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August 11, 2011

FILE VIA JEFIS

Clerk, Morris Special Civil Part
Records & Administration
Washington & Court Streets
P.O. Box 910
Morristown, NJ 07963-0910

**Re: Midland Funding, LLC v. Cheryl Williams, Docket No.: MRS-DC-004044-11
P&P File Number W134497**

Dear Judge Nergaard:

Please recall that this firm represents Plaintiff Midland Funding, LLC ("Midland") in the above-captioned matter. Your Honor will hear oral argument on Defendant Cheryl Williams' motion to dismiss the complaint on August 12, 2011. Midland opposed the motion. Defendant filed a response thereto. Pursuant to R. 1:6-5, no further submissions are permitted without the Court's leave. On August 10, 2011, however, defendant served what purports to be a Supplemental Reply Brief. Midland does not know if the Court will consider that submission and is taking the precaution of submitting this responsive brief.

Midland's opposition established beyond debate that defendant's motion for summary judgment is nothing more than a desperate attempt to avoid discovery. The motion rests solely on defendant's counsel's naked assertion that Midland has no evidence to support its claim. For that reason alone the motion must be denied. Moreover, although not required to do so, Midland's opposition to the motion included a certification by its counsel to which was attached a veritable mountain of evidence to support the claim. Notwithstanding defendant's protestation to the contrary, Midland's counsel is certainly competent to certify as to what evidence she presently has at her disposal. Since defendant filed the motion without benefit of discovery, she has no idea how the evidence will be presented. She, therefore, cannot possibly be heard to say that the evidence is inadmissible.

Assuming arguendo for purposes of this motion only that defendant filed it in good faith, defendant should have withdrawn it after Midland submitted the mountain of evidence it has at this embryonic stage of the proceedings. Unfortunately, defendant chose to file the reply and supplemental reply briefs. Those submissions, however, simply regurgitate the arguments set forth in the moving papers. Nothing in either submission alters the fact that the motion seeks to do away with the discovery process. Indeed, both submissions underscore defendant's fundamental misunderstanding of the applicable

law. Midland is not moving for summary judgment, defendant is. It is her burden to establish that there are no disputed material facts. That heavy burden cannot be met by her counsel's proclamation. Whatever burden Midland has is more than amply met by the submission of its counsel.

The recent holding in Deutsche Bank National Trust Company v. Mitchell, --- A.3d --- (App. Div. 2011), 2011 WL 3444223 is of no comfort to defendant. There, the trial court granted summary judgment based upon an attorney's certification as to the facts. Not surprisingly, the Appellate Court reversed that decision. The rationale of that case applies with even greater force here. In that case there was a certification of facts, albeit an inappropriate one. Here, defendant has not even bothered to submit a certification. Moreover, the plaintiff in that case sued to collect on a note it did not have in its possession. There is no such note in the case at bar. Rather, the complaint seeks to collect the amounts due on defendant's defaulted credit card account. Obviously, if defendant was in possession of documents or other evidence to prove she does not owe the debt, she would have presented same by way of her certification. Her failure to do so speaks volumes.

In sum, the motion is utterly devoid of any merit. It is frivolous and should be denied.

Very truly yours,

PRESSLER and PRESSLER, LLP



Steven A. Lang

cc: Inna Rya, Esq. (via email)

This communication is from a debt collector.