

FILED

2007 MAR -9 PM 5:00 *cmf*

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

ROCKINGHAM COUNTY, C.S.C.

SUPERIOR COURT DIVISION

ROCKINGHAM COUNTY

BY *cmf Asst*

File No. 05CVS999

NANCY E. ODELL, Individually and on)
behalf of those similarly situated,)

Plaintiff,)

v.)

LEGAL BUCKS, LLC,)

J. KEITH TART, and)

LYNN D. TART,)

Defendants.)

**PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
ON COUNTERCLAIM**

COMES NOW the plaintiff, Nancy E. Odell, pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, and moves the Court for partial summary judgment on the counterclaim of defendant Legal Bucks, LLC ("Legal Bucks") to the extent the counterclaim seeks to enforce a provision (the "Penalty Clause") of the parties' contract purporting to entitle Legal Bucks to "liquidated damages" in the amount of three times principal and accrued interest. Plaintiff moves for partial summary judgment on the ground there is no genuine issue of material fact and plaintiff is entitled for a judgment as a matter of law that the Penalty Clause is unenforceable. Plaintiff offers the pleadings, depositions, all the discovery and the previously filed affidavits in this case in support of the motion. As further support for this motion, plaintiff shows the Court:

1. On or about July 27, 2002, Odell was injured in an automobile accident wherein she suffered personal injuries. In this regard, she engaged the services of an attorney, Lawrence Egerton, Jr., to pursue her claim for compensation for injuries.

2. On or about March 27, 2003, Legal Bucks advanced \$3,000 to plaintiff pursuant to an agreement entitled "Transfer and Conveyance of Proceeds and Security Agreement" (the "Agreement"), a copy of which is attached hereto as **Exhibit 1**. The Agreement was executed by plaintiff and defendant Legal Bucks on or about March 28, 2003. (Answer ¶ 12).

3. As set forth in the Agreement, Legal Bucks exacted interest on its \$3,000 loan at a rate of approximately 100% per year; More than 13% per month for the first three months and then 7.8% per month thereafter, payable from the proceeds of the underlying claim.

4. In May 2005, Odell settled her underlying claim for \$18,000.00. By that time Legal Bucks' contract provided that Odell owed it \$9,750 from the proceeds of the underlying claim.

5 Paragraph 13 of the Agreement, Penalty Clause, provides as follows:

In the event that Plaintiff terminates or otherwise breaches the covenants, conditions or terms of this Agreement, Plaintiff shall pay liquidated damages to Legal Bucks in the amount of three times (3x) the Security Interest set forth in Paragraph 2, above. Plaintiff expressly acknowledges that in the event of termination or other breach of covenants, conditions and terms of this Agreement, the anticipated loss to Legal Bucks in such an event will be estimated to be the amount set forth in the foregoing liquidated damages provision, and such estimated value is reasonable and not imposed as a penalty.

(**Exhibit 1** ¶ 13).

6. On June 15, 2005, Plaintiff filed this action seeking a determination that her contract with Legal Bucks was void, That day this Court entered an Order, a copy of which is attached hereto as **Exhibit 2**, directing that the disputed funds be placed with the Clerk of

Superior Court of Rockingham County pending the determination of the matters in controversy in this action.

7. This Court entered summary judgment in favor of defendants on plaintiff's claims on December 28, 2006.

8. Defendants now seek to have the amount of plaintiff's \$9750 debt to Legal Bucks trebled to \$29,750 pursuant to the Penalty Clause.

8. The amount of principal plus accrued interest called for in the Agreement, \$9750, is a straightforward calculation and is in no way difficult to ascertain because of indefiniteness or uncertainty.

9. Defendants did not arrive at the Penalty Clause's penalty of three times the amount in controversy by a good-faith effort to estimate in advance the actual damage which would probably ensue from a breach.

10. Defendants fixed the Penalty Clause's penalty of three times the amount in controversy not as a pre-estimate of probable actual damages, but as a punishment, the threat of which was designed to prevent a breach of the contract and/or as security to insure that Legal Bucks would collect principal plus accrued interest.

11. Defendants are not entitled to enforce the Penalty Clause in light of the fact that the amount of principal and interest accrued under the Agreement was timely placed into this Court pending a determination of the matters in controversy in this action. Plaintiff has not withheld the funds. Since June 15, 2005 the funds have been with the Clerk of Superior Court.

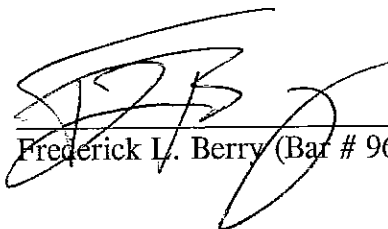
12. Prior to the ruling in this case no court in North Carolina has ever held the defendants' practices were legal. As defendants said in Legal Bucks' 2004 fund raising

material, "The *greatest source of risk* is that as yet there is no unquestionable, affirmative legal precedent for the assignment of rights to prospective litigation proceeds *to a financing source*. It is conceivable that the courts will find litigation funding to be an illegal practice and, additionally, void all outstanding advance contracts." (September 1, 2004, Confidential Limited Offering Memorandum, page 12, **Exhibit 3**, emphasis theirs.) Plaintiff has not breached the contract, she merely sought a determination of the validity of the contract.

WHEREFORE, plaintiff respectfully requests that the Court grant its motion for partial summary judgment on Legal Bucks' counterclaim on the ground that the Penalty Clause is unenforceable as a matter of law, and grant plaintiff all such other relief as the Court deems just and proper.

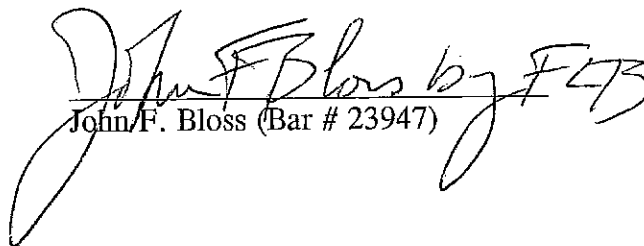
Respectfully submitted, this the 9 day of March, 2007.

BARRON & BERRY, L.L.P.
301 S. Greene St., Ste. 310
Post Office Box 2370
Greensboro, NC 27402
Telephone: (336) 274-4782
Facsimile: (336) 379-8592



Frederick L. Berry (Bar # 9696)

CLARK BLOSS & WALL, PLLC
125 South Elm Street, Suite 600
Greensboro, North Carolina 27401
Telephone: (336) 275-7275
Facsimile: (336) 275-7276



John F. Bloss (Bar # 23947)


Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing *Plaintiff's Motion for Partial Summary Judgment on Counterclaim* upon the defendants in this action by mailing a copy thereof to their attorney by first-class mail, postage prepaid, addressed as follows: *+ by FAX*

Hada V. Haulsee, Esq.
Womble Carlyle Sandridge & Rice, PLLC
One West Fourth Street
Winston-Salem, North Carolina 27101

This the 9 day of March, 2007.


Frederick L. Berry
N.C. State Bar No. 9696
Attorney for Plaintiff

FILED
2007 MAR -9 PM 5:06
ROCKINGHAM COUNTY, C.S.C.
BY CWP Ass



ORIGINAL

TRANSFER AND CONVEYANCE OF PROCEEDS AND SECURITY AGREEMENT

THIS TRANSFER AND CONVEYANCE OF PROCEEDS AND SECURITY AGREEMENT (the "Agreement"), effective the date of the last signature hereon, is made by and between:

Nancy Odell

Social Security No.: 231-60-4778

Driver's License No.: 2932418 State NC

Street Address: 720 Shawn Street Eden, NC 27288

Telephone: (336) 635-1223 (h); (336) 324-1367 (m)

(hereinafter referred to as "Plaintiff"), and Legal Bucks, LLC a North Carolina limited liability corporation (hereinafter referred to as "Legal Bucks").

RECITALS

WHEREAS, on or about July 27, 2002, Plaintiff received various personal injuries when the car in which she was a passenger was involved in a collision (hereinafter referred to as the "Accident"). The Accident occurred on Stadium Drive in Eden, North Carolina. As a result of the Accident, Plaintiff has one or more causes of action against Rufus Junior Moyer and/or Wallace Dean Dishman, and/or their insurers, and possibly others (hereinafter and collectively referred to as the "Defendants"). Plaintiff may have successor claims and/or litigation arising out of the same facts, or arising out of the conduct of the claims process and/or litigation. Together, all such legal process will be referred to herein as the "Litigation."

WHEREAS, an undetermined amount of time will be required for Plaintiff to seek compensation from the Defendants through continued legal action and/or negotiations to otherwise persuade or prevail upon the Defendants to pay the Plaintiff an amount appropriate and necessary to compensate Plaintiff for the injuries incurred and/or damages suffered;

WHEREAS, Plaintiff desires to pursue litigation to such time that a fair and favorable settlement/judgment can be obtained;

Plaintiff's Initials N.O.



WHEREAS, in order to afford Plaintiff an opportunity to meet current financial needs, Legal Bucks has agreed to accept certain proceeds which may arise from settlement or verdict resulting from the Litigation; and

WHEREAS, Legal Bucks has made its own determination to make this advance and has not relied on any advice from Plaintiff's counsel regarding the merits, value, risk, or legitimacy of the Litigation.

NOW THEREFORE, for and in consideration of the sum of **Three Thousand and No/100 Dollars (\$3,000.00)** (the "Advance"), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Legal Bucks and Plaintiff do hereby agree as follows:

1. For purposes of this Agreement, (i) "Gross Recovery" shall be defined as the gross amount and value of all consideration that may be received by Plaintiff from the Defendants by way of settlement or judgment; and (ii) "Proceeds" shall be defined as the Gross Recovery from the Litigation, *less* Plaintiff's attorney's fees, actual costs and expenses advanced by Plaintiff's legal counsel on Plaintiff's behalf, and any other prior, superior assignments, liens, encumbrances or security interests of any kind or nature in or relating to the Proceeds.

2. Plaintiff unconditionally and irrevocably transfers and conveys to Legal Bucks all of Plaintiff's control, right, title and interest in the first monies paid to Plaintiff from the Proceeds as follows:

(A) If Legal Bucks is paid *prior to* July 1, 2003: **\$4,200** (the amount of the Advance (\$750) plus 40% of the Advance (\$300)); and

(B) If Legal Bucks is paid *on or after* July 1, 2003: The amount from Subparagraph A (**\$4,200**) **plus** \$234 (7.8% of the Advance) **for each month thereafter and until Legal Bucks is paid** (the "monthly assignment"). The monthly assignment will occur the first day of each month, beginning July 1, 2003. Under no circumstances, however, shall the amount owed under this Subparagraph exceed three hundred twenty-five percent (325%) of the Advance (**\$9,750**).

3. Plaintiff hereby grants to Legal Bucks a security interest in the Proceeds of the Litigation, as set forth in Paragraph 2 above, in order to secure the conveyance, subject to the terms and conditions of this Agreement (hereinafter referred to as the "Security Interest").

4. This Agreement is expressly intended to transfer, convey and relinquish control over only a specified portion of the Proceeds which may flow from and are received as a result of the Litigation, to wit: the Security Interest. This Agreement is not an assignment, nor a purchase of any

right, chose in action, cause of action, or claim which Plaintiff may have or possess as against any responsible party, respondent or defendant referred to herein. No control, input, influence, right or involvement of any kind as concerns any claim, right, or interest of Plaintiff in the Litigation is contemplated by any party to this Agreement.

5. Except as expressly provided for herein, this Agreement is contingent, speculative and without recourse on the part of Legal Bucks.

6. If there is no recovery of Proceeds by Plaintiff, then Legal Bucks shall receive NOTHING. If the Proceeds do not allow for payment of the Security Interest in full, Plaintiff shall (1) satisfy the Security Interest to the maximum extent possible from the Proceeds and owe nothing further; and (2) direct counsel to provide Legal Bucks with a full itemization of Proceeds.

7. Plaintiff shall and does hereby require and direct his/her attorney to acknowledge this transfer, conveyance and security agreement.

8. All parties to this Agreement acknowledge that by execution hereof, Plaintiff's attorney is solely and merely following Plaintiff's instructions. Plaintiff's attorney is making neither representation nor guarantee to Legal Bucks, whether inferred, expressed or implied, concerning the merits or value of the claims which give rise to the Litigation. Further, all parties to this Agreement acknowledge that Plaintiff's attorney assumes no affirmative duties herein other than the ministerial obligations of conveying certain materials and information to Legal Bucks and disbursing the Security Interest as contracted for and agreed to hereby.

9. If the undersigned attorney ceases to represent the Plaintiff subsequent to the date of this Agreement, Plaintiff shall, within five (5) business days of the last date of representation, give written notice, by certified mail, return receipt requested, to Legal Bucks, 3524 Yadkinville Road, PMB #314, Winston-Salem, North Carolina 27016, or such other address as may be provided by Legal Bucks. Said notice shall also include the name, address and phone numbers of Plaintiff's new attorney(s). Further, within five (5) business days of new counsel's hire, Plaintiff shall direct any new attorney(s) to acknowledge receipt of this security interest and lien.

10. Plaintiff hereby authorizes his/her attorney(s) to release to Legal Bucks any information, files, records, or other documents regarding the Litigation requested by Legal Bucks. Legal Bucks agrees to treat such information as privileged and confidential and to receive and review these materials solely in the limited capacity necessary for this Agreement. Legal Bucks will not disclose any information received concerning the litigation to any third parties, except as directed by Plaintiff or as otherwise provided by law. Legal Bucks expressly reserves the right to consult with counsel of its own choosing as to questions of law; provided Legal Bucks shall require counsel to conduct a proper inquiry for any conflicts of interest before engaging representation. No documents or information protected by the attorney client privilege is included within the scope of this paragraph.

11. Plaintiff agrees to hold harmless, defend and indemnify Legal Bucks from any claim or cause of action brought by any third party, arising from or in any way related to this Agreement.

12. This Agreement constitutes the entire agreement between the parties, and there are no representations, warranties, covenants or obligations except as set forth herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated by this Agreement. This Agreement shall be binding on, and inure to the benefit of, the parties hereto and their successors and assigns. In the event any one or more of the covenants, terms and conditions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity, liability or enforceability of any other ~~covenant~~, term or condition in this Agreement.

13. In the event that Plaintiff terminates or otherwise breaches the covenants, conditions or terms of this Agreement, Plaintiff shall pay liquidated damages to Legal Bucks in the amount of three times (3x) the Security Interest set forth in Paragraph 2, above. Plaintiff expressly acknowledges that in the event of termination or other breach of covenants, conditions and terms of this Agreement, the anticipated loss to Legal Bucks in such an event will be estimated to be the amount set forth in the foregoing liquidated damages provision, and such estimated value is reasonable and not imposed as a penalty.

14. Plaintiff intends this Agreement to be fully valid and binding as to and upon all heirs, trustees, executors, or any other successor-in-interest who may obtain or assert control over the Litigation by reason of Plaintiff's death, disability or incapacity.

15. Plaintiff represents and warrants unto Legal Bucks that (a) Plaintiff believes the Litigation to be meritorious and filed in good faith; and (b) Plaintiff has complete right, title and interest in and to the Litigation and full power and authority to make and execute this Agreement.

16. This Agreement shall be construed and interpreted in accordance with the laws of North Carolina. Venue for any dispute arising hereunder (including any interpleader action) shall lie in Forsyth County, North Carolina. Plaintiff further agrees that any and all lawsuits related to or arising from this Agreement shall be filed and maintained in the Superior Court for the County of Forsyth, North Carolina. Plaintiff understands that the "choice of laws," "forum," and "venue" clauses contained herein are essential to this Contract, and that they have not been placed in this contract as mere recitals.

17. Plaintiff acknowledges that he/she has been advised to review this Agreement with counsel prior to signing. Plaintiff further acknowledges that he/she understands this to be a valid, binding, and enforceable agreement.

WITNESS the following signatures and seals:

Plaintiff:

I, **Nancy Odell**, the undersigned individual, agree to the foregoing Transfer and Conveyance of Proceeds and Security Agreement.

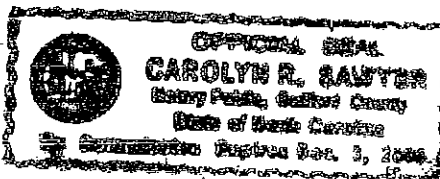
Nancy E. Odell (Seal)
Nancy Odell

3-28-03
Date

NOTARY:

I, Carolyn R Sawyer, the undersigned notary public, witnessed Nancy E. Odell, individually, sign and acknowledge the foregoing Transfer and Conveyance of Proceeds and Security Agreement, this 28th day of March 2002: 2003

Carolyn R Sawyer
Notary Public
My Commission expires: 12/3/05



Legal Bucks:

I, **Lynn D. Tart**, an authorized representative of Legal Bucks, LLC, agree to the foregoing Transfer and Conveyance of Proceeds and Security Agreement on behalf of the Corporation.

LEGAL BUCKS, LLC

L. D. Tart
By: Lynn D. Tart, President

March 27, 2003
Date

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NORTH CAROLINA
Rockingham
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NANCY E. ODELL, Individually and on
behalf of those similarly situated,

Plaintiff,

v.

LEGAL BUCKS, LLC,
J. KEITH TART,
LYNN D. TART,

Defendants.

05 CVS 999
ROCKINGHAM COUNTY
FILED
JUN 15 2005
AT 4:59 O'CLOCK P M
J. MARK PEGRAM
CLERK OF SUPERIOR COURT

ORDER PLACING FUNDS IN CLERK'S
OFFICE

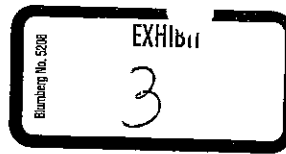
THIS CAUSE, coming on to be heard on the plaintiff's motion to place disputed funds in the Office of the Clerk of Superior court and the Court, having considered the Motion, finds it is well founded and should be ALLOWED.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the disputed funds in this action, \$9750.00, currently being held by Barron & Berry, LLP, be placed with the Clerk of Superior Court of Rockingham County pending the determination of the matters in controversy in this action.

This the 15 day of June, 2005.

[Signature]

Judge Presiding



CONFIDENTIAL

\$61,425 approximately 26 months previously. While exceeding a 100% total return, the payment was well short of the \$241,000 contracted amount. The plaintiff violated his contract, and the plaintiff's attorney violated his fiduciary duty.

This case is instructive in demonstrating the value of specializing in smaller advances repetitively placed with clients of cooperating attorneys: In such a relationship, the future value of LBFund to the attorney may well be greater than the future value of additional plaintiff representation. Thus fiduciary duty and economic self interest combine to favor LBFund's recovery of proceeds due it from the successful plaintiff.

Litigation: Despite the foregoing, LBFund will someday be required to engage in offensive or defensive litigation to collect its proceeds from a successfully closed advance. The cost of such litigation will be deducted from the proceeds of that advance, and any front-end cash cost of such litigation must be raised from the capital accounts of investors in the advance or another source whose cost may dilute investor returns.

Death or disability of Keith Tart: This event could cause LB Fund to discontinue making new advances. Fortunately, an advance already made requires no additional legal action and only a small administrative effort to be collected. Thus an investor assumes a risk of losing the ability to continue investing, but he will recover his proceeds from advances already made.

Regulating or Forbidding the Practice: The *greatest source of risk* is that as yet there is no unquestionable, affirmative legal precedent for assignment of rights to prospective litigation proceeds *to a financing source*. It is conceivable that the courts will find litigation funding to be an illegal practice and, additionally, void all outstanding advance contracts. Should this happen, an investor may lose his entire investment.

More likely is that litigation funding will at some point become a regulated activity due to its perceived predatory aspects. Should regulation occur the likely result would be reduced fees and added expense for compliance. Regulation, however, will not be an unmitigated burden: Large, well-operated firms will come to dominate the market. The market will likely grow faster as (i) marketing efforts become more direct and assertive, (ii) attorneys may proactively utilize finance firms as a litigation support tool, and (iii) additional sources of funds will become available as investor rights as well as restrictions are defined.

Falling Rates of Return: Though not a risk, per se, management expects litigation funding to become more accepted over time. As this happens, additional competitors will come into the markets and the rate of return on advances will likely fall. Basically management believes that risk will gradually be reduced within the industry and returns will therefore decline. This will take some time, and investors can respond according to their personal considerations. Investors desiring to retain higher returns and accepting higher risks will redeploy their capital. Investors willing to accept lower returns for reduced risk will stay invested in the Fund.

Illiquidity: LBFund membership units are not publicly traded and have restrictions on ownership transfer. All cash in LB Fund is invested in advances at the earliest moment and will not be used to redeem membership units. Investors will only be able to recover their investment and gain as advances close. On 6/30/2004, Legal Bucks' oldest outstanding advance was 1,592 days old. On average, closed advances have been open for 245 days but we cannot yet forecast the expected days outstanding for an average case.

Self-Underwriting: LBFund is self marketing Class B Shares. There is no assurance that the offering will be fully subscribed. However, if the minimum shares are sold, total portfolio funding