

**DEPARTMENT THREE  
JUDGE HARRY S. KINNICUTT  
707-207-7303  
TENTATIVE RULINGS SCHEDULED FOR  
THURSDAY, NOVEMBER 3, 2016**

**MIDLAND FUNDING LLC v. SCHUMM  
Case No. FCM150133**

Demurrer by MIDLAND FUNDING LLC to Defendant's Cross-Complaint

TENTATIVE RULING

Based upon the limited information provided in the pleadings, it is not clear that the collection assignment here included assignment to MIDLAND FUNDING LLC ("MIDLAND") of the liabilities of original lender CITIBANK, N.A. ("CITIBANK") for acts committed prior to the assignment. Heppler v. J.M. Peters Co. (1999) 73 Cal.App.4<sup>th</sup> 1265, 1289 [intent of the parties determines whether liabilities as well as benefits were included within the assignment].

At least some types of assignments involve benefits only, not liabilities. Sherwood Partners, Inc. v. EOP-Marina Business Center, LLC (2007) 153 Cal.App.4<sup>th</sup> 977, 981-982 [assignment for the benefit of creditors].

Even assuming that MIDLAND may have been assigned not only the rights, but also the liabilities, of CITIBANK to the subject credit card issued to Defendant/Cross-Defendant STEPHEN SCHUMM ("SCHUMM"), the cross-complaint here fails to state a cause of action for breach of contract or for fraud.

SCHUMM's cross-complaint alleged a written contract for issuance of a credit card, in which CITIBANK "contracted to protect [SCHUMM] from fraudulent, unauthorized or otherwise improper charges", by issuance of a card "represented to be 'not valid unless signed'". SCHUMM asserted that CITIBANK "failed to protect [SCHUMM] from fraudulent, unauthorized or otherwise improper charges", and "treated said card as valid, even though it was unsigned".

Preliminarily, the court finds these allegations uncertain as to whether SCHUMM is claiming that CITIBANK billed him for charges he never authorized, or just that he never signed the credit card before authorizing all of those charges. It is only the former which could constitute a viable cause of action against CITIBANK (and, depending upon interpretation of the assignment contract, potentially against MIDLAND).

Alternatively, and more importantly, these vague allegations are insufficient to state a cause of action for either breach of contract or for fraud.

Each and every element of a fraud-based cause of action must be alleged with particularity. Stansfield v. Starkey (1990) 220 Cal.App.3d 59, 73; see also Lazar v. Superior Court (1996) 12 Cal.4th 631, 645.

For any fraud-based causes of action based upon a misrepresentation, a complaint must allege the “who, what, when, where and how” of each alleged misrepresentation. Stansfield v. Starkey (1990) 220 Cal.App.3d 59, 73.

Against a corporate defendant, the plaintiff must generally identify the speaker, by name and/or title, what was said, at what time, and in what manner (written, spoken in person, spoken over telephone, etc.). Tarmann v. State Farm Mut. Auto Ins. Co. (1991) 2 Cal.App.4th 153, 157.

The misrepresentation alleged here is vague, and the cross-complaint provides none of the necessary particularities.

Furthermore, to the extent SCHUMM may be claiming that charges he authorized are invalid because he never signed the credit card entrusted to him by CITIBANK, the elements of justifiable reliance and damages are not met.

The breach of contract cause of action fails as well, as a reasonable interpretation of the alleged “not valid until signed” condition is that SCHUMM would not authorize any charges on that credit card before signing the credit card entrusted to him by CITIBANK. Civil Code §1643 provides:

A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

Although it is not clear that SCHUMM could amend to properly allege either of these causes of action, the court sustains MIDLAND’s demurrer to both causes of action with 30 days leave to amend.

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**AMERICREDIT FINANCIAL SERVICES, INC. v. WARD, et al.**  
**Case No. FCM151087**

Application for Writ of Possession

**TENTATIVE RULING**

On October 24, 2016, a notice of stay was filed with this court, informing the court that a Chapter 13 bankruptcy petition had been filed in July 2016 by Defendants MICHAEL and APRIL WARD.

The filing of a bankruptcy petition creates an automatic stay on state court proceedings involving the bankruptcy petitioner, which can be lifted only by bankruptcy court dismissal order or order for relief from the automatic stay.

The court is therefore unable to rule on this application at this time, and it is taken off calendar.