

IN THE COUNTY COURT OF THE 15 JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY
FLORIDA

CASE # 502008CC005285 SBRD

LVNV FUNDING, LLC,
assignee of Bank of America

v.

JULES R. SHECTER

**ORDER ON DEFENDANT/COUNTER-PLAINTIFF, JULES R. SHECTER'S MOTION
FOR SUMMARY JUDGMENT AND MOTION TO STRIKE PLAINTIFF'S PLEADINGS
AND FOR ATTORNEY'S FEES AND COSTS**

THIS CAUSE came before the court on May 28, 2009, based upon the Defendant/Counter-Plaintiff's Motion for Summary Judgment, Motion to Strike Plaintiff's Pleadings, and Motion for Attorney's Fees and Costs. The plaintiff is represented by Richard A. Russell of Mann Bracken, LLC., and the Defendant/Counter-Plaintiff by Angelo Marino, Jr. Based on the arguments of counsel, the pleadings, and motions, the Court finds as follows:

The plaintiff alleged that it was an assignee of a credit card debt and that Defendant owed plaintiff money due on a Visa credit card. Based on the alleged credit card, plaintiff alleged two theories against Defendant/Counter-Plaintiff: money lent and unjust enrichment.

The Defendant filed a counterclaim against the Plaintiff for violation of Florida statutes 559.715, 559.72, 559.72(9), 501.204, and 501.2105 as well as for violations of 15 USC 1692(E) and 15 USC 1692 (F) for filing suit for Unfair and Unlawful Trade Practices and Acts.

In response to plaintiff's complaint, Defendant/Counter-Plaintiff filed his Request for Admissions, Interrogatories to Plaintiff, and Request for Production on May 6, 2008. After three court orders granting plaintiff over 136 days to answer Defendant's discovery requests, plaintiff was in violation of the Court's orders. Defendant/Counter-Plaintiff moved for Summary Judgment on numerous grounds: failure to demonstrate an assignment from Bank of America or any other successor in interest, violations of Florida statute 559.715, violations of one or more acts of Florida Statute 559.72, and failure to any ability to prove plaintiff's case.

A creditor seeking to recover on an obligation has the burden of proof to show that it has the right to seek collection on the debt because it owns the consumer's obligation or State law gives it the right to sue on behalf of the owner, **Great Seneca Fin. Corp. V. Leanna**, 2006 WL 2536275 (Conn. Super. Ct. August 2006); **C & W Asset Acquisition, LLC v. Somogyi**, 136 S.W. 3d 134 (Mo. Ct. App. 2004); **Citibank (SD) v. Martin**, 807 N.Y.S. 2d 284 Civ. Ct. 2005).

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Case law clearly demonstrates that a collector must show a continuous, unbroken chain of assignments from the original creditor to the entity collecting on the debt. **In re Leverette**, 378 B.R. 793 (E.D. Tex 2007); **Wright v. Asset Acceptance Corp.**, 2000 WL 33216031 (S.D.) Ohio Jan 3, 2000); **in re Kendall**, 380 B.R. 37 Bankr. N.D. Okla. 2007); **Rushmore Recovers X, LLC v. Skolnick**, 847 N.Y.S. 2d 823 (Dist Ct. 2007); and **National Check Bureau, Inc. v. Cody**, 2007 WL 175762 (Ohio Ct App. Jan 27, 2005).

An earlier debt buyer can assign to the current collector only the rights it itself acquired from its assignor, **Wright v. Asset Acceptance Corp.**, 2000 WL 33216031 (S.D.) Ohio Jan 3, 2000); **Rushmore Recovers X, LLC v. Skolnick**, 847 N.Y.S. 2d 823 (Dist Ct. 2007).

Nevertheless, there is no evidence that Bank of America and/or Visa had any relationship in the record, that Bank of America and/or Visa sold Defendant's debt to plaintiff and/or plaintiff's predecessor. There is no evidence of a chain of title never mind a continuous chain of title. There is no evidence that Defendant's alleged debt was part of the sale since there are no documents with these alleged assignments that mention Defendant's debt. There is no evidence Defendant's alleged debt was ever part of any alleged sale, never mid the fact that there is no continuous evidence of title of any debt. Plaintiff has admitted all of the Requests for Admissions for failure to respond to them in over a year as well as other discovery.

Therefore, based on the above reasons and findings of fact:

It is ORDERED AND ADJUDGED that:

Defendant's Motion for Summary Judgment as to all of Plaintiff's claims is granted and Plaintiff shall take nothing from this action.

DONE AND ORDERED this 5 day of June, 2009, in
Broward County, Florida.

DATE & SIGN

JUN 05 2009

JUDGE

JANIS BRUSTARES KEYSER

The Honorable Judge Janis Brustares Keyser

copies furnished:

Richard A. Russell, Esq.
(Attorney for plaintiff)

Angelo Marino, Jr., Esq.
(Attorney for Defendant/Counter-Plaintiff)