

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 APR - 6 PM 3:10

CASE NO. 72605-6-I

COURT OF APPEALS DIVISION ONE OF THE STATE OF
WASHINGTON

DONALD F. WOLPH and TERESA A. WOLPH, husband and
wife,

Appellants,

v.

LINDA JEAN SAPP, as Personal Representative of the Estate of
Barbara Priscilla Harrington, deceased,

Respondent.

Appellants' Reply Brief

Bernard G. Lanz, WSBA 11097
The Lanz Firm, P.S.
216 1st Avenue South, # 333
Seattle, WA 98104
(206) 382-1827

Attorney for Appellants

Table of Contents

I.	INTRODUCTION	1 _Toc415176198
II.	ARGUMENTS	2
	A. Standard of Review.....	2
	B. Summary Judgment is inappropriate because the terms of the contract depend upon the parties' intent, which is a question of fact for a jury to decide.	3
	C. Summary Judgment is inappropriate because Harrington's intent, or lack thereof, to pay the debt is an issue of material fact that should be determined by a jury.	4
	D. Summary Judgment is inappropriate because there is a genuine issue of material fact as to when the Statute of limitations began to run .	6
	E. The acknowledgment is not void because Harrington was presumptively sane and Sapp has not produced any relevant evidence to rebut that assumption.....	9
III.	CONCLUSION	9

Table of Authorities

Cases

Korst v. McMahon, 136 Wn. App. 202, 208, 148 P.3d 1081 (Ct. App. Div. II 2006)6

Young Soo Kim v. Choong -Hyun Lee, 174 Wn. App. 319, 323, 300 P.3d 431 (2013)6

Statutes

CR 56(c)2

Other Authorities

RCW 11.40.0519

RCW 11.40.1358

RCW 4.16.2807, 9

Treatises

11 U.S.C. §523.....5

11 U.S.C. §524.....5

I. INTRODUCTION

Wolph's theory of the case is that Wolph and Harrington entered into an agreement for Harrington to buy the property because she had no place else to live. The contract was intended to create a forbearance of any late fees and accrued interest during Harrington's lifetime. Even though Harrington only made periodic payments until 2000, and despite their differences, Wolph elected not to foreclose on the property because he did not want his mother to be homeless. When Harrington filed for bankruptcy in 2003, she signed a statement of intention, evidencing her intent to repay the debt despite filing bankruptcy. Shortly after filing bankruptcy, Harrington signed a statement in April 2003 acknowledging that the debt needed to be settled. Then in 2009, she attached a hand written letter to her will acknowledging the debt. After Harrington's death, Wolph contacted the personal representative who was non-responsive and who also stated in open court, in a different proceeding, that she had no intention of pursuing the property. When Wolph learned the will had been probated, he made a claim against the estate.

Sapp's theory of the case is that Wolph forced his mother into paying for a property he did not originally pay for and then charged her more than what he originally agreed to receive for the property. Harrington

discharged his debt in Bankruptcy and then signed a statement in April 2003 stating that she stopped paying in 2000, she was forced to pay him, and he paid nothing for the property. Then in her letter attached to her will she stated Wolph agreed to take \$15,000, not as an acknowledgment, but as a record that she already paid it.

When all reasonable inferences are construed in favor of Wolph, his theory of the case is as reasonable as, if not more than, Sapp's theory. Therefore, summary judgment is inappropriate.

II. ARGUMENTS

A. Standard of Review

“A material fact is one upon which the outcome of the litigation depends.” *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993). Here, there are two dispositive material facts – the parties' intentions during formation of the contract and Harrington's subsequent intent. Therefore, summary judgment is inappropriate because there are at least two genuine issues as to a material fact. See *Id.*; CR 56(c). In addition, all reasonable inferences are construed in the light most favorable to the nonmoving party. *Id.*

Wolph has presented evidence that, when viewed in the light of the parties' other objective manifestations, the contract has two or more reasonable but competing meanings. Therefore, its interpretation is not a matter of law, but a question of fact to be determined by the trier of fact. *Go2Net, Inc. v. C I Host, Inc.*, 115 Wn. App. 73, 83, 60 P.3d 1245 (2003).

B. Summary Judgment is inappropriate because the terms of the contract depend upon the parties' intent, which is a question of fact for a jury to decide.

Wolph presented a letter he wrote to Harrington during negotiations as evidence of the circumstances surrounding the contract's formation and the parties' intent to create a forbearance. CP-53. He did not rely solely on his 2012 letter explaining the contract terms to his sister, Anna Harrington, as Sapp suggests. Appellee's Resp. Br. at 6; CP-53, 194-95. And, in any event, Sapp did not object to the 2012 letter in the trial court. CP-207-08.

Wolph also presented evidence of Harrington's subsequent acts and conduct such as signing the statement of intention in bankruptcy court and writing a handwritten letter, which she attached to her will, naming the exact amount of the debt and expressing intent the letter be published with the will. CP-41, 88. In his declaration, Wolph attested to his own subsequent acts and conduct such as allowing Harrington to live on the property after she stopped making payments in 2000, not foreclosing on

the property during her lifetime, and financially assisting his mother. CP-183-84, 186.

This is all relevant evidence under the context rule. *Berg v. Hudesman*, 115 Wn.2d 657, 667-68, 801 P.2d 222 (1990). When this evidence is viewed in favor of Wolph, it is reasonable to interpret the provisions of the contract as creating a forbearance during Harrington's lifetime to ensure she would not be homeless, but Wolph would be paid in full.

C. Summary Judgment is inappropriate because Harrington's intent, or lack thereof, to pay the debt is an issue of material fact that should be determined by a jury.

A person's intentions are proved through their actions. Harrington committed two telling acts. First, she signed a statement of intention in bankruptcy court, swearing that she intended to repay the debt she owed to him. CP-88. Second, she specifically named the debt, including the exact amount originally owed, in handwritten letter attached to her will. Third, she had a witness watch her write the letter. CP-41-43.

Sapp's attempt to disprove Harrington's intentions only proved that there are genuine issues of material fact. Sapp argued that the absence of a formal acknowledgment in bankruptcy court and Harrington's April statements that Wolph was added to the property without paying anything and that she stopped paying in 2000 because she had paid over \$17,055.00

is evidence she disputed the debt and did not intend to pay it. Appellee's Resp. Br. At 8; CP-55, 57, 101-24. But, the meaning of each of these acts is a question for a jury because there are two reasonable competing inferences for each act.

First, even if Harrington did not file an affirmation under 11 U.S.C. §523 or §524, on a summary judgment motion, Wolph is entitled to an inference that her signature on the statement of intention means she intended to repay the debt. This is especially true when Harrington's intention was later confirmed in her handwritten letter attached to her will. CP-41. Sapp's argument that Harrington's bankruptcy attorney would have informed her that the debt was unenforceable without a reaffirmation agreement is pure speculation and not evidence of anything. See Appellee's Resp. Br. at 11. Sapp further argues that the contract was intended to be paid off in 96 months, but 96 months was only an intended timeframe if all payments were made on time and it bears no relevance on the terms, as Sapp suggests. *Id.* at 5.

Second, Sapp's accounting is a debtor's accounting consisting of photocopies of Harrington's checks, but does not account for interest and late fees. CP-100-124. Wolph's accounting more accurately reflects the actual balance owed. CP-169-78.

Third, Harrington's April 2003 statement does not expressly

dispute owing the debt. To the contrary, she acknowledged that it needed to be settled. CP-57.

Wolph does not need to show that when the facts are viewed in his favor, and all reasonable inferences are construed in his favor, his theory of the case is more reasonable. He only needs to show that his theory of the case is as reasonable as Sapp's theory. From the evidence Wolph presented, a reasonable jury could conclude that Harrington intended to repay the debt. Therefore, summary judgment is inappropriate.

D. Summary Judgment is inappropriate because there is a genuine issue of material fact as to when the Statute of limitations commenced

Summary judgment based on the statute of limitations is appropriate only where the pleadings, depositions, interrogatories, admissions, and affidavits in the record establish that no genuine issue of material fact exists regarding when the statutory period began. *Young Soo Kim v. Choong -Hyun Lee*, 174 Wn. App. 319, 323, 300 P.3d 431 (2013).

The statute of limitations is a defense for which the defendant bears the burden of proof. *Korst v. McMahon*, 136 Wn. App. 202, 208, 148 P.3d 1081 (Ct. App. Div. II 2006).

If Harrington acknowledged the debt in her handwritten letter then, as a matter of law, the statutory period commenced when the letter was

written. RCW 4.16.280. Wolph presented Harrington's letter, which stated that Wolph agreed to take \$15,000, as evidence of an acknowledgment. The referenced debt was the only debt Harrington owed to Wolph and she referenced the exact amount of the original debt. The fact that the letter was attached to her will is evidence Harrington intended it to be communicated to Wolph because it was going to be published. This would put Wolph on notice that she acknowledged the debt. Lastly, Harrington's letter did not contain an intent not to pay. Therefore, the letter met the requirements of an acknowledgment sufficient to restart the statute of limitations. *Jewell v. Long*, 74 Wn. App. 854, 857, 876 P.2d 473 (Ct. App. Div. 2 1994) citing *Cannavina v. Poston*, 13 Wn.2d 182, 195, 124 P.2d 787 (1942); RCW 4.16.280.

Sapp argues that Harrington's statement that Wolph "agreed to take" \$15,000 for the property is not sufficient to create an acknowledgment and indicates the debt was already paid. Appellee's Resp. Br. at 13. This is wrong for three reasons.

First, there is no authority that requires the acknowledgement of a debt to be direct, unqualified and/or unconditional.

Second, Sapp did not argue that this statement showed an intent not to pay. In fact she stated "this statement does not indicate intent to pay or intent not to pay." Appellee's Resp. Br. at 14. She mistakenly argues

that the last requirement of an acknowledgment is that the statement indicates no intention to pay. This is incorrect. The actual requirement is that the statement does not indicate an intention not to pay. This is a big difference because the former involves an affirmative statement and the latter involves the lack of any statement to the contrary. The latter is more broad. Although Sapp argues that Harrington indicated an intent not to pay on two other occasions, the letters she presented make no such statement. CP-55-57.

Third, an inference that “agreed to take” is an acknowledgment is reasonable in the context of the letter because it mentions the exact amount of the debt and it may be an explanation for why Harrington left Wolph out of the will. Wolph was to collect the debt instead of an inheritance. On summary judgment, all reasonable inferences are construed in favor of the nonmoving party.

Even Sapp agrees that if there was an acknowledgment then RCW 11.40.135 applies and Wolph cannot be barred by the statute of limitations for not filing a claim against the estate within two years because his debt was secured with real property. Appellee’s Resp. Br. at 16. Here, Wolph presented sufficient evidence that when the facts are viewed in his favor, and all reasonable inferences are construed in his favor, Harrington acknowledged the debt. Therefore, the debt was revived under RCW

4.16.280 and not time barred by RCW 11.40.051.

E. The acknowledgment is not void because Harrington was presumptively sane and Sapp has not produced any relevant evidence to rebut that assumption.

Sapp offered no rebuttal to this argument, but simply repeated the arguments she made in her summary judgment motion. In fact, there is no rebuttal as a matter of law because a person can only void a contract based on unsoundness of mind if the person possesses general mental derangement that affects his or her ability to comprehend the nature, terms and effect of the contract in issue. *Page v. Prudential Life Ins. Co. of Am.*, 12 Wn.2d 101, 109, 120 P.2d 527 (1942). Harrington did not.

Sapp's evidence of multi infarct dementia is irrelevant to the inquiry because those medical records were from 2007 and bear no relevance, as a matter of law, about Harrington's mental status as of 2009 when she wrote the letter attached to her will. *Page*, 12 Wn.2d at 109. "Contractual capacity is a question of fact to be determined at the time the transaction occurred." *Id.*

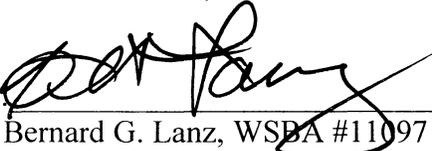
III. CONCLUSION

In this case the parties' intent during formation of the original contract and the Harrington's subsequent intent are issues of material fact. The commencement of the statute of limitations also depends upon whether Harrington acknowledged the debt. But,

when viewed in the light most favorable to Wolph a reasonable person could infer that the parties intended to create a forbearance during Harrington's lifetime, but that Wolph would be paid in full, that Harrington always intended to pay the debt, and that she acknowledged the debt, thus commencing a new six year statutory period in 2009. Therefore, this court should reverse the trial court's order for summary judgment and remand the case for trial.

Dated this 6th day of April, 2015.

THE LANZ FIRM, P.S.:

By 
Bernard G. Lanz, WSBA #11097

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

DONALD F. WOLPH and TERESA A.)
WOLPH, husband and wife,)
)
Appellants,)
)
v.)
)
LINDA JEAN SAPP, as Personal)
Representative of the Estate of Barbara)
Priscilla Harrington, deceased)
)
Respondent.)

Court of Appeals No. 72605-6-I

DECLARATION OF SERVICE:

APPELLANT'S REPLY BRIEF

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 APR -6 PM 3:10

I, Kathryn M. Daines, declare as follows: I am employed in the County of King, State of Washington. I am over the age of 18 and not a party to the within action. My business address is Suite 333, 216 1st Avenue South, Seattle, WA 98104.

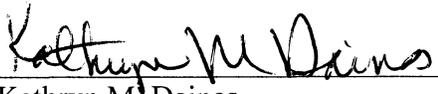
On the 6th day of April 2015, I deposited with the United States Postal Service, a true and correct copy of the "Appellant's Reply Brief", to be served on the following:

Brian J. Hanis
HANIS IRVINE PROTHERO, PLLC
Attorneys at Law
6703 South 234th Street, Suite 300
Kent, WA 98032

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I declare under penalty of perjury under the laws of the State of Washington that the
above is true and correct.

DATED this 6th day of April 2015.


Kathryn M. Daines