

IN THE STATE COURT OF GWINNETT COUNTY

STATE OF GEORGIA

|                                       |   |                 |
|---------------------------------------|---|-----------------|
| MIDLAND FUNDING LLC ASSIGNEE OF CHASE | ) |                 |
| BANK(USA), N.A.,                      | ) |                 |
|                                       | ) |                 |
| <i>Plaintiff</i>                      | ) |                 |
|                                       | ) |                 |
| v.                                    | ) | Civil Action No |
|                                       | ) | 10-07271-4      |
| JILL SHERIDAN,                        | ) |                 |
|                                       | ) |                 |
| <i>Defendant</i>                      | ) |                 |

**DEFENDANT'S MOTION FOR AN AWARD  
OF ATTORNEY'S FEES AND COSTS & EXPENSES OF LITIGATION**

**COMES NOW**, Defendant Jill Sheridan, *pro se*, hereby files this Motion for an Award of Attorney's Fees and Expenses & Costs of Litigation pursuant to O.C.G.A. § 9-15-14(a) and to O.C.G.A. § 9-15-14(b). In support of this motion, Defendant relies on the legal authority and arguments set forth in Defendant's Brief in Support of her Motion for an Award of Attorney's Fees and Expenses & Costs, Affidavit and Exhibits being filed contemporaneously herewith. Defendant incurred these attorney's fees and costs and expenses in the defense of the Plaintiff's groundless and frivolous claim and absurd conduct during the litigation of this claim, including abuses of discovery.

This Motion is brought within Forty-Five (45) days of this Court granting a final disposition in favor of the Defendant in the above-styled action. Defendant requests that pursuant to O.C.G.A. § 9- 15-14, a hearing should be set at which time the Defendant will

present her witness, Ted Silverbach, Attorney at Law. Defendant hired Mr. Silverbach for legal representation in defense of the Plaintiff's claim. At the requested hearing, Mr. Silverbach will testify as to the reasonableness and necessity of his fees and be available to the Plaintiff's counsel for cross examination.

WHEREFORE, based on the pleadings and for the reasons set forth more fully in the attached Brief, Affidavit, and Exhibits, the Defendant respectfully requests that the Court grant a hearing on this matter at which an Order be entered against the Plaintiff and its Attorneys awarding the Defendant Attorney's Fees and costs and expenses of litigation incurred in defending the above-styled action. In addition, the Defendant requests an award for costs that will be incurred in the future to prosecute this motion, pursuant to O.C.G.A. § 9-15-14(d) including costs for Mr. Silverbach's witness testimony.

This 24<sup>th</sup> Day of January, 2011.

Respectfully Submitted,

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Jill Sheridan, *pro se*  
3266 Stonewall Dr. NW  
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(678) 636 - 9406

IN THE STATE COURT OF GWINNETT COUNTY

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| MIDLAND FUNDING LLC ASSIGNEE | ) |                 |
| OF CHASE BANK(USA), N.A.,    | ) |                 |
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| <i>Plaintiff</i>             | ) |                 |
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| v.                           | ) | Civil Action No |
|                              | ) | 10-07271-4      |
| JILL SHERIDAN,               | ) |                 |
|                              | ) |                 |
| <i>Defendant</i>             | ) |                 |

**DEFENDANT'S BRIEF IN SUPPORT OF HER MOTION FOR AN AWARD OF ATTORNEY'S FEES AND COSTS & EXPENSES OF LITIGATION**

COMES NOW, Jill Sheridan, Defendant, proceeding *pro se* in the above styled action, and moves this Honorable Court, pursuant to O.C.G.A. § 9-15-14(a) and O.C.G.A. § 9-15-14(b) to award a hearing on this matter at which an award be order against the Plaintiff for the Defendant's Attorney's Fees and Costs and Expenses of Litigation.

While the Defendant did include in her Answer a counterclaim pursuant to O.C.G.A. § 9-15-14, she satisfied the requirement of converting this counterclaim to a motion during trial by bringing it to the trial court's attention orally her motion for Attorney's Fees and Costs and by the filing of this motion within 45 days of final judgment in this action. See *Glass v. Glover*, 241 Ga. App. 838 (528 SE2d 262) (2000); accord, *Nuckols v. Nuckols*, 226 Ga. App. 194 (486 SE2d 194) (1997); *Hagemann v. City of Marietta*, 287 Ga. App. 1, 650 S.E.2d 363 (2007). Motion may be oral at hearing or trial and may convert counterclaim to motion. *Nesbit v. Nesbit*, 295 Ga. App. 763,673 S.E.2d 272 (2009) (reversed denial based upon lack of motion); but see *Williams v. Cooper*, 280 Ga. 145,625 S.E.2d 754 (2006).

## **CASE BACKGROUND**

Plaintiff, Midland Funding LLC, brought the above styled suit against the Defendant, Jill Sheridan, alleging it had acquired, through assignment, from Chase Bank USA NA, the legal right to collect a debt allegedly owed. The Defendant has no knowledge whatsoever of any assignment entitling Midland Funding LLC to collect any amount whatsoever. On multiple occasions, the Defendant requested evidence of the alleged debt owed and evidence that any assignment ever took place.

The above styled case is the second time the Plaintiff has filed suit against the Defendant for the same groundless claim. The first case was filed by the Plaintiff in Magistrate Court of Gwinnett County, Case #09M39244 on December 29, 2009. Like the above styled action, the Plaintiff attached no supporting documentation to the Statement of Claim and described the alleged indebtedness as no more than “delinquent debt”. On March 18, 2010, the scheduled trial date, the Plaintiff voluntarily dismissed the action without prejudice after the defendant requested evidence of the assignment, and the plaintiff could not provide any. In fact, Clay Moseley, Attorney for Plaintiff at the Magistrate hearing, responded to the Defendants request for evidence of an assignment by matter of factly stating, “You’re never going to get it” and “We’ll just re-file”. The instant action here in State Court is the “re-filing” of that claim.

## **ARGUMENT AND CITATION OF AUTHORITY**

O.C.G.A. § 9-15-14 was created to deter and punish claims precisely like those asserted in this case. O.C.G.A. § 9-15-14(a) provides for a mandatory recovery of attorney’s fees and expenses against a party where that party’s claim, defense, or position is not based upon any justiciable issue of law or fact. *Smith v. Gwinnett County*, 256 Ga. App. 533, 536 (2002)

(affirming grant of attorney fees against Plaintiff bringing inverse condemnation actions pertaining to property he did not own at the time of bringing suit).

Besides identifying itself as a successor in interest in the style of its complaint, Midland Funding LLC has presented no admissible evidence in support of its claim of assignment from Chase Bank USA NA. Furthermore, no admissible evidence has been presented that Midland Funding LLC ever had any standing to sue the Defendant, Jill Sheridan whatsoever. Therefore, Defendant is entitled to Attorney's Fees and costs & Expenses of litigation due to the Plaintiff's and its counsel's pursuit of a claim which they knew could not prevail, and no presentation of evidence whatsoever to support that claim. See *Ellis v. Stanford*, 256 Ga. App. 294, 568 S.E.2d 157 (2002) (affirming award under 9-15-14 where litigant maintained a theory throughout the case while presenting no evidence at all to support it).

O.C.G.A. § 9-15-14(b) provides for the recovery of attorney fees and costs "if an attorney or party brought ... an action, or any part thereof, that lacked substantial justification." O.C.G.A. § 9-14-15(b); *Bircoll et al. v. Rosenthal et al.*, 267 Ga. App. 431, 431-432 (2004). The phrase, 'lacked substantial justification' means "substantially frivolous, substantially groundless or substantially vexatious." O.C.G.A. § 9-15-14(b); *Cobb County School District v. Mat Factory, Inc.*, 215 Ga. App. 697, 703 (1994). Plaintiff's claims were "substantially frivolous" and "substantially groundless," as the suit Plaintiff filed was not actionable. The Plaintiff and its counsel were aware of this the first time they filed claim in Magistrate court.

Plaintiff's stubborn actions forced Defendant to incur further expense in defending against this baseless suit. Because Plaintiff knew it could not assert these claims against

Defendant but nevertheless proceeded with attempts to do so, Defendant is entitled to attorney fees and costs against Plaintiff and its Attorney.

Mr. James Freaney, Attorney for the Plaintiff at Trial on December 9, 2010, presented the Plaintiff's case in three words, "The Plaintiff rests". Bringing a case all the way to trial without presenting a shred of evidence or testimony is further evidence of the Plaintiff and its counsel's attempts to use the legal system as a proverbial wrench to force the Defendant into pay a debt which was not legally collectable. Because of the fact that the Plaintiff's filing and maintenance of this litigation was ultimately aimed to force payment from the Defendant and without the intention of ever proving their claim at Trial, this litigation was for improper reasons, namely harassment to coerce payment. Thus, the Defendant is entitled to an Award for Attorney's Fees and Costs & Expenses of Litigation under OCGA §9-15-14(b) which provides award if "an action, or any part thereof was interposed for delay or harassment..."

The Plaintiff and its counsel engaged in abusive discovery tactics aimed to stonewall the Defendant's attempts to complete discovery and obtain necessary documents and information for her defense at trial. This conduct is outlined in the Defendant's Motion to Compel, or in the Alternative, Motion in Limine filed with this Honorable court on December 6<sup>th</sup> 2010. The motion was not ruled on at Trial, as the Plaintiff quickly moved to rest their case. However, this motion and it's evidence of these abusive discovery tactics will be presented at such hearing requested on this matter which fulfill the requirement for an award for Attorney's Fees and Costs & Expenses of Litigation under OCGA §9-15-14(b) for finding that the attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery.

Included in these discovery abuses are evasive and incomplete discovery responses, non-sensical objections and responses, non-verified interrogatories, and no response from any attorney of record in regard to Defendant's attempt to resolve discovery issues. The Defendant incurred costs due to this misconduct in re-propounding discovery providing the opportunity for the Plaintiff to correct and supplement their responses, sent a courtesy follow-up letter, and Mr. Clayton Moseley, Plaintiff's counsel at the Magistrate trial, interjected himself into the above styled case and pointed out that the Plaintiff will easily win their case with documents and witnesses which were undisclosed to Defendant in her discovery requests. Despite his agreement to supplement their previous deficient discovery responses, the Plaintiff's counsel did not do so, further delaying and stonewalling the litigation, and ultimately forcing the Defendant to file her Motion to Compel, or in the Alternative, Motion in Limine. It is the Defendant's contention that Mr. Moseley injected himself simply to delay the Defendant from filing her Motion to Compel, creating a further expanding of wasteful and unnecessary litigation expense. With the discovery period coming to a close and the trial date fast approaching, Mr. Moseley sought to delay the Defendant filing of a motion to compel by telling her of witnesses and exhibits he was planning to use at trial, and then agreeing to supplement and correct the Plaintiff's prior discovery responses, but did not follow through. Therefore, through the Plaintiff and their counsel's misconduct during the discovery phase of this litigation, the Defendant is entitled to Attorney's fees and expenses and costs of litigation.

Only when the Defendant was forced to file with this Honorable court her Motion to Compel, or in the Alternative, Motion in Limine did the Plaintiff decide they no longer wanted to pursue the claim. However, they did not choose to do the right thing and dismiss this groundless action to avoid wasting further time and resources of the Defendant or of this

Honorable court. Instead, the Plaintiff offered, in a non-negotiable settlement through Mr. Moseley, to dismiss the case with prejudice only if the Defendant agreed to accept their terms of settlement. The settlement offer included a compensation amount to the Defendant for her Attorneys Fees and expenses incurred during this ridiculous litigation in the amount of \$0.00 (yes, nothing at all), while at the same time expecting the Defendant to dismiss her counterclaim, sign away all of her rights against the Plaintiff, its attorneys, and numerous other affiliates and accept as “consideration” the amount the Plaintiff was claiming, thus incurring a tax liability against the Defendant. Of course, the Defendant refused and continued to explain that she simply wanted nothing more than reimbursement for her out of pocket attorney’s fees and costs expended in defense of this ridiculous suit. The Plaintiff refused to negotiate any other terms, thus unnecessarily expanding the litigation in which they knew they could not prevail and forcing the Defendant to incur further expenses in this case, including the filing of this request.

This forced the Defendant to file her Motion to Compel, or in the Alternative, Motion in Limine on December 6<sup>th</sup>, 2010. Even during attempts to settle on the morning of Trial, the Plaintiff refused to offer any reimbursement whatsoever for the Defendant’s costs and pushed this litigation all the way to trial, where they ultimately wasted even more of the Defendant’s and this Honorable court’s time by presenting no case at all.

### **CONCLUSION**

The Defendant requests this Honorable Court to tax against both Plaintiff and its Counsel and award for the Defendant for their shared frivolous pursuit of this claim against the Defendant. Considering that both cases, *Ponder vs. CACV* and *Wirth vs. CACH* were cases handled on appeal by Fred J. Hanna and James Freaney, the Plaintiff’s counsel was well aware

of the essential elements and evidentiary requirements of their case, but nonetheless they continued to pursue their groundless claim on behalf of their client, not once but twice! "[A] party may assign to another a contractual right to collect payment, including the right to sue to enforce the right. But an assignment must be in writing in order for the contractual right to be enforceable by the assignee." *Ponder v. CACV of Colorado, LLC*, 289 Ga. App. 858, 859 (658 SE2d 469) (2008). And the writing must identify the assignor and assignee. See *Southern Mut. Life Ins. Assn. v. Durdin*, 132 Ga. 495, 498 (64 SE 264) (1909); *Scott v. Cushman & Wakefield of Ga.*, 249 Ga. App. 264 (547 SE2d 794) (2001).

WHEREFORE, Defendant respectfully requests this Honorable Court to grant a hearing in this matter at which an award be ordered for the Defendant's Attorney's Fees in the amount of Five Hundred Dollars (\$500) and Costs and Expenses of litigation in the amount of Four Hundred Thirty Nine Dollars (\$439) for a total award of Nine Hundred and Thirty Nine Dollars (\$939) pursuant to O.C.G.A. § 9-15-14(a) and O.C.G.A. § 9-15-14(b). These expenses are evidenced by the Defendant's Exhibits A, B, and C filed contemporaneously herewith. In addition, the Defendant is requesting an award for further fees and costs in prosecuting this motion including fees for Mr. Silverbach's travel and appearance to provide testimony.

This 24<sup>th</sup> Day of January, 2011.

Respectfully Submitted,

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