

2004-1185-CD
CITIBANK (SOUTH DAKOTA)

VS

DOROTHY J. KENNELLY

Citibank vs Dorothy Kennelly
2004-1185-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

CITIBANK (SOUTH DAKOTA) N.A.
701 East 60th Street North, Sioux Falls, SD
Plaintiff

v.

DOROTHY J KENNELLY
RR 3 Box 285, Du Bois PA 15801-8852
Defendant

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

: NO. 04-1185-CD

: 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

C277

FILED *ICC shff*
m/3:02 PM
AUG 05 2004 *Any pd. 85.00*

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

CITIBANK (SOUTH DAKOTA) N.A.
701 East 60th Street North, Sioux Falls, SD
Plaintiff

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO.

DOROTHY J KENNELLY
RR 3 Box 285, DuBois, PA
Defendant

: CIVIL ACTION - LAW

Complaint

1. The plaintiff is Citibank (South Dakota) N.A., with place of business located at 701 East 60th Street North, Sioux Falls, South Dakota.

2. The defendant is Dorothy J. Kennelly, who resides at RR 3 Box 285, DuBois, Clearfield County, Pennsylvania.

3. Plaintiff, a national banking association, engages in various types of banking business including consumer lending through the issuance of credit cards.

4. Plaintiff furnished consumer credit to the defendant by means of a credit card with account number 4428135013782776 hereinafter referred to as the credit card account.

5. Plaintiff maintained an accurate and running record of all debits and credits to the credit card account in its books of account.

6. Plaintiff mailed defendant a written statement each month which accurately stated the debits and credits to the credit card account for the prior billing period.

7. Defendant received the monthly statements from plaintiff for the credit card account including the statement attached hereto as Exhibit A statement without protest, dispute or objection.

8. Defendant in not protesting, disputing or objecting to the statements including the Exhibit A statement thereby assented and agreed to the correctness of the balance due on the credit card account so as to constitute an account stated.

9. The amount due plaintiff on the account stated, less credits, if any issued subsequent to the Exhibit A statement, is \$5,442.90.

Wherefore, plaintiff demands judgment against defendant for the sum of \$5,442.90, 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.

02/27/04 \$5442.90 \$9999.99
 PMT DUE DATE NEW BALANCE MIN AMT DUE

SITE:KC-CL TM:CO-5000 ACID:KCB7150
 02/04/04 19:36:35:

DOROTHY J KENNELLY
 ATTN: ACCOUNT-CODE=LB34
 DU BOIS PA
 15801-8852000

P.O. BOX 8101
 S HACKENSACK, NJ
 07606-8101

CHOICE®

For Customer Service, call or write
 1-800-925-8871

Account Number
 4428 1350 1378 2776
 Payment must be received by 1:00 pm local time on 02/27/2004

To report billing errors, write
 to this address; calling will
 not preserve your rights. BOX 6248
 SIOUX FALLS, SD
 57117

Statement/Closing Date	Total Credit Line	Available Credit Line	Cash Advance Limit	Available Cash Limit	New Balance
02/02/2004	\$4100	\$0	\$1000	\$0	\$5442.90
	Amount Over Credit Line	Past Due	Purch/Adv Minimum Due	Minimum Amount Due	
	\$1342.90	\$1011.05	\$118.00	\$5442.90	

Sale Date	Post Date	Reference Number	Activity Since Last Statement	Amount
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When you pay your bill by check, you authorize us to electronically process your payment. If your check is processed electronically, your checking account may be debited on the same day we receive the check and it will not be returned with your checking account statement. If someone other than you or a bill paying service pays your bill, you must give a copy of this notice to them before the payment is sent to us.

Help is available! Please call the toll-free number shown above to learn about our special payment options. Call Monday - Friday, 7 am to 9 pm, or Saturday, 8 am to 5 pm, Central Time. Please give us the opportunity to assist you.

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES	\$5,442.90	\$0.00	\$0.00	\$0.00	\$5,442.90
ADVANCES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$5,442.90	\$0.00	\$0.00	\$0.00	\$5,442.90

Days This Billing Period: 31

Rate Summary	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE
PURCHASES				
Standard Purch	\$0.00	2.33250%(M)	27.990%	27.990%
ADVANCES				
Standard Adv	\$0.00	0.07668%(F)	27.990%	27.990%

SEND PAYMENTS TO:

PLEASE REFER TO THE REVERSE SIDE OF THE ORIGINAL STATEMENT FOR PAYMENT INFORMATION.

1547
EXHIBIT

Make check or money order payable in U.S. dollars on a U.S. bank to CITI Cards. Include account number on check or money order. No cash please.

VERIFICATION

Kathy Devereaux is Attorney Management Specialist for Citibank (South Dakota) N.A. the within Plaintiff in this action, and that the statements of fact made in the foregoing Complaint are true and correct to the best of the undersigned verifier's knowledge and belief. The undersigned understands that the statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 7/1/04

Kathy Devereaux

DOROTHY J. Kennelly
4428135013782776

FILED

AUG 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

CITIBANK

VS.

KENNELLY, DOROTHY J.

COMPLAINT

Sheriff Docket #

16068

04-1185-CD

SHERIFF RETURNS

NOW SEPTEMBER 3, 2004 AT 10:53 AM SERVED THE WITHIN COMPLAINT ON DOROTHY J. KENNELLY, DEFENDANT AT RESIDENCE, RR#3 BOX 285, GUY AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DOROTHY J. KENNELLY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/DEHAVEN

Return Costs

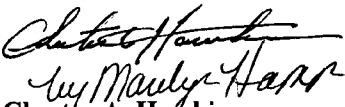
Cost	Description
32.62	SHERIFF HAWKINS PAID BY: ATTY CK# 1461
10.00	SURCHARGE PAID BY: ATTY CK# 1462

Sworn to Before Me This

7th Day of SEP. 2004

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,


Chester A. Hawkins
Sheriff

FILED ^{EGK}

SEP 07 2004

3:00
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

CITIBANK (SOUTH DAKOTA) N.A.
701 East 60th Street North,
Sioux Falls, SD,

Plaintiff

vs.

DOROTHY J. KENNELLY,
RR 3, Box 285, DuBois, PA,

Defendant

NO. 04-1185-C.D.

Type of Case: Civil

Type of Pleading: Answer, New Matter
and Counterclaim

Filed on behalf of: Defendant

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED

OCT 04 2004

0/12:25/1
William A. Shaw

Prothonotary/Clerk of Courts

2 chm to Att

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

CITIBANK (SOUTH DAKOTA) N.A.	:	
701 East 60th Street North,	:	
Sioux Falls, SD,	:	
Plaintiff	:	
	:	
vs.	:	NO. 04-1185-C.D.
	:	
DOROTHY J. KENNELLY,	:	
RR 3, Box 285, DuBois, PA,	:	
Defendant	:	

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 twenty (20) days after this Answer, New Matter, Counterclaim 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 claims 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 Answer, New Matter and Counterclaim or for any other claim or relief requested by the Defendant. 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.

Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

CITIBANK (SOUTH DAKOTA) N.A.	:	
701 East 60th Street North,	:	
Sioux Falls, SD,	:	
Plaintiff	:	
	:	
vs.	:	NO. 04-1185-C.D.
	:	
DOROTHY J. KENNELLY,	:	
RR 3, Box 285, DuBois, PA,	:	
Defendant	:	

ANSWER

AND NOW, comes the Defendant, DOROTHY J. KENNELLY, through her Attorney, David P. King, and responds to Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. Defendant is without information sufficient as to form an opinion regarding the accuracy of the averments in Plaintiff's Paragraph 5. Strict proof of the accuracy and running records and credits are required.

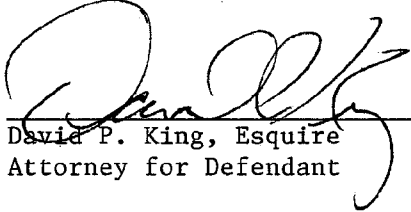
6. The averments in Plaintiff's Paragraph 6 are admitted, but denied if the same infers that the Defendant is indebted to the Plaintiff for the reasons as set forth hereafter.

7. The averments in Plaintiff's Paragraph 7 are denied if the same infers that the Defendant is indebted to the Plaintiff for the reasons as set forth hereafter.

8. The averments in Plaintiff's Paragraph 8 are denied, as in fact the Defendant does dispute the correctness of the balance due on her account for the reasons as set forth hereafter.

9. The averments in Plaintiff's Paragraph 9 are denied if the same infers that the Defendant is indebted to the Plaintiff for such amount for the reasons as set forth hereafter.

WHEREFORE, Defendant demands that a judgment be entered in her favor and against the Plaintiff, and she will so ever pray.


David P. King, Esquire
Attorney for Defendant

NEW MATTER

COUNT I
(STATUTE OF LIMITATIONS)

10. The averments in Defendant's answers set forth above are herein incorporated by reference.

11. The Defendant avers that the debt allegedly owed in this matter is barred in whole or in part by the applicable Statute of Limitations.

WHEREFORE, Defendant prays your Honorable Court to dismiss the Complaint against her and otherwise find in her favor.

COUNT II
(UNCONSCIONABILITY)

12. The averments in Defendant's Answer and New Matter as set forth in Paragraphs 1 through 11 above are herein incorporated by reference.

13. Defendant avers that the interest rate charged and assessed by the Plaintiff is exorbitant, unconscionable, unenforceable and should not be allowed under and in accordance with the laws of the Commonwealth of Pennsylvania.

WHEREFORE, Defendant prays your Honorable Court that the Complaint against her be dismissed, and otherwise that this matter be resolved in her favor.

COUNT III
(MISREPRESENTATION)

14. The averments in Defendant's Answer and New Matter as set forth in Paragraphs 1 through 13 above are herein incorporated by reference.

15. At the time when the Defendant's account was in good standing, Plaintiff contacted the Defendant for purposes of taking out disability insurance on her loan and account with Plaintiff.

16. The purpose of such disability insurance would be to pay Defendant's debt should she become disabled and unable to fulfill the same.

17. Through the representations of the Plaintiff, and at the Plaintiff's urgings, the Defendant did subscribe to disability insurance on her loan and account with the Plaintiff.

18. Thereafter, the Plaintiff did add to Defendant's running account a monthly premium for such disability insurance.

19. Defendant continued to pay this as part of her monthly obligations from time to time as they became due.

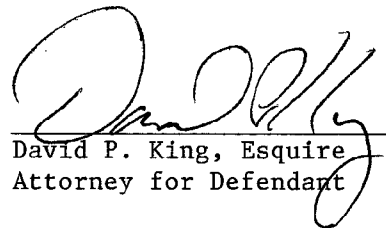
20. Notwithstanding, sometime thereafter the Defendant did in fact become disabled and unable to work, and unable to meet her obligations, including the obligations owed to the Plaintiff and on her account with the Plaintiff which is the subject matter of these proceedings.

21. The Defendant contacted the Plaintiff with such information regarding her disability, but was told at that time that since she was now self-employed, that disability insurance would not apply, and the entire debt and account must be paid out of her own funds or income.

22. The Defendant was never assessed of such conditions or prerequisites at the time disability insurance was explained to her by the Plaintiff.

23. Thus, the Defendant avers and alleges that her account with the Plaintiff, in whole or in part, should have been paid by disability insurance, but the Plaintiff failed, refused and neglected to pursue or permit the same.

WHEREFORE, Defendant prays your Honorable Court to dismiss the Complaint against her in its entirety or in part as may be applicable, and she will so ever pray.


David P. King, Esquire
Attorney for Defendant

COUNTERCLAIM I

24. Defendant hereby incorporates all of the averments contained in her Answer and New Matter in Paragraphs 1 through 23 above.

25. The Defendant avers that she was not properly informed regarding the nature and extent of the disability insurance that she was purchasing at the urgings and initiative of the Plaintiff as mentioned above.

26. The Defendant believes that the Plaintiff had a duty to properly inform the Defendant of such coverage or noncoverage situations which Plaintiff did not do.

27. The Defendant believes and avers that the Plaintiff has likely engaged in the same solicitation of other account holders for purposes of having them purchase disability insurance also.


28. The Defendant believes that such activities as it relates to her specifically are illegal, unfair, deceptive and amounts to an improper and unfair trade or business practice, and otherwise violates the Statutes of the Commonwealth of Pennsylvania, and the applicable laws of the Commonwealth of Pennsylvania.

WHEREFORE, Defendant prays your Honorable Court for the following remedies:

(a) That the Complaint against her be dismissed with prejudice.


(b) That the Plaintiff be made to pay Defendant's legal fees incurred in these matters.

(c) To award to the Defendant punitive damages as are applicable, and she will so ever pray.


David P. King, Esquire
Attorney for Defendant

I verify that the statements made in this Answer, New Matter and Counterclaim 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.

Date: September 30, 2004


Dorothy J. Kennelly

FILED

OCT 04 2004

William A. Shaw
Prothonotary/Clerk of Courts

CA

BURTON NEIL & ASSOCIATES, P.C.
Burton Neil, Esquire, Id. no. 11348
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA) N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v.

: NO. 04-1185 CD

DOROTHY J. KENNELLY

Defendant : CIVIL ACTION - LAW

RULE TO SHOW CAUSE

AND NOW, this 15 day of November, 2004,
upon consideration of plaintiff's **Preliminary Objections**, it is hereby ordered that:

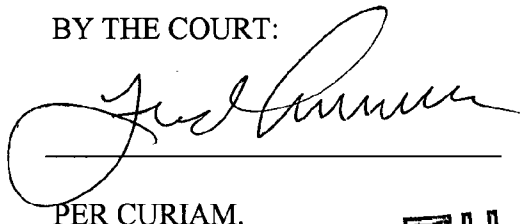
(1) A rule is issued upon the respondent to show cause why the
petitioner is not entitled to the relief requested;

(2) The respondent shall file an answer to the petition within
(20) days of service upon the respondent;

(3) Argument to be held on Dec. 16, 2004, at 1:30 p.m.
in Courtroom H-1 before the Honorable Judge Ammerman
in the Clearfield County Courthouse;

(4) Notice of the entry of this order shall be provided to all
parties by the petitioner.

BY THE COURT:



PER CURIAM.

In making this communication, we advise our firm is a debt collector.

FILED EGC
O 3:44 30 100 to 100
NOV 15 2004

Proth

FILED

M 10:37 AM NO CC

OCT 26 2004

BURTON NEIL & ASSOCIATES, P.C.
Burton Neil, Esquire, Id. no. 11348
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

William A. Shaw
Prothonotary

CITIBANK (SOUTH DAKOTA) N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v.

: NO. 04-1185 CD

DOROTHY J. KENNELLY

Defendant : CIVIL ACTION - LAW

Preliminary Objections to New Matter and Counterclaim

Now comes plaintiff Citibank (South Dakota) N.A. by and through counsel, Burton Neil, Esquire and interposes preliminary objections to defendant's new matter as follows:

A. Failure to Conform to Rule of Court Pa R.C.P. 1028(a)(2)

1. Paragraphs 11 defendant's new matter set forth the affirmative of the "applicable statute of limitations."
2. Pa R.C.P. 1019(a) requires that the material facts on which a defense is based be plead in a concise and summary form.
3. Defendant's affirmative defense of the statute of limitations plead no facts, that is, defendant did not aver which statute applies and did not aver facts why the defense itself would apply.

Wherefore, plaintiff prays the Court will strike paragraph 11 defendant's new matter because it fails to conform to rule of court.

B. Legal Insufficiency of a Pleading (Demurrer)[Pa R.C.P. 1028(a)(4)]

1. Paragraph 13 of defendant's new matter raised the affirmative defense of unconscionability.
2. Defendant's unconscionability defense is based upon the allegation that the rate of interest charged by plaintiff to defendant's account is not enforceable under the laws of the Commonwealth of Pennsylvania.

3. The law which controls is that of the State of South Dakota and not the Commonwealth of Pennsylvania.

Wherefore, plaintiff prays your Honorable Court will strike the defense of unconscionability.

C. Insufficiency of a Pleading [Pa R.C.P. 1028(a)(3)]

1. Count III of defendant's new matter in general terms alleges that a contract of insurance existed between herself and plaintiff.

2. Defendant alleged no facts regarding the terms of the contract, i.e.

- a. when did the alleged contract for insurance take place;
- b. when did defendant contact plaintiff regarding the alleged disability;
- c. when did defendant's alleged disability occur; how long did it last;
- d. on what date was the alleged disability claim denied.
- e. whether defendant received an insurance policy setting forth the terms and conditions of coverage.

3. Without facts specifically setting forth details of defendant's claim of misrepresentation, plaintiff is unable to respond.

Wherefore, plaintiff prays your Honorable Court will direct defendant to file a more specific complaint.

D. Failure to Conform to Rule of Court Pa R.C.P. 1028(a)(3)

1. Defendant's counterclaim alleges in general terms that plaintiff violated "the statutes of the Commonwealth of Pennsylvania, and the applicable laws of the Commonwealth of Pennsylvania."

2. Defendant's pleading did not set forth the name and/or title of the laws allegedly violated by plaintiff.

3. In order to respond to defendant against the allegations, plaintiff is entitled to know the specific laws upon which defendant's counterclaim is based.

E. Failure to Conform to Rule of Court Pa R.C.P. 1028(a)(2)

1. Defendant's counterclaim is based upon alleged misrepresentations allegedly made by plaintiff as pertains to disability insurance allegedly purchased by defendant.

2. The alleged existence of disability insurance is clearly an agreement allegedly between

plaintiff and defendant.

3. Defendant's pleading failed to aver, contrary to Pa R.C.P. 1019(h) whether the said agreement was oral or written.

4. If such an insurance contract was in writing, defendant failed to attach a copy as required by Pa R.C.P. 1019(i).

Wherefore, plaintiff prays your Honorable Court to order defendant to plead whether the contract of insurance was oral or written and, if written, to attach a copy to the pleading.

Burton Neil & Associates, P.C.

(
By: 

Burton Neil
Attorney for Plaintiff

In making this communication, we advise our firm is a debt collector.

CITIBANK (SOUTH DAKOTA) N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 04-1185 CD

DOROTHY J. KENNELLY

Defendant : CIVIL ACTION - LAW

Order

And Now, this day of , 2004 on consideration of plaintiff's

Preliminary Objections, it is hereby Ordered that the same are hereby sustained. Therefore,

1. Paragraphs 11 and 13 Defendant's New Matter are hereby stricken.
2. Defendant's new matter is legally insufficient with respect to the particulars raised in sections C and D of the Preliminary Objections. Defendant is Ordered to file a more specific pleading.
3. Defendant is directed to plead whether the contract of insurance was oral or written and, if written, to attach a copy.

To the extent Defendant files an amended pleading, the same is to be filed within twenty (20) days from the date of this Order.

By the Court

J.

BURTON NEIL & ASSOCIATES, P.C.

Burton Neil, Esquire, Id. no. 11348

1060 Andrew Drive, Suite 170

West Chester, PA 19380

610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA) N.A.

Plaintiff

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 04-1185 CD

DOROTHY J. KENNELLY

Defendant : CIVIL ACTION - LAW

Certificate of Service

Burton Neil, Esquire, being duly sworn according to law, deposes and says that he is attorney for plaintiff Citibank (South Dakota) N.A., that he served a true and correct copy of plaintiff's Rule to Show Cause, Preliminary Objections and proposed Order on counsel for the defendant, David P. King at his address of record by first class U.S. Mail, postage prepaid on the date set forth below.

Dated: 10/22/04

[Signature]
Burton Neil, Esquire

In making this communication, we advise our firm is a debt collector.

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

CITIBANK (SOUTH DAKOTA) N.A.

Plaintiff

VS.

DOROTHY J KENNELLY

Defendant

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

: NO. 04-1185-CD

: CIVIL ACTION - LAW

Certificate of Service

I, Burton Neil, Esquire do hereby certify that I served a true and correct copy of the Rule to Show Cause issued on November 15, 2004 on the attorney for the defendant at his address of record via certified mail, postage prepaid on the date set forth below.

Date: _____

11/23/04

BURTON NEIL & ASSOCIATES, P.C.

BY: _____

Burton Neil, Esquire
Attorney for Plaintiff

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

FILED

C277

NOV 29 2004

EGK

11/12:30/04
William A. Shaw
Prothonotary

m c/l

FILED

NOV 29 2004 NOV 29 2004

William A. Shaw
Prothonotary

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

CITIBANK (SOUTH DAKOTA) N.A.,
Plaintiff

vs.

DOROTHY J. KENNELLY,
Defendant

NO. 04-1185 C.D.

Type of Case: Civil

Type of Pleading: Answer to Preliminary
Objections to New Matter and Counterclaim

Filed on behalf of: Defendant

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED

DEC 10 2004 *EBK*

0/10:45/ *W*
William A. Shaw

Prothonotary/Clerk of Courts

2 cert to App King

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

CITIBANK (SOUTH DAKOTA) N.A.,	:
Plaintiff	:
	:
vs.	: NO. 04-1185 C.D.
	:
DOROTHY J. KENNELLY,	:
Defendant	:

ANSWER TO PRELIMINARY OBJECTIONS TO NEW MATTER AND COUNTERCLAIM

AND NOW, comes the Defendant, DOROTHY J. KENNELLY, and responds to Plaintiff's Preliminary Objections as follows:

A. Failure to Conform to Rule of Court PaR.C.P. 1028(a)(2)

1. Admitted.
2. Admitted.
3. Denied. While parties are presumed to know the law, and a pleading raising the applicable Statute of Limitations is permissible. The facts are to be determined at time of trial.

WHEREFORE, Plaintiff prays your Honorable Court to deny Preliminary Objection "A".

B. Legal Insufficiency of a Pleading (Demurrer) [PaR.C.P. 1028(a)(4)]

1. Admitted.
2. Admitted.
3. Plaintiff's Paragraph 3 is a conclusion of law, without a factual determination which can only be determined at time of trial.

Moreover, the defense of unconscionability raised in Defendant's New Matter Count II is incorporated by reference in Count III "Misrepresentation".

WHEREFORE, Defendant prays your Honorable Court to deny Plaintiff's Preliminary Objection "B".

C. Insufficiency of a Pleading [PaR.C.P. 1028(a)(3)]

1. Admitted.

2. The Plaintiff already has, or is in a better position to provide the information that is being questioned in this Preliminary Objection.

Plaintiff or Plaintiff's agents are in possession of the information that Plaintiff requests, and are in a better position to determine the same than the Defendant at this time. Discovery will further be an avenue to obtain further information by the Plaintiff and the Defendant.

3. Plaintiff can respond generally.

WHEREFORE, Defendant prays your Honorable Court to accept Defendant's New Matter without the necessity to file a more specific Complaint so that this matter may be at issue.

D. Failure to Conform to Rule of Court PaR.C.P. 1028(a)(3)

1. Admitted.

2. Admitted, but all parties are presumed to know the laws of the Commonwealth of Pennsylvania, but not necessarily the laws of other jurisdictions.

3. Plaintiff can respond by denial generally so that this matter may be at issue.

WHEREFORE, Defendant prays your Honorable Court to deny Plaintiff's Preliminary Objection "D".

E. Failure to Conform to Rule of Court PaR.C.P. 1028(a)(2)

1. Admitted.

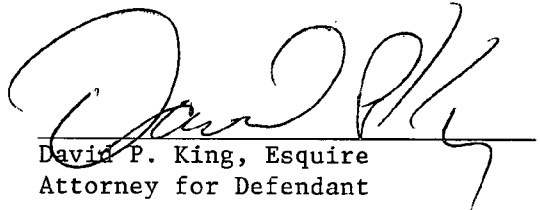
2. Admitted.

3. It is hard to imagine a contract for insurance without some written documentation.

4. Defendant is not in possession of an insurance contract. Discovery and testimony would show that the only documentation was a form filled out by the Defendant and sent back to the Plaintiff or Plaintiff's agent.

The Plaintiff who received the above would be in possession of the same, and would be required to produce the same at trial or discovery beforehand.

WHEREFORE, Defendant prays your Honorable Court to deny the Plaintiff's Preliminary Objection "E".



David P. King, Esquire
Attorney for Defendant

FILED

DEC 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CITIBANK (SOUTH DAKOTA) N.A.:

-VS-

: No. 04-1185-CD

DOROTHY J. KENNELLY

:

O R D E R

NOW, this 16th day of December, 2004, following argument on the Preliminary Objections to New Matter and Counterclaim filed on behalf of the Plaintiff, it is the ORDER of this Court as follows:

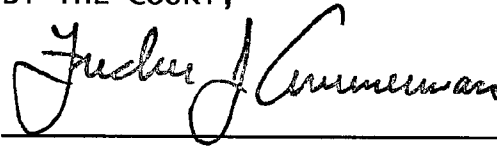
1. The Preliminary Objections as set forth under Paragraphs A, C and E are granted to the extent that the Defendant shall have no more than sixty (60) days from this date in which to engage in the Discovery process in order to attempt to obtain information relative the allegations referenced in the said Preliminary Objections. Within no more than sixty (60) days from this date, the Defendant shall file an amended complaint setting forth more specific factual allegations relative the same;

2. The Preliminary Objections B and D relative allegations of legal insufficiency of the pleading in the form of a demurrer to Count II of the Plaintiff's New Matter are hereby granted. The provisions of Count II of the said New Matter are hereby dismissed;

CA
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6:49 PM
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DEC 23 2004
William A. Shaw
Prothonotary

3. In the event that no amended complaint is filed within the applicable time period, counsel for the Plaintiff may request the Court to issue further ruling on Preliminary Objections A, C and E. In the event that an amended complaint is filed, the Plaintiff shall be at liberty to file Preliminary Objections related thereto pursuant to the rules of Civil Procedure.

BY THE COURT,

A handwritten signature in cursive script, reading "Frederick J. Cummings", is written over a horizontal line.

President Judge

FILED
SEP 14 2007
M/11:15/W
William A. Shaw
Prothonotary/Clerk of Courts
No 6/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CITIBANK (SOUTH DAKOTA) N.A.
701 East 60th Street North
Sioux Falls, SD 57117

Plaintiff(s)

v.

DOROTHY J KENNELLY
RR 3 Box 285
Du Bois PA 15801-8852

Defendant(s)

CIVIL DIVISION, ARBITRATION
AND STATUTORY APPEALS ONLY

CASE NO. 04-1185-CD

TYPE OF PLEADING: Plaintiff's Petition to
Strike Counterclaim

CODE AND CLASSIFICATION:

FILED ON BEHALF OF: Plaintiff
CITIBANK (SOUTH DAKOTA) N.A.
(Name of Party, indicate plaintiff or defendant)

NAME, ADDRESS AND TELEPHONE OF:

 X Counsel of Record
 Individual, if pro se

Yale D. Weinstein, Esquire
Burton Neil & Associates, P.C.
1060 Andrew Drive, Suite 170
West Chester, PA 19380
Telephone: 610-696-2120
email: litigation@burt-law.com

Attorney's State ID# 89678

Attorney's Firm ID#

CITIBANK (SOUTH DAKOTA) N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v. : NO. 04-1185 CD
DOROTHY J. KENNELLY
Defendant : CIVIL ACTION - LAW

RULE TO SHOW CAUSE

AND NOW, this 17 day of September, 2007, upon consideration of plaintiff's **Petition to Strike Counterclaim**, it is hereby ordered that:

(1) A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;

(2) The respondent shall file an answer to the petition within (20) days of service upon the respondent;

(3) The Petition shall be decided under Pa. R.C.P. No. 206.7;

(4) Argument to be held on November 5, 2007, at 11:00 AM in Courtroom 1 before the Honorable Fredric J. Ammerman in the Clearfield County Courthouse;

(5) Notice of the entry of this order shall be provided to all parties by the petitioner.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE MATTERS SET FORTH IN THE FOLLOWING PETITION, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE PROTHONOTARY SETTING FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY OR PERSON FILING THE PETITION. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR THE RELIEF REQUESTED BY THE PETITIONER. YOU MAY LOSE 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.

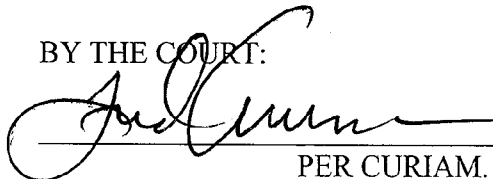
COURT ADMINISTRATION
Clearfield County Courthouse
Second & Main Streets
Clearfield, PA 16830

FILED
010:04/07
SEP 18 2007

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty Weinstein

BY THE COURT:


PER CURIAM.

FILED

SEP 18 2007

William A. Shaw
Prothonotary/Clerk of Courts

CITIBANK (SOUTH DAKOTA) N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v. : NO. 04-1185-CD
DOROTHY J. KENNELLY
Defendant : CIVIL ACTION - LAW

Order

AND NOW, this _____ day of _____, 2007 on consideration of
plaintiff's Petition to Strike Counterclaim, it is hereby **ORDERED** that the Defendant's
Counterclaim is stricken for failing to comply with the December 16, 2004 Order.

BY THE COURT:

J.

cc: Yale D. Weinstein, Esquire - Attorney for Plaintiff
1060 Andrew Drive, Ste. 170
West Chester, PA 19380

David P. King, Esquire - Attorney for Defendant
23 Beaver Drive, P.O. Box 1016
DuBois, PA 15801

BURTON NEIL & ASSOCIATES, P.C.
By: Yale D. Weinstein, Esquire, Id. No. 89678
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA) N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 04-1185-CD

DOROTHY J. KENNELLY

Defendant : CIVIL ACTION - LAW

Plaintiff's Petition to Strike Counterclaim

Plaintiff petitions the Court to strike Defendant's Counterclaim against defendant for the following reasons:

1. On October 26, 2004, plaintiff filed preliminary objections to defendant's new matter and counterclaim.
2. A true and correct copy of plaintiff's preliminary objections to defendant's new matter and counterclaim is attached as Exhibit 1 and incorporated by reference.
3. On December 10, 2004, defendant filed a response to plaintiff's preliminary objections to defendant's new matter and counterclaim.
4. A true and correct copy of defendant's response to plaintiff's preliminary objections is attached as Exhibit 2 and incorporated by reference.
5. On December 16, 2004, an Order was entered granting the defendant sixty days to engage in discovery and to file an amended complaint.

6. A true and correct copy of the Court's December 16, 2004 Order is attached as Exhibit 3 and incorporated by reference.

7. Defendant has not conducted discovery nor filed an amended complaint pursuant to the December 16, 2004 Order.

WHEREFORE, plaintiff Citibank (South Dakota), N.A. moves the Court to strike defendant's counterclaim.

BURTON NEIL & ASSOCIATES, P.C.

By: 

Yale D. Weinstein, Esquire
Attorney for Plaintiff

In making this communication, we advise Burton Neil & Associates, P.C. is a debt collector.

Verification

Yale D. Weinstein, Esquire, attorney for plaintiff, CITIBANK (SOUTH DAKOTA) N.A., makes this statement on its behalf as to the truthfulness of the facts set forth in the foregoing Plaintiff's Petition to Strike Counterclaim subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities. Counsel, rather than an officer or other representative of plaintiff is verifying the foregoing Plaintiff's Petition to Strike Counterclaim because plaintiff's officers and/or representatives are outside the jurisdiction of the court and the verification of none of them could be obtained within the time required to file this pleading. Plaintiff's counsel is verifying Plaintiff's Petition to Strike Counterclaim based upon information and belief from information in his file.

Date: _____

9/1/18

Yale D. Weinstein, Esquire

BURTON NEIL & ASSOCIATES, P.C.
Burton Neil, Esquire, Id. no. 11348
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA) N.A.
Plaintiff

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

v.

: NO. 04-1185 CD

DOROTHY J. KENNELLY

Defendant : CIVIL ACTION - LAW

Preliminary Objections to New Matter and Counterclaim

Now comes plaintiff Citibank (South Dakota) N.A. by and through counsel, Burton Neil, Esquire and interposes preliminary objections to defendant's new matter as follows:

A. Failure to Conform to Rule of Court Pa R.C.P. 1028(a)(2)

1. Paragraphs 11 defendant's new matter set forth the affirmative of the "applicable statute of limitations."
2. Pa R.C.P. 1019(a) requires that the material facts on which a defense is based be plead in a concise and summary form.
3. Defendant's affirmative defense of the statute of limitations plead no facts, that is, defendant did not aver which statute applies and did not aver facts why the defense itself would apply.

Wherefore, plaintiff prays the Court will strike paragraph 11 defendant's new matter because it fails to conform to rule of court.

B. Legal Insufficiency of a Pleading (Demurrer)[Pa R.C.P. 1028(a)(4)]

1. Paragraph 13 of defendant's new matter raised the affirmative defense of unconscionability.
2. Defendant's unconscionability defense is based upon the allegation that the rate of interest charged by plaintiff to defendant's account is not enforceable under the laws of the Commonwealth of Pennsylvania.

FILED

OCT 28 2004

Prothonotary

COPY

EXHIBIT

1

3. The law which controls is that of the State of South Dakota and not the Commonwealth of Pennsylvania.

Wherefore, plaintiff prays your Honorable Court will strike the defense of unconscionability.

C. Insufficiency of a Pleading [Pa R.C.P. 1028(a)(3)]

1. Count III of defendant's new matter in general terms alleges that a contract of insurance existed between herself and plaintiff.

2. Defendant alleged no facts regarding the terms of the contract, i.e.

- a. when did the alleged contract for insurance take place;
- b. when did defendant contact plaintiff regarding the alleged disability;
- c. when did defendant's alleged disability occur; how long did it last;
- d. on what date was the alleged disability claim denied.
- e. whether defendant received an insurance policy setting forth the terms and conditions of coverage.

3. Without facts specifically setting forth details of defendant's claim of misrepresentation, plaintiff is unable to respond.

Wherefore, plaintiff prays your Honorable Court will direct defendant to file a more specific complaint.

D. Failure to Conform to Rule of Court Pa R.C.P. 1028(a)(3)

1. Defendant's counterclaim alleges in general terms that plaintiff violated "the statutes of the Commonwealth of Pennsylvania, and the applicable laws of the Commonwealth of Pennsylvania."

2. Defendant's pleading did not set forth the name and/or title of the laws allegedly violated by plaintiff.

3. In order to respond to defendant against the allegations, plaintiff is entitled to know the specific laws upon which defendant's counterclaim is based.

E. Failure to Conform to Rule of Court Pa R.C.P. 1028(a)(2)

1. Defendant's counterclaim is based upon alleged misrepresentations allegedly made by plaintiff as pertains to disability insurance allegedly purchased by defendant.

2. The alleged existence of disability insurance is clearly an agreement allegedly between

plaintiff and defendant.

3. Defendant's pleading failed to aver, contrary to Pa R.C.P. 1019(h) whether the said agreement was oral or written.

4. If such an insurance contract was in writing, defendant failed to attach a copy as required by Pa R.C.P. 1019(i).

Wherefore, plaintiff prays your Honorable Court to order defendant to plead whether the contract of insurance was oral or written and, if written, to attach a copy to the pleading.

Burton Neil & Associates, P.C.

By: _____
Burton Neil
Attorney for Plaintiff

In making this communication, we advise our firm is a debt collector.

C277

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

CITIBANK (SOUTH DAKOTA) N.A.,
Plaintiff

vs.

DOROTHY J. KENNELLY,
Defendant

NO. 04-1185 C.D.

Type of Case: Civil

Type of Pleading: Answer to Preliminary
Objections to New Matter and Counterclaim

Filed on behalf of: Defendant

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

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

DEC 10 2004

Attest.

Lucas A. H.
Prothonotary/
Clerk of Courts

EXHIBIT

2

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

CITIBANK (SOUTH DAKOTA) N.A.,	:
Plaintiff	:
	:
vs.	: NO. 04-1185 C.D.
	:
DOROTHY J. KENNELLY,	:
Defendant	:

ANSWER TO PRELIMINARY OBJECTIONS TO NEW MATTER AND COUNTERCLAIM

AND NOW, comes the Defendant, DOROTHY J. KENNELLY, and responds to Plaintiff's Preliminary Objections as follows:

A. Failure to Conform to Rule of Court PaR.C.P. 1028(a)(2)

1. Admitted.
2. Admitted.
3. Denied. While parties are presumed to know the law, and a pleading raising the applicable Statute of Limitations is permissible. The facts are to be determined at time of trial.

WHEREFORE, Plaintiff prays your Honorable Court to deny Preliminary Objection "A".

B. Legal Insufficiency of a Pleading (Demurrer) [PaR.C.P. 1028(a)(4)]

1. Admitted.
2. Admitted.
3. Plaintiff's Paragraph 3 is a conclusion of law, without a factual determination which can only be determined at time of trial.

Moreover, the defense of unconscionability raised in Defendant's New Matter Count II is incorporated by reference in Count III "Misrepresentation".

WHEREFORE, Defendant prays your Honorable Court to deny Plaintiff's Preliminary Objection "B".

C. Insufficiency of a Pleading [PaR.C.P. 1028(a)(3)]

1. Admitted.

2. The Plaintiff already has, or is in a better position to provide the information that is being questioned in this Preliminary Objection.

Plaintiff or Plaintiff's agents are in possession of the information that Plaintiff requests, and are in a better position to determine the same than the Defendant at this time. Discovery will further be an avenue to obtain further information by the Plaintiff and the Defendant.

3. Plaintiff can respond generally.

WHEREFORE, Defendant prays your Honorable Court to accept Defendant's New Matter without the necessity to file a more specific Complaint so that this matter may be at issue.

D. Failure to Conform to Rule of Court PaR.C.P. 1028(a)(3)

1. Admitted.

2. Admitted, but all parties are presumed to know the laws of the Commonwealth of Pennsylvania, but not necessarily the laws of other jurisdictions.

3. Plaintiff can respond by denial generally so that this matter may be at issue.

WHEREFORE, Defendant prays your Honorable Court to deny Plaintiff's Preliminary Objection "D".

E. Failure to Conform to Rule of Court PaR.C.P. 1028(a)(2)

1. Admitted.

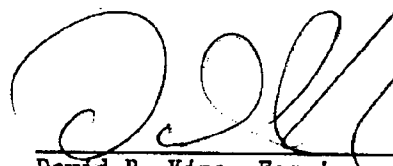
2. Admitted.

3. It is hard to imagine a contract for insurance without some written documentation.

4. Defendant is not in possession of an insurance contract. Discovery and testimony would show that the only documentation was a form filled out by the Defendant and sent back to the Plaintiff or Plaintiff's agent.

The Plaintiff who received the above would be in possession of the same, and would be required to produce the same at trial or discovery beforehand.

WHEREFORE, Defendant prays your Honorable Court to deny the Plaintiff's Preliminary Objection "E".



David P. King, Esquire
Attorney for Defendant

CD77

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

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA DEC 23 2004

CIVIL DIVISION

Attest.

W. J. Kennelly
Prothonotary/
Clerk of Courts

CITIBANK (SOUTH DAKOTA) N.A.:

-VS- : No. 04-1185-CD

DOROTHY J. KENNELLY :

ORDER

NOW, this 16th day of December, 2004, following argument on the Preliminary Objections to New Matter and Counterclaim filed on behalf of the Plaintiff, it is the ORDER of this Court as follows:

1. The Preliminary Objections as set forth under Paragraphs A, C and E are granted to the extent that the Defendant shall have no more than sixty (60) days from this date in which to engage in the Discovery process in order to attempt to obtain information relative the allegations referenced in the said Preliminary Objections. Within no more than sixty (60) days from this date, the Defendant shall file an amended complaint setting forth more specific factual allegations relative the same;

2. The Preliminary Objections B and D relative allegations of legal insufficiency of the pleading in the form of a demurrer to Count II of the Plaintiff's New Matter are hereby granted. The provisions of Count II of the said New Matter are hereby dismissed;

3. In the event that no amended complaint is filed within the applicable time period, counsel for the Plaintiff may request the Court to issue further ruling on Preliminary Objections A, C and E. In the event that an amended complaint is filed, the Plaintiff shall be at liberty to file Preliminary Objections related thereto pursuant to the rules of Civil Procedure.

BY THE COURT,

/s/ Fredric J. Ammerman

President Judge

Burton Neil & Associates, P.C.
By: Yale D. Weinstein, Esquire ID. NO. 89678
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA) N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v. : NO. 04-1185-CD
DOROTHY J KENNELLY : CIVIL ACTION - LAW
Defendant

Certificate of Service

I, Yale D. Weinstein, Esquire, do hereby certify that I served a true and correct copy of the within Plaintiff's Petition to Strike Counterclaim, Cover Sheet and proposed Rule to Show Cause and Order on defendant's counsel, David P. King, Esquire, at his address of record via first class mail, postage prepaid on the date set forth below.

Date: 9/18/07

Burton Neil & Associates, P.C.

By: [Signature]

Yale D. Weinstein, Esquire
Attorney for Plaintiff

The law firm of Burton Neil & Associates is a debt collector.
C277

FILED
SEP 14 2007
Prothonotary/Clerk of Courts
William A. Shaw

FILED

11/12:47/61
SEP 27 2007

NO CC
(S)

William A. Shaw
Prothonotary/Clerk of Courts

Burton Neil & Associates, P.C.

By: Yale D. Weinstein, Esquire ID. NO. 89678

1060 Andrew Drive, Suite 170

West Chester, PA 19380

610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA) N.A.
Plaintiff

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 04-1185-CD

DOROTHY J KENNELLY

Defendant

: CIVIL ACTION - LAW

Certificate of Service

I, Yale D. Weinstein, Esquire, do hereby certify that I served a true and correct copy of the within Rule to Show Cause dated September 17, 2007 on defendant's counsel, David P. King, Esquire, at his address of record via first class mail, postage prepaid on the date set forth below.

Date:

9/27/07

Burton Neil & Associates, P.C.

By:

(Signature)
Yale D. Weinstein, Esquire
Attorney for Plaintiff

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

C277

(277)

CITIBANK (SOUTH DAKOTA) N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v. : NO. 04-1185 CD
DOROTHY J. KENNELLY
Defendant : CIVIL ACTION - LAW

RULE TO SHOW CAUSE

AND NOW, this 17 day of September, 2007, upon consideration of plaintiff's **Petition to Strike Counterclaim**, it is hereby ordered that:

(1) A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;

(2) The respondent shall file an answer to the petition within (20) days of service upon the respondent;

(3) The Petition shall be decided under Pa. R.C.P. No. 206.7;

(4) Argument to be held on November 5, 2007, at 11:00 AM in Courtroom 1 before the Honorable Fredric J. Ammerman in the Clearfield County Courthouse;

(5) Notice of the entry of this order shall be provided to all parties by the petitioner.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE MATTERS SET FORTH IN THE FOLLOWING PETITION, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE PROTHONOTARY SETTING FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY OR PERSON FILING THE PETITION. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR THE RELIEF REQUESTED BY THE PETITIONER. YOU MAY LOSE 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.

COURT ADMINISTRATION
Clearfield County Courthouse
Second & Main Streets
Clearfield, PA 16830

Prothonotary
Clearfield County Courthouse
Clearfield, PA 16830

BY THE COURT:

/s/ Fredric J Ammerman

PER CURIAM.

SEP 18 2007

Attorney

Prothonotary
Clearfield County Courthouse
Clearfield, PA 16830

FILED

SEP 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

10

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

CITIBANK (South Dakota) N.A,
Plaintiff

vs.

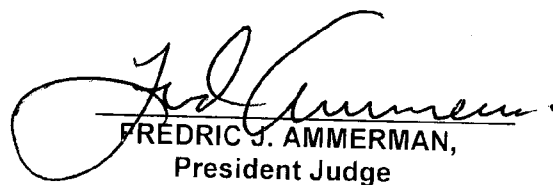
DOROTHY J. KENNELLY,
Defendant

NO. 2004 - 1185 - CD

ORDER OF COURT

AND NOW, this 5th day of November, 2007, following argument on Plaintiff's Petition to Strike Counterclaim filed on September 14, 2007, with the Court referencing its order of December 16, 2004, and noting that there has been no activity on the part of Defendant as required therein, **IT IS THE ORDER OF THIS COURT** that the Defendant's counterclaim be and is hereby dismissed.

BY THE COURT:


FREDRIC J. AMMERMAN,
President Judge

FILED REC'd
018:30/64
NOV 06 2007
King

William A. Shaw
Prothonotary/Clerk of Courts

@

FILED

NOV 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/06/07

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CITIBANK (SOUTH DAKOTA) N.A.
701 East 60th Street N
Sioux Falls, SD 57117

Plaintiff(s)

v.

DOROTHY J KENNELLY
RR 3 Box 285
Du Bois PA 15801-8852

Defendant(s)

CIVIL DIVISION, ARBITRATION
AND STATUTORY APPEALS ONLY

CASE NO. 04-1185-CD

TYPE OF PLEADING: Praecipe

CODE AND CLASSIFICATION:

FILED ON BEHALF OF: Plaintiff
CITIBANK (SOUTH DAKOTA) N.A.
(Name of Party, indicate plaintiff or defendant)

NAME, ADDRESS AND TELEPHONE OF:

X Counsel of Record
Individual, if pro se

Yale D. Weinstein, Esquire
Burton Neil & Associates, P.C.
1060 Andrew Drive, Suite 170
West Chester, PA 19380
Telephone: 610-696-2120
email: litigation@burt-law.com

Attorney's State ID# 89678

Attorney's Firm ID# _____

(Signature)

FILED *no cc*
m/2:50:30
APR 14 2008
William A. Shaw
Prothonotary/Clerk of Courts
Cert. of Disc.
to Atty
@

Burton Neil & Associates, P.C.
By: Yale D. Weinstein, Esquire ID. NO. 89678
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120
Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA) N.A.
Plaintiff

v.

DOROTHY J KENNELLY
Defendant

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

: NO. 04-1185-CD

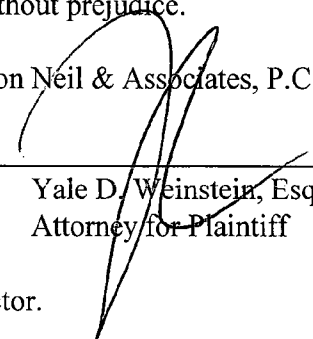
: CIVIL ACTION - LAW

Praeipce to Discontinue

To the Prothonotary:

Kindly discontinue the above-captioned action without prejudice.

Burton Neil & Associates, P.C.

By: 
Yale D. Weinstein, Esquire
Attorney for Plaintiff

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

C277

FILED

APR 14 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Citibank (South Dakota) N.A.

Vs.

No. 2004-01185-CD

Dorothy J. Kennelly

CERTIFICATE OF DISCONTINUATION

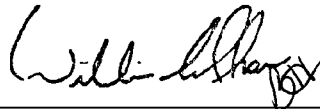
Commonwealth of PA
County of Clearfield

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 April 14, 2008, marked:

Discontinued without Prejudice

Record costs in the sum of \$85.00 have been paid in full by Burton Neil & Associates, PC.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of April A.D. 2008.



William A. Shaw, Prothonotary