Midland Funding LLC v Krumm
2024 NY Slip Op 35208(U)
July 15, 2024
Supreme Court, Albany County
Docket Number: Index No. 907464-17
Judge: Justin Corcoran
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SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

MIDLAND FUNDING LLC,

Plaintiff,

-against-

DECISION, ORDER and JUDGMENT
Index No. 907464-17

TYLER KRUMM,

Defendant.

(Supreme Court, All Purpose/IAS Term)

APPEARANCES: SELIP & STYLIANOU, LLP
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Woodbury, New York 11797-9004

TYLER KRUMM
Self-represented Defendant
15 Holmes Court
Albany, New York 12209

JUSTIN CORCORAN, J.S.C.:

In this breach of contract action, plaintiff Midland Funding LLC ("plaintiff") moves for summary judgment pursuant to CPLR 3212 upon a claimed credit card debt. Plaintiff alleges its predecessor in interest Synchrony Bank issued a credit card to defendant Tyler Krumm ("defendant") and that he failed to make payments for charges made using the card. Plaintiff seeks judgment in the amount of $1,365.57, a sum purportedly representing charges made by defendant on the credit card. Defendant appeared and answered, claiming he had no business dealings with plaintiff, and that plaintiff lacks standing.

A plaintiff establishes a *prima facie* entitlement to summary judgment on its cause of action for breach of contract by providing evidence that there was an agreement, which "defendant accepted by his use of the credit card and payments made thereon, which was breached by the defendant when he failed to make the required payments." *Citibank (South Dakota), N.A. v. Keskin*, 121 AD3d 635, 636 (2d Dept. 2014). Plaintiff, as the subsequent owner of the outstanding credit card debt, establishes standing by submitting evidence of the purchase of the debt that forms the basis for the action. It is plaintiff's burden to prove the purchase, and it must be shown that defendant's particular account was included therein. *Palisades Collection, LLC v. Kedik*, 67 AD3d 1329, 1330 (4th Dept. 2009); *CACH LLC v. George*, 56 Misc3d 591, 592 (Dist. Ct. 2017) "An assignment of a security interest conveys to the assignee all rights and interests of the secured party-assignor," including the right to seek payment of the secured obligation. *Rockland Lease Funding Corp. Inc. v. Waste Mgt. of New York Inc.*, 245 AD2d 779, 779 (3d Dept. 1997).

To address standing, plaintiff provided an affidavit of its officer Susan Barrett, who sets forth a business records foundation for plaintiff's records pursuant to CPLR 4518. She further avers that on March 30, 2016, plaintiff purchased defendant's account ending in 8005 from Synchrony Bank, including the right to any proceeds from the account. Barrett states that as part of the purchase, Synchrony Bank transferred the business records related to defendant's account to plaintiff, and that plaintiff incorporated and maintained those records in the ordinary course of its business.

Barrett references several documents appended to her affidavit that evince the purchase of defendant's account from Synchrony Bank, and an account statement dated May 26, 2015, addressed to defendant for an account ending in 8005, indicating a final balance of $1,365.57. The statement also includes the terms of the applicable credit card agreement during the period when charges were incurred.

Plaintiff also provides an affidavit by Siyu Cao, an employee of Synchrony Bank, who lays a business records foundation for records relating to a pool of charged-off consumer credit accounts sold by Synchrony Bank to plaintiff, which included defendant's account ending in 8005. The Cao affidavit and the exhibits annexed thereto establish that defendant's last payment was received by Synchrony Bank on December 27, 2015, and that

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he failed to make any further payments, thereby breaching the credit card agreement. The account was subsequently charged off with a final balance of $1,365.57 owing.

A document may be admitted as a business record upon proof that "it was made in the regular course of any business and ... it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter." CPLR 4518(a); *People v. Cratsley*, 86 NY2d 81, 89 (1995). "[T]he mere filing of papers received from other entities, even if they are retained in the regular course of business, is insufficient to qualify the documents as business records." *People v. Cratsley, supra* at 90 (internal quotation marks and citation omitted). However, such records are admissible "if the recipient can establish ... that the records provided by the maker were incorporated into the recipient's own records or routinely relied upon by the recipient in its business." *Velocity Invs., LLC v. Lymon*, 218 AD3d 1091, 1093 (3d Dept. 2023) quoting *Deutsche Bank Natl. Trust Co. v. Monica*, 131 AD3d 737, 739 (3d Dept. 2015). To be admissible, these documents should carry the indicia of reliability ordinarily associated with business records. *Deutsche Bank Natl. Trust Co. v. Monica, supra*, citing *People v. Cratsley, supra, One Step Up, Ltd. V. Webster Bus. Credit Corp.*, 87 AD3d 1, 11 (1st Dept. 2011) and *Corsi v. Town of Bedford*, 58 AD3d 225, 231-232 (2d Dept. 2008), lv denied 12 NY3d 714 (2009). Bank and credit card account statements are self-authenticating and require no foundation for admission into evidence. *Portfolio Recovery Assoc., LLC v. Lall*, 127 AD3d 576 (1st Dept. 2015).

Plaintiff has established that Synchrony Bank's record were incorporated into plaintiff's business records and relied on as part of plaintiff's regular course of business and, therefore, qualify as business records excepted from the hearsay rule. *See Deutsche Bank Natl. Trust Co. v. LeTennier*, 189 AD3d 2022, 2024-2025 (3d Dept. 2020); *Citibank, NA v. Abrams*, 144 AD3d 1212, 1216 (3d Dept. 2016). The Cao affidavit also provides an independent business records foundation for those same records. Synchrony Bank's records are made for the "conduct of a business" and are therefore "inherently highly trustworthy because they are routine reflections of day-to-day operations and because the entrant's obligation is to have them truthful and accurate for purposes of the conduct of the enterprise.'" *People v. Guidice*, 83 NY2d 630, 635 (1994), quoting *People v. Kennedy*, 68 NY2d 569, 579 (1986). Based on the foregoing, the Court finds that plaintiff has established the assignment of the debt that forms the basis for this action, as well as *prima facie* entitlement to summary judgment on its cause of action for breach of contract. In opposition, defendant fails to raise any triable issue of fact.

In accordance with the foregoing, it is hereby

ORDERED and ADJUDGED the plaintiff's motion for summary judgment on its breach of contract action is **GRANTED** and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of $1,365.57, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs. As this action involves a consumer debt transaction, the applicable prejudgment interest rate is 2% per annum pursuant to CPLR 5004.

ENTER.

Dated: July 15, 2024
Albany, New York

JUSTIN CORCORAN
Supreme Court Justice

07/15/2024

Papers Considered: Papers 1-17 filed electronically in the NYSCEF docket.

The Court has uploaded the original Decision/Order/Judgment to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the Albany County Clerk. Plaintiff is not relieved from the applicable provisions of CPLR 2220 and §202.5b(h)(2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.