

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: PART 11C

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NATIONAL COLLEGIATE STUDENT LOAN  
TRUST 2007-4, A DELAWARE  
STATUTORY TRUST(S),

Index No: CV-009265-14/BX

Plaintiff,

-against-

**DECISION AFTER TRIAL**

SAMANTHA WATSON  
SOPHIA DETRY,

Defendants  
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After trial, the decision in the above action is as follows:

Plaintiff commenced this action seeking a judgment in the amount of \$7,336.00 against the defendants for an alleged breach of a promissory note and on an account stated. Plaintiff called Mr. Jonathan Boyd to testify on its behalf. Mr. Boyd testified that he is employed by Transworld System, Inc. (TSI) as a Legal Case Manager. He stated that TSI is the designated custodian of records for the Plaintiff. He stated that his job responsibilities include reviewing, maintaining, and analyzing the business records. He noted that the Plaintiff's business records are student loan records. He suggested that he is familiar with the Plaintiff's records and are able to identify them.

Plaintiff moved into evidence a document entitled "Loan Request/Credit Agreement-Signature Page" (Agreement) dated April 30, 2007. Mr. Boyd testified that the Agreement was received by fax and that it went to underwriting. He indicated that the loan was approved and the funds were disbursed. Plaintiff moved into evidence the "Note Disclosure Statement" (Disclosure) dated May 14, 2007. He stated that the Disclosure was created once the loan was approved. He insisted that the Disclosure was sent to the defendants. He noted that Charter One Bank, N.A. was the original lender. He also noted that AES was the original servicer of the defendant's loan. Mr. Boyd asserted that the Plaintiff received the loan by assignment.

Plaintiff moved into evidence the "Pool Supplement RBS Citizens, N.A. (Successor to Charter One Bank, N.A.) (RBS Citizens Assignment) dated September 20, 2007. Mr. Boyd stated that the assignment was between the original lender and National Collegiate Funding, LLC. He also stated that First Marblehead Corporation is a servicing company and is the servicing company for National Collegiate Funding, LLC. He suggested that the schedule at the end of the RBS Citizens Assignment identifies the defendants' loan.

Mr. Boyd further testified that the defendants' loan was subsequently assigned by National Collegiate Funding, LLC to the Plaintiff also on September 20, 2007. Plaintiff moved into evidence the Deposit and Sale Agreement between The National Collegiate Funding LLC and Plaintiff. Mr. Boyd suggested that the defendants' loan was transferred to the Plaintiff prior to the time any payments were due from the defendants.

Plaintiff moved into evidence the Loan Financial Activity (Activity) for the subject loan. Mr. Boyd stated that the repayment records are kept electronically. He suggested that this document shows the financial activity from the loan from the date of disbursement through the charge-off. He stated that the transaction code on page three of the Activity indicates that \$5,760.73 was the transfer amount from National Collegiate Funding LLC to the Plaintiff.

Mr. Boyd stated that the defendants made a payment on February 11, 2011. He acknowledged that he did not know how the payment was made. He suggested the defendants did not make any other payments and were declared in default. He indicated that the loan was charged-off in the amount of \$6,764.68 on August 1, 2011. He indicated that the sum requested in the complaint includes interest that continued to accrue. Mr. Boyd asserted that the Plaintiff has not received any payments since the charge-off and a balance remains due and owing. Plaintiff did not call any other witnesses.

Defendant, Samantha Watson, testified that she does not believe that she owes any money for this loan. She asserted that the Plaintiff was unable to show how the alleged payment was made

on the loan. She stated that the Plaintiff is relying on the payment to establish that she owes the money. Ms. Watson insisted that the documents submitted into evidence do not establish that AES was the original servicer of the loan. She also insisted that the Deposit and Sale Agreement does not show that the Plaintiff owns the loan. She stated that she never received any documents that informed her that she was in default on the loan. She also stated that she did not receive any notice that the original lender was changed. She insisted that she never received any notices or statements regarding this loan. She also insisted that her cosigner never received any notices.

Ms. Watson noted that the Disclosure indicates that the loan was made out only to her. She stated that Mr. Boyd testified earlier that the loan is made out to both parties. Ms. Watson insists that the Plaintiff does not own this loan and that it cannot sue her because she never did business with the Trust. She noted that the Plaintiff claimed that it is the original owner of the loan which is not supported by the Agreement. She insists that Charter One Bank is the original lender.

Defendant, Sophia Detry, testified that they do not owe the Plaintiff the money. She stated that she does not recall her daughter ever making payments on the loan. She asserted that if her daughter did make any payments on the loan they were not to the Plaintiff. Ms. Detry asserted that the Plaintiff does not have the right to sue them. She stated that the Plaintiff has not provided any proof. She noted that she never received the documents and she is only seeing them for the first time in court. She insisted that the documents were never sent to her address.

Defendants challenge the Plaintiff's standing and capacity to sue in this matter. It is unquestioned on this record that Charter One Bank is the original lender of the loan. Although the defendants challenged Mr. Boyd's authority to testify on behalf of the Plaintiff, the Court admitted into evidence the electronic records relied upon by the Plaintiff pursuant to CPLR § 4518. It is well settled that the relationship between two businesses and the nature of the records in question, including the circumstances of their preparation, may give the recipient sufficient familiarity with the other party's records to justify admissibility through the foundation testimony of the recipient

(*People v Cratsley*, 86 NY 2d 81 [1995]). Moreover, where a company routinely relies upon the records of another business in the conduct of its own business, that company will be permitted to admit into evidence through one of its employees the records of the other company (*Merrill Lynch Business Financial Services, Inc. v Trataros Constructin, Inc.*, 30 AD 3d 336 [1<sup>st</sup> Dept. 2006]; *People v DiSalvo*, 284 AD2d 547 [2<sup>nd</sup> Dept. 2001]). This Court determined that Mr. Boyd has the necessary familiarity and knowledge of the Plaintiff's records based upon his testimony and the relationship between his employer as the designated custodian of records and the Plaintiff (*see for example Merrill Lynch Business Financial Services, Inc.*, 30 AD3d 336; *Portfolio Recovery Associates, LLC, v Lall*, 127 AD 3d 576 [1<sup>st</sup> Dept 2015], *affg* 41 Misc3d 128[A][App Term 1<sup>st</sup> Dept 2013]).

Generally, an assignee of a consumer credit agreement must establish its standing at the time the action was commenced (*See Portfolio Recovery Assoc. v Lall*, 41 Misc3d 128[A]). The Court finds that Plaintiff failed to establish the chain of title from the original lender to Plaintiff. Mr. Boyd credibly established that the RBS Citizens Assignment dated September 20, 2007, shows that the defendants' loan was transferred to The National Collegiate Funding LLC. The Court finds that the Deposit and Sale Agreement also dated September 20, 2007 is insufficient to establish that The National Collegiate Funding LLC assigned the defendants' loan to the Plaintiff.

The Agreement indicates that the defendants applied for a loan in the amount of \$5,000. The Loan Program Information indicates that the loan defendants applied for was part of the "Charter One Continuing Education Loan." This Court's review of the Deposit and Sale Agreement finds that assignment does not specifically identify the Charter One Continuing Education Loan as part of Schedule A relied upon by the Plaintiff. Section 3.02 of the Deposit and Sale Agreement provides that "[t]he Seller hereby assigns to the Purchaser and the Purchaser hereby accepts all of the Seller's rights and interests under each of the Pool Supplements listed on Schedule A attached hereto and the related Student Loan Purchase Agreements listed on Schedule B attached hereto." Schedule A of

the Deposit and Sale Agreement lists the "Pool Supplements" that were transferred from RBS Citizens, N.A., successor by merger to Charter One Bank, N.A., as well as other original lenders. There are several loan programs sponsored by RBS Citizens, N.A., successor by merger to Charter One Bank, N.A. included in Schedule A of the Deposit and Sale Agreement. The Court finds nothing in Schedule A of the Deposit and Sale Agreement that referenced the defendants' Charter One Continuing Education Loan that originated from Charter One Bank, N.A. Mr. Boyd's unsupported testimony that the defendants' loan was part of the assignment from The National Collegiate Funding LLC to the Plaintiff is insufficient based upon the pool supplements listed in Schedule A. Mr. Boyd did not provide any testimony that identified defendants' Charter One Continuing Education Loan as part of Schedule A of the Deposit and Sale Agreement.


Based upon the foregoing, the Court is unable to determine whether the defendants' loan disbursed on or about May 14, 2007 in accordance with the Disclosure was included in the assignment between the National Collegiate Funding LLC and the Plaintiff. Accordingly, the Court finds that Plaintiff failed to establish its standing in this proceeding.

In light of the foregoing, it is hereby:

**ORDERED AND ADJUDGED** that the Clerk shall dismiss this action in its entirety based upon the Plaintiff's failure to establish its standing to bring this action.

This shall constitute the decision and order of the Court.

Dated: January 7, 2016

  
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Hon. Eddie J. McShan  
Judge, Civil Court