Northeast New Jersey Legal Services, Inc.
By: John Ukegbu, Esq.
574 Summit Avenue
Jersey City, New Jersey 07306-2797
(201) 792-6363 Ext. 3243
Amicus Curiae Status

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

NEW CENTURY FINANCIAL SERVICES, INC., Plaintiff/Respondent vs. AHLAM OUGHLA, Defendant/Appellant.	DOCKET NO.: A-006078-11T4 CIVIL ACTION On Appeal from Judgment of the Superior Court of New Jersey, Law Division, Special Civil Part, Hudson County Docket No. HUD-DC-004244-12 Sat Below: Hon. Martha T. Royster, J.S.C. NOTICE OF MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE

To: The Clerk
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 006
Trenton, New Jersey 08625-0006

Philip D. Stern, Esq.
Philip D. Stern & Associates, LLC
697 Valley Street, Suite 2 D
Maplewood, New Jersey 07040-2642
Attorney for Defendant/Appellant

Lawrence J. McDermott, Jr., Esq.
Steven A. Lang, Esq.
Pressler & Pressler, L.L.P.
7 Entin Road
Parsippany, New Jersey 07054-5020
Attorneys for Plaintiff/Respondent

PLEASE TAKE NOTICE that the undersigned, on behalf of Northeast Legal Services, Inc. hereby moves for leave to file a proposed letter brief and to participate in oral argument, if any, in the above-captioned appeal as amicus curiae. Said application is made pursuant to R. 1:13-9.

In support of this motion, Northeast New Jersey Legal Services, Inc. will rely on the attached Certification of Gregory G. Diebold, Esq., Deputy Director and the Director of Litigation for Northeast New Jersey Legal Services, Inc. Pursuant to R. 1:13-9(c) the movant is filing its proposed amicus curiae letter brief herewith.

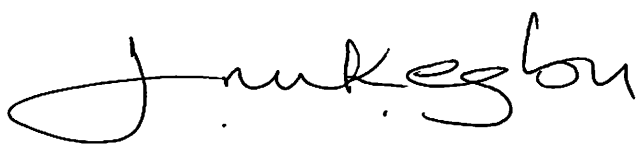
Dated: February 13, 2013

John Ukegbu, Esq.
Northeast New Jersey Legal Services, Inc.

CERTIFICATION OF FILING AND SERVICE

I certify that 5 copies of the forgoing motion together with the supporting certification, along with 5 copies of the proposed amicus curiae letter brief have been forwarded to the Clerk of the Superior Court of New Jersey--Appellate Division and 2 copies of each of the foregoing documents have been served upon each of the parties' attorney by United States Postal Services, Next Day Mail to their respective last known addresses listed above.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Dated: February 13, 2013

John Ukegbu, Esq.
Northeast New Jersey Legal Services, Inc.

Northeast New Jersey Legal Services, Inc.
By: John Ukegbu, Esq.
574 Summit Avenue
Jersey City, New Jersey 07306-2797
(201) 792-6363 Ext. 3243
Amicus Curiae Status

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

NEW CENTURY FINANCIAL SERVICES, INC., Plaintiff/Respondent vs. AHLAM OUGHLA, Defendant/Appellant.	DOCKET NO.: A-006078-11T4 CIVIL ACTION On Appeal from Judgment of the Superior Court of New Jersey, Law Division, Special Civil Part, Hudson County Docket No. HUD-DC-004244-12 Sat Below: Hon. Martha T. Royster, J.S.C. CERTIFICATION OF GREGORY G. DIEBOLD

I, Gregory G. Diebold, Esq., of Northeast New Jersey Legal Services, Inc., 574 Summit Avenue, Jersey City, New Jersey, certifies as follows:

1. I am the Deputy Director and Director of Litigation for Northeast New Jersey Legal Services, Inc. (hereinafter "Northeast New Jersey Legal Services" or "NNJLS").

2. Northeast New Jersey Legal Services is a nonprofit, charitable corporation which provides free legal services in civil matters to indigent residents of Bergen, Hudson and Passaic Counties. Northeast New Jersey Legal Services is the largest Legal Services field program in New Jersey, in terms of the poverty population within its service area.

3. Northeast New Jersey Legal Services is a legal assistance organization as defined by Court R. 1:21-1(e).

4. Northeast New Jersey Legal Services has no financial interest in the outcome of this appeal.

5. Northeast New Jersey Legal Services believes that this appeal presents a matter of public importance, and the issues presented will have an effect on the present and future clients of NNJLS who have consumer problems.

6. In 2012, Northeast New Jersey Legal Services had 1559 cases re consumer financial problems, of which 1093 were classified as collection matters.

7. Northeast New Jersey Legal Services respectfully requests permission to be an Amicus Curiae in this appeal in order to protect the interests of present and future clients of NNJLS who may be sued in collection cases.

8. Northeast New Jersey Legal Services has represented many clients who have/had successful defenses to collection suits, such as:

    a. Client simultaneously sued by two different debt buyers for the same debt (see paragraph 10 below);

    b. Wrong person sued due to similarity of name, mistaken identity;

    c. Theft of identity, consumer never opened the account;

    d. Debt was settled by prior agreement, consumer sued anyway;

    e. Persons sued did not sign the contract, was not liable for debt of friends or relatives;

    f. Statute of limitations;

    g. Defenses to repossession suits under Article 9 of the Uniform

Commercial Code;

h. New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and Regulations;

i. Common law of fraud;

j. Federal Truth in Lending Act, 15 U.S.C. 1601 et seq.;

k. Warranty defenses;

l. Minority, Incapacity; and

m. Unconscionability, Lack of good faith and fair dealing.

9. All clients of Northeast New Jersey Legal Services who are sued deserve due process assurance from the judicial system that the plaintiff suing the consumer is *the actual owner of the claimed debt* before the consumer can be subjected to the compulsory process of judgment, wage execution and bank levies over the twenty-year life of a judgment.

10. Northeast New Jersey Legal Services represented a client German Lopez, Sr. who was sued twice in a two-month period, by two different debt-buyers, for the same debt: New Century Financial Services, represented by Pressler & Pressler, LLP sued German Lopez, Sr. in DC 004541-06, Special Civil Part, Hudson County, and Great Seneca Financial Corp., represented by Eichenbaum & Stylianou sued Mr. Lopez in DC 002412-06. Two default judgments were entered against Mr. Lopez for the same debt before he sought assistance from NNJLS.

11. Why would two debt-buying companies simultaneously claim the right to own the same debt? We suggest that one of the prior owners of the debt (often

there are middlemen debt sellers) must have sold the debt twice, to two different debt buyers.

12. Loose practices such as the sale of the same debt twice become more likely when the debt buying company is not buying any actual documents—not receiving the complete collection of account statements, not receiving any agreement signed by a consumer, not receiving any signed request for credit, but rather getting only a list, a spreadsheet with thousands of lines of alleged debts.

13. If this Court loosens New Jersey's summary judgment standards, to let debt-buyers to "prove" they are the owners merely by simply declaring themselves to be the owners, without proving a chain of assignments from the original bank to the middle-men debt sellers to the plaintiff debt-buyers, then the future clients of NNJLS are at risk of having double judgments entered against them, just as happened to German Lopez, Sr.

14. The attorneys of Northeast New Jersey Legal Services and its predecessor organizations have demonstrated expertise by prior service in representing amicus curiae in appellate cases such as Beneficial Finance Co. v. Swaggerty, 86 N.J. 602 (1981); Perth Amboy Iron Works, Inc. v. American Home Assurance Co., 118 N.J. 249 (1990); Chase Manhattan Bank v. Josephson, 135 N.J. 209, (1994); Housing Authority of Town of Morristown v. Little, 135 N.J. 274, (1994); Sacks Realty Co., Inc. v. Shore, 317 N.J. Super. 258 (App. Div. 1998); In re Connors, 497 F.3d 314 (3d Cir. 2007); First Nat. Fidelity Corp. v. Perry, 945 F.2d 61 (3d Cir. 1991).

15. NNJLS attorneys have also represented individual clients in appeals in cases such as Cohen v. de la Cruz, 523 U.S. 213 (1998); Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602 (1999); Pulley v. Legreide, 303 B.R. 81 (D.N.J. 2003), aff'g 295 B.R. 28 (Bkrtcy. D.N.J. 2003).

I certify that the above statements made by me are true. I am aware that if any statement made by me is willfully false, that I am subject to punishment.

Dated: February 13, 2013

Gregory G. Diebold

Northeast New Jersey Legal Services, Inc.

A NON PROFIT TAX EXEMPT CORPORATION
Serving Hudson, Bergen and Passaic Counties
574 Summit Avenue · Jersey City, N.J. 07306-2797

(201) 792-6363
FAX (201) 798-8780
FAX (201) 798-8785
TTY (201) 798-6182
jukegbu@lsnj.org

President
Jack Jay Wind, Esq.

Executive Director
John H. Fitzgerald, Esq.

Bergen Office:
190 Moore Street
Hackensack, N.J. 07601

Gregory G. Diebold, Esq.
Deputy Director
Jersey City Office

Passaic Office:
152 Market Street
Paterson, N.J. 07505

Please reply to Jersey City office.

February 13, 2013

Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 006
Trenton, New Jersey 08625-0006

Re: New Century Financial Services, Inc. vs.
Ahlam Oughla
Docket No.: A-006078-11T4

On Appeal from a Judgment of the Superior Court of New Jersey, Law Division, Special Civil Part, Hudson County

Sat Below: Hon. Martha T. Royster, J.S.C.

Proposed Letter Brief of Amicus Curiae

Your Honors:

Please accept this Letter Brief on behalf of the proposed amicus curiae Northeast New Jersey Legal Services, Inc., in lieu of a more formal Brief in support of the Defendant-Appellant's appeal of the May 25, 2012 Order granting Plaintiff-Respondent's motion for summary judgment and the July 27, 2012 denial of her motion for reconsideration.

TABLE OF CONTENTS

Page

STATEMENT OF CASE 2

STATEMENT OF ISSUES..... 3

INTEREST OF AMICUS..... 4

EXPERTISE OF AMICUS..... 4

STATEMENT OF PROCEDURAL HISTORY..... 5

STATEMENT OF FACTS..... 5

LEGAL ARGUMENTS

POINT ONE

RESPONDENT HAS FAILED TO DEMONSTRATE THAT IT HAS "STANDING" TO BRING THIS ACTION BECAUSE THERE IS NO EVIDENCE OF ASSIGNMENT FROM THE ORIGINAL CREDITOR..... 12

POINT TWO

THERE IS A PRACTICAL REASON WHY THE COMMON LAW REQUIRED AN ASSIGNEE TO PROVE BY COMPETENT EVIDENCE THE FULL CHAIN OF ASSIGNMENT---THE RATIONALE IS SIMPLE, TO PROTECT AN OBLIGOR FROM MULTIPLE CLAIMS BY THOSE CLAIMING TO BE THE ASSIGNEE OF THE OBLIGEE..... 14

CONCLUSION..... 18

STATEMENT OF CASE

This case stems from a collection action instituted by Respondent New Century Financial Services, Inc. (hereinafter "Respondent" or "NCFS") against the Appellant Ahlam Oughla for the alleged default on a Credit One Bank, N.A. (hereinafter "Credit One Bank") credit card account. See Complaint. The Appellant has raised as part of her defense to the collection action the issue of "standing" in

the form of Respondent's inability to prove a valid chain of assignment. The court below essentially accepted Respondent's assertion that it owned the debt without requiring proof of an unbroken chain of assignment of the debt. To quote the Respondent: "Your Honor, Mr. Galic's testimony that New Century owns this debt, without more is sufficient." T16-23 to 25.

This case is on appeal after the Appellant's motion for reconsideration of the summary judgment motion that the court below had earlier granted the Respondent was denied on July 27, 2012. T1. The notice of appeal was filed on August 13, 2012. Da5.

STATEMENT OF ISSUES

The principal issue in this case is whether the Respondent satisfied its burden of proving that the Credit One Bank account that is subject of this litigation was validly assigned to it. Put in boarder terms, this court is being asked to reaffirm the applicability of a bedrock common law principle that an assignee must prove its ownership by producing the contracts of assignment and establishing an unbroken chain of title. Cullen v. Woolverton, 63 N.J.L. 644, 646 (E&A 1899). This, at a time when our courts face the challenge of dealing with the evidentiary inadequacies of proving ownership of millions of consumer accounts by the debt buying industry. The recent Federal Trade Commission (hereinafter "FTC") study of the consumer debt buying industry highlights this problem and is a clarion call to the industry, regulators and the judiciary to address these inadequacies, so that consumers are provided meaningful and accurate information during the collection process. Federal Trade Commission, The Structure and Practices of the Debt

Buying Industry, (January 2013).

INTEREST OF AMICUS

Northeast New Jersey Legal Services, Inc. (hereinafter "NNJLS") is an independent, non-profit corporation funded by the Legal Services Corporation, the State of New Jersey and the IOLTA Fund of the Bar of New Jersey. NNJLS represents indigent civil litigants in Bergen, Hudson and Passaic counties. It is the largest Legal Services field program in the State, in terms of the poverty population within its service area. NNJLS is a legal assistance organization as defined by R. 1:21-1(e). In 2012, NNJLS serviced 1559 consumer financial related cases, including 1093 consumer related debt collection matters.

The issues presented in this case are of significant concern to NNJLS and the clients it represents especially in these times of economic hardship and financial instability. NNJLS's long history of representing low-income consumers gives us, we submit, both an interest in and unique perspective on the issues involved in this case. We believe we can offer the Court a broader perspective of the issues in this case by demonstrating the practical impact of requiring a full chain of assignment.

EXPERTISE OF AMICUS

The attorneys who will present this matter on behalf of NNJLS have extensive experience in consumer related matters. The attorneys who will present this matter are members of the National Association of Consumer Advocates and regular speakers at consumer law training programs organized by the statewide legal services support center--Legal Services of New Jersey. Two of the more notable cases in which they have participated as either amicus or lead counsel are

Beneficial Finance Co. v. Swaggerty, 86 N.J. 602 (1981) and Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602 (1999).

The movant additionally satisfy the remaining criteria of R. 1:13-9. The application is timely since the Reply Brief in this case is due on February 14, 2013.

STATEMENT OF PROCEDURAL HISTORY

Amicus will rely upon the Appellant's recitation of the procedural history in this case and will adopt it as its own.

STATEMENT OF FACTS

Amicus will also rely upon the Appellant's recitation of the facts in this case.

I.

The Emergence of the Consumer Debt Buying Industry--An Historical Perspective

The sale and trading of charged-off[1] consumer debt portfolios has its origins in the 1987 savings and loans crisis. Caroline Mayer, As Debt Collectors Multiply, So Do Consumer Complaints, Wash. Post, July 28, 2005. At the time, thrifts were closing at an alarming rate and the Federal Deposit Insurance Corporation (hereinafter "FDIC") which insures deposits up to a certain amount, had to take receivership of these insolvent thrifts so as to cover the expenses associated with repaying depositors.

In the aftermath of the crisis, Congress created the Resolution Trust Corporation (hereinafter "RTC") to take the insolvent thrifts off the books of the FDIC and to close them and return insured deposits. Federal Deposit Insurance

---

[1] Charge-off is an accounting term that refers to open-end retail credit accounts that have been delinquent or past due for 180 days and which the creditor treats as a loss. 65 Fed. Reg. 36904, (June 12, 2000)

Corporation, An Examination of the Banking Crises of the 1980s and Early 1990s 100 (1997), available at http://www.fdic.gov/bank/historical/history/vol1.html. The RTC was also charged with disposing of the remaining assets of the thrifts to the private sector. The RTC held auctions around the country allowing private investors to bid on portfolios of mixed assets of performing and non-performing assets. At these auctions, bidders were unable to evaluate the assets before bidding and most purchasers had no clue what they had purchased until they had left the auction. This availability of distressed assets was the catalyst that spurned today's consumer debt buying industry.

At the time, there was just a handful of debt buying companies that purchased, collected and profited from the distressed assets that were being sold by the RTC. Mayer, supra. By way of example, in the early1990s the RTC auctioned off $485.5 billion in distressed thrift assets to these debt buying companies. Lee Davison, The Resolution Trust Corp. and Congress, 1989-1993, Part II: 1991-1993, 18 FDIC Banking Review No. 3, 23 (2006). After the RTC sold all of the failed thrift assets, these debt buying companies found new business opportunities by shifting their focus to buying and collecting charged-off consumer debts.

The emergence of the consumer debt buying industry coincided with the easy availability of consumer credit in the early 1990s. This is illustrated by the explosive increase in the amount of outstanding credit card debt in the United States between 1990 and 2005, which grew from $237 billion to well over $802 billion an increase of 238% over a 15 year period. U.S. Government Accountability

Office, Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers, 57 (Sept. 2006), available at http://www.gao.gov/new.items/d06929.pdf.

During this period living expenses steadily rose while real wages declined. Jose A. Garcia, Demos, Borrowing to Make Ends Meet: The Rapid Growth of Credit Card Debt in America (2007). In order to sustain themselves, many low-income and working poor families turned to their credit cards to "deficit finance" essential expenditures as their incomes lagged behind and failed to cover their basic needs. Id. (finding that medical debt and unemployment were significant contributors to household credit card debt loads); see also Jose Garcia, Tamara Draut, Demos, The Plastic Safety Net: How Households are Coping in a Fragile Economy (2009), available at http://www.demos.org/pubs/psn.pdf. To compound matters, many consumers were entrapped by subprime credit cards with low credit limits but exorbitant interest rates and fees, often marketed to low-income individuals who historically had little or no access to mainstream financial services. Rishawn Biddle, Credit Cards: Defaults Force Issuers to Beat a Retreat, 25 Los Angeles Bus. J. 43 (2003).

By the time the banks imploded in 2008 and the American taxpayers were once again called on to bailout those that were "too big to fail", subprime credit cards accounted for more than a quarter of the credit card market. Margo Anderson, From Subprime Mortgages to Subprime Credit Cards, 19 Communities & Banking 4, 23 (Fall 2008). As debt loads became unsustainable credit card charge-offs escalated, thus creating a fertile market for the consumer debt buying industry.

II.

The Business of Buying and Selling Debt

Traditionally the banks and finance companies--the credit originators would sell pools of defaulted loans beginning within the first 180 days past the date of charge-off. Vernon Gerety, Bad Debt Marketplace The Emerging Secondary Market, (June 2009). These asset tranches were sold based upon a "forward flow" agreement with a single buyer taking the entire pool of defaulted debt. Typically "forward flow" agreements between a single buyer and seller, contractually determines future transactions between the parties. The agreement determines the intervals, usually on a monthly or quarterly basis, for purchasing of the debt, at a negotiated price. For example, a forward flow contract might stipulate; Bank A agrees to sell to Broker B all credit card accounts that were charged off in January 2010 at a price of 4.0% of face value. This debt sale will continue each month usually for a one year period at the same price.

Initially the buyers were large collection agencies, finance companies and in some cases large private equity funds. Gerety supra. Historically the sellers contractually prohibited buyers from reselling the portfolios to the secondary market because of reputational concerns and the possibility of having to service downstream buyers with media requests concerning the details of the debt, like ownership and the validity of the debt relative to the consumer. Id.

Starting in 2002, the restrictions on the reselling of charged-off accounts began to loosen and a vibrant secondary debt buying market emerged largely as result of the recognition of the benefits that a well developed secondary market

could give the industry, namely, greater demand and higher prices. Id. With the growth of the secondary market came brokers. Id. The brokers were now able to offer buyers a broader selection of portfolios. Buyers were now offered debt in sub-segments, typical portfolios containing a pool of charged-off consumer debt for a specific state or county within a state. Id. Buyers of these sub-segmented debts typically were regional and local collection agencies and the debt buying operations of collection law firms that had local expertise and wanted to leverage their proximity and familiarity with the local court house.

Typically when a debt buyer purchases a portfolio it receives an electronic file or datastream of information about the accounts in the portfolio. Federal Trade Commission, The Structure and Practices of the Debt Buying Industry, (January 2013). [Hereinafter FTC Report]. The electronic file or media typically has the following information the name, last known address and telephone of the debtor, social security number of the debtor, the creditor's account number the outstanding balance on the account, the dates of account opening and last payment. FTC Report at 34-35. However, information regarding the validity of the debt is virtually non-existent. The standard industry practice is for debt sellers to routinely disavow in the purchase and sales agreement all representations and warranties as to accuracy of the information provided to the debt buyers regarding the debts that are being sold, in other words, the debts are sold "as is". FTC Report at 25. Typically the debt buyers' ability to obtain additional documentation from the original creditor is severely limited, they may purchase the right to request some documentation in a limited number of cases, or they may not have access to any supporting

documentation at all. FTC Report at iii. If the debt is resold to another debt buyer, obtaining supporting documentation becomes even more difficult as most second and subsequent sales do not provide for direct access to the original creditor to obtain needed documentation especially in contested matters. U.S. Government Accountability Office, Credit Cards: Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology at 44-45, [hereinafter "GAO Report"] available at http:// www.gao.gov/new.tems/d09748.pdf.

The recent FTC study on the debt buying industry found that on the average debt buyers paid 4 cents for each dollar of debt. FTC Report at 23. Stated differently, debt buyers on the average paid 4% of the face value of the debt that they acquired. The price of debt is influenced by market forces of availability and demand for charged-off debts, the perceived likelihood of collection and the overall quality of debt. FTC Report at 23-24. Debt portfolios that were previously worked over and then resold are worth less because the previous buyers of the portfolio have skimmed the easily collectable accounts from the portfolio. GAO Report at 28-29. There are even markets for debts that are legally uncollectable debts, like debts discharged in bankruptcy or debts of deceased. David Streitfeld, You're Dead? That Won't Stop the Debt Collector, N.Y. Times, March 4, 2009, at A1, available at http://www.nytimes.com/2009/03/04/business/04dead.html?_r=1&scp=1&sq=dead%20newest%20frontier&st=cse.

III.

The Debt Buying Industry, Collection Methods and the Courts

There are a range of collection tactics that debt buyers employ in their effort to collect consumer debts, this range from sending collection letters to filing lawsuits. Increasingly, the debt collection industry has turned to the courts to collect debts.[2] Across the country there has been a surge in debt collection filings. As the Chief Financial Officer of Asta Funding simply put it "We're looking to sue." Caitlin Devitt, So Sue'Em. Debt Buyers Are Increasingly Going to Court to Increase Recoveries and Justify Prices Being Paid for Debt Portfolios in a Demand Driven Market, Collection and Credit Risk at 32 (July 2007). Indeed, the industry's response to the 2008 economic crisis as evidenced in an industry survey has been to place more accounts for collection through the court system. Patrick Lunsford, More Payment Plans and Legal Collections, Say ARM Companies in Survey, InsideArm, Jan.27, 2009 available at http://www.insidearm.com/go/arm-news/-more-payment-plans-and-legal-collections-say-arm-companies-in-survey. The FTC recently observed that "[t]he majority of cases on many state court dockets on a given day often are debt collection matters" and the glut of debt collection cases has "posed considerable challenges to the smooth and efficient operation of courts". Federal Trade Commission, Collecting Consumer Debts: The Challenges of Change, at 55 (February 2009).

---

[2] See the Annual Report (Form 10-K) for 2001-2006 of the four publicly traded debt buyers Asset Acceptance, Inc., Asta Funding, Inc. Encore Capital Group, Inc. and Portfolio Recovery Associates, Inc.

Here in New Jersey 303,710 contract cases were filed in the Special Civil Part for the period July 2011-June 2012.[3] Contract cases accounted for 57.34% of the cases filed in Special Civil Part for the said period. Even though there are no statistics in New Jersey for the number of default judgments that are entered in consumer debt collection cases, it is estimated that 60%-95% of the consumer debt collection lawsuits nationwide result in defaults with the consensus being that the default rate is closer to 90%. Federal Trade Commission, Repairing A Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration at 7 (July 2010). In view of the large number of collection cases that are filed, this appeal presents an important question of whether Respondent's claim could be adjudicated in the first place without proving the chain of title from the original credit.

LEGAL ARGUMENTS

POINT ONE

RESPONDENT HAS FAILED TO DEMONSTRATE THAT IT HAS "STANDING" TO BRING THIS ACTION BECAUSE THERE IS NO EVIDENCE OF ASSIGNMENT FROM THE ORIGINAL CREDITOR

In order for a party to sue it must have standing. In re Baby T., 160 N.J. 332 (1999). Standing is an element of justiciability and is a threshold determination that courts are required to make before delving into the merits of a case. New Jersey Citizen Action v. The Rivera Motel Corp., 296 N.J. Super. 402, 411 (Explaining the distinction between "standing" and "subject-matter jurisdiction",

---

[3] http://www.judiciary.state.nj.us/quant/cman1206.pdf

noting that standing affects whether a matter is appropriate for judicial review).

Respondent's assertion of ownership does not establish standing. Instead, the assertion of ownership allows the debt buyer to litigate the issue of ownership, but once there is an adjudication that the debt buyer failed to prove the validity of the chain of assignment, the debt buyer lacks standing to have the debt adjudicated. By way analogy, consider someone claiming to be the decedent's illegitimate child who alleges undue influence in the decedent's will. Whether the person is indeed the decedent's child must be decided before addressing the undue influence claim. That determination may involve a trial and the person's assertion of parentage is sufficient to adjudicate parentage. But if the court finds that the person is not the decedent's child then the court does not decide the undue influence claim

Surely, the litigants agree that Respondent must prove the account was assigned to it. The bone of contention seems to revolve around the standard of proof. Respondent contends that the mere assertion that it owns the debt is sufficient to prove assignment. T16-23 to 25; T11-11 to 15. Respondent's position is contrary to the well established common law principles of assignment. Respondent has the burden of proving that it is the current owner of the account, and how it became the owner, by producing a copy of all the contracts of assignment in its chain of title, from Credit One Bank onward, and the burden of proving the consideration paid for the alleged assignment. Sullivan v. Visconti, 68 N.J.L. 543, 550 (Sup. Ct. 1902); Triffin v. Quality Urban Housing Partners, 352 N.J.Super. 538,

(App. Div 2002); Triffin v. Johnston, 359 N.J.Super. 543, (App. Div. 2003). In Cullen v. Woolverton, 63 N.J.L. 644, 646 (E&A 1899), New Jersey's then highest court held that plaintiff must produce the actual contract of assignment upon defendant's demand, or else be barred from recovery. To effect a valid assignment, "the subject matter of the assignment must be described sufficiently to make it capable of being readily identified." Transcon Lines v. Lipo Chemical Inc., 193 N.J. Super. 456, 467 (Law Div. 1983). More recently, the highest court of our sister State of Missouri held that an assignee of a credit card account, like the account before this Court, must prove the full chain of assignment with competent evidence. CACH, LLC v. Askew, 358 S.W.3d 58 (2012). The record in this case demonstrates that NCFS was unable to prove at the minimum the first link in the chain of assignment. No assignment of the account from the original creditor Credit One Bank to MHC Receivables was proven in this case. T7-21 to 25; T8-1 to 25; T9-1to 5. Therefore, the alleged assignees subsequent to MHC Receivables failed to prove their ownership of the Credit One Bank account.

POINT TWO

THERE IS A PRACTICAL REASON WHY THE COMMON LAW REQUIRED AN ASSIGNEE TO PROVE BY COMPETENT EVIDENCE THE FULL CHAIN OF ASSIGNMENT---THE RATIONALE IS SIMPLE, TO PROTECT AN OBLIGOR FROM MULTIPLE CLAIMS BY THOSE CLAIMING TO BE THE ASSIGNEE OF THE OBLIGEE

There is a practical reason for the common law requiring that an assignee prove by competent evidence the full chain of assignment—the rationale is simple, to protect an obligor from multiple claims by those claiming to be the assignee of the obligee. That rationale is still applicable today to the debt buying industry as

evidenced by the examples below:

1. Great Seneca Financial Corp. vs. German Lopez, Sr.,HUD-DC-002412-06 and New Century Financial Services vs. German Lopez, Sr., HUD-DC-004541-06 where Respondent and Great Seneca Financial Corp. both sued NNJLS client German Lopez, Sr. and both obtained a judgment against him for the same Providian Bank credit card.
2. Debtor paid Debt Buyer A only for Debt Buyer B to later attempt to collect the debt that was earlier paid. See Overcash v. United Abstract Group, Inc., 549 F. Supp. 2d. 193, 195 (N.D.N.Y 2008); Chiverton v. Federal Financial Group, Inc., 399 F. Supp. 2d. 96, 99 (D. Conn. 2005); Fontana v. C. Barry & Associates, LLC, 2007 WL 2580490 at *1 (W.D.N.Y. Sept. 4, 2007).
3. Sometimes, the debtor pays Debt Buyer A even though Debt Buyer A has already sold the debt to Debt Buyer B without notifying the debtor. See Smith v. Mallick, 514 F.3d 48, 50 (D.C. Cir. 2008). Other times, the debtor pays the original creditor before the debt buyer's collection efforts. See Associates Financial Services Co. v. Bowman, Heintz, Boscia & Vician, PC, IP 99-1725-C-M/S, 2001 U.S. Dist. LEXIS 7874 at **9 – 12 (April 25, 2001) later opinion No. IP 99-1725-C-M/S, 2004 U.S. Dist. LEXIS 6520 (S.D. Ind. March 31, 2004). (Allegations were made that a creditor continued to collect on accounts allegedly sold to a debt buyer).
4. In Capital Credit & Collection Service, Inc. Armani, 206 P. 3d. 1114 (Ore. App. 2009), a debt collector was found to have settled a debt and then instituted litigation on it.

5. In McCammon v. Bibler, Newman & Reynolds, P.A., 493 F. Supp. 2d 1166 (D. Kan. 2007), the collection agency obtained a judgment against consumer knowing that the consumer had paid the original creditor. See also Grimsley v. Messerli & Kramer, P.A., 2009 WL 928319 (D. Minn., March 31, 2000) (Finding firm collecting on already paid debt); Sweatt v. Sunkidd Venture, Inc. 2006 WL 1418652 (W. D. Wash. May 18, 2006) (Noting firm collecting on debt already paid); Hooper v. Capital Credit & Collection Services, Inc., 2004 WL 825619 (D. Or. April 13, 2004) (Attempted collection on debt already paid to original creditor potentially due to original creditor's bookkeeping errors); McHugh v. Check Investors, Inc., 2003 WL 21283288 (W.D. Va. May 21, 2003) (Debtor had paid debt before collection agency ever began collection efforts).
6. Chase Bank USA, N.A. v. Cardello, 896 N.Y.S.2d 856, 857, (Richmond Co. Civ. Ct. 2010): "[O]n a regular basis this court encounters defendants being sued on the same debt by more than one creditor alleging they are the assignee of the original credit card obligation. Often these consumers have already entered into stipulations to pay off the outstanding balance due the credit card issuer and find themselves filing an order to show cause to vacate a default judgment from an unknown debt purchaser for the same obligation."
7. Dornhecker v. Ameritech Corp., 99 F. Supp. 2d 918, 923 (N.D. Ill. 2000), in which the debtor claimed he settled with one agency and was then dunned by a second for the same debt; and Northwest Diversified, Inc. v. Desai, 818

N.E.2d 753 (Ill. 1st Dist. 2004), in which a commercial debtor paid the creditor only to be subjected to a levy by a purported debt buyer.

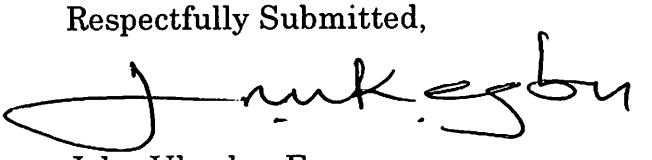
8. Finally, in 2009 a debt buyer was charged with a scheme to sell 86,000 accounts that he did not own. The debt buyer had actually sold 10,000 accounts at the time he was caught. United States v. Goldberg, 09-80030-Cr (S. D. Fla.) One of the purchasers sued complaining that it had purchased 6,521 accounts. RMB Holding, LLC v. Goldberg & Associates, LLC, No. #:07-cv-406 (E. D. Tenn.) The decision finds that "RMB began making attempts to collect on accounts it purchased from Goldberg" even though "Goldberg never delivered title or ownership of the accounts to RMB." See also Old National Bank v. Goldberg & Associates, LLC, 08-80078, 2008 U.S. Dist. LEXIS 114408 (S. D. Fla. Sept. 4, 2008).

As illustrated by these real life examples, proving ownership is more than a mere technicality. Surely, simply testifying that one owns the debt without any competent evidence proving each link in the chain of assignment does not suffice to prove ownership of the debt. CACH LLC, supra.

CONCLUSION

For the reasons, stated above this Court should reverse the summary judgment that was granted in favor of Respondent and against the Appellant and this case should be remanded to the trial court with specific instructions that the Appellant should put forth competent evidence proving each link in the chain of assignment of the debt it alleges to own. Palisades Collection, L.L.C. v. Olosunde, 2008 WL 5233566 (App. Div. 2008) (Plaintiff must produce the complete contracts of assignment not just the Bill of Sale which is an attachment to the contract).

Respectfully Submitted,



John Ukegbu, Esq.

Enclosures

Cc: Lawrence J. McDermott, Jr., Esq. & Steven A. Lang, Esq. (with enclosures)

Philip D. Stern, Esq. (with enclosures)