

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.

5 TH & OLYMPIC, LLC, a Washington Limited Liability Company, d/b/a
SHILSHOLE BAY II, LLC; FIRST & LEE CORPORATION; SHILSHOLE
BAY II, LLC; JOSEPH J. SACOTTE and JANE DOE SACOTTE, husband
And wife; and HARTFORD INSURANCE COMPANY, a Corporation,

Appellants,

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

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 MAR 22 AM 10:29

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

The Defendant, Joseph Sacotte and his partner, Joel Lavin, are the owners of First Church, LLC, the developer of a 12 unit condominium project known as The Sanctuary located in Seattle, Washington. On September 10, 2010 Resource Transition consultants, LLC was appointed general receiver over First Church, LLC in the matter of Charter Bank v. Joseph J. Sacotte, et ux et el, King County case No. 10-2-26503-1 SEA. [CP116]

The Defendant, 5th & Olympic, LLC is also owned by Joseph Sacotte and Joel Lavin, and was the general contractor on their First Church, LLC condominium project.

5th & Olympic, LLC is a registered general contractor and Hartford Fire Insurance Company provided the \$12,000.00 general contractors bond. A judgment has been entered against Hartford for \$6,000.00 pursuant to RCW 18.27 et seq. Hartford it is not a party to this appeal and the judgment against Hartford remains outstanding.

On May 29, 2008 Joseph Sacotte completed a credit application and personal guarantee for 5th & Olympic, LLC to AAA Kartak Storefronts and Glazing which stated: "I personally guarantee payment of all charges incurred by the above firm (5th & Olympic, LLC – added herein) and its agents." This application was assigned to the Appellant on March 5, 2010.

In 2009, Appellant was requested by Joel Lavin to provide proposals to the general contractor, 5th & Olympic, LLC for mirrors and glass. The proposals were

accepted by 5th & Olympic, LLC and the material was delivered and installed. Payment was not received an Appellant commenced this action on May 21, 2010 for the sum of \$18,763.83. Thereafter, Appellant received a cashier's check from Charter Bank in the sum of \$10,486.83 payable to AAA Kartak Glass & Closet and First Church.

The Supplemental Declaration of Kevin Kartak [CP 45] dated February 7, 2011 provides a copy of the Assignment of the Application and also provides for four (4) copies of the Kartak proposals to 5th & Olympic, LLC accepted by Joel Lavin, which specifically provide in the same sentence he signed for 1.5% interest on past due accounts. There can be no issue on past due interest at 18%. This claim is without merit and frivolous.

The record is replete that 5th & Olympic, LLC and not First Church, LLC was the entity obligated to Kartak. At the trial Court, the Appellants declared under penalty of perjury that Kartak contracted with First Church, LLC. Appellants now admit in their brief (page 4) that 5th & Olympic hired Respondent.

Kartak would not have extended credit to 5th & Olympic without the personal guarantee of Joseph Sacotte.

II. ORDERS ENTERED

1. On February 11, 2011 Judge Spector granted a partial summary judgment in favor of Appellant against 5th & Olympic, LLC and Joseph Sacotte, subject to a determination of the amount actually owing. A CR 54 Rule was entered and Respondent did not appeal this order.

2. On November 1, 2011 Judge Osihi entered again a final Judgment against 5th & Olympic, LLC and Joseph Sacotte in the principal sum of \$8,277.00, plus interest of \$2,855.57, costs of \$360.00 and reasonable attorney's fees in the sum of \$4,650.00. The Judgment remains unsatisfied.

III. STATEMENTS OF UNDISPUTED FACTS

1. 5th & Olympic, LLC in this appeal does not dispute the principal amount owing to Appellant in the sum of \$8,277.00, but disputes the interest of (18%) and attorney's fees awarded Appellant. The issue of interest at 18% is undisputed in the proposals signed by Joel Lavin and the billings. The assignment of error should be dismissed summarily.

2. On March 10, 2010, AAA Kartak Storefronts & Glazing, Inc. assigned to AAA Kartak Glass & Closet, Inc. all of its rights, title and interest to receive payment from 5th & Olympic, LLC, Shilshole Bay II, LLC, Joseph J. Sacotte and First Church and any other associated corporations owned and or controlled by Joseph J. Sacotte and all amounts relating thereto, including, but not limited to, interest, attorney's fees and all costs.

At the time of the assignment, 5th & Olympic, LLC and Mr. Sacotte owed Appellant in excess of \$18,000.00.

3. Hartford Fire & Insurance Company, bonding company for 5th & Olympic, LLC has not appeals the judgment entered against it on November 1, 2011 in the sum of \$6,000.00.

IV. STATEMENT OF POSSIBLE ISSUES

1. Did Respondents fail to file a timely notice of Appeal from the order entered by Judge Spector on February 11, 2011 on the issue of liability? Appellant submits that the notice of appeal was untimely.
2. Is the assignment of the Credit Application from Kartak Storefront to Kartak Closet valid and enforceable? YES.
3. Whether the assignment is or is not enforceable, interest at 18% is enforceable against 5th & Olympic, LLC. based upon the signed proposals of Joel Lavin, 50% owner.
4. If the assignment is valid and enforceable, does the Assignment bind 5th & Olympic, LLC and Joseph Sacotte for attorney's fees. YES.
5. If the assignment is unenforceable against Joseph Sacotte, is he entitled to attorney's fees? Should the judgment be remanded and modified to exclude Joseph Sacotte? NO.

V. ARGUMENT

This is a common scenario – Developers and Contractors are usually under capitalized and financially leverage their projects / developments to the maximum hilt possible; and, sometimes the owners have some questionable assets to convince a sub-contractor or supplier to provide credit on the condition that the developer and / or owner(s) provide a personal guarantee.

When default occurs for none payment – the defense of the guarantor is - I’m not liable on my personal guarantee for various unsupported reasons – it was someone else’s fault that the project is in default or failed. At this point in the construction process, the construction lender cuts off all construction draws (usually because the developer and/or contractor are not paying the sub-contractors and suppliers) and the completion of the project comes to a stand still as in this case. The question then asked by the construction lender (Charter Bank), where did the money go and who receive it and for what purpose. A very valid question. Is Charter Bank partially at fault for not monitoring the disbursement of construction draws or were there some misleading statements on costs advanced by First Church, LLC. That is unknown. However, the answer is not a part of this litigation, but is an issue since this litigation would not have been instigated. Rather than Bankruptcy, in this case a receiver was appointed to take charge of the assets of the developer, First Church, LLC.

This is not a “SHELL GAME.” Creditors have the right to know and need know who is liable for the fruits of their labor and the materials they supply for the benefit of their Debtor.

The argument of Appellant is misplaced regarding the assignment of the Credit Application. Assignments are not limited to merely negotiable instruments and it is not the Appellants position that the Credit Application is or is not a negotiable instrument. The law permits assignments of all sorts of

contracts, agreements and under-standings, including the credit application, which is at issue in this case. AAA Kartak Storefronts & Glazing, Inc. assigned to AAA Kartak Glass, In. d/b/a AAA Kartak Glass & Closet, Inc., the Credit Application on March 5, 2010. The “Credit Application and Personal Guarantee” requests credit on behalf of 5th & Olympic, LLC and Joseph Sacotte from AAA Kartak Storefronts & Glazing, Inc. Copy of the Credit Application is attached hereto as Exhibit “A.” This corporation is obviously affiliated and owned by Kartak in its operations of it glass and glazing business. That being said, Kartak would not do business with Mr. Sacotte and any of this affiliated companies without his personal guarantee.

The Credit Application provided by 5th & Olympic, LLC provides for the assurance that any obligations of 5th & Olympic , LLC will be paid and guaranteed by Joseph Sacotte.

RCW 4.08.080 provides in part as follows:

“Any assignee ...specialty, book account, or other chose in action, for the payment of money, by assignment in writing...may ...sue and maintain an action ...”

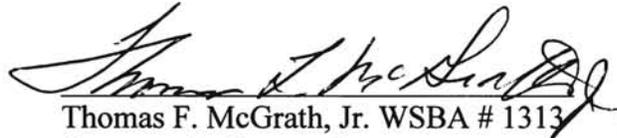
The legal authority submitted by Appellant is not applicable in this case.

VI. CONCLUSIONS

1. The Court should dismiss this appeal without argument and without a published opinion;
2. Affirm the Trial Court decisions; and

3. Award Plaintiff / Respondent its attorney's fees in this appeal.

DATED this 20th day of March, 2012.

A handwritten signature in cursive script, appearing to read "Thomas F. McGrath, Jr.", written in black ink over a horizontal line.

Thomas F. McGrath, Jr. WSBA # 1313
Attorney for Respondent



13214 4th Ave W, Everett, WA 98204
3420 C Street NE #306, Auburn, WA 98002

425-844-8555
Fax 425-741-1747

Approved
(Signature)

Credit Application and Personal Guarantee

Company Name 5th & Olympic LLC Phone (206) 838 - 3064
Date Business Began 2001 Corporation Partnership LLC
Billing Address 505 A West Olympic Place
City Seattle State Wa Zip 98119
Alt. Phone () - Fax (206) 838 - 3066 E-mail info@Sacotte.com
UBI # 602 123 861 Bank Charter Bank Phone (206) 774 - 5100

Owner Joel Lavin Phone (206) 838 - 3064
Home Address _____ Zip _____
Owner Joe Sacotte Phone (206) 838 - 3064
Home Address _____ Zip _____

Have you ever filed for bankruptcy or chapter 11? no

Have you ever been an officer of a corporation that has filed bankruptcy or chapter 11? no

Credit References

Business see attached Phone () - Fax () -
Business _____ Phone () - Fax () -
Business _____ Phone () - Fax () -
Business _____ Phone () - Fax () -

I certify under the penalty of fraud that the above information is true to the best of my knowledge. I authorize AAA Kartak Storefront & Glazing, Inc. (AAA Kartak) to access my/our credit history for the purpose of establishing credit. I understand and agree that: that all invoices are due and payable on the 10th of the month following installation; accounts past due will be charged interest of 1.5% per month; I have received a copy of AAA Kartak's Standard Exclusions and One Year limited warranty and understand it applies to all work, (additional copies available upon request.) Upon default of payment, I agree to pay the collection costs and reasonable attorney fees that may be incurred. I personally guarantee payment on all charges incurred by the above firm and its agents.

Signature (Signature) Date 5/29/08
Print Name JOE SACOTTE Social Security Number _____

91-2139772

Our Goal: Credit Decision with in 48 hours.
Incomplete applications may cause delay.
(Please fax to 425-741-1747)

EX-"A"