

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

APPELLATE CASE NO: 2017-CV-16-A-O
LOWER CASE NO.: 2016-SC-14962-O

TERRY SKYRMES,

Appellant,

v.

JASON LAVOIE,

Appellee.

Appeal from the County Court for Orange County,
Florida, Faye L. Allen, County Court Judge

Melissa Alfonso, Esquire, for Appellant

Jason Lavoie, *pro se* Appellee

Before Murphy, Traver, Carsten, J.J.

In early 2015, Mr. Lavoie executed a \$5,000 promissory note payable to Mr. Skyrmes. The note required monthly payments of \$100, beginning April 1, 2015, and maturing on December 1, 2019. Mr. Lavoie did not make the payment due on October 1, 2015 and tendered no subsequent payments. Mr. Skyrmes notified Mr. Lavoie of the default and intent to accelerate, pursuant to paragraph 8 of the promissory note. After Mr. Skyrmes transmitted a second notice to Mr. Lavoie, he filed a statement of claim for the full balance due under the note.

On the date of trial, the trial court raised the issue of whether Mr. Skyrmes had paid the documentary (“doc”) stamp taxes on the promissory note. The court indicated that a promissory note was unenforceable if the doc stamp taxes were not paid. Counsel for Mr. Skyrmes stated that she did not know this, and requested a continuance so that Mr. Skyrmes could pay the taxes. The court denied the motion to continue.

The case proceeded to trial, where Mr. Skyrmes presented evidence that Mr. Lavoie willingly signed the promissory note and failed to make payment under its terms. At the close of the case, the court entered judgment in favor of Mr. Lavoie, holding that the promissory note was unenforceable for failure to pay the doc stamp tax. Mr. Skyrmes requested a dismissal without prejudice, which the court denied.

Appellant makes three claims on appeal: (1) The trial court abused its discretion when it denied his motion for continuance prior to the start of trial, (2) The promissory note was not rendered unenforceable by nonpayment of the doc stamp tax because it did not secure future advances, and (3) The trial court erred when it entered judgment of dismissal with prejudice after Mr. Skyrmes requested dismissal without prejudice.

The trial court correctly noted that it was bound by the Fifth District Court of Appeal's decision in *Somma v. Metra Electronics Corp.*, 727 So. 2d 302 (Fla. 5th DCA 1999), which held that a promissory note was unenforceable where a note's holder had not paid the doc stamp tax. However, that case also held:

In an action to enforce such a note, once the court discovers that the documentary taxes have not been paid, the court must dismiss the action without prejudice, or upon proper motion abate the action for a time sufficient to enable the plaintiff to purchase documentary stamps and affix them to the note.

Somma, 727 So. 2d 302

In the instant case, the court itself raised the issue of nonpayment of the doc stamp tax. When counsel for Appellant made a proper motion for continuance so that Mr. Skyrmes could pay the doc stamps, the court incorrectly denied the motion. The court was bound by *Somma* to either dismiss the action without prejudice or to grant the requested continuance. It did neither. For this reason alone, the Court finds the judgment in this matter must be reversed and the case remanded to the trial court. As a result of this ruling, the Court does not reach the other two claims of error.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Final Judgment is Reversed and Remanded for a new trial.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this

_____ day of _____, 2018.

MIKE MURPHY
Presiding Circuit Judge

Traver and Carsten, J.J., concur.

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been provided via U. S. Mail Delivery and/or facsimile to **Melissa Alfonso**, Esquire, 56 E. Pine Street, Suite 301, Orlando, FL 32801, ma@apellie.com, and to **Jason Lavoie**, 1119 Sunflower Tr., Orlando, FL 32828, this _____ day of _____, 2018.

Judicial Assistant