

Capital One vs Theodore Flick

07-736-CD

92344

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Capital One Bank
(Plaintiff)

CIVIL ACTION

c/o Apotheker & Associates, P.C.
2417 Welsh Road
Suite 21 #520
Philadelphia, PA 19114

(City, State ZIP)

No. 07-7360-CD

Type of Case: COMPLAINT

Type of Pleading: _____

VS.

Theodore R. Flick
(Defendant)

Filed on Behalf of:

Capital One Bank
(Plaintiff/Defendant) c/o

4334 S. Hersey Blvd.
(Street Address)
Coalport PA 16627-0120
(City, State ZIP)

Apotheker & Associates, P.C.
2417 Welsh Road
Suite 21 #520
Philadelphia, PA 19114

DAVID J. APOTHAKER, Esq.
(Filed by)

Apotheker & Associates, P.C.
2417 Welsh Road
(Address) Suite 21 #520
Philadelphia, PA 19114

215-634-8920
(Phone)

Q
(Signature)

FILED Atty pd. 85.00

MAY 13 2007
2007
MAY 09 2007
100 Sheriff

William A. Shaw
Prothonotary/Clerk of Courts

APOTHAKER & ASSOCIATES, P.C.

BY: David J. Apothaker, Esq.

Attorney I.D.#38423

2417 Welsh Road, Suite 21 #520

Philadelphia, PA 19114

(215) 634-8920

Attorneys for Plaintiff

CAPITAL ONE BANK
c/o Apothaker & Associates, P.C.
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114

Plaintiff,

vs.

THEODORE R FLICK
4334 S EVERLY BLVD
COALPORT, PA 16627-0120
Defendant.

) COURT OF COMMON PLEAS
) CLEARFIELD COUNTY
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) NO.:
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NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action with 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 ONE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

CLEARFIELD COUNTY BAR ASSOCIATION
Lawyer Referral and Information Service
814-765-2641

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o con un abogado y entregar a la corte en forma escrita sus objeciones a las demandas en contra de su persona. Se avisa que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

CLEARFIELD COUNTY BAR ASSOCIATION
Lawyer Referral and Information Service
814-765-2641

APOTHAKER & ASSOCIATES, P.C.

BY: David J. Apothaker, Esq.

Attorney I.D.#38423

2417 Welsh Road, Suite 21 #520

Philadelphia, PA 19114

(215) 634-8920

Attorneys for Plaintiff

CAPITAL ONE BANK

c/o Apothaker & Associates, P.C.

2417 Welsh Road, Suite 21 #520

Philadelphia, PA 19114

Plaintiff,

vs.

THEODORE R FLICK

4334 S EVERLY BLVD

COALPORT, PA 16627-0120

Defendant.

) COURT OF COMMON PLEAS

) CLEARFIELD COUNTY

)

) NO.:

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**CIVIL ACTION COMPLAINT
FIRST COUNT**

1. Plaintiff, CAPITAL ONE BANK, is a company with its principal place of business located at c/o Apothaker & Associates, P.C., 2417 Welsh Road, Suite 21 #520, Philadelphia, PA 19114.

2. Defendant is THEODORE R FLICK, an adult individual residing at 4334 S EVERLY BLVD COALPORT, PA 16627-0120.

3. At the special instance and request of Defendant, Plaintiff sold and delivered to Defendant goods and/or services at the times, of the kinds, in the quantities, and for the prices set forth in Plaintiff's records. A true and correct copy of which is attached hereto, incorporated herein by reference and designated Exhibit "A".

4. Defendant received and accepted the goods and/or services described in Exhibit "A".

5. The prices set forth in Exhibit "A" are the fair, reasonable and market prices for said goods and/or services, and the prices which Defendant agreed to pay.

6. All credits, if any, to which Defendant is entitled, are set forth in Exhibit "A".

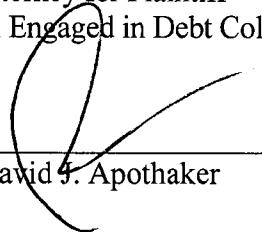
7. In addition, Plaintiff avers that Defendant has failed and continues to fail to make any payments, leaving a balance due and owing of \$5,728.76 from May 15, 2003.

8. Although demand has been made, Defendant has failed to make payment of the amount due as above.

WHEREFORE, Plaintiff demands judgment in favor of Plaintiff and against Defendant(s) for the sum of \$5,728.76 plus costs, and reasonable attorney's fees.

APOTHAKER & ASSOCIATES, P.C.
Attorney for Plaintiff
A Law Firm Engaged in Debt Collection

BY: _____


David J. Apothaker

Dated: 4/26/2007

Our File No.: 92344

VERIFICATION

Randy Faling, hereby states that I am Agent for plaintiff in this action, and that I am authorized to take this Verification, and that the statements made in the foregoing Civil Action Complaint are true and correct to the best of my knowledge, information, and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.



DATE:

CAPITAL ONE BANK
c/o Apothaker & Associates, P.C.
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114

THEODORE R FLICK
4334 S EVERLY BLVD
COALPORT, PA 16627-0120

STATEMENT OF ACCOUNT

Debtor's Name: THEODORE R FLICK

Account Number: 5291071306805621

Date of Debt: May 15, 2003

Balance Due: \$5,728.76

Our File No.: 92344

EXHIBIT "A"

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

CAPITAL ONE BANK
c/o Apotheker & Associates, P.C.
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114

Plaintiff

vs.

No. 07-736-CD

THEODORE R. FLICK
4334 S. Heverly Blvd.
Coalport, PA 16627

Defendant

CASE NUMBER: No. 07-736-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED
03-44-07
MAY 23 2007
3CC
Atty Gearhart

W.A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts
Sect

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

CAPITAL ONE BANK :
c/o Apotheker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
Philadelphia, PA 19114 :
Plaintiff :
vs. : No. 07-736-CD :
THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
Defendant :
:

CASE NUMBER: No. 07-736-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED 3CC
03:44:57 MAY 23 2007
Amy Gearhart

William A. Shaw
Prothonotary/Clerk of Courts
Shaw

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

CAPITAL ONE BANK
c/o Apotheker & Associates, P.C.
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114
Plaintiff

vs. : No. 07-736-CD

THEODORE R. FLICK
4334 S. Heverly Blvd.
Coalport, PA 16627
Defendant

DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

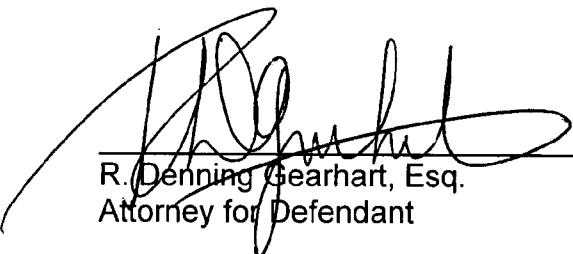
NOW COMES, the Defendant, Theodore R. Flick, by and through his Attorney, R. Denning Gearhart, Esquire, who files Preliminary Objections to Plaintiff's Complaint and respectfully avers as follows:

1. Plaintiff filed a Complaint in the Court of Common Pleas of Clearfield County, Pennsylvania, on or about May 9, 2007, alleging that Plaintiff furnished consumer credit to Defendant through a Capital One Bank account.
2. Plaintiff alleges that there is an unpaid balance on the credit card account of Five Thousand Seven Hundred Twenty-eight and 76/100 (\$5,728.76) Dollars.
3. Plaintiff attached one page of what is alleged to be a statement of the account. However, Plaintiff failed to attach a copy of the original agreement Plaintiff alleges that Defendant breached.
4. Plaintiff has failed to produce detailed statements of the account showing all purchases made on said account and how Plaintiff calculates the amount that is due.

5. Plaintiff fails to state what, if any, charges were made for interest, late fees, and other various charges which may or may not have been imposed by Plaintiff and the legal authority for such charges.

6. Plaintiff's Complaint is insufficient on its face and should be dismissed because Plaintiff failed to produce an original copy of the agreement and a detailed monthly statement of the account setting out purchases made and costs incurred so that Defendant is able to calculate the details leading to the conclusion of the Plaintiff and enter into a proper defense of the claims.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be stricken pursuant to Pennsylvania Rule of Civil Procedure 1028 on the grounds of legal insufficiency.



R. Denning Gearhart, Esq.
Attorney for Defendant

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

CAPITAL ONE BANK
c/o Apotheker & Associates, P.C.
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114
Plaintiff

vs. : No. 07-736-CD

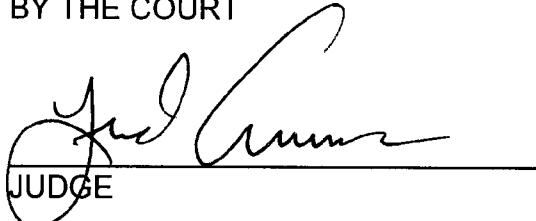
THEODORE R. FLICK
4334 S. Heverly Blvd.
Coalport, PA 16627



O R D E R

AND NOW, this 24 Day of May, 2007, upon
consideration of Defendant's Preliminary Objections to Plaintiff's Complaint filed in the
above captioned action, it is the ORDER of this Court that a hearing be scheduled for the
19th Day of June, 2007, at 10:00 O'clock A.M., in
Courtroom No. 1, of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT



JUDGE

FILED 3CC AKA
92:40 am Grahm
MAY 25 2007 (CR)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 07-736-CD

CAPITAL ONE BANK
Plaintiff

vs.

THEODORE R. FLICK,
Defendant

DEFENDANT'S PRELIMINARY OBJECT-
IONS TO PLAINTIFF'S COMPLAINT

FILED

MAY 23 2007

William A. Shaw
Prothonotary/Clerk of Courts

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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

CAPITAL ONE BANK
c/o Apotheker & Associates, P.C.
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114

Plaintiff

vs.

: No. 07-736-CD

THEODORE R. FLICK
4334 S. Heverly Blvd.
Coalport, PA 16627

Defendant

CASE NUMBER: No. 07-736-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: CERTIFICATE OF SERVICE

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED
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William A. Shaw
Prothonotary/Clerk of Courts

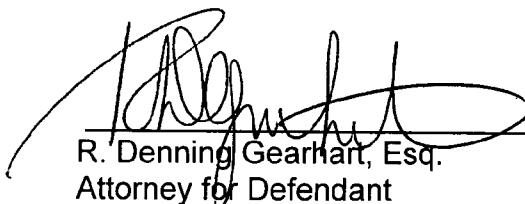
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CAPITAL ONE BANK :
c/o Apothaker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
Philadelphia, PA 19114 :
Plaintiff :
vs. : No. 07-736-CD
THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
Defendant :
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of Defendant's Preliminary Objections to Plaintiff's Complaint filed in the above matter on the Plaintiff through Plaintiff's attorney by depositing such documents in the United States Mail, first class, postage pre-paid and addressed as follows:

David J. Apothaker, Esq.
APOTHAKER ASSOCIATES, P.C.
2417 Welsh Road
Suite 21 #520
Philadelphia, PA 19114



R. Denning Gearhart, Esq.
Attorney for Defendant

Dated: May 29, 2007

APOTHAKER & ASSOCIATES, P.C.
BY: Kimberly F. Scian, Esq.
Attorney I.D.#55140
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114
(215) 634-8920
Attorneys for Plaintiff

CAPITAL ONE BANK
6851 JERICHO TURNPIKE STE 190
SYOSSET, NY 11791

Plaintiff,
vs.

THEODORE R FLICK
4334 S HEVERLY BLVD
COALPORT, PA 16627-0120
Defendant.

) COURT OF COMMON PLEAS
) CLEARFIELD COUNTY
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CLEARFIELD COUNTY BAR ASSOCIATION
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AVISO

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CLEARFIELD COUNTY BAR ASSOCIATION
Lawyer Referral and Information Service
814-765-2641

FILED
JUN 18 2009
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William A. Shaw
Prothonotary/Clerk of Courts
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APOTHAKER & ASSOCIATES, P.C.
BY: Kimberly F. Scian, Esq.
Attorney I.D.#55140
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114
(215) 634-8920
Attorneys for Plaintiff

CAPITAL ONE BANK
6851 JERICHO TURNPIKE STE 190
SYOSSET, NY 11791

Plaintiff,
vs.

THEODORE R FLICK
4334 S HEVERLY BLVD
COALPORT, PA 16627-0120
Defendant.

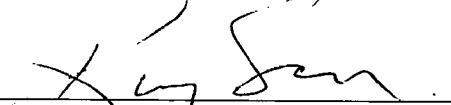
) COURT OF COMMON PLEAS
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**AMENDED COMPLAINT
FIRST COUNT**

1. Plaintiff, CAPITAL ONE BANK, is a company with its principal place of business located at 6851 JERICHO TURNPIKE STE 190, SYOSSET, NY 11791.
2. Defendant is THEODORE R FLICK, an adult individual residing at 4334 S HEVERLY BLVD COALPORT, PA 16627-0120.
3. Defendant applied for and received a credit card from account number 5291071306805621.
4. Defendant used the credit card, account number 5291071306805621, and as of April 27, 2007 there was an outstanding balance due and owing in the amount of \$5,728.76.
5. Plaintiff purchased this account and presently owns and holds this account.
6. When Plaintiff purchased this account there was an outstanding balance due and owing of \$5,728.76. Attached hereto as Exhibit "A" is the Credit Card Statement.

WHEREFORE, Plaintiff demands judgment in favor of Plaintiff and against Defendant(s) for the sum of \$5,728.76, plus costs, interest and reasonable attorney's fees.

APOTHAKER & ASSOCIATES, P.C.
Attorney for Plaintiff
A Law Firm Engaged in Debt Collection

BY: 

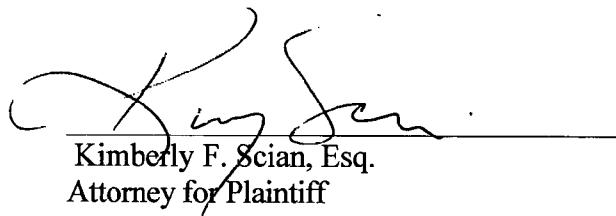
Kimberly F. Scian

Dated: 6/14/2007

Our File No.: 92344

VERIFICATION

Kimberly F. Scian, Esq. hereby states that I am counsel for plaintiff in this action, and that I am authorized to take this Verification, and that the statements made in the foregoing Civil Action Complaint are true and correct to the best of my knowledge, information, and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.



Kimberly F. Scian, Esq.
Attorney for Plaintiff

DATE: 6/14/2007

APOTHAKER & ASSOCIATES, P.C.

BY: Kimberly F. Scian, Esq.

Attorney I.D.#55140

2417 Welsh Road, Suite 21 #520

Philadelphia, PA 19114

(215) 634-8920

Attorney for Plaintiff

CAPITAL ONE BANK

) COURT OF COMMON PLEAS

) CLEARFIELD COUNTY

)

Plaintiff,

)

vs.

)

THEODORE R FLICK

)

Defendant.

)

)

CERTIFICATION OF SERVICE

I, Kimberly F. Scian, Esq., attorney for Plaintiff, certify that on 6/14/2007, I mailed a copy of the Amended Complaint by Regular mail to

R. DENNING GEARHART, ESQUIRE
207 EAST MARKET STREET
CLEARFIELD, PA 16830



Kimberly F. Scian, Esq.
Attorney for Plaintiff

Date: 6/14/2007

Our File No.: 92344

Capital One® Values You As A Customer!

014

If you are unable to pay the amount due at this time, we strongly urge you to call us immediately at 1-800-955-6600. We are willing to work with you to help you out of your current financial situation and resolve the delinquency of your account.

Don't further damage your credit.

Your account will soon be reviewed to be charged-off as bad debt. If your account is charged-off, you will still be responsible for the debt, but it will be listed on your credit report and could prevent you from receiving credit cards, loans and even affect future employment and housing opportunities.

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014-0400



MASTERCARD ACCOUNT
5291-0713-0680-5621

AUG 20 - SEP 19, 2002
Page 1 of 1

Account Summary

| | |
|-----------------------------------|------------------|
| Previous Balance | \$6,082.58 |
| Payments, Credits and Adjustments | \$141.00 |
| Transactions | \$58.00 |
| Finance Charges | \$135.62 |
| New Balance | \$6,135.20 |
| Minimum Amount Due | \$6,135.20 |
| Payment Due Date | October 19, 2002 |
| Total Credit Line | \$3,500 |
| Total Available Credit | \$0.00 |
| Credit Line for Cash | \$3,500 |
| Available Credit for Cash | \$0.00 |

Payments, Credits and Adjustments

| | | | |
|------------------|--------|------------------------------|-----------|
| 1 | 11 SEP | PAYMENT RECEIVED - THANK YOU | \$141.00- |
| Transactions | | | |
| 2 | 20 AUG | PAST DUE FEE | \$29.00 |
| 3 | 20 AUG | OVERLIMIT FEE | 29.00 |

At your service

To call Customer Relations or to report a lost or stolen card:
1-800-955-7070

For free online account service and special customer offers, log on to:
www.capitalone.com

| | |
|-----------------------------|-------------------------|
| Send payments to: | Send inquiries to: |
| Attn: Remittance Processing | Capital One Services |
| Capital One Services | P.O. Box 85015 |
| P.O. Box 85147 | Richmond, VA 23285-5015 |
| Richmond, VA 23276 | |

Finance Charges

| Please see reverse side for important information | | | | |
|---|---------------------------|------------------|----------------------|-------------------|
| | Balancerate applied to | Periodic rate | Corresponding APR | FINANCE CHARGE |
| PURCHASES | \$3,096.45 | .07096% | 25.90% | \$68.11 |
| CASH | \$3,068.88 | .07096% | 25.90% | \$67.51 |

ANNUAL PERCENTAGE RATE applied this period

25.90%

59410S

▼ PLEASE RETURN PORTION BELOW WITH PAYMENT. ▼



0000000 0 5291071306805621 19 6135200141006135202

| | |
|--------------------|-------------------------|
| New Balance | \$6,135.20 |
| Minimum Amount Due | \$6,135.20 |
| Payment Due Date | October 19, 2002 |
| Total enclosed | \$ <input type="text"/> |

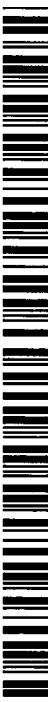
Please print address changes below using blue or black ink.

| | | |
|------------|-----------------|-----|
| Street | Apt # | |
| City | State | ZIP |
| Home Phone | Alternate Phone | |

Capital One Bank
P.O. Box 85147
Richmond, VA 23276

059410

#9026308479059329# MAIL ID NUMBER
THEODORE R FLICK
P O BOX 120
COALPORT PA 16627-0120



19R020100

2

- 1. How To Avoid A Finance Charge.**
- a. **Grace Period.** You will have a minimum grace period of 25 days from the date of new purchases, new transfers, new special purchases and new other charges if you pay your total "New Balance" in accordance with the Important Notice for payments below, and in time for it to be credited by your next statement closing date. There is no grace period on cash advances and special transfers. In addition, there is no grace period on any transaction if you do not pay the total "New Balance" in time.
- b. **Avguing Finance Charge.** Transactions which are not subject to a grace period are assessed finance charge 1) from the date of the transaction or 2) from the date the transaction is processed to your Account or 3) from the first calendar day of the current billing period. Additionally, if you did not pay the "New Balance" from the previous billing period, finance charges will continue to accrue to your unpaid balances until the unpaid balance is paid in full. This means that you may still owe finance charges, even if you pay the entire New Balance indicated on the front of your statement by the next statement closing date, but did not do so for the previous month. Unpaid finance charges are added to the applicable segment of your Account.
- c. **Periodic Finance Charge.** Each billing period that your account is subject to a finance charge, a minimum total FINANCE CHARGE of \$0.50 will be imposed. If the total finance charge resulting from the application of your periodic rate(s) is less than \$0.50, we will subtract that amount from the \$0.50 minimum and the difference will be added to the purchase segment of your account.
- †d. **Temporary Reduction in Finance Charge.** We reserve the right not to assess any or all finance charges for any given billing period.
2. **Average Daily Balance (including New Purchases).**
- a. Finance charge is calculated by multiplying the daily balance of each segment of your account (e.g., cash advance, purchase, special transfer, special purchase) by the corresponding daily periodic rate(s) that has been previously disclosed to you. At the end of each day during the billing period, we add up the daily periodic balance for each segment and add any new purchases and any periodic finance charge calculated on the previous day's balance for that segment. We then subtract any payments or credits posted as of that day that are allocated to that segment. This gives us the separate daily balance for each segment of your account. However, if you paid the full balance shown on the previous statement in full (or if your new balance was zero or a credit amount), new transactions which post to your purchase or special purchase segments are not added to the daily balances. We calculate the average daily balance by adding all the daily balances together and dividing the sum by the number of the days in the current billing cycle. To calculate your total monthly finance charge, we multiply the difference between the daily periodic rate and by the number of days in the billing period. Due to rounding on a daily basis, there may be a slight variance between this calculation and the amount of finance charge actually assessed.
- b. If the code Z or N appears on the front of this statement next to "Balance Rate Applied To," we multiply the average daily balance of each segment by your monthly

periodic rate. To obtain the average daily balance for the billing period covered by this statement, we take the beginning balance of each segment each day, add any new transactions to each segment, and subtract any payments or credits. (If the code N appears on the front of this statement next to "Balance Rate Applied To," we also subtract any unpaid finance charge included in the balance of each segment.) This gives us the daily balance of each segment. Then, we add up all the daily balances for each segment for the billing period and divide by the total number of days in the billing period. This gives us the average daily balance for each segment.

3. **Annual Percentage Rates (APR).**

- a. The term "Annual Percentage Rate" may appear as "APR" on the front of this statement.
- b. If the code P (Prime), L (3-mo LIBOR), C (Certificate of Deposit), or S (Bankcard Prime) appears on the front of this statement next to the periodic rate(s), the periodic rates are called "Annual Percentage Rates." ANNUAL PERCENTAGE RATES may vary monthly and may increase or decrease based on the stated indices, as found in *The Wall Street Journal*, plus the margin previously disclosed to you. These changes will be effective on the first day of your billing period covered by your periodic statement ending in the months January, April, July and October.
- c. If the code F (Prime), B (3-mo LIBOR) or G (3-mo LIBOR Repriced Monthly) appears on the front of your statement next to the periodic rate(s), the periodic rates and corresponding ANNUAL PERCENTAGE RATES may vary monthly and may increase or decrease based on the stated indices, as found in *The Wall Street Journal*, plus the margin previously disclosed to you. These changes will be effective on the first day of your billing period covered by your periodic statement ending in the months February, May, August and November.

4. **Assessment of Late, Overlimit and Returned Payment Fees.** Your account will be assessed no more than two of the fees listed here that occur during any billing period. Under the terms of your customer agreement, we reserve the right to waive or not to assess any fees without prior notification to you without waiving our right to assess the same or similar fees at a later time.

5. **Renewing Your Account.** If a membership fee appears on the front of this statement, you have 30 days from the date this statement was mailed to you to avoid paying the fee or to have such fee credited to you if you cancel your account. During this period, you may continue to use your account without having to pay the membership fee. To cancel your account, you must notify us using our Customer Relations Department and pay your "New Balance" in full (excluding the membership fee) prior to the end of the thirty-day period.
6. **If You Close Your Account.** You can request to close your account by calling our Customer Relations Department. You must destroy your credit card(s) and account access device, cancel any preauthorized billing, and cease using your account. If you do not cancel preauthorized billing arrangements, we will consider receipt of a charge your authorization to reopen your account. Additionally, your account will not be closed until you pay all amounts you owe us including: any transactions you have authorized, finance charges, past due fees, overlimit fees, returned payment fees, cash advance fees and any other fees assessed in your account. You are responsible for these amounts whether they appear on your account at the time you request to close the account or they are incurred subsequent to your request to close the account. This may result in charges appearing on your account after you have requested the account to be closed or the reopening of

your account if it has already been closed. For example, if you authorized a purchase from a merchant and we receive the transaction from the merchant after your account has been closed, your account will be reopened, the amount of the charge will be added to your account, and you will be assessed a membership fee. If a membership fee for your account, the fee will continue to be charged, to the extent permitted by law, until the account balance has been paid in full as defined above.

7. **Using Your Account.** Your card or account cannot be used in connection with any internet gambling transaction.

8. **Notes About Electronic Check Conversion.** When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your bank account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your bank account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

BILLING RIGHTS SUMMARY

(In Case of Errors Or Questions About Your Bill)
If you think your bill is wrong, or if you need more information about a bill or a bill you received on a separate sheet, as soon as possible at the address for inquiries shown on the front of this statement. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can call our Customer Relations number, but doing so will not preserve your rights. In your letter, give us the following information: your account number, the amount of the amount of the suspected error, a description of the error and an explanation, if possible, of why you believe there is an error; or if you need more information, a description of the item you are unsure about. You do not have to pay any amount in question while we are investigating it, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

† 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. You have this protection only when the purchase price is less than \$50.00 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.) Please remember to sign all correspondence.

† Does not apply to consumer non-credit card accounts

‡ Does not apply to business non-credit card accounts

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594105

Important Notice: Your payment will be credited to your account as of the date we receive it, provided you send the bottom portion of this statement and your check in the enclosed remittance envelope, and your payment is received in our processing center by 3 p.m. Payments addressed to our Virginia or Georgia processing center must be received on a business day by 3:00 p.m. ET. Payments addressed to our Washington processing center must be received on a business day by 3:00 p.m. PT. Please allow at least five (5) business days for postal delivery. Payments received by us at any other location or in another form may not be credited the same day we receive them. Our business days are Monday through Saturday, excluding holidays. Please do not use staples, paper clips, etc. when preparing your payment.

Capital One® Values You As A Customer!

014

If you are unable to pay the amount due at this time, we strongly urge you to call us immediately at 1-800-955-6600. We are willing to work with you to help you out of your current financial situation and resolve the delinquency of your account.

Don't further damage your credit.

Your account will soon be reviewed to be charged-off as bad debt. If your account is charged-off, you will still be responsible for the debt, but it will be listed on your credit report and could prevent you from receiving credit cards, loans and even affect future employment and housing opportunities.

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014-0400



MASTERCARD ACCOUNT
5291-0713-0680-5621

SEP 20 - OCT 19, 2002
Page 1 of 1

Account Summary

| | |
|-----------------------------------|-------------------|
| Previous Balance | \$6,135.20 |
| Payments, Credits and Adjustments | \$141.00 |
| Transactions | \$58.00 |
| Finance Charges | \$132.10 |
| New Balance | \$6,184.30 |
| Minimum Amount Due | \$6,184.30 |
| Payment Due Date | November 19, 2002 |
| Total Credit Line | \$3,500 |
| Total Available Credit | \$0.00 |
| Credit Line for Cash | \$3,500 |
| Available Credit for Cash | \$0.00 |

Payments, Credits and Adjustments

| | | | |
|------------------|--------|------------------------------|-----------|
| 1 | 09 OCT | PAYMENT RECEIVED - THANK YOU | \$141.00- |
| Transactions | | | |
| 2 | 20 SEP | PAST DUE FEE | \$29.00 |
| 3 | 20 SEP | OVERLIMIT FEE | 29.00 |

At your service

To call Customer Relations or to report a lost or stolen card:
1-800-955-7070

For free online account service and special customer offers, log on to:
www.capitalone.com

Send payments to:
Attn: Remittance Processing
Capital One Services
P.O. Box 85147
Richmond, VA 23276

Send inquiries to:
Capital One Services
P.O. Box 85015
Richmond, VA 23285-5015

Finance Charges

| | Please see reverse side for important information | | | |
|-----------|---|---------------|-------------------|----------------|
| | Balance rate applied to | Periodic rate | Corresponding APR | FINANCE CHARGE |
| PURCHASES | \$3,142.61 | .07096% | 25.90% | \$66.90 |
| CASH | \$3,062.84 | .07096% | 25.90% | \$65.20 |

ANNUAL PERCENTAGE RATE applied this period

25.90%

58731S

▼ PLEASE RETURN PORTION BELOW WITH PAYMENT. ▼



0000000 0 5291071306805621 19 6184300141006184308

| | |
|--------------------|-------------------------|
| New Balance | \$6,184.30 |
| Minimum Amount Due | \$6,184.30 |
| Payment Due Date | November 19, 2002 |
| Total enclosed | \$ <input type="text"/> |

Please print address changes below using blue or black ink.

| | | |
|------------|-----------------|-----|
| Street | Apt. # | |
| City | State | ZIP |
| Home Phone | Alternate Phone | |

Capital One Bank
P.O. Box 85147
Richmond, VA 23276



058731

#9029308479059326# MAIL ID NUMBER
THEODORE R FLICK
P O BOX 120
COALPORT PA 16627-0120





1. **How To Avoid A Finance Charge.**
 - a. **25 days** without finance charge on new purchases, new balance transfers, new special purchases and new other charges if you pay your total "New Balance" in accordance with the Important Notice for payments below, and in time for it to be credited by your next statement closing date. There is no grace period on cash advances or special transfers. In addition, there is no grace period on any transaction if you do not pay the total "New balance".
 - b. **Accruing Finance Charge.** Transactions which are not subject to a grace period are assessed finance charge 1) from the date of the transaction or 2) from the date the transaction is processed to your Account or 3) from the first calendar day of the current billing period. Additionally, if you did not pay the "New Balance" in full, finance charges continue to accrue to your unpaid balance until the unpaid balance is paid in full. This means that you may still owe finance charges, even if you pay the entire New Balance indicated on the front of your statement by the next statement closing date, but did not do so for the previous month. Unpaid finance charges are due on the applicable segment of your Account.
 - c. **Minimum Finance Charge.** If any transaction on your account is subject to a finance charge, a minimum total FINANCE CHARGE of \$0.50 will be imposed. If the total finance charge resulting from the application of your periodic rate(s) is less than \$0.50, we will subtract that amount from the \$0.50 minimum and the difference will be billed to the purchase segment of your account.
 - d. **Interest Rate Reduction in Finance Charge.** We reserve the right to not assess any or all finance charges for any given billing period.
2. **Average Daily Balance (Including New Purchases).**
 - a. Finance charge is calculated by multiplying the daily balance of each segment of your account (e.g., cash advance, purchase, special transfer, and special purchase) by the periodic rate(s) for that segment that was previously disclosed to you. At the end of each day during the billing period, we apply the daily periodic rate for each segment of your account to the daily balance of each segment. Then at the end of the billing period, we add up the results of these daily calculations to arrive at your periodic finance charge for each segment. We add up the total periodic finance charge to arrive at the total periodic finance charge for your account. To obtain the daily balance for each segment of your account, we take the beginning balance for each segment and add any new transactions and any periodic finance charge calculated on the previous day's balance for that segment. We then subtract any payments or credits posted as of that day that are allocated to that segment. This gives us the appropriate daily balance for each segment of your account. However, if you paid the New Balance shown on your previous statement in full (or if your new balance was zero or a credit amount), new transactions which post to your purchase or special purchase segments are not added to the daily balances. We calculate the average daily balance by adding all the daily balances together and dividing the sum by the number of days in the current billing cycle. To calculate your total finance charge, multiply your average daily balance by the daily periodic rate and by the number of days in the billing period. Due to rounding on a daily basis, there may be a slight variance between this calculation and the amount of finance charge actually assessed.
 - b. If the code Z or N appears on the front of this statement next to "Balance Rate Applied To," we multiply the average daily balance of each segment by your monthly

periodic rate. To obtain the average daily balance for the billing period covered by this statement, we take the beginning balance of each segment each day, add any new transactions to each segment, subtract any payments or credits. (If the code N appears on the front of this statement next to "Balance Rate Applied To," we also subtract any unpaid finance charge included in the balance of each segment.) This gives us the daily balance of each segment. Then, we add up all the daily balances for each segment for the billing period and divide by the total number of days in the billing period. This gives us the average daily balance of each segment.

3. **Annual Percentage Rates (APR).**

- a. The term "Annual Percentage Rate" may appear as "APR" on the front of this statement.
- b. If the code P (Prime), L (3-mo. LIBOR), C (Certificate of Deposits or 1 Year Bankard Prime) appears on the front of this statement next to the periodic rate(s), the periodic rates and corresponding ANNUAL PERCENTAGE RATES may vary quarterly and may increase or decrease based on the stated indices, as found in *The Wall Street Journal*, plus the margin previously disclosed to you. These changes will be effective on the first day of your billing period.
- c. If the code D (Prime), F (1-mo. LIBOR), O (0.0-mo. LIBOR Repriced Monthly) appears on the front of your statement next to the periodic rate(s), the periodic rates and corresponding ANNUAL PERCENTAGE RATES may vary monthly and may increase or decrease based on the stated indices, as found in *The Wall Street Journal*, plus the margin previously disclosed to you. These changes will be effective on the first day of your billing period.

4. **Assessment of Late, Overlimit and Returned Payment Fees.** Your account will be assessed no more than two of the fees listed here that occur during any billing period. Under the terms of your customer agreement, we reserve the right to waive or not to assess any fees without prior notification to you. We also reserve the right to assess the same or similar fees at a later time.

5. **Renewing Your Account.** If a membership fee

appears on the front of this statement, you have 30 days from the date this statement was mailed to you to avoid paying the fee or to have such fee credited to you if you cancel your account. During this period, you may continue to use your account, but you will not be required to pay the membership fee. To cancel your account, please notify us by calling our Customer Relations Department and pay your "New Balance" in full (excluding the membership fee) prior to the end of the thirty-day period.

6. **If You Close Your Account.** You can request to close your account by calling our Customer Relations Department. You may destroy your credit card(s) and account access checks, or all other forms of card and billing, and cease using your account. If you do not cancel preauthorized billing arrangements, we will consider receipt of a charge your authorization to reopen your account. Additionally, your account will not be closed until you pay all amounts you owe us including: any transactions you have authorized, finance charges, past due amounts, interest, late fees, overlimit fees, cash advance fees and any other fees assessed to your account. You are responsible for these amounts whether they appear on your account at the time you request to close the account or they are incurred subsequent to your request to close the account. This may result in charges appearing on your account after you have requested the account to be closed or the reopening of

your account if it has already been closed. For example, if you authorized a purchase from a merchant and we receive the transaction from the merchant after your account has been closed, your account will be reopened, the amount of the charge will be added to your account, and you will be responsible for payment. If there is a membership fee for your account, the fee will continue to be charged, to the extent permitted by law, until the account balance has been paid in full as defined above.

7. **Using Your Account.** Your card or account cannot be used in connection with any internet gambling transaction.

8. **Notice About Electronic Check Conversion.** When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your bank account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, your funds may be withdrawn from your bank account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

BILLING RIGHTS SUMMARY

(In Case Of Errors Or Questions About Your Bill)

If you believe there is an error, or if you need more information on a transaction, call within 60 days on a separate sheet as soon as possible at the address for inquiries shown on the front of this statement. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can call our Customer Relations number, but doing so will not preserve your rights. In your letter, give us the following information: the name of the person to whom you sent the amount of the suspected error, a description of the error and an explanation, if possible, of why you believe there is an error; or if you need more information, a description of the item you are unsure about. You do not have to pay any amount in question while we are investigating it, but you are still obligated to pay the parts of your bill that are not in question. (While we are investigating your question, we cannot report you as delinquent or take any action to collect the amount you question.)

† 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 have the right not to pay the remaining amount due on the property or services. You have this protection only when the purchase price was more than \$50.00 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.) Please remember to sign all correspondence.

† Does not apply to consumer non-credit card accounts

‡ Does not apply to business non-credit card accounts

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58731S

Important Notice: Your payment will be credited to your account as of the date we receive it, provided you send the bottom portion of this statement and your check in the enclosed remittance envelope, and your payment is received in our processing center by 3 p.m. Payments addressed to our Virginia or Georgia processing center must be received on a business day by 3:00 p.m. ET. Payments addressed to our Washington processing center must be received on a business day by 3:00 p.m. PT. Please allow at least five (5) business days for postal delivery. Payments received by us at any other location or in another form may not be credited the same day we receive them. Our business days are Monday through Saturday, excluding holidays. Please do not use staples, paper clips, etc. when preparing your payment.

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

CAPITAL ONE BANK :
c/o Apotheker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
Philadelphia, PA 19114 :
Plaintiff :
vs. : No. 07-736-CD :
THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
Defendant :
:

CASE NUMBER: No. 07-736-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFF'S AMENDED COMPLAINT

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED 3cc
013:54754 Atty Gearhart
JUL 10 2007
EK

William A. Shaw
Prothonotary/Clerk of Courts

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

CAPITAL ONE BANK :
c/o Apotheker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
Philadelphia, PA 19114 :
Plaintiff :

vs. : No. 07-736-CD

THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
Defendant :

DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

NOW COMES, the Defendant, Theodore R. Flick, by and through his Attorney, R. Denning Gearhart, Esquire, who files Preliminary Objections to Plaintiff's Amended Complaint and respectfully avers as follows:

1. That upon filing of Plaintiff's Complaint, Preliminary Objections were filed arguing that the Complaint was insufficient in that it failed to provide copies of the duly executed agreement between the parties. Further, the Complaint failed to detail charges against the alleged credit card, the basis for those specific charges, and the amount of each individual specific charge, all of which would be required by the Pennsylvania Rules of Civil Procedure.

2. Prior to argument on those Preliminary Objections, Plaintiff submitted an Amended Complaint.

3. The Amended Complaint is insufficient in that it still does not include copies of the duly executed agreement between the parties, it still does not detail the charges on the alleged credit card, and it still does not list the basis for these charges, nor

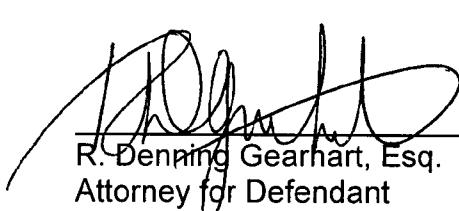
does it give the dates or amounts of these individual charges.

4. Instead, it gives as an Exhibit only a statement of a total amount alleged to have been due on September 19, 2002, and a statement for October 19, 2002, together with boiler plate language which is alleged to have been included in the agreement between the parties. There is no indication that the Defendant agreed to these terms.

5. The Rules of Civil Procedure require that the Complaint/Amended Complaint be sufficient so as to allow the Defendant to understand the specifics of the claim and to enter a defense for that claim, if any.

6. Specifically, in this case, there is no way that the Defendant can determine whether or not there were inappropriate charges made against this card by the Plaintiff or by a third party. Indeed, if the charges for which the Plaintiff is claiming are represented by the two statements from 2002, then the claim would be barred by the Statute of Limitations.

WHEREFORE, Defendant prays Your Honorable Court to dismiss Plaintiff's Amended Complaint as being insufficient.



R. Denning Gearhart, Esq.
Attorney for Defendant

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

CAPITAL ONE BANK
c/o Apotheker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114
Plaintiff

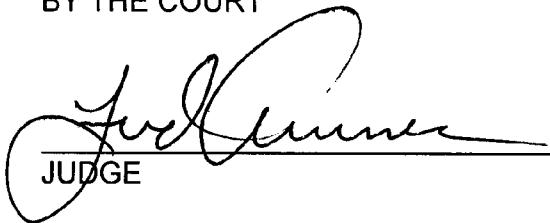
vs. : No. 07-736-CD

THEODORE R. FLICK
4334 S. Heverly Blvd.
Coalport, PA 16627

ORDER

AND NOW, this 12 Day of July, 2007, upon
consideration of Defendant's Preliminary Objections to Plaintiff's Amended Complaint filed
in the above captioned action, it is the ORDER of this Court that a hearing be scheduled
for the 14th Day of September, 2007, at 2:00 O'clock P.M., in
Courtroom No. 1, of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT



JUDGE

FILED 3cc
014:00 AD JUL 13 2007 Atty Gearhart
(CR)

William A. Shaw
Prothonotary/Clerk of Courts

14

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 07-736-CJ

CAPITAL ONE BANK,
Plaintiff

vs.

THEODORE R. FLICK,
Defendant

DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S
AMENDED COMPLAINT

FILED
JUL 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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

CAPITAL ONE BANK :
c/o Apotheker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
Philadelphia, PA 19114 :
Plaintiff :
vs. : No. 07-736-CD :
THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
Defendant :
:

CASE NUMBER: No. 07-736-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: CERTIFICATE OF SERVICE

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED NO CC
010:52 AM
JUL 18 2001
WM

William A. Shaw
Prothonotary/Clerk of Courts

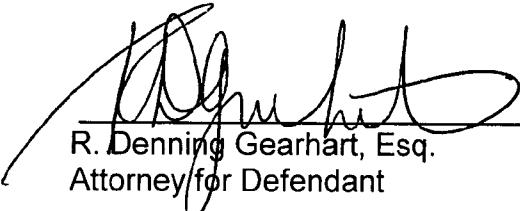
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CAPITAL ONE BANK :
c/o Apothaker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
Philadelphia, PA 19114 :
Plaintiff :
vs. : No. 07-736-CD
THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
Defendant :
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of Defendant's Preliminary Objections to Plaintiff's Amended Complaint filed in the above matter on the Plaintiff through Plaintiff's attorney by depositing such documents in the United States Mail, first class, postage pre-paid and addressed as follows:

David J. Apothaker, Esq.
APOTHAKER ASSOCIATES, P.C.
2417 Welsh Road
Suite 21 #520
Philadelphia, PA 19114


R. Denning Gearhart, Esq.
Attorney for Defendant

Dated: July 18, 2007

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

CAPITAL ONE BANK,
Plaintiff

vs.

THEODORE R. FLICK,
Defendant

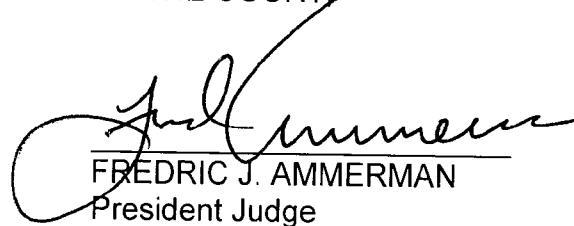
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NO. 07-736-CD

ORDER

NOW, this 21st day of August, 2007, due to a scheduling conflict, it is the ORDER of this Court that the hearing on the Defendant's Preliminary Objections to Plaintiff's Amended Complaint be and is hereby **rescheduled** from the 14th day of September, 2007, at 2:00 p.m. to the **24th day of September, 2007 at 2:30 p.m.** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT


FREDRIC J. AMMERMAN
President Judge

FILED
010:06 30
AUG 22 2007

William A. Shaw
Prothonotary/Clerk of Courts
1cc Atlys: Apotheker
Gearhart

(GK)

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

CAPITAL ONE BANK,
Plaintiff

*

6

2

vs.

NO. 07-736-CD

*

*

THEODORE R. FLICK,
Defendant

ORDER

NOW, this 24th day of September, 2007, following argument on the Defendant's Preliminary Objections, it is the ORDER of this Court that the said Preliminary Objections are hereby granted to the extent that the Plaintiff shall have no more than Twenty (20) Days from this date in which to file an amended complaint. The amended complaint shall have attached thereto a copy of the original contractual agreement signed by the Defendant; an itemized statement of all items purchased, the cost of the same and the interest rate; specific calculations of assessments for interest, penalties, late fees, attorney fees and any other applicable charges.

BY THE COURT.

FREDRIC J. AMMERMAN
President Judge

FILED 01/25/2007 SEP 25 2007
William A. Shaw
Notary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102782
NO: 07-736-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: CAPITAL ONE BANK
vs.
DEFENDANT: THEODORE R. FLICK

SHERIFF RETURN

NOW, May 15, 2007 AT 9:47 AM SERVED THE WITHIN COMPLAINT ON THEODORE R. FLICK DEFENDANT AT 4334 S. HEVERLY BLVD., COALPORT, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO THEODORE R. FLICK, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

FILED
05/13/2007
OCT 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

| PURPOSE | VENDOR | CHECK # | AMOUNT |
|-----------------|-----------|---------|--------|
| SURCHARGE | APOTHAKER | 46928G | 10.00 |
| SHERIFF HAWKINS | APOTHAKER | 46928G | 45.16 |

Sworn to Before Me This

____ Day of _____ 2007

So Answers,

Chester A. Hawkins
by Marilyn Hause
Chester A. Hawkins
Sheriff

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

CAPITAL ONE BANK :
c/o Apotheker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
Philadelphia, PA 19114 :
Plaintiff :
vs. : No. 07-736-CD :
THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
Defendant :
:

CASE NUMBER: No. 07-736-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: CERTIFICATE OF SERVICE

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

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NOV 01 2007
WM
William A. Shaw
Prothonotary/Clerk of Courts

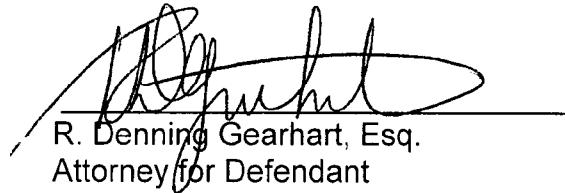
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CAPITAL ONE BANK :
c/o Apothaker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
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Plaintiff :
vs. : No. 07-736-CD
THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
Defendant :
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of the Motion to Dismiss for Failure to Prosecute filed in the above matter on the Plaintiff through Plaintiff's attorney by depositing such documents in the United States Mail, first class, postage pre-paid and addressed as follows:

David J. Apothaker, Esq.
APOTHAKER ASSOCIATES, P.C.
2417 Welsh Road
Suite 21 #520
Philadelphia, PA 19114



R. Denning Gearhart, Esq.
Attorney for Defendant

Dated: November 1, 2007

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

CAPITAL ONE BANK
c/o Apotheker & Associates, P.C.
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114

Plaintiff

vs.

No. 07-736-CD

THEODORE R. FLICK
4334 S. Heverly Blvd.
Coalport, PA 16627

Defendant

CASE NUMBER: No. 07-736-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: MOTION TO DISMISS FOR FAILURE TO PROSECUTE

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED
O 10:45 AM 6K
OCT 31 2007

William A. Shaw
Prothonotary/Clerk of Courts

3CC Atty
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

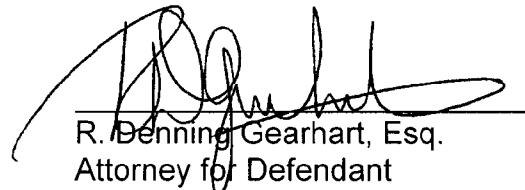
CAPITAL ONE BANK :
c/o Apotheker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
Philadelphia, PA 19114 :
Plaintiff :
vs. : No. 07-736-CD
THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
Defendant :
:

MOTION TO DISMISS FOR FAILURE TO PROSECUTE

NOW COMES, the Defendant, Theodore R. Flick, by and through his Attorney, R. Denning Gearhart, Esquire, who avers as follows:

1. That a Complaint was filed by the Plaintiff in the above captioned matter on May 9, 2007, and an Amended Complaint filed on or about June 18, 2007.
2. That following Argument on Preliminary Objections, Your Honorable Court entered an Order dated September 24, 2007, a copy of which is attached hereto as Exhibit "A", requiring that an Amended Complaint be filed containing certain averments, exhibits and information.
3. That Plaintiff failed to comply with the Court's Order.

WHEREFORE, Defendant prays Your Honorable Court to dismiss Plaintiff's
Complaint and Amended Complaint with prejudice.



R. Denning Gearhart, Esq.
Attorney for Defendant

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

CAPITAL ONE BANK :
c/o Apotheker & Associates, P.C. :
2417 Welsh Road, Suite 21 #520 :
Philadelphia, PA 19114 :
Plaintiff :
:

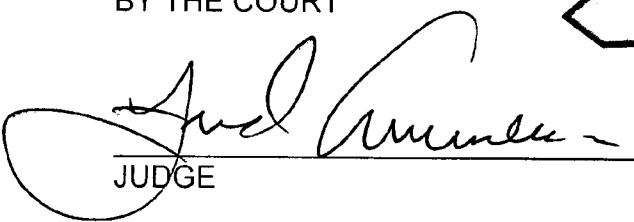
vs. : No. 07-736-CD

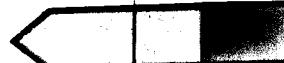
THEODORE R. FLICK :
4334 S. Heverly Blvd. :
Coalport, PA 16627 :
:

O R D E R

AND NOW, this 31st Day of October, 2007, upon
consideration of the Motion to Dismiss for Failure to Prosecute, the Court noting that the
record does not show Plaintiff's compliance with this Court's Order dated September 24,
2007, said Complaint and Amended Complaint is hereby dismissed with prejudice.

BY THE COURT


JUDGE



FILED
11/9/30/2007 3:00 PM
NOV 01 2007 Atty Gearhart
(60)

William A. Shaw
Prothonotary/Clerk of Courts

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

CAPITAL ONE BANK,
Plaintiff

vs.

THEODORE R. FLICK,
Defendant

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*
*

NO. 07-736-CD

O R D E R

NOW, this 24th day of September, 2007, following argument on the Defendant's Preliminary Objections, it is the ORDER of this Court that the said Preliminary Objections are hereby granted to the extent that the Plaintiff shall have no more than Twenty (20) Days from this date in which to file an amended complaint. The amended complaint shall have attached thereto a copy of the original contractual agreement signed by the Defendant; an itemized statement of all items purchased, the cost of the same and the interest rate; specific calculations of assessments for interest, penalties, late fees, attorney fees and any other applicable charges.

BY THE COURT,

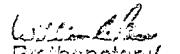
/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

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

SEP 25 2007

EXHIBIT "A" Attest.


Prothonotary/
Clerk of Courts

VA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION NO. 07-736-CD

CAPITAL ONE BANK,
Plaintiff

vs.

THEODORE R. FLICK,
Defendant

MOTION TO DISMISS FOR FAILURE TO
PROSECUTE

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830