

**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

Ms. Traci Yearwood Van Horn
10 Foxhound Court
Dover, DE 19904

RE: Midland Funding, LLC. v. Traci Yearwood Van Horn
C.A. No. CPU5-11-000732

Decision on Plaintiff's Motion for Summary Judgment

Dear Mr. Yeager and Ms. Van Horn:

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

Midland has moved for summary judgment regarding a debt it alleges is owed to it by Traci Van Horn. In support of its motion, Midland attached an affidavit stating that Midland owns this account which originated with Citibank. Attached to the affidavit are several delinquent billing statements indicating an outstanding balance of \$3,149.35, as

of January 1, 2010, that accrued at an annual percentage rate of 27.73%. In Van Horn's response to the motion for summary judgment, she has submitted billing statements indicating that Citibank raised the interest rate from 9.90% to 23.73% between July 7, 2008 and September 4, 2008. Van Horn contends that Citibank was without authority to raise the interest rate as such and she, therefore, disputes the amount still owed on the account.

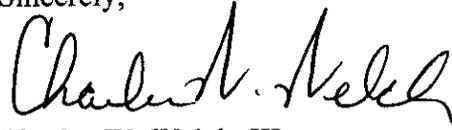
When considering a motion for summary judgment, the Court must view the facts and reasonable inferences therefrom in the light most favorable to the non-moving party. *Browning-Ferris, Inc. v. Rockford Enterprises, Inc.*, 642 A.2d 820, 823 (Del. Super. 1993). The Court will grant summary judgment only 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 remains a genuine issue of material fact as to whether Citibank (the originator of the debt) had the authority to legally raise the interest rate from approximately 10% to almost 27% as indicated in Midland's attached billing statements. Midland has not supplied a copy of an agreement or other documentation establishing this authority. If Citibank did not have the authority to raise the interest rate as it did, then, the balance owed remains in dispute. Therefore, absent some evidence that Citibank had the authority to raise the interest rate, there remains a genuine issue of material fact as to the amount owed by Van Horn. Nothing in Midland's affidavit

controverts Van Horn's contention that Citibank had no authority to raise the rate. Because of the uncertainty surrounding the interest rate, is it unclear how much Van Horn owes Midland. Therefore, 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