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August 10, 2011

DEFENDANT'S SUPPLEMENTAL REPLY BRIEF
IN SUPPORT OF SUMMARY JUDGMENT
(Oral Argument Scheduled for August 12, 2011)

Honorable Maryann L. Nergaard, J.S.C.
Superior Court of New Jersey
P.O. Box 910
Morristown, NJ 07963-0910

Re: Midland Funding, LLC vs. Cheryl E. Williams, Docket No. DC-004044-11

Dear Judge Nergaard,

Kindly accept this letter in lieu of a more formal brief as Defendant's Supplemental Reply Brief in further support of her Motion for Summary Judgment.

The Motion challenges the sufficiency of Plaintiff's evidence to carry its burden of persuasion to prove its claim. Plaintiff's evidence is limited to a certification made by Gina M. Lo Bue, Esq., an associate attorney employed by Pressler and Pressler, LLP, Plaintiff's attorneys in this action. Yesterday's Appellate Division decision in *Deutsche Bank National Trust Company v. Mitchell*, __ N.J. Super. __, Docket No. A-4925-09T3 (App. Div. Aug. 9, 2011) conclusively establishes the insufficiency of Plaintiff's submissions.

In that foreclosure action, the Appellate Division reversed summary judgment because, having failed to show that it held the note prior to filing the complaint, the Bank lacked standing. Nevertheless, the court felt "it important to note that the proofs presented by plaintiff in support of summary judgment were inadequate." *Id.*, slip op. at 17.

Deutsche Bank provided a certification of an attorney dated January 22, 2009 This attorney certification does not meet the requirement of personal knowledge we articulated in [*Wells Fargo Bank, N.A. v. Ford*, 418 N.J. Super. 592 (App. Div. 2011)]. **Attorneys in particular should not certify to 'facts within the primary knowledge of their clients.'** Pressler & Verniero, *Current N.J. Court Rules*, comment on R. 1:6-6 (2011); *Higgins v. Thurber*, 413 N.J. Super. 1, 21 n.19 (App. Div. 2010), aff'd, 205 N.J. 227 (2011).

[Emphasis added; footnote omitted.]

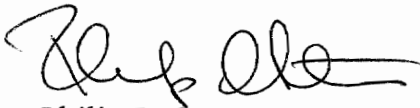
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The cases cited by the court do, indeed, stand for the proposition cited. "Attorney affidavits or certifications that are not based on personal knowledge constitute objectionable hearsay." *Higgins*, supra, citing *Gonzalez v. Ideal Tile Importing Co., Inc.*, 371 N.J. Super. 349, 358, *aff'd*, 184 N.J. 415 (2005) ("Even an attorney's sworn statement will have no bearing on a summary judgment motion when the attorney has no personal knowledge of the facts asserted.") "A certification will support the grant of summary judgment only if the material facts alleged therein are based, as required by Rule 1:6-6, on 'personal knowledge.'" *Wells Fargo Bank, N.A. v. Ford*, supra at 599.

Here, the only certification submitted to establish Plaintiff's claim is a certification from Plaintiff's attorney. Consequently, the only conclusion is that Plaintiff has submitted inadmissible hearsay which is insufficient to defeat Defendant's Motion for Summary Judgment.

Thank you for your consideration in this matter.

Respectfully,



Philip D. Stern

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cc: Cheryl E. Williams

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