2011

Debbie A. Webster v. JPMorgan Chase Bank, NA, d/b/a Washinton Mutual Bank : Brief of Appellant

Utah Court of Appeals

Debbie Webster; Pro Se.
Scott M. Lilja; Counsel for Appellee.

IN THE UTAH COURT OF APPEALS

DEBBIE A. WEBSTER, Plaintiff, vs. JPMORGAN CHASE BANK, NA, d/b/a WASHINGTON MUTUAL BANK, Defendant.	Court of Appeals Number: 20110235-CA District Court Number: 090909315

OPENING BRIEF OF APPELLANT DEBBIE WEBSTER

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4. JURISDICTION OF APPELLATE COURT

The Utah Court of Appeals has appellate jurisdiction of this matter as provided in Utah Code Annotated 78A-4-103(2)(b)(h).

5. STATEMENT OF ISSUES

1. Did the district court improperly dismiss my Amended Complaint? (Record at 149-192).

Standard of Review:

The grant of a motion to dismiss is a matter of law, which the appellate court reviews for correctness. Thimmes v. Utah State Univ., 2001 UT App 93, ¶ 4, 22 P.3d 257, 258.

2. Did the district court fail to assume that all of the allegations contained in my Amended Complaint were true when it ruled on Chase's motion to dismiss? (Record at 342-344).

Standard of Review:

The grant of a motion to dismiss is a matter of law, which the appellate court reviews for correctness. Thimmes v. Utah State Univ., 2001 UT App 93, ¶ 4, 22 P.3d 257, 258.

3. Did the district court fail to draw all reasonable inferences from the

allegations contained in my Amended Complaint in a light most favorable to me when it ruled on Chase's motion to dismiss? (Record at 344-345).

Standard of Review:

The grant of a motion to dismiss is a matter of law, which the appellate court reviews for correctness. Thimmes v. Utah State Univ., 2001 UT App 93, ¶ 4, 22 P.3d 257, 258.

4. Did the district court fail to assume the truth of the allegations contained in my amended complaint, and they in fact, draw all inferences in a light most favorable to Chase? (Record at 345-346).

Standard of Review:

The grant of a motion to dismiss is a matter of law, which the appellate court reviews for correctness. Thimmes v. Utah State Univ., 2001 UT App 93, ¶ 4, 22 P.3d 257, 258.

5. Did the district court improperly and incorrectly make factual findings when ruling on Chase's motion to dismiss? (Record at 346-350).

Standard of Review:

The grant of a motion to dismiss is a matter of law, which the appellate court reviews for correctness. Thimmes v. Utah State Univ., 2001 UT App 93, ¶ 4, 22 P.3d 257, 258.

6. Did the district court improperly conclude that my Amended Complaint did not comply with the requirements of Rule 9 for pleading a cause of action for fraud? (Record at 160-164).

Standard of Review:

The grant of a motion to dismiss is a matter of law, which the appellate court reviews for correctness. Thimmes v. Utah State Univ., 2001 UT App 93, ¶ 4, 22 P.3d 257, 258.

6. DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND RULES

The following statutes and rules are reproduced in the Addendum.

Rule 9(b) of the Utah Rules of Civil Procedure

Rule 12(b)(6) of the Utah Rules of Civil Procedure

Rule 15 of the Utah Rules of Civil Procedure

7. STATEMENT OF THE CASE

a. NATURE OF THE CASE

This is an appeal from the district court's memorandum decision, and judgment, dismissing my Amended Complaint against J.P. Morgan Chase for Breach of Contract; Breach of Covenant of Good Faith and Fair Dealing; Fraud;

Fraudulent Inducement; Tortious Interference with Economic Relations; Tortious Interference with Prospective Business Relations; and Intentional Infliction of Emotional Distress.

b. COURSE OF PROCEEDINGS

On June 4, 2009, I filed my Complaint against J.P. Morgan Chase. Chase filed a motion to dismiss my Complaint on July 23, 2009.

I filed an Amended Complaint on November 3, 2009.

On February 23, 2010, the district court held a hearing on Chase's motion to dismiss. At the end of an oral argument Judge Peuler granted Chase's motion to dismiss.

On March 4, 2010, I filed an objection to Chase's proposed order on its motion to dismiss, and asked the district court to issue a memorandum decision stating the reasons it granted Chase's motion to dismiss. However, on May 7, 2010, the district court denied my Objection to Chase's proposed order on its motion to dismiss. On May 25, 2010, the district court then filed Chase's order on its motion to dismiss.

On June 2, 2010, I filed a Motion to Alter or Amend.

On September 8, 2010, the district court denied my Motion to Alter or Amend and instructed Chase to prepare and order denying my Motion to Alter or Amend.

I filed an Objection to Chase's proposed order on my Motion to Alter or Amend on November 30, 2010. On January 24, 2011, the district court denied my Objection to Chase's proposed order on my Motion to Alter or Amend.

On February 8, 2011, the district court filed the order denying my Motion to Alter or Amend.

c. DISPOSITION AT TRIAL COURT

On June 4, 2009, I filed my Complaint against on July 23, 2009. I filed an Amended Complaint on November 3, 2009.

On June 4, 2009, I filed my Complaint against Chase for Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, Fraud, Fraudulent Inducement, Tortious Interference with Economic Relations, Tortious Interference with Prospective Business Relations, and Intentional Infliction of Emotional Distress. Chase filed a motion to dismiss my Complaint on July 23, 2009.

I filed an Amended Complaint on November 3, 2009.

On February 23, 2010, the district court held a hearing on Chase's motion to dismiss. At the end of an oral argument Judge Peuler issued a ruling granting Chase's motion to dismiss. In granting Chase's motion to dismiss Judge Peuler made the following statements:

And I'm going to grant the defendant's motion to dismiss this matter. Um, I

start with the basic proposition that there was a written contract that the parties agreed to, and the oral, uh, promises, were, um, at odds with the requirements of the written contract, um, that both parties signed. Um, the written agreement, um, and I can't remember the exact language that was in the contract, um, but said that the uh, plaintiff may be required to, uh, provide some financial documents, well, she had a choice as to what she could provide, and there was nothing, uh, I think that limited her to providing only certain ones. Uh, in fact she didn't provide anything and so because of that I think that the defendant was entitled to, um, uh, suspend her loan. Um, and because they had a right to suspend their loan there was no breach of covenant of good faith and fair dealing. The representations fail because number one the pleadings don't meet the requirements of rule 9b, and number two, uh probably more important in my mind because it's substantive, um, there can't be a reasonable reliance on a promise that's made when you sign documents that are contrary to that promise, the contract specifically said you may be required to provide us with financial information, and so any oral promise that you wouldn't ever have to do that or, uh, that the funds would be guaranteed to you, um, there cannot be a reasonable reliance on that promise. And finally and relative to the intentional claims, there are no allegations of any intentional acts on the part of, uh, the defendant in terms of what they did. They had a right to enforce the contract. And I, um, I don't come to this decision easily, because I think the plaintiff, um, really, um, was relying on those funds, and I'm not happy to see that she doesn't have the funds anymore to finish her education nevertheless I don't think there's a basis here either under contract law or tort, uh, law, um, that, um, she is entitled to sue the bank for enforcing their written contract. So, um, based upon that I'm going to grant the motion to dismiss. And I'll ask, um, defendant's counsel to please prepare an order as appropriate.

Chase prepared an order of dismissal and it was entered by the district court on May 25, 2010. That order states:

With regard to Plaintiffs First and Second Causes of Action for Breach of Contract, the Court finds the purported promises alleged in the Complaint and in the Amended Complaint are at odds with, and contrary to, the terms of the written agreement between the parties.

The Court finds that Chase has done nothing more than exercise its contractual rights under that agreement and that Chase acted in good faith with regard to the exercise of those rights;

With regard to the Plaintiffs claims for fraud and fraudulent inducement, Plaintiffs third and fourth causes of action, the Court finds that in light of the terms of the agreement between the parties which contradict the promises alleged in the Complaint and in the Amended Complaint, Plaintiff cannot have reasonably relied on the alleged promises.

The Court further finds that Plaintiffs fraud claims were not plead in compliance with Utah Rule of Civil Procedure 9(b);

On March 4, 2010, I filed an objection to Chase's proposed order on its motion to dismiss, and asked the district court to issue a memorandum decision stating the reasons it granted Chase's motion to dismiss. However, on May 7, 2010, the district court denied my Objection to Chase's proposed order on its motion to dismiss.

On May 25, 2010, the district court filed Chase's order on its motion to dismiss.

On June 2, 2010, I filed a Motion to Alter or Amend.

On September 8, 2010, the district court denied my Motion to Alter or Amend and instructed Chase to prepare and order denying my Motion to Alter or Amend.

I filed an Objection to Chase's proposed order on my Motion to Alter or Amend on November 30, 2010.

On January 24, 2011, the district court denied my Objection to Chase's

proposed order on my Motion to Alter or Amend.

On February 8, 2011, the district court filed the order denying my Motion to Alter or Amend.

I filed my Notice of Appeal on March 11, 2011.

8. RELEVANT FACTS

1. On March 30, 2007, I entered into an agreement with Washington Mutual, and Washington Mutual was later purchased by Chase. Washington Mutual, (hereinafter, referred to as "Chase"), agreed to provide me with a "Home Equity Line of Credit " (hereinafter, "HELOC"). (Record at 555).

2. When I applied for the HELOC account with Chase, I explained in great detail that I was going to Nursing School and that I was going to use the HELOC account to support myself while I was attending Nursing School. (Record at 548-555).

3. Chase, entered into the HELOC Agreement with me, knowing that I would be using the funds in the HELOC account as the source of my support while I was attending Nursing School. (Record at 548-555).

4. At the time Chase, entered into the HELOC Agreement with me, Chase knew that I was going to give up my employment, contracts, and major source of income to attend Nursing School. (Record at 548-555).

5. At the time Chase entered into the HELOC Agreement with me, Chase knew that I would NOT have a full-time job while I was in Nursing School. (Record at 548-555).

6. At the time Chase entered into the HELOC Agreement with me, Chase knew that I would have no income, other than the funds in my HELOC account, to support myself while I was in Nursing School. (Record at 548-555).

7. However, with the full knowledge that I was planning on using the funds in the HELOC account to support myself while I was in Nursing School, with the full knowledge that I would be giving up my employment, contracts, and major source of income in order to attend Nursing School, with the full knowledge that I would have NO additional means with which I could support myself while I was in Nursing School, other than the funds in the HELOC account, and with the full knowledge of my situation and plans to attend Nursing School, Chase entered into the HELOC Agreement with me, and guaranteed that I would have the funds in the HELOC account available to me to support myself while I was going to Nursing School. (Record at 548-555).

8. I detrimentally relied on Chase's promises that I would have access to the HELOC account while I was attending Nursing School, and I incurred substantial expenses to attend Westminster College. (Record at 556).

9. I detrimentally relied on Chase's promises that I would have access to the HELOC account while I was attending Nursing School and I gave up my employment, contracts, and major source of income to attend Westminster College Nursing School. (Record at 556).

10. I could not have attended Westminster College Nursing School without access to the funds in the HELOC account. (Record at 556).

11. I would not have incurred the substantial expenses to attend Westminster College Nursing School, and endured the hardships required to go to Nursing School, if Chase had not promised me that I would have access to the HELOC account to support myself while I was going to Nursing School. (Record at 556).

12. I would not have given up my employment, contracts, and major source of income, and incurred the substantial expenses to attend Nursing School if Chase had not promised me that I would have access to the HELOC account to support myself while I was going to Nursing School. (Record at 556-57).

13. I have never violated any provision of the HELOC Agreement. (Record at 557).

14. I have always made my payments on the HELOC account on time. (Record at 557).

15. I have complied in every way with the terms of the HELOC Agreement. (Record at 557).

16. On or about March 24, 2009, Chase, sent me a letter stating:

> *Recently we sent you a request to provide us with a copy of a recent pay-stub along with any additional current income documentation and to complete and return a signed Internal Revenue Service (IRS) form 4506-T so that we could obtain updated income information reported on your recent tax returns. Since we have not received the requested documents, your HELOC account has been suspended from additional advances effective 03-23-09.*
>
> *At this point in time you may no longer obtain any additional advances on your HELOC account. If you would like to submit a recent pay-stub, additional income documentation and a form 4506-T, we have enclosed another form for your use. If you return a copy of your recent pay-stub, additional income documentation and the completed and signed 4506-T form within 14 days of the date of this letter, we will consider this information in determining whether to reinstate your account.*

I was sent this letter even though I made my payments on time to the HELOC account, and even though I had complied in every way with the terms of the HELOC Agreement. (Record at 636).

17. Before Chase sent me the letter dated March 24, 2009, Chase sent me a letter dated March 6, 2009, wherein Chase stated:

> *Property Address:* *825 Three Fountains Cir Unit 1*
> *Salt Lake City, UT 84107*
>
> *Dear Customer:*
>
> *Thank you for being a valued customer.*

We need your help updating your financial information related to your Home Equity Line of Credit (HELOC). Your account documents allow us to request updated information from you.

Complying with our request is easy:
Complete and sign the enclosed Internal Revenue Service (IRS) Form 4506-T where indicated for each Borrower shown above. Instructions for completing the form are on the following page. This form allows us to obtain a summary of a specified federal tax return from the IRS.

Provide a copy of a recent paystub for each Borrower and any additional current income documentation you would like to provide. Please indicate if you are self employed.

Return each completed and signed 4506-T and other documents within 14 days of the date of this letter. You can fax the documents to 1-866-272-9223 or mail them to: Chase Bank, a division of JPMorgan Chase Bank, N.A., Account Management MB0402FL, P.O. Box 3990, Melbourne, FL 32902-3990.

It is important that you provide this information. Thank you for your cooperation. If you have additional questions please contact us toll free at (877) 750-6825, Monday through Friday 5:00 a.m. to 6:00 p.m. and Saturday 5:00 a.m. to 2:00 p.m., Pacific Time. If you are a hearing impaired customer, please contact us at (800) 841-1743 (TDD), Monday through Friday 6:00 a.m. to 7:00 p.m. and Saturday 6:00 a.m. to 5:00 p.m., Pacific Time.

Sincerely,

Chase Bank, a division of
JPMorgan Chase Bank, N.A. (Record at 638).

18. The March 6, 2009, letter did not tell me that I had to reply to it, and send Chase the documents identified in the letter, by any specific date to avoid suspension of my HELOC account. (Record at 638).

19. I did not receive the March 6, 2009, letter in time to respond to it within the 14-day period stated in the letter, because it was sent to the wrong address. (Record at 559).

20. The March 6, 2009, letter was sent to Unit 1, not Unit 11. My address is 825 Three Fountains Cir, Unit 11, Salt Lake City, UT 84107. (Record at 559).

21. Chase sends my checking account statements, my credit card statements, and all other correspondence to 825 Three Fountains Cir, Unit 11, Salt Lake City, UT 84107. (Record at 559).

22. The March 24, 2009, letter was also sent to the wrong address. It was sent to, Unit 1 rather than Unit 11. So, even if the March 6, 2009, letter had told me that I had to reply to it by a specified date, or that my access to my HELOC account would be suspended, I could not have responded to the March 6th letter within the 14-day period stated in the letter, because I never received the letter until after the 14-day period to respond to it had passed, because Chase mailed both letters to the wrong address. (Record at 559).

23. In the March 6, 2009, letter, Chase demanded that I provide it with an *"Internal Revenue Service (IRS) Form 4506-T"* and *"a recent pay-stub for each Borrower."* However, paragraph 17 of the "WaMu Equity Plus AGREEMENT AND DISCLOSURE" (hereinafter, "the Agreement"), entitled "Credit Information,"

provides: *"You will provide us with a current financial statement, a new credit application, or both, at any time upon our request,"* it does not state that I am required to provide Chase with a recent pay-stub or a completed and signed 4506-T, as it demanded in both the March 6, 2009, letter and the March 24, 2009, letter. So, I was not required to provide Chase with either a recent pay-stub or a completed and signed 4506-T, as it demanded in both its March 6, 2009, letter and its March 24, 2009, letter. Chase was very specific in its request for me to provide it a pay-stub which it knew I did not have, or provide an IRS form 4506-T which would also show that I had no income. Phone conversations documenting this are on record. Chase did not request me to send it just *"a current financial statement, a new credit application, or both,"* in either its March 6, 2009, letter or its March 24, 2009, letter. So, Chase was NOT entitled to suspend my HELOC account for my alleged failure to provide it with an IRS Form 4506-T or a pay-stub, that I was never required to provide to it under the terms of the HELOC Agreement. (Record at 636 & 638).

24. Likewise, because Chase NEVER requested that I sent it just *"a current financial statement, a new credit application, or both,"* in either its March 6, 2009, letter or its March 24, 2009, letter, which are the ONLY things it was entitled to ask for, Chase was not entitled to suspend my HELOC account. (Record at 636 & 638).

25. Part, paragraph 14(b) of the Agreement specifies:

(b) In addition to any other rights we may have, we can suspend additional advances (including any Fixed Rate Loans) or reduce your Credit Limit during any period in which the following are in effect:

(iii) You are in default of any material obligation of this Agreement. We consider all of your obligations to be material. Categories of material obligations include, for example, the events described above permitting us to terminate, obligations and limitations relating to your receipt of advances, obligations concerning maintenance or use of the Property, obligations to perform the terms of the Security Instrument or any deed of trust, mortgage, deed to secure debt or other security agreement or lease on the Property (and to perform on any notes or other obligations secured by the same), obligations to notify us and to provide documents and information to us (such as updated financial information), and obligations to comply with applicable law (such as zoning restrictions). (Record at 562).

However, because the Agreement does not specify what *"updated financial information"* I am required to provide to Chase, or that the failure to provide any such information would constitute a material breach of the Agreement, I was not required to provide Chase with either the IRS Form 4506-T or a pay-stub, referenced in both the March 6, 2009, and the March 24, 2009, letters from Chase, addressed to me, but sent to the wrong address. (Record at 636 & 638).

26. After Chase cut off my access to the HELOC account, I tried many times to resolve the problem with it over the phone. However, Chase refused to even discuss my account until I sent it an IRS Form 4506-T and a pay-stub, which I did not have, and never have had, even at the time of the original loan. Phone

conversations documenting this are on record. (Record at 339-341).

27. On June 4, 2009, I filed a complaint against Chase for Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, Fraud, Fraudulent Inducement, Tortious Interference with Economic Relations, Tortious Interference with Prospective, Business Relations, and Intentional Infliction of Emotional Distress. (Record at 1-68).

28. Chase filed a motion to dismiss my complaint on July 23, 2009. (Record at 101-103).

29. I filed an Amended Complaint on November 3, 2009. (Record at 546).

30. On February 23, 2010, the district court held a hearing on Chase's motion to dismiss. (Record at 313).

31. At the end of oral argument Judge Peuler issued a ruling granting Chase's motion to dismiss. (Record at 313).

32. In granting Chase's motion to dismiss Judge Peuler made the following statements:

> *And I'm going to grant the defendant's motion to dismiss this matter. Um, I start with the basic proposition that there was a written contract that the parties agreed to, and the oral, uh, promises, were, um, at odds with the requirements of the written contract, um, that both parties signed. Um, the written agreement, um, and I can't remember the exact language that was in the contract, um, but said that the uh, plaintiff may be required to, uh, provide some financial documents, well, she had a choice as to what she could provide, and there was nothing, uh, I think that limited her to providing only*

certain ones. Uh, in fact she didn't provide anything and so because of that I think that the defendant was entitled to, um, uh, suspend her loan. Um, and because they had a right to suspend their loan there was no breach of covenant of good faith and fair dealing. The representations fail because number one the pleadings don't meet the requirements of rule 9b, and number two, uh probably more important in my mind because it's substantive, um, there can't be a reasonable reliance on a promise that's made when you sign documents that are contrary to that promise, the contract specifically said you may be required to provide us with financial information, and so any oral promise that you wouldn't ever have to do that or, uh, that the funds would be guaranteed to you, um, there cannot be a reasonable reliance on that promise. And finally and relative to the intentional claims, there are no allegations of any intentional acts on the part of, uh, the defendant in terms of what they did. They had a right to enforce the contract. And I, um, I don't come to this decision easily, because I think the plaintiff, um, really, um, was relying on those funds, and I'm not happy to see that she doesn't have the funds anymore to finish her education nevertheless I don't think there's a basis here either under contract law or tort, uh, law, um, that, um, she is entitled to sue the bank for enforcing their written contract. So, um, based upon that I'm going to grant the motion to dismiss. And I'll ask, um, defendant's counsel to please prepare an order as appropriate. (Record at 425).

33. Chase prepared an order of dismissal and it was entered by the district court on May 25, 2010. That order states:

With regard to Plaintiffs First and Second Causes of Action for Breach of Contract, the Court finds the purported promises alleged in the Complaint and in the Amended Complaint are at odds with, and contrary to, the terms of the written agreement between the parties.

The Court finds that Chase has done nothing more than exercise its contractual rights under that agreement and that Chase acted in good faith with regard to the exercise of those rights;

With regard to the Plaintiffs claims for fraud and fraudulent inducement,

Plaintiffs third and fourth causes of action, the Court finds that in light of the terms of the agreement between the parties which contradict the promises alleged in the Complaint and in the Amended Complaint, Plaintiff cannot have reasonably relied on the alleged promises.

The Court further finds that Plaintiffs fraud claims were not plead in compliance with Utah Rule of Civil Procedure 9(b);... (Record at 425).

34. On March 4, 2010, I filed an objection to Chase's proposed order on its motion to dismiss, and asked the district court to issue a memorandum decision stating the reasons it granted Chase's motion to dismiss. (Record at 314-315).

35. On May 7, 2010, the district court denied my Objection to Chase's proposed order on its motion to dismiss. (Record at 328).

36. On May 25, 2010, the district court filed Chase's order on its motion to dismiss. (Record at 330-332).

37. On June 2, 2010, I filed a Motion to Alter or Amend. (Record at 334-335).

38. On September 8, 2010, the district court denied my Motion to Alter or Amend and instructed Chase to prepare and order denying my Motion to Alter or Amend. (Record at 390-392).

39. I filed an Objection to Chase's proposed order on my Motion to Alter or Amend on October 13, 2010. (Record at 394-395).

40. On January 24, 2011, the district court denied my Objection to Chase's

proposed order on my Motion to Alter or Amend. (Record at 408).

41. On February 8, 2011, the district court filed the order denying my Motion to Alter or Amend. (Record at 410-412).

42. I filed my Notice of Appeal on March 11, 2011. (Record at 414-415).

43. I filed my Bond For Cost on Appeal on April 15, 2011. (Record at 423-424).

9. SUMMARY OF ARGUMENT

IN GRANTING CHASE'S MOTION TO DISMISS, JUDGE PEULER COMPLETELY IGNORED THE STANDARDS ESTABLISHED BY THE SUPREME COURT FOR GRANTING A MOTION TO DISMISS. IN GRANTING CHASE'S MOTION TO DISMISS, JUDGE PEULER FAILED TO ASSUME THE TRUTH OF ALL OF MY ALLEGATIONS IN MY AMENDED COMPLAINT, AND TO DRAW ALL REASONABLE INFERENCES FROM THOSE ALLEGATIONS IN A LIGHT MOST FAVORABLE TO ME. JUDGE PEULER ALSO MADE IMPROPER, PROHIBITED, AND INCORRECT FINDINGS OF FACTS WHEN RULING ON THE CHASE'S MOTION TO DISMISS. JUDGE PEULER THEN MADE IMPROPER AND UNLAWFUL CONCLUSIONS OF LAW, BASED ON HER IMPROPER, PROHIBITED, AND INCORRECT FINDINGS OF FACTS WHEN SHE GRANTED CHASE'S MOTION TO DISMISS.

10. DETAIL OF ARGUMENT

When ruling on a motion to dismiss, the court is required to assume the truth of all of a plaintiff's allegations and to draw all reasonable inferences from those allegations in a light most favorable to the Plaintiff. See Brown v. The Division of Water Rights of Dept. of Natural Resources of State of Utah, 030910 UTSC,

20080995, citing Oakwood Vill. LLC v. Albertsons, Inc., ¶10, 2004 UT 101, ¶¶ 8-9, 104 P.3d 1226, wherein the Utah Supreme Court stated:

> *A district court should grant a motion to dismiss only when, assuming the truth of the allegations in the complaint and drawing all reasonable inferences therefrom in the light most favorable to the plaintiff, it is clear that the plaintiff is not entitled to relief.*

See also, Lowe v. Sorenson Research Co., 779 P.2d 668, 669 (Utah 1989), wherein the Utah Supreme Court stated:

MARSHALING OF EVIDENCE

The only evidence there is in the record to support Judge Pueler's Memorandum decision and Judgment is her own statements contained in her oral ruling granting Chase's Motion to Dismiss. In oral ruling granting Chase's Motion to Dismiss, Judge Peuler stated:

And I'm going to grant the defendant's motion to dismiss this matter. Um, I start with the basic proposition that there was a written contract that the parties agreed to, and the oral, uh, promises, were, um, at odds with the requirements of the written contract, um, that both parties signed. Um, the written agreement, um, and I can't remember the exact language that was in the contract, um, but said that the uh, plaintiff may be required to, uh, provide some financial documents, well, she had a choice as to what she could provide, and there was nothing, uh, I think that limited her to providing only certain ones. Uh, in fact she didn't provide anything and so because of that I think that the defendant was entitled to, um, uh, suspend her loan. Um, and because they had a right to suspend their loan there was no breach of covenant of good faith and fair dealing. The representations fail because number one the pleadings don't meet the requirements of rule 9b, and number two, uh probably more important in my mind because it's substantive, um, there can't be a reasonable reliance on a promise that's made when you sign documents that are contrary to that promise, the contract specifically said you may be required to provide us with financial information, and so any oral promise that you wouldn't ever

have to do that or, uh, that the funds would be guaranteed to you, um, there cannot be a reasonable reliance on that promise. And finally and relative to the intentional claims, there are no allegations of any intentional acts on the part of, uh, the defendant in terms of what they did. They had a right to enforce the contract. And I, um, I don't come to this decision easily, because I think the plaintiff, um, really, um, was relying on those funds, and I'm not happy to see that she doesn't have the funds anymore to finish her education nevertheless I don't think there's a basis here either under contract law or tort, uh, law, um, that, um, she is entitled to sue the bank for enforcing their written contract. So, um, based upon that I'm going to grant the motion to dismiss. And I'll ask, um, defendant's counsel to please prepare an order as appropriate.

Judge Pueler's oral ruling is the only thing in this case that can possibly be considered as "evidence" that can be construed to support her oral ruling granting Chase's Motion to Dismiss, and the Judgment she entered in this case.

The Supreme Court has repeatedly declared that:

> *On appeal from a motion to dismiss under Utah Rule of Civil Procedure 12(b)(6), we review the facts only as they are alleged in the complaint. Lowe v. Sorenson Research Co., 779 P.2d 668, 669 (Utah 1989). As a result, we "accept the factual allegations in the complaint as true and consider all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff." Prows v. State, 822 P.2d 764, 766 (Utah 1991) (citing St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194, 196 (Utah 1991)).*

And in Baker v. Angus, 910 P.2d 427, 430 (Utah Ct. App.1996), this Court stated *"[w]e construe the facts in the complaint liberally and we consider all the reasonable inferences to be drawn from the facts in a light most favorable to the plaintiffs.*

POINT 1:
IN RULING ON CHASE'S MOTION TO DISMISS JUDGE PEULER FAILED TO ASSUME THE TRUTH OF THE ALLEGATIONS CONTAINED IN MY AMENDED COMPLAINT.

In granting Chase's motion to dismiss, Judge Peuler completely ignored the mandates of Brown v. The Division of Water Rights of Dept. of Natural Resources of State of Utah, Oakwood Vill. LLC v. Albertsons, Inc., Lowe v. Sorenson Research Co., Prows v. State, St. Benedict's Dev. Co. v. St. Benedict's Hosp, and Baker v. Angus, supra, and failed to assume the truth of the allegations contained in my Amended Complaint. In her oral ruling Judge Peuler stated:

> *Um, I start with the basic proposition that there was a written contract that the parties agreed to, and the oral, uh, promises, were, um, at odds with the requirements of the written contract, um, that both parties signed. Um, the written agreement, um, and I can't remember the exact language that was in the contract, um, but said that the uh, plaintiff may be required to, uh, provide some financial documents, well, she had a choice as to what she could provide, and there was nothing, uh, I think that limited her to providing only certain ones.* (Emphasis added).
>
> *The representations fail because number one the pleadings don't meet the requirements of rule 9b, and number two, uh probably more important in my mind because it's substantive, um, there can't be a reasonable reliance on a promise that's made when you sign documents that are contrary to that promise, the contract specifically said you may be required to provide us with financial information, and so any oral promise that you wouldn't ever have to do that or, uh, that the funds would be guaranteed to you, um, there cannot be a reasonable reliance on that promise.*
>
> *And finally and relative to the intentional claims, there are no allegations of any intentional acts on the part of, uh, the defendant in terms of what they did.*

In making those statement, Judge Peuler clearly failed to assume the truth of the allegations contained in my Amended Complaint, e.g., my statements where I said, and proved that I did NOT have a choice as Judge Peuler claims I had:

> *In the March 6, 2009 letter, Chase demanded that Ms. Webster provide Chase with an "Internal Revenue Service (IRS) Form 4506-T" and "a recent pay-stub for each Borrower."*
> *However, paragraph 17 of the "WaMu Equity Plus AGREEMENT AND DISCLOSURE" (hereinafter, "the Agreement"), signed by Ms. Webster, entitled "Credit Information," provides: "You will provide us with a current financial statement, a new credit application, or both, at any time upon our request," it does not state that Ms. Webster is required to provide Chase with a recent pay-stub or a completed and signed 4506-T, as Chase demanded in both the March 6, 2009 letter and the March 24, 2009 letter.*
>
> *Therefore, Ms. Webster was not obligated to provide Chase with either a recent pay-stub or a completed and signed 4506-T, as Chase demand in both its March 6, 2009 letter and its March 24, 2009 letter.*
> *However, because the Agreement does not specify what "updated financial information" Ms. Webster is required to provide to Chase, or that the failure to provide any such information would constitute a material breach of the Agreement, Ms. Webster was not required to provide Chase with either the IRS Form 4506-T or a pay-stub, referenced in both the March 6, 2009 and the March 24, 2009 letters from Chase, addressed to Ms. Webster, but sent to the wrong address.* (Record at 636).
>
> *Chase falsely promised Ms. Webster that she would have access to her HELOC account, while she was attending Nursing School.*
>
> *Ms. Webster reasonably believed Chase's promises that she would have access to her HELOC account, while she was attending Nursing School.*
>
> *Ms. Webster detrimentally relied on Chase's promises, that she would have access to her HELOC account, while she was attending Nursing School, and incurred substantial expenses to attend a very well respected private nursing college.*

Ms. Webster detrimentally relied on Chase's promises that she would have access to her HELOC account, while she was attending Nursing School, and gave up her employment, contracts, and major source of income to attend Nursing School, when she was accepted at a very well respected private nursing college.

Ms. Webster would not have incurred the substantial expenses to attend Nursing School, and endured the hardships required to attend Nursing School, if Chase had not promised her that she would have access to her HELOC account, with which she could support herself, while she was in Nursing School.

Ms. Webster would not have given up her employment, contracts, and major source of income, and incurred the substantial expenses to attend Nursing School if Chase had not promised her that she would have access to her HELOC account to support herself while she was in Nursing School.

At the time Chase falsely promised Ms. Webster that she would have access to her HELOC account, while she was attending Nursing School, Chase knew that those promises were not true and that it had no intention of honoring the HELOC Agreement with Ms. Webster.

At the time Chase falsely promised Ms. Webster that she would have access to her HELOC account, while she was attending Nursing School, Chase did so, knowing that those promises were not true and that it had no intention of honoring the HELOC Agreement with Ms. Webster, for the purpose of enticing Ms. Webster into entering into the HELOC Agreement with Chase.

Chase's false representations to Ms. Webster that she would have access to her HELOC account, while she was attending Nursing School, when Chase knew that those promises were not true, when Chase knew it had no intention of honoring the HELOC Agreement with Ms. Webster, and when Chase made the false representations to Ms. Webster solely for the purpose of enticing Ms. Webster into entering into the HELOC Agreement with Chase, constitutes the tort of fraud. (Record at 548-555).

Because Judge Peuler ignored the specific standards for granting a motion to

dismiss when ruling on Chase's motion to dismiss, I am entitled to have the memorandum decision of Judge Peuler and the judgment entered in this case reversed and the case remanded to the district court where I can have a trial before a jury, and a new judge, in compliance with the mandates of Albertsons, Inc., Sorenson Research Co., Prows v. State, St. Benedict's Hosp., and Angus, supra.

POINT 2:

IN RULING ON CHASE'S MOTION TO DISMISS JUDGE PULER FAILED TO DRAW ALL REASONABLE INFERENCES FROM THE ALLEGATIONS CONTAINED IN MY AMENDED COMPLAINT IN A LIGHT MOST FAVORABLE TO ME.

In ruling on Chase's Motion to Dismiss, Judge Peuler was required to draw all reasonable inferences contained in my Amended Complaint in a light most favorable to me. Judge Peuler did not do so.

In her oral ruling on Chase's motion to dismiss, Judge Peuler stated:

and I can't remember the exact language that was in the contract, um, but said that the uh, plaintiff may be required to, uh, provide some financial documents, well, she had a choice as to what she could provide, and there was nothing, uh, I think that limited her to providing only certain ones. Uh, in fact she didn't provide anything and so because of that I think that the defendant was entitled to, um, uh, suspend her loan. Um, and because they had a right to suspend their loan there was no breach of covenant of good faith and fair dealing. (Emphasis supplied).

The representations fail because number one the pleadings don't meet the requirements of rule 9b, and number two, uh probably more important in my mind because it's substantive, um, there can't be a reasonable reliance on a promise that's made when you sign documents that are contrary to that promise, the contract specifically said you may be required to provide us with

financial information, and so any oral promise that you wouldn't ever have to do that or, uh, that the funds would be guaranteed to you, um, there cannot be a reasonable reliance on that promise.

In making those statements Judge Peuler clearly failed to draw all reasonable inferences contained in my Amended Complaint in a light most favorable to me. Therefore, I am entitled to have the memorandum decision of Judge Pueler and the judgment entered in this case reversed and the case remanded to the district court for atrial before a jury and a new judge, in compliance with the mandates of Albertsons, Inc., Sorenson Research Co., Prows v. State, St. Benedict's Hosp., and Angus, supra.

POINT 3:

IN RULING ON CHASE'S MOTION TO DISMISS, JUDGE PEULER FAILED TO ASSUME THE TRUTH OF THE ALLEGATIONS CONTAINED IN MY AMENDED COMPLAINT, AND IN FACT DREW ALL INFERENCES IN A LIGHT MOST FAVORABLE TO CHASE.

In ruling on Chase's motion to dismiss, Judge Peuler not only failed to assume the truth of the allegations contained in my Amended Complaint, and draw all reasonable inferences from the allegations contained in my Amended Complaint in a light most favorable to me, Judge Peuler drew all inferences in a light most favorable to Chase.

In ruling on Chase's motion to dismiss, Judge Peuler made these statements:

and I can't remember the exact language that was in the contract, um, but said that the uh, plaintiff may be required to, uh, provide some financial documents, well, she had a choice as to what she could provide, and there

was nothing, uh, I think that limited her to providing only certain ones. Uh, in fact she didn't provide anything and so because of that I think that the defendant was entitled to, um, uh, suspend her loan. Um, and because they had a right to suspend their loan there was no breach of covenant of good faith and fair dealing. (Emphasis supplied).

The representations fail because number one the pleadings don't meet the requirements of rule 9b, and number two, uh probably more important in my mind because it's substantive, um, there can't be a reasonable reliance on a promise that's made when you sign documents that are contrary to that promise, the contract specifically said you may be required to provide us with financial information, and so any oral promise that you wouldn't ever have to do that or, uh, that the funds would be guaranteed to you, um, there cannot be a reasonable reliance on that promise.

In making those statements Judge Peuler not only failed to assume the truth of the allegations contained in my Amended Complaint, and draw all reasonable inferences from the allegations contained in my Amended Complaint in a light most favorable to me, but in fact, Judge Peuler drew all inferences in a light most favorable to Chase.

Because Judge Peuler not only failed to assume the truth of the allegations contained in my Amended Complaint, and draw all reasonable inferences from the allegations contained in my Amended Complaint in a light most favorable to me, but in fact, Judge Peuler drew all inferences in a light most favorable to Chase, I am entitled to have the memorandum decision of Judge Pueler and the judgment entered in this case reversed and the case remanded to the district court for atrial before a jury and a new judge, in compliance with the mandates of Albertsons, Inc., Sorenson Research Co., Prows v. State, St. Benedict's Hosp., and Angus, supra.

POINT 4:
JUDGE PEULER MADE IMPROPER AND INCORRECT FACTUAL FINDINGS WHEN RULING ON CHASE'S MOTION TO DISMISS.

In ruling on a motion to dismiss, a court is required to assuming the truth of the allegations in the complaint and draw all reasonable inferences therefrom in the light most favorable to the plaintiff. A court is only permitted to grant a motion to dismiss if after it has assumed the truth of the allegations contained in a complaint and after drawing all reasonable inferences therefrom in a light most favorable to the plaintiff, it is clear that the plaintiff is not entitled to relief under those circumstance. See, Oakwood Vill. LLC v. Albertsons, Inc., supra, wherein the Utah Supreme Court stated:

> *A district court should grant a motion to dismiss only when, assuming the truth of the allegations in the complaint and drawing all reasonable inferences therefrom in the light most favorable to the plaintiff, it is clear that the plaintiff is not entitled to relief.*

When ruling on a motion to dismiss, a court is not entitled to weigh the truth or accuracy of the allegations contained in the complaint. When ruling on a motion to dismiss, a court is not entitled to make factual conclusion concerning the allegations contained in a complaint. The court is required to assume the truth of the allegations in the complaint, draw all reasonable inferences therefrom in the light most favorable to the plaintiff, and only grant a motion to dismiss if it is clear that the plaintiff is not entitled to relief. Judge Peuler did not do that in this case.

In ruling on Chase's motion to dismiss, Judge Peuler made the following prohibited, and incorrect factual findings:

I can't remember the exact language that was in the contract, um, but said that the uh, plaintiff may be required to, uh, provide some financial documents, well, she had a choice as to what she could provide, and there was nothing, uh, I think that limited her to providing only certain ones.

Uh, in fact she didn't provide anything and so because of that I think that the defendant was entitled to, um, uh, suspend her loan.

Um, and because they had a right to suspend their loan there was no breach of covenant of good faith and fair dealing.

The representations fail because number one the pleadings don't meet the requirements of rule 9b, and number two, uh probably more important in my mind because it's substantive, um, there can't be a reasonable reliance on a promise that's made when you sign documents that are contrary to that promise, the contract specifically said you may be required to provide us with financial information, and so any oral promise that you wouldn't ever have to do that or, uh, that the funds would be guaranteed to you, um, there cannot be a reasonable reliance on that promise.

Those statements are not only improper and prohibited factual findings. They are also factually incorrect, and as Judge Peuler admits she is making them without even knowing what the "contract" says. (***"I can't remember the exact language that was in the contract."***) (Emphasis supplied).

Judge Peuler's assertion that *"well, she had a choice as to what she could provide, and there was nothing, uh, I think that limited her to providing only certain ones,"* is not only an improper factual finding, but also patently wrong. Chase's letter of March 6, 2009 unequivocally states I must provide Chase with an *"Internal Revenue Service (IRS) Form 4506-T"* and *"a recent pay-stub for each Borrower,"* it does not give me a choice of what I can provide Chase, as Judge Peuler incorrectly

states. While the March 6, 2009, letter does permit me to give Chase any other documents I may wish to provide in addition to providing an *"Internal Revenue Service (IRS) Form 4506-T"* and *"a recent pay-stub for each Borrower,"* it does not give me the option to provide documents in place of the required *"Internal Revenue Service (IRS) Form 4506-T"* and *"a recent pay-stub for each Borrower."* Also, the statements of Chase's representatives clearly establishes that I had to provide Chase with a 4506-T and a pay-stub before Chase would even consider looking at my HELOC account. These statements in the form of phone conversations I had with Chase's representatives, after my access to the HELOC account was denied, are in the record. (Record at 339-341). Therefore, Judge Peuler's assertion that *"well, she had a choice as to what she could provide, and there was nothing, uh, I think that limited her to providing only certain ones,"* is not only an improper factual finding, but also patently wrong.

Judge Peuler's statement where she says:

> *there can't be a reasonable reliance on a promise that's made when you sign documents that are contrary to that promise, the contract specifically said you may be required to provide us with financial information, and so any oral promise that you wouldn't ever have to do that or, uh, that the funds would be guaranteed to you, um, there cannot be a reasonable reliance on that promise.*

is yet another impermissible factual finding, and it is also a factual finding that Judge Peuler is not entitled to make, especially not on a motion to dismiss. Whether or not reliance is reasonable is a question of fact for a jury to determine not a judge. See, Larsen v. Exclusive Cars, Inc, 97 P.3d 714 (Utah App. 2004)

citing, Gold Standard, Inc. v. Getty Oil Co., 915 P.2d 1060 (Utah 1996).

In Larsen v. Exclusive Cars, Inc, the trial court granted the defendant's motion for summary judgment. On appeal, the Utah Court of Appeals reversed stating:

> *The trial court erred when it looked chiefly to the sales documents to determine that Larsen's reliance on Maestas's oral representations was unreasonable as a matter of law. See TS 1 P'ship, 877 P.2d at 159; see also Spears v. Warr, 2002 UT 24,¶ 19, 44 P.3d 742 (noting that fraud is an exception to the rule excluding parol evidence and can be proven by evidence outside the contract).*

In Partnership v. Allred, 877 P.2d 156 (Utah Ct. App.1994), the Court of Appeals reversed a grant of summary judgment when the trial court ruled that the plaintiff's reliance on oral promises could not be reasonable when the promises differed from the terms of the lease agreement. In reversing, the Court of Appeals stated *"given [the tenant's] position that she would not have signed the lease ... absent the fraudulent representations, the trial court's reliance on the lease to grant the motion is misplaced."* Id.

The same legal analysis applied in Larsen v. Exclusive Cars, Inc, and Partnership v. Allred, is applicable to this case. Judge Peuler is not legally entitled to make a factual determination on a motion to dismiss that my detrimental reliance on Chase's promises was not reasonable. Because, I have alleged fraud and fraudulent inducement on the part of Chase, and because I have asserted that I never would have entered into any agreement with Chase but for Chase's false and fraudulent promises that I would never have to provide a pay stub, a W-2 or tax returns, Judge Peuler's assertions to wit:

um, there can't be a reasonable reliance on a promise that's made when you sign documents that are contrary to that promise, the contract specifically said you may be required to provide us with financial information, and so any oral promise that you wouldn't ever have to do that or, uh, that the funds would be guaranteed to you, um, there cannot be a reasonable reliance on that promise,

are indisputably improper factual findings. They are also factual findings Judge Peuler is not entitled to make, and especially not on a motion to dismiss, where she is required to *"construe the facts in the complaint liberally"* and *"consider all the reasonable inferences to be drawn from the facts in a light most favorable to"* me.

I specifically refused to sign the HELOC loan documents that contained Authorization For Release Of Information form in the loan package and stated that I would not authorize Chase and any of its agents and assignees to verify my employment records, banking accounts, etc., in connection with my application for the HELOC loan, because I would not have any income while I was in Nursing School, and there would be no income to verify. Therefore, the loan package had to be redone, and the Authorization For Release Of Information was deleted from the loan package.

Judge Peuler's assertion when she stated: *"and finally and relative to the intentional claims, there are no allegations of any intentional acts on the part of, uh, the defendant in terms of what they did,"* is also an impermissible factual finding, as well as factually incorrect. See Point 1, and my references to paragraphs 98

through 100 of my Amended Complaint.

Because Judge Peuler made impermissible, and factually incorrect, findings when ruling on Chase's motion to dismiss, because Judge Peuler made factual findings she is not entitled to make, especially on a motion to dismiss, and because Judge Peuler ignored the holdings of Albertsons, Inc., Sorenson Research Co., Prows v. State, St. Benedict's Hosp, Angus, Exclusive Cars, Inc, Warr, and Allred, supra, I am entitled to have the memorandum decision of Judge Pueler and the judgment entered in this case reversed and the case remanded to the district court for atrial before a jury and a new judge, in compliance with the mandates of Albertsons, Inc., Sorenson Research Co., Prows v. State, St. Benedict's Hosp., and Angus, supra.

POINT 5:
I PLEADED FRAUD AND FRAUDULENT INDUCEMENT WITH SUFFICIENT SPECIFICITY AS REQUIRED BY RULE 9 URCP.

Contrary to Judge Peuler's oral ruling, I plead my causes of action for fraud and fraudulent inducement in compliance with the provisions of Rule 9 URCP, the holding of Dugan v. Jones, 615 P.2d 1239 (Utah 1980), and the other cases cited by Chase in its motion to dismiss. Neither Dugan v. Jones, nor any of the other cases cited by Chase, specifying the elements of a fraud claim, state that a party must specify the date, time, place, manner and name of a member of a corporation

who made the fraudulent representations. Therefore, Chase's cites to Coroles v. Sabey, 79 P.3d 974 (Utah. Ct. App. 2003) and Koch v. Koch Indus., Inc., 203 F.3d 176 (10th Cir. 2000) for its assertion that my causes of action for fraud and fraudulent inducement should be dismissed, and Judge Peuler's oral ruling that my claims of fraud and fraudulent inducement were not plead with the specificity required by Rule 9 URCP, because, at the time I filed my Complaint, I lacked the information necessary to identify the representatives of Chase who made the fraudulent representations to me. Furthermore, in both Coroles and Koch the plaintiffs were given an opportunity to file an amended complaint to specify with more particularity the dates, times, places and names of the individuals who alleged made the fraudulent representations. Therefore, those cases are distinguishable from my case.

Subsequent to filing my Complaint I obtained some additional information regarding the dates and names of the individuals who made the fraudulent representations to me. As I stated in my Memorandum in Opposition to Chase's motion to dismiss, the fraudulent representations were first made to me on March 21st or 22nd 2007. I am not sure which day because I do not have a copy of my application specifying the date on which I filled out the HELOC Loan Application. I do, however, have a copy of an order for a credit report that was requested at the

time I applied of the loan, which leads me to believe that I applied for the HELOC Loan on either March 21st or 22nd 2007.

After filing my initial Complaint, I have also been able to determine that it is most likely that Jeanette Roberts is one of the individuals who made the false representations to me. Another individual who may have made the representations to me is Ashley Stephens. The false representations were made to me at the time I applied for the HELOC Loan, either March 21st or 22nd 2007, again when I initially reviewed the HELOC Agreement on March 26, 2007, and again at the end of the three-day rescission period, when the first HELOC Agreement was shredded and a final HELOC Agreement was redrafted on March 30, 2007. All representations were made at Chase's office located at 9th Street Marketplace, 5664 S. 900 E., Ste. 6, Murray, UT 84121.

Contrary to Chase's assertion all of this information was under the possession and control of Chase, I was only able to obtain this information from various Chase employees after I filed my Complaint. Therefore, even if my claims of fraud were not pleaded with the specificity required by Rule 9 URCP, I should have been given the opportunity under Rule 15 URCP to file an amended complaint, specifying the additional information I was able to obtain from Chase after I filed my Complaint, as the plaintiffs were allowed to do in both Coroles and Koch . However, because

Dugan v. Jones, Coroles v., or Koch v. Koch Indus., Inc. Sabey, state that a plaintiff claiming fraud as a cause of action in her complaint must specify the date, time, place, manner and name of a member of a corporation who made the fraudulent representations, Judge Peuler was wrong in ruling that my Amended Complaint did not satisfy the requirements or Rule 9 URCP for pleading a claim if fraud with sufficient specificity, and this Court must reverse her ruling and remand my case back to the district court for a trial before a jury.

11. CONCLUSION AND RELIEF SOUGHT

Because Judge Peuler completely ignored the standards established by the Supreme Court for granting a motion to dismiss, because Judge Peuler failed to assume the truth of all of my allegations in my Amended Complaint, and to draw all reasonable inferences from those allegations in a light most favorable to me, because Judge Peuler incorrectly ruled that I did not plead fraud and fraudulent inducement with the specificity required by Rule 9 URCP, because Judge Peuler also made improper, prohibited, and incorrect findings of facts when ruling on the Chase's motion to dismiss, and because Judge Peuler made improper and unlawful conclusions of law, based on her improper, prohibited, and incorrect findings of facts when she granted Chase's motion to dismiss, Judge Peuler's memorandum decision granting Chase's motion to dismiss and the judgment entered in this case must be reversed, and the case must be remanded to the district court for a trial on

the merits before a jury, and a new judge, in compliance with the holdings Albertsons, Inc., Sorenson Research Co., Prows v. State, St. Benedict's Hosp, Angus, Exclusive Cars, Inc, Warr, and Allred, supra.

Dated this 23rd day of February 2012.

Debbie Webster (Pro Se)

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of February 2012, I mailed two true and correct copy of this brief to the people at the address below, by depositing copies in the United States mail, postage prepaid.

Scott M. Lilja
36 South Main Street, Suite 1900
Salt Lake City, Utah 84111

Debbie Webster

CERTIFICATION OF COMPLIANCE WITH RULE 24(f)(1) UTAH R. APP 24(F)(1)

I Debbie Webster hereby certify that my Brief complies with the type-volume limitation of Utah R. App. 24(f)(1) because it is 9,860 words, as determined by my word processor that is WordPerfect X4.

Dated this 23rd day of February 2012.

Debbie Webster

11. ADDENDUM

May 2010 Order: 1-3

Transcript of February 23, 2010, hearing: 4-10

Rule 9(b) Utah Rules of Civil Procedure 11

Rule 12(b)(6) Utah Rules of Civil Procedure: 12

Rule 15 Utah Rules of Civil Procedure: 13

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Attorneys for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DEBBIE A. WEBSTER, Plaintiff, v. JP MORGAN CHASE BANK, NA, d/b/a Chase Bank, Defendant.	ORDER Civil No: 090909315 Judge Peuler

Defendant JP Morgan Chase Bank, NA's Motion to Dismiss Plaintiff's Complaint and Plaintiff's Motion for Entry of Default Judgment came on for hearing before the Court on February 23, 2010 at 9:00 a.m. Plaintiff Debbie A. Webster was represented by Charles A. Schultz and Defendant JP Morgan Chase Bank, NA ("Chase") was represented by Scott M. Lilja. The Court, having reviewed the motions and memoranda of the parties and having heard the arguments of counsel, finds as follows:

1. In determining the disposition of Chase's Motion to Dismiss, the Court has taken into consideration the allegations contained in the Amended Complaint filed by Plaintiff in conjunction with Plaintiff's Motion to Amend as well as the Complaint on file;

2. With regard to Plaintiff's First and Second Causes of Action for Breach of Contract, the Court finds the purported promises alleged in the Complaint and in the Amended Complaint are at odds with, and contrary to, the terms of the written agreement between the parties. The Court finds that Chase has done nothing more than exercise its contractual rights under that agreement and that Chase acted in good faith with regard to the exercise of those rights;

3. With regard to the Plaintiff's claims for fraud and fraudulent inducement, Plaintiff's third and fourth causes of action, the Court finds that in light of the terms of the agreement between the parties which contradict the promises alleged in the Complaint and in the Amended Complaint, Plaintiff cannot have reasonably relied on the alleged promises. The Court further finds that Plaintiff's fraud claims were not plead in compliance with Utah Rule of Civil Procedure 9(b); and,

4. With regard to Plaintiff's claims for tortious interference with existing economic relations, tortious interference with prospective economic relations and intentional infliction of emotional distress, Plaintiff's fifth, sixth and seventh causes of action, the Court finds that Plaintiff has failed to plead any intentional conduct by Chase sufficient to support those claims.

Based upon the foregoing, and good cause appearing,

T IS HEREBY ORDERED that:

1. Defendant JP Morgan Chase Bank, N.A.'s Motion to Dismiss Plaintiff's Complaint is granted and Plaintiff's Complaint, Amended Complaint and entire action against JP Morgan Chase Bank, N.A. is hereby dismissed with prejudice and on the merits.

2. Plaintiff's Motion for Entry of Default Judgment is denied.

Dated this 25 day of May, 2010.

BY THE COURT:

SANDRA N. PEULER
Third Judicial District Court

(3)

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DEBBIE A. WEBSTER.	:	Case No. 090909315
Plaintiff,	:	
v	:	
JPMORGAN CHASE BANK,	:	
Defendant.	:	

PARTIAL TRANSCRIPT - RULING ONLY FEBRUARY 23, 2010

BEFORE

JUDGE SANDRA PEULER

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

APPEARANCES

For the Plaintiff: CHARLES A. SCHULTZ
Attorney at Law

For the Defendant: SCOTT M. LILJA
Attorney at Law

* * *

SALT LAKE CITY, UTAH - FEBRUARY 23, 2010

JUDGE SANDRA PEULER

P R O C E E D I N G S

9:45:48 (ruling starts)

THE COURT: Okay. Thank you, Mr. Schultz.

Counsel, I'm going to go ahead and rule on these motions today and I appreciate both of you answering all of my questions. It's been very helpful. I'm going to deny the motion - the plaintiff's motion for entry of default. I think there was some confusion about whether or not the amended complaint had actually been filed or was filed as an attachment, and that may be my fault. Nevertheless, I believe the defendant responded to it with regard to their objection in their motion to dismiss. So I believe it was properly responded to.

And I'm going to grant the defendant's motion to dismiss this matter. I start with the basic proposition that there was a written contract that the parties agreed to, and the oral promises were at odds with the requirements of the written contract that both parties signed. The written agreement - and I can't remember the exact language that was in the contract, but said that the plaintiff may be required to provide some financial documents. Well, she had a choice as to what she could provide and there was nothing, I think, that limited her to providing only certain ones. In fact,

she didn't try to file anything and so because of that, I think that the defendant was entitled to suspend her loan and because they have the right to suspend the loan, there was no breach of covenant of good faith and fair dealing.

The representations fail because number one, the pleadings don't meet the requirements of Rule 9(b), and number two, probably more importantly in my mind because it's substantive, there can't be a reasonable reliance on a promise that's made on the assigned documents that are contrary to that promise. The contracts specifically said you may be required to provide us with financial information. And so any oral promise that you wouldn't ever have to do that or that the funds would be guaranteed to you, there cannot be a reasonable reliance on that promise.

And finally, relative to the intentional claims, there are no allegations of any intentional acts on the part of the defendant in terms of what they did. They had a right to enforce the contract. And I don't come to this decision easily because I think the plaintiff really was relying on those funds and I'm not happy to see that she doesn't have the funds anymore to finish her education. Nevertheless, I don't think there's a basis here either under contract law or tort law that she is entitled to sue the bank for enforcing their written contract. So based upon that, I'm going to grant the motion to dismiss and I'll ask defendant's counsel

to please prepare an order as appropriate.

MR. LILJA: Certainly, Your Honor.

THE COURT: Thanks, counsel, for your appearances today. We'll be in recess.

(Whereupon the hearing was concluded)

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Rule 9. Pleading special matters.

(b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Rule 12. Defenses and objections.

(b) How presented. Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 15. Amended and supplemental pleadings.

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to conform to the evidence. When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall grant a continuance, if necessary, to enable the objecting party to meet such evidence.

(c) Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(d) Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.