

05-875-CD
Comm. Fin. vs. Richard Males

Com. Finan Systems et al v. Richard Males
2005-875-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK

NO. 05-875-CD
IN CIVIL ACTION

Plaintiff(s)

-vs-

RICHARD MALES

Defendant(s)

COMPLAINT

CODE-
FILED ON BEHALF OF
PLAINTIFF

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NOTICE TO DEFEND

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 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 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 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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. 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.

**Keystone Legal Services
211 1/2 East Locust Street
Clearfield, PA 16830
814-765-9646**

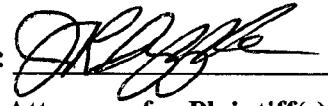
COMPLAINT

1. Plaintiff is a corporation having offices at 120 North Keyser Avenue, Scranton, PA 18504, and as the assignee of Unifund CCR Partners, assignee of Citibank, stands in its assignor's stead, and all are hereinafter referred to interchangeably as "Plaintiff".
2. Defendant is an individual whose address is 1433 Treasure Lake, Du Bois, Clearfield County, Pennsylvania 15801.
3. At a specific instance and request of the Defendant, the Defendant applied for and was granted a credit card by Plaintiff at the terms and conditions agreed upon by the parties, as is more specifically shown by the Agreement, a true and correct copy of which is attached hereto, marked Exhibit "A" and made a part hereof.
4. The Plaintiff avers that the agreement between the parties was based upon a written agreement which the Defendant accepted by using credit card to make purchases and/or cash advances.
5. Thereafter, in breach of obligations under the Agreement, the Defendant failed to make payments as they became due.

6. Plaintiff avers that the terms of the Agreement provide for acceleration of the entire balance due and owing upon Defendant's breach of the Agreement.
7. Plaintiff avers that the balance due amounts to \$21,047.48, as is more specifically shown by Plaintiff's Statement of Account, a true and correct copy of which is attached hereto, marked Exhibit "B" and made a part hereof.
8. Plaintiff avers that the interest has accrued at the rate of 19.80% per annum on the balance due from January 26, 2005.
9. Per the term of the agreement, the Defendant has agreed to pay to the Plaintiff as liquidated damages, the costs of collection, including all reasonable attorneys' fees incurred in the collection of monies owing, which Plaintiff avers will amount to 25% of the balance due.
10. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and refused to pay the amount due to Plaintiff or any part thereof.

WHEREFORE, Plaintiff demands Judgment against Defendant in the amount of \$21,047.48, with appropriate additional interest from January 26, 2005, plus attorneys fees and costs.

APPLE AND APPLE, P.C.

By: 
Attorneys for Plaintiff(s)

CITIBANK CARD AGREEMENT

This Agreement and the folder containing the card are your Citibank Card Agreement. The folder contains important account information, including the annual percentage rate and the amount of any membership fee. Please read and keep the folder and this Agreement for your records.

To simplify the rest of this Agreement for you, the following definitions will apply. The words *you*, *your*, and *yours* mean the person responsible for this Agreement, to whom we direct the billing statement. The word *card* means one or more cards which we have issued with your account number. The words *we*, *us*, and *our* mean Citibank (South Dakota), N.A. The words *Citibank checks* mean one or more checks that we may provide to access your Citibank card account. This Agreement is binding on you unless you cancel your account within 30 days after receiving the card and you have not used or authorized use of your account.

Using Your Account and Your Credit Line:

The card must be signed to be used. Your initial credit line appears on the folder containing the card. A portion of your credit line, called the cash advance limit, is available for cash advances. At our discretion and at any time, we may change your credit line or cash advance limit. We will notify you if we do, either by mail or through a billing statement sent either before or after the change takes effect. You may request a change to your credit line or cash advance limit by contacting Customer Service by telephone or mail. The full amount of your credit line is available to buy or lease goods or services wherever the card is honored. Your cash advance limit is available for cash through any bank or automated teller machine that accepts the card or by using Citibank checks. The total amount charged on your account, including purchases, balance transfers, cash advances, finance charges, fees, or other charges, must always remain below your credit line. However, if that total amount exceeds your credit line you must still pay us.

Additional Cards:

You may request additional cards on your account for yourself or others and you may permit another person to have access to the card or account number. However, if you do, you must pay us for all charges made by those persons, including charges for which you may not have intended to be responsible. You must notify us to revoke permission for any person you previously authorized to use your account. If you tell us to revoke another person's use of your account, we may close the account and issue a new card or cards with a different account number. You are responsible for the use of each card issued on your account according to the terms of this Agreement.

Membership Fee:

The folder containing the card indicates whether your account is subject to a membership fee. If it is, the fee is added to the purchase balance and is non-refundable unless you notify us to cancel your account within 30 days from the mailing date of the billing statement on which the fees are billed.

EXHIBITS *A*

2.10.9:

You **Determine the Balance:**
Your billing statement shows the balance, any finance charges, fees, the minimum payment, and the payment due date. It also shows your current credit line and cash advance limit, an itemized list of current charges, Citibank checks, payments and credits, a summary showing separately the purchase and cash advance balances, and finance charges on each balance, and other important information. If you default under this Agreement, we may, in our sole discretion, stop sending you billing statements if we deem your account uncollectible or if we institute delinquency collection proceedings by sending it to an outside collection agency or attorney or collection service by telephone or mail. We will mail or deliver the billing statement to only one mailing address.

How We Determine the Balance:

The total outstanding balance (the amount you owe us) appears as the "New Balance" on the billing statement. To determine the New Balance, we begin with the outstanding balance on your account at the beginning of each billing period, called the "Previous Balance" on the billing statement. We add any purchases and cash advances and subtract any payments and credits that we receive. We then add the appropriate finance charges and fees and make other applicable adjustments.

Annual Percentage Rate for Purchases:

Your annual percentage rate for purchases and the corresponding daily periodic rate appears on the folder containing the card. A daily periodic rate is the applicable annual percentage rate divided by 365. Whether or not the annual percentage rate for purchases is based on the quarterly U.S. Prime Rate plus a margin is indicated on the folder containing the card.

Annual Percentage Rate for Cash Advances:

Your **ANNUAL PERCENTAGE RATE** for cash advances is 19.99%, which corresponds to a daily periodic rate of 0.05418%. The daily periodic rate is the cash advance annual percentage rate divided by 365. Please see the next section for details relating to how this rate may change if you default under any Citibank Card Agreement.

Variable Annual Percentage Rates for Purchases and Cash Advances:

If the annual percentage rate for purchases is based on the quarterly U.S. Prime Rate plus a margin, we will calculate the rate by adding the margin that appears on the folder containing the card to the U.S. Prime Rate published in *The Wall Street Journal* on the third Tuesday of March, June, September, and December of each year. If the third Tuesday is a holiday, we will use the Prime Rate published the next day. If more than one Prime Rate is published, we may choose the highest rate. *If The Wall Street Journal* ceases publication or to publish the Prime Rate, we may use the Prime Rate published in any other newspaper of general circulation, or we may establish a similar reference rate at our sole discretion. Each time the annual percentage rate changes, we will apply it to any existing balances, subject to any promotional rate that may apply.

In addition, the annual percentage rate for purchases and cash advances may vary if you default under any Citibank Card Agreement because you fail to make a payment to us or any other creditor when due. You exceed your credit line, or you make a payment to us that is not honored by your bank. In such circumstances, we may increase the **ANNUAL PERCENTAGE RATE**

(including any promotional rate) on all balances to a fixed rate of up to 23.99%. Factors considered in determining this higher rate may include the length of time the account has been open, the residence, seniority, and length of Citibank Card Agreement defaults, and other indications of account usage and just for finance. Your account may again become eligible for a lower annual percentage rate on new purchases, new cash advances, or both after you have met the terms of all Citibank Card Agreements, for six months. Your existing purchase and cash advance balances will remain subject to the higher rate until they are paid in full.

Any increase or decrease in a variable annual percentage rate takes effect on the first day of the billing period directly following the month in which we calculate the rate. The annual percentage rate in effect and any subsequent changes to it will appear on the billing statement. An increase in the variable annual percentage rate means you will pay a higher finance charge and perhaps a higher minimum payment.

Promotional Rate Offers:

At our discretion, we may offer you a promotional annual percentage rate for all or a part of the purchase and/or cash advance balances. The period of time for which the promotional rate applies may be limited. Any promotional rate, the corresponding periodic rates, and the period of time during which it is in effect will appear on the folder containing the card. We may also offer you a promotional annual percentage rate for exchange, spreads, transactions, such as transfers, or balances from accounts you have with other credit card issuers. Any promotional rate offer will be subject to the terms of the offer and this Agreement.

Finance Charges:

Finance charges will begin to accrue from the date of the advance for each advance and from the date of the transaction for purchases (including balances you transfer from any other credit card issuer) and continue to accrue until payment in full is received to your account. However, if you paid the total bill balance listed on the last billing statement by the payment due date on that statement and you did not transfer a balance from any other credit card issuer during that billing period, you will not begin to accrue finance charges on your current statement to pay your total bill balance. To avoid imposition of finance charges on purchases in certain cases, this same grace period for purchases may apply even if you have transferred a balance during the billing period. If there is no such grace period for purchases, the balance transfer offer will be ineffective.

We will calculate finance charges as follows:

F1 We figure a portion of the finance charge on your account by multiplying the daily balance on purchases (which includes balances you have few from any other credit card issuer) and the daily balance on cash advances by the applicable daily periodic rate and adding together any such finance charges for purchases and for cash advances for each day in the billing period.

F2 For finance charge calculation purposes, the billing period begins on the day after the Statement/Credit Card Date of the previous billing period and ends on the number of days in the current billing period. It includes the Statement/Credit Card Date of the current billing period.

F3 To calculate the daily balances, we take the beginning balance for purchases and the beginning balance for cash advances each day, add any new purchases and fees and any finance charge on the previous day's balance, subtract any payments or credits, and make other adjustments. Following each transaction or date, we add a new purchase to the purchase balance.

going down on one transaction and a new cash advance to the cash advance balance on the date of the advance. A credit balance is treated as a balance of zero.

¶ The "balances subject to finance charge" for purchases and for cash advances on the billing statement are each the average of the respective daily balances during the billing period. If you multiply those figures by the number of days in the billing period and by the applicable daily periodic rates, the results will be the finance charges assessed on purchases or cash advances, except for minor variations caused by rounding.

Cash Advances and Transaction Fee:

You have obtained a cash advance if you obtain funds from an automated teller machine (ATM), through a Citibank check, through home banking, or through a financial institution, make a wire transfer, acquire a money order, traveler's check, lottery ticket, betting or casino chip, or similar item, or engage in another similar transaction. For each cash advance, we add an additional FINANCIAL CHARGE of 3.0% of the advance, but not less than \$5. This fee will be added to the cash advance balance. (The amount of the cash advance may include a surcharge that the ATM owner imposes.) The cash advance transaction fee may cause the annual percentage rate on the billing statement on which the cash advance first appears to exceed the nominal annual percentage rate.

Minimum Finance Charge:

If finance charges based on periodic rates are being added to your account, but the total of such finance charges for purchases and cash advances is less than \$50, we assess a minimum FINANCIAL CHARGE, based on periodic rates, of \$50. We add the amount to either the purchase or cash advance balance at our discretion.

Credit Balance:

You may not maintain a credit balance on your account in excess of your assigned credit line. We will return to you any credit amount over \$100 if the amount has been on your account longer than three months. You may request a refund of a credit balance at any time. We may reduce the amount of any credit balance by the amount of new charges billed to your account.

Security Interest for Secured Accounts:

The holder containing the card indicates if your account is a secured account. If it is, you have given us a security interest in a certificate of deposit or a savings account to secure repayment of your account. If you withdraw your funds from the certificate of deposit or savings account, we will close your account.

Transactions Made in Foreign Currencies:

If a transaction is made in a foreign currency, we and Visa International or MasterCard International, depending on which card is used, will convert the transaction into a U.S. dollar amount. Visa and MasterCard will act in accordance with their operating regulations or conversion procedures in effect at the time the transaction is processed. Currently, their regulations and procedures provide that the currency conversion rate they use is either

(1) a wholesale market rate or (2) a government mandated rate for the day prior to the processing date. Visa increases this government rate by an additional rate adjustment rate and MasterCard mandates that you increase the conversion rate provided to us by Visa or MasterCard by an percent and keep this increase the currency conversion rate calculated in this manner that is in effect on the processing date or the most often by one rate in effect on the transaction date or the posting date.

Minimum Amount Due:

Each month you must pay a minimum amount due is the total of two amounts. The first is any previous amount that is past due plus any accrued interest of your credit line. The second is the greater of the amount of (1) one-half of finance charges or (2) the following:

(1) the New Balance on the billing statement if it is less than \$50, or

(2) \$20, if the New Balance is at least \$20 and not greater than \$500, or

(3) if the New Balance exceeds \$500, 1/10 of the New Balance (rounded down to the nearest dollar).

You must pay at least the minimum amount to the payment due date, but you may pay more at any time without a penalty. We will allocate payments to amounts owed on your account at our discretion. This includes, but is not limited to, applying payments to promotional balances, such as balances you transfer from other credit card issuers, before we apply such payment to your purchase or cash advance balances. If you pay more than the minimum, we will allocate the excess amount to the purchase or cash advance balance at our discretion. The sooner you pay the New Balance, the less you will pay in finance charges. We may also allow you to skip a payment if we do not notify you. If you choose to skip a payment when offered, we will continue to assess finance charges.

Payments:

We can accept late or partial payments, etc., as payments that offset "paid in full" or other disturbance end-of-month, without losing any of our rights under this Agreement. There may be, at the time of up to five days in crediting a payment if it is received at an address other than the address provided on the billing statement. You agree to pay or, in U.S. dollars drawn on funds on deposit in the United States, using a personal check, a similar instrument or automatic debit that will be processed and honored by your bank. We reserve the right to accept payments in any foreign currency. If we do, we will notify you of the currency conversion rate at our discretion.

Over-the-Credit-Line Fee:

We will add a \$20 fee to the purchase balance for each billing period in which the New Balance exceeds your credit line.

Late Fee:

We will add a \$20 fee to the purchase balance for each billing period in which the minimum payment by its due date is not made.

Over-the-Credit-Line Payment Fee:

We will add a \$20 fee to the purchase balance for each billing period in which the instrument is not honored when we must return it back to us. Credit card payments, or when an automatic debit is returned unpaid. At our option, we will assess a \$20 fee the first time your check or payment is not honored, even if it is honored upon resubmission.

Citibank Checks:

Citibank checks may be used to purchase goods and services or to obtain cash up to the amount of your available cash advance limit, unless that amount will cause the balance to exceed your credit line. We will treat Citibank checks as a cash advance and charge them against your cash advance limit. Each Citibank check must be in the form we have issued and must be used according to any instructions we give you. Citibank checks may be used only by the person whose name is printed on them. Citibank checks may not be used to pay any amount owed to us under this or any other Citibank Card Agreement. We will not certify any Citibank checks, nor will we return paid Citibank checks.

Returned Citibank Check Fee:

We will add a \$25 fee to the cash advance balance if we decline to honor a Citibank check. We may decline to honor a Citibank check if, for example, the amount of the check would cause the account to exceed your cash advance limit or credit line, if you default, if you did not comply with our instructions regarding the check, if your account has been closed, or if the card has expired.

Stop Payment Fee:

We will add a \$25 fee to the cash advance balance when payment of a Citibank check is stopped at your request. You may stop payment on a Citibank check by notifying us in writing at P.O. Box 5500, Sioux Falls, South Dakota 57117 or by calling us at the telephone number listed on the billing statement. If you call, you must confirm the call in writing within 14 days. A written stop payment order will remain in effect for six months unless renewed in writing.

Once a charge is made through the use of the card or account number we cannot "stop payment" on the charge. If there is a dispute involving a charge on your account, please refer to the section entitled "What To Do If There's An Error In Your Bill".

Lost or Stolen Cards, Account Numbers or Citibank Checks:

If any card, account number or Citibank check is lost or stolen or if you think someone used or may use them without your permission, notify us at once by calling the telephone number shown on the billing statement or the number printed in calling collect or local Directory Assistance. We may require you to provide certain information in writing to help us find out what happened. Don't use the card or the Citibank checks after we've been notified, even if they are found or returned. You may be liable for unauthorized use of the card, but not for more than \$50. You won't be liable for unauthorized purchases or cash advances made after we've been notified of the loss or the theft; however you must identify for us the charges on the billing statement that were not made by you or someone authorized by you, and from which you received no benefit.

Default:

You default under this Agreement if you fail to pay the minimum payment listed on each billing statement when due, fail to make a payment to any other creditor when due, file for bankruptcy, exceed your credit line without permission, cash on a check or similar instrument that is not honored or that we must return because it cannot be cashed, or on automatic debit that we must return unpaid, or default on any other Citibank Card Agreement. If you default, we may close your account and demand immediate payment of the full balance. If you have given us a security interest in a certificate of deposit, or a savings account, we may use the deposit amount to pay any amount you owe.

Preatuthorized Charges:

If you default, if the cash is lost or stolen, or we change your account or account number for any reason, we may suspend automatic charges on that account to third-party vendors for insurance premiums or other goods or services. If preauthorized charges are suspended, you must contact the third-party vendor to reinstate them. You are responsible for making direct payment for such charges until you reinstate automatic charges.

Collection Costs:

If we enter collection of your account to a lawyer who is not our salaried employee, you will have to pay our attorney's fee plus court costs or any other fees, to the extent permitted by law. If we sue to collect and you win, we will pay your reasonable legal fees and court costs.

Customer Privacy:

We will safeguard, according to strict standards of security and confidentiality, any information you share with us. We will limit the collection and use of any such information to the minimum we require in order to deliver you superior service, which includes advising you about our products, services, and other opportunities, and to administer our business. We will permit only authorized employees, who are trained in the proper handling of customer information, to have access to your information. Whenever we hire other organizations to provide support services, we will require them to conform to our privacy standards and to allow us to audit them for compliance. We will always maintain control over the confidentiality of your information. We will, however, facilitate relevant marketing and promotional offers from reputable companies that meet your needs. These companies are not permitted to retain any of your information unless you have specifically expressed interest in their products or services. If you do not want to receive these offers, write or call us at the address or telephone number listed on the billing statement. Be sure to include your name, address, and account number. We will remind you at least once each year of your right to be excluded from these offers.

We may report your performance under this Agreement to credit reporting agencies, including your failure to make minimum payments on time. If you request additional cards on your account for others, you understand that we may report account information in your name as well as in the names of those other people. We may also obtain follow-up credit reports on you (for example, when we review your account for a credit line increase). If you wish to know the names of the agencies we have contacted, write us at the address listed on the billing statement. We will try to notify you by telephone or by mail of any legal process served on us in order to give you an opportunity to object to it, unless the law prohibits the notice.

Except as set forth in this Agreement and except for reports to credit reporting and collection agencies, information we are permitted to share with Citibank affiliates, and information we share in connection with collection of your account, no one else will be given information about your account without your knowledge, authorization or proper legal authority.

Sharing Customer Information Among Citibank Affiliates:

To alert you to special offers and provide you with products and services that are tailored specifically to you, Citibank affiliates share information about you on a confidential basis.

Citibank affiliates are permitted by law to share any information about their

transactions or experiences with you other information you provide to us, or that we obtain from third parties (for example, credit bureaus), will not be shared if you notify us that you do not want such information shared among Citibank affiliates.

You may notify us in writing of your instruction at any time. Please attach your name and address (as it appears on your account statement), along with your account type, account number and Social Security number for addition. Processing Center, at CR 3170, South Hackensack, NJ 07606. We ask that you mail your instruction in a stamped envelope that does not include any other correspondence. If you have already told us that you do not want such other information shared, it was effective immediately. You do not need to notify us again.

If you are also a customer of other Citigroup companies (such as Connecticut Credit, Traveler's Property Casualty, Travelers Life & Casualty, Sabina, Smith Barney and Prudential Financial Services) and you receive a notice of their intent to share certain information about you with Citibank affiliates, you will need to separately notify them if you do not want such information shared.

Telephone Monitoring and Recording:

From time to time we may monitor and record your telephone calls, regarding your account with us to assure the quality of our service.

Correcting Your Credit Report:

If you think we reported erroneous information in a credit report filed against you at the address listed on the billing statement, we will promptly investigate the matter and if our investigation shows you are right, we will contact each credit reporting agency to whom we reported and will request they correct their report. If we disagree with you after our investigation, we will tell you in writing or by telephone and inform you how to obtain a statement of your position from those agencies. Your statement will become a part of your credit record with them.

Closing Your Account:

You may close your account at any time by notifying us in writing. We ask that you retain responsible to pay the balance according to the terms of this Agreement. We may close your account or suspend your account (but charges at any time without prior notice. We may also terminate a different card on account number at any time. You must return the card to us upon request under this Agreement.

Refusal of the Card:

We are not responsible if a purchase or cash advance on your account is not approved, either by us or by a third party, even if you have sufficient credit available. We may limit the number of purchases or cash advances which may be approved in one day. If we detect unusual or suspicious activity on your account, we may temporarily suspend your credit (subject to audit and review by a third party) until we can verify the activity. We may approve purchases or cash advances, which cause the balance to exceed your credit line without violating any of our rules under this Agreement.

Changing this Agreement:

We can change this Agreement, including all fees and the annual percentage rate, at any time. However, if the change will cause a fee, rate or minimum payment to increase, we will mail you written notice at least 15 days before the beginning of the billing period in which the change becomes effective. If you do not agree to the change, you must notify us in writing within 30 days after the effective date of the change and pay us the balance, either in one e

or under the terms of the unchanged agreement, otherwise, the change in the notice is binding on you unless we notify you otherwise, use of the card after the effective date of the change shall be deemed acceptance of the new terms, even if the 25 days have not expired.

Enforcing this Agreement:

We can delay in enforcing or fail to enforce any of our rights under this Agreement without losing them.

Assignment:

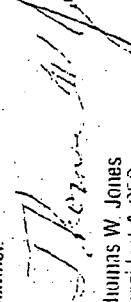
We reserve the right to assign any or all of our rights and obligations under this Agreement to a third party.

Applicable Law:

The terms and enforcement of this Agreement shall be governed by federal law and the law of South Dakota, where we are located.

For Further Information:

Call us at the telephone number shown on the front of the billing statement. You can also call toll-free or local Directory Assistance to get our telephone number.


Thomas W. Jones
President & CEO

©1999 Citibank (South Dakota), N.A.

What To Do If There's An Error In Your Bill.

Your Billing Rights. Keep This Notice For Future Use.

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us In Case of Errors or Questions About Your Bill.

If you think your billing statement is wrong, or if you need more information about a transaction on your billing statement, write to us (on a separate sheet) at the address shown on the front of your billing statement. Write to us as soon as possible. We must hear from you no later than 60 days after we send you the first billing statement on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information:

Your name and account number.

The dollar amount of the suspected error.

Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

Please sign your letter.

If you have authorized us to pay your credit card bill automatically from your savings or checking account you can stop the payment on any amount you think is wrong. To stop the payment you must tell us at least three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities Under the Better Business Bureau Notice.

We must acknowledge your letter within 30 days, unless on the contract of the error by then. Within 90 days, we must either correct the error or explain why we believe your billing statement was correct. After we receive your letter, we cannot try to collect any amount you question, or report your question as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your balance that are not in question.

If we find that we made a mistake on your billing statement, you will not have to pay any finance charges related to any questioned amount. If we don't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount in either case, we will send you a statement of the amount you owe and the date it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within 10 days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name and address of anyone to whom we report your account information. We must tell anyone we report you to that the matter has been settled if between us when it is finally settled.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your billing statement was correct.

Special Rule for Credit Card Purchases.

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current address, and

The purchase price must have been more than \$50. Those limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

BO 10/1/01 D
11/1/03/4/04 V 0.99

AFFIDAVIT

I, Patricia Cobb, Esquire, of Commonwealth Financial Systems, Inc., Plaintiff herein, verify that the statements of fact contained in the foregoing Complaint 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.

6-2-05
Date:

Patricia A. Cobb
PATRICIA COBB

Executive Vice President
120 North Keyser Avenue
Scranton, PA 18504

Apple & Apple File No. 103330

CFSI File No. 123664
Richard Males

FILED

JUN 20 2005

William A. Straw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS, :
INC., assignee of UNIFUND CCR PARTNERS, :
assignee of CITIBANK, :
Plaintiff : No. 05 - 875 C.D.
vs. : IN CIVIL ACTION
RICHARD MALES, :
Defendant : Type of Pleading: ANSWER, NEW
: MATTER AND COUNTERCLAIM
: Filed on Behalf of: RICHARD MALES,
: Defendant
: Counsel of Record for this Party:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
: GLEASON, CHERRY AND
: CHERRY, L.L.P.
: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801
: (814) 371-5800

FILED
010:38 AM 2005
AUG 16 2005
T. Cherry

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK,

Plaintiff : No. 05 - 875 C.D.

vs. : IN CIVIL ACTION

RICHARD MALES,

Defendant :

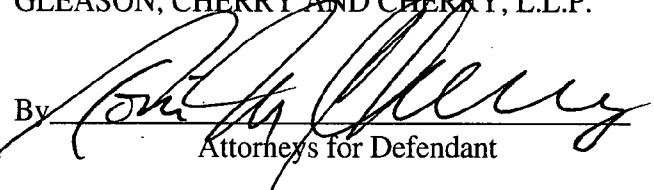
NOTICE TO PLEAD

To The Within Plaintiff:

YOU ARE HEREBY NOTIFIED TO
PLEAD TO THE WITHIN NEW
MATTER AND COUNTERCLAIM
WITHIN TWENTY (20) DAYS FROM
THE DATE OF SERVICE HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS, :
INC., assignee of UNIFUND CCR PARTNERS, :
assignee of CITIBANK, :
Plaintiff : No. 05 - 875 C.D.
vs. : IN CIVIL ACTION
RICHARD MALES, :
Defendant :
:

A N S W E R

AND NOW, comes the Defendant, RICHARD MALES, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and answers the Complaint filed by Plaintiff as follows:

1. ADMITTED.
2. ADMITTED.
3. DENIED as stated. Plaintiff's predecessor offered Defendant a credit card. It is DENIED that the terms and conditions for credit offered by Plaintiff's predecessor and accepted by Defendant are the same terms and conditions contained in Exhibit "A" attached to Plaintiff's Complaint.
4. DENIED as stated. In further answer thereto, Defendant incorporates herein by reference the averments set forth in Paragraph 3 of this Answer as if the same were set forth at length herein.

5. DENIED. Defendant made payments when due until March 28, 2001. Defendant made no payments after March 28, 2001, and no demand for further payments was ever made by Plaintiff thereafter until the filing of the instant Complaint on June 20, 2005, more than four years after Defendant made his last payment.

6. DENIED as after reasonable investigation, Defendant is without sufficient knowledge to attest to the truth or falsity of the averments set forth in Paragraph 6 of Plaintiff's Complaint. However, by way of further answer, Defendant denies that any acceleration of the balance due and owing can be enforced against Defendant as the Plaintiff's case is time-barred.

7. DENIED. Defendant does not owe a balance due of \$21,047.48 nor is any amount that Plaintiff claims is due is collectable from the Defendant because Plaintiff's action is time-barred.

8. DENIED. There is no interest due on any balance from January 26, 2005, nor can Plaintiff attempt to collect any interest on any balance that Plaintiff claims is due as Plaintiff's action is time-barred.

9. DENIED. Defendant has not agreed to pay to Plaintiff any liquidated damages nor costs of collection. On the contrary, Defendant avers that he owes no damages to Plaintiff and that Plaintiff's action is time-barred.

10. DENIED as stated. Defendant has made no payments to Plaintiff since March 28, 2001, and Plaintiff has made no demands for payment from Defendant since that date until the filing of the instant Complaint. Consequently, Plaintiff cannot now make demand for payment from Defendant.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed with prejudice.

NEW MATTER

11. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 10 inclusive in the foregoing Answer as if the same were set forth at length herein.

12. That on March 28, 2001, Defendant made a payment to the agent of Plaintiff's predecessor and/or assignor.

13. That the payment made on March 28, 2001, was the last payment that Defendant made on the credit card account for which Plaintiff now sues for collection.

14. That attached to Plaintiff's Complaint as Exhibit "B" is a computer record of Defendant's account and by Plaintiff's own records, the last payment date is April 25, 2001, more than four years prior to the filing by Plaintiff of its Complaint on June 20, 2005.

15. That Defendant took no steps after March 28, 2001, to reaffirm the credit card debt for which Plaintiff now seeks payment.

16. That no where in Plaintiff's Complaint does Plaintiff allege that Defendant ever reaffirmed his obligation to Plaintiff after March 28, 2001.

17. That Plaintiff alleges that Defendant's obligation is based on a written contract entered into on February 1, 1978 (see Exhibit "B").

18. That the applicable Pennsylvania Statute of Limitations, 42 Pa.Cons.Stat.Ann. §5525(a)(3), requires that suit on such a cause of action be commenced within four years of the date on which the cause of action accrued.

19. Plaintiff's cause of action accrued on April 25, 2001, according to Plaintiff's own records and Plaintiff's action was not commenced until June 20, 2005, which is beyond the applicable statutory period of limitation.

20. Plaintiff's action is accordingly barred by the applicable Statute of Limitation.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed with prejudice.

COUNTERCLAIM

21. Defendant incorporates herein by reference the averments contained in Paragraphs 11 through 20 inclusive in the foregoing New Matter as if the same were set forth at length herein.

22. That Plaintiff knew at the time of the filing of its Complaint on June 20, 2005, that its action against Defendant was time-barred as evidenced by the documentation attached thereto as Exhibit "B".

23. That Plaintiff's action in commencing this matter against Defendant when it knew that the Statute of Limitations had run was arbitrary, vexatious and in bad faith.

24. That Defendant has had to hire counsel and expend money in defending an action commenced by Plaintiff arbitrarily, vexatiously and in bad faith.

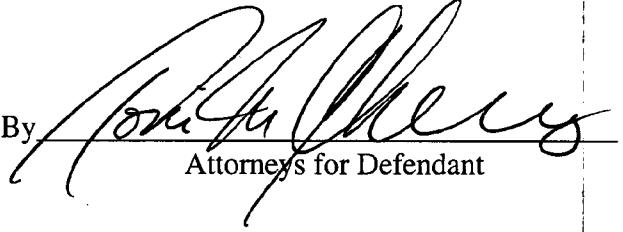
25. That Defendant is entitled to an award of counsel fees because the conduct of the Plaintiff in commencing this action against Defendant was arbitrary, vexatious and in bad faith under the provisions of 42 Pa. C.S.A. §2503(9).

WHEREFORE, Defendant demands judgment against Plaintiff in an amount equal to the attorney's fees that Defendant will have to expend in defending this action, together with interest and costs of suit.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By


John P. Cherry
Attorneys for Defendant

VERIFICATION

I, RICHARD MALES, Defendant, verify that the information provided in the foregoing Answer, New Matter and Counterclaim is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Richard Males
Richard Males

DATED: August 12, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

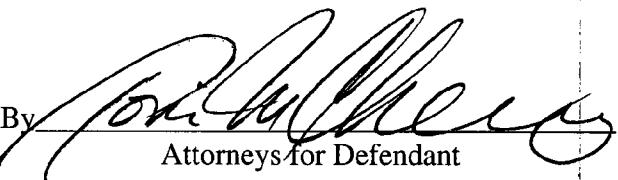
COMMONWEALTH FINANCIAL SYSTEMS, :
INC., assignee of UNIFUND CCR PARTNERS, :
assignee of CITIBANK, :
Plaintiff : No. 05 - 875 C.D.
vs. : IN CIVIL ACTION
RICHARD MALES, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2005, a true and correct copy of Defendant's Answer, New Matter and Counterclaim was served upon the following persons by mailing the same to them by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

JAMES R. APPLE, ESQ.
CHARLES F. BENNETT, ESQ.
JOEL E. HAUSMAN, ESQ.
Apple and Apple, P.C.
Attorneys at Law
4650 Baum Boulevard
Pittsburgh, PA 15213

GLEASON, CHERRY AND CHERRY, L.L.P.

By 
Attorneys for Defendant

Dated: August 15, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100572
NO: 05-875-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: COMMONWEALTH FINANCIAL SYSTEMS, INC.

vs.

DEFENDANT: RICHARD MALES

SHERIFF RETURN

NOW, July 08, 2005 AT 12:01 PM SERVED THE WITHIN COMPLAINT ON RICHARD MALES DEFENDANT AT 1433 TREASURE LAKE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RICHARD MALES, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN /

FILED
07/04/05
AUG 24 2005
CR

William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	APPLE	6576	10.00
SHERIFF HAWKINS	APPLE	6575	33.39

Sworn to Before Me This

So Answers,

____ Day of _____ 2005

*Chester A. Hawkins
by Marilyn Harris*
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK,

Plaintiff

: No. 05 - 875 C.D.

vs.

RICHARD MALES,

Defendant

: IN CIVIL ACTION

: Type of Pleading: TEN-DAY
DEFAULT NOTICE

: Filed on Behalf of: RICHARD MALES,
Defendant

: Counsel of Record for this Party:

: TONI M. CHERRY, ESQ.
Supreme Court No.: 30205

: GLEASON, CHERRY AND
CHERRY, L.L.P.
: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801
: (814) 371-5800

FILED

01205 LM
OCT 18 2005

cc AAA
T. Cherry
©

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK,

Plaintiff : No. 05 - 875 C.D.

vs. : IN CIVIL ACTION

RICHARD MALES,

Defendant

TO: COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK, Plaintiff
c/o James R. Apple, Esq.
Apple and Apple, P.C.
4650 Baum Boulevard
Pittsburgh, PA 15213-1237

Date of Notice: October 17, 2005

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 OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN 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.

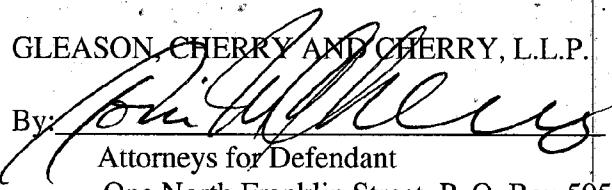
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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.

COURT ADMINISTRATOR
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

GLEASON, CHERRY AND CHERRY, L.L.P.

By:


Attorneys for Defendant

One North Franklin Street, P. O. Box 505
DuBois, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS, :
INC., assignee of UNIFUND CCR PARTNERS, :
assignee of CITIBANK, :
Plaintiff : No. 05 - 875 C.D.
vs. : IN CIVIL ACTION
RICHARD MALES, :
Defendant :
:

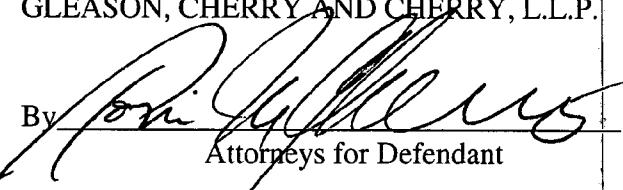
CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2005, a true and correct copy of the Ten-Day Default Notice was served upon Plaintiff, COMMONWEALTH FINANCIAL SYSTEMS, INC., assignee of UNIFUND CCR PARTNERS, assignee of CITIBANK, c/o of JAMES R. APPLE, ESQ., by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

COMMONWEALTH FINANCIAL SYSTEMS
INC., assignee of UNIFUND CCR PARTNERS
assignee of CITIBANK, Plaintiff
c/o James R. Apple, Esq.
Apple and Apple, P.C.
4650 Baum Boulevard
Pittsburgh, PA 15213-1237

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Ron Williams
Attorneys for Defendant

Dated: October 17, 2005

FILED

OCT 18 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK,

Plaintiff : No. 05 - 875 C.D.

vs.

RICHARD MALES,

Defendant

Type of Pleading: AMENDED
ANSWER AND AMENDED NEW
MATTER

Filed on Behalf of: RICHARD MALES,
Defendant

Counsel of Record for this Party:

TONI M. CHERRY, ESQ.
Supreme Court No.: 30205

GLEASON, CHERRY AND
CHERRY, L.L.P.
Attorneys at Law
P. O. Box 505
One North Franklin Street
DuBois, PA 15801

(814) 371-5800

FILED 2cc
01/11/09 BY Atty T. Cherry
OCT 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK,

Plaintiff : No. 05 - 875 C.D.

vs. : IN CIVIL ACTION

RICHARD MALES,

Defendant :

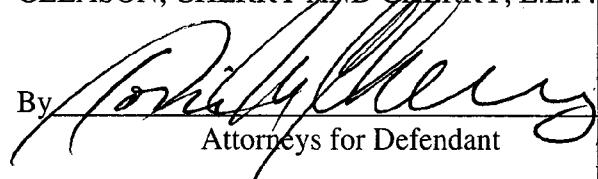
NOTICE TO PLEAD

To The Within Plaintiff:

YOU ARE HEREBY NOTIFIED TO
PLEAD TO THE WITHIN AMENDED
NEW MATTER WITHIN TWENTY (20)
DAYS FROM THE DATE OF SERVICE
HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS, :
INC., assignee of UNIFUND CCR PARTNERS, :
assignee of CITIBANK, :
Plaintiff : No. 05 - 875 C.D.
vs. : IN CIVIL ACTION
RICHARD MALES, :
Defendant :
:

AMENDED ANSWER

AND NOW, comes the Defendant, RICHARD MALES, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and answers the Complaint filed by Plaintiff as follows:

1. ADMITTED.
2. ADMITTED.
3. DENIED as stated. Plaintiff's predecessor offered Defendant a credit card. It is DENIED that the terms and conditions for credit offered by Plaintiff's predecessor and accepted by Defendant are the same terms and conditions contained in Exhibit "A" attached to Plaintiff's Complaint.
4. DENIED as stated. In further answer thereto, Defendant incorporates herein by reference the averments set forth in Paragraph 3 of this Answer as if the same were set forth at length herein.

5. DENIED. Defendant made payments when due until March 28, 2001. Defendant made no payments after March 28, 2001, and no demand for further payments was ever made by Plaintiff thereafter until the filing of the instant Complaint on June 20, 2005, more than four years after Defendant made his last payment.

6. DENIED as after reasonable investigation, Defendant is without sufficient knowledge to attest to the truth or falsity of the averments set forth in Paragraph 6 of Plaintiff's Complaint. However, by way of further answer, Defendant denies that any acceleration of the balance due and owing can be enforced against Defendant as the Plaintiff's case is time-barred.

7. DENIED. Defendant does not owe a balance due of \$21,047.48 nor is any amount that Plaintiff claims is due is collectable from the Defendant because Plaintiff's action is time-barred.

8. DENIED. There is no interest due on any balance from January 26, 2005, nor can Plaintiff attempt to collect any interest on any balance that Plaintiff claims is due as Plaintiff's action is time-barred.

9. DENIED. Defendant has not agreed to pay to Plaintiff any liquidated damages nor costs of collection. On the contrary, Defendant avers that he owes no damages to Plaintiff and that Plaintiff's action is time-barred.

10. DENIED as stated. Defendant has made no payments to Plaintiff since March 28, 2001, and Plaintiff has made no demands for payment from Defendant since that date until the filing of the instant Complaint. Consequently, Plaintiff cannot now make demand for payment from Defendant.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed

with prejudice.

AMENDED NEW MATTER

11. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 10 inclusive in the foregoing Amended Answer as if the same were set forth at length herein.
12. That on March 28, 2001, Defendant made a payment to the agent of Plaintiff's predecessor and/or assignor.
13. That the payment made on March 28, 2001, was the last payment that Defendant made on the credit card account for which Plaintiff now sues for collection.
14. That attached to Plaintiff's Complaint as Exhibit "B" is a computer record of Defendant's account and by Plaintiff's own records, the last payment date is April 25, 2001, more than four years prior to the filing by Plaintiff of its Complaint on June 20, 2005.
15. That Defendant took no steps after March 28, 2001, to reaffirm the credit card debt for which Plaintiff now seeks payment.
16. That no where in Plaintiff's Complaint does Plaintiff allege that Defendant ever reaffirmed his obligation to Plaintiff after March 28, 2001.
17. That Plaintiff alleges that Defendant's obligation is based on a written contract entered into on February 1, 1978 (see Exhibit "B").
18. That the applicable Pennsylvania Statute of Limitations, 42 Pa.Cons.Stat.Ann. §5525(a)(3), requires that suit on such a cause of action be commenced within four years of the date on which the cause of action accrued.

19. Plaintiff's cause of action accrued on April 25, 2001, according to Plaintiff's own records and Plaintiff's action was not commenced until June 20, 2005, which is beyond the applicable statutory period of limitation.

20. That Plaintiff knew at the time of the filing of its Complaint on June 20, 2005, that its action against Defendant was time-barred as evidenced by the documentation Plaintiff attached to the Complaint as Exhibit "B".

21. Plaintiff's action is accordingly barred by the applicable Statute of Limitation.

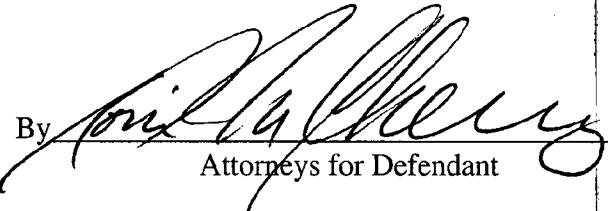
WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed with prejudice with costs assessed to Plaintiff.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

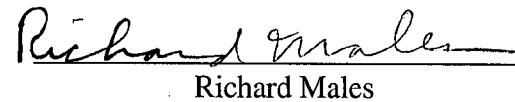
By

Attorneys for Defendant

A handwritten signature in black ink, appearing to read "April A. Cherry".

VERIFICATION

I, RICHARD MALES, Defendant, verify that the information provided in the foregoing Amended Answer and Amended New Matter is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Richard Males

DATED: October 27, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

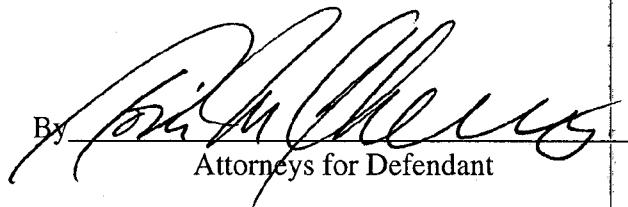
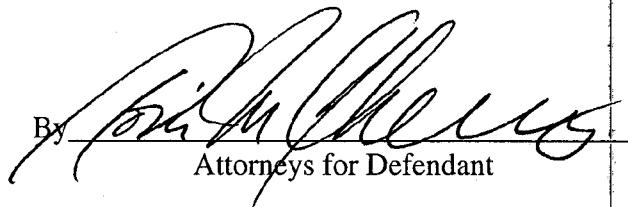
COMMONWEALTH FINANCIAL SYSTEMS, :
INC., assignee of UNIFUND CCR PARTNERS, :
assignee of CITIBANK, :
Plaintiff : No. 05 - 875 C.D.
vs. : IN CIVIL ACTION
RICHARD MALES, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2005, a true and correct copy of Defendant's Amended Answer and Amended New Matter was served upon the following persons by mailing the same to them by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

JAMES R. APPLE, ESQ.
CHARLES F. BENNETT, ESQ.
JOEL E. HAUSMAN, ESQ.
Apple and Apple, P.C.
Attorneys at Law
4650 Baum Boulevard
Pittsburgh, PA 15213

GLEASON, CHERRY AND CHERRY, L.L.P.


By 
Attorneys for Defendant

Dated: October 27, 2005

FILED

OCT 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK

NO. 2005-875-CD
IN CIVIL ACTION

Plaintiff(s)

-vs-

RICHARD MALES

Defendant(s)

PRELIMINARY
OBJECTIONS TO
DEFENDANT'S
COUNTERCLAIM

FILED ON BEHALF OF
PLAINTIFF

COUNSEL OF RECORD
FOR THIS PARTY:

James R. Apple, Esq.
PA I.D. No. 37942
Charles F. Bennett, Esq.
PA I.D. No. 30541
Joel E. Hausman, Esq.
PA I.D. No. 42096
APPLE AND APPLE, P.C.
Firm No. 719
4650 Baum Boulevard
Pittsburgh, PA 15213-1237
Telephone: 412-682-1466
Fax: 412-628-3138

FILED NO CC
m 11/42/05
NOV 14 2005 6K

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

**COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK**

**NO. 2005-875-CD
IN CIVIL ACTION**

Plaintiff(s)

-vs-

RICHARD MALES

Defendant(s)

PRELIMINARY OBJECTIONS

AND NOW, comes the Plaintiff, Commonwealth Financial Systems, Inc., assignee of Unifund CCR Partners, assignee of Citibank, by and through its attorney, Apple and Apple, P.C., and files the following Preliminary Objections to Defendant's Counterclaim, and in the nature of a Motion To Strike:

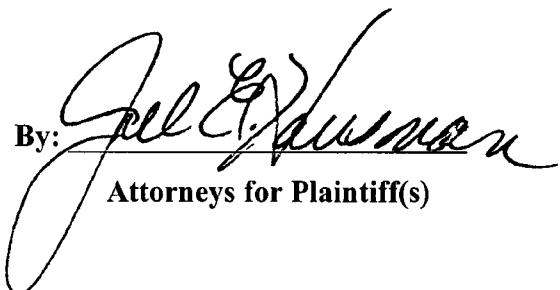
1. On June 20, 2005, Plaintiff instituted an action to recover a certain consumer debt alleged to be owed by the Defendant.
2. On or about August 16, 2005, Defendant filed an Answer containing a Counterclaim.
3. That Defendant's counterclaim purports to assert a claim for counsel fees for pursuant to 42 Pa.C.S.A. §2503(9).

4. The courts of Pennsylvania have held that it is improper to present a claim for counsel fees pursuant to 42 Pa.C.S.A. §2503 as an affirmative claim in a case prior to the disposition of the underlying action. (See: *Seghetti v. Heritage Resorts of Gettysburg*, 19 D & C. 4th 218 (1993); *Hanick v. Pennsylvania Power Co.*, 308 Pa.Super. 352, 454 A. 2d 572 (1982).

Wherefore, Plaintiff respectfully moves this Honorable Court to strike Defendant's Counterclaim for lack of conformity to law or rules of court.

Respectfully Submitted,
APPLE AND APPLE, P.C.

Dated: 25 Oct 05

By: 
Attorneys for Plaintiff(s)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK

NO. 2005-875-CD
IN CIVIL ACTION

Plaintiff(s)

-vs-

RICHARD MALES

Defendant(s)

CERTIFICATION OF SERVICE

I hereby certify that I am this day serving a true and correct copy of the attached or foregoing document upon the person and in the manner indicated below:

Service by first class mail, postage prepaid and addressed as follows:

Toni M. Cherry, Esquire
GLEASON CHERRY AND CHERRY LLP
p.o. Box 505
Dubois PA 15801-0505

Dated: 25 Oct 05

By: J. E. Hansen

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

**COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK**

**NO. 2005-875-CD
IN CIVIL ACTION**

Plaintiff(s)

-vs-

RICHARD MALES

Defendant(s)

ORDER OF COURT

**AND NOW, to-wit, this _____ day of _____, 2005, after
review and consideration, Plaintiff's Preliminary Objections to Defendant's
Counterclaim, said objections are sustained for lack of conformity to law or rules of
court.**

**It is therefore hereby ORDERED, ADJUDGED, and DECREED that Defendant's
Counterclaim be, and forthwith is stricken**

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK,

NO. 2005-875-CD
IN CIVIL ACTION

Plaintiff(s)

-vs-

RICHARD MALES

Defendant(s),

RECEIVED
NOV 14 2005
COURT ADMINISTRATORS
OFFICE

BRIEF IN SUPPORT
OF PRELIMINARY
OBJECTIONS

FILED ON BEHALF OF
PLAINTIFF

COUNSEL OF RECORD
FOR THIS PARTY:

James R. Apple, Esq.
PA I.D. No. 37942
Charles F. Bennett, Esq.
PA I.D. No. 30541
Joel E. Hausman, Esq.
PA I.D. No. 42096
Apple and Apple, P.C.
Firm No. 719
4650 Baum Boulevard
Pittsburgh, PA 15213
Telephone (412) 682-1466
Fax (412) 682-3138

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

**COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK**

**NO. 2005-875-CD
IN CIVIL ACTION**

Plaintiff(s)

-vs-

RICHARD MALES

Defendant(s)

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO COUNTERCLAIM

AND NOW, comes the Plaintiff, by and through its attorneys Apple and Apple, P.C., and Joel E. Hausman, Esquire and respectfully submits the following Brief in support of Plaintiff's Preliminary Objections to the Counterclaim of Defendants:

RELEVANT FACTS

In the case at bar, Plaintiff instituted an action in assumpsit against the Defendants for monies due pursuant to a credit agreement.

Defendant responded alleging an affirmative defense of the expiry of the applicable Statute of Limitations, and Defendant asserted a counterclaim for counsel fees pursuant to 42 Pa. C.S.A. §2503.

Plaintiff has responded to this Counterclaim by filing the foregoing Preliminary Objections.

ARGUMENT

The courts of this Commonwealth have consistently held that a claim for counsel fees is not an independent cause of action which may be affirmatively asserted in connection with an underlying cause of action. Instead, the courts have held that a claim for such fees is a supplemental proceeding initiated by Petition once a final disposition of the underlying cause of action has occurred. *Hanick v. Pennsylvania Power Co.*, 308 Pa.Super. 352, 454 A. 2d 572 (1982); *Sghetti v. Heritage Resorts of Gettysburg*, 19 D & C. 4th 218 (1993).

Accordingly, Plaintiff would respectfully submit that Defendant's Counterclaim lacks conformity to law, and is subject to being stricken, in its entirety, pursuant to Pa. P.C.P. No. 1028.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully moves this Honorable Court to sustain its Preliminary Objections to Defendant's Counterclaim, without leave to amend, for lack of conformity to law.

Respectfully Submitted,

APPLE AND APPLE, P.C.

By:

Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK

NO. 2005-875-CD
IN CIVIL ACTION

Plaintiff(s)

-vs-

RICHARD MALES

Defendant(s)

CERTIFICATION OF SERVICE

I hereby certify that I am this day serving a true and correct copy of the attached or foregoing document upon the person and in the manner indicated below:

Service by first class mail, postage prepaid and addressed as follows:

Toni M. Cherry, Esquire
GLEASON CHERRY AND CHERRY LLP
P.O. Box 505
Dubois PA 15801-0505

Dated: 25 Oct 05

By: Toni M. Cherry

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK,

NO. 2005-875-CD
IN CIVIL ACTION

Plaintiff(s)

-vs-

RICHARD MALES,

Defendant(s)

PRAECIPE TO DISCONTINUE
WITHOUT PREJUDICE

CODE-
FILED ON BEHALF OF
PLAINTIFF

COUNSEL OF RECORD
OF THIS PARTY:

James R. Apple, Esq.
PA I.D. No. 37942
Charles F. Bennett, Esq.
PA I.D. No. 30541
Joel E. Hausman, Esq.
PA I.D. No. 42096
APPLE AND APPLE, P.C.
Firm No. 719
4650 Baum Boulevard
Pittsburgh, PA 15213-1237
Telephone: 412-682-1466
Fax: 412-628-3138

FILED *pro se* *attm*
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to Party
Copy to C/A

William A. Shaw
Prothonotary *W.A.S.*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK,

NO. 2005-875-CD
IN CIVIL ACTION

Plaintiff(s)

-vs-

RICHARD MALES,

Defendant(s)

PRAECIPE TO DISCONTINUE
WITHOUT PREJUDICE

TO THE PROTHONOTARY

SIR:

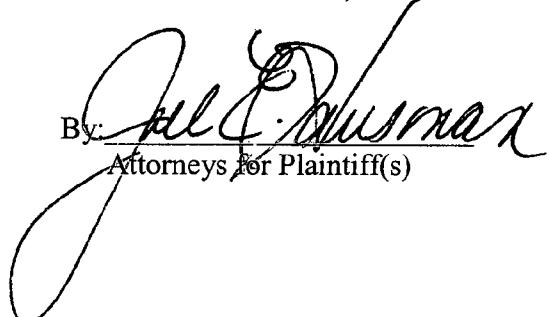
Kindly discontinue without prejudice the above-captioned matter upon the records
of the Court.

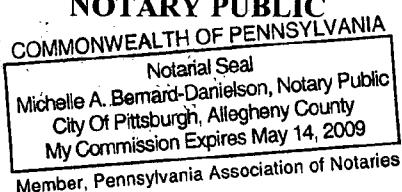
SWORN TO AND SUBSCRIBED
BEFORE ME THIS 15th DAY OF

November, 2005

APPLE AND APPLE, P.C.

By:


Jill E. Blumman
Attorneys for Plaintiff(s)



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

COMMONWEALTH FINANCIAL SYSTEMS,
INC., assignee of UNIFUND CCR PARTNERS,
assignee of CITIBANK,

NO. 2005-875-CD
IN CIVIL ACTION

Plaintiff(s)

-vs-

RICHARD MALES,

Defendant(s)

CERTIFICATION OF SERVICE

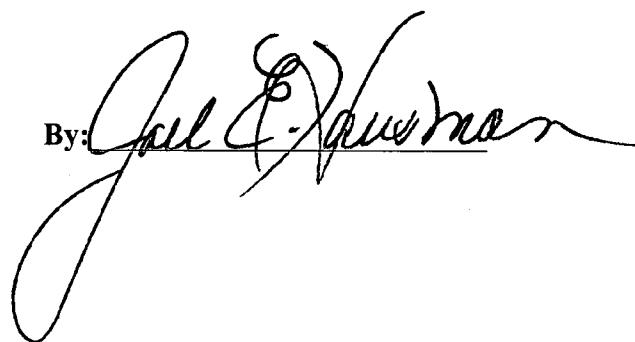
I hereby certify that I am this day serving a true and correct copy of the attached or foregoing document upon the person(s) and in the manner indicated below:

Service by first class mail, postage prepaid and addressed as follows:

**Toni M. Cherry, Esquire
GLEASON, CHERRY & CHERRY, LLP
P.O. Box 505
DuBois, PA 15801-0505**

Dated: 15/02/15

By:



FILED

NOV 17 2005

William A. Shaw
Prothonotary

APPLE and APPLE P.C.

4650 BAUM BOULEVARD – PITTSBURGH, PA 15213-1237

Attorneys at Law

Licensed to practice in Pennsylvania only
MARVIN J. APPLE, RETIRED
JAMES R. APPLE

Tel: 412-682-1466
Toll Free: 800-477-2775
Fax: 412-682-3138

CHARLES F. BENNETT
JOEL E. HAUSMAN

November 15, 2005

**Prothonotary, Clearfield County
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830**

**Re: Commonwealth Financial Systems,
Inc./Citibank
vs: Richard Males
AAfile: 103330
Docket No: 2005-875-CD**

Dear Sir/Madam:

Enclosed for filing please find Plaintiff's Praeclipe to Discontinue the above-captioned matter.

Upon your receipt of this item, please time stamp the additional cover-page provided and return the same in the enclosed self-addressed, stamped envelope so that we may have a record of your receipt of this document.

Thank you for your assistance and cooperation in this matter. If you have any questions, or if there is any problem with the enclosed filing, please contact our office as promptly as possible.

Very truly yours:

APPLE AND APPLE, P.C.

Joel E. Hausman
Joel E. Hausman, Esquire

JEH/lsl

Enclosure

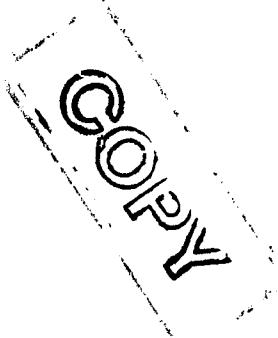
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**Commonwealth Financial Systems, Inc.,
assignee of Unifund CCR Partners, assignee
of Citibank**

Vs.
Richard Males

No. 2005-00875-CD



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 November 17, 2005, marked:

Discontinued without prejudice

Record costs in the sum of \$85.00 have been paid in full by James R. Apple Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 17th day of November A.D. 2005.

William A. Shaw, Prothonotary