matter of law. All facts submitted and all

reasonable inferences from them are to be considered in the light most favorable to the non-moving party. The motion should be granted only if from all the evidence, reasonable persons could reach but one conclusion'. *Elias vs City of Seattle* 142 Wash. 2d, 450, 13 P. 1050 (2000)

Defendants affidavit's demonstrates that there is a dispute of material fact. Therefore the court erred by granting summary judgment for Discover Bank.

F. CONCLUSION

There were affidavits submitted by both sides.

If the court chooses to agree with the Defendants that Plaintiff's affidavits are "hear say" and therefore of no value, then there would be no dispute of material facts, as ours were the only material facts provided to the court. If this is the case, then the court's error was in awarding contrary to the facts provided.

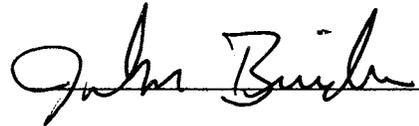
If the court chooses to allow Plaintiff's affidavits, then there is dispute of material facts and the court's error was to rule that there was no dispute.

G. PRAYER FOR RELIEF

Appellant prays for relief of the following issues,

1. Overturn the trial courts summary judgment order on 3-16-2009. (CP 29).
2. Overturn the trial court's order of 4-0-2009 denying defendants motion for reconsideration. (CP 41).

RESPECTFULLY submitted this 21st day of
August, 2009



JOHN S BRIDGES
Appellant / Defendant
pro-se

TILLER
COURT OF APPEALS
DIVISION II

CERTIFICATE OF SERVICE

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I, JOHN S. BRIDGES, certify under penalty of perjury under the laws of the State of Washington that I served the foregoing document by the method, on the date, and on each attorney(s) and/or person(s) identified below as indicated.

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Dated This 21st day of August, 2009



JOHN S. BRIDGES
APPELLANT / DEFENDANT
Pro-se