

FILED

DEC 06 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 338771

**COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON**

JESS ORTIZ

Appellant/Plaintiff

v.

INGA STERLING,

Respondents/Defendants

APPELLANT'S BRIEF

Submitted by:

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TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR

II. STATEMENT OF THE CASE

III. ARGUMENT

IV. CONCLUSION

TABLE OF AUTHORITIES

Table of Cases

Barer v. Goldberg, 20 Wash.App. 472, 476, 582 P.2d 868, review denied, 90 Wash.2d 1025 (1978).

Nelson v. Castle Rock School District 88 Wn.App 627, 630, 945 P2d 765 (Div. 2, 1997)

Other Authorities

RCW 4.16.005.

RCW 4.16.080(3);

I. ASSIGNMENT OF ERROR

Assignments of Error

- 1. The Court erred in finding that the Plaintiff, Jess Ortiz, owed the Defendant \$35,000.00 for the 1958 Chevrolet Impala.**
- 2. The Court erred in concluding that the three-year statute of limitations, RCW 4.16.080 did not apply to the loans found to be made to Mr. Ortiz.**

Issues Pertaining to Assignments of Error

- 1. Issue Pertaining to Assignment of Error No. 1.**

The Court appears to have ruled that the cost of the 1958 Chevrolet Impala was to be repaid although the Court's calculations of damages used the cost figure of \$30,000.00 as the parties testified.

- 2. Issue Pertaining to Assignment of Error No. 2.**

The action was commenced on November 12, 2010. Defendant subsequently brought her counterclaim. The issue presented is whether each loan made was a separate and distinct loan with a separate and distinct statute of limitations.

II. STATEMENT OF THE CASE

The Court found that the Defendant, Inga Sterling, made several loans to the Plaintiff, Jess Ortiz. CP 32-33. The loans were of various sums and occurred over several years. The first loan was made on July 1, 2009. The last loan was made on December 13, 2013. CP 36.

The agreement to repay the loans were oral. There was no date agreed upon for repayment of any of the loans. There was no agreement that a demand was to be made for repayment. There was merely a promise to pay each loan. RP 234-243.

In August, 2005, the parties purchased a 1958 Chevrolet Impala automobile. The automobile was purchased for \$30,000.00. The Defendant paid for the automobile and took title in her name. The parties agreed that Ms. Ortiz would pay the Defendant the \$30,000.00 and she would sign the title of the automobile to Mr. Ortiz. RP 32.

Commencing in December, 2005, Mr. Ortiz commenced paying the Defendant for the automobile. He made periodic and substantial payments continuing until August 1, 2009 when a last payment of \$7,653.00 was made. RP 34.

Mr. Ortiz had paid the \$30,000.00 for the automobile by October

7, 2008. He continued making payments on what he believed he owed the Defendant. Subsequent to October 7, 2008, Mr. Ortiz paid the Defendant \$12,616.00.

III. ARGUMENT

A. The Court Erred in Finding and Concluding the Cost of the Automobile was \$35,000.00

The entire of the evidence presented to the Court was that the cost of the 1958 Chevrolet Impala automobile was \$30,000.00. There was no evidence present to the Court that would support a finding that the automobile cost \$35,000.00. The Court's damage computation uses a cost of \$30,000.00.

The finding of the cost of the automobile at \$30,000.00 was in error.

B. Claims for Loans Made Prior to November 12, 2007 are Barred by the Statute of Limitations.

The Defendant made individual loans to the Plaintiff, Mr. Ortiz. Mr. Ortiz agreed to repay the loans. The agreement to repay was oral. The statute of limitations governing the loans is the three year statute of limitations, RCW 4.16.080(3).

There was no agreement as to when the loans were to be repaid. The loans are known legally as demand loans. Nelson v. Castle Rock School District 88 Wn.App 627, 630, 945 P2d 765 (Div. 2, 1997).

The statute of limitations on an oral loan agreement is three years from the date the cause of action accrued. RCW 4.16.080(3); RCW 4.16.005. Absent other facts, the cause of action accrues on the date when the loan is made. Barer v. Goldberg, 20 Wash.App. 472, 476, 582 P.2d 868, review denied, 90 Wash.2d 1025 (1978).

Id. There is an exception to this rule where the parties contemplated that an actual demand for payment was to be made at which time the statute of limitations would begin to run. Id. In the present case, there is no evidence that the parties contemplated that a demand would be made. Therefore, the statute of limitations began as each individual loan was made.

This suit was commenced on November 12, 2010. Any loans made prior to that date are barred by the statute of limitations.

The Court concluded, however, that RCW 4.16.270 applied. It concluded that since the last payment by Mr. Ortiz to Ms. Sterling was made on August 1, 2009, that is when the statute of limitations began to run. Therefore, the Court concluded no loans were barred by the statute of limitations.

The Court's conclusion ignores the clear evidence that the payments initially were intended to fulfill the agreement to purchase the car. Payments subsequent to the payment of \$30,000.00 were to repay sums owed to Defendant for other obligations.

The automobile was purchased and the title was changed in August, 2005. Mr. Ortiz agreed to pay \$500.00 per month. He also was anxious to have the automobile transferred to him and pay in excess of the monthly payment. RP 35. Nearly all of the payments were made in increments of \$500.00. RP 34.

it is clear that the parties intended the payment to be on the automobile. Moreover, the Defendant never provided Mr. Ortiz with an accounting or other evidence suggesting a different application of payments. The \$30,000.00 agreed to be paid for the car was paid by October 7, 2008.

From October 7, 2008, the Defendant loaned Mr. Ortiz \$20,698.00. Mr. Ortiz paid the Defendant \$12,616.00 from October 7, 2008 until August 1, 2009 at which time he made a last payment. The last payment, in his mind, was \$1,000.00 greater than he owed the Defendant. RP 38. At that time, there had been no accounting by the Defendant. In fact, there had been no accounting until after an action to obtain the car had been commenced.

The Defendant and the Court relied upon RCW 4.16.270 to suggest that the sums Mr. Ortiz agreed to pay were a single transaction with many elements. There is no evidence to support that claim and no evidence of an accounting suggesting the allocation of payments to what are actually individual transactions. Mr. Ortiz's clear intent was to pay off the automobile

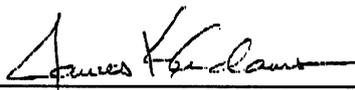
in accordance with the parties' agreement. Once the car was paid for, then any other claims, unspecified by the Defendant would be paid.

IV. CONCLUSION

The automobile was purchased for \$30,000.00. The parties agreed that Mr. Ortiz would pay the Defendant \$30,000.00 for the automobile. There was a specific agreement for the payment for the automobile. Mr. Ortiz completed that promise. There was no specific agreement for the repayment of the loans. Those loans made before November 12, 2007 are barred by the three year statute of limitations for oral loans, RCW 4.16.080(3).

RESPECTFULLY SUBMITTED this 6th day of December, 2016.

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