

IN THE UTAH COURT OF APPEALS

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Key Bank National Association,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080511-CA
v.)	
)	F I L E D
Wayne R. Weston,)	(June 4, 2009)
)	
Defendant and Appellant.)	2009 UT App 144

Fourth District, Provo Department, 060403535
The Honorable Gary D. Stott

Attorneys: Donald L. Dalton, Salt Lake City, for Appellant
Arnold Richer, South Jordan, for Appellee

Before Judges Bench, Orme, and Davis.

DAVIS, Judge:

Wayne R. Weston argues that the trial court erred in granting summary judgment and awarding attorney fees in favor of Key Bank National Association (Key Bank). We affirm the trial court's decisions, and we remand for the trial court to determine the amount of attorney fees Key Bank incurred on appeal.

"We review a [trial] court's decision to grant summary judgment for correctness, giving no deference to the court below. Summary judgment is appropriate if there is 'no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.'" Guisti v. Sterling Wentworth Corp., 2009 UT 2, ¶ 19, 201 P.3d 966 (omission in original) (footnote and additional internal quotation marks omitted) (quoting Utah R. Civ. P. 56(c)).

In this case, Weston contends that there were disputed issues of material fact regarding whether the preferred credit line (PCL) was opened in Weston's name personally or on behalf of the May Corporation. We disagree. The undisputed material evidence demonstrated that the PCL was obtained and used by Weston in a personal, not a corporate, capacity. First, the PCL was a loan product offered by Key Bank exclusively to individuals, never to business entities. Second, after Weston solicited the PCL, he provided Key Bank with his personal information during the phone application process. Third, upon approval of the PCL, Key Bank mailed Weston a book of blank

checks that bore his name and home address¹ in the top left corner of the checks; the blank checks contained no information regarding the May Corporation, and Weston never contacted Key Bank to inquire why the checks had only his name on them. Fourth, Key Bank issued all invoices for the PCL in Weston's name with no reference to the May Corporation. And finally, Weston negotiated the checks by signing them personally and not as a corporate officer of the May Corporation.

"Individuals who fail to limit their signatures to their corporate capacity have consistently been held to be directly liable [for those signatures]" DBL Distrib., Inc. v. 1 Cache, LLC, 2006 UT App 400, ¶ 13, 147 P.3d 478. Moreover, "the signer's corporate capacity must be clear from the form of [the] signature." Id. Here, Weston signed the blank checks in a personal capacity. Accordingly, Weston--not the May Corporation--is directly liable to repay the PCL. Because the undisputed material facts show that the PCL was Weston's personal obligation rather than the May Corporation's obligation,² we conclude that the trial court did not err in granting summary judgment in favor of Key Bank.³

¹Weston contends that the address on the checks was a business address and not the address of a personal residence. During his deposition, however, counsel for Key Bank asked Weston about the address imprinted on the blank checks, and Weston identified the address as "[t]he home address."

In any event, even if the address were a corporate address, everything else about the checks and the way in which they were negotiated suggests personal use. Accordingly, the trial court correctly concluded, "The address issue that has been raised is not sufficient for me to find that it's a corporate obligation rather than a personal obligation for which Mr. Weston is not responsible." See generally Utah R. Civ. P. 56(c) (stating that a motion for summary judgment is proper when there is no genuine dispute regarding any material issue of fact).

²Of course, the instant case concerns only the rights of Weston and Key Bank as between themselves. Nothing in our decision precludes Weston from recovering from the May Corporation any PCL proceeds expended on the May Corporation's behalf or that the May Corporation may otherwise owe Weston.

³Weston also contends that the trial court erred when it denied his motion to strike Helen M. Rozich's affidavit, which was filed in support of Key Bank's motion for summary judgment. We conclude that the trial court did not err because the documents relied on by Rozich fell within the business records exception to the hearsay rule, see Utah R. Evid. 803(6).

(continued...)

Weston also argues that the trial court abused its discretion in granting an award of attorney fees to Key Bank. More specifically, Weston argues that the award was improper because the basis for the award did not appear in the affidavit in support of attorney fees. Again, we disagree. "[A]ttorney fees may be awarded . . . when they are authorized by statute or contract." Fericks v. Lucy Ann Soffe Trust, 2004 UT 85, ¶ 23, 100 P.3d 1200. Here, the PCL agreement specifically provided that in the event of default, Key Bank was entitled to all reasonable attorney fees incurred in collecting on the delinquent account. Accordingly, the award of attorney fees was specifically authorized by contract, and the trial court did not err in awarding the fees on that basis. Moreover, "as the party successful on appeal, [Key Bank] is also entitled to attorney fees . . . incurred on appeal." Aris Vision Inst., Inc. v. Wasatch Prop. Mgmt., Inc., 2006 UT 45, ¶ 22, 143 P.3d 278. Accordingly, we remand to the trial court for a determination of the reasonable amount of attorney fees incurred on appeal to be awarded to Key Bank.

James Z. Davis, Judge

WE CONCUR:

Russell W. Bench, Judge

Gregory K. Orme, Judge

³(...continued)
Specifically, Rozich relied on documents that had been provided to Weston during discovery and were indeed kept in the ordinary course of Key Bank's business. See generally id. (permitting as an exception to the general bar against hearsay any reports or data compilation made by a person with knowledge "if kept in the course of a regularly conducted business activity"). Moreover, most of Rozich's affidavit testimony that is relevant to this appeal was conceded by Weston during his deposition testimony. Accordingly, we affirm the trial court's ruling denying Weston's motion to strike.