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No. 67953-8-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

AAA KARTAK GLASS, INC., d/b/a AAA KARTAK GLASS & CLOSET, INC., a Washington Corporation,

Respondent,

v.

5TH & OLYMPIC, LLC, d/b/a SHILSHOLE BAY II, LLC; FIRST & LEE CORPORATION; SHILSHOLE BAY II, LLC; JOSEPH SACOTTE JANE DOE SACOTTE, husband and wife; and HARTFORD FIRE INSURANCE COMPANY,

Appellants.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 APR -5 AM 11:47

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
HONORABLE JULIE SPECTOR
HONORABLE PATRICK OISHI

REPLY BRIEF OF APPELLANTS

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ORIGINAL

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I. REPLY RE STATEMENT OF THE CASE

Many purported "facts" in Plaintiff's Response are not supported by the record or by citation to the record. Defendants request that these unsupported "facts" be ignored and/or stricken.

In light of the argument raised by Plaintiff [Response, at 2], defendant 5th & Olympic acknowledges that the trial court was entitled to hold that 5th & Olympic is liable for 18% interest. This has no effect on the remaining assignments of error raised by Defendants.

II. REPLY ARGUMENT

A. The Assignment Is Of No Benefit To Plaintiff Because Defendants Do Not Owe Any Money To The Assignor - Kartak Storefront

Plaintiff states that "Assignments are not limited to merely negotiable instruments . . . ." Response, at 5. This is correct; however, when an assignment does not involve a negotiable instrument, it is black letter law that the assignee simply steps into the shoes of the assignor. Walter Implement, Inc. v. Focht, 42 Wn. App. 104, 107-08, 709 P.2d 1215 (1985)[1]; Rodin v. O'Beirn, 3 Wn. App. 327, 330, 474 P.2d 903 (1970). Plaintiff cites no caselaw to the contrary.

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[1] Walter was reversed in part on other grounds. Walter Implement, Inc. v. Focht, 107 Wn.2d 553, 730 P.2d 1340 (1987).

It is undisputed that the assignor - Kartak Storefront - is not owed any money by Defendants [CP 93]. Therefore, the assignment from Kartak Storefront is of no benefit to Plaintiff; in particular, it does not enable Plaintiff to obtain a judgment against Sacotte personally or recover attorney's fees from 5th & Olympic.

B. The Credit Application And Personal Guaranty Is Not A Negotiable Instrument

As set forth in Defendants' Brief [at 8 - 10], the credit application and personal guaranty signed by Defendants is not a negotiable instrument. Plaintiff's Response does not dispute this. Because the credit application and personal guaranty is not negotiable, Plaintiff cannot use its terms to buttress Plaintiff's own claims against Defendants. C.I.T. Corp. v. Strain, 178 Wn. 260, 264, 34 P.2d 440 (1934) (assignee could not use terms of a personal guaranty because such a "guaranty is not negotiable"). See also Walter, 42 Wn. App. at 107 (same - lease); Rodin, 3 Wn. App. at 329 (same - real estate contract).

C. Defendants Were Not Required To Appeal Judge Spector's February 11, 2011 Order Within 30 Days

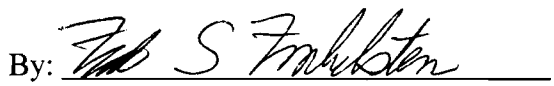
Plaintiff asserts that "the notice of appeal [of Judge Spector's February 11, 2011 Order] was untimely." Response, at 4. However, Judge Spector's Order [CP 63] was plainly not "final" under CR 54(b)

because it only entered partial summary judgment against Defendants; in fact, the Order did not even set forth the amounts owed by Defendants (an obvious requirement for a final judgment) because Judge Spector concluded there was a genuine issue of material fact regarding the principal amount owed. Thus, Defendants were not required to appeal the Order within 30 days. Washburn v. Beatt Equipment Co., 120 Wn.2d 246, 300, 840 P.2d 860 (1992); Fox v. Sunmaster Products, Inc., 115 Wn.2d 498, 503-05, 798 P.2d 808 (1990). Tellingly, Plaintiff cites no authority in support of its position.

III. CONCLUSION

Defendants request this Court to hold that: (1) Plaintiff is not entitled to a judgment against Joseph Sacotte and Jane Doe Sacotte personally, (2) Plaintiff is not entitled to attorney's fees from 5th & Olympic, LLC, and (3) Sacotte is entitled to reasonable attorney's fees and costs in the trial court and on appeal.

April 5, 2012 **FINKELSTEIN LAW OFFICE, PLLC**

By: 
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