

07-608-CD
Bureaus Inv. Vs A. Cummings

Bureaus Invest et al vs Chase Manhatten
2007-608-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

BUREAUS INVESTMENT GROUP NO 2 LLC,
assignee of CHASE MANHATTAN BANK USA,

NO. 07-608-CD
IN CIVIL ACTION

Plaintiff(s),

-vs-

ALEXA L. CUMMINGS,

Defendant(s).

COMPLAINT

CODE-
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

FILED
3/2/07
APR 19 2007
Atty. fd. 85.00
WAS

William A. Shaw
Prothonotary/Clerk of Courts

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

**BUREAUS INVESTMENT GROUP NO 2 LLC,
assignee of CHASE MANHATTAN BANK USA,**

**NO.
IN CIVIL ACTION**

Plaintiff(s),

-vs-

ALEXA L. CUMMINGS,

Defendant(s).

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 1717 Central Street, Evanston, IL 60204 and as the assignee of Chase Manhattan Bank USA, stands in its assignor's stead, and all are hereinafter referred to interchangeably as "Plaintiff".
2. Defendant is an individual whose address is 710 Stronach Road, Grampian, Clearfield County, Pennsylvania 16838.
3. The Plaintiff avers that the agreement between the parties was based upon a written agreement which the Defendant accepted by using credit card or loan to make purchases and/or cash advances.
4. Thereafter, in breach of obligations under the Agreement, the Defendant failed to make payments as they became due.
5. 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.
6. Plaintiff avers that the balance due amounts to \$7,409.45, as is more specifically shown by Plaintiff's Statement of Account, a true and correct copy of which is attached hereto, marked Exhibit "A" and made a part hereof.
7. Plaintiff avers that the interest has accrued at the rate of 20% per annum on the balance due from July 11, 2006.
8. 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 20% of the balance due.

9. 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 \$7,409.45, with appropriate additional interest from July 11, 2006, plus attorneys' fees and costs.

APPLE AND APPLE, P.C.

By: 

Attorneys for Plaintiff(s)

Client: BUREAUS INVESTMENT GROUP NO 2 LLC
Assignee of CHASE VISA / MASTERCARD
1717 Central Street
Evanston, IL 60201

7/10/2006
ALEXA L CUMMINGS
710 STRONACH RD
GRAMPIAN, PA 16838

STATEMENT OF ACCOUNT

Original Account Number: 5183377600027072
Account Number: 413043521

New Balance \$7,409.45	Payment Due Date 7/10/2006	Statement Closing Date 7/10/2006
Total Credit Line \$0	Total Available Line \$0	Cash Access Line \$0

Your account is seriously past due, and the full balance is due immediately.

Here is your Account Summary:

Previous Balance (-) Payment & Credits (+) Purchases, Cash, Debits (+) FINANCE CHARGES (=) New Balance	\$5,151.24 (\$150.00) 0.00 \$2,408.21 \$7,409.45
--	--

@ 20.00% Per Annum

Minimum Payment Due \$7,409.45

Your charges and credits at a glance:

TRAN DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTION	CREDITS	CHARGES

Send Payments to: The Bureaus Inc PO Box 809323 Chicago IL 606809323
Write your account number on your check or money order. Never send cash. See reverse side for other payment instructions.

EXHIBIT A

106216

AFFIDAVIT

I MICHAEL SLOTKY, of
Bureaus Investment Group No. 2, LLC, 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. § 4909, relating to unsworn falsification to authorities.

8-15-06

Date

Affiant

PARTNER

Title

1717 Central St.

Address

EVANSTON, IL
60201

City, State and Zip

Re: Alexa L. Cummings

(413043521)

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Bureau's Investment Group LLC
(Plaintiff)

CIVIL ACTION

(Street Address)

(City, State ZIP)

No. 07-6008-C

Type of Case: _____

Type of Pleading: _____

vs.

Filed on Behalf of:

Alexa L. Cummings
(Defendant)

(Plaintiff/Defendant)

672 Stronach Road
(Street Address)

Grampian, PA 16838
(City, State ZIP)

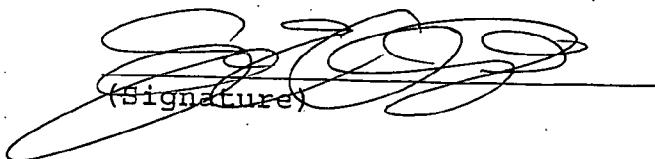
Eric E. Cummings
(Filed by)

710 Stronach Road, Grampian PA 16838
(Address)

(814) 574-1427
(Phone)

FILED ^{NO}
05/22/2007
MAY 22 2007 (6K)

William A. Shaw
Prothonotary/Clerk of Courts


(Signature)

Attention: James R. Apple, Esquire and Donna Kent

April 25, 2007

Dear Attorney Apple,

I am responding in writing to address the letter which I was served in regard to the case of Bureaus Investment Group LLC, assignee of Chase Manhattan Bank USA vs. Alexa L. Cummings: Civil Action No. 07-608-CD.

It is currently my intention to resolve this matter in good faith, as quickly as possible.

The following information is a recount of the events as they unfolded, to the best of my recollection and documentation, concerning this matter. I received this credit card and incurred an indebtedness of approximately \$4,000.00. Successful and prompt payments were made towards the balance for approximately a year. Upon initial default, I received no official notice via mail or phone, as to the immediate status of the current balance due.

The first notice that I received of chase Manhattan's intention of immediate collection of the total balance due was via phone call by co-plaintiff Bureaus. The occurrences which followed were numerous and frequent. The calls were made to a business line by a man seemingly named John White, as an employee of the assignee proceeded to harass, insult, degrade and cause great emotional distress to my family, by business and to myself.

Regardless of the employee's actions, I, in good faith, attempted numerous times during the initial conversation to offer any means necessary to reach a reasonable payment plan. Despite my best efforts, the employee persisted in taking the above actions, as opposed to working with my offers. The previously mentioned calls persisted for approximately five months, everyday and at unreasonable hours. At this point, feeling hopelessness and regards to the Bureau's negotiating of my offers to set up a payment plan, I did not know what to do. Upon the phone calls ceasing, I was at no time notified via mail or telephone as to outstanding interest accrual which is currently being requested due.

I allege that neither the assignee or assignor properly mitigated the claimed interest damages. This allegation is furthered by noting the amount of time between either plaintiff's reasonable attempts to collect pursuant to a payment plan and the filing of this action.

I respectfully submit to any reasonable offers from your clients, in hopes of concluding this matter promptly. Please do not hesitate to contact me personally, at (814) 236-4611, as I am

not represented by counsel. Thank you for your prompt attention to this matter, I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Cummings". The signature is fluid and cursive, with a large, stylized "A" at the beginning.

Alexa L. Cummings

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102708
NO: 07-608-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: BUREAUS INVESTMENT GROUP NO 2 LLC, ASSIGNEE
vs.
DEFENDANT: ALEXA L CUMMINGS

SHERIFF RETURN

NOW, April 23, 2007 AT 9:38 AM SERVED THE WITHIN COMPLAINT ON ALEXA L CUMMINGS DEFENDANT AT 710 STRONACH RD, GRAMPIAN, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ALEXA L CUMMINGS, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	APPLE	14648	10.00
SHERIFF HAWKINS	APPLE	14648	29.64

FILED No cc.
0/11/40cm
SEP 26 2007
LSM

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

So Answers,

____ Day of _____ 2007

Chester A. Hawkins
by Marilyn Hamps
Chester A. Hawkins
Sheriff

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

BUREAU INVESTMENT GROUP NO. 2 *
LLC, assignee of CHASE MANHATTAN *
BANK, U.S.A., *

Plaintiff *

*

Docket No. 07-608-CD

v.

*

*

*

ALEXA L. CUMMINGS,
Defendant *

Type of Pleading:
PRELIMINARY OBJECTIONS
OF DEFENDANT

Filed on Behalf of:
Defendant:
ALEXA L. CUMMINGS

Counsel of Record for
This Party:

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

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

FILED
01/31/07 300
OCT 04 2007
Att'y Koerber
(6)

William A. Shaw
Prothonotary/Clerk of Courts

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

PRELIMINARY OBJECTIONS OF DEFENDANT

COMES NOW, Alexa L. Cummings, referred to hereinafter "Defendant", by and through her attorney, Dwight L. Koerber, Jr., Esquire, and files the within Preliminary Objections. These Preliminary Objections are directed to the Complaint filed on April 19, 2007 and the ensuing ten (10) day default notice served September 28, 2007.

I.

LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER)

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

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

(a) Plaintiff has failed to set forth a copy of the signed contract or

signed credit card application so as to demonstrate that there is in fact a contractual obligation on the part of Defendant to pay the indebtedness that is asserted.

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

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

(3) The failure to include the documents identified in paragraph 2 (a)(b) and (c) above constitute a material deficiency in the Complaint. See Atlantic Credit and Finance, Inc., Appellee v. Carmen L. Guilliana and Patricia Wilson a/k/a Patricia A. Maurizo. Appellants, 2003 Pa. Super 259,829 A.2d 340; 2003 Pa. Super Lexis 2068. (2003), attached hereto as Exhibit A. This case is highly relevant to the circumstances here, as the Court was dealing with a similar collection action and ruled that Preliminary Objections would be sustained, based upon the following reasoning:

[*P13] "We find that the failure to attach the writings which assertedly established appellee's right to a judgment against the appellants in the amount of \$17,496.27, based on an alleged debt that it allegedly purchased for substantial less than \$9, 644.66, is fatal to the claims set forth in appellee's complaint. Thus, the preliminary objection of appellants based on the failure to produce a cardholder agreement and statement of account, as well evidence of the assignment, establishes a meritorious defense. (Page 6 of attached decision).

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

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

II.
FAILURE TO PLEAD IN CONFORMITY WITH LAW

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

(6) Plaintiff has failed to comply with the requirements of the Pennsylvania Rules of Civil Procedure, in particular the requirements of Rule 1019(h)(i) which require that when a claim is based upon an agreement, that a copy of the agreement must be identified as being a written agreement or oral agreement.

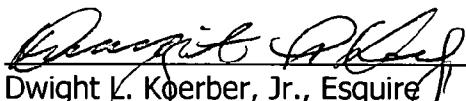
(7) Pa.R.C.P. 1019(i) requires that a copy of the agreement, if it is in writing, must be attached.

(8) As established through the Complaint filed on April 19, 2007, and in accordance with the legal standards set forth in the Atlantic Credit decision of the Superior Court, the documentation pertaining to a credit card application, statement of account and assignment must be evidenced by a written document.

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

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

Respectfully submitted,



Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Alexa L. Cummings

EXHIBIT A

Attached hereto as Exhibit A is a copy of case law pertaining to Atlantic Credit and Finance, Inc., Appellee v. Carmen L. Guilliana and Particia Wilson, a/k/a Patricia A. Maurizo, Appellants, 2003 Pa. Super 259. 829 A.2d 340; 2003 Pa. Super Lexis 2068. (2003).

EXHIBIT A

Attached hereto as Exhibit A is a copy of case law pertaining to Atlantic Credit and Finance, Inc., Appellee v. Carmen L. Guilliana and Particia Wilson, a/k/a Patricia A. Maurizo, Appellants, 2003 Pa. Super 259, 829 A.2d 340; 2003 Pa. Super Lexis 2068. (2003).

Service: Get by LEXSEE®
Citation: 2003 PA Super 259

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

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

No. 1734 MDA 2002

SUPERIOR COURT OF PENNSYLVANIA

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

April 14, 2003, Submitted

July 11, 2003, Filed

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

PRIOR HISTORY:

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

DISPOSITION:

Order vacated and case remanded with directions.

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

Jeffrey S. Wilson, Philadelphia, for appellee.

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

OPINION BY: MCEWEN

OPINION

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

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

[*P2] Appellee filed a complaint on March 16, 2001, wherein it alleged, *inter alia*, that it was a Virginia corporation with an address of 4415 Pheasant Ridge Road, Suite 103, Roanoke, VA 24014. Appellee did not allege that it was registered to do business in Pennsylvania as required by 15 Pa.C.S. § 4141(a) n1, but claimed that appellants were indebted to "GM Card" "in accordance with the written contract" in the amount \$ 9,644.66, and owed that sum as well as (1) "interest due from [March 3, 2000] until [March 16, 2001] in the sum[***2] of \$

2,329.19", and (2) attorney fees "in accordance with the written contract, due from the date of attached [March 3, 2000] to the date of this suit in the sum of \$ 2,394.77." Appellee further alleged that it was "the purchaser of the account from The GM Card", but failed to attach either any contract or agreement between GM and appellants, or any contract or agreement between GM and itself, other than a single sheet which appears to be a monthly statement from GM Card addressed to appellants dated March 3, 2000, setting forth a new balance as of March 28, 2000, of \$ 9,644.66 based on an interest rate of 24.15% and monthly "over limit charge assessments" of \$ 29.00 and "late charge assessments" of \$ 29.00.

----- Footnotes ----- 1

Section 4141(a) requires registration of foreign corporations which are doing business in Pennsylvania. **See: American Housing Trust, III v. Jones**, 548 Pa. 311, 696 A.2d 1181 (1997); **Leswat Lighting Systems, Inc. v. Lehigh Valley Restaurant Group, Inc.**, 444 Pa. Super. 281, 663 A.2d 783 (Pa.Super. 1995). This section provides:

§ 4141. Penalty for doing business without certificate of authority

(a) Right to bring actions or proceedings suspended.--A nonqualified **foreign business corporation doing business in this Commonwealth** within the meaning of Subchapter B (relating to qualification) **shall not be permitted to maintain any action or proceeding in any court of this Commonwealth until the corporation has obtained a certificate of authority**. Nor, except as provided in subsection (b), shall any action or proceeding be maintained in any court of this Commonwealth by any successor or assignee of the corporation on any right, claim or demand arising out of the doing of business by the corporation in this Commonwealth until a certificate of authority has been obtained by the corporation or by a corporation that has acquired all or substantially all of its assets.¹⁵ Pa.C.S. § 4141(a) (emphasis supplied).

----- End Footnotes-----

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

[*P4] Appellee alleges that, pursuant to Pa.R.Civ.P. 237.1, it mailed a ten day default notice to appellants at the 615 Wyncroft Lane address on January 4, 2002, the twenty-first day after service of the complaint. Appellee, thirteen days thereafter on January 17, 2002, caused the prothonotary to enter judgment against appellants as follows:

"Real Debt" \$ 14,368.62 "Interest to 1/02" \$ 2,873.72 "Plus costs of" \$ 253.93 TOTAL \$ 17,496.27

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

----- Footnotes ----- 2

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

----- End Footnotes-----

[*4] [**P6] [**342]** While appellee has conceded that the petition was promptly filed, it contends that the trial court properly ruled that the judgment could not be opened and correctly found that appellants, because they relied on preliminary objections rather than a proposed answer, had failed to establish the meritorious defense which serves as a condition precedent to opening a judgment:

In general, a default judgment may be opened when three elements are established: the moving party must (1) promptly file a petition to open the default judgment, (2) show a meritorious defense, and (3) provide a reasonable excuse or explanation for its failure to file a responsive pleading. ***Allegheny Hydro No. 1***, 722 A.2d [189] at 191 [(Pa.Super. 1998)]. ***Penn-Delco School District v. Bell Atlantic-Pa., Inc.***, 1999 PA Super 317, 745 A.2d 14, 17 (Pa.Super. 1999), ***appeal denied***, 568 Pa. 665, 795 A.2d 978 (2000).

[*P7] The threshold issue for our consideration is whether appellants were obliged to file an answer to the complaint or whether preliminary objections were sufficient to join the issues presented therein. **[***5]** The Commonwealth Court, in ***Peters Township Sanitary Authority v. American Home and Land Development Co.***, 696 A.2d 899 (Pa.Cmwlth. 1997), ***appeal denied***, 550 Pa. 712, 705 A.2d 1312 (1997), in holding that preliminary objections rather than an answer may be attached to a petition to open a default judgment, observed:

Quail Run first argues that the trial court erred in strictly construing the term "answer" within the text of Rule 237.3, thereby rejecting the filing of a "pleading" in the nature of preliminary objections. According to Quail Run, a standard of liberality, not strictness, should be applied in ruling on a petition to open default judgment. **See** Pa.R.C.P. No. 126. Further, Quail Run contends that examination of the provisions of Rules 1037 and 237, and their respective Commentary Notes, reveals that the court should accept a "pleading" in the form of preliminary objections with regard to Rule 237.3. The Explanatory Comment regarding Rule 1037 states:

Rule 1037. Judgment Upon Default or Admission. Assessment of Damages.

Subdivision (b) of Rule 1037 provided for the entry of judgment**[***6]** upon praecipe resulting from a default or admission. The rule spoke of failure to file "an answer." This left unclear the effect of filing preliminary objections. This rule is changed to refer to "a pleading," a term which under Rule 1017(a) includes both an answer and preliminary objections. The filing of an answer or preliminary objections will clearly prevent the entry of a default judgment.

Pa.R.C.P. No. 1037 (Explanatory Comment--1994).

Quail Run contends that, if Rule 1037, regarding *prevention* of the entry of default judgment, allows for the filing of preliminary objections, it follows that, under Rule 237.3, regarding *relief* from the entry of default judgment, preliminary objections may also be properly filed. Quail Run notes that, although the language of Rule 237.3(b)(emphasis added) states that "the court shall open the judgment if the proposed *complaint* or *answer* states a meritorious **[**343]** cause of action or defense," the Explanatory Comment regarding subdivision (b) uses the more inclusive term "proposed pleading" and provides:

Subdivision (b) eases the burden of a party against whom judgment has been entered and who moves**[***7]** promptly for relief from that judgment. If the petitioner files a petition for relief from the judgment within ten days after entry of the judgment on the docket, the rule requires the court to open the judgment if the *proposed pleading* states a meritorious cause of action or defense .

Thus, Quail Run argues that preliminary objections, in addition to answers, are appropriate attachments to a petition to open, and the trial court erred by holding otherwise. We agree.

Based on our review of Rules 126, 237.3 and 1037, in conjunction with their associated Explanatory Notes, we conclude that Quail Run did not invalidate its Petition to Open by attaching preliminary objections, rather than a complaint or answer, to that Petition, and we believe that the trial court abused its discretion by finding that it did.

* * * *

In considering petitions to open default judgments, a court must determine whether there are equitable considerations which require that a defendant, against whom a default judgment has been entered, receive an opportunity to have the case decided on the merits. **Duckson v. Wee Wheelers, Inc.**, 423 Pa. Super. 251, 255, 620 A.2d 1206, 1208 (1993). [***8] Generally, default judgments are not favored. **Kennedy v. Black**, 492 Pa. 397, 402, 424 A.2d 1250, 1252 (1981). It has been stated in regard to default judgments that:

the purpose of the rules in authorizing the entry of default judgments is to prevent a dilatory defendant from impeding the plaintiff in establishing his claim. The rules are not primarily intended to provide the plaintiff with a means of gaining a judgment without the difficulties which arise from litigation .

Tronzo v. Equitable Gas Co., 269 Pa. Super. 392, 395-96, 410 A.2d 313, 315 (1979), quoting **Moyer v. Americana Mobile Homes, Inc.**, 244 Pa. Super. 441, 445, 368 A.2d 802, 804 (1976). **Peters Township Sanitary Authority v. American Home and Land Development Co.**, *supra*, 696 A.2d at 900-02 (emphasis supplied) (footnotes omitted). We agree with this well reasoned analysis and conclusion of our learned colleagues of the Commonwealth Court that preliminary objections, rather than an answer, may be attached to a petition to open and in that fashion establish a meritorious[***9] defense.

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

[*P9] Rule 1024 requires, *inter alia*:

Rule 1024. Verification.

(a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified. The signer need not aver the source of the information or expectation [**344] of ability to prove the averment or denial at the trial. A pleading may

be verified upon personal knowledge as to a part and upon information and belief as to the remainder.

(b).

(c) **The verification shall be made by one or more of the parties** filing [***10] the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, **the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party**. Pa.R.C.P. No. 1024 (a),(c) (emphasis supplied). The verification in the instant case did not conform to the requirements of Rule 1024 but rather provided:

VERIFICATION

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

[undecipherable signature] VERIFIER

DATE: 9/21/00

(emphasis supplied)

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

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

----- Footnotes ----- 3

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

642 n.3 (Pa.Super. 1994), **reversed**, 545 Pa. 115, 680 A.2d 845 (1996).

----- End Footnotes -----

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

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

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

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

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

Service: Get by LEXSEE®

Citation: 2003 PA Super 259

View: Full

Date/Time: Wednesday, October 3, 2007 - 10:47:34 AM EDT

[Products & Services](#) | [LexisNexis Bookstore](#) | [LexisNexis by Credit Card](#) | [Feedback](#) | [Sign Off](#) | [Help](#)
[About LexisNexis](#) | [Terms and Conditions](#) | [Support Identifier](#)

Copyright © 2004 LexisNexis, a division of Reed Elsevier, Inc. All rights reserved.

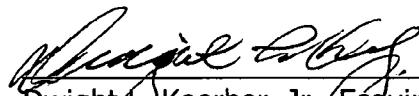
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

BUREAU INVESTMENT GROUP NO. 2 *
LLC, assignee of CHASE MANHATTAN *
BANK, U.S.A., *
Plaintiff *
*
* Docket No. 07-608-CD
v. *
*
*
*
*
*
ALEXA L. CUMMINGS, *
Defendant *

CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 2007, the undersigned served a certified copy of the Preliminary Objections of Defendant in the above-captioned matter upon counsel for the Plaintiff. Such document was served via United States First Class Mail upon the following:

Charles F. Bennett, Esquire
APPLE AND APPLE, P. C.
Firm No. 719
4650 Baum Boulevard
Pittsburgh, PA 15213



Dwight L. Koerber, Jr. Esquire
Attorney for Defendant: Alexa L. Cummings

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

BUREAU INVESTMENT GROUP NO. 2
LLC, assignee of CHASE MANHATTAN
BANK, U.S.A.,

Plaintiff

*

*

*

*

*

*

Docket No. 07-608-CD

v.

*

*

*

*

ALEXA L. CUMMINGS,
Defendant

*

*

Type of Pleading:
PRAECIPE TO ENTER APPEARANCE

Filed on Behalf of:

Defendant:

ALEXA L. CUMMINGS

Counsel of Record for
This Party:

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

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

FILED 30c
01/31/2007 Atty Koerber
OCT 04 2007
(68)

William A. Shaw
Prothonotary/Clerk of Courts

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

BUREAU INVESTMENT GROUP NO. 2 *
LLC, assignee of CHASE MANHATTAN *
BANK, U.S.A., *

Plaintiff *

*

*

*

Docket No. 07-608-CD

v.

*

*

*

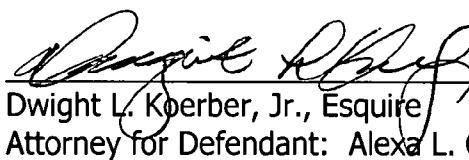
ALEXA L. CUMMINGS,
Defendant *

*

*

PRAECIPE TO ENTER APPEARANCE

Please enter my appearance on behalf of Alexa L. Cummings, Defendant in the
above referenced case.


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Alexa L. Cummings

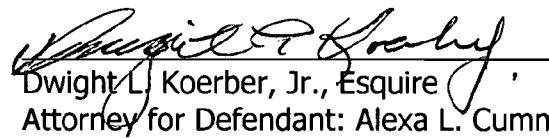
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

BUREAU INVESTMENT GROUP NO. 2 *
LLC, assignee of CHASE MANHATTAN *
BANK, U.S.A., *
Plaintiff *
*
* Docket No. 07-608-CD
v. *
*
*
*
ALEXA L. CUMMINGS, *
Defendant *
*

CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 2007, the undersigned served a certified copy of the Praeclipe to Enter Appearance in the above-captioned matter upon counsel for the Plaintiff. Such document was served via United States First Class Mail upon the following:

Charles F. Bennett, Esquire
APPLE AND APPLE, P. C.
Firm No. 719
4650 Baum Boulevard
Pittsburgh, PA 15213


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Alexa L. Cummings

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

BUREAU INVESTMENT GROUP NO. 2 *
LLC, assignee of CHASE MANHATTAN *
BANK, U.S.A., *

Plaintiff *

*

*

Docket No. 07-608-CD

v. *

*

*

ALEXA L. CUMMINGS, *
Defendant *

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:

Defendant:

ALEXA L. CUMMINGS

Counsel of Record for
This Party:

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

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

FILED 3cc
013-24794 Atty Koerber
OCT 09 2007
WAS

William A. Shaw
Prothonotary/Clerk of Courts

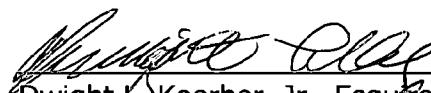
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

BUREAU INVESTMENT GROUP NO. 2 *
LLC, assignee of CHASE MANHATTAN *
BANK, U.S.A., *
Plaintiff *
*
* Docket No. 07-608-CD
v. *
*
*
*
ALEXA L. CUMMINGS, *
Defendant *
*

CERTIFICATE OF SERVICE

I certify that on the 9th day of October, 2007, the undersigned served a certified copy of the Order dated October 9, 2007 in the above-captioned matter upon counsel for the Plaintiff. Such document was served via United States First Class Mail upon the following:

Charles F. Bennett, Esquire
APPLE AND APPLE, P. C.
Firm No. 719
4650 Baum Boulevard
Pittsburgh, PA 15213



Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Alexa L. Cummings

FILED

OCT 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

OK

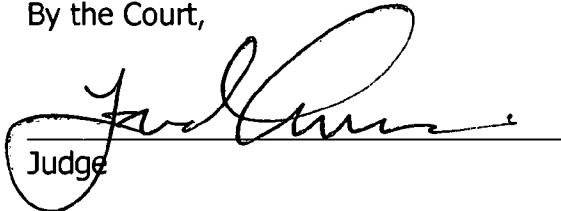
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

BUREAU INVESTMENT GROUP NO. 2 *
LLC, assignee of CHASE MANHATTAN *
BANK, U.S.A., *
Plaintiff *
* *
* * Docket No. 07-608-CD
v. *
* *
* *
* *
ALEXA L. CUMMINGS, *
Defendant *
*

ORDER

AND NOW, this 8 day of October, 2007 upon consideration of the
Preliminary Objections filed by Defendant, Alexa L. Cummings, it is the Order and Decree of
this Court that this matter shall be scheduled for Oral Argument before the Court on the
27th day of November, 2007 at 3:00 a.m./p.m. in Courtroom No.
1, at the Clearfield County Courthouse.

By the Court,



Judge

FILED 3ce
OCT 10 2007 Atty Kaerber
OCT 09 2007

William A. Shaw
Prothonotary/Clerk of Courts
GW

FILED

OCT 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/9/07

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

BUREAUS INVESTMENT GROUP NO 2 LLC,
assignee of CHASE MANHATTAN BANK USA,

NO.2007-00608CD
IN CIVIL ACTION

Plaintiff(s),

-vs-

ALEXA L. CUMMINGS,

Defendant(s).

PRAECIPE TO SETTLE AND
DISCONTINUE
WITH PREJUDICE

CODE-
FILED ON BEHALF OF
PLAINTIFF

COUNSEL OF RECORD
OF THIS PARTY:

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

3cc + 3 cop A
FILED 0/3/2007 of disc
0/3/2007 issued to
DEC 03 2007 Atty. Charles Bennett
Atty. Charles Bennett
By Atty Koerber
William A. Shaw
Prothonotary/Clerk of Courts
Copy to C/A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

BUREAUS INVESTMENT GROUP NO 2 LLC,
assignee of CHASE MANHATTAN BANK USA,

NO.2007-00608CD
IN CIVIL ACTION

Plaintiff(s),

-vs-

ALEXA L. CUMMINGS,

Defendant(s).

PRAECIPE TO SETTLE AND DISCONTINUE
WITH PREJUDICE

TO THE PROTHONOTARY

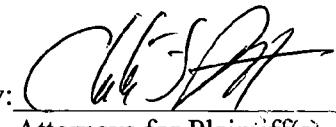
SIR:

Kindly mark this case settled and discontinued with prejudice upon the records of the Court.

SWORN TO AND SUBSCRIBED

APPLE AND APPLE, P.C.

BEFORE ME THIS 28th DAY OF

By: 
Attorneys for Plaintiff(s)

November, 2008

Mary Beth VanDergraft
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Mary Beth VanDergraft, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires July 20, 2010

Member, Pennsylvania Association of Notaries

FILED

DEC 03 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Bureaus Investment Group No 2 LLC
Chase Manhattan Bank USA

Vs.
Alexa L. Cummings

No. 2007-00608-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 December 4, 2007, marked:

Settled and discontinued with 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 3rd day of December A.D. 2007.

William A. Shaw *Wm*

William A. Shaw, Prothonotary