

IN THE IOWA DISTRICT COURT IN AND FOR MADISON COUNTY
Small Claims Division

MIDLAND FUNDING, LLC,
Plaintiff

Small Claim # 13332

Vs.

BETH A. BONECHER,
Defendant

JUDGMENT ENTRY

This case was tried on August 6, 2008, with the parties appearing by counsel, Kevin Abbott for Plaintiff and Raymond Johnson for Defendant. Plaintiff and Defendant did not attend.

A brief history of this claim can be pieced together with the exhibits. Because there was no testimony by either party, Exhibits 1,2 and A were admitted subject to objections and the court will give weight to the exhibits and objections as noted below.

Plaintiff submitted Exhibit 1 – Initial Disclosure Statement that begins: *Dear Valued Cardholder: We are pleased to provide you with an FCNB MasterCard and/or VISA "Credit Card" Account.* The document goes on to describe Finance Charges, Other Fees and Charges and other terms of a credit card agreement. No where on the document is the name of Defendant.

Exhibit 2 –, a document which appears to be a credit card statement dated 02/16/2004 for Account Number: 5770 9120 2353 3256 from NEWPORT NEWS, directs the payment to be made to Card Processing Center. The statement shows no current charges other than an overlimit fee of \$35 dated 02-16-2004 and a late fee of \$35 dated 02-11-2004. New balance on the card is \$963.35 with a 27.60% interest rate. The credit limit for the card is \$400. The Minimum Payment is \$563.85 and the past due amount is \$100.00. The document also states, "Your account is 120 days delinquent".

Exhibit 3 –, is a notice to cure the default dated May 17, 2008, sent by Plaintiff's attorney and referencing the Creditor to be Midland Funding LLC, Regarding: FCNB-Newport News. The account number is 8525768317 and the account balance is \$1184.02.

Exhibit 4 – is a Bill of Sale and Assignment of Accounts from Spiegel Acceptance Corporation to Midland Funding LLC dated December 4, 2007.

Defendant offered Exhibit A which appears to be a credit history for Defendant. On page 3, Newport News #5770912023533256 shows a balance of \$1184 owing and states that the account was closed in 03/2003 and charged off as bad debt. On page 2 of

Exhibit A, Midland Credit(sic) Mgmt Inc. #8525768317 shows a debt of \$1418 in collection status and the original creditor as FCNB Newport News.

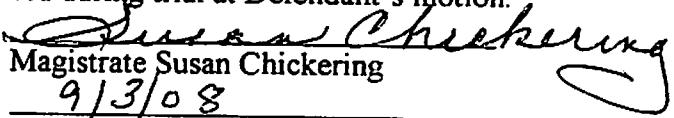
Plaintiff has also filed with the court, a Minnesota affidavit dated May 16, 2008, signed by Bernice Thell which states that she is an employee of Midland Credit Management, Inc., servicer of the account on behalf of Plaintiff. Thell affirms that by relationship of her employment with Midland Credit that she has personal knowledge of account number 8525768317. She further states that Defendant has failed to make payments, failed to make a payment after a 30 day demand and that the amount of \$1184.02 is owing on the account since 5/13/2004. Her affidavit states that the original creditor assigned the debt to Plaintiff.

Plaintiff's claim is denied for several reasons.

- (1) There is little evidence that the original debt was with FCNB Newport News other than a billing statement and an affidavit by a person not employed by Plaintiff. If the affiant has personal knowledge of a claim that has been assigned to a new creditor, she should file the documents that support her statement. This court will not rely on conclusions by an affiant that are unsupported by other evidence.
- (2) Without testimony, it is difficult to determine when the last charge was made on the account to begin the 5 year statute of limitations running. This court does not consider late payment fees and overlimit fees to be new charges which toll the statute. Based on the best evidence before the court, the default date is found to be March of 2003. Since this case was filed on June 25, 2008, the 5 year statute of limitations has run.
- (3) There is inadequate documentation to support that Plaintiff was assigned this debt. If the original debt was with FCNB Newport News, why is the assignment that is offered from Spiegel Acceptance Corporation to Midland Funding LLC. How did Spiegel get the debt?
- (4) Finally, the information provided to this court is insufficient to allow the court to compute the amount the Plaintiff claims. (Plaintiff amended the claim to \$963.85 at trial.)

IT IS THEREFORE ORDERED THAT the claim against Defendant Beth A. Bonecher is dismissed with prejudice and costs are assessed against Plaintiff Midland Funding LLC.

Defendant's counterclaim was dismissed during trial at Defendant's motion.


Magistrate Susan Chickering

9/3/08
Date

9-5
Atty. Abbott
Atty. Johnson