

**COURT OF APPEALS, DIVISION 2
OF THE STATE OF WASHINGTON**

NO. 49586-4-II

**JOHN WALKER AND,
JENNIFER WALKER, husband and wife**

Plaintiffs/Respondents.

vs.

**JAMES CIACIUCH AND,
KIMBERLY CIACIUCH, husband and wife,
AND OLYMPIC PENINSULA
DEVELOPMENT CO., LLC, a Washington
State Limited Liability Company,
Defendants/Petitioners.**

BRIEF OF PETITIONERS

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37 Wn.App. 602, 608, 682 P.2d 960 (1984).
3. Scott v. Pacific West Mountain Resort, 119 Wn.2d 484, 502,..... Pages 3, 4
834 P.2d 6 (1992).

Constitutional Provisions

None

Statutes

None

Regulations and Rules

3 **Other Authorities**

4 None

5
6 **I. Assignments of error**

- 7 1. The trial court erred in granting the Plaintiff's summary judgment motion on
8 September 23, 2016, because there was a genuine issue of material fact as to how
9 much money was owed to the Plaintiff. That matter ought to have been resolved
10 at the trial level, and summary judgment was not appropriately granted to the
11 Plaintiff. Sections C, F and L on the Order Granting Plaintiffs' Motion for
12 Summary Judgment.
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14

15
16 **Issues Pertaining to Assignments of Error**

17 Was the granting of the Plaintiff's summary Judgment Motion on September 26,
18 2016, for the original amount of the debt less the proceeds from the selling of the Fey
19 Road, properly granted by the trial court when there was a genuine dispute as to a
20 material fact in the case?
21

22 **II. Statement of the Case**

23 Mr. John Walker loaned Mr. James Ciaciuch \$75,000 in exchange for an investment
24 opportunity on property located on Fey Road in Clallam County, Washington, City of
25 Port Angeles. The parties agreed that \$125,000 would be paid back to the plaintiffs.
26 That money would come either from the selling of the property at 4245 South Fey Road
27 or from proceeds the defendant would receive from legal disputes in California. That
28

1 property was ultimately foreclosed on, and no money was received from the litigation in
2 California. The parties renegotiated the loan amount so that the defendant would only
3 have to pay back \$80,000. Basically, the plaintiff would forgive any balance over
4 \$80,000. Plaintiff's attorney, Mr. Lane Wolfley, foreclosed on the Fay Road property,
5 and incorrectly gave the proceeds of \$14,939.45 that was supposed to go to the Plaintiff
6 to another party named Singhose. This money should have been deducted from what the
7 Mr. Ciaciuch owed the Mr. Walker.
8

9
10 Ultimately, Mr. Walker filed a motion for summary judgment against the defendants.
11 The motion for summary judgment was granted on September 23, 2016, by Clallam
12 County Superior Court, awarding the plaintiffs \$118,547.22. This figure was arrived at
13 by taking the original amount of the debt (\$125,000) and deducting the \$14,939.45 in
14 proceeds from the sale of the Fay Road property and adding costs of \$8,487.67.
15

16 There is a genuine issue of material fact in this case, so summary judgment was not
17 appropriately granted.
18

19 **III. Argument**

20
21 In ruling on a Motion for Summary Judgment, the court's function is to determine
22 whether issues of fact exist, not to resolve factual issues on their merits. Balise v.
23 Underwood, 62 Wn.2d 195, 199, 381 P.2d 966 (1963). The court must consider all of the
24 material evidence and inferences from the evidence in the light most favorable to the
25 nonmoving party and, when so considered, if reasonable persons might reach different
26 conclusions, the court must deny the motion. Scott v. Pacific West Mountain Resort, 119
27 Wn.2d 484, 502, 834 P.2d 6 (1992).
28

1 Even though evidentiary facts may not be disputed, if different inferences or
2 conclusions may be drawn from them, summary judgment is not appropriate. Money
3 Savers Pharmacy, Inc. v. Kofler Stores (Western), Ltd., 37 Wn.App. 602, 608, 682 P.2d
4 960 (1984).
5

6 **a. There are Genuine Issues of Material Fact**

7
8 In this case, Mr. Ciaciuch originally borrowed \$75,000 from the Mr. Walker, and
9 it was agreed to between the parties that the Mr. Ciaciuch would pay Mr. Walker back
10 \$125,000. The proceeds would come from either the selling of property located at 4245
11 South Fay Road in Port Angeles, Washington, Clallam County, or from the proceeds the
12 Mr. Ciaciuch would receive from litigation out of the State of California.
13

14 The Fay Road property was ultimately foreclosed upon and no proceeds were
15 received from the litigation in California. As a result, the parties renegotiated the loan.
16 The new agreement forgave any balance over \$80,000. The effect of this agreement was
17 to reduce the debt owed by the Mr. Ciaciuch from \$125,000 to \$80,000. The terms of the
18 payback of the \$80,000 debt are unclear.
19

20 The attorney for the Mr. Walker, Mr. Lane Wolfley, foreclosed on the Fay Road
21 property and incorrectly gave the proceeds of \$14,939.45 to another party by the last
22 name of Singhose. The proceeds were supposed to go directly to Mr. Walker. Therefore,
23 the debt of \$80,000 should have been reduced by the proceed amount of \$14,939.45. The
24 trial court ignored the fact that the original \$125,000 debt had been renegotiated and
25 subtracted the proceeds from the Fay Road property from the *original* loan amount and
26 granted an award to Mr. Walker for \$118,547.22.
27
28

1 The trial court erred in its ruling. Because there are genuine issues of material
2 fact, summary judgment was not appropriate. Scott v. Pacific West Mountain Resort,
3 119 Wn.2d 484, 502, 834 P.2d 6 (1992) held that the court should review all of the
4 evidence in the light most favorable to the nonmoving party and, when so considered, if
5 reasonable persons might reach different conclusions, the court must deny the motion.
6

7 In hearing a Motion for Summary Judgment, the court's function is to determine
8 whether issues of fact exist, not to resolve factual issues on their merits. Balise v.
9 Underwood, 62 Wn.2d 195, 199, 381 P.2d 966 (1963). The court failed to do this. It
10 ignored the renegotiated amount of the original debt and subtracted the proceeds from the
11 sale of the Fay Road property in coming up with the \$118,547.22 judgment amount.
12 Because there is a factual dispute, summary judgment was not appropriate.
13

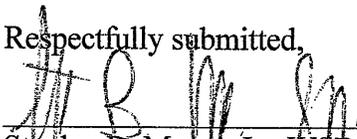
14
15 Even if all of the facts stated by the Defendant were not in dispute, if different
16 inferences and conclusions could be drawn from those facts, summary judgment is not
17 warranted. Money Savers Pharmacy, Inc. v. Kofler Stores (Western), Ltd., 37 Wn.App.
18 602, 608, 682 P.2d 960 (1984).
19

20 IV. Conclusion

21 Because summary judgment was not appropriate by the trial court, the Appellants
22 are asking for the trial court's ruling be reversed and that this matter be sent back to the
23 trial court for further litigation consistent with this court's ruling.
24

25 Respectfully submitted this 26th day of June 2017.

26
27 Respectfully submitted,

28 
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