

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

In re,

La'Sharra Valisha McClain,

Debtor(s).

C/A No. 15-03419-HB

Adv. Pro. No. 16-80100-HB

La'Sharra Valisha McClain,

Plaintiff(s),

v.

Midland Funding, LLC, Midland Credit  
Management, Inc.,

Defendant(s).

Chapter 13

**ORDER**

Plaintiff La'Sharra Valisha McClain ("McClain") and Defendants Midland Funding, LLC and Midland Credit Management, Inc. (collectively, "Midland") present cross Motions for Summary Judgment<sup>1</sup> pursuant to Fed. R. Civ. P. 56.<sup>2</sup> The Motions ask the Court to determine whether proofs of claim filed by Midland comply with Fed. R. Bankr. P. 3001(c)(2)(A) and if not, McClain seeks relief pursuant to Fed. R. Bankr. P. 3001(c)(2)(D).

**FACTS**

The facts are not in dispute. McClain filed for Chapter 13 relief on June 30, 2015, and her confirmed plan requires payment of 100% of allowed unsecured claims. McClain's schedules include nine unsecured debts in the aggregate amount of \$16,245.00 originally

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<sup>1</sup> ECF Nos. 37 & 38, filed Apr. 12, 2017.

<sup>2</sup> Made applicable to this adversary proceeding by Fed. R. Bankr. P. 7056.

owed by McClain to Synchrony Bank (collectively, the “Debts”).<sup>3</sup> Each of the Debts arises from a charge account that is an open-end or revolving consumer credit account (e.g., credit card account).<sup>4</sup> Shortly after the bankruptcy was filed, Synchrony Bank “charged-off” the Debts. This act created for each Debt a “charge-off statement,” defined as the last account statement from the original creditor,<sup>5</sup> which includes not only the principal amount of the Debt but also an itemized statement of the interest, fees, expenses, or charges incurred (the charge-off statements are hereinafter referred to as “Charge Offs”). Midland then purchased from Synchrony Bank the entire outstanding balance for each of the Debts as indicated on the Charge Offs.

Midland then filed nine proofs of claim in McClain’s bankruptcy case, totaling \$18,009.00 (collectively, the “Claims”).<sup>6</sup> As the record now indicates, more than \$1,800.00 of that total arises from pre-petition additions to the principal balance, such as interest, fees, expenses, or other charges (“Additions”). The Additions were charged by Synchrony Bank before the transfer of the Debts to Midland. The Claims, however, do not attach the Charge Offs that provide a breakdown of the total amount of the Debts, and Midland represented in two ways that the Claims do not include any Additions: (1) Midland declined to check a box on the Official Form that would indicate Additions are included in the Claim amount; and (2) the Claims attach a one-page Account Summary indicating no Additions are included in the Claim amount, of which an example follows:

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<sup>3</sup> The Debts are scheduled under the following names: GECRB/Walmart; GECRB/American Eagle; GECRB/Gap; GECRB/Banana Republic; GECRB/Lowes; Sams Club/GEMB; GECRB/Amazon; Synch/gap; and GECRB/Care Credit. The debts were not indicated as contingent, unliquidated or disputed.

<sup>4</sup> See Fed. R. Bankr. P. 3001(c)(3).

<sup>5</sup> See ECF No. 38-1, Ex. 1 at 9 (Midland’s Expert Report).

<sup>6</sup> The only large discrepancy in amounts between the Debts and the Claims was the Claim filed for the GECRB/Gap Debt in the amount of \$1,655.46, which McClain scheduled as \$0.00. At the hearing, McClain’s counsel stated this discrepancy may have been due to an error when inputting the information to complete McClain’s schedules.

<b>TOTAL CLAIM AMOUNT</b> \$1,665.46	<b>UNSECURED PRINCIPAL</b> \$1,665.46	<b>INTEREST DUE</b> \$0.00	<b>FEES</b> \$0.00	<b>COSTS</b> \$0.00
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After efforts by McClain's attorney, Midland amended two of the nine Claims<sup>7</sup> using the Official Form in effect at that time.<sup>8</sup> The amended Claims again indicate they do not include any Additions (example below):

7. How much is the claim?	\$ 1665.46	Does this amount include interest or other charges?
		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

Despite this representation, the two amended Claims each attach the corresponding Charge Off, which includes an itemization of Additions that are included in the Claim amount. The Charge Offs for the other seven Claims were never attached to any filing made on the Court's claim record, but are now included in the summary judgment record and disclose that Additions are a portion of those Claims as well.

McClain does not now dispute the validity or amount of the Claims. However, McClain asserts she was misled by the manner in which Midland presented its nine Claims and was harmed as a result.<sup>9</sup> The Court docket and pleadings evidence ample effort by McClain's attorney to obtain information from Midland to analyze the Claims.

Midland presented the expert report of Patti J. Blenden, a certified public accountant and certified regulatory compliance manager not directly associated with Midland. Blenden's

<sup>7</sup> The amended Claims were filed for the Debts scheduled as GECRB/Gap and the Synch/gap. (POC Nos. 11-2 & 16-2, filed Mar. 18, 2016).

<sup>8</sup> Official Form 10 was amended to Official Form 410, effective December 1, 2015. The changes to the Official Form do not affect the issues before the Court.

<sup>9</sup> At the hearing, McClain also argued Midland's representation of the Debts as principal only and failure to itemize Additions was an affirmative misrepresentation, and requested the Court issue sanctions pursuant to Fed. R. Bankr. P. 9011(c)(1)(B). McClain also requested at the hearing that Midland should be fined for any and all prior instances in which it filed a proof of claim in this district and failed to disclose and itemize any Additions. These requests were not previously made by a motion or otherwise in McClain's pleadings with proper notice to Midland and the Court declines to raise them *sua sponte* at this time.

report details how Midland, as a debt buyer, is not required to disclose certain information under the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (“TILA”), its implementing regulation, Regulation Z, 12 C.F.R. § 226.1 *et seq.* (2011), and other related legislation. According to Blenden, from the debt buyer’s perspective, the principal amount of its Claim is the entire balance of the Debt purchased, as evidenced by the original creditor’s Charge Off in compliance with TILA and Regulation Z. In Blenden’s opinion, because Midland did not charge any Additions after it acquired the Debts, “[t]he post-charge-off outstanding balance . . . is correctly characterized as a principal balance equal to the debt purchased from the original creditor at charge-off and is collectible in its entirety.” (ECF No. 38-1, Ex. 1 at 7).

#### **JURISDICTION**

This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (B), and the parties have consented to this Court entering a final order in this matter

#### **SUMMARY JUDGMENT STANDARD**

Under Fed. R. Civ. P. 56(a), “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “[S]ummary judgment should be granted in those cases in which it is perfectly clear that no genuine issue of material fact remains unresolved and inquiry into the facts is unnecessary to clarify the application of the law.” *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 738 (D.S.C. 2001).

The fact that there exists an important, difficult or complicated question of law is not a bar to a summary judgment where it is clear there is no genuine issue of a material fact. Resolution of the legal issues will not be rendered easier by going through the trial when there is no issue of fact to be tried. In this regard, summary judgment is appropriate when the parties merely dispute the significance of the events but do not dispute which events actually occurred.

*Bradacs v. Haley*, 58 F. Supp. 3d 514, 521 (D.S.C. 2014) (internal quotation marks and citations omitted).

### THE CLAIMS PROCESS AND BANKRUPTCY RULE 3001

The Federal Rules of Bankruptcy Procedure specify the form, content, and filing requirements for a proof of claim. *See e.g.*, Fed. R. Bankr. P. 3001. 3001(f) states that “[a] proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim.”

In 2011, the Bankruptcy Rules were amended to include additional disclosure requirements for certain types of claims and the consequences for failing to provide such information. 3001(c) was amended to provide:

*Additional Requirements for Individual Debtor Case; Sanctions for Failure to Comply.* In a case in which the debtor is an individual:

- (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges *shall* be filed with the proof of claim.
- ....
- (D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and a hearing, take either or both of the following actions:
  - (i) Preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
  - (ii) Award other appropriate relief, including reasonable expenses and attorney’s fees caused by the failure.

Fed. R. Bankr. P. 3001(c)(2) (emphasis added). Consistent with 3001(c)(2)(A), Official Form 10 instructed creditors to check a box if their “claim includes interest or other charges in addition to the principal amount of [the] claim” and to “[a]ttach a statement that itemizes interest or charges.” Official Form 10 was subsequently amended to Official Form 410, which

requires the same disclosures in a different way by stating the creditor must “[a]ttach statement itemizing interest, fees, expenses, or other charges *required by Bankruptcy Rule 3001(c)(2)(A)*.” (emphasis added).

3001(c)(2)(A) does not provide any exception for debt buyers and its disclosure requirements are directed to all creditors in cases where the debtor is an individual. *See Jowers v. Midland Funding, LLC, et al.*, C/A No. 16-01667-DD, Adv. Pro. No. 16-80101-DD, slip op. at 9 (Bankr. D.S.C. May 23, 2017) (stating that because the debt buyer’s “proof of claim listed the entire amount of the debt as principal, and did not provide an itemization of prepetition interest and other charges as required by Rule 3001(c)(2)(A), the proof of claim does not comply with Rule 3001.”); *Maddux et al. v. Midland Credit Mgmt.*, C/A No. 15-33574, 2016 WL 8808176, at \*5, \*9 (Bankr. E.D. Va. Dec. 1, 2016) (previously granting summary judgment that the claims violated 3001(c)(2)(A) because they contained interest that was neither disclosed nor itemized, and finding at trial that “[r]epresenting on the proof of claim form that the claimed amount did not include interest was misleading”).

Further, the Supreme Court’s opinion in *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017), instructs that there is a distinction between the claims filing process and other laws that apply to debt collectors – the former stands alone and separate from the latter. *See id.* at 1414 (“At the same time, we do not find in either the Fair Debt Collection Practices Act or the Bankruptcy Code good reason to believe that Congress intended an ordinary civil court applying the Act to determine answers to these bankruptcy-related questions.”). The filing, review, and allowance of proofs of claim is not a two-party contest between debtor and creditor. The process has requirements designed to provide information for not only debtors and their counsel, but also trustees and other interested parties to monitor claims for any

inaccuracy or abuse. *See id.* at 1413 (“The audience in Chapter 13 bankruptcy cases includes a trustee . . . who must examine proofs of claim and, where appropriate, pose an objection . . .”). “Procedural bankruptcy rules more directly guide the evaluation of claims.” *Id.* (citations omitted). 3001 and the disclosure requirements set forth therein are intended to strike the proper balance between efficiency and fairness: to provide adequate information for interested parties to evaluate proofs of claim, while allowing creditors whose claims comply with the requirements to have the presumption of validity without necessitating substantial efforts or costs. *See id.* at 1415 (“The Bankruptcy Code . . . creates and maintains what we have called the ‘delicate balance of a debtor’s protections and obligations.’” (quoting *Kokoszka v. Belford*, 417 U.S. 642, 651, 94 S. Ct. 2431, 41 L. Ed.2d 374 (1974))); *see also Maddux*, 2016 WL 8808176 at \*9 (“The resolution of claims in bankruptcy is designed to be a fair and inexpensive process. These Debtors were entitled to sufficient information to evaluate the validity of the Midland Claims without undue burden or expense.”).

### **DISCUSSION**

The Additions reflected in the Charge Offs clearly show the Claims here include, in addition to their principal amounts, “interest, fees, expenses, or other charges incurred before the petition was filed,” as described in 3001(c)(2)(A). The opinion of Midland’s expert does not persuade the Court to find otherwise. 3001(c)(2)(A) does not allow an exception by viewing the claim “from the debt buyer’s point of view” and the requirements under TILA and Regulation Z are not at issue here.

The original Claims do not include “an itemized statement of the interest, fees, expenses, or charges” with the filed Claims. Regarding the two amended Claims, attaching to the filed Claim an itemization of any “interest, fees, expenses, or charges,” yet indicating

on the Official Form that the Claim does not include such Additions is irreconcilable and erroneous. Accordingly, Midland failed to comply with 3001(c)(2)(A).

The undisputed facts indicate Midland's failure to meet the requirements of 3001(c)(2)(A) when filing the Claims undermined the Bankruptcy Code's goal to promote efficient and economical administration of bankruptcy estates, frustrated the claims review process, and caused McClain's counsel to expend additional time and effort. Consequently, 3001(c)(2)(D)(ii) allows "appropriate relief, including reasonable expenses and attorney's fees caused by the failure," and does not constrain its application to claims that are limited or disallowed. There is no genuine dispute as to any material fact and McClain is entitled to judgment as a matter of law to compensate for reasonable expenses and attorney's fees caused by Midland's failure to comply with 3001(c)(2)(A).

McClain no longer disputes the validity or amount of the Claims and has failed to show how 3001(f) or 3001(c)(2)(D)(i) should be employed here. Therefore, no relief will be granted pursuant to those Rules. Finally, as the Court's findings are contrary to the relief requested by Midland, that relief is denied.

**IT IS, THEREFORE, ORDERED:**

1. Midland's proof of claim nos. 9, 10, 12, 13, 14, 15, and 22 and amended proof of claim nos. 11 and 16 filed in McClain's main bankruptcy case do not conform to or comply with the requirements of Fed. R. Bankr. P. 3001(c)(2)(A);
2. pursuant to Fed. R. Bankr. P. 3001(c)(2)(D)(ii), McClain is entitled to reasonable expenses and attorney's fees caused by Midland's failure to comply with Fed. R. Bankr. P. 3001(c)(2)(A). McClain's counsel shall file within **fourteen (14) days**



from entry of this Order an affidavit reflecting such amounts. Thereafter, Midland shall have **seven (7) days** from the filing to object; and

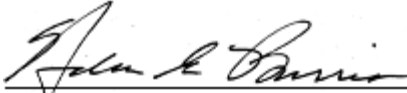
3. all remaining relief requested in the Motions for Summary Judgment is denied.

**AND IT IS SO ORDERED.**

**FILED BY THE COURT  
06/07/2017**



Entered: 06/07/2017

  
US Bankruptcy Judge  
District of South Carolina