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STATE COURT  
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Case No. 69903-2-1

DIVISION I, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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CITIBANK, N.A.,

Plaintiff-Respondent

v.

MARGARET & LEON CARTER,

Defendant/Appellant

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ON APPEAL FROM KING COUNTY SUPERIOR COURT

(Hon. Mary Yu)

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APPELLANT'S OPENING BRIEF

(CORRECTED)

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Leon Carter  
P.O. Box 22433  
Seattle, WA 98122-0433  
(206) 905-9792  
Appellant, Pro Se

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**A. ASSIGNMENTS OF ERROR**

1. The trial court erred in adopting Citibank's argument that Suttell & Hammer was a law firm not subject to the rules of RCW 19.16. *See* CP 52, 2
2. The trial court erred in adopting Citibank's argument that Suttell & Hammer was hired, as a law firm, to bring this action against the Carter. *See* CP 52, 2
3. The trial court erred in assuming that Sutter & Hammer had the consent of Citibank, N.A. to use its name in this lawsuit. *See* CP 48, 1
4. The trial court erred in adopting Citibank's argument that it is the current debt holder. *See* CP 48, 1
5. The trial court erred when it accepted as fact the statement by Citibank that copies of payment slips were into the court record. *See* CP 52, 1
6. The trial court erred when it accepted Citibank's argument that the copy of the un-signed contract proves Carter entered into a legally binding agreement with Citibank. *See* CP 48, 2
7. The trial court erred when it accepted Citibank's argument that it had proven Carter had incurred the debt. *See* CP 48, 2

8. The trial court erred when it denied Carter's motion for production of documents. *See* CP 33, 2
9. The trial court erred when it accepted Citibank's argument that Carter had failed to present any genuine issues of material fact. *See* CP 48, 1
10. The trial court erred when it accepted Citibank's argument that Suttell & Hammer had the standing to collect this debt in a court of law. *See* CP 52, 1

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Does a licensed debt collector have the standing to bring legal action against a debtor in the name of a third party in violation of RCW 19.16.250(5)? (Assignment of errors 1, 2, 3, 10)
2. Does an unsigned copy of consumer credit card contract prove that an agreement had been reached between the two parties in contrast to *Bridges*? (Assignment of errors 4, 6, 7)
3. Is a debt collection agency, whose employees are attorneys, permitted to bring a consumer debt action to civil court for

judgment in violation of RCW 19.16.250(5)? (Assignment of errors 1, 2, 3, 10)

4. Do itemized charges shown on a consumer's monthly credit card statement prove that it was the consumer who made the charges, and thereby assumed responsibility for the paying the charges in contradiction to *Bridges*? (Assignment of errors 4, 5, 6, 7)
5. Must a licensed debt fully disclose the name and contact information of debt holder upon demand of the debtor in compliance with RCW 19.16.250(8)b? (Assignment of errors 2, 3, 4, 8)
6. Do the questions of debt ownership, debt liability and standing constitute issues of material fact that could affect the outcome of the litigation as offered in *Owen*? (Assignment of errors 9)

### **C. STATEMENT OF THE CASE**

According to Citibank, Margaret Carter applied for and was issued a Citibank credit card on a specific account. Citibank records indicated that debt was incurred on the card in the amount of \$15,882.82. Citibank filed a collection action on October 19, 2010. Carter filed a pro se answer to the complaint, denying Citibank's allegations. A trial date was set for April 9, 2012.

Citibank filed a motion for summary judgment on October 27, 2010. Citibank's motion was supported by an affidavit from Perla Zapeda, an unverified employee of Citicorp Credit Services, who stated that she was authorized to make the affidavit on behalf of Citibank. Zapeda's affidavit set forth the total sum Citibank claimed was owed and provided copies of twenty-four monthly account statements, along with a six-page unsigned credit card agreement. The account statements indicated that payments were made on the account each month. However, the statements make no indication of how the payments were supposedly made. Nor did they cover the period in which the card was first issued or the majority of the debt was accumulated. No cancelled checks were included.

Carter did not submit a written response, but during oral arguments on the motion for summary judgment, Leon Carter, representing the Carter family unit, pro se, argued over the objections of Citibank's attorney, that his name should be added to the complaint; that Citibank had no proof that Carter owned the debt or the amount stated, nor had Citibank proven that it had standing to collect the debt in a court of law. The court agreed and denied the motion for summary judgment. Carter did not ask for cost.

Citibank motioned for mandatory arbitration; it was granted and held May 1, 2012. The Arbitrator denied all of Carter's arguments/defenses and awarded the Citibank the full amount claimed

plus fees and costs. Carter was granted trial de novo and returned to the Court of Judge Mary Yu. Subsequently, Carter's motion for production of documents was denied.

Citibank filed a second motion for summary judgment on November 13, 2012. It was supported by an affidavit from Mary E. Crum, an employee of "Citibank or an affiliate," who stated that she was authorized to make the affidavit on behalf of Citibank. Crum's affidavit set forth the total sum Citibank claimed was owed and provided copies of twenty-four monthly account statements, along with a six-page unsigned credit card agreement. The account statements indicated that payments were made on the account each month. However, the statements make no indication of how the payments were supposedly made. Nor did they cover the period in which the card was first issued or the majority of the debt was accumulated. No cancelled checks/payment slips were included. Crum was also named as the Plaintiff in this motion.

In Carter's response to the second motion for summary judgment it was argued that the law firm presumably hired by Citibank hadn't presented proof that it was engaged to bring the action, and that the firm, as a debt collection agency, was prohibited from practicing law in debt collection matters. Additionally, it was argued that Citibank had presented no proof that Carter owned the debt or the amount stated, nor had Citibank



proven that it had standing to collect the debt in a court of law. After hearing oral arguments Judge Yu granted summary judgment for the Citibank and awarded fees and costs.

Carter appeals.

#### D. ARGUMENTS

1. **The summary judgment should not have been granted because Citibank failed to provide adequate proof of Carter's assent to the terms of an unsigned credit card agreement.**

*Citibank* claimed that it proved *Carter's* assent to the cardholder agreement by establishing that he personally used the card. *Citibank* asserted that the account statements proved *Carter* used the card because some of those statements listed a numerical amount under the heading "purchase." But the *Bridges* court held that sufficient proof of use of a credit card would require "detailed, itemized" documentation of the alleged cardholder's actual use. 154 Wn.App. at 727-28 (emphasis added.) None of the notations on the statements offered by *Citibank* were actually

explained what the supposed purchase was or who it was from. Nor is it clear whether these were individual “purchases” or were only total amounts for the period covered by the statement. Moreover, these supposed purchases did not add up to anything near the total Citibank claimed was owed on the card. And the account statements did not otherwise provide a basis to match the listed amounts with any particular charge slip or purchase. The materials Citibank provided thus did not constitute the detailed and itemized documentation required by *Bridges*.

**2. The summary judgment should not have been granted because the Judge ignored all material issues of fact presented by Carter when she reversed her earlier ruling.**

A motion for summary judgment may be granted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c). And if “A material fact is one that affects the outcome of the litigation,” *Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 789,

108 P.3d 1220 (2005) (quoting *Barrie v. Hosts of Am., Inc.*, 94 Wn.2d 640, 642, 618 P.2d 96 (1980)), then Carter raised several issues of material facts including questions of debt ownership, debt liability and debt standing.

Judge Yu failed to “construe all facts and reasonable inferences in the light most favorable to the non-moving party.” *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). Judge Yu discarded the notion that “[T]he moving party bears the burden of showing the absence of a material issue of fact.” *Swinehart v. City of Spokane*, 145 Wn.App. 836, 844, 187 P.3d 345 (2008) (citing *Redding v. Virginia Mason Med. Ctr.*, 75 Wn.App. 424, 426, 878 P.2d 483 (1994)).

Moving in favor of Citibank in a summary judgment withdrew Carter’s right to demand a jury for the settlement of this issue. As a result, Carter was denied due process under the 14<sup>th</sup> Amendment of the U. S. Constitution.

**E. APPELLANT REQUEST FEES AND COSTS**

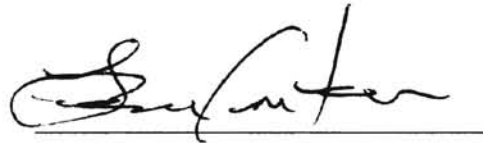
Pursuant to RAP 18.1, Appellant Leon Carter requests an award of legal consultation fees and costs for this appeal assuming Appellant prevails in a new trial. RCW 49.60.030.

**F. CONCLUSION**

For the reasons stated above, the case must be remanded for a new trial.

August 15, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Leon Carter", is written over a horizontal line.

Leon Carter, Appellant

COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION I

CITYBANK, N.A. ) Case No.: 10-2-36779-9  
Respondent, ) Appeals Court No. 69903-2-1  
vs. )  
MARGARET CARTER & LEON CARTER ) AFFIDAVIT OF SERVICE  
Appellants. )

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I, Margaret Carter, certify under penalty of perjury under the laws of the State of Washington that I am over the age of 18 years, and competent to be a witness herein. On August 15, 2013, I served a true and correct copy of the following documents:

1. Appellant's Opening Brief (Corrected)
2. This Affidavit of Service

To the following attorneys of record for Respondent via U. S. Mail, postage pre-paid:

Ashley A. Nagrodski, WSBA#40847  
SUTTELL & HAMMER, P.S.  
P.O. Box C-90006  
Bellevue, WA 98009

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

SIGNED at Seattle, Washington, this 15th day of August 2013.



Margaret Carter