

07-2099-CDT
LVNV Funding vs Fred Martell

128987

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

LVNV Funding LLC
(Plaintiff)

CIVIL ACTION

c/o 2417 Welsh Road Suite 21 #520

(Street Address)

Phila., PA 19114

(City, State ZIP)

No. 07-2099-CD

Type of Case: CIVIL

Type of Pleading: COMPLAINT

VS.

Fred Martell
(Defendant)

Filed on Behalf of:

LVNV Funding LLC
(Plaintiff/Defendant)

313 Reed St. Apt 21

(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)

(Signature)

FILED

Atty pd. 85.00

10/13/01
DEC 26 2001 ICC Sheriff

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty

Our File No.: 128987

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

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

Plaintiff,

vs.

FRED MARTELL
313 REED ST APT 21
CLEARFIELD, PA 16830

Defendant.

) COURT OF COMMON PLEAS
) CLEARFIELD COUNTY
)
) NO.:
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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 twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentir una comparecencia escrita o con un abogado y entregar a la corte en forma escrita sus objeciones a las demandas en contra de su persona. Se avisa que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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

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

Plaintiff,

vs.

FRED MARTELL
313 REED ST APT 21
CLEARFIELD, PA 16830

Defendant.

) COURT OF COMMON PLEAS
) CLEARFIELD COUNTY
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) NO.:
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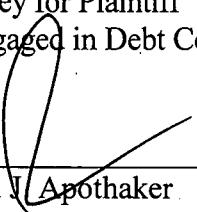
**CIVIL ACTION COMPLAINT
FIRST COUNT**

1. Plaintiff, LVNV FUNDING LLC, 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 FRED MARTELL, an adult individual residing at 313 REED ST APT 21 CLEARFIELD, PA 16830.
3. At the special instance and request of Defendant, Plaintiff sold and delivered to Defendant goods and/or services at the times, of the kinds, in the quantities, and for the prices set forth in Plaintiff's records. A true and correct copy of which is attached hereto, incorporated herein by reference and designated Exhibit "A".
4. Defendant received and accepted the goods and/or services described in Exhibit "A".
5. The prices set forth in Exhibit "A" are the fair, reasonable and market prices for said goods and/or services, and the prices which Defendant agreed to pay.
6. All credits, if any, to which Defendant is entitled, are set forth in Exhibit "A".
7. In addition, Plaintiff avers that Defendant has failed and continues to fail to make any payments, leaving a balance due and owing of \$1,671.89.

8. Although demand has been made, Defendant has failed to make payment of the amount due as above.
9. The original creditor is CITI-SEARS.

WHEREFORE, Plaintiff demands judgment in favor of Plaintiff and against Defendant(s) for the sum of \$1,671.89 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

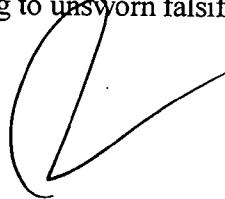
BY: 
David T. Apothaker

Dated: 12/20/2007

Our File No.: 128987

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

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

FRED MARTELL
313 REED ST APT 21
CLEARFIELD, PA 16830

STATEMENT OF ACCOUNT

Debtor's Name: FRED MARTELL
Account Number: 1150115181861
Original Creditor: CITI-SEARS
Balance Due: \$1,671.89

Our File No.: 128987

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103578
NO: 07-2099-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: LVNV FUNDING LLC
vs.
DEFENDANT: FRED MARTELL

FILED
03/20/08

MAY 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF RETURN

NOW, January 16, 2008 AT 10:05 AM SERVED THE WITHIN COMPLAINT ON FRED MARTELL DEFENDANT AT 313 REED ST. APT. 21, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO IVA SPENCER, DAUGHTER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	APOTHAKER	69216	10.00
SHERIFF HAWKINS	APOTHAKER	69216	22.00

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-CIVIL DIVISION

LVNV FUNDING LLC,
Plaintiff

*
*
* NO.: 07-2099-CD

vs.
FRED MARTELL,
Defendant

* Type of Case: Civil
*
* Type of Pleading: Preliminary Objections
*
* Filed on Behalf of: Defendant
*
* 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
05/22/2008 3CC
MAY 22 2008 Atty Foor

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LVNV FUNDING, LLC,

Plaintiff : Civil Action

vs. : No. 07-2099-CD

FRED MARTELL,

Defendant :

DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S COMPLAINT

Pursuant to Pa. R.C.P. No. 1028(c), Defendant Fred Martell, by and through his 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 the original creditor as Citi-Sears and therefore plaintiff must be an assignee of the original creditor.
3. Plaintiff has failed to attach any documentation of the assignment.
4. Plaintiff filed a Complaint demanding damages in the amount of \$ 1,671.89 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.

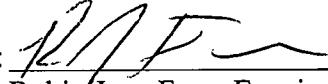
2. The Complaint is deficient in reciting factual averments and Defendant is without information upon which she can premise a meaningful response and formulate a defense.

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

5-22-08
Date

BY: 
Robin Jean Foor, Esquire
ID# 41520

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

LVNV Funding LLC,
Plaintiff

vs.

Fred Martell,
Defendant

*
*
* NO.: 07-2099-CD
*
* Type of Case: Civil
*
* Type of Pleading: Certificate of
* Service
*
* Filed on Behalf of: Defendant
*
* 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

MAY 28 2008

William A. Shaw
Prothonotary/Clerk of Courts
1 Court St. Annex

62

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC,

Plaintiff : Civil Action
vs. : No. 07-2099-CD
FRED MARTELL, :
Defendant :
:

CERTIFICATE OF SERVICE

I, Robin Jean Foor, Esquire, hereby certify that on the 22nd day of May, 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

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

LVNV FUNDING LLC,
Plaintiff

vs.

FRED MARTELL,
Defendant

- *
*
* NO.: 07-2099-CD
*
* Type of Case: Civil
*
* Type of Pleading: Petition to Schedule
* Argument
*
* Filed on Behalf of: Defendant
*
* 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 10:18 a.m. 68
JUN 24 2008 3cc Arty

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV Funding LLC, :
: Plaintiff : Civil Action
: vs. : No. 07-2099-CD
: :
Fred Martell, :
: Defendant :

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

Defendant, Fred Martell, by and through his 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. Defendant was served plaintiff's complaint on or about January 16, 2008.
2. Defendant filed preliminary objections to the complaint and served them on
May 22, 2008.
3. As of June 23, 2008, the plaintiff has not filed an amended complaint.

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



Robin Jean Foor

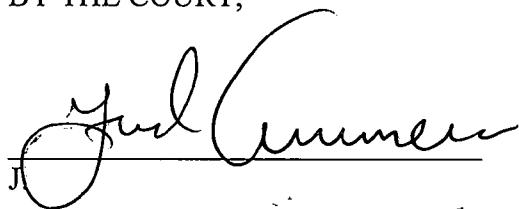
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LVNV Funding LLC, :
Plaintiff : Civil Action
vs. : No. 07-2099-CD
Fred Martell, :
Defendant :
:

ORDER

AND NOW, this 25 day of June, 2008, upon consideration
of Defendant Fred Martell's Preliminary Objections to the Plaintiff's Complaint filed in the
above captioned matter, it is the Order of the Court that argument has been scheduled for the
23rd day of July, 2008 at 11:15 o'clock A .m. in
Courtroom # 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FILED 3CC Atty
98:40 am
JUN 26 2008 64

William A. Shaw
Prothonotary/Clerk of Courts

~~FILED~~

~~JUN 24 2008~~

~~William A. Shaw
Prothonotary/Clerk of Courts~~

DATE: 10-26-2008

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:

FILED

JUN 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

LVNV FUNDING LLC,
Plaintiff

vs.

FRED MARTELL,
Defendant

*

*

* NO.: 07-2099-CD

*

* Type of Case: Civil

*

* Type of Pleading: Certificate of
Service

*

* Filed on Behalf of: Defendant

*

* 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
1:32 PM
JUL 6 2008
William A. Shaw
Prothonotary/Clerk of Courts
Atty Foor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV Funding LLC,

Plaintiff : Civil Action
vs. : No. 07-2099-CD
Fred Martell, :
Defendant :
:

CERTIFICATE OF SERVICE

I, Robin Jean Foor, Esquire, hereby certify that on the 1st day of July, 2008, I served a copy of the Petition to Schedule Argument and the Order Scheduling Argument filed in that above captioned matter to the following individual by first class mail, postage prepaid:

Kimberly F. Scian, 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

CAPITAL ONE BANK,
Plaintiff

vs.

NO. 07-2099-CD

FRED MARTELL,
Defendant

ORDER

NOW, this 23rd day of July, 2008, it is the ORDER of this Court that the Defendant's Preliminary Objections to Amended 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 executed copy of the agreement/application 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.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED ^{1CC}
07/24/2008 Attn: Apotheker
JUL 24 2008 Foor

William A. Shaw
Prothonotary/Clerk of Courts

610

FILED

JUL 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/24/08

 You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

Our File No.: 128987
APOTHAKER & ASSOCIATES, P.C.
BY: Kimberly F. Scian, Esquire
Attorney I.D.# 55140
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114
(215) 634-8920
Attorney for Plaintiff

LVNV FUNDING LLC) COURT OF COMMON PLEAS
Plaintiff,) CLEARFIELD COUNTY
vs.)
FRED MARTELL) NO. 07-2099-CD
Defendant.)
)

PRAECLPICE TO DISMISS WITHOUT PREJUDICE

TO THE PROTHONOTARY:

Kindly dismiss this action without prejudice.

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

By:

Kimberly F. Scian, Esquire

Dated: 8/15/2008

FILED <sup>ICC & Cert
of disc</sup>
m 11:30 am ^{issued to}
AUG 25 2008 ^{W.A. Scian}
William A. Shaw
Prothonotary/Clerk of Courts <sup>COPY to
CJA</sup>

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

LVNV Funding, LLC

Vs.
Fred Martell

No. 2007-02099-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 August 25, 2008, marked:

Dismissed without prejudice

Record costs in the sum of \$85.00 have been paid in full by David Apothaker Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 25th day of August A.D. 2008.

William A. Shaw *cm*

William A. Shaw, Prothonotary