

2005

# MBNA America Bank, N.A. v. Launale A. Williams : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

John C. Heath, PLLC; Paul H. Johnson; Counsel for Defendant/Appellant.

R. Bradley Neff; Tefton J. Smith; Counsel for Plaintiff/Appellee.

---

## Recommended Citation

Brief of Appellee, *MBNA America Bank v. Williams*, No. 20050516 (Utah Court of Appeals, 2005).

[https://digitalcommons.law.byu.edu/byu\\_ca2/5846](https://digitalcommons.law.byu.edu/byu_ca2/5846)

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

---

IN THE UTAH COURT OF APPEALS

---

MBNA AMERICA BANK, N.A.,

Plaintiff and Appellee,

-vs-

LAUNALE A. WILLIAMS

Defendant and Appellant.

) BRIEF OF APPELLEE  
)  
)  
)  
)

) Docket No. 20050516-CA  
)  
)  
)

---

Appeal from the Fifth Judicial District Court, Washington County Case No. 040501534,

Honorable G. Rand Beacham

---

**PARTIES**

R. Bradley Neff--5325  
Tefton J. Smith--10083  
Attorneys for Plaintiff  
1225 E Fort Union Blvd #315  
Salt Lake City, Ut 84047  
P.O. Box 1128  
Sandy, UT 84091-1128  
Telephone: (801) 571-5151  
Counsel for Plaintiff/Appellee

John C. Heath, PLLC  
Paul H. Johnson -4856  
P.O. Box 1173  
Salt Lake City, UT 84110  
Telephone (801) 297-2494  
Counsel for Defendant/Appellant



FILED  
UTAH APPELLATE  
MAR 31 2005

---

IN THE UTAH COURT OF APPEALS

---

MBNA AMERICA BANK, N.A.,

Plaintiff and Appellee,

-vs-

LAUNALE A. WILLIAMS

Defendant and Appellant.

) BRIEF OF APPELLEE  
)  
)  
)

) Docket No. 20050516-CA  
)  
)

---

Appeal from the Fifth Judicial District Court, Washington County Case No. 040501534,

Honorable G. Rand Beacham

---

**PARTIES**

R. Bradley Neff--5325  
Tefton J. Smith--10083  
Attorneys for Plaintiff  
1225 E Fort Union Blvd #315  
Salt Lake City, Ut 84047  
P.O. Box 1128  
Sandy, UT 84091-1128  
Telephone: (801) 571-5151  
Counsel for Plaintiff/Appellee

John C. Heath, PLLC  
Paul H. Johnson -4856  
P.O. Box 1173  
Salt Lake City, UT 84110  
Telephone (801) 297-2494  
Counsel for Defendant/Appellant

## **TABLE OF CONTENTS**

Table of Authorities .....	2
Jurisdiction .....	3
Summary of Arguments .....	3
Argument .....	6
Conclusion .....	13

## **TABLE OF AUTHORITIES**

### **CASES**

<i>Cafferty v Hughes</i> , 46 P.3d 233 (Utah Ct. App. 2002) .....	10
<i>State v. Irwin</i> , 924 P.2d 5 (Utah Ct. App. 1996), cert denied, 931 P.2d 146 (Utah 1997) .	7

### **STATUTES**

Utah Code Ann. § 78-2a-3(2)(j) .....	3
--------------------------------------	---

### **RULES**

Rule 6 Utah Rules of Civil Procedure .....	3, 6, 7
Rule 7 Utah Rules of Civil Procedure .....	10, 11
Rule 8 Utah Rules of Civil Procedure .....	5
Rule 12 Utah Rules of Civil Procedure .....	8, 10, 11
Rule 36 Utah Rules of Civil Procedure .....	4, 8
Rule 37 Utah Rules of Civil Procedure .....	4, 8
Rule 54 Utah Rules of Civil Procedure .....	4, 8
Rule 55 Utah Rules of Civil Procedure .....	4, 8

## **JURISDICTION**

This Court has jurisdiction pursuant to Utah Code Annotated § 78-2a-3(2)(j).

## **SUMMARY OF ARGUMENTS**

1. Plaintiff was granted ten (10) days to amend its complaint at the hearing held on February 16, 2005. Defendant was also instructed to respond to the amended complaint in writing. Plaintiff's counsel was then granted thirty (30) days from the date of Defendant's answer to the amended complaint to respond to Defendant's pending discovery. As Plaintiff's counsel prepared the amended complaint, he inadvertently thought he had thirty days in which to file the amended complaint.

Rule 6(b) Utah Rules of Civil Procedure (URCP) states that the court may extend a deadline "with or without motion or notice" for good cause. Rule 6(b)(2) states that after the expiration of a deadline, the party may move the court for an extension based on excusable neglect. In this case, Plaintiff's filing of the amended complaint served as an implied motion to extend the deadline. The district court's admission of the amended complaint, coupled with the lack of objection by the Defendant, worked to grant Plaintiff's implied motion to extend the deadline.

While Plaintiff's amended complaint was not filed in accordance with the February 16, 2005 hearing, the Defendant did not suffer any harm and was not prejudiced in any way. No motions were filed by the Defendant prior to the filing of Plaintiff's amended complaint, and Defendant never moved to strike the amended complaint. Defendant waived her right to enforce the deadline when she failed to move to strike the

amended complaint. The Defendant did not raise the timeliness issue in her subsequent filings, but again complained that Plaintiff had not responded to her discovery. Therefore, Defendant's argument that it was reversible error for the trial court to allow the amended complaint must fail.

2. Defendant's response to the amended complaint was not a 12(b) motion and did not invoke the time requirements of Rule 12 URCP. The Defendant argues that her March 23, 2005 filing titled "Motion for Default Judgment and/or to compel answers to Requests for Admission and Production of Documents" should be construed as a 12(b) motion. A review of the filing, however, does not support that assertion. All averments and assertions made in the document pertain to discovery and the Defendant's request to have the requests for admissions deemed admitted.

The Defendant's March 23, 2005 seemed to address discovery matters as she cited rules 36, 37, 54, and 55. The Defendant demonstrated some knowledge of the Utah Rules of Civil Procedure by listing the rules which support her legal arguments. Nowhere in the document does the Defendant cite Rule 12, or even use the terminology of Rule 12. Defendant does not ask for "dismissal", but requested the district court enter "default judgment" based on Plaintiff's alleged lack of responses to discovery. Therefore, Defendant's assertion that the March 23, 2005 filing is a motion to dismiss under rule 12 is not supported by the four corners of the document and must fail.

3. Defendant argues that her April 5, 2005 filing, titled "Memorandum in Opposition to Plaintiff's Motion for Judgment and Defendants Answer to Plaintiff's

Amended Complaint” should be construed as an answer to the amended complaint. In support of this proposition, Defendant states that the April 5, 2005 filing “generally” disputes the amended complaint and specifically addresses two paragraphs of the amended complaint.

While the April 5, 2005 filing states in the heading that the document serves as an answer to the amended complaint, the document is completely devoid of any denial or admission of the allegations set forth in the amended complaint. Rule 8(b) URCP states that “[a] party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies.” Plaintiff is unable to identify any “short and plain” statements which “admit or deny” the averments of the amended complaint in the April 5, 2005 filing, and for this reason, the trial court correctly ruled that judgment on the pleadings was proper.

In the April 5, 2005 filing, the Defendant again insisted that the Plaintiff respond to her discovery. If liberally construed at all, it would be construed as a motion to compel discovery, not a substantive answer to the amended complaint. Therefore, the April 5, 2005 filing did not comply with Rule 8(b) URCP and judgment on the pleadings was appropriate.

## **ARGUMENT**

### **1. IT WAS NOT REVERSIBLE ERROR FOR THE TRIAL COURT TO ALLOW THE AMENDED COMPLAINT TO STAND.**

The trial court did not commit reversible error when it allowed Plaintiff's amended complaint to stand as the Defendant did not suffer any injury and did not oppose the untimely filing of the amended complaint. At the February 16, 2005 hearing, Plaintiff was allowed ten (10) days to amend the complaint, Defendant was instructed to file a written answer to the amended complaint, and Plaintiff was granted thirty (30) days from the filing of the answer to respond to Defendant's discovery. (Brief of Appellant, Exhibit No. 2, Tr. p. 39). Due to excusable neglect, Plaintiff filed the amended complaint approximately fourteen (14) days beyond the deadline given by the district court. Defendant, however, failed to object and the district court allowed the amended complaint to stand.

#### **A. THE DISTRICT COURT WAS WITHIN ITS DISCRETION WHEN IT ALLOWED PLAINTIFF'S AMENDED COMPLAINT TO STAND.**

It was not reversible error for the district court to allow the amended complaint to stand as the district court is broad granted discretion to extend deadlines. Rule 6(b) URCP states that the court may extend a deadline "with or without motion or notice" for good cause prior to the expiration of a deadline. Rule 6(b)(2) states that after the expiration of a deadline, the party may move the court for an extension based on excusable neglect. By filing the amended complaint beyond the deadline, the filing worked as an implied motion to extend the time. While not explicitly stating that the late



filing was due to excusable neglect, the filing was late due to Plaintiff's counsel believing he had been granted thirty (30) days to file the amended complaint.

The district court was within its discretion to allow the amended complaint to stand as it did not prejudice the Defendant in any way, and the district court is granted broad discretion over deadlines under Rule 6(b) URCP. Therefore, it was not reversible error for the district court to allow the amended complaint to stand.

**B. DEFENDANT DID NOT PRESERVE THE UNTIMELY FILING OF THE AMENDED COMPLAINT AT THE TRIAL LEVEL AND IS, THEREFORE, BARRED FROM RAISING IT ON APPEAL.**

The Defendant failed to object to the untimely filing of the amended complaint in any subsequent filings and, therefore, failed to preserve the issue for appeal. There are limited circumstances when a party may raise an issue on appeal without preserving the issue at trial. They are the "plain error/manifest error doctrine", the "exceptional circumstances" doctrine, and ineffective assistance of counsel. *State v. Irwin*, 924 P.2d 5 (Utah Ct. App. 1996), cert denied, 931 P.2d 146 (Utah 1997).

None of these doctrines apply as the Defendant did not invoke any of them on appeal. Even if they were to be raised in the reply brief, none would apply to the facts of this case. Therefore, Defendant's argument that Plaintiff's amended complaint was not timely filed should be disregarded by this Court as it was not preserved in the trial court.

**2. THE TRIAL COURT DID NOT ERROR WHEN IT FAILED TO  
CONSTRUE THE DEFENDANT’S RESPONSE TO THE AMENDED  
COMPLAINT AS A RULE 12(b) MOTION.**

Defendant contends that the district court should have construed Defendant’s response to the amended complaint as a Rule 12 motion. invoking the additional time requirements of that rule. Such an argument is unfounded. (Brief of Appellant, page 25) Defendant filed a motion titled “Motion for Default Judgment and/or to Compel Answers to Request for Admissions and Production of Documents” on March 23, 2005. The content of that motion corresponds with its title. It petitioned the district court to have the Defendant’s request for admissions deemed admitted and “default judgment” entered against the Plaintiff. Defendant cited Rules 36, 37, 54 and 55 URCP in support of her motion, not Rule 12 URCP.

The district court could not have construed the March 23, 2005 filing as anything other than what the filing purported to be. The Defendant cited the rules appropriate for title of the motion, and the content of the motion made legal arguments consistent with the title. It is unreasonable for the Defendant to argue that the district court should have reviewed the motion as anything other than what it was. It would throw our legal system into chaos to require district court judges to identify every possible legal theory presented in a filing and presume what the party “really” meant to say.

The district court could not have “reasonably inferred” from the language of the March 23, 2005 filing that the Defendant actually intended to file a completely different pleading than what was presented in the title and addressed in the motion and

memorandum. Therefore, Defendant's argument that the March 23, 2005 filing was actually a 12(b) motion in disguise, must fail.

**3. DEFENDANT'S RESPONSE TO THE AMENDED COMPLAINT DID NOT "GENERALLY DENY" PLAINTIFF'S CLAIM FOR DAMAGES.**

Defendant argues that the March 23, 2005 filing was not the "sole answer," but that the April 5, 2005 filing titled "Memorandum in Opposition to Plaintiff's Motion for Judgment and Dependents Answer to Plaintiff's Amended Complaint" should be construed as an answer also. (Brief of Appellant, page 29). Defendant then argues that the district court should have considered statements from Defendant's response to the petition to confirm an arbitration award. (Brief of Appellant, page 29-30). The district court was correct not to review previous pleadings as Plaintiff presented a different cause of action in the amended complaint, rendering previous filings irrelevant.

**A. DEFENDANT'S APRIL 5, 2005 FILING DOES NOT CONFORM TO THE REQUIREMENTS OF AN ANSWER AS DISCUSSED ABOVE.**

Defendant argues that the April 5, 2005 filing titled "Memorandum in Opposition to Plaintiff's Motion for Judgment and Dependents Answer to Plaintiff's Amended Complaint" generally denies the averments of the amended complaint. (Brief of Appellant, page 29-30). The statements made by the Defendant in the April 5, 2005 filing do not satisfy the requirements of an answer as discussed above. Every statement made in that filing was made in the context of Plaintiffs's alleged failure to respond to discovery. Once again, the Defendant failed to provide a responsive answer to the amended complaint, but rather sought to have the discovery deemed admitted (again).

As discussed above, the district court cannot be expected to scour a filing in an attempt to construe the document as anything other than what it is on its face.

The April 5, 2005 filing, while stating that it is also an answer to the amended complaint, does not refute the averments of the amended complaint. In substance, it is another motion to have the matters deemed admitted for failure to respond to discovery. Defendant argues at length, citing cases from other jurisdictions, that the court must liberally construe any pleading as an answer. Plaintiff freely admits that Defendant filed an answer but argues that the answer totally failed to address the averments of the amended complaint.

Much of the case law presented is also irrelevant as it discusses default judgments. This case does not concern a default judgment as the Defendant filed two pleadings, both claiming to be answers. Plaintiff was granted judgment on the pleadings, not default judgment. Therefore, the case law regarding default judgment does not apply to this case.

Therefore, the Defendant's argument that the April 5, 2005 filing prevented judgment on the pleadings is without merit and must fail.

**B. THE DISTRICT COURT PROPERLY AWARDED JUDGMENT ON THE PLEADINGS AS THE PLEADINGS WERE CLOSED.**

Judgment on the pleadings was properly awarded to Plaintiff as pleadings were closed in accordance with Rules 12(c) and 7 URCP. Rule 12(c) URCP states in part that "[a]fter the pleading are closed . . . any party may move for judgment on the pleadings." Rule 12(c) URCP, see also *Cafferty v Hughes*, 46 P.3d 233 (2002 UT App 105). Rule 7

provides a guide for required pleadings and motions. It states “[there shall be a complaint and an answer.” Rule 7(a) URCP. Rule 7 URCP then gives instructions on content and form of the motions and memoranda. See Rule 7(b-d) URCP

In this case, Plaintiff filed and amended complaint on March 17, 2005. (Appellant’s Brief, Appendix Exhibit No. 6) Defendant filed a document stating it was an answer to the amended complaint on March 23, 2005. (Appellant’s Brief, Appendix Exhibit No. 7) Plaintiff filed its motion for judgment on the pleadings on March 25, 2005. (Appellant’s Brief, Appendix Exhibit No. 8) Defendant filed memorandum in opposition to Plaintiff motion for judgment on April 5, 2005. (Appellant’s Brief, Appendix Exhibit No. 10) Plaintiff then submitted the matter for decision in accordance with Rule 7(d) URCP and the motion for judgment on the pleadings was granted on May 3, 2005. (Appellant’s Brief, Appendix Exhibit No. 12)

The pleadings were “closed” within the meaning of Rule 12(c) URCP and the motion for judgment on the pleading was fully pleaded in accordance with Rule 7 URCP. Therefore, Defendant’s argument that the pleadings were not “closed” is not supported by the record.

**C. THE DISTRICT COURT PROPERLY REFUSED TO CONSIDER  
DEFENDANT’S RESPONSE TO THE PETITION TO CONFIRM AN  
ARBITRATION AWARD.**

Defendant claims that the district court should have looked back to filings regarding confirmation of an arbitration award to find denials of the averments made in

the amended complaint. Such a requirement is untenable as the motion to confirm an arbitration award was abandoned by the Plaintiff, resulting in the filing of the amended complaint. At the February 16, 2005 hearing, the parties agreed to have Plaintiff file an amended complaint. (Brief of Appellant, Exhibit No. 2, Tr. p. 38-39). At that hearing, the district court specifically instructed the Defendant to file an answer to the amended complaint. (Brief of Appellant, Exhibit No. 2, Tr. p. 39, lines 8-10). Expecting the district court to then go back to a previous filing in an attempt to find an “answer” is unreasonable when the district court has given specific instructions to the Defendant. Therefore, the district court was correct when it did not refer to prior filings to find statements to refute the amended complaint.

**D. DEFENDANT WAS SPECIFICALLY WARNED AT THE FEBRUARY 16, 2005 HEARING THAT HER FILINGS DID NOT CONFORM AND WAS ENCOURAGED TO SEEK COMPETENT LEGAL COUNSEL.**

Defendant was specifically warned at the February 16, 2005 hearing that her case could be prejudiced by failing to follow the rules of procedure and proper form of pleadings. (Appendix 1, Tr. pp. 42-43). The Defendant argues that rule 10(f) allows the clerk to waive the requirements as to the form of pleadings for pro se parties. (Brief of Appellant, Page 31). In fact, the Defendant acknowledged at the February 16, 2005 hearing that she had “seen people lose cases strictly on terminology that they did not use in court.” (Appendix 1, Tr. p. 43, lines 9-10).

From the transcript, it is apparent that the district court warned the Defendant of the risks of defending herself in court, and advised her to get an attorney. (Appendix 1, Tr. pp. 42-43). The Defendant cannot now appeal the decision, claiming that she should be given deference for defending herself. Therefore, the Defendant's argument that deference should be granted in construing her filings as containing elements of an answer to the amended complaint must fail.

### **CONCLUSION**

For the above reasons, this Court should deny Defendant's appeal.

**Addendum** is attached and includes a portion of the February 16, 2005 hearing transcript.

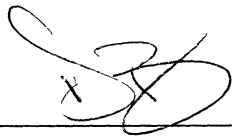
DATED: March 31, 2006



Tefton J. Smith

I certify that I mailed a copy of the Brief on Appellee, postage prepaid, first class mail, on March 31, 2006, to the following person:

John C. Heath, PLLC  
Paul H. Johnson -4856  
P.O. Box 1173  
Salt Lake City, UT 84110  
Telephone (801) 297-2494  
Counsel for Defendant/Appellant

A handwritten signature in black ink, appearing to be "P. H. Johnson", is written over a horizontal line.

04-02080-0/ALH



## **ADDENDUM**

## **EXHIBIT A**

1 unauthorized practice. I can't tell you how many people I have  
2 referred to the Utah State Bar for their prosecution. I have  
3 one more from yesterday sitting on my desk. And I need to do a  
4 letter on that case where we, apparently, have got the  
5 secretary to a notary public doing guardianship papers.

6 DEFENDANT WILLIAMS: Well, I can tell you I have not  
7 purchased anything.

8 THE COURT: Okay.

9 DEFENDANT WILLIAMS: This is off -- that's the  
10 wonderful and the bad thing about the internet, is you can find  
11 anything you want. And I swear on the Bible I have not paid.

12 THE COURT: One thing that you are doing with your  
13 papers is the format's not entirely correct. It's something I  
14 can follow. But it's actually a format that the title for the  
15 documents, in other words, is more like they use in the state  
16 of Nevada. I can follow it that way. But I can also tell you  
17 that I have seen people lose their cases for the sole reason  
18 that they were relying on something off the internet, or, quite  
19 often, somebody else who is lurking in the shadows and, you  
20 know, playing with other people's cases. So my recommendation  
21 is, as it always is, get some legal advice from a professional  
22 who is licensed.

23 DEFENDANT WILLIAMS: Yeah.

24 THE COURT: I understand the limitations and the cost  
25 of that.

1                   DEFENDANT WILLIAMS: Sometimes it's worth it.

2                   THE COURT: Well, what I always tell people or ask  
3 people, is if you have a toothache, do you go out in the garage  
4 and get out the Dremel tool and see what you can do with it?  
5 That's an exaggeration, of course. But, you know, this is a  
6 serious matter. And you would be better off with legal advice.  
7 But you are entitled to do the best you can by your own.

8                   DEFENDANT WILLIAMS: I think the preliminary, this  
9 stuff that we are going over, because I have seen people lose  
10 cases strictly on terminology that they did not use in court.  
11 That is why I had searched these things out to find out okay,  
12 what is the terminology that the courts want. And I appreciate  
13 your --

14                  MR. NEFF: Then, Your Honor, if I could get the  
15 defendant's phone number and permission to call her with  
16 respect to the scheduling conference that may be down the road.

17                  THE COURT: Okay. That will be needed for the clerk  
18 also. Let's see, oh, that's one of the things, Miss Williams,  
19 that I need to have you start doing on your pleadings, and that  
20 is in the upper left hand, putting your name, address and phone  
21 number there.

22                  DEFENDANT WILLIAMS: Okay.

23                  THE COURT: So it identifies where these are coming  
24 from.

25                  DEFENDANT WILLIAMS: Okay.

1 THE COURT: Mr. Neff's has the customary format. It's  
2 just right above the name of the court. And if you'll start to  
3 include those, then he won't, of course, need to ask.

4 DEFENDANT WILLIAMS: I see what you are saying.

5 THE COURT: But you can get that after we are finished  
6 here. And make sure that Miss Williams gets notice of  
7 everything being filed.

8 MR. NEFF: Shall I prepare an order?

9 THE COURT: I think the minute entry will be fine.

10 MR. NEFF: Okay.

11 THE COURT: These three matters we have talked about  
12 today. All right. Anything else we need to discuss today?

13 MR. NEFF: No.

14 THE COURT: Okay. Thank you.

15 MR. NEFF: Thank you, Your Honor.

16

17

18

19

20

21

22

23

24

25