

The Honorable David E. Freedman
Hearing Date: June 25, 2021 at 1:30 pm
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF WHATCOM

MANJIT GREWAL, an individual,
Plaintiff,
v.
JULIE CARNEY, an individual,
Defendant.

Case No. 18-2-00174-37

DEFENDANT'S REPLY IN SUPPORT OF
MOTION FOR RECONSIDERATION

I. REPLY

A. Whether or not the Promissory Note is a Credit Agreement under RCW 19.36.100 is a Genuine Issue of Material Fact and Cannot be the Basis of Granting Summary Judgment for Grewal.

Manjit Grewal's response to the motion for reconsideration is fatally flawed because it is entirely dependent on accepting her version of events and explanation for the purpose of the Promissory Note. However, a motion for summary judgment should only be granted if relief can be granted to moving party while viewing all factual inferences and disputes in the light most favorable to the non-moving party. *City of Lakewood v. Pierce County*, 144 Wn.2d 118, 125, 30 P.3d 446 (2001); *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 690 P.2d 386 (1999). In other words, because the facts Grewal relies on to assert that the Promissory Note is a credit agreement are disputed, and unquestionably material, this issue is not properly disposed of at summary judgment.

1 Accordingly, Carney’s motion for reconsideration should be granted and this matter should be set
2 for trial.

3 It is important to recognize the competing facts in this case. Grewal presents this case as an
4 open and shut debt collection effort on an unpaid promissory note in both her complaint and
5 summary judgment papers. *See Motion for Summary Judgment*. Grewal contends that the parties
6 entered into the Inventory Agreement in September, 2014 for Carney to sell Grewal’s merchandise
7 through her store and then they entered into the Promissory Note in May, 2015 for Julie to pay for
8 the inventory. *Id.*, p. 2; *Declaration of Manjit Grewal in Support of Motion for Summary Judgment*
9 (“*Grewal Decl.*”), ¶ 11. However, Carney asserts that the Promissory Note was not executed to
10 extend credit but rather as a favor to Grewal to assist her in obtaining a loan on her Coos Bay,
11 Oregon house. *Declaration of Carney in Support of Motion for Summary Judgment* (“*Carney*
12 *Decl.*”), ¶ 13. Carney insists that the terms of the sale of the tobacco are set forth in the parties’
13 Inventory Agreement. *Id.*, ¶ 8; *Declaration of Manjit Grewal in Support of Motion for Summary*
14 *Judgment* (“*Grewal Decl.*”), Ex. B. Carney explains offers that when she later executed the
15 promissory note she confirmed with Grewal that “there was no way I will ever owe you \$120,000
16 for the consigned inventory because of the price reductions and returns.” *Carney Decl.*, ¶ 13.
17 Grewal said she “understood,” and that she “just needed the Promissory Note to be able to get the
18 loan [on her Coos Bay home].” *Id.*, ¶ 13. Grewal’s and Carney’s competing explanations for
19 entering into the Promissory Note are night and day, but on summary judgment this Court has to
20 give Carney every possible benefit of the doubt when resolving the factual dispute. *City of*
Lakewood, 144 Wn.2d at 125.

21 With this background, Grewal’s argument for why the Promissory Note is a credit agreement
22 perfectly illustrates the problem with the Court’s ruling on summary Judgment. In her response,
23 Grewal cites definitions of what constitutes “credit” and then argues that the Promissory Note here
24 fits the definition of a credit agreement as follows:

25 From these definitions, “credit agreement” includes situations in which A gives
goods to B and B agrees to pay for those goods in the future over time. That is

1 exactly the situation here. In the Promissory note, Carney agreed to pay Grewal for
2 the inventory with monthly \$1,100 payments in the future over time from 2014-
3 2018.”

4 See Plaintiff's Response to Defendant's Motion for Reconsideration, p. 7. But if the Court is
5 constrained to the four corners of the Promissory Note and can't look beyond the face of its terms,
6 how does the Court know “that is exactly the situation here”? That is only the situation here from
7 Grewal's perspective. But for purposes of summary judgment the Court is constrained to Carney's
8 explanation, not Grewal's, and Carney's explanation is that the Promissory Note was not signed as
9 an agreement to pay for goods over time. Carney's explanation is the parties signed an Inventory
10 Agreement to cover the sale of the goods, and that the Promissory Note was signed as a separate
11 favor to her former friend. The competing explanations for the promissory note create a *genuine*
12 *dispute of material fact* as to the foundation of the Promissory Note, and if Carney is believed then
13 the Promissory Note is not a credit agreement. *Hiatt v. Walker Chevrolet Co.*, 120Wn.2d 57, 65,
14 837 P.2d 618 (1992) citing CR 56(c), *Reese v. Sears, Roebuck & Co.*, 107 Wn.2d 563, 567, 731
15 P.2d 497 (1987); *Hibbs v. Abbott Labs*, 62 Wn. App. 451, 456, 814 P.2d 1186 (1991). The very
16 issue of whether the Promissory Note is a Credit Agreement under RCW 19.36.100 requires that the
17 Court weigh the parties' explanations and resolve competing facts which it cannot do. Summary
18 judgment should have been denied.

19 **B. The Lack of Consideration is Similarly an Issue of Material Fact and Could not
20 Support Granting Summary Judgment for Grewal.**

21 Failure of consideration is a good defense to an action on a negotiable promissory note as
22 between the original parties thereto, and partial failure of consideration is defense pro tanto. *Burton*
23 *v. Dunn*, 55 Wn.2d 368, 372, 347 P.2d 1065 (1960) citing *Mell v. Winslow*, 49 Wn.2d 738, 306 P.2d
24 751 (1957); *Sutton v. Matthews*, 41 Wn.2d 64, 247 P.2d 556 (1952); *Dittmar v. Frye*, 200 Wn. 451,
25 93 P.2d 709 (1939). Grewal argues that giving a promissory note to replace a previous obligation
is sufficient consideration under *Copeland Planned Futures v. Obenchain*, 9 Wn. App. 32, 39, 510
P.2d 654 (1973). However, this analysis again relies upon Grewal's version of the facts, Carney's

1 as is required at the summary judgment stage. While Grewal claims the Promissory Note was
2 executed for payment of the Inventory, Carney contends that the Promissory Note was entered into
3 for Grewal to obtain a loan for the Coos Bay House while the original Inventory Agreement (subject
4 to discounts and returns) was the actual debt owed to Grewal. See Carney Decl., ¶ 13 cf Grewal
5 Decl., ¶ 11.

6 If Carney's facts are accepted at trial, then there was no additional consideration supplied to
7 her to change the terms of the consignment relationship to one of a purchase relationship. *Carney*
8 *Decl.*, ¶ 13. Despite Grewal's contestations to the contrary, summary judgment was inappropriate
9 here when genuine issues of material fact exist as to whether there was consideration provided in
10 exchange for the Promissory Note.

11 **II. CONCLUSION**

12 Because there are genuine issues of material fact regarding whether or not the Promissory
13 Note is a Credit Agreement this case, summary judgment was not appropriate. This case requires
14 resolution of the facts at a trial. Just because Grewal conned Carney into a Promissory Note should
15 not place weighing credibility out of reach of the trier of fact. Carney respectfully renews her request
16 for reconsideration and asks that Grewal's motion for summary judgment be denied.

17 Respectfully submitted this this 23rd day of June, 2021.

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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing *Defendant's Reply in Support of Her Motion for Reconsideration* on the following party via Email and U.S. First Class Mail:

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DATED this 23rd day of June, 2021 at Seattle, Washington.

/s/ Krystalin Williams

Krystalin Williams