

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

<p><b>UBS BANK USA,</b></p> <p><b>Plaintiff,</b></p> <p><b>v</b></p> <p><b>HERBERT K. MALLARD,</b></p> <p><b>Defendant.</b></p>	<p><b>MINUTE ENTRY</b></p> <p><b>CASE # 080926075</b></p> <p><b>March 24, 2010</b></p> <p><b>Judge Sandra Peuler</b></p>
---------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------

Before the Court is a request to submit for decision on Plaintiff's motion for summary judgment. Based upon a review of the pleadings filed in this matter, the Court rules as follows.

1. Plaintiff's request for oral argument is denied. The Court has reviewed all memoranda, affidavits, and other documents submitted in connection with the motion, and oral argument would not be of assistance in ruling. Additionally, although the Court has reviewed all of defendant's pleadings, he has failed to controvert plaintiff's undisputed facts in a manner as required by Rule 7, Utah Rules of Civil Procedure.

2. Plaintiff's motion for summary judgment is granted. The plaintiff's motion and memorandum were filed April 10, 2009. Defendant requested and received two continuances, and the Court granted a third, based upon defendant's Rule 56(f) motion. The time has now expired for the requested discovery to occur, and it does not appear, based upon a review of the Court file, that any discovery was conducted by defendant.

As noted above, the defendant failed to follow the requirements of Rule 7, in his

memoranda in opposition to plaintiff's summary judgment motion. Although the defendant disputed many of the facts identified by plaintiff, he provided no admissible evidence to support his theories that (1) plaintiff fabricated all or part of the credit line agreement; (2) that there is more than one agreement; (3) that he did not receive a copy of the agreement; and (4) that the loan would be secured by a mortgage on property purchased by defendant.

The undisputed facts, supported by the unambiguous written agreement signed by both parties, demonstrate that defendant received a loan in the sum of \$550,000, that he failed to pay the loan when payment was demanded by plaintiff, that plaintiff liquidated defendant's security holdings to partially repay the loan amount, and that the balance owing is \$58,724.32. Pursuant to the terms of the written agreement, interest, fees, and costs may be added to the principal. Additionally, based upon the agreement entered into between the parties, and the court finding that defendant breached the terms of that agreement by refusing to pay upon demand, the court determines that plaintiff is entitled to judgment as a matter of law.

Plaintiff's reply memorandum in support of its motion for summary judgment also seeks to strike certain motions filed by defendant. Those motions include (1) motion to dismiss, filed March 3, 2010; (2) motion to deny summary judgment, filed March 4, 2010; and (3) motion to compel, filed on March 8, 2010. In the interest of economy, as well as fairness to defendant, the Court denies the motion. The Court reviewed all of the pleadings in connection with determining whether any genuine issues of material fact existed, before ruling on the summary judgment motion. However, the plaintiff is not required to respond to any of the motions, as the ruling on plaintiff's motion for summary

judgement resolves all outstanding motions.

Counsel for plaintiff is requested to prepare an Order and Judgment consistent with this ruling.

DATED this 25 day of March, 2010



\_\_\_\_\_  
DISTRICT JUDGE

By \_\_\_\_\_  
STAMP USED AT DIRECTION OF JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080926075 by the method and on the date specified.

MAIL: HERBERT K MALLARD 223 ATLANTIC AVENUE 3E PALM BEACH, FL  
33480

MAIL: JENNIFER R ESHELMAN 50 W BROADWAY SUITE 700 SALT LAKE CITY  
UT 84101-2006

Date: 3/25/10

K. Grotz  
Deputy Court Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

UBS BANK USA,

Plaintiff,

vs

HERBERT K. MALLARD,

Defendant.

MINUTE ENTRY

Case No. 080926075

March 5, 2010

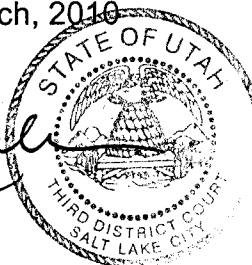
Judge Sandra Peuler

Pending before the court is defendant's motion to compel the court to give an authenticated credit line agreement part to defendant. Upon review of the file, I note that an additional motion has been filed by defendant, which is a motion to reinstate counsel. Based upon the pleadings filed in this matter, and the court noting that plaintiffs aver that they have given defendant a copy of the agreement twice, strikes the defendant's motion to compel as meritless. Additionally, former counsel was retained by defendant. The court will not order former counsel to continue to represent defendant. Defendant may retain the same or other counsel, as he may choose, based upon his agreement with them. The court, therefore, also strikes the motion to reinstate counsel as lacking merit.

This minute entry is the order of the court, and no additional order is required to be prepared in the matter.

DATED this 5 day of March, 2010

*Sandra Peuler*  
Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080926075 by the method and on the date specified.

MAIL: HERBERT K MALLARD 223 ATLANTIC AVENUE 3E PALM BEACH, FL  
33480

MAIL: STEPHEN P HORVAT 50 W BROADWAY STE 700 BANK ONE TOWER SALT  
LAKE CITY UT 84101-2006

Date: 3-5-10



Deputy Court Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

UBS BANK USA,

Plaintiff,

v

HERBERT K. MALLARD,

Defendant.

MINUTE ENTRY

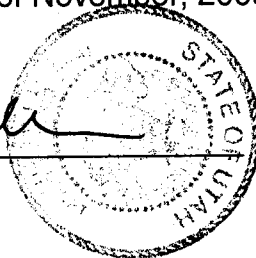
CASE # ~~09~~0926075  
November 20, 2009  
Judge Sandra Peuler

I received a letter from counsel for Defendant dated November 16, 2009, which has been copied to opposing counsel and the Defendant. Based upon the information supplied in the letter, the motion and affidavit filed by Defendant using counsel's name are stricken. The Court will not consider them for any purpose, and no response is required by opposing counsel. Defendant is ordered to refrain from preparing pleadings which use another person's name.

This minute entry is the Order of the Court.

DATED this 20 day of November, 2009

  
DISTRICT JUDGE



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080926075 by the method and on the date specified.

MAIL: HERBERT K MALLARD 223 ATLANTIC AVENUE 3E PALM BEACH, FL 33480

MAIL: JENNIFER R ESHELMAN 50 W BROADWAY SUITE 700 SALT LAKE CITY UT 84101-2006

MAIL: DARREN LEVITT 2150 South 1300 East #500 SLC UT 84106

Date: 11/20/09

K Gyotepas  
Deputy Court Clerk



**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

<b>UBS BANK USA,  Plaintiff,  vs  HERBERT K. MALLARD,  Defendant.</b>	<b>MINUTE ENTRY  CASE # 080926075 Judge Sandra Peuler  July 6, 2009</b>

Before the Court is a Request to Submit for Decision on Plaintiff's motion to strike the following: Defendant's (1) Memorandum in Further Denial of Plaintiff's Motion for Summary Judgment; (2) Request for Denial of Plaintiff UBS Request for Decision; and (3) Motion for Denial of Summary Judgment and Request for Hearing. Plaintiff requested a hearing. Based upon a review of the pleadings filed in this matter, the Court rules as follows.

1. The request for hearing is denied. The matters before the Court are not dispositive, and oral argument would not be of assistance to the Court in ruling.

2. The Plaintiff's motion to strike the above-named motions and memoranda is granted. The motions/memoranda filed by Defendant were improper sur-replies to the Plaintiff's motion for summary judgment and violate Rule 7, Utah Rules of Civil Procedure, as no leave of Court was sought or granted.

Counsel for Plaintiff is requested to prepare the appropriate order in this matter.

DATED this 6 day of July, 2009

  
DISTRICT COURT JUDGE

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

<b>UBS BANK USA,</b>  <b>Plaintiff,</b>  <b>vs</b>  <b>HERBERT K. MALLARD,</b>  <b>Defendant.</b>	<b>MINUTE ENTRY</b>  <b>CASE # 080926075</b> <b>May 13, 2009</b>  <b>Judge Sandra Peuler</b>
---------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------

I have received and reviewed memoranda in connection with Plaintiff's motion for summary judgment. I have also received and reviewed Defendant's request to continue the matter, so that he may obtain local counsel. The Defendant asks for one month to do so, and that request is reasonable. The Plaintiff does not object to the request. Based upon that, I will defer taking any action on Plaintiff's motion for thirty (30) days from this date.

This Minute Entry is the Order of the Court.

DATED this 13 day of May 2009



DISTRICT COURT JUDGE

By \_\_\_\_\_  
STAMP USED AT DIRECTION OF JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080926075 by the method and on the date specified.

MAIL: HERBERT K MALLARD 223 ATLANTIC AVENUE 3E PALM BEACH, FL  
33480

MAIL: THOMAS R KARRENBERG 50 W BROADWAY STE 700 SALT LAKE CITY UT  
84101-2006

Date: 5/14/09

K. Grotelas  
Deputy Court Clerk