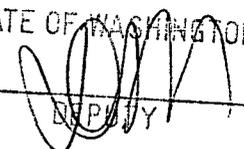


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  ~~DEPUTY~~

No. 43609-4-II

**COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON**

Amas Canzoni, a natural person
Tanana Canzoni, Estate of

Appellants

v.

TWINSTAR CREDIT UNION

Respondent

RESPONDENT'S RESPONDING BRIEF

N. Joseph Lynch, WSBA #7481
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I. FACTUAL CHRONOLOGY

On December 12, 2006, appellants Tanana Canzoni and Amas Canzoni executed a Visa Credit/Debit Card Agreement – Acknowledgement. (Ex. A; *CP p.12-19*). The Canzonis used the Credit/Debit Card provided to them by the Credit Union for several years on a periodic basis. The balance on the account varied and at its highest point, was \$3,012.33. The Agreement called for payments of \$170 per month as of January 8, 2007.

On November 7, 2008, Tanana Canzoni and Amas Canzoni executed a Disclosure Statement and Agreement as a result of their application filed with the Credit Union to finance a 2004 Infiniti G35 vehicle. (Ex.B; *CP p.20-25*).

The Canzonis admit signing the aforementioned documents identified as Ex. A and B (*CP p.12-25*). As set forth in the Complaint for Replevin/Monies Due filed with the court on March 8, 2012, (*CP p.6-25*), the loans to the Canzonis became past due. The loan for the Infiniti had a due date

of November 12, 2011, as of March 7, 2012. The Visa Loan Agreement was also past due.

In addition to the filing of the Summons and Complaint, a Motion for Order to Show Cause Re: Replevin was also filed on March 8, 2012 (CP p.26-27). An Order to Show Cause Re: Replevin was issued on the same date (CP p.28-29). The return date on the Order to Show Cause was April 13, 2012. Attempts were made to serve the Canzonis, but personal service was unsuccessful. On March 20, 2012, Timothy Gibb, a process server, posted two sets of the aforementioned paperwork on windows at the address of the Canzoni's at 14435 Vail Cut-Off Road, Rainier, Washington. (CP p.30). As a result of the inability to obtain personal service on the Canzonis, a Second Order to Show Cause Re: Replevin was obtained from the court on April 9, 2012. (CP p.31,32). Although no response was received from the Canzonis prior to April 13th, the original date for hearing on the Order to Show Cause, respondent's counsel appeared on that date in order to advise the court as to the lack of service and re-issued Order to Show Cause. Amas Canzoni did appear at the court for the hearing originally scheduled on April 13th. The court called the

case. Amongst other comments of Mr. Canzoni, he stated that the appellants had not been properly served (*VRP, April 13, 2012, page 4, line 6*). As a result, respondent's counsel provided two sets of pleadings to Mr. Canzoni, reflecting the new hearing date of May 18, 2012 (*VRP, April 13, 2012, page 4, line 11*). The court commented on the record that Mr. Canzoni had been served with a copy (*VRP, April 13, 2012, page 5, line 15*).

Following said hearing, Mr. Canzoni then filed a Reply on April 13, 2012 (*CP p.46-78*). In addition, Mr. Canzoni filed an original Bill in Equity (*CP p.79-204*) on May 9, 2012 and a Response (*CP p.205-224*) on May 15, 2012. Within that Response is contained the appellant's position statement that the loan had been discharged as a result of the provision of EFT instruments. Copies of those are included as attachments to the Response (*CP p.218-219*). Whereas those three checks were presented to the Credit Union for discharge of debt/ "EFT only", upon attempting to process the documents, they were returned from Anchor Savings Bank, the drawee, as a result of Anchor Savings Bank being unable to locate an account, as set forth in the Statement of Tami Clark (*CP p.225-229*). It was later verified that the account had been closed on December 19, 2007.

Therefore, there were no funds provided to the respondent and the checks were not accepted, but instead returned to the appellants.

Following a one-week continuance, the matter was heard before the Honorable James J. Dixon on May 25, 2012. As set forth in the Verbatim Report of Proceedings dated May 25, 2012, the court heard statements from both counsel and entered an Order of Judgment and Replevin (*CP p.245-248*), which granted judgment in favor of respondent and against the appellants on the Visa Credit/Debit Card and, further, included provisions in its Order granting the request of the Credit Union for replevin of the 2004 Infiniti G35 vehicle. This appeal followed.

II. RESPONSE TO ASSIGNMENTS OF ERROR

1. At no point did counsel for respondent Credit Union ever act as a witness. No Declarations of counsel were filed with the court, and no testimony was provided. As set forth in the Verbatim Reports of Proceedings of April 13, 2012 and May 25, 2012, Counsel presented argument to the court where necessary and answered the court's inquiries.
2. The Complaint filed in this proceeding, including its attachments (*CP p.6-25*) set forth two causes of action against the Canzonis, as

set forth earlier herein. The Complaint is verified by Diane Sokolik, the Account Solutions Manager for TwinStar Credit Union. Exhibits A and B, the Visa Credit/Debit Card Agreement and Disclosure Statement/Loan Agreement for the Infiniti, were both executed by the Canzonis and, as a result, obligations of the Canzonis created periodically by the use of the debit card and as created by the Canzonis at the time of purchase of the 2004 Infiniti, were paid by the respondent Credit Union.

3. EFT instruments may act as a legitimate means of discharging a debt. However, the very definition (Electronic Funds Transfer) requires that funds be available to transfer in order to discharge said debt. Although presented for payment by the appellants, there were no funds in the Anchor Savings Bank account to be transferred in order to pay said debt, as set forth in the statement of Tami Clark (*CP p.225-229*). Therefore, the attempt by the appellants to discharge their debt by use of an EFT instrument was not effective. There is no evidence to indicate a bias of the trial court. At no time during either the hearing on April 13, 2012 or May 25, 2012 did the appellant assert that Tami Clark was not

qualified to issue a statement or that there was any basis for the court to strike the statement.

4. To create a contract in the State of Washington, as well as any other jurisdiction in the United States, the minds of the parties must meet as to every essential term of the proposed contract, and there must be a clear and unequivocal acceptance of a certain and definite offer in order that a mere agreement may become a contract. *Joseph v. Donover Co., 261 F.2d 812 (1958)*. Both parties must have the capacity to enter into a contract (as opposed to being minors or having been declared incapacitated). The subject matter must be one that is capable of being addressed within a contractual format. There must be legal consideration. The appellants assert that the lack of a signature by an individual acting on behalf of the respondent somehow establishes that there is either no obligation of the respondent as to the mutuality of agreement and obligation, or that the parties to the contract are not equal in rights and obligations. The loan documents, identified as Exhibits A and B to the Complaint (*CP p.12-25*), are documents clearly prepared by TwinStar Credit Union and contain verbiage

therein identifying TwinStar Credit Union as the “Lender” (*CP p.13*) and contain terms of a Promissory Note and Security Agreement on Exhibit B (*CP p.20-21*). A contract signed by one party and accepted by the other need not bear the signature of the accepting party, *Hunter v. Byron, 92 Wash.469 (1916)*.

Signatures of the parties are not essential to the determination of the existence of a contract, *Jacob’s Meadow Owner’s Ass’n. v. Plateau 44II LLC, 139 Wash.App. 743 (2007)*. Any written contract though signed by only one of the parties, binds the other if he accepts it and both act in reliance on it as a valid contract. *JA Jones Const.Co. v. Plumber’s and Pipefitter’s Local 598, 568 F.2d 1292 (1978)*. The loan documents as attached to the Complaint (*CP p.12-25*) constitute contractual documents, which were executed by the Canzonis, who were competent to execute same. Both parties acted upon the obligations contained in those documents, in that the respondent, Credit Union, paid obligations of the appellants’ over a period of years until such time as the appellants ceased making payments.

As stated by the appellants, a contract must be supported by consideration in order to be enforceable. *Keystone Land & Development Co., v. Xerox Corp.*, 152 Wash.2d 171 (2004), *Goodstein v. Continental Cas. Co.*, 509 F.3d 1042 (2007).

Consideration for a contract is any act, forbearance, creation, modification or destruction of a legal relationship, or return promise given in exchange. *Labriola v. Pollard Group, Inc.*, 152 Wash.2d 828 (2004). Also *King v. Riveland*, 125 Wash.2d 500 (1994). Consideration in this proceeding by the Credit Union was to pay obligations incurred by the appellants, who in turn, on the basis of the Credit Union paying said obligations, agreed to repay them as set forth in the loan agreements.

5. The argument of the appellant is confusing as it relates to the comment that the respondent requires lawful currency to be paid as repayment of the loan, but did not itself render lawful consideration as a requirement for a contract. The appellants' preamble, as set forth in paragraph 5 of its brief (*discussed at paragraph E, page 25 Appellants' Brief*) is different than the "Issues Pertaining to Assignment of Error" set forth at page 4, line

8 of the Appellants' Brief in paragraph (a) (b) and (c). The appellants seem to be arguing that the Credit Union did not "loan" any of its money and, therefore, has not incurred any loss and that the Canzonis actually made payments under false pretenses. The argument presented in Section E on page 25 of the Appellants' Brief, rambles on with opinions and cites comments from various publications, but does not present argument on the assignments of error. It is the position of the respondent that it loaned money to the appellants as set forth previously herein and as identified in Exhibits A and B to the Complaint (*CP p.12-25*), that the Canzonis made payments on those loans for several years and they eventually defaulted, resulting in this lawsuit and the judgment entered herein.

6. The appellants argue that there are remaining genuine issues of material fact. However, the argument presented in the Brief of the appellant contains no identification of any genuine issues of material fact that remain. Since there is no argument supporting the assertion of the appellants and no facts to address, the respondent takes the position that there are no genuine issues of

material fact. The appellants did not raise this issue in the trial court. The appellants also assert that the trial court showed bias and denied them due process. There is no bias shown on the record. The appellants were allowed to present argument, as reflected as reported in the Verbatim Reports of Proceedings of April 13, 2012 and May 25, 2012. All of the pleadings filed by the appellants were a part of the record. Appellants chose to act in a *pro se* manner, as opposed to hiring counsel. There is no basis to find that either the court was biased, nor was there due process denied. In fact, the argument of the appellants in their Brief does not even address these points.

III. CONCLUSION

This is a very simple and straightforward matter. The appellants borrowed money from the respondent Credit Union. The loan relationship between them commenced in 2006 and continued for several years. The appellants eventually quit making payments. They refused to return the Infiniti automobile. The respondent Credit Union was left with no option but to file a Complaint with the court requesting a judgment for monies owed

and requesting an order replevying the vehicle, pursuant to the terms of the security agreement contained in the Note (*CP p.20-25*).

As opposed to a defense in which the appellants would have responded that the money was not borrowed, they were not delinquent, or there weresome other extenuating circumstances, they chose to provide a defense where they have cited various articles and amendments of the United States Constitution (as opposed to articles and amendments to the Washington State Constitution); they have cited various terms from the United States Code, the United States Code Annotated, UCC (as opposed to RCW 62A); various publications; Black's Law Dictionary; the Congressional Record; and have cited 26 cases within their Table of Authorities, none of which are Washington cases. In other words, the appellants do not rely for authority on any provision of the Revised Code of Washington, on any provision of the Washington State Constitution, nor on the holdings of any Washington State Appellate Cases. It is the position of the respondent Credit Union that the judgment of the trial court be affirmed.

Dated this 12 day of March, 2013.

Respectfully submitted,

LYNCH LAW OFFICES

A handwritten signature in black ink, appearing to read 'N. Joseph Lynch', written over a horizontal line.

N. Joseph Lynch, WSBA #7481
Attorney for Respondent

Affiant further states that she is informed and believes, and therefore alleges, that none of the parties are in the military service of the United States.

C. Gardner

C. GARDNER

SUBSCRIBED and SWORN to before me this 12th day of March, 2013.



Navie K. Van Hoof

Navie K. Van Hoof

Notary Public in and for the State

of Washington, residing at Toledo

My commission expires 8-15-15