

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

WELLS FARGO BANK, N.A.,

Plaintiff/Respondent,

v.

DUMA VIDEO, INC., a  
Washington corporation; SULTAN  
WEATHERSPOON and JANE  
DOE WEATHERSPOON, husband  
and wife and their marital  
community,

Defendant/Appellant.

NO. 49531-7-II

AMENDED  
BRIEF OF RESPONDENT

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WELLS FARGO BANK, N.A.,  
Plaintiff/Respondent,

v.

DUMA VIDEO, INC., a Washington corporation; SULTAN  
WEATHERSPOON and JANE DOE WEATHERSPOON, husband and  
wife and their marital community,  
Defendants/Appellants.

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**BRIEF OF RESPONDENT**

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Douglas W. Harris, WSBA #11479  
Attorney for Respondent  
11120 N.E. 2nd Street, Suite 220  
Bellevue, WA 98004  
(425) 456-1832

## TABLE OF CONTENTS

Table of Authorities	3
I. Statement of Case	4
II. Argument	5
III. Conclusion	9
IX. Appendix	10

## TABLE OF AUTHORITIES

### Table of Cases

1. <i>Building Industry Association of Washington v. McCarthy</i> , 152 Wn. App. 720, 742-743 (2009)	7
2. <i>Janda v. Brier Realty</i> , 97 Wn. App. 45, 55 (1999)	8
3. <i>MRC Receivables Corp. v. Zion</i> , 152 Wn. App. 625, 629 (2009)	7
4. <i>Michak v. Transnation Title Insurance Co.</i> , 148 Wn.2d 788, 795 (2003)	5
5. <i>Sanders v. Woods</i> , 121 Wn. App. 593, 600 (2004)	5
6. <i>Schaaf v. Highfield</i> , 127 Wn.2d, 17, 21 (1995)	5
7. <i>State ex. Rel. Carroll v. Junker</i> , 79 Wn.2d 12, 26 (1971)	7
8. <i>Young v. Key Pharmaceuticals, Inc.</i> , 112 Wn.2d 216, 225 (1989)	5

### Table of Statutes

A. <u>CR 56</u>	
CR56(c)	5
CR56(f)	7

## **I. STATEMENT OF THE CASE**

This is a collection case seeking recovery of monies due for charges made on business line of credit. Defendants entered into a Business Line of Credit Agreement (CP 10) (“Agreement”) with Plaintiff. Defendant Sultan Weatherspoon personally guaranteed the obligation. The existence and the enforceability of the Agreement is not in dispute. Defendants defaulted under the terms of the Agreement.

On November 2, 2015 Plaintiff filed suit to collect the amounts due under the Agreement. The Summons and Complaint were served on the Defendants on October 19, 2015. Defendants filed a response to the Complaint (CP 3) alleging a settlement agreement had been entered into resolving the claim set forth in the Complaint (CP 5).

On April 8, 2016 Plaintiff filed a Motion for Summary Judgment (CP 12). Defendants filed a Response to the motion (CP 17) supported by the declaration of Sultan Weatherspoon (CP 16). No motion for a continuance under CR 56 (f) was filed. Neither the Response nor the Declaration contained a request for a continuance. The Motion for Summary Judgment was originally noted to be heard on May 20, 2016. The motion was continued by agreement of the parties and was not heard until July 22, 2015 at which time the motion was granted and judgment was entered. No discovery was ever conducted.

## II. ARGUMENT

### A. Standard for Summary Judgment

Under CR 56(c) the initial burden is on Plaintiffs to prove that no issue is genuinely in dispute. See, *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Thereafter the burden shifts to the Defendants to establish that an issue exists requiring trial. *Schaaf v. Highfield*, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). To defeat summary judgment the evidence must set forth specific, detailed, and disputed facts; speculation, argumentative assertions, opinions, and conclusory statements will not suffice. *Sanders v. Woods*, 121 Wn. App. 593, 600, 89 P.3d 312 (2004). For purposes of a summary judgment proceeding, a “fact” is an event, an occurrence, or something that exists in reality. *Michak v. Transnation Title Insurance Co.*, 148 Wn.2d 788, 795, 64 P.3d 22 (2003).

The Declaration of Amount Due and supporting exhibits (CP 10) presented a prima facie case for the entry of judgment. Defendants’ Response (CP 17) is supported by the Declaration of Sultan Weatherspoon (CP 16). In his declaration Mr. Weatherspoon makes various unsupported allegations regarding an alleged settlement agreement. Defendant alleged that Plaintiff agreed to settle the claim under the terms of the letter attached as Exhibit B to his declaration. The letter is hand dated and signed only by the Defendant. The declaration provided no evidence that

Plaintiff consented or agreed to the terms set forth in the letter. As set forth in the Declaration in Reply (CP 24), Plaintiff did not agree to those terms. The declaration also alleges that Defendant made two payments in compliance with the terms set forth in the letter but provided no evidence that those payments were in fact made. Evidence of any payments made would be in the control of Defendants. None was produced.

Plaintiff in fact did agree to payment arrangements on the full balance of the debt in May 2015. A copy of that letter is attached as Exhibit A to the Declaration in Reply (CP 24). Plaintiff defaulted on the first payment which was due on May 8, 2015. As set forth in Mr. Weatherspoon's declaration, on July 2, 2015 Wells Fargo exercised its right of offset to Mr. Weatherspoon's account in the amount of \$3,492.84. A copy of the setoff notice is attached as Exhibit B to the Declaration in Reply (CP 24). The amount of the offset is reflected in the billing statement attached as Exhibit B to the Declaration of Amount Due (CP 10) filed in support of Plaintiff's motion. The Brief of Appellant alleges that Wells Fargo failed to subtract the offset amount from the amount awarded in the Judgment (CP 29) which is not accurate.

**B. It Was Not An Abuse of Discretion to Deny the Request for Continuance**

Appellant asserts that it was an abuse of discretion for the trial court to deny an oral request for a continuance made at the hearing on summary judgment. A court's denial of a CR 56(f) motion is reviewed for abuse of discretion. *MRC Receivables Corp. v. Zion*, 152 Wn. App. 625, 629 (2009). That case also involved discussion of additional discovery at oral argument but no separate motion to continue was filed. The court found no abuse of discretion.

“Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *State ex. Rel. Carroll v. Junker*, 79 Wn.2d 12, 26 (1971).

*Building Industry Association of Washington v. McCarthy*, 152 Wn. App. 720, 742-743 (2009) states that the trial court may deny a motion for a continuance when (1) the requesting party does not have a good reason for the delay in obtaining the evidence, (2) the requesting party does not indicate what evidence would be established by further discovery, or (3) the new evidence would not raise a genuine issue of fact. In this case the trial court would have grounds under any or all three conditions.

First, there is no good reason for the delay in obtaining the evidence. Defendants were served with the Complaint on October 19, 2015. The Motion for Summary Judgment was not filed until April 8, 2016. The motion was subsequently continued until July 22, 2016 leaving approximately eight months for the conducting of discovery. None was conducted. Failure to offer good reason for the delay in obtaining evidence is grounds for denial of the motion *Janda v. Brier Realty*, 97 Wn. App. 45, 55 (1999).

Second, Appellants assert that additional discovery of telephone logs and the deposition of a Wells Fargo representative would have established that a settlement agreement had been reached. The clear and unambiguous statement in the Declaration in Reply (CP) states unequivocally that no settlement agreement had been agreed to or entered into with Defendants. Further, The Declaration of Amount Due (CP 10) contains a record of all payments made on the account and do not reflect the payments Defendant alleges he made under his alleged settlement agreement. Discovery would have not resulted in establishing the settlement agreement or payments allegedly made. Third, for the same reasons just stated the desired evidence would not raise a genuine issue of fact. It was well within the trial court's discretion to deny the oral request for continuance.

### III. CONCLUSION

Defendants do not deny incurring the charges under the Agreement. No genuine issue of material fact has been raised, only unsupported allegations of a settlement agreement. There is no admissible evidence that a settlement agreement was reached under the terms alleged by Defendants. There is no evidence that Plaintiff agreed to accept less than the full amount of the claim. The trial court did not abuse its discretion in denying the request for continuance. Plaintiff was entitled to judgment as a matter of law.

RESPECTFULLY SUBMITTED this 16th day of February, 2017.

s/Douglas W. Harris

Douglas W. Harris, WSBA #11479  
Attorney for Respondent

Douglas W. Harris, Inc., P.S.  
11120 N.E. 2nd Street, Suite 220  
Bellevue, WA 98004  
Telephone: (425) 456-1832  
Fax: (425) 456-1835  
E-mail: Doug@dwharrislaw.com

#### IV. APPENDIX

##### CR 56

CR56(c)	11
CR56(f)	11

Rule 56. Summary Judgment [Effective until April 28, 2015].

## Washington Court Rules

### Washington Superior Court Civil Rules

#### Chapter 7. Judgment

*As amended through September 1, 2016*

#### **Rule 56. Summary Judgment [Effective until April 28, 2015]**

- (a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.
- (b) **For Defending Party.** A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.
- (c) **Motion and Proceedings.** The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 28 calendar days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law or other documentation not later than 11 calendar days before the hearing. The moving party may file and serve any rebuttal documents not later than 5 calendar days prior to the hearing. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it shall be filed and served not later than the next day nearer the hearing which is neither a Saturday, Sunday, or legal holiday. Summary judgment motions shall be heard more than 14 calendar days before the date set for trial unless leave of court is granted to allow otherwise. Confirmation of the hearing may be required by local rules. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.
- (d) **Case Not Fully Adjudicated on Motion.** If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted.

It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

- (e) **Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.  
The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.
- (f) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.
- (g) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.
- (h) **Form of Order.** The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered.

## CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of BRIEF OF RESPONDENT to be served on the following by mailing a full, true and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney shown below, the last-known office address of the attorney, and deposited with the United States Postal Service at Bellevue, Washington, on the date set forth below.

Jesse D. Conway  
The Law Office of Jesse D. Conway, PLLC  
1014 Franklin Street, Suite 106  
Vancouver, WA 98660

DATED this 16th day of February, 2017.

s/Douglas W. Harris  
Douglas W. Harris, WSBA #11479  
Attorney for Respondent

Douglas W. Harris, Inc., P.S.  
11120 N.E. 2nd Street, Suite 220  
Bellevue, WA 98004  
Telephone: (425) 456-1832  
Fax: (425) 456-1835  
E-mail: Doug@dwharrislaw.com

**DOUGLAS W HARRIS INC P S**

**February 16, 2017 - 2:54 PM**

**Transmittal Letter**

Document Uploaded: 2-495317-Amended Respondent's Brief.pdf

Case Name: Wells Fargo Bank, N.A. v. Duma Video, Inc.

Court of Appeals Case Number: 49531-7

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Amended Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Chalise Baughan - Email: [chalise@dwharrislaw.com](mailto:chalise@dwharrislaw.com)

A copy of this document has been emailed to the following addresses:

[doug@dwharrislaw.com](mailto:doug@dwharrislaw.com)

[jesse@conwaylaw.net](mailto:jesse@conwaylaw.net)