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NO. COA10-1092
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

JOSEPH E. LEWIS,
Plaintiff,

v.

Johnston County
No. 09 CVS 04486

ANNE STANLEY, Administratrix
of the Estate of Bobby
Stanley,
Defendant.

Appeal by plaintiff from order entered 13 May 2010 by Judge Alma Hinton in Johnston County Superior Court. Heard in the Court of Appeals 9 February 2011.

Hall, Rodgers, Gaylord & Millikan, PLLC, by Jonathan E. Hall, for Plaintiff-Appellant.

Spence & Spence, P.A., by Robert A. Spence, Jr., for Defendant-Appellee.

ELMORE, Judge.

Joseph E. Lewis (plaintiff) appeals an order allowing a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim for which relief can be granted. After careful consideration, we affirm the decision of the trial court.

On or about 25 September 2007, Bobby Stanley (deceased) requested to borrow \$300,000.00 from plaintiff to further finance a cellular phone business owned by Cicero Yow. Plaintiff agreed to lend the amount to Stanley, and both plaintiff and Stanley executed an agreement to repay the loan (the Stanley note). The note required Stanley to repay the debt to plaintiff over a period of twelve months with an interest rate of twelve percent.

On 9 January 2009, Stanley passed away, and Anne Stanley (defendant) became the administratrix of Stanley's estate. At the time of his death, Stanley had fallen behind in his repayment obligations under the Stanley note. A principal balance of \$225,000.00 remained on the note which became a debt of Stanley's estate upon his death. Plaintiff and defendant discussed transferring the debt owed under the Stanley note to Yow. Plaintiff agreed to allow defendant to transfer the estate's liability under the Stanley note to Yow. "Note satisfied and cancelled through transfer of debt," was handwritten on the Stanley note, and both plaintiff and defendant signed the note under this handwritten language. Both parties' signatures were made in the presence of a notary public. Next, defendant and Yow executed a document to transfer

liability for payment on the Stanley note from the estate to Yow. That document states, in its entirety:

This agreement is between Cicero Yow and Anne Stanley. Cicero Yow agrees to assume a loan for Anne Stanley from Exum Lewis on February 12, 2009[,] for \$225,000.00. Cicero Yow will allow Anne Stanley to repay this debt from payments received on accounts receivables due to Anne Stanley and/or monthly payments that are paid by Anne Stanley over a 60-month period.

No payments were made on the note by defendant or Yow after the document was signed. On 30 October 2009, plaintiff filed a complaint alleging 1) breach of contract, 2) cancellation of promissory note under false pretenses, and 3) mutual mistake. On 30 December 2009, defendant filed an answer and motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the Rules of Civil Procedure. On 13 May 2010 the trial court issued an order granting defendant's motion to dismiss. Plaintiff appeals from this order.

"On appeal of a 12(b)(6) motion to dismiss for failure to state a claim, our Court conducts a de novo review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct." *Page v. Lexington Ins. Co.*, 177 N.C. App. 246, 248, 628 S.E.2d 427, 428 (2006) (quotation marks, alterations, and citations omitted). Our Supreme Court has made it clear that

dismissal of a complaint for failure to state a claim is proper under three circumstances: "(1) when the complaint on its face reveals that no law supports plaintiff's claim; (2) when the complaint reveals on its face the absence of fact sufficient to make a good claim; (3) when some fact disclosed in the complaint necessarily defeats the plaintiff's claim." *Oates v. JAG, Inc.*, 314 N.C. 276, 278, 333 S.E.2d 222, 224 (1985) (citations omitted).

In his complaint, plaintiff first alleges breach of contract. We conclude that facts disclosed in the complaint necessarily defeat this claim.

N.C. Gen. Stat § 25-3-604 explains how an obligation to repay debt may be discharged. The statute says in relevant part:

A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay an instrument (i) by an intentional voluntary act, such as a surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

N.C. Gen. Stat. § 25-3-604 (2009).

Here, plaintiff's complaint establishes the fact that a

handwritten provision was added to the Stanley note. This handwritten provision stated that the note had been satisfied and cancelled by transfer of the debt. Plaintiff further admits in his complaint that he signed the note under this handwritten portion before a notary public. Therefore, the requirements for discharging an obligation were satisfied, and plaintiff's breach of contract claim is defeated. The parties added words to the instrument which indicated their intent to discharge the debt, and plaintiff acknowledged the voluntary nature of this act by affixing his signature to the note in the presence of a notary public. The debt owed by defendant to plaintiff was validly discharged and no grounds exist for relief for a breach of contract claim.

Next, Plaintiff's complaint alleges that the promissory note was cancelled under false pretenses because defendant did not execute a valid assignment of the debt to Yow. Plaintiff's claim is supported by the assertion that the assignment of the debt to Yow made no reference to the estate of Bobby Stanley, and did not identify the Stanley note as being held by the estate, and is therefore invalid. We conclude that no law supports plaintiff's claim.

N.C. Gen. Stat. § 25-3-402 says in relevant part:

If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument whether or not identified in the instrument.

N.C. Gen. Stat. § 25-3-402 (2009).

Here, defendant is the duly authorized administratrix of the estate of Bobby Stanley. On 20 February 2009, defendant executed a document to transfer liability for payment on the Stanley note from the estate of Bobby Stanley to Yow. Defendant signed the document, but the document made no reference to the estate. However, since defendant is the administratrix of the estate, and her signature appears on the document, the estate is bound to the assignment. Therefore, under N.C. Gen. Stat. § 25-3-402 the assignment is enforceable. Furthermore, the statute clearly indicates that the represented person is liable on the instrument whether or not he is identified in the instrument. Even though the document made no reference to the estate of Bobby Stanley, the assignment would still serve as a valid novation according to this statute. Plaintiff's claim that the

assignment was invalid is not supported by law.

Lastly, plaintiff pleads in the alternative that said cancellation was performed under a mistaken belief that defendant had validly transferred the estate's liability to Yow. Again, plaintiff's claim is supported by the assertion that the assignment of the debt to Yow by defendant was invalid. As previously discussed, the assignment of the obligation to Yow was valid and enforceable, and we again find that no law supports plaintiff's claim.

In sum, upon review of the pleadings we find that plaintiff has failed to assert a claim for which relief can be granted. Plaintiff validly cancelled the Stanley note, and defendant effectively transferred the debt to Yow by a valid assignment. Therefore, we affirm the decision of the trial court.

Affirmed.

Judges STEELMAN and ERVIN concur.

Report per Rule 30(e).