90677-7

Case No. 69903-2-1

SUPREME COURT
OF THE STATE OF WASHINGTON

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CITIBANK, N.A.,

Plaintiff-Respondent

v.

MARGARET CARTER
&
LEON CARTER,

Defendant-Appellant

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# MOTION FOR DISCRETIONARY REVIEW

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Leon Carter
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Seattle, WA 98122-0433
(206) 905-9792
Appellant, Pro Se

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**Cases**



**Statutes**



**Rules**

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## A. IDENTITY OF PETITIONER

Leon Carter, the appellant below, asks this Court to review of the Court of Appeals decision designated in Part B of this motion.

## B. COURT OF APPEALS DECISION

Carter seeks review of Division One's decision in Citibank v. Carter, No. 69903-2-1 (June 9, 2014). The court denied a motion of reconsideration by order dated July 14, 2014.[1]

## C. ISSUES PRESENTED FOR REVIEW

1. **Citing Cowiche Canyon Conservancy v. Bosley as justification, the Court of Appeals (COA) dismissed Appellant's Opening Brief (AOB) (Appendix C), and based its decision on review of evidence contained in court records of the case. Is this a violation of RAP 12.1(a)?**

2. **In *Citibank v. Carter*, do the COA determinations on what proves debt ascension, conflict with those the COA made in *Discover Bank v. Bridges* and Citibank v. Ryan? Did the COA reverse itself twice in *Citibank v. Carter*?**

3. **The COA based its decision on an unsigned, partial copy of a consumer credit card contract. Is this a**

[1] The opinion and order are attached as appendices A and B.

**reversal of the Court's ruling in both *Bridges & Ryan*?**

4. **The COA based the amount of the Judgment on charges shown on monthly statements submitted as evidence by Respondent. Is this a reversal of the COA's own determination in *Bridges*?**

5. **Did the COA misinterpret Cowiche, and, if so, does the COA's actions effectively deny Appellant the right to procedural due process as guaranteed by the Washington State Constitution (Const. art I, § 3) and the U. S. Constitution (14th Amendment)? (State & Federal Consumer protection laws.)**

## D. 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, in King County Superior Court.

Citibank filed a Motion for Summary Judgment on October 27, 2010. Acting Pro Se, Carter argued that Citibank had offered 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 lower Court agreed and denied the Motion for Summary Judgment.

Two weeks before trial, and 18 months after the deadline to do so, Citibank motioned for mandatory arbitration. Judge Yu granted the motion. Arbitration was held May 1, 2012.

Arbitrator, Richard P. Matthews, refused Appellant's request to access top a phone-in witness; denied all of Appellant's arguments and defenses without comment, and awarded Suttell & Hammer the full amount, $15,882.82, plus fees and costs.

Subsequently, Carter was granted Trial De Novo. The case was returned to the same Court, trial was set for March 23, 2013.

Citibank filed a second Motion for Summary Judgment on November 13, 2012. On January 3, 2013, The Court granted Summary Judgment for Citibank and awarded Plaintiff $15,882.82, plus fees and costs. Since all of the documents and evidence were identical to what the Court had rejected previously, this decision amounted to a reversal of the lower Court's earlier ruling, denying Summary Judgment..

Carter appealed, claiming that the lower Court made several errors that effectively, denied Appellant's rights to due process and equal protection of the law as guaranteed by Article 1, Section 3, of the Washington State Constitution, and the 14th Amendment of the United States Constitution.

The Court of Appeals affirmed the lower court's ruling and rejected Appellant's Motion for Reconsideration.

## E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### 1. Review should be accepted because by dismissing Appellants Opening Brief, the Court of Appeals far departed from the accepted and usual course of Appellate Court proceedings.

It is a fundamental concept of jurisprudence that issues on appeal must be based on either errors made by the trial court or errors in the trial court's interpretation of the law. The rules for the COA's decision making have been written, and when the language of such a statutory provision is clear and unambiguous, a court must derive its meaning from the wording of the provision alone.[2] *Cerrillo v. Espraza, 158 Wn.2d 251, 138 P.3d 155 (2006)* Here, the relevant portion of the CR 12.1(a) is clear:

> [T]he appellate court will decide a case only[3] on the basis of issues set forth by the parties in their briefs.

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[2] *Cerrillo v. Espraza*, 158 Wn.2d 251, 138 P.3d 155 (2006)

[3] Empasis added.

The COA dis not base its decision on arguments made in AOB stating: "The Carters make a number of assignments of error unsupported by argument in their brief. We do not address these assignments of error. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992."

This appears to be a misinterpretation of *Cowiche* which concerns alleged violations of the Shoreline Management Act. The property owner wanted the removal of three its railroad trestles which crossed Cowiche Creek. Three private plaintiffs who had no interest in the railroad trestles sought to intervene. The Appeals Court wrote:

> "In their opening brief the plaintiffs proffer three grounds for standing .... In fact, the three grounds argued are not supported by any reference to the record nor by any citation of authority; we do not consider them. RAP 10.3(a) (5); *McKee v. American Home Prods. Corp.*, 113 Wash. 2d 701, 705, 782 P.2d 1045 (1989) ...all plaintiffs lack standing to bring the action."

**2. In dismissing AOB and basing its decision on court evidence the COA changed the process and re-litigated the case without notifying all parties involved.**

As construed by the courts, it is a fundamental right for all parties to be adequately notified of changes in expected Court proceedings; the opportunity to be heard at these proceedings, and that the person or panel

making the final decision over the proceedings be impartial in regards to the matter before them.[4] *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970)

In dismissing AOB and deciding the case on court evidence the COA became the trial court, and thereby sanctioned the decisions, errors and actions of the trial Court.

### 3. The COA based its decision on evidence not included in the Court record.

As one reason for supporting the lower Court, the COA found that: "Citibank submitted copies of several checks drawn on the account of Leon Carter for payments on the Sears credit card." This is an issue that was not set forth in brief, nor was it before the trial Court, and, there is no evidence to support it in the trial record. If the Court had decided to raise it as a new issue, the Court failed to notify all parties concerned.[5]

If the COA has new evidence that was not part of the court records sent for review, it would mean that Appellant has been denied the Right to Discovery an issue raised in AOB, a violation of CR 26 (b) (1):

> In General. Parties may obtain discovery regarding any matter, not privileged, which is

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[4] Goldberg v. Kelly, 397 U.S. 254, 267 (1970)
[5] RAP 12.1(b)

> relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

**4. The COA contradicts itself on what constitutes itemized proof.**

To further justify the Summary Judgment, the COA states: ... "Citibank also provided detailed, itemized proof of the Carters' use of the credit card by submitting Sears Statement Transaction Reference Reports and account statements...[and] that the Carters owe $15,882.82 on the account." ... In *Ryan*, the Court considered the same documents, submitted by Suttell & Hammer, as being insufficient to justify a Summary Judgment:

> "None of the notations on the statements offered by Citibank here 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. 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*." 154 WnApp at 727-28

**5. The COA reverses itself on what exactly is proof of assent to a debt.**

In *Carter* the COA states, "Citibank provided proof of assent." In Ryan, based on nearly identical documents submitted by Suttell & Hammer, the COA disagreed:

> "In sum, we find no reasoned basis to distinguish *Bridges* and conclude that Citibank's proof of Ryan's supposed assent to the credit card agreement failed to meet the *Bridges* standard. Accordingly, we reverse and remand for further proceedings consistent with this opinion."

**6. The COA placed all burdens of proof on Defendant-Appellant.**

The Court may grant summary judgment in favor of a moving party who demonstrates "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*. In ruling on a motion for summary judgment, the court must only consider admissible evidence. *Orr* v. *Bank of America, NT & SA,* 285 F.3d 764 (9th Cir. 2002). The party moving for summary judgment bears the initial burden of showing the absence of any genuine issues of material fact. *Celotex Corp.* v. *Catrett,* 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to identify specific facts showing there is a genuine issue of material fact. *See*

*Anderson* v. *Liberty Lobby, Inc., All* U.S. 242, 256 (1986). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252.

For purposes of summary judgment, a fact is "material" if it might affect the outcome of the suit under the governing law. *Id.* at 248. Further, a dispute over a material fact is "genuine" only where the evidence is such that a reasonable jury could find in favor of the non-moving party. *Id.* The Court views the facts, and all rational inferences therefrom, in the light most favorable to the non-moving party. *Scott* v. *Harris,* 550 U.S. 372, 378 (2007).

As with the lower Court, the COA dismisses without meaningful comment, all Appellant arguments and defenses, stating ... "[T]he Carters argue that genuine issues of material fact as to "debt liability," "debt standing," and "debt ownership" preclude summary judgment.[6]

In consumer credit card cases, the questions of who owns the debt, who is liable to pay it, and who has the standing to collect it in a court of

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[6] Emphasis by the Court of Appeals

law, are fundamental issues of material fact that either one of which could affect the outcome of the litigation. AOB at 3

The COA has focused all of its attention on debt liability by Appellants, rather than points of law raised in AOB questioning standing and ownership.

Suttell & Hammer, P.S., is a licensed debt collection agency in Washington State. The definition of a collection agency' in RCW 19.16.100(2) covers two distinct types of entities: (1) those soliciting claims for collection and (2) those collecting or attempting to collect claims owed or due or asserted to be owed or due another person.[7] Debt buyers solicit claims for collection within the meaning of the statute because they seek to purchase (i.e., solicit) claims from creditors that they later try to collect for themselves.

The CAA provides substantive protections for Washington residents facing debt collection. For example, RCW 19.16.250 delineates 25 prohibited practices that create civil liability for licensed collection

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[7] The inclusion of a comma in RCW 19.16.100(2)(a) after "soliciting claims for collection" supports the argument that there are two types of entities, one of which is debt buyers, who are included in the definition of a collection agency. Moreover, this Court has a "very high regard for the lowly comma." *Peters* v. *Watson Co.*, 40 Wn.2d 121, 123, 241 P.2d 441 (1952).

agencies. Furthermore, a licensed collection agency's violation of any of these prohibited practices gives rise to a claim under Washington's Consumer Protection Act.[8] These robust consumer protections constitute a vital component of the CAA. As noted by Division I of the Washington Court of Appeals, the area of debt collection industry is heavily regulated because of the "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors."[9]

One of its rules government is that any license seeking to collect a claim must, at the time of filing, present a letter of assignment, authorizing the licensee to collect. Suttell & Hammer failed to produce such a letter, and, thereby, failed to prove it had standing to bring the lawsuit, or to prove who owns the debt and who should collect it:

> In any action brought by licensee to collect the claim of his, her, or its customer, the assignment of the claim to licensee by his, her, or its customer shall be conclusively presumed valid, "if the assignment is filed in Court with the complaint."[10] (RCW 19.16.270)

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[8] *See* RCW 19.16.440.
[9] *Stephens* v. *Omni Ins. Co.*, 138 Wn. App 151, 172, 159 P.3d 10 (2007).
[10] Emphasis added

Was this failure on the Part of Suttell & Hammer to obey the law an issue of material fact? Does it preclude Summary Judgment? A reasonable jury instructed in the rule of law would conclude that it is, and decide the case in favor of the Defendant. AOB at 4

Appellant also presented the unsigned contract and monthly credit statements as issues of material fact. (AOB at 4-5) Having been informed that the COA has twice rejected those documents as proof of debt liability and amount of the debt, a reasonable jury could conclude that this is an issue of material fact and decide in favor of the Defendant as demanded by precedent.

**7. Having decided not to base its findings and decision on judicial errors or misinterpretation of law by the lower count, the COA has denied Appellant the rights to equal protection under the law and procedural due process, both guaranteed by the Washington State Constitution (Art 1 § 3) and the U.S. Constitution (14th Amendment).**

Procedural Due Process is essentially based on the concept of "fundamental fairness." The United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be

ranked as fundamental."[11] *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)

As construed by the courts, it includes an individual's right to be adequately notified of charges or proceedings, the opportunity to be heard at these proceedings, and that the person or panel making the final decision over the proceedings be impartial in regards to the matter before them.[12] *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970)

Or, to put it more simply, where an individual is facing a deprivation of life, liberty, or property, procedural due process mandates that he or she is entitled to adequate notice, a hearing, and a neutral judge.

The requirement of a neutral judge has introduced a constitutional dimension into the question of whether a judge should recuse himself or herself from a case. Specifically, the Supreme Court has ruled that in certain circumstances, the due process clause of the Fourteenth Amendment requires a judge to recuse himself on account of a potential or actual conflict of interest. For example, on June 8, 2009, in *Caperton v. A.*

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[11] *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)
[12] *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970)

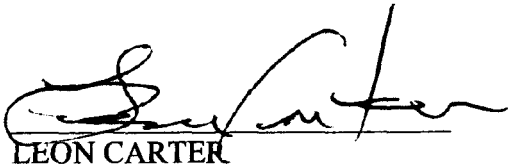
*T. Massey Coal Co. (2009)*, the Court ruled that a justice of the Supreme Court of Appeals of West Virginia could not participate in a case involving a major donor to his election to that court.[13]

## F. CONCLUSION

For the reasons set forth above, this Court should grant review pursuant to RAP 13.4 (b) (2) & (3).

Dated this 10th Day of August, 2013

Respectfully Submitted,



LEON CARTER
Appellant Pro Se

[13] Jess Bravin and Kris Maher (June 8, 2009). "Justices Set New Standard for Recusals". The Wall Street Journal. Retrieved 2009-06-09

SUPREME COURT
FOR THE STATE OF WASHINGTON

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

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 10, 2014, I served a true and correct copy of the following documents:

1. Motion for Discretionary Review
2. Affidavit of Service

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

Melisa Lenora Gurule
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milisa@suttellaw.com

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 10th day of August, 2014.

Margaret Carter

# 69903-2-1

# Appendix A

RICHARD D. JOHNSON,
*Court Administrator/Clerk*

*The Court of Appeals*
of the
*State of Washington*
*Seattle*

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June 9, 2014

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CASE #: 69903-2-I
Citibank, N.A., Resp. vs. Margaret & Leon Carter, Apps.
King County, Cause No. 10-2-36779-9.SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We affirm."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of $200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

hek

c: The Honorable Mary Yu

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | | |
|---|---|---|
| CITIBANK (SOUTH DAKOTA), N.A., Respondent, v. MARGARET CARTER & LEON CARTER, Appellants. | ) | No. 69903-2-I<br>DIVISION ONE<br>UNPUBLISHED OPINION<br>FILED: June 9, 2014 |

SCHINDLER, J. — Margaret and Leon Carter appeal the order granting Citibank's motion for summary judgment. The Carters contend Citibank did not provide adequate proof of assent to the terms of an unsigned credit card agreement and genuine issues of material fact precluded summary judgment. Because Citibank provided proof of assent and the Carters presented no evidence to create a genuine issue of material fact, we affirm.

## FACTS

Citibank issued a Sears credit card to Margaret Carter and sent her a "Card Agreement." From 2006 to 2009, Margaret regularly used the Sears credit card to make purchases, and made monthly payments on the account.[1] Margaret eventually stopped

[1] We refer to the parties by their first names for purposes of clarity and mean no disrespect by doing so.

making payments.

On October 19, 2010, Citibank filed a lawsuit against Margaret for the past due amount owed on the account totaling $15,882.82. Citibank requested judgment for the amount owed plus interest and attorney fees.

Margaret's spouse Leon, appearing pro se, argued that he should be added to the lawsuit as a defendant. The court added Leon to the caption of the lawsuit as a joint holder of the credit card.

Citibank filed a motion for summary judgment. Citibank argued that by using the card, the Carters assented to the terms of the Card Agreement and "to the amount due and owing as stated on the billing statements." In support of its motion for summary judgment, Citibank submitted an affidavit from Citibank Document Control Officer Mary Crum. Crum states the account statements "reflect[ ] that charges were made on the Account to purchase goods and services and/or obtain cash advances." Crum also states that the Carters "did eventually fail to make required payments on the Account" and are "presently in default on the Account." Crum states the balance on the account is $15,882.82 and the "Account Statement does not reflect any outstanding disputes on the Account." Crum attached account statements for the period of July 7, 2006 to March 9, 2010, a copy of the Card Agreement, copies of checks showing that Margaret's spouse Leon made payments on the credit card account, and "Sears Statement Transaction Reference Report[s]."

The Card Agreement states, "This Card Agreement is your contract with us. It governs the use of your card and account." The Card Agreement also states,

> You agree to use your account in accordance with this Agreement. You must pay us for all amounts due on your account. This Agreement is

> binding on you unless you close your account within 30 days after receiving the card and you have not used or authorized use of the card.

The Sears Statement Transaction Reference Reports show individual items the Carters purchased and the payments made on the account from September 20, 2006 to October 26, 2006.

In opposition to summary judgment, the Carters "acknowledge[d] that there is a debt, but dispute[ ] the amount claimed." The Carters argued they were "not bound by contract to the debt and should have the right to challenge the ownership and amount." The Carters submitted no evidence in opposition to summary judgment. In reply, Citibank argued that although the Carters disputed the amount owed, the unrebutted evidence established the amount owed.

The court granted Citibank's motion for summary judgment and entered judgment in the amount of $15,882.82 plus $259 in costs against Margaret Carter.

ANALYSIS

The Carters argue that Citibank failed to provide adequate proof of assent to the terms of an unsigned credit card agreement.

We review summary judgment de novo. Kruse v. Hemp, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993). Summary judgment is appropriate only when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c); Hansen v. Friend, 118 Wn.2d 476, 485, 824 P.2d 483 (1992). If in viewing all of the evidence reasonable minds could reach only one conclusion, summary judgment is appropriate. Hansen, 118 Wn.2d at 485. "A party may not rely on mere allegations, denials, opinions, or conclusory statements, but, rather must set forth specifics indicating material facts for trial." Int'l Ultimate, Inc. v. St.

Paul Fire & Marine Ins. Co., 122 Wn. App. 736, 744, 87 P.3d 774 (2004) (citing CR 56(e); Grimwood v. Univ. of Puget Sound, Inc., 110 Wn.2d 355, 359, 753 P.2d 517 (1988)).

The formation of a contract requires objective manifestation of mutual assent. Hoglund v. Meeks, 139 Wn. App. 854, 870, 170 P.3d 37 (2007). "Generally, manifestations of mutual assent will be expressed by an offer and acceptance." Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 178, 94 P.3d 945 (2004). The existence of mutual assent or a meeting of the minds is generally a question of fact, but a question of fact may be determined as a matter of law where reasonable minds could not differ. Sea-Van Invs. Assocs. v. Hamilton, 125 Wn.2d 120, 126, 881 P.2d 1035 (1994); Keystone, 152 Wn.2d at 178 n.10. "The offeror is the master of the offer" and "may propose acceptance by conduct, and the buyer may accept by performing those acts proposed by the offeror." Discover Bank v. Ray, 139 Wn. App. 723, 727, 162 P.3d 1131 (2007).

In Ray, the credit card user argued Discover Bank provided insufficient proof that he accepted the cardmember agreement. Ray, 139 Wn. App. at 725-26. The court disagreed. The cardmember agreement "clearly and unambiguously provided that use of the credit card issued by Discover Bank constituted an acceptance of the cardmember agreement." Ray, 139 Wn. App. at 727. The evidence Discover Bank submitted at summary judgment established that Ray used the card for several years. The court held Ray accepted the terms of the cardmember agreement "through his conduct of using the credit card." Ray, 139 Wn. App. at 727.

Here, the Carters' Card Agreement specifically provides that the Carters "agree to use your account in accordance with this Agreement," and that "[t]his Agreement is binding on you unless you close your account within 30 days after receiving the card and you have not used or authorized use of the card."[2] As in Ray, the evidence Citibank submitted in support of its summary judgment motion established that the Carters used the credit card to make purchases for several years, and accepted the clear and unambiguous terms of the Card Agreement.

The Carters rely on Discover Bank v. Bridges, 154 Wn. App. 722, 226 P.3d 191 (2010). Bridges does not support their argument. In Bridges, Discover Bank sued the Bridgeses alleging they owed approximately $12,000 on a credit card. Bridges, 154 Wn. App. at 724. Discover Bank filed a motion for summary judgment and in support, submitted account statements covering a seven-day period. Bridges, 154 Wn. App. at 724. The court granted summary judgment. Bridges, 154 Wn. App. at 725.

On appeal, the Bridgeses argued that Discover Bank did not demonstrate that they mutually assented to a contract by accepting the cardmember agreement and personally acknowledging their account. Bridges, 154 Wn. App. at 727. The court held that because Discover presented no evidence of the Bridgeses' personal acknowledgement of the account, genuine issues of material fact precluded summary judgment. Bridges, 154 Wn. App. at 728. The court stated that the record contained "neither a signed agreement between Discover Bank and the Bridgeses, nor detailed, itemized proof of the Bridgeses' card usage." Bridges, 154 Wn. App. at 727. The court also stated that Discover Bank presented no evidence to show "that the Bridgeses

[2] (Emphasis added.)

acknowledged the debt, for example, through evidence of cancelled checks or online payment documentation." Bridges, 154 Wn. App. at 727.

Here, unlike in Bridges, Citibank submitted copies of several checks drawn on the account of Leon Carter for payments on the Sears credit card. Citibank also provided "detailed, itemized proof"[3] of the Carters' use of the credit card by submitting Sears Statement Transaction Reference Reports and account statements for a four-year period showing the Carters made purchases and payments on the account.

In the alternative, the Carters argue that genuine issues of material fact as to "debt liability," "debt standing," and "debt ownership" preclude summary judgment. But the undisputed record shows the Carters had a credit card account with Citibank, the Carters owed $15,882.82 on the account, and Citibank had no record of outstanding disputes as to the amount owed. Because there was no genuine issue of material fact, the court did not err by granting summary judgment.

We affirm.[4]

WE CONCUR:

[3] Bridges, 154 Wn. App. at 727.

[4] The Carters also make a number of assignments of error unsupported by argument in their brief. We do not address these assignments of error. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

# 69903-2-1

# Appendix B

RICHARD D. JOHNSON,
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of the
*State of Washington*

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July 14, 2014

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CASE #: 69903-2-I
Citibank, N.A., Resp. vs. Margaret & Leon Carter, Apps.

Counsel:

Enclosed please find a copy of the Order Denying Motion for Reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

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Enclosure

c: The Hon. Mary Yu

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | | |
|---|---|---|
| CITIBANK (SOUTH DAKOTA), N.A., | ) | No. 69903-2-I |
| | ) | |
| Respondent, | ) | DIVISION ONE |
| | ) | |
| v. | ) | |
| | ) | ORDER DENYING MOTION |
| MARGARET CARTER & LEON CARTER, | ) | FOR RECONSIDERATION |
| | ) | |
| | ) | |
| Appellants. | ) | |

Appellant Leon Carter filed a motion for reconsideration. A majority of the panel determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Dated this 14th day of July, 2014.

FOR THE COURT:

Judge

# 69903-2-1

# Appendix C

Case No. 69903-2-1

DIVISION I, COURT OF APPEALS
OF THE STATE OF WASHINGTON

---

CITIBANK, N.A.,

Plaintiff-Respondent

v.

MARGARET & LEON CARTER,

Defendant/Appellant

---

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
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Appellant, Pro Se

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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 14th Amendment of the U. S. Constitution.

## E. APPELLANT REQUEST FEES AND COSTS

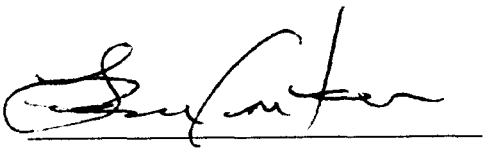
Pursuant to RAP 18.1, Appellant Leon Carter requests an award of legal consultation fees and costs for this appeal assuming Appellant prevails in a new trial. RCW 49.60.030.

## F. CONCLUSION

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

August 15, 2013

Respectfully submitted,



Leon Carter, Appellant

COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION I

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

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