



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Capital One Bank  
(Plaintiff) Apothaker & Associates, P.C.

40 2417 Welsh Road  
Suite 21 #520  
(Street Address) Philadelphia, PA 19114

(City, State ZIP)

CIVIL ACTION

No. 07-1338-CD

Type of Case: \_\_\_\_\_

Type of Pleading: Appeal

VS.

Filed on Behalf of:

Melvin K. Schwentner  
(Defendant)

Capital One Bank  
(Plaintiff/Defendant)

414 S. State St.  
(Street Address)

Dubois, PA 15801  
(City, State ZIP)

David J. Apothaker, Esq.  
(Filed by)

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

(Address)

215-634-8820  
(Phone)

X  
(Signature)

FILED

m11:40/34  
AUG 20 2007

William A. Shaw  
Prothonotary/Clerk of Courts

Att'y pd. 85.00

1cc-Att'y

Def

1 copy of Notice  
to JJ Ford

COMMONWEALTH OF PENNSYLVANIA

## NOTICE OF APPEAL

COURT OF COMMON PLEAS

FROM

JUDICIAL DISTRICT

## DISTRICT JUSTICE JUDGMENT

46<sup>th</sup>

COMMON PLEAS No.

07-1338-CD

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT Capital One Bank		MAG. DIST. NO. OR NAME OF D.J. Melvin K Schwentner	
ADDRESS OF APPELLANT c/o David Apothaker, 2417 Welsh Rd., Ste 21 #520, Philadelphia, PA 19114		CITY Philadelphia	STATE PA
DATE OF JUDGMENT 8-6-07	IN THE CASE OF (Plaintiff) Capital One Bank		(Defendant) Melvin K. Schwentner
CLAIM NO. TA 20 CV-0000302-07 LT 20		SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT David J. Apothaker Esq	

This block will be signed ONLY when this notation is required under Pa. R.C.P.K.P. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

\_\_\_\_\_  
Signature of Prothonotary or Deputy

If appellant was Claimant (See Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

## PRAECIPE: To Prothonotary

Enter rule upon \_\_\_\_\_, appellee(s), to file a complaint in this appeal

Name of appellee(s)

(Common Pleas No. \_\_\_\_\_) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

\_\_\_\_\_  
Signature of appellant or his attorney or agent

**RULE:** To \_\_\_\_\_, appellee(s)

Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGEMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Prothonotary or Deputy

C-831-FJ

11/2/11

**PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT**

(This proof of service **MUST BE FILED WITHIN FIVE (5) DAYS** filing the notice of appeal. Check applicable boxes)

**COMMONWEALTH OF PENNSYLVANIA**

COUNTY OF \_\_\_\_\_;ss

**AFFIDAVIT:** I hereby swear or affirm that I served

☐ a copy of the Notice of Appeal, Common Pleas No. \_\_\_\_\_, upon the District Justice designated therein on (date of service) \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.

☐ and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of affiant

\_\_\_\_\_  
Signature of official before whom affidavit was made

\_\_\_\_\_  
Title of official

My commission expired on \_\_\_\_\_, 20\_\_\_\_.

COMMONWEALTH OF PENNSYLVANIA

## NOTICE OF APPEAL

COURT OF COMMON PLEAS

FROM

JUDICIAL DISTRICT

## DISTRICT JUSTICE JUDGMENT

46<sup>th</sup>

COMMON PLEAS No.

07-1338-CD

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT Capital One Bank		MAG. DIST. NO. OR NAME OF D.J. Melvin K Swentner	
ADDRESS OF APPELLANT c/o David Apothaker, 2417 Welsh Rd., Ste 21 #520, Philadelphia, PA 19114		CITY Philadelphia	STATE PA
DATE OF JUDGMENT 8-6-07	IN THE CASE OF (Plaintiff) Capital One Bank		(Defendant) vs. Melvin K. Swentner
CLAIM NO. TA 20 CV-0000302-07 LT 20		SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT David J. Apothaker Esq	

This block will be signed ONLY when this notation is required under Pa. R.C.P.K.P. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was Claimant (See Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

Signature of Prothonotary or Deputy

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(This section of form to be used ONLY when appellant was DEFENDANT, (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon-appellee).

## PRAECIPE: To Prothonotary

Enter rule upon \_\_\_\_\_, appellee(s), to file a complaint in this appeal

Name of appellee(s)

(Common Pleas No. \_\_\_\_\_) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

Signature of appellant or his attorney or agent

**RULE:** To \_\_\_\_\_, appellee(s)

Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGEMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: \_\_\_\_\_, 20\_\_\_\_.

Signature of Prothonotary or Deputy

**PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT**

*(This proof of service MUST BE FILED WITHIN FIVE (5) DAYS filing the notice of appeal. Check applicable boxes)*

**COMMONWEALTH OF PENNSYLVANIA**

COUNTY OF \_\_\_\_\_;ss

**AFFIDAVIT:** I hereby swear or affirm that I served

☐ a copy of the Notice of Appeal, Common Pleas No. \_\_\_\_\_, upon the District Justice designated therein on (date of service) \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.

☐ and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of affiant

\_\_\_\_\_  
Signature of official before whom affidavit was made

\_\_\_\_\_  
Title of official

My commission expired on \_\_\_\_\_, 20\_\_\_\_.

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

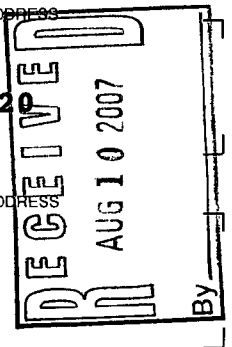
96752  
Mag. Dist. No.: **46-3-01**  
MDJ Name: Hon. **PATRICK N. FORD**  
Address: **309 MAPLE AVENUE  
PO BOX 452  
DUBOIS, PA  
15801**  
Telephone: **(814) 371-5321**

PLAINTIFF:  
**CAPITAL ONE BANK  
% APOTHAKE, ESQ  
2417 WELSH RD, STE 21#520  
PHILADELPHIA, PA 19114**

NAME and ADDRESS

VS.  
DEFENDANT:  
**SCHWENTNER, MELVIN K  
414 SOUTH STATE STR  
DUBOIS, PA 15801**

NAME and ADDRESS



**ATTORNEY FOR PLAINTIFF :**

**DAVID J. APOTHAKE  
2417 WELSH RD STE 21 #520  
PHILADELPHIA, PA 19114**

Docket No.: **CV-0000302-07**  
Date Filed: **6/05/07**



**THIS IS TO NOTIFY YOU THAT:**

Judgment: **FOR DEFENDANT** (Date of Judgment) **8/06/07**

☒ Judgment was entered for: (Name) **SCHWENTNER, MELVIN K**

☒ Judgment was entered against: (Name) **CAPITAL ONE BANK**  
in the amount of \$ **.00**

☐ Defendants are jointly and severally liable.

☐ Damages will be assessed on Date & Time \_\_\_\_\_

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127  
\$ \_\_\_\_\_

☐ Portion of Judgment for physical damages arising out of  
residential lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>.00</b>
Judgment Costs	\$ <b>.00</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	\$ <b>.00</b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
<b>Certified Judgment Total</b>	\$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

8-6-07 Date Patrick N. Ford-PNF, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

\_\_\_\_\_, Date \_\_\_\_\_, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-01**

MDJ Name: Hon. **PATRICK N. FORD**

Address: **309 MAPLE AVENUE  
PO BOX 452  
DUBOIS, PA  
15801**

Telephone: **(814) 371-5321**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF: **CAPITAL ONE BANK  
% APOTHAKE, ESQ  
2417 WELSH RD, STE 21#520  
PHILADELPHIA, PA 19114**

VS.

DEFENDANT: **SCHWENTNER, MELVIN K  
414 SOUTH STATE STR  
DUBOIS, PA 15801**

**CAPITAL ONE BANK  
% APOTHAKE, ESQ  
2417 WELSH RD, STE 21#520  
PHILADELPHIA, PA 19114**

Docket No.: **CV-0000302-07**  
Date Filed: **6/05/07**



**THIS IS TO NOTIFY YOU THAT:**

Judgment: **FOR DEFENDANT** (Date of Judgment) **8/06/07**

☒ Judgment was entered for: (Name) **SCHWENTNER, MELVIN K**

☒ Judgment was entered against: (Name) **CAPITAL ONE BANK**  
in the amount of \$ **.00**

☐ Defendants are jointly and severally liable.

☐ Damages will be assessed on Date & Time \_\_\_\_\_

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127  
\$ \_\_\_\_\_

☐ Portion of Judgment for physical damages arising out of  
residential lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>.00</b>
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<b>Certified Judgment Total</b>	\$ _____

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**8-6-07** Date **Patrick N. Ford**, Magisterial District Judge

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\_\_\_\_\_, Date \_\_\_\_\_, Magisterial District Judge

My commission expires first Monday of January, **2012**.

SEAL



COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

Mag. Dist. No.:

**46-3-01**

MDJ Name: Hon.

**PATRICK N. FORD**

Address: **309 MAPLE AVENUE  
PO BOX 452  
DUBOIS, PA**

Telephone: **(814) 371-5321 15801**

PLAINTIFF:

NAME and ADDRESS

**CAPITAL ONE BANK  
% APOTHAKE, ESQ  
2417 WELSH RD, STE 21#520  
PHILADELPHIA, PA 19114**

VS.

DEFENDANT:

NAME and ADDRESS

**SCHWENTNER, MELVIN K  
414 SOUTH STATE STR  
DUBOIS, PA 15801**

Docket No.: **CV-0000302-07**  
Date Filed: **6/05/07**



**PATRICK N. FORD  
309 MAPLE AVENUE  
PO BOX 452  
DUBOIS, PA 15801**

**THIS IS TO NOTIFY YOU THAT:**

Judgment: **FOR DEFENDANT** (Date of Judgment) **8/06/07**

- ☒ Judgment was entered for: (Name) **SCHWENTNER, MELVIN K**
- ☒ Judgment was entered against: (Name) **CAPITAL ONE BANK**  
in the amount of \$ **.00**
- ☐ Defendants are jointly and severally liable.
- ☐ Damages will be assessed on Date & Time \_\_\_\_\_
- ☐ This case dismissed without prejudice.
- ☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127  
\$ \_\_\_\_\_
- ☐ Portion of Judgment for physical damages arising out of  
residential lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>.00</b>
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**8-6-07** Date **Patrick N. Ford - PNF**, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

\_\_\_\_\_, Date \_\_\_\_\_, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

AOPC 315-06

DATE PRINTED: **8/06/07 11:10:00 AM**

WEALTH OF PENNSYLVANIA  
 COUNTY OF: CLEARFIELD

# CIVIL COMPLAINT

Meg. Dist. No.: 46-3-01  
 DJ Name: Hon.  
 PATRICK N. FORD  
 Address: 109 N. BRADY ST, PO BOX 452  
 DUBOIS, PA 15801  
 Telephone: 814-371-5321

PLAINTIFF:

NAME and ADDRESS

CAPITAL ONE BANK  
 c/o David Apothaker, Esquire  
 2417 Welsh Road, Suite 21 #520  
 Philadelphia, PA 19114

VS.

DEFENDANT:

NAME and ADDRESS

MELVIN K SCHWENTNER  
 414 S STATE ST  
 DU BOIS, PA 15801-1567

Docket No.: CV-302-07  
 Date Filed: 6-5-07

	AMOUNT	DATE PAID
FILING COSTS	\$ 77.50	6/5/07
SERVING COSTS	\$	/ /
TOTAL	\$	/ /

Pa.R.C.P.D.J. No. 206 sets forth those costs recoverable by the prevailing party.

**TO THE DEFENDANT:** The above named plaintiff(s) asks judgment against you for \$1,261.96 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

Defendant(s) purchased/received the goods credit and/or other services identified in Plaintiff's billing, invoice or other records, at the time and for the amount set forth therein and, despite demands, has failed, neglected, and refused to pay the balance due and owing of \$1,261.96.

I, David J. Apothaker, Esq. verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 P.S. § 4904) related to unsworn falsification to authorities.

(Signature of Plaintiff or Authorized Person)

Plaintiff's

Attorney: David J. Apothaker, Esq.

Address: 2417 Welsh Road, Suite 21 #520

Telephone: 215-634-8920

Philadelphia, PA 19114

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT WILL BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within magisterial district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five (5) days before the date set for the hearing. If you have a claim against the plaintiff which is not within district justice jurisdiction, you may request information from this office as to the procedures you may follow. **If you are disabled and require reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District office at the address above or telephone number. We are unable to provide transportation.**

AOPC 308A-05



Attorneys for Plaintiff

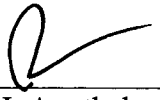
Defendant.

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 MELVIN K SCHWENTNER, an adult individual residing at 414 S STATE ST DU BOIS, PA 15801-1567.
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 \$1,261.96.

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 \$1,261.96 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: 8/28/2007

Our File No.: 96752

**VERIFICATION**

Randy Pothig, 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.

Randy Pothig

DATE:

Our File No.: 96752  
APOTHAKER & ASSOCIATES, P.C.  
BY: David J. Apothaker  
Attorney I.D.#38423  
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.	)	
MELVIN K SCHWENTNER	)	NO.: 07-1338-CD
	)	
	)	
	)	
Defendant.	)	
	)	

CERTIFICATION OF SERVICE

I, David J. Apothaker, Esquire, attorney for Plaintiff, certify that on 9/04/2007, I mailed a copy of the Complaint by Regular mail to

MELVIN K SCHWENTNER  
414 S STATE ST  
DU BOIS, PA 15801-1567



David J. Apothaker, Esq.  
Attorney for Plaintiff

Date: 8/28/2007

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

MELVIN K SCHWENTNER  
414 S STATE ST  
DU BOIS, PA 15801-1567

STATEMENT OF ACCOUNT

Debtor's Name:	MELVIN K SCHWENTNER
Account Number:	4388642313522933
Date of Debt:	March 29, 2004
Balance Due:	\$1,261.96

Our File No.: 96752

EXHIBIT "A"



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAPITAL ONE BANK,

Plaintiff

vs.

MELVIN K. SCHWENTNER,

Defendant

CIVIL DIVISION

No. 07 - 1338 - CD

**PRELIMINARY OBJECTIONS TO  
PLAINTIFF'S COMPLAINT**

Filed on Behalf of:

Defendant, MELVIN K.  
SCHWENTNER

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

**FILED**

010.2481  
OCT 18 2007

3cc  
Atty Colavecchi

William A. Shaw  
Prothonotary/Clerk of Courts

(6K)

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

CAPITAL ONE BANK, :  
Plaintiff : No. 07 - 1338 - CD  
:   
vs. :   
:   
MELVIN K. SCHWENTNER, :   
Defendant :

**PRELIMINARY OBJECTIONS  
TO PLAINTIFF'S COMPLAINT**

NOW COMES, Melvin K. Schwentner, who, through his attorney, Joseph Colavecchi, Esquire, files his Preliminary Objections to the 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 September 4, 2007, alleging that Plaintiff owes Defendant One Thousand Two Hundred Sixty-one Dollars and Ninety-six Cents (\$1,261.96).

2. Plaintiff in their Complaint alleged they were attaching to the Complaint certain records designated as Exhibit "A".

3. There is no explanation of the basis for this Complaint.

4. The Complaint amounts to an allegation that there is an account owed by Melvin K. Schwentner in the amount of One Thousand Two Hundred Sixty-one Dollars and Ninety-six Cents (\$1,261.96).

5. Plaintiff has failed to attach a copy of any agreement between Plaintiff and Defendant.

6. Plaintiff has failed to produce detailed statements showing how they arrived at the amount alleged to be due.

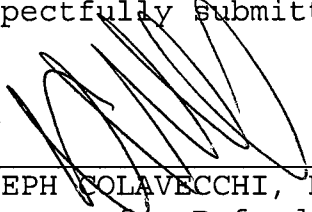
7. Plaintiff has failed to set forth the basis for their charges and legal authority for such charges.

8. Plaintiff's Complaint is insufficient on its face and should be dismissed because Plaintiff failed to produce any written agreement between Plaintiff and Defendant and further failed to produce a detailed monthly statement of the account setting out a description of the goods and/or services for which they alleged Defendant agreed to pay.

9. There is not sufficient information for Defendant to even enter into a proper defense of the claims.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be stricken pursuant to Pa. R.C.P. 1028 on the grounds of legal insufficiency.

Respectfully Submitted,



---

JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Defendant  
221 East Market Street  
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAPITAL ONE BANK,

Plaintiff

vs.

MELVIN K. SCHWENTNER,

Defendant

CIVIL DIVISION

No. 07 - 1338 - CD

**RULE**

Filed on Behalf of:

Defendant, MELVIN K.  
SCHWENTNER

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830

814/765-1566

**FILED**

OCT 22 2007

0/2:50/6  
William A. Shaw  
Prothonotary/Clerk of Courts

(6K)

3 CEnt TO ATT

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

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

CAPITAL ONE BANK,

:  
Plaintiff: No. 07 - 1338 - CD

VS.

MELVIN K. SCHWENTNER,

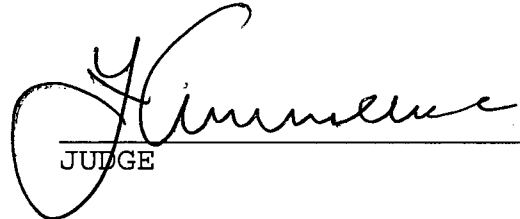
:  
Defendant:

**RULE**

AND NOW, this 22nd day of October 2007, a Rule is hereby issued and directed to Plaintiff to show cause why the Complaint should not be dismissed because of the failure of the Plaintiff to comply with Pa. R.C.P. 1028 and to set out a basis for the allegations set forth in Plaintiff's Complaint.

This Rule is Returnable before the Court on the 7th day of December, 2007, at 9:00 o'clock A.M., at the Clearfield County Courthouse, Courtroom No. 1.

BY THE COURT:

  
JUDGE

FILED

OCT 22 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 10-22-07  
☒ 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  
CIVIL DIVISION

CAPITAL ONE BANK,

Plaintiff : No. 07 - 1338 - CD

vs.


MELVIN K. SCHWENTNER,

Defendant :

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant's Preliminary Objections and Rule Returnable in the above-captioned action was mailed by First Class Mail, postage prepaid, the 26<sup>th</sup> day of October 2007, to the attorney of record:

David J. Apothaker  
Attorney at Law  
2417 Welsh Road, Suite 21 #520  
Philadelphia, PA 19114

  
\_\_\_\_\_  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Defendant  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830  
814/765-1566

Dated: 10/26/07

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

**FILED** No CC.  
9/2:10 LM  
OCT 29 2007  


William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

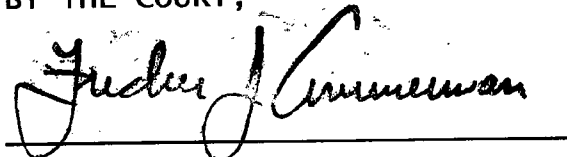
CIVIL DIVISION

CAPITAL ONE BANK :  
-VS- : No. 07-1338-CD  
MELVIN K. SCHWENTNER :

O R D E R

AND NOW, this 7th day of December, 2007, this being the date set for argument relative the Preliminary Objections filed to the Complaint; the Court noting that counsel for the Defendant has filed an appropriate certificate of service indicating that a copy of the Preliminary Objections and Rule scheduling this hearing were properly mailed to the attorney for the Plaintiff; no one having appeared on behalf of the Plaintiff; upon review of the Complaint, which is clearly deficient on its face, it is the ORDER of this Court that the Preliminary Objections be and are hereby granted. Plaintiff's Complaint is hereby dismissed, with prejudice.

BY THE COURT,



President Judge

FILED  
DEC 10 2007

William A. Shaw  
Prothonotary/Clerk of Courts  
2cc Atty: Apothaker  
J. Colavecchi