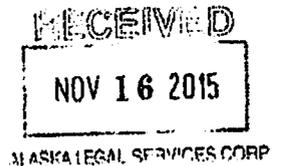


IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU



MIDLAND FUNDING LLC, Plaintiffs, v. JENNIFER HARTSOCK, Defendant.	FILED IN CHAMBERS STATE OF ALASKA FIRST JUDICIAL DISTRICT AT JUNEAU BY: GLB ON: <u>11/9/2015</u>
	Case No. IJU-14-1003 CI

ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANT

I. INTRODUCTION

On May 26, 2015, the Defendant Jennifer Hartsock ("Ms. Hartsock") filed a motion for summary judgment in the above-captioned matter. On June 12, 2015, Midland Funding LLC ("Midland") responded by filing a Rule 56(f) motion to hold summary judgment in abeyance until discovery is completed. Both parties subsequently filed cross-motions to compel discovery.

Ms. Hartsock argues there are no genuine issues of material fact and that she is entitled to judgment as a matter of law. She contends that Midland is unable to prove it owns the debt in question, and thus lacks the standing to sue. This conclusion would resolve this case and moot all other outstanding motions. Midland counters that issues of material fact remain, and argues that this Court should grant a Rule 56(f) motion to hold Ms. Hartsock's motion for summary judgment in abeyance until it can complete discovery. It contends that further discovery may lead to evidence demonstrating its ownership of Midland's debt. For the following reasons, the Court grants Ms. Hartsock's motion for summary judgment.

II. FACTS AND PROCEDURAL HISTORY

Midland is a debt-buying company that purchases unpaid debt from various creditors, often credit card companies.¹ Debt-buying companies typically buy the debts in bulk, without many of the supporting underlying documents originally issued by the initial creditor. The debt-buying company then pursues the unpaid debts independently. This process has been succinctly summarized by the 6th Circuit Court of Appeals:

To recoup a portion of its lost investment, an originating lender may sell a charged-off consumer loan to a Debt Buyer, usually as part of a portfolio of delinquent consumer loans, for a fraction of the total amount owed to the originating lender. Once a Debt Buyer has purchased a portfolio of defaulted consumer loans, it may engage in collection efforts (or hire a third-party to do so), which may include locating borrowers, determining whether borrowers are in bankruptcy, commencing legal proceedings, or “otherwise encouraging” payment of all or a portion of the delinquency.²

This case commenced on December 17, 2014, when Midland filed suit against Ms. Hartssock for \$1,229.94 in credit card debt it purports to own. Midland claims it came to own this debt through a convoluted path among numerous debt buying companies. According to Midland, the debt was initially sold by Ms. Hartssock’s bank (CIT Bank) to WebBank on November 13, 2009. It was then assigned from WebBank to Dell Financial Services, LLC on March 19, 2013. On March 27, 2013 the account was assigned from Dell to Asset Acceptance, LLC. Finally, on August 8, 2013, Midland claims it accepted the account from Asset Acceptance.³

¹ See Midland Funding, Frequently Asked Questions, at <https://www.midlandfunding.com/faqs/> (visited Oct. 20, 2015).

² ~~Stratton v. Portfolio Recovery Associates, LLC, 770 F.3d 443, 445 (6th Cir. 2014) (internal citations omitted).~~

³ Affidavit of James J. Davis, Jr. in Support of Plaintiff’s Motion for Summary Judgment at Exhibit A, p.7 (Response to Interrogatory No. 6).

To support these facts, Midland has produced several affidavits and bills of sale purporting to show the transfer of Ms. Hartsock's credit card debt amongst the various debt buying agencies. However, except for the final bill of sale, none of these documents specifically describe Ms. Hartsock's debt in question—they simply provide that pooled groups of debts were transferred between said companies.

Ms. Hartsock filed her motion for summary judgment on May 26, 2015, arguing that because Midland has failed to produce any documentation that it actually owns her debt, it lacks standing to sue. Midland opposed the motion on June 12, 2015, contending that affidavits and bills of sales sufficiently established their ownership of the debt.

In addition, on June 12, 2015, Midland also filed a Rule 56(f) motion to hold the summary judgment motion in abeyance, arguing that additional discovery from Ms. Hartsock may lead to proof that it has ownership over the debt. Ms. Hartsock opposed this motion, contending that, even if discovery revealed she had credit card debt with her initial bank (CIT Bank), there is nothing she could produce that would demonstrate Midland had actually purchased the debt through a clear chain-of-title. She explained, "Any documents and information relevant to the question of standing are solely in Midland's possession and control, and there is no need for Midland to conduct any discovery on this issue."⁴

Following these motions, the parties turned to a discovery dispute to compel evidence. However, because of the conclusion in this order, those arguments are mooted and do not require analysis.

⁴ Defendant/Counter-Plaintiff's Partial Opposition to Motion Pursuant to Rule 56(f) to Hold Summary Judgment Motion in Abeyance, *Midland Funding LLC v. Hartsock*, 1JU-14-1003CI (June 17, 2015).

III. SUMMARY JUDGMENT STANDARD

Pursuant to Alaska Civil Rule 56, the court shall grant summary judgment if the court finds that “no genuine issue as to any material fact” exists and that “any party is entitled to judgment as a matter of law.”⁵ If the moving party has made that showing, the burden shifts to the non-moving party “to set forth specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant's evidence and thus demonstrate that a material issue of fact exists.”⁶

The court construes facts offered in support of and in opposition to a motion for summary judgment in a light most favorable to the nonmoving party.⁷ The court does not attempt to weigh evidence or evaluate credibility of witnesses, and assumes that all facts set forth in the non-movant's affidavits are true and capable of proof.⁸ “[T]he only questions to be answered at the summary judgment stage are whether a reasonable person could believe the non-moving party's assertions and whether a reasonable person could conclude those assertions create a genuine dispute as to a material fact.”⁹ “Although a trial court initially must determine whether the evidence could be believed by a reasonable person, that decision is not based on whether the court actually believes the evidence or whether it believes the moving party has better evidence.”¹⁰

⁵ *Gilbert v. Sperbeck*, 126 P.3d 1057, 1059 (Alaska 2005), quoting *West v. Umialik Ins. Co.*, 8 P.3d 1135, 1137 (Alaska 2000), citing Alaska R. Civ. P. 56(c).

⁶ *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 517 (Alaska 2014), quoting *State Dep't of Highways v. Green*, 586 P.2d 595, 606 n. 32 (Alaska 1978).

⁷ *Beilgard v. State*, 896 P.2d 230, 233 (Alaska 1995).

⁸ *Moore v. Hartley Motors, Inc.*, 36 P.3d 628, 630 (Alaska 2001).

⁹ *Christensen*, 335 P.3d at 520.

¹⁰ *Id.*

IV. DISCUSSION

“Standing is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions.”¹¹ To satisfy standing requirements, “every action shall be prosecuted in the name of the real party in interest.”¹² The basic requirement to satisfy standing is “adversity.”¹³ Therefore, to have standing to sue Ms. Hartsock for the unpaid debt, Midland would have to prove it actually owns the debt in question, and it has a clear chain title to that debt. If it does not own the debt, Midland clearly is not adverse to Ms. Hartsock.

- i. **The evidence produced by Midland does not sufficiently demonstrate that it has ownership of Ms. Hartsock’s alleged debt because it does not have a clear chain-of-title.**

Debt-buying companies, and their practice of buying bulk amounts of unpaid debt, are a relatively new phenomenon. Many lawsuits by these companies result in default judgments, as the debtor lacks the financial ability to hire an attorney and challenge the suit.¹⁴ As such, there is little case law to which this court can turn. However, several underlying rules have been developed by courts across the country.

Primarily, like any assignment of a contract, a debt-buying company attempting to collect on a debt must demonstrate through a complete chain-of-title that it actually owns the debt in

¹¹ *Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1255 (Alaska 2010) (internal citations omitted).

¹² Alaska Civil Rule 17(a).

¹³ ~~*Gilbert v. State*, 139 P.3d 581 (2006).~~

¹⁴ Danielle Douglas, *Taking on the country's biggest debt buyer*, The Washington Post (Oct. 10, 2015, 11:29 AM), http://www.washingtonpost.com/business/economy/taking-on-the-countrys-biggest-debt-buyer/2014/05/09/fbd65a24-a94d-11e3-b61e-8051b8b52d06_story.html.

question.¹⁵ It is the assignee's burden to demonstrate it actually owns the debt in question.¹⁶ It may not simply rely on bills of sale or affidavits that show the purchase of bulk debts while not demonstrating actual ownership of the specific debt in question—to do so would remove the fundamental standing requirement of adversity.

Here, Midland has established that several bulk orders of debt were transferred between several companies. It has not provided evidence specifically identifying that Ms. Hartsock's debt was transferred between WebBank and Dell, or between Dell and Asset Acceptance. Instead, it has produced bills of sale and affidavits that allude to unattached and unspecified lists of transferred debts.¹⁷ Additionally, it has not provided any evidence regarding the original contract between CIT Bank and WebBank.¹⁸ Midland *has* produced a redacted Bill of Sale and attached schedule purporting to transfer an account belonging to Ms. Hartsock from Asset Acceptance to Midland.¹⁹ The schedule includes Ms. Hartsock's name, some personal information, and debts purported to have been charged to her.²⁰ It should be noted that if this evidence of current ownership was the only requirement, Midland would likely survive this motion for summary judgment. However, the chain-of-title issue that serves as prerequisite to Midland's current ownership is far from clear.

¹⁵ See, e.g., *Wirth v. Cach, LLC*, 685 S.E.2d 433 (Ga. App. 2009), *Cach, LLC v. Sliss*, 958 N.Y.S.2d 59 (City Ct. of Auburn 2010), *Arrow Fin. Servs., LLC v. Guiliani*, 32 A.3d 1055 (Me. 2011).

¹⁶ *Id.*

¹⁷ *Id.*, pp. 12-19. The affidavits and bills of sale do not refer to the Defendant, and the schedules they cite to are not provided.

¹⁸ See *Certificate of James J. Davis, Jr. in Support of Defendant's Motion for Summary Judgment at Exhibit A*, pp. 10-43.

¹⁹ *Id.*, at pp. 20-43.

²⁰ Memorandum in Opposition to Defendant's Motion for Summary Judgment, *Midland Funding v. Hartsock*, 1JU-14-1003 CI (June 12, 2015).

Midland contends that, “[Ms. Hartsock] does not dispute the terms of the assignment nor assert that she was a party to the agreement. The only record before the court is that [Midland] is the owner and holder of the account at issue.”²¹ It also presents seemingly unrelated briefing regarding the admissibility of evidence.²² But this statement and argument is to ignore both Ms. Hartsock’s argument and Midland’s burden—Ms. Hartsock is not presently arguing she did not incur an initial debt, or even that Midland currently, in some manner, has access to a schedule of debts with her name on it. She contends that Midland has failed to adequately demonstrate it owns the alleged debt through a clear chain-of-title.

The issue here is not whether Midland has sufficient evidence to survive a motion for summary judgment demonstrating it may have current ownership of Ms. Hartstock’s debt. Instead, the issue is whether Midland could present sufficient evidence demonstrating the clear chain of assignment prior to its purported ownership and recovery. There is not sufficient evidence to prove Ms. Hartsock’s specific debt was transferred down the line from CIT Bank all the way to Midland. Midland contends the debt was transferred four times between five different companies. But the bills of sale Midland produces for two of the transfers do not reference Ms. Hartstock’s alleged debt, and it has not produced any evidence regarding a third transfer. Without further evidence, there is not sufficient evidence to demonstrate this chain-of-title. The burden is on Midland to produce evidence where a reasonable jury could conclude there was a clear chain. It has failed to so.

²¹ *Id.*

²² *Id.* at 2.

- ii. **Midland has failed to meet its burden that it could produce evidence demonstrating clear ownership of the debt, and Ms. Hartsock is thus entitled to judgment as a matter of law.**

The motion for summary judgment based on a lack of standing cannot be granted just on the evidence before the court. Instead, this Court must consider whether evidence can be produced that reasonably tends to dispute or contradict the moving party's factual argument for summary judgment.²³

Midland contends that additional discovery may lead to new evidence establishing their ownership of Ms. Hartsock's debt. It argues it has not been given reasonable time to complete discovery, and has submitted several interrogatories and document requests to Ms. Hartsock in an effort to establish she owned an account and incurred debt at her initial bank.²⁴ Midland believes that with further discovery, evidence of its ownership of her debt will come to light. If that were true, a Rule 56(f) motion to hold summary judgment in abeyance would be appropriate.

Ms. Hartsock responds by arguing that any further evidence Midland could discover from her—including payments to her bank and other credit card information—would not prove Midland actually owns her debt. She contends that while such evidence may be probative of the fact that she opened an account with CIT Bank and incurred debt, it would do nothing to add to Midland's case that it owns her debt. The Court agrees with Ms. Hartsock.

Midland has had ample opportunity to produce further documentation demonstrating a clear chain-of-title for Ms. Hartsock's debt. However, it has already argued that, "The only

²³ *Greywolf v. Carroll*, 151 P.3d 1234 (Alaska 2007).

²⁴ See, Plaintiff's Request for Admissions Addressed to Defendant, 1JU-14-1003CI.

record before the Court is that [Midland] is the owner and holder of the account at issue.”²⁵ It also has admitted that it has “produced the documents it has with respect to the account.”²⁶ This leads to the conclusion that, if Midland has provided all the documentation it has with respect to the account, any further evidence would have to come through discovery and Ms. Hartsock.

For this assertion to have weight, it would mean that Midland relies on the original debtors to prove *their* ownership of the debt. It is unreasonable to believe that Ms. Hartsock would maintain sufficient documentation of every purchase of her alleged debt by every debt-buying company. The debts are bought in bulk, and the record indicates that even the companies buying and selling them have limited ability to track individual debts. Midland’s only path to producing evidence demonstrating the chain-of-title of Ms. Hartsock’s debt is by hoping Ms. Hartsock has detailed recordings of the debt being bought and sold by debt-buying companies. The Court does not believe there is a reasonable chance of such a record existing.

Therefore, even when viewing the evidence in the light most favorable to the non-moving party, Midland has failed to show that evidence can be produced that reasonably tends to dispute Ms. Hartsock’s argument. Midland has admitted it has no further documentation, and a reasonable person could not believe Ms. Hartsock would maintain such intricate chain-of-title evidence.

V. CONCLUSION

For the above stated reasons, Ms. Hartsock’s motion for summary judgment is GRANTED. Midland’s motion for a Rule 56(f) abeyance is DENIED. Both parties’ motions to compel are dismissed as MOOT.

²⁵ Memorandum in Opposition to Defendant’s Motion for Summary Judgment, *Midland Funding v. Hartsock*, 1JU-14-1003 CI (June 12, 2015).

²⁶ Motion to Compel, Pg. 2, *Midland Funding v. Hartsock*, 1JU-14-1003CI, August 17, 2015.

