**STATE OF MICHIGAN**

 **IN THE 3rd CIRCUIT IN WAYNE COUNTY COURT**

National Collegiate Student Loan Trust 2007-4

 Plaintiff/Counter-Defendant Case No. 18—

 HON.

-vs-

 **AMENDED MOTION AND**

**RESPONSE TO SUMMARY MOTIONS**

Mr and Mrs Debtor,

Defendant/Counter-Plaintiff.

WELTMAN, WEINBERG AND WELTMAN, WEINBERG & REIS, CO. LPA LAW OFFICES OF BRIAN PARKER, P.C.

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**BRIEF IN SUPPORT OF DEFENDANT’S AMENDED MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(4), (5) AND (7)**

**AS TO PLAINTIFF’S COMPLAINT**

 NOW COMES DEFENDANT DEBTOR (hereinafter “Defendant”), by and through his attorneys, THE LAW OFFICES OF BRIAN P. PARKER, P.C.**,** and for his Brief in Support of Defendant/Counter-Plaintiff’s Motion For Summary Disposition Pursuant to MCR 2.116(C)(4),(5) and (7), states as follows:

**Introduction**

The Plaintiff’s case in this matter rests on a “foundation of sand.”[[1]](#footnote-1)

Defendant James Debtor was sued by National Collegiate Student Loan Trust 2007-4 (“NCSLT”) via a bare bones lawsuit and no valid proof that NCSLT owned the debt they were suing upon. Mr. Debtor is being sued for a debt based upon his attendance at ITT-TECH in Troy. However, he never attended that school and the Plaintiff is aware of this. **Please see Exhibit 1**.

The ownership records of the debt in this case reveal that NCSLT has no standing or right to sue Mr. Debtor, and that NCSLT is not the Real Party in Interest. Further, the student loan agreement’s terms and conditions show that this “breach of contract” lawsuit should be governed by Ohio law only.

Further yet, Plaintiff’s Complaint and documents suggest that non-party guarantor The Education Resource Institute (“TERI”) had already satisfied the alleged indebtedness back in 2014. **Please see Plaintiff’s Loan Financial Activity at Exhibit 2**. Indeed, Plaintiffs’ referenced loan financial activity summaries—that were prepared in 2017 solely for purposes of this litigation—show that the loan they allege to own was reduced to a zero balance in August of 2014.



This would thereby render this lawsuit barred under satisfaction of payment *and* the applicable statute of limitations. **Please see Exhibit 2**. Notice also on **Exhibit 2** that the owner of the debt in 06/06/17 when this document was printed a company called NCT. NCT is not in any chain of title anywhere. However, the Plaintiff supplied letters to Mr. Debtor that National Collegiate Trust part of the loan assignment history. The Owner is NCT which is National Collegiate Trust:



**Please see Exhibit 3 (letters from NCT)**

Again, NCT is nowhere to be found in the supposed chain of title presented by NCSLT’s lawsuit at **Exhibit 4**. The account number of the account in the lawsuit is as follows:

Yet, the account number in the letters from NCT say the account number is: 19-0499-3662. **See Exhibit 3**.

National Collegiate Funding, LLC is a separate entity from National Collegiate Trust just as National Collegiate Funding, LLC is a separate entity from the Plaintiff, National Collegiate Student Loan Trust, 2007-4. Yet, NCT from the letters is an owner but nowhere to be found in the chain of title of ownership of the debt.

**PLAINTIFF HAS NOT INTEREST IN THE OWNERSHIP OF THE DEBT**

Attached to its complaint, NCSLT has provided evidence of the assignment of the subject debt through a Deposit and Sale Agreement. The Deposit and Sale Agreement at **Exhibit 5** states on September 20, 2007 that the Sale Agreement is between the National Collegiate Funding, LLC as seller (in such capacity, the “Seller”) and The National Collegiate Student Loan Trust 2007-4, as purchaser (the “Purchaser”). The five-page agreement details the rights and responsibilities of the parties in the sale of millions of student loans like Mr. Debtor’s debt. However, and in violation of Michigan law, there is no specific, signed or dated assignment of Mr. Debtor’s debt from the Original Creditor to National Collegiate Funding, LLC to NCSLT 2007-4.

Further, the Deposit and Sale Agreement does have a section devoted to Assignments at Article XII. The section reveals something quite interesting regarding the title and ownership of the debts in this Sale. It states:



The Purchaser (NCSLT 2007-4) is required to assign the same “***right, title and interest***” that the Purchaser received “to the Indenture Trustee under the Indenture. In this case, the Indentured Trustee is U.S. Bank, N.A. The Deposit and Sale Agreement is “Signed” by Patricia A. Evans for NCSLT 2007-4. Please see the last page of **Exhibit 5**.

The Indenture at **Exhibit 6** between NCSLT 2007-4 and the Indenture Trustee (US Bank) states:



The Granting Clause of the Indenture confirms the language of the Deposit and Sale Agreement at the Assignment Clause of Article XII assigning all ***right title and interest*** of the Issuer (NCSLT 2007-4) is granted to the Indenture Trustee or US Bank, NA: 

The Prospectus for the NCSLT 2007-4 sale was created to attract investors to invest in a Trust that would then pay National Collegiate Funding, LLC for the bundle of debt. The Prospectus confirms the eventual transfer of all the rights to the Indenture Trustee at **Exhibit 7**. The Prospectus states:



Further evidence of this transfer of rights from NCSLT to U.S. Bank, N.A. can be found

at: ttps://www.sec.gov/Archives/edgar/data/1223029/000088237707002305/d719503.htm for the entire Trust filings with the SEC. The Indenture at **Exhibit 6** here is also signed by Ms. Patricia A. Evans who signed the Deposit and Sale Agreement at **Exhibit 5**.

In the New York Times article at **Exhibit 8**, Mr. Donald Uderitz, the founder of Vantage Capital Group ***and the beneficial owner of National Collegiate’s trusts*** stated on Page 4 that “he was appalled by National Collegiate’s collection lawsuits and wanted them to stop.” He states further on page 7 of the article that “It’s fraud to collect on loans that you don’t own.” “We don’t like what is going on.” The article details how hundreds of lawsuits have been dismissed when borrowers challenge them because there is no proof or paperwork. NCSLT’s owner hired a contractor to audit the servicing company that bills NCSLT’s borrowers each month and out of 400 found “not a single one had assignment paperwork documenting the chain of ownership, according to the report they had prepared.” **Page 6 of Exhibit 8**.

Lastly, the attachments of the Original Complaint filed against Mr. Debtor had an Exhibit A that showed the Contract. It states that Mr. Debtor attended ITT-TECH in Troy. Mr. Debtor never attended ITT-TECH in Troy. Please see **Exhibit 1**.

Further, the loan paperwork between the Lender and Mr. Debtor state under the terms of the contract (**Exhibit 4 Lawsuit attachments**) that Plaintiff is saying were breached requires the case be either brought in OHIO or use OHIO

1. :
2.
3.  **Plaintiff has filed in Michigan and relies only upon Michigan Law**.

What will be clear from the lack of evidence in this lawsuit along with the convoluted ownership history is that NCSLT was never the Real Party in Interest to this loan. Further, according to the Loan Agreement that NCSLT attached to the lawsuit, this Court has no jurisdiction under Ohio law to grant NCSLT standing or any relief.

**FACTS**

 On or about December 21, 2017, Plaintiff National Collegiate Student Loan Trust 2007-4, by and through counsel, Weltman, Weinberg & Reis, filed a lawsuit against Mr. Debtor alleging non-payment of private student loan debt.

In its lawsuit, NCSLT alleges that Mr. Debtor applied for a student loan from JP Morgan Chase Bank that was subsequently assigned to Plaintiff. NCSLT states in Paragraph 7 that the debt was subsequently assigned to Plaintiff from JP Morgan Chase Bank:



The Court can readily observe that there is no assignment attached to the lawsuit in Plaintiff’s Exhibit A or B (at **Exhibit 4**). There appears to be a complete indifference on the part of Plaintiff as to proving their case or right to sue Mr. Debtor. Attached to Exhibit A to Plaintiff’s Complaint is a purported four-page document with a signature page at Page 1. **Please see Exhibit 4**. The first signature page, signed on June 12, 2007, is a one-page “Loan Request/Credit Agreement.” The remaining three pages are not signed and consist of standard boilerplate forms of terms and conditions attached to the signature page. The terms include a provision “**L. Additional Agreements**” that the “Credit Agreement” was “entered in Ohio” and is governed under both Federal and Ohio law and specifically states:



Further, the contract states that Mr. Debtor attended ITT-TECH in Troy. Mr. Debtor never attended ITT-TECH in Troy. Plaintiff through their attorney, Dan Best is aware of this fact. **Please see Exhibit 1.**

Letters from Servicers and NCT state that the account number is # 19-0499-3662. **Please see Exhibit 3, which is a letter from a totally separate company called National Collegiate Trust (NCT)**. In the Loan Activity Report, the Account # is ITS2C\*\*\*\*\*\*2283. **Please see Exhibit 2**. Thus, Plaintiff’s Complaint was filed with a new or unidentifiable account number, no assignments, and, as will be demonstrated below with Plaintiff’s own documents, no Real Interest in the Debt.

1. **Plaintiff’s Discovery Responses reveal no ownership or chain of title to NCSLT.**

NCSLT provided document responses in its discovery titled NCSLT2007-4/00001-00065 (Bates #1-65) which NCSLT states is everything it has regarding their case. In the complaint at their EXHIBIT A and Document Bates number 10, there is an unsigned “Note Disclosure Statement” dated September 1, 2006 from Bank One (JPMorgan Chase Bank, N.A.) that identifies the debt as Loan No. 02756692—***not as XXXXX0143/001-001000*** as stated in the NCSLT complaint, Paragraph #6.

**b. The Bank One NA “Pool Supplement” and the missing “Schedule 1.”**

NCSLT’s lawsuit at Paragraph 6 (shown above) next references an Exhibit B that is alleged to be a May 1, 2002/July 26, 2002/December 7, 2006 “Pool Supplement” “by and between The First Marblehead Corporation and Bank One, NA . . . .” (Exhibit B to Plaintiff’s complaint) as proof that the debt “***was subsequently assigned to Plaintiff, National Collegiate Student Loan Trust 2007-4*** (See attached Exhibit B). **This document, however, shows no assignment while referencing “Schedule 1 [Transferred Bank One Loans]”—which Plaintiff also does not attach to this lawsuit.**

In follow up discovery, NCSLT produced the attached “Pool Supplement.” **Please see Exhibit 6, Bates #14-17**. This version, at the top left-hand page, indicates that it is an “Unassociated Document” with some other Exhibit terminology, befitting a downloading of material from a website of some kind, and not the copies of anything relevant to this lawsuit. Under this alleged “Pool Supplement,” which apparently became part of an earlier May 1, 2002 and July 26, 2002 agreement, non-party JP Morgan Chase Bank allegedly transferred to non-party, “The National Collegiate Funding LLC,” “each student loan set forth on the attached Schedule 1 (the ‘Transferred Bank One Loans’) . . . .”

 Attached at Bates #17 of **Exhibit 6**, there appears to be a screen shot of something titled, National Collegiate Student Loan Trust 2007-4. The document has the words “Roster: CHASE BANK” on it and appears to be nothing more than a printout from some unknown computer database. This “screen shot” document was identified in deposition testimony from Mr. Luke (that is re-printed below) as an “assignment.” This is what NCSLT purports to be its proof that National Collegiate Funding LLC assigned a debt to Plaintiff in this case.

This this screen shot “assignment” has (1) no Assignor or Assignee, (2) no account number, (3) no signature and, no name of Mr. Debtor. There is nothing that is minimally required of a true assignment. Yet, as the Court will see from the deposition testimony of Mr. Luke, he states that this part of the assignment also attached to the Deposit and Sale Agreement at **Exhibit 7**—and that this somehow proves that the debt at bar was assigned from National Collegiate Funding, LLC to the Plaintiff. There is no mention of where National Collegiate Trust (NCT) fits into the title history.

The Court will recall that this one-page screen shot (**Exhibit 6, final page Bates #17**) was not attached to the lawsuit and the Plaintiff stated in the Request to Admits that an assignment of the Specific Debt of Mr. Debtor ***was attached*** to the complaint.

Mr. Luke admits that neither the Complaint nor its Exhibit B contains any proof of an existing assignment. He testified in his deposition that Exhibit B merely “*contemplates*” an assignment. Mr. Luke is asked about Exhibit B and where the assignment is:

 “Q. So when paragraph 6 says, subsequently assigned to 8 NCSLT 2007-4, see Exhibit B; Exhibit B does not show that, does it?

MR. SHARTLE: Objection.

 A. It does not. It contemplates the assignment.

 BY MR. PARKER:

 Q. Contemplates.

 A. Contemplates.

 Q. Does it say that in the allegation?

 MR. HOLMES: Let him finish.

A.The pool supplement document that is attached as Exhibit B to Exhibit Number 4 states –

 BY MR. PARKER:

 Q. The Complaint?

 A. The Complaint. States it will, in turn, sell the loan, along with all the other loans that it acquired, to NCSLT 2007-4.

 Q. All right. So it doesn't show an assignment. It shows a contemplation, is that what you said?

 MR. SHARTLE: Objection, asked and answered.

 A. It shows an assignment, but it only shows the assignment to NCSLT.

 BY MR. PARKER:

 Q. Let me rephrase the question. You are being told, Mr. Debtor, you need to look at Exhibit B and you'll see the assignment to the plaintiff, but that assignment is not in Exhibit B, just the contemplation of that assignment, is that correct?

 MR. SHARTLE: Object to the form.

 A. That is correct.

 BY MR. PARKER:

 Q. So the assignment isn't attached?

 MR. SHARTLE: Object to the form, calls for a legal conclusion also.

 BY MR. PARKER:

 Q. Go ahead.

 A. ***The full assignment was not included in this Complaint***.

**Please see Exhibit 5, Page 79**. (*Emphasis added.)*

This concept of “contemplation of assignment” will be important later below when Mr. Luke is confronted with the Deposit and Sale agreement that shows NCSLT assigning the Debtor debt from Plaintiff to US Bank, NA prior to the Debtor lawsuit. Mr. Luke has a different interpretation of “contemplation” when it works *against* him. Prior to that, the Court should be aware of how Weltman, Weinberg’s own attorney defines what an assignment is in Michigan.

**c. Plaintiff’s own attorney has written extensively on what constitutes an assignment in Michigan because of a Michigan Court of Appeals case from 2011.**

In August of 2011, Weltman, Weinberg & Reis’ very own attorney, Jeffrey K. Bearss, authored an Article titled “Michigan Courts Increase Requirements of Proof of Assignment in Debt Buyer cases” for the law firm that represents NCSLT. The article examined a recent Michigan Court of Appeals ruling under the case name, ***Brownbark II, LP v. Bay Area Floorcovering & Design Inc. et al***, Michigan Court of Appeals Case No. 296660, May 31, 2011.

Mr. Bearss wrote in the article that, “The Court of Appeals stated that Michigan’s statute of frauds still requires that an assignment of debt be in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise.” Mr. Bearss concluded the article with some advice for Weltman’s clients: “For our debt buyer clients, there is now an increased level of proof of the assignment. The general contract, or batch assignment agreement, is no longer sufficient. A specific assignment, or affidavit supporting a specific assignment, should be supplied that refers to the specific account number. It should also be signed and notarized by the original creditor.” Weltman has now taken this article down from its website. **Please see Mr. Bearss’s Article at Exhibit 8**.

 **d. The Deposit and Sale Agreement/NCSLT 2007-4 at Exhibit 7.**

NCSLT produced a December 7, 2006 “Deposit and Sale Agreement (**Exhibit 7**, Bates #18-23) between “The National Collegiate Funding LLC” and Plaintiff, The National Collegiate Student Loan Trust 2007-4, whereby the “Seller is selling and the Purchaser is purchasing the student loans listed on Schedule 1 or Schedule 2 to each of the Pool Supplements set forth on Schedule A attached hereto (the Transferred Student Loans.”).

This “Deposit and Sale Agreement document references a number of “Pool Supplements” under the heading of “Schedule A” and “Student Loan Purchase Agreements,” under the heading of “Schedule B.” ***There is no indication that Debtor’s alleged Loan with the various account numbers was ever transferred or assigned to NCSLT 2007-4***.[[2]](#footnote-2)

In his deposition, Mr. Luke states that the Deposit and Sale Agreement is evidence of an Assignment to NCSLT from non-party National Collegiate Funding, LLC only and admits that under Michigan law, Mr. Bearss analysis and *Brownbark*’s Assignment requirements, NCSLT does not have a good chain of title from the original creditor, JPMorgan Chase to NCSLT as a Plaintiff and Real Party in Interest:

 “BY MR. PARKER:

 Q. Can you tell me, specifically to what Mr. Bearss was talking about, a document that shows signature -- let's read what it's supposed to be. Can you show me a specific assignment? Do you know what the word specific means?

 A. Yes.

 Q. I'm not being funny. Or affidavit supporting a specific assignment -- and he uses that word twice in the same sentence -- that refers to the specific account number. Do you understand? It's just one page.

 A. Yes.

 Q. It should also be signed and notarized by the original creditor. Do you have that document under those perimeters I just gave you?

 MR. SHARTLE: Objection to the form and argumentative and calls for a legal conclusion.

 BY MR. PARKER:

 Q. Go ahead.

 ***A. I do not have a document that is signed and notarized by JP Morgan Chase Bank that references solely the Debtor’s' loan.***

 Q. That's it? Do you have one from National Collegiate Funding to NCSLT 2007-4 under those parameters?

 A. ***I do not have a signed and notarized document from National Collegiate Funding, L.L.C. to NCSLT 2007-4 7 that references only the Debtor’s' loan.”***

 **Please see Exhibit 5, Page 109**. (*Emphasis added.)*

 **e.** **NCSLT’s own Deposit and Sale Agreement states that the debt was assigned to another entity: The Indentured Trustee.**

As stated in Defendant/Counter-Plaintiff’s Amended Counter-Claim, in Article XII, NCSLT’s own Deposit and Sale Agreement states:

**Exhibit 7, Bates # 22**.

NCSLT’s own agreement states that the Purchaser (NCSLT 2007-4) is required to assign the same “***right, title and interest***” that the Purchaser received “to the Indentured Trustee under the Indenture.” In this case, the Indentured Trustee is U.S. Bank, N.A. The Deposit and Sale Agreement is “signed” on December 7, 2006 by Michele C. Harra for NCSLT 2007-4. Please see the last page of **Exhibit 7**.

Generally, an Indenture is a legally binding bond or loan document by which two parties agree on a set of conditions and loan terms requiring the borrower to pay the lender a series of principle and interest payments over time. Here, it would control the bond holders of the NCSLT Trust’s ability to get paid—as well as the investment management by the Indenture’s Trustee. The Indenture at **Exhibit 9** between NCSLT 2007-4 and the Indenture Trustee (US Bank) is “signed” on December 1, 2006 by Ms. Harra and states:



The Granting Clause of the Indenture at **Exhibit 9** confirms the language of the Deposit and Sale Agreement at the Assignment Clause of Article XII: assigning all ***right, title and interest*** of the Issuer (NCSLT 2007-4) is granted to the Indenture Trustee or US Bank, NA: 

A “Prospectus” is a formal legal document that is required by and filed with the Securities and Exchange Commission (SEC) that provides details about an investment offering for sale to the public. Every document produced here by NCSLT in its discovery, came from the internet. The Court can view the website addresses attached to the NCSLT documents: [www.sec.gov/edgar/searchedgar/companysearch.html](http://www.sec.gov/edgar/searchedgar/companysearch.html). There, it can view the Deposit and Sale Agreement, Indenture, and Prospectus originally filed back in 2006. This was *before* the bond certificates were advertised for sale to fund National Funding, LLC’s purchase of the 2006 student loans for NCSLT 2007-4’s trust.

The Prospectus for the NCSLT 2007-4 sale was created to attract investors to invest in a Trust that would then pay National Collegiate Funding, LLC for the bundle of debts it purchased from the student loan lender, Chase. Here, and right from the beginning, the Prospectus confirms in 2006 the ***eventual*** transfer of all the rights to the Indenture Trustee at **Exhibit 9**. There were 15 Trusts to be financed. The Prospectus detailed the assignment to the Indenture Trustee:

 **Please see Exhibit 10**.

The Indenture at **Exhibit 9** here is also signed by Ms. Michele C. Harra who signed the Deposit and Sale Agreement at **Exhibit 7**. When confronted with the fact that Deposit and Sale Agreement requires the Purchaser (NCSLT 2007-4) to assign the same “***right, title and interest***” that the Purchaser received “to the Indentured Trustee under the Indenture” in his deposition, Mr. Luke’s “contemplation” theory shows up again—but in reverse, to claim it did not yet happen

When Mr. Luke was asked about the lawsuit against Mr. Debtor missing the assignment necessary to show a “subsequent assignment” in Paragraph #6 of the complaint, Mr. Luke testified that the paperwork that was attached, “***contemplates the assignment***.” He testified that that Exhibit B attached to the complaint, “States it will, in turn, sell the loan along with all others that is acquired to NCSLT 2007-4.” **Please see Exhibit 5, Page 79**. He further testified:

 “Q. Let me rephrase the question. You are being told, Mr. Debtor, you need to look at Exhibit B and you'll see the assignment to the plaintiff, but that assignment is not in Exhibit B, just the contemplation of that assignment, is that correct?

 MR. SHARTLE: Object to the form.

 A. That is correct.”

 **Please see Exhibit 5, Page 80.**

Mr. Luke was then asked about the fact that the Deposit and Sale Agreement between National Collegiate Funding, LLC and NCSLT 2007-4 requires in Article XII of the document that the Purchaser (NCSLT 2007-4) is to assign the same “***right, title and interest***” that the Purchaser received “to the Indentured Trustee under the Indenture.”Incredibly, and in the same deposition he testified that an assignment has happened because it was ***contemplated***,Mr. Luke brought out the fact the documents may say that NCSLT is required to assign the debt to the Indenture Trustee, US Bank, NA, but that does not mean it has happened yet:

 “Q. But now that the actual document you said represents the assignment also shows that they're supposed to assign the document to someone else, you're backing up now and saying no, it doesn't?

 MR. SHARTLE: Objection, argumentative. That's mischaracterization of the testimony. BY MR. PARKER:

 Q. You're saying you don't know that happened? MR. SHARTLE: What part happened? What are you talking about?

 BY MR. PARKER:

 Q. You do understand what I'm asking you?

 A. I understand.

 Q. So have you ever looked at this statement before?

 A. Yes.

 Q. What were your thoughts when you looked at it?

 A. Do you want me to give you my personal opinion on that statement?

 Q. No, but you're going to anyway. He's going to make you. I know what it is. I know what's going on. I have to tell you off the record. It doesn't matter what I know anyway. All I care about is what you know, all right? You wanted me to know this is an assignment and I have to trust this paperwork, but clearly, to me, the paperwork says we're getting rid of this after we purchase it on the same day because all these documents–

 A. ***It does not say the same day***.

 Q. ***It does contemplate an assignment, as you used?***

 A. ***It contemplates a potential for future assignment based on a nondescript set of parameters or scenarios that may occur, that's contemplated in the indenture.***

 Q. What are those scenarios?

 A. I don't recall.

 Q. Are there scenarios listed? Is there a date?

 A. No.

 Q. So you're putting your own stuff into this, correct?

 A. You asked me the question.

 Q. You agree that we have to depend on the writing of the document?

 A. Correct.

 Q. And it doesn't say future parameters to determine when this gets assigned?

 A. Correct. It also doesn't say it was assigned.”

 **Please see Exhibit 5, Page 109**

 So, when the assignment or proof of an assignment to Plaintiff is not attached to the lawsuit (to show NCSLT is the Real Party in Interest), Mr. Luke believes the debt is still assigned to Plaintiff anyway because the paperwork shows the assignment is to be “*contemplated*.” But eleven years after the Deposit and Sale Agreement and Indenture were signed mandating the student loan debts be assigned to US Bank by NCSLT 2007-4, Mr. Luke testified that the same writing assigning all of *the rights, title and interest* in the debt from NCSLT to the Indenture Trustee, US Bank, is just a contemplation with mythical parameters he can’t explain that show the assignment from NCSLT to US Bank, NA has not happened yet and 11 years after the same representative (Ms. Harra) signed off on the documents mandating the assignments.

**f. NCSLT 2007-4’s “Loan Financial Activity at Exhibit 2.**”

 Also, in response to Defendant’s discovery requests, NCSLT provides what looks to be a computer printout of alleged “Loan Financial Activity” showing a “Curr Bal: of 0.00” as of May 1, 2012.

 Moreover, the document lists “TERI” as the guarantor of the alleged loan and that $20,027.09 was credited on the account on May 1, 2012. This document evidently suggests that TERI, the guarantor, satisfied this loan.

 **g. NCSLT 2005-2 Exhibit 11 “Loan Payment History Report Dated January 9, 2018.”**

NCSLT’sExhibit G appears to be another computer printout entitled “Loan Payment History Report.”. This document states that $20,027.09 (the same amount credited ostensibly by TERI on Plaintiff’s Exhibit 2) was charged off on May 1, 2012:



**Please See Exhibit 11**.

 There is no proof of any assignments in the complaint showing that Plaintiff has a right to sue anyone on a loan that lacks a proper chain of title and the Real Party in Interest. Who the Real Party in Interest is, NCSLT should not be the Plaintiff in this case. The case against Mr. Debtor should be dismissed.

**Standard of Review**

 Summary disposition may be granted under MCR 2.116(C)(4) where “[t]he court lacks jurisdiction of the subject matter.” "Jurisdictional questions under MCR 2.116(C)(4) are 1 Plaintiff Sandra Pearsall is also a party to this case, but her claims are derivative of Roger Pearsall’s claims. As used in this opinion, the term “plaintiff” refers solely to Roger Pearsall. -2- questions of law that are also reviewed de novo." Travelers Ins Co v Detroit Edison Co, 465 Mich 185, 205; 631 NW2d 733 (2001). "When reviewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact." Bock v General Motors Corp, 247 Mich App 705, 710; 637 NW2d 825 (2001).

 MCR 2.116(C)(5) provides that a party is entitled to summary disposition where “the party asserting the claim lacks the legal capacity to sue.” In reviewing such a motion, a court must consider the affidavits, together with the pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties. MCR 2.116(G)(5); *George Morris Cruises v Irwin Yacht & Marine Corp*, 191 Mich App 409,413; 478 NW2d 693 (1991). The Michigan Supreme Court has explained that in order to have standing, a party must establish that it has suffered an injury in fact, that the injury in fact can be traced to the conduct of the defendant, and that the injury would “likely” be “redressed by a favorable outcome.” *Lee v Macomb County Bd of Comm'rs*, 464 Mich 726, 739; 629 NW2d 900 (2001). The Supreme Court further explained that an injury in fact is an injury that is “concrete and particularized” and that is “actual or imminent” as opposed to “conjectural or hypothetical.”

 Under MCR 2.116(C)(7), summary disposition should be granted if the claim is barred as a matter of law, including by previous satisfaction via payment or a relevant statute of limitations. *Vance v Henry Ford Health Sys*, 272 Mich App 426, 429; 726 NW2d 78 (2006). In reviewing a motion for summary disposition because the claim is barred, we consider the affidavits, pleadings, and other documentary evidence presented by the parties and accept as true the plaintiff’s well-pleaded allegations except those contradicted by documentary evidence. *Id*. at 429; *Davis v Detroit*, 269 Mich App 376, 378; 711 NW2d 462 (2005).

 **ARGUMENT**

1. **Mr. Debtor is entitled to Summary Disposition under MCR 2.116(C)(5) because NCSLT 2007-4 has not established standing, and none of its proffered documents show that it is the real party in interest.**

 Given that NCSLT has not produced any documents showing that they have the legal right and standing to sue for alleged loans taken with Bank One and/or JP Morgan Chase Bank, summary disposition should be granted in favor of Mr. Debtor.

 Under MCR 2.116(C)(5), summary disposition in favor of Mr. Debtor is proper because National Collegiate Student Loan Trust 2007-4 can establish it has the legal capacity or right to sue on behalf of the alleged promissory notes issued by Bank One and/or JPMorgan Chase Bank. See e.g., *Edgewood Development, Inc v Landskroener*, 262 Mich App 162, 165; 684 NW2d 387 (2004); *Aichele v Hodge*, 259 Mich App 146, 152; 673 NW2d 452 (2003) (summary disposition was proper under MCR 2.116(C)(5) where moving party lacked the legal capacity to sue.)

 As previously demonstrated and supported by Defendant’s Exhibits here, the documents gathered in response to Defendant’s discovery requests reveal that NCSLT has no standing or legal right to sue Mr. Debtor—and, running along that vein, is not the Real Party in Interest.

 A prospective plaintiff is not a real party in interest unless it is "vested with the right of action on a given claim . . . ." *Miller v Chapman Contracting*, 477 Mich 102, 106; 730 NW2d 462 (2007), quoting *Blue Cross & Blue Shield of Mich v Eaton Rapids Comm Hosp*, 221 Mich App 301, 311; 561 NW2d 488 (1997).

**B.** **Mr. Debtor is entitled to Summary Disposition under MCR 2.116(C)(4) BECAUSE PLAINTIFF’S CASE LACKS STANDING PURSUANT TO THE GOVERNING OHIO LAW, AND THEREFORE, THIS HONORABLE COURT LACKS SUBJECT MATTER JURISDICTION UNDER OHIO LAW.**

 Plaintiff’s own complaint Exhibits, as reprinted above, unambiguously show this loan was “entered” in Ohio and that Ohio law controls “***without regard to conflict of law rules***.” See e.g., *Buckeye Commerical Sav. Bank v Protogere*, 250 Mich 652, 655; 231 NW 65 (1930) (“The note being an Ohio contract, liability on it is governed by the law of that State”). And under either Michigan or Ohio law, the general rule is that an assignee stands in the shoes of the assignor. See Ford Motor Credit Co v Ryan, 189 Ohio App 3d 560, 598; 939 NE2d 891 (2010); First of America Bank v Thompson, 217 Mich App 581, 587; 552 NW2d 516 (1996).

 Under Ohio law, standing is a “jurisdictional requirement.” *Fed. Home Loan Mort Corp v Schwartzwald*, 134 Ohio St. 3d 13, 18 (2012) (quoting *State ex rel. Dallman v Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 179; 298 NE2d 515 (1973). “The issue of standing, inasmuch as it is jurisdictional in nature, may be raised at any time during the pendency of the proceedings.” *New Boston Coke Corp v Tyler*, 32 Ohio St.3d 216, 218; 513 NE2d 302 (1987).

 As alleged assignee, NCSLTs must establish and prove its ownership and assignment of the alleged debt. See *Premier Capital, LLC v Baker*, 972 NE2d 1125, 1131 (Ohio Ct. App, 2012). To establish ownership of the promissory note, (1) every assignment in the chain must be proved, (2) every assignment document must be properly authenticated, and (3) every assignment document must reference the specific account number of the debtor’s account. *Id*. at 1132-34. As explained above, Plaintiffs’ proffered documents fail to satisfy these required elements or Weltman’s own ***Brownbark*** analysis.

 The original alleged lender is either JPMorgan Chase Bank or Bank One. The alleged loan was supposedly transferred from the original lender to non-party National Collegiate Funding, LLC, via a Note Purchase Agreement, with a “Pool Supplement” referring to a list of alleged transferred loans in either “Schedule 1” or “Schedule 2.” In each case, the alleged and referenced “Schedule 1” or “Schedule 2” is **not** provided. There is a National Collegiate Trust company that also claims ownership but is nowhere to be found in Plaintiff’s chain of title response to discovery.

 The “roster” page of some kind is nothing more than an unidentified computer printout with none of the elements necessary to pass as an assignment in Michigan. There is no information about how this document or Debtor loan specifically related to the alleged “Pool Supplement” or to “Schedule 1” or “Schedule 2.” Moreover, contrary to the requirement that each and every assignment document reference Debtor’s specific account number (see *Premier Capital, supra*), none of the Pool Supplements—with the missing Schedules, including the alleged “roster” pages—contain any reference whatsoever to Debtor’s loan number.

 *Further* compounding NCSLTs’ pile of sand, **none** of the “Deposit and Sales” documents contain the requisite Schedules. Under the summary disposition standard, an adverse inference may be drawn against a party who fails to produce evidence within its control. *Grossheim v Associated Truck Lines, Inc*, 181 Mich App 712, 715; 450 NW2d 40 (1989).

 Other courts have either dismissed or denied relief to Plaintiff NCSLTs for failure to prove that they own the promissory notes at issue. For example, in *Nat’l Collegiate Student Loan Trust 2003-1 v Beverly*, 2014 Ohio App LEXIS 4258, the **Ohio** Court of Appeals reversed a judgment in favor of National Collegiate and explained in part:

 “The documents submitted by appellees, however, do not establish assignment of the loans to appellees. The documents in both cases refer to the assignment of “each student loan set forth on the attached Schedule 2.” **The Schedule 2 document, however, was not included in the documents filed by appellees with the trial court in either case.** Without the schedule, we cannot determine whether the assignments applied to these specific loans.

 The purported assignment of the September 2005 loan to the 2006 Trust is in fact an assignment to another entity—The National Collegiate Funding LLC. According to the document, the other entity agreed that it “in turn *will sell* the Transferred Bank One Loans to” the 2006 Trust. (Emphasis added.) **Appellees submitted no affidavit** or other evidence showing that the contemplated assignment of the loan to the 2006 Trust occurred. [*Id*. at 20-21. (Emphasis added)] [Attached as Exhibit D].”

See also *National Collegiate Loan Trust 2007-4 v Trimble,* State of Ohio, Court of Common Pleas*,* decided July 16, 2015, Case No. 15-CVH02-1743 (Exhibit E) (the NCSLT’s summary disposition motion was denied due to the missing schedules:

***“Appearances can often be deceiving***. The problem with granting Summary Judgment in favor of Plaintiff is that there is no evidence before the Court showing that Plaintiff is the owner of the note that is the subject of this case. This matter all comes down to Schedule 1 of the first agreement. In the copy of the first agreement provided by Plaintiff ***there are no notes listed in Schedule 1***. In fact, the only thing stated in Schedule 1 is “Transferred Bank of America Loans”. ***Schedule 1 says nothing else***. **Since Schedule 1 lists no notes, there is no evidence before the Court showing that Plaintiff is entitled to enforce the note that is the subject of this case**. As such, Plaintiff’s motion must be denied. *Id*. (*emphasis added*.)

 See also *Nat’l Collegiate Student Loan Trust 2006-2 v Ramirez*, 2017 Tex. App. LEXIS 2030, decided March 9, 2017, Case No. 02-16-00059-CV (Exhibit F)(trial court properly no caused the NCSLT because none of the purported assignment documents, including the alleged “Pool Supplements” and “Deposit and Sale” agreements referenced the subject loans at issue).

 See also *Nat’l Collegiate v Grosik*, 2014 Ohio Misc. LEXIS 17104, decided December 4, 2014, Case No. 14CV-3802 (Exhibit G), where the trial court dismissed the NCSLT’s lawsuit explaining:

 “JPMorgan Chase Bank was the original lender on the note. **The pool supplement failed to establish the subject loan was transferred to plaintiff.** First, the document was unauthenticated and therefore inadmissible. Second, even assuming the document was admissible, **it neglected to establish the specific note at issue was part of the sale from JP Morgan to The National Collegiate Funding LLC**. Indeed, the note in question was executed in 2007, but the document was dated May 2002. Moreover, as noted above, Mr. Boyd’s affidavit stated nothing about the alleged transfer of the note from JP Morgan Chase to Collegiate.

 The Court thus concludes Collegiate lacks interest in the subject matter in focus; hence, **Collegiate does not have standing to sue Grosik on the instant note**. Consequently, the Court holds that it lacks jurisdiction to entertain this matter and DISMISSES the Complaint without prejudice.” *Id*. (*emphasis added*.)

As such, under the authorities stated above, Plaintiff NCSLT here cannot establish legal standing to proceed in this case.

**C.** **Mr. Debtor is entitled to Summary Disposition under**

 **mcr 2.116(C)(7) BECAUSE PLAINTIFF’S proffered documents DEMONSTRATE that THE non-party guarantor already satisfied the alleged indebtedness to NCSLT via payment.**

To reiterate, summarydisposition may be granted to Debtor under MCR.116(C)(7) if the evidence shows that the plaintiff’s claims are barred by a prior payment.

As noted above, the alleged Loan Request and “Loan Activity Documents” all show thatnon-partyTERI was a guarantorfor the alleged loans. Each “Loan Activity Document” that was dated in May 2012 indicate a zero balance and show that the alleged loan was credited/charged off in May 2012.

“***Plaintiff***” has sued Mr. Debtor with no proof of ownership of the debt, no chain of title/assignments, no proof of ownership with one owner (National Collegiate Trust) who is not mentioned in Plaintiff’s discovery responses to the chain of title inquiries while suing on a contract that states that the Choice of Law is to be Ohio, “without regard to conflict of laws.” Plaintiff NCSLT 2007-4 is not the Real Party in Interest and this case should be dismissed.

**RELIEF REQUESTED**

 For all the foregoing reasons, Defendant Debtor maintains that he is entitled to summary disposition in this matter under MCR 2.116(C)(4) and/or (5) and (7), and respectfully requests that this Honorable Court GRANT his Motion. Thank you.

Respectfully submitted,

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BRIAN P. PARKER (P48617)

Attorney for Plaintiff

 Dated: March 10, 2018

1. *Auto Indus Supplier ESOP v SNAPP Sys*., 2008 US Dist, LEXIS 105961, dated Dec. 23, 2008 (Case No. 03-74357)(aff’d CA 6, 2011)(Judge Avern Cohn stuck the damage expert’s report because it did not have any personal knowledge of the facts and documents referenced in the report and concluded that the report and proffered testimony “rest[ed] ‘on a foundation of sand.’”). [↑](#footnote-ref-1)
2. NCSLT 2007-4’s foundation of sand is ever more evident by its reference to its Exhibit 4, which consists of letters from National Collegiate Trust.” **Nowhere in this letter is there any indication whatsoever that Debtor’s alleged loan was ever transferred to NCSLT *2007-4 or who the entity National Collegiate Trust is*.**  [↑](#footnote-ref-2)