

No. 46158-7-II

**Court of Appeals, Div. II,
of the State of Washington**

Richard Frost,

Appellant,

v.

Fred Hacker and John Hacker,

Respondents.

Brief of Appellant

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1. Introduction

Ten years ago, Richard and Tammie Frost borrowed money from Fred Hacker for a down payment on a real estate contract. The loan was never memorialized in writing. Hacker never initiated any collection efforts until 2013, long after the statute of limitations had run. Hacker's attorney drafted a promissory note to ratify and revive the old debt. Tammie¹ signed the promissory note without Richard's involvement or consent. Hacker then brought this suit against Richard and Tammie and their marital community, to collect on the 2013 note.

The superior court entered judgment in favor of Hacker and against both Tammie and the marital community for the full amount of the 2013 note. This Court should reverse because Tammie did not have authority to bind the marital community to her late ratification of a stale debt.

2. Assignments of Error

Assignments of Error

1. The superior court erred in granting Hacker's motion for summary judgment and in entering judgment against the marital community.

Issues Pertaining to Assignments of Error

Whether Tammie Frost lacked authority to bind the marital community to the terms of the 2013 promissory note in derogation of the community's defense of the statute of limitations (assignment of error #1).

¹ For purposes of clarity, this brief will refer to Richard and Tammie Frost by their first names. No disrespect is intended.

3. Statement of the Case

In early July, 2001, Richard and Tammie Frost borrowed \$16,328.00 from Fred Hacker to fund a down payment on a real estate contract. CP at 19, 22, 29. The loan was never memorialized in writing. *See* CP at 19-20, 29. Hacker claims to have lent additional monies to Frosts from time to time, but these alleged loans were also undocumented. *Id.* Hacker made no attempt to enforce Frosts' promise to repay, until 2013.

In January 2013, Hacker had his attorney draft a promissory note for Tammie's signature in the amount Hacker believed Frosts owed on all of these unwritten loans. CP at 20. Tammie signed the note, handwriting "& Richard C. Frost Sr. Jr." above her own name. CP at 20, 22, 29. Tammie neither consulted with Richard nor obtained his consent to put his name on the note or to bind the marital community. *See* CP at 20, 29. Richard "had nothing to do" with the 2013 note. CP at 29.

Two months later, Hacker commenced this lawsuit to collect on the 2013 note. CP at 4. Three months after filing suit, Hacker demanded immediate and full payment of the note. CP at 23. Hacker moved for summary judgment against Richard, Tammie, and the marital community. CP at 14. Richard brought a cross-motion for summary judgment dismissal of the claims against the marital community and against himself in his individual capacity. CP at 25.

The superior court held that Tammie had bound the marital community. CP at 47. The court entered final judgment against Tammie individually and against the marital community. CP at 56. Richard appeals.

4. Summary of Argument

The 2013 note was nothing more than a late attempt to revive a stale debt. The statute of limitations on Hacker's loan to Frosts had expired years before. Hacker could not enforce the loan against Richard, Tammie, or the marital community.

Even if Tammie's signature on the 2013 note ratified her own obligation to pay, she did not have authority to bind the marital community. Tammie could not bind the community because the note would be an impermissible gift of community assets, the note did not benefit the marital community, and Richard did not authorize or ratify the transaction. This Court should reverse the judgment against the marital community.

5. Argument

5.1 Summary judgment orders are reviewed *de novo*.

This Court reviews summary judgment orders *de novo*. *Schmitt v. Langenour*, 162 Wn. App. 397, 404, 256 P.3d 1235 (2011). The Court engages in the same inquiry as the trial court. *Labriola v. Pollard Group, Inc.*, 152 Wn.2d 828, 832, 100 P.3d 791 (2004). Summary judgment should be granted when there is no genuine issue as to any material fact and the issues can be resolved as a matter of law. CR 56(c). The court considers the facts in the light most favorable to the nonmoving party. *Labriola*, 152 Wn.2d at 833. A material fact is one that affects the outcome of the litigation, in whole or in part. *Schmitt*, 162 Wn. App. at 404. A genuine issue of material fact exists

only if reasonable minds could reach different conclusions. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695 (2009).

5.2 The marital community had no obligation to pay the oral loan because the statute of limitations had expired no later than 2008.

The marital community was released of any obligation to pay the oral loan by the expiration of the statute of limitations. The loan from Hacker to Frosts was never put in writing. An action on a contract or liability that is not in writing must be commenced within three years of its accrual.

RCW 4.16.080. A cause of action for payment of a debt accrues at maturity. An oral debt, in order to survive the statute of frauds, must mature within one year. *See* RCW 19.36.010 (a promise not in writing is void if it is “not to be performed in one year from the making thereof”).

Accordingly, Hacker’s cause of action to enforce the debt had to accrue, if at all, no later than July 2005, one year after making the oral loan. The three year statute of limitations on that action would have expired no later than July 2008. Because Hacker could not have enforced the loan after that date, the Frost marital community no longer had any legal obligation to pay the loan.

5.3 Because the marital community had no obligation to pay, Tammie could not bind the community to the 2013 note without Richard’s knowledge or consent.

Tammie’s execution of the 2013 note was gratuitous. Neither she, nor Richard, nor their marital community had any enforceable obligation to repay

Hacker for the oral loan. There is no evidence of any consideration for the note. The use of community resources or credit, without obligation to do so, can only be classified as a gift. *In re Marriage of Schweitzer*, 132 Wn.2d 318, 331, 937 P.2d 1062 (1997).

5.3.1 The 2013 note was an impermissible gift of community property or credit without Richard's consent, in violation of RCW 26.16.030(2).

Neither spouse may make a gift of community property without the knowledge and consent of the other spouse. RCW 26.16.030(2). This rule applies equally to gratuitous debts. *Schweitzer*, 132 Wn.2d at 331. In *Schweitzer*, the marital community had no legal obligation to support an adult son while he attended college; therefore, the court held, expenditures and loans incurred for that purpose without the husband's consent were impermissible gifts of community property. Similarly, the court has held that a husband's gratuitous guaranty of debts incurred by his son could not bind the marital community where the wife never consented to the guaranty. *Nichols Hills Bank v. McCool*, 104 Wn.2d 78, 701 P.2d 1114 (1985).

This case is no different. Just as in *Schweitzer* and *McCool*, the Frosts' marital community had no legal obligation to pay Hacker. Tammie's execution of the 2013 note was gratuitous. Richard never consented. Just as in *Schweitzer* and *McCool*, and in accordance with RCW 26.16.030(2), the 2013 note cannot bind the community because it was an impermissible gift of community credit without the consent of both spouses.

As the court noted in *McCool*, both the statute and public policy considerations dictate that the marital community must be protected against unauthorized gifts from one spouse without the consent of the other. *McCool*, 104 Wn.2d at 88. To subject the marital community to one spouse's gratuitous debt would defy the statutory mandate by allowing the community estate to be reduced without the consent of both spouses. *Id.* In accordance with RCW 26.16.030, with case law, and with public policy, this court should reverse the judgment against the Frosts' marital community.

5.3.2 Additionally, the 2013 note does not bind the marital community because Tammie was not acting for the benefit of the community when she signed the note.

In a marriage, spouses owe each other “the highest fiduciary duties,” including the duty to manage community assets *for the benefit of the community*. *Peters v. Skalman*, 27 Wn. App. 247, 251, 617 P.2d 448 (1980). Each spouse is required to act in good faith when managing community property. *In re Marriage of Chumbley*, 150 Wn.2d 1, 9, 74 P.3d 129 (2003). A spouse's authority to act alone only extends to transactions “in the community interest,” or for its benefit. *Id.* A gratuitous debt does not confer any benefit on the community. *Schweitzer*, 132 Wn.2d at 330. A gratuitous debt is, therefore, outside the authority of one spouse acting alone to bind the marital community.

Tammie did not confer any benefit on the community when she signed the 2013 note. Neither she nor Richard nor the community had any legal obligation to pay Hacker after the statute of limitations had run. There

is no evidence that the community received any consideration for Tammie's execution of the note. The community did not benefit from the note. To the contrary, if the note were binding on the community, the community estate would be reduced by over \$35,000; the community would lose the benefit of its statute of limitations defense. Such a transaction is not in the community interest. Tammie did not have authority, acting alone, to bind the community to her gratuitous transaction.

5.3.3 Richard did not authorize or ratify the 2013 note.

Authorization occurs when the non-acting spouse affirmatively consents, prior to the transaction. *McCool*, 104 Wn.2d at 83. Ratification occurs when the non-acting spouse indicates approval after the transaction has taken place. *Id.* at 85.

Richard did not authorize or ratify the 2013 note. Hacker presented the note to Tammie alone. CP at 20. There is no evidence that Richard ever approved of the note, either before or after Tammie signed it. *See* CP at 20, 22. To the contrary, Richard testified that he "had nothing to do" with the note. CP at 29. Richard never consented to the transaction.

6. Conclusion

The 2013 note was nothing more than a late attempt to revive a stale debt. The Frost's marital community had no obligation to pay the past oral loans from Hacker after the statute of limitations had run. As a matter of law, Tammie did not have authority to bind the community to the 2013, which she gratuitously signed, conferring no benefit on the community. This

Court should reverse the judgment against the marital community and grant Richard's motion for summary judgment dismissal of Hacker's claims against Richard and the marital community.

Respectfully submitted this 28th day of July, 2014.

/s/ Kevin Hochhalter
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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on July 28, 2014, I caused the original of the foregoing document, and a copy thereof, to be served by the method indicated below, and addressed to each of the following:

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copy:	Tammie Frost P. O. Box 571 Rainier, WA 98576	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail

DATED this 28th day of July, 2014

/s/ Rhonda Davidson
Rhonda Davidson, Legal Assistant

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