

07-2105-CD

Discover Bank vs Marcia A. Smay

116385
COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Discover Bank

(Plaintiff)

c/o 2417 Welsh Road Suite 21 #520

(Street Address)

Phila., PA 19114

(City, State ZIP)

CIVIL ACTION

No. 07-2105-CD

Type of Case: CIVIL

Type of Pleading: COMPLAINT

VS.

Filed on Behalf of:

MACCIA A. SMAY

(Defendant)

Discover Bank
(Plaintiff/Defendant)

110 BARLAND LN

(Street Address)

CLEARFIELD PA 16830

(City, State ZIP)

David J. Apothaker, Esquire

(Filed by)

2417. Welsh Road Suite 21 #520

(Address) Phila., PA 19114

215-634-8920

(Phone)

FILED

DEC 26 2007

William A. Shaw
Prothonotary/Clerk of Courts

(Signature)

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

APOTHAKER & ASSOCIATES, P.C.
BY: David J. Apothaker, Esq.
Attorney I.D.#38423
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114
(215) 634-8920
Attorneys for Plaintiff

DISCOVER BANK)	COURT OF COMMON PLEAS
c/o Apothaker & Associates, P.C.)	CLEARFIELD COUNTY
2417 Welsh Road, Suite 21 #520)	
Philadelphia, PA 19114)	NO.:
Plaintiff,)	
vs.)	
)	
MARCIA A SMAY)	
110 GARLAND LN)	
CLEARFIELD, PA 16830-8266)	
Defendant.)	

CIVIL ACTION COMPLAINT
FIRST COUNT

1. Plaintiff, DISCOVER BANK, is a company with its principal place of business located at c/o Apothaker & Associates, P.C., 2417 Welsh Road, Suite 21 #520, Philadelphia, PA 19114.
2. Defendant is MARCIA A SMAY, an adult individual residing at 110 GARLAND LN CLEARFIELD, PA 16830-8266.
3. At the special instance and request of Defendant, Plaintiff sold and delivered to Defendant goods and/or services at the times, of the kinds, in the quantities, and for the prices set forth in Plaintiff's records. A true and correct copy of which is attached hereto, incorporated herein by reference and designated Exhibit "A".
4. Defendant received and accepted the goods and/or services described in Exhibit "A".
5. The prices set forth in Exhibit "A" are the fair, reasonable and market prices for said goods and/or services, and the prices which Defendant agreed to pay.
6. All credits, if any, to which Defendant is entitled, are set forth in Exhibit "A".
7. In addition, Plaintiff avers that Defendant has failed and continues to fail to make any payments, leaving a balance due and owing of \$6,840.06.

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

WHEREFORE, Plaintiff demands judgment in favor of Plaintiff and against Defendant(s) for the sum of \$6,840.06 and requests this Court award Plaintiff attorney's fees and costs to the extent permitted by applicable law.

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

BY: _____

David J. Apothaker

Dated: 12/20/2007

Our File No.: 116385

VERIFICATION

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



David J. Apothaker
Attorney for Plaintiff

DATE: 12/20/2007

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

MARCIA A SMAY
110 GARLAND LN
CLEARFIELD, PA 16830-8266

STATEMENT OF ACCOUNT

Debtor's Name:	MARCIA A SMAY
Account Number:	6011002010307916
Balance Due:	\$6,840.06

Our File No.: 116385

EXHIBIT "A"

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

DISCOVER BANK,
Plaintiff

vs.

MARCIA A. SMAY,
Defendant

*
*
* NO.:07-2105-CD
*
* Type of Case: Civil
*
* Type of Pleading: Preliminary
* Objections
*
* Filed on Behalf of: Marcia A. Smay
*
* 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

No ACTION
@ this time.
DJ.

FILED
013.11.08
JAN 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

3cc
Amy Foor

66

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DISCOVER BANK,

Plaintiff

vs.

MARCIA A. SMAY,

Defendant

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Civil Action

No. 07-2105-CD

DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S COMPLAINT

Pursuant to Pa. R.C.P. No. 1028(c), Defendant Marcia A. Smay, by and through her attorneys, Robin Jean Foor, and MidPenn Legal Services preliminarily objects to Plaintiff's Complaint and moves for its dismissal as follows:

I. PRELIMINARY OBJECTIONS RAISING FAILURE OF A PLEADING TO CONFORM TO LAW OR RULE OF COURT Pa. R.C.P. 1028 (a)(2)

1. Pennsylvania Rule of Civil Procedure 1019(i) states that "when a claim is based on upon a writing, the pleader shall attach a copy of the writing or the material part thereof..."

2. Plaintiff lists its principal place of business as c/o Apothaker and Associates and therefore, plaintiff believes and alleges that the plaintiff is not Discover Bank but an assignee of Discover Bank.

3. Plaintiff has failed to attach any documentation of the assignment.

4. Plaintiff filed a Complaint demanding damages in the amount of \$6,840.06 plus attorney fees and costs.

5. Plaintiff has failed to attach to the Complaint a signed written contract between

Plaintiff and Defendant. Such writing would form the very core of Plaintiff's case, but such writing has not been appended to the Complaint, nor its absence explained, as required by Pa.R.C.P. No. 1019(h) and (i).

WHEREFORE, Defendant respectfully requests that the Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's Complaint.

II. PRELIMINARY OBJECTION RAISING INSUFFICIENT SPECIFICITY IN A PLEADING Pa. R.C.P. 1028 (a)(3)

1. The Complaint contains alleged claims for money owed but fails to provide adequate documentation or accounting of charges allegedly made by Defendant, which would support Plaintiff's claim of damages, such as a breakdown of charges, payments, and interest, so that Defendant can properly formulate a response and assert any counterclaims.

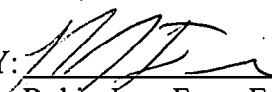
2. The Complaint is deficient in reciting factual averments and Defendant is without information upon which she can premise a meaningful response and formulate a defense.

WHEREFORE, Defendant respectfully requests that the Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's Complaint.

Respectfully submitted,

MidPenn Legal Services
Attorneys for Defendant

1-30-08
Date

BY: 
Robin Jean Foor, Esquire
ID# 41520

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

DISCOVER BANK,
Plaintiff

vs.

MARCIA A.SMAY,
Defendant

*
*
* NO.:07-2105-CD
*
* Type of Case: Civil
*
* Type of Pleading: Certificate of
* Service
*
* Filed on Behalf of: Marcia A. Smay
*
* 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 ^{icc}
01/12/08
JAN 31 2008
Atty Foor

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DISCOVER BANK,

Plaintiff

vs.

MARCIA A. SMAY,

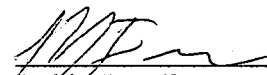
Defendant

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: Civil Action
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: No. 07-2105-CD
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CERTIFICATE OF SERVICE

I, Robin Jean Foor, Esquire, hereby certify that on the 31st day of January, 2008, I served a copy of the Preliminary Objections filed in that above captioned matter to the following individual by first class mail, postage prepaid:

David J. Apothaker, Esquire
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114



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

UN

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

DISCOVER BANK,
Plaintiff

vs.

MARCIA A. SMAY,
Defendant

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*
* NO.:07-2105-CD
*
* Type of Case: Civil
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* Type of Pleading: Petition to Schedule
* Argument on Preliminary Objections
*
* Filed on Behalf of: Marcia A. Smay
*
* 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 ^{2cc}
012:2567
FEB 22 2008

BCH
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Atty Foor

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

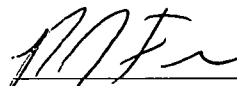
DISCOVER BANK,	:	
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Plaintiff	:	Civil Action
	:	
vs.	:	No. 07-2105-CD
	:	
MARCIA A. SMAY,	:	
	:	
Defendant	:	

PETITION TO SCHEDULE ARGUMENT ON DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S COMPLAINT

Defendant, Marcia A. Smay, by and through her attorneys, Robin Jean Foor, Esq and MidPenn Legal Services, requests the court to schedule the argument on defendant's objections and alleges as follows:

1. Plaintiff filed a complaint on or about December 26, 2007.
2. Defendant filed preliminary objections to the complaint on January 30, 2008.
3. As of February 22, 2008, the plaintiff has not filed an amended complaint.

WHEREFORE, defendant requests the Court to schedule argument on the Preliminary Objections.



Robin Jean Foor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DISCOVER BANK,

Plaintiff

vs.

MARCIA A. SMAY,

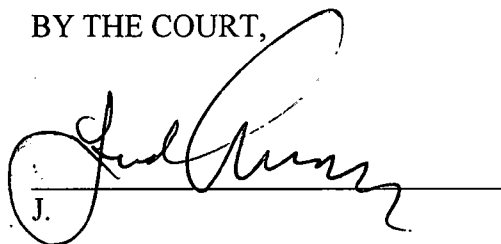
Defendant

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: Civil Action
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: No. 07-2105-CD
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ORDER

AND NOW, this 26 day of Feb., 2008, upon consideration of Defendant Marcia Smay's Preliminary Objections filed in the above captioned matter, it is the Order of the Court that argument has been scheduled for the 8th day of April, 2008 at 9:45 o'clock A.m. in Courtroom # 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


J.

FILED

of 4:00/302cc
FEB 26 2008

Atty For

Go

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/26/08

☒ 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

DISCOVER BANK,
Plaintiff

vs.

MARCIA A. SMAY,
Defendant

*
*
* NO.:07-2105-CD
*
* Type of Case: Civil
*
* Type of Pleading: Certificate of Service
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*
* Filed on Behalf of: Marcia A. Smay
*
* 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

0/2:45pm

MAR 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

ICC
Atty Foor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DISCOVER BANK,

Plaintiff

vs.

MARCIA A. SMAY,

Defendant

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: Civil Action
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: No. 07-2105-CD
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CERTIFICATE OF SERVICE

I, Robin Jean Foor, Esquire, hereby certify that on the 28th day of February, 2008,
I served a copy of the Petition and Order Scheduling Argument on Preliminary
Objections filed in that above captioned matter to the following individual by first class
mail, postage prepaid:

David J. Apothaker, Esquire
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114



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

DISCOVER BANK,
Plaintiff

vs.

MARCIA A. SMAY,
Defendant

NO. 07-2105-CD

ORDER

FILED 11:03:33 AM
APR 09 2008
ICC Augs:
Apothaker
For

William A. Shaw
Prothonotary/Clerk of Courts

NOW, this 8th day of April, 2008, the Court noting that Plaintiff's Counsel having failed to appear for the argument scheduled this date; it is the ORDER of this Court that the Defendant's Preliminary Objections to the Plaintiff's Complaint be granted. The Plaintiff shall have no more than 20 days from this date to file an Amended Complaint which shall contain a true and correct copy of the agreement entered into by the Defendant at the time the credit card was issued as well as a detailed statement of the account showing purchases made and calculation of all interest charges, late fees, attorney's fees and any other costs or charges which are part of the demand for payment.

In addition, the Court notes that paragraph one of the Complaint indicates that the principal place of business of Discover Bank is the law office of Apothaker & Associates and that the verification attached to the Complaint is signed by Plaintiff's counsel not an appropriate representative of Discover Bank. In the event Discover Bank is the actual party in interest the amended complaint will so plead, provide an appropriate and actual address for Discover Bank and attach a verification executed by an appropriate corporate officer of Discover Bank. In the event the actual party in interest is Apothaker & Associates, P.C. and/or David J. Apothaker, Esquire then the

amended complaint shall so state and a true and correct copy of the assignment document shall be attached thereto.

BY THE COURT,

A handwritten signature in cursive script, reading "Fredric J. Ammerman". The signature is written in dark ink and is positioned above a horizontal line.

FREDRIC J. AMMERMAN
President Judge

FILED

APR 09 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/9/08

☐ 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

DISCOVER BANK,
Plaintiff

vs.

MARCIA A.SMAY,
Defendant

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*
* NO.:07-2105-CD
*
* Type of Case: Civil
*
* Type of Pleading: Motion to Dismiss
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*
* Filed on Behalf of: Marcia A. Smay
*
* 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

O 11:49a.m GK

APR 30 2008

3 CC Atty Foor

William A. Shaw
Prothonotary/Clerk of Courts

(610)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DISCOVER BANK,

Plaintiff

vs.

MARCIA A. SMAY,

Defendant

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Civil Action

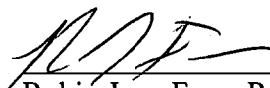
No. 07-2105-CD

DEFENDANT'S MOTION TO DISMISS

Defendant, Marcia A. Smay, by and through her attorneys, MidPenn Legal Services and Robin Jean Foor, Esquire request to dismiss plaintiff's complaint and allege as follows:

1. Plaintiff failed to appear for argument on Preliminary Objections filed by the defendant.
2. On April 8, 2008, the Court sustained the preliminary objections and issued an order giving the plaintiff to file an amended complaint.
3. That order was sent to the plaintiff by the prothonotary on April 9, 2008.
4. The plaintiff has not filed an amended complaint.

Wherefore, defendant requests the court dismiss the complaint with prejudice.



Robin Jean Foor, PA ID # 41520
MidPenn Legal Services
211 East Locust Street
Clearfield, PA 16830
(814) 765-9646

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DISCOVER BANK,

Plaintiff

vs.

MARCIA A. SMAY,

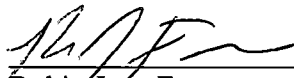
Defendant

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: Civil Action
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: No. 07-2105-CD
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CERTIFICATE OF SERVICE

I, Robin Jean Foor, Esquire, hereby certify that on the 30th day of April, 2008, I
served a true and correct copy of Defendant's Motion to Dismiss to the following
individual by first class mail, postage prepaid:

David J. Apothaker, Esquire
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114



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

DOCKET # 103590
NO: 07-2105-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: DISCOVER BANK
vs.
DEFENDANT: MARCIA A. SMAY

SHERIFF RETURN

NOW, January 11, 2008 AT 12:03 PM SERVED THE WITHIN COMPLAINT ON MARCIA A. SMAY DEFENDANT AT 110 GARLAND LN., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MARCIA A. SMAY, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / DEHAVEN

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	APOTHAKE	69204	10.00
SHERIFF HAWKINS	APOTHAKE	69204	20.00

FILED
01/31/08
MAY 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DISCOVER BANK,

Plaintiff

vs.

MARCIA A. SMAY,


Defendant

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: Civil Action
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: No. 07-2105-CD
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ORDER

AND NOW this 2 of May, 2008, upon consideration of defendant's preliminary objections and plaintiff's failure to file an amended complaint, plaintiff's complaint is dismissed with prejudice.

By the Court,


Fredric J. Ammerman, P.J.

FILED
012:17/54
MAY 05 2008

300
Atty. For

(62)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/5/08

X 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: