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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 MOTION TO STRIKE  
PLAINTIFF MIDLAND FUNDING  
LLC'S AFFIDAVIT AND EXHIBITS  
SUBMITTED IN SUPPORT OF ITS  
MOTION FOR  
SUMMARY JUDGMENT

16  
17 I am the defendant Christine Baker and I hereby submit my Motion to Strike  
18 plaintiff Midland Funding LLC's ("Midland") Exhibits 1 – 3 submitted with Midland's  
19 Motion for Summary Judgment.

20 Exh. 1: HCBC Mastercard Statement

21 Exh. 2: Affidavit of Carina Bowman and attachments

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

23 Exhibits 1 and 3 and the attachments to the Bowman Affidavit are not  
24 authenticated, they constitute hearsay and are therefore inadmissible. MCM employee  
25 Bowman is not qualified to lay foundation for records allegedly prepared by HSBC and  
26 the records prepared by MCM have been based on unauthenticated HSBC documents and  
27 therefore do not constitute proof of the alleged debt.  
28



1 1/31/09. Apparently Ms. Bowman drew conclusions based on records created by MCM  
2 and it is undisputed that Midland and MCM did not extend credit to me.

3 **While several documents are attached to Ms. Bowman's affidavit, they are**  
4 **not referenced in the affidavit and they are therefore inadmissible.**

5 One of the attachments to the Bowman affidavit is a HSBC "Bill of Sale" that does  
6 NOT contain any reference to my name or account. However, it references an "Exhibit  
7 A" which is conspicuously ABSENT. Several additional attachments are statements  
8 apparently prepared by MCM and NOT by HSBC and are therefore irrelevant even if  
9 they were properly authenticated as they are based on unauthenticated HSBC records.

10 The purpose of a custodian's affidavit is to authenticate evidence — such an  
11 affidavit is of little value when it does not attach the evidence at issue. And to the extent  
12 that Ms. Bowman's role was intended to be akin to that of a fact witness or expert  
13 witness, the only personal knowledge she could have offered (as required by Ariz. R. Civ.  
14 P. 56(e)) would necessarily have been based on her review and analysis of documents.  
15 Ms. Bowman never claimed to have reviewed any specific documents or to know the  
16 manner in which they were prepared and kept. Her affidavit, therefore, was sufficient  
17 neither to invoke the business-records exception nor to support the motion for summary  
18 judgment. *See Villas at Hidden Lakes Condos. Ass'n v. Geupel Constr. Co.*, 174 Ariz. 72,  
19 82, 847 P.2d 117, 127 (App. 1992).

20 In *Am. Express Travel Related Servs v. Vinhnee*, 336 B.R. 437 (B.A.P. 9th Cir  
21 2005), American Express called a witness who identified himself as the custodian of  
22 records for the monthly statements and laid the foundation for the records under the  
23 traditional 803(6) method. The court was not satisfied with the witness' knowledge of the  
24 hardware and software used to produce and store the information, and refused to admit  
25 the records into evidence, even after American Express was afforded the opportunity to  
26 make a post-trial supplementary submission.  
27  
28

1           The United States Bankruptcy Appellate Panel of the Ninth Circuit upheld the  
2 exclusion of the records and further articulated the necessity of laying a careful and  
3 detailed foundation for computer records: “The paperless electronic record involves a  
4 difference in the format of the record that presents more complicated variations on the  
5 authentication problem than for paper records. The court specifically noted that the  
6 complexity of “ever-developing computer technology” requires careful attention to  
7 ensure that the document offered in court is the same record that was originally created  
8 on the computer. Technological processes such as those that allow one to alter the text of  
9 documents, the court explained, necessitate the need for a new, more in-depth foundation.

10           The *Vinhnee* court seemed most concerned with the witness’ knowledge of  
11 specifics regarding accuracy, security, and the potential for data error or loss. “There is  
12 no information regarding American Express’ computer policy and system control  
13 procedures, including control of access to pertinent databases, control of access to  
14 pertinent programs, recording and logging of changes to the data, backup practices, and  
15 audit procedures utilized to assure the continuing integrity of the records.”

16           The purpose of a custodian's affidavit is to authenticate evidence — such an  
17 affidavit is of little value when it does not attach the evidence at issue. And to the extent  
18 that the paralegal's role was intended to be akin to that of a fact witness or expert witness,  
19 the only personal knowledge he could have offered (as required by Ariz. R. Civ. P. 56(e))  
20 would necessarily have been based on his review and analysis of documents. But the  
21 paralegal never claimed to have reviewed any specific documents or to know the manner  
22 in which they were prepared and kept. His affidavit, therefore, was sufficient neither to  
23 invoke the business-records exception nor to support the motion for summary judgment.  
24 *See Villas at Hidden Lakes Condos. Ass'n v. Geupel Constr. Co.*, 174 Ariz. 72, 82, 847  
25 P.2d 117, 127 (App. 1992).


26           Midland failed to provide ANY information regarding the HSBC policies and  
27 controls, it failed to authenticate its Exhibits and the Bowman Affidavit is based entirely  
28 on conclusions drawn after reviewing unidentified documents and inadmissible Exhibits.

1 Ms. Bowman has no personal knowledge about the alleged debt and her Affidavit  
2 Exhibit 2, its unreferenced attachments and the unauthenticated Exhibits 1 and 3 must  
3 therefore be stricken.

4 **CONCLUSION**

5 For the foregoing reasons, I request that the Court strike Exhibits 1, 2 and 3  
6 submitted by Midland in support of its Motion for Summary Judgment.

7 Respectfully submitted this 31st day of December, 2012.

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9 \_\_\_\_\_  
10 Christine Baker  
11 Defendant Pro Se

12 Copy emailed on 12/31/12 to:

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17 \_\_\_\_\_  
18 Christine Baker