

IN THE COUNTY COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 2007-SC-006135-XXXX
DIVISION: P

LVNV FUNDING, LLC, as assignee
of SEARS, ROEBUCK AND CO.,

Plaintiff,

vs.

DELORES MATTHEWS,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT**

This matter came before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint. The Court having heard argument of counsel for the Plaintiff and Defendant, having reviewed the file and being otherwise sufficiently advised in the premises, makes the following findings of fact and conclusion of law:

1. On June 18, 2007, the Plaintiff, LVNV Funding, LLC filed its Complaint raising the following claims: Count One - Credit Card; Count Two - Open Account; and Count Three - Money Lent. The only supporting documentation attached to the Complaint is a single document appearing to be labeled "Ledger Card." This document does not reference the account number, Plaintiff or the original account holder. This document is not dated and is not signed or by Plaintiff, Plaintiff's predecessor or Defendant.

2. Fla.Sm.Cl.R. 7.050(a) provides that a case shall be commenced by filing a

Statement of Claim. –Actions are commenced by the filing of a statement of claim in concise form, which shall inform the Defendant of the basis and the amount of the claim. If the claim is based on a written document, a copy or the material part thereof shall be attached to the statement of claim.

No written document, a copy or the material part thereof was attached to the statement of claim.

3. Plaintiff has also failed to attach copies of the account, showing items, time of accrual of each, and amount of each. *See by analogy* Form 1.932, *Fla.R.Civ.Pro.*, requirements for an open account claim.

4. This Court has considered the opinions referenced in Defendant's motion including the decision of the Honorable Gary Flower in Capital One Bank, Inc. v. Rosa L. Gelsey, County Court, Florida Fourth Judicial Circuit, Duval County, Florida signed July 3, 2007. This Court gives great weight to this opinion and adopts the rationale contained therein.

It is therefore based upon any of the foregoing deficiencies,

ORDERED AND ADJUDGED:

A. Defendant's Motion to Dismiss Plaintiff's Complaint is granted without prejudice because of the deficiencies referenced in Paragraphs 1, 2, 3 and 4 above.

B. Plaintiff shall have thirty (30) days from the date of this order to serve an amended complaint. Defendant shall have twenty (20) days after service of the amended complaint to file a response.

DONE AND ORDERED in Duval County, Florida, this ~~ORDER ENTERED~~ day of September, 2007.

OCT 04 2007

/s/ ANGELA M. COX

COUNTY COURT JUDGE

Copies furnished to:

Robert Bowen, Attorney for Plaintiff
Lynn Drysdale, Attorney for Defendant