PASADENA RECEIVABLES, INC.,	*	IN THE
Appellant.	*	CIRCUIT COURT
v.	*	FOR
	*	HOWARD COUNTY
LOREN W. PARKER,	*	13-C-10-084673
Appellee.		

* * * * * * * * * * * * *

ORDER

For the reasons set forth in the "Memorandum Opinion" issued on September 28, 2011 herein, it is this 28th day of September, 2011, by the Circuit Court for Howard County,

ORDERED, that the decision of the District Court is reversed and remanded for a new trial.

Richard S. Bernhardt
Judge, Circuit Court for Howard County

ENTERED

OCT 13 2011

CLERK, CIRCUIT COURT
HOWARD COUNTY

TRUE COPY TEST:

Margaret D Rappaport

CLERK

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Appellant.	*	CIRCUIT COURT
v.	*	FOR
LOREN W. PARKER,	*	HOWARD COUNTY
Appellee.	*	13-C-10-084673

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MEMORANDUM OPINION

This matter came before the Court for a record appeal of the decision of the District Court of Maryland for Howard County, in District Court Case Number: 100100065172009. On June 21, 2010, the District Court entered judgment in favor of Loren W. Parker (hereinafter "Parker" or "Appellee"). On July 16, 2010, Pasadena Receivables, Inc. (hereinafter "Pasadena" or "Appellant") filed its Notice of Appeal. This Court heard oral arguments on the appeal of the District Court's decision on March 31, 2011. For the reasons set forth herein, the judgment of District Court shall be reversed and the case remanded to the District Court of Maryland for Howard County for a new trial.

BACKGROUND

Appellant Pasadena Receivables is a Maryland corporation, located in Pasadena, Maryland.

Appellee Loren Parker is a resident of Laurel, Howard County, Maryland.

Pasadena Receivables is a corporation engaged in the business of purchasing "charged off portfolios of debt, mostly credit card debts" for collection. (Tr. 9, June 21, 2010). A third party, Turtle Creek Assets, Limited, had previously purchased portfolios of credit card debts including

some from Chase Bank USA ("Chase"). (Tr. 15 – 16, June 21, 2010.[1] In July of 2009, Turtle Creek Assets, Limited began assigning certain portfolios of credit card debts to Appellant Pasadena Receivables.[2] (Tr. 13 – 18, June 21, 2010). In September of 2009, Turtle Creek assigned a third portfolio of credit card accounts to Pasadena Receivables, which included Appellee Parker's credit card account with Chase Bank. (Tr. 20, June 21, 2010).

Thereafter, on November 10, 2010, Pasadena filed suit in the District Court for Howard County, Maryland, as the assignee of Chase Bank USA, ("Chase") against Defendant Parker. Pasadena's Complaint in District Court alleged that Mr. Parker owed a balance of $6,242.10 on a defaulted credit card obligation, originally incurred with the credit card lender, Chase. Prior to the trial date, Pasadena propounded pretrial interrogatories on Parker. On January 12, 2010, the Appellant filed a Maryland Rule 5-902(b) Notice of Intention to Rely on Certified Records maintained in a regularly conducted business activity. The Appellee did not file a written objection to the notice within five days after the service of the notice on the ground that the sources of information or the method or circumstances of preparation indicated a lack of trustworthiness as required by Maryland Rule 5-902(b)(1).

Trial proceeded in the District Court on three separate dates: April 12, 2010, May 10, 2010, and June 21, 2010. At the beginning of the District Court's hearing on April 12, 2010, counsel for Pasadena moved to introduce the records that were the subject of the Rule 5-902(b) notice: "a copy of the bills of sale from the original creditors through to Pasadena Receivables, the entire account history of the Chase account [referring to Defendant's Chase account] from first use to the last, as well as Pasadena Receivables' account summary, the card member's terms

[1] Chase Bank is a credit card company providing credit cards to clients.
[2] Through a contract dated July 16, 2009, Pasadena Receivables purchased a batch of 306 defaulted credit card accounts from Turtle Creek Assets as part of a Forward Flow Agreement for the months of July, August and September of 2009. (Lagana Test. Tr. 15, June 21, 2010).

and conditions and a redacted copy section of the accounts purchased by Pasadena Receivables from Turtle Creek." (Tr. 3 – 4, April 12, 2010). Both counsel presented Judge Reese with lengthy arguments as to whether the business records would therefore be under Rule 5-902(b)(1).[3] Appellee's position was that the validity of the records under 5-803(b)(6) must be demonstrated as a pre-requisite to admissibility under 5-902(b). (Tr. 5, April 12, 2010). Appellee further asserted the record had to be actually made by the business that certified the record. (Tr. 5, April 12, 2010). Appellee finished by arguing that since Appellant is the business certifying the records, but not the business that created the records, the records cannot be valid under 5-803(b)(6) and therefore inadmissible, the Appellant's compliance with 5-902(b) notwithstanding. Appellant responded by arguing that Appellant had followed 5-902(b) as required and no written objection was made by the Defendant. Therefore, argued Appellant, the requirements of 5-803(b)(6) were deemed satisfied and the records must be admitted. The Appellant also asserted, as per *Killian v. Houser*, that the records are records used in the course of the Appellant's business and as such are admissible even though created by another business.[4] The Appellant concluded by arguing that the records in question were bank records and as such were deemed by law to have a higher degree of reliability.[5] (Tr. 6 – 9, April 12, 2010). Judge Reese denied the admission of Pasadena's business records on the basis that the Plaintiff's business records certification (which had been submitted in the form required by 5-902(b)(2)) did not meet "the business records requirements under 5-803 that would therefore be admissible under 5-902(b)". (Tr. 27, April 12, 2010).

[3] There was no dispute that the appropriate notice was filed by the Appellant and no written objection filed by the Appellee pursuant to 5-902(b)(1). There was also no dispute that the written form of certification of the records by the Appellant conformed to 5-902(b)(2).
[4] 251 Md. 70 (1968).
[5] Appellant cited to *Chapman v. State*, 331 Md. 448 (1993).

After the close of Pasadena's case on June 21, 2010, Parker moved for judgment in favor of the Appellee, which the Court subsequently denied. (Tr. 43, June 21, 2010). Parker did not present any witnesses, and the trial moved to closing argument. After argument, the District Court entered judgment in favor of the Appellee, holding the Appellant had failed to prove "the chain of title" by a preponderance of the evidence and thereby failed to prove the Appellee owed the Appellant the debt. (Tr. 46, June 21, 2010) The Appellant filed a motion to reconsider, which was denied. The Appellant timely appealed.

DISCUSSION

A. SCOPE OF REVIEW

Maryland Rule 7-113 governs the standard of review for an on the record appeal to the Circuit Court. For an appeal of a District Court judgment, the Circuit Court is required to review the case on both the law and the evidence.[6]

For factual findings, the appellate court will not substitute its judgment for that of the trial court unless the factual findings are clearly erroneous in light of the total evidence.[7] Under the clearly erroneous standard, the Circuit Court must consider evidence produced at the trial in a light most favorable to the prevailing party, and if substantial evidence was presented to support the trial court's determination, that decision is not clearly erroneous and cannot be disturbed.[8] Further, the Court of Appeals has determined that when there is "solid evidence which tends to support the disputed factual allegations of each party," then "under these circumstances . . . rules

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[6] Scope of Review. The circuit court will review the case on both the law and the evidence. It will not set aside the judgment of the District Court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the District Court to judge the credibility of the witnesses. MD. R. 7-113(f).
[7] *Ryan v. Thurston,* 276 Md. 390, (1975).
[8] *Id.* at 392.

of procedure, and particularly," responsibility for resolving such a conflict is placed with the trial court.[9]

On the contrary, the same presumption of correctness for review of factual findings does not apply to the legal findings of the District Court. The Court of Appeals has stated that for cases applying Rule 886 [the predecessor to Rule 7-113], the 'clearly erroneous' standard does not apply to *legal* determinations of the District Court.[10] The lower court's interpretations of law enjoy no presumption of correctness on review. Instead, the Circuit Court must apply the law, as it understands it to be.[11]

B. QUESTIONS PRESENTED FOR REVIEW

1. DID THE DISTRICT COURT COMMITT REVERSIBLE ERROR WHEN IT REQUIRED PASADENA TO ESTABLISH ITSELF AS THE LAWFUL ASSIGNEE?

The Appellant argues that the District Court should not have required the Appellant to establish itself as the lawful assignee because Appellee, at no time prior to trial, raised any issue as to Pasadena's capacity to bring suit as an assignee. Appellant argues that under Maryland Rule 3-308, if there was an issue as to the capacity of a party to sue or be sued, the Appellee was required to make a specific demand for proof at any time prior to the conclusion of the trial. Appellant argues that in the absence of this specific demand for proof, the Appellant's capacity should have been admitted for the purpose of the litigation.

Appellee Parker argues that the Appellant's argument conflates the issue of capacity under Rule 3-308 with the issue of standing to sue. Appellee argues that the issue is not whether the assignment conferred capacity to sue, but whether the assignment conferred standing to sue.

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[9] *Kowell Ford, Inc. v. Doolan*, 283 Md. 579, 548 (1978).
[10] *Rohrbaugh v. Stern*, 305 Md. 443, 446, (1986).
[11] *Id.*

Appellee is correct. Maryland Rule 3-308 is inapplicable, and the correct issue is whether the Appellant had standing to bring the suit against Appellee. Maryland courts have held that legal capacity involves the "litigant's power to appear and bring its grievance before the court. Legal capacity to sue, or lack thereof, often depends purely on the litigant's status, such as that of an infant, and adjudicated incompetent, a trustee."[12]

A Maryland corporation has the capacity to sue or be sued in all courts.[13] It has not been contested that Appellant Pasadena is a Maryland corporation and thereby has the capacity to sue Appellee Parker.[14]

Standing to sue is a party's right to make a legal claim or seek a judicial enforcement of a duty or right. The Court of Appeals has stated that, "the doctrine of standing is an element of the larger question of justiciability and is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present the court with a dispute that capable of judicial resolution. The most critical requirement of standing . . . is the presence of 'injury in fact- an actual legal stake in the matter being adjudicated.'"[15] An assignment of a debt confers standing since the assignee now has an interest that can be impaired. Without a valid assignment, then the party that brings a suit has no standing.

In the instant case, there was no direct contractual relationship between the Appellee and the Appellant from which the Appellee would owe a debt to the Appellant. The question of whether the Appellant had standing to sue wholly depends on whether there was a valid assignment of the Appellee's debt to the Plaintiff. Appellant bears the burden to establish by a

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[12] *Hand v. Manufacturers*, 405 Md. 375, 399 (2008) (citing *Security Pacific Nat. Bank v. Evans*, 31 A.D.3d 278, 820 N.Y.S.2d 2, 3 – 4 (2006)).
[13] MD. CORP. & ASS'N. 2-103(2).
[14] To the contrary, Michael Lagana testified that he was a vice president of the Appellant corporation and that it was, in fact, a Maryland corporation. (Tr. 9, June 21, 2010)
[15] *Hand*, 405 Md. at 398 (quoting *Security Pacific Nat. Bank v. Evans*, 31 A.D.3d 278, 820 N.Y.S.2d 2, (2006))

preponderance of the evidence that a valid assignment has been made thereby establishing standing.

2. DID THE DISTRICT COURT COMMITT REVERSIBLE ERROR BY NOT ADMITTING PASADENA'S CERTIFIED BUSINESS RECORDS UNDER MARYLAND RULE 5-902(11)?

As stated earlier, the Appellee maintains the position that the validity of the proffered record under Rule 5-803(b)(6) must be established before the proffered record is admissible under 5-902(b). Appellee states, further, that the only business that can certify a record under 5-902(b) is the business that generated the record. The Appellant's response is that Appellant's compliance with 5-902(b), in absence of a written objection by the Appellee, renders the record admissible and immune from a challenge under 5-803(b)(6).

Maryland Rule 5-803(b)(6) establishes the business records exception to the hearsay rule.[16] In doing so, it states the characteristics that must be present in a record before it can be properly established as a business record and thereby be an exception to the hearsay rule.

Rule 5-803(b)(6) does not establish a method of laying the proper foundation for entering the record into evidence.[17] The Rule does not establish the ability of a custodian to testify in court, but that certainly is possible as per the development of the case law.[18] Further, it does not establish the ability of the custodian to create a "certification" to be used instead of testimony by the custodian. As stated

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[16] "In order to qualify under the pre-Title 5 business records exception to the hearsay rule, documents had to comply with section 10-101 of the Courts and Judicial Proceedings Article of the Maryland Code. . . . The Maryland Statute, now 'trumped' by the subsequent adoption of Rule 5-803(b)(6) to the minor extent that it is inconsistent with section 10-101, was but one incarnation of the business records hearsay exception that has broadened significantly over the centuries since its inception as the 'shop book rule.'" Lynn McLain, *Self-Authentication of Certified Copies of Business Records*, 24 U. BALT. L. REV. 27, 45-46 (1994-95).

[17] "The modern Maryland cases, codified by Rule 5-803(b)(6), are both flexible and lenient with regard to how the foundation for business records can be established." *Id.* at 46.

[18] ". . . [T]he drafters of Maryland Rule 5-803(b)(6) omitted the federal rule's phrase: 'as shown by the testimony of the custodian or other qualified witness.' The intent behind the Maryland Rule was to codify the pre-Title 5 Maryland case law." *Id.* at 48.

before, the rule merely lists what needs to be demonstrated in order to establish a record as a business record and, therefore, excepted from the hearsay rule.[19]

A business record may be admitted into evidence by two methods: extrinsic evidence, through Rule 5-803(b)(6), or self-authentication, pursuant to Rule 5-902.[20] If testimony from a custodian is utilized, the custodian must be capable of testifying that he or she maintains the records and that they have not been altered or changed from the time that they were created. Additionally, the custodian must be able to testify, with some knowledge, that the person who made the record did so at or near the time of the event, had knowledge of or was given the information by a person with knowledge of the actual event, that the record is the type of record that is made in the regularly conducted course of business (as opposed for litigation), and that it was regular practice of the business to make and keep the record. The custodian is stating a familiarity not only with the business practices of the company but also that the records that are generated by and during the business practices of the company.[21] Records that are kept by a business, in conformity with the requirements of 5-803(b)(6), are considered reliable and trustworthy for the court.

To be self-authenticating, the proponent of a business record must satisfy the two prongs of 5-902(b): notice and certification.[22] The rule was established for the purpose of creating a procedure to

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[19] Rule 5-803(b)(6) requires the business record (A) be "made at or near the time of the act, event, or condition or the rendition of the diagnosis," (B) be "made by a person with knowledge or from information transmitted by a person with knowledge," (C) be "made and kept in the course of a regularly conducted business activity," and (D) the "regular practice of that business" was to make and keep the business record. MD. R. EVID. 5-803(b)(6)..

[20] "There are two ways that the necessary evidentiary foundation for admitting business records may be established: by extrinsic evidence (usually live witness testimony) regarding the four requirements of Rule 5-803(b)(6) or by 'self-authentication' pursuant to Rule 5-902(a)(11)." *State v. Bryant*, 361 Md. 420, 426 (2000).

[21] "The rationale underlying the business records exception is that because the business relies on the accuracy of its records to conduct its daily operations, the court may accept those records as reliable and trustworthy. *See Chapman v. State*, 331 Md. 448, 459, 628 A.2d 676, 681 (1993); Hon. Joseph F. Murphy, Jr., *Maryland Evidence Handbook* § 804, at 418 (2d ed. 1993). Moreover, the recorder, who has no motive to falsify or record inaccurately, is under a business duty to make an honest and truthful report that can be relied upon by the business. *See State v. Garlick*,313 Md. 209, 217, 545 A.2d 27, 30-31 (1988); *Aetna Casualty & Surety v. Kuhl*,296 Md. 446, 454, 463 A.2d 822, 827 (1983)." *Department of Public Safety and Correctional Services v. Cole*, 342 Md. 12, 30-31 (1996).

[22] "A record of regularly conducted business activity, to be admissible as a self-authenticating document under Rule 5-902(a)(11), must satisfy the notice requirement of the rule and contain a certification that it falls within the scope

the proper procedure to object to a business record exception.[29] Failure to file an objection establishes the validity of the provisions contained within the certificate and constitutes a satisfaction of 5-803(b)(6).[30] To require the offering party to prove the conditions precedent in 5-803(b)(6), absent an objection to the 5-902(b) certification, would nullify 5-902(b). Failure by the adverse party to file a notice of objection constitutes a waiver of the right to raise objections to the admission of the record on grounds of authenticity or trustworthiness.

The record of the District Court is clear that the Appellant complied with the notice and certification requirements of 5-902(b). The record of the District Court is equally clear that the Appellee failed to file a written objection based on lack of trustworthiness as required by 5-902(b)(1). By failing to file a written objection based on the lack of trustworthiness of the proposed business records, the Appellee's objections at trial to the trustworthiness of those same business records based on Rule 5-803(b)(6) were waived. The District Court erred in excluding the records.

3. ARE THE BUSINESS RECORDS OF A CREDIT CARD ISSUER ADMISSIBLE WHEN PROFFERED BY THE ASSIGNEE OF THE CREDITOR WHO HAS INCORPORATED THE ISSUING CREDITOR'S RECORDS INTO ITS BUSINESS RECORDS?

[29] There is a clear similarity in the use of certain language between Maryland Rule 5-902(b)(1) and Maryland Rule 803(b)(6). In particular, the language in Rule 5-902(b)(1) that states that an adverse party may file a "written objection on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness," directly corresponds with the language in Rule 5-803(b)(6), which states that "a record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness."

[30] "Testimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record of regularly conducted business activity, within the scope of Rule 5-803 (b)(6) that has been certified pursuant to subsection (b)(2) of this Rule," provided certain requirements are met. MD. R. EVID. 5-902(b)(1).

As previously stated, Appellee's failure to object to the business records under Rule 5-902 (b) removes the issue of authentication of the business records. However, assuming *arguendo* that the Appellee's objection had merit, or that the Appellee had made a timely objection under Rule 5-902(b) to Pasadena's Notice of Intention to Rely on Certified Record, the Appellant's business records would still be admissible under Rule 5-803(b)(6), as records of a regularly conducted business activity.

Appellee Parker argues that the Appellant failed to properly certify the records because the records do not fall under the business records exception. Since the records were not made in the regular course of business of the Appellant, Parker argues that Pasadena's custodian, Mr. Lagana, was too far removed from the records to testify effectively. Therefore, he was unable to certify the records were made at or near the time of the matters at issue or kept within the course of regularly conducted business activity. Further, Appellee claims that there was no evidence that the purported business records of Chase were in fact incorporated into, or became a part of, Appellee's business records. Instead, Appellee argues that the business records at issue are the separate and distinct records of another business, not the Appellant's business.

Appellant Pasadena argues that as the assignee of the debt, it can properly testify as to the business records generated by the original assignor, Chase Bank. Pasadena reasons that Appellant can testify to the proposed business records because the assignor's records were incorporated into the assignee's business records.

Maryland has long held that a testifying custodian of a business record does not have to be the person "who was such at the time that the record was made."[31] Further, the lack of knowledge of a maker of a written notice (such as the notice required under 5-902(b)) "may be

[31] *Killen v. Houser*, 251 Md. 70, 76 (1968).

shown to affect the weight of the evidence but not its admissibility."[32] Business records are admissible pursuant to Courts and Judicial Proceedings 10-101(b), even when they are "hearsay in nature," when the entry meets tests of necessity and circumstantial guarantee of trustworthiness.[33]

In the instant case, the Appellant called Michael Lagana to testify on June 21, 2010. Mr. Lagana testified that he was "vice president of acquisitions" and that his job was to purchase "charged off portfolios of debt". (Tr. 9, June 21, 2010). Mr. Lagana provided testimony as to the Appellant's business of purchasing "charged off debt" and as to the nature of the debt collection industry. (Tr. 9 – 11, June 21, 2010). He further testified that he alone, on behalf of the Appellant, negotiated and completed the purchase of the debt from Turtle Creek Assets Limited that is the focus of the instant case. (Tr. 13, June 21, 2010). Mr. Lagana identified the "Credit Card Purchase Agreement" dated July 16, 2009 between Turtle Creek and the Appellant, and specifically noted that Turtle Creek warranted that "good and marketable title" of each "Charged-off Account" (including Chase) is being transferred to the Plaintiff by the agreement. (Tr. 16, June 21, 2010). Mr. Lagana then identified a "Bill of Sale" between Chase and Turtle Creek that was delivered to the Appellant after the "funding of the deal". (Tr. 21 – 22, June 21, 2010). The "Bill of Sale" between Chase and Turtle Creek was delivered to the Appellant as part of the business transaction between the Appellant and Turtle Creek and contained the records relevant to the debt that is the focus of the instant case. The Appellant offered the aforementioned documents as exhibits and the Appellee objected on grounds of hearsay. The District Court ruled that the testimony amounted to the payment of a certain amount of money to

[32] Cts and Jud Proc §10-101(d). Courts and Judicial 10-101 applies to records of all businesses of every kind. *Bethlehelm-Sparrows Point Shipyard, Inc. v. Scherpenisse*, 187 Md. 375 (1946). The section permits the introduction of business records as an exception to the hearsay rule when tests of necessity and trustworthiness are met. *Smith v. Jones*, 236 Md. 305 (1964).

[33] *Mattvidi Assoc. Ltd. Partnership v. NationsBank of Virginia*, 100 Md. App. 71, 87 (Md. Ct. Spec. App. 1994).

Turtle Creek for "a stack of papers," and to the extent the exhibits accurately reflected the papers purchased, the exhibits would be admitted to show nothing more than a "stack of papers" was purchased. (Tr. 25, June 21, 2010). The District Court, however, did not accept into evidence "any hearsay" that may be in the "stack of papers." (Tr. 25 – 26, June 21, 2010).

In *Morrow v. State*[34], the Court of Appeals was asked to determine if a copy of a receipt for the purchase of spark plugs from a garage was admissible in the absence of the testimony of the maker of the receipt (the garage owner). The witness testifying in support of the receipt was the person who conducted the transaction at the garage and received the receipt from the garage owner. The Court of Appeals noted that the receipt was the unsworn statement of an out of court declarant and was hearsay. The appellant's argument was that the receipt was a business record pursuant to the precursor to Courts and Judicial Proceedings 10-101 and, therefore, an exception to the hearsay rule. The Court of Appeals ruled in favor of the appellant and held that the trial court erred in excluding the evidence.[35] In the instant case, the import of Mr. Lagana's testimony was not that he negotiated the purchases of unspecified stacks of paper, but that he negotiated the purchase of what the papers represented, and what the papers represented was the assignment of the authority to collect debts, including the debt from Chase. Just as the receipt in *Morrow* was admissible to corroborate the location of the defendant on the date and time indicated on the receipt, the exhibits in the instant case were admissible to show the purchase of an assignment.

The Court is mindful that the objection of the Defendant is not necessarily to the papers and the words and numbers on the papers, but to the hearsay nature of those records that Turtle Creek received from Chase. The question for the Court, however, is whether the records qualify

[34] 190 Md. 559 (1948).
[35] The opinion is unclear if the intent of the opinion was to limit the discussion of the business record argument to permitting the evidence for corroborative purposes, or if the opinion was broader.

as business records and are therefore admissible, not whether the fact finder will give them weight. Again, Courts and Judicial Proceedings 10-101(d) plainly states that the lack of personal knowledge of maker of the written notice, or in this case the witness Mr. Lagana, does not bar admissibility, but can be considered by the fact finder in weighing the evidence.

Mr. Lagana's testimony also generated the question of whether "incorporated business" records are admissible under 5-803(b)(6), unless the objecting party can show that the record lacks trustworthiness. Mr. Lagana was the proper witness to present all of the necessary testimony expected from a custodian of Appellant's business records. In fact, Mr. Lagana went one step further in that he participated in the events and the creation of the records. Mr. Lagana clearly testified as to the nature of the Appellant's business and the integral and necessary role that the disputed records play in the conduct of the Appellant's business. The business records that the Appellant seeks to admit in the trial court are those that credit card companies typically keep in the regular course of business activity, and are also the type of records that are typically produced when debts are assigned to another company. The Appellee did not produce any specific evidence that records, or portfolios, of the credit card debts had been altered or modified, or that they were not the same account records, as they passed through the chain of possession from Chase to Turtle Creek, and then later from Turtle Creek to Pasadena.

The United States Court of Appeals, Second Circuit, was presented with a similar scenario in *U.S. V. Jakobetz*,[36] in which the defendant was convicted of kidnapping. The defendant claimed that the trial court committed error by permitting into evidence a toll receipt that was important to the prosecution because it showed defendant's location on a date and at a time consistent with the testimony of witnesses. The defendant was a trucker, and the custodian of the employing trucking company records testified that the toll receipt was turned in by the

[36] 955 F. 2d 786 (1992).

defendant at the end of the trip, as per company policy, and that in reliance on the receipt the company reimbursed the defendant for the cost of the toll. The Court of Appeals reviewed Federal Rule of Evidence 803(6) to determine if the trial court committed error.[37] The Court of Appeals found that based on the testimony of the custodian, the toll receipt had been integrated into the trucking company's records and relied on in the day to day operations of the truck company. The Court therefore held that the toll receipt was admissible as a business record of the truck company.

Mr. Lagana's testimony was sufficient to demonstrate that the disputed records had been integrated into the Plaintiff's company records and were relied on as a critical part of the day to day operations of the Plaintiff company's business. His testimony was also sufficient to demonstrate that the Appellant business relied on the accuracy of incorporated documents. Finally, Mr. Lanaga's testimony was sufficient to establish additional circumstances indicating the trustworthiness of the records. The records, therefore, are business records of the Appellant and it was error to refuse to admit without restrictions.

C. CONCLUSION

Having held that the District Court erred in permitting the disputed records into evidence pursuant to Maryland Rule 5-902(b), or in the alternative as having satisfied Maryland Rule 5-803(6) for the reasons stated above, the next question is whether the error was harmless. The District Court tried the case to a verdict on its merits. In finding that the Appellant had failed to

[37] Federal Rule of Evidence 803(6), as constituted when the decision was handed down, was identical in substance to Maryland Rule 5-803(6).

meet his burden of proof, the District Court specifically cited what it viewed as deficiency of evidence in the "chain of title". (Tr. 46, June 21, 2010). The disputed records go directly to the issue of the assignment, or as stated by the District Court the "chain of title," and while the admission of the records may not carry sufficient weight with the fact finder to change the verdict, the error is not harmless and a new trial is warranted.

For the reasons set forth herein, it is this 27 day of September, 2011, by the Circuit Court for Howard County,

ORDERED, that the decision of the District Court is reversed and remanded for a new trial.

Richard S. Bernhardt
Judge, Circuit Court for Howard County