

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

CAPITAL ONE BANK (USA), N.A.,  
Respondent,

v.

CURTIS J. SHUGARTS,  
Appellant.

No. 40653-5-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Curtis J. Shugarts appeals from the judgment entered against him in favor of Capital One Bank (USA), N.A. (Capital One). We affirm.<sup>1</sup>

On December 29, 2009, Capital One served Shugarts with a summons and complaint. In that complaint, it alleged that Shugarts was the obligor on a credit card account with an unpaid balance of \$4,150.40. On January 21, 2010, Shugarts mailed his answer to Capital One. He denied that he had any express agreement with Capital One under which he would be liable for monthly service charges or attorney fees. He demanded that Capital One file its complaint. Capital One did so on January 29, 2010.

On February 2, 2010, Capital One filed a motion for default judgment or alternatively

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<sup>1</sup> A commissioner of this court initially considered Shugarts's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

summary judgment. It submitted evidence of Shugarts's signature on a Capital One credit card application that stated that he agreed to be bound by the terms and conditions enclosed with the application. It also submitted evidence of Shugarts's past due account. Capital One noted its motion for April 2, 2010. Shugarts filed his answer on February 4, 2010.

On March 5, 2010, Shugarts filed a motion to continue the April 2 hearing date. The hearing was reset to April 16, 2010. On March 26, 2010, Shugarts filed an affidavit in opposition to Capital One's motion for default judgment or alternatively summary judgment. In that affidavit, he responded to the assertions made in Capital One's submissions. On April 1, 2010, he filed his opposition to a default judgment, arguing that because he had filed his answer, under CR 55(a)(2) the trial court could no longer enter a default judgment.

The trial court heard argument on Capital One's motion for summary judgment on April 16, 2010. Shugarts denied he had an express agreement with Capital One. The court rejected his argument, based on the application form that Shugarts had signed, and granted Capital One's motion. It entered a judgment against Shugarts for \$4,975.02, which included \$650 in attorney fees.

Shugarts appeals, arguing that the trial court erred in granting a default judgment against him because he had filed his answer before the court heard Capital One's motion for a default judgment. He bases his contention on the language in the default judgment order that "the defendants hav[e] failed to appear or file an Answer herein and more than twenty (20) days hav[e] elapsed since the date of service of the Summons and Complaint herein." Clerk's Papers at 78-79.

But considering Capital One's motion, which was alternatively a motion for a default

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judgment or a motion for summary judgment, Shugarts's response to the motion for summary judgment and the motion argument that was clearly an argument on the motion for summary judgment, the judgment that the trial court entered was a summary judgment, not a default judgment, despite the language in the order. Because the court entered a summary judgment and because Shugarts does not identify any error in the entry of summary judgment, we affirm. In light of its inclusion of erroneous language in its proposed order, which led to this appeal, we deny Capital One's request for attorney fees on appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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QUINN-BRINTNALL, J.

We concur:

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PENYAR, C.J.

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JOHANSON, J.