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July 9, 2012

DEFENDANT'S REPLY IN SUPPORT OF RECONSIDERATION

Honorable Martha T. Royster, J.S.C.
Hudson County Superior Court
Administration Building, Chambers 806
595 Newark Avenue
Jersey City, NJ 07306

Re: New Century Financial Services, Inc. vs. Ahlam Oughla
Docket No. HUD-DC-4244-12

Dear Judge Royster,

Please accept this letter brief in lieu of a more formal brief in reply to Plaintiff's opposition to Defendant's Motion for Reconsideration.

Defendant's Motion detailed numerous deficiencies with Plaintiff's summary judgment motion ("SJ-Motion") and respectfully asserted that the court erred in granting Plaintiff's motion.

Rather than argue that the record supporting the SJ-Motion was sufficient, Plaintiff improperly attempts to correct the deficient record. Nevertheless, the additional materials create more factual issues further highlighting that summary judgment should not have been granted.

"A motion for reconsideration is designed to seek review of an order based on the evidence before the court on the initial motion, R. 1:7-4, **not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record.**" *Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi*, 398 N.J. Super. 299, 310 (App. Div. 2008). (citing *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996).). (Emphasis added). Unheeded, Plaintiff now submits

1. Certification of Marko Galic dated June 26, 2012 ("Galic Cert 6/26/12") with exhibits A through D;
2. Certification of Steven A. Lang, Esq. dated July 2, 2012 ("Lang Cert 7/2/12") with exhibits A, B and C; and
3. Affidavit of Jon C. Mazzoli.

Except for Mr. Lang's submission of a court decision, all of the materials constitute an improper attempt to expand the record and are inadmissible. Consider, for example, the multiple levels of hearsay from Mr. Lang's submission of what he contends to be parts of Defendant's credit report. Mr. Lang is saying what he read in a document which purports to be information told to a credit bureau by third parties.

Contrary to Plaintiff's argument, Defendant may defeat the SJ-Motion without submitting evidence to disprove Plaintiff's ownership. Plaintiff bears the burden of proof as to each element of its case. A party who does not bear the burden of proof can successfully move for summary judgment without submitting any evidence. See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding adopted in *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520 (1995)). Similarly, the nonmoving party can defeat a summary judgment brought by the party who bears the burden of proof by showing that the evidential record is insufficient. See, e.g., *LVNV Funding, L.L.C. v. Colvell*, 421 N.J. Super. 1 (App. Div. 2011) where the Appellate Division reversed summary judgment improvidently granted to a debt buyer who submitted insufficient proofs.

In the face of its own evidentiary shortcomings, Plaintiff completely distorts case law and argues that it need merely testify, "I own the account," citing *Sullivan v. Visconti*, 68 N.J.L. 543, 550 (Sup Ct. 1902) *aff'd* 69 N.J.L. 452 (E. & A. 1903). *Sullivan* requires that Plaintiff both "aver **and prove**" that the account was assigned to Plaintiff. *Id.* at 550 (emphasis added). While *Sullivan* stipulates that there is no particular required *form* of assignment, the SJ-Motion record suggests that the form employed here was written assignments involving at least five distinct entities (MHC Receivables, LLC; Sherman Originator, LLC; LVNV Funding, LLC; Sherman Acquisition, LLC; Plaintiff). Plaintiff distorts *Sullivan* by ignoring the form purportedly employed here and merely saying that one owns an account is sufficient to prove a chain of assignment among five entities.

Hoping to then avoid the broken links in the chain of assignment, Plaintiff contends that, notwithstanding what the documents reflect, there was only one intermediate assignment because the three intermediate transfers were among "affiliates" – whatever that term means. A relationship among those entities does create a shared ownership of assets or change the legal fact that they are separate LLCs and transfers of property from one to the other must be accomplished properly. Surely if Plaintiff contended that the transfers from MHC to Sherman Originator to LVNV to Sherman Acquisition were irrelevant, it would not have provided the documentation. Of course, those transfers are relevant and cannot be ignored when evaluating whether the chain of assignment has been established.

Indeed, in successfully moving for summary judgment, Plaintiff asserted that the Bills of Sale are distinct assignments which form part of Plaintiff's proof of assignment and ownership. Plaintiff should not be heard now to take a contrary position.

Finally, Plaintiff also relies on a complete misreading of *LVNV Funding, L.L.C. v. Colvell*, 421 N.J. Super. 1 (App. Div. 2011). There, the Appellate Division reversed summary judgment in favor of plaintiff on the grounds that the plaintiff had failed to meet the requirements for default judgment under R. 6:6-3(a) and, therefore, could not meet the more demanding requirements for summary judgment.

The court's ruling in *Colvell* does not say that meeting the requirements of the Rule is **sufficient** to grant summary judgment. Rather, the court said that by failing to meet the requirements for default judgment under R. 6:6-3(a), a summary judgment motion necessarily fails because the threshold for default judgment is lower than the standard for summary judgment. "Although the Rule does not generally apply in a summary judgment situation, we agree with the trial court that Rule 6:6-3(a) provides a guide to the proofs **necessary** to grant summary judgment in a credit card collection matter." *Id.* at 6. (Emphasis added).

For the foregoing reasons, Defendant respectfully asks the court to grant her Motion for Reconsideration.

Respectfully,
s/Philip D. Stern
Philip D. Stern
via JEFIS

cc: Ahlam Oughla
Steven A. Lang, Esq. via regular mail