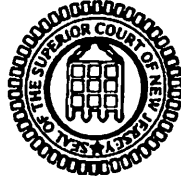


SUPERIOR COURT OF NEW JERSEY

CHARLES E. POWERS, JR.
JUDGE



BERGEN COUNTY JUSTICE CENTER
HACKENSACK, NJ 07601
(201) 527-2470

July 25, 2013

Steven A. Lang, Esq.
Pressler and Pressler, LLP
7 Entin Road
Parsippany, New Jersey 07054

Philip D. Stern, Esq.
697 Valley Street, Suite 2D
Maplewood, New Jersey 07040

Re: Midland Funding LLC v. Eric Berry (BER-DC-26845-12)

Dear Counsel:

Enclosed please find the opinion of the Court for the bench trial that was held in the above referenced matter.

Very truly yours,


CHARLES E. POWERS, JR., J.S.C.

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

	:	SUPERIOR COURT OF NEW JERSEY
MIDLAND FUNDING, LLC	:	LAW DIVISION : BERGEN COUNTY
	:	DOCKET NO. BER-DC-26845-12
Plaintiffs,	:	
	:	<u>OPINION</u>
vs.	:	
	:	
ERIC BERRY	:	Decided: July 25, 2013
	:	
	:	
Defendant	:	Honorable Charles E. Powers, Jr., J.S.C.

I. SUMMARY

This case involves the attempted collection of a debt. Plaintiff, a purchaser of a bad debt, alleges that it purchased a GE Money account previously issued to the Defendant, Eric Berry. Plaintiff asserts that the GE Money account was assigned by its parent company GE Capital Corp, to Hilco Receivables, LLC, who on December 31, 2009 merged with Equable Ascent Financial LLC. Plaintiff asserts that on May 14, 2012, Equable Ascent Financial, LLC assigned the Defendant's account to Plaintiff, Midland Funding.

Defendant argues that there was no evidence presented at trial that Defendant has standing to collect on the alleged debt. Furthermore, Defendant contends that the individual, Mycah Strunk, "Senior Legal Specialist and Custodian of Records" for Plaintiff, could not properly authenticate

the records submitted to prove the assignment of the Defendant's account pursuant to N.J.R.E. 803(c)(6).

II. Legal Analysis

a. Assignment of Rights

In order to prove a valid assignment of rights, one must show, "... clear evidence of the intent to transfer the person's rights and the subject matter of the assignment must be described sufficiently to make it capable of being readily identified. To be effective, the assignment must be clear and unequivocal and must be noticed to the obligor." Tirgan v. Mega Life and Health Ins., 304 N.J. Super. 385, 390 (1997) (internal citations omitted).

In this case, Plaintiff sought to use certain documents purported to be business records to prove the assignment of the Defendant's account to Plaintiff. To authenticate these records the Plaintiff sought to use the testimony of Mycah Struck. Mycah Struck is employed as the Plaintiff's "Senior Legal Specialist and Custodian of Records."

b. Proper authentication of a business record – N.J.R.E. 806(c)(6)

N.J.R.E. 806(c)(6) excepts from the hearsay rule:

(6) *Records of regularly conducted activity.* --A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy. N.J.R.E. 806(c)(6)

To qualify under the business record exception for the hearsay rule, the proponent of the evidence must show that the writings, "(1) are made in the regular course of business, (2) are prepared reasonably contemporaneously with the events they describe, and (3) no credible

challenge has been presented to their trustworthiness.” State v. Sweet, 195 N.J. 357, 371 (2008) (internal citation omitted).

While, a foundation witness need not have personal knowledge of the facts contained in the record, See Hahnemann University Hosp. v. Dudnick, 292 N.J. Super. 11, 17 (App.Div. 1996), a foundation witness’ position must render him “sufficiently familiar with the record system used.” Id. at 18.

In this case, the Plaintiff’s foundation witness lacked sufficient knowledge to authenticate either the essential assignment documents or the various predecessor assignor’s records. Mr. Struck could not testify that he was familiar with any of the Plaintiff’s predecessors record keeping practices. It is also the impression of the Court that Mr. Struck was not familiar with any of the Plaintiff’s assignment practices. While Mr. Struck need not have personal knowledge of the documents and the legal basis for assignment, the Court is not satisfied that Mr. Struck had sufficient knowledge of the system used by his employer or others in the chain of ownership to ensure the documents relied upon to prove the debt assignment or the alleged debt were trustworthy business records.

This case can be distinguished from Garden State Bank v. Graef, 341 N.J. Super 241 (App.Div. 2001). In that case the Court, under the hearsay exception for business records (N.J.R.E. 803(c)(6)), found that a Bank’s credit manager was qualified to authenticate electronic computer print outs regarding loan information because the witness was sufficiently familiar with the record system used by his employer, which enabled him to establish that it was the regular practice of his employer to make a record. Id. at 245. Here, while Mr. Struck testified that it was his job to be familiar with the records of his company, which included the documents related to the assignment of accounts, there was no proof from a prior assignor of how the

assignment records were collected, stored or maintained. The Court therefore finds that the Plaintiff has failed to established the proper foundation required under N.J.R.E. 803(c)(6)). As stated above, in order to show a proper assignment, there must be clear evidence of an intent to transfer. Without the requisite documentation, which the Plaintiff failed to properly introduce into evidence, the Plaintiff's claim must fail.

b. Introduction of the Federal Trade Commission Report

The Court need not consider the Federal Trade Commission Report or take judicial notice thereof as it does not constitute facts.

III. Conclusion

For the aforementioned reasons this Court hereby dismisses the Plaintiff's claims with prejudice. The Court is not satisfied that Plaintiff has shown that it has standing to sue via a valid assignment and has failed to provide this Court with valid business records substantiating such an alleged assignment. The Defendant shall submit an Order for judgment in accordance with this opinion.