



The Defendant purchased the real estate and the deed was issued to Elk of the Wood, an Arizona nonprofit Corporation. The purchase price was \$32,000.00 and the property is located in Aiken County. The deed was executed on May 11, 2016.

The Plaintiff received a check from the Defendant prior to the date the promissory note was signed for \$30,000.00. The bank is identified as WeRe Bank and the payee name was the Clara M. Michael Estate. The Plaintiff presented the check to his bank and Huntington National Bank issued a letter dated August 28, 2017 stating that it would not negotiate the instrument since it was not a standard negotiable check. In previous attempts, the bank was not successful in receiving any payments from this bank. The Plaintiff testified that he advised the Defendant he would not accept that check as part of the transaction before the note was prepared and signed by the Defendant.

The Plaintiff had an attorney send a demand letter to the Defendant. The letter is dated February 24, 2017 and was mailed to three different addresses. The Defendant denies that he received the letter. The Plaintiff also sent another demand letter dated September 14, 2017. Again, the Defendant denied receiving the letter. The Plaintiff presented an exhibit that included the principal amount and pre-judgment interest at 8.75% per annum for a total of \$38,551.23. The per diem was listed as 7.6712. The Plaintiff attempted to introduce an article from Wikipedia. The document was marked for identification but not admitted as an exhibit.

On cross-examination, the Plaintiff admitted that the original WeRe Bank check had not been returned to the Defendant. Plaintiff stated that one of the reasons he did not accept the check because the payee was the Clara M. Michael Estate, not the Plaintiff. The Plaintiff agreed the letter from the bank did not provide a definition for the term "standard negotiable check". The Plaintiff did not contact WeRe Bank about negotiating the check. On re-direct, the Plaintiff testified he had no issue with returning the WeRe Bank check. The Plaintiff made a motion to amend the pleadings to list Elk of the Wood as an individual Defendant. The Defendant did not object and the motion was granted.

The Defendant testified he would not accept the return of the \$30,000.00 check. He admits that \$30,000.00 was not deleted from his account. He has only used one other WeRe Bank check and that was to his own bank. The Defendant admits no cash has been deposited in the WeRe Bank account. The WeRe Bank account does not require cash deposits. It is a promissory note or bond whereby the Defendant promised to work in the future or sell assets.

Defendant did not have \$30,000.00 in cash in any account. When asked if he had United States tender equal to \$30,000.00, the Defendant responded that he did not know. The Defendant testified he relied on a verbal agreement related to the Iraq Dinar. He admits the promissory note has no information about the Iraq Dinar issue.

Defendant testified that the Plaintiff made a verbal offer to loan the Defendant \$32,000.00. Prior to the note being executed, the Defendant presented the WeRe check and the Plaintiff accepted the check. The Defendants position is that this represents an acceptance under the Uniform Commercial Code. The Plaintiff never presented the check to the bank. The Plaintiff has held the check for at least two years and that is not a reasonable amount of time to hold the check and now offer to return the check. The Defendant believes that \$30,000.00 of the debt has been discharged under the South Carolina Uniform Commercial Code. The Defendant also made two \$1,000.00 payments to the Plaintiff's account.

In regards to the Iraq Dinor, the Defendants stated it has not been re-valued as of the date trial. Defendant does not have a problem paying the Plaintiff back under the original verbal agreement. He also offered to have a UCC-1 filed to secure the repayment. As of the date of trial, the Defendant cannot repay the loan. The Defendant believes that \$2,000.00 is the outstanding debt.

At the close of all the evidence, the Plaintiff renewed his directed verdict motion. The court declined to grant the motion based on the evidence submitted.

#### CONCLUSIONS OF LAW

This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

The promissory note was signed on April 29, 2016. The total debt was for \$34,000.00 that included a principal amount of \$32,000.00 with an interest charge of \$2,000.00. The maturity date was May 30, 2016. Following the execution of the agreement, the plaintiff sent a cashier check to the realty company in South Carolina. As a result, a deed was issued to the Elk of the Wood, an Arizona nonprofit corporation

The defendant argues that he paid \$30,000.00 towards the debt based on a WeRe Bank check he wrote to the Clara M. Michael Estate which is not a party to this action. This document

was prepared prior to the promissory note being signed. The plaintiff testified he advised the defendant he would not accept the check as part of the transaction and that refusal was conveyed to the defendant prior to the preparation of the promissory note. Even if the check was accepted by the plaintiff, it was not made out for payment to the plaintiff. The defendant admitted that the WeRe Bank account did not have \$30,000.00 in the account. The defendant further testified that a WeRe Bank account does not require a cash deposit.

The necessary elements of a contract are an offer, acceptance, and valuable consideration. "*Sauner v. Public Service Authority of South Carolina, 354 S.C. 397, S.E. 2d 161 (2003)*". The court finds that the agreement between the parties is conveyed pursuant to the terms of the promissory note. The plaintiff had already refused to accept the WeRe Bank check prior to the defendant signing the promissory note. Further, that check did not purport to pay the plaintiff \$30,000.00. The check paid that amount to the Clara M. Michael Estate. The defendant owes \$32,000.00 to the plaintiff based on the promissory note. The defendant has previously paid \$2,000.00 towards the total debt of \$34,000.00. The defendant's argument about a verbal agreement concerning the Iraq dinar has no merit. The agreement between the parties is controlled by the written terms in the promissory note.

An award of prejudgment interest is proper on a liquidated damages claim. "*C. McCormick, Handbook of the Law of Damages, 54 and 55 (1935)*". The summons and complaint did include a claim for prejudgment interest. The default in this matter occurred on the maturity date of May 30, 2016. By Administrative Order 2016 - 01 - 04 - 01, the South Carolina Supreme Court set the judgment interest rate as 7.50% per annum. The plaintiff is entitled to prejudgment interest at that rate from May 30, 2016 with a per diem of 6.575. The plaintiff's Exhibit 8 has 854 days since the breach and based on those figures, the damages are \$5,615.05 for the prejudgment interest award.

#### CONCLUSION

1. This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

2. The plaintiff is entitled to a judgment award against the defendants in the amount of \$32,000.00 based on the default of payment towards the promissory note. The plaintiff is also entitled to an award for prejudgment interest of \$5,615.05. For a total judgment award of \$37,615.00.

**IT IS SO ORDERED.**

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Aiken, South Carolina

2018

\_\_\_\_\_  
M. Anderson Griffith  
Master-in-Equity



Aiken Common Pleas

**Case Caption:** Brian T Michael VS William H Ellwood , defendant, et al  
**Case Number:** 2018CP0200510  
**Type:** Master/Order/Form 4

AND IT IS SO ORDERED

s/M Anderson Griffith-3076

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MAR 08 2019

SC Court of Appeals

South Carolina Supreme Court

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Columbia South

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