

**IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA**

**VINCENT OLSON,**  
Plaintiff,

vs.

**THEODORE OLSON, JR. and  
ROBIN OLSON,**  
Defendants.

Case No. CI99-27

**SUMMARY JUDGMENT**

**DATE OF HEARING:** September 23, 1999.

**DATE OF DECISION:** October 27, 1999.

**APPEARANCES:**

For plaintiff: David E. Copple without plaintiff.  
For defendant: Terry R. Wittler with defendant Ted Olson Jr., and without defendant Robin Olson.

**SUBJECT OF ORDER:** Defendants' motion for summary judgment.

**FINDINGS:** The court finds and concludes that:

1. The applicable principles of law are well-known:
  - a. Summary judgment is proper only when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Parker v. Lancaster Cty. School Dist. No. 001*, 256 Neb. 406, \_\_\_ N.W.2d \_\_\_ (1999).
  - b. The court views the evidence in a light most favorable to the party against whom the judgment is sought and gives such party the benefit of all reasonable inferences deducible from the evidence. *Id.*
  - c. On a motion for summary judgment, the question is not how a factual issue is to be decided but whether any real issue of material fact exists. *Id.*
  - d. Where reasonable minds may differ as to whether an inference supporting an ultimate conclusion can be drawn, summary judgment should not be granted. *Id.*

2. On a motion for summary judgment, after the moving party has shown facts entitling it to a judgment as a matter of law, the opposing party has the burden to present evidence showing an issue of material fact which prevents judgment as a matter of law for the moving party. *Battle Creek State Bank v. Preusker*, 253 Neb. 502, 571 N.W.2d 294 (1997); *Kime v. Hobbs*, 252 Neb. 407, 562 N.W.2d 705 (1997).

3. The plaintiff's petition states a cause of action alleging indebtedness founded upon promissory notes. However, the petition does not allege the contents of such notes or allege the notes by reference to any attached promissory note or notes. The financing statement signed by defendant Ted Olson Jr. does not constitute any promise to pay any amount. It does not create any indebtedness. Moreover, it is not legally sufficient to constitute "acknowledgement of an existing liability, debt or claim, or any promise to pay the same . . . in writing" under NEB. REV. STAT. § 25-216 (Reissue 1995). *Kotas v. Sorensen*, 216 Neb. 648, 345 N.W.2d 1 (1984).

4. The defendants asserted a foundational objection to paragraphs 5 and 6 of Exhibit 14, and to paragraph 9 of Exhibit 15. At the time of the hearing, the court overruled the objections and received the exhibits. The court concludes that the objections were well-founded and should have been sustained as to the last sentence in each of paragraphs 5 and 6 of Exhibit 14 and as to paragraph 9 of Exhibit 15. Accordingly, the court will disregard those portions of the exhibits.

(1) The Nebraska Supreme Court, in *Battle Creek State Bank v. Preusker*, 253 Neb. 502, 571 N.W.2d 294 (1997), stated:

Supporting and opposing affidavits (1) shall be made on personal knowledge, (2) shall set forth such facts as would be admissible in evidence, and (3) shall show affirmatively that the affiant is competent to testify to the matters stated therein. *Young v. First United Bank of Bellevue*, 246 Neb. 43, 516 N.W.2d 256 (1994). Statements in affidavits as to opinion, belief, or conclusions of law are of no effect. *Id.*

The Preuskers' affidavits *did not provide facts to support their statements* that the bank had knowledge of the loans. However, the affidavit of the bank provided specific facts to indicate that it did not have knowledge as alleged by the Preuskers. Therefore, the statements of the Preuskers were mere opinions and were not based on personal knowledge.

*Id.* at 513-14, 571 N.W.2d at \_\_\_\_ (emphasis added).

(2) The affidavit must therefore state *facts* to show the foundation for the particular statements and the competence of the witness.

(3) The disregarded portions of the exhibits fail to meet that standard.

5. Viewed in the light most favorable to the plaintiff, there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the defendants are entitled to judgment as a matter of law.

6. There is no certification on file of any costs incurred by the defendants.

**ORDER:** IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The defendants' motion for summary judgment is granted.
2. Summary judgment is hereby entered dismissing the plaintiff's petition with prejudice to future action, at plaintiff's cost.
3. Judgment is entered denying any requested attorney's fees.

Entered: October 27, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 19\_\_ by \_\_\_\_.
- 9 Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 19\_\_ by \_\_\_\_.
- : Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 19\_\_ by \_\_\_\_.
- : Note the decision on the trial docket as: 10/27/99 Signed "Summary Judgment" entered.  
Done on \_\_\_\_\_, 19\_\_ by \_\_\_\_.

Mailed to:

BY THE COURT:

\_\_\_\_\_  
William B. Cassel  
District Judge