

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

CHARLES XAVIER KEMP

Case No. 2007-02777-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO STATE PENITENTIARY

Defendant

FINDINGS OF FACT

{¶1} 1) Plaintiff, Charles X. Kemp, an inmate formerly incarcerated at defendant, Ohio State Penitentiary (“OSP”), stated he purchased shoes, boots, a watch, and a ring for OSP employee, Odessa L. Stanley. Plaintiff related he authorized the withdrawal of funds from his inmate account to pay for the mail order purchases which were delivered to the personal residence of Odessa L. Stanley. Plaintiff characterized the mail order purchases of shoes, boots, a watch, and a ring as “loans” to Odessa L. Stanley. Plaintiff maintained he never received reimbursement for the described purchases delivered to the home of Odessa L. Stanley.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$665.88, the total amount of funds withdrawn from his inmate account to pay for mail order purchases apparently made on three separate occasions between August and December, 2005. Plaintiff described the three purchases as, “loans that were not paid.” Plaintiff did not provide any legal basis to establish how defendant should bear financial responsibility for a monetary debt owed to him by Odessa L. Stanley. The filing fee was paid.

{¶3} 3) Defendant denied any liability in this matter. Defendant related, “[a]ny money or property that was sent to the OSP staff member was given voluntarily.” Defendant also noted, plaintiff, “is not alleging that any funds were inappropriately

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deducted from his account, or that any staff was negligent in handling his property.”

{¶4} 4) Plaintiff filed a response observing that he loaned Odessa L. Stanley money at a time when she was employed by defendant. Plaintiff contended this fact of Odessa L. Stanley’s employment status should bind her employer to accept financial responsibility for payment of loan principals to her creditor. Plaintiff reasoned, that because of Odessa L. Stanley’s job duties which included the power to discipline and counsel inmates such as himself, defendant unknowingly took on the burden of being a guarantor of any loans made to Odessa L. Stanley. Plaintiff did not submit any copies of any written loan agreements between him and Odessa L. Stanley.

CONCLUSIONS OF LAW

{¶5} Plaintiff has not provided any evidence other than his own assertions to establish his purchase of boots, shoes, a watch, and a ring for Odessa L. Stanley constituted loan agreements. No evidence of a written loan agreement was produced. No evidence other than plaintiff’s assertion was presented to indicate plaintiff and Odessa L. Stanley entered into an oral agreement for a loan. No terms or conditions regarding a loan agreement were submitted.

{¶6} Accordingly, no evidence exists to establish defendant made any promise to pay plaintiff any part or portion of any debt obligation of Odessa L. Stanley. Plaintiff

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has failed to produce any evidence to establish defendant is a guarantor of any loan agreement Odessa L. Stanley may have entered into with plaintiff. In order for plaintiff to prove defendant liable for the loan debt of Odessa L. Stanley, plaintiff must produce evidence that defendant made a written promise to assume financial responsibility for the characterized debt. See *McCollister v. Arnold* (Dec. 30, 1980), Franklin App. No. 80AP-625. The determination of whether or not a promise was made to guarantee a loan is reserved as a question of fact. See *Mentor Lumber & Supply Co. v. Victor* (Dec. 31, 1990), Lake App. No. 89-L-14-103. The facts of the instant claim do not support the argument that defendant is somehow responsible to assume a debt of its employee. Therefore, plaintiff's action against defendant is denied.



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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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