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Division III
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NO. 349187

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION THREE

FIRESIDE BANK f/k/a FIRESIDE THRIFT CO.
(CAVALRY INVESTMENTS, LLC – Appellant of Record)

Appellant,

vs.

JOHN W. ASKINS and LISA D. ASKINS,

Respondents.

ANSWER TO BRIEF OF AMICUS CURIAE

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I. INTRODUCTION

Appellant Cavalry Investments, LLC (“Cavalry”) submits that the Brief of Amicus Curiae Statewide Poverty Action Network (“Statewide”) fails to offer arguments that are apposite to the narrow issue on appeal.

This appeal concerns the sufficiency (or lack thereof) of the record evidence. In this context, Statewide’s policy arguments are irrelevant.

II. ARGUMENT

A. Statewide’s Policy Arguments are Inapposite.

Statewide’s Brief focuses on what it views as systemic problems in the debt buying industry, and the impacts of consumer debt on certain population groups. *See* Amicus Brief at pp. 2-6 and 9-11. Statewide makes arguments about the policy and social implications that it asserts flow from the sale of debt obligations and industry practices. *Id.*

This appeal, however, does not concern whether or under what conditions creditors should be allowed to transfer or sell their rights, or whether Washington’s existing statutory scheme should be modified. *Cf.* Appellant’s Amended Brief at pp. 3-5 (assignments of error). Such policy matters may be relevant to the legislative process, but they are inapposite to this Court’s evaluation of the evidentiary record in the trial court, or whether that record supports the trial court’s challenged order.

B. Statewide’s Misconstrues This Appeal.

Statewide asserts that this case “exemplifies” the policy concerns it articulates regarding consumer debt. *See* Amicus Brief at pp. 7-9. This argument, however, is premised on a misunderstanding of what is at issue.

There is no question about the nature or amount of the underlying debt obligation incurred by the Askins. Nor is there any dispute about the fact of post-judgment garnishment proceedings as reflected in the trial court’s docket. The transaction between Cavalry and Fireside Bank, the original judgment creditor, is not in evidence and Statewide’s speculation about its terms is uninformed and inapposite.¹

This appeal turns on an evaluation of the relevant record evidence. Simply put: Does that evidence support the trial court’s finding that Cavalry “violated RCW 19.16.250(21) by attempting to collect, through applications for writs of garnishment, amounts of money greater than allowed by law,” and did the Askins otherwise meet their burden under CR 60 to show that the Judgment against them had been satisfied?²

Statewide offers no input on either of these points.

¹ *Wash. Educ. Ass’n v. Shelton School Dist. No. 309*, 93 Wn. 2d 783, 793, 613 P.2d 769 (1980) (“The appellate court must consider only those matters in the record in determining whether the trial judge abused his discretion.”).

² CP 427 (“Violation Finding”) (emphasis supplied); CP 462-63; Appellant’s Amended Brief at pp. 3-5 (assignments of error).

C. Statewide’s Burden of Proof Argument is Misplaced.

Statewide argues the Court should not “shift” the burden of proof to the Askins because under “black letter contract law,” a plaintiff has the burden to establish the existence of a contract and breach. *See* Amicus Brief at pp. 11-14. Statewide is correct in its general statement of law, but Statewide confuses the burden of proof a plaintiff bears on a breach of contract claim with a judgment debtor’s burden to prove that a court judgment entered against him or her has been satisfied under CR 60(b).³

The burden of proof issue here concerns whether the Askins satisfied their burden to show the Judgment had been satisfied as required under CR 60. *See* Appellant’s Amended Brief at pp. 5 and 31-34. The burden of proof applicable to a plaintiff asserting a contract claim is inapplicable and irrelevant.

III. CONCLUSION

The policy arguments asserted by Statewide have no bearing on whether the record evidence supports the trial court’s Violation Finding or whether the Askins met their burden under CR 60(b) to show that the

³ Compare Amicus Brief at p. 13 (citing *Citoli v. City of Seattle*, 115 Wn. App. 459, 476, 61 P.3d 1165 (2002)) and WPI 300.02 with *Dalton v. State*, 130 Wn. App. 653, 665-66, 124 P.3d 305 (2005) (defendant’s burden of proof under CR 60(b) requires clear and convincing evidence) and Appellant’s Amended Brief at pp. 31-34.

Judgment had been satisfied. Statewide's arguments do not assist this Court and offer no guidance with points of law.

DATED: June 4, 2018.

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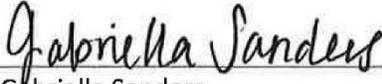
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I hereby certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 4th day of June 2018, at Seattle, Washington.


Gabriella Sanders

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