

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

February 22, 2012

Seth H. Yeager, Esq.
Lyons, Doughty, and Veldhuis, P.A.
15 Ashley Place Suite B
Wilmington, DE 19804

Mr. Robert Gustafson
811 Turkey Point Road
Felton, DE 19943

RE: Midland Funding, LLC. v. Robert Gustafson
C.A. No. CPU5-11-000090

Decision on Plaintiff's Motion for Summary Judgment

Dear Mr. Yeager and Mr. Gustafson:

This civil case involves a debt action to collect on a delinquent Sears charge account that has been assigned to the plaintiff, Midland Funding, LLC (Midland). Midland alleges that the defendant, Robert Gustafson (Gustafson), owes it for an unpaid balance on the Sears charge account. Midland filed a Motion for Summary Judgment for this matter seeking the entry of judgment against Gustafson and a hearing was held for the motion, after which the Court reserved decision. For the reasons set forth below, Midland's motion is denied.

Midland has moved for summary judgment seeking judgment for a debt it alleges is owed to it by Robert Gustafson (Gustafson). In support of its motion, Midland attached an affidavit stating that, according to its records, Gustafson owes a total of

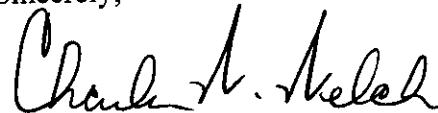
\$13,921.54, including interest and fees, on an unpaid Sears charge account that was assigned to it. The affidavit further states that Midland properly made demand on Gustafson for the outstanding balance. Gustafson has responded to the demand for payment by asserting that although he did have an account with Sears at one point in time, he did not incur the debt demanded, nor did he receive any billing statements from Sears indicating that he had an outstanding balance with it. Gustafson testified that he destroyed his Sears card a number of years ago and was unaware of the alleged debt until he was contacted by Midland. He also testified that he alone checked the mail each day due to his wife's and daughter's disabilities and that at no time did he receive any billing statements from Sears. Midland provided copies of billing statements addressed to Gustafson which show both the original charge amount and the subsequent accrual of interest and fees. The statements were addressed to Gustafson at his correct residential address, however, there is no evidence on the record that they were actually mailed

When considering a motion for summary judgment, the Court must view the facts and reasonable inferences therefrom in the light most favorable to the non-moving party. *Browning-Ferris, Inc. v. Rockford Enterprises, Inc.*, 642 A.2d 820, 823 (Del. Super. 1993). The Court will grant summary judgment only if the pleadings and the record show that there are no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law. *See Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party bears the burden of proof to show that no such issues exist. *Moore*, 405 A.2d at 680-81.

In this case, there remain genuine issues of material fact as to whether Sears ever sent Gustafson, the non-moving party, the billing statements at issue and whether charges were attributed to his account in error. Nothing in Midland's affidavit contradicts Gustafson's assertion that he never authorized the charges and that he was unaware of the debt because Sears never sent him the statements attached to Midland's motion. Since genuine issues of material fact remain as to whether Gustafson incurred the charges with Sears and whether Sears ever sent the statements to Gustafson, Midland's Motion for Summary Judgment is denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is written in a cursive style with a large initial "C".

Charles W. Welch, III

CWW:mek