

08-957-CD
LVNV Funding vs Tina Dotzler

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

LVNV FUNDING LLC

(Plaintiff)

c/o Apothaker & Associates, P.C.

2417 Welsh Road, Suite 21 #520

(Street Address)

Philadelphia, PA 19114

(City, State, ZIP)

CIVIL ACTION

No. 08-957-CD

Type of Case: CIVIL

Type of Pleading: PLEADING

VS.

Filed on Behalf of:

TINA DOTZLER

(Defendant)

1005 HILL ST APT B

(Street Address)

PHILIPSBURG, PA 16866-2804

(City, State, ZIP)

LVNV FUNDING

LLC

(Plaintiff)

David J. Apothaker, Esq.
Apothaker & Associates, P.C.

(Filed by)

2417 Welsh Road, Suite 21 #520

Philadelphia, PA 19114

(Address)

215/634-8920

(Phone)

(Signature)

FILED

21103/21
MAY 23 2008

William A. Shaw

Prothonotary/Clerk of Courts CC Sheriff

100A/My

95.00

Our File No.: 160131
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 Apotheker & Associates, P.C.
2417 Welsh Road, Suite 21 #520
Philadelphia, PA 19114

vs.

TINA DOTZLER
1005 HILL ST APT B
PHILIPSBURG, PA 16866-2804
Defendant.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take 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 paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o con un abogado y entregar a la corte en forma escrita sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted compla 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 SUFICIENTE 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.

TINA DOTZLER
1005 HILL ST APT B
PHILIPSBURG, PA 16866-2804
Defendant.

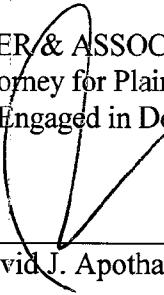
) COURT OF COMMON PLEAS
) CLEARFIELD COUNTY
)
)
) NO.:
)
)
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)

**CIVIL ACTION COMPLAINT
FIRST COUNT**

1. Plaintiff is LVNV FUNDING LLC c/o Apothaker & Associates, P.C., 2417 Welsh Road, Suite 21 #520, Philadelphia, PA 19114.
2. Defendant(s) is/are TINA DOTZLER, an adult individual residing at 1005 HILL ST APT B PHILIPSBURG, PA 16866-2804.
3. Plaintiff, LVNV FUNDING LLC, is the Assignee and Successor in Interest of Account #0362124315726; and said account was issued to Defendant(s) by SEARS, the Original creditor.
4. Defendant received, accepted and used the account to its benefit.
5. This account is in default and Defendant(s) has an unpaid balance of \$1,699.77. A true and correct copy of the total due and owing is attached hereto, made a part hereof and marked as Exhibit "A".
6. All credits, if any, to which Defendant(s) is entitled, have been applied to the account and are included in Exhibit "A".
7. Although demand has been made, Defendant(s) 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 \$1,699.77 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

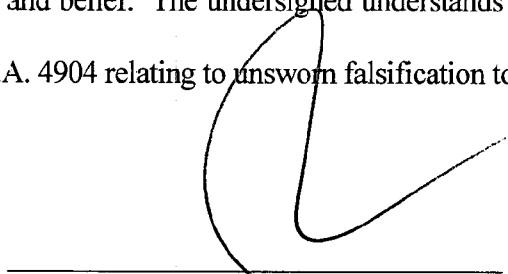
BY: 
David J. Apothaker

Dated: 5/13/2008

Our File No.: 160131

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: 5/13/2008

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

TINA DOTZLER
1005 HILL ST APT B
PHILIPSBURG, PA 16866-2804

STATEMENT OF ACCOUNT

Debtor's Name: TINA DOTZLER

Account Number: 0362124315726

Original Creditor: SEARS

Balance Due: \$1,699.77

Our File No.: 160131

EXHIBIT "A"

(1A)

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

LVNV FUNDING, LLC,
Plaintiff

vs.

TINA DOTZLER,
Defendant

*
* NO.: 08-957-CD
*
* Type of Case: Civil
*
* Type of Pleading: Preliminary Objections
*
* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

FILED ^{4CC}
01/08/08 Atty Pugh
JUL 08 2008

BS
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. 08-957-CD

TINA DOTZLER,
Defendant

**DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S COMPLAINT**

Defendant, Tina Dotzler, by and through her undersigned counsel, Shana M. Pugh, of MidPenn Legal Services, hereby files these Preliminary Objections to Plaintiff's Complaint and avers the following in support thereof:

**I. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM
TO LAW OR RULE OF COURT – VERIFICATION**

1. LVNV Funding, LLC (hereinafter referred to as "Plaintiff"), filed a complaint in this Honorable Court against Tina Dotzler, (hereinafter referred to as "Defendant") on May 23, 2008, seeking a judgment in excess of one thousand six hundred ninety-nine dollars and seventy-seventy cents (\$1,699.77).

2. Pennsylvania Rule of Civil Procedure 1024(c) requires that a pleading be verified by a party, with two exceptions: (1) *all* of the parties lack sufficient knowledge or information or (2) *all* of the parties are outside of the jurisdiction of the court *and* the verification of none of them can be obtained within the time allowed for the filing of the pleading. (emphasis added).

3. Moreover, Pa.R.C.P. No. 1024(c) requires that in the event that one of the aforementioned exceptions is applicable, the person verifying the pleading must set forth the source of the person's information as to matters not stated upon his or her own knowledge *and* the reason why the verification is not made by a party. (emphasis added).

4. In the instant case, Plaintiff's counsel verified the Complaint. However, Plaintiff's counsel fails to set forth the exception to Pa.R.C.P. No.1024(c) upon which counsel bases his ability to verify the complaint.

5. In addition, Plaintiff's counsel fails to state a reason why a party to the action was unable to verify the complaint.

6. Thus, the verification of the Complaint by Plaintiff's counsel in this matter fails to conform to Pa.R.C.P. No. 1024(c) and preliminary objections are therefore appropriate. Pa.R.C..P. No.1028(a)(2).

WHEREFORE, Defendant Tina Dotzler respectfully requests that this Honorable Court sustain her preliminary objections and dismiss Plaintiff's Complaint with prejudice.

**II. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM TO LAW OR
RULE OF COURT – FAILURE TO ATTACH
COPY OF WRITTEN AGREEMENT**

7. Plaintiff does not state, as required by Pa.R.C.P. No. 1019(h), whether the agreement between Plaintiff and the original creditor is oral or written.

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

9. Paragraph three (3) of Plaintiff's Complaint alleges that Plaintiff is the "...Assignee and Successor in Interest..." of an account alleged to be issued to Defendant by Sears, the alleged original creditor.

10. Plaintiff alleges to be the assignee of the original creditor but fails to attach a signed written contract between Plaintiff and Sears or any other creditor who may be the original creditor. In the instant case, such a writing is essential to Plaintiff's case, but such a writing has not been appended to the Complaint nor has the absence thereof been explained as is required by Pa. R.C.P. No. 1019(i).

11. Plaintiff alleges the alleged account to be in default, with an unpaid balance of one thousand six hundred ninety-nine dollars and seventy-seven cents (\$1,699.77), however Plaintiff has failed to attach a signed written contract between Plaintiff and Defendant.

12. Plaintiff does not state, as required by Pa. R.C.P. No. 1019(h), whether the agreement between the alleged original creditor and Defendant is oral or written. In fact, Plaintiff does state at all whether Defendant ever had an agreement with the alleged original creditor.

13. Plaintiff attached Exhibit "A" to the Complaint. This document is nothing more than a synopsis of Plaintiff's Complaint. This document is insufficient to establish a relationship between Plaintiff and Defendant, Plaintiff and the alleged original creditor, or Defendant and the original creditor.

WHEREFORE, Defendant Tina Dotzler respectfully requests that this Honorable Court sustain her preliminary objections and dismiss Plaintiff's Complaint with prejudice.

III. MOTION TO STRIKE/INSUFFICIENT SPECIFICITY OF PLEADING

14. Pennsylvania Rule of Civil Procedure 1019(a) requires that the "material facts" on which a cause of action is based shall be stated in a concise and summary form.

15. Plaintiff's Complaint fails to state the date upon which the alleged default occurred.

16. Plaintiff alleges, in paragraph six (6) of the Complaint that all credits have been applied to the account and included in Exhibit "A". However, the Exhibit shows nothing other than the amount alleged to be due.

17. The Complaint and the exhibit fail to provide any documentation to support Plaintiff's claim of damages such as a breakdown of charges, payments, and interest, so that Defendant can bring his Motion for Summary Judgment based upon the statute of limitations, any counterclaims, a response to said Complaint or raise any applicable defenses to said Complaint.

WHEREFORE, Defendant Tina Dotzler respectfully requests that this Honorable Court sustain her preliminary objections and dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted,

MidPenn Legal Services
Attorneys for Defendant

7-8-08
Date

BY: Shana M. Pugh, Jr. Esq.
Shana M. Pugh, Esquire
ID# 200952

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

LVNV FUNDING, LLC,
Plaintiff

vs.

TINA DOTZLER,
Defendant

*
*
* NO.: 08-957-CD
*
* Type of Case: Civil
*
* Type of Pleading: Certificate of Service
*
* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

FILED ^{1CC}
013144371 JUL 08 2008 Atty Pugh
WM
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. 08-957-CD

TINA DOTZLER,

Defendant

CERTIFICATE OF SERVICE

I, Shana M. Pugh, Esquire, hereby certify that on the 8th day of July, 2008, I served a copy of Defendant's Preliminary Objections to Plaintiff's Complaint filed in the above captioned matter to the following individual by first class mail, postage prepaid:

David J. Apotheker, Esquire
Apotheker & Associates, P.C.
2417 Welsh Road
Suite 21, No. 520
Philadelphia, PA 19114

Date: 7-8-08

Shana M. Pugh, Esq.
Shana M. Pugh
Supreme Court ID No. 200952
MidPenn Legal Services, Inc.
230 Lincoln Way East, Suite A
Chambersburg, PA 17201
(717) 264-5354
Attorney for Defendant

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

LVNV FUNDING, LLC,
Plaintiff

vs.

TINA DOTZLER,
Defendant

*
*
* NO.: 08-957-CD
*
* Type of Case: Civil
*
* Type of Pleading: Petition to Schedule
* Argument on Defendant's Preliminary
* Objections to Plaintiff's Complaint
*
*
* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

FILED 3cc
01/31/2008 Atty Pugh
AUG 07 2008
GK

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. 08-957-CD

TINA DOTZLER,
Defendant

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

Defendant, Tina Dotzler, by and through her attorney, Shana M. Pugh, of MidPenn Legal Services, requests the Court to schedule the argument on Defendant's objections and alleges as follows:

1. Plaintiff filed a Complaint on May 23, 2008.
2. Defendant filed Preliminary Objections to Plaintiff's Complaint on July 8, 2008, a date within twenty days of service of the Complaint.

3. As of August 6, 2008, Plaintiff has not filed an Amended Complaint.

WHEREFORE, Defendant requests the Court to schedule argument on the Defendant's Preliminary Objections.

Shana M Pugh 1,171
Shana M. Pugh

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT
OF PENNSYLVANIA – FRANKLIN COUNTY BRANCH

LVNV Funding, LLC,
Plaintiff

vs.

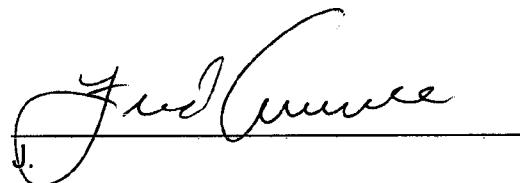
No. 08-957-CD

Tina Dotzler,
Defendant

ORDER

AND NOW, this 13 day of August, 2008, upon
consideration of Defendant Tina Dotzler's Preliminary Objections filed in the
above captioned matter, it is the Order of the Court that argument has been
scheduled for the 15th day of September, 2008 at
11:00 o'clock A.m. in Courtroom # 1, Clearfield County
Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FILED 3cc
014:00 AM AUG 13 2008 Atty Hugh
AUG 13 2008
600

William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 13 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/13/08

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:

Our File No.: 160131
APOTHAKER & ASSOCIATES, P.C.
BY: Kimberly F. Scian, Esquire
Attorney I.D.# 55140
520 Fellowship Road C306
Mount Laurel, NJ 08054
(800) 672-0215
Attorney for Plaintiff

LVNV FUNDING LLC) COURT OF COMMON PLEAS
vs. Plaintiff,) CLEARFIELD COUNTY
vs.)
TINA DOTZLER) NO. 08-957-CD
vs.)
Defendant.)

)

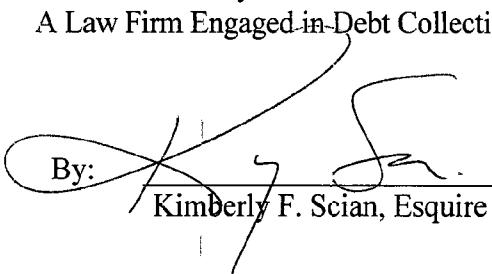
PRAECIPE TO DISMISS WITHOUT PREJUDICE

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: 9/11/2008

FILED NO C
M 12:34 PM
SEP 15 2008
Clerk

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104204
NO: 08-957-CD
SERVICES 1
COMPLAINT

PLAINTIFF: LVNV FUNDING LLC
vs.
DEFENDANT: TINA DOTZLER

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	APOTHAKER	90456	10.00
SHERIFF HAWKINS	APOTHAKER	90456	34.16

FILED
013.15 LM
SEP 22 2008


William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

So Answers,

____ Day of _____ 2008



Chester A. Hawkins
Sheriff