

2005

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

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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MBNA AMERICA BANK, N.A., )

Plaintiff/Appellee, )

vs. ) Docket No. 20050516-CA

LAUNALE A. WILLIAMS, )

Defendant/Appellant. )

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**REPLY BRIEF OF APPELLANT**

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Appeal from the Fifth Judicial District Court, Washington County  
Case No. 040501534, Honorable G. Rand Beacham

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**ORAL ARGUMENT REQUESTED**

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**ORAL ARGUMENT REQUESTED**

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## **ARGUMENT**

### **I. UNDER THE CIRCUMSTANCES OF THE CASE, IT WAS REVERSIBLE ERROR FOR THE TRIAL COURT TO GRANT JUDGMENT ON THE PLEADINGS BASED ON THE PURPORTED AMENDED COMPLAINT.**

MBNA has argued that it was not reversible error for the trial court to base its judgment on the pleadings on the purported amended complaint (which was not filed and served within the deadline set by the court in its grant of leave to amend), because 1) Williams did not suffer any injury, and 2) Williams did not oppose the untimely filing of the purported amended complaint. However this argument is without merit.

It is clear that Williams suffered an extremely prejudicial injury as a result of the trial court's actions—namely, a judgment on the pleadings was entered against him in an amount in excess of \$16,000, based on a purported amended complaint that did not comply with the trial court's grant of leave to amend.

In addition, although the trial court had discretion to grant MBNA leave to amend its complaint despite the fact that MBNA did not comply with the trial court's original grant of leave to amend, principles of due process would require the trial court to give Williams notice that it was going to do so—in order to alert her to the fact that she had a legal duty to

respond to such purported amended complaint—before the trial court granted a judgment on the pleadings against Williams based on such purported amended complaint and her alleged lack of a reply thereto.

Finally, if the purported amended complaint was never properly filed and served, no legal duty was created to respond to such purported amended complaint whatsoever, and accordingly, there could be no obligation to object to such purported amended complaint in order to preserve on appeal, the issue of whether such purported amended complaint created a legal duty to file a response thereto.

Based on the foregoing and on the reasoning stated in William's Appellate Brief, pages 23-25, it was reversible error for the trial court to grant a judgment on the pleadings based on such purported amended complaint, which was not filed and served in accordance with the trial court's grant of leave to amend.

**II. IN REVIEWING THIS CASE, THE APPELLATE COURT MUST FOLLOW THE PROPER STANDARD OF REVIEW—RATHER THAN THE FAULTY STANDARD OF REVIEW PROPOSED BY MBNA.**

In an appellate review of a trial court's judgment on the pleadings, the appellate court should "take the factual allegations of the nonmoving party as true, considering such facts and all reasonable inferences drawn therefrom

in a light most favorable to the nonmoving party. *Straley v. Halliday*, 997 P.2d 33, 339 (Utah App. 2000). Furthermore, a judgment on the pleadings awarded in favor of a plaintiff and against a defendant should be affirmed only when the plaintiff has set forth all elements of a claim for relief in the complaint, and none of the materials filed by the defendant can reasonably be construed as either disputing, answering or stating a defense to the allegations of the complaint. *See, Salt Lake City Corporation v. Layton*, 2004 WL 63938 (Unpublished Opinion, Utah App. 2004) (a copy of such unpublished opinion was provided to the Court as Exhibit No. 1 of the Addendum to the Brief of Appellant).

MBNA would have the Court deviate from this standard in reviewing the trial court's actions. It is true that the balance of the pleading filed by Williams on March 23, 2005, constituted a motion to compel responses to discovery. However, as has been explained in William's Appellate Brief on pages 25-28, paragraph 4 of such pleading could reasonably be construed to be a URCP Rule 12(b) motion to dismiss, if all reasonable inferences were drawn therefrom in a light most favorable to Williams. Yet, MBNA seems to be requesting the Court to do just the opposite—namely, to draw all reasonable inferences therefrom in a light most favorable to MBNA. The same can be said for MBNA's argument regarding how the Court should



construe the pleading filed by Williams on April 5, 2005. MBNA would have this Court construe such document narrowly, in a light most favorable to MBNA, rather than in a light most favorable to Williams. If the proper standard of review were applied by the Court, it is clear that such document generally disputed MBNA's claim for money damages set forth in its purported amended complaint (as has been set forth in pages 28-33 of William's Appellate Brief). The same can be said concerning MBNA's argument that the pleadings were closed after Williams filed her pleading on March 23, 2005, and concerning MBNA's argument that the trial court warned Williams to get an attorney—MBNA is requesting the Court to construe such information in a light most favorable to MBNA, rather than in a light most favorable to Williams.

Finally, MBNA has argued that in ruling on MBNA's motion for judgment on the pleadings, the trial court could not consider pleadings filed by Williams prior to the time when MBNA filed and served its purported amended complaint. However, the proper standard of care, as set forth above on page 6, would allow a trial court to determine whether *any* of the materials filed by a defendant in a case either disputed, answered or stated a defense to the allegations of the complaint, in formulating its ruling on a motion for judgment on the pleadings.


## **CONCLUSION**

For the foregoing reasons, the Court should reverse the trial court's Judgment on the Pleadings, and remand the case to the trial court to proceed with litigation of the case.

DATED this 3<sup>rd</sup> day of May, 2006.

JOHN C. HEATH, PLLC

By:

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


Paul H. Johnson, Esq.

*Attorney for Appellant/Defendant  
Launale A. Williams*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused two (2) true and correct copies of the foregoing REPLY BRIEF OF APPELLANTS to be served by First Class U.S. mail, postage prepaid, on this 3rd day of May, 2006, to the following counsel of record:

R. Bradley Neff, Esq.  
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A handwritten signature in black ink, appearing to read "Karl J. Neff", written over a horizontal line.