

Summary of SC91780, CACH LLC v. Jon Askew

Appeal from the St. Louis County circuit court, Judge Dale Hood
Argued and submitted Dec. 1, 2011; opinion issued Jan. 17, 2012

Attorneys: Askew was represented by Dennis M. Devereaux of St. Louis, (314) 579-2450; and James J. Daher of James J. Daher LLC in St. Louis, (314) 832-7800. CACH was represented by Karen L. Jones of Evans & Dixon LLC in St. Louis, (314) 552-4107.

Several organizations filed briefs as friends of the Court: the National Consumer Law Center was represented by Gina Chiala of Slough Connealy Irwin & Madden LLC in Kansas City, (816) 531-2224; the National Association of Retail Collection Attorneys was represented by Clinton P. Woerth and Eric B. Wetzel of Kozeny & McCubbin LC in St. Louis, (314) 991-9255; DBA International was represented by Joshua C. Dickinson of Spencer Fane Britt & Browne LLP in Kansas City, (816) 474-8100; the Commercial Law League of America was represented by M. Courtney Koger, Michelle A. Fox and Anna M. Wenzel of Kutak Rock LLC in Kansas City, (816) 960-0090; and the Missouri Creditors Bar Inc. was represented by David J. Weimer of Kramer & Frank PC in Kansas City, (816) 471-0030.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals a nearly \$6,700 judgment against him and in favor of a debt collector. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the judgment. The debt collector failed to demonstrate it had the right to pursue collection of the alleged debt. The trial court erred in admitting into evidence a document purporting to show assignment of certain accounts from one company to another because the debt collector's records custodian had no personal knowledge about the original creditor's business practices and was not the records custodian for the two companies that allegedly acquired the debt before allegedly assigning it to the debt collector here. Without that evidence, the debt collector could not show it currently owned the alleged debt.

Judge Scott Hayes, presiding judge of the 14th Judicial Circuit (Howard and Randolph counties), sat in this case by special designation in place of Judge George W. Draper III.

Facts: CACH LLC, a debt collector, attempted to collect money it alleged was owed on a credit card account that Jon Askew opened in 1998 with Provident Bank. After discussing the account with Askew's wife, CACH received two checks – one made in February 2008 and the other made the next month – drawn on the couple's joint checking account. Askew stopped payment on the second check and, in April 2008, sent CACH a letter disputing the validity of the debt and requesting evidence of both the debt and of CACH's authority in the matter. CACH then filed a petition in circuit court seeking to recover the amount it claimed still was owed on the credit card, plus interest. In the petition, CACH claimed: Provident was acquired by Washington Mutual, which assigned Askew's account to Worldwide Asset Purchasing II LLC, which assigned the account to CACH. Askew filed an answer alleging in part that CACH lacked standing (an interest in the subject matter of a suit that gives it a right to potential recovery). At

trial, CACH's sole witness was Diana Eakins, the records custodian for Square Two Financial, which owns CACH. Through Eakins, CACH sought to introduce into evidence certain documents as business records pursuant to section 490.680, RSMo 2000: Exhibit 7, purporting to be a bill of sale transferring certain unnamed accounts from Washington Mutual to Worldwide; Exhibit 8, purporting to be a bill of sale transferring certain unnamed accounts from Worldwide to CACH; and Exhibit 9, purporting to be a redacted spreadsheet referencing Askew's credit card account. Neither Exhibit 7 nor Exhibit 8 reference Askew's account by either name or number but rather refer to an attached "account schedule," which Eakins testified was Exhibit 9. Askew objected to the admission of all three documents, arguing they lacked proper foundation and constituted hearsay. The court admitted all three exhibits into evidence and ultimately entered judgment of nearly \$6,700 in favor of CACH. Askew appeals.

REVERSED.

Court en banc holds: CACH failed to demonstrate that it had standing to pursue collection of the debt Askew allegedly owed on his credit card account. Standing cannot be waived. CACH fails to point to any authority stating that a payee admits assignment of a debt simply by making one payment on that debt to the alleged assignee. Rather, to recover on an account owed to another party, the party attempting to make recovery must show clearly, through a valid assignment, that it is the rightful owner of the account. When there are multiple assignments, there must be proof of the validity of assignment every time the rights to collect the debt are transferred. Under section 490.680, business records may be admitted into evidence, despite being hearsay, if the records "custodian" or "other qualified witness" testifies about the record's identity, mode of preparation and that it was made in the regular course of business, at or near the time of the event it records. A document prepared by one business cannot qualify for the business records exception merely because the records custodian of another business testifies that it appears in the files of another business that did not create the record. Here, Eakins testified she had no personal knowledge about Providian's business practices and was not the records custodian for Washington Mutual or Worldwide. She testified she only had knowledge of how "most of the major banks" with which CACH did business kept records; she did not testify about her personal knowledge regarding the procedures used by any of the particular alleged prior owners of Askew's account. As such, she was not qualified to lay a business records foundation for Exhibit 7, and the circuit court erred in admitting this document into evidence, thereby causing prejudice to Askew. Without Exhibit 7 in evidence, CACH failed to provide any competent evidence of the alleged assignment of Askew's account from Providian to Washington Mutual to Worldwide to CACH. Without evidence of the validity of these assignments, CACH did not demonstrate it had standing to pursue the claim.