

07-1660-CD  
Citibank vs Howard Fugate Jr.

pd \$86.00  
**FILED** *CC Shft*  
m/12:20pm  
**OCT 12 2007**  
William A. Shaw  
Prothonotary/Clerk of Courts

Burton Neil & Associates, P.C.  
By: Brit J. Suttell, Esquire ID. NO. 204140  
1060 Andrew Drive, Suite 170  
West Chester, PA 19380  
(610) 696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A.  
701 East 60th Street N  
Sioux Falls, SD 57117

: IN THE COURT OF COMMON PLEAS

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

HOWARD FUGATE JR  
633 Maple Avenue, Du Bois PA 15801-2383

Defendant

: NO. 07-1660-C

: CIVIL ACTION - LAW

### **Complaint - Notice**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim 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. 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.**

#### **LAWYER REFERENCE AND INFORMATION SERVICE**

David S. Meholic

Court Administrator

Clearfield County Courthouse

Clearfield, PA 16830

Telephone No. 814-765-2641 Ext. 5982

C-12583



Burton Neil & Associates, P.C.  
By: Brit J. Suttell, Esquire ID. NO. 204140  
1060 Andrew Drive, Suite 170  
West Chester, PA 19380  
(610) 696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS  
701 East 60th Street N  
Sioux Falls, SD 57117

Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
v.

: NO.

HOWARD FUGATE JR  
633 Maple Avenue, Du Bois PA 15801-2383  
Defendant : CIVIL ACTION - LAW

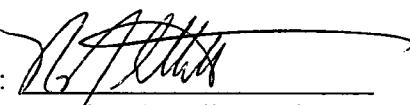
### **Complaint**

1. Plaintiff is CITIBANK (SOUTH DAKOTA), N.A., with place of business located at 701 East 60th Street North, Sioux Falls, South Dakota.
2. Defendant is Howard Fugate Jr, who resides at 633 Maple Avenue, Du Bois, Clearfield County, Pennsylvania.
3. Plaintiff is a national banking association, engaged in various types of banking business including consumer lending through the issuance of credit cards.
4. Plaintiff furnished consumer credit to the defendant by means of a credit card with account number 5424180720382784 hereinafter referred to as the credit card account.
5. Plaintiff kept accurate running records of all debits and credits to the account.
6. Plaintiff mailed to defendant monthly statements for the account including the billing statement attached hereto as Exhibit A. The monthly statements accurately stated the previous balance, the debits and credits to the account for the prior billing period.
7. Before plaintiff mailed Exhibit A, defendant had for many months made payments on account of the billing statement or retained the statement without payment.

8. Defendant's actions as set forth above constituted an account stated between parties for the sum of \$8,862.97 which sum reflects the Exhibit A statement balance less credits, if any, which were applied subsequent to the date of Exhibit A.

Wherefore, plaintiff demands judgment against defendant for the sum of \$8,862.97, and the costs of this action.

Burton Neil & Associates, P.C.

By:   
\_\_\_\_\_  
Brit J. Suttell, Esquire  
Attorney for Plaintiff

The law firm of Burton Neil & Associates, P.C. is a debt collector.

08/06/07 \$8862.97 \$8862.97 SITE:KC-CL TM:CO-5000 ACID:KCB3104  
 09/05/07 22:11:09:

HOWARD FUGATE JR  
 633 MAPLE AVE  
 DU BOIS  
 15801-2383000

PA

CITI CARDS  
 PO BOX 183056  
 COLUMBUS, OH  
 43218-3056

C, 12583

## Citi® Platinum Select® Card



Account Number  
 5424 1807 2038 2784

**Customer Service:**

1-800-950-5114	Total Credit Line \$7860	Available Credit Line \$0	Cash Advance Limit \$2700	Available Cash Limit \$0	New Balance \$8862.97
BOX 6500 SIOUX FALLS, SD 57117	Statement/ Closing Date 07/10/2007	Amount Over Credit Line \$1002.97	Past Due \$1935.44	Purch/Adv Minimum Due \$350.06	Minimum Amount Due \$8862.97

Sale Date	Post Date	Reference Number	Activity Since Last Statement	Amount
7/10			Standard Purch LATE FEE - JUN PAYMENT PAST DUE 66 0000	39.00 0000000000
7/10			PURCHASES*FINANCE CHARGE*PERIODIC RATE 84 0000	223.06 0000000000

Your late fee was based on your account balance as of the payment due date (07/06/07), which was \$8,600.91.

Help is available! Please call the toll-free number shown above to learn about our special payment options. Call Monday - Friday, 7 am to 9 pm, or Saturday, 8 am to 5 pm, Central Time. Please give us the opportunity to assist you.

Please see enclosed privacy notice for important information.

EXHIBIT A

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(-) New Balance
PURCHASES	\$8,600.91	\$39.00	\$0.00	\$223.06	\$8,862.97
ADVANCES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL</b>	<b>\$8,600.91</b>	<b>\$39.00</b>	<b>\$0.00</b>	<b>\$223.06</b>	<b>\$8,862.97</b>

Days This Billing Period: 29

Rate Summary	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE
PURCHASES Standard Purch	\$8,708.12	0.08833%(D)	32.240%	32.240%
ADVANCES Standard Adv	\$0.00	0.08833%(D)	32.240%	32.240%

## Verification

Shauna Houghton

I, \_\_\_\_\_ am an employee of Citicorp Credit Services, Inc., (USA) which is by contract the service provider for plaintiff CITIBANK (SOUTH DAKOTA), N.A. retained to perform services on its behalf. I am authorized to make this verification as attorney-in-fact for plaintiff under powers of attorney from plaintiff to Citicorp Credit Services, Inc. (USA) and to me. The foregoing averments of fact in the within pleading are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to the authorities.

✓ Shauna Houghton  
Signature

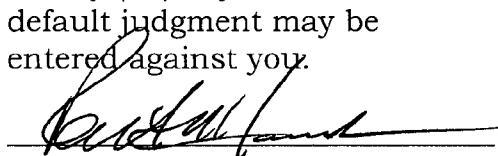
Shauna Houghton

Howard FUGATE JR  
5424180720382784

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

CITIBANK (SOUTH DAKOTA),  
N.A., : CIVIL ACTION - AT LAW  
Plaintiff : No. 07-1660-CD  
vs. : Type of pleading:  
HOWARD FUGATE, JR.,  
Defendant : **ANSWER AND NEW MATTER**  
: Filed on behalf of:  
: DEFENDANT  
: Counsel of record for this  
: Party:  
: Robert M. Hanak, Esq.  
: Supreme Court No. 05911  
: Hanak, Guido and Taladay  
: 528 Liberty Boulevard  
: P. O. Box 487  
: DuBois, PA 15801  
: 814-371-7768

You are hereby notified to plead  
to the within pleading within  
twenty (20) days hereof or a  
default judgment may be  
entered against you.



**FILED**  
M 11 8 2007 NOCC  
OCT 3 2007  
6K  
William A. Shaw  
Prothonotary/Clerk of Courts

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

CITIBANK (SOUTH DAKOTA), :  
N.A., :  
Plaintiff :  
:  
vs. : No. 07-1660-CD  
:  
HOWARD FUGATE, JR., :  
Defendant :  
:

**ANSWER**

AND NOW, comes the Defendant, and by his Attorneys,  
Hanak, Guido and Taladay, and responds to Plaintiff's Complaint as  
follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied. Defendant is without knowledge as to the  
accuracy of running accounts of debits and credits. By discovery to be  
instituted, Defendant will request all data concerning the running  
account. Without such information, Defendant cannot accurately  
answer this allegation.

6. Defendant incorporates the Answer to No. 5. Defendant  
is without knowledge as to the accuracy of statements and requests such

data. Until such matters are presented, Defendant is unable to answer this allegation and, therefore, denies.

7. Admitted.

8. Defendant is without knowledge as to the accuracy of the amounts stated as owing, and for reasons as averred in New Matter denies such amounts to the degree that usurious amounts of interest, finance charges or unauthorized charges have been added to the principal balance of the credit expenditures. For this reason, Defendant denies this allegation as to the amount owing.

WHEREFORE, Defendant demands judgment in his favor.

**NEW MATTER**

Defendant further avers New Matter as follows:

9. Defendant verify believes that the interest, together with unauthorized carrying charges or costs are usurious and contrary to the laws of the Commonwealth of Pennsylvania as applicable for collection in this State.

10. To the degree that the Court determines usury applied to the Defendant's account, this contract is void or voidable.

WHEREFORE, demands such relief as applicable under Pennsylvania law should it be determined that the Plaintiff is guilty of the charge of usury, together with all costs of suit.



Robert M. Hanak  
Attorney for Defendant

**VERIFICATION**

I, HOWARD FUGATE, JR., hereby verify that the statements made in the ANSWER AND NEW MATTER 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 the authorities.

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10-26-02

(Date)

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Howard Fugate, Jr.

CERTIFICATE OF SERVICE

I certify that on the 17 day of October, 2007, a copy of the ANSWER AND NEW MATTER was forwarded via first class US mail, postage prepaid, addressed as follows:

Brit J. Suttell, Esq.  
Burton Neil & Associates, P.C.  
1060 Andrew Drive, Suite 170  
West Chester, PA 19380

  
\_\_\_\_\_  
Robert M. Hanak  
Attorney for Defendant

FILED

NOV 13 2007

11/12/07

William A. Shaw

Prothonotary/Clerk of Courts

No C/C

6P

BURTON NEIL & ASSOCIATES, P.C.  
By: Brit J. Suttell, Esquire, Id. No. 204140  
1060 Andrew Drive, Suite 170  
West Chester, PA 19380  
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A.  
Plaintiff

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 07-1660-CD

HOWARD FUGATE, JR.

Defendant : CIVIL ACTION - LAW

**Reply to New Matter**

9. Denied. There are no facts set forth in the averment to which a responsive pleading is required. The allegation is denied pursuant to Pa. R.C.P. 1029(d). By way of further response, it is denied that the interest and other fees charged on the account were usurious. Plaintiff is a national bank, which defendant admitted, and was permitted under controlling state and federal law to charge and collect the finance charges, interest and fees it charged defendant. *See* 12 U.S.C. §§ 85 and 86; *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 116 S. Ct. 1730, 135 L. Ed. 2d 25 (1996); *Bank One v. Mazaika*, 545 Pa. 115, 680 A.2d 845 (1996).

10. Denied. There are no facts set forth in the averment to which a responsive pleading is required. The allegation is denied pursuant to Pa. R.C.P. 1029(d). By way of further response, it is denied that the interest and other fees charged on the account were usurious.

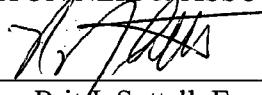
Plaintiff is a national bank, which defendant admitted, and was permitted under controlling state and federal law to charge and collect the finance charges, interest and fees it charged defendant.

*See* 12 U.S.C. §§ 85 and 86; *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 116 S. Ct. 1730, 135 L. Ed. 2d 25 (1996); *Bank One v. Mazaika*, 545 Pa. 115, 680 A.2d 845 (1996).

Additionally, it is denied that plaintiff's action is based upon a contract which would be voidable.

To the contrary, plaintiff's action is based upon an account stated.

BURTON NEIL & ASSOCIATES, P.C.

By: 

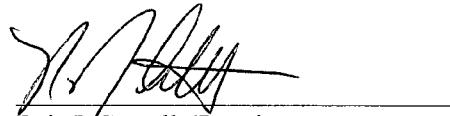
\_\_\_\_\_  
Brit J. Suttell, Esquire  
Attorney for Plaintiff

In making this communication, we advise our firm is a debt collector.

## Verification

Brit J. Suttell, Esquire, attorney for plaintiff, CITIBANK (SOUTH DAKOTA), N.A., makes this statement on its behalf as to the truthfulness of the facts set forth in the foregoing Reply to New Matter subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities. Counsel, rather than an officer or other representative of plaintiff is verifying the foregoing Reply to New Matter because plaintiff's officers and/or representatives are outside the jurisdiction of the court and the verification of none of them could be obtained within the time required to file this pleading. Plaintiff's counsel is verifying plaintiff's Reply to New Matter based upon information and belief from information in her file.

Date: November 8, 2007



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Brit J. Suttell, Esquire

Burton Neil & Associates, P.C.  
By: Brit J. Suttell, Esquire ID. NO. 204140  
1060 Andrew Drive, Suite 170  
West Chester, PA 19380  
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A.  
Plaintiff

v. : IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

: NO. 07-1660-CD

HOWARD FUGATE JR  
Defendant

: CIVIL ACTION - LAW

#### **Certificate of Service**

I, Brit J. Suttell, Esquire, do hereby certify that I served a true and correct copy of the within Plaintiff's Reply to New Matter on defendant's counsel, Robert M. Hanak, Esquire, at his address of record via first class mail, postage prepaid on the date set forth below.

Burton Neil & Associates, P.C.

Date: November 9, 2007

By:

  
\_\_\_\_\_  
Brit J. Suttell, Esquire  
Attorney for Plaintiff

The law firm of Burton Neil & Associates is a debt collector.

C-12583



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CITIBANK (SOUTH DAKOTA), N.A.  
701 East 60th Street North  
Sioux Falls, SD 57117

Plaintiff(s)

v.

HOWARD FUGATE JR  
633 Maple Avenue  
Du Bois PA 15801-2383

Defendant(s)

CIVIL DIVISION, ARBITRATION  
AND STATUTORY APPEALS ONLY

CASE NO. 07-1660-CD

TYPE OF PLEADING: Praecipe  
to Substitute Verification

CODE AND CLASSIFICATION:

FILED ON BEHALF OF: Plaintiff  
CITIBANK (SOUTH DAKOTA), N.A.  
(Name of Party, indicate plaintiff or defendant)

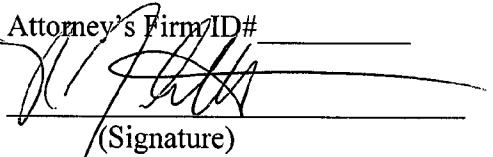
NAME, ADDRESS AND TELEPHONE OF:

Counsel of Record  
 Individual, if pro se

Brit J. Suttell, Esquire  
Burton Neil & Associates, P.C.  
1060 Andrew Drive, Suite 170  
West Chester, PA 19380  
Telephone: 610-696-2120  
**email: litigation@burt-law.com**

Attorney's State ID# 204140

Attorney's Firm ID# \_\_\_\_\_

  
(Signature)

FILED NO CC  
M 11/13/01  
DEC 03 2001 (6A)

William A. Shaw  
Prothonotary/Clerk of Courts

Burton Neil & Associates, P.C.  
By: Brit J. Suttell, Esquire ID. NO. 204140  
1060 Andrew Drive, Suite 170  
West Chester, PA 19380  
610-696-2120  
Attorney for Plaintiff

---

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
v. : NO. 07-1660-CD  
HOWARD FUGATE JR : CIVIL ACTION - LAW  
Defendant

**Praecipe to Substitute Verification**

To the Prothonotary:

Kindly substitute the attached verification for the attorney verification filed with plaintiff's

Reply to New Matter.

Burton Neil & Associates, P.C.

By:   
\_\_\_\_\_  
Brit J. Suttell, Esquire  
Attorney for Plaintiff

In making this communication, we advise that our firm is a debt collector.

**Verification**

Sherri Smith is an employee of Citicorp Credit Services, Inc., (USA) which is by contract the service provider for plaintiff Citibank (South Dakota) N.A. retained to perform services including but not primarily limited to collecting delinquent debt. I am authorized to make this verification as attorney-in-fact for plaintiff under powers of attorney from plaintiff to Citicorp Credit Services, Inc. (USA) and to me. The foregoing averments of fact in the within pleading are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to the authorities.

Date: 11-20-07  
Signature

Fugate Jr/Howard  
5424180720382784

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103298  
NO: 07-1660-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: CITIBANK (SOUTH DAKOTA) N.A.  
vs.  
DEFENDANT: HOWARD FUGATE JR.

**SHERIFF RETURN**

NOW, October 23, 2007 AT 10:50 AM SERVED THE WITHIN COMPLAINT ON HOWARD FUGATE JR. DEFENDANT AT 633 MAPLE AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO HOWARD FUGATE JR., DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	NEIL	34661	10.00
SHERIFF HAWKINS	NEIL	34661	54.86

**FILED**  
013:20pm  
FEB 06 2008  
(SM)

William A. Shaw  
Prothonotary/Clerk of Courts

Sworn to Before Me This

\_\_\_\_ Day of *2007*  
\_\_\_\_

So Answers,

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CITIBANK (SOUTH DAKOTA), N.A.  
701 East 60th Street N  
Sioux Falls, SD 57117

Plaintiff(s)

v.

HOWARD FUGATE JR  
633 Maple Avenue  
Du Bois PA 15801-2383

Defendant(s)

CIVIL DIVISION, ARBITRATION  
AND STATUTORY APPEALS ONLY

CASE NO. 07-1660-CD

TYPE OF PLEADING: Praecipe

CODE AND CLASSIFICATION:

FILED ON BEHALF OF: Plaintiff  
CITIBANK (SOUTH DAKOTA), N.A.  
(Name of Party, indicate plaintiff or defendant)

NAME, ADDRESS AND TELEPHONE OF:

Counsel of Record  
 Individual, if pro se

Brit J. Suttell, Esquire  
Burton Neil & Associates, P.C.  
1060 Andrew Drive, Suite 170  
West Chester, PA 19380  
Telephone: 610-696-2120  
**email: litigation@burt-law.com**

Attorney's State ID# 204140

Attorney's Firm ID# 

(Signature)

FILED 1cc + 1 cert  
m/a:15cm of disc issued  
JUL 14 2008 to Atty ~~stet~~  
S/letell  


William A. Shaw  
Prothonotary/Clerk of Courts

Burton Neil & Associates, P.C.  
By: Brit J. Suttell, Esquire ID. NO. 204140  
1060 Andrew Drive, Suite 170  
West Chester, PA 19380  
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A.  
Plaintiff

v.

HOWARD FUGATE JR  
Defendant

: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA  
: NO. 07-1660-CD  
: CIVIL ACTION - LAW

**Praecipe to Settle, End, & Discontinue**

To the Prothonotary:

Mark the above matter Settled, Ended and Discontinued.

Burton Neil & Associates, P.C.  
By:   
Brit J. Suttell, Esquire  
Attorney for Plaintiff

The law firm of Burton Neil & Associates is a debt collector.

C-12583

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION



Citibank (South Dakota) N.A.

Vs.  
Howard Fugate Jr.

No. 2007-01660-CD

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 14, 2008, marked:

Settle, ended and discontinued

Record costs in the sum of \$85.00 have been paid in full by Brit J. Suttell Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of July A.D. 2008.



Lm

William A. Shaw, Prothonotary