

IN THE STATE OF MICHIGAN

APPEAL FROM THE COURT OF APPEALS

APPEAL FROM THE WAYNE COUNTY CIRCUIT COURT
HONORABLE MICHAEL SAPALA (Ret.)

GEORGE BADEEN, an individual and on behalf of a proposed class, and **MIDWEST RECOVERY AND ADJUSTMENT, INC.**, a Michigan for profit corp. and on behalf of a proposed class,

Docket No. 147150

Plaintiffs/Appellants,

v

147150
Reply

PAR, INC., d/b/a **PAR NORTH AMERICA**, an Indiana corporation; **REMARKETING SOLUTIONS**, a Delaware limited liability company, for itself and as successor in interest; **CENTERONE FINANCIAL SERVICES LLC**, a Delaware limited liability company; **FIRST NATIONAL REPOSSESSORS, INC.**, a Minnesota corporation; **MILLENNIUM CAPITAL AND RECOVERY CORPORATION**, an Ohio corporation; **RENOVO SERVICES, LLC**, a Delaware limited liability company; **RENAISSANCE RECOVERY SOLUTIONS, INC.**, a Nevada corporation; **ASR NATIONWIDE, LLC**, a Florida limited liability corporation; **THE M. DAVIS COMPANY, INC.** d/b/a **USA RECOVERY SOLUTIONS**, a California corporation; **REPOSSESSORS, INC.**, a Minnesota corporation; **AMERICAN RECOVERY SERVICE, INC.**, a California corporation; **DIVERSIFIED VEHICLE SERVICES, INC.**, an Indiana corporation; **NATIONAL ASSET RECOVERY CORP.**, A Florida corporation; **CONSUMER FINANCIAL SERVICES, LLC**, a Connecticut limited liability company; **TD AUTO FINANCE, LLC**, a Michigan limited liability company; **TOYOTA MOTOR CREDIT CORPORATION**, a California corporation; **NISSAN MOTOR ACCEPTANCE CORPORATION**, a California corporation; **SANTANDER CONSUMER USA, INC.**, an Illinois corporation; **PNC BANK, N.A.**, an Ohio corporation; **BANK OF AMERICA, N.A.**, a North Carolina company; **FIFTH THIRD BANK**, an Ohio company; **GE MONEY BANK**, a foreign corporation; **THE HUNTINGTON NATIONAL BANK**, an Ohio corporation, jointly and severally,

Defendants/Appellees.

**PLAINTIFF/APPELLANTS GEORGE BADEEN AND
MIDWEST RECOVERY AND ADJUSTMENT, INC'S REPLY BRIEF**

FILED
JUL 8 2013
LARRY S. ROYSTER
CLERK
MICHIGAN SUPREME COURT

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

1. The rules of statutory interpretation require forwarders to be licensed. 4

2. Forwarders are indirectly involved in repossessions. 5

3. Lenders are required to use licensed agencies. 6

4. Forwarders practices include far more than the interstate communications
exempted under the Occupational Code. 6

5. Badeen has built his arguments thus far without any discovery. 7

TABLE OF AUTHORITIES

Helder v North Pointe Ins Co, 234 Mich App 500, 504 (1999). 4

In re MCI Telecommunications Complaint, 460 Mich 396, 412 (1999). 4, 5

MCL 339.3091(b) 4, 5

MCL 339.904 7

MCL 339.915a(f) 5

MCL 445.252 6

Senate Fiscal Agency Bill Analysis, HB 5022, May 3, 1994 6

**PLAINTIFF/APPELLANTS GEORGE BADEEN AND
MIDWEST RECOVERY AND ADJUSTMENT, INC'S REPLY BRIEF**

Plaintiff/Appellants, GEORGE R. BADEEN, and MIDWEST RECOVERY AND ADJUSTMENT, INC., through their attorneys, XUEREB LAW GROUP PC, by Joseph M. Xuereb, submit the following as their reply brief.

REBUTTAL ARGUMENTS

1. The rules of statutory interpretation require forwarders to be licensed.

“When construing a statute, the court should presume that every word has some meaning and should avoid any construction that would render the statute, or any part of it, surplusage or nugatory.” *Helder v North Pointe Ins Co*, 234 Mich App 500, 504 (1999). Contrary to appellee’s representations, the plain meaning of the words in MCL 339.901(b) support appellant’s interpretation of the statute.

Despite appellee’s arguments, “soliciting a claim for collection” and “attempting to collect a claim owed or due another” are not the same. If “soliciting a claim” and “attempting to collect a debt” as detailed in Appellee’s brief mean the same thing, it would render the entire clause “attempting to collect a claim owed or due another” meaningless surplusage, which clearly violates the rules of statutory interpretation. *Helder, supra*.

Further, “[w]here statutes related to the same subject matter, they should be read, construed, and applied together to distill the Legislature’s intent.” *In re MCI Telecommunications Complaint*, 460 Mich 396, 412 (1999). The legislature, in adopting 339.915a(f), provided that licensed collection agencies are forbidden from “[s]oliciting, purchasing, or receiving an assignment of a claim for the sole purpose of instituting an action on the claim in a court.” Appellees appear to say that this portion of the

Occupational Code means soliciting lenders was already addressed in the Occupational Code, so therefore it could not mean the same thing in MCL 339.901(b). However, in context, the legislature clearly forbids licensees from seeking assignment of a claim for the sole purpose of instituting a court action only. Clearly, licensed collection agencies can solicit collection work in general.

More importantly, the use of the word "solicit" in MCL 339.915a(f) can only mean asking the lender for the assignment. Likewise, applying the rules of construction found in *MCI Telecommunications*, "solicit" in the definition of collection agency can only mean asking the lender for the right to collect the claim!

2. Forwarders are indirectly involved in repossessions.

Forwarders hold themselves out as the national one stop shop for repossessions. They advertise as being national repossession agents. Application for Leave, Exhibit 3, Forwarder Websites. Even though they contract out the actual act of repossession, they still (1) hire an agency to do the repossession (2) arrange for vehicle transport (3) arrange for titling of the vehicle (4) arrange for sale of the vehicle and (5) transfer the proceeds of sale. Yet Forwarders would have this Court believe that they have nothing to do with the collections process! Clearly, Forwarders are indirectly involved in collections, and must be licensed under the act. Appellees' argument that "indirectly" means attempts to reach out to the debtor through non-direct means is entirely fabricated, and has no roots anywhere within the statute.

The fact is that Forwarders meet the statutory definition of a collection agency in MCL 339.901(b). This means that Forwarders are already regulated under the Act.

3. Lenders are required to use licensed agencies.

It is illegal for Lenders, as regulated people under the Regulation of Collection Practices Act, to hire an unlicensed collection agency:

A regulated person shall not...(s) [employ] a person required to be licensed under article 9 of Act No. 299 of the Public Acts of 1980, being sections 339.901 to 339.916 of the Michigan compiled laws, to collect a claim unless that person is licensed....

MCL 445.252. Because Forwarders are required to be licensed, Lenders are in violation of the act by hiring them.

4. Forwarders practices include far more than the interstate communications exempted under the Occupational Code.

As appellees point out in their brief at page 20:

“Larger collection agencies are usually willing and able to meet these licensing requirements, not only to pursue debtor clients here, *but also to solicit new business in the State*. Small out-of-state collection agencies, however, who want to pursue debtors who move here from other states often must either write these debts off or assume the financial burden of paying the license fee and obtaining the necessary bond simply to contact the debts residing in Michigan by phone, fax, or mail.”

Senate Fiscal Agency Bill Analysis, HB 5022, May 3, 1994 (bold italics emphasis added, underlined in original)

First, the most striking part of this quote, found in appellee’s brief, is that it clearly contemplates solicitation of new work *as part of the requirements of licensure!* *While this is for an amendment to the already existing statutory scheme, clearly it shows the context contemplated for the use of the term solicit to mean generating new business by the legislature.*

Second, this history contemplates out of state agencies that use interstate

commerce *only* to contact a debtor in order to collect a debt. It does not contemplate the actions taken by lenders. Forwarders *are* the “large collection agencies” the Senate Bill contemplated would still need to be licensed despite the addition of the interstate communication exception in MCL 339.904(2). Forwarders solicit the new work, then hire a local agency to collect the vehicle, arrange for transfer of the vehicle, then arrange for titling and sale of the vehicle, and so on. Clearly, this goes far above and beyond a simple letter, fax, or phone call in order to collect a debt that the Interstate Commerce exception was designed to address.

5. Badeen has built his arguments thus far without any discovery.

Summary disposition in this case was granted before Badeen even had the opportunity to begin the discovery process. Badeen has built this case using only his own, and public, records. At least one Forwarder has offices in Michigan, with the possibility of several more. Forwarders and Lenders are hiding behind the windfall grant of summary disposition of this case to cloud everything they do, attempting to smokescreen the facts by keeping things to the current completely undeveloped record. Of course, there are not specific line items in the record for some of what Badeen asserts! He was never afforded the opportunity to properly build the record. However, each and every assertion made, pleaded or otherwise, is based upon his industry knowledge and personal dealings.

Respectfully Submitted,

XUEREB LAW GROUP PC

By: 

Joseph M. Xuereb (P40124)
Attorney for Defendants/Appellants
7752 N. Canton Center Rd., Ste. 110
Canton, MI 48187
(734) 455-2000
Dated: July 8, 2013