STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Aaron Carmody, Plaintiff-Co-Appellant,

v.

Byline Bank, Defendant-Third-Party Plaintiff-Respondent,

Dylan Esterling, Defendant-Respondent,

v. Nicole Elizabeth Carmody, Third-Party Defendant-Appellant

,

Appeal No. 2022-AP-001660

On Appeal from the Circuit Court for Door County
The Honorable David Weber, Presiding
Case No. 18-CV-88

BRIEF OF PETITIONER-APPELLANT

Aaron and Nicole Carmody

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Sturgeon Bay WI 54235

Self Represented Parties-Appellant

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STATEMENT OF ISSUES

1. WHETHER FINDINGS OF FACT WERE CLEARLY ERRONEOUS WHEN PLAINTIFFS AND DEFENDANTS EXPERTS CONCLUSIONS CONTRADICT THE COURT'S FINDINGS THAT AARON CARMODY SIGNED LOAN DOCUMENTS IN QUESTION. WAS THE COURT'S FINDINGS AGAINST THE GREAT WEIGHT AND CLEAR PREPONDERANCE OF THE EVIDENCE?

2. IS DYLAN ESTERLING AS NOTARY RESPONSIBLE FOR DAMAGES TO AARON AND NICOLE CARMODY HAVING ENGAGED IN NOTARY FRAUD, AUTHENTICATING SIGNATURES OF THE PARTIES WHILE NEVER WITNESSING A SIGNING, WHICH RESULTED IN LITIGATING TO PROTECT HIS RIGHTS WITH THIRD PARTY BYLINE BANK. DID HIS RECKLESSNESS AT MINIMUM CAUSE DAMAGE TO THE PLAINTIFF? THE COURT SAID NO.

3. WHETHER THE COURTS CONCLUSIONS OF LAW REGARDING MISREPRESENTATION ARE INCORRECT UNDER THE LAW. SHOULD AARON AND NICOLE CARMODY, UNSOPHISTICATED PARTIES, HAVE JUSTIFIABLY RELIED ON STATEMENTS MADE BY THE SOPHISTICATED SBA ACCREDITED LENDER DEFENDANT BYLINE AND THEIR CLOSING AGENTS ANASTASI JELLUM. DID BYLINE HAVE A DUTY TO PROVIDE ACCURATE INFORMATION? THE COURT SAID NO.

4. WHETHER THE COURTS CONCLUSIONS OF LAW REGARDING STATUTE 100.18 ARE INCORRECT UNDER THE STATUTE. WAS AARON AND NICOLE CARMODY A MEMBER OF THE PUBLIC WHEN CERTAIN FALSE OR MISLEADING STATEMENTS WERE MADE BY DEFENDANTS? THE COURT SAID NO.

5. WHETHER DEFENDANTS HAD NO DUTY OWED TOWARD AARON AND NICOLE CARMODY TO ACT IN GOOD FAITH WHEN A GENUINE ISSUE OF MATERIAL FACT EXISTED. CARMODY ASSERTED THAT BECAUSE HE NEVER SIGNED THE LOAN DOCUMENTS AND THUS NO LOAN CONTRACT EXISTS. DEFENDANT ASSERTED A CONTACT DID EXIST. DID A COGNIZABLE CLAIM EXIST? THE COURT SAID NO.

STATEMENT ON ORAL ARGUMENT

The issues on appeal derive from a well-developed summary judgment record. Oral argument is unnecessary because the record and the briefs on appeal will present the issue and develop the legal theories and authorities so that oral argument would be unlikely to aid the Court's analysis. *See* Wis. Stat. § 809.22. Notwithstanding the foregoing, Aaron Carmody is prepared to participate in oral argument if the Court believes it will prove helpful to resolving the case.

STATEMENT OF THE CASE

This is an appeal from a final judgment entered August 16th, 2022 in the circuit court for Door County, the Honorable David Weber, presiding. Previously, the circuit court partially granted *and* denied Plaintiffs, Third Party Defendants, and Defendants competing motions for summary judgment June 7th, 2021 pursuant to Wis. Stat. § 802.08(6) and subsequently granted certain motions in limine to Defendants on Sept 29th, 2021.

This case stems in part, from the allegations that Aaron Carmodys signature was forged on certain loan documents. R374. Initially filing the case in May 2018, after Aaron Carmody had obtained an experts report (R23:5) that the signatures of Aaron Carmody were not genuine on the "loan Documents" the parties engaged in a protracted discovery, after which defendants Byline Bank and Dylan Esterling added third party defendant Nicole Carmody in March 2019. Defendant's expert also determined it was not Aaron Carmody's genuine signature (R705:6), alleging that Nicole Carmody forged Aaron Carmody's name on certain loan documents, and that relative to Aaron Carmody, that he in effect, ratified the forged documents in question. Various other equitable claims were made against Aaron Carmody in counterclaims, unjust enrichment, promissory estoppel, ratification. (R60). In turn, it was discovered that Byline had made misrepresentations with intent to make the business appear more valuable than what it was worth, misrepresentations that the Plaintiff and business partners relied on. Byline created appraisals and provided information that were based on financial information they knew could not be

accurate.

In regards to the third party complaint of the Defendant, the Defendant claimed that “Upon information and belief, Nicole Carmody, placed the signature of ‘Aaron Carmody’, for himself personally and as President of DAB, upon the respective Loan Documents. “ Similar equitable claims were made in their complaint. (R62)

This case culminated in 12 days of trial and well over 700 documents on the record. This appeal is now contesting certain findings of fact regarding the authenticity of Aaron Carmody's signature, erroneously concluding that Aaron Carmody signed the loan documents personally with his own hand in spite of the great weight of the evidence to the contrary. Also conclusions of law relating to motions for summary judgment in favor of the defendant, namely wrongly dismissing claims *with prejudice* relating to statute 100.18 Fraudulent representations, and Breach of Implied Duty of Good Faith. Conclusions of law regarding the final trial order also in favor of the defendant, namely that in regards to Carmody’s Misrepresentation claim, the court determined that Aaron Carmody had no valid reason to rely on statements made by the sophisticated defendant and its agents, or that they had no duty to provide accurate information during the the period of time leading up to the loan closing. We now appeal to the honorable Court of Appeals in regards to those errant findings of fact and the mistakes in law.

STATEMENT OF FACTS

A. IT WAS UNCONTESTED THAT AARON CARMODY WAS IN MARINETTE AND NOT AT THE CLOSING THAT OCCURED ON JULY 22ND, 2016, WHERE ALL THE OTHER PARTIES HAD MET. R768:21.

B. AARON CARMODY GAVE PERMISSION FOR ADAM KOMOROSKI TO STOP AT THIS HOUSE. "Just the conversation with Adam asking if Nicole was home or she had something to sign" R749:123.

C. ANASTASI JELLUM INSTRUCTED AARON CARMODY THAT THEY WOULD LET HIM KNOW THE DETAILS OF HOW AND WHERE THE CLOSING WOULD HAPPEN, THIS NEVER HAPPENED. R604:1-3.

D. PRIOR TO THE CLOSE, ANASTASIA JELLUM INSTRUCTED AARON CARMODY OF A SINGULAR DOCUMENT THAT NEEDED TO BE SIGNED, A "JURAT" FORM. R604:1-3.

E. AARON CARMODY NOTIFIED ALL RELEVANT PARTIES THAT HE COULD NOT SIGN ANYTHING ON JULY 22, 2016. BUT RATHER ON MONDAY R605:P1, R606:1, R680:29, R608:33

F. THE BANK AND ITS AGENTS RELIABLY INDICATED MANY TIMES TO CARMODY THAT CLOSING WOULD HAPPEN ON THE JULY 25th or 26th.

"we have to move to the -- move the closing to Monday" R680:30 Exhibit 289.

"we have to move the closing to Monday since it appears these items won't be wrapped up

until tomorrow and the bank requires the clear to close to be given at least 24 hours before closing." R606:1

"The loan documents are ready, but the clear to close from the bank is needed before we can send these out for signature." R605:2

G. CLEAR TO CLOSE WAS NOT GIVEN UNTIL MON, Jul 25, 2016 at 8:46 AM. R607.

H. BYLINE AND ITS AGENT ANASTASI JELLUM DID NOT SEND A DRAFT COPY OR AN EXECUTED COPY OF THE LOAN DOCUMENTS EITHER BEFORE OR AFTER THE CLOSE TO THE CARMODYS. R742:160, 164, R749:146.

I. THERE IS NO DIRECT EVIDENCE THAT AARON CARMODY WAS EVER IN CONTACT WITH THE FULL SET OF THE LOAN DOCUMENTS UNTIL SEPTEMBER 2017. R749:146.

J. THERE IS NO DIRECT EVIDENCE THAT AARON CARMODY EVER MET WITH ADAM KOMOROSKI DURING THE CLOSE TO SIGN LOAN DOCUMENTS.

K. ON SATURDAY ADAM KOMOROSKI WAS IN THE PROCESS OF MOVING OUT TO COLORADO AND WANTED TO GET HIS LOAN DOCUMENTS TO ESTERLING BY 7 AM SATURDAY MORNING. R742:114.

L. DEFENDANTS EXPERT AND PLAINTIFFS EXPERT BOTH AGREE THAT AARON CARMODY DID NOT SIGN THE LOAN DOCUMENTS IN QUESTION. R705:6 EXHIBIT 449.

M. AARON CARMODY DID SIGN SOME DOCUMENTS THAT WERE NEEDED AS PART OF THE CLOSE AT VARIOUS POINTS OF TIME LEADING UP TO JULY 25TH, 2016. R749:56, 59, 61, 94,112, 117,130.

N. NICOLE CARMODY ADMITS THAT THE SIGNATURES OF AARON CARMODY ON THE LOAN DOCUMENTS LOOK LIKE HOW SHE SIGNS HIS NAME. R741:178.

O. NICOLE CARMODY ADMITTED THAT IT IS HER SIGNING AARON CARMODYS NAME ON THE LOAN DOCUMENTS IN QUESTION. R791.

P. BYLINE KNEW THAT THEY WERE NOT RECEIVING OVER 1.4 MILLION IN ACCOUNTS RECEIVABLE R406.

Q. BYLINE NEVER CORRECTED THE APPRAISAL ONCE THEY KNEW THE FINANCIALS WERE INCORRECT. R74:213-215.

R. BYLINE SHARED APPRAISAL INFORMATION BECAUSE THEY WERE ASKED. R742:179, R608:1.

S. THE BUSINESS APPRAISAL CONTAINED MANY UNCORRECTED MISTAKES THAT DEFENDANT WAS AWARE OF. R742:55, 57, 213-215.

T. THE INK USED TO SIGN AARON CARMODY AND NICOLE CARMODY CAME FROM THE SAME PEN. R705:7, R751,71.

ARGUMENTS

I. It was improper for the judge to ignore testimony from both the Defendants and the Plaintiff's expert, when both testimonies were unimpeached, unequivocal and uncontradicted. The weight of the evidence against the courts findings is the great weight and the preponderance.

“On review of a factual determination made by a trial court without a jury, an appellate court will not reverse unless the finding is clearly erroneous. See sec. 805.17 (2), Stats. “a finding of fact is clearly erroneous when "it is against the great weight and clear preponderance of the evidence." - Phelps v Physicians Ins Co,. 319 Wis.2d 1, 768 N.W.2d. So we apply the clearly erroneous standard of review here.

Both experts came to the same conclusion that it was not Aaron Carmody's authentic signature. The court exclaimed , “I don't agree with either one of them.” R768:27, was not logical or proper based on his reasoning. “Under these circumstances the trial court was not at liberty to disregard the unimpeached, unequivocal[2] and uncontradicted testimony of Dr. Hurley. This being so, the finding of the trial court that the desertion was not wilful is against the great weight and clear preponderance of the evidence.” - Cahill v. Cahill, 26 Wis. 2d 173 - Wis: Supreme Court 1965 p 179.

The above citation was in regard to the influence of a singular opposing expert witness, here in this case it is now doubly so. I have attempted to find case law where both Plaintiffs and Defendants were of the same conclusion and the court made a finding of fact contrary, however I was unable to locate such a precedent. At trial, the credibility of either of the experts was not challenged, none of them were impeached,

there was unequivocal testimony without contradiction regarding the authenticity of Aaron Carmody's signature. All of the testimony was harmonious with their conclusions and the litigation efforts in general by the defense as they had spent the majority of the pleadings and trial pointing the finger squarely at Nicole Carmody. This all begs the question, just how many experts are required for the court to believe that Aaron Carmody did not sign the contested documents?

The conclusion made by the Court, and also the reasons for the finding, contradict the evidence. For example;

1. The Court ruled that if the expert had seen the two worded signatures, they may have changed her mind.

> "But it seems to me when looking at the expert reports and listening to their testimony, all the assumed known signatures of Aaron Carmody were the ones with no pen lift. This started with Mr. Carmody himself making this representation to Miss Kessler, and I believe that this was more or less assumed by Miss Tweedy. This is a major assumption that I find to be erroneous." R768:27

The previous statement by the judge directly contradicts the Tweedy testimony regarding this assumption by Tweedy, as she specifically recognized that Aaron Carmody sometimes uses 2 words for his signature, as detailed in her report. I cannot stress this fact enough that the Tweedy report IS the Defendants expert!

> "Q. (By Ms. Cremona) If you can turn to 159?
>
> A. Fifty-nine?
>
> Q. 159, correct. That's the driver's license.
>
> A. Yes. In 159 there is that A form which is kind of a narrow A, starts at the top, comes

down, goes back up, then drops down. And now this has got a peak following it, and then you -- you've got a lot of letters or movements between that going to the end when you have that I'll call it the big six that moves horizontally toward the end of the signature down and then finishes with the big terminal stroke to the upper right. This is written a lot more carefully than a lot of the signatures that I saw.

Q. So what you're finding is for this one you still do think it could fall into a variation of a known signature?

A. Yes.

Q. But notably there are two different words being written; correct?

A. Yes."

R751:46

R705:145 - 152,159 (the Tweedy report).

The Tweedy report specifically uses as example, known and admitted signatures, roughly half of which, have multiple word versions of signatures used to result in her conclusions, namely that, "It was concluded that there is a strong probability that these remaining questioned Aaron Carmody signatures and endorsements were not produced by the writer said to be Aaron Carmody." - R705:6. It is clear that the courts recollection or the study of the Tweedy report was not thoroughly considered. The bar would seem pretty low to determine forensic document examination on the fact that a signature uses 2 distinct words and uses a capital first letter on first and last name with various "squiggle"(s). The Expert, being given nearly half the known signatures with 2 word authentic examples recognizes this and still makes the determination that the questioned signatures were strongly probably made by someone other than Aaron Carmody. This Conclusion by Defendants hired Expert,

having every inclination to find in their favor, only supports Nicole Carmody's testimony that he sometimes uses 2 words and that's how she believes she signs his name. That is to say, there is harmony between what Nicole Carmody testified to in regards to how she believes Aaron Carmody sometimes signs his name and the Experts conclusions based on the reference material used to make the conclusion. The court assigned Nicole the de facto role of an expert here, by using such phrases as "could be," which is used as an answer by Nicole Camody over 35 times (R751:8,9,20,32 as examples) to the question, "is that your husband's signature?"

The following sections are going to iterate the other reasons the court gave to become certain that the signatures in question were made by Aaron Carmody.

Finally The Court opines that; "When I consider that testimony, I do not believe either was privy to Nicole Carmody's testimony." R768:26 However, why would an expert sit through an entire trial to hear all the relevant testimony? This just does not happen. It was improper for the court to put unsupported theories of what they might say given a hypothetical opportunity to sit through some other testimony at trial.

> "the court of appeals correctly observed, these hypothetical facts are not before the court. We do not reach decisions based on hypothetical facts." Smith v. Atlantic Mut. Ins. Co., 456 NW 2d 597 - Wis: Supreme Court 1990 ¶ 814.

The entire field of forensic examination is more or less trying to prove either a lie or a truth. An expert does not rely on the testimony of others, but rather the hard evidence and their expertise, In this case many decades of experience between the two. "It is well-established law in Wisconsin that an expert may give an opinion in answer to

a direct, as contrasted to, a hypothetical question" Rabata v. Dohner, 172 NW 2d 409 - Wis: Supreme Court 1969 at ¶ 122. Here the Defence did not bother to elicit this hypothetical testimony from its expert as the questioned signatures were already assigned the party they believe made the forgery.

> "The consistency of the signatures is indicative that the writer has produced these signatures many times before. This is often seen when someone, such as a secretary or personal assistant, is authorized to sign their boss' signature or when a wife signs her husband's signature." R705:7

Next, "HE ADMITTED TO SIGNING THE DOCUMENTS."

> "Number 1, he admitted to signing the documents in an email; he just stated that he didn't notarize them. This is Exhibit 14. It is just beyond me how somebody would say that "I didn't sign in front of a notary" if he didn't sign any documents. It just wouldn't happen. At least in my opinion." R768:19,20 referring to R619:4**.**

Firstly, the judge disregards the context entirely, Nathan Price had sent him a text image of signature page of a "PERSONAL FINANCIAL CERTIFICATION" form on June 23 2017, which as it turns out, was one of the only forms Anastasi Jellum, the banks agent provided to Aaron Carmody directly on July 18th, 2016, a few days before the loan documents had been signed. R639:p9. The email from Anastasi Jellum clearly instructs Carmody to have it notarized. R604:1-3. So it is reasonable to at least partially remember this document. The text string from Nathan Price starts off with "What the heck? Why do they have all my collateral?" R619:2. That is evidence that Carmody did not know why the bank had liens on his property, meaning he had no knowledge of signing anything in regards to that.

The court then lays a blanket of assumption over the remaining hundreds of pages of other loan documents, which when the text was sent, Carmody didn't even know existed, as he was never directly provided a complete copy of the draft or executed loan documents until the following September, months later. R742:160, 164.

"Now, there is direct evidence here, namely, Mr. Carmody's own text in which he says he signed; he just did not sign in the presence of a notary." R768:25.

Regardless, the courts comments on this text are misstating the record. What the plaintiff actually said was, "And yeah I don't remember signing in front of a notary." R 619:4. When Price testified as to the text message in question, he said that Carmody was being sarcastic.

"Nate Price: He's claiming he didn't sign in front of a notary, right.

Mr. Gavenda: But that implies he signed?

MR. LINNAN: Objection. It does not imply that.

THE COURT: Can you ask him a question.

(By Mr. Gavenda) To you does that imply that?

A. No.

Q. Why not?

A. Because he's sarcastic. I know Aaron Carmody. He's being sarcastic, because he already told me he didn't sign these documents."

- R740:29

"When the trial judge acts as the finder of fact, and where there is conflicting testimony, the trial judge is the ultimate arbiter of the credibility of the witnesses. Gehr v. Sheboygan, 81 Wis.2d 117,

122, 260 N.W.2d 30 (1977).

The evidence here is that Price testified that Plaintiff already told him that he didn't sign the loan documents that are the subject of the Initial documents and that the text message was written with sarcasm as it immediately followed a text message from Nate Price, "see….notarized... *I don't remember* Dylan being at your house." R619:3 (italics added.) A second data point exists in regards to this at trial that the court made no mention of in its oral ruling, as Aaron Carmody clarifies at trial, "Right there I knew something was wrong. Because I never remembered signing in front of a notary on any loan documents, and especially whatever this equipment -- I would remember that." -R749:171. and "And we brought to the attention of Eric Manke that there was no -- neither one of us saw a notary and that I never signed this document that he's talking about." R749:171. and "No. He said, "You signed that" -- this here -- and Aaron immediately said, "I didn't sign anything." R740:33 Byline never called Eric Manke as a witness to refute this, even tho they could have at any point during trial. That uncontested fact should be adopted by the court. There is no evidence on the record of Byline contesting this fact.

The testimony in court and the surrounding singular sarcastic text message is not in any way recognizable as an admission. The language usage interpretation concocted first by the defense and then adopted by the court to turn a negative statement about one fact, does not constitute a positive fact about another, this is just basic language usage. Take for example Nate Price's statement of "I don't remember Dylan being at your house." Is that "direct evidence" that Dylan was at Nate's house or that he ever met Dylan? Of course not. It is not a reasonable inference.

At trial, Aaron Carmody testified that he, "Look, I called the office of the comptroller of the currency, I called the FBI, I called my local police departments, I called the sheriff's department, and nobody would do dick." R737:143. This testimony was not contested in any way or discredited.

Aaron Carmody has a detailed discussion with a detective and his Banker which outlines the entire history of the signing and what he believed happened. Transcript available at R703. "I never signed anything on any of that stuff." R703:36.

On 10-15-2021, 4 days into the trial, The judge declared, "what I've heard thus far is that it seems that I am persuaded that a lot of these signatures were not signed by Mr. Carmody. At the same time, I am -- I'm persuaded that it could very well be Nicole Carmody." R751:149.

Thus there is no conflicting testimony to Price's or Aaron Carmody's explanation of the text message. Price was not discredited by the defense, contradicted or impeached. There is no credible evidence to the contrary regarding the Price testimony on the comments as to the text message as Carmody stated early on that he had told just about every law enforcement agency he could think of, his business partners, his personal banker and finally Byline itself about the forgeries.

It was never even attempted at trial to determine what documents Price and Carmody were discussing. It was established that Carmody signed lots of documents in relation to the purchase of the business, see R749:56, 59, 61, 94,112, 117,130. The court misstates the record that he claimed to not sign any documents. "I just cannot find it plausible that he would not have -- that he would have bought a business with

two others without signing any documents." - R768:20. This is contradicting the record on the matter, but it does provide a glimpse of what the judge was thinking;

> "THE COURT: Did you read the documents before you signed them?
>
> THE WITNESS: Um, the Grant Erickson documents or the -- I mean, I believe I did.
>
> THE COURT: You've testified that at that point you were not aware that paperwork had been signed?
>
> A. I was aware that some paperwork had been signed.
>
> Q. When you say "some," what do you mean?
>
> A. The stuff that I signed related to the selling of DAB Drilling between the buyers and the sellers. I was aware that those were documents that had been signed." R749:59.

Additionally per testimony of Carmody;

- "I just remember that a security agreement was signed, and I remember signing at least one of them." R737:84.
- "I remember selling two promissory notes, but maybe only one security agreement." R737:87. The record was not corrected in the above typo, but what it should have said was "I remember signing two promissory notes." I don't think the defense will object to that as I am not in the business of "selling" promissory notes.
- "Q. (By Mr. Gavenda) And you've affirmed that you did sign seller notes?A. That 's correct." R737:82.
- "Q. And you signed a personal guarantee for the line of credit with Central Bank & Trust; correct? A. I believe I did. Yes." R737:106.

Of course none of those documents Carmody was detailing in the above example had notarizations on them. The inference that the court made in determining that Aaron Carmody admitted signing specifically the loan and mortgage documents is

not a reasonable one.

Nicole admitting that the signatures look like how she signs Aarons name:

- “Q. And the signature looks like your rendition of how you would sign his name; correct? A. It's possible.” R741:93
- “Q. And those are also characteristics of how you sign his name; correct? A. Yes.” R741:195.
- “So there's at least five characteristics that are similar to how your rendition of how you sign Mr. Carmody's name; correct? A. Yes.” R741:178.
- "Q. And both of those are characteristics of how you sign this name? A. Yes." , R741171
- "Yes. That's how I do it." R741:172.
- "Q. But you're consistent on how you sign his name; correct? A. I try to be. Yes.", "Q. But Mr. Carmody is a little more erratic on how he signs his name; that's a fair statement to make? A. You can say that." R741:233.

Nicole Carmody admits to the way she signed and has signed Aaron Carmodys name.

- “Q. And you mimic the way that Aaron signs his name; correct? A. I try to. I tried to.” R740:276.
- Nicole Carmody admits she signed Aaron Carmody's name on the loan documents in question. R791.

  “When asked if she signed Plaintiff’s name, Nicole Carmody testified that she did not, but her denial is not credible.” R631:16.

  “Further, Nicole Carmody testified that she has a distinct manner in which she writes dates on documents and checks. Ms. Carmody admitted that the dates on the Loan Documents were consistent with how she writes dates:

The undersigned solemnly declares and certifies that the attached above statements and supporting schedules, both printed and written, give a full, true and complete statement of the financial condition of the undersigned as of the date indicated above.

By: _____ DATE: 7-25-16
Signature:

If the credit is not joint but applicant is relying on community property assets, applicant's spouse must sign below:

I warrant and represent the attached financial statement(s) accurately set forth all the community property and all obligations of every kind chargeable against such property. You are authorized to make all inquiries, including those into my income and employment, which you deem necessary to make a credit check on me. I understand my signature below does not obligate me to you in any way other than the extent to which my spouse has obligated our community property, unless and until I specifically and in writing assume such further obligation.

Nicole Carmody 7-25-16
Spouse's Signature Date

See Exhibit 117.

Ms. Carmody admitted that her method of affixing dates on documents even appears on documents that Ms. Carmody herself did not have to sign:

See Exhibit 128. With respect to Exhibits 114, 117, 121, 123, 126, 127, 128, 129, and 133, Nicole Carmody testified that the dates on those documents were consistent with how she writes dates. Yet, Ms. Carmody had no reasonable explanation as to why she would date a document that she did not sign, let alone a signature line for Plaintiff, which was allegedly unsigned when she dated it.

Nicole Carmody's testimony, claiming that she did not date and sign the Loan Documents on behalf of Plaintiff, is simply not credible. Significantly, Ms. Carmody testified that she signed her name to the Loan Documents, including the Mortgages, because Plaintiff told her to. The evidence makes clear that Plaintiff authorized Ms. Carmody to sign Plaintiff's name on the Loan Documents and she did so because Plaintiff told her to." - Defendants closing brief. R631:17,18.

Noteworthy here however, the record does not reflect the fact that Nicole ever testified that Aaron Carmody told her to sign "mortgages". Defendants'

embellishments do not make it so.

There is no direct evidence that Carmody was ever in physical proximity to the loan documents. Aaron Carmody notified business partners that he could be available on the following monday. "I wont be able to sign anything on friday" R605:1 , R680:21, R606:1.

Anastai Jellum Notified everyone that closing would not happen until Monday the 25th. "Guys, we are still waiting on the bank to approve the landlord waiver that was originally -- originally agreed upon, and some additional internal items. At this point we have to move to the -- move the closing to Monday" R680:30 Exhibit 289. Carmody had every right to rely on these statements by the Banks agents.

It is uncontested that Carmody was gone that day to work, over 2 hours away when the documents were signed. "The facts seem to indicate that Aaron Carmody was working in Marinette on the day when the others signed the documents at the Carmody residence." R768:21.

"Q. (By Mr. Linnan) Did -- did Aaron Carmody discuss with you the possibility that he would be meeting up with anybody to sign this paperwork on July 22nd? A. No, he didn't. He didn't mention him -- he didn't mention that he would be signing anything that day. He was obligated to work." R740:229.

Nicole Carmody testified that her and Aaron Carmody did have communication later that day regarding the things she signed. "Q. (By Mr. Linnan) When Aaron got home, whenever that might have been, did he ask you how your signing went? A. Yeah. I think he asked me how it went. Q. Okay. Do you remember what you told him? A. I don't remember what I told him, no." R740:230. Yet the court in its oral ruling made the

statement, “Yet, according to Nicole, they had no discussion about the documents when he got home. There was only one plausible way this could have happened; if he signed the documents himself.” R768:22.

Nicole Carmody testified that in general that her and Aaron do not speak much about business together. "But in general, you don't talk about business matters in depth? I would agree with that yes." R740:230, "Your Honor, Aaron and I don't communicate a lot. So we have a problem with that. So I'm not -- that's just a reality." R741:13 , "THE COURT: You don't communicate very much. THE WITNESS: Right. Yes." R741:133.

The court seems to think because they didn't speak about the “Closing”, it can only mean that Aaron signed them. This is far fetched and not a reasonable inference. Carmody testified that he didn't even know what Adam was bringing for Nicole to sign. Aaron Carmody testified that Komoroski just said, "Something for her to sign". The court infers that there was no communication at all but R740:230 says otherwise. "THE COURT: And so he didn't ask you any questions about how the **closing** went? THE WITNESS: Not that I remember." R741:212.

“Q. Did you ask him then, "Hey, did you sign the documents?" A. No, I did not.

Q. Why not? A. I just didn't care. I mean, I had -- I have my life, you know, my stuff that I'm doing. I didn't really care. R741:132.

Nicole's testimony about what she talked about with Aaron Carmody is inconsistent at best, but does describe the lack of communication in general.

The Court refers to a "Closing" and Nicole refers to "Signing." It was not even established that a closing happened on the 22nd. Esterling himself seems to believe that the closing happened on the 25th. It paints a very inconsistent set of

assumptions that are possible as even the Defendant seems to believe that the closing was on the 25th. "what is the closing date for this? Was it the 21st or the 25th? THE WITNESS: I would say it would be the 25th." R742:123

On Saturday Adam Komoroski was in the process of moving out to Colorado and wanted to get his loan documents to Esterling by 7 am Saturday morning. R742:114. Therefore, to make the conclusion that the court made, Adam had to at least have signatures before that point in time. Nicole Carmody testified that Aaron was home at his normal time. "Q. What time did he get home that day? A. I guess regular time. Dinnertime maybe. I can't

tell you." R741:132.

Aaron Carmody testified "She said, "Adam brought some stuff over and I signed some stuff." R737:232.

In the Defendant's opening pleadings, Defendants claim that "Upon information and belief, Nicole Carmody, placed the signature of "Aaron Carmody", for himself personally and as President of DAB, upon the respective Loan Documents." R62:8.

In the original pleadings of the Defendant in their counter complaints they do not allege that the Signature of Aaron Carmody was authentic or genuine, rather that it was made with "proper authority," "The signatures of Plaintiff, as well as those of the Co-Borrowers, were made with proper authority" R60:25.

To understand what they mean by "authority," we review their pleading "42. Upon information and belief, Plaintiff provided Nicole Carmody with authority to place the signature of

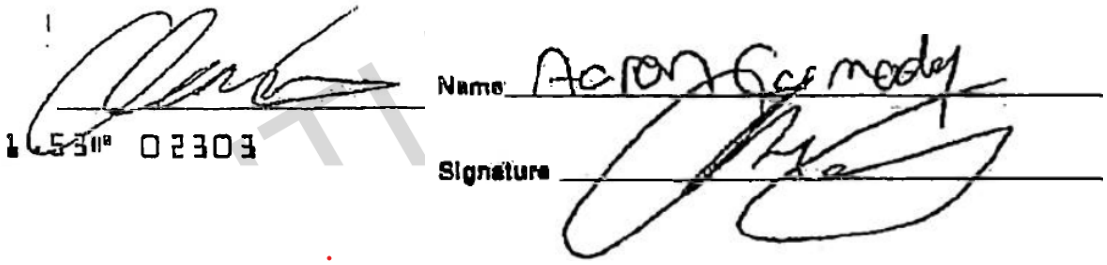
“Aaron Carmody”, for himself personally and as President of DAB, upon the respective Loan Documents, with the intention to be bound by such authorized signature.”, “Byline is entitled to a determination by the Court that Plaintiff provided Nicole Carmody with authority to place the signature of “Aaron Carmody”, for himself personally and as President of DAB, upon the respective Loan Documents. “ R62:8. Additionally, To bolster this point, the defense openly consented to the judge, after discovery was complete, that I did not sign the documents in question;

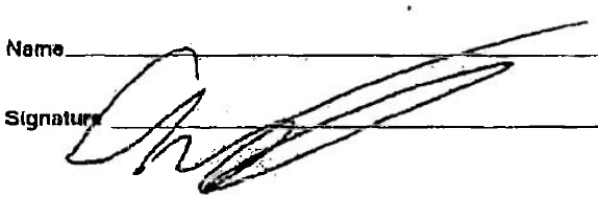
> “MR. GAVENDA:"Our expert is going to testify that his wife, who is practiced at signing his signature, signed these documents." , "This case is who signed Mr. Carmody's signature. *We believe it was Nicole*."
>
> THE COURT: “So you consent -- the
>
> defense consents that Aaron Carmody didn't sign these documents?’
>
> MR. GAVENDA: That is our expert's opinion, that Mr. Carmody did not sign these documents."
>
> -R761:20-21

Opening Arguments ``Our expert is going to conclude that she likely cannot find based on the known signatures of Mr. Carmody that they were signed by Mr. Carmody." R748:25 Interestingly, the judge did not seem to recall that the facts of the case included the assertion that the Defendants expert had concluded years previous that it was most likely not Aaron Carmody's genuine signature. “It is expected that defendant's expert will at trial agree that any signature on the 'loan documents' -- that's in quotations -- "purporting to be the plaintiff's are not genuine." Is that true?” R748:25.

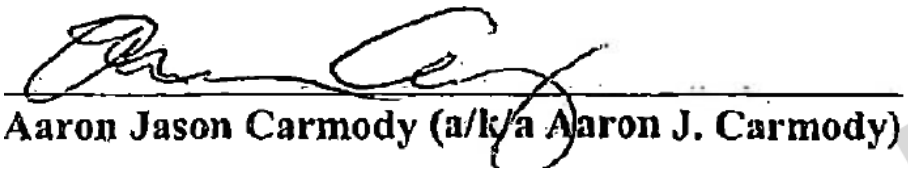
Finally, a basic review of allegedly forged signatures look nothing like the

authentic contemporary known signatures. The court does not even consider this basic fact in its ruling. Authentic signatures from 7/13/2016, and 7/29/2016, 6/7/2016 R705:165, 177, 172 respectively.





Contested Signature on a mortgage example from 7/25/2016 R705:165



This is why we feel the court's assumptions leading to a determination that the plaintiff signed specifically Bylines loan documents are against the great weight of the evidence. It is not a reasonable conclusion or inference. The court cites circumstantial evidence, however circumstantially, anyone else who had preoveable access to the documents would have been in a better position to forge Aaron Carmody's name, Nate Price, Adam Komoroski, Nicole Carmody etc.

Byline should be precluded from asserting that the signature was genuine. Jeffrey Fordice, Byline witness concerning banking practices.

"whose ultimate responsibility is it to make sure that the borrower sees the loan documents?

Q. (By Mr. Linnan) Yes, that's fair.

A. The closer.

Q. Okay. Right. But who is the closer that you're referring to right now?

A. This would be Rissa Angeloni.

Q. Okay. And then whose is responsibility is it to make sure they're all signed properly?

A. Again it would be Rissa." R744:236.

An agent for the bank should have been handling the closing, not Adam Komoroski. Rissa, in this case was the employee of the same firm who now represents the Defendants, Anastasi Jellum. P.A./Jellum Law. It is clear that the Bank's agent is now trying to erase their own negligence by blaming Aaron and Nicole Carmody for this litigation.

"If the plaintiff set out to prove that the closing was not handled well, I think the plaintiff succeeded." R768:12.

"The record further shows First Federal should be found negligent in having contributed substantially to the making of the unauthorized signatures on the checks. In this regard, the record shows the notes and mortgages in question were executed outside the presence of any of First Federal's employees." Fidelity & Deposit Co. v. First Nat. Bank of Kenosha ¶ 481. Once Carmody denied in his pleadings that the signature was not valid, the burden of proof shifts to the defendant who should be precluded under equitable doctrine from asserting the signature is genuine.

Who has the burden of proof regarding whether or not a signature is genuine?

Pursuant to Wisconsin Statute § 891.25 (Presumptions as to signatures), when any written instrument constitutes the subject of the action or proceeding or when the signing of such instrument is put in issue and the instrument purports to have been signed, the instrument itself is proof that it was signed until denied by the oath or affidavit of the person by whom it purports to have been signed or by a pleading. Because Plaintiff, through a sworn statement and a formal legal pleading, has denied the authenticity of the signature on the mortgage (purporting to be his), the burden passes to the Defendants to prove that they are authentic.

> "First Fed was negligent in several respects and that as a result of such negligence it is estopped from asserting its claim against First National. Under the estoppel doctrine of the Uniform Commercial Code every person who, by his negligence, substantially contributes to the making of an unauthorized signature, is precluded from asserting the lack of authority against a holder in due course" Fidelity & Deposit Co. v. First Nat. Bank of Kenosha ¶ 481.
>
> "THE COURT: So are you telling me that you were so aware of the fact that you were doing something improper you didn't want to put it in writing? Is that what you're telling me? THE WITNESS: I would say yes." Esterling R742:105.
>
> "He admits that he notarized them even though they were not signed in front of him. This is plainly improper." R768:14.

Defendant will claim that no part of this transaction has anything to do with a "negotiable instrument" however a note/promissory note is understood by statute to be a negotiable instrument. The same equitable principles should therefore apply here as well. The Negotiable Instruments Act, 1881, which Wisconsin has adopted, states that "a negotiable instrument means a promissory note, bill of exchange or cheque payable

either way to order or bearer.“ (Section 13). Thus, a promissory note is a negotiable instrument by statute. One of the loan documents in question is fundamentally the note - R640:10 to which all other relevant documents are tied, i.e. the mortgages in question.

Conclusion as to I

The overwhelming amount of evidence, even if offered by the defendant alone, that Aaron Carmody’s signature is not authentic is the great weight and preponderance of the evidence. Coupled with the improperly discounted expert testimony of the Defendant and the plaintiffs, the Factual finding that the court made is clearly erroneous. The Defence and all other parties testified that they believed it was not Aaron Carmodys authentic signature. We ask the court to reverse the courts finding of fact in regards to the signatures, and find them negligent in the making of a forged signature and for the release of the mortgages in question and a release from the liabilities created from the loan documents.

II. ARGUMENT NOTARIAL DAMAGES

In its oral ruling; "137.01(8), notarial misconduct. I think there was notarial misconduct here, but I don't think it was causal to any damages. And certainly doesn't support a claim to quiet the title. It doesn't invalidate the documents themselves. 706.06, authentication, I don't believe there's any violation of the authentication statute." R768:51.

"THE COURT: So are you telling me that you were so aware of the fact that you were doing something improper you didn't want to put it in writing? Is that what you're telling me? THE WITNESS: I would say yes." Esterling R742:105.

"He admits that he notarized them even though they were not signed in front of him. This is plainly improper." R768:14.

"(4) In addition to any criminal penalty or civil remedy otherwise provided by law, knowingly false authentication of an instrument shall subject the authenticator to liability in tort for compensatory and punitive damages caused thereby to any person." Statute 706.06(04).

The judges unwillingness to assign a modicum of consequences to Esterling, if anything, shows his partiality to the benefit of Esterling and the bank. Carmody proved at a minimum, damages relating to hiring a forensic document examiner and legal fees to contest the signatures authenticity.

> "The general rule is that costs and expenses of litigation, other than the usual and ordinary court costs, are not recoverable in an action for damages, nor are such costs even recoverable in a subsequent action; but, where the wrongful acts of the defendant have involved the plaintiff in litigation with others, or placed him in such relation with others as to make it necessary" TALMER BANK AND TRUST v. Jacobsen, 2018 ¶8.
>
> "…the damages which may be recovered must be the proximate result of the false

certificate." In Governor of Wisconsin Ex. Rel. Milkeus v. Maryland Casualty Co. Wis. 472; 213 N.W. 287; Supreme Court of Wisconsin. April 5, 1927. p 474

"To sustain an award for punitive damages, the law does not require a specific finding of an intentional and ruthless desire to injure, vex or annoy. The injured party need show only a wanton, willful or reckless disregard of the rights of others on the part of the wrongdoer. `Reckless indifference to the rights of others and conscious action in deliberate disregard of them . . . may provide the necessary state of mind to justify punitive damages; Fahrenberg v. Tengel, 96 Wis. 2d 211, 221, 291 N.W.2d 516 (1980).

In Kink v. Combs, supra, this court held that malice or vindictiveness is not a necessary prerequisite for an award of punitive damages. Kink v. Combs, 28 Wis. 2d 65, 135 N.W.2d 789 (1965)

Here Esterling's misconduct/recklessness/fraud - call it what you will, is manifest in the very nature of the case. Carmody was effectively forced to litigate with another party, Byline, to refute the authenticity of the signatures. "He couldn't say he did not sign the documents, because someone with authority would have witnessed him sign the documents." - R768:14. Therefore, Esterling was in violation of various statutes, which entitled the Plaintiff to an award of damages. 137.01(8).Misconduct. "If any notary public shall be guilty of any misconduct or neglect of duty in office the notary public shall be liable to the party injured for all the damages thereby sustained." Statutes 137.01(8).

CONCLUSION AS TO II

The Court, and in fact Esterling admissions, determined that Esterling engaged in improper notarial conduct. The Court's finding that no violation

occurred is contrary to settled law. The court should not be partial to Esterling 100% of the time and hold him financially blameless in any and all regards when it is clear on its face that there were violations and financial consequences to the Plaintiff. To condone the behavior of Esterling would be contrary to the law on the matter. Therefore we ask the court to allow for an award of relevant damages and to reverse the court's finding that no violations occurred that resulted in damages. Esterling's conduct is the very reason for the law.

III. ARGUMENT INTENTIONAL MISREPRESENTATION

"I am convinced -- when I think of this case, too, I am persuaded that Aaron Carmody and his partners did think they were getting a business worth about $5 million for the purchase price of 3.5 million." -The Court - R768:44.

After Discovery had commenced, Carmody became aware of the valuation R - 414 p14 that had been used to determine the $5,050,000 and that the financials that went into the creation of it were not correct. Carmody then set about using the same firm to create the appraisal using the real numbers in February, 2019.

> "Thanks, Tyler, I'm assuming that you have access to the original numbers and program which generated the report. The following metrics need to be adjusted 60k in cash on hand. (you can add this to existing operating capital) a 28% reduction in the asset value.($416,000 reduction) No accounts receivable ($1,439,683) The attached projections. (i had a 5% year over year increase) Regards, Aaron" R404.

The results of which were manifest in R421:4.

Business partners specifically requested information about the business appraisal. June 7th, 2016 the business partners asked, "Ok cool. Do you feel that eval will come through OK?" R608:1. on June 24, 2016, Esterling later exclaimed "I don't have the full report yet but the business valuation came back at just over $5 million" R408:1.

On the grounds of Misrepresentation, the court initially found that Carmody did not have a right to rely on the appraisal representation, and then amended its ruling in the final judgment to say that Carmody did have a right to rely on the appraisal with a condition;

"I'm -- therefore, I'm -- based on the evidence I heard at the trial, I'm amending my ruling to state that Mr. Carmody would have been justified in relying on the appraisal if he had asked for it. Every appraisal comes with assumptions. Without knowing what the assumptions are, the number, the brute number, is just meaningless." R768:8.

A few points to be made in regards to the court's first statement;

1. A dollar figure of the appraisal is the most important metric of the appraisal as that is the entire point of an appraisal. Too high and it can sway someone to purchase, too low and a potential buyer could walk away. As the bank's vice president witness astutely confirms; "Q. Because the ultimate number is something that may, as you say, confirm or at least provide some support for -- to the buyer? A. Of the purchase price. Yes." - R744:289.

2. The Court also determined that Carmody, in this transaction, was not as sophisticated as Byline, "He's an unsophisticated borrower." R768:28., "And nobody -- nobody had the duty -- I mean, I understand that the bank is a sophisticated lender and maybe Mr. Carmody is not as sophisticated, but there is a limit as to what the bank has a duty to do." R768:50. In any case, this has little to do with the representation of facts that they knew could not be accurate.

Aaron Carmody and Nicole Carmody both had a right to rely on the number as being accurate as the duty to represent accurate information is on the sophisticated party, not upon the unsophisticated party. The level of sophistication of the bank and its agents, with the full power and might of the SBA 7a program, replete with a nauseating abundance of regulations and S.O.P. might as well be a

mountain compared to the knowledge of the Carmodys and the other business partners for that matter.

> "A fact is known to the vendor if the vendor has actual knowledge of the fact or if the vendor acted in reckless disregard as to the existence of the fact. This usage of the word "know" is the same as in an action for intentional misrepresentation based on a false statement.-Ollerman v. O'Rourke Co., Inc., 288 NW 2d 95 - Wis: Supreme Court 1980 ¶ 42

The Defendants had knowledge at the time the statement was made that the math that went into the appraisal could not possibly be right, "If they are going to basically pull the A/R off the table....then I think its the least they can do for you guys.Thanks" R406, thus the appraisal could not be correct, and failed to disclose that fact. Subsequently, the Defendants never modified the evaluation even after those materially adverse events were made known to them.

> "the purchaser is in a poor position to discover a condition which is not readily discernible, and the purchaser may justifiably rely on the knowledge and skill of the vendor." - Ollerman v. O'Rourke Co., Inc., 288 NW 2d 95 - Wis: Supreme Court 1980 ¶ 42

> "Even apart from the Ollerman exception, Wisconsin also recognizes the rule that a duty to disclose may arise where a seller has told a half-truth or has made an ambiguous statement if the seller's intent is to create a false impression and he does so." - Westerfield v. QUIZNO'S FRANCHISE CO., LLC, 2007. p 850

The Appraisal in question was never furnished to the Plaintiff when the statement was made thus it was "not readily discernible." It may be true that Carmody should have asked for it. The fact that he didn't but chose to rely on the

sophisticated parties knowledge and skill at the time the statement was made, is justified. The Court's words that “every appraisal comes with assumptions.” is true. However, an assumption that the appraisal was accurate and reflected real world information, made by a sophisticated government regulated party, is therefore a legally valid assumption whereby a justifiable reliance could be made. But even if the appraisal had been furnished upon request, being an unsophisticated party, how could one accurately determine if all factors within a very detailed business evaluation were incorporated or not? It is a science beyond a layman to adequately understand.

> “you have to kind of be a business valuation expert to understand where they're getting their valuation from.” R744:257
>
> “Q. Because the ultimate number is something that may, as you say, confirm or at least provide some support for -- to the buyer? A. Of the purchase price. Yes.” R744:289.

It was proven at trial that the evaluation contained many falsehoods; 1.4 Million in accounts receivable, leased drills and other equipment that should not have been on the evaluation. R414. The plaintiffs own valuation done by the same firm the defendant used, after the litigation began, showed that the business was only worth about 2 million once corrected to have accurate numbers. R421:4. The Defendant acknowledges that they knew equipment values could trigger the need for a new appraisal. “I think we'll be okay. It's never a perfect list when it's equipment or inventory. It was simply too late in the game to make a change. It could have triggered the need for a new appraisal." - R608:39-40 Exhibit 5. But it was definitely never too late in the

game. "But, I mean, at any point, too, it – the buyers could have put things on hold or decided not to sign, or whatever the case might be." R742:194.

"The strange part is that I don't think we have a very good list to work off of. We went off the equipment appraisal and made the changes for equipment that was added or subtracted. Then we were able to account for all of the vehicles since they have titles." Exhibit 286 R680:26. However the business appraisal/valuation was never updated to reflect this. "Do you believe it's your job to pass along adverse changes in the financial condition of the application to your higher-ups, whoever they may be? A. I would say yes" R742:57.

The judge also elaborates at the oral ruling that;

> "it seems clear to me from all of the testimony and all of the things that were said at the trial that Mr. Carmody thought in essence by signing some papers he could acquire an asset for 1.5 million dollars more than they paid for it, and that this was a prime motivator in him doing what he did." R768:45.

This explains that Carmody doing, "what he did," purchasing the business because he thought it was genuinely worth 1.5 million more than what they paid was a deciding factor in buying the business.

Byline made a factual representation as to the value of the business being purchased using information known by them to be false. A valuation based on false information cannot be accurate, yet was conveyed to the business partners as the actual BV - Business valuation. Byline informed clients not to worry about the missing assets as it could trigger a new appraisal. R608:39-40 Exhibit 5.

Succinctly, the court recognizes a misleading statement was made by the defendant for which the Plaintiff relied. Paradoxically however, the court ruled that

he had no right to rely on it, which we have shown is not the law in regards to a sophisticated /unsophisticated party and the duty that existed therein. Aaron and Nicole Carmody had every right to rely on any statement made by Byline bank and its agents. This was an SBA accredited organization who is expected to follow the letter of the law for the public good. In Fact, an SBA accredited loan servicer such as Byline, has a duty to every taxpayer in the county to represent accurate information in the loan process, to argue otherwise is foolish and contrary concerning public policy.

CONCLUSION AS TO III

The defendants made a representation that was justifiably reliable when viewed through the lens of an unsophisticated party. As a government lending program, serviced by an SBA accredited bank, it is by its very nature entrusted by the public to perform a public good and should follow the standards given to it by the governmental agencies responsible for the public good . Considering the relevant facts, the practices by the defendant should not be condoned. But for the reasons stated by the court that Carmody had to perform some affirmative act of investigation, and that he was not entitled to rely on the Banks statements, we view as a mistake in the law, we maintain that Intentional Misrepresentation was improperly dismissed on those grounds. We would ask for a finding of misrepresentation and allowed damages or alternatively a trial on the matter.

IV. ARGUMENT 100.18 - Fraudulent Representations.

Next is dismissal of a claim (with prejudice) in summary judgment for violation of Section 100.18 which was dismissed due to the reasoning that no statements were made to the public. "I don't believe there's been any statement or representation of any kind to the public." R586:118. and "And then under 100.18 I don't think that -- consistent with my prior ruling that there's -- this isn't any sort of advertising or a deceptive practice regarding a representation to the public, which I think is required under that section. So I'm granting summary judgment on that cause of action." R758:6-7. Aaron Carmody was most definitely a member of the public at all times leading up to the Closing and after. Therefore this is errant reasoning as per statute: Summary judgment motion relative R315:47.

> "specifically with regard to a claim made pursuant to Wis. Stat. § 100.18(1), a plaintiff must allege facts that would fulfill three elements: (1) the defendant made a representation to one or more members of the public with the intent to induce an obligation; (2) the representation was untrue, deceptive or misleading; and (3) the representation materially induced a pecuniary loss to the plaintiff." -Hinrichs v. DOW Chemical Co ¶ 56.
>
> "A statement made to one person may constitute a statement made to "the public" under this section. Kailin v. Armstrong, 2002 WI App 70, 252 Wis. 2d 676, 643 N.W.2d 132, 01-1152. See also Hinrichs v. DOW Chemical Co., 2020 WI 2, 389 Wis. 2d 669, 937 N.W.2d 37, 17-2361.

Here, there was no previous relationship between Carmody and Byline. It is uncontested that the first and last business interaction was in regards to the Dab Drilling Inc loan. "The court of appeals correctly determined that dismissal for failure to meet

"the public" component of a § 100.18 claim in this case was in error." Hinrichs v. Dow Chemical Co., 937 NW 2d 37 - Wis: Supreme Court 2020 ¶ 70, Even if an existing relationship did exist,... "Under the majority's interpretation, "The majority broadens the meaning of a "representation" "made ... or placed before the public" to encompass an email between two businesses in a commercial relationship." Hinrichs v. Dow Chemical Co., 937 NW 2d 37 - Wis: Supreme Court 2020 ¶ 101. "Under the majority's interpretation, "the public" means everyone and therefore has no meaning" Hinrichs v. Dow Chemical Co., 937 NW 2d 37 - Wis: Supreme Court 2020 ¶ 101.

Statements were made by Byline and its agents concerning the Value of the business that could reasonably be construed as "untrue, deceptive or misleading." -Wis 100.18(1). Logically, it is at least misleading to state that an appraisal for a prospective business came back at 5 plus million dollars R408:1, when the person making the claim knew that the numbers that went into the appraisal were incorrect. R408:1, R406, R453:1, R742:55, 57, 213-215.

In the initial commitment letter, dated Feb 18th, Byline represented that the terms included $1,439,000 in accounts receivable when they knew that it did not. Byline also represented that Equipment was worth 1.5 million when they knew that it was not.

Dear Mr. Komoroski, Mr. Price and Mr. Carmody:

We are pleased to inform you that Ridgestone Bank ("Bank") has agreed to offer to CTBF dba A.N.A. Drilling & Underground ("Borrower"), at Bank's sole discretion the following credit facility which is subject to, but not limited to, the terms and conditions set forth herein.

BORROWER: CTBF dba A.N.A. Drilling & Underground

BANK: RIDGESTONE BANK

FACILITY:

Sources:			Uses:		
A) SBA Term Note	$ 2,050,000	49%	Working Capital	$ 292,283	7%
	-		Purchase Inventory	4,000	0%
	-		Purchase Equipment	1,500,000	36%
Seller Note	600,000	14%	Purchase Business / Intangibles	840,930	20%
Accounts Payable	284,613	7%	Accounts Receivable	1,439,683	35%
	-		Gov't Guaranty Fees	55,156	1%
Seller Note	900,000	22%	Bank Fees	2,500	0%
Owner's Equity	320,000	8%	Closing Fees	20,061	0%
Total	$ 4,154,613	100%	Total	$ 4,154,613	100%

R640:4.

Byline had knowledge that 1.4 Million in accounts receivable was not to be included, yet the business appraisal contained this errant figure. They never asked the appraiser to correct the numbers and recreate a new appraisal.

Sent by Byline Feb 17, 2016

To: "aaron.carmody" <aaron.carmody@gmail.com>, Byline Case <nbylinebankcaselinnan@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: Dylan Esterling <desterling@ridgestone.com>
Date: February 17, 2016 at 4:00:54 PM CST
To: Nate Price <ceag8@yahoo.com>
Subject: RE: Update

If they are going to basically pull the A/R off the table....then I think its the least they can do for you guys.

Thanks,

R406

Fwd: Business Valuation for A.N.A Drilling Underground

Heather Price <ceag8@yahoo.com> Thu, Jan 24, 2019 at 12:57 PM
To: Byline Case <nbylinebankcaselinnan@gmail.com>
Cc: "aaron.carmody" <aaron.carmody@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: Dylan Esterling <desterling@ridgestone.com>
Date: June 24, 2016 at 7:58:41 AM CDT
To: "ceag8@yahoo.com" <ceag8@yahoo.com>, "adamkomoroski@gmail.com" <adamkomoroski@gmail.com>
Subject: Fwd: Business Valuation for A.N.A Drilling Underground

I don't have the full report yet but the business valuation came back at just over $5 million

Dylan

R - 408 p 1.

Valuation Approach	Valuation Method	Exhibit Reference	Enterprise Value	Weighting	Weighted Value
Market Approach	Guideline Public Company Multiples	Exhibit B	$5,194,334	33%	$1,731,445
Market Approach	Guideline M&A Transaction Multiples	Exhibit E	5,202,175	33%	1,734,058
Income Approach	Discounted Cash Flow	Exhibit G	4,618,748	33%	1,539,583
Enterprise Value					$5,005,085

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Aaron Carmody used the same firm with the correct numbers to generate an appraisal of only 2 million.

Valuation Approach	Valuation Method	Exhibit Reference	Implied Enterprise Value	Weighting	Weighted Value
Market Approach	Guideline Public Company Multiples[1]	Exhibit B	$4,291,496	0%	$0
Market Approach	Guideline M&A Transaction Multiples	Exhibit E	$2,057,428	50%	$1,028,714
Income Approach	Discounted Cash Flow	Exhibit G	$2,222,119	50%	$1,111,060
Estimated Enterprise Fair Market Value					**$2,139,773**

R421:4

"A business appraisal assists the buyer in making a determination that the seller's asking price is supported by an independent qualified source." R411:172.

"Q. Because the ultimate number is something that may, as you say, confirm or at least provide some support for -- to the buyer? A. Of the purchase price. Yes." R744:289.

In addition,

"The plain language of the statute shows that statements or representations may be actionable even when contained in bills or other documents not traditionally considered

> "advertisements." - MBS-Certified Public Accountants, LLC v. Wisconsin Bell Inc. 2013 WI App 14, 346 Wis. 2d 173, 828 N.W.2d 575, 08-1830. p 17

Defendant, Byline, in their motion for summary judgment claimed that, "Moreover, Esterling's representation that Byline's Business Valuation 'came back at just over $5 million' is not untrue, deceptive or misleading. The Business Valuation, which was performed solely for the benefit of Byline, plainly does set forth a valuation just over $5 million." - R316:47 was proven to be clearly misleading as the judge plainly observes;

> "I am convinced -- when I think of this case, too, I am persuaded that Aaron Carmody and his partners did think they were getting a business worth about $5 million for the purchase price of 3.5 million." -The Court - R768:44.
>
> "that was a defining moment in my decision-making" R740:73"

It therefore, as the court concludes, misled Carmody to believe that the business was worth about $5 Million. "This court has held that liability for misrepresentation of a fact can be imposed on the speaker who fails to exercise reasonable care in making the representation." *Ollerman v. O'Rourke Co., Inc., 288 NW 2d 95 - Wis: Supreme Court 1980*

Conclusion as to IV

Based on the representations made by Byline, most notably the 5 + Million dollar valuation, the Carmodys agreed to put down $320,000 as a down payment and various mortgages were consequently made which has encumbered the Carmody's property since July 25th, 2016. The Carmodys have incurred legal bills and other costs associated with the loan closing that are causal to the misrepresentations made to include a $250,000 line of credit needed to supplement

the lack of equipment and accounts receivable. Clearly believing that they bought a business for ~ 1.5 Million less than its represented worth had a deciding factor in moving forward. Paying 1.5 Million more than what it was actually worth ($2,139,773) with the correct numbers R404:2,R421 is a travesty. Dismissal by the court was contrary to law for the reason stated by the court: Carmody was a member of the public, a statement was made, and it was misleading. If the court condoned this type of behavior, it would violate the very reasons for statute 100.18. Aaron and Nicole ask for a reversal of the dismissal of the count relating to 100.18 and for a finding that the defendant bank did violate the statute and for an award of damages as the court sees fit based upon the arguments or at minimum, have a separate hearing on the damages and make the defendant bank issue appropriate corrections. "100.18(11)(b)2 - Any person suffering pecuniary loss because of a violation of this section by any other person may sue in any court of competent jurisdiction and shall recover such pecuniary loss, together with costs, including reasonable attorney fees"

ARGUMENT V. - Breach of Implied Duty of Good Faith dismissed because Carmody asserted that he did not sign the loan documents in his pleadings.

I assert the foregoing paragraphs and incorporate herein, In Summary judgment, the court dismissed claim Breach of Implied Duty of Good Faith based wholly on the assertion by Aaron Carmody that he never signed the loan documents in question R586:116,117, while the Defendant maintained that a Contract did exist. A genuine issue of material fact existed. The courts dismissal was premature and contrary to law.

"if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." - Green Spring Farms v. Kersten, 401 NW 2d 816 - Wis: Supreme Court 1987 P 215.

Because a genuine issue of material fact existed and the crux of the litigation in the first place, it was improper to dismiss count 1 of the Complaint.

Conclusion as to V.

The court ultimately determined that there was a contract, determining in its decision that a genuine issue of material fact had been resolved, thus it was improper to dismiss count 1. I would ask that the court determine that there was a violation of good faith due to a customer and award the appropriate relief as prayed for in the original complaint (or a portion thereof) or conversely to remand the decision to the circuit court on the matter thereby allowing for a trial on the matter.

Final Conclusion

I have highlighted the 5 main issues within this appeal with separate arguments and conclusions for each. I would ask that the Court grant the relief requested in the above Conclusions as I have detailed.

Dated this 15th day of March, 2023.

Aaron and Nicole Carmody

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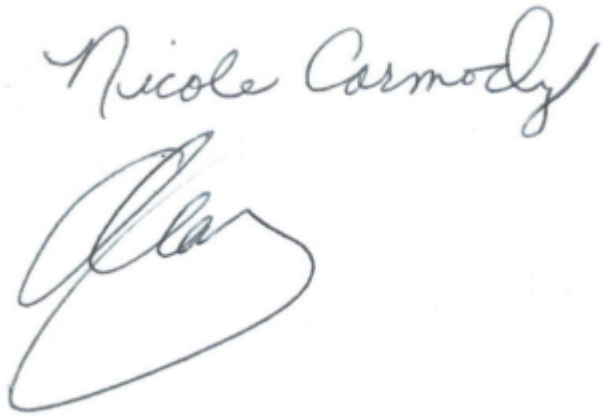

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