

2005

MBNA America Bank, N.A. v. Michael W. Goodman : Reply Brief

Utah Court of Appeals

Follow this and additional works at: 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.

Michael Goodman; pro se.

Tefton J. Smith; Counsel for Appellant.

Recommended Citation

Reply Brief, *MBNA America Bank v. Goodman*, No. 20050523 (Utah Court of Appeals, 2005).
https://digitalcommons.law.byu.edu/byu_ca2/5854

This Reply Brief 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. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

R. Bradley Neff--5325
Tefton J. Smith--10083
Attorneys for Plaintiff
1225 East Ft. Union Blvd #315
P.O. Box 1128
Sandy, UT 84091-1128
Telephone: (801) 571-5151
Toll Free: (888) 599-NEFF (6333)

IN THE UTAH COURT OF APPEALS

MBNA AMERICA BANK, N.A.,)	REPLY BRIEF
Plaintiff and Appellant,)	
)	
)	
-vs-)	
)	Appellate Case No. 20050523-CA
MICHAEL W GOODMAN)	
)	
Defendant and Appellee.)	

COMES NOW Plaintiff and Appellant, MBNA AMERICA BANK, N.A., by and through its counsel of record, and pursuant to Rule 24(c) Utah Rules of Appellate Procedure, submits the following Reply Brief.

TABLE OF CONTENTS

Table of Authorities	2
Argument	2
Conclusion	4

TABLE OF AUTHORITIES

<i>Defendant's Brief</i>	2, 3
Utah Rule of Appellate Procedure, Rule 40(b)	4

ARGUMENT

1. DEFENDANT'S OPPOSING MEMORANDUM DOES NOT REBUT OR ADDRESS THE ISSUES RAISED IN PLAINTIFF'S BRIEF ON APPEAL.

Defendant does not address the legal arguments presented in Plaintiff's Brief on Appeal. As discussed in the docketing statement and brief on appeal, Plaintiff is appealing the issue of whether the district court correctly applied the applicable legal standard in granting Defendant's motion to dismiss. All arguments which do not pertain to the decision being appealed are irrelevant.

Defendant's opposing brief does not address the legal standard or whether it was correctly applied. Defendant's brief does not cite to any case law and does not specifically address the issues presented in Plaintiff's brief. The Defendant presents only emotional arguments supported by facts which are irrelevant to the issue on appeal.

2. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WAS NOT BEFORE THE COURT WHEN DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE WAS GRANTED.

Defendant's motion to dismiss was the only motion before the district court at the May 27, 2005 review hearing as Plaintiff's pending motion for summary judgment was not before the district court for consideration. In the appellee's brief, Defendant alleges

that Plaintiff intentionally concealed from this Court that Plaintiff had filed a summary judgment motion prior to the May 27, 2005 review hearing. (Defendant's Brief, Pages 7, 18). While Defendant is correct that Plaintiff did file a summary judgment motion on or about May 12, 2005, this was not submitted to the district court for decision. Therefore, the summary judgment motion is irrelevant to this appeal.

Defendant further argues that Plaintiff's summary judgment motion created a situation where the district court could only grant one of the competing motions. (Defendant's Brief, Page 18). In fact, the only motion before the district court was Defendant's motion to dismiss. No where in the May 24, 2005 order, which precipitated this appeal, did the district court deny Plaintiff's motion for summary judgment. Therefore, Plaintiff's motion for summary judgment was not before the district court when Defendant's motion to dismiss was granted.

3. DEFENDANT'S CLAIMS REGARDING AFFIDAVITS AND FILINGS FROM A PREVIOUS CASE HAVE NO BEARING ON THIS APPEAL.

Defendant's arguments regarding affidavits and a previous district court case are irrelevant to the issue being appealed. Defendant's brief attempts to establish inconsistencies on the part of the Plaintiff and Plaintiff's attorneys in regards to a previous court case and two affidavits. (Defendant's Brief, pages 8, 9, 11, 12, 18). Prior to the case from which Plaintiff brings this appeal, Plaintiff did file a petition to confirm an arbitration award in the Fourth District Court. That civil case number was 040103444. In that case, the district court indicated that the petition would be unsuccessful if the Plaintiff could not produce a written agreement demonstrating Defendant's consent to

arbitrate in the designated forum. Plaintiff submitted an affidavit in support of its motion to confirm that arbitration award. Plaintiff then filed a motion to dismiss the case without prejudice and the court granted that motion.

The other affidavit referred to by the Defendant is the affidavit in support of Plaintiff's motion for summary judgment. As discussed above, that motion had not been submitted for decision, and is not relevant to this appeal. Therefore, the Defendant's attempts to establish contradictions in the affidavits and filing of the previous petition to confirm an arbitration award are irrelevant to the issue being appealed.

4. DEFENDANT'S PERSONAL ATTACKS ON PLAINTIFF'S COUNSEL ARE INAPPROPRIATE AND DO NOT CONSTITUTE LEGAL OR FACTUAL ARGUMENT.

Defendant makes several assertions in his brief that call into question the integrity of Plaintiff's counsel. Not only are these statements inappropriate in an appellate brief, such personal attacks mask any legal or factual argument the Defendant attempts to make, rendering such argument uncomprehensible. While Defendant is not an attorney, he is still governed by Rule 40(b) of the Utah Rule of Appellate Procedure which states in part that sanctions may be appropriate for "conduct unbecoming . . . a person allowed to appear before the court." Rule 40(b), Utah Rules of Appellate Procedure. Defendant's personal attacks on opposing counsel should be disregarded by the Appellate Court.

CONCLUSION

For the above reasons, this Court should overturn the ruling of the district court and reinstate Plaintiff's claim.

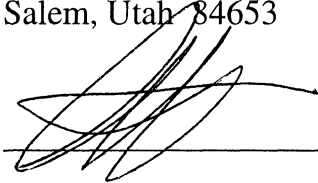
DATED: March 22, 2006



Tefton J. Smith

I certify that I mailed 2 copies of the Brief on Appeal, postage prepaid, first class mail, on March 22, 2006, to the following person:

MICHAEL W GOODMAN
550 East 1100 North
Salem, Utah 84653

A handwritten signature in black ink, appearing to read 'Michael W. Goodman', is written over a horizontal line.

04-02080-0/ALH