

Royea v. Hill, No. 472-7-07 Wncv (Toor, J., Dec. 8, 2008)

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STATE OF VERMONT  
WASHINGTON COUNTY

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DANIEL ROYEA,  
Plaintiff

v.

DEBRA HILL,  
Defendant

SUPERIOR COURT  
Docket No. 472-7-07 Wncv

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RULING ON MOTION FOR SUMMARY JUDGMENT

This case, filed as an action seeking collection of a loan, is actually a case between former romantic partners. Plaintiff, the ex-boyfriend, has filed a motion for summary judgment. Defendant did file an answer to the complaint disputing the debt, but failed to respond to the summary judgment motion. The court therefore set the motion for a hearing so that she would appear and explain her position: she failed to do so. The court is thus left with an unopposed motion to resolve.

The facts set forth by Royea are that during the parties' relationship<sup>1</sup> he loaned Hill money on many occasions, with an agreement that she would repay it. In support of this claim he submitted a chart reflecting 211 entries for separate loans over the period November 2005 to March 2007. They range from \$3.23 to \$977.73, with notations explaining the purpose of the loan. The explanations include "candy," "meal," "lunch," "Jim Croce CD," "gas," "iced tea," "hairspray," and "pop tarts." *See* Exhibit A to

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<sup>1</sup> The romantic relationship is not mentioned in the papers, but was acknowledged by Plaintiff and his counsel at the hearing.

Plaintiffs' First Requests to Admit. The total amount he claims is due is \$14,344.17. Royea's affidavit explains that he documented the loans by keeping the receipts for each purchase. He also asserts that each time he "advanced money" to Hill, he "inquired when it would be repaid," and that she "expressly agreed to repay the sums due when she received her 'next child support check' or when she received her income tax refund." Royea Affidavit ¶¶ 6, 11-12.

Royea also submits an email purportedly from Hill which he asserts is an acknowledgment of the debt. The court disagrees. The email merely asks that Royea send her a list of what he claims she owes. She does not expressly acknowledge that she owes him any particular amount.

#### Conclusions of Law

If the court were to accept the statement of undisputed facts at face value, it would be compelled to grant the motion for summary judgment because the statement sets forth that the parties agreed to multiple loans and they have not been repaid. However, the court concludes that, at least without live testimony explaining the background, the facts set forth are just not credible on their face. Absent further explanation, it is beyond belief that parties involved in a romantic relationship would keep receipts for \$3.73 or similar amounts and total them up as "debts."

The court has considered whether it is bound by Rule 56 to accept the representations asserted by Royea, given that they are unopposed. V.R.C.P. 56(c)(2). However, the court cannot be required to accept even utterly unbelievable allegations merely because the other side has failed to respond. If an affiant stated in support of a motion that little green men had carted him off to Planet Krypton and given him magical

powers, the court would surely not have to deem such facts to be true. The court must have the leeway to reject absurd claims in the context of summary judgment motions, and require that they be presented by live witnesses at trial.

Other courts have also concluded that a court must deny summary judgment if the account of the affiant, taken in the context of other known facts, is not sufficient to convince a factfinder of its truth. For example, in a case involving a police officer's affidavit concerning a death as a result of his use of force, "the court may not simply accept what may be a self-serving account by the police officer. It must also look at the circumstantial evidence that, if believed, would tend to discredit the police officer's story, and consider whether this evidence could convince a rational factfinder that the officer acted unreasonably." Scott v. Henrich, 39 F. 3d 912, 915 (9<sup>th</sup> Cir. 1994). *See also*, Estate of Bing v. City of Whitehall, Ohio, 373 F. Supp. 2d 770,779 (S.D. Ohio 2005)("[t]he jury can best determine the officer's credibility"), *aff'd in part, rev'd in part on other grounds*, 456 F.3d 555 (Ohio 2006).

#### Order

The motion for summary judgment is denied. The case will be scheduled for a one hour court trial. Ms. Hill is reminded that appearing to testify at trial is advisable if she wishes to present her side of the story.

Dated at Montpelier this 8th day of December, 2008.

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Helen M. Toor  
Superior Court Judge