

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2011-000797-001 DT

02/08/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT  
J. Eaton  
Deputy

GREATER GLENDALE FINANCE L L C  
v.  
ICKOY D MCGOWAN (001)  
LATOYA TENILLE CLARK (001)

LISA RAUSER  
BRADLEY S GELDER

NORTH VALLEY JUSTICE COURT  
REMAND DESK-LCA-CCC

HIGHER COURT RULING / REMAND

**Lower Court Case No. CC2011024616.**

The Manistee Justice Court vacated a judgment against Defendants-Appellees Ickoy D. McGowan and Latoya Tenille Clark (Defendants) in a civil action (breach of contract). Plaintiff-Appellant Greater Glendale Finance, LLC (Plaintiff) contends the trial court erred. This case was subsequently transferred to the North Valley Justice Court. For the reasons stated below, this Court remands the matter.

I. FACTUAL BACKGROUND.

On August 3, 2004, Defendants entered into a Retail Installment Contract and Security Agreement (“Agreement”) with Walker Motors, LLC (dba JD Byrider) for the purchase of a vehicle, payable in 91 bi-weekly payments of \$166.42. The Agreement was assigned to Walker Motors Financing, LLC (dba CNAC). Presumably, Plaintiff is now dba CNAC.<sup>1</sup> On or about September 17, 2009, Defendants filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code. In the bankruptcy documents, Defendants listed CNAC as a creditor (for the vehicle loan), but gave an address in Indiana. On January 5, 2010, the bankruptcy court discharged Defendants. According to Plaintiff, the bankruptcy court set an August 6, 2010, bar date for filing of claims against Defendants’ estate.

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<sup>1</sup> According to the Appellees’ Counter Designation of Record (filed by Defendants), Greater Glendale Finance, LLC was “formally known as Walker Motors Financing, LLC.” Accordingly, it is apparent Greater Glendale Finance, LLC is now dba CNAC. Whether Plaintiff is authorized to do so is a matter this Court recently considered and remanded to the North Valley Justice Court for a determination in *Greater Glendale Finance, LLC v. Garrick Lyle Merriweather; Maria A. Brown*, LC2012-000471 (Lower Court Case No. CC 2012-020267); see Minute Entry filed by this Court on January 3, 2013. For purposes of the appeal in the matter *sub justice*, this Court will presume Plaintiff is authorized to dba CNAC, for this issue is not disputed between the parties.

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On February 3, 2011, Plaintiff filed a civil complaint against Defendants in Manistee Justice Court, seeking \$6,624.29 in unpaid principle, \$7,886.20 in interest from the date of the default, and court costs for breaching the Agreement (Defendants failed to make a payment after August 19, 2005). On March 24, 2011, Plaintiff filed an Application for Entry of Default due to Defendants' failure to file an answer to the complaint. On May 4, 2011, the trial court entered a default judgment in Plaintiff's favor in the amount of \$14,510.79. On August 2, 2011, Defendants filed a Motion To Vacate Judgment, wherein they argued the complaint filed by Plaintiff was fraudulent, for the debt owned by Plaintiff was discharged on January 5, 2010. On August 17, 2011, Plaintiff filed a Response to Motion To Vacate, wherein it argued Defendants' debt was not discharged because Defendants failed to list the proper CNAC as a creditor. Plaintiff alleged the CNAC that Defendants listed as a creditor is in Indiana, and Plaintiff is in Glendale, Arizona. Plaintiff also alleged each CNAC is privately owned and are not affiliated with each other. On August 22, 2011, the trial court granted Defendants' Motion To Vacate Judgment, dismissing the matter without prejudice.

On January 25, 2012, Defendants filed a Debtors' Motion To Reopen Case To Amend Schedules To Add Inadvertently Omitted Claim, wherein Defendants contended their document preparer incorrectly listed CNAC in Indiana as the creditor, instead of Plaintiff (dba CNAC in Glendale, Arizona). Defendants consented to an allowed unsecured claim for Plaintiff in the amount of \$209.82, the amount it would have received had it filed a timely notice of claim and had participated in the distribution of estate assets. On April 23, 2011, the Bankruptcy Court issued an Order reopening Defendants' bankruptcy case to add Plaintiff to the list of creditors. The Order also provided, in relevant part, as follows:

IT IS FURTHER ORDERED:

1. Debtors shall pay Creditor aka Greater Glendale Finance, LLC the sum of \$209.82 within 30 days of the date this Order becomes final and appealable;
2. Upon proof of payment the Claim shall be discharged.
3. Upon failure to do so, Debtors shall not be granted a discharge of the Claim unless Debtors can establish the Creditor had actual notice of this case prior to the issuance of the discharge order issued in the case.

According to Defendants' August 2, 2011, Motion To Vacate Judgment, they contacted Plaintiff on the day they received the Summons and Complaint; Defendants were served with process on February 16, 2011. Defendants allege that, on that day, they contacted Plaintiff's finance department, informed them that the debt was discharged, and faxed the discharge information to them. Defendants assert Plaintiff's finance department acknowledged receipt of the fax and that "everything would be stopped." Notably, the date stamp on the fax sheet shows it was sent on March 7, 2011, at 11:34 p.m. The fax was sent to (623) 847-3586.

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On August 16, 2012, Judge Handley of the Manistee Justice Court recused himself and the case was transferred to North Valley Justice Court. Plaintiff asserts that, as of August 13, 2012, Defendant have failed to pay them the \$209.82, and, consequently, pursuant to the Bankruptcy Court's April 23, 2011, Order, the debt owed to Plaintiff was not discharged. On September 6, 2011, Plaintiff filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

**II. ISSUE: WHETHER DEFENDANTS' DEBT WAS DISCHARGED BY THE U.S. BANKRUPTCY COURT PURSUANT TO ITS APRIL 23, 2011, ORDER.**

The Bankruptcy Court retroactively amended Defendants' schedules to include Plaintiff as a creditor entitled to asset distribution in the amount of \$209.82. Pursuant to the Bankruptcy Court's April 23, 2011, Order, the debt owed to Plaintiff was to be discharged if Defendants paid Plaintiff \$209.82 within 30 days of the date this Order became final and appealable. Because Defendants failed to file an Appellee's Memorandum, including relevant and supporting documents (i.e., proof of payment), this Court cannot determine conclusively whether the debt was discharged by means of payment. Notably, the Bankruptcy Court's April 23, 2011, Order also states that if Defendants failed to pay Plaintiff \$209.82 within 30 days of the date the Order became final and appealable, Defendants would not be granted a discharge of the Claim **unless** Defendants could establish Plaintiff had actual notice of the bankruptcy case prior to the issuance of the discharge order, which was issued on January 5, 2010. Defendants did not contact Plaintiff (the proper plaintiff) regarding the bankruptcy until March 7, 2011, which was well after the discharge order was issued.

**IT IS THEREFORE ORDERED** remanding this matter to the North Valley Justice Court for a hearing to determine whether Defendants paid Plaintiff \$209.82 within 30 days of the date the April 23, 2011, Order became final and appealable. When the April 23, 2011, Order became final and appealable must also be determined.

**IT IS FURTHER ORDERED** that, if the North Valley Justice Court finds Defendants paid Plaintiff \$209.82 within 30 days of the date the April 23, 2011, Order became final and appealable, the North Valley Justice Court shall dismiss this case, for the Complaint filed by Plaintiff and the resulting May 4, 2011, default judgment are both void as a matter of law.

**IT IS FURTHER ORDERED** that, if the North Valley Justice Court finds Defendants failed to pay Plaintiff \$209.82 within 30 days of the date the April 23, 2011, Order became final and appealable, the debt owed to Plaintiff was not discharged, and the May 4, 2011, default judgment shall stand.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen  
THE HON. CRANE MCCLENNEN  
JUDGE OF THE SUPERIOR COURT

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