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7 **IN THE JUSTICE COURT OF MOHAVE COUNTY**
8 **STATE OF ARIZONA**

9 MIDLAND FUNDING LLC,)

10 Plaintiff)

11 v.)

12 Christine Baker,)

13 Defendant.)

CV 2012 - 1251

DEFENDANT'S RESPONSE IN
OPPOSITION TO PLAINTIFF
MIDLAND FUNDING LLC'S MOTION
FOR SUMMARY JUDGMENT
CROSS MOTION FOR SUMMARY
JUDGMENT

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17 I am the defendant Christine Baker and I hereby submit my Response opposing
18 plaintiff Midland Funding LLC's ("Midland") Motion for Summary Judgment filed on
19 November 23, 2012 and my Cross Motion for Summary Judgment. This Motion is
20 supported by my Memorandum of Points and Authorities, Affidavit, Exhibits, Separate
21 Controverting Statement of Facts and Motion to Strike Midland's Exhibits, all of which
22 are incorporated herein by reference.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. Issues**

25 Midland claims to be the successor-in-interest to a charged off HSBC credit card.
26 However, it does not have standing as it failed to prove that it actually owns the alleged
27 debt. Midland also failed to provide admissible evidence to document the amount
28 allegedly owed and the collection of the alleged debt is time barred.

1 **II. Standard of Review**

2 In a contract case, the burden of proof rests solely on the plaintiff. *Yeazell v.*
3 *Copins*, 98 Ariz. 109, 116, 402 P.2d 541, 546 (1965). A plaintiff's motion for summary
4 judgment does not operate to shift that burden of proof. Put differently, the mere absence
5 of a genuine dispute of material fact does not automatically entitle a plaintiff to judgment
6 — the plaintiff must also demonstrate that the evidence entitles it to judgment as a matter
7 of law. Ariz. R. Civ. P. 56(c).

8 Under Rule 56(c), it is the party moving for summary judgment who bears the
9 "burden of persuasion." *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 115, ¶ 15, 180
10 P.3d 977, 980 (App. 2008). This burden of persuasion never shifts to the non-moving
11 party. *Id.* The moving party's burden is a "heavy" one: all reasonable inferences from the
12 evidence are made in the non-moving party's favor. *Id.* at 116, ¶ 17, 180 P.3d at 981.

13 To carry its burden of persuasion, a plaintiff who seeks summary judgment must
14 submit "undisputed admissible evidence that would compel any reasonable juror to find
15 in its favor on every element of its claim." *Mahmoodi*, 224 Ariz. at 293, ¶ 20, 229 P.3d at
16 1035.

17 **III. Midland Does Not Have Standing And It Has No Admissible Evidence**
18 **to Support its Claim.**

19 As described in detail in my Motion to Strike Midland's Exhibits filed
20 concurrently herewith, Midland's Exhibits are not admissible:
21

22 Exh. 1: HCBC Mastercard Statement

23 Exh. 2: Affidavit of Carina Bowman and attachments

24 Exh. 3: 1/2003 Household Bank Generic Cardmember Agreement

25 Attached to the Bowman Affidavit (but not referenced), is a Bill of Sale from
26 HSBC to Midland. Even if this Bill of Sale was admissible, it is still lacking vital data
27 required to establish that Midland is the rightful owner of the alleged debt. [DSOF 1]
28

1 The Arizona Supreme Court affirmed the granting of summary judgment for the
2 defendants in *Certified Collectors, Inc. v. Lesnick*, 116 Ariz. 601, 602, 570 P.2d 769, 770
3 (1977):

4 ... We now turn to the purported assignment in this case which is the crux
5 of plaintiff's claim for recovery. We note that plaintiff has continually
6 characterized itself as an "assignee" throughout this litigation and that this
7 conclusion is apparently based on a document in the record entitled
8 "Assignment." This exhibit indicates that on May 21, 1973 one Louis Sierra
9 4 signed an assignment form with Certified Collectors, Inc. This form
10 contains only a recitation of the consideration involved, and the seal of a
11 California notary public. The crucial information necessary here, namely
12 Sierra's identity and the capacity in which he made this agreement, his
13 relation (if any) to the Emerson Television Sales Corporation and any
14 identification of what debt this purported assignment related to are all
15 absent. Moreover, there are no additional facts in the record which would
16 even suggest an answer to the lack of information in this-at best-cryptic
17 form "assignment." 5

18 We therefore hold that the basic elements of a legal assignment are so
19 lacking in this case that we can find no basis in the record on which to
20 conclude that Certified Collectors, Inc. has any right to bring an action on
21 this claim as the real party in interest. 6 ...

22 Just as in *Certified Collectors*, the unauthenticated HSBC Bill of Sale does not
23 contain ANY of the "crucial information necessary", it does not contain ANY reference
24 to me or to the alleged debt and it is not notarized and does not even contain the
25 consideration involved. Any HSBC employee or contractor could use the
26 unauthenticated account documentation to sell charged off accounts without
27 authorization and to multiple buyers. [DSOF 2]. *Certified Collectors* establishes that
28 Midland does NOT have a valid assignment and it therefore does not have standing.

**Even if Midland had standing, it failed to provide admissible evidence to
establish the amount allegedly owed.**

Even if Midland Credit Management ("MCM") Legal Specialist Carina Bowman
was a competent witness and the exhibits were admissible, the documents are insufficient

1 to establish the truth of Midland's arguments as the amount allegedly owed differs.
2 [DSOF 3] Ms. Bowman claims in her Affidavit that the amount owed is \$2,853.96 and
3 while I can not decipher the "new balance" on Exhibit 1, the HSBC statement, it is
4 definitely not \$2,853.96. Exhibit 3, the 2003 "Household" Agreement clearly is not
5 related to the alleged "HSBC" debt, allegedly opened in 2006.

6 Midland submitted no admissible documents to establish the amount allegedly
7 owed. [DSOF 3]

8 **IV. Midland's Claim Is Time Barred.**

9 The Arizona legislature changed the statute of limitations for credit cards from 3
10 to 6 years in 2011. The new law became effective on 7/20/11. [DSOF 4] Therefore, the
11 3-year statute of limitations applies to the alleged debt as it was not subject to a written
12 agreement [DSOF 5] and all my credit card accounts were "open" accounts:

13 **ARS 12-543 Oral debt; stated or open account; relief on ground of** 14 **fraud or mistake; three year limitation**

15 There shall be commenced and prosecuted within three years after the cause
16 of action accrues, and not afterward, the following actions:

17 **1. For debt where the indebtedness is not evidenced by a contract in** 18 **writing.**

19 2. Upon stated or open accounts other than such mutual and current
20 accounts as concern the trade of merchandise between merchant and
21 merchant, their factors or agents, **but no item of a stated or open account**
22 **shall be barred so long as any item thereof has been incurred within**
23 **three years immediately prior to the bringing of an action thereon.**
[emphasis added]

24 I have not used any credit card that I later defaulted on after June 2008 [Affidavit
25 ¶2, DSOF 6]. Midland filed the complaint on June 11, 2012. [DSOF 7]

26 Pursuant to ARS 12-505, an action barred by pre-existing law is not revived by
27 amendment of the law:

1 **VI. The Burden of Proof Is On Midland.**

2 Midland claims that I as the defendant have to prove that I owe nothing to
3 Midland and this is absolutely ridiculous and wishful thinking on Midland's part, as
4 explained in detail above in the Standard for Review.

5 Midland pointed out that I had not submitted my Rule 26.1 Disclosures. I thought
6 that I provided my initial disclosures with my answer and discovery requests, but
7 apparently did not and I therefore submitted my initial disclosures today. However, I
8 have no documents to prove that I owe NOTHING to Midland. The documents provided
9 with my initial disclosures pertain to my counterclaims which I hope to be able to pursue
10 as I am still awaiting the Court's ruling on my Request for Leave to Amend. With respect
11 to Midland's claim, my initial disclosures reiterate my answer and affirmative defenses.
12 It is up to Midland to establish that it owns the alleged debt and to prove how much I
13 owe.

14
15 **VII. Conclusion**

16 Midland failed to establish its entitlement to judgment as a matter of law, it has no
17 admissible evidence to prove that it has standing and to document the alleged debt.
18 Additionally, the collection of the alleged debt is time barred. Consequently, the Midland
19 Motion for Summary Judgment has to be denied.

20
21 **CROSS MOTION FOR SUMMARY JUDGMENT**

22 I move for Summary Judgment pursuant to Rule 56 as Midland has no admissible
23 evidence to establish that it has standing and to document the alleged debt. Additionally,
24 the collection of the alleged debt is time barred. This Motion is supported by my
25 Memorandum of Points and Authorities, Response to the Midland Motion for Summary
26 Judgment, Affidavit, Exhibits, Separate Controverting Statement of Facts and Motion to
27 Strike Midland's Exhibits, all of which are incorporated herein by reference.
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Standard of Review**

3 The party moving for summary judgment always bears the initial burden of
4 informing the Court of the basis for its motion and identifying those portions of the
5 record that it believes demonstrate the absence of a genuine issue of material fact.
6 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A court shall grant summary
7 judgment when "there is no genuine issue as to any material fact and the moving party is
8 entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(c). Summary judgment
9 should be granted, "if the facts produced in support of the claim or defense have so little
10 probative value, given the quantum of evidence required, that reasonable people could
11 not agree with the conclusion advanced by the proponent of the claim or defense." *Orme*
12 *Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

13
14 The Supreme Court held that a party moving for summary judgment need merely
15 point out by specific reference to the relevant discovery that no evidence existed to
16 support an essential element of the claim. Conclusory statements will not suffice, but the
17 movant need not affirmatively establish the negative of the element. *Celotex*, 477 U.S. at
18 328, 106 S.Ct. at 2555 (White, J., concurring). If the party with the burden of proof on the
19 claim or defense cannot respond to the motion by showing that there is evidence creating
20 a genuine issue of fact on the element in question, then the motion for summary judgment
21 should be granted.

22 **II. Midland Can Not Prevail at Trial as it Has No Admissible Evidence and its**
23 **Claim is Time Barred.**

24 As discussed in detail in my Motion to Strike the Midland Exhibits and in my
25 Response to the Midland Motion for Summary Judgment, Midland failed to provide
26 admissible evidence to prove that it owns the alleged debt and to establish the amount of
27 the alleged debt.
28

1 On 7/13/12 I submitted my discovery requests to Midland and over three months
2 later I received the Midland Responses dated 10/17/12, attached hereto as Exhibits C - E,
3 my Requests of Admission, Interrogatories and Requests for Production of Documents.
4 Midland objected to my requests, failed to provide meaningful responses interrogatories
5 and requests for documents and referred to its Initial Disclosures, attached hereto as
6 Exhibit F. The documents provided with the Midland Initial Disclosures are the Exhibits
7 it submitted with its Motion for Summary Judgment.

8 The Supreme Court held that a party moving for summary judgment need merely
9 point out by specific reference to the relevant discovery that no evidence existed to
10 support an essential element of the claim. Conclusory statements will not suffice, but the
11 movant need not affirmatively establish the negative of the element. *Celotex*, 477 U.S. at
12 328, 106 S.Ct. at 2555 (White, J., concurring). If the party with the burden of proof on the
13 claim or defense cannot respond to the motion by showing that there is evidence creating
14 a genuine issue of fact on the element in question, then the motion for summary judgment
15 should be granted.

16 Midland supplemented its Initial Disclosures on 10/18/12 with the unauthenticated
17 alleged HSBC credit card statement (Exhibit F). Midland failed to produce any
18 additional documents as demanded in my Requests for Production of Documents and
19 presumably Midland submitted its most convincing documents with its Motion for
20 Summary Judgment.

21 My Requests for Admission [Exhibit C] are deemed admitted pursuant to Rule
22 36(a):

23 **Rule 36(a). Request for Admission**

24 ... The matter is admitted unless, within (40) days after service of the
25 request, or, in the case of a defendant, within 60 days after service of the
26 summons and complaint upon that defendant, or execution of a waiver of
27 service by that defendant, or within such shorter or longer time as the court
28 may allow, the party to whom the request is directed serves upon the party
requesting the admission a written answer or objection addressed to the
matter, signed by the party or by the party's attorney. ... [emphasis added]

1 From Midland's late 10/17/12 responses.

2 10. Plaintiff admits that it has no written agreement signed by me for the
3 alleged debt.

4 **Admit**

5
6 11. Plaintiff admits that prior to the 2011 amendment of A.R.S. 12-548 the
7 Arizona statute of limitations for open accounts without written agreements
8 was 3 years.

9 **Objection, Plaintiff objects to the request as a legal conclusion**
10 **and seeking information that is not relevant. Notwithstanding,**
11 **and subject to the objection, Plaintiff admits.**

12 Midland admits that it has no written agreement signed by me for the alleged debt
13 and I already established that its Exhibit 1, the 2003 HOUSEHOLD Agreement does not
14 pertain to the alleged 2006 HSBC debt. I know that I have not used any of my charged
15 off credit cards after June 2008 [Affidavit ¶ 2, DSOF 6] and therefore the 3-year statute
16 of limitation was expired when the new 6-year statute of limitations for credit cards
17 became effective on July 20, 2011 and when Midland filed suit on June 11, 2012.

18 As explained in *DSS Financial v. Deborah Walrod*, Exhibit A and in *LVNV*
19 *Funding v Leslie Thompson*, Exhibit B, credit card debts are time barred when the last
20 charge occurred over 3 years prior to the filing of the lawsuit.

21 Clearly, Midland can not document the alleged debt and its claim is time barred.


22 **III. Conclusion**

23 Midland has failed to provide any relevant admissible evidence with its Initial
24 Disclosures and Discovery Responses, it failed to provide a written agreement between
25 me and HSBC and all documentation before the Court substantiates that the collection of
26 the alleged debt is time barred. .

27 I respectfully request that the Court deny Midland's Motion for Summary
28 Judgment and grant my Cross Motion for Summary Judgment.

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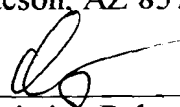
Respectfully submitted this 31st day of December, 2012.



Christine Baker
Defendant Pro Se

Copy emailed on 12/31/12 to:

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Christine Baker