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

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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Ruth Bennett,  
Appellant,

v.

Financial Assistance, Inc.,  
Respondent

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RESPONDENT'S BRIEF

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## **I. JURISDICTION**

Respondent agrees that this Court has the jurisdiction to hear an appeal from Thurston County Superior Court.

## **II. IDENTITY OF THE PARTIES**

Respondent is a fully licensed and bonded collection agency doing business throughout the State of Washington. Appellant contends FAI is a debt buyer, but it has not purchased the debt that is the subject of this litigation. As set forth in FAI's motion for summary judgment, the account was assigned to FAI by the credit union.

## **III. ASSIGNMENT OF ERRORS**

Bennett lists what appears to be seven (7) assignments of error. Some of these are duplicative or inter-related. FAI will attempt to address each in the argument section below.

## **IV. LAW AND ARGUMENT**

### **A. Standard of Review.**

This Court reviews an order granting summary judgment de novo, and engage in the same inquiry as the trial court. *Kahn v. Salerno*, 90 Wn. App. 110, 117, 951 P.2d 321 (1998). Summary judgment is appropriate “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.” CR 56(c); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). A material fact is one on which the outcome of the litigation depends, in whole or in part. *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974).

**B. Procedural History.**

FAI was assigned a claim against Bennett for collection by its client, O’Bee Credit Union, in the sum of \$16,182.51. Bennett was served with the Summons and Complaint in this matter on December 26, 2016, and sent a written response/answer dated January 12, 2017. The record is unclear as to when Bennett submitted her Appearance and demanded FAI file the case. Regardless, FAI sent the case in to be filed, and it was ultimately filed on February 7, 2017. The trial court apparently received Bennett’s Answer, Affirmative Defenses and Counterclaims. FAI then noted a motion for summary judgment, to be heard on May 12, 2017. Said

motion was mailed to Bennett on April 13, 2017. The motion also included a copy of CR 56, so that Bennett would know her obligations in responding to the motion.

**C. Many Assignments of Error are Beyond the Record.**

Instead of responding to the motion, Bennett filed a motion to Dismiss. As the Court noted, Bennett “did not file any responsive pleading to the motion for summary judgment.” TR at 7. At the summary judgment hearing, Bennett was heard, but had not filed anything responsive to the motion. Instead, Bennett relied on her Answer and a Motion to Dismiss that she sent to FAI and apparently filed with the Court the day before the hearing.

The Court specifically noted that RCW 4.08.080 allows FAI to sue in its own name on an assigned claim. TP at 7. The Court further noted that Bennett filed nothing objecting to the specific elements of FAI’s motion for summary judgment. TP at 7. The only evidence before the Court was FAI’s motion and supporting documents. The Court entered judgment for FAI as requested, and Bennett files this appeal.

Many of the assignments of error, specifically numbers 5, 6, 7, 8 and 9 are raising allegations made in Bennett’s Answer and/or motion to dismiss, but were not issues before the Court on summary judgment.

**D. Bennet’s Argument that FAI concedes a material fact is misplaced.**

Bennett argues that FAI concedes issues of material facts in oral argument at Page 4, lines. 24-25. But a reading of the transcript in context shows that FAI was acknowledging receipt of an Answer from Bennett, that raised issues and counterclaims. That is not to say that said answer is a sufficient response on summary judgment. In fact, the following lines on page 5 indicate that FAI received alleged counterclaims but that said claims were not perfected by Bennett paying for said counterclaims. The Court also noted that the materials received from Bennett were untimely. There was no concession by FAI that a material fact existed.

**E. Bennett failed to timely object to any issue with timing of FAI’s motion; regardless, Bennett filed no response.**

Bennett claims FAI filed its motion for summary judgment with insufficient time for response. As indicated in the Clerk’s papers, FAI noted the motion for May 12, 2017, by serving said motion on Bennett via mail on April 13, 2017. The motion was heard 29 days later, on May 12, 2017. CP 25. This issue was presented to the Court but the Court clearly deemed summary judgment appropriate regardless. Arguably, Appellant waived the issue by not filing a response at all – arguing the need for more

time. By Appellant's own admission, any shortage was a matter of a couple of days; nothing more. Bennett did file a motion to dismiss the day before the hearing. Bennett had an opportunity to object prior to the Court ruling, but did so only after the Court had found in FAI's favor. Additionally, Bennett makes no showing that a day or two's difference for mailing would have resulted in a different outcome. Bennett did not file a late response; she filed NO response.

**F. The Superior Court properly reviewed the evidence before it under CR 56.**

Appellant alleges that it was an error for the Court to grant summary judgment as "no discovery had been conducted." However, discovery is not mandatory; plaintiff did not feel the need for discovery and instead simply moved for summary judgment. Bennett had issued discovery requests to FAI, but did not seek additional time for completion of her discovery prior to the hearing on the motion. Notably, the Court has broad discretion under CR 56(f) to make such an order or fashion a remedy. Here, Bennett raises the issue of discovery only after the Court had orally ruled, and court clearly listened to Bennett's argument, but did not change its decision. TP at 8-9. As the Court noted, the only evidence before the Court was FAI's moving papers, as there was no proper CR 56 response filed. TP 6-7.

## V. CONCLUSION

The trial Court's ruling on summary judgment should be affirmed. In review of the materials de novo, the only evidence properly before the Court was that of FAI's moving papers and supporting declaration and exhibits. The Court specifically noted the absence of a proper response, and ruled accordingly. FAI requests the Court affirm the trial court's decision and award FAI its attorney's fees as provided for by the contract between the parties.

Dated this 2nd day of April, 2018.

Respectfully submitted,

  
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Jason L. Woehler, WSBA #27658  
Attorney for Respondent

DECLARATION OF MAILING

Jason L. Woehler declares as follows:

I am an attorney for Respondents, a United States citizen, over the age of eighteen (18) years, and am competent to testify to the matters set forth herein.

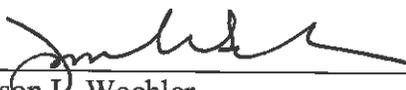
I certify that on April 2, 2018, I mailed by U.S. First-Class Mail, postage prepaid copies of the above Brief of Respondent

to the following:

Ruth Bennett  
13829 Chein Hill Lane SE  
Tenino, WA 98589

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Dated at Bellevue, Washington on April 2, 2018.

  
\_\_\_\_\_  
Jason L. Woehler

**FINANCIAL ASSISTANCE, INC**

**April 05, 2018 - 9:12 AM**

**Transmittal Information**

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