



TABLE OF CONTENTS

I. APPELLANT’S REPLY.....1

A. ST. MARTIN’S COMPLAINT MEETS THE LEGAL REQUIREMENT FOR NOTICE UNDER WASHINGTON STATE’S LIBERAL NOTICE PLEADING STANDARD.....1

    a. Respondent misinterprets the controlling law regarding what constitutes an insufficient pleading.....3

    b. The claims of Appellant gave fair notice to the Respondent and are therefore valid under CR 8.....6

    c. Because Claim 1 and Claim 2 are valid under CR 8, the Respondent’s arguments alleging Appellant’s violation of CR 15 are immaterial.....8

B. THE DISHONORED CHECK IS AN INDEPENDENT DEBT AS IT IS SUPPORTED BY VALID CONSIDERATION.....8

C. FEDERAL PREEMPTION CANNOT BE DENIED IN FAVOR OF STATE LAW.....11

D. RESPONDENT WAS NOT PREJUDICED BECAUSE SHE HAD FULL KNOWLEDGE OF THE CLAIMS AND LITIGATED ACCORDINGLY.....12

II. CONCLUSION.....13

## TABLE OF AUTHORITIES

### A. Table of Cases

#### Federal Cases

##### *Beech Aircraft Corp. v. Rainey*

488 U.S. 153 (1988).....12

#### Washington Cases

##### *Lewis v. Bell*

45 Wn.App. 192, 197, 724 P.2d 425 (1986).....2, 3

##### *RTC Transport, Inc. v. Walton*

72 Wn.App. 386, 391, 864 P.2d 969 (1994).....2, 5

##### *Dewey v. Tacoma Sch. Dist. No. 10*

95 Wn.App. 18, 974 P.2d 847 (1999).....3, 4

##### *Pacific Northwest Shooting Park Association v. the City of Sequim*

158 Wn.2d 342, 144 P. 3d 276 (2006).....3, 4

##### *Michael v. Mosquera-Lacy*

140 Wn.App. 139, 146, 165 P.3d 43 (2007).....5

##### *Sintra, Inc. v. City of Seattle*

119 Wn.2d 1, 11-12, 829 P.2d 765, (1992).....5

##### *Higgins v. Salewsky*

17 Wn.App. 207, 210, 562 P.2d 655 (1977).....5, 6

##### *Reichelt v. Johns-Manville Corp.*

107 Wn.2d 761, 766, 733 P.2d 530 (1987).....8

##### *Storti v. University of Washington*

330 P.3d 159, 306 Ed. Law Rep. 1088 (2014).....8, 9

##### *Trotzer v. Vig*

149 Wn.App. 594, 203 P.3d 1056 (2009).....9

<i>King v. Riveland</i>	
125 Wn.2d 500, 886 P.2d 160 (1994).....	9
<i>Dragt v. Dragt/DeTray, LLC</i>	
139 Wn.App. 560, 161 P.3d 473 (2007).....	9
<i>Guenther v. Fariss</i>	
66 Wn.App. 691, 833 P.2d 417 (1992).....	9
<i>Federal Nat. Mortg. Ass'n v. Carrington</i>	
60 Wn.2d 410, 374 P.2d 153 (1962).....	11

**B. Statutes and Treatises**

5 C. Wright & A. Miller, Federal Practice § 1215 (1990).....	2
5 C. Wright & A. Miller, Federal Practice § 1202 (1990).....	3
3A L. Orland & K. Tegland, Wash.Prac., Rules Practice CR 8.....	3
C.R. 8.....	2, 6, 7, 8, 13
C.R. 15.....	8
Calamari & Perillo, Contracts § 4.2, at 151 (6th ed. 2009).....	9
R.C.W. 62A.3-303(b).....	9
R.C.W. 62A.3-118(f).....	10, 14
C.R. 12(e).....	12
20 U.S.C. § 1091a.....	13

## I. APPELLANT'S REPLY

The Response submitted by the Respondent attempts to sway this court into believing four core fallacies: (i) St. Martins failed to affirmatively plead its case by neglecting to include "Perkins Loans" or "dishonored check" in the Complaint, (ii) the Washington Statute of Limitations must necessarily apply to the Perkins Loans because federal preemption wasn't brought up until "well after the arbitration decision had been rendered," Response, p. 12, (iii) the check should not be considered a negotiable instrument because no consideration was given, (iv) relief should not be granted to Appellant because it would prejudice Respondent.

In many respects, the facts asserted by Respondent are incorrect and her interpretation of the law is either logically flawed or not supported by case precedent. Moreover, with respect to the Perkins Loans, the Respondent conveniently glosses over the most critical factor as to why the trial court decided in her favor – Respondent's counsel made serious misstatements of the law.

### A. ST. MARTIN'S COMPLAINT MEETS THE LEGAL REQUIREMENT FOR NOTICE UNDER WASHINGTON STATE'S LIBERAL NOTICE PLEADING STANDARD.

Respondent attempts to recalibrate the requirements of CR 8 for the purpose of sustaining her judgment.

As she correctly points out, "Washington is a notice pleading state and merely requires a simple and concise statement of the claim and the relief sought." Response, p. 11 (citing CR 8(a)). Under Washington's liberal rules of procedure, pleadings are only intended to provide notice to the court and the opponent of the general nature of the claim asserted (emphasis added). *Lewis v. Bell*, 45 Wn.App. 192, 197, 724 P.2d 425 (1986). Under this standard, many Washington complaints list nothing more than the cause of action (e.g. breach of contract, unjust enrichment). It is well-understood that the burden of filling in the details and other minutiae rests squarely with the discovery process. 5 C. Wright & A. Miller, Federal Practice § 1215 (1990). Indeed, in the present matter, the Respondent received complete documentation of both the Perkins loans and the dishonored check during discovery. That is how she was able to reference them in her subsequent motion for summary judgment. CP 149, ¶ 3.3; 150-152, ¶ 3.5-3.12; 158-160.

This rule - which is nearly identical to the federal rule standard - was designed to avoid a party losing a right due to a defective pleading. *RTC Transport, Inc. v. Walton*, 72 Wn.App. 386, 391, 864 P.2d 969 (1994). In fact, "Under the federal rules it is very difficult for counsel to draft a pleading so badly as to lose the rights of his clients. It has even been said that 'a sixteen year old boy could plead' under these rules."

(Footnotes omitted.) 5 C. Wright & A. Miller, Federal Practice § 1202, at 75 (1990) (quoting Proceedings, Cleveland Institute on the Federal Rules, at 220 (1938)). This observation applies equally to Washington pleading rules due to the substantial similarity. See 3A L. Orland & K. Tegland, Wash.Prac., Rules Practice CR 8, Comments--Robert Meisenholder (4th ed. 1992).

**a. Respondent misinterprets the controlling law regarding what constitutes an insufficient pleading.**

While it is true that “inexpert pleadings may survive a summary judgment motion, [but] insufficient pleadings cannot,” Response, p. 11 (quoting *Lewis v. Bell*, 45 Wn.App. at 197), the standard for a pleading to be classified as insufficient is exceedingly high. To this end, Respondent relies on three cases to support her assertion that the pleadings in the present matter rise to the level of being insufficient: *Lewis v. Bell*; *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn.App. 18, 974 P.2d 847 (1999); *Pacific Northwest Shooting Park Association v. the City of Sequim*, 158 Wn.2d 342, 144 P. 3d 276 (2006). Appellant will now analyze the context for each of these cases.

In *Lewis*, only the tort of outrage was pled. 45 Wn.App at 197. All affidavits and memoranda submitted addressed solely that cause of action.

*Id.* Accordingly, the appellate court was right to not consider a separate and distinct tort of assault on appeal. *Id.*

In *Pacific*, the “PNSPA did not introduce its claim of *interference with its business expectancies with vendors and the general public* until it responded to the city’s motion for summary judgment.” 158 Wn.2d at 352. This new claim was not introduced until responding to the city’s summary judgment motion. *Id.* The sole original claim was for tortious interference by the city chief with the contractual relationship of PNSPA and the city. *Id.* at 347.

In *Dewey*, Dewey raised two additional claims in response to the School District’s Motion for Summary Judgment - retaliatory discharge and wrongful discharge. 95 Wn.App. at 26. These claims were separate and distinct from the seven other claims in Dewey’s complaint: (1) breach of employment contract; (2) wrongful discharge in violation of RCW 42.40 and RCW 42.41 (the "whistleblower" statutes); (3) misrepresentation of Dewey's job responsibilities; (4) interference with a business relationship; (5) civil conspiracy; (6) age discrimination; and (7) intentional infliction of emotional distress. *Id.* at 22.

In each of these cases, the requisite component for finding that the pleadings were insufficient is a complete absence of the claim(s) in the original pleadings. The claims disallowed were separate and distinct from

any of the claims in the associated complaints. As a consequence, the opposing party and the court were not given proper notice.

Despite the Respondent's attempts to align these cases with the present matter, the pleadings of Appellant are distinct in that notice of the disputed claims was provided. While the pleadings may be inexpert, they are far from insufficient.

Of great concern to Appellant, Respondent neglected to bring to this court's attention the numerous cases wherein courts have upheld inexpert pleadings. *Michael v. Mosquera-Lacy*, 140 Wn.App. 139, 146, 165 P.3d 43 (2007), *reversed on different grounds* (Court finds that the Plaintiff's pleading of CPA claim was sufficiently pled thereby giving Defendant fair notice, despite the fact that the claim did not specifically allege any injury to property as required by the CPA); *RTC Transport, Inc. v. Walton*, 72 Wn.App. at 391 (Court finds that "fair notice" was given by Appellant on the claim of cargo loss regardless of the fact that Appellant did not aver capacity when pleading the claim); *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 11-12, 829 P.2d 765, (1992) (Court finds that Plaintiff sufficiently pled a 42 U.S.C. § 1983 claim when all that was claimed was "damages...for deprivation of its substantive due process rights and an unconstitutional taking", *Id* at 10); *Higgins v. Salewsky*, 17 Wn.App. 207, 210, 562 P.2d 655 (1977) (Court found that Plaintiff's

complaint was sufficient pled even though it did not specifically allege that city had not adopted city legislation implementing a civil service system for its fire department). The list from Appellant's research is voluminous. However, in the spirit of brevity, Appellant will continue with its analysis.

**b. The claims of Appellant gave fair notice to the Respondent and are therefore valid under CR 8.**

For the sake of continuity, Appellant will address the claims with the same moniker that Respondent applied. Claim 1 will apply to the Perkins Loans, and Claim 2 will apply to the dishonored check.

With respect to Claim 1, it is a cause of action for a collection of money. CP p. 7, l. 1-4. This debt stemmed from the Respondent's time as a student at St. Martins University. Respondent alleges that Appellant's pleading is insufficient because it does not state that it originated from a Perkins Loan. This is erroneous. For the sake of argument, the debt could have originated from any another instrument or mechanism – for example, a line of credit. Regardless, the cause of action would have remained the same.

With respect to Claim 2, the same logic holds true. The claim is a cause of action for a collection of money. *Id.*, l. 5-8. This debt originated on January 1, 2003, but a new debt was created by the writing of a

negotiable instrument on November 18, 2008 – the validity of which will be discussed in a proceeding section. These dates are accurately reflected in the Complaint. *Id.* Again, regardless of the basis for the underlying debt – be it a check, line of credit, loan, or otherwise – the cause of action remains same.

Respondent merely alleges that (i) “Saint Martin’s attempted to change their Claim No. 1 from ‘indebted...for educational services’ to ‘Perkins Loan’, and (ii) Saint Martin’s attempted to change their Claim No. 2 from ‘indebted...for educational services’ to ‘dishonored check’.” Response p. 15. However, she has provided no case law to support the degree of specificity she asserts is required in Appellant’s original causes of action. In contrast, Appellant has provided numerous examples supporting its interpretation of CR 8.

The plain and simple truth is that both Claim 1 and Claim 2 have existed since the filing of the Complaint in this matter. If either or both of these had been missing, then the Respondent’s argument would have merit as she would not have been given proper notice. However, this is not the case. Respondent’s assertions that omitting “Perkins Loan” or “dishonored check”, Response p. 9, somehow changes the nature of the claim is misconstrued and operates in stark contrast to the liberal pleading standard

afforded by CR 8 and controlling precedent. Accordingly, Respondent's arguments regarding the insufficiency of Claim 1 and Claim 2 must fail.

**c. Because Claim 1 and Claim 2 are valid under CR 8, the Respondent's arguments alleging Appellant's violation of CR 15 are immaterial.**

The Respondent argues that Appellant was required to seek leave from the trial court to amend its Complaint. Response, p. 12, 14-16. However, based on the proper interpretation of CR 8, there was no requirement for the Appellant to do so. Accordingly, the Respondent's arguments alleging CR 15 violations are wholly irrelevant.

However, it should be noted that when issues that are not raised by the pleadings are tried by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the pleadings. *Reichelt v. Johns-Manville Corp.*, 107 Wn.2d 761, 766, 733 P.2d 530 (1987). Hypothetically, even if the pleadings were deficient, the matters were fully tried in the summary judgment motion, CP 146-171, and corresponding response and reply. CP 193-195 and 201-216, respectively.

**B. THE DISHONORED CHECK IS A NEW DEBT AS IT IS SUPPORTED BY VALID CONSIDERATION.**

Under Washington law, consideration is defined as any act, forbearance, creation, modification, or destruction of a legal relationship or return promise given in exchange therefor. *Storti v. University of*

*Washington*, 330 P.3d 159, 306 Ed. Law Rep. 1088 (2014); *Trotzer v. Vig*, 149 Wn.App. 594, 203 P.3d 1056 (2009); *King v. Riveland*, 125 Wn.2d 500, 886 P.2d 160 (1994). Any act or forbearance which has been bargained-for is sufficient consideration. *Dragt v. Dragt/DeTray, LLC*, 139 Wn.App. 560, 161 P.3d 473 (2007). Washington courts have long focused on the sufficiency of the consideration, not the adequacy. *Guenther v. Fariss*, 66 Wn.App. 691, 833 P.2d 417 (1992). In making the determination as to whether sufficient consideration exists, courts look to three elements: (i) the promisee must suffer legal detriment; (ii) the detriment must induce the promisee; (iii) the promise must induce the detriment. Calamari & Perillo, *Contracts* § 4.2, at 151 (6th ed. 2009).

Respondent is correct that the reliance by Appellant of the negotiable instrument statute of limitation on the dishonored check must fail unless said check can be connected to some valid form of consideration. Response, p. 20 (citing R.C.W. 62A.3-303(b)). However, consideration was in-fact provided in exchange for the check. By the Respondent's own admission, it is undisputed that she wrote this check to obtain a copy of her college transcript. CP 149-150, ¶ 3.4. Indeed, the school would not provide the transcript without the Respondent's promise to pay the outstanding amount.

In applying these facts to Washington law, it is clear that this was sufficient consideration to support the check as an independent negotiable instrument under R.C.W. 62A, et. seq. The Respondent sought her transcript, to which the Appellant refused. The Respondent came to an agreement with the Appellant wherein she would write a check of \$622.85 to cover the outstanding amount owed – the bargained-for exchange. CP 157. As a result of Appellant receiving the check, it provided the transcript to Respondent – the act. As an aside, the amount sought by Appellant is \$642.85, the difference of which is attributed to a \$20.00 NSF fee.

With respect to the sufficiency questions posed by Washington courts, Appellant suffered a legal detriment by providing the transcript as it was an act which Appellant was not legally obligated to do. The Respondent provided the check to the Appellant to induce the detriment. And the check did in-fact induce Appellant into providing the Respondent with her transcript.

For the aforementioned reasons, sufficient consideration exists to establish the check as an independent negotiable instrument. Accordingly, it is susceptible to the six-year statute of limitation found in R.C.W. 62A.3-118(f). This means the due date for filing any cause of action would be November 18, 2014. The Complaint in this matter was filed on January 3, 2014. CP p. 6-7. Since Appellant's claims comport with CR 8, and

because there are no special pleading requirements for a negotiable instrument under CR 9, there can be no statute of limitations bar on Claim 2.

C. FEDERAL PREEMPTION CANNOT BE DENIED IN FAVOR OF STATE LAW.

It is a bogus theory that Appellant somehow owed a duty to Respondent to assert federal preemption after receiving the Respondent's answer and affirmative defenses, regardless of the specificity. Response, p. 12 and 15. It is also incorrect that federal preemption is waived if not asserted in the Complaint. Response, p. 16-19. Federal preemption does not have to be pled. As mentioned in Appellant's brief, the court is required to take judicial notice of such matters. *Federal Nat. Mortg. Ass'n v. Carrington*, 60 Wn. 2d 410, 374 P.2d 153 (1962). The only reason the court didn't was because of Respondent's counsel made erroneous misstatements of law. Appellant's Brief, p. 5-13. Further, Appellant was under no duty to respond to an affirmative defense until an appropriate motion was brought before the court. Respondent only did this in her Motion for Summary Judgment, CP 150-152, and Appellant responded appropriately by stating the controlling statute. CP 193-195.

D. RESPONDENT WAS NOT PREJUDICED BECAUSE SHE HAD FULL KNOWLEDGE OF THE CLAIMS AND LITIGATED ACCORDINGLY.

Respondent attempts to characterize the Appellant's position as causing prejudice to her. Response, p. 13. Respondent asserts that this “case has never been arbitrated based on ‘Perkins Loans,’ ‘dishonored check,’ or ‘federal preemption,’” *Id*. She further infers that Appellant only attempted to argue these after she filed her Motion for Summary Judgment. *Id* at 14. These statements are false. Moreover, they are hearsay and completely unsupported by the record before this court. In reality, these issues were testified to at great length in the arbitration by Gus Carlson, the president of Financial Assistance, Inc. – the collection agency acting on behalf of St. Martin’s University. Appellant recognizes that its aforementioned assertion also constitutes hearsay, but it is proper in that it is being submitted for the purpose of rebutting Respondent’s hearsay. For a precis of the doctrine of “fighting fire with fire” which permits inadmissible evidence to refute an opponent’s similarly inadmissible evidence *see Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, n.2 (1988).

If the Respondent desired more clarity on the claims made, she could have filed a CR 12(c) motion for a more definitive statement, but she did not.

While there is no direct evidence of this testimony, this court need only look to the subsequent motion for summary judgment wherein the Respondent “anticipates” the very arguments around these issues. CP 150-153; 158-160; 166-171. Logic dictates that if Appellant had not made these arguments during arbitration, then Respondent would have no reason to engage in such a thorough analysis on mere "anticipation".

## **II. CONCLUSION**

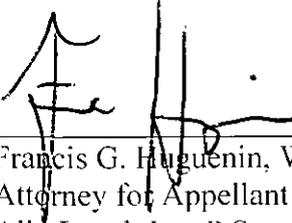
In filing her summary judgment motion, Respondent focused primarily on the inapplicability of the HEA to Federal Perkins Loans. CP 150-153. However, in her Response, she is completely silent on this matter. Now, she attempts to shift the focus instead to the sufficiency of Appellant's claims in the Complaint. However, in doing so, she makes a negligent attempt to reclassify precedent to suit her needs. In the process, she neglected to provide the court with pertinent case law.

The facts are simple: (i) C.R. 8 only requires that the pleadings give fair notice of the general nature of a claim, (ii) both claims in this case were properly asserted in Appellant's Complaint, (iii) the discovery process provided Respondent with details as to the nature of the underlying debt, (iv) pursuant to 20 U.S.C. § 1091a, no statute of limitation applies to Claim 1, and (v) because there was sufficient

consideration, Claim 2 is a valid negotiable instrument subject to its own six-year statute of limitation. R.C.W. 62A.3-118(f).

For the aforementioned reasons, Appellant respectfully requests that this Court reverse the trial court's (i) decision granting Respondent's summary judgment motion, and (ii) order awarding Respondent's attorney's fees. Further, the Appellant respectfully requests that its attorney's fees be awarded in having to bring this appeal to correct the errors of Respondent's counsel.

Respectfully submitted this 2<sup>nd</sup> day of May, 2016



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COURT OF APPEALS  
DIVISION II

2016 MAY -3 AM 11:23

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

No. 48064-6-II

COURT OF APPEALS, DIVISION II,  
OF THE STATE OF WASHINGTON

ST. MARTIN'S UNIVERSITY,

Petitioner,

vs.

CARMEN FLORES,

Respondent.

**DECLARATION OF  
TRANSMITTAL**

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**Declaration of Transmittal**

Under the penalty of perjury under the laws of the State of  
Washington, I affirm the following to be true:

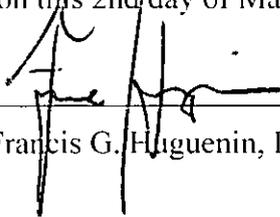
I transmitted the revised original and copy of the Appellant's Reply  
to the Washington State Court of Appeals, Division II, by first class mail,  
postage prepaid at:

Washington State Court of Appeals  
Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402

Additionally, I transmitted a true and correct copy of this  
document, together with this Declaration of Transmittal, to Respondent's

attorney of record, Sans Gilmore. Said documents were transmitted to Mr. Gilmore's email address at [sansgilmore@gmail.com](mailto:sansgilmore@gmail.com), pursuant to a pre-existing email service agreement.

Signed at Seattle, Washington on this 2nd day of May, 2016



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Francis G. Huguenin, Declarant