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64159-0

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

CITIBANK SOUTH DAKOTA NA, Respondent,

v.

Tim P Ryan, Appellant

Court of Appeals No. 64159-0-1
Skagit County Superior Court No. 09-2-01355-4

BRIEF OF APPELLANT

Tim P Ryan, Pro Se Appellant

116 Heritage Place, #104
Burlington, WA 98233

2010 MAY 13 AM 10:12
COURT OF APPEALS
DIVISION 1
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I. INTRODUCTION

This case pertains to an alleged credit card debt claimed by Respondent/Plaintiff as owed by the Pro Se Appellant/Pro Se Defendant. The trial court ruled in favor of the Respondent's/Plaintiff's Motion for Summary Judgment. The Pro Se Appellant/Pro Se Defendant moved the Court of Appeals to review the trial court decision.

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1:

The presiding judge Susan Cook erred in ruling in favor for the Respondent/ Plaintiff without making an informed ruling based on evidence from both sides.

Issues Pertaining to Assignment of Error No. 1:

Judge Susan Cook signed Respondent/Plaintiff's Order for Summary Judgment, which stated on its face that the judgment was based on the "Motion for Summary Judgment, and its affidavits" (CP 84-85). The Order did not state that the

1 Pro Se Appellant/Pro Se Defendant's documents and
2 affidavits were even considered in the opinion.

3 **III. STATEMENT OF THE CASE**

4 This case started on April 24, 2009 by the service of the
5 Summons (CP 1-2) and Complaint (CP 3-5) upon the Pro
6 Se Appellant / Pro Se Defendant. Since pertinent
7 information was found lacking in the Complaint, the Pro Se
8 Appellant/Pro Se Defendant sent a request for
9 documentation on May 15, 2009, titled "Response To
10 Complaint" (CP 44) to the attorneys for
11 Citibank/Respondent/Plaintiff. The Summons (CP 1-2) and
12 Complaint (CP 3-5) were filed into Skagit County Superior
13 Court on June 29, 2009. From May 15, 2009, until July 15, 2009,
14 the Respondent/Plaintiff failed to provide the requested
15 documentation as per the above referenced "Response To
16 Complaint." Yet without providing the required and
17 requested documents, the Summons and Complaint was filed
18 into the Court a little more than two weeks before providing
19 even an effort to document the debt and obligation

1 allegedly owed by Pro Se Appellant/Pro Se Defendant. In
2 fact, the requested documentation, (CP 63-83) while wholly
3 insufficient, was not provided to Pro Se Appellant/ Pro Se
4 Defendant until July 17, 2009, the date the Motion For
5 Summary Judgment (CP 6-8) was filed with the Court. A
6 motion for summary judgment is not supposed to be filed until
7 a defendant fails to respond to a summons and complaint.
8 Pro Se Appellant/Pro Se Defendant did not have the vital
9 requested documents provided timely from the Plaintiff's to
10 respond prior to July 17, 2009. Using the wholly insufficient
11 documentation provided by the Respondent/Plaintiff, the Pro
12 Se Appellant/Pro Se Defendant filed an Answer (to Summons
13 and Complaint) (CP 36-38), an Opposition To Summary
14 Judgment (CP 39-47), and Affidavit Of Fact (CP 48-51) with
15 the Court on August 12, 2009. On August 20, 2009, the
16 Respondent / Plaintiff once again provided Pro Se
17 Appellant/Pro Se Defendant with an identical copy of the
18 same documentation previously received on July 15, 2009.
19 However, the documentation requested evidencing credit

1 card debt account and debt obligation (CP 9-35) included
2 with the Motion For Summary Judgment (CP 6-8) filed in the
3 Court on July 17, 2009, had an additional portion (CP 30-34)
4 not previously provided to Pro Se Appellant/Pro Se
5 Defendant, alleging to be a card agreement that Pro Se
6 Appellant/Pro Se Defendant had never seen before nor had
7 been provided. Providing incomplete documentation not
8 only once, but twice, does not make it any more complete.
9 Said documentation included an affidavit allegedly by a
10 Delores Wageman (CP 63) who it is believed to be an agent
11 for Citigroup Financial. This affidavit was not signed under
12 penalty of perjury, nor did it state that it was true, correct and
13 complete. It was notarized, stating that Delores Wageman
14 was the person who actually signed the affidavit. This leaves
15 the affidavit of the Respondent/Plaintiff without being done
16 under oath, unless you count swearing that you are actually
17 Delores Wageman, the person who claims to have signed the
18 document. This does not stipulate that the documents
19 provided, as well as the affidavit itself, is truthful, correct, and

1 complete, nor does it stipulate that the provided documents
2 (including the affidavit) were provided under penalty of
3 perjury. Yet these are the documents that were used along
4 with the Motion For Summary Judgment (CP 6-35) to rule in
5 favor of the Respondent/Plaintiff.

6 **IV. ARGUMENT**

7 All of Pro Se Appellant/Pro Se Defendant's documents
8 filed with the Court titled Answer (To Summons and
9 Complaint) (CP 36-38) dated 8/12/2009, Opposition To
10 Summary Judgment (CP 39-47) also dated 8/12/2009, and
11 Affidavit Of Fact (CP 48-51) also dated 8/12/2009 are signed
12 under penalty of perjury and as true, correct and
13 complete. It is in these three documents that Pro Se
14 Appellant/Pro Se Defendant repeatedly states a denial of the
15 alleged debt. This is very key to the Assignment of Error No. 1,
16 since Judge Susan Cook made her ruling on the
17 Respondent/Plaintiff's Motion For Summary Judgment and its
18 affidavits (CP 6-35), which bore no oath except to say that
19 Delores Wageman was in fact the person who had signed

1 the affidavit. Unsworn affidavits and motions cannot be held
2 to a higher standard in seeking the truth than the sworn
3 answers and oppositions signed under penalty of perjury by
4 the Pro Se Appellant/Pro Se Defendant. Since the Pro Se
5 Appellant/Pro Se Defendant did not then and does not now
6 have the services of an attorney, it was vital that all
7 documents denying the claim made against him be signed in
8 this manner.

9 As well as these sworn documents provided to the
10 Court by Pro Se Appellant/Pro Se Defendant, the Court had
11 ample time to review all documents provided by both sides.
12 It appears that Judge Cook did not review the
13 documents provided by Pro Se Appellant/Pro Se Defendant,
14 and in fact, took it upon herself to prosecute this case against
15 Pro Se Appellant/Pro Se Defendant, as per the Verbatim
16 Report of Proceedings. After Respondent/Plaintiff's attorney
17 claimed that the Pro Se Appellant/Pro Se Defendant never
18 swore under oath that he didn't occur the debt or that he
19 didn't use the credit card (RP page 3, line 19-22), Judge

1 Susan Cook took it upon herself to prosecute, repeatedly
2 asking the Pro Se Appellant/Pro Se Defendant if he had
3 denied the debt and use of the credit card under oath (RP
4 page 5, lines 7-10, and 15-21; RP page 8, line 21- page 9, line
5 2 & lines 13-14; and RP page 10, lines 11-15.) Judge Cook
6 again both prosecutes and testifies against Pro Se
7 Appellant/Pro Se Defendant, saying that the
8 Respondent/Plaintiff is familiar with the terms of the contract
9 and saying that the Pro Se Appellant/Pro Se Defendant
10 agreed to pay the amount (RP page 6, lines 6-10).

11 In response to these repeated attempts at prosecuting
12 the Pro Se Appellant/Pro Se Defendant by the Judge, the Pro
13 Se Appellant/Pro Se Defendant did get a word in about
14 taking Delores Wageman's affidavit (CP 9) into consideration
15 (RP page 6, lines 17-19, and 21-22). This had to do with an
16 affidavit that was not sworn. When Pro Se Appellant/Pro Se
17 Defendant tried to respond to the Judge's question regarding
18 a sworn denial (RP page 9, line 15), he was cut off by the
19 Judge who interrupted him about his Response To Complaint

1 letter (CP 44) to Respondent/Plaintiff's attorney dated May
2 15, 2009 (RP page 9, lines 16-18). Had she actually read all
3 the documents in the file before the Court, she would have
4 seen that this document, which was actually only an exhibit
5 attached to the Answer (To Complaint) (CP 36-38), was only a
6 request for documents. This was not filed as a separate
7 document with the Court. The actual Answer (To Complaint)
8 (CP 36-38) filed by the Pro Se Appellant/Pro Se Defendant
9 does indeed contain a denial of debt and is signed under
10 penalty of perjury and a declaring that it is true, correct, and
11 complete. Pro Se Appellant/Pro Se Defendant actually
12 responded to the judge's continued demand to see a
13 sworn denial, stating "I deny using the card" (RP page 10,
14 line 22). Judge Cook responded by saying, "But not under
15 oath in the file" (RP page 10, line 23). Immediately following
16 this statement by the judge, Judge Cook stated, " All right. At
17 this point I'm going to sign the plaintiff's motion for, order for
18 summary judgment" (RP Page 10, line 24-25 thru Page 11, line
19 1). Had Judge Cook actually read all of Pro Se

1 Appellant/Pro Se Defendant's paperwork she would have
2 seen that denial of obligation and debt were both made
3 under oath, unlike the affidavit signed by Citigroup Financial's
4 Delores Wageman (CP 63). The only other document that
5 even bares a semblance of oath is in the Motion for Summary
6 Judgment (CP 8) where the attorney swears that he spent a
7 certain amount of hours writing and prosecuting this case.

8 **V. CONCLUSION**

9 Based on the Assignment of Error No.1 with the support
10 of the Issues Supporting the Assignment of Error No. 1 and
11 along with the above Argument, Pro Se Appellant/Pro Se
12 Defendant requests that the Order Granting Summary
13 Judgment (CP 84-85) signed by Judge Susan Cook be
14 reconsidered and overturned in Pro Se Appellant/Pro Se
15 Defendant's favor, based on CR 59(a)(1). Judge Cook
16 clearly has shown that she did not take into consideration
17 duly sworn documents denying the obligation and debt filed
18 into the Court by Pro Se Appellant/Pro Se Defendant, by her
19 continual questioning during the hearing regarding the lack

1 of denials made under oath, and by her signature on the
2 Order Granting Summary Judgment (CP 84, final sentence,
3 and CP 85, top sentence), which states "..... the Court
4 having considered the Plaintiff's Motion for Summary
5 Judgment, and the affidavits in support...." There definitely
6 was an irregularity in the proceedings of the court by the
7 Judge, which prevented the Pro Se Appellant/Pro Se
8 Defendant from having a fair trial. Judge Cook showed a
9 clear abuse of discretion. No credit card was issued to the
10 Pro Se Appellant/Pro Se Defendant by Citibank, and Pro Se
11 Appellant/Pro Se Defendant made no purchases for goods or
12 service or cash advances.

13
14 Pro Se Appellant/Pro Se Defendant declares the foregoing
15 is true, correct and complete, to the best of Defendant's
16 knowledge, under penalty of perjury under the positive Laws
17 of the united States of America and the Washington state.

18
19 Submitted on **April 28, 2010**
20 Refiled and reserved in compliance
21 of RAP 10.4(a) **May 11, 2010**

22 Tim P Ryan, Pro Se Appellant/
23 Pro Se Defendant
24
25



**COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON**

Case No.: 64159-0-1

Affidavit of Proof of Service

I, Affiant Cathy Ryan, am competent to testify and am over the age of majority, and state that the facts contained herein are true and correct, to the best of Affiant's first hand knowledge under penalty of perjury pursuant to the laws of Washington State

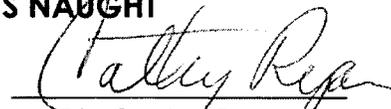
This is the Affidavit of Proof of Service of Cathy Ryan that I, affiant, served via First Class US Mail (1) copy of the document listed below to Suttell & Associates, P.S., 1450 – 114th Ave. S.E., #240, Conifer Building, Bellevue, WA 98004 for CITIBANK SOUTH DAKOTA NA.

A courtesy copy of:

1. Court of Appeals Brief of Appellant- refiled and reserved in compliance
2. Affidavit of Proof of Service

FURTHER AFFIANT SAYS NAUGHT

Dated this 11th day of May, 2010


Cathy Ryan

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

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COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
2010 MAY 13 AM 10:14

CASE #: 64159-0-1
Citibank South Dakota, Respondent v. Tim P. Ryan, Appellant

Counsel:

The appellant's brief filed in the above case on April 29, 2010, along with the attached checklist, is being returned for failure to comply with the Rules of Appellate Procedure. appellant is directed to re file and reserve the brief in compliance with the checklist on or before May 13, 2010.

Failure to timely comply with the Rules of Appellate Procedure may result in the imposition of sanctions pursuant to RAP 18.9.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

CHECKLIST FOR BRIEFS

Case No. 64159-0-I, Citibank v. Ryan.

CONTENTS

- _____ (1) Title Page. RAP 10.3(a)
- _____ (2) Tables. RAP 10.3(a)
1. of contents, with page references
 2. Cases arranged alphabetically and where cited
 3. Other sources, where cited
- _____ (3) Assignments of Error Required for appellant and for respondent only if also seeking review. RAP 10.3(a); RAP 10.4(c).
1. Separately stated
 2. Issue pertaining thereto
 3. If involving proposed or actual findings of fact or instruction
 - a. Separate assignment for each
 - b. Referenced by number
 - c. Text of instruction, finding of fact or the like
- _____ (4) Statement of Case (necessary for respondent only if dissatisfied with appellant's statement). RAP 10.3(a)
1. Facts & Procedure
 2. References to record. All references to the record should be to specific pages in the Clerk's Papers or the Report of Proceedings rather than to sub numbers or to the appendix
- _____ (5) Argument. RAP 10.3(a)
1. Record references
 2. Authorities cited
- _____ (6) Conclusion stating precise relief sought. If issue relating to statute, rule, regulation, instruction, or finding of fact, set out verbatim in text of appendix
- _____ (7) A brief of appellant, petitioner, or respondent, and a pro se brief in a criminal case should not exceed 50 pages. A reply brief should not exceed 25 pages. An amicus curiae brief should not exceed 20 pages.
- XXXXXX (8) Failure to comply with the provisions of the Rules of Appellate Procedure related to font size, **side margins**, or spacing. RAP 10.4 (a)

TK

116 Heritage Place, # 104
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May 11, 2010

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Court of Appeals Case No. 64159-0-1
CITIBANK SOUTH DAKOTA NA, Respondent v. Tim P Ryan, Appellant

Skagit County Superior Court Case No. 09-2-01355-4

Mr. Johnson:

Enclosed please find an original and two copies of the following listed documents. Please confirm one copy and return to Pro Se Appellant in the enclosed stamped envelope.

1. BRIEF of APPELLANT – refiled and reserved in compliance
2. Affidavit of Proof of Service – one copy for court

Sincerely,

Tim Ryan, Pro Se Appellant



2010 MAY 13 AM 10:01
COURT OF APPEALS
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