

MIDLAND FUNDING, LLC,

Plaintiff,

v.

JOHN NOLE, ETC.,

Defendant.

County Court, 12th Judicial Circuit in and for Manatee
County.

Case No. 2016-SC-319.

May 26, 2016.

Charles Sniffen, Judge.

Counsel: Stacey-Ann Saint-Hubert, Midland Funding, LLC,
Tampa, for Plaintiff. Arthur Rubin, We Protect Consumers,
P.A., Tampa, for Defendant.

FINAL JUDGMENT FOR DEFENDANT

THIS CAUSE came before the Court for final hearing on May 26, 2016 on Plaintiffs' statement of claim seeking money damages, and the Court having reviewed the file, taken testimony and received evidence, and being otherwise fully advised, the Court finds as follows:

1. Attorney Stacey Saint-Hubert appeared for Plaintiff. Attorney Arthur Rubin appeared for Defendant. The Court commends both attorneys on their preparedness and professionalism.

2. Plaintiff presented the sworn testimony of Emily Walker, who appeared by phone. Ms. Walker is a senior legal specialist and records custodian for Midland Credit Management ("MCM"), which is a debt-servicing entity affiliated with the Plaintiff. The Court finds that Ms. Walker's testimony was credible. Ms. Walker testified

about the methods and processes employed by Plaintiff when verifying debt that has been purchased from an outside creditor. However, Ms. Walker was unable to testify whether MCM's policies were specifically implemented with regard to the account that is the subject of this action. Plaintiff urged that the Court conclude that these routine practices were followed as contemplated by Section 90.406, Florida Statutes.

3. Plaintiff offered three composite exhibits in evidence: Exhibit 1 is a collection of credit card statements generated by the original creditor that are addressed to the Defendant; Exhibit 2 are documents that are alleged to be related to the Plaintiff's purchase of the debt that is the subject of this action; and Exhibit 3 is a series of letters addressed to the Defendant.

4. For the admissibility of the original creditor's business records, Plaintiff relies on *Sas v. Federal Nat'l Mortgage Assoc.*, 165 So.3d 849 (Fla. 2d DCA 2015) [40 Fla. L. Weekly D1361a] citing *WAMCO xxviii Ltd. V. Integrated Electronic Environments, Inc.*, 903 So.2d 230 (Fla. 2d DCA 2005) [30 Fla. L. Weekly D957a] and *Bank of N.Y. v. Calloway*, 157 So.3d 1064 (Fla. 4 DCA 2015) [40 Fla. L. Weekly D173b]. The Court finds that this case is distinguishable from *Sas* and *WAMCO* because the witness testified that MCM did not receive any ledger, account history or payment history from its predecessor. Thus the Court concludes from the evidence presented that MCM could not have completed any independent verification of the accuracy of the credit card statements provided. Moreover, Ms. Walker acknowledged that MCM does not have a copy of the Defendant's cardholder agreement, and therefore was unable to testify regarding the basis for any interest, late fees or other charges appearing on the credit card statements. For the foregoing reasons, the Court sustained Defendant's objection as to the admissibility of Exhibit 1 and it was excluded.

5. Exhibit 2 was likewise excluded. Several of the documents were redacted. Ms. Walker acknowledged that

the documents were not redacted at the time they were received from the original creditor. Among the information excluded was identifying information that would have connected the documents to the debt that is the subject of this action; without this information, the Court cannot find that the documents are relevant. Moreover, Defendant objects because the Bill of Sale makes reference to a "Purchase and Sale Agreement" that was not attached or otherwise presented to the Court. For the foregoing reasons the Court sustained Defendant's objections as to the admissibility of Exhibit 2, and it was excluded.

6. Plaintiff's Exhibit 3 was admitted.

7. Because Exhibits 1 and 2 were excluded, Plaintiff was unable to establish a prima facie case of account stated. The Court further notes that Ms. Walker testified that the letters in Exhibit 3 were sent by a third-party vendor and not by MCM; thus there was no admissible evidence from which the Court could conclude that the letters in Exhibit 3 had actually been sent to Defendant. Finally, Ms. Walker's testimony was insufficient to establish that the Defendant failed to object to any statements received.

In light of the foregoing, it is hereby ORDERED AND ADJUDGED as follows:

On the Plaintiff's claim Judgment is hereby entered in favor of Defendant, and against the Plaintiff, and the Plaintiff shall take nothing by this action and go hence without day.

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