

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

CLAYTON ZETLER,
Plaintiff,

07-1339-CD
No. ____--2007 C.D.

Vs.

STEPHEN L. KUCHY,
Defendant.

TYPE OF CASE: CIVIL

TYPE OF FILING: COMPLAINT

FILED ON BEHALF OF:
PLAINTIFF

COUNSEL FOR PLAINTIFF

MARK WHEELER
PA. SUP. CT. ID # 64335

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07/20/07
AUG 20 2007
William A. Shaw
Prothonotary/Clerk of Courts
85.00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
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Vs.

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Defendant.

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take prompt 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 and 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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE
THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL
HELP.

COURT ADMINISTRATOR
CLEARFIELD County Courthouse
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
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CLAYTON ZETLER,
Plaintiff,

No. _____--2007 C.D.

Vs.

STEPHEN L. KUCHY,
Defendant.

COMPLAINT

1. Plaintiff is CLAYTON ZETLER, an individual, sui juris, who presently resides at 235 Locust Lane, Luthersburg, County of Clearfield, Commonwealth of Pennsylvania;

2. Defendant is STEPHEN L. KUCHY, an individual, sui juris, who presently resides at Route 255, P.O. Box 151, Byrnedale, County of Elk, Commonwealth of PA:

3. On November 10, 2005 the Plaintiff and the Defendant entered into a written lease purchase agreement for the lease and eventual purchase of a 1998 Freightliner semi tractor bearing serial number 2FUPDXYB2WA918453 pursuant to terms and conditions as outlined therein—see attached copy of said agreement marked Plaintiff's Exhibit One;

4. The contract provided for the defendant Kuchy to pay to the plaintiff the aggregate fee of \$17,000.00 by monthly payments of \$1,000.00 beginning in January of 2006 and continuing for 15 consecutive months along with a down payment of 2,000.00;

5. The defendant made 4 monthly payments in the months of January, 2006, February 2006, March 2006, and April 2006;

6. The defendant Kuchy failed to make any additional payments to the plaintiff despite numerous requests for payment including a demand letter posted to the defendant

by the undersigned counsel dated October 3, 2006, a copy of which is attached and marked Plaintiff's Exhibit Two;

7. This demand letter was sent by certified mail and delivered and signed for by the defendant's agent, one named Heather Fleck, on October 17, 2006—see attached copy of certified mail and the green return card for the same marked Plaintiff's Exhibit Three;

8. Previous to the October 3, 2006 letter the plaintiff Zetler wrote a demand letter dated July 6, 2006 demanding return of the subject Freightliner semi tractor or payment in full of the outstanding balance of \$11,000.00—see attached copy of said July 6, 2006 demand letter marked Plaintiff Exhibit Four;

9. The defendant has willfully failed to obey the terms of the subject agreement and has ignored the stated demand for payment as of the date of filing of the civil Complaint;

10. An issued developed between the parties related to the payment of checks for loads which the defendant was hauling and that the carrier was writing checks to the plaintiff for since he was the record owner of the truck.

11. The defendant Kuchy begged the plaintiff to transfer the truck into his name prior to the full payment of the lease payments which the plaintiff initially refused to do;

12. After repeated requests the defendant Kuchy threatened to stop all payments on the subject lease if the plaintiff did not transfer the vehicle as requested;

13. The plaintiff demanded full payment but the defendant stated he was unable to do so but promised to make the payments and honor the lease if the plaintiff would just sign the vehicle over.

14. The plaintiff finally decided to sign the vehicle over on the condition that the defendant continue to honor the lease purchase agreement;

15. The defendant Kuchy never made another payment to the plaintiff after the subject semi tractor was transferred;

BREACH OF WRITTEN CONTRACT

16. All previous averments of fact outlined herein and heretofore in paragraphs 1 through 15 are incorporated by present reference hereto;

17. The defendant stopped making payments on the lease purchase agreement in violation of the written document as well as the verbal addendum between the parties;

18. The defendant breached the contract by failing to pay a lump sum when the defendant Kuchy requested to have the vehicle transferred prior to the end of the lease term;

19. Defendant breached the written contract by failing to pay the defendant when demands for payment were made both verbally on numerous occasions and in writing as outlined heretofore;

20. Defendant breached the written contract by requesting the transfer of the subject vehicle in bad faith and failing to perform on the written lease purchase agreement as evidenced by his immediate and full failure to pay for the same;

21. The written contract did not contain a clause prohibiting oral amendments and The defendant made many such additional promises to pay for the subject vehicle;

COUNT TWO—BREACH OF ORAL CONTRACT & ORAL AMENDMENTS

22. Plaintiff incorporates all prior averments of fact alleged herein by present

reference thereto;

23. Plaintiff avers that the WRITTEN contract was amended orally by repeated promises to perform and by the additional promise to pay an additional fee to make the early transfer worth the plaintiff's while.

24. Plaintiff alleges that on an almost daily basis the defendant was promising him something extra and or threatening to not perform on the contract;

COUNT THREE—FRAUD

25. Plaintiff incorporates all prior averments of fact alleged herein by present reference hereto;

26. Plaintiff avers that during the subject time period that the defendant Kuchy had no intention of continuing to perform on the lease purchase agreement at the time he made the representations that he would both perform on the contract as well as provide the plaintiff with additional consideration in the amount of \$2500.00 to make the early transfer worth the plaintiff's while;

27. Defendant made a material misrepresentation of fact that he would continue to perform on the written and oral contracts in order to obtain the vehicle prior to the payment in full of the same;

28. The defendant KUCHY undertook a series of intentional acts to injure the plaintiff—most specifically the act of MULTIPLE PROMISES TO PERFORM and the added promise of additional consideration of \$2,500.00 as well as the threat of non-performance or intentional bad faith breach of the original written contract as well as the oral modifications thereto;

29. The plaintiff believed the material misrepresentations of fact made by the

defendant and relied on them as evidence by his agreeing to transfer the subject semi tractor prior to the defendant's full performance on the contract;

30. The plaintiff has suffered detriment based on the reliance on the promises of the defendant Kuchy in so far as he has not received the benefit of the original bargain as well as not receiving the additional consideration offered by the defendant Kuchy, to wit the original payments as well as the promised for extra consideration of \$2,500.00;

31. The original contract provided that the defendant would pay all the plaintiff's attorney's fees related to the enforcement of the original written contract—see paragraph 8;

32. The plaintiff has had to forward attorney's fees to his attorney, the undersigned counsel of record.

33. The plaintiff has had to pay court costs to advance this action against the defendant Kuchy;


34. If this action is not settled and court proceedings are necessary the plaintiff shall surely expend other necessary costs to advance this complaint and would ask the court to reimburse such reasonable costs upon their payment and notice to the other party as well as to the court;

35. The plaintiff was promised by the defendant that upon the transfer of the vehicle that the plaintiff would be made a lien holder on the title and the defendant would provide the original title to the plaintiff to hold as surety of payment and neither was done—both proving de facto fraudulent intent;

WHEREFORE, the plaintiff, upon this COMPLAINT, would request the following relief:

- a. compensatory damages in an amount OUTLINED HEREIN, plus interest;
- b. punitive damages in an amount greater than \$25,000.00.
- c. attorney's fees;
- d. all other relief deemed equitable and just;


RESPECTFULLY SUBMITTED:



Mark Wheeler, Esquire

PLAINTIFF'S VERIFICATION

I verify that the statements in this COMPLAINT are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.


Clayton Zetler

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CIVIL DIVISION

CLAYTON ZETLER,
Plaintiff,

No. _____--2007 C.D.

Vs.

STEPHEN L. KUCHY,
Defendant.

AFFIDAVIT OF SERVICE

I, MARK WHEELER, attorney for plaintiff in the above captioned matter, hereby
certify that I have caused to be served a true and correct copy of the foregoing
COMPLAINT to the following defendant as follows:

STEPHEN L. KUCHY
Route 255
P.O. Box 151
Brynedale, PA 15827

(by first class mail, certified, restricted delivery, return receipt requested)


MARK WHEELER, Esquire

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CIVIL DIVISION

CLAYTON ZETLER
Plaintiff

vs.

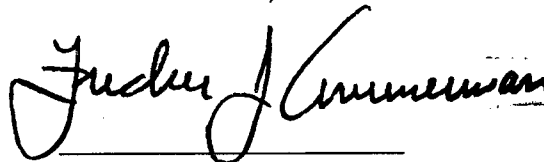
STEPHEN L. KUCHY
Defendant

* NO. 2007-1339-CD
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ORDER

NOW, this 24th day of June, 2013, upon the Court's review of the docket and noting no activity for a period of over five years, it is the ORDER of this Court that the case be moved to inactive status. The Prothonotary shall code the case in Full Court as Z-INACTA.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED
JUN 25 2013
8:30am
William A. Shaw
Prothonotary/Clerk of Courts
icc DAy m. Wheeler
icc del
GK