

[Cite as *Oliver v. Ohio State Univ.*, 2008-Ohio-4201.]

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

REGINALD M. OLIVER

Plaintiff

v.

THE OHIO STATE UNIV.

Defendant

Case No. 2007-04745-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

{¶ 1} In March 1998, plaintiff, Reginald M. Oliver, took out a “University Loan” in the amount of \$650.00 issued by defendant, The Ohio State University (OSU). Under the terms of the issued loan, number 038DDA, plaintiff was obligated to begin repayment in \$50.00 monthly installments upon leaving OSU. The loan carried a 7% interest rate. Plaintiff began loan repayment under the agreed terms and conditions in May 2000 (first \$50.00 payment posted by defendant on June 1, 2000). A review of plaintiff’s loan payment history (copy submitted) indicated that his attempts at monthly installment payments were sporadic and that it appears that payments ceased after April 2001. Since plaintiff failed to comply with the loan repayment schedule defendant acted, explaining that the decision was made “to place his (plaintiff’s) account for collection on May, 2001 with the General Revenue Corporation (GRC).” According to defendant’s records, after the account was turned over for collection, plaintiff attempted to make payments on the loan balance with checks he drafted. The checks were non-negotiable due to insufficient funds. Subsequently, for a period from February 2002 to October 2002, plaintiff did make periodic payments on the loan account to defendant. Although plaintiff was contacted in February 2003 regarding his outstanding account balance on loan number 038DDA, he made no further attempts to make any payments.

{¶ 2} In June 2003, defendant received a check (copy submitted) for a loan payment from Regina M. Oliver. Rather than apply this \$500.00 check payment to Ms. Regina M. Oliver’s account, OSU personnel mistakenly applied the payment to the outstanding account of plaintiff, Mr. Reginald M. Oliver. Defendant observed that, “[a]s a result of the mistaken payment, (plaintiff’s) account showed a credit of \$88.00 which (OSU) repaid to him, issued him a release of his loan obligation and closed his account with GRC.” Defendant acknowledged that plaintiff’s outstanding loan account had been

erroneously closed when a payment from Regina M. Oliver intended to pay her own loan was mistakenly used to offset the delinquent account of plaintiff, Reginald M. Oliver. Defendant also acknowledged that the mistake made with the two separate and distinct accounts, opened by two individuals with similar names, was not discovered until October 2003, four months after the error had been recorded.

{¶ 3} Upon realizing the mistake made with the two separate accounts in the name of Mr. Reginald M. Oliver and Ms. Regina M. Oliver, defendant, on October 20, 2003, corrected the error by making proper entries on the two separate loan payment documents (Collection Profile For The Ohio State University). Defendant noted that the reconciliation with proper entries recorded was finalized in December 2003. During December 2003, defendant made several attempts to contact plaintiff to inform him of the correction that had been made to his outstanding loan account. When the correction to the loan credit error was entered, defendant determined that plaintiff's loan account was twenty-six months overdue. After making numerous unanswered attempts to have plaintiff contact OSU to resolve the issue with his outstanding loan account, defendant persisted in pursuing the matter. Defendant related that during a period from May 5, 2005 to August 7, 2006, OSU "sent five separate Loan Acceleration Letters (facsimile copy submitted) to Mr. Oliver's attention, informing him that his loan amount was due and owing immediately." Although plaintiff was clearly notified through the Loan Acceleration Letters that he still owed principal balance, interest, late charges, and collection costs on his student loan, he made no attempts to contact defendant for any resolution regarding the delinquent student loan account. Furthermore, defendant asserted that OSU continued to contact plaintiff by telephone regarding his delinquent loan account, but he never responded to any of these attempted contacts.

{¶ 4} Since plaintiff never made any attempt to satisfy the debt he owed, defendant, in September 2006, placed the delinquent student loan account for collection with the Ohio Attorney General's Office. Defendant stated that , "[t]he Ohio Attorney General's Office was able to secure partial payment of the debt by seizing Mr. Oliver's 2006 Ohio Income Tax Refund, per statute." The refund seizure amount of \$450.00

was applied to partially satisfy the delinquent account leaving a balance of \$1,206.22 still owed by plaintiff for “satisfaction of this loan and collection effort.”

{¶ 5} Plaintiff has maintained that his loan account was paid and consequently OSU had no right to institute collection action through the Ohio Attorney General. Plaintiff essentially asserted that his \$450.00 Ohio Income Tax Refund was converted as a result of defendant’s acts. Therefore, plaintiff filed this complaint seeking to recover \$600.00, representing the amount of his seized income tax refund, “plus interest.” Plaintiff implied that defendant had no right or authority to seize his income tax refund. The filing fee was paid.

{¶ 6} Evidence has shown that when plaintiff and defendant entered into the 1998 student loan agreement a promissory note was executed which OSU held. After OSU received the \$500.00 check from Regina M. Oliver on June 3, 2006 and mistakenly credited that payment amount to plaintiff’s loan account, defendant then sent plaintiff the original promissory note date stamped PAID. Plaintiff has apparently contended that defendant’s conduct of forwarding to him a promissory note stamped PAID constituted a valid cancellation of the note, despite the fact defendant’s conduct was based on mistakenly applying a credit on plaintiff’s account that was clearly intended to apply to another account. Plaintiff implied that the act by OSU of sending him the promissory note stamped PAID demonstrated defendant’s intent to discharge his loan debt.

{¶ 7} R.C. 1303.69 addresses the particular mechanism for a creditor to cancel a negotiable instrument such as a promissory note. This statute provides:

{¶ 8} “(A) A person entitled to enforce an instrument,<sup>1</sup> with or without

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<sup>1</sup> R.C. 1301.31 states:

“(A) ‘Person entitled to enforce’ an instrument means any of the following persons:

“(1) The holder of the instrument;

“(2) A nonholder in possession of the instrument who has the rights of a holder;

“(3) A person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 1303.38 or division (D) of section 1303.58 of the Revised Code.

“(B) A person may be a “person entitled to enforce” the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.”

consideration, may discharge the obligation of a party to pay the instrument in either of the following ways:

{¶ 9} “(1) By surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party’s signature, the addition of words to the instrument indicating discharge, or any other intentional voluntary act;

{¶ 10} “(2) By agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

{¶ 11} “(B) Cancellation or striking out of an indorsement pursuant to division (A) does not affect the status and rights of a party derived from the indorsement.”

{¶ 12} The facts of the instant claim support the conclusion that OSU mistakenly cancelled plaintiff’s promissory note considering he did not actually pay the outstanding loan balance owed. Plaintiff’s loan account was credited with a payment intended for another loan account held by a person with a similar name. The fact that defendant in the present action surrendered the promissory note to plaintiff did not constitute an effectual discharge of the debt owed based on the mistake asserted. It has been previously held that in order for a valid discharge to occur, an intent to discharge is required. See *Huntington National Bank v. Mark*, Highland App. No. 03CA16, 2004-Ohio-3856. A surrender of a promissory note is not considered a valid discharge of the obligation when the surrender occurs as a result of a clerical error or mistake; thereby supporting the conclusion that there can be no real intent to discharge such a debt obligation when the surrender was prompted by error or mistake. *Huntington*. When reviewing the facts of the present claim and considering the evidence presented, the court finds that there was no valid discharge of the debt plaintiff owes since no supporting evidence has been produced to establish intent by OSU to discharge plaintiff’s debt. The Ohio Attorney General’s Office has statutory authority under R.C. 131.02 to pursue collection actions against individuals indebted to the state such as plaintiff. It is clear that plaintiff failed to repay his student loan to OSU and that there

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ENTRY

was no valid discharge of his debt obligation. Under the facts of this claim, the collection action instituted was proper and consequently, plaintiff cannot advance any argument to prove that he is entitled to recovery of his income tax refund. Therefore, this claim is denied.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

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MILES C. DURFEY  
Clerk

Entry cc:

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RDK/laa  
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