

**VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE CITY OF
PETERSBURG**

CAPITAL ONE BANK (USA), N.A.,

Plaintiff,

v.

Case No. GV16005912-00

JOHN DOE,

Defendant.

GROUND OF DEFENSE

Comes now Defendant John Doe, by counsel, and for his Grounds of Defense, states as follows:

Nature of Case

1. In response to the allegations contained in Paragraph 1 of the Bill of Particulars, Defendant denies that Plaintiff is entitled to any recovery in this action. Defendant denies that the account on which Plaintiff is suing is his account. Plaintiff has only had one Capital One account in his life. That account, a credit card account, was closed in 2009 when Plaintiff paid off the full amount that Capital One claimed he owed. Attached as Exhibit 1 is a February 16, 2009 letter to Plaintiff from Capital One stating that Plaintiff paid Capital One \$1661.00 on February 14, 2009. Attached as Exhibit 2 is an April 21, 2009 letter to Plaintiff from Capital One in which Capital One states that it closed Plaintiff's account as he had asked, that all fees and finance charges had been removed from his account, and that the account reflected a \$0 balance as of April 21, 2009.

Parties

2. Defendant admits the allegations as stated in Paragraph 2 of the Plaintiff's Bill of Particulars, that the Plaintiff in this case is purported to be Capital One Bank (USA), N.A., a

national bank.

3. Defendant admits the allegations as stated in Paragraph 3 of the Plaintiff's Bill of Particulars.

Factual Background

4. Defendant denies the allegations contained in Paragraph 4 of the Plaintiff's Bill of Particulars.

5. Defendant denies the allegations contained in Paragraph 5 of the Plaintiff's Bill of Particulars. Defendant denies using or authorizing the use by another of the account being sued on, which account Defendant denies having opened.

COUNT I – Suit on Debt/Account Stated

6. Defendant denies the allegations contained in Paragraph 6 of the Plaintiff's Bill of Particulars. He denies having any liability under COUNT I contained in the Bill of Particulars.

7. Defendant denies the allegations contained in Paragraph 7 of the Plaintiff's Bill of Particulars. He denies having any liability under COUNT I contained in the Bill of Particulars. Defendant denies that there have been any transactions between the parties that gave rise to an indebtedness. He denies that there existed an agreement between the parties. Defendant calls for strict proof of any and all transactions which Plaintiff contends gave rise to an indebtedness and for strict proof of the agreement between the Parties which Plaintiff contends established the amount that was due to the Plaintiff.

8. Defendant denies the allegations contained in Paragraph 8 of the Plaintiff's Bill of Particulars. He denies having any liability under COUNT I contained in the Bill of Particulars.

COUNT II – Breach of Contract

9. Defendant denies the allegations contained in Paragraph 9 of the Plaintiff's Bill of Particulars. He denies having any liability under COUNT II contained in the Bill of Particulars. Defendant denies having opened the account upon which Plaintiff sues and upon which Plaintiff bases the claim set forth in Count II of the Bill of Particulars.

10. Defendant denies the allegations contained in Paragraph 10 of the Plaintiff's Bill of Particulars. He denies owing Plaintiff \$1,257.57 or any amount.

Conditions Precedent

11. Defendant denies the allegations contained in Paragraph 11 of the Plaintiff's Bill of Particulars.

AFFIRMATIVE DEFENSES

12. Defendant denies use of the credit card such as to constitute liability for the amounts set forth in Plaintiff's Warrant in Debt and Bill of Particulars.

13. Plaintiff fails to include the original or a true copy of the contract signed by Defendant that is alleged to be in default.

14. Defendant reserves the right to amend his Grounds of Defense up to and including the date of trial.

WHEREFORE, Defendant respectfully requests that Plaintiff's Warrant in Debt and Bill of Particulars be dismissed with prejudice, and that Defendant receive such other relief as the Court may deem appropriate.

COUNTERCLAIM

1. Defendant denies use of the credit card such as to constitute liability for the amounts set forth in Defendant's Warrant in Debt.

2. Plaintiff will fail to prove the request, consent and/or use of the card and will fail to prove the authority of any agent who used the card, as required by Code of Virginia §6.2-424, et seq.

3. Defendant is entitled to and demands his attorneys' fees and costs pursuant to Code of Virginia §6.2-427.

WHEREFORE, Defendant prays that Plaintiff's Warrant in Debt be dismissed, with prejudice, and that Plaintiff be awarded attorneys' fees and costs, and for such other and further relief the Court deems right and proper.

Respectfully submitted,
John Doe
By Counsel

By: Dale W. Pittman, VSB#15673
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent electronically and mailed, first class, postage prepaid to:

Janelle M. Mills, Esquire
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Counsel for Plaintiff

on this _____ day of February, 2017.

Dale W. Pittman