

04-978-CD
WORLDWIDE ASSET PURCHASE, LLC VS CAROL D ECKLEBERRY

Worldwide Asset vs Carol Eckleberry
2004-978-CD

BURTON NEIL & ASSOCIATES, P.C.

By: Burton Neil, Esquire

Identification No. 11348

1060 Andrew Drive, Suite 170

West Chester, PA 19380

(610) 696-2120

Attorney for Plaintiff

WORLDWIDE ASSET PURCHASING, LLC

9911 Covington Cross Drive, Suite 107

Las Vegas, NV 89144

: IN THE COURT OF COMMON PLEAS

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO.

04-978-CD

CAROL D. ECKELBERRY

1720 Towsontown Road, La Jose PA 15753--962

Defendant

: CIVIL ACTION - LAW

**COMPLAINT
NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**LAWYER REFERENCE AND
INFORMATION SERVICE**

David S. Meholick

Court Administrator

Clearfield County Courthouse

Clearfield, PA 16830

Telephone No. 814-765-2641 Ext. 5982

FILED

JUN 28 2004

William A. Shaw
Prothonotary/Clerk of Courts

BURTON NEIL & ASSOCIATES, P.C.

By: Burton Neil, Esquire

Identification No. 11348

1060 Andrew Drive, Suite 170

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Attorney for Plaintiff

WORLDWIDE ASSET PURCHASING, LLC

9911 Covington Cross Drive, Suite 107

Las Vegas, NV

Plaintiff

v.

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

: NO.

CAROL D. ECKLEBERRY

1720 Towsontown Road, La Jose, PA

Defendant

: CIVIL ACTION - LAW

Complaint

1. The plaintiff is WORLDWIDE ASSET PURCHASING, LLC, a business corporation, with place of business located at 9911 Covington Cross Drive, Suite 107, Las Vegas, NV.

2. The defendant is Carol D. Eckleberry, who resides at 1720 Towsontown Road, La Jose, Clearfield County, Pennsylvania.

3. At the defendant's request, Direct Merchants Bank issued the defendant a credit card bearing account number 5458001204104313 for defendant's use in making charge purchases subject to the terms and conditions governing the use of the credit card. Attached hereto, made a part hereof and marked Exhibit A is a true and correct copy of the terms and conditions.

4. The defendant accepted the credit card and the terms and conditions governing its use for the purchase of goods, merchandise and services and/or for cash advances from vendors who accepted Direct Merchants Bank's credit card. In using the credit card, the defendant agreed to comply with the terms and conditions governing its use which included the obligation to pay Direct Merchants Bank for all charges made in full upon receipt of the statement or in installments subject to monthly finance charges.

5. The defendant utilized the credit card by making/obtaining purchases of goods, merchandise and services and/or cash advances from vendors who accepted the credit card. Monthly statements were sent to the defendant which detailed the charges made to the account including finance charges, late and/or, over limit charges. The balance due for the charges made by the defendant including any finance charges, late or over limit charges is \$7,047.95.

6. Defendant did not pay the balance due in full upon receipt of the billing statements and failed to make the required minimum monthly payment set forth in the billing statement. As such, defendant is in default of the terms and conditions governing the use of the credit card.

7. Plaintiff purchased the defendant's account from Direct Merchants Bank and is now the holder and owner of the account.

8. Although demand has been made by plaintiff upon defendant to pay the sum of \$7,047.95, the defendant failed and refused to pay all or any part thereof.

9. Plaintiff alleges it is entitled to recovery of attorneys fees from defendant pursuant to the terms and conditions governing the account. Plaintiff seeks recovery of attorneys fees in the sum of \$1,409.59.

Wherefore, plaintiff demands judgment against the defendant in the sum of \$7,047.95, attorneys fees in the sum of \$1,409.59 and the costs of this action.

BURTON NEIL & ASSOCIATES, P.C.

By: 

Burton Neil, Esquire
Attorney for Plaintiff

The law firm of Burton Neil & Associates, P.C. is a debt collector.

IF YOU FAIL TO FULFILL THE TERMS OF YOUR CREDIT OBLIGATION, A NEGATIVE REPORT REFLECTING ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY(IES). IF YOU BELIEVE WE HAVE INACCURATE INFORMATION ABOUT YOU OR HAVE REPORTED INACCURATE INFORMATION ABOUT YOU TO A CONSUMER REPORTING AGENCY, YOU CAN NOTIFY US AT THE SCOTTSDALE, ARIZONA ADDRESS WRITTEN ABOVE.

(11/00)

We will send you a statement covering each billing cycle in which you have a balance in excess of \$1. The statement will include: (a) payments, credits, purchases, cash advances, finance charges, and all other charges made to your Account during the billing cycle; (b) the minimum payment you must make

(I)

(called the "minimum payment") and the date by which the minimum payment must be paid in order to avoid late charges, and (c) your available credit.

PAYMENT

Payment is due when you receive your statement each month. We will not impose any late charges if you pay at least the minimum payment reflected in your statement by the date specified, which will always be 25 days from the statement date. If you wish, you may pay more than the minimum payment and at any time you may pay the entire amount due for the current billing cycle (called "new balance"). Send payments to Payment Center, P.O. Box 17036, Baltimore, MD 21297-0443.

The minimum payment each month will be equal to 2.5% of the new balance or the amount of your monthly finance charge if the monthly finance charge is greater than 2.5% of the new balance or \$15, whichever is greater, or the amount of the new balance if less than \$15, plus:

- any past due amounts appearing on your statement; and
 - the amount by which the new balance exceeds your credit limit.
- All payments by mail must be made by check or money order. Payments may not be made by attempting to effect a transfer or by using a convenience check from this Account or from any other Direct Merchants Bank Account. You agree that any payment you make may be, but is not required to be, returned to you without applying it to your Account and without presentation or protest, for Office of a financial institution located in the United States; (2) is not drawn on the U.S. Post Office or a financial institution located in the United States; (3) is drawn on the U.S. Post Office with different numeric and written amounts; (4) contains a restrictive endorsement; (5) is not dated; (6) is not payable to Direct Merchants Bank, or Direct Merchants Credit Card Bank, N.A.; (7) is not payable in U.S. dollars; (8) is not paid upon presentation; or (9) results from an attempted transfer or is drawn on a convenience check. You agree to pay any bank collection fees we incur for any check payments made in U.S. dollars drawn on a financial institution not located in the United States. All payments under this Agreement must be received at the address specified on your billing statement. Any conditional check, money order or any other instrument tendered as full satisfaction of a disputed debt or as an accord and satisfaction or containing a restrictive endorsement must be sent to us at the Cardmember Service Center address provided on page (6) of this Agreement. You must note conspicuously on the face of the payment that it is tendered for this purpose. If you make a payment in any other manner and we accept it, we will not have waived our rights to collect any amounts owed under this Agreement.

Even though your payment may be posted to your Account, we may not restore your available credit or cash advance available credit immediately.

ANNUAL FEE

An Annual Fee does not apply to this Account.

HOW WE FIGURE FINANCE CHARGES

The periodic FINANCE CHARGE is calculated separately for purchases and cash advances. To calculate the FINANCE CHARGE for purchases, on each day of the billing cycle we multiply the daily balance for purchases times the daily periodic rate for purchases. At the end of the billing cycle we add together the FINANCE CHARGES calculated for each day of the billing cycle.

To calculate the FINANCE CHARGE for cash advances, on each day of the billing cycle we multiply the daily balance for cash advances times the daily periodic rate for cash advances. At the end of the billing cycle we add together the FINANCE CHARGES calculated for each day of the billing cycle. This Account is subject to a minimum monthly finance charge of \$.50 if any finance charges accrue in any such month.

DAILY BALANCES

We calculate the daily balances separately for purchases and for cash advances.

The daily balance for purchases for any given day is equal to the previous day's daily balance for purchases plus any new purchases, and any unpaid FINANCE CHARGES on purchases, and any other fees and charges that we add that day and minus any payments and credits we apply to the purchase balance that day. We add new purchases to the daily balance on the purchase date, unless we elect to use a later date.

The daily balance for cash advances on any day is equal to the previous day's cash advance daily balance, plus any new cash advances made that day, any cash advance transaction fees that we add that day and any unpaid FINANCE CHARGES on cash advances, and minus any payments and credits applied to the cash advance balance that day. We treat any cash advances obtained as having been made on the transaction date shown on your periodic statement, unless we elect to use a later date.

The daily balance is considered to be zero for any day on which your Account has a credit balance. On the Account statement, we may provide information about an average daily balance. You understand and agree that since FINANCE CHARGES are calculated on each day's daily balance, the

"average daily balance" box on your statement will constitute only an approximation (for informational purposes only) for the applicable billing cycle.

DAILY PERIODIC RATES

As of November 2000, the daily periodic rate on your Account for purchases is 0.0625% ("Purchase Rate"), which corresponds to an ANNUAL PERCENTAGE RATE (APR) of 21.99%. The daily periodic rate on your Account for cash advances is 0.0712% ("Cash Rate"), which corresponds to an ANNUAL PERCENTAGE RATE of 25.99%. In the event that you fail to make your payment by the "pay by" date on your billing statement two times in a rolling six-month period, the Purchase Rate will automatically default to 0.0712% ("Default Rate"), which corresponds to an APR of 25.99%, and the Cash Rate will automatically default to 0.08216% ("Default Rate") which corresponds to an APR of 29.99%. All new and outstanding purchase and cash balances will be subject to the Default Rate. Purchase and cash balances will be returned to their respective Purchase Rate and Cash Rate when your Account is current but out of twelve months in a rolling twelve-month period, five out of six months in a rolling six-month period and is current in the last month.

The Purchase Rate, Cash Rate and Default Rates are variable rates that are derived by adding an index to the prime rate published in *The Wall Street Journal* on the first Tuesday of the month preceding the month in which that billing cycle ends and dividing by .361. The index for the Purchase Rate is 12.45%. The index for the Cash Rate is 16.49%. The index for the Default Rate is 16.49% for purchases and 20.49% for cash advances. Regardless of the prime rate, your Account is subject to a maximum daily periodic rate. If the maximum rate is applied to your Account, it is because the appropriate index disclosed above plus the prime rate exceeds the maximum rate applicable to your Account. The maximum daily periodic rate for purchases and cash advances is 0.08216%, which corresponds to an APR of 29.99%.

An increase or decrease in the prime rate will result in an increase or decrease in your daily periodic rate in your next billing cycle. If your daily periodic rate increases, it may increase the minimum payments due on your Account.

DELINQUENCY RATES

A penalty APR ("Delinquency Rate") may be automatically imposed on your Account if your payment is late three times in any six-month period or if your Account is over two cycles past due. The Delinquency Rate for purchases is 29.99% and the Delinquency Rate for cash advances is 29.99%. The Delinquency Rate is derived by adding an index to the prime rate. The index for the purchase Delinquency Rate is 20.49% and the index for the cash advance Delinquency Rate is 24.49%. If the Delinquency Rate index plus the prime rate exceeds the maximum rate disclosed above, the Delinquency Rate applicable to your Account will be the maximum rate 29.99%. Purchase and cash balances will be returned to the respective Default Rates when your Account is current five out of six months in a rolling six-month period and is current in the sixth month.

PROMOTIONAL OFFERS

Any special promotional offers will be sent under separate cover and will be considered an amendment to this Agreement as long as they are in effect.

ADJUSTING FOR GRACE PERIODS

"Grace periods" are periods during which we impose no finance charges on purchases. We impose no finance charge on a purchase added to your daily balance during the billing cycle covered by the periodic statement if that statement shows no previous balance or shows that the previous balance was paid in full within 25 days. Also, we impose no additional finance charge on any purchases included in the new balance of a monthly periodic statement if you pay the new balance in full on or before the date specified in your statement.

LATE CHARGE

At least the minimum payment amount shown on your statement is due each month when you receive your statement. We may impose a \$29 late charge if you do not pay at least the minimum payment by the date specified in your statement, which will always be 25 days from the statement date.

OVER THE LIMIT CHARGE

On any day you exceed your credit limit during your billing cycle, you may be billed an over limit fee of \$29. This fee will only be imposed once per billing cycle, but may be imposed in each billing cycle that you remain over your credit limit.

RETURNED PAYMENT CHARGE

You agree to pay \$25 each time a payment you make to us in any means is returned unsatisfied by your bank or other financial institution.

RETURNED CONVENIENCE CHECK CHARGE

If you are issued convenience checks to use with your Account, you agree to pay a \$15 charge each time you use a convenience check that we are unable to honor because it would exceed your Credit Line when added to your existing balance on the date it is presented for payment, or your Account is otherwise blocked or frozen.

RESEARCH CHARGES

You agree to pay \$5 for each sales slip, statement, transfer of convenience check copy, or our records of your transfers you request if more than one copy is requested per year.

ADMINISTRATIVE CHARGES

We may charge you a fee to take advantage of certain optional administrative services we provide our Cardmembers such as automatic payment services, additional credit cards, express delivery services or payment date selection services. Each time an administrative service is offered to you, a fee for the service will be disclosed. You agree to pay the fee disclosed each time you opt to take advantage of an administrative service. These services are optional and are not required to be exercised by you.

APPLICATION OF PAYMENTS

In accordance with any applicable law, the bank may choose the order in which to apply payments to the Account at the time the payment is made. You may not request or instruct the bank how payments to be applied and the bank is not required to follow any such requests or instructions.

CHANGE OF TERMS (including finance charges)

SUBJECT TO APPLICABLE LAW, WE MAY CHANGE OR TERMINATE ANY TERM OF THIS AGREEMENT OR ADD NEW TERMS AT ANY TIME, WITHOUT LIMITATION, INCLUDING ADDING OR INCREASING THE RATE OR AMOUNT OF FINANCE CHARGES, OR CHANGING THE METHOD OF COMPUTING THE BALANCE UPON WHICH FINANCE CHARGES ARE ASSESSED. PRIOR WRITTEN NOTICE WILL BE PROVIDED TO YOU WHEN REQUIRED BY APPLICABLE LAW. CHANGES MAY APPLY TO BOTH NEW AND OUTSTANDING BALANCES.

DEFAULT AND TERMINATION OF AGREEMENT

You will be in default under this Agreement upon: (a) your failure to make at least the minimum payment by the date specified on your statement; (b) your violation of any other provision of this Agreement; (c) your death; (d) your becoming the subject of bankruptcy or insolvency proceedings; (e) you or your property becoming the subject of attachment, foreclosure, repossession, lien, judgment or garnishment proceedings; (f) your failure to supply in writing with any information we reasonably deem necessary; (g) your supplying us with misleading, false, incomplete or incorrect information; (h) our receipt of information that you are unwilling or unable to perform the Terms or Conditions of this Agreement; (i) our receipt of information from third parties, including credit reporting agencies, which indicates a serious delinquency or charge-off with other creditors; or (j) your moving out of the U.S. After your default, your Account balance will continue to accrue finance charges at the contract rate. Balances outstanding under this Agreement when your credit line is reduced or terminated will continue to accrue finance charges until paid in full and are subject to all Terms and Conditions of this Agreement. Upon default, we have the right to terminate or suspend your credit privileges under this Agreement, to change the Terms of your Account and this Agreement, to require you to pay your entire Account balance including all accrued but unpaid charges immediately, and to sue you for what you owe. You will pay our court costs, reasonable attorneys' fees and other collection costs related to the default to the extent permitted by applicable law. Upon default, we will apply your payments first to attorneys' fees and then in the order set forth under Application of Payments. We can cancel your Account, refuse to allow further transactions, or revoke your card at any time.

CREDIT AUTHORIZATIONS

Some transactions will require our prior authorization and you may be asked to provide identification. If our authorization system is not working, we may not be able to authorize a transaction, even if you have sufficient available credit. We will not be liable to you if any of these events happen. We are not responsible for any refusal to accept or honor your card.

CARD RENEWAL

Cards are issued with an expiration date. We have the right not to renew your card for any reason.

CLOSING YOUR ACCOUNT

You can cancel or close your Account by writing to us at Cardmember Service Center, P.O. Box 21222, Tulsa, Oklahoma 74121-1222. Your notice becomes effective within five days after we receive it. If you cancel the Account, you must immediately pay everything you owe us, including any amounts owed but not yet billed to you. If you do not pay us immediately, outstanding balances will continue to accrue finance and other charges and be subject to the Terms and Conditions of this Agreement. We will not honor any transfer or convenience check written on your Account if we receive the check after your Account is canceled.

LIABILITY FOR UNAUTHORIZED USE

You should retain your copies of all charge slips until you receive your statement, at which time you should verify that the charges are true and the amounts unaltered. You may be liable for the unauthorized use of your credit card. You may be liable for unauthorized use that occurs after you notify us of the loss, theft or possible unauthorized use. Notification must be given by you

Verification

Angel y moss is Attorney Relationship Manager
(Name of authorized representative) (Title or Position)

for WORLDWIDE ASSET PURCHASING, LLC, the within Plaintiff, and makes this statement on its behalf as to the truthfulness of the facts set forth in the foregoing Complaint subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 5/24/04

r Angel y moss
Name

Carol D. Eckleberry
5458001204104313

FILED

100

M/2:00 PM

SHF

JUN 28 2004

Prothonotary/Clerk of Courts
William A. Shaw
Atty. Gen. 85.00

In The Court of Common Pleas of Clearfield County, Pennsylvania

WORLDWIDE ASSET PURCHASING, LLC

VS.

ECKELBERRY, CAROL D.

COMPLAINT

Sheriff Docket #

15876

04-978-CD

SHERIFF RETURNS

NOW JULY 12, 2004 AT 9:42 AM SERVED THE WITHIN COMPLAINT ON CAROL D. ECKELBERRY, DEFENDANT AT EMPLOYMENT, BRINK'S AUTO BODY REPAIR, RIDGE ROAD, WESTOVER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CAROL D. ECKELBERRY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
103.87	SHERIFF HAWKINS PAID BY: Atty
10.00	SURCHARGE PAID BY: ATTY Ck#2132

Sworn to Before Me This

20th Day Of Sept 2004
William A. Shaw

WILLIAM A. SHAW
Prothonotary

My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
by Maury Harris
Chester A. Hawkins
Sheriff

FILED
PM 11:58 AM
SEP 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

WORLDWIDE ASSET PURCHASING LLC
9911 Covington Cross Dr, Las Vegas 89144
Plaintiff

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA

VS.

: NO. 04-978-CD

CAROL D. ECKLEBERRY
1720 Towsontown Road
La Jose PA 15753--962

Defendant

: CIVIL ACTION - LAW

FILED

*M. 1:20 PM 10/1/04
Notice to W of
Start to Atty.*
OCT 01 2004

William A. Shaw
Prothonotary

Praecipe for Default Judgment

To the Prothonotary:

Please enter judgment by default for want of an answer in the above case in favor of the plaintiff and against the defendant, and assess damages as follows:

Principal:	\$7,047.95
Attorneys Fees:	\$1,409.59
TOTAL	\$8,457.54

Understanding that false statements herein made are subject to penalty under 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, I verify that:

1. The above are the precise last-known addresses of the judgment debtor and creditor.
2. The annexed notice of intention to file this praecipe was mailed to all parties against whom judgment is to be entered and to their record attorneys, if any, after the default occurred, and at least ten days prior to the date of the filing of this praecipe.
3. Pursuant to Section 201(b)(1)(A) of the Servicemembers Civil Relief Act of 2003 (SCRA), the defendant is not in the military service of the United States based on information received from the defendant and/or the Department of Defense website.

**JUDGMENT BY DEFAULT ENTERED
AND DAMAGES ASSESSED AS ABOVE.
NOTICE GIVEN UNDER PA.R.CIV.P. 236**

Pro Prothonotary

BURTON NEIL & ASSOCIATES, P.C.

BY: 

Burton Neil, Esquire
Attorney for Plaintiff

I.D. #11348
1060 Andrew Drive, Suite 170
W. Chester, PA 19380

The law firm of Burton Neil & Associates is a debt collector.

57465

WORLDWIDE ASSET PURCHASING, LLC
Plaintiff

VS.

CAROL D. ECKLEBERRY
Defendant

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 04-978-CD
: CIVIL ACTION - LAW

Notice of Intention to File Praecipe for Default Judgment

TO: Carol D. Eckleberry
1720 Towsontown Road
La Jose PA 15753--962

DATE OF NOTICE: August 3, 2004

IMPORTANT NOTICE

You are in default because you have failed to enter a written appearance personally or by attorney and file in writing with the court your defenses or obligations to the claims set forth against you. Unless you act within ten (10) days from the date of this notice, a judgment may be entered against you without a hearing and you may lose your property or other important rights. You should take this notice to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the following office to find out where you can get legal help. This office can provide you with information about hiring a lawyer.

If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

**LAWYER REFERENCE AND
INFORMATION SERVICE**

David S. Meholick
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
Telephone No. 814-765-2641 Ext. 5982

BURTON NEIL & ASSOCIATES, P.C.

BY: 

Burton Neil, Esquire
Attorney for Plaintiff
Identification No. 11348
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

The firm of Burton Neil & Associates, P.C. is attempting to collect a debt.

57465

WORLDWIDE ASSET PURCHASING LLC
9911 Covington Cross Dr, Las Vegas 89144
Plaintiff

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA

VS.

: NO. 04-978-CD

CAROL D. ECKLEBERRY
1720 Towsontown Road
La Jose PA 15753--962

Defendant : CIVIL ACTION - LAW

Praeipice for Default Judgment

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TOTAL	\$8,457.54

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2. The annexed notice of intention to file this praecipe was mailed to all parties against whom judgment is to be entered and to their record attorneys, if any, after the default occurred, and at least ten days prior to the date of the filing of this praecipe.
3. Pursuant to Section 201(b)(1)(A) of the Servicemembers Civil Relief Act of 2003 (SCRA), the defendant is not in the military service of the United States based on information received from the defendant and/or the Department of Defense website.

**JUDGMENT BY DEFAULT ENTERED
AND DAMAGES ASSESSED AS ABOVE.
NOTICE GIVEN UNDER PA.R.CIV.P. 236**

BURTON NEIL & ASSOCIATES, P.C.

BY: _____

Burton Neil, Esquire
Attorney for Plaintiff
I.D. #11348
1060 Andrew Drive, Suite 170
W. Chester, PA 19380

Pro Prothonotary

The law firm of Burton Neil & Associates is a debt collector.

COPY 57465

BURTON NEIL & ASSOCIATES, P.C.

BY: Burton Neil, Esquire

Identification No. 11348

1060 Andrew Drive, Suite 170

West Chester, PA 19380

610-696-2120

ATTORNEY FOR: Plaintiff

WORLDWIDE ASSET PURCHASING LLC

Plaintiff

VS.

CAROL D. ECKLEBERRY

Defendant

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

: NO. 04-978-CD

: CIVIL ACTION - LAW

RULE OF CIVIL PROCEDURE NO. 236 (REVISED)

Notice is given that a JUDGMENT in the above captioned matter has been entered against you on

Prothonotary

By: _____

Deputy

If you have any questions concerning the above, please contact:

Burton Neil, Esquire
Attorney for Party Filing
1060 Andrew Drive, Suite 170
West Chester, PA 19380
Phone: 610-696-2120

The law firm of Burton Neil & Associates is a debt collector.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Worldwide Asset Purchasing, LLC
Plaintiff(s)

No.: 2004-00978-CD

Real Debt: \$8,457.54

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Carol D. Eckelberry
Defendant(s)

Entry: \$20.00

Instrument: Default Judgment

Date of Entry: October 1, 2004

Expires: October 1, 2009

Certified from the record this 1st day of October, 2004



William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment, Debt,
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLDWIDE ASSET PURCHASING,
LLC

Plaintiff/Respondent

v.

CAROL D. ECKLEBERRY,
Defendant/Petitioner

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Docket No. 04-978-CD

Type of Pleading:
PETITION TO REOPEN AND/OR
STRIKE JUDGMENT

Filed on Behalf of:
Defendant:
CAROL D. ECKLEBERRY

Counsel of Record for
This Party:

Dwight L. Koerber, Jr., Esquire
PA I.D. 16332

LAW OFFICES OF
DWIGHT L. KOERBER, JR.
110 N. Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED 300
OCT 26 2004
William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLDWIDE ASSET PURCHASING,
LLC

Plaintiff/Respondent

v.

CAROL D. ECKLEBERRY,

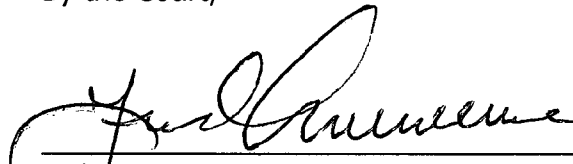
Defendant/Petitioner

Docket No. 04-978-CD

ORDER

AND NOW, this 29th day of October, 2004, upon consideration of the Petition to Reopen and/or Strike Judgment of Carol D. Eckleberry, it is hereby ORDERED that Worldwide Asset Purchasing, LLC, shows cause why the relief request should not be granted. Written response is due twenty (20) days from the date of the entry of this Order.

By the Court,



Judge

FILED ^{EGK}
01/17/04 ^{3cc}
OCT 29 2004 ^{Atty Koerber}

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLDWIDE ASSET PURCHASING,
LLC

Plaintiff/Respondent

v.

CAROL D. ECKLEBERRY,
Defendant/Petitioner

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Docket No. 04-978-CD

PETITION TO REOPEN AND/OR STRIKE JUDGMENT

COMES NOW, Defendant, Carol D. Eckleberry, by and through her attorney, Dwight L. Koerber, Jr., Esquire, and files the within Petition seeking to reopen and/or strike the judgment entered against her in this matter.

- (1) Petitioner is Carol D. Eckleberry, who is the Defendant in this proceeding.
- (2) Petitioner resides at 1720 Thompson Town Road, La Jose, Pennsylvania 15753.
- (3) Respondent is Worldwide Asset Purchasing, LLC, which is the Plaintiff in this matter.
- (4) The address of Respondent is 9911 Covington Cross Drive, Suite 107, Las Vegas, Nevada, 89144.
- (5) On October 1, 2004, a judgment was entered by Plaintiff against Petitioner in this matter, in the amount of \$8,457.54. Attached hereto as Exhibit A is a true and correct copy of that judgment.

GROUND FOR REOPENING

(6) Petitioner seeks to reopen the judgment in this matter, as it was entered at a time that she was in discussion with representatives of Plaintiff, with Petitioner fully believing that a default judgment would not be entered until further information was furnished to her.

(7) Specifically, Petitioner made a point of calling the Law Firm of Burton Neil and Associates, P. C., and spoke with an individual named Candy Conway, at telephone number (610) 696-2120.

(8) It is Petitioner's estimate that she had approximately four (4) different discussions with Candy Conway, with the thrust of those discussions being to point out the meritorious defense which is described below and to request copies of the printout showing what the alleged charges pertain to in this matter. During those discussions, the said Candy Conway informed Petitioner that she would forward the documents that she had requested to her, but the documents were never forwarded.

(9) During the time that Petitioner was speaking with representatives of the law firm for Plaintiff in this matter, she also called Alegis Group, L. P., at (877) 617-8344 and spoke with an individual named Cliff Berk, asking that he furnish documentation to her, so as to identify the account that Petitioner had previously satisfied through Alegis Group, L. P. As shown in the meritorious summarized below, Petitioner reasonably believed that she had fully satisfied the indebtedness involved in the present litigation.

(10) In addition, while this litigation was pending, Petitioner called Worldwide Asset Purchasing at telephone number 1-888-211-7422 and spoke with an individual named Julie and an individual named Angel Moss, for the purpose of informing them that the account had been satisfied and also for the purpose of requesting that additional documentation be furnished to her to identify specifically what account Worldwide Asset Purchasing, LLC was seeking to recover for through its collection efforts. During those discussions, Petitioner was informed that she would be provided the information that she requested through the law firm representing the Respondent herein.

(11) Petitioner has shown a great deal of interest in the issues raised in this litigation and has taken reasonable and appropriate steps, in her judgment, to address them, but because she has not been involved in litigation previously, Petitioner was not aware of the need to retain legal counsel to properly represent her interests during the time that she was seeking to gather information in this case.

(12) Petitioner would submit that she has acted in a prudent fashion, and would point out that upon learning of the need to seek to reopen the judgment herein, Petitioner has taken prompt and reasonable steps to seek to reopen the judgment.

(13) It is Petitioner's position that if she had been directly informed by the various agents and representatives of Respondent that she needed to retain an attorney in order to present her position, that she would have retained an attorney and would have promptly filed an answer so as to preclude a default judgment from being entered. A significant factor which shows that Petitioner reacted in a reasonable fashion in not retaining counsel immediately in

this case is the fact that after she had reached her settlement payment with Alegis Group, L. P., from time to time there would be collection efforts made by different entities on behalf of Worldwide Assets Purchasing, LLC. In those situations, Petitioner would furnish them with a copy of the proof from Alegis Group, L. P. showing that the account had been paid and it resulted in the collection efforts being discontinued. Attached hereto as Exhibit B is a copy of that notice.

(14) Based upon the numerous phone calls Petitioner made to Respondent or related parties, Respondent or related parties, Respondent knew or should have known that Petitioner was relying upon them to guide her through her legal problem with them.

(15) Based upon the information she presented to agents for Respondent and based upon their response, Petitioner reasonably believed that they would not proceed with the entry of a default judgment against her until they first presented the documents that she had requested and until it was shown that in fact this amount was property due.

(16) By failing to clearly advise Petitioner that she could not rely upon them to treat her fairly, Respondent misled Petitioner into not retaining legal counsel to protect her legal right.

WHEREFORE, Petitioner, Carol D. Eckleberry prays that the October 1, 2004 judgment be stricken and that this proceeding be reopened so as to entitle her to present her meritorious defense in this case.

MERITORIOUS DEFENSE

(17) The allegations set forth in paragraph 1-16 are hereby incorporated by reference.

(18) The underlying dispute herein relates to a Master Charge account which Petitioner and her husband opened with Direct Merchants Bank in approximately 1998.

(19) Over the years, Petitioner would make periodic charges and then make periodic payments on this said account, doing so for herself and for her husband.

(20) In the latter part of the year 2002, it became apparent to Petitioner that the extraordinarily high interest rate that she was paying, in the amount of 29%, was such that it would be very difficult for her to pay off this account through the conventional installment payments that had been made in the past. Accordingly, Petitioner sought to become aware of alternative arrangements to pay down and/or discharge her the indebtedness under the said Master Charge account.

(21) Pursuant to an advertisement which Petitioner saw on television, she and/or her husband contacted a company named Alegis Group, L. P. as that company advertised that it would assist consumers such as Petitioner in consolidating their debt or in paying it off in a more reasonable and cost efficient fashion.

(22) After contacting Alegis Group, L. P., Petitioner received a notice from that company directing Petitioner and her husband as to what course of action should be taken in order to satisfy their indebtedness.

(23) Attached hereto as Exhibit C is a copy of the notice that was sent to Petitioner in this regard.

(24) Petitioner had previously spoken with a representative of Alegis Group, L. P. and provided information over the telephone identifying its credit card number and further identifying the high level of interest payments that it had been required to pay. When Petitioner received the notice from Alegis Group, L. P. attached hereto as Exhibit C, she and her husband reasonably believed that the past payments had been reconstructed at a reduced interest level with the total amount due and owing as being \$1,148.20.

(25) Petitioner and her husband, in due course, used their income tax return to pay off the indebtedness that was to be handled through Alegis Group, L. P., and in due course received a notice informing them that their account was paid in full. Attached hereto as Exhibit B is a true and correct copy of the notice informing them of this status.

(26) In dealing with Direct Merchants Bank, Petitioner and her husband have had only one (1) account, with this being the account that Petitioner identified over the telephone in explaining their desire to reconstruct/consolidate their indebtedness while dealing with Alegis Group, L. P. Petitioner can distinctly recall the telephone conversation and the fact that she heard her husband reading the account number, which was 5458001204104313. Since Petitioner was the individual in their family who would handle the payment of this account and is the individual who administered the use of the credit card, she was very attentive to the telephone conversation and identification of the account number in question.

(27) After the lawsuit was filed in the present matter, Petitioner contacted the law firm representing Worldwide Assets Purchasing, LLC, as well as Alegis Group, L. P. and Worldwide Asset Purchasing itself, as more fully explained in paragraphs 7 – 10 of this

complaint. In those discussions, Petitioner explained that this account should have been shown as being paid in full and further explained that there was no basis for any indebtedness to be asserted against her.

(28) In addition to presenting the defense set forth above, Petitioner would also join as an additional defendant in this case, the company known as Alegis Group, L. P. This company represented to Petitioner that her indebtedness to Direct Merchants Bank had been satisfied, and Petitioner therefore seeks to have them joined as a Defendant in this proceeding.

(29) Petitioner would also raise as a defense unfair and unreasonable collection practices that have been asserted and pursued on behalf of Direct Merchants Bank, as they have failed to follow through on representations and promises made concerning the status of payment of her indebtedness and the issue of consolidating her past indebtedness into one (1) single payment. If misrepresentations had not been made, Petitioner would have continued to pay the amount that was due and owing under her original account with Direct Merchants Bank and would not be in the present position she is currently in.

(30) Petitioner also challenges whether the interest rate was properly calculated in this matter. The interest rate originally set forth in the said charge account was at a rate of approximately 14%. Petitioner never knowingly and willfully consented to the rate being increased to 29% and objects to collection efforts that seek to profit from this unreasonably high rate.

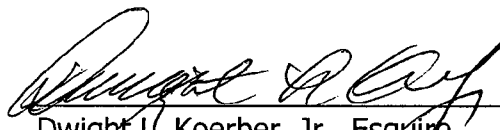
(31) Petitioner also asserts that the interest charge sought to be collected herein is usurious, as well as misleading. Petitioner would not have undertaken a credit relationship with Direct Merchants Bank if there had been full disclosure of the true interest rate that they would be seeking to collect against her.

(32) Petitioner also challenges whether Plaintiff is the lawful owner of the account it seeks to collect upon, as the account had already been assigned to Allegis Group and others. Attached hereto as Exhibit D is a copy of one of the multiple assignments that occurred prior to the time that litigation was undertaken on behalf of Worldwide Asset Purchasing in this case.

(33) Petitioner would also assert as defense and/or counterclaim that there were oppressive and outrageous collection practices, which resulted in numerous telephone calls on a daily fashion to her home telephone number, done in a fashion so as to amount to 3-4 telephone calls on a given day, with this extending for 4-5 months on a continuous basis.

WHEREFORE, Plaintiff sets forth her meritorious defense, in support of her request that the judgment entered on October 1, 2004 in this proceeding be reopened and/or be stricken.

Respectfully submitted,


Dwight L. Koerber, Jr., Esquire
Attorney for Petitioner: Carol D. Eckleberry

VERIFICATION

I certify that the statements made in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

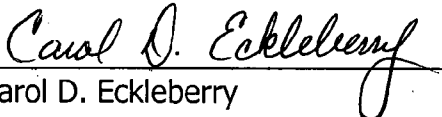

Carol D. Eckleberry

EXHIBIT A

True and correct copy of Judgment entered against Petitioner

BURTON NEIL & ASSOCIATES, P.C.

BY: Burton Neil, Esquire

Identification No. 11348

1060 Andrew Drive, Suite 170

West Chester, PA 19380

610-696-2120

ATTORNEY FOR: Plaintiff

WORLDWIDE ASSET PURCHASING LLC

Plaintiff

VS.

CAROL D. ECKLEBERRY

Defendant

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

: NO. 04-978-CD

: CIVIL ACTION - LAW

RULE OF CIVIL PROCEDURE NO. 236 (REVISED)

Notice is given that a JUDGMENT in the above captioned matter has been entered against you on

October 1, 2004.

Prothonotary

By: Will. L. Harp

Deputy

If you have any questions concerning the above, please contact:

Burton Neil, Esquire
Attorney for Party Filing
1060 Andrew Drive, Suite 170
West Chester, PA 19380
Phone: 610-696-2120

The law firm of Burton Neil & Associates is a debt collector.

WORLDWIDE ASSET PURCHASING LLC
9911 Covington Cross Dr, Las Vegas 89144
Plaintiff

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA

VS.

CAROL D. ECKLEBERRY
1720 Towsontown Road
La Jose PA 15753--962

: NO. 04-978-CD

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

Defendant

: CIVIL ACTION - LAW

OCT 01 2004

Praecipe for Default Judgment

Attest.

William D. Shaw
Prothonotary/
Clerk of Courts

To the Prothonotary:

Please enter judgment by default for want of an answer in the above case in favor of the plaintiff and
against the defendant, and assess damages as follows:

Principal:	\$7,047.95
Attorneys Fees:	\$1,409.59
TOTAL	\$8,457.54

Understanding that false statements herein made are subject to penalty under 18 Pa. C.S. § 4904 relating to
unsworn falsification to authorities, I verify that:

1. The above are the precise last-known addresses of the judgment debtor and creditor.
2. The annexed notice of intention to file this praecipe was mailed to all parties against whom judgment is
to be entered and to their record attorneys, if any, after the default occurred, and at least ten days prior to the date of
the filing of this praecipe.
3. Pursuant to Section 201(b)(1)(A) of the Servicemembers Civil Relief Act of 2003 (SCRA), the defendant
is not in the military service of the United States based on information received from the defendant and/or the
Department of Defense website.

**JUDGMENT BY DEFAULT ENTERED
AND DAMAGES ASSESSED AS ABOVE.
NOTICE GIVEN UNDER PA.R.CIV.P. 236**

BURTON NEIL & ASSOCIATES, P.C.

BY: _____

Burton Neil, Esquire
Attorney for Plaintiff
I.D. #11348
1060 Andrew Drive, Suite 170
W. Chester, PA 19380

Pro Prothonotary

The law firm of Burton Neil & Associates is a debt collector.

WORLDWIDE ASSET PURCHASING, LLC
Plaintiff

VS.

CAROL D. ECKLEBERRY
Defendant

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 04-978-CD
: CIVIL ACTION - LAW

Notice of Intention to File Praecipe for Default Judgment

TO: Carol D. Eckleberry
1720 Towsontown Road
La Jose PA 15753-962

DATE OF NOTICE: August 3, 2004

IMPORTANT NOTICE

You are in default because you have failed to enter a written appearance personally or by attorney and file in writing with the court your defenses or obligations to the claims set forth against you. Unless you act within ten (10) days from the date of this notice, a judgment may be entered against you without a hearing and you may lose your property or other important rights. You should take this notice to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the following office to find out where you can get legal help. This office can provide you with information about hiring a lawyer.

If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

**LAWYER REFERENCE AND
INFORMATION SERVICE**

David S. Meholick
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
Telephone No. 814-765-2641 Ext. 5982

BURTON NEIL & ASSOCIATES, P.C.

BY: _____
Burton Neil, Esquire
Attorney for Plaintiff
Identification No. 11348
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

The firm of Burton Neil & Associates, P.C. is attempting to collect a debt.

57465

EXHIBIT B

Notice received from Alegis Group, L. P.



ALEGIS GROUP L.P.

15 South Main Street Drive, Suite 600
Greenville, South Carolina 29601

Toll Free: 877-503-8110
Greenville Local: 864-751-2620

ADDRESS SERVICE REQUESTED

6935281

Previous Creditor:	DIRECT MERCHANT'S BANK
Current Creditor:	Sherman Acquisition LP
Account Number:	5458001411654803
Current Balance:	\$0.00

July 28, 2003

PIFPD

DOUGLAS ECKLEBERRY
1720 THOMPSON TOWN RD
LA JOSE, PA 15753

ALEGIS GROUP, LP
PO Box 741027
Houston, Texas 77274-1027

IMPORTANT: To receive proper credit be sure to enclose this portion with your payment in full.

DEAR DOUGLAS ECKLEBERRY:

THANK YOU FOR YOUR PAYMENT REGARDING THE ABOVE ACCOUNT. THIS LETTER WILL VERIFY THAT THE ABOVE REFERENCED ACCOUNT IS CONSIDERED PAID IN FULL.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

54580012014313 Card #
704895 amount

610-269-2048
Candy Conway
Fax 610-696-4111
#

EXHIBIT C

Copy of Notice from Alegis Group, L. P. regarding payment of the subject indebtedness

15 S. MAIN ST., SUITE 600
GREENVILLE, SC 29601

ADDRESS SERVICE REQUESTED



6935281

ALEGIS GROUP LP

1-877-617-8344
(864)678-8400

PREVIOUS CREDITOR: METRIS/DIRECT MERCHANTS BANK
CURRENT CREDITOR: SHERMAN ACQUISITION, LP
ACCOUNT NUMBER: 5458001411654803
BALANCE: \$1,148.20

12-04-2002

#BWNDLZK
#G000 02M8 OK52#



DOUGLAS E. ECKLEBERRY
1720 THOMPSON TOWN RD
LA JOSE PA 15753-7426

A844
CM4
METCURR-HS

ALEGIS GROUP LP
P.O. BOX 741027
HOUSTON TX 77274-1027



IMPORTANT: To receive proper credit, be sure to enclose this portion with your payment in full.

Dear DOUGLAS E ECKLEBERRY:

SHERMAN ACQUISITION, LP has recently purchased the above referenced account from METRIS/DIRECT MERCHANTS BANK and has placed the account with Alegis Group LP for servicing.

All payments on this account should now be sent to the following address.

ALEGIS GROUP LP
P.O. BOX 741027
HOUSTON TX 77274-1027

METRIS/DIRECT MERCHANTS BANK has informed us that your account is current and that your credit line has been closed. We look forward to continuing the relationship you established with METRIS/DIRECT MERCHANTS BANK and appreciate your continued attention to this account. By remitting your regularly scheduled payment amount to the above address, you can continue to fulfill your obligation to repay this balance under the same arrangements that you had with METRIS/DIRECT MERCHANTS BANK.

If you would like to discuss your account or set up a post-dated check plan that will automatically draft checks to make your regularly scheduled payments, please call one of our friendly and courteous Recovery Specialists at 1-877-617-8344.

Thank you in advance for your prompt response.

EXHIBIT D

Copy of Assignment that occurred prior to the time litigation was undertaken



M.R.S. ASSOCIATES, INC.
3 EXECUTIVE CAMPUS, SUITE 400
CHERRY HILL NJ 08002



Office Hours :
Mon - Thurs 8am - 9pm EST
Fri - 8am - 5pm EST
Sat - 8am - 12pm EST
Sun - 9am - 12pm EST

March 25, 2003

M.R.S. ASSOCIATES, INC.
3 EXECUTIVE CAMPUS, SUITE 400
CHERRY HILL NJ 08002

02984466-203 09530
CAROL D ECKLEBERRY
1720 TOWSONTOWN RD
LA JOSE PA 15753

CLT ACCT # : 0112932723	MRS ACCT # : 02984466	ACCOUNT BAL. : \$5615.73
RE : WORLDWIDE ASSET PURCHASING		

✂ IMPORTANT: TO RECEIVE PROPER CREDIT BE SURE TO ENCLOSE THIS PORTION WITH YOUR PAYMENT IN FULL ✂
SEE REVERSE SIDE FOR CREDIT CARD AND WESTERN UNION PAYMENT INFORMATION

RE: WORLDWIDE ASSET PURCHASING
PREVIOUS CREDITOR :
CLT ACCT#: 0112932723
MRS ACCT#: 02984466
ACCOUNT BALANCE : \$5615.73

M.R.S. ASSOCIATES, INC.
3 EXECUTIVE CAMPUS, SUITE 400
CHERRY HILL NJ 08002

Dear CAROL D ECKLEBERRY,

The above referenced client has placed your account with our office for collection. This decision was made due to your continued failure to meet your contractual obligation. If for some reason you believe this debt is not valid, please review your rights listed at the bottom of this letter and contact our office to explain the nature of the dispute.

If the debt is not in dispute, then you have an important decision to make: honor your contractual obligation and receive significant positive benefits from satisfying the debt or continue not honoring your contractual obligation and face the possibility of negative consequences. The negative consequences are determined by the terms and conditions of your contract, the applicable laws in your state, and our client's willingness to incur additional costs and expenses (which may in turn be passed on to you!).

Clearly our client would prefer to work with you than against you, however, the decision to proceed with further collection activity is determined by you and your willingness to honor your commitment.

Which would you prefer - the positive benefits or negative consequences? The choice is yours!

IMPORTANT CONSUMER INFORMATION

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt and any information obtained will be used for that purpose.
This communication is from a debt collection agency.

Sincerely,

Allen Freedman

Allen Freedman
1-856-488-2160
M.R.S. ASSOCIATES, INC.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLDWIDE ASSET PURCHASING,
LLC

Plaintiff/Respondent

v.

CAROL D. ECKLEBERRY,
Defendant/Petitioner

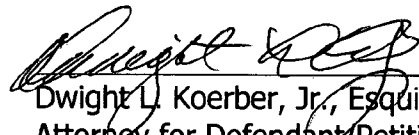
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Docket No. 04-978-CD

CERTIFICATE OF SERVICE

I certify that on the 26 day of October, 2004, the undersigned served a certified copy of the Petition to Reopen and/or Strike Judgment in the above-captioned matter upon counsel for the Plaintiff/Respondent. Such document was served via United States First Class Mail upon the following:

Burton Neil, Esquire
1060 Andrew Drive
Suite 170
West Chester, PA 19380


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant/Petitioner:
Carol D. Eckleberry

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO: 04-978-CD

Worldwide Asset Purchasing, LLC

-vs-

Carol D. Eckleberry

PETITION TO REOPEN AND/OR
STRIKE JUDGMENT

LAW OFFICE
DWIGHT KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Worldwide Asset Purchasing, LLC,
Plaintiff/Respondent

*

*

vs.

Docket No. 04-978-CD

*

Carol D. Eckleberry,
Defendant/Petitioner

*

*

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
Defendant/Petitioner:
Carol D. Eckleberry

Counsel of Record for
This Party:

LAW OFFICES OF
DWIGHT L. KOERBER, JR.

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

FILED
10/31/04
NOV 01 2004

3cc
Atty Koerber

William A. Shaw
Prothonotary/Clerk of Courts

110 North Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Worldwide Asset Purchasing, LLC,
Plaintiff/Respondent

*

*

VS.

Docket No. 04-978-CD

*

Carol D. Eckleberry,
Defendant/Petitioner

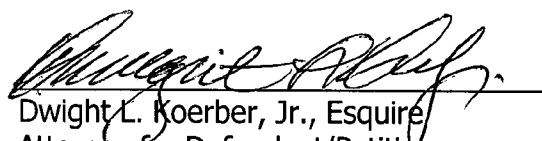
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*

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of October, 2004, the undersigned served a true and correct copy of the Petition to Reopen and/or Strike Judgment on counsel for Plaintiff/Respondent. Such document was served via United States First Class Mail upon the following:

Burton Neil, Esquire
BURTON NEIL & ASSOCIATES
1060 Andrew Drive
Suite 170
West Chester, PA 19380


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant/Petitioner:
Carol D. Eckleberry

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO: 04-978-CD

Worldwide Asset Purchasing, LLC

-vs-

Carol D. Eckleberry

CERTIFICATE OF SERVICE

FILED

NOV 01 2004

Wanda A. Smith
Prothonotary/Clerk of Court

LAW OFFICE
DWIGHT KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

CA
WORLDWIDE ASSET PURCHASING, L.L.C. : IN THE COURT OF COMMON PLEAS
Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

VS.

04-978-CD
: NO. ~~02-04128~~

CAROL D. ECKLEBERRY

Defendants

: CIVIL ACTION - LAW

ORDER

AND NOW, this _____ day of _____, 200__, on consideration of Defendant Carol D. Eckleberry's Petition to Reopen and/or Strike Judgment and Plaintiff Worldwide Asset Purchasing, L.L.C.'s Answer, it is hereby ORDERED and DECREED that Defendant's Petition be and the same hereby is DENIED and DISMISSED.

BY THE COURT:

, J.

BURTON NEIL & ASSOCIATES, P.C.
BY: Jay H. Pressman, Esquire
Identification No. 38800
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120
Attorney for Plaintiff

FILED^{no cc}
m/12:58pm
NOV 18 2004
William A. Shaw
Prothonotary/Clerk of Courts

WORLDWIDE ASSET PURCHASING, L.L.C. : IN THE COURT OF COMMON PLEAS
Plaintiff :
VS. : CLEARFIELD COUNTY, PENNSYLVANIA
CAROL D. ECKLEBERRY : NO. ~~02-04128~~ 04-978-CD
Defendants : CIVIL ACTION - LAW

**PLAINTIFF'S WORLDWIDE ASSET PURCHASING, L.L.C.'S ANSWER TO
DEFENDANT CAROL D. ECKLEBERRY'S PETITION TO REOPEN AND/OR STRIKE
JUDGMENT**

Plaintiff, Worldwide Asset Purchasing, L.L.C. , by its counsel, Jay H. Pressman, Burton Neil & Associates, P.C., hereby answers Defendant Carol D. Eckleberry's Petition to Reopen And/or Strike Judgment, or so much thereof as is relevant, as follows:

1.- 4. Admitted

5. Denied. To the contrary default judgment in this matter was entered for failure to answer the complaint seeking recovery of charges due on account # 5458001204104313. By way of further answer Exhibit A speaks for itself.

GROUND FOR REOPENING

6. Admitted in part. Denied in part. It is admitted the judgment was entered at a time defendant was in discussion with plaintiff's counsel's employee Candy Conway. The remainder of this averment is denied. To the contrary, after reasonable investigation, plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations as to what plaintiff believed and the same are deemed denied. By way of further answer defendant was advised that the account that defendant paid was account #5458001411654803, not account #5458001204104313 upon which suit was filed. Furthermore, defendant was advised judgment

would be entered unless defendant provided proof that account # 5458001204104313 had been paid. No such proof was provided.

7. Admitted in part. Denied in part. It is admitted defendant called the law firm of plaintiff's counsel, Burton Neil & Associates, P.C. and spoke with plaintiff's counsel's employee Candy Conway. It is denied defendant spoke only to Candy Conway. To the contrary, defendant also spoke plaintiff's counsel's employee Andre Blount.

8. Admitted in part. Denied in part. It is admitted defendant had four conversations with Candy Conway and that defendant alleged she had a defense to the charges. It is admitted that in one of the conversations defendant requested copies of a printout showing the charges. It is denied Candy Conway informed defendant she would provide copies of a printout showing the charges or forward documents defendant requested. To the contrary, Candy Conway requested defendant provide proof that account # 5458001204104313 was paid. Furthermore, defendant agreed to fax over proof that account # 5458001204104313 was paid but never did.

9. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these allegations and the same are deemed denied. By way of further answer the account that was allegedly satisfied through Alegis Group, L.P. was account #5458001411654803, not the claim for account # 5458001204104313 upon which suit was filed.

10. Denied. It is denied debtor spoke with plaintiff's employee Angel Moss. To the contrary she did not. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegation that defendant spoke with an individual named Julie or the defendant's purposes in calling and the same are deemed denied. By way of further answer after suit is filed, plaintiff's employees are instructed to advise debtors that the claim is being handled by attorneys and to provide the number and name of the person to contact at the attorney's office for anything having to do with the matter. Furthermore, the account that was satisfied was account # 5458001411654803, not account # 5458001204104313 upon which suit was filed.

11. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding defendant's 1) interest in the litigation; 2) her judgment as to what is reasonable and appropriate; 3) her previous involvement in litigation; 4) and her awareness of the need to retain legal counsel, and the same are deemed denied. By way of further answer, it is denied the steps defendant took were reasonable and appropriate. To the contrary

defendant was advised judgment would be entered unless defendant provided proof that account #5458001204104313 had been paid and defendant agreed to fax over proof that account #5458001204104313 was paid but failed to do so or to retain counsel to answer the complaint.

12. Denied. It is denied that defendant's actions have been prudent. To the contrary defendant was advised judgment would be entered unless defendant provided proof that account #5458001204104313 had been paid but defendant failed to provide proof or to retain counsel to answer the complaint. Furthermore, it is denied defendant has taken prompt and reasonable steps to open the judgment. To the contrary the defendant waited until twenty five (25) days after the judgment was entered to file Petition to Reopen and/or Strike Judgment.

13. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations as to what defendant would have done if she had been advised to or had retained an attorney and the same are deemed denied. It is denied that defendant reacted in a reasonable fashion in not retaining counsel immediately. To the contrary, defendant was advised judgment would be entered unless defendant provided proof that account #5458001204104313 had been paid but defendant failed to provide proof or to retain counsel to answer the complaint. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations as to defendant's actions in connection with the collection efforts of different entities and the same are deemed denied. Furthermore, Exhibit B is a document which speaks for itself and reflects that the account that was allegedly satisfied through Alegis Group, L.P. was account # 5458001411654803, not account #5458001204104313 upon which suit was filed.

14. Denied. There are no facts plead in support of these averments. Pursuant to Pa R.C.P. 1029(d) the averment is deemed denied. By way of further answer, after reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegation as to what defendant was relying upon and the same is deemed denied. Furthermore, defendant was advised judgment would be entered unless defendant provided proof that account #5458001204104313 had been paid but defendant failed to provide proof or to retain counsel to answer the complaint.

15. Denied. There are no facts plead in support of these averments. Pursuant to Pa R.C.P. 1029(d) the averment is deemed denied. By way of further answer, after reasonable investigation,

Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegation as to 1) what information defendant allegedly presented to plaintiff; 2) plaintiff's alleged response; or 3) what defendant believed and the same is deemed denied. It is denied defendant's belief that plaintiff would not enter default judgment was reasonable. To the contrary, defendant was advised judgment would be entered unless defendant provided proof that account #5458001204104313 had been paid but defendant failed to provide proof or to retain counsel to answer the complaint.

16. Denied. It is denied that plaintiff did not treat defendant fairly or that plaintiff misled defendant. To the contrary the plaintiff treated plaintiff fairly and did not mislead her. By way of further answer plaintiff advised defendant that the account that was allegedly paid was account #5458001411654803, not account #5458001204104313 upon which suit was filed. Furthermore, defendant was advised judgment would be entered unless defendant provided proof that account #5458001204104313 had been paid but defendant failed to provide proof or to retain counsel to answer the complaint.

MERITORIOUS DEFENSE

17. Plaintiff's incorporates by reference its answers to paragraphs 1 through 16.

18. Denied. Suit was filed on Mastercard credit card account #5458001204104313, which Defendant Carol D. Eckleberry opened with Direct Merchants Bank (N.A.) November 13, 1998.

19. Admitted in part. Denied in part. It is admitted defendant made charges and payments on the account. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegation as to for whom those payments were made and the same are deemed denied.

20. Denied. It is denied the interest rate was extraordinarily high. To the contrary the interest rate was the rate defendant agreed to pay under the Complaint Exhibit A Terms and Conditions when it used or allowed someone else to use the credit card account. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations as to 1) defendant's difficulty in paying the account and 2) what she sought to become aware of to pay down and/or discharge her indebtedness on the account, and the same are deemed

denied.

21. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these allegations and the same are deemed denied. By way of further answer the account that was allegedly satisfied through Alegis Group, L.P. was account #5458001411654803, not account #5458001204104313 upon which suit was filed.

22. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these allegations and the same are deemed denied. By way of further answer the account that was allegedly satisfied through Alegis Group, L.P. was account #5458001411654803, not account #5458001204104313 upon which suit was filed.

23. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegation that Exhibit C was sent to defendant and the same is deemed denied. By way of further answer, Exhibit C is a document which speaks for itself and shows that the account that was allegedly satisfied through Alegis Group, L.P. was account #5458001411654803, not account #5458001204104313 upon which suit was filed.

24. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations that 1) defendant spoke with a representative of Alegis Group, LLC; 2) what was said during that alleged conversation; 3) that Exhibit C was sent to defendant; 4) what defendant believed; 5) or the total amount due and owing on the account listed in Exhibit C, and the same are deemed denied. It is denied that defendant's belief was reasonable. To the contrary, Exhibit C shows that the account that was allegedly satisfied through Alegis Group, L.P. was account #5458001411654803, not account #5458001204104313 which defendant which Defendant Carol D. Eckleberry opened with Direct Merchants Bank (N.A.) November 13, 1998. By way of further answer, Exhibit C is a document which speaks for itself and reflects that account #5458001411654803 was allegedly satisfied through Alegis Group, L.P., not account #5458001204104313 upon which suit was filed.

25. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of these allegations and the same are deemed denied. By way of further answer, Exhibit B is a document which speaks for itself and shows that the account that was allegedly satisfied through Alegis Group, L.P. was account #5458001411654803, not account #5458001204104313 upon which suit was filed.

26. Denied. Defendant and her husband have had two accounts with plaintiff. Defendant's was account #5458001204104313 upon which suit was filed and her husband's was account #5458001411654803, which was allegedly satisfied through Alegis Group, L.P. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations as to 1) which account defendant allegedly identified while dealing with Alegis Group, L. P.; 2) defendant's recollection of the alleged telephone conversation her husband had with Alegis Group; 3) what she heard during the alleged telephone conversation; 4) if she handled payment of the account; 5) if she administered the use of the credit card; or 5) if she was attentive to the alleged telephone conversation and the identification of the account in question, and the same are deemed denied.

27. Admitted in part. Denied in part. It is admitted defendant contacted plaintiff after the lawsuit was filed. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegation that defendant contacted Alegis Group, L.P. and the same is deemed denied. It is admitted defendant alleged the account should have been shown as paid and there was no basis for any indebtedness. It is denied said account was paid or that there was no indebtedness. To the contrary the account that was paid was account # 5458001411654803, not account # 5458001204104313 upon which suit was filed. By way of further answer on at least two occasions prior to filing the lawsuit, defendant was advised judgment would be entered unless defendant provided proof that account # 5458001204104313 had been paid but defendant agreed to fax over proof that account # 5458001204104313 was paid but never did.

28. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations as to who defendant would join as an additional defendant or what Alegis Group, L. P. allegedly represented to defendant, and the same are deemed denied. By way of further answer the account that was allegedly satisfied through Alegis Group, L.P. was account #5458001411654803, not account #5458001204104313 upon which suit was filed.

29. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations 1) as to what defenses defendant would raise; 2) that defendant would have paid the amount that was due on her account; or 3) what position defendant would be in if she had, and the same are deemed denied. It is denied plaintiff has 1) pursued unfair or unreasonable collection practices; 2) has failed to follow through on or made representations and

promises concerning the status of payment of her indebtedness and consolidating past indebtedness into one payment; or 3) has made misrepresentations. To the contrary defendant was advised that the account that was allegedly paid was account #5458001411654803, not account #5458001204104313 upon which suit was filed. Furthermore, defendant was advised judgment would be entered unless defendant provided proof that account #5458001204104313 had been paid. Defendant agreed to fax over proof but never did.

30. Admitted in part. Denied in part. It is admitted the interest rate was originally 14%. It is denied the increased interest rate was extraordinarily high or that defendant did not consent to the rate. To the contrary the increased interest rate was the rate defendant agreed to pay in accordance with the Complaint Exhibit A Terms and Conditions when it used or allowed someone else to use the credit card account. Denied. There are no facts plead in support of the remainder of this averment. Pursuant to Pa R.C.P. 1029(d) the remainder of this averment is deemed denied. By way of further answer defendant did not notify plaintiff in writing within sixty days of plaintiff first sending any bill that it disputed the interest rate or that the bill was wrong.

31. Denied. It is denied the interest rate is either usurious or misleading or that there was not full disclosure of the interest rate. To the contrary the interest rate was the rate defendant agreed to pay in accordance with the Complaint Exhibit A Terms and Conditions when it used or allowed someone else to use the credit card account. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegation as to what credit relationship defendant would have undertaken and the same is deemed denied. By way of further answer defendant did not notify plaintiff in writing within sixty days of plaintiff first sending any bill that it disputed the interest rate or that the bill was wrong.

32. Denied. It is denied the account that is the subject of this lawsuit was assigned to Alegis Group, L.P. or others. To the contrary, plaintiff is the owner of the account that is the subject of this lawsuit, account # 5458001204104313. By way of further answer, the account allegedly assigned to Alegis Group, L.P. was account # 5458001411654803. It is denied Exhibit D is an assignment of account# 5458001204104313, which is the subject of this lawsuit. To the contrary Exhibit D is a document which speaks for itself.

33. It is denied plaintiff's collection practices were oppressive or outrageous. To the contrary, plaintiff collection practices were in accordance with the law. After reasonable

investigation, plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations as to what defense and/or counterclaim defendant might assert or that 3-4 calls per day for 4-5 month were allegedly made and the same are deemed denied.

WHEREFORE Plaintiff Worldwide Asset Purchasing, L.L.C., prays the Court deny and dismiss Defendant Carol D. Eckleberry's Petition to Reopen and/or Strike Judgment, as per the proposed Order attached.

BURTON NEIL & ASSOCIATES, P.C.

BY: 

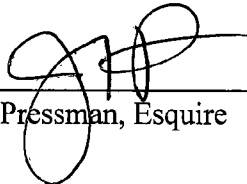
Jay H. Pressman, Esquire
Attorney for Plaintiff

In making this communication, we advise that this office is a debt collector.

VERIFICATION

Jay Pressman, Esquire, being duly sworn according to law, deposes and says that he is the attorney for plaintiff, Worldwide Asset Purchasing, LLC, in the foregoing matter, that he is authorized to take this verification on its behalf; and that the facts set forth in the foregoing Plaintiff's Answer to Defendant's Petition to Reopen and/or Strike Judgment filed are true and correct to the best of his knowledge, information and belief subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 11/17/04



Jay Pressman, Esquire

BURTON NEIL & ASSOCIATES, P.C.

By: Jay Pressman, Esquire

Identification No: 38800

1060 Andrew Drive, Suite 170

West Chester, PA 19380

610-692-2120

Attorney for Plaintiff

WORLDWIDE ASSET PURCHASING, L.L.C. : IN THE COURT OF COMMON PLEAS

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

VS.

: NO. 02-04128

CAROL D. ECKLEBERRY

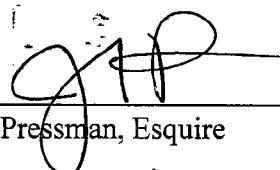
Defendants

: CIVIL ACTION - LAW

Certificate of Service

Jay Pressman, Esquire, being duly sworn according to law, deposes and says that he is attorney for plaintiff Worldwide Asset Purchasing, LLC, that he served a true and correct copy of the Plaintiff's Answer to Defendant's Petition to Reopen and/or Strike Judgment and Proposed Order on defendant's counsel, Dwight L Koerber, Jr., Esquire, by first class mail, postage pre-paid on the date set forth below.

Dated: 11/17/04


Jay Pressman, Esquire

In making this communication, we advise that this office is a debt collector.

BURTON NEIL & ASSOCIATES, P.C.

BY: Jay Pressman, Esquire

Identification No. 38800

1060 Andrew Drive, Suite 170

West Chester, PA 19380

610-696-2120

ATTORNEY FOR: Plaintiff

WORLDWIDE ASSET PURCHASING LLC

: IN THE COURT OF COMMON PLEAS

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

VS.

: NO. 04-978-CD

CAROL D. ECKLEBERRY

Defendant

: CIVIL ACTION - LAW

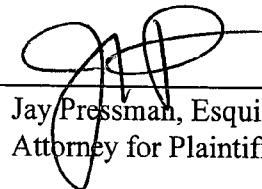
PRAECIPE TO SUBSTITUTE VERIFICATION

TO THE PROTHONOTARY:

Kindly substitute the attached verification for the attorney verification filed with plaintiff's
Answer to Defendant's Petition to Strike or Reopen Judgment.

BURTON NEIL & ASSOCIATES, P.C.

BY:


Jay Pressman, Esquire
Attorney for Plaintiff

FILED ^{NO} _{cc}
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DEC 06 2004

William A. Shaw
Prothonotary/Clerk of Courts

VERIFICATION

Angel ymoss is Attorney Relationship Manager
(Name of authorized representative) (Title or Position)
for Worldwide Asset Purchasing the within Plaintiff, and makes this
(Name of Company)

statement on its behalf as to the truthfulness of the facts set forth in the foregoing Plaintiff's Answer to Defendant Carol D Eckleberry's Petition to Reopen And/Or Strike Judgment subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 11/17/04

Angel ymoss
Name

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

WORLDWIDE ASSET
PURCHASING, LLC

vs.

CAROL D. ECKLEBERRY

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:
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: No. 04-978-CD
:
:

ORDER

AND NOW, this 11th day of January, 2005, it is the ORDER of the Court that argument on Defendant's Petition to Reopen and/or Strike Judgment and Plaintiff's Answer thereto in the above-captioned matter is hereby scheduled for **Monday, February 14, 2005 at 11:00 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

FILED^{1CC}
01/22/05
JAN 11 2005
Alyssa Veil, Koerber

William A. Shaw
Prothonotary/Clerk of Courts

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

WORLDWIDE ASSET
PURCHASING, LLC

vs.

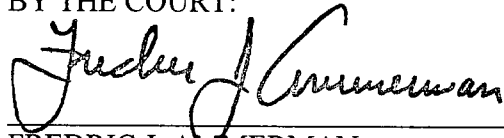
CAROL D. ECKLEBERRY

:
:
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: No. 04-978-CD
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ORDER

AND NOW, this 11th day of January, 2005, it is the ORDER of the
Court that argument on Defendant's Petition to Reopen and/or Strike Judgment and
Plaintiff's Answer thereto in the above-captioned matter is hereby scheduled for
Monday, February 14, 2005 at 11:00 A.M. in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

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0/12:05/14
William A. Shaw
Prothonotary/Clerk of Courts

CRUT TO ATTY. B. NEIL
↓
KORNBEL

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLDWIDE ASSET PURCHASING,
LLC

Plaintiff

v.

CAROL D. ECKLEBERRY,
Defendant

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Docket No. 04-978-CD

Type of Pleading:
SUPPLEMENT TO PETITION TO REOPEN
AND/OR STRIKE JUDGMENT

Filed on Behalf of:
Defendant:
CAROL D. ECKLEBERRY

Counsel of Record for
This Party:

Dwight L. Koerber, Jr., Esquire
PA I.D. 16332

LAW OFFICES OF
DWIGHT L. KOERBER, JR.
110 N. Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED ^{OK} 302
01/31/05
JAN 27 2005
Dwight L. Koerber

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLDWIDE ASSET PURCHASING,
LLC

Plaintiff

v.

CAROL D. ECKLEBERRY,
Defendant

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Docket No. 04-978-CD

**SUPPLEMENT TO PETITION TO REOPEN
AND/OR STRIKE JUDGMENT**

COMES NOW, Defendant. Carol D. Eckleberry, by and through her attorney, Dwight L. Koerber, Jr., Esquire and files the within Supplement to Petition to Reopen and/or Strike Judgment entered against her in this matter.

(34) Paragraphs 1—33 of the original petition are hereby incorporated by reference.

(35) In further support of her meritorious defense herein, Defendant would state that if she is permitted to reopen the judgment entered against her, that she would include in her meritorious defenses the filing of Preliminary Objections so as to show that the Complaint should be stricken for failure to comply with a rule of law.

(36) According to Pa.R.C.P. 1028(a) Preliminary Objections may be granted where a pleading fails to comply with the Rule of Law. The Rule of Law that Plaintiff has failed to comply with is Pa.R.C.P. 1019(h) and (i).

(37) Pa.R.C.P. requires a part to specify whether an agreement that they were relying upon is written or oral. Plaintiff has not done so in this case, but instead has simply attached a copy of terms and conditions without explaining where they came from.

(38) Pa.R.C.P. 1019(i) requires that a copy of the written document that they are relying upon be attached to the Complaint. In the case at hand, the Plaintiff has failed to do so, as the Plaintiff has not attached a copy of any type of application or other document that may have been signed by Defendant that would be the basis of the alleged contract to which the terms and conditions that Plaintiff is relying upon would apply.

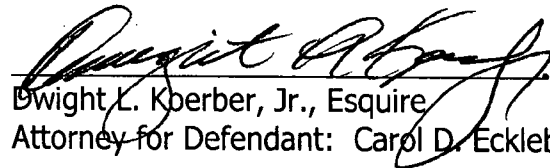
(39) In further support of the Preliminary Objections that she would file herein, Defendant would point to the decision of the Superior Court in Atlantic Credit and Finance, Inc., Appellee v. Carmen L. Guillian and Patricia Wilson a/k/a Patricia A. Maurizo, Appellants, 2003 Pa.Super 259, 829 A.2d 340; 2003 Pa.Super Lexis 2068 (2003), as that case held that "...the failure to produce a cardholder agreement and statement of account, as well as evidence of the assignment, establish a meritorious defense." That case fully supports Defendant's position herein and it is the intention of Defendant to raise these issues on Preliminary Objections if the judgment entered against her is reopened.

(40) Attached hereto is a copy of the decision in Atlantic Credit and Finance, Inc., supra, setting forth the legal principle upon which Defendant would rely.

(41) Through filing the within Supplement to Petition to Reopen and/or Strike Judgment, Defendant is presenting these additional grounds in support of its position that there is a meritorious defense to be asserted.

WHEREFORE, Defendant prays that its Supplement to Petition to Reopen and/or Strike Judgment be accepted and that the judgment entered against her be reopened so that she can defend on the merits of the Complaint.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dwight L. Koerber, Jr.", is written over a horizontal line.

Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Carol D. Eckleberry

Source: All Sources > Cases > PA State Cases, Combined
Terms: Rule W/3 1019 and date(geq 1990 and leq 2004) (Edit Search)

2003 PA Super 259, *; 829 A.2d 340, **;
2003 Pa. Super. LEXIS 2068, ***

ATLANTIC CREDIT AND FINANCE, INC., Appellee v. CARMEN L. GIULIANA AND PATRICIA
WILSON A/K/A PATRICIA A. MAURIZO, Appellants

No. 1734 MDA 2002

SUPERIOR COURT OF PENNSYLVANIA

2003 PA Super 259; 829 A.2d 340; 2003 Pa. Super. LEXIS 2068

April 14, 2003, Submitted

July 11, 2003, Filed

SUBSEQUENT HISTORY: Appeal denied by Atl. Credit & Fin., Inc. v. Giuliani, 843 A.2d 1236, 2004 Pa. LEXIS 52 (Pa., 2004)

PRIOR HISTORY: [***1] Appeal from the Order of the Court of Common Pleas of Lancaster County, Civil Division, No. CI-01-02734. Before GEORGELIS, J.

DISPOSITION: Order vacated and case remanded with directions.

COUNSEL: Jeffrey L. Troutman, Lancaster, for appellants.

Jeffrey S. Wilson, Philadelphia, for appellee.

JUDGES: Before: JOYCE, KLEIN, JJ. and MCEWEN, P.J.E. OPINION BY MCEWEN, P.J.E.

OPINIONBY: MCEWEN

OPINION: [**340] OPINION BY MCEWEN, P.J.E.:

[*P1] This appeal has been taken from the order entered October 17, 2002, which denied the motion to strike or open the default judgment which had been entered against appellants, Carmen L. Giuliani and Patricia Wilson, by appellee, Atlantic [**341] Credit and Finance, Inc. We are constrained to vacate and remand.

[*P2] Appellee filed a complaint on March 16, 2001, wherein it alleged, *inter alia*, that it was a Virginia corporation with an address of 4415 Pheasant Ridge Road, Suite 103, Roanoke, VA 24014. Appellee did not allege that it was registered to do business in Pennsylvania as required by 15 Pa.C.S. § 4141(a) n1, but claimed that appellants were indebted to "GM Card" "in accordance with the written contract" in the amount \$ 9,644.66, and owed that sum as well as (1) "interest due from [March 3, 2000] until [March 16, 2001] in the sum[***2] of \$ 2,329.19", and (2) attorney fees "in accordance with the written contract, due from the date of attached [March 3, 2000] to the date of this suit in the sum of \$ 2,394.77." Appellee further alleged that it was "the purchaser of the account from The GM Card", but failed to attach either any contract or agreement between GM and appellants, or any contract or agreement between GM and itself, other than a single sheet which appears to be a monthly statement from GM Card addressed to appellants dated March 3, 2000, setting forth a new balance as of March 28, 2000, of \$ 9,644.66 based on an interest rate of 24.15% and monthly "over limit charge assessments" of \$ 29.00 and "late charge assessments" of \$

29.00.

----- Footnotes -----

n1 Section 4141(a) requires registration of foreign corporations which are doing business in Pennsylvania. **See: *American Housing Trust, III v. Jones*, 548 Pa. 311, 696 A.2d 1181 (1997); *Leswat Lighting Systems, Inc. v. Lehigh Valley Restaurant Group, Inc.*, 444 Pa. Super. 281, 663 A.2d 783 (Pa.Super. 1995).** This section provides:§ 4141. **Penalty for doing business without certificate of authority (a) Right to bring actions or proceedings suspended.**--A nonqualified foreign business corporation doing business in this Commonwealth within the meaning of Subchapter B (relating to qualification) shall not be permitted to maintain any action or proceeding in any court of this Commonwealth until the corporation has obtained a certificate of authority. Nor, except as provided in subsection (b), shall any action or proceeding be maintained in any court of this Commonwealth by any successor or assignee of the corporation on any right, claim or demand arising out of the doing of business by the corporation in this Commonwealth until a certificate of authority has been obtained by the corporation or by a corporation that has acquired all or substantially all of its assets.15 Pa.C.S. § 4141(a) (emphasis supplied).

----- End Footnotes-----[***3]

[*P3] Appellee originally directed the Sheriff to make service on appellants at 637 Wyncroft Lane, Apt. # 1, the address reflected on the single GM Card statement attached to the complaint. Appellants were not served at that address, but, after reinstatement of the complaint, service was made by the Sheriff on December 14, 2001, at 615 Wyncroft Lane, Apt. # 1.

[*P4] Appellee alleges that, pursuant to Pa.R.Civ.P. 237.1, it mailed a ten day default notice to appellants at the 615 Wyncroft Lane address on January 4, 2002, the twenty-first day after service of the complaint. Appellee, thirteen days thereafter on January 17, 2002, caused the prothonotary to enter judgment against appellants as follows:"Real Debt" \$ 14,368.62 "Interest to 1/02" \$ 2,873.72 "Plus costs of" \$ 253.93 TOTAL \$ 17,496.27

[*P5] Appellants, twelve days thereafter, on January 29, 2002, filed a petition to open or strike the judgment and filed preliminary objections to the complaint. The parties subsequently filed briefs with the court which, by opinion and order dated October 17, 2002, denied the petition to open. n2

----- Footnotes -----

n2 The petition to strike was based on the failure to provide the ten-day notice required by Pa.R.C.P. No. 237.1. The trial court denied the petition to strike based solely on the presumption of receipt for mail deposited with the U.S. Postal Service.

----- End Footnotes-----[***4]

[*P6] [***342] While appellee has conceded that the petition was promptly filed, it contends that the trial court properly ruled that the judgment could not be opened and correctly found that appellants, because they relied on preliminary objections rather than a proposed answer, had failed to establish the meritorious defense which serves as a condition precedent to opening a judgment:In general, a default judgment may be opened when three elements are established: the moving party must (1) promptly file a petition to open the default judgment, (2) show a meritorious defense, and (3) provide a reasonable excuse or

explanation for its failure to file a responsive pleading. *Allegheny Hydro No. 1*, 722 A.2d [189] at 191 [(Pa.Super. 1998)]. *Penn-Delco School District v. Bell Atlantic-Pa., Inc.*, 1999 PA Super 317, 745 A.2d 14, 17 (Pa.Super. 1999), **appeal denied**, 568 Pa. 665, 795 A.2d 978 (2000).

[*P7] The threshold issue for our consideration is whether appellants were obliged to file an answer to the complaint or whether preliminary objections were sufficient to join the issues presented therein. *****5** The Commonwealth Court, in *Peters Township Sanitary Authority v. American Home and Land Development Co.*, 696 A.2d 899 (Pa.Cmwlt. 1997), **appeal denied**, 550 Pa. 712, 705 A.2d 1312 (1997), in holding that preliminary objections rather than an answer may be attached to a petition to open a default judgment, observed: Quail Run first argues that the trial court erred in strictly construing the term "answer" within the text of Rule 237.3, thereby rejecting the filing of a "pleading" in the nature of preliminary objections. According to Quail Run, a standard of liberality, not strictness, should be applied in ruling on a petition to open default judgment. **See** Pa.R.C.P. No. 126. Further, Quail Run contends that examination of the provisions of Rules 1037 and 237, and their respective Commentary Notes, reveals that the court should accept a "pleading" in the form of preliminary objections with regard to Rule 237.3. The Explanatory Comment regarding Rule 1037 states: Rule 1037. Judgment Upon Default or Admission. Assessment of Damages. Subdivision (b) of Rule 1037 provided for the entry of judgment *****6** upon praecipe resulting from a default or admission. The rule spoke of failure to file "an answer." This left unclear the effect of filing preliminary objections. This rule is changed to refer to "a pleading," a term which under Rule 1017(a) includes both an answer and preliminary objections. The filing of an answer or preliminary objections will clearly prevent the entry of a default judgment. Pa.R.C.P. No. 1037 (Explanatory Comment--1994). Quail Run contends that, if Rule 1037, regarding *prevention* of the entry of default judgment, allows for the filing of preliminary objections, it follows that, under Rule 237.3, regarding *relief* from the entry of default judgment, preliminary objections may also be properly filed. Quail Run notes that, although the language of Rule 237.3(b)(emphasis added) states that "the court shall open the judgment if the proposed *complaint* or *answer* states a meritorious *****343** cause of action or defense," the Explanatory Comment regarding subdivision (b) uses the more inclusive term "proposed pleading" and provides: Subdivision (b) eases the burden of a party against whom judgment has been entered and who moves *****7** promptly for relief from that judgment. If the petitioner files a petition for relief from the judgment within ten days after entry of the judgment on the docket, the rule requires the court to open the judgment if the *proposed pleading* states a meritorious cause of action or defense. **Thus, Quail Run argues that preliminary objections, in addition to answers, are appropriate attachments to a petition to open, and the trial court erred by holding otherwise. We agree.** Based on our review of Rules 126, 237.3 and 1037, in conjunction with their associated Explanatory Notes, **we conclude that Quail Run did not invalidate its Petition to Open by attaching preliminary objections, rather than a complaint or answer, to that Petition, and we believe that the trial court abused its discretion by finding that it did.**

* * * In considering petitions to open default judgments, a court must determine whether there are equitable considerations which require that a defendant, against whom a default judgment has been entered, receive an opportunity to have the case decided on the merits. *Duckson v. Wee Wheelers, Inc.*, 423 Pa.Super. 251, 255, 620 A.2d 1206, 1208 (1993). *****8** Generally, default judgments are not favored. *Kennedy v. Black*, 492 Pa. 397, 402, 424 A.2d 1250, 1252 (1981). It has been stated in regard to default judgments that: the purpose of the rules in authorizing the entry of default judgments is to prevent a dilatory defendant from impeding the plaintiff in establishing his claim. The rules are not primarily intended to provide the plaintiff with a means of gaining a judgment without the difficulties which arise from litigation. *Tronzo v. Equitable Gas Co.*, 269 Pa. Super. 392, 395-96, 410 A.2d 313, 315 (1979), quoting *Moyer v. Americana Mobile Homes, Inc.*, 244 Pa.Super. 441, 445, 368 A.2d 802, 804 (1976). *Peters Township Sanitary Authority v. American*

Home and Land Development Co., supra, 696 A.2d at 900-02 (emphasis supplied) (footnotes omitted). We agree with this well reasoned analysis and conclusion of our learned colleagues of the Commonwealth Court that preliminary objections, rather than an answer, may be attached to a petition to open and in that fashion establish a meritorious[***9] defense.

[*P8] As a result, we move to consideration of the validity of the two preliminary objections filed by appellants to the complaint. The first objection is that the complaint, which contained numerous factual averments, had not been verified as required by Pa.R.C.P. No. 1024, but rather had been verified by an unnamed individual identified as a "paralegal" for Atlantic Credit who had no personal knowledge of the facts and was not an officer of the corporate plaintiff.

[*P9] Rule 1024 requires, *inter alia*: **Rule 1024. Verification.** (a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified. The signer need not aver the source of the information or expectation [***344] of ability to prove the averment or denial at the trial. A pleading maybe verified upon personal knowledge as to a part and upon information and belief as to the remainder.(b) .(c) **The verification shall be made by one or more of the parties** filing [***10] the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, **the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party.** Pa.R.C.P. No. 1024 (a),(c) (emphasis supplied). The verification in the instant case did not conform to the requirements of Rule 1024 but rather provided:

VERIFICATION The undersigned who is paralegal of Atlantic Credit & Finance Inc. (a corporation organized and existing under the laws of the state of Virginia) (a partnership trading under the trade style in the pleading) (an individual who is the party in the pleading) having reviewed the averments of the attached pleading verifies that the pleading is based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language[***11] of the pleading is that of counsel and not of signer. Signer verifies the within pleading is true and correct to the best of the signer's knowledge, information and belief to the extent that the contents of the pleading are that of counsel, verifier has relied upon counsel in taking this verification. This verification is made subject to the penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsifications to authorities. [undecipherable signature] VERIFIERDATE: 9/21/00(emphasis supplied)

[*P10] As noted in Goodrich Amram, "the requirement of a verification is not waivable because without it a pleading is mere narration, and amounts to nothing." 2 Goodrich Amram 2d § 1024(a):1. While our cases acknowledge that amendment should be liberally allowed to cure technical defects in a verification, *see, e.g., George H. Althof, Inc. v. Spartan Inns of America, Inc.*, 295 Pa. Super. 287, 441 A.2d 1236 (Pa.Super. 1982); *Monroe Contract Corp. v. Harrison Square, Inc.*, 266 Pa. Super. 549, 405 A.2d 954 (Pa.Super. 1979), there is no doubt but that the verification attached[***12] to the complaint in the instant case falls so far short of the statutory mandate that the verification is wholly defective and inadequate to support entry of a \$ 17,496.27 judgment against appellants.

[*P11] The second preliminary objection of appellants was that appellee had failed to attach to the complaint any writing evidencing any contract between GM Card and appellants as required by Pa.R.C.P. No. 1019, despite the averment of appellee that it had purchased the contractual rights of GM Card and despite appellee's claims that it was entitled to counsel fees and the exorbitant interest rates set forth in the terms of the GM Card contract. n3


----- Footnotes -----

n3 Anyone who is perplexed that banks and lenders can lawfully charge 24.15 interest on a debt, must surely be appalled to learn that Congress has permitted such banker/lenders to wring from debtors additional sums, bearing no relationship to the outstanding debt, for "overcharges" and "late fees". "Don Corleone once rasped: 'A lawyer with his briefcase can steal more than a hundred men with guns.' Mario Puzo, *The Godfather*, p. 51 (Putnam Publishing Group 1969) - one supposes that professional courtesy precluded his allusion to the banker." ***Mazaika v. Bank One, Columbus, N.A.***, 439 Pa. Super. 95, 653 A.2d 640, 642 n.3 (Pa.Super. 1994), **reversed**, 545 Pa. 115, 680 A.2d 845 (1996).

----- End Footnotes----- [***13]

[*P12] [345] Rule 1019(i)** of the Pennsylvania Rules of Civil Procedure requires that where a claim or defense is based upon a writing, the pleader shall attach a **copy of the writing, or the material part thereof**, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

Pa.R.C.P. No. 1019(i) (emphasis supplied).

[*P13] We find that the failure to attach the writings which assertedly establish appellee's right to a judgment against appellants in the amount of \$ 17,496.27, based on an alleged debt it allegedly purchased for substantially less than \$ 9,644.66, is fatal to the claims set forth in appellee's complaint. Thus, the preliminary objection of appellants based on failure to produce a cardholder agreement and statement of account, as well as evidence of the assignment, establishes a meritorious defense. 

[*P14] The two preliminary objections filed to the complaint in the instant case are both clearly meritorious and should have been sustained. Thus, we remand the case so as to enable the trial court to enter an order sustaining the preliminary objections[***14] and striking the complaint without prejudice to the right of appellee to file an amended complaint within 20 days of receipt of the trial court order so ruling.

[*P15] Order vacated. Case remanded. Jurisdiction relinquished.

Source: All Sources > Cases > PA State Cases, Combined

Terms: Rule W/3 1019 and date(geq 1990 and leq 2004) (Edit Search)

View: Full

Date/Time: Tuesday, January 4, 2005 - 1:13:20 PM EST

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**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLDWIDE ASSET PURCHASING,
LLC

Plaintiff

v.

CAROL D. ECKLEBERRY,
Defendant

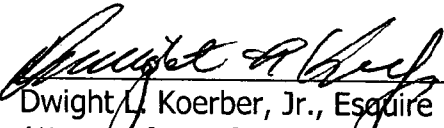
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Docket No. 04-978-CD

CERTIFICATE OF SERVICE

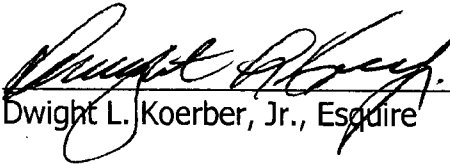
I certify that on the 27th day of January, 2005, the undersigned served a certified copy of the Supplement to Petition to Reopen and/or Strike Judgment in the above-captioned matter upon counsel for the Plaintiff. Such document was served via United States First Class Mail upon the following:

Jay Pressman, Esquire
Burton Neil & Associates
1060 Andrew Drive
Suite 170
West Chester, PA 19380


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Carol D. Eckleberry

VERIFICATION

Dwight L. Koerber, Jr., Esquire, being duly sworn according to law, deposes and states that he is the attorney for Defendant, Carol D. Eckleberry, that he is authorized to sign this verification on her behalf, and the facts set forth in the attached Petition are true and correct to the best of his knowledge, information and belief, subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.


Dwight L. Koerber, Jr., Esquire

Date: 1/26/05

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET NO. 04-978-CD

WORLDWIDE ASSET PURCHASING, LLC
Plaintiff

v.

CAROL D. ECKLEBERRY
Defendant

SUPPLEMENT TO PETITION TO REOPEN
AND/OR STRIKE JUDGMENT

LAW OFFICE
DWIGHT KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

WORLDWIDE ASSET
PURCHASING, LLC

vs.

CAROL D. ECKLEBERRY

:
:
:
: No. 04-978-CD
:
:

ORDER

AND NOW, this 14 day of February, 2005, it is the ORDER of the Court that Defendant's Petition to Reopen and/or Strike Judgment in the above-captioned matter is hereby continued at the direction of the Court until **Monday, March 21, 2005 at 9:00 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

The proceedings are hereby stayed until such time as the Court issues further Order resolving the Defendant's Petition.

FILED

6K @ 2:23 PM 2005 *W. A. Shaw*
FEB 14 2005

BY THE COURT:

Fred J. Ammerman
FREDRIC J. AMMERMAN
President Judge

William A. Shaw
Prothonotary

CA

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Worldwide Asset Purchasing, LLC,
Plaintiff/Respondent

*

*

vs.

Docket No. 04-978-CD

*

Carol D. Eckleberry,
Defendant/Petitioner

*

ORDER

FILED 2cc
of 4:00 PM Any
MAR 21 2005 Koerber
Will serve
William A. Shaw
Prothonotary/Clerk of Courts (62)

AND NOW THIS 21st day of March, 2005, this being the time and date for a rescheduled hearing, a hearing was held on the Petition to Reopen and/or Strike Judgment filed on behalf of Defendant Carol D. Eckleberry. The Court notes that the hearing was scheduled for today at 9:00 a.m., after the prior hearing on February 14, 2005 was continued because counsel for Plaintiff had requested to participate in the fact-finding hearing through telephone conference only, thereby making it necessary for the Court to order that the prior hearing be rescheduled.

Following the testimony of Defendant, and the presentation and review of the exhibits which Petitioner filed in her Petition to Reopen and/or Strike Judgment, it is the Order and Decree of this Court that the judgment is hereby reopened, and that within 20 days of the date of this Order Defendant shall file a responsive pleading, consisting of either an Answer or Preliminary Objections. With respect to the prospect of Preliminary Objections being filed, the Court hereby acknowledges that Defendant filed a Supplement

to her Petition to Reopen and/or Strike the Judgment, and pointed to the failure of Plaintiff to comply with Pa. R.C.P. 1019(i) which requires it to furnish copies of written documents upon which it relies in order to establish a cause of action. The failure to attach a copy of the signed cardholder agreement, appropriate statements of accounts showing how the debt was established (including reference to interest and penalties), and a failure to attach a copy of the assignment from Direct Merchants is a material deficiency in the Complaint. See Atlantic Credit and Finance, Inc., Appellee v. Carmen L. Guiliana and Patricia Wilson a/k/a Patricia A. Maurizo, Appellants, 2003 Pa. Super 259, 829 A.2d 340; 2003 Pa. Super Lexis 2068 (2003).

In determining whether a petition to reopen a judgment will be granted when a default judgment is involved, there are three factors which the Court is required to take into account, to wit:

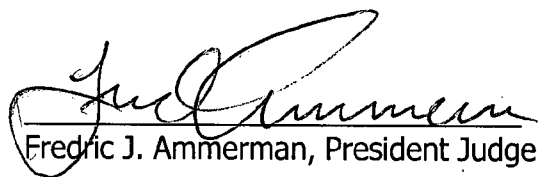
- (1) Is there a meritorious defense?
- (2) Did the Petitioner act promptly in filing her Petition?
- (3) Is there reasonable excuse for not initially filing a responsive pleading so as to permit a default judgment to be entered?

The Court finds affirmatively that the three elements listed above have been met. Furthermore, the Court finds the Defendant's testimony to be credible where she has explained that she had only one account with Direct Merchants and that this account was shown as paid in full through the July 28, 2003 notice she received from the Alegis Group. The Court also finds that Defendant reasonably relied upon representations made to her by representatives of the law firm representing Plaintiff to the effect that no further action

be taken on the lawsuit until certain documents were furnished to the Defendant. The written notations made by Defendant contemporaneous with the numerous phone conversations that she had, in an effort to show that the underlying debt was properly satisfied, corroborate and add significant credibility to Defendant's testimony (See Exhibit 1 presented at hearing).

The Court wishes to emphasize that in matters such as this, where there is an assignment of commercial credit accounts involving multiple parties, that it is essential that the Plaintiff be fully prepared to properly submit into evidence all written documents that are essential to the cause of action that they seek to maintain, in full accordance with the Pennsylvania Rules of Evidence and the Pennsylvania Rules of Civil Procedure. The Court further states its policy that Plaintiff shall appear in person for all procedural and fact-finding matters that involve this proceeding.

By the Court,



Fredric J. Ammerman, President Judge

FILED

MAR 21 2005

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Worldwide Asset Purchasing, LLC,
Plaintiff/Respondent

vs.

Carol D. Eckleberry,
Defendant/Petitioner

*

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Docket No. 04-978-CD

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
Defendant/Petitioner:
Carol D. Eckleberry

Counsel of Record for
This Party:

LAW OFFICES OF
DWIGHT L. KOERBER, JR.

FILED
0/312/01
MAR 23 2005

3cc
Dwight Koerber
(cd)

William A. Shaw
Prothonotary/Clerk of Courts

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Worldwide Asset Purchasing, LLC,
Plaintiff/Respondent

*

vs.

Docket No. 04-978-CD

*

Carol D. Eckleberry,
Defendant/Petitioner

*

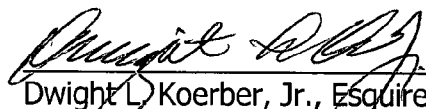
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CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of March 2005, the undersigned served a true and correct copy of the March 21, 2005 Order in the above-referenced case on counsel for Plaintiff/Respondent. Such document was served via United States First Class Mail upon the following:

Jay Pressman, Esquire
BURTON NEIL & ASSOCIATES, P.C.
1060 Andrew Drive
Suite 170
West Chester, PA 19380


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant/Petitioner:
Carol D. Eckleberry

Date: 03/29/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:44 PM

ROA Report

Page 1 of 2

Case: 2004-00978-CD

Current Judge: Fredric Joseph Ammerman

Worldwide Asset Purchasing, LLC vs. Carol D. Eckleberry

Civil Other

Date		Judge
06/28/2004	X Filing: Civil Complaint Paid by: Neil, Burton (attorney for Worldwide Asset Purchasing, LLC) Receipt number: 1881671 Dated: 06/28/2004 Amount: \$85.00 (Check) One CC Sheriff	No Judge
09/20/2004	X Sheriff Return, Papers served on Defendant at employment. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm. Shff. Hawkins \$113. 87 Paid by Atty.	No Judge
10/01/2004	X Filing: Judgment Paid by: Neil, Burton (attorney for Worldwide Asset Purchasing, LLC) Receipt number: 1887577 Dated: 10/01/2004 Amount: \$20.00 (Check) Notice to Def. Stmt. to Atty. Judgment entered against Def. in the amount \$8,457.54	No Judge
10/26/2004	X Petition to Reopen and/or Strike Judgment, filed by s/Dwight L. Koerber, Jr., Esq. Three CC Attorney Koerber	No Judge
10/29/2004	X Order, AND NOW, this 29th day of October, 2004, upon consideration of the Petition to Reopen and /or strike Judgment of Carol D. Eckleberry, it is hereby ORDERED that Worldwide Asset Purchasing, LLC, shows cause why the relief request should not be granted. Written response is due 20 days from the dated of the entry of this Order. By the Court, /s/ Fredric J. Ammerman, President Judge. 3CC Atty Koerber.	Fredric Joseph Ammerman
11/01/2004	X Certificate of Service of Petition to Reopen and/or Strike Judgment on Counsel for Plff. Filed by Atty. Koerber. 3 CC to Atty.	Fredric Joseph Ammerman
11/18/2004	X Plaintiff's Worldwide Asset Purchasing, LLC's Answer to Defendant Carol D. Eckleberry's Petition to Reopen and/or Strike Judgment, filed by s/Jay H. Pressman, Esq. No CC	Fredric Joseph Ammerman
12/06/2004	X Praeipce To Substitute Verification: Kindly substitute the attached verification for the attorney verification filed with plaintiff's Answer to Defendant's Petition to Strike or Reopen Judgment. Filed by Jay Pressman, Esquire. No CC	Fredric Joseph Ammerman
01/11/2005	X Order, AND NOW, this 11th day of Jan., 2005, it is the ORDER of the Court that argument on Defendant's Petition to Reopen and/or strike Judgment and Plaintiff's Answer thereto in the above-captioned matter is hereby scheduled for Monday, Feb. 14, 2005 at 11:00 a.m. in Courtroom no. 1, Clfd. Co. Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. CC to Attys. B. Neil & Koerber	Fredric Joseph Ammerman
01/14/2005	X Order, AND NOW, this 11th day of Jan., 2005, it is the ORDER of the Court that argument on Defendant's Petition to Reopen and/or strike Judgment and Plaintiff's Answer thereto in the above-captioned matter is hereby scheduled for Monday, Feb. 14, 2005 at 11:00 a.m. in Courtroom no. 1, Clfd. Co. Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. CC to Attys. B. Neil & Koerber	Fredric Joseph Ammerman
01/27/2005	X Supplement To Petition To Reopen And/Or Strike Judgment, filed by s/Dwight L. Koerber, Jr., Esquire. 3CC Atty Koerber	Fredric Joseph Ammerman
02/14/2005	X Order, AND NOW, this 14th day of Feb., 2005, it is the ORDER of the Court that defendant's Petition to Reopen and/or Strike Judgment is hereby continued at the direction of the Court until Monday, March 21, 2005 at 9:00 a.m. in Courtroom No. 1, Clfd. Co. Courthouse. The proceedings are hereby stayed until such time as the Court issues further Order resolving the Defendant's Petition. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Atty Koerber	Fredric Joseph Ammerman

Date: 03/29/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:44 PM

ROA Report

Page 2 of 2

Case: 2004-00978-CD

Current Judge: Fredric Joseph Ammerman

Worldwide Asset Purchasing, LLC vs. Carol D. Eckleberry

Civil Other

Date		Judge
03/21/2005	X Order, AND NOW, this 21st day of March, 2005, this being the time and date for a rescheduled hearing, a hearing was held on the Petition to Reopen and/or strike Judgement filed on behalf of Defendant (see original). BY THE COURT/s/ Fredric J. Ammerman, Judge. 2CC Atty Koerber (will serve).	Fredric Joseph Ammerman
03/23/2005	X Certificate of Service, copy of March 21, 2005 Order upon Jay Pressman, Esquire, on March 22, 2005. Filed by s/ Dwight L. Koerber, Jr., Esquire. 3CC Atty. Koerber	Fredric Joseph Ammerman

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLWIDE ASSET PURCHASING,
LLC

Plaintiff

v.

CAROL D. ECKLEBERRY,
Defendant

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Docket No. 04-978-CD

Type of Pleading:
PRELIMINARY OBJECTIONS
OF DEFENDANT

Filed on Behalf of:
Defendant:
CAROL D. ECKLEBERRY

Counsel of Record for
This Party:

Dwight L. Koerber, Jr., Esquire
PA I.D. 16332

LAW OFFICES OF
DWIGHT L. KOERBER, JR.
110 N. Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED 3cc
d/3.30.04 Amy Koerber
APR 11 2005
William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLDWIDE ASSET PURCHASING,
LLC

Plaintiff

v.

CAROL D. ECKLEBERRY,
Defendant

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Docket No. 04-978-CD

PRELIMINARY OBJECTIONS OF DEFENDANT

COMES NOW, Carol D. Eckleberry, referred to hereinafter "Defendant", by and through her attorney, Dwight L. Koerber, Jr., Esquire, and files the within Preliminary Objections. These Preliminary Objections are filed pursuant to the March 21, 2005 Order of this Honorable Court.

I.

LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER)

(1) Pa.R.C.P. 1028(a)(4) provides that Preliminary Objections may be filed for the legal sufficiency of a pleading, in the form of a demurrer.

(2) Defendant hereby demurs to the Complaint filed herein, because of the failure of Plaintiff to set forth the following evidence necessary to affirmatively demonstrate a cause of action:

(a) Plaintiff has failed to set forth a copy of the signed contract or signed credit card application so as to demonstrate that there is in fact a contractual

obligation on the part of Defendant to pay the indebtedness that is asserted.

(b) Plaintiff has failed to attach a copy of the written evidence showing that the subject account has been assigned to it.

(c) Plaintiff has failed to present a statement of account establishing the basis of the charges which it alleges are due and owing by Defendant to Plaintiff.

(3) As noted by this Honorable Court in its decision of March 21, 2005, the failure of Plaintiff to attach to its Complaint the documents that are itemized hereinabove is a material deficiency in the Complaint. See Atlantic Credit and Finance, Inc., Appellee v. Carmen L. Guillian and Patricia Wilson a/k/a Patricia A. Maurizo, Appellants, 2003 Pa. Super 259,829 A.2d 340; 2003 Pa. Super Lexis 2068. (2003)

(4) Based upon the deficiencies set forth here and above, it is Defendant's position that the Complaint filed herein is legally insufficient and for that reason Defendant requests that her demurrer be sustained.

WHEREFORE, Defendant prays that her demurrer in the form of Preliminary Objections be sustained and that the Complaint be dismissed with prejudice.

II. FAILURE TO PLEAD IN CONFORMITY WITH LAW

(5) Pa.R.C.P. 1028(a)(2) provides that Preliminary Objections may be filed for the failure to plead in conformity with law.

(6) Plaintiff has failed to comply with the requirements of the Pennsylvania Rules of Civil Procedure, in particular the requirements of Rule 1019(h)(i) which require

that when a claim is based upon an agreement, that a copy of the agreement must be identified as being a written agreement or oral agreement.

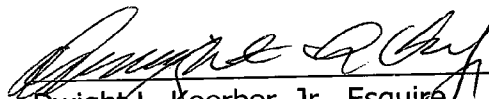
(7) Pa.R.C.P. 1019(i) requires that a copy of the agreement, if it is in writing, must be attached.

(8) As established through the March 21, 2005 Order of this Honorable Court, and in accordance with the legal standards set forth in the Atlantic Credit decision of the Superior Court, the documentation pertaining to a credit card application, statement of account and assignment must be evidenced by a written document.

(9) The Complaint filed herein is legally deficient for failing to comply with the requirements of Pa.R.C.P. 1019(i) which require that copies of the credit card application, statement of account and assignment be incorporated in and set forth in the Plaintiff's Complaint.

WHEREFORE, Defendant prays that her Preliminary Objections be sustained, for failure of Plaintiff to plead in conformity with law, and that an Order be entered dismissing the Complaint with prejudice.

Respectfully submitted,


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Carol D. Eckleberry

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLDWIDE ASSET PURCHASING,
LLC

Plaintiff

v.

CAROL D. ECKLEBERRY,
Defendant

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Docket No. 04-978-CD

ORDER

AND NOW, this ____ day of _____, 2005 upon consideration of the Preliminary Objections filed by Defendant, it is the Order and Decree of this Court that the Preliminary Objections are sustained and the Complaint is hereby dismissed with prejudice.

By the Court,

President Judge

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

WORLWIDE ASSET PURCHASING,
LLC

Plaintiff

v.

CAROL D. ECKLEBERRY,
Defendant

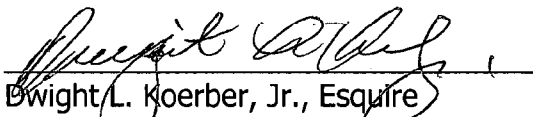
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Docket No. 04-978-CD

CERTIFICATE OF SERVICE

I certify that on the 11th day of April, 2005, the undersigned served a certified copy of the Preliminary Objections of Defendant in the above-captioned matter upon counsel for the Plaintiff. Such document was served via United States First Class Mail upon the following:

Jay Pressman, Esquire
LAW OFFICES OF BURTON NEIL & ASSOCIATES, P. C.
1060 Andrew Drive
Suite 170
West Chester, PA 19380


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Carol D. Eckleberry

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Worldwide Asset Purchasing, LLC,
Plaintiff/Respondent

*

*

vs.

Docket No. 04-978-CD

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Carol D. Eckleberry,
Defendant/Petitioner

*

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Type of Pleading:
PRAECIPE

Filed on Behalf of:
Defendant/Petitioner:
Carol D. Eckleberry

Counsel of Record for
This Party:

LAW OFFICES OF
DWIGHT L. KOERBER, JR.

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

FILED ^{3cc}
01/12/30/04
MAY 03 2005
W.A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts

110 North Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Worldwide Asset Purchasing, LLC,
Plaintiff/Respondent

*

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vs.

Docket No. 04-978-CD

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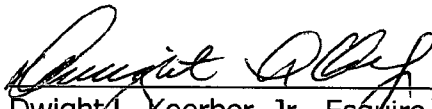
Carol D. Eckleberry,
Defendant/Petitioner

*

PRAECIPE

Pursuant to the March 21, 2005 Order entered in this matter, please mark the judgment entered on October 1, 2004 as reopened. Already filed of record are the Preliminary Objections of Defendant dated April 11, 2005.

Respectfully submitted,



Dwight L. Koerber, Jr., Esquire
Attorney for Defendant/Petitioner:
Carol D. Eckleberry

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Worldwide Asset Purchasing, LLC,
Plaintiff/Respondent

*

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vs.

Docket No. 04-978-CD

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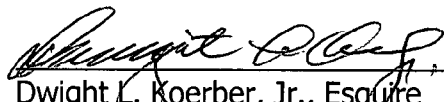
Carol D. Eckleberry,
Defendant/Petitioner

*

CERTIFICATE OF SERVICE

This is to certify that on the 3rd day of May 2005, the undersigned served a true and correct copy of the foregoing Praecipe on counsel for Plaintiff/Respondent. Such document was served via United States First Class Mail upon the following:

Burton Neil, Esquire
BURTON NEIL & ASSOCIATES
1060 Andrew Drive
Suite 170
West Chester, PA 19380


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant/Petitioner:
Carol D. Eckleberry

FILED

MAY 03 2005

William A. Shaw
Prothonotary/Clerk of Courts

BURTON NEIL & ASSOCIATES, P.C.

BY: Burton Neil, Esquire

Identification No. 11348

1060 Andrew Drive, Suite 170

West Chester, PA 19380

610-696-2120

ATTORNEY FOR: Plaintiff

WORLDWIDE ASSET PURCHASING LLC

Plaintiff

VS.

CAROL D. ECKLEBERRY

Defendant

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

: NO. 04-978-CD


: CIVIL ACTION - LAW

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Kindly discontinue the above-captioned action without prejudice.

BURTON NEIL & ASSOCIATES, P.C.

BY: 
Burton Neil, Esquire
Attorney for Plaintiff

FILED No CC
MAY 03 2005
William A. Shaw
Prothonotary/Clerk of Courts
Cert. of Disc.
to Atty Neil
Copy to CIA

The law firm of Burton Neil & Associates is a debt collector.

57465



**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Worldwide Asset Purchasing, LLC,
Plaintiff/Respondent

*

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vs.

Docket No. 04-978-CD

*

Carol D. Eckleberry,
Defendant/Petitioner

*

ORDER

AND NOW THIS 21st day of March, 2005, this being the time and date for a rescheduled hearing, a hearing was held on the Petition to Reopen and/or Strike Judgment filed on behalf of Defendant Carol D. Eckleberry. The Court notes that the hearing was scheduled for today at 9:00 a.m., after the prior hearing on February 14, 2005 was continued because counsel for Plaintiff had requested to participate in the fact-finding hearing through telephone conference only, thereby making it necessary for the Court to order that the prior hearing be rescheduled.

Following the testimony of Defendant, and the presentation and review of the exhibits which Petitioner filed in her Petition to Reopen and/or Strike Judgment, it is the Order and Decree of this Court that the judgment is hereby reopened, and that within 20 days of the date of this Order Defendant shall file a responsive pleading, consisting of either an Answer or Preliminary Objections. With respect to the prospect of Preliminary Objections being filed, the Court hereby acknowledges that Defendant filed a Supplement

to her Petition to Reopen and/or Strike the Judgment, and pointed to the failure of Plaintiff to comply with Pa. R.C.P. 1019(i) which requires it to furnish copies of written documents upon which it relies in order to establish a cause of action. The failure to attach a copy of the signed cardholder agreement, appropriate statements of accounts showing how the debt was established (including reference to interest and penalties), and a failure to attach a copy of the assignment from Direct Merchants is a material deficiency in the Complaint. See Atlantic Credit and Finance, Inc., Appellee v. Carmen L. Gulliana and Patricia Wilson a/k/a Patricia A. Maurizo, Appellants, 2003 Pa. Super 259, 829 A.2d 340; 2003 Pa. Super Lexis 2068 (2003).

In determining whether a petition to reopen a judgment will be granted when a default judgment is involved, there are three factors which the Court is required to take into account, to wit:

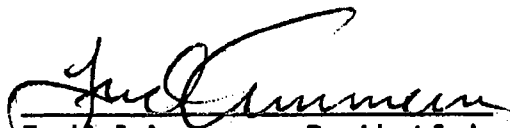
- (1) Is there a meritorious defense?
- (2) Did the Petitioner act promptly in filing her Petition?
- (3) Is there reasonable excuse for not initially filing a responsive pleading so as to permit a default judgment to be entered?

The Court finds affirmatively that the three elements listed above have been met. Furthermore, the Court finds the Defendant's testimony to be credible where she has explained that she had only one account with Direct Merchants and that this account was shown as paid in full through the July 28, 2003 notice she received from the Alegis Group. The Court also finds that Defendant reasonably relied upon representations made to her by representatives of the law firm representing Plaintiff to the effect that no further action

be taken on the lawsuit until certain documents were furnished to the Defendant. The written notations made by Defendant contemporaneous with the numerous phone conversations that she had, in an effort to show that the underlying debt was properly satisfied, corroborate and add significant credibility to Defendant's testimony (See Exhibit 1 presented at hearing).

The Court wishes to emphasize that in matters such as this, where there is an assignment of commercial credit accounts involving multiple parties, that it is essential that the Plaintiff be fully prepared to properly submit into evidence all written documents that are essential to the cause of action that they seek to maintain, in full accordance with the Pennsylvania Rules of Evidence and the Pennsylvania Rules of Civil Procedure. The Court further states its policy that Plaintiff shall appear in person for all procedural and fact-finding matters that involve this proceeding.

By the Court,


Fredric J. Ammerman, President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 21 2005

Attest.


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Worldwide Asset Purchasing, LLC

Vs.

No. 2004-00978-CD

Carol D. Eckleberry

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on May 3, 2005, marked:

Discontinued without Prejudice

Record costs in the sum of \$105.00 have been paid in full by Burton Neil, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 3rd day of May A.D. 2005.

William A. Shaw, Prothonotary