

IN THE DISTRICT COURT OF MARYLAND FOR WASHINGTON COUNTY

MIDLAND FUNDING, LLC,  
Plaintiff,

VS.

Case No. 11-02-0002349-2012

RICKY SNOW,  
Defendant.

**OPINION AND ORDER**

This is a debt-collection case in which the Plaintiff, Midland Funding LLC, as assignee of Chase Bank USA, NA, has filed suit against the Defendant, Ricky Snow, seeking a judgment based on an assignment of a credit card debt from JP Morgan Chase Bank to the Plaintiff. Defendant filed a timely notice to defend.

Two main issues are presented by the Defendant: whether the documentation in connection with the debt at issue can be admitted pursuant to the business records exception through the Plaintiff's custodian of records, and, if the supporting documents are found to be admissible, whether they are sufficiently reliable to establish the validity and amount of the debt.

Although the issue of whether a custodian of records of an assignee can qualify the records of an assignor appears to be unsettled among most jurisdictions, at least one of the Circuit Courts in District Eleven has found such practice to be permissible provided the Plaintiff's custodian of records is present to testify. Such has also historically been the practice of this Court, which has not required the custodian of records of predecessors in interest to also be present to testify if the custodian of records of the ultimate assignee is present. In this case, the Plaintiff's custodian of records was present to so testify.

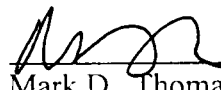

Nevertheless, this Court has also recognized that if there is a legitimate objection to the reliability of such records as received by the ultimate assignee, or if the Defendant presents evidence calling into serious question the original indebtedness or the amount thereof, the ultimate assignee is in no position to address or be cross-examined regarding such objections, having no actual first-hand knowledge of the record-keeping practices of its predecessor(s) in interest. Historically, this Court has addressed such issues by considering what weight to give such records which were received by the Plaintiff, without automatically excluding them from evidence.

In this particular case, at trial the Defendant provided the Court with a copy of a Consent Order entered into on September 18, 2013 between the Office of the Comptroller of the Currency ("OCC") and JPMorgan Chase Bank and its subsidiaries ("Chase") (the "Consent Order"). The Consent Order outlines numerous unsound practices carried out by Chase in connection with the

Bank's sworn documents and collections litigation practices. Specifically and most pertinent to this matter are the OCC's findings that Chase was filing inaccurate sworn documents, improperly notarized affidavits and affidavits not based on personal knowledge in connection with, among other things, credit card debt collection. The OCC also concluded that Chase failed to devote sufficient financial, staffing, and managerial resources to ensure proper administration of its Collections Litigation Department. As a result of the OCC's findings, Chase was fined and ordered to take a number of corrective measures that include ensuring compliance with the FTC Act, ensuring compliance with both State and Federal Debt Collection Laws, improving governance of third-party vendors associated with certain consumer products, developing an enterprise-wide risk management program for such consumer products marketed or sold by the bank or its vendors, and improving its consumer compliance internal audit program. Chase also received fines in excess of \$300 million in connection with other violations not wholly unrelated to the debt collection shortfalls outlined above.

Taking all of this into account in the present case, this Court finds that the documentation supporting the debt acquired by Plaintiff from Chase is insufficiently reliable in and of itself to enable the Plaintiff to meet its burden of proof, and judgment is therefore entered in favor of the Defendant.

12/18/13

  
Mark D. Thomas 

cc: counsel