

07-1608-CD  
First Comm Bank vs Russell Gibson et al

FILED  
OCT 01 2007  
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William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK,

Plaintiff,

vs.

RUSSELL P. GIBSON,  
i/d/b/a CR AUTO AND SALES

Defendant.

CIVIL DIVISION

No. 2007-1608-CV

COMPLAINT IN  
CONFESSION OF JUDGMENT

Filed on Behalf of:  
FIRST COMMONWEALTH BANK,  
Plaintiff

Counsel of record for this party:

Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber Esquire  
Pa. I.D. No. 201022  
TUCKER ARENSBERG, P.C.  
Firm #287  
1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 566-1212

**NOTICE**

IF THIS IS THE FIRST NOTICE THAT YOU HAVE RECEIVED FROM THIS OFFICE, BE ADVISED THAT:

PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692 et seq. (1977), DEFENDANT(S) MAY DISPUTE THE VALIDITY OF THE DEBT OR ANY PORTION THEREOF. IF DEFENDANT(S) DO SO IN WRITING WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS PLEADING, COUNSEL FOR PLAINTIFF WILL OBTAIN AND PROVIDE DEFENDANT(S) WITH WRITTEN VERIFICATION THEREOF; OTHERWISE, THE DEBT WILL BE ASSUMED TO BE VALID. LIKEWISE, IF REQUESTED WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS PLEADING, COUNSEL FOR PLAINTIFF WILL SEND DEFENDANT(S) THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM ABOVE.

THE LAW DOES NOT REQUIRE US TO WAIT UNTIL THE END OF THE THIRTY (30) DAY PERIOD FOLLOWING FIRST CONTACT WITH YOU BEFORE SUING YOU TO COLLECT THIS DEBT. EVEN THOUGH THE LAW PROVIDES THAT YOUR ANSWER TO THIS COMPLAINT IS TO BE FILED IN THIS ACTION WITHIN TWENTY (20) DAYS, YOU MAY OBTAIN AN EXTENSION OF THAT TIME. FURTHERMORE, NO REQUEST WILL BE MADE TO THE COURT FOR A JUDGMENT UNTIL THE EXPIRATION OF THIRTY (30) DAYS AFTER YOU HAVE RECEIVED THIS COMPLAINT. HOWEVER, IF YOU REQUEST PROOF OF THE DEBT OR THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR WITHIN THE THIRTY (30) DAY PERIOD THAT BEGINS UPON YOU RECEIPT OF THIS COMPLAINT, THE LAW REQUIRES US TO CEASE OUR EFFORTS (THROUGH LITIGATION OR OTHERWISE) TO COLLECT THE DEBT UNTIL WE MAIL THE REQUESTED INFORMATION TO YOU. YOU SHOULD CONSULT AN ATTORNEY FOR ADVICE CONCERNING YOUR RIGHTS AND OBLIGATIONS IN THIS SUIT.

IF YOU HAVE FILED BANKRUPTCY AND RECEIVED A DISCHARGE, THIS IS NOT AN ATTEMPT TO COLLECT A DEBT. IT IS AN ACTION TO ENFORCE A LIEN ON REAL ESTATE.

## **ACT 105 OF 2000 NOTICE**

A JUDGMENT HAS BEEN ENTERED AGAINST YOU BY CONFESSION OF JUDGMENT.

PURSUANT TO 42 PA. C.S.A. §2737.1, IF YOU WERE INCORRECTLY IDENTIFIED AS A DEFENDANT IN THE COMPLAINT IN CONFESSION OF JUDGMENT, YOU MAY BE ENTITLED TO COSTS AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

YOU MAY TAKE ACTION TO STRIKE THE JUDGMENT BY FOLLOWING THE PROCEDURE IN RULE 2959 WHICH IS AS FOLLOWS:

### **I. Pennsylvania Rule of Civil Procedure 2959 – Striking Off Judgment.**

(a) (1) Relief From a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.

(2) The ground that the waiver of the due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only

(i) in support of a further request for a stay of execution where the court has stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of prima facie evidence of a defense; and

(ii) as provided by Pennsylvania Rule of Civil Procedure 2958.3 or Rule 2973.3.

(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.

(b) If the petition states prima facie grounds for relief the court shall issue a rule to show cause and may grant a stay of proceedings. After being served with a copy of the petition the plaintiff shall file an answer on or before the return day of the rule. The return day of the rule shall be fixed by the court by local rule or special order.

(c) A party waives all defenses and objections which are not included in the petition or answer.

(d) The petition and the rule to show cause and the answer shall be served as provided in Rule 440 (see text of Rule 440 reprinted below).

(e) The court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence. The court for cause shown may stay proceedings on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment. If evidence is produced which a jury trial would require the issues to be submitted to the jury the court shall open the judgment.

(f) The lien of the judgment or of any levy or attachment shall be preserved while the proceedings to strike off or open the judgment is pending.

Rule 440. Service of Legal Papers other than Original Process

(a) (1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, or at such other address as a party may agree, or

Note: Such other address as a party may agree might include a mailbox in the prothonotary's office or an e-mail address. For electronic service by means other than facsimile transmission, see Rule 205.4(g).

(ii) by transmitting a copy by facsimile to the party's attorney of record as provided by subdivision (d).

(2) (i) If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, or by transmitting a copy by facsimile as provided by subdivision (d).

(ii) If such service cannot be made, service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

Note: This rule applies to the service upon a party of all legal papers other than original process and includes, but is not limited to, all other pleadings as well as motions, petitions, answers thereto, rules, notices, interrogatories and answers thereto. Original process is served under Rule 400 et seq.

(b) Service by mail of legal papers other than original process is complete upon mailing.

(c) If service of legal papers other than original process is to be made by the sheriff, he shall notify by ordinary mail the party requesting service to be made that service has or has not been made upon a named party or person.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, )  
 ) No. \_\_\_\_\_  
Vs. )  
 )  
RUSSELL P. GIBSON, i/d/b/a CR AUTO )  
AND SALES, )  
 )  
Defendant. )

**COMPLAINT IN CONFESSION OF JUDGMENT**

Plaintiff, First Commonwealth Bank, by and through its counsel, Tucker Arensberg, P.C., avers as follows:

1. Plaintiff, First Commonwealth Bank, f/k/a Deposit Bank (the "Bank"), is a banking association with business offices at 654 Philadelphia Street, P.O. Box 400, Indiana, Pennsylvania 15701-0400.
2. Defendant, Russell P. Gibson, individually and doing business as CR Auto and Sales ("Borrower"), is an individual with a last known address of 1237 1/2 South Brady Street, Dubois, PA 15801.
3. On or about July 7, 2006, Borrower executed and delivered to the Plaintiff a U.S. Small Business Administration Note in the original principal amount of \$10,000.00 (the "Note"). A true and correct copy of the Note is attached hereto, incorporated herein, and labeled as Exhibit "A".
4. The Note contains a warrant of attorney whereby Borrower authorized the Bank to act as its lawful agent and attorney-in-fact for the purpose of entering judgment against Borrower and in favor of Bank, without notice or demand.

5. Borrower is in default under the Note for failure to make payment when due.

6. To date the Borrower has failed or refused to make payment of the balance due to the Plaintiff.

7. The Note authorizes the confession of judgment and attorneys fees of ten percent (10%) upon failure to pay upon demand of Bank.

8. Judgment has not been entered on the Note in any jurisdiction.

9. The Note has not been assigned.

**10. JUDGMENT IS NOT BEING ENTERED BY CONFESSION AGAINST A NATURAL PERSON IN CONNECTION WITH A CONSUMER CREDIT TRANSACTION.**

11. As of September 10, 2007, the amount due from Borrower to Plaintiff pursuant to the Note is Nine Thousand Nine Hundred Ninety Nine and 42/100 Dollars (\$9,999.42), plus costs of suit and interest, computed as follows:

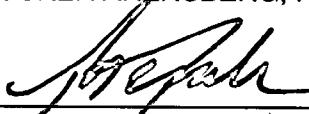
Principal Debt .....	\$ 8,669.18
Accrued Interest thru September 10, 2007 .....	390.35
(accruing daily in the amount of \$2.256361)	
Late Charges: .....	72.97
Attorney's fees of 10% .....	<u>866.92</u>
Total:.....	\$ 9,999.42

Plus interest accruing after September 10, 2007 at the contract rate and costs and expenses of suit.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against Defendant, Russell P. Gibson, individually and trading doing business as CR Auto and Sales, on the Note in the amount of Nine Thousand Nine Hundred Ninety Nine and 42/100 Dollars

(\$9,999.42), plus interest thereon at the contract rate after September 10, 2007, plus costs and expenses of suit and such other relief as this court deems appropriate.

Respectfully submitted,  
TUCKER ARENSBERG, P.C.



---

Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber, Esquire  
Pa. I.D. No. 201022  
1500 One PPG Place  
Pittsburgh, Pennsylvania 15222  
(412) 566-1212  
Counsel for First Commonwealth Bank,  
Plaintiff

Date: October \_\_\_, 2007

308309.1:BF  
11555-133586

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, )  
vs. ) No. \_\_\_\_\_  
RUSSELL P. GIBSON, )  
/d/b/a CR AUTO AND SALES, )  
Defendant. )

**CONFESSiON OF JUDGMENT**

Pursuant to the authority contained in the Warrants of Attorney within the Note, a copy of which is attached to the Complaint as Exhibit "A", I hereby appear for the Defendant and confess judgment in favor of the Plaintiff and against Defendant as follows:

Principal Debt.....	\$ 8,669.18
Accrued Interest thru September 10, 2007 .....	390.35
(accruing daily in the amount of \$2.256361)	
Late Charges:.....	72.97
Attorney's fees of 10% .....	<u>866.92</u>
Total:.....	\$ 9,999.42

Plus interest accruing after September 10, 2007 at the contract rate and costs and expenses of suit.



\_\_\_\_\_  
Attorney for Defendant  
pro hac vice

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, )  
vs. ) No. \_\_\_\_\_  
RUSSELL P. GIBSON, )  
i/d/b/a CR AUTO AND SALES, )  
Defendant. )

**CERTIFICATE OF RESIDENCE**

I hereby certify that the precise address of Plaintiff is:

First Commonwealth Bank  
654 Philadelphia Street  
P.O. Box 400  
Indiana, Pennsylvania 15701-0400

and the last known address of the Defendant is:

Russell P. Gibson  
i/d/b/a CR Auto and Sales  
1237 ½ S. Brady Street  
Dubois, PA 15801

TUCKER ARENSBERG, P.C.

By:

  
\_\_\_\_\_  
Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber, Esquire  
Pa. I.D. No. 201022  
Attorney for First Commonwealth Bank,  
Plaintiff



## U.S. Small Business Administration

**NOTE**

SBA Loan #	EXP 212-386-6008
SBA Loan Name	CR Auto and Sales
Date	7-7-06
Loan Amount	10,000.00
Interest Rate	9.50%
Borrower	Russell P. Gibson
Operating Company	N/A
Lender	First Commonwealth Bank

## 1. PROMISE TO PAY:

In return for the Loan, Borrower promises to pay to the order of Lender the amount of

ten thousand and 00/100-----

Dollars,

interest on the unpaid principal balance, and all other amounts required by this Note.

## 2. DEFINITIONS:

“Collateral” means any property taken as security for payment of this Note or any guarantee of this Note.

“Guarantor” means each person or entity that signs a guarantee of payment of this Note.

“Loan” means the loan evidenced by this Note.

“Loan Documents” means the documents related to this loan signed by Borrower, any Guarantor, or anyone who pledges collateral.

“SBA” means the Small Business Administration, an Agency of the United States of America.

**EXHIBIT**

A

3. PAYMENT TERMS:

Borrower must make all payments at the place Lender designates. The payment terms for this Note are:

The interest rate is 9.50%.

Borrower must pay principal and interest payments of \$210.02 every month, beginning one month from the month this Note is dated; payments must be made on the first calendar day in the months they are due.

Lender will apply each installment payment first to pay interest accrued to the day Lender receives the payment, then to bring principal current, then to pay any late fees, and will apply any remaining balance to reduce principal.

Loan Prepayment:

Notwithstanding any provision in this Note to the contrary:

Borrower may prepay this Note. Borrower may prepay 20 percent or less of the unpaid principal balance at any time without notice. If Borrower prepays more than 20 percent and the Loan has been sold on the secondary market, Borrower must:

- a. Give Lender written notice;
- b. Pay all accrued interest; and
- c. If the prepayment is received less than 21 days from the date Lender receives the notice, pay an amount equal to 21 days' interest from the date lender receives the notice, less any interest accrued during the 21 days and paid under subparagraph b., above.

If Borrower does not prepay within 30 days from the date Lender receives the notice, Borrower must give Lender a new notice.

All remaining principal and accrued interest is due and payable 5 years from date of Note.

Late Charge: If a payment on this Note is more than 10 days late, Lender may charge Borrower a late fee of up to 5% of the unpaid portion of the regularly scheduled payment.

#### 4. DEFAULT:

Borrower is in default under this Note if Borrower does not make a payment when due under this Note, or if Borrower or Operating Company:

- A. Fails to do anything required by this Note and other Loan Documents;
- B. Defaults on any other loan with Lender;
- C. Does not preserve, or account to Lender's satisfaction for, any of the Collateral or its proceeds;
- D. Does not disclose, or anyone acting on their behalf does not disclose, any material fact to Lender or SBA;
- E. Makes, or anyone acting on their behalf makes, a materially false or misleading representation to Lender or SBA;
- F. Defaults on any loan or agreement with another creditor, if Lender believes the default may materially affect Borrower's ability to pay this Note;
- G. Fails to pay any taxes when due;
- H. Becomes the subject of a proceeding under any bankruptcy or insolvency law;
- I. Has a receiver or liquidator appointed for any part of their business or property;
- J. Makes an assignment for the benefit of creditors;
- K. Has any adverse change in financial condition or business operation that Lender believes may materially affect Borrower's ability to pay this Note;
- L. Reorganizes, merges, consolidates, or otherwise changes ownership or business structure without Lender's prior written consent; or
- M. Becomes the subject of a civil or criminal action that Lender believes may materially affect Borrower's ability to pay this Note.

#### 5. LENDER'S RIGHTS IF THERE IS A DEFAULT:

Without notice or demand and without giving up any of its rights, Lender may:

- A. Require immediate payment of all amounts owing under this Note;
- B. Collect all amounts owing from any Borrower or Guarantor;
- C. File suit and obtain judgment;
- D. Take possession of any Collateral; or
- E. Sell, lease, or otherwise dispose of, any Collateral at public or private sale, with or without advertisement.

#### 6. LENDER'S GENERAL POWERS:

Without notice and without Borrower's consent, Lender may:

- A. Bid on or buy the Collateral at its sale or the sale of another lienholder, at any price it chooses;
- B. Incur expenses to collect amounts due under this Note, enforce the terms of this Note or any other Loan Document, and preserve or dispose of the Collateral. Among other things, the expenses may include payments for property taxes, prior liens, insurance, appraisals, environmental remediation costs, and reasonable attorney's fees and costs. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance;
- C. Release anyone obligated to pay this Note;
- D. Compromise, release, renew, extend or substitute any of the Collateral; and
- E. Take any action necessary to protect the Collateral or collect amounts owing on this Note.

7. WHEN FEDERAL LAW APPLIES:

When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.

8. SUCCESSORS AND ASSIGNS:

Under this Note, Borrower and Operating Company include the successors of each, and Lender includes its successors and assigns.

9. GENERAL PROVISIONS:

- A. All individuals and entities signing this Note are jointly and severally liable.
- B. Borrower waives all suretyship defenses.
- C. Borrower must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- D. Lender may exercise any of its rights separately or together, as many times and in any order it chooses. Lender may delay or forgo enforcing any of its rights without giving up any of them.
- E. Borrower may not use an oral statement of Lender or SBA to contradict or alter the written terms of this Note.
- F. If any part of this Note is unenforceable, all other parts remain in effect.
- G. To the extent allowed by law, Borrower waives all demands and notices in connection with this Note, including presentment, demand, protest, and notice of dishonor. Borrower also waives any defenses based upon any claim that Lender did not obtain any guarantee; did not obtain, perfect, or maintain a lien upon Collateral; impaired Collateral; or did not obtain the fair market value of Collateral at a sale.

10. STATE-SPECIFIC PROVISIONS:

The undersigned hereby authorizes and empowers any attorney or clerk of any court of record in the United States or elsewhere to appear for and, with or without declaration filed, confess judgment against the undersigned in favor of the holder, assignee or successor of holder of this note, at any term, for the full or total amount of this note, together with all "indebtedness" provided for therein, with costs of suit and attorney's commission of ten (10) percent for collection; and the undersigned expressly releases all errors, waives all stay of execution, rights of inquisition and extension upon any levy upon real estate and all exemption of property from levy and sale upon any execution herein, and the undersigned expressly agrees to condemnation and expressly relinquishes all rights to benefits or exemptions under any and all exemption laws now in force or which may hereafter be enacted.

11. BORROWER'S NAME(S) AND SIGNATURE(S):

By signing below, each individual or entity becomes obligated under this Note as Borrower.

Russell P. Gibson dba CR Auto and Sales

Russell P. Gibson

2-7-06

Date

**VERIFICATION**

I, Gary R. Carpenter, Loan Workout Officer I of First Commonwealth Bank, hereby certify that the averments of fact contained in the foregoing Complaint in Confession of Judgment are true and correct to the best of my knowledge, information and belief; that I am authorized to make this declaration on behalf of the Plaintiff, and that it is made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.



Gary R. Carpenter  
Loan Wcrkout Officer I  
First Commonwealth Bank

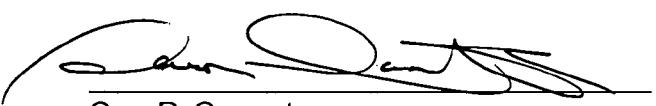
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11555-133586

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, )  
vs. ) No. \_\_\_\_\_  
RUSSELL P. GIBSON, i/d/b/a CR AUTO )  
AND SALES, )  
Defendant. )

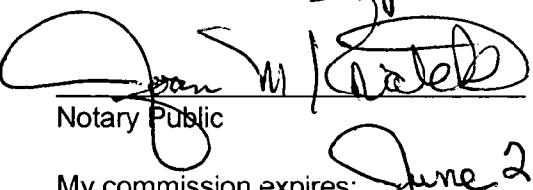
**AFFIDAVIT**

I hereby certify that the facts set forth in the foregoing Complaint in Confession of Judgment are true and correct to the best of my knowledge, information and belief; that the Exhibits attached to the Complaint in Confession of Judgment are true and correct copies of the originals; that the Defendant is in default under the Note; that the underlying transaction giving rise to this action is commercial in nature and is not a consumer credit transaction against a natural person; and that I am authorized to make this Affidavit.



Gary R. Carpenter  
Loan Workout Officer I  
First Commonwealth Bank

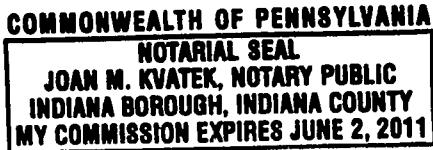
Sworn to and subscribed before me  
this 25th day of September, 2007.



Notary Public

My commission expires: June 2, 2011

BANK\_FIN:308309-1 011555-133586



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No. <u>2007-1608-C0</u>
	)	
vs.	)	
	)	
RUSSELL P. GIBSON,	)	
i/d/b/a CR AUTO AND SALES,	)	
	)	
Defendant.	)	

**NOTICE OF ENTRY OF JUDGMENT**

To: Russell P. Gibson  
i/d/b/a CR Auto and Sales  
1237 1/2 S. Brady Street  
Dubois, PA 15801

You are hereby notified that a judgment was entered against you by confession in the  
above captioned proceeding on October 1, 2007.

The amount of the judgment is **\$9,999.42**, plus interest accruing at the contract rate and  
costs and expenses of suit.

A copy of the complaint is enclosed.



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Prothonotary, Clearfield County

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103405  
NO: 07-1608-CD  
SERVICE # 1 OF 1  
NOTICE UNDER RULE 2958.1 OF JUDGMENT

PLAINTIFF: FIRST COMMONWEALTH BANK  
vs.  
DEFENDANT: RUSSELL P. GIBSON i/d/b/a CR AUTO AND SALES

**SHERIFF RETURN**

NOW, December 12, 2007 AT 10:05 AM SERVED THE WITHIN NOTICE UNDER RULE 2958.1 OF JUDGMENT ON RUSSELL P. GIBSON i/d/b/a CR AUTO AND SALES DEFENDANT AT 1237 1/2 SOUTH BRADY ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RUSSELL P. GIBSON, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL NOTICE UNDER RULE 2958.1 OF JUDGMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

**FILED**  
03/06/08  
DEC 14 2007  
William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	ARENSBERG	306818	10.00
SHERIFF HAWKINS	ARENSBERG	306818	90.00

Sworn to Before Me This

\_\_\_\_ Day of \_\_\_\_\_ 2006

So Answers,

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

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

FILED

JAN 11 2008

019:05 AM  
William A. Shaw  
Prothonotary/Clerk of Courts

3 CPM TO  
ATT

First Commonwealth Bank,  
Plaintiff

vs.

Russell P. Gibson,  
Defendant

\*

\*

\* NO.: 07-1608

\*

\* Type of Case: Confession of Judgment

\*

\* Type of Pleading: Petition to Open

\*

\*

\* Filed on Behalf of: Russell P. Gibson

\*

\* Counsel of Record for this Party:

\* Robin Jean Foor, Esquire

\*

\* Supreme Court No.: 41520

\*

\* MidPenn Legal Services

\* 211 East Locust Street

\* Clearfield, PA 16839

\* (814)765-9646

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

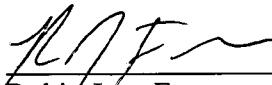
First Commonwealth Bank	:
Plaintiff	:
	:
vs.	: NO. 07-1608CD
	:
Russell P. Gibson	:
Defendant	:

DEFENDANT'S PETITION TO OPEN CONFESSED JUDGMENT

Defendant, Russell P. Gibson, by his undersigned counsel, respectfully petitions this Court to open the confessed judgment, and in support states the following:

1. Plaintiff, First Commonwealth Bank, commenced this action on October 1, 2007, by complaint to confess judgment against the defendant upon a Small Business Administration Loan ("loan") containing a warrant of attorney. A true and correct copy of the complaint is attached as "Exhibit A."
2. Defendant was served with a notice under Rule 2958.1 on December 12, 2007. A copy of the notice is attached as "Exhibit B."
3. Defendant has a high school diploma but reads poorly.
4. At the time he executed to contract, defendant did not know it contained a warrant of attorney and plaintiff's representative did not explain the warrant of attorney to defendant.
5. Defendant did not voluntarily, intelligently or knowingly waive his due process rights when he executed the contract.
6. This petition has been filed promptly after notice of the entry of judgment by confession.

WHEREFORE, defendant, Russell P. Gibson, respectfully requests that this Court open the judgment by confession of October 1, 2007 in the above captioned matter.



---

Robin Jean Foor  
Attorney for Russell P. Gibson  
PA ID # 41520  
MidPenn Legal Services Inc.  
211 East Locust Street  
Clearfield, PA 16803  
(814)765-9646

# EXHIBIT A

FILED

OCT 01 2007

2007-1608-C

William A. Shaw  
Prothonotary/Clark of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

1 Cents Worldwide  
to Dept 1

FIRST COMMONWEALTH BANK,

Plaintiff,

vs.

RUSSELL P. GIBSON,  
i/d/b/a CR AUTO AND SALES

Defendant.

CIVIL DIVISION

No. 2007-1608-C

COMPLAINT IN  
CONFESION OF JUDGMENT

Filed on Behalf of:  
FIRST COMMONWEALTH BANK,  
Plaintiff

Counsel of record for this party:

Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber, Esquire  
Pa. I.D. No. 201022  
TUCKER ARENSBERG, P.C.  
Firm #287  
1500 One PPG Place  
Pittsburgh, PA 15222  
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**NOTICE**

IF THIS IS THE FIRST NOTICE THAT YOU HAVE RECEIVED FROM THIS OFFICE, BE ADVISED THAT:

PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692 et seq. (1977), DEFENDANT(S) MAY DISPUTE THE VALIDITY OF THE DEBT OR ANY PORTION THEREOF. IF DEFENDANT(S) DO SO IN WRITING WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS PLEADING, COUNSEL FOR PLAINTIFF WILL OBTAIN AND PROVIDE DEFENDANT(S) WITH WRITTEN VERIFICATION THEREOF; OTHERWISE, THE DEBT WILL BE ASSUMED TO BE VALID. LIKEWISE, IF REQUESTED WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS PLEADING, COUNSEL FOR PLAINTIFF WILL SEND DEFENDANT(S) THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM ABOVE.

THE LAW DOES NOT REQUIRE US TO WAIT UNTIL THE END OF THE THIRTY (30) DAY PERIOD FOLLOWING FIRST CONTACT WITH YOU BEFORE SUING YOU TO COLLECT THIS DEBT. EVEN THOUGH THE LAW PROVIDES THAT YOUR ANSWER TO THIS COMPLAINT IS TO BE FILED IN THIS ACTION WITHIN TWENTY (20) DAYS, YOU MAY OBTAIN AN EXTENSION OF THAT TIME. FURTHERMORE, NO REQUEST WILL BE MADE TO THE COURT FOR A JUDGMENT UNTIL THE EXPIRATION OF THIRTY (30) DAYS AFTER YOU HAVE RECEIVED THIS COMPLAINT. HOWEVER, IF YOU REQUEST PROOF OF THE DEBT OR THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR WITHIN THE THIRTY (30) DAY PERIOD THAT BEGINS UPON YOU RECEIPT OF THIS COMPLAINT, THE LAW REQUIRES US TO CEASE OUR EFFORTS (THROUGH LITIGATION OR OTHERWISE) TO COLLECT THE DEBT UNTIL WE MAIL THE REQUESTED INFORMATION TO YOU. YOU SHOULD CONSULT AN ATTORNEY FOR ADVICE CONCERNING YOUR RIGHTS AND OBLIGATIONS IN THIS SUIT.

IF YOU HAVE FILED BANKRUPTCY AND RECEIVED A DISCHARGE, THIS IS NOT AN ATTEMPT TO COLLECT A DEBT. IT IS AN ACTION TO ENFORCE A LIEN ON REAL ESTATE.

## **ACT 105 OF 2000 NOTICE**

A JUDGMENT HAS BEEN ENTERED AGAINST YOU BY CONFESSION OF JUDGMENT.

PURSUANT TO 42 PA. C.S.A. §2737.1, IF YOU WERE INCORRECTLY IDENTIFIED AS A DEFENDANT IN THE COMPLAINT IN CONFESSION OF JUDGMENT, YOU MAY BE ENTITLED TO COSTS AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

YOU MAY TAKE ACTION TO STRIKE THE JUDGMENT BY FOLLOWING THE PROCEDURE IN RULE 2959 WHICH IS AS FOLLOWS:

### **I. Pennsylvania Rule of Civil Procedure 2959 – Striking Off Judgment.**

(a) (1) Relief From a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.

(2) The ground that the waiver of the due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only

(i) in support of a further request for a stay of execution where the court has stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of prima facie evidence of a defense; and

(ii) as provided by Pennsylvania Rule of Civil Procedure 2958.3 or Rule 2973.3.

(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.

(b) If the petition states prima facie grounds for relief the court shall issue a rule to show cause and may grant a stay of proceedings. After being served with a copy of the petition the plaintiff shall file an answer on or before the return day of the rule. The return day of the rule shall be fixed by the court by local rule or special order.

(c) A party waives all defenses and objections which are not included in the petition or answer.

(d) The petition and the rule to show cause and the answer shall be served as provided in Rule 440 (see text of Rule 440 reprinted below).

(e) The court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence. The court for cause shown may stay proceedings on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment. If evidence is produced which a jury trial would require the issues to be submitted to the jury the court shall open the judgment.

(f) The lien of the judgment or of any levy or attachment shall be preserved while the proceedings to strike off or open the judgment is pending.

**Rule 440. Service of Legal Papers other than Original Process**

(a) (1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, or at such other address as a party may agree, or

Note: Such other address as a party may agree might include a mailbox in the prothonotary's office or an e-mail address. For electronic service by means other than facsimile transmission, see Rule 205.4(g).

(ii) by transmitting a copy by facsimile to the party's attorney of record as provided by subdivision (d).

(2) (i) If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, or by transmitting a copy by facsimile as provided by subdivision (d).

(ii) If such service cannot be made, service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

Note: This rule applies to the service upon a party of all legal papers other than original process and includes, but is not limited to, all other pleadings as well as motions, petitions, answers thereto, rules, notices, interrogatories and answers thereto. Original process is served under Rule 400 et seq.

(b) Service by mail of legal papers other than original process is complete upon mailing.

(c) If service of legal papers other than original process is to be made by the sheriff, he shall notify by ordinary mail the party requesting service to be made that service has or has not been made upon a named party or person.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, )  
vs. ) No. \_\_\_\_\_  
RUSSELL P. GIBSON, i/d/b/a CR AUTO )  
AND SALES, )  
Defendant. )

**COMPLAINT IN CONFESSION OF JUDGMENT**

Plaintiff, First Commonwealth Bank, by and through its counsel, Tucker Arensberg, P.C., avers as follows:

1. Plaintiff, First Commonwealth Bank, f/k/a Deposit Bank (the "Bank"), is a banking association with business offices at 654 Philadelphia Street, P.O. Box 400, Indiana, Pennsylvania 15701-0400.
2. Defendant, Russell P. Gibson, individually and doing business as CR Auto and Sales ("Borrower"), is an individual with a last known address of 1237 ½ South Brady Street, Dubois, PA 15801.
3. On or about July 7, 2006, Borrower executed and delivered to the Plaintiff a U.S. Small Business Administration Note in the original principal amount of \$10,000.00 (the "Note"). A true and correct copy of the Note is attached hereto, incorporated herein, and labeled as Exhibit "A".
4. The Note contains a warrant of attorney whereby Borrower authorized the Bank to act as its lawful agent and attorney-in-fact for the purpose of entering judgment against Borrower and in favor of Bank, without notice or demand.

5. Borrower is in default under the Note for failure to make payment when due.

6. To date the Borrower has failed or refused to make payment of the balance due to the Plaintiff.

7. The Note authorizes the confession of judgment and attorneys fees of ten percent (10%) upon failure to pay upon demand of Bank.

8. Judgment has not been entered on the Note in any jurisdiction.

9. The Note has not been assigned.

**10. JUDGMENT IS NOT BEING ENTERED BY CONFESSION AGAINST A NATURAL PERSON IN CONNECTION WITH A CONSUMER CREDIT TRANSACTION.**

11. As of September 10, 2007, the amount due from Borrower to Plaintiff pursuant to the Note is Nine Thousand Nine Hundred Ninety Nine and 42/100 Dollars (\$9,999.42), plus costs of suit and interest, computed as follows:

Principal Debt .....	\$ 8,669.18
Accrued Interest thru September 10, 2007 .....	390.35
(accruing daily in the amount of \$2.256361)	
Late Charges: .....	72.97
Attorney's fees of 10% .....	<u>866.92</u>
Total:.....	\$ 9,999.42

Plus interest accruing after September 10, 2007 at the contract rate and costs and expenses of suit.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against Defendant, Russell P. Gibson, individually and trading doing business as CR Auto and Sales, on the Note in the amount of Nine Thousand Nine Hundred Ninety Nine and 42/100 Dollars

(\$9,999.42), plus interest thereon at the contract rate after September 10, 2007, plus costs and expenses of suit and such other relief as this court deems appropriate.

Respectfully submitted,  
TUCKER ARENSBERG, P.C.

Date: October \_\_\_, 2007

  
\_\_\_\_\_  
Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber, Esquire  
Pa. I.D. No. 201022  
1500 One PPG Place  
Pittsburgh, Pennsylvania 15222  
(412) 566-1212  
Counsel for First Commonwealth Bank,  
Plaintiff

308309.1:BF  
11555-133586

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
)  
Plaintiff, ) No. \_\_\_\_\_  
)  
vs. )  
)  
RUSSELL P. GIBSON, )  
/d/b/a CR AUTO AND SALES, )  
)  
Defendant. )

**CONFESSTION OF JUDGMENT**

Pursuant to the authority contained in the Warrants of Attorney within the Note, a copy of which is attached to the Complaint as Exhibit "A", I hereby appear for the Defendant and confess judgment in favor of the Plaintiff and against Defendant as follows:

Principal Debt .....	\$ 8,669.18
Accrued Interest thru September 10, 2007 .....	390.35
(accruing daily in the amount of \$2.256361)	
Late Charges:.....	72.97
Attorney's fees of 10% .....	<u>866.92</u>
Total:.....	\$ 9,999.42

Plus interest accruing after September 10, 2007 at the contract rate and costs and expenses of suit.



Attorney for Defendant  
pro hac vice

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, ) No. \_\_\_\_\_  
vs. )  
RUSSELL P. GIBSON, )  
i/d/b/a CR AUTO AND SALES, )  
Defendant. )

**CERTIFICATE OF RESIDENCE**

I hereby certify that the precise address of Plaintiff is:

First Commonwealth Bank  
654 Philadelphia Street  
P.O. Box 400  
Indiana, Pennsylvania 15701-0400

and the last known address of the Defendant is:

Russell P. Gibson  
i/d/b/a CR Auto and Sales  
1237 1/2 S. Brady Street  
Dubois, PA 15801

TUCKER ARENSBERG, P.C.

By: 

Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber, Esquire  
Pa. I.D. No. 201022  
Attorney for First Commonwealth Bank,  
Plaintiff



## U.S. Small Business Administration

**NOTE**

SBA Loan #	EXP 212-386-6008
SBA Loan Name	CR Auto and Sales
Date	7-7-06
Loan Amount	10,000.00
Interest Rate	9.50%
Borrower	Russell P. Gibson
Operating Company	N/A
Lender	First Commonwealth Bank

**1. PROMISE TO PAY:**

In return for the Loan, Borrower promises to pay to the order of Lender the amount of  
 ten thousand and 00/100 Dollars,  
 interest on the unpaid principal balance, and all other amounts required by this Note.

**2. DEFINITIONS:**

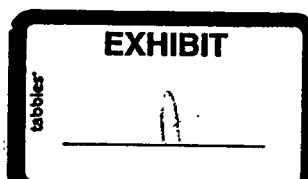
“Collateral” means any property taken as security for payment of this Note or any guarantee of this Note.

“Guarantor” means each person or entity that signs a guarantee of payment of this Note.

“Loan” means the loan evidenced by this Note.

“Loan Documents” means the documents related to this loan signed by Borrower, any Guarantor, or anyone who pledges collateral.

“SBA” means the Small Business Administration, an Agency of the United States of America.



**3. PAYMENT TERMS:**

Borrower must make all payments at the place Lender designates. The payment terms for this Note are:

The interest rate is 9.50%.

Borrower must pay principal and interest payments of \$210.02 every month, beginning one month from the month this Note is dated; payments must be made on the first calendar day in the months they are due.

Lender will apply each installment payment first to pay interest accrued to the day Lender receives the payment, then to bring principal current, then to pay any late fees, and will apply any remaining balance to reduce principal.

**Loan Prepayment:**

Notwithstanding any provision in this Note to the contrary:

Borrower may prepay this Note. Borrower may prepay 20 percent or less of the unpaid principal balance at any time without notice. If Borrower prepays more than 20 percent and the Loan has been sold on the secondary market, Borrower must:

- a. Give Lender written notice;
- b. Pay all accrued interest; and
- c. If the prepayment is received less than 21 days from the date Lender receives the notice, pay an amount equal to 21 days' interest from the date lender receives the notice, less any interest accrued during the 21 days and paid under subparagraph b., above.

If Borrower does not prepay within 30 days from the date Lender receives the notice, Borrower must give Lender a new notice.

All remaining principal and accrued interest is due and payable 5 years from date of Note.

**Late Charge:** If a payment on this Note is more than 10 days late, Lender may charge Borrower a late fee of up to 5% of the unpaid portion of the regularly scheduled payment.

4. DEFAULT:

Borrower is in default under this Note if Borrower does not make a payment when due under this Note, or if Borrower or Operating Company:

- A. Fails to do anything required by this Note and other Loan Documents;
- B. Defaults on any other loan with Lender;
- C. Does not preserve, or account to Lender's satisfaction for, any of the Collateral or its proceeds;
- D. Does not disclose, or anyone acting on their behalf does not disclose, any material fact to Lender or SBA;
- E. Makes, or anyone acting on their behalf makes, a materially false or misleading representation to Lender or SBA;
- F. Defaults on any loan or agreement with another creditor, if Lender believes the default may materially affect Borrower's ability to pay this Note;
- G. Fails to pay any taxes when due;
- H. Becomes the subject of a proceeding under any bankruptcy or insolvency law;
- I. Has a receiver or liquidator appointed for any part of their business or property;
- J. Makes an assignment for the benefit of creditors;
- K. Has any adverse change in financial condition or business operation that Lender believes may materially affect Borrower's ability to pay this Note;
- L. Reorganizes, merges, consolidates, or otherwise changes ownership or business structure without Lender's prior written consent; or
- M. Becomes the subject of a civil or criminal action that Lender believes may materially affect Borrower's ability to pay this Note.

5. LENDER'S RIGHTS IF THERE IS A DEFAULT:

Without notice or demand and without giving up any of its rights, Lender may:

- A. Require immediate payment of all amounts owing under this Note;
- B. Collect all amounts owing from any Borrower or Guarantor;
- C. File suit and obtain judgment;
- D. Take possession of any Collateral; or
- E. Sell, lease, or otherwise dispose of, any Collateral at public or private sale, with or without advertisement.

6. LENDER'S GENERAL POWERS:

Without notice and without Borrower's consent, Lender may:

- A. Bid on or buy the Collateral at its sale or the sale of another lienholder, at any price it chooses;
- B. Incur expenses to collect amounts due under this Note, enforce the terms of this Note or any other Loan Document, and preserve or dispose of the Collateral. Among other things, the expenses may include payments for property taxes, prior liens, insurance, appraisals, environmental remediation costs, and reasonable attorney's fees and costs. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance;
- C. Release anyone obligated to pay this Note;
- D. Compromise, release, renew, extend or substitute any of the Collateral; and
- E. Take any action necessary to protect the Collateral or collect amounts owing on this Note.

**7. WHEN FEDERAL LAW APPLIES:**

When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.

**8. SUCCESSORS AND ASSIGNS:**

Under this Note, Borrower and Operating Company include the successors of each, and Lender includes its successors and assigns.

**9. GENERAL PROVISIONS:**

- A. All individuals and entities signing this Note are jointly and severally liable.
- B. Borrower waives all suretyship defenses.
- C. Borrower must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- D. Lender may exercise any of its rights separately or together, as many times and in any order it chooses. Lender may delay or forgo enforcing any of its rights without giving up any of them.
- E. Borrower may not use an oral statement of Lender or SBA to contradict or alter the written terms of this Note.
- F. If any part of this Note is unenforceable, all other parts remain in effect.
- G. To the extent allowed by law, Borrower waives all demands and notices in connection with this Note, including presentment, demand, protest, and notice of dishonor. Borrower also waives any defenses based upon any claim that Lender did not obtain any guarantee; did not obtain, perfect, or maintain a lien upon Collateral; impaired Collateral; or did not obtain the fair market value of Collateral at a sale.

10. STATE-SPECIFIC PROVISIONS:

The undersigned hereby authorizes and empowers any attorney or clerk of any court of record in the United States or elsewhere to appear for and, with or without declaration filed, confess judgment against the undersigned in favor of the holder, assignee or successor of holder of this note, at any term, for the full or total amount of this note, together with all "indebtedness" provided for therein, with costs of suit and attorney's commission of ten (10) percent for collection; and the undersigned expressly releases all errors, waives all stay of execution, rights of inquisition and extension upon any levy upon real estate and all exemption of property from levy and sale upon any execution herein, and the undersigned expressly agrees to condemnation and expressly relinquishes all rights to benefits or exemptions under any and all exemption laws now in force or which may hereafter be enacted.

11. BORROWER'S NAME(S) AND SIGNATURE(S):

By signing below, each individual or entity becomes obligated under this Note as Borrower.

Russell P. Gibson dba CR Auto and Sales



Russell P. Gibson



Date

**VERIFICATION**

I, Gary R. Carpenter, Loan Workout Officer I of First Commonwealth Bank, hereby certify that the averments of fact contained in the foregoing Complaint in Confession of Judgment are true and correct to the best of my knowledge, information and belief; that I am authorized to make this declaration on behalf of the Plaintiff, and that it is made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.



Gary R. Carpenter  
Loan Workout Officer I  
First Commonwealth Bank

308309.1:BF  
11555-133586

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
)  
Plaintiff, ) No. \_\_\_\_\_  
)  
vs. )  
)  
RUSSELL P. GIBSON, i/d/b/a CR AUTO )  
AND SALES, )  
)  
Defendant. )

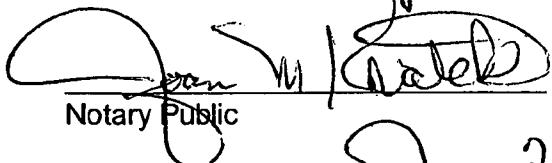
**AFFIDAVIT**

I hereby certify that the facts set forth in the foregoing Complaint in Confession of Judgment are true and correct to the best of my knowledge, information and belief; that the Exhibits attached to the Complaint in Confession of Judgment are true and correct copies of the originals; that the Defendant is in default under the Note; that the underlying transaction giving rise to this action is commercial in nature and is not a consumer credit transaction against a natural person; and that I am authorized to make this Affidavit.



Gary R. Carpenter  
Loan Workout Officer I  
First Commonwealth Bank

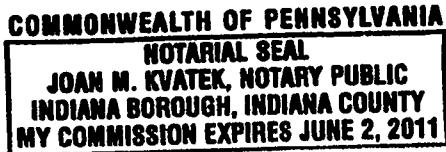
Sworn to and subscribed before me  
this 25th day of September, 2007.



Notary Public

My commission expires: June 2, 2011

BANK\_FIN:308309-1 011555-133586



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, ) No. 2007-1608-C  
vs. )  
RUSSELL P. GIBSON, )  
i/d/b/a CR AUTO AND SALES, )  
Defendant. )

**NOTICE OF ENTRY OF JUDGMENT**

To: Russell P. Gibson  
i/d/b/a CR Auto and Sales  
1237 1/2 S. Brady Street  
Dubois, PA 15801

You are hereby notified that a judgment was entered against you by confession in the  
above captioned proceeding on Oct. 1, 2007.

The amount of the judgment is **\$9,999.42**, plus interest accruing at the contract rate and  
costs and expenses of suit.

A copy of the complaint is enclosed.



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Prothonotary, Clearfield County

## EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No. 2007-1608-CD
	)	
vs.	)	
	)	
RUSSELL P. GIBSON,	)	
i/d/b/a CR AUTO AND SALES,	)	
	)	
Defendant.	)	

**Notice Under Rule 2958.1  
of Judgment and Execution Thereon**

**NOTICE OF DEFENDANT'S RIGHTS**

To: Russell P. Gibson  
i/d/b/a CR Auto and Sales  
1237 ½ South Brady Street  
DuBois, PA 15801

A judgment in the amount of **\$9,999.42** has been entered against you and in favor of the plaintiff without any prior notice or hearing based on a confession of judgment contained in a written agreement or other paper allegedly signed by you. The sheriff may take your money or other property to pay the judgment at any time after thirty (30) days after the date on which this notice is served on you.

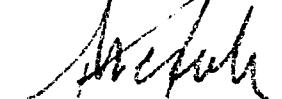
You may have legal rights to defeat the judgment or to prevent your money or property from being taken. **YOU MUST FILE A PETITION SEEKING RELIEF FROM THE JUDGMENT AND PRESENT IT TO A JUDGE WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH THIS NOTICE IS SERVED ON YOU OR YOU MAY LOSE YOUR RIGHTS.**

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

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

David S. Meholic, Court Administrator  
Clearfield County Courthouse  
Clearfield, Pennsylvania 16830  
Telephone: (814) 765-2641 (ext. 5982)

~~TUCKER ARENSBERG, P.C.~~



Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber, Esquire  
Pa. I.D. No. 201022  
1500 One PPG Place  
Pittsburgh, Pennsylvania 15222  
(412) 566-1212

Attorneys for First Commonwealth Bank, Plaintiff

VERIFICATION

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

Russell P. Gibson  
Russell P. Gibson  
P

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

First Commonwealth Bank :  
Plaintiff :  
:  
vs. : NO. 07-1608CD  
:  
Russell P. Gibson :  
Defendant :  
:

RULE TO SHOW CAUSE WHY CONFESSED JUDGMENT SHOULD NOT BE  
OPENED

AND NOW, this 16<sup>th</sup> day of January, 2008, a rule is  
entered upon the plaintiff, First Commonwealth Bank, to show cause why the judgment  
by confession of October 1, 2007 in the above captioned matter should not be opened.

Rule returnable the 5<sup>th</sup> day of March, 2008 at 9:00 o'clock  
A.m. in Courtroom # 1, Clearfield County Courthouse, 1 North Second Street,  
Clearfield, PA.

By the Court:

  
\_\_\_\_\_  
J.

FILED 3CC  
014-00261 Atty For  
JAN 17 2008  
(6K)  
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**JAN 17 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 1/17/08

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

First Commonwealth Bank,  
Plaintiff

vs.

Russell P. Gibson,  
Defendant

\*

\*  
\* NO.: 07-1608

\*

\* Type of Case: Confession of Judgment

\*

\* Type of Pleading: Certificate of Service

\*

\*

\* Filed on Behalf of: Russell P. Gibson

\*

\* Counsel of Record for this Party:

\* Robin Jean Foor, Esquire

\*

\* Supreme Court No.: 41520

\*

\* MidPenn Legal Services

\* 211 East Locust Street

\* Clearfield, PA 16839

\* (814)765-9646

FILED  
01/10/2016 CJA Amy Foor  
JAN 28 2016  
WAS  
William A. Shaw  
Prothonotary/Clerk of Courts

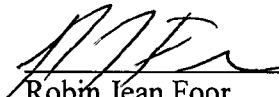
IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

First Commonwealth Bank :  
Plaintiff :  
:  
vs. : NO. 07-1608CD  
:  
Russell P. Gibson :  
Defendant :  
:

CERTIFICATE OF SERVICE

I, Robin Jean Foor, Esquire, hereby certify that on the 24<sup>th</sup> day of January, 2008 I served a copy of the Order scheduling a Rule Returnable on the Petition to Open Confessed Judgment filed in that above captioned matter to the following individual by first class mail, postage prepaid:

Thomas E. Reiber, Esquire  
Tucker Arensberg, P.C.  
1500 One PPG Place  
Pittsburgh, PA 15222

  
\_\_\_\_\_  
Robin Jean Foor  
PA ID # 41520  
MidPenn Legal Services Inc.  
211 East Locust Street  
Clearfield, PA 16803  
(814)765-9646

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

First Commonwealth Bank,  
Plaintiff

vs.

Russell P. Gibson,  
Defendant

\*

\*  
\* NO.: 07-1608

\*

\* Type of Case: Confession of Judgment

\*

\* Type of Pleading: Certificate of Service

\*

\*

\* Filed on Behalf of: Russell P. Gibson

\*

\* Counsel of Record for this Party:

\* Robin Jean Foor, Esquire

\*

\* Supreme Court No.: 41520

\*

\* MidPenn Legal Services

\* 211 East Locust Street

\* Clearfield, PA 16839

\* (814)765-9646

FILED 100  
01/10/2007 JAN 28 2007 Atty Foor  
WM  
William A. Shaffer  
Prothonotary/Clerk of Courts

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

First Commonwealth Bank :  
Plaintiff :  
:  
vs. : NO. 07-1608CD  
:  
Russell P. Gibson :  
Defendant :  
:

CERTIFICATE OF SERVICE

I, Robin Jean Foor, Esquire, hereby certify that on the 11<sup>th</sup> day of January, 2008 I served a copy of the Petition to Open Confessed Judgment filed in that above captioned matter to the following individual by first class mail, postage prepaid:

Thomas E. Reiber, Esquire  
Tucker Arensberg, P.C.  
1500 One PPG Place  
Pittsburgh, PA 15222

  
\_\_\_\_\_  
Robin Jean Foor  
PA ID # 41520  
MidPenn Legal Services Inc.  
211 East Locust Street  
Clearfield, PA 16803  
(814)765-9646

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK,

CIVIL DIVISION

Plaintiff,

No. 07-1608

vs.

RUSSELL P. GIBSON,  
i/d/b/a CR AUTO AND SALES

PLAINTIFF'S RESPONSE TO  
DEFENDANT'S PETITION TO OPEN

Defendant.

Filed on Behalf of:  
FIRST COMMONWEALTH BANK,  
Plaintiff

Counsel of record for this party:

Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber, Esquire  
Pa. I.D. No. 201022  
TUCKER ARENSBERG, P.C.  
Firm #287  
1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 566-1212

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11/10/08 2:00 PM  
CLERK OF COURT

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No. 07-1608
	)	
vs.	)	
	)	
RUSSELL P. GIBSON, i/d/b/a CR AUTO	)	
AND SALES,	)	
	)	
Defendant.	)	

**PLAINTIFF'S RESPONSE TO DEFENDANT'S PETITION TO OPEN**

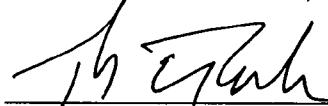
Plaintiff, First Commonwealth Bank, by and through its counsel, Tucker Arensberg, P.C., responds to the Defendant's Petition to Open (the "Petition") as follows:

1. The Defendant's Petition paragraph 1 is admitted.
2. The Defendant's Petition paragraph 2 is admitted.
3. The Defendant's Petition paragraph 3 is denied as irrelevant. Plaintiff is unaware of any banking regulation, or state statute, which requires a Bank to discover the level of educational competency of its borrowers prior to making loans.
4. The Defendant's Petition paragraph 4 is denied, for those reasons stated more fully herein.
5. The Defendant's Petition paragraph 5 is denied, for those reasons stated more fully herein.
6. The Defendant's Petition paragraph 6 states a conclusion of law to which no response is required, as the pleadings, and dates of filing and service thereof speak for themselves.

WHEREFORE, Plaintiff demands that Petition of the Defendant be denied.

Respectfully submitted,  
TUCKER ARENSBERG, P.C.

Date: February 6, 2008

  
Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber, Esquire  
Pa. I.D. No. 201022  
1500 One PPG Place  
Pittsburgh, Pennsylvania 15222  
(412) 566-1212  
Counsel for First Commonwealth Bank,  
Plaintiff

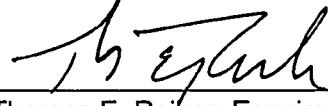
317895.1:BF  
11555-133586

**CERTIFICATE OF SERVICE**

I hereby certify that I did, this 6<sup>th</sup> day of February, 2008, serve a true and correct copy of the attached Response by first class mail, postage pre-paid, upon counsel for the Defendant :

Robin Jean Foor, Esq.  
MidPenn Legal Services Inc.  
211 East Locust Street  
Clearfield, PA 16803

TUCKER ARENSBERG, P.C.

By: 

Thomas E. Reiber, Esquire  
Pa. I.D. No. 41825  
Michael J. Stauber, Esquire  
Pa. I.D. No. 201022  
Attorney for First Commonwealth Bank,  
Plaintiff

317895.1:BF  
11555-133586

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

First Commonwealth Bank,  
Plaintiff

\*

\*  
\* NO.: 07-1608

vs.

Russell P. Gibson,  
Defendant

\* Type of Case: Confession of Judgment

\* Type of Pleading: Petition to Continue  
\* Hearing

\* Filed on Behalf of: Russell P. Gibson

\* Counsel of Record for this Party:  
\* Robin Jean Foor, Esquire

\* Supreme Court No.: 41520

\* MidPenn Legal Services  
\* 211 East Locust Street  
\* Clearfield, PA 16839  
\* (814)765-9646

FILED

01:20P.M. 6K  
MAR 06 2008

3cc to Atty

William A. Shaw  
Prothonotary/Clerk of Courts

GW

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

First Commonwealth Bank :  
Plaintiff :  
:  
vs. : NO. 07-1608CD  
:  
Russell P. Gibson :  
Defendant :  
:

DEFENDANT'S PETITION TO CONTINUE HEARING

Defendant, Russell P. Gibson, by his undersigned counsel, respectfully petitions this Court to open the confessed judgment, and in support states the following:

1. Plaintiff, First Commonwealth Bank, commenced this action on October 1, 2007, by complaint to confess judgment against the defendant upon a Small Business Administration Loan ("loan") containing a warrant of attorney.
2. Defendant was served with a notice under Rule 2958.1 on December 12, 2007.
3. Defendant filed a Petition to Open the Confessed Judgment on January 11, 2008.
4. A hearing is scheduled on that petition on March 5, 2008 at 9:00 a.m.
5. Defendant is attempting to sell the property in question and pay off plaintiff's loan.
6. Defendant and plaintiff have agreed to a continuance of approximately 60 days.

A copy of plaintiff's letter is attached.

WHEREFORE, defendant, Russell P. Gibson, respectfully requests to continue the hearing on this matter approximately 60 days.



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Robin Jean Foor  
Attorney for Russell P. Gibson  
PA ID # 41520  
MidPenn Legal Services Inc.  
211 East Locust Street  
Clearfield, PA 16803  
(814)765-9646

# EXHIBIT A

February 27, 2008

Robin Jean Foor, Esquire  
MidPenn Legal Services  
211 East Locust Street  
Clearfield, PA 16830

**Re: First Commonwealth Bank vs. Russell P. Gibson  
Court of Common Pleas of Clearfield County  
Case Nos. 07-1608 and 07-1610**

Dear Ms. Foor:

In response to your correspondence regarding the March 5, 2008 hearing on your Petition to Open the Confessed Judgment, First Commonwealth Bank has no problem with continuing that hearing for sixty days. However, the Bank will not forbear from pursuing the foreclosure action that was re-started, or will be re-started, at the end of the Act Notice periods.

Should you have any questions, please do not hesitate to contact me. I will leave it up to you to contact the Court and request a new hearing on the Petition approximately sixty days in the future.

Very truly yours,

TUCKER ARENSBERG, P.C.



Thomas E. Reiber

cc: Gary Carpenter

TER:tse

BANK\_FIN:319640-1 011555-133586

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

First Commonwealth Bank :  
Plaintiff :  
vs. : NO. 07-1608CD  
Russell P. Gibson :  
Defendant :

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MAR 6 3 2008 3cc to Attorney  
William A. Shaw  
Prothonotary/Clerk of Courts  
(60)

ORDER

AND NOW, this 29<sup>th</sup> day of FEBRUARY, 2008, defendant's request for continuance is granted. A hearing on defendant's Petition to Open is scheduled for the 14<sup>th</sup> day of May, 2008 at 1:30 o'clock P.m. in Courtroom #1, Clearfield County Courthouse, 1 North Second Street, Clearfield, PA.

By the Court:

  
\_\_\_\_\_  
J.

**FILED**

MAR 08 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3-3-08

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

First Commonwealth Bank,  
Plaintiff

vs.

Russell P. Gibson,  
Defendant

\*  
\*  
\* NO.: 07-1608  
\*  
\* Type of Case: Confession of Judgment  
\*  
\* Type of Pleading: Praeclipe to Withdraw  
\* Petition to Open Confessed Judgment  
\*  
\* Filed on Behalf of: Russell P. Gibson  
\*  
\* Counsel of Record for this Party:  
\* Robin Jean Foor, Esquire  
\*  
\* Supreme Court No.: 41520  
\*  
\* MidPenn Legal Services  
\* 211 East Locust Street  
\* Clearfield, PA 16839  
\* (814)765-9646

FILED  
03:09 P.M. GF 3cc AMY  
MAY 12 2008

William A. Shaw  
Prothonotary/Clerk of Courts

(6K)

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

First Commonwealth Bank	:	
Plaintiff	:	
	:	
vs.	:	NO. 07-1608CD
	:	
Russell P. Gibson	:	
Defendant	:	

DEFENDANT'S PRAECIPE TO WITHDRAW PETITION

To Prothonotary:

Please withdraw defendant's Petition to Open Confessed Judgment.



---

Robin Jean Foor  
Attorney for Russell P. Gibson  
PA ID # 41520  
MidPenn Legal Services Inc.  
211 East Locust Street  
Clearfield, PA 16803  
(814)765-9646