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How to Lose a Default Judgment Motion: Seek the Wrong Relief Too Soon

Defendant is a mother who received the news all parents of teenagers everywhere desire and fear: Congratulations, your daughter is admitted to college; but given the costs, she will need a loan to attend. According to Plaintiff's complaint:

- Plaintiff is Defendant's former mother-in-law^[1] and grandmother of the student;
- In 2011, Defendant (mom) contacted Plaintiff (grandmother) and convinced Plaintiff to co-sign "an obligation for a student loan from SallieMae";
- Defendant told the Plaintiff that Defendant "would guarantee that every single payment would be made timely and that appellant would not have any problems regarding payments";
- in reliance on Defendant's representations, Plaintiff agreed to co-sign on the student loan application and promissory note; and
- after the daughter / granddaughter defaulted on the loan payments, "SallieMae repeatedly demanded monthly payments from Plaintiff."

Apparently, Plaintiff did not allege that she had made any payments to SallieMae. Rather, Plaintiff alleged that she suffered a damaged credit rating. It does not seem that Plaintiff had made any payments to SallieMae before the complaint was filed and so did not seek a money judgment.

Defendant did not answer Plaintiff's complaint.^[2] Plaintiff moved for a default judgment. Specifically, Plaintiff sought a "declaratory judgment indicating that [Defendant] in fact owes the obligation to SallieMae, as if she were an original co-signer, and owes the obligation to hold [Plaintiff] harmless therefrom."

Plaintiff asserted that the doctrine of promissory estoppel prevented Defendant from denying her liability. The appellate decision recites the usual promissory estoppel rules:

Promissory estoppel is an equitable doctrine for preventing the harm resulting from reasonable reliance upon false representations. GGJ, Inc. v. Tuscarawas Cty. Bd. of Commrs., 5th Dist. Tusc. No.2005AP070047, 2006–Ohio–2527, citing Karnes v. Doctors Hosp., 51 Ohio St.3d 139, 142, 555 N.E.2d 280 (1990). The party asserting promissory estoppel bears the burden of proving, by clear and convincing evidence, all of the elements of the claim. In re Estate of Popov, 4th Dist. No. 02CA26, 2003–Ohio–4556. The elements necessary to establish a claim for estoppel are: (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) the reliance must be reasonable and foreseeable; and (4) the party claiming estoppel must be injured by the reliance. Schepflin v. Sprint–United Telephone of Ohio, 5th Dist. Richland No. 96–CA–62–2, 1997 WL 1102026 (April 29, 1997), citing Stull v. Combustion Eng., Inc., 72 Ohio App.3d 553, 557, 595 N.E.2d 504 (3d Dist.1991).

At first glance it seems the alleged facts should protect Plaintiff from suffering liability for the student loan payments. Unfortunately, Plaintiff asserted that Defendant is estopped “from denying that she was in fact liable to SallieMae as the co-signor of the student loan.” Presumably, Plaintiff framed the requested relief in this fashion because she had not made any payments to SallieMae. Plaintiff did not allege that SallieMae had tried to collect the loan from Defendant (mom).

The trial court denied Plaintiff’s motion for a default judgment and dismissed the complaint. On appeal, the appellate court affirmed that decision. The court held that Defendant “was not a party to the [student loan promissory note] and there is no allegation that Defendant made any promises to SallieMae that she would pay the obligation.” Granting the requested declaratory judgment would be essentially creating a “contract between SallieMae, [student], and” the Defendant.

The court closed with this: “This Court, therefore, cannot now order that [Defendant]–not [Plaintiff]– is responsible to SallieMae for the

student loan obligation.” Although unstated, it seems clear that under the deemed admitted facts, Plaintiff could have won a default money judgment for any loan payments Plaintiff had paid to SallieMae.

The lesson may be this: Counsel must resist the urge to “do something” to assuage the emotions of a broken family. Or stated more lawyerly: cases must be “ripe” before they are filed.

The above-discussed case is *Huggins v. Ark*, Delaware County Court of Appeals Case No. 17 CAE 08 0059 (Feb. 21, 2018).

[\[1\]](#) The student’s parents divorced in 2016. The unstated family dynamic in this case is obvious.

[\[2\]](#) It appears Defendant did participate in the appeal, *pro se*.

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