IOC 3/31/15 Exhibit 3 Summary Chart of Payments

|  |  |  |  |
| --- | --- | --- | --- |
| Date Deadbeat Paid | Amount | Loan Balance | Notes |
| 6/1/14 | 7500.00 | 289,000 |  |
| 7/1/14 | 7500.00 | 281,463 |  |
| 8/1/14 | 10,000.00 | 271,563 |  |
| 9/1/14 | 8427.05 | 263,245 |  |
| 10/1/14 | 7500 | 255,845 |  |
| 11/1/14 | 7500 | 248,445 |  |
| 11/1/14 | 7500 | 241,045 |  |
| 12/1/15 | 00 | 241,445 |  |
| 1/1/15 | zero | 241,845 | Default |
| 2/1/15 | Nothing | 242,045 | Refuses |
| 3/1/15 | Nada | 243,345 | Done |
| 4/1/15 | Zip | 243,645 | Crush him |

Script

Creditor Attorney/Lanier

We offer Exhibit 3, a chart summarizing the payments received most recently as well as showing the 4 payments missed.

Debtor Lawyer/Hughes

Objection your honor, it lacks foundation

Creditor Attorney/Lanier

The underlying pay history has already been introduced into evidence. Summary should be admitted.

Debtor Lawyer/Hughes

But the underlying actual documents supporting the pay history have not been admitted, nor have they been made available for inspection before the hearing?

Creditor Attorney/Lanier

Not true—the underlying documents supporting the pay history are the checks the debtor wrote and mailed in, so the debtor cannot complain.

Debtor Lawyer/Hughes

On the contrary, they have not only the actual checks processed and in their file, but they also have other documents including tax statements and other charges reflected on the pay history.

The chart has also not been proven who prepped it, and we be given the chance to cross examine.

Creditor Attorney/Lanier

Those are immaterial to the bottom line here—goes to the weight if anything.

Debtor Lawyer/Hughes

There is another reason to not admit this “chart”—it is prejudicial and defames my client the debtor by referencing him as a “deadbeat” and using terms like “zilch”, nada, zip, and it even threatens him by saying “crush him”.

Creditor Attorney/Lanier

Well the truth is a defense here because the debtor is a deadbeat. Google defines deadbeat: “a person who tries to evade paying debts.”

As for “zilch” and “zip” they obviously mean we got “nuthin”.

Debtor Lawyer/Hughes

The choice of these words is improper—even the definition does not really fit because it refers to someone “trying” to evade payment—as the evidence shows there was an effort made to pay, and that will be shown when we talk about Exhibit 4 next.

ISSUES

* Is the chart admissible?

In Re: INTERNATIONAL MANAGEMENT ASSOCIATES, LLC, 3/19/2015 11th Circuit

Bankruptcy court admitted summary without admitting underlying documents on which it was based, and allowed the trial court to find a Ponzi scheme. On appeal the debtor argued the summary was improper because the underlying documents not admitted were also inadmissible hearsay. The appeals court affirmed the admission, finding the trial court properly admitted the summary was supported by admissible back up if it was offered under (i) Rule 807, the residual exception to the hearsay rule, (ii) as 803(6) business records, meaning authenticity was proved and that they were business records since they were seized when the trustee took over and they were consistent with his interviews of the debtor principals.

* Would the chart be admissible without the pay history also being admitted into evidence, assuming that the Creditor’s corporate representative testified that he had reviewed the account records, and that the chart accurately recited the four payments missing?

FRE 1006. SUMMARIES TO PROVE CONTENT

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. ...

*U.S. v. Rizk*, 660 F.3d 1125, 1130 (9th Cir. 2011). “A proponent of summary evidence must establish that the underlying materials upon which the summary is based ... were made available to the opposing party for inspection ... The availability requirement ensures that the opposing party has ‘an opportunity to verify the reliability and accuracy of the summary prior to trial.’”

*U.S. v. Spires*, 628 F.3d 1049, 1053 (8th Cir. 2011). “‘summary evidence is properly admitted when (1) the charts fairly summarize voluminous trial evidence; (2) they assist the jury in understanding the testimony already introduced; and (3) the witness who prepared the charts is subject to cross-examination with all documents used to prepare the summary.’ Also, summaries may include assumptions and conclusions so long as they are ‘based upon evidence in the records.’”

*U.S. v. Morin*, 627 F.3d 985, 997 (5th Cir. 2010). FRE 1006 “‘does not specifically address summary witnesses,’ but ‘[n]evertheless, for complex cases, this court has allowed summary witnesses in a limited capacity.’