

FILED
Court of Appeals
Division II
State of Washington
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No. 50393-0-II

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

RUTH BENNETT,

Defendant-Appellant,

v.

FINANCIAL ASSISTANCE, INC.,

Plaintiff-Appellee.

**ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT
(Hon. James J. Dixon)**

APPELLANT'S OPENING BRIEF

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I. JURISDICTION STATEMENT

1. The Court of Appeals Division II, pursuant to the Rules of Appeal RAP 4.1(a)(2), is the established Appellate Court; pursuant to RAP 2.2 defines the order of the Superior Court as appealable, and RAP 6.1 is the Defendant's right of Appeal from the Thurston County Superior Court of Washington Order of May 12, 2017. *See* CP 102.

II. IDENTITY OF PARTIES

2. Appellant-Defendant is a resident of Washington State. Appellee-Plaintiff is an unlicensed debt buyer operating in Washington state, and purports to be licensed in 50 states to collect or buy debt, commonly known as Financial Assistance Inc.

III. ASSIGNMENT OF ERRORS

3. The Thurston County Superior Court Judge erred in performing his role in the judicial process on Summary Judgment. The role of the trial court on a motion for summary judgment is well established as a matter of law. The Judge must view the facts and all reasonable inferences that may be drawn from them in a light most favorable to the non-movant and may only grant summary judgment if the Judge finds that there is no dispute as to any material facts and the movant is entitled to summary judgment as a matter of law. The Superior Court Judge erred in performing that task.

4. The Judge of the Superior Court erred as the Plaintiff failed to properly note its Motion for summary judgment insofar as the Plaintiff, pursuant to court rules, did not note the motion for summary judgment on a 28-day calendar. CR 56(c) and CR 6(e).

5. Plaintiff who is a debt buyer failed to follow all legal requirements under Washington State law to purchase and be assigned or collect a debt. Appellee as of today's date

is still in violation of RCW 19.16.190 and RCW 19.16.260. Plaintiff did not have standing to collect the Debt purported and maintain a lawsuit in the Superior Court.

6. The Superior Court Judge erred in allowing Plaintiff's Summons and Complaint dated October 27, 2016, untimely filed by Plaintiff, to stand, over the objection of Defendant that it was not filed within 14 days after receipt of Defendant's demand. The Defendant's demand to file Plaintiff's lawsuit pursuant to CR 4 voided the lawsuit as Plaintiff did not comply.

7. The Superior Court Judge erred by not recognizing Defendant's verbal objections in support and response to Plaintiff's Motion for Summary Judgment. Objections pursuant to CR 56(f).

8. The Superior Court Judge erred as Defendant had served Discovery on Plaintiff pursuant to CR 26 and CR 30. Plaintiff failed to respond to Defendant's interrogatories and request for production; therefore essential outstanding discovery was not completed.

9. The Superior Court Judge abused his discretion by not recognizing Defendant as a *pro Se* litigant, while holding her to a higher standard than even a seasoned attorney. The entire case file contained disputed material facts as to the Plaintiff's claim. The Superior Court Judge erred by not considering the case file, specifically the declaration and facts within the case file which was a basis to deny Plaintiff's Summary Judgment Motion.

IV. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

10. The Superior Court unlawfully granted Summary Judgment.

11. The Superior Court unlawfully allowed Appellee to proceed without following court rules which prejudiced Defendant in her response. Plaintiff's Summary Judgment motion was untimely.

12. The Superior Court unlawfully allowed Plaintiff to proceed unlicensed and without a bond, without standing to file suit to collect.

13. The Superior Court allowed the Motion to proceed even though the Summons and Complaint had not been properly served as to CR 4. The Complaint was Void.

14. The Superior Court abused its discretion to close discovery prematurely and grant Summary Judgment without staying Discovery.

15. The Superior Court abused its discretion by not recognizing the objections and the case file that demonstrate issues of disputed material facts are present. Plaintiff's Motion for Summary Judgment should not have been granted.

V. STATEMENT OF CASE

16. The case is not complicated and is a basic collection action on a credit card that originated from an O Bee Credit Union. Defendant, as far back as April 2016, had disputed the purported Debt of \$16,182.00. When she asked for accounting and other credit inquiries from the Banking Institution O Bee, no response was provided. -On October 27, 2016, the Plaintiff prepared a lawsuit but failed to file it. The Plaintiff served the lawsuit on December 26, 2016, by leaving with an unnamed Gentleman, (*see* CP 14), not the Defendant. The lawsuit was still unfiled as of December 26, 2016. Upon hearing of lawsuit, Defendant served an Answer with Affirmative Defenses and Counterclaim on Plaintiff's attorney by certified mail, receipt # 70153430000016051576, on January 12, 2017, along with a *Pro Se* Notice of Appearance with Demand to File Summons and Complaint within 14 days of receipt of demand. Plaintiff failed to file lawsuit by January 29, 2017 per Defendant's demand, but later filed on February 7, 2017, nine (9) days past the 14-day expiration date of demand. *See* CP 31, CP 5-6 and CP 7-8; *Transcript* at page 8, lines 15-18.

17. Plaintiff filed a Summons and Complaint purporting that it is a Washington corporation in good standing, has all necessary licenses and has paid all fees. However, Plaintiff in fact does not have all licenses to conduct collection actions in Washington state as required pursuant to RCW 19.16.110, RCW 19.16.190 and RCW 19.16.260. After checking with the Secretary of State website, I could not find any evidence that Plaintiff had complied with all of the licensing requirements, including bonding, to conduct business as a Collection Agency in Washington State. *See* ER-201 – **Judicial Notice of Adjudicative Facts**.

18. Plaintiff, an unlicensed Washington Collection Agency, further alleged Defendant owes a principal sum of \$ 16,182.51. However, the court record shows a random accounting with a beginning balance of \$14,052.50; this is a material fact as to the amount of debt owing being in dispute per Defendant's response within the case file. *See* CP 15-24.

19. On April 18, 2017, the day after Defendant received a copy of Plaintiff's late-filed Summons and Complaint, Defendant filed her Answer with Affirmative Defenses and Counterclaim, *Pro Se* Notice of Appearance with Demand that Plaintiff file the Summons and Complaint within 14 days of receipt (previously served on Plaintiff January 12, 2017), and her Certificate of Service. *See* CP 31 and CP 32. Approximately one week later, the Court returned the Answer to Defendant requesting payment of a filing fee on the Counterclaim. On April 26, 2017, Defendant re-filed her Answer with Affirmative Defenses and Counterclaim. *See* CP 73-89. Although it appears by her court filing that she was late in responding to the Complaint, this delay was caused by Plaintiff's failure to timely file the Summons & Complaint within the 14-day timeframe demanded by Defendant, which ended January 29, 2017. Defendant did not know and could not have known that Plaintiff would file the Summons and Complaint on February 7, 2017, nine (9) days late and then willfully withhold mailing a copy of the filed Summons and

Complaint to her until some sixty-six (66) days (almost ten (10) weeks) later, on April 14, 2017 (*see* CP 30 and *Transcript* at page 8, lines 16-19), received by her on April 17, 2017, with the stamped filing date obscured on her copy of the Summons by a “CONF COPY” stamp placed directly over the file-stamped date; not so on the Complaint.

20. Defendant’s Answer to the Complaint with Affirmative Defenses filed on April 26, 2017 included a denial of Debt along with a detailed Counterclaim with supporting Exhibits. *See* CP 73-89.

21. On March 13, 2017, Plaintiff filed a Notice of Hearing for Summary Judgment scheduled for May 12, 2017, at 9:00 a.m. (*see* CP 25). The Declaration of Mailing/Service signed on April 13, 2017 was actually postmarked April 14, 2017 and filed with the Court on April 17, 2017. *See* CP 30. The Plaintiff also failed to recognize Rule (6) which allows three (3) additional days for mailing time. Defendant did not receive the Notice by mail until April 17, 2017, which was not 28 days’ notice as required pursuant to CR 56(c), but was only 26 days, 25 days if you include the Easter holiday.

22. On May 12, 2017, the Motion for Summary Judgment was heard, as it appears by the verbatim report of the proceedings. The Court transcript demonstrates all errors of the Superior Court, where stated, and therefore are essential disputed facts that the Superior Court failed to acknowledge. *See Transcript* at page 4, lines 24-25, page 5, lines 21-25, page 6, lines 1-7, page 8, lines 14-25 and page 9, lines 1-7, 11-12.

23. On May 12, 2017, the Defendant again raised the issue of Plaintiff’s failure to file the Summons and Complaint within the required 14-day demand. *See Transcript* at page 8, lines 10-18, which establishes Plaintiff’s failure to timely file the lawsuit, making the service defective and in doing so the lawsuit itself was void. Another error of the Court was that Defendant had

served discovery requests for production on the Plaintiff on April 21, 2017; this discovery would be required Thirty-three (33) days later, May 24, 2017, allowing mail time. This production request was also presented timely as a bench copy in Opposition to the Motion for Summary Judgment. *See* CP 34-36. The *Transcript* reflects this argument was made as a basis to deny summary judgment pursuant to CR 56. *See Transcript* at page 8, lines 23-24.

VI. LEGAL AUTHORITY AND ARGUMENT

STANDARD OF REVIEW

24. Summary Judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c). A material fact is one on which the outcome of the litigation depends in whole or in part. *Atherton Condo, Apartment-Owners Ass'n Bd. Of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

25. In a summary judgment motion, the moving party bears the initial burden of showing the absence of an issue of material fact. *See e.g., LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975). If the moving party meets its initial burden, the burden shifts to the non-moving party to establish the existence of a genuine issue of material fact. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If the non-moving party fails to establish the existence of a genuine issue of material fact, then the superior court should grant the motion for summary judgment. *Young*, 112 Wn.2d at 255.

26. Here the evidence is so overwhelming that it is inconceivable that a Motion for Summary Judgment could have been ordered, as the Plaintiff's own recorded statement of May 12, 2017, the *Transcript* at page 4, lines 24-25, admits an issue of material fact exists. Plaintiff's statement supports evidence of disputed facts material to the case.

27. The Superior Court Judge erred as a matter of law: (A) failed to discuss facts that would favor Defendant's case and (B) failed to view facts in a light most favorable to Defendant's response to motion for Summary Judgment.

28. A review of the *Transcript* also demonstrates a lack of attention by the Superior Court Judge in performing his task. Insofar as the Judge established that CR 56(c) requires a timeline of Twenty-eight (28) days and with a heavy hand holds Defendant to the 11-day response rule; however, he discounts that Plaintiff failed to provide proper notice of Twenty-eight (28) days. In addition, CP 34 through 36 establishes that a timely response was presented per CR 56(f). *See Transcript* at page 8, lines 23-24. Another issue of fact raised by Defendant was the untimely 14-day filing of Plaintiff's lawsuit, pursuant to the Summons and CR 4, set forth below:

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

See Transcript, page 8, lines 14-18.

29. The Defendant's facts demonstrate a demand was made, Plaintiff failed to acknowledge demand and the lawsuit was filed untimely. The lawsuit was void. *See* CP 31.

30. As demonstrated, the Superior Court failed to follow the standard of review for summary judgment by placing the moving party in a light most favorable. Based on the evidence and the declaration of Ruth Bennett in the *Transcript*, this would be admissible at trial. Here, the Superior Court Judge erred as he made his own judgment; the Judge makes inferences favoring the Plaintiff's position despite a *bona fied* dispute of facts.

31. Under legal authority, the court may consider any material that would be admissible or usable at trial. 10A. Wright, Miller Kane, Federal Practice and Procedure § 2721, at p.40 (2nd ed. 1983). Questions of fact may be determined on summary judgment as a matter of law where reasonable minds could reach but one conclusion. **Ruff v. County of King**, 125 Wash.2d 697, 703-04, 887 P.2d 886 (1995); see also **Ellwein**, 142 Wash.2d at 776, 15 P.3d 640. But a court must deny summary judgment when a party raises a material factual dispute. **Balise v. Underwood**, 62 Wash.2d 195, 200, 381 P.2d 966 (1963); **Smith v. Safeco Insurance Company**, 150 Wash.2d 478, 485-86.

32. Plaintiff's own admission in the *Transcript* demonstrates it did not meet "the initial burden of showing the absence of an issue of material fact." **Green v. A.P.C.**, 136 Wn.2d 87, 100, 960 P.2d 912 (1998).

33. Here, the Plaintiff never met the burden to move for Summary Judgment. The trial court further erred as no discovery had been conducted. As no discovery has been conducted by the parties, CR 56(f) should be applied with the spirit of liberality. See **Bernal v. American Honda Motor Co.**, 87 Wn.2d 406 (1976). In general, even courts of limited jurisdiction have deemed a motion for summary judgment prior to completion of discovery as premature. The application of summary judgment is not intended to deprive a defendant from obtaining and developing evidence material to their case.

34. The Superior Court erred by allowing Plaintiff to proceed when issues of material fact were in dispute as to Plaintiff's standing to collect and bring suit for collection of debt.

35. Plaintiff is in violation of Washington state law. Plaintiff does not have standing to conduct business or engage in litigation to collect consumer debt. It appears that Plaintiff did

not meet the bonding requirements of licensing by failing to maintain a yearly \$5,000 bond pursuant to RCW 19.16.190 and RCW 19.16.260.

The plain language of RCW 19.16.110 states: **License required.**

No person shall act, assume to act, or advertise as a collection agency or out-of-state collection agency as defined in this chapter, except as authorized by this chapter, without first having applied for and obtained a license from the director.

Nothing contained in this section shall be construed to require a regular employee of a collection agency or out-of-state collection agency duly licensed under this chapter to procure a collection agency license.

Washington law further states at RCW 19.16.260: **Licensing prerequisite to suit.**

No collection agency or out-of-state collection agency may bring or maintain an action in any court of this state involving the collection of its own claim or a claim of any third party without alleging and proving that he, she, or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable: PROVIDED, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency or out-of-state collection agency to prove such matters.

A copy of the current collection agency license or out-of-state collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence of the licensing and bonding of such collection agency or out-of-state collection agency as required by this chapter.

37. Plaintiff cannot dispute its violation of Washington law and Washington state legislation pursuant to House Bill 1822-2013-14 which added “debt buyers” to the definition of a collection agency. The House Bill, as adopted, squarely imposes a condition on Plaintiff that a license and bond are required to bring its legal action.

38. Pursuant to Washington state statute, Plaintiff had no standing or authority to collect, as a condition of debt buyer and collecting is to maintain a license and a bond. Here it appears that Plaintiff had not maintained a license and bond to commence and maintain a lawsuit.

VI. CONCLUSION

The Defendant asks the Court to reverse the Order of May 12, 2017, as Summary Judgment motion failed by any legal standard. The Appellant's brief demonstrates that issues of material fact were in dispute. Plaintiff did not meet the burden of proof as required for summary judgment. As a matter of law the motion for summary judgment should have been denied. This matter should be set for trial, so the case may be decided on its merits and evidence presented by the parties, or other relief as so ordered.

DATED this day 26th day of February, 2018.

s/ Ruth Bennett

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DECLARATION OF SERVICE

1. I am over the age of 18, the Appellant in this matter, and make this declaration based on my personal knowledge and belief.
2. On February 26th, 2018, I caused a true and correct copy of this Appellant's Opening Brief to be served on Attorney for Plaintiff-Appellee, via United States Postal Service post-paid first class mail, as follows:

Jason L. Woehler
15127 NE 24th Street #403
Redmond, WA 98052-5544
3. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

s/ Ruth Bennett

Ruth Bennett

RUTH BENNETT - FILING PRO SE

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