9-19-2017

Idaho First Bank v. Bridges Respondent's Brief 2 Dckt. 44532

IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHO FIRST BANK,

Appellant/Cross-Respondent,

vs.

MAJ-LE TATE BRIDGES, et al.,

Respondents/Cross-Appellants.

Supreme Court No. 44532

Valley Co. Case No. CV-2015-00145-C

APPELLANT/CROSS-RESPONDENT'S BRIEF

Appeal from the Fourth Judicial District, Valley County, Idaho
Hon. Jason D. Scott, District Judge presiding.

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I. STATEMENT OF THE CASE

A. Nature of the Case

Cross Appellants Maj-Le Bridges and Harold A. Bridges appeal the District Court's denial of their creatively captioned "Motion for Order to Prevent IFB's Untimely Arbitration Demand and to Confirm Debt on Cabin Note is Extinguished and Not Recoverable from Any Assets." As set forth in Appellant Idaho First Bank's original appeal, the District Court granted summary judgment against Idaho First's claim for deficiency under its 2006 loan to the Bridges, finding that the Valley County collateral was real property and Idaho First's claim was untimely under I.C. § 45-1512. After that ruling, Idaho First brought an arbitration proceeding against the Bridges to foreclose upon separate property in Ada County,[1] not Valley County, granted as collateral on a separate loan in 2008. The collateral instrument for the later 2008 loan contains a cross-collateralization clause providing that the Ada County property secured not only the loan consummated at the time, but any other debts the Bridges may owe Idaho First as a lender.

After all claims had been dismissed before the District Court, the Bridges' motion asked the Court to block the arbitration proceeding and to rule that the remaining balance of the 2006 loan was extinguished and uncollectable by any means, including resort to different collateral. The Court had little difficulty in denying this unusual motion, finding it did not have jurisdiction

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[1] Likely because of a clerical error, the title page to the Bridges Brief entitled "Joint Respondents' and Cross-Appellants' Brief" indicates that this appeal is from the District Court of the Fourth Judicial District of the State of Idaho, "In and For the County of Ada." This is incorrect. The proceeding below was always pursued and defended in Valley County regarding the improvements the Bridges constructed on state lease land in Valley County and the relevant 2006 loan documents.

under I.A.R. 13(b) once the appeal was filed. It found it did not have jurisdiction for reopening the action to decide whether the Bridges were entitled to an additional measure of relief they did not seek, a declaratory judgment that the remaining balance of the 2006 loan was extinguished. Even if there were no jurisdictional impediment, the Court indicated it would not grant the motion, finding no waiver of the cross-collateralization clause or the right to arbitration.

Finally, because the combined appeal raised so many issues relevant to the arbitration under Idaho law, the arbitrator stayed Idaho First's arbitration to determine what, if any, effect a decision by this Court might have upon the arbitration.

B. Statement of Facts and Course of Proceedings

Idaho First incorporates Section I.B. of Appellant's Opening Brief, but adds the following:

On September 21, 2006, the Bridges obtained a loan from Idaho First for $1,500,000.00 under a Promissory Note. R., pp. 11-12; R., p. 73, ¶ 9; R., p. 82, ¶ 9. The Promissory Note was secured by a Construction Deed of Trust. R., pp. 108-117. Defendants constructed an approximately 5,000 square foot structure constructed on the Valley County state lease land. R., p. 83, ¶ 13. This original Promissory Note and Construction Deed of Trust are referred to as the "First Loan Transaction" or, as the District Court preferred, "the 2006 loan."

To complete construction, on January 3, 2008, the Bridges requested a second loan from Idaho First for $150,000.00. This second loan was made under a Credit Agreement and Disclosure (R., pp. 871-876) and a second Deed of Trust encumbering different real property

Defendants owned in Ada County, Idaho. R., pp. 878-886. This indebtedness and related documents are referred to as the "Second Loan Transaction" or "the 2008 loan."

The Deed of Trust for the 2008 loan encumbering the Ada County property provides in part:

> In addition to the Credit Agreement, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Credit Agreement, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, **and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.** (emphasis added)

R., p. 878. Defendants not only executed this Deed of Trust, they initialed this specific paragraph. *Id.*

After ruling against Idaho First in its effort to recover a deficiency under Article 9 or I.C.§ 45-1512, the District Court entered Judgment, which dismissed Idaho First's second amended complaint in its entirety "with no award of relief to Idaho First Bank." R., p. 848. On August 1, 2016, the District Court entered its Order denying Idaho First's motion to reconsider. R., pp. 822-825. At no time had the Bridges asserted any counterclaim. Idaho First filed a timely Notice of Appeal on September 8, 2016. R., pp. 827-31.

On October 6, 2016, Idaho First filed a Demand for Arbitration with the American Arbitration Association according to the terms of the Deed of Trust for the Second Loan

Transaction or 2008 loan, seeking all amounts owed by the Bridges to Idaho First, including the full amounts due under the Promissory Note for the 2006 loan. R., pp. 891-96.

Then, on October 21, 2016, the Bridges filed their "Motion for Order to Prevent IFB's Untimely Arbitration Demand and to Confirm Debt on Cabin Note is Extinguished and Not Recoverable from Any Assets." R., pp. 851-52. This Motion asked the Court to

> (1) permanently prevent Idaho First Bank's efforts to change the forum and pursue arbitration, and (2) clarify that this Court's rulings cannot be collaterally attacked through a foreclosure of the 2008 Deed of Trust, the debt owed under the 2006 Cain Note has been fully extinguished, and/or no further collection can be pursued regarding that debt.

Id. The Bridges attempted to invoke I.A.R. 13(b)(6) or (13) and I.R.C.P. 60(b)(1) or (6).

The District Court had no difficulty denying Respondents' motion for further relief after the case was dismissed. In its written Order, District Court stated:

> The Court sees no justification for reopening this action to litigate whether the Bridges are entitled to an additional measure of relief they didn't seek: a declaratory judgment that the remaining balance of the 2006 loan is extinguished and not collectable by resort to collateral other than the McCall cabin.
>
> (emphasis added)

R., p. 960.

Inquiring of the Bridges' counsel at oral argument, the District Court asked:

> Now, I haven't technically adjudicated an issue like that. I haven't answered the question, is this debt extinguished or is it merely not collectible by recourse to a deficiency claim following the sale of the cabin deed of trust collateral.
>
> Given that – what authorizes me to expand the issues I've adjudicated – I mean, adjudicated in what I needed to adjudicate to determine whether the claims were viable. Now, if the bank has a separate theory or a separate collateral instrument on which it might be able to recover the same amount, why is it again that that is an issue that ought to be adjudicated on a post judgment basis in this

case as opposed to in some separate proceeding whether it's in the arbitration or a new lawsuit that challenges the arbitration?"[2]

(emphasis added)

After counsel tried to answer this compelling question, the Court commented:

> Well, I guess I might quibble with that. Because I think what they lost on was the idea that the deficiency balance was collectible under Idaho Code Section 45-1525, or whatever the [statute] is, if I've got the cite right. Or in this case also, if they had a UCCC deficiency claim, and I ruled that they didn't have a UCC deficiency claim because there was no personal property collateral. And I ruled that Idaho Code 45-1512 deficiency claim was time-barred.
>
> Now, that's a separate issue from whether the debt is extinguished or whether it's still lingering but just not actionable. And given that I didn't need to resolve the extinguishment issue in order to adjudicate the claim presented – I mean, I don't' know, I'm struggling with how the upshot of my ruling is – my existing ruling can be that the debt is definitively extinguished.

Tr., pp. 14-15, ll. 23-25; 1-17.

In its ruling on the record at hearing, the Court clearly identified the reasoning behind its refusal to grant Respondents' motion:

> That's (the extinguishment issue) a legal question that didn't prove to be necessary to address in order to address the claims the bank made. So once the court's judgment is entered, there was a calculable deficiency that was determined not to be collectible on these legal theories but no determination made as to whether it was still [extant] debt or not.
>
> Now, the parties plainly have a dispute about whether it is or isn't an [extant] debt, but resolving that, as I said, wasn't part of resolving this case. It wasn't necessary to this case. It only – the question only arises in the context of the bank's effort to try to collect the debt through recourse to other collateral,

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[2] *Transcript of Proceedings* of December 5, 2016, pp. 3-4, ll. 11-25; 1-3. Subsequent references to this Transcript are cited as Tr. followed by page and line numbers in accordance with I.A.R. 35(e).

namely the Bridges' 200 – the Bridges' home in Boise which they pledged as collateral securing a loan made on the 2008 home as collateral but also pledged – when they entered into that agreement, the home they pledged for that loan was also made collateral through a cross-collateralization provision for the note on the cabin.

Now, the Idaho Supreme Court recently had occasion to address the subject of whether a debt barred by the statute of limitations can nevertheless be collected through recourse to collateral. That case was Sallaz v. Rice. The opinion was issued on November 23. The court held that it could.

Now, this wasn't a deficiency claim. It didn't involve Idaho Code Section 45-1512, but it held that when collecting a debt becomes time-barred, as I held this debt in this case had become, that doesn't mean a creditor who has collateral is somehow estopped or barred from foreclosing on the collateral as a means of collecting the debt.

So it is I think possible that once the merits are reached, that this concept would permit the bank to do what it is purporting to do or wanting to do.
(emphasis added)

Tr., pp. 31-32, ll. 5-25; 1-20.

In its subsequent written Order denying the same motion, the District Court amplified its conclusions particularly as to jurisdiction. The District Court noted that it lacked "unfettered jurisdiction" over the action, because of the dismissal and pending appeal, and was limited under I.A.R. 13(b). R., p. 959. The Bridges' claim that I.A.R. 13(b)(6)'s grant of jurisdiction to decide motions made under I.R.C.P. 60(b)(1) or 60(b)(6) was mistaken: there was simply no "mistake, inadvertence, surprise or excusable neglect" under Rule 60(b)(1) that justified any relief to the Bridges from judgment, nor "any other reason that justifies relief" under Rule 60(b)(6). As the District Court emphasized, "[i]ndeed, the judgment awarded them [the Bridges] complete relief:

complete dismissal of Idaho First Bank's deficiency claims with prejudice." R., pp. 959-60. The District Court concluded:

> The Court sees no justification for reopening this action to litigate whether the Bridges are entitled to an additional measure of relief they didn't seek: a declaratory judgment that the remaining balance of the 2006 loan is extinguished and not collectable by resort to collateral other than the McCall cabin.

R., p. 960.

Next, the Court rejected the Bridges' contention that the arbitration proceeding was an attempt to subvert the judgment in this action: "the arbitration proceeding Idaho First Bank subsequently commenced isn't an attempt to relitigate its deficiency claims. Instead, it's an attempt to collect the remaining balance of the 2006 loan by resort to collateral other than that which was at issue in this action." R., p. 960. The Bridges were seeking an unjustifiable expansion of the District Court's prior judgment, not its enforcement. *Id.* Finally, the Court rejected the Bridges' waiver argument and indicated that even if there were no jurisdictional impediment to grant the Bridges' requested relief, it would not do so. It was up to the arbitration proceeding to determine any issues surrounding cross-collateralization and "whether Idaho First Bank has the right to collect the remaining balance of the 2006 loan through resort to the collateral for the 2008 loan." *Id.*

The Bridges filed a cross-appeal of the denial of this motion. R., pp. 963-70. Because of the possibility that a decision in this appeal regarding Idaho law could affect issues in the

arbitration and based on Respondents' unrealistic estimates of the time involved in this appeal, the arbitrator stayed the arbitration pending a decision from this Court.[3]

II. ISSUES PRESENTED ON CROSS- APPEAL

1. Whether the District Court's denial of the Bridges' motion was properly entered due to lack of jurisdiction.
2. Whether the District Court's denial of the Bridges' motion was properly entered due to the pendency of the arbitration and its inability to interfere with that proceeding.

III. ATTORNEY FEES ON APPEAL

Idaho First denies that the Bridges are entitled to attorney fees on appeal, in part because this entire appeal involves a transaction for personal or household purposes under I.C. § 12-120(3), not a "commercial transaction" under Idaho law. The Bridges have failed to provide "facts, authority, and argument supporting the claim that the case involves a 'commercial transaction' and that such transaction is the gravamen of the lawsuit." *See, e.g., Bream v. Benscoter*, 139 Idaho 364, 370, 79 P.3d 723, 729 (2003); *Poledna v. Idaho DOL*, 158 Idaho 372, 375, 347 P.3d 1186, 1189 (2015).

IV. STANDARD OF REVIEW ON CROSS-APPEAL

Idaho First submits this Court may exercise free review over the questions of law in this cross-appeal.

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[3] *See,* Exhibit A to the *Affidavit of Counsel in Support of Request for Judicial Notice of Filings in Related Arbitration*, filed July 18, 2017, ¶¶'s 8-11.

V. ARGUMENT

A. THE DISTRICT COURT CORRECTLY DECIDED THAT IT DID NOT HAVE JURISDICTION TO GRANT THE BRIDGES' REQUESTED RELIEF AND INTERFERE WITH THE ARBITRATION PROCEEDING.

1. The Idaho Uniform Arbitration Act allows only limited judicial involvement in arbitration proceedings.

With a full-throated endorsement of arbitration, Section 7-901, Idaho Code, provides in part[4]:

> [a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. (emphasis added)

Similarly, Section 7-902(a) provides that the sole grounds to stay an arbitration is if the opposing party denies the existence of the agreement to arbitrate. Here, the Bridges have not done so. Likewise, an order compelling arbitration shall not be refused because the claim in issue "lacks merit or bona fides or because any fault or grounds of the claim sought to be arbitrated have not been shown," under Section 7-902(e). This is the actual basis for the Bridges' claims, but they attempt to invoke other rules, knowing they cannot overcome 7-902(e), as argued below.

After arbitration, a court's power to vacate an award is limited to where an award was procured by "corruption, fraud or other undue means (Section 7-912(1)); evident partiality or

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[4] The arbitration provision at issue makes explicit reference to the Federal Arbitration Act. Regardless of which act applies, the analysis is the same. *See, e.g.*, 9 U.S.C. § 4 (providing that courts shall order arbitration unless the agreement for arbitration is at issue).

corruption or misconduct (Section 7-912(2)); and other equally exceptional circumstances (Section 7-912(3)-(5)).[5]

Within this context the Court must evaluate the Bridges' remarkable assignments of error to the District Court.

2. The District Court properly decided it did not have jurisdiction under I.A.R. 13.

At Section VI.B.1. of Respondents' Brief, without a single citation to authority, the Bridges claim "it difficult to understand how the District Court would lack 'inherent' jurisdiction" to grant them relief. Respondents' Brief, p. 40. What the Bridges refuse to acknowledge is that I.A.R. 13(b)(6) and its incorporation of I.R.C.P. 60(b) provides limited jurisdiction after dismissal and pending appeal. As the District Court noted, they pointed to no specific "mistake, inadvertence, surprise, or excusable neglect" under Rule 60(b)(1). It was the Bridges who had prevailed entirely on the second amended complaint. Nor had they shown any "other reason that justifies relief" under Rule 60(b)(6), for they were not asking relief from the judgment. The judgment was entirely in their favor on the issues decided. These rules do not grant free-floating jurisdiction to a district court to hear additional issues and grant further relief.

Rather weakly, the Bridges claimed earlier that they were seeking to vacate the final judgment below to "clarify" the District Court's rulings and orders so Idaho First could not pursue arbitration or raise certain legal arguments in arbitration. R., p. 857. The District Court's

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[5] Very similar provisions appear in the Federal Arbitration Act, 9 U.S.C. § 10(a)(1) – (4).

ruling on the deficiency claims were clear. In part, what the Bridges were inviting the District Court to do was to further opine and advise another forum about the *res judicata* effects and other significance of its own ruling. The District Court properly understood it did not have jurisdiction to do so, noting that the Bridges were actually seeking something they had never asked for – a declaratory judgment that their deficiency was forever extinguished even as to separate collateral under a separate instrument. R., p. 960.

3. Neither the District Court nor this Court has jurisdiction to issue advisory opinions to a different tribunal about the legal effect of rulings.

Although the Bridges would dearly love this Court to instruct the Arbitrator they win as to cross-collateralization in the Arbitration, this Court may not do so, just as the District Court declined to do so. First, the legal effect of the cross-collateralization clause in the second Deed of Trust only arose once Idaho First decided to foreclose on the Ada County property. Its import and effect were not before the District Court regarding the McCall property. Doubtless, the Bridges will argue in the arbitration that, because of this Court's prior rulings, Idaho First has no claim arising under the 2006 loan, despite the cross-collateralization provision. They will make all of the claim preclusion arguments in section VI.B.2 of Respondent's Brief. Idaho First will argue that the cross-collateralization clause rescues the claim because of its explicit language that, as part of a new credit extension, it is collectible regardless of any ruling that it is barred by a limitations period or is otherwise unenforceable. This will form one significant issue for the Arbitrator -- one not properly before this Court or the District Court.

Courts are not generally empowered to issue advisory opinions. *See, e.g., Taylor v. AIA Servs. Corp.,* 151 Idaho 552, 569, 261 P.3d 829, 846 (2011); *MDS Invs., LLC v. State,* 138 Idaho 456, 465, 65 P.3d 197, 206 (2003); *see also, Brown & Root Braun v. Bogan Inc.*, 54 F. App'x 542, 552 (3d Cir. 2002) (unpublished) ("Additionally, Sun asks us to proclaim that *res judicata* does not apply to its claims against Home in New York state court. The effect of our ruling to vacate the November 7, 2000 Order on the doctrine of *res judicata* in Sun's proceedings against Home in another court is a matter beyond our power to declare. Any holding about the *res judicata* effect of this ruling in another court would be an impermissible advisory opinion"); *Deep v. Boies*, 493 F. Supp. 2d 88 (D. Me. 2007) ("Rendering an opinion on the effect of my order on a proceeding before a New York state court would be an impermissible advisory opinion").

This Court should decline the Bridges' invitation to advise on what an arbitrator should find as to claim preclusion, waiver or as to the purported extinguishment of their remaining obligations under the 2006 promissory note. These issues were never before the District Court and are not before this Court now. The Bridges do not invoke jurisdiction by raising late arguments below. Even the styling of the Bridges' argument demonstrates its inappropriateness. At Section IV.C.2. the Bridges entitle this section "This Court Should Dismiss IFB's Cross-Collateralization Argument." Respondents' Brief, p. 48. The Bridges ask this Court to "dismiss" an "argument" that Idaho First will make to the arbitrator in the arbitration proceeding.

The District Court saw through the Bridges' attempts to invite it to provide relief they had not asked for. Despite the many times the Bridges repeat that Idaho First is trying to

"undermine" the District Court's ruling, [6] the District Court even opined that Idaho First's position on cross-collateralization would likely succeed. Tr., p. 32, ll. 17-20. The District Court properly understood that its limited ruling based on the actual claims asserted by the parties was that the McCall collateral constituted real property, that Idaho First had to follow I.C. § 45-1512 under the 2006 Deed of Trust and had not done so. Whether a later instrument like the 2008 Deed of Trust and its cross-collateralization provision were effective in making all amounts due through resort to different collateral was never properly before the District Court.[7] The Bridges sought no affirmative relief, including any declaration that their debt was "extinguished." This Court does not properly have before it the myriad reasons the Bridges now want it to assert t that the cross-collateralization provision is ineffective.

4. Regardless, the Cross-Collateralization provision is effective.

The Bridges argue that they should be allowed to avoid payment of any further amounts due on their 2006 loan and retain their windfall because the cross-collateralization provision in the second Deed of Trust is "void." Respondents' Brief, p. 50. After citing general Idaho case authority that illegal contracts will not be enforced, Defendants immediately turn to North Dakota and other jurisdictions claiming that anti-deficiency statutes may not be waived. First,

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[6] See, e.g., Respondents' Brief, p. 53 ("For all the above reasons, IFB's argument to undermine the District Court's prior ruling dismissing the deficiency action should be rejected").

[7] Despite their current arguments, counsel for the Bridges conceded that Idaho First was not obligated to pursue the 2008 collateral at the same time or within the same action as its collection efforts as to the 2006 loan. Tr., p. 9, ll. 15-19.

Idaho has no similar "anti-deficiency" statute and no similarly announced public policy against deficiency claims. While some jurisdictions, such as North Dakota disfavor deficiency claims, Idaho does not. The cases cited by Defendants involve a contemporaneous waiver of deficiency upon obtaining a loan. What is involved here is a waiver of deficiency as consideration for obtaining a second, additional loan. Defendants were free to seek another lender who would not require such a waiver, but instead entered into a knowing, explicit waiver of any deficiency claim as to the earlier loan.[8]

Similarly, the Bridges rely on cases from other jurisdictions stating that parties may not pre-waive a statute of limitations period in an original contract. Here, Bridges waived such an objection in a second, later contract, when they affirmatively sought new loan monies. Such waivers are routinely enforced. *See, e.g., Shupe v. Asplundh Tree Expert Co.*, 566 F. App'x 476, 482 (6th Cir. 2014) (unpublished) ("Waivers of statutes of limitations are valid and enforceable under Kentucky law"); *United States v. Am. Gas Screw Franz Joseph,* 210 F. Supp. 581, 584 (D. Alaska 1962) ("Here we have a situation where the parties, by a solemn writing, agreed to waive the statute of limitations. The preferred mortgage dated the 15th day of June, 1949, specifically refers to the said financing agreement. Under California law, the waiver in writing of the statute of limitations is valid and enforceable...Under the law of that state a waiver even to the extent of

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[8] Defendants attempt to suggest that their waiver was not "knowing and voluntary" because the "cross-collateralization provision says nothing about the anti-deficiency statute." Respondents' Brief, p. 53. This is not a serious argument. As noted above, the cross-collateralization provision addresses explicitly the specific procedural protection afforded by Section 45-1512, Idaho Code: that a deficiency claim should be brought within a specified time.

99 years is enforceable. ... An unlimited waiver, such as we have in this case, is valid.") (citations omitted).

Finally, the Bridges argue that, because they characterize Section 45-1512, Idaho Code, as a statute of repose,[9] rather than a statute of limitations, the language of the cross-collateralization is not applicable. Apparently, although unclear, Defendants claim this result because the provision explicitly mentions "any statute of limitations" and does not set explicitly the magic words "statute of repose." Again, this one-sentence argument is not serious, for even the Bridges note that the provision secures Idaho First's right to elect all obligations, debts and liabilities, whether "the obligation to repay such amounts... may become unenforceable." This result obtains whether because of a statute of repose or any other reason.

Even if the subject were properly before the District Court below or before this Court on appeal, the Bridges' attempts to erase the cross-collateralization provision from application are unavailing

VI. CONCLUSION

For all the reasons stated above, Idaho First respectfully requests this Court affirm the District Court's denial of Cross-Appellant's "Motion for Order to Prevent IFB's Untimely Arbitration Demand and to Confirm Debt on Cabin Note is Extinguished and Not Recoverable from Any Assets."

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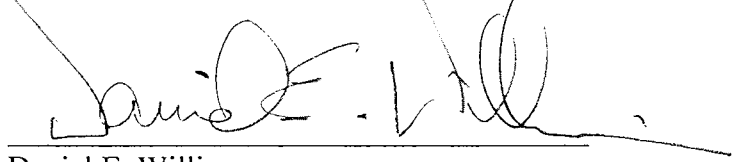
[9] It is not, as argued in Appellant's Reply Brief, p. 32.

Dated this 19th day of September, 2017.

THOMAS, WILLIAMS & PARK, LLP



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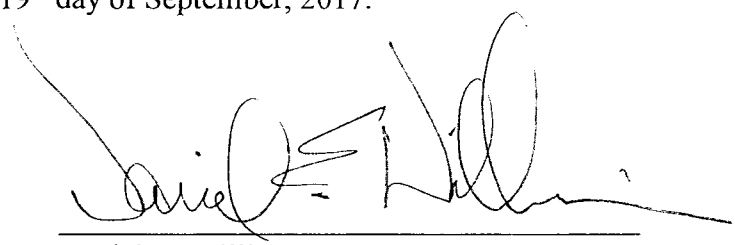
CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that the brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that two bound copies were served on Defendants via hand delivery.

DATED AND CERTIFIED this 19th day of September, 2017.



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