STATE OF MICHIGAN

COURT OF APPEALS

MIDLAND FUNDING, LLC, Assignee of FIA CARD SERVICES, N.A.,	UNPUBLISHED April 24, 2018
Plaintiff-Appellee,	
v	No. 338404 Washtenaw Circuit Court
MICHAEL BASSETT,	LC No. 14-000438-CZ
Defendant-Appellant.	

Before: MURPHY, P.J., and JANSEN and SWARTZLE, JJ.

PER CURIAM.

In this appeal after remand, defendant appeals as of right the July 17, 2015 judgment in favor of plaintiff in the amount of $25,909.25.[1] We reverse.

I. PROCEDURAL HISTORY AND RELEVANT FACTS

Previously, this Court laid out the facts as follows:

> According to the evidence presented by Midland Funding, Bassett obtained a credit card financed by FIA Card Services, N.A. in August 2004. He incurred charges on the card and made payments on it until February 2009. It appears that when he stopped making payments, he still owed a significant sum of money. In December 2012, Asset Acceptance sold "purchased accounts" to Midland Funding. Shortly thereafter, Midland Credit Management, Inc, a debt collection company, informed Bassett that Midland Funding had acquired his FIA Card Services account and that Midland Credit Management would be collecting on and servicing his account. In November 2013, Midland Credit Management sent another letter offering Bassett three payment options. It does not appear that Bassett responded to those correspondences.

[1] See *Midland Funding, LLC v Bassett*, unpublished per curiam opinion of the Court of Appeals, issued December 13, 2016 (Docket No. 328720).

Midland Funding brought suit against Bassett in May 2014. In an affidavit attached to the complaint, a Midland Funding employee averred that Midland Funding had been assigned all rights, title, and interest in Bassett's FIA Card Services account. Bassett initially contended that he was unaware of the account and that in any event Midland Funding had failed to show that the account was properly assigned to it. Midland Funding filed a motion for summary disposition, but failed to provide satisfactory proof that Bassett's FIA Card Services account had been assigned to it. As a result, the trial court stated that it would only grant summary disposition if evidence of the assignment was produced. Midland Funding did not produce the evidence and the trial court never issued an order granting or denying the motion. Thereafter, Bassett filed a motion to dismiss the suit because the affiant supporting the complaint had died before the complaint was filed. Bassett believed the affiant's death was a fatal flaw in the proceedings because the affiant would not be able to testify at trial. In response to Bassett's motion, the trial court ordered Midland Funding to submit an amended affidavit within 21 days. After Midland Funding failed to meet that deadline, the case was set for trial.

On July 15, 2015, the day before trial, Midland Funding submitted notice of its intention to submit certified records under MRE 902(11). With the exception of an "account specific affidavit" from Ashley Lashinski, a Midland Certified Management legal specialist, all of the proposed records had been previously submitted with Midland Funding's motion for summary disposition. Lashinski averred in her April 2015 affidavit that she was familiar with the records pertaining to Bassett's account and that the account was included in the assignments from FIA Card Services to Asset Accounting and from Asset Accounting to Midland Funding. Likewise, Emily Walker, another Midland Credit Management legal specialist, averred to nearly the exact same statements in her July 2015 affidavit. Walker also averred that the record attached to the notice were "records regarding the account and/or payment(s) received, being a reproduction from the records on file on behalf of [Midland Funding] based upon [her] review."

At trial, Basset objected to the admission of the records, arguing that he had received insufficient notice under MRE 902(11) because the notice and records had only been delivered the day before trial. The trial court admitted the records, finding that Bassett was not prejudiced because, with the exception of two of the affidavits included in the notice, he had already seen all of the records. Thereafter, Midland Funding moved for a directed verdict. Bassett maintained that the evidence failed to show that his account had been assigned to Midland Funding. However, the trial court disagreed, granting Midland Funding's motion for directed verdict, and entered a judgment against Bassett in favor of Midland Funding.

Ultimately, this Court vacated the directed verdict in favor of plaintiff on the basis that none of the exhibits at trial were properly admitted. *Bassett*, unpub op at 4. This Court remanded the matter for a new trial. *Id*. at 5.

After remand, defendant retained counsel, and the matter proceeded to a bench trial. Plaintiff presented one witness, Emily Walker, a senior legal specialist at Midland Credit Management, which was the debt servicer for Midland Funding, a subsidiary of Midland Credit Management. Walker testified that she had reviewed defendant's account, and all of the documents received by Midland in connection with the purchase of the debt pool containing defendant's account.

Walker explained that the original creditor in this matter was FIA Card Services, N.A. An affidavit from Molly McNutt, signed on December 26, 2012, indicated that FIA Card Services, N.A. had sold a pool of charged off accounts to Asset Acceptance, LLC. Walker admitted that McNutt's affidavit contains no mention of specific debtors or accounts included in the sale. Similarly, the bill of sale and assignment of loans between FIA Card Services, N.A. and Asset Acceptance, LLC contain no specific identifying information regarding individual debtors. However, Walker testified those documents were customarily accompanied by an electronic sale file. The electronic sale file customarily contains supporting documentation regarding the individual accounts included in the charged off debt pool. However, Walker did not provide testimony regarding what the electronic sale file included in the sale between FIA Card Services, N.A. and Asset Acceptance, LLC, contained.

Walker next testified that on August 8, 2013, Asset Acceptance, LLC sold the pool of charged off accounts to Midland Funding. The affidavit of sale was signed on November 20, 2013. Again, each individual account in the pool of debt was not listed in the affidavit of sale or on the bill of sale in order to protect the confidentiality of the individual debtors, as well as any proprietary information now owned by Midland Funding. Rather, the bill of sale lists a file address that "leads to a secure email site with login information to get into to be able to transfer the account over," and that secure site lists individual debtor information. Based on Walker's trial testimony, it appears that the file address is redacted, or blacked out, on the bill of sale admitted at trial. Walker testified that although defendant's information is not explicitly listed on the chain of title documents, she was confident that his account was included in the transfer.

Walker was able to produce a field data report containing defendant's account information. This field data report is "a redacted version of the electronic sale file that only shows the account information for that particular consumer without risking the privacy of other consumers' information." The field data report was created by Midland Funding within 30 days of the debt pool sale. No similar document was provided by Asset Acceptance, LLC when it sold the charged off debt pool to Midland.

Walker testified that the charged off amount of defendant's debt is $25,606.65. Walker was unable to provide a breakdown principal versus interest. Further, Walker had no personal knowledge of how the balance came to be, except that she had reviewed the final account statement sent to defendant by FIA Card Services, N.A.

On cross-examination, Walker testified that she had not reviewed the consumer agreement between defendant and FIA Card Services, N.A., rather FIA Card Services, N.A. had included an exemplar of the agreement with the sale file. Further, Walker admitted that she never had any "direct proof" that the pool of charged off debt was credit card debt, and that she does not have any chain of title document with defendant's name on it.

Defendant presented no evidence, and the trial court found in favor of plaintiff. Specifically, the trial court found that defendant had conceded he "probably owes" a debt to either FIA Card Services, N.A. or Asset Acceptance, LLC. Therefore, the only issue in this case was whether plaintiff could prove, through establishing a chain of title, that it was the owner of defendant's debt. The trial court found that the evidence presented by plaintiff did establish by a preponderance of the evidence that plaintiff owned defendant's debt. Accordingly, the trial court entered judgment in favor of plaintiff in the amount of $25,909.05: the total balanced owed by defendant plus costs. This appeal followed.

II. EVIDENTIARY ISSUES

Defendant first argues that the trial court's finding that plaintiff proved it owned his debt was clearly erroneous, and further, that several chain of title exhibits were erroneously admitted as hearsay evidence.

A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion, which occurs when "the trial court chooses an outcome falling outside the range of principled outcomes." *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010). An evidentiary error will not warrant appellate relief unless, in light of all the evidence admitted at trial, the challenged evidence affected the outcome of trial. *Shaw v Ecorse*, 283 Mich App 1, 27-28; 770 NW2d 31 (2009). This Court reviews the trial court's findings of fact for clear error. *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 270; 761 NW2d 761 (2008). "A finding is clearly erroneous where, after reviewing the record, this Court is left with the definite and firm conviction that a mistake has been made." *Jackson–Rabon v State Employees Retirement Sys*, 266 Mich App 118, 119-120; 698 NW2d 157 (2005) (internal quotation marks omitted).

We first conclude that despite defendant's challenge to the admissibility of chain of title documents, there was no abuse of discretion in the admission of these documents. Under MRE 801(c), "hearsay" is a "statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." "Hearsay evidence is inadmissible unless it falls within one of the exceptions listed in the Michigan Rules of Evidence." *People v Solloway*, 316 Mich App 174, 198-199; 891 NW2d 255 (2016). The chain of title documents were properly admitted under one such exception, the records of regularly conducted activity, or business record exception, found in MRE 803(6). The exception provides, in pertinent part, that:

> A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, ... made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodial or other qualified witness[,]

shall be admitted as an exception to the rule against hearsay. MRE 803(6).

Here, Walker was a person with knowledge of the business records being admitted. Walker was able to testify to the fact that the chain of title documents were drafted

contemporaneously to the sale of the debt pool, and that the documents were regularly made and kept in the course of purchasing debt pools. Therefore, it was not an abuse of discretion for the trial court to admit the chain of title documents under MRE 803(6).

Rather, our issue with the chain of title documents is that they do not prove by a preponderance of the evidence that plaintiff owns defendant's debt. Although the chain of title documents admitted affirmatively show Midland Financial purchased a debt pool from Asset Acceptance, LLC, which was originally owned by FIA Card Services, N.A., the trial court's finding that defendant's individual debt was included in that debt pool is clearly erroneous. Walker testified that none of the chain of title documents contains any information specifically identifying defendant's account as an account included in the debt pool purchased by Midland Funding. To be clear, Walker testified that the bill of sale conveying the debt pool to Midland Funding from Asset Acceptance, LLC, does not specifically convey defendant's account. Rather, it conveys an unidentified pool of charged off accounts and a link to a secure server containing all of the individual account information in that pool. Walker was able to provide a field data report containing defendant's information prepared by Midland Funding after its purchase of the debt pool using the information obtained from the secure server. The field data report is "a redacted version of the electronic sale file that only shows the account information for that particular consumer without risking the privacy of other consumers' information." However, there was no information identifying any individual debtors in any of the chain of sale documents with respect to the sale between FIA Card Services, N.A. and Asset Acceptance, LLC, and likewise, no field data report, or similar document, was produced with respect to that sale. Therefore, there is a break in the chain of title as it relates to the inclusion of defendant's debt in the charged off debt pool.

Based on the foregoing, we conclude that plaintiff failed to affirmatively establish a continuous chain of title to defendant's debt between FIA Card Services, N.A. and Midland Funding. Instead, plaintiff only established a continuous chain of title to a generic debt pool. The trial court's finding to the contrary was clearly erroneous, leaves this Court with a "definite and firm conviction that a mistake has been made." *Jackson-Rabon*, 266 Mich App at 119-120. Because Midland Funding failed to prove by a preponderance of the evidence that it owned defendant's debt, defendant was entitled to judgment in his favor.

III. RIGHT TO A JURY TRIAL

Defendant also argues that he was entitled to a jury trial on remand, and that the trial court erred by not *sua sponte* ordering one. Given our foregoing decision to vacate the judgment in favor of plaintiff, we find it unnecessary to address this issue.

We reverse, vacate the trial court's judgment in favor of plaintiff, and remand for entry of judgment in favor of defendant. We do not retain jurisdiction. As the prevailing party, defendant may tax costs. MCR 7.219.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Brock A. Swartzle