

IN THE COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2013

No. 76

James Townsend,
Appellant,

v.

Midland Funding, LLC,
Appellee.

Circuit Court for Baltimore City
24-C-13-001033
(Honorable Pamela J. White)

Motion to Participate Amici Curiae of AARP, The University of Maryland Law School Consumer Protection Clinic, Civil Justice Inc., Maryland Legal Aid Bureau, Inc., The National Association of Consumer Advocates, The National Consumer Law Center, and The Public Justice Center, In Support of Appellant

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¹ The views expressed in this brief are those of the Consumer Protection Clinic only. They do not expressly or impliedly represent the views of the University of Maryland Francis King Carey School of Law, or of its Clinic in general. The authors acknowledge the assistance on this Brief: of the following Consumer Protection Clinic students: Andrew J. Ahye, Daniel G. Borman, Thomas J. Bolek and David R. Seaton.

COMES NOW AARP, The University of Maryland Law School Consumer Protection Clinic, Civil Justice Inc., Maryland Legal Aid Bureau, Inc., The National Association of Consumer Advocates, The National Consumer Law Center, and The Public Justice Center, and moves this court to Participate Amici Curiae In Support of Appellant. In support thereof, Amici state as follows:

1. Amici are national and local consumer advocacy organizations, each having extensive experience representing the interests of low income consumers in state and federal courts to protect them from the injustice of erroneous judgments entered against them in debt buyer lawsuits. Although the amount in controversy is typically small, averaging about \$3,000, the consequences of an erroneous judgment can be devastating.

2. Amici sought the consent of counsel for both parties to participate Amici Curiae. Appellant's Counsel granted consent. No response was received from counsel for Appellee.

3. Pursuant to Rule 8-511(b), amici curiae certify that the statements expressed in the proposed brief Amici Curiae represent the considered opinion of the amici in its capacity as advocates of low-income and older people. Amici have authored the proposed brief in its entirety and have no interest in the outcome of the particular litigation between Appellants and Appellees except the institutional interests described within. No persons or entities have made any monetary or other

contribution to the preparation or submission of the proposed brief other than amici, their members, and counsel.

4. Amici have an interest in protecting people from abusive debt collection based on inherently inaccurate and unverified information. Several have participated as amici curiae in cases involving challenges to abusive debt collections in federal and state courts. Amici have also advocated for improved court procedures—including in Maryland—and regulatory oversight of the debt buyer industry. Amici are engaged in the public policy debate over the standards of proof and rules of evidence and the due process rights which arise in the context of debt buyer litigation. Specifically, amici seek to combat errors and injustice in the context of debt collection—especially debt buyer—lawsuits.

5. If allowed to participate, amici will argue that courts should not accept unauthenticated third-party business records or affidavits of persons not associated with the original creditor as proof of a consumer's original debt. Specifically, amici will argue this point based on the following sources: (1) Maryland Rule 3-306 and its accompanying history, (2) Recent revelations regarding the practices of banks that sell inaccurate information to debt buyers for collection (3) the U.S. Constitution and Due Process guarantees, (4) the Maryland Rules of Professional Conduct, the Maryland Code of Judicial Conduct, and the Maryland Access to Justice Commission's findings on self-represented litigants.

6. Amici raise issues which might otherwise escape the Court's attention, and amici's participation in this case will assist this Court in understanding and evaluating the issues raised on appeal.

7. **AARP** is a nonprofit, nonpartisan organization with a membership that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse. As the leading organization representing the interests of people aged fifty and older, AARP is greatly concerned about abusive practices being used to collect stale and invalid debt, to which older people are especially vulnerable. Many older debtors believe they will go to jail if summoned to court. Older people are more easily upset by the threat of a court judgment against them, and many believe that they will lose their homes, pensions, or bank accounts, or even go to jail if they receive a court summons. As a result, older people may feel coerced into paying debts they had already paid in full or never owed in the first place, such as debts of a deceased loved one.

8. **The University of Maryland Law School Consumer Protection Clinic** provides *pro bono* representation to Maryland consumers who are being sued by debt buyers. In addition to representing individual clients, the Clinic is also tasked with public outreach and education. In these capacities, the Clinic seeks to

identify and propose solutions to systemic problems which impede access to justice for Maryland's residents, particularly its self represented litigants. In partnership with the Maryland Pro Bono Resource Center's Consumer Protection Project, the Clinic also provides consultation and support to pro bono lawyers who are part of PBRC's Consumer Protection Project.

9. **Civil Justice, Inc.** ("CJ") is a non-profit, public interest organization founded in 1998 for the purpose of increasing the delivery of legal services to individuals of low and moderate income while supporting a statewide network of solo, small firm and community based lawyers who share a commitment to increasing access to justice. CJ has represented hundreds of Maryland consumers individually, and thousands in public interest litigation who have been victimized by predatory creditors and their affiliates. CJ and its members routinely advise and often represent Maryland consumers who are facing debt collection actions in state courts, many of whom are *pro se*, and clarifying the rules of procedure and proof required will have a significant impact in these cases.

10. **Maryland Legal Aid Bureau, Inc.** provides direct legal services to low-income consumers in support of its mission to safeguard the economic stability of the State's poorest residents by ensuring that only valid debts are being lawfully collected in the courts of this State. Over the past ten years, that stability has been threatened by the massive increase in lawsuits filed by debt buyers.

Because so many more people seek Legal Aid's help each year than it can possibly represent, many eligible individuals are turned away. The Legal Aid Bureau must usually provide only brief advice and close cases involving consumers sued for old credit card debts on the District Court's small claim docket.

11. **The National Association of Consumer Advocates** ("NACA") is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors and law students whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for information sharing among consumer advocates across the country and serving as a voice for its members as well as consumers in the ongoing effort to curb unfair and abusive business practices. Enforcement and compliance with consumer protection laws has been a continuing concern of NACA since its inception.

12. **The National Consumer Law Center** ("NCLC") is a national research and advocacy organization focusing on justice in consumer financial transactions, especially for low income and elderly consumers. Since its founding as a non-profit corporation in 1969 at Boston College School of Law, NCLC has been the consumer law resource center to which legal services and private lawyers, state and federal consumer protection officials, public policy makers, consumer and business reporters, and consumer and low-income community organizations

across the nation have turned for legal answers, policy analysis, and technical and legal support. NCLC is recognized nationally as an expert in debt collection issues, including the Fair Debt Collection Act, and has drawn on this expertise to provide information, legal research, policy analyses, and market insights to federal and state legislatures, administrative agencies, and the courts for over 40 years. NCLC is, among other roles and accomplishments, author of a widely praised twenty-volume series of treatises on consumer law, including *Fair Debt Collection* (7th ed. 2011 and Supp.) and *Collection Actions* (2d ed. 2011 and Supp.). The Supreme Court of the United States has relied upon *Fair Debt Collection* as supporting authority. *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, LPA*, 559 U.S. 573, 591 n.12 (2010).

13. **The Public Justice Center** (“PJC”), a not-for-profit civil rights and anti-poverty legal services organization founded in 1985, has a longstanding commitment to protecting and advancing consumers’ rights. The PJC has participated in a number of Maryland cases guarding the rights of consumers, including in the contexts of creditors’ requests for attorneys’ fees, arbitration agreements, and access to justice. The PJC participated directly in and contributed significantly to the deliberations of the Rules Committee on the recent amendments to Rule 3-306 and has an interest in this case because it

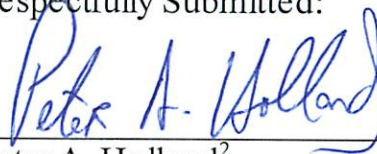
addresses the critical issues of due process in an area of civil litigation that has a substantial impact on the lives of poor people.

14. Wherefore: Amici hereby respectfully request permission to participate as Amici Curiae in the above captioned case.

Sept. 23, 2013

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Respectfully Submitted:



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CERTIFICATE OF SERVICE

I hereby certify that on this 23th day of September, 2013, the requisite copies of this motion were served on the following counsel of record via first class mail, postage prepaid:

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PETER A. HOLLAND

JAMES TOWNSEND

Petitioner,

v.

MIDLAND FUNDING, LLC

Respondent

* IN THE

* COURT OF APPEALS

* OF MARYLAND

* 2013 Term

* No. 76

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ORDER

The Court having considered the Motion of for Leave to Participate as Amici Curiae Motion to Participate Amici Curiae of AARP, The University of Maryland Law School Consumer Protection Clinic, Civil Justice Inc., Maryland Legal Aid Bureau, Inc., The National Association of Consumer Advocates, The National Consumer Law Center, and The Public Justice Center, In Support of Appellant in support of Appellant James Townsend in the above-captioned case and to participate in this case as *Amici Curiae*, and any opposition thereto, it is this ____ day of _____, 2013,

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby GRANTED.

Hon. Mary Ellen Barbera
Chief Judge, Court of Appeals