

STATE OF MICHIGAN

IN THE 48th JUDICIAL DISTRICT COURT

MIDLAND FUNDING, LLC,

Plaintiff,

vs

Case No. 17-33816-GC

MARK COOPER,

Defendant.

MOTION

BEFORE THE HONORABLE KIMBERLY F. SMALL

Bloomfield Hills, Michigan - Tuesday, April 10, 2018

APPEARANCES:

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WITNESSES

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None.

EXHIBITS

Introduced

Admitted

None.

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Bloomfield Hills, Michigan
Tuesday, April 10, 2018

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(At 2:37 p.m., proceedings begin)

THE COURT: Good afternoon, everybody.

MS. KALISH: Good afternoon, Your Honor. Mimi Kalish appearing on behalf of the Plaintiff, Midland Funding.

THE COURT: Thank you.

MR. PARKER: Brian Parker for the Defendant. Thank you, Your Honor.

THE COURT: All right. Thank you.

Counsel, your motion for summary disposition pursuant to (C) (9).

MS. KALISH: I think it says as to (C) (9) and (C) (10). Thank you, Your Honor.

THE COURT: Right, and (C) (10), correct.

MS. KALISH: I appreciate the Court reviewing the filed pleadings. I know the Court does a good job of reviewing these matters.

THE COURT: I did, and all the exhibits. It was -- it was a fun night.

MS. KALISH: Notwithstanding the size of the pleadings, Your Honor, this is a relatively straightforward collection case for breach of a credit

1 card agreement. The amount in dispute is less than
2 \$900.00. I would have liked --

3 THE COURT: Yeah. Counsel, let -- let me -- let
4 me just stop you for one moment, and I should have said
5 from the beginning, I have reviewed all of this.

6 Mr. Parker, I've got a couple questions for you.

7 You were very careful in the affidavit to
8 indicate that it was really -- this is more of an issue as
9 it relates to their chain of title, so to speak, for
10 standing to sue on this debt. Are you claiming that your
11 client does not owe this debt?

12 MR. PARKER: The client does not owe it to
13 Midland Funding and there's no proof --

14 THE COURT: Okay. Please answer my question.
15 Does -- he owes it to somebody?

16 MR. PARKER: Yes, of course.

17 THE COURT: All right. So you're not disputing
18 that in fact this debt is due and owing to somebody.

19 MR. PARKER: Yes, Your Honor. I'm not disputing
20 that.

21 THE COURT: All right. Thank you very much.
22 And you're not disputing the amount?

23 MR. PARKER: I -- well, obviously, I -- I have
24 no proof of the amount, so I'd have to say yes I am
25 disputing that.

1 THE COURT: Okay. But you -- but you're
2 claiming -- you don't dispute that there is some debt that
3 is owed to somebody?

4 MR. PARKER: Yeah. And there's no -- there's no
5 --

6 THE COURT: You're just claiming that Midland
7 Funding is not the right individual to be suing.

8 MR. PARKER: Correct. And their own evidence
9 shows that they don't own it.

10 THE COURT: All right. And after that, I'll
11 have you have a seat.

12 MR. PARKER: Thank you.

13 THE COURT: Counsel, I think that -- that
14 literally -- as I was reading this last night with all of
15 the bells and whistles and all of the statutes that were
16 cited, that really seems to be the only issue. I know
17 that you have submitted an affidavit. Is there anything
18 else you want to add?

19 MS. KALISH: No, Your Honor. You know, this is
20 more about the underlying federal case that they -- has
21 now been voluntarily dismissed. I anticipate it's going
22 to be re -- re-filed pending the disposition of this case,
23 but specifically if you flyspeck the issues raised by
24 counter-plaintiff -- or I should say Defendant, as there's
25 no counterclaim in this case -- that the language in the

1 underlying affidavit that accompanied the complaint refute
2 -- referred to the underlying obligation as the obligation
3 sued upon, in the past tense, when the affidavit was, in
4 fact, sworn to and signed prior to the case being filed.
5 That doesn't on its face make it a false affidavit.
6 Clearly, the affidavit was prepared and sworn to in
7 anticipation of filing suit, and in fact, when the
8 Defendant saw the affidavit, at that point, suit had been
9 filed. So to -- to put that before the Court as a -- a
10 false affidavit relied on by Midland Funding is pretty
11 much a non-starter.

12 Beyond that, I think we have sufficiently set
13 forth a chain of title, the bill of sale, the assignment,
14 the accompanying affidavits, and my client's possession of
15 a full set of account statements, showing use of the
16 account and payments on the account.

17 I think that as far as this Plaintiff, we have
18 more than satisfied our burden in showing that there was
19 an agreement between the parties, the agreement was
20 breached by virtue of him not paying the amount due, that
21 this Plaintiff is the proper party in interest to bring
22 this case, and that my client has suffered damages.

23 Unless the Court has any questions, I'm happy to
24 --

25 THE COURT: All right.

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MS. KALISH: -- rely on the brief.

THE COURT: Thank you very much.

Mr. Parker, anything else?

MR. PARKER: Thank you, Your Honor.

THE COURT: Go right ahead.

MR. PARKER: That was the perfect admission for my case. Ms. Kalish, in her brief, stated Cooper fails to explain why this would be considered a false statement, because even though it was false, when Mr. Cooper grabs it, it now becomes a true statement.

This is Midland's specific admission that the obligation sued upon would have been a false statement on October 19th when it was signed above the words I certify under perjury -- penalty of perjury that the foregoing statements are true and correct. So Midland's admitting it was false.

So they're then asking you to believe the rest of the affidavit, which they've already admitted under Michigan -- excuse me, under the Minnesota statutes is a form of perjury up to seven years of criminal sent -- excuse me, it's a felony of seven -- up to seven years.

Beyond the perjury of the affidavit, there's no such thing as a future affidavit. You don't file an affidavit and say this is going to be true. Think about what Midland Funding just said to you. And I know in your

1 courtroom you see hundreds of these, they're all the same;
2 they're all filed for the purposes of later litigation.
3 That's not how we operate in Minnesota or Michigan. You -
4 - you have to -- the darn -- the thing has to be true when
5 you sign it, not when it's -- somebody reads it. So
6 that's a -- I thank her for that admission.

7 This is a -- these are early days in this case.
8 This is a -- a -- to quote a gentlemen that just said it
9 earlier, a draconian attempt to end this case before we
10 get into the meat of this. It's too early for this. We
11 need discovery. In the 47th District Court, I have the
12 exact same case, I represent Mr. Tucker against Midland,
13 and Judge Parker said on April 21st, we get to depose the
14 affiant, and I would like to do that. I want her to admit
15 what frankly Ms. Kalish, who is an admitting source for
16 Midland, admitted too, that she signed a false statement
17 hoping it would be true by the time it got to Cooper. And
18 she says that at page four, if you look at page four of
19 her brief. Ms. Clemetson also states on or about
20 2016/11/25, somebody Credit -- Credit One Bank gave
21 something to MHC Receivables --

22 THE COURT: All right. Which -- which exhibit
23 are you looking at? There are -- there are multiple
24 exhibits in this case --

25 MR. PARKER: Her exhibit A.

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THE COURT: Her exhibit A?

MR. PARKER: Is the affidavit from Ms. Clemetson. I think her name is pronounced Tya --

THE COURT: All right. And also -- you know, what tab is it under yours; do you know?

MR. PARKER: Mine?

THE COURT: It would be helpful, because there's probably about two inches of paper here, and I'm not going to start flipping through each and every one, and while I have reviewed them all, I did not commit to memory which tab it was under --

MR. PARKER: I only have eight, I think. It would be at the beginning or it would be at the end, Your Honor. It's --

THE COURT: Tell you what, why don't you pull out your brief and tell me exactly which one it is, because if you're telling me at the beginning or at the end, I'm not going to start flipping through --

MR. PARKER: Here it is.

THE COURT: -- inches and inches of paper.

MR. PARKER: May I approach?

THE COURT: Just tell me what you have it marked as. I have all of them.

MR. PARKER: Well, I'm going to hand it to you, because I don't know if I have it the same as you --

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THE COURT: Well, if --

MR. PARKER: -- if I can approach?

THE COURT: Sure.

MR. PARKER: Thank you.

THE COURT: All right. I'd like to be able to refer to it on the record, so I have no idea which tab it's under for yours. Bear with me just a moment.

MR. PARKER: Thank you, Your Honor. I did try to make it easier by tabbing it for you.

THE COURT: Well, you did, and it would be nice if you referenced it during your argument by tab; that would help.

MR. PARKER: Thank you. I'm sorry about that.

THE COURT: That's all right.

MR. PARKER: It's exhibit one -- it's tab exhibit one, Your Honor.

THE COURT: All right. Go right ahead.

MR. PARKER: If you're looking at the first page, Ms. Clemetson is claiming to be a legal specialist, not even employed by Midland, but by Midland Credit Management, and she says I have access to and have reviewed the electronic records pertaining to the account maintained by MCM, and I'm authorized to make this affidavit on Plaintiff's behalf. In other words, Ms. Clemens -- Clemetson is saying she's a legal specialist

1 for MCM, acting under the authority of Plaintiff Midland;
2 in fact, Ms. Clemetson is an authorized officer of Midland
3 testifying by Midland for Ms. Clemetson who's authorized
4 by MCM. There is no -- this is strike number two. We now
5 have a -- a lying under oath. Number two, we're having
6 the same person authorizing the same person say that it's
7 okay, this is good foundation. There's -- you just can't
8 do that. You need at least somebody from Midland swearing
9 under oath, authorizing Ms. Clemetson to say okay, she can
10 speak for us. She's speaking for herself and authorizing
11 herself to speak for Midland, who's authorizing her to
12 speak for herself.

13 If you look again at exhibit one, the Court will
14 not see anything that she has relied upon to make the
15 statements that she's making. There is not in exhibit B,
16 exhibit C, exhibit D, exhibit E, exhibit F, exhibit G,
17 exhibit H --

18 THE COURT: Okay, I -- I -- I get it.

19 MR. PARKER: -- of -- thank you; sorry, Your
20 Honor. I'm -- I'm making a record. I apologize; sorry.
21 I always get into trouble with you, because I talk too
22 much.

23 So she doesn't say what records she reviewed.
24 At this stage, she's required to at least have some
25 support of the arguments she's making, which I will repeat

1 again she's made in a perjurious way, when she and Midland
2 have admitted that they have not told the truth until
3 they're waiting for somebody to see it, and then it's the
4 truth. So she's laid -- she has not laid enough
5 foundation, any foundation for this to be a good
6 affidavit.

7 You're waiting for me to talk about the account
8 statements and proof that purchases were made and perhaps
9 payments were made on these doc -- on -- on this debt.

10 There are two ways that they can come in.
11 Number one, 902(11). There has not been a 902(11)
12 offering of these statements, so they can't come in as far
13 as evidence is concerned. Number two is the custodian of
14 records who 902 replaces, so we don't have to drag
15 somebody one in here from Nevada, and that allows debt
16 collectors to -- to use 902 instead of the custodian of
17 records. The custodian of records in this case would be
18 Vicky Scott, who claims to be vice president of Credit
19 One, vice president of collections, a representative of
20 MHC Receivables, Vicky Scott. She has made an appearance
21 in at least three or four affidavits. So that --

22 THE COURT: That's under your tab number five,
23 for reference --

24 MR. PARKER: Thank you, Your Honor.

25 So that would be incumbent -- if I'm Midland

1 Funding, if I'm Mimi Kalish, you know what I'm going to
2 do? I'm going to get an affidavit from Ms. Scott, who
3 wears many hats, who can just say hey, I know Mr. Cooper
4 and he made these debts and we have an agreement with him.
5 You see no connection of Mr. Cooper, nobody's hanging with
6 Mr. Cooper here. There is nothing from Credit One to MHC,
7 from MHC to Sherman Originators, from Sherman Originators
8 from Midland Funding, zero connection.

9 Is there anything there where you see an
10 assignment? I've been listening to you all -- for a good
11 part of the day, and you appear to be an expert on
12 assignments. There's no assignment for -- about the
13 Cooper debt; nothing.

14 And I think Ms. Scott, who as I said --

15 THE COURT: What led you to believe that I'm an
16 expert on assignments?

17 MR. PARKER: You keep handing out papers telling
18 people that you've written papers on assignments, so I --
19 I --

20 THE COURT: (Indiscernible) assignment clause in
21 an insurance policy --

22 MR. PARKER: Well, I'm not familiar with that,
23 but I'm sorry, I --

24 THE COURT: I know. So you -- you -- you
25 weren't paying attention to what I was ruling on; it had

1 nothing to do with this type of assignment.

2 MR. PARKER: All right. So there's only two
3 ways at this early stage -- those aren't self-
4 authenticating. I can make up those documents, and I've
5 actually done it in your case once, where I had Mickey
6 Mouse being the assignee, and you can do it -- you can
7 Photoshop assignments; you can Photoshop anything. So in
8 other words, those things have to come either by 902(11)
9 offering -- it's too early in the game for them to have
10 done that -- where I get to do discovery on their
11 offering, or custodian of records. They've done neither
12 of those. So the records that they brought in to show Mr.
13 Cooper has made payments perhaps to Credit One, at this
14 point of the game aren't admissible.

15 THE COURT: Well, let me -- let me ask you this;
16 this is a motion for summary disposition.

17 MR. PARKER: Yes, Your Honor.

18 THE COURT: She has brought forward affidavits -
19 - forget about the -- the chain of title issue. I'm now
20 talking about the payment issue. Where is your client's
21 affidavit indicating that it's not true? That's what the
22 whole summary disposition is about, is so we don't have to
23 put everybody to the expense of all of this discovery and
24 litigation expenses if there's no genuine issue of
25 material fact to go forward on.

1 So she does have this affidavit. You are, in
2 your argument, attempting to poke all of these holes in
3 it, but I don't see an affidavit from your client saying
4 no, this is untrue.

5 MR. PARKER: My client --

6 THE COURT: If you -- if you go forward and put
7 that in front of me now -- and if it's obviously true, now
8 I've got a material issue that needs to be resolved. But
9 you can't get up and just argue that.

10 MR. PARKER: I just did when I talked about how
11 they have a burden of proof. Do you, Your Honor, see the
12 debt of Mr. Cooper in the assignment --

13 THE COURT: All right. Mr. Parker, you don't
14 get to ask me questions. Just by nature of -- of our
15 rules here --

16 MR. PARKER: Right.

17 THE COURT: -- this isn't a -- you know --

18 MR. PARKER: There is no --

19 THE COURT: -- just an ego thing on my part,
20 okay?

21 MR. PARKER: Okay.

22 THE COURT: I'm the one that gets to ask you
23 questions. The bottom line is I'm asking you where is
24 your client's affidavit indicating that these payments
25 weren't made?

1 MR. PARKER: He has -- well the payments are
2 irrelevant as to the title history, Your Honor --

3 THE COURT: Well, you're the one that brought up
4 the -- the payments, and -- and -- and rightly so. I said
5 putting aside the title history for just a moment, you're
6 even the one that said Judge, I'm sure you're going to be
7 waiting for me to ask to -- to address these payments, and
8 then you said you -- you laced into Vicky Scott indicating
9 that, you know, she didn't review anything, and on and on
10 and on, and I'm -- didn't even have any chance to do any
11 discovery, we need to do that, and I'm going to say to you
12 where is the affidavit claiming from your client that
13 these payments weren't made?

14 MR. PARKER: My client does not have to sign an
15 affidavit that he did not make payments to Midland.

16 THE COURT: But you're claiming then in order to
17 deal with that issue then we need discovery.

18 MR. PARKER: Yeah, I'd like to depose --

19 THE COURT: All right. And I'm not going to let
20 you do that, and I'm going to say to you right now, Mr.
21 Parker, while that is true if there is an issue to
22 resolve, I'm gonna let you to go at discovery, I will tell
23 you that I don't know how I feel about a deposition in
24 this -- this case, but be that as it may, I would let you
25 do discovery, but this is a motion for summary

1 disposition. She has placed before me affidavits. You're
2 claiming the affidavits are false.

3 MR. PARKER: Your Honor, you -- you keep cutting
4 me off, and I must be doing a bad job, it's not your
5 fault.

6 There is nothing in any of those affidavits that
7 says Cooper's debt -- do -- I'm not allowed to ask you
8 questions. These are a giant pool of debts, so to sue
9 Cooper, they have to have prove that Cooper -- they have
10 Cooper's debt. There's nothing in the record of four
11 affidavits -- nothing of Cooper's debt in those
12 affidavits, and the one thing Midland is in control of,
13 they've committed perjury and there is no connection to
14 any of those affidavits in the Midland affidavit. She
15 says not looked at anything. In fact, as I make the
16 point, every sale date is on or about. If she was looking
17 at the same things that Ms. Kalish has presented to you,
18 wouldn't she say December 13th --

19 THE COURT: Well, Mr. Parker, you -- you know
20 why people do on or about. In fact, criminal cases are
21 charged out with criminal offense dates of on or about --

22 MR. PARKER: Not under oath.

23 THE COURT: Oh, yes they are. I do them all day
24 long.

25 MR. PARKER: All right. Well, I don't think --

1 THE COURT: In fact, Mr. -- Mr. Parker, not that
2 I have to prove myself to you, but if you open up a file,
3 you will see on the complaint itself on or about, and then
4 there's the date. The bottom line is people do that so
5 there isn't an allegation of any type of fraud, where it
6 is on or about --

7 MR. PARKER: They've admitted --

8 THE COURT: -- where there's is a little bit --

9 MR. PARKER: -- the fraud --

10 THE COURT: -- of wiggle room. All right.

11 MR. PARKER: -- Your Honor --

12 THE COURT: Counsel, do you have any response --

13 MR. PARKER: I wasn't -- I wasn't finished,
14 unless you're finished with me.

15 THE COURT: No, no. Go right ahead.

16 MR. PARKER: All right. Getting back to your
17 question --

18 THE COURT: Which question?

19 MR. PARKER: About where is -- why should you
20 not just look at these affidavits, which have no relation
21 whatsoever to the Cooper debt. My answer to you in
22 response to them telling you that there's a chain of
23 title, there is no chain of title from Credit One to
24 Midland of the Cooper debt --

25 THE COURT: When I asked you about --

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MR. PARKER: -- it does not exist.

THE COURT: -- the counter-affidavit, I was talking about the -- I even said putting aside the issue of chain of title. You had indicated that they -- that Ms. Scott didn't review anything to determine in her affidavit when she indicated that payments were made, and I said well, where is your client's affidavit saying no payments were made. That's what that was in reference to.

MR. PARKER: Okay. Not to Midland -- the burden of proof is on them, Your Honor.

May I go on?

THE COURT: Sure.

MR. PARKER: Thank you, Your Honor.

As I stated, this is between Cooper and Midland. There is no connection between Cooper and Midland, other than these affidavits, which have no connection. None of them; Sherman, MHC, or Credit One have no connection, discernible proof-wise evidence, assignments, to Mr. Cooper that Midland says that they can stand in the shoes of any of these.

The only connection Midland has to these documents is their exhibit B, which they call the Field Data Report, and they're saying that proves that the debt was charged off. But that report was created by Sherman Originators, and not by the original creditor, Credit One

1 Bank. On December 26th -- 21st of 2016, they created this
2 field document report and sold it to Midland a month after
3 the debt was sold by Credit One to MHC, which there would
4 be no connection, nor an ability of Midland to say this
5 proves that the debt was charged off. They're using a
6 third party's third party sale document to prove something
7 that happened a month earlier, if it indeed it even
8 happen.

9 Their complaint is four paragraphs; it is based
10 upon a -- an account stated, which would be 600.2145, and
11 that's why they have an affidavit, and then also they have
12 a contract claim, which neither one of them work. Under
13 the account stated -- under the *Unifund* case, as I cite,
14 you have to have both assent and a payment, getting back
15 to your original argument. There's been no assent, and
16 there's been no payment made to the person that they need
17 to make the payment to, to have an account statement --
18 account stated claim. So there is no account stated
19 claim.

20 To have a contract claim, which the 600.2145
21 affidavit replaces the contract, they need to have a
22 contract that was signed by the parties. They have
23 presented you a partial contract dated 2016. None of the
24 payments or purchases were made after 2015. So that is a
25 false contract they've given you, so they can't claim a

1 breach of contract, and they can't --

2 THE COURT: I was with you up until that very
3 last point.

4 MR. PARKER: Mimi is actually an expert on this.
5 If you have a contract, it's a common defense of -- of
6 people like me to say hey, there's no signed contract, so
7 there's some case law that says if that person has used
8 the -- the card, then the courts say well, that's evidence
9 that he agreed to the contract. So what Ms. Kalish has
10 presented is a contract to prove that there is a breach of
11 contract claim. But if you look at the bottom of the
12 contract, it says it was created in 2016. So she can't
13 hold him to a 2016 contract and say that she has a
14 contract claim based upon that document when there's no
15 evidence he used it in 2016. They can't have a breach of
16 contract where the only way they get that contract in is
17 to show usage, which her own documents show all the usage
18 and there's nothing from 2016.

19 So her case fails under both the accounts stated
20 under 600.2145 and the breach of contract, because there's
21 no usage.

22 This is clearly a case where I believe the Court
23 should deny as -- under 2.116(9) [sic] because we've more
24 than given the Court, through our affirmative defenses and
25 answer, this is hearsay, there is no contract, there is no

1 debt, he does -- he gave 16 aff -- affirmative defenses.
2 He's more than met his burden to show that this is a
3 hearsay document that's being held against him, among
4 other things.

5 Number two, their -- their affidavit -- the best
6 thing they could have done is have Vi -- a Vicky Scott
7 affidavit saying yeah, here's Cooper's debt, because I've
8 got three hats. They don't have that. It's \$800.00. I'm
9 not selling my soul for \$800.00 like Midland has here by
10 perjuring themselves in an affidavit. You're signing off
11 on that, respectfully, if you agree to their motion.
12 That's where I'm coming from.

13 But I feel like -- not feel, the evidence is
14 clear that under 2.116(I)(2), he's entitled to a dismissal
15 and a no cause of action. There is no federal claim; I
16 don't know why they used that as a -- as a reason for me
17 to fight or not fight, but we set aside -- there is no
18 counterclaim. This is clearly a case -- and if you take a
19 look at all your documents and all the other Mid --
20 they're using the same affidavit; it is totally violation
21 of Minnesota -- and I can quote the Minnesota statute, and
22 Michigan's perjury statute. They admit they violated the
23 law by admitting this stuff was false and we're hoping
24 that when Cooper looked at it, it would be true, and
25 that's on the top of page four of their brief. And she

1 just -- and Ms. Kalish just said that.

2 So I would like a no cause of action against
3 Midland in this case, Your Honor.

4 THE COURT: Thank you.

5 MR. PARKER: If not -- if you think I've made --
6 done a decent job, I'd like some discovery. I don't have
7 to have written discovery; if we can just do the --

8 THE COURT: And I'll tell you, Mr. Parker, it
9 has nothing to do with whether or not I think you have
10 done a decent job. My job is to look at the evidence and
11 the law and call it like I see it regardless of which
12 attorneys are in front of me and how good of a job they've
13 done or not. Bottom line is I rule on the evidence and
14 the law; period, end. That's how I'm wired. That's what
15 I've done for 21 years, and will continue to do.

16 Counsel, anything else?

17 MS. KALISH: Um --

18 THE COURT: Would you like to address the issue
19 of you -- him claiming that you have admitted that Ms. --
20 what is it, Clemetson, committed perjury? Mr. Parker is
21 claiming on this record that you admitted perjury on
22 behalf of -- of your client --

23 MS. KALISH: I will --

24 THE COURT: -- do you want to address that?

25 MS. KALISH: -- thank you for bringing that up,

1 but I will address that, Your Honor.

2 I -- I -- I confess to not being able to follow
3 every -- every bit of Defendant's argument as to that one
4 point. I -- I think the Court understands that it's no
5 more perjurious than referring in an affidavit to the
6 amount owed plus court costs and attorney fees, even
7 though as of the time of attesting to an affidavit,
8 there's no determination as to what, if any, costs there
9 will be. I think the Court understands that by -- it's
10 more of a semantics argument by referring to the
11 underlying debt as the obligation sued upon, suing the
12 past tense, that clearly it's referring to the underlying
13 debt. I don't think it rises to the level of -- of
14 perjury. I think it's attaching a little bit of
15 sensationalism to something that in most any other court,
16 with what the Court has before it, the affidavit
17 supporting the complaint, a full set of statements, a full
18 chain of title, with the bill of sale and the affidavits -
19 -

20 THE COURT: All right. Counsel --

21 MS. KALISH: -- that -- that --

22 THE COURT: -- let me just ask you -- let me ask
23 you one more question. Mr. Parker indicates that nowhere
24 in any of these documents does it show an actual purchase
25 of the debt of Mr. Cooper.

1 Now, obviously the affidavit of Ms. Clemetson
2 does indicate at paragraph three the generic defendant or
3 defendants. I would imagine that you folks do that just
4 because of the sheer volume that you do. However, this is
5 a case as it relates to Midland Funding versus Cooper, and
6 this is his one and only case, so while you folks may do
7 this en masse, and I can't even imagine the numbers that
8 are out there that are being processed, Mr. Parker's
9 position is, is you -- basically you can't even use the
10 guy's name in the affidavit, so this is just a generic
11 affidavit. How do you respond to that?

12 MS. KALISH: As this Court may know, because I'm
13 sure there have been other collection courts before Your
14 Honor, that these accounts are purchased in bulk --

15 THE COURT: Right.

16 MS. KALISH: -- and the affidavit and the bill
17 of sale itself does not reference the account number
18 specifically. There's a redacted exhibit where it has --

19 THE COURT: And I think that's his point. How
20 do we know it's Mr. Cooper's debt? Look, as we sit here
21 right now, we all know that this is not about a lot of
22 money, but regardless -- in this one particular case --
23 but regardless, I don't care if it's worth, you know,
24 \$100,000.00 or \$500.00, to the person who is involved in
25 the action, it's their case and -- and it deserves the

1 attention that every case deserves. So I think his
2 point's a simple one, where does it say that Cooper's debt
3 was, in fact, purchased?

4 MS. KALISH: In what the Court has before it
5 today, other than the affidavit that accompanied the
6 complaint, it doesn't.

7 THE COURT: All right.

8 MS. KALISH: By virtue of the fact that we were
9 in possession of all of the account statements, I think
10 the Court can deduce that Midland Funding purchased the
11 account. How would they have come into possession of
12 these account statements --

13 THE COURT: Mr. Parker, I'd appreciate -- just
14 take a deep breath. Thank you.

15 MS. KALISH: This comes up in other courts. I --
16 -- I -- I understand what the Court is saying. It's the
17 custom of the trade. This is more about --

18 THE COURT: All right. So educate me. When you
19 folks -- when your client buys these in bulk, there's no
20 account numbers on them or there is?

21 MS. KALISH: I -- I --

22 THE COURT: Part of its redacted, part of its
23 not?

24 MS. KALISH: They're all -- it's -- it's an
25 exhibit with a whole bunch of account numbers that are

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redacted.

THE COURT: Okay. And then you get a copy of statements, and is that how you know who the person is and how to get there, how to contact them?

MS. KALISH: We -- we get the account statements, the affidavit from the current party in interest, who is Midland Funding, and we get the chain of title showing on what date the account was charged off, and the date it was sold, and the subsequent sales thereafter, and the date that that occurred.

THE COURT: All right.

MS. KALISH: And -- you know, everything --

THE COURT: And so that would be -- just so I am clear, you also get exhibit two, which is the field data; is that --

MS. KALISH: That shows the charge off date.

THE COURT: Okay.

MS. KALISH: You know, when it no longer became a viable account receivable for Credit One Bank, it was charged off as a bad debt and that was the date that it --

THE COURT: All right. And it does --

MS. KALISH: -- was sold.

THE COURT: -- show the individual's name, address, origination date, last payment amount, charge off date, and charge off balance.

1 MS. KALISH: Correct. You know, unfortunately -
2 - I -- I shouldn't say unfortunately -- everybody's
3 entitled to make a living, but, you know, as this Court
4 may know, Mr. Parker makes a -- a practice of suing
5 assigned debt creditors and sometimes their attorneys for
6 violations of the Fair Debt Collection Practices Act by
7 zeroing in on what I would call minutia that may not
8 necessarily create a question of triable fact, but may at
9 least form the basis of a federal collection suit, whereby
10 his client doesn't have to pay him unless he gets a payday
11 and --

12 MR. PARKER: How is this relevant to our case,
13 Your Honor?

14 MS. KALISH: I'm just saying that --

15 THE COURT: You know, I -- I let you go on too,
16 Mr. Parker. Bottom line is, is everybody is entitled to
17 make a living however they choose to do it, so long as
18 it's legal.

19 MS. KALISH: Right. But I --

20 THE COURT: So I -- I understand your point.

21 MS. KALISH: I -- I think the Court knows that
22 by throwing around words like false affidavit,
23 Photoshopping affidavits, that my client perjured itself,
24 I -- I -- I don't think it fits within the confines of the
25 facts of this case.

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THE COURT: All right, thank you.

MS. KALISH: Thank you.

MR. PARKER: I would like to say something, Your Honor.

THE COURT: Go right ahead.

MR. PARKER: Thank you, Your Honor. That Field Data Report if you look on the bottom --

THE COURT: Hold on; let me go back to it. All right.

MR. PARKER: It says it was created not by Credit One, but by Sherman Originators, a month after the debt was actually sold. So they have no business relying --

THE COURT: Excuse me. There's some phone that's vibrating --

MR. PARKER: It's mine. I --

THE COURT: -- and it's unfortunately being picked up on the record and --

MR. PARKER: Sorry.

THE COURT: -- canceling out the record.

MR. PARKER: It -- on --

THE COURT: All right. Why don't you start over what you just said, Mr. Parker?

MR. PARKER: Thank you. I very much apologize for that, Your Honor.

1 THE COURT: That's all right.

2 MR. PARKER: That was me.

3 THE COURT: I'm just glad it was on vibrate,
4 instead of ring.

5 MR. PARKER: They're relying to you on a
6 document that at the bottom says it was created a month
7 after the document was actually sold from Credit One -- if
8 you look down at the bottom, I think it says --

9 THE COURT: I see it.

10 MR. PARKER: So they have no --

11 THE COURT: It says data printed from elec --
12 electronic records provided by Sherman Originators, III,
13 LLC, pursuant to bill of sale, assignments, transfers,
14 blah, blah, blah.

15 MR. PARKER: They have no business relying on
16 that document as something that Credit One gave them.
17 That was given to them and created by the person they
18 bought the debt from. So when Ms. Kalish relies upon that
19 as the gospel, it's not, it's -- it's so non-hearsay -- we
20 have to remember, as you know, hearsay is the rule. The
21 exception is the exception. And to bring that hearsay
22 document as the gospel is -- is very wrong.

23 And I might want to remind the Court what Ms.
24 Kalish said; she said the obligation sued upon became a
25 true statement when Cooper picked it up, which means it

1 was false when it was signed on October 19th, three months
2 earlier, when their affiant said the debt had already been
3 sued upon.

4 Back to this thousands of cases that are filed
5 and they have a -- a large burden. They don't have to not
6 follow the law because it's expedient.

7 THE COURT: No, I think I certainly said that to
8 her. Regardless of how many cases you have --

9 MR. PARKER: They have no case here.

10 THE COURT: -- each individual case has to stand
11 on its own, and she knows that.

12 MR. PARKER: Lastly, we're not just talking
13 about one affidavit; we're talking about four affidavits
14 she's got to show the Cooper debt traveled, and that train
15 went the other way a long time ago.

16 To answer your question to her, there is no
17 proof of Cooper's debt passing among those four debt
18 collectors, Your Honor, and I ask you to dismiss the case.

19 THE COURT: All right. Counsel, anything else
20 as it relates to his comment about Sherman providing that
21 information? I'm talking about the Field Data Report.

22 MS. KALISH: Judge, I mean I think we've
23 sufficiently connected the dots --

24 THE COURT: Okay.

25 MS. KALISH: -- for the Court. I mean it's

1 accepted and I -- I've been doing this 20 years, just like
2 Your Honor has been ruling from the bench.

3 THE COURT: I have.

4 MS. KALISH: And I'm in very district court all
5 over the state, and the threshold -- understand the way
6 this business is, it doesn't -- you know, half of the
7 Defendant's brief was lifted from the internet and was in
8 indictment on --

9 MR. PARKER: Can we stick to the case again,
10 Your Honor, please?

11 MS. KALISH: -- on assigned debt creditors,
12 having nothing to do with the facts of this case, and I --
13 I -- I think we've sustained our burden; clearly we
14 wouldn't be in possession of all the right dates, all the
15 assignments, bill of sale, affidavits, and a full set of
16 account statements, and this Defendant knows that he used
17 this account and enjoyed the extension of credit and made
18 purchases and payments, and here we are today.

19 So I'm hoping that we don't have to spend a
20 whole lot of money beyond this, and we can get a -- a
21 judgment in hand today. Thank you very much.

22 THE COURT: All right, thank you very much.

23 The Court obviously has reviewed all of the
24 documents. I've listened quite intensely to -- and
25 intently to all of the arguments.

1 And this is the Plaintiff's motion for summary
2 disposition under MCR 2.116(C) (9) and (C) (10). There were
3 two claims in -- there's account stated, there is an
4 affidavit in support of the account stated, and there's
5 also a breach of contract claim.

6 The Defendant submitted a response to the
7 Plaintiff's motion for summary disposition, and it was in
8 excess actually of the page limit permitted by the court
9 rule. But be that as it may, it was extremely detailed,
10 dealt with many violations of the Fair Debt Collection
11 Act, which this Court does not need to get into at this
12 moment in time. As I was reading it, there was -- and
13 also the Michigan -- the Consumer Protection Act. There
14 were many distinctions to be made from the cases that were
15 being cited versus the case that we have here in court.
16 But no need to belabor this record going over all of them.

17 I found none of them, at least at first blush,
18 as this record is postured, to be persuasive.

19 What the Defendant does argue is -- in large
20 part is really a chain of custody issue, and indicating
21 that the affidavits submitted by the Plaintiff are, you
22 know, at best inadequate, at worst, perjurious.

23 I am certainly not willing to go to the extent
24 of suggesting that I believe that Ms. Clemetson committed
25 perjury. An on or about statement is used all the time in

1 affidavits, and to suggest that it's somehow improper to
2 do so, and if they really had the documents, it wouldn't
3 be an on or about, is in -- in my mind sort of a
4 nonsensical argument. Again, affidavits I read all day
5 long. What you're signing is something that you believe
6 to be true, you just don't want to say I'm absolutely
7 positive it's exactly this date, and again, I even pointed
8 out that criminal complaints often have on or about
9 statements in them, and you're talking about, in many
10 cases, taking away people's freedom for -- for decades
11 based on that particular date. So I'm not disturbed at
12 all with the on or about language.

13 As it relates to the chain of custody that the
14 Plaintiff has put in front of this court, there is a chain
15 of title, which starts with the affidavit of Tya
16 Clemetson, indicating that this debt was purchased by
17 Midland Funding; the Defendant owes the balance. Appended
18 to that is also exhibit two, which is the field data, and
19 regardless of who created the field data, it is
20 information that is very pertinent to this case,
21 specifically to this Defendant. It indicates the
22 individual, Mark Cooper, it indicates the address, phone
23 number, origination date, last payment date, so on and so
24 forth. Very specific information as it relates to this
25 Defendant. Then you go on to exhibit three, which is the

1 bill of sale and assignment from Credit One to MHC
2 Receivables, LLC, and then I could just keep going on and
3 on as the documents have been submitted to this Court.
4 You've got the affidavit of sales account by Vicky Scott.

5 And the Defendant wants this Court to just
6 simply say these -- these affidavits are -- are not
7 accurate, and we did get into a discussion as it related
8 to the last payment or payments made by -- by the
9 Defendant. It is -- in a motion for summary disposition,
10 if you choose to dispute something so the process does not
11 have to go on if there's no issue to really -- for a fact-
12 finder to resolve, it is the responsibility of the non-
13 moving party to bring forth something that shows that the
14 affidavit in these cases is not true. I have nothing of
15 the sort in front of me.

16 So viewing the evidence in a light most
17 favorable to the non-moving party, which in this case is
18 the Defendant, there is undisputed evidence that -- or
19 unanswered evidence that in fact the debt -- the line of
20 credit was extended to the Defendant, that the Defendant
21 has failed to pay that line of credit, and -- and in fact,
22 at the beginning, I asked Mr. Parker specifically are you
23 disputing that in fact the Defendant owes somebody, and
24 the answer was no, I'm not disputing that, and I knew that
25 if he had been disputing it, it certainly would have been

1 in an affidavit before this Court, which it's not.

2 So again, viewing the evidence in the light most
3 favorable to the non-moving party in this case, which is
4 the Defendant, I will grant summary disposition in favor
5 of the Plaintiff.

6 Now, I did -- Mr. Parker, you did indicate that
7 you are disputing the amount; however, I don't believe
8 that there was an affidavit indicating that there was any
9 dispute of the amount.

10 MR. PARKER: Well, he doesn't owe the debt to
11 Midland, so why would he do that?

12 THE COURT: Well, I understand you don't think
13 he owes the debt to Midland --

14 MR. PARKER: Right, and we've already argued
15 that --

16 THE COURT: All right.

17 MR. PARKER: Can I have my document --

18 THE COURT: Then I'll -- I'll -- pardon me?

19 MR. PARKER: Can I have the document back that I
20 gave you?

21 THE COURT: Yeah, I'll have somebody -- just --
22 give me just a moment, please, let me finish my job up
23 here. I will go ahead then and grant judgment in the
24 amount prayed for. I do have a judgment in front of me; I
25 will go ahead and sign it. All right. And Erica, Mr.

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Parker, will hand you back your exhibit one. All right;
thank you everybody.

MS. KALISH: Thank you, Your Honor.

(At 3:21 p.m., proceedings concluded)

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CERTIFICATION

I certify that this transcript, consisting of 38 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Kimberly F. Small on Tuesday, April 10, 2018, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the District Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.

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