

2005

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

Utah Court of Appeals

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Michael Goodman; Pro Se.

Tefton J. Smith; Counsel for Appellant.

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IN THE FOURTH DISTRICT COURT IN AND FOR UTAH COUNTY
AMERICAN FORK DEPARTMENT

MBNA AMERICA BANK, N.A.,

Plaintiff, Appellant

-vs-

MICHAEL W GOODMAN

Defendant, Appellee.

)
)
)
) Judge Howard Maetani
)
) Civil No. 050101404
)
)
)

IN THE UTAH COURT OF APPEALS

MBNA AMERICA BANK, N.A.,

Plaintiff and Appellant,

-vs-

MICHAEL W GOODMAN

Defendant and Appellee.

) BRIEF OF APPELLANT
)
) APPEAL FROM DISTRICT COURT
) RULING
)
)
) Appellate Case No. 20050523-CA
)
)
)

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IN THE UTAH COURT OF APPEALS

MBNA AMERICA BANK, N.A.,)	BRIEF OF APPELLANT
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 Utah Rules of Appellate Procedure, submits the following Brief of Appellant.

PARTIES

MBNA America Bank - Appellant

Michael Goodman - Appellee

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<i>Prows v. State</i> , 822 P.2d at 766 (citing <i>St. Benedict's</i> 811 P.2d at 196).	3,7
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JURISDICTION

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

ISSUES PRESENTED FOR REVIEW

The only issue on appeal is whether it reversible error for the Trial Court to grant Defendant Appellee's Motion to Dismiss based on Plaintiff Appellant's admission that the "credit card agreement" was likely unavailable when the stated cause of action was based on the "credit card agreement."

Standard of Review: The standard of review on a motion to dismiss requires the Appellate Court to "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 at 766 (citing *St. Benedict's* 811 P.2d at 196).

Issue Preservation. This issue was preserved for appeal at the trial level as set forth on pages 5 and 14 of the Transcript of Oral Argument dated May, 27, 2005.

STATEMENT OF THE CASE

The underlying case generating this appeal was based on a credit card balance owed, which the Plaintiff sued to recover. Only one hearing was held on the matter, a review hearing on Defendant's Motion to Dismiss. The Trial Court Judge granted Defendant's Motion to Dismiss based on the fact that Plaintiff failed to present a signed writing.

Factual Summary. Plaintiff Appellant filed a complaint on or about March 23, 2005, alleging that an agreement existed between the parties by which the Defendant Appellee obtained loans from the Plaintiff Appellant, and failed to make the required payments under the agreement. (Complaint, Paragraphs 3-7)

The Defendant Appellee filed a motion to dismiss claiming that Plaintiff Appellant did not have a signed agreement to support its claim. (See Defendant's Motion to Dismiss, page 2) At a "Review Hearing" held on May 27, 2005, the Court asked Plaintiff Appellant's counsel whether it had a signed agreement between the parties. Plaintiff Appellant's counsel responded that he had been informed by his client that the Credit Card Application bearing Defendant Appellee's signature was most likely unavailable. (May 27, 2005 Hearing Transcript, Pages 6, 7) The Trial Court then granted Defendant's Motion to Dismiss with prejudice, precipitating this appeal. (May 27, 2005 Hearing Transcript, Pages 6, 7, 14)

SUMMARY OF ARGUMENTS

The issue on appeal in this case is not complex or novel. The Trial Court erroneously granted Defendant's Motion to Dismiss based on the lack of a written instrument bearing the Defendant's signature. The only issues to be considered on a motion to dismiss are jurisdiction, venue, and whether the Plaintiff has stated a cause of action upon which relief may be granted. (See URCP 12) In this case, The Plaintiff stated a valid cause of action, and should be allowed to pursue that claim regardless of whether Plaintiff can produce a document bearing Defendant's signature. The District Court's ruling does not permit Plaintiff to conduct discovery, which may allow Plaintiff to discover evidence to support other contract theories. Therefore, it was reversible error for the Trial Court to Grant the Motion to Dismiss, and said decision should be overturned.

ARGUMENT

1. IN REVIEWING THE MOTION TO DISMISS, IT WAS REVERSIBLE ERROR FOR THE TRIAL COURT TO CONSIDER ANY EVIDENCE SUPPORTING THE CLAIMS ASSERTED IN THE COMPLAINT.

The Trial Court erred when it granted the Defendant's Motion to Dismiss based on Plaintiff's inability to present a signed agreement between the Parties. Rule 8 of the Utah Rule of Civil Procedure (URCP), states in part "[a] pleading which sets forth a claim for relief, . . . shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief; and (2) a demand for judgment for the relief to which he deems himself entitled." Plaintiff's complaint complies in every way with this rule. The complaint alleged that an agreement existed, that money was owed, and seeks judgment against Defendant Goodman.

Defendant's Motion to Dismiss was solely based on a previous action to confirm an arbitration award granted to the Plaintiff. The Defendant did not claim the complaint was deficient in any way, that the Trial Court lacked jurisdiction or venue, or any other objection stated under Rule 12, URCP. Therefore, the Defendant failed to even allege a valid reason based in law or fact, to support his motion to dismiss, other than the lack of a signed agreement.

At the Review hearing held on May 27, 2005, the Judge specifically stated, that without a document bearing the Defendant's signature the case would be dismissed with prejudice. (See Hearing Transcript, Page 6) This was reversible error. The Court should not even be reaching the issue of whether there was a signed agreement on a Motion to

Dismiss. The District Court did not allow for any other form of agreement to be inferred from the complaint other than a written agreement. Not all enforceable contracts are written. It could be inferred that the agreement was oral agreement, quasi contract, implied contract, or constructive contract. Therefore, the District Court should not have dismissed Plaintiff's complaint based on the finding that no written agreement existed.

A. ASSUMING ARGUENDO, THE DISTRICT COURT DISMISSED THE MATTER UNDER RULE 12(b)(6), THE COURT DID NOT APPLY THE PROPER STANDARD OF REVIEW.

While it is entirely unclear in the record what procedure the District Court used as a basis for its ruling, Plaintiff can only assume the District Court relied on Rule 12(b)(6) URCP. If the Court dismissed the case under Rule 12(b)(6), then it failed to use the proper standard of review. Rule 12(b)(6) URCP provides that the motion is to be treated as a summary judgment motion and both parties are to have the opportunity to present all evidence in accordance with Rule 56 URCP. In this case, the Defendant did not specifically invoke the 12(b)(6) defense. Even if the Defendant's Motion to Dismiss was liberally construed to include a 12(b)(6) defense, the District Court did not allow the Plaintiff to present evidence in accordance with Rule 56 URCP. Rather, the District Court committed reversible error, and summarily dismissed the case.

If the District Court reviewed the Complaint using a 12(b)(6) standard, it erred when it failed to assume all facts as alleged in Plaintiff's Complaint. In *Mounteer v. Utah Power & Light Co.*, the Utah Supreme Court ruled that the standard of review on a 12(b)(6) motion requires the court to review the complaint in the light most favorable to

the Plaintiff, and draw all reasonable inferences therefrom. 823 P.2d 1055 (Utah 1991) In *St. Benedict's Development Co. v. St Benedict's Hosp.*, the Utah Supreme Court held that in reviewing a motion to dismiss under 12(b)(6), the allegations in the compliant are deemed admitted, and that the defendant is merely challenging the ability of the Plaintiff to recover, based on those facts. 811 P.2d at 196. See also, *Colman v. Utah State Land Bd*, 795 P. 2d 622, 624 (Utah 1990).

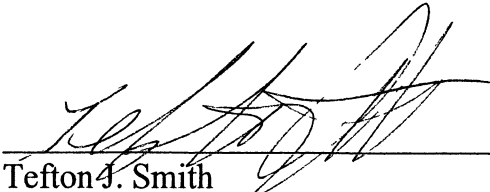
In this case, the District Court did not evaluate the Motion to Dismiss assuming all allegations in the compliant to be valid, then determine whether a recover was possible under those facts. Instead, the District Court focused solely on the allegation in the complaint that an agreement existed, and made a factual determination that no agreement existed because there may be no signed agreement. Therefore, the District Court misapplied the standard of review, and committed reversible error.

CONCLUSION

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

Addendum is attached and includes the Order of Dismissal and the hearing transcript.

DATED: November, 29, 2005



Tefton J. Smith

I certify that I mailed a copy of the Brief on Appeal, postage prepaid, first class mail, on November 29, 2005, to the following person:

MICHAEL W GOODMAN
550 East 1100 North
Salem, Utah 84653

A handwritten signature in black ink, appearing to be 'MW Goodman', is written over a horizontal line.

04-02080-0/ALH

Addendum

Michael W. Goodman
220 E Salem Canal Rd.
Salem, UT 84653

IN THE FOURTH JUCIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH, AMERICAN FORK DEPARTMENT

MBNA AMERICA BANK, N.A.,

ORDER TO DISMISS

PLAINTIFF,

v.

Case No.: 050101404

MICHAEL W. GOODMAN,

DEFENDANT.

ORDER TO DISMISS WITH PREJUDICE PLAINTIFF'S COMPLAINT AGAINST
DEFENDANT

The above captioned matter having been heard by this court on Defendant's Motion to Dismiss Plaintiff's Complaint against Defendant, and the court having been properly advised in the premises, it is hereby ordered and adjudged:

This court orders the above matter be dismissed with prejudice.

Dated this 27th day of May, 2005.


Judge Maetoni

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IN THE FOURTH JUDICIAL DISTRICT - AMERICAN FORK COURT
UTAH COUNTY, STATE OF UTAH

=====

MBNA AMERICA BANK,)	ORAL ARGUMENT
)	
Plaintiff,)	
)	
vs.)	
)	
MICHAEL GOODMAN,)	CASE 050101404
)	APPEAL 20050523
)	
Defendant.)	JUDGE HOWARD MAETANI
)	

BE IT REMEMBERED that this matter came on for hearing
before the above-named court on May 27, 2005.

WHEREUPON, the parties appearing and represented by
counsel, the following proceedings were held:

OFFICIAL CERTIFIED TRANSCRIPT
(From Electronic Recording)

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A-P-P-E-A-R-A-N-C-E-S

FOR PLAINTIFF:

R. BRADLEY NEFF, ESQ.
9730 S 700 E #100
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1 P-R-O-C-E-E-D-I-N-G-S

2 (May 27, 2005)

3 THE JUDGE: This '05 case is, I guess you made a
4 motion to dismiss still, Mr. Goodman?

5 MR. GOODMAN: I did. And the reason I did is
6 because if you look at his complaint you will see... Let me
7 turn to his complaint.

8 THE JUDGE: I'm trying to find the complaint
9 myself. Or was this a petition?

10 MR. GOODMAN: No, it was a complaint.

11 MR. NEFF: It was a complaint, Your Honor.

12 MR. GOODMAN: Summons and complaint.

13 MR. NEFF: Did it not make it to the court file?

14 THE JUDGE: I don't have it in this file, unless
15 it was misfiled. They may have... I don't have it in here.

16 MR. NEFF: Okay.

17 MR. GOODMAN: It's dated March 15th. It was
18 served on me the 23rd and filed thereafter.

19 MR. NEFF: I'll follow up with our processor.
20 It's possible it never got filed.

21 THE JUDGE: All I have is his, his--

22 MR. NEFF: His affidavit?

23 THE JUDGE: I've got some a--

24 MR. GOODMAN: Can I provide you with my copy,
25 sir?

1 THE JUDGE: Well, okay. I've got it, I've got
2 it. Okay.

3 MR. NEFF: Okay.

4 THE JUDGE: It was mixed up with these others.
5 I have it here. Because there was something else here.

6 Okay. This is his motion to dismiss now

7 **ARGUMENT BY MR. GOODMAN**

8 MR. GOODMAN: Right. And my motion to dismiss is
9 based on the fact that the third item in his complaint says,
10 Defendant entered into an agreement
11 with the plaintiff. A true and correct
12 copy of this agreement is attached as
13 Exhibit A.

14 And if you'll refer to Exhibit A, this is exactly
15 what I told you in the 2004 hearing that they would provide
16 as evidence, an unsigned, undated, not even a place to put a
17 signature on or a name on the document. It makes no
18 reference to me in the context it. It doesn't mention MBNA.
19 There is actually not validity to this contract or agreement
20 whatsoever.

21 Based on your ruling in the, in the previous thing
22 because this is the same document they used in the, in their
23 attempt to get the arbitration award. We went over this in
24 great discussion in the 2004 hearing and you said that you
25 would dismiss it at that point with prejudice if they could

1 not provide something with a signature.

2 THE JUDGE: Well, this is the complaint now?

3 MR. NEFF: Yes.

4 THE JUDGE: So do you want to respond?

5 ARGUMENT BY MR. NEFF

6 MR. NEFF: Yes, Your Honor. It's simply a notice
7 pleading. We don't have an obligation to set forth every
8 fact or every document that we plan to provide as evidence
9 and attach it to the complaint. It's simply.

10 THE JUDGE: Well, as far... Well--

11 MR. NEFF: It's simply an evidence of the
12 agreement. And I, I will submit to the court that in
13 oversight that does not include a quantum meruit cause of
14 action which I noticed this morning, which we'll be filing a
15 motion to amend the complaint to include a quantum meruit
16 action.

17 But it's simply a notice pleading, Your Honor.
18 He's on notice that there was an agreement, we're alleging a
19 breach. I mean we, we will not--

20 THE JUDGE: Well, I think, I think that you guys
21 are obligated. The, the--

22 MR. GOODMAN: This is the same--

23 THE JUDGE: Just a minute, Mr. Goodman. Let me
24 speak. Okay? If you let me speak we can get through this
25 without the, so that, so that you can start listening to me

1 now.

2 I am going to dismiss this because, you know, if
3 you, if you refer to a paragraph and say here is the, the
4 agreement, you know, and then, and then if it's like I
5 said. The fact that the, I have to take judicial notice of
6 this I suppose from the last time is you said they, for some
7 reason MBNA throws their records out, they don't keep their
8 signed agreements.

9 MR. NEFF: Their applications. Unfortunately,
10 yes, Your Honor.

11 THE JUDGE: Okay. Well, you can tell them that
12 as far as coming to my court I want to see the, if his
13 signature, if anybody's signature is on it. If it's not on
14 it I'm going to dismiss it.

15 MR. NEFF: Your Honor, that, that raises an issue
16 that, I mean, obviously we've continued to run up against
17 this in other cases.

18 THE JUDGE: Well then they'd better, they'd better
19 start getting their act together.

20 MR. NEFF: But... Sorry. Go ahead, Your Honor.

21 THE JUDGE: Or else you come in on your quantum
22 meruit arguments. But if you're going to cite this and say
23 this is an agreement, there's no agreement as far as I know
24 that are signed then, you know, I'm going to dismiss it.

25 MR. NEFF: Well, Your Honor, that doesn't leave

1 room for, for example, applications over the phone where
2 there is no signed application.

3 **THE JUDGE:** Well then, well then--

4 **MR. GOODMAN:** They're no good, they're verbal.

5 **MR. NEFF:** Verbal contracts can be enforced.

6 **THE JUDGE:** Well, my, yes, my feeling is you can
7 take this up on appeal. But as far as I'm concerned I want
8 to see the written agreement. I mean, if they want to start
9 giving people a credit card over the telephone then that's
10 their business, I'm not going to tell them how to run their
11 business. Personally I don't think you would run your
12 business that way.

13 **MR. NEFF:** No, Your Honor. I certainly would do
14 things quite differently.

15 **THE JUDGE:** Well, and so, so...

16 **MR. NEFF:** But unfortunately we all don't get to
17 pick our clients.

18 **THE JUDGE:** Yes. So would I, so would I.

19 **MR. NEFF:** Yes.

20 **THE JUDGE:** Now I'm not saying, you know, that
21 your client has really, I not saying whether Mr. Goodman
22 actually did or did not. But until I see his signature then,
23 you know, I'm not going to deal with this matter and I'm
24 going to dismiss it. And it's unfortunate but, and I'm
25 going to dismiss this one with prejudice. And if you, if

1 they want to appeal it that's fine.

2 But I think they'd better start getting their,
3 their, either their, they keep those documents. I don't know
4 why they throw it out.

5 MR. NEFF: I don't know either, Your Honor. I--

6 MR. GOODMAN: It's so easy, it's so easy to
7 digitalize things and keep documents.

8 MR. NEFF: I've run into this--

9 THE JUDGE: Well, no. No, Mr. Goodman, if there's
10 a signature, that would be to me would be an agreement. But
11 they don't have one.

12 MR. GOODMAN: Well, what I'm saying is it's so
13 easy to keep documents with today's technology.

14 THE JUDGE: Well yes, that's what I'm saying, it's
15 so easy to keep--

16 MR. GOODMAN: There's no reason not to have a
17 document if you are in true and fact the holder in due course
18 of a note.

19 THE JUDGE: Well, if this is one of many millions
20 of credit cards and they, you know, they proceed that way.
21 And so that's my ruling and you can take it from there.

22 MR. NEFF: I'm sorry. It was dismissed with
23 prejudice, Your Honor?

24 THE JUDGE: Yes.

25 MR. NEFF: Is that on the--

1 THE JUDGE: 05.

2 MR. NEFF: -- on the agreement complaint or
3 would that bar the subsequent filing on a quantum meruit
4 action?

5 THE JUDGE: Well this is on, there's no quantum
6 meruit action on this.

7 MR. NEFF: There is not.

8 THE JUDGE: There isn't any.

9 MR. NEFF: Correct.

10 THE JUDGE: This is on the agreement itself.

11 MR. NEFF: Okay.

12 THE JUDGE: So that's on this--

13 MR. GOODMAN: I'm unfamiliar with the quantum
14 meruit.

15 THE JUDGE: Well, what they're saying is they've
16 got some meritorious reasons why. That's why, you know--

17 MR. GOODMAN: For the arbitration or for what?

18 THE JUDGE: No, no. For going after you. What
19 it is is equity, that's what they're arguing, they're going
20 to be arguing. So if they want to argue that.

21 MR. GOODMAN: Right. But due to the multiple
22 times we've appeared in court without the evidence being
23 provided and the extensions of time, you granted them--

24 THE JUDGE: Well that... No.

25 MR. GOODMAN: You're going with prejudice.

1 **THE JUDGE:** With prejudice. I'm dismissing this.
2 That's why I tried to get through the '04 case but you
3 wouldn't let me. But I'm dismissing this without, with
4 prejudice. This is dismissed with prejudice. If they want
5 to may file an equity action they can take it from there.
6 So it's up to them. I don't know. And then they know
7 their, their, it's a hard road to follow through on a quantum
8 meruit case too.

9 **MR. GOODMAN:** So as, you signed the document that
10 I prepared for you there for the motion to dismiss?

11 **THE JUDGE:** I will see. Have you got an order?

12 **MR. GOODMAN:** Yes, there's an order there. How
13 soon could I have that available to send to Mr. Smith?

14 **THE JUDGE:** I'm looking for the order.

15 **MR. GOODMAN:** It was sent with the motion to
16 dismiss.

17 **THE JUDGE:** Okay. You find it then.

18 **MR. NEFF:** Your Honor, I apologize for the whole
19 malay on these cases, I know that--

20 **THE JUDGE:** I know, I know. But I just--

21 **MR. NEFF:** It's, it's been difficult for us and--

22 **THE JUDGE:** I'm not saying I'm right too. But my,
23 my feeling is, you know, I want to keep it straight here. I
24 mean these, these people come in, if they've got an agreement
25 then let's see the written agreement.

1 MR. NEFF: Uh-huh (affirmative).
2 THE JUDGE: If not, boy, you take your chances.
3 I'm not going to tell them how to run business and...
4 MR. NEFF: Uh-huh (affirmative).
5 THE JUDGE: And if you want to keep, if they...
6 If the Supreme Court says I don't need something I'm fine,
7 that's fine with me too. But I'm just dealing with straight
8 contract, you know.
9 MR. NEFF: Uh-huh (affirmative).
10 MR. GOODMAN: (Short inaudible, no mic).
11 THE JUDGE: I know, I know, yes, the...
12 MR. NEFF: I mean, all of these actions are
13 brought in good faith, Your Honor. And we have
14 documentation, we have on other things. But, you know, it's,
15 it's really been. There's been a whole slew of cases where
16 we don't have applications. And unfortunately it's not
17 uniform throughout the state so--
18 THE JUDGE: Well I'll tell you... Yes, I know.
19 MR. NEFF: Yes.
20 THE JUDGE: But I'll tell you what scares me in a
21 lot of this is--
22 MR. NEFF: Uh-huh (affirmative).
23 THE JUDGE: -- is the theft identification thing.
24 MR. NEFF: Uh-huh (affirmative).
25 THE JUDGE: Now I'm not saying he's a victim of

1 theft identification. Usually someone will make that
2 argument.

3 MR. NEFF: Uh-huh (affirmative).

4 THE JUDGE: If someone just issues a credit card
5 over the telephone, you know, I mean, how do they know the
6 individual? I mean, I can't see a company like MBNA saying
7 I'll give you a credit card over the telephone with no
8 written agreement. And what if that wasn't me and it was
9 someone else, you know.

10 MR. NEFF: Uh-huh (affirmative).

11 THE JUDGE: And says oh, yes, I'm Howard Maetani.
12 And then they run up that credit card and they come after
13 me. You're going to believe I'm going to make that
14 argument. And there's no way they can prove so they'll have
15 to eat that, you know.

16 MR. NEFF: Well, we have a practice where if
17 someone provides an affidavit of forgery or a police report
18 or something to that effect then we simply close it out
19 before it ever even gets filed and we--

20 THE JUDGE: Well, I'm not saying--

21 MR. NEFF: Okay.

22 THE JUDGE: I'm saying that that would be a
23 defense.

24 MR. NEFF: Yes.

25 THE JUDGE: But because of that I just want to

1 make sure that everything is--

2 MR. NEFF: Uh-huh (affirmative).

3 THE JUDGE: -- is in order.

4 MR. NEFF: And I can understand that.

5 THE JUDGE: If other judges want to grant it
6 that's fine.

7 MR. NEFF: Okay.

8 MR. GOODMAN: You're entirely right, Your Honor,
9 because this, contrary to what he just said this is not
10 brought in good faith. This, this matter is, is a disputed
11 matter. His, his bringing this action is actually in
12 violation of fair collection practices act.

13 THE JUDGE: Well--

14 MR. GOODMAN: So it's not even in good faith.

15 THE JUDGE: I'm not going to get to that issue of
16 good faith or bad faith. I just look at what's in front of
17 me and make any decision. All right?

18 MR. GOODMAN: So the order is available in the
19 clerk's office?

20 THE JUDGE: I've got it now. Do you want copies
21 of it? Do you want to get a copy of it?

22 MR. GOODMAN: I'll send it to him.

23 MR. NEFF: That's fine.

24 MR. GOODMAN: That's my responsibility.

25 MR. NEFF: I know what happened.

1 **THE JUDGE:** You can just go down there. And I
2 think, I think he knows what happens and--

3 **MR. NEFF:** Yes.

4 **THE JUDGE:** And they can decide what they want to
5 do, you know.

6 **MR. NEFF:** Yes.

7 **THE JUDGE:** They've got 30 days to a--

8 **MR. GOODMAN:** I'm willing to abide by the law.

9 **THE JUDGE:** Well, they've got 30 days to appeal
10 this too. So I don't know. Or they can proceed the other
11 way. But it seems to me they may want to, the best way is
12 to, to get things right I think. And if they don't want to
13 do that then...

14 **MR. GOODMAN:** The truth of the matter is--

15 **THE JUDGE:** And file it. But they don't want to
16 file it here. But see they can file it before another judge
17 as willing to do that.

18 **MR. GOODMAN:** The truth of the matter is though
19 they sell those and then they don't have an original copy or
20 it has no (short inaudible, no mic) showing that they are no
21 longer the holder in due course, and that's why--

22 **THE JUDGE:** I want to know, I want to know
23 because--

24 **MR. GOODMAN:** That's why they don't provide the
25 evidence because they don't have it.

1 MR. NEFF: It hasn't been sold.

2 THE JUDGE: Well, we're not even reaching that
3 issue, Mr. Goodman so...

4 MR. GOODMAN: I for, but I know well what they're
5 doing.

6 THE JUDGE: Okay. Well have a good day. Thank
7 you.

8 MR. NEFF: Thank you for helping me finally get to
9 a final resolution on these issues, Your Honor.

10 THE JUDGE: Yes.

11 MR. NEFF: I know that it's been, we've kind of
12 been dancing around it with a series of cases so--

13 THE JUDGE: Yes, I think--

14 MR. NEFF: But they know where you stand.

15 THE JUDGE: -- I believe (short inaudible) file
16 your action with someone else.

17 MR. GOODMAN: He spelled it out pretty plainly on
18 February 1st in the hearing.

19 MR. NEFF: Thank you, Your Honor.

20 THE JUDGE: Okay. Have a good day. Put it
21 there. You too, Mr. Goodman, have a good Memorial holiday.

22 MR. GOODMAN: Sorry to have wasted your time.

23 THE JUDGE: Well, you haven't wasted my time.
24 This is what the judicial system is all about.

25 MR. GOODMAN: Well, it's been a waste of my

1 time.

2 **THE JUDGE:** Well, I've got to go through something
3 like this with an individual, and that's why on the '04 case,
4 I said let's take care of that , I took care of this and the
5 '05 case. And after that they can do what they want.
6 They've got other legal remedies and so it's up to them.
7 Okay? You have a good Memorial holiday.

8 **MR. GOODMAN:** Appreciate your time.

9 **THE JUDGE:** Okay. Come forward please, I signed
10 this order. And you can go... Let's see. I signed the
11 order. Do you want that copy of this?

12 **MR. NEFF:** If I can today.

13 **THE JUDGE:** You go downstairs and have them make a
14 copy for you, but make sure to leave it with them so they can
15 put it in the file. Okay?

16 **MR. NEFF:** Thank you.

17 WHEREUPON, the hearing was completed.

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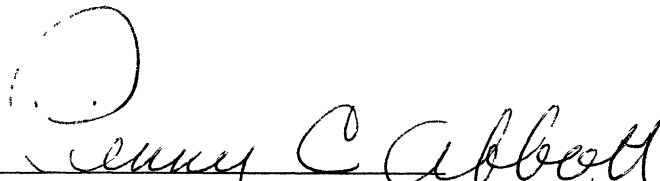
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1 REPORTER'S CERTIFICATION

2 STATE OF UTAH)
3) SS.
4 COUNTY OF UTAH)
5

6 I, Penny C. Abbott, a Certified Shorthand Reporter and
7 Notary Public in and for the State of Utah, do hereby certify
8 that I received the electronically recorded court CD in the
9 matter of MBNA vs. Goodman, hearing date May 27, 2005, and
10 that I transcribed it into typewriting and that a full, true
11 and correct transcription of said hearing so recorded and
12 transcribed is set forth in the foregoing pages numbered 1
13 through 17, inclusive except where it is indicated that the
14 tape recording was inaudible.

15 WITNESS my hand and official seal this 25th day of
16 September, 2005.

17
18 
19 PENNY C. ABBOTT, COURT REPORTER/NOTARY
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