

No. 30070-6

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

FDIC as Receiver for the BANK OF WHITMAN,

Respondent,

v.

URIBE, INC., a Washington Corporation;
MICHAEL C. URIBE and HELEN R.
URIBE, husband and wife and the
Marital Community composed thereof,

Appellants.

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

I.	ARGUMENT	1
	1. The Counterclaim	1
	2. The Affidavits.....	1
II.	CONCLUSION	2

I. ARGUMENT IN REPLY

1. **The Counterclaim.** Respondent's Brief argues that Uribes' counterclaim (CP 263) is deficient because in Section III, First Cause of Action, the counterclaim refers to a contract for the Bank to provide a performance bond for the construction contract. The Uribe's agree that the oral contract between the Bank and Uribes was for the Bank to provide an irrevocable line of credit (ILOC), and not a bond. This is made clear in Section II, Facts Common to all Causes of Action and later in the affidavits filed by Uribes in opposition to the Bank's motion for summary judgment.

The issue about an agreement for the Bank to provide a performance bond is simply a distraction. This Court should therefore disregard any of the Bank's arguments regarding the procurement of a bond by the Bank.

2. **The Affidavits.** The Bank of Whitman, argues various disputed facts contained in the affidavits for and against summary judgment. The extensive argument about the facts of the case demonstrates why the Bank's motion for summary judgment should have been denied.

The undisputed facts in the affidavits are that the Uribes and Bank of Whitman had a course of dealing where the Bank provided financing to

the Uribes for construction jobs. In the previous case, the Bank provided an ILOC securing the required performance bond. In 2007 the Uribes and the bank agreed that the Bank would make another loan for a pipeline construction project. As before, the Bank attempted to tender an acceptable ILOC but it was unable to do so because of its poor financial condition. The Bank then cast about to find another solvent bank to do so, which delayed the start of the Uribes' work on the project.

The Uribes claim that they lost money on the project because of the delay in procuring the performance bond. That is a disputed fact.

The Bank argues there was no express or implied contract for the bank to provide an ILOC in order for the Uribes to procure a performance bond. The Bank's affidavits and the Uribes' affidavits squarely disagree as to the material facts from which the express or implied oral contract arose.

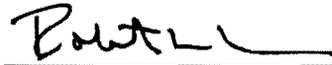
Therefore, genuine issues of material facts are present and the summary judgment should be reversed.

II. CONCLUSION

Based on the foregoing, Defendant – Counter Plaintiffs Uribe, Inc. and Michael and Helen Uribe respectfully submit there are genuine issues of material fact as to the existence of an oral contract with Bank of Whitman, and therefore, the Summary Judgment Order should be reversed and the case remanded for further proceedings.

RESPECTFULLY SUBMITTED this 12th day of April, 2012.

ROBERT M. SEINES



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