I Won Lawsuit Against Midland Funding

Last Updated: April 29, 2013

This post was taken from our discussion boards and bears repeating and showcasing. The link to the post is: http://www.creditinfocenter.com/community/topic/306292-i-won-went-to-trial-and-i-won/.

That's right! I FINALLY had my trial with Midland funding. I never posted about it on the board until now, but I also successfully fought off a Motion for Summary Disposition and went through the accompanying oral argument just prior to trial as well.

Vxp p du|#ri#Suh0Wuldo

I believe I stopped posting about my case after a pre-trial conference and just after the plaintiff supplied a stack of alleged credit card statements along with a letter saying I could call to discuss settlement. At that pre-trial hearing I refused to settle, informed the court that in my opinion no account stated exists and that it was ultimately a matter for trial. The judge agreed and then set a trial date. That's about where we left off.

P rwlrq#ru#Vxp p du|#Glvsrvlwlrq

Not long after that (and I never did post about this here on the site) the Plaintiff's attorney filed a Motion for Summary Disposition, which is really just Michigan's version of a motion for summary judgment. For those that don't know, a motion for summary disposition/judgment is a basically a motion saying to the court that there is no real reason for a suit to continue on and go to trial. In theory the moving party is saying "this case is already over and shouldn't go to trial and waste the courts time because . . ."

In their motion the Plaintiff claimed there were no genuine issues of material fact and they were entitled to judgment as a matter of law. They set the motion hearing for this on a Monday and the Trial was scheduled for the following Thursday.

Their brief in support of their motion for summary disposition wasn't too long but it was pretty intimidating at first glance. In it they cited some MI cases about account stated (which was the basis for their claim). They also stated that I had requested a copy of a signed application, which was true. They then stated they didn't need this under an account stated anyway (which is also true). They also pointed out there is a statute that says the OC doesn't have to retain the application for more than 24 months after the account was opened (also true). They then argued that they only need to show I had received statements and failed to object to them in a reasonable time and/or that they also need only show I used (or authorized use of) the card. They also argued that one of the alleged statements showed a payment made and they pointed out some case law that seemed to show a voluntary payment is enough to establish acceptance of the account balance alleged due and an account stated.

Euhdfk#ri#Frqwudfw

I thought it was odd that in their motion for summary disposition they threw in the allegation of "breach of contract" and it is NEVER mentioned in their complaint. I can only assume they had realized I was kicking the legs out of their account stated theory and decided to try to add breach of contract. They claimed I failed to perform and breached the terms of the contract without ever describing what the terms were. I had even requested a copy of the alleged credit card agreement in Discovery months earlier and they never did supply it.

It's weird that the document I thought would be the easiest for them to provide was the one they never

Forum Topics

- Filing bankruptcy after being served court summons › view post
- Resurgent. › view post
- Does sending a CCP98 relieve the requirement to respond to CCP96 › view post
- California plaintiff failed to respond to RFA's...even after a one week extension › view post
- State of Texas trying to collect on sales tax penalties, when nothing was sold?? › view post

Recent Articles

- See Our Targeted Articles on How to Fix Your Credit Report › read article
- Learn How to Vacate a Judgment › read article
- Repair Your Credit and Increase Your Credit Score › read article
- Why Bankruptcy Fraud is Rarely Caught and

Fuhglw#Uhsdlu# | #Edqnuxswf| # | #Fuhglw#Uhsruw# | #Fuhglw#Uhexloglqj# | #Fuhglw#Vfrulqj# | #Ghew# | #Ihdwxuhg#Duwlfohv# | #Lqghqwlw|#Wkhiw# | #Sulydf|# | #P ruwjdjhv

Vlwh#P ds# | #Vfdp #Dohuw# | #Vho#Khos#Iruxp v# | #Vdylqjv# #Exgjhwlqj# | #Txhvwlrqv

Odvw#p rglilhg#D#derxw#dq#krxu#djr1#,

¤4<<805346#Z he#Dqdwlrq"#lqf1#Doo#ulikw#uhvhuyhg1
Fuhglw#lqir#Fhqwhu"#lv#d#Z he#Dqdwlrq"#z hevlwh1

now to defeat a motion for summary disposition. I realized there are several different ways, or combinations thereof, that a motion for summary disposition can be brought. The Plaintiff's Motion in this case was brought pursuant to MCR 2.116(C)(10) which basically says that: "Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

Remhfwlrq#wr#P rwlrq#iru#Vxp p du|#Glvsrvlwlrq

After finding and reading many objections to a motion for summary disposition and supporting briefs (there are literally hundreds or thousands of examples on the internet) it quickly became obvious that under MCR 2.116(C)(10) all I had to do was show there was one single genuine issue of material fact remaining for trial. The catch is you have to provide documentation or sworn affidavits to prove any of your objections or arguments.

For example, if in a motion for summary disposition/judgment the plaintiff says you never disputed the account in question it's not enough to simply say yes you did. Just like at trial, you need to have some sort of proof. You'd need to attach proof of a letter of dispute or something similar. In some cases you'd need to write up an affidavit if it was hard to prove something or you had little documentation to back it up. The bottom line is you can SAY anything you want in an objection to a motion for summary disposition/judgment, but you have to have proof to back it up.

In my response in opposition to the Plaintiff's Motion for Summary Disposition technically all I had to show was that there was at least one remaining genuine issue of material fact for the judge to decide at trial. This was not difficult because I had objected to and denied pretty much everything and everything was in dispute. When the plaintiff's attorney whined about "limiting the issues" for trial even the judge had commented that it seemed like all was fair game and that since I had denied, everything was up for debate at trial.

Rather than just lay out a single genuine issue of material fact to defeat their motion I decided to pretty much lay out all of the remaining issues and any relevant arguments I had to oppose. A motion for summary disposition and any objection are pretty much a trial on paper. Since my trial was only a few days after the hearing on the motion for summary disposition, I decided to pretty much lay out all remaining issues and any arguments relevant to their motion. It's basically just outlining how the trial would likely proceed so it was great preparation for argument at trial anyway. If the Plaintiff files a motion for summary disposition very early in the proceedings then you may not necessarily want to go "all in" and show them your entire hand before trial. I figured I was safe enough that if I waited until the last day to serve my opposition and file it, they wouldn't have much time to read and respond.

In my arguments I went through and picked apart their arguments and looked up all the cases they cited. It's a lot less intimidating when you go through and find all of the holes in the Plaintiff's arguments. You seen realize they haven't spent much time on things at all! I listed any major arguments to contradict theirs in my brief and made notes of all the others to bring up at trial because I assumed they'd probably rely on most of the same arguments and cited case law.

I did a ton of work and research and my response in opposition and accompanying brief were about 20 pages in length. I was a little nervous about submitting something too long but I've been noticing the Court probably just skims things over and most of the work is done at oral arguments. From what I've seen you make major arguments orally and then can rely on your written brief if need be. If the court can't make a decision on a motion at the close of the motion hearing I believe they can take time to read through the documentation in greater detail and render a decision after analysis.

So I must have done something right with my "Response in Opposition to Plaintiff's Motion for Summary Disposition". We had the motion hearing and the judge pretty promptly denied their motion.

Glvsrvlwlrq#ri#Rxwvwdqglqj#P rwlrqv

The Plaintiff's attorney was the first attorney that originally showed up and who I hadn't seen for months. He called me out in the hall prior to the hearing and basically tried to intimidate me. He said, "Of course the court wants us to resolve this between ourselves if possible. Is there even any point in having this conversation?" I mentioned that the previous attorney had mentioned a settlement number that was just a slight discount of the alleged balance due. I told him based on that number and what I'd seen, there was no way I was going to settle for that amount. I also reminded him that I didn't even believe this account was mine or that the plaintiff truly even owned it. He just said, "Ok". Then as I turned to go back into the court room he threw in, "So you're prepared to argue these briefs?" I just said, "Yeah...the best I can" and went back in and sat down awaiting my turn.

We were shortly called up by the judge. By now the judge was pretty familiar with the case and my face simply because I've shown up for EVERYTHING. Since he recognized this wasn't the usual attorney, the judge immediately complained to the plaintiff's attorney that "It would be nice if we could have some continuity with an attorney in this matter". The plaintiff's attorney just replied, "Yeah." lol WTF? Nice response, buddy.

Then the judge flipped to the beginning of the file and noted that this attorney was the first to appear and he seemed just a little less pi$$ed.

The judge then said he noticed we went out in the hall to discuss things while he was dealing with the previous case, and he asked if there was any progress. I am quickly learning not to talk unless there is an absolute need to do so. (Read more on what not to say in court.)

I let the plaintiff's attorney whine a little. He informed the court that there was no resolution and that I was not receptive to settling and that ultimately "The Defendant feels it's a matter of proofs." DUH Dip$hit. Your plaintiff bought an alleged BAD debt and then sued me. Of course you need to prove it...why would I roll over and hand over money I don't have to someone who can't prove this debt is mine or that they even own it?!?

The judge addressed the Plaintiff and said, "This is a relatively small amount. I know a lot of times in these cases one of the biggest issues is the matter of unreasonably high interest rates and fees. Did your client give you any leeway or negotiation with those?" The attorney said they did but basically that there wasn't much to negotiate with me. The judge then asked me if I had any interest in settling the matter without court intervention because the trial was later that week and "Generally the time to settle the matter is before and not AT trial". I said I'd discuss the matter again but basically there was no way I would settle on a debt that I didn't know was mine and definitely not at the amount they keep mentioning. We moved on pretty quickly after that.

P rwhrq#wr#Vwulnh#wkh#Diilgdylw

Since I still had an outstanding Motion to Strike the plaintiff's affidavit of debt that hadn't been heard, I noticed it for the same day as this hearing. The judge immediately brought it up as one of the issues at hand for the day. He pretty quickly shot it down as being premature. He looked at me and said, "it hasn't technically been entered into evidence yet so there's really nothing to strike. You can wait until trial and then raise your issues then." Out of the corner of my eye I saw the Plaintiff's attorney's head turn toward me and he looked at me with a big stupid Cheshire cat grin.

While the judge was technically right about the affidavit not being evidence, I believe I had a pretty strong argument for it to be stricken anyway since it was a document attached to the complaint that failed to comply with court rules for proper format of a pleading. The affidavit of debt referred to documents and written instruments but none of them were attached. There is a Michigan court rule that says when defense or claim in a pleading refers to a written instrument it must be attached as an exhibit. MCR 2.113(F)(1) If not the pleading fails to comply with court rules and the pleading, or parts of the pleading are subject to a motion to strike MCR 2.115(B). Since the affidavit was attached to the complaint it was part of the pleading MCR 2.113(F)(2).

Although I believe these were all valid reasons to have the affidavit stricken I believe the stronger reasons were reasons of hearsay etc. I was entirely prepared to argue this at trial and just read from my brief supporting the motion to strike if need be. I could raise the issue of not having the written instruments attached as a last resort at trial. After the judge had already given the attorney a hard time I could sense things might be going my way so I didn't push the motion to strike argument. I just politely told the judge I was happy to object to the affidavit at trial and kept my mouth shut and didn't push the issue.

Ghq|lqj#wkh#Sodlqwliiv#p rwrq#iru#Vxp p du|#Glvsrvlwrq

Boy am I glad I didn't push the issue because the tables quickly turned on the Mr. Cocky attorney who had been smirking at my motion to strike a moment earlier.

Now it was his turn to argue his motion for summary disposition and it was pretty obvious the Plaintiff's attorney hadn't even really bothered to read up on the file or even really get himself up to speed with what was going on. It's almost like these goons think they are entitled to a win just because they showed up and are licensed attorneys and we aren't.

I don't even think this guy understood the concept of how their motion was brought. It was brought pursuant to MCR 2.116(C)(10) and basically claimed that there were no genuine issues of material fact remaining to be decided. All I had to do was show there was a single major remaining issue pertinent to the resolution of the case for the judge to decide at trial to defeat their motion. He made some general arguments that basically said statements were sent, I didn't object, one of the statements showed a payment, and the plaintiff was entitled to judgment.

I was prepared to start countering with all of the counter arguments I made in my brief but the judge pretty much did it for me. I was trying to rely on my written brief as much as possible but I did rehearse ahead of time to try and outline what I'd say.

Before I could bother the judge asked the plaintiff's attorney most of the issues I raised in my brief. I had to do very little talking. The judge then said, "Well based on what I've seen there were, issues remaining to be decided at trial and I'm going to deny the Plaintiff's motion for summary disposition".

Boy did that trigger the whining from the other side. "Your honor, if you aren't going to award a full motion for summary disposition then at least award a partial disposition based on what issues aren't in dispute." I almost crapped in my pants because I didn't even realize there was such a thing

The judge looked at me and I quickly pointed out pretty much everything is in dispute and we don't agree on anything. He didn't look impressed with that answer. I was worried I was going to have the tables turned on me so I started laying out some of the outstanding issues remaining just in case the judge didn't read through my entire brief in detail.

I got to the part where as a last resort I pointed out that the plaintiff admitted in Discovery that there was an arbitration clause in the alleged credit agreement that if exercised by either party precluded litigation. The plaintiff's attorney jumped on it and laughed and said, "Your Honor nobody has elected arbitration". The judge looked at me and sternly said, "It's a little late to be electing arbitration now."

I replied, "With all due respect your honor I can't elect arbitration when I have no copy of the agreement to even read the clause and see how it's worded." I pointed out that I had asked for the alleged credit card agreement before and that it wasn't provided. The judge replied that he didn't recall me making the court aware of it in pre-trial and I agreed that other in Discovery I probably hadn't. The judge then got mad and said when we set the trial date I should have simply told him there was outstanding Discovery and that I wasn't ready for trial. I realized we were starting to get off topic and that I just might orally argue my way into a hole so I once again played my "silence is golden" card.

I informed the judge that it didn't matter, since this had gone on for well over 7-8 months that I just wanted to go to trial and have it be over with. The judge denied their motion for summary disposition and then gave both the plaintiff and attorney reasons why we perhaps we didn't want this to go to trial.

I've been continually attacking the bill of sale and everything else. They simply attached a paper with the alleged account number and my name in an attempt to make the bill of sale look like it specifically applied to the alleged account in this case. The judge turned to me and said, "Suppose you are right about this bill of sale. I'm not saying you ARE, but for the sake of argument suppose you ARE right. In all likelihood all that will happen is this matter be dismissed and the will get refiled." I knew he was right so I just nodded in agreement.

He then turned to the Plaintiff's attorney and said, "You'd better have someone here on Thursday. We are generally going to need some sort of witness rather than simply having a trial based on the pleadings." It was then I sort of knew that all my complaining about lack of authentication and hearsay were probably going to be right on track. With that the judge said he'd see us on the day of trial.

I couldn't believe I made it through all that without having my arse handed to me by the judge or a licensed attorney. The attorney hurried out ahead of me struck up a conversation with another attorney in the hall. I made my way out to the elevators and he asked "Are you sure you don't want to talk about this?"

I walked over and said "Not unless your settlement number is going to be around a hundred bucks." I did not want to settle but I figured I'd still have a dozen or more hours of preparation before trial so I didn't panic before the judge. I also realized that even if I won it was going to be nothing more than a dismissal since I didn't have any counterclaims. I figured a Ben Franklin might be worth trading for a dismissal with prejudice and saving myself the time, copying costs, mileage, etc preparing for trial.

We never got that far in our "discussion". He grabbed his briefcase and said "Ok. Fine. I'll just put you up there on Thursday and you can tell the judge this is yours" and he stormed off. I told his back to have a nice day and then walked out feeling a little shell shocked but happy with my mini victory!

Although I'm no attorney and it wasn't perfect, I was proud of myself for defeating the motion for summary disposition on my own! It took a bunch of research and a little common sense. It just goes to show what we can accomplish as pro se litigants with a lot of determination and research!

Duulylqj#bw#wkh#Frxuwkrxvh#ru#wkh#Wuldo

It took me nearly twice as long as normal to get to the courthouse because we had a huge snow storm that week and the roads were terrible. In fact many courts in the surrounding area were closed the day before. To be sure I didn't risk a trip to the court for nothing I even called the court just prior to closing the day before my trial to make sure the Plaintiff's attorney didn't ask for a continuance etc. due to the nasty weather. No such luck.

I got to court and the plaintiff's attorney showed up (this time was the other attorney that had dealt with most of the case). I was 80% sure they'd let me get all worked up for trial and then dismiss at the last minute. To my surprise that was not the case. She came up to me and said "Obviously the court wants us to resolve this issue if we can. I've been authorized to offer you a settlement of 50% of the balance plus our costs payable over 6 months. I have been authorized to offer that or we can have the judge come out and

render a verdict."

I informed the attorney that I had already had a discussion and threw out a low settlement number with the other attorney at the motion hearing for the motion for summary disposition. I informed her it was only because I didn't want to have to research and prepare myself to argue against a licensed attorney at trial. I explained that I had now already gone through all the preparation for trial and I wasn't willing to settle. I did note that I was most interested in a dismissal with prejudice but it wouldn't be for the proposed 50%.

I politely informed her that while going to trial before the judge wasn't the most pleasant idea, it was a must. I said, "The idea doesn't thrill me and I know you are much more experienced at this than I am". She laughed and replied in a friendly manner, "It's not really a matter of experience. It's a matter of me thinking it's going to go one way and one way only." I wanted to say, "Me too" but I wasn't quite that confident!

We left it at that and that's when the 'Oh crap, we are really going to do this!' thoughts started entering my mind. I tried to push the images of the judge ripping me a new one and this attorney going Perry Mason on me out of my mind.

I noticed the Plaintiff walked away and exchanged glances and greetings with a gentleman in a shirt and tie in the front row of seats and then she proceeded to the back. I started to worry that this might be a witness to authenticate documents or records. Maybe she was just sitting away from him to throw me off. I did NOT expect them to fly in a witness but I had prepared some questions to ask the witness on cross examination just in case they did. I flipped through my paperwork to find it and review some of the questions while we waited for the judge.

The first matter before the court was some sort of basic civil issue (I don't remember what) and the well dressed gentleman I was worried about being a witness was actually the attorney for the defendant in that case. Relieved, I switched gears and went over what I would briefly say in my opening statement.

Wkh#Wuldo

I went into court armed with a bunch of paperwork and all of my exhibits prepared and easily sorted in separate files. I had watched some YouTube videos of opening and closing statements etc. I had also gotten my hands on a PDF file of the juror's handbook for this court which broke down the basic procedures pretty well. I had a basic idea of the order of things and how things were supposed to go. Apparently the Plaintiff's attorney hadn't watched these same videos or read the same book. In fact, I'm not so sure she's ever actually been all the way to a trial in one of these cases. The trial didn't really proceed like a trial is supposed to.

She opened by apologizing to the court and me for not being at the motion hearing but something came up. I could care less and it seemed like the court wasn't interested either. She then started her opening statement by complaining to the judge that she was still unable to come to a resolution with me on this matter. (Just like she started EVERY pre-trial conference.) The judge interrupted, "Yeah, I know. That's why it's scheduled for trial TODAY." I successfully extinguished my urge to turn to her and exclaim "In YOUR FACE!"

She then attempted to introduce the case background and told the Judge the Plaintiff filed an "8 allegation complaint". I was going to interrupt because their original complaint is basically one allegation or claim backed up with some statements. Instead I made a note that I needed to address the issue in my opening statement/argument. The judge was pretty much right with me. He questioned, "8 allegations?" Then he flipped to the front of the file and said, "You mean ONE single allegation in the complaint that is 8 paragraphs or statements…right?" The judge sort of looked at me like WTF is she talking about. She agreed that is indeed what she meant.

She then started to outline the complaint and the judge interrupted her. "I don't need you to rehash the entire case. The court has read the file and all the pleadings. It's all in the file which is, I don't know: 3 inches thick?" He then held up the file and I had to laugh a little.

The Plaintiff's attorney then started to mention the statements etc. and the judge cut her pretty short. The courtroom was basically empty except for us when the judge called our case. He said, "I don't see anyone else in the courtroom besides you and the defendant. Do you have any sort of witness?" He flipped through the file and said "I don't know if an affidavit from a . . . "legal $specialist$t" is going to cut it from a legal standpoint. Is there anyone here for the defendant to cross examine or question?" She confirmed that there was not.

She then whined that I should be put under oath. Since things were going my way I didn't put up a fight when the judge asked me about it. He put me under oath and she proceeded to ask me several questions in the most half @$$ed monotone voice I've ever heard in my life. "Mr SO AND SO did you receive capital one credit card statements on this account from capital one." I replied, "Not to my recollection, no." "Did you receive statements from the plaintiff regarding this account?" My answer was, "Other than the ones provided to me in Discovery, no not to my recollection."

She asked a couple more of the same types of questions, obviously doing it on the fly. She then tried to get cute with some weird question about whether or not I received statements about the statements on the

account from the plaintiff. I had no idea what the heck she was asking so I politely informed her I didn't understand the question and asked her to ask it again. She sighed and just blurted out, "Mr. So and So, did you have this Capital One credit card?" I just said, "No not that I recall".

She then started to whine a little and said she was "at a loss for how to proceed". That she had provided me with most of the info I asked for. She then followed it with, "I guess the Plaintiff is unable to proceed with anything other than what we've already provided." Then there was a pause and silence. I stood there and realized this must have been her pretty much resting her case on her opening statement/argument.

I was waiting for something like, "Your honor, this is Plaintiff's Exhibit #1, copies of credit card agreements" or "Plaintiff's Exhibit #2 a copy of the bill of sale". . .nothing!

After I realized she was done I figured I'd use a great little tool brought to my attention by MustangGrrL027: the Motion for a Directed Verdict. I remembered reading her victory thread from her case with Midland and the directed verdict technique. I had looked up the court rule and how I needed to present it and how it had been used in my state.

Prwlrq#iru#d#Gluhfwhg#Yhuglfw

From reading the MI rules of civil procedure, a motion for directed verdict is to be used at the close of the opposing party's evidence. At that point you can ask the court/jury to render a decision in your favor right then and there based only on the evidence presented to that point. If the court agrees it renders a decision in favor of the defendant right then and there and the defendant doesn't even have to argue or present their opposing evidence. If the court does not agree a directed verdict is warranted, the trial just continues as normal and you present your arguments and evidence.

I was already planning on trying a motion for a directed verdict but I was waiting for the attorney to present her evidence. I planned to object and orally argue a motion to strike for everything as she went along. I was prepared as possible with applicable court rules and case law in support. After we were finished with that I planned to ask for a directed verdict based on the fact that most of her evidence was inadmissible and the plaintiff failed to support its claim with any prima facie evidence. We never got that far. She just put up a half a$$ed opening statement and didn't really present ANY evidence.

After her little "unable to proceed" comment I summoned what little confidence I had and said, "Your honor I move for a Directed Verdict based on the grounds that the Plaintiff hasn't provided ANY evidence to prove ANYTHING at this point".

The motion for a directed verdict really seemed to make her mad. Her response was simply, "your honor we have". WTF? THAT was her big objection and opposition to my motion? I had even paused to make sure she wasn't going to continue on, "Sorry, but last I checked you never even officially entered anything into evidence at trial".

Wkh#Ylfwru|

After the judge was pretty much saying things were over she decided to continue on and argued that this was a trial that had to be based on the pleadings due to the nature of the case. She also whined that there had to be more to a defense than a defendant saying, "not me". I was prepared to fire back with a description of this was much more than a simple case of me saying "not me". I was going to say how they haven't even proven they had standing to bring the action, how there was no one there to authenticate any of their documentation, how my answer properly listed applicable defenses and affirmative defenses, how each was a very good defense to every one of their allegations, how I outlined all my valid arguments in my opposition to their motion for summary disposition if they had bothered to read it, and how there also has to be more to the basis of a lawsuit than the plaintiff's own word saying "yeah sure he owes this and this amount".

None of it was necessary. The judge said something to the effect of, "The Defendant has already denied knowledge or recollection of everything along the way. He's submitted a counter affidavit. You've had an opportunity to question the defendant and I believe his response was he doesn't recall this card or this debt. Based on that I'm going to grant the Defendant's Motion and I find no cause of action."

Boy did that tick her off! It's amazing how some of these so called "professionals" can throw a mild temper tantrum in the middle of court. There was a lot of heavy sighing, head shaking, and slamming shut of her file folders. I wanted to be elated but I was just sort of numb. It didn't really hit me what I had just accomplished until I was halfway home.

So there you have it. Not pretty but it at least temporarily kept these wolves at bay. As mad as she was I wouldn't be surprised if they refile it. I'm already prepared if they do!

You might also want to review the following forum topics regarding other Midland Funding wins:

- I won against Midland in Florida
- I won against Midland Using Delaware SOL/
- I won against Midland Funding
- Start to Finish Win Against Midland Funding

- I Won!
- I won in Texas!